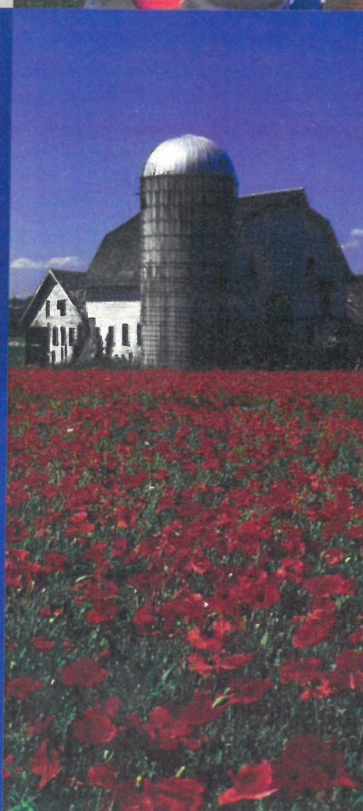




U.S. Department
of Transportation

**Federal Transit
Administration**

Uniform Relocation Assistance and Real Property Acquisition Policies Act Guide (URA)



Federal Transit Administration Uniform Relocation Assistance and Real Property Acquisition Policies Act Guide (URA)

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Introduction



This guide is intended to serve as a basic reference for Federal Transit Administration (FTA) grantees and other transit recipients who receive federal aid funds for projects involving the acquisition of real property. Typically, the FTA participates in federal grants to local agencies that carry out transit related projects. These funds are used to support activities related to building and maintaining designated transit improvements. In some circumstances, federal grants are passed on to third party recipients. Eligibility to

receive federal funds depends on compliance with federal laws, regulations and policies. State and local governments often have additional requirements that may apply to the acquisition process. The FTA will participate in the statutory limits as set in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

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 U.S. Constitution. The founding fathers placed a high value on the protection of private property. The U.S. 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 an interest in the acquisition of real property for federally assisted projects. The most important is ensuring that the Fifth and 14th 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, it is the responsibility of the federal government to ensure that federal tax dollars used to fund public improvement projects are spent in such a manner that is efficient and cost effective.



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 Relocation Act (URA), is the primary law for acquisition and relocation activities on federal or federally assisted projects and programs. The regulatory supplement for implementing the URA is found in 49 CFR part 24.

Federal real estate acquisition statutes and regulations include, but are not limited to:

United States Code (U.S.C.)

Title 42, Chapter 61 - Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally-Assisted Programs

Title 49 - Chapter 53 - Transportation

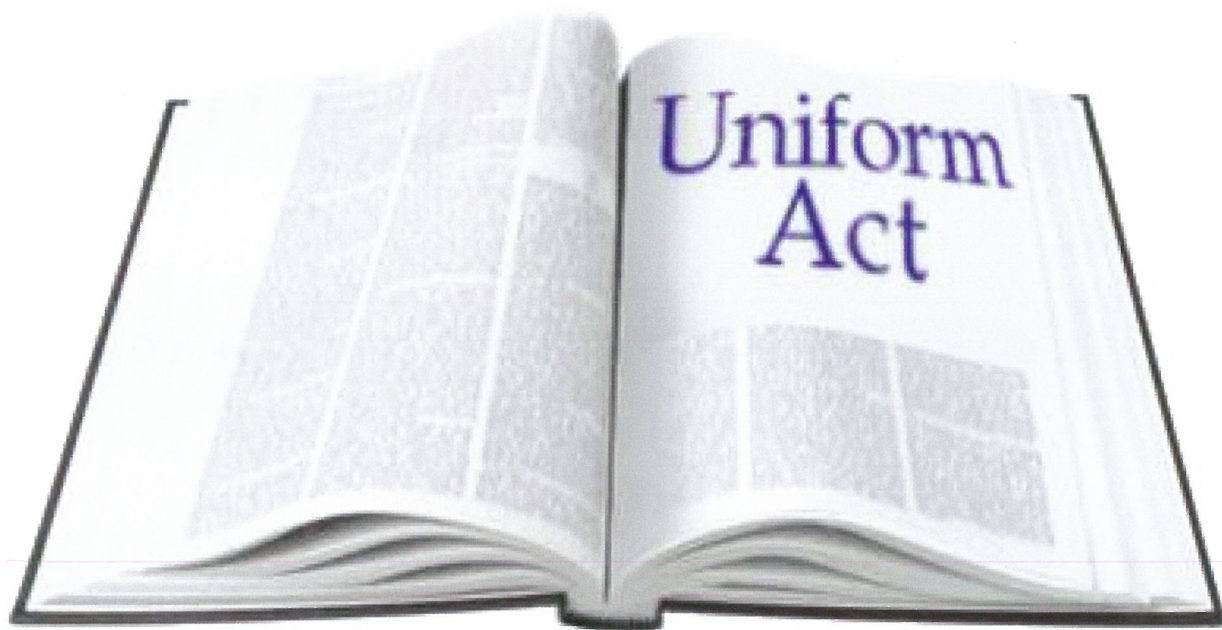
Code of Federal Regulations (CFR) - 49 CFR part 24

FTA Circulars and Guidance

Circular 5010.1D	Grant Management Requirements (Chapter 4)
Circular 5200.1A	Full Funding Grant Agreement Guidance
Circular 9030.1D	Urbanized Area Formula Program
Circular 9040.1F	Nonurbanized Area Formula Program (Chapter X)
Circular 9300.1B	Capital Investment Program Guidance (Chapter VI)

Chapter 1

GENERAL REQUIREMENTS



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 1

GENERAL REQUIREMENTS

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Chapter 1

GENERAL REQUIREMENTS

1.1 The Uniform Relocation Act and Government-Wide Regulation

1.1.1 What Does the Uniform Relocation Act Do?

The URA 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 URA (and its implementing regulations) may be found in the appendix of this guide.

The URA provides benefits and protection for people 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 URA requires services and payments be provided for displaced persons. A **displaced person** may be an individual, family, business, farm or nonprofit organization.

1.1.2 When Does the Uniform Relocation Act Apply?

The URA applies when federal dollars are utilized in any phase of a project. The URA 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 URA also applies to acquisitions by private as well as public entities when the acquisition is for a federal or federally assisted project.

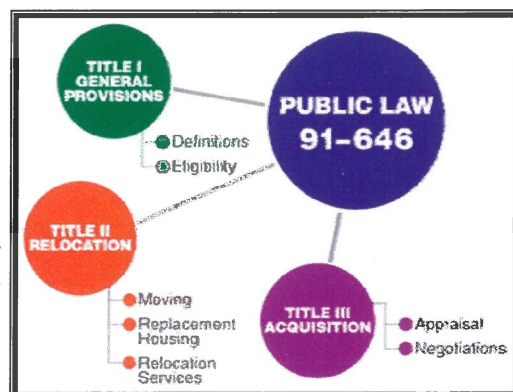
Property owners and occupants must be advised of their rights under the URA by means of a written statement or brochure. Electronic versions of the FTA's brochure titled "General Acquisition & Relocation Information" may be obtained from the FTA Web site at: http://www.fta.dot.gov/planning/planning_environment_5937.html.

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

1.1.3 Major Components of the Uniform Relocation Act

The URA 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 URA is a specialized and



complex subject. If a grantee does not have staff qualified to administer a relocation program, you should seek assistance from your state highway department or qualified consultants to ensure that displaced persons are provided all appropriate assistance and payments.

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 affected by federal programs and promoting public confidence in federal land acquisition practices.

Note: Failure to comply with the provisions of the URA will result in denial of federal participation in project costs.

1.1.4 49 Code of Federal Regulations (CFR) Part 24 - 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 regulation that implements the URA (a copy of 49 CFR part 24 is in the appendix).

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, FTA's basic guidance is found in FTA circular 5010.1D, a copy of which is in the appendix.

1.2 General Requirements and Federal Aid Prerequisites

1.2.1 Planning and Federal Aid Programming

Before grantees can acquire right-of-way and provide relocation assistance to occupants, the project must be on the appropriate transportation improvement plan (TIP) applicable to local areas and the state transportation improvement plan (STIP). Additional project development is required for projects under the FTA's Discretionary New Starts program (through section 5309 funding). New Starts projects account for a large percentage of FTA real estate funding. Because FTA cannot fund all the projects competing for discretionary section 5309 funding, FTA uses the additional requirements described in 49 CFR part 611, Major Capital Investment Projects, to qualify the best projects for federal funding.

1.2.2 NEPA Coordination/Documentation

All proposed transit projects anticipating receipt of federal funding must be evaluated for compliance with the National Environmental Policy Act (NEPA) prior to commencing work. The analysis varies with the complexity of the proposed project. Certain uncomplicated projects may result in a categorical exclusion (CE) determination. A more complex project requires an

environmental assessment (EA). The analysis of an EA will result in either a finding of no significant impact (FONSI) or the need for a comprehensive environmental impact statement (EIS). Often grantees do not need an EA to know the project will require an EIS. The 23 CFR part 771, "Environmental Impact and Related Procedures," provides regulatory guidance.

1.2.3 Project Definition

The grant agreement will spell out in detail the nature of the project to be funded. Property to be acquired must be addressed in the project's environmental document and, when applicable, the impact mitigation plan. For New Starts projects, the real estate acquisition and management plan (RAMP), as a part of the project management plan (PMP), is a precondition for a full funding grant agreement (FFGA). The RAMP is a living document that expands as the project progresses. For the specific work proposed, the RAMP must verify adequate technical capacity, procedures and project definition.

1.2.4 Real Property Interest to Be Acquired

The grantee shall acquire real property rights of such nature and extent that are adequate for the construction, operation and maintenance of the transit project. The NEPA document may also include property acquisition for eligible joint development on the project property. Normally, the transit grantee will acquire fee title to all land required for the transit line and related facilities. Where less than fee title is proposed, the property rights acquired shall be sufficient to assure adequate continuing control. Property rights must be adequate for project construction and safe transit project operations. The RAMP for New Starts projects will define the nature of and reasons for the property rights obtained. The grantee's files must contain evidence that adequate title has been obtained. A grantee may acquire property after approval of the NEPA document under FTA pre-award authority. Grantees must be aware that federal participation is allowed only when and if there is a grant that authorizes acquisition of the real property.

1.3 Minimum Requirements

1.3.1 Transit Agency Organization and Staffing Requirements

Transit agencies must have adequate technical capacity. In order to conform to the URA requirements, the agency must have sufficient professional staff and operational procedures to ensure that property owners and displaced persons are provided all entitlements and protections contained in the URA. This guide provides the minimum URA requirements for

An approved RAMP is a precondition for a full funding grant agreement.



the appraisal, acquisition and relocation assistance functions. The flow chart presented in Figure 1-1 provides an overview of the tasks required for the typical acquisition and relocation assistance process conforming to 49 CFR part 24.

The level of staff and organizational requirements depends on the complexity of the work proposed. Project complexity will range from the relatively simple acquisition of a few parcels of vacant land to complex projects involving high-value commercial or industrial property and/or significant relocation

of displaced residences and businesses. The grantee must carefully evaluate the scope of work proposed against the requirements set out in the URA and applicable laws and regulations. The grantee must also secure professional and administrative staff necessary to adequately deliver and document an acceptable acquisition and relocation program conforming to the URA. At a minimum, the grantee is required to provide staff and organizational structure to provide an acceptable appraisal or appraisal review function and to maintain a separation of functions between the appraisal process and the acquisition process as set out in Chapters 2 and 3 of this guide. In the event that a significant number of people will be displaced, the grantee shall maintain qualified staff whose primary responsibility is to implement the relocation assistance program as described in Chapters 4, 5, 6 and 7 of this guide.

Appraisal, acquisition and relocation work on a public project requires specific and unique skills that are unlike the same work performed on nonpublic projects. Instead of relying on an internal staff, local agencies may use the services of other public agencies or private consulting firms that have the experience, procedures and/or staffing levels approved for acquisition and relocation work on a project that will receive federal financial assistance. If the transit agency relies on private outside assistance for real estate acquisition, the project RAMP will describe the solicitation and contracting procedures, operational procedures, organization and staff qualifications prior to commencing work. An FTA headquarters real estate representative must approve the RAMP prior to entry into final design. FTA's interim approval of the RAMP may be required if the grantee proposes extensive acquisition or relocation under pre-award authority. The URA and implementing regulations provide a very clear and precise acquisition process that must be followed.

1.3.2 Recordkeeping

The grantee shall maintain records in sufficient detail of its acquisition and relocation assistance and displacement activities to document compliance with the URA. Chapter 9 of this guide provides guidance and recommendations for maintaining documentation to support the transit agency's grant assurance and certification of URA compliance. Records must be maintained on a parcel basis and retained for at least three years following project completion. Records maintained by the transit agency in accordance with this guide are confidential, unless local law provides otherwise. Records shall be available for inspection and audit by FTA and other authorized people and organizations at any time. All real estate records and related documentation should be maintained on or near the project.

The grantee shall maintain records in sufficient detail of its acquisition, relocation assistance and displacement activities to document compliance to the URA.

1.3.3 Appeals

1.3.3.1 Actions That May Be Appealed

Any aggrieved person may file a written appeal with the local agency if the person believes that the grantee has failed to properly consider the person's application or claim for payments or assistance under the URA. Actions that may be appealed include, but are not limited to, the person's eligibility for relocation and the amount of a payment, including payment for closing costs and incidental expenses, certain litigation expenses as described at section 3.5.4, and other relocation payments discussed in Chapters 5, 6 and 7. The local agency shall consider a written appeal regardless of its form and the agency shall promptly review appeals.

The appeal process is intended for those disputed payments or eligibility determinations that may not be resolved by the grantee's staff or agent. Where a request for relief is reasonable and has merit for resolution at the agent level, it is not necessary to pursue the formal appeal process in order to resolve the problem or dispute. Sufficient discretion within program guidelines should be available at the agent level to respond to special and individual circumstances and needs.

1.3.3.2 Time Limit for Initiating an Appeal

The grantee may set a reasonable time limit for a person to file an appeal, but not less than 60 days after the person receives written notification from the agency of its determination on the person's claim or application for a payment.

1.3.3.3 Right to Representation

A person has the right, at his or her expense, to be represented by legal counsel or other representative in connection with an appeal.

1.3.3.4 Review of Files by Person Making Appeal

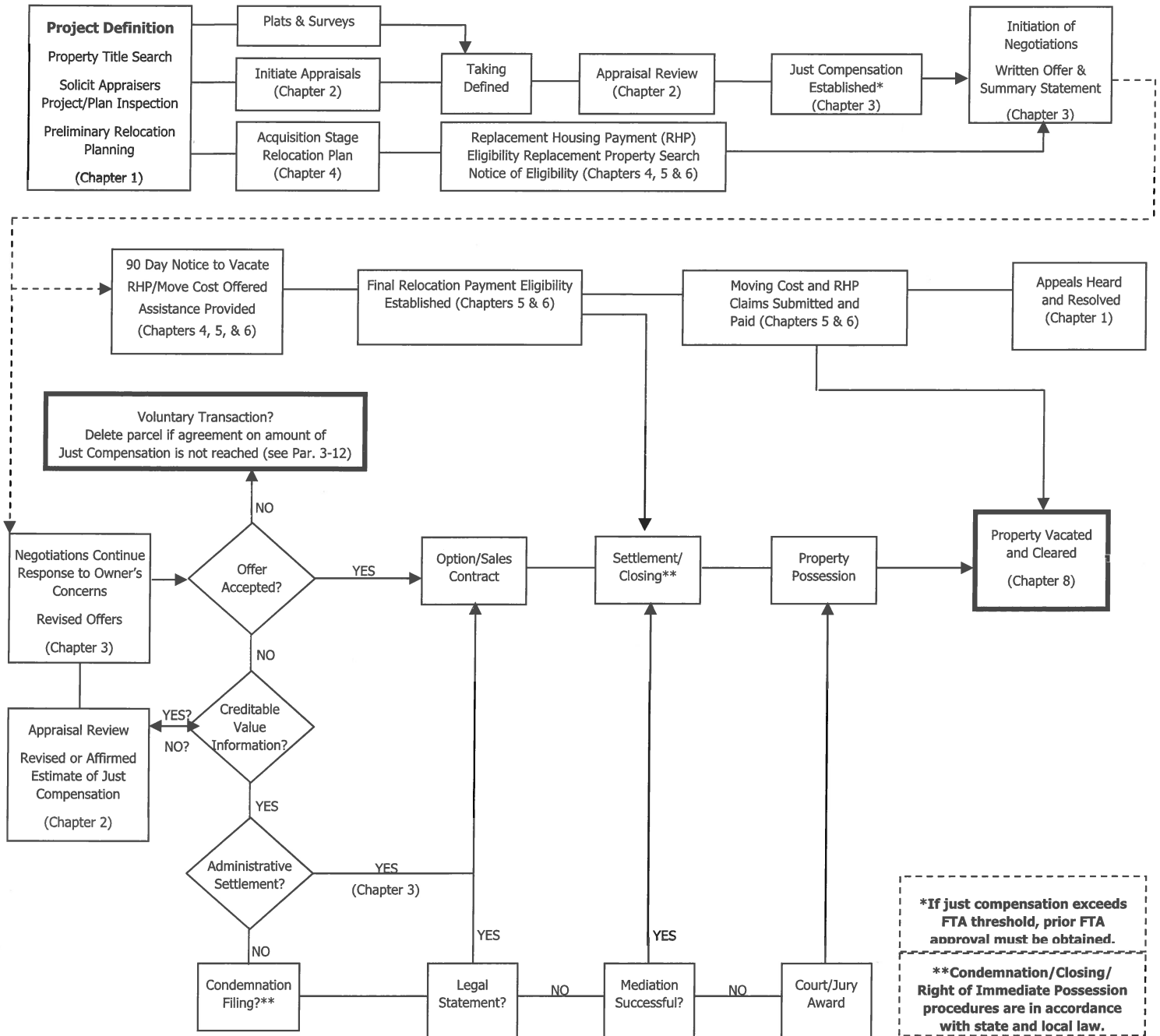
The grantee shall permit a person to inspect and copy all materials pertinent to the appeal, except materials that are classified as confidential by the grantee. The grantee may impose reasonable conditions on a person's right to inspect records, consistent with applicable laws.

1.3.3.5 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 information that is needed to ensure a fair and full review of the appeal.

1.3.3.6 Determination and Notification after Appeal

Promptly after receipt of all information submitted by a person in support of an appeal, the grantee 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 grantee shall advise the person of the right to seek judicial review. Normally, the person would be advised to consult legal counsel to pursue judicial review.



ACQUISITION AND RELOCATION ASSISTANCE PROCESS

Figure 1-1

1.3.3.7 Agency Official to Review Appeal

The official conducting the review of an appeal must be the grantee's chief executive officer or his or her authorized designee. A reviewing official must not have been directly involved in the action appealed. A two-tiered appeal process is acceptable.

Some points regarding the appeals process:

- Discuss your appeal process in your information brochure and in correspondence regarding relocation benefits;
- Limit the time to file an appeal to 60 days after notification of a specific benefit and/or after denial of a benefit;
- Maintain a good record of the appeal (including a transcript of any verbal appeal hearing); and
- If the displaced person is correct, admit it, terminate the appeal process and correct the error.

1.3.4 No Duplication of Payments

No person shall receive any payment required under the URA, as described in this guide, if that person receives a payment under federal, state or local law which is determined by the transit agency to have the same purpose and effect as the payment provided under the URA.

Persons utilizing government-subsidized housing may only be compensated for necessary increases in out-of-pocket costs; see Chapter 6. The FTA is available to clarify applicability of this provision should there be an apparent conflict between the URA and another federal program or mandate.

1.3.5 Relocation Payment not Considered Income

Relocation payments, as described in Chapters 5, 6 and 7 of this guide, are not considered income for purposes of the federal internal revenue code, or for the purpose of determining the eligibility of any person for assistance under the federal Social Security Act or any other federal law, except for federal law providing low-income housing assistance.

1.3.6 Relocation Assistance Planning

1.3.6.1 Project Planning Stage

Early in project development, the acquiring agency should identify relocation assistance measures sufficient to minimize the impact of displacement on individuals, families, businesses, farms and nonprofit organizations. Relocation planning at this stage is normally conducted as part of the NEPA documentation and approval process. Complex projects benefit greatly from including URA professionals on the NEPA team. URA professionals readily recognize factors that might be missed by environmental and planning specialists less familiar with larger parcel issues, situations requiring housing of last resort payments, time-consuming relocation problems, etc.



The preliminary relocation planning should result in an estimate of the number of displaced persons, business, farms and nonprofit organizations and the characteristics and needs of the displaced persons (e.g., elderly, disabled, minority, low income). This preliminary plan should consider other projects in the area and it should relate the available supply of comparable replacement housing and suitable replacement business and farm sites, to the needs of the displaced persons.

The plan should result in an estimate of the cost and time requirements for an orderly and humane relocation program as part of project development. Secondary sources of information are generally sufficient to adequately prepare this plan. A grantee seeking a full funding grant agreement (FFGA) with FTA should be aware of the importance of its estimates for cost and time for acquisition and relocation. By integrating URA professionals into the NEPA team, the potential grantee can recognize several cost and time issues early, thereby avoiding drastic revisions to its estimates later when requesting FTA approval for entry into final design.

1.3.6.2 Acquisition Stage Relocation Planning

Prior to commencing acquisition, the grantee should prepare an acquisition stage relocation plan that includes information for relocation specific to each of the identified people who have been displaced. See Chapter 4 of this guide for the planning requirements at the property acquisition stage. The acquisition stage plan is prepared using information obtained by interviewing the displaced persons. Grantees should conduct the interviews before initiating negotiations to acquire the property.

1.3.7 Preliminary Title Information, Surveys and Plats

Accurate ownership information and property descriptions are required to initiate the appraisal process and negotiations. The grantee should order title searches and preliminary abstracts in anticipation of delivery of these for the initiation of negotiations. Appraisal work may commence upon identification of the fee interest, leaseholds, any encumbrances, or easements on the property to be acquired, and upon securing adequate property descriptions. For properties with tenant-occupants, leases and other documents indicating ownership must be secured and tenant owned improvements identified.

The cost of a title search and the abstract supporting the grantee's assurance of title or title insurance are eligible for federal participation as part of the grant agreement for preliminary engineering. If preferred, the costs are also eligible on the grant that covers actual acquisition.

Property surveys and plats are required for partial acquisitions and for condemnation purposes. Local customs and laws may necessitate the preparation of plats for whole acquisitions. Because the property surveys are beneficial to preliminary engineering, the costs are eligible under either the preliminary engineering grant or the grant allowing property acquisition. Grantees must adhere to local law before conducting surveys. If the survey is accomplished prior to approval of the environmental document, make it clear that the survey is part of the planning process and it will not promote one alternative over another.

1.3.8 Realty/Personalty Determination

When improved property is to be acquired, an analysis of the property is necessary to distinguish items of realty to be acquired from personal property

An item cannot be both purchased and moved; federal participation is not allowed for both acquisition and relocation of the same item.

(personalty) items that may be relocated. The analysis is particularly important for properties occupied by business tenants. A written list of items of realty and items of personalty must be prepared during a meeting of the appraiser, relocation personnel and real estate owner. The business tenant should also be present if they can claim ownership of any items of realty. This realty/personalty determination is provided to the appraiser as part of the appraisal assignment to assure that personalty is not appraised and to assure that realty items are not excluded from the valuation. A formal realty/personalty determination is necessary for acquisitions of improved property and should be developed in consultation with the property owner and any affected tenants. Some items may require advice of legal counsel to determine whether a particular attached property item constitutes realty or remains personalty that may be relocated. Generally, an attached item is considered realty if removal of the item would substantially damage the item or the real estate.



The transit agency's review appraiser must ensure all realty items are properly valued in the real estate appraisal and items if personalty is excluded. Acquisition and relocation assistance staff must also assure that items of real estate are not proposed for relocation. Federal reimbursement is available for the acquisition of real property and for the relocation of personal property. An item cannot be both purchased and moved and federal participation is not allowed for both acquisition and relocation of the same item.

Grantees should address the ownership of any tenant improvements either prior to or as part of the property valuation process. The inventory and categorization of realty and personalty items should be similarly handled. If the appraiser is to be responsible for any of this, it should be spelled out in the appraisal scope of work required to be developed by the grantee.

1.3.9 Hazardous Materials and Contamination

1.3.9.1 Avoidance of Contaminated Property

As part of the project planning and environmental assessment phases, the grantee should undertake adequate environmental audits for the presence of hazardous material and contamination. Contaminated property should be avoided if it is reasonably possible to do so in order to minimize excessive project costs for the cleanup and remediation, as well as the liability that the grantee might assume with ownership.

1.3.9.2 Grantee Responsibilities before the Appraisal

Prior to the appraisal of any land that is to be acquired, including donated land, the grantee should secure an environmental audit of suspected contaminated property and provide the results to the appraiser for inclusion in the appraisal report. Appraisers should be aware of and advise the grantee of the actual property conditions that may warrant further environmental investigation prior to completion of the appraisal. If the grantee has the technical expertise to adjust the value of the property to account for the impact the contamination's presence has on market value, the grantee can instruct the appraiser to condition the appraisal report with an assumption that the property is free of contamination. See Chapter 2 of this guide for guidance on the appraisal of contaminated property. Grantees should include its basic procedures for handling the valuation of contaminated property in its RAMP. Such procedures should address

when adjustment of estimated value for the contamination impact is not appropriate. Grantees will find it difficult to anticipate all the different kinds of situations involving contamination, but the RAMP should provide a good framework that indicates forethought.

1.3.9.3 Grantee Responsibilities before Acquisition

Appropriate due diligence for contamination is conducted as a part of the NEPA process and discussed in the NEPA document before selection of a contaminated property in a capital project. Appraisals should consider the effect, if any, contamination has on the market value of the property being valued. The terms “contamination” and “hazardous material” should be interpreted broadly to include all contaminants that can affect property value. To assure federal participation, the grantee must require the property owner to remediate the contamination and obtain indemnification from the property owner for remediation costs or adjust the offer amount to the property owner to reflect the impact the contamination has on market value. The grantee must also seek liability agreements with other potentially responsible parties (PRPs) and/or seek legal recourse for reimbursement for the agency’s remediation cost. (See Appendix C, FTA circular 5010.1D, Chapter IV, section 2(g)(4) of this guide.)

Grantees may offer to acquire contaminated property conditioned on the property owner’s remediation of the contamination threat to public health and safety. This method will generally be used only with sophisticated property owners. For example, oil companies often want to remove their tanks and provide necessary cleanup. Section 2.1.8 provides guidance on the proper consideration of contamination in appraising the fair market value of property. Adequate environmental audits (phase I and phase II site studies) should be made that identify the scope of contamination and identify other responsible parties, who under law have cleanup liability.



The grantee should not undertake site remediation (phase III), without first attempting to secure adequate assurances and indemnification of cleanup costs from responsible parties. The grantee also needs an agreement from the regulatory agency or agencies defining the extent of the local agency’s cleanup responsibility. A qualified environmental consultant and an attorney experienced with laws relating to contamination will likely be required to ensure the grantee’s interests are adequately protected in developing the remediation requirements for the use of the site in the project and limiting any future cleanup liability.

Chapter 2

REAL PROPERTY VALUATION AND APPRAISAL



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 2

REAL PROPERTY VALUATION AND APPRAISAL

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Chapter 2

REAL PROPERTY VALUATION AND APPRAISAL

2.1 Appraisal Requirements

On FTA projects, the URA obligates the grantee to provide an appraisal process that includes the following:

1. **Fair Market Value.** The grantee must appraise the fair market value of the real property to be acquired before the initiation of negotiations with an owner; also see section 3.1 of this guide. The grantee may waive this requirement for an appraisal where the grantee determines that an appraisal is unnecessary on a particular parcel because the valuation problem is uncomplicated and the estimated fair market value is \$10,000 or less, based on a review of available market data; see section 2.8. Although federal procedures permit an appraisal waiver process, some state laws may mandate a formal appraisal of each parcel. This may become an issue when a grantee must condemn a parcel. FTA allows a waiver for a parcel of \$10,000 or less; however, FTA requires some minimum documentation be in the file to support the value.
2. **Inspection.** The grantee's appraiser shall afford the owner or designated representative an opportunity to accompany the appraiser during the inspection of the property. Letters to the property owners providing an opportunity to accompany the appraiser should be sent via certified mail. The appraisal report should document that the offer to accompany the appraiser was made and whether or not it was accepted. If the owner did accompany, the name of the owner and/or their representative should also be documented in the report.
3. **Just Compensation.** The grantee shall maintain an adequate appraisal review process to assist the grantee in establishing just compensation prior to the initiation of negotiations; see section 2.5. The amount of just compensation established shall not be less than the grantee's approved appraisal of the fair market value of the property to be acquired. An agency official is the only one that can establish just compensation.
4. **Project Influence on Property.** The appraisal of the property to be acquired will disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than physical deterioration within the reasonable control of the owner. In the case of partial acquisitions, project influence is disregarded in the before condition appraisal, but the effects of the project must be considered in the after condition appraisal; also see discussion in section 2.4.4.
5. **Relocation Assistance Benefits.** Appraisers shall not give consideration to, or include in their appraisals, any allowance for relocation assistance benefits.



2.2 Appraiser and Review Appraiser Qualifications

The grantee shall establish qualification criteria, which, at a minimum, ensure that the competency of its appraisers is consistent with the level of difficulty of the appraisal assignment. The grantee shall review the experience, education, training and other qualifications of appraisers

and review appraisers and will use only those determined to be qualified. The transit grantee may obtain referrals for qualified appraisers and reviewers from other transit grantees and from nearby airport offices, local offices of the state highway department and local housing agencies. The appraiser ideally should be experienced in valuing property for public projects.

- For larger projects, a mail solicitation list can be obtained from the state appraisal licensing agency. This will enable an agency to solicit all licensed appraisers in a given geographic area regarding their interest in the project and their past experience with appraisal work under the URA.
- Contract for specifically named appraisers within an appraisal firm or group of appraisers. It is the individual's expertise you desire to employ.
- For a small project, rely on qualifications lists assembled by other agencies.

All states now license and certify appraisers in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), providing minimum education and experience requirements for real estate appraisers. An active state licensed or



certified appraiser is bound by the ethics provision in the Uniform Standards of Professional Appraisal Practice (USPAP) and by state law to accept only work for which he or she is competent. However, a transit agency should not simply rely on the license or certification when hiring appraisers, but should actively solicit the most qualified appraisers available.

There are many criteria for the evaluation of appraisers and review appraisers. These include the following:

- Professional organization membership and designations (e.g. MAI, SREA, ASA, IFA) within those organizations
- Licensing (the type of state license an appraiser holds)
- Educational background
- Experience
- Client references
- Expertise (geographic or special types of property)

The independence of the review appraiser should be maintained. Therefore, it may be appropriate to draw from different organizations or firms when acquiring these services. The review appraiser may also assist the grantee in administering the project appraisal efforts, such as determining qualifications for appraisers or determining the complexity of various appraisal situations.

The independence of the review appraiser should be maintained.

2.3 Appraisal Management

The goal of managing the appraisal process is to ethically and effectively arrive at the market value for the real property necessary for a project. With that goal in mind, it is useful to assign groups of similar types and proximate properties to the same appraiser. This will speed the appraisal process and minimize valuation inconsistencies. A grantee should also ensure that an adequate number of appraisers are available to work on the project. This will enhance the independence of the appraiser and reduce the appearance that the appraiser is in any way obligated to the transit agency.

The independence of the valuation process must not be compromised. The person who assigns appraisal work and evaluates the performance of an appraiser or review appraiser must not also be the individual responsible for the real estate negotiation aspects of the project. See section 2.6 for further discussion.

2.3.1 Scope of Work

The transit agency and appraiser for a given parcel must agree to the scope of work for the appraisal assignment. The scope of work should appropriately address, but is not limited to issues such as:

- Purpose of the appraisal
- Definition of fair market value to be used
- Assumptions that are mutually agreeable
- Limiting conditions that are mutually agreeable
- Property owner accompaniment
- Handling of realty/personalty inventories and valuation
- Tenant-owned improvements, ownership and valuation
- Project maps, plats and property data to be provided by grantee and date of delivery to appraiser
- Applicability of all URA appraisal requirements
- Special considerations relative to the valuation assignment

It may also address approaches to value that are applicable, if appropriate. The agreed scope of work should be included in the appraisal report.

2.4 Appraisal Standards

2.4.1 Appraisal Scope of Work and Report Formats

The scope of work is a written statement agreed upon by the appraiser and the agency describing the appraisal work that the appraiser is to do. It should be developed cooperatively by the assigned staff or contract appraiser and an agency official who is competent to both represent the

The format and level of documentation for an appraisal report depends on the complexity of the appraisal problem

agency's needs and respect valid appraisal practice.

The scope of work should describe what the agency and the appraiser each are to do, and the mutually expected outcome of the assignment/contract. Although this is a revised approach from what was required in the past relative to abbreviated and detailed appraisal formats, greater flexibility is actually afforded.

Under the URA regulations, once a scope of work has been developed, existing appraisal formats that agencies have in use can continue to be utilized if they fit the scope that has been developed and are an approved grantee procedure.

The format and level of documentation for an appraisal report depends on the complexity of the appraisal problem. Many acquisitions by virtue of their low value or simplicity do not require a detailed appraisal. For those valuations, a short form, a value finding or other summary appraisal format conforming to nationally recognized standards should be used. However, at a minimum, any appraisal report format used must adequately present the appraiser's data and analysis and support the value estimate, thus, providing required documentation for the grantee's file. All appraisals shall be secured on all acquisitions in accordance with the scope of work. All appraisals shall reflect nationally recognized appraisal standards and professional practices for the preparation and reporting of a self-contained appraisal.

2.4.2 Certification

All appraisals shall contain the appraiser's signed certification as provided in the sample certification included at the end of this chapter. Note that this certification is required in addition to the ones that may be required by the appraiser's professional organization or license law.

2.4.3 Number of Appraisals Needed

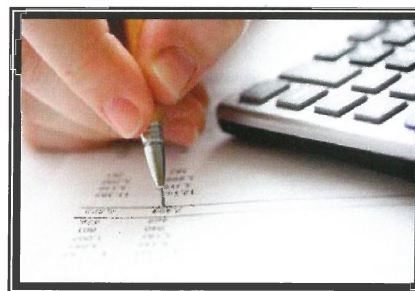
Unless waived as provided for in section 2.1, at least one appraisal is necessary for each parcel to be acquired and that appraisal must be examined by a reviewing appraiser. The grantee may obtain two appraisals, but it is not a federal requirement. A grantee may benefit from two independent appraisals if the appraisal is complex or has a high value.

2.4.4 Before and After Valuation

The acquiring agency shall use the before and after method of valuation, as interpreted by state law, for partial acquisitions, except where there is clearly no damage or benefit to the remaining land or improvements due to a relatively minor acquisition of real property.

2.5 Appraisal Review

Each appraisal or appraisals, if more than one has been prepared for a parcel, shall be reviewed by a qualified review appraiser and a recommendation of just compensation established prior to the initiation of negotiations. The review required by the URA is not to be confused with an administrative review function that consists primarily of a desk check of factual data and information presented in an appraisal report. Rather, the review of an appraisal report prescribed under the URA is a critical evaluation of the report in all



respects, with the validity and reasonableness of the final valuation conclusion being the principal focal point. The intent of the review is to produce an adequately documented appraisal, and a sound and valid recommendation for the amount of just compensation. Additional information on the requirements of a review appraisal is discussed in paragraph 2.5.2. The authority for these requirements can be found in 49 CFR part 24.104 and FTA circular 5010.1D Chapter 1V.

2.5.1 Grantee's Responsibility

When acquiring real property in connection with an FTA transit project, the grantee has the responsibility to have all appraisals and specialty valuations reviewed for acceptance as conforming to applicable requirements. The grantee's appraisal review process shall provide for a critical analysis of the appraisal, an evaluation of the competency of the appraiser and assurance of appraisal consistency on a project-wide basis. The grantee must ultimately use this information to set the just compensation amount that will be offered to the property's owner.

2.5.2 Review Appraiser Responsibilities

The following presents a description of the review appraiser's responsibilities:

1. Appraisal Report Review. The review appraiser should secure necessary corrective material from an appraiser prior to the recommendation of just compensation. The review appraiser should not accept an appraisal that does not meet minimum regulatory or commonly accepted appraisal standards, even though value conclusions may be considered accurate. The appraisal report is relied on to persuade a property owner that the transit agency's offer is sound and credible. Significant errors in the appraisal report that are not corrected in the review process may result in a breakdown in negotiations and/or excessive court awards.
2. Verification. The review appraiser shall inspect subject properties and, to the extent necessary, comparable sales. The review appraiser is responsible for verifying information that affects the value and requiring correction of any factual errors (e.g. as erroneous property area, zoning determinations, other property characteristics), which significantly affect value conclusions.
3. Value Recommendation. The review appraiser shall make a recommendation in a written report of a single value and not utilize a range of values. The review appraiser should reconcile any variances between different appraisals of similar parcels. The reviewer normally should not average appraisal conclusions. The reviewer may not in any event select a value lower than the lowest acceptable appraisal.
4. The review appraiser must conclude one of three options regarding an appraisal:
 - Recommend the appraisal as the basis of just compensation
 - Accept the appraisal as technically adequate but not the basis of just compensation
 - Not accept a report
5. Review Responsibility. The review appraiser is not the appraiser and should not substitute his or her judgment for that of the appraiser. Given an unresolved difference of opinion on an otherwise technically acceptable appraisal, the review appraiser may recommend the agency solicit an additional appraisal or, in unusual circumstances, suggest that he or she, the review appraiser, prepare an appraisal with adequate documentation to support the recommended compensation.

6. Consistency. The review appraiser must ensure value consistency and reliability on a project wide basis. Where there is a significant variance in unit values (e.g. dollar/ft², dollar/acre) in otherwise acceptable appraisals of comparable acquisitions, the review appraiser may undertake sufficient analysis and documentation to reconcile the appraised values to a single consistent unit value. When it is necessary to establish a consistent just compensation offer amount, the reviewer has the discretion to select the unit value to be applied on comparable acquisitions from within the range of accepted appraised values, or from a single accepted appraisal of the comparable acquisition. The nonselected acceptable appraisals should be retained in the grantee's files as supporting information, and may be discoverable in condemnation proceedings. To facilitate supported value consistency on a project basis, adequate appraisal management is required as discussed in section 2.3.
- It is not acceptable for a person functioning as a negotiator (or involved extensively in that aspect) to supervise or evaluate any appraiser, review appraiser or person preparing a waiver valuation. This prohibition is designed to maintain the independence of the valuation process.**
7. Just Compensation Recommendation. The review appraiser's recommendation for just compensation shall be a written report providing the estimate of just compensation and an allocation of compensation to any separately held interests by tenants or others.
8. Certification. The review appraiser shall certify that he or she:
- Does not have any direct or indirect, present or contemplated future personal interest in such property or in any monetary benefit from its acquisition.
 - That the estimate has been reached independently, without collaboration or direction and is based on appraisals and other factual data, and is consistent with all URA requirements.
 - That the estimate of just compensation excludes items generally held to be noncompensable in eminent domain.

This certification is required in addition to certification that may be required under the appraiser's professional organization or state licensing laws.

2.6 Conflict of Interest

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

No appraiser or review appraiser will act as a negotiator for the real property which that person has appraised, except that the grantee may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition, including any damages, is \$10,000 or less.

It is not acceptable for a person functioning as a negotiator (or involved extensively in that aspect) to supervise or evaluate any appraiser, review appraiser or person preparing a waiver valuation. This prohibition is designed to maintain the independence of the valuation process.

2.7 Appraisal of Properties Containing Hazardous Materials

The presence of contamination is normally reflected in a property's salability, thereby generally impacting the market value. In valuing such property for transit project purposes, the impact of any hazardous materials affecting the property's market value and the level of treatment needed to control or clean up the property should be considered and reflected in the appraised market value. For New Starts projects, the real estate acquisition management plan must include the grantee's procedures for making sure the contamination's impact is considered in estimating market value. There are several ways to handle this issue. It is appropriate to value the parcels as contaminated, or they may be valued as clean and their value adjusted for the contamination by the review appraiser, if sufficiently reliable data is available to do so.

2.7.1 Identification of Hazardous Materials Sites

The grantee's real estate department should be notified early of sites that may be contaminated. Acquisitions of such sites are usually complicated and require planning. Again, it is highly advantageous to require URA specialists on the NEPA team. The appraiser usually is not a specialist or expert on handling hazardous materials or in estimating the costs of control, cleanup or removal, and should not be expected to make these determinations. Therefore, these matters



and related project costs should be determined by an environmental audit during early project development and the findings given to the appraiser for consideration in valuing the affected property. The degree to which the hazardous materials impact the market value of a property often requires an appraiser with access to environmental specialists and legal assistance. The real estate appraiser must be given specific instructions regarding how to consider the contamination impacts on value of the parcel to be appraised in the appraisal scope of work.

Without specific instructions from the grantee to the appraiser to value the property as though the property is free of contamination, it is not acceptable to complete a report based on the assumption that the contaminated property is not contaminated.

2.7.2 Commercial/Industrial Properties

In appraising commercial and industrial properties impacted with hazardous materials, the following situations may be encountered:

—The property contains hazardous materials which must be cleared before any further use or activity, existing or otherwise, can be carried out on the property. In these instances, the appraised value must be made on the potential highest and best use, less the cost of clearing the materials, in compliance with existing regulatory criteria.

—The property contains hazardous materials, but clearing or disposal may be delayed until a future date. In such instances, the property should be valued as unimpaired, less the present worth of the estimated cost to clean up at a future date. Full consideration must be given to the influence that any existing hazardous material may have on the value of the property.

—The property has building components and/or site improvements that contain hazardous materials, which upon demolition or refurbishing will require removal and disposal meeting applicable environmental and health regulations (e.g. nonfriable asbestos containing materials, PCB's, lead paint, acidic sludge, other regulated toxic and hazardous materials). The appraiser's estimate of accrued depreciation for these items and cost-to-cure to replace worn components must consider appropriate removal and disposal costs.

—The property contained hazardous materials that have been cleared or disposed of by the owner prior to acquisition by the transit agency. If the cleanup is in accordance with applicable government requirements, the property may be appraised and valued as if exposed for sale on the open market, recognizing the extent of site remediation completed and any future risk of additional cleanup liability. Comparable sales of remediated property would be the best indicator of value, if available. In most active commercial or industrial real estate markets, comparable sales with similar impairments exist. These are the best indicators of the value of an environmentally impacted property and any impact resulting from any stigma of prior contamination.

2.7.3 Residential Property

Residential properties that may contain hazardous materials in their building components should be appraised "as is" subject to the following conditions:

—Should the real estate market indicate a value adjustment for the presence of the hazardous materials on the property, the appraiser should incorporate this market factor in the appraisal of the fair market value. Often comparable sales contain similar building components and adjustment is not required.

—Existing conditions such as friable asbestos, exposed and chipping lead paint, or other hazardous conditions that require correction or remediation prior to selling a property must be considered by the appraiser, and the cost-to-cure these conditions properly accounted for in the appraised fair market value.

—Consideration of the present value of the expected demolition costs to remove the improvements and adequately dispose of the hazardous materials should be made in the appraisal of interim use properties and properties with highly depreciated improvements having a relatively short-term remaining economic life.



2.7.4 Key Points to a Real Property Appraisal

Appraisals and an appropriate appraisal review process are generally required of every parcel. Briefly, the appraisal and appraisal review process includes the following steps:

Step 1 Estimate Value - Appraisers estimate value.

Step 2 Recommend Just Compensation - Review appraisers recommend approval of an appraisal and a just compensation amount.

Appraisals and an appropriate appraisal review process are generally required of every parcel.

Step 3 Just Compensation Offer - A transit agency official sets the amount of just compensation, after which the written offer to the owner can be prepared.

If a property is contaminated (i.e. hazardous waste or materials), it is valued similarly to other impaired properties.

2.8 Other Valuation Techniques

A waiver valuation is the process used and the resulting product when a local transit agency makes an informed decision that an appraisal is not required, but a valuation is still needed. An appraisal of a parcel may be waived if the agency determines the valuation problem is uncomplicated and the value of the proposed acquisition will be \$10,000 or less. In this case, the transit agency may prepare a written waiver valuation. The valuation may be prepared by an appraiser (or nonappraiser) having a sufficient understanding of the local real estate market. The waiver valuation is not an appraisal, and no review appraisal is required for a waiver valuation, but approval of a just compensation amount by an agency official is still required. Additionally, if a waiver valuation is done, there is no requirement to offer the property owner the opportunity to accompany the appraiser during the inspection of the property.

Chapter 3

REAL PROPERTY ACQUISITION

*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 3

REAL PROPERTY ACQUISITION

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Chapter 3

REAL PROPERTY ACQUISITION

3.1 General

The following are the minimum URA requirements for the FTA grantee's acquisition of real property for a federally assisted project:

1. The grantee shall make every reasonable effort to acquire real property expeditiously by negotiation.
2. Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in section 2.1, and the owner or owner's representative shall be given the opportunity to accompany the appraiser during the appraiser's inspection of the property, except when a waiver valuation is utilized instead of an appraisal. There shall be no discussion of property values with the owner before the completion of the appraisal.

There shall be no discussion of property values with the owner before the completion of the appraisal.

3. Before the initiation of negotiations, the grantee shall establish an amount which he or she believes is just compensation for the real property. The amount cannot be less than the approved appraisal of the fair market value of the property, taking into account the value of any allowable damages or benefits to any remaining property. Promptly thereafter, the grantee must make a written offer to acquire the property for the full amount believed to be just compensation. The date of this written offer is defined in the URA as the initiation of negotiations. Figure 3-1 provides a sample of a combination offer letter and summary statement that meets the URA requirements. The initiation of negotiations typically establishes eligibility for relocation payments for people who have been displaced, if any, who are occupants on the property as of this date. See Chapter 4 of this guide for more information on relocation assistance and



payments.

4. Along with the initial written offer to purchase, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:
 - A statement of the amount offered as just compensation. For partial acquisitions, the amount of compensation for property taken and amounts for damages, if any, shall be stated separately.
 - A description and location identification of the real property and the interest in the real property to be acquired.
 - An identification of the buildings, structures and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement

shall identify any separately held ownership interest in the property (e.g. a tenant-owned improvement [see section 3.3]) and indicate that such interest is not covered by the offer.

—A summary of the appraisal or a copy of the appraisal.

5. Include an offer to acquire any uneconomic remnants. 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 transit agency has determined has little or no value or utility to the owner.
6. An acquiring agency cannot advance the time of condemnation, defer negotiations, defer condemnation, delay the deposit of funds with the court or take any other coercive action in order to induce an agreement.

3.2 Negotiations Process

The goal of the negotiation process envisioned by the URA is consistent and fair treatment of all property owners in order to reach purchase agreements for the property that is needed in the agency's project. The acquiring agency must demonstrate reasonable effort to negotiate acquisition of the property. The FTA is required to provide oversight of the URA compliance. One of the means FTA uses to oversee its program (especially for projects not included in New Starts) is to require prior concurrence in certain transactions. Unless alternative concurrence levels are requested and granted, a grantee must provide the following information to receive FTA's prior concurrence:

—Submit its appraisal and review appraisal to FTA before offering to acquire property valued at \$500,000 or more.

—Submit to FTA the justification for settlement purchases when a settlement is proposed of \$50,000 or more than the offer amount.

—Submit to FTA the explanation of how negotiations failed and why the grantee proposes filing condemnation. Additionally, FTA concurrence is required before filing for condemnation if the appraised amount exceeds \$500,000.



FTA may allow alternative concurrence levels provided a person experienced in URA issues reviews the grantee's procedures and technical capacity for appraisal, acquisition, relocation and property management. If FTA's concurrence is not required in a transaction, the grantee must still comply with all aspects of 49 CFR part 24, the implementing regulations for the URA, as amended.

3.2.1 Contacting the Owners

As soon as feasible, generally after NEPA approval, the agency must provide all owners with a written notice stating its interest in acquiring the property and the basic protections provided to the owner by law. This notice is anticipated to precede appraisal activities.

Once the agency has completed its appraisal and review process, the agency's negotiator should personally contact each owner with the agency's written offer of just compensation.

(date)

Name

Project ID

Address

Parcel ID _____

City, State Zip

Salutation:

The Metro Transit Agency has proposed (*describe project*). This transportation improvement necessitates the acquisition of property, including property that public records indicate you own.

Our approved offer is \$ _____ for the needed real property. This offer is allocated as follows:

- Loss of land, including any improvements and fixtures being acquired is: \$ _____
- Damage to remaining property is: \$ _____*

The above amounts represent payment for clear title to the needed property.

**As an alternative offer, in addition to the land necessary for the project, we will also acquire the property we have identified as an uneconomic remainder for the sum of \$ _____.*

This value is based on a professional appraisal made by a qualified appraiser to determine the fair market value of your property plus damages to the remainder, if any. The appraised value was reviewed by our reviewing appraisers to ensure that you will receive just compensation for your property. Our determination of just compensation: (1) is based on the fair market value of the property; (2) is not less than the approved, appraised value of the property; and (3) disregards any decrease or increase in fair market value prior to the date of valuation caused by the project for which the property is being acquired.

Metro Transit Agency (*will or will not*) prorate real estate taxes based on available information on the date of settlement and deed transfer. If the agency does not prorate at settlement, we will reimburse you separately for your prepaid taxes on the portion of the property transferred to Metro Transit.

Following is a list of structures, equipment and fixtures that have been considered as a part of the real estate and are part of the property to be acquired. You may negotiate to retain any of the items owned by you but not needed by Metro Transit Agency. Items marked with a "T" are believed to be owned by other parties; therefore, their value is not included in the above approved offer. (*NOTE: Include either or both of these clauses only when applicable*).

(If applicable, provide a list of structures, building equipment and fixtures.)

The following items are considered to be personal property and are not included in the acquisition:

(Note: Use this clause only where required.)

(Note: Also, agencies may include additional information deemed appropriate or required by state law.)

We are also enclosing a brochure explaining your rights and our acquisition procedures. If you have any questions concerning the construction or acquisition details or the right of way plans furnished you, please contact me at (*phone number*).

SAMPLE LETTER PRESENTING WRITTEN OFFER AND SUMMARY STATEMENT ON LETTERHEAD OF ACQUIRING AGENCY

Figure 3-1

Nonresident owners may be contacted by certified mail. The initiation of negotiations and written offer should follow very closely the establishment of just compensation by the agency. The negotiations should continue, without significant delay, until amicable settlement is secured or an impasse is reached.

3.2.2 Documentation

The negotiator must keep an appropriately documented diary or log with all information pertinent to the negotiations (e.g. initiation of negotiation date, amount of offer, counter offers, summary of discussion, information requested and provided). The file documentation should tell the story of the negotiations from the beginning of acquisition to settlement and should include all correspondence by the negotiator, including e-mails. The negotiator's log should be written in ink or typewritten in permanent form. The log must be maintained with the grantee's permanent parcel files. The project files should be maintained on or near the project site.

The project files should be maintained on or near the project site.

3.2.3 Required Services and Duties

The written offer will represent a full and fair offer of just compensation, not less than the approved appraisal, and reflect all relevant terms and conditions of the proposed acquisition. The negotiator must present and explain the amount of just compensation due the property owner for the proposed acquisition of property and any resulting damages to the property. To make an adequate presentation and explanation of the offer to the property owner, the grantee's negotiator must be thoroughly familiar with the appraisal and the conclusions of the review appraiser on just compensation.

The objective of negotiations is the mutual agreement with the property owner on the payment of fair compensation for the proposed acquisition. Therefore, negotiations are to be conducted from the viewpoint of two parties seeking agreement on the fair compensation and not on a "take-it-or-leave-it" basis. The owner must be given reasonable opportunity to present factual material relevant to the question of value and the owner must also be given reasonable opportunity to suggest modification in the proposed terms and conditions of the purchase. The grantee should carefully consider the owner's presentation and suggestions.



The negotiator is often the primary or only contact the property owner may have with the transit agency. The owner may therefore rely on the negotiator as a problem solver concerning issues the owner may have with the proposed project in addition to the amount of just compensation offered to acquire the property. Successful negotiations often entail resolution of these unrelated matters. Within reason, the attempt to resolve these issues may be beneficial to the entire project.

Acquisition by amicable settlement is almost always less expensive than litigation. The negotiator should establish a good business rapport with the property owner through frequent contacts and timely consideration of issues raised by the owner.

3.2.4 Updating the Offer of Just Compensation

During the course of negotiations the offer of just compensation should be updated when:

- The property owner provides creditable valuation information.
- There is a material change in the character or condition of the property that indicates the need for new appraisal information.
- A significant delay has occurred since the date of value of the grantee's appraisal; the grantee shall have the existing appraisals updated or new appraisals secured.
- The appraisal information and/or revised appraisals shall be submitted to the review appraiser and, if warranted, the review appraiser should recommend a revised estimate of just compensation.
- The grantee shall promptly offer the revised amount to the property owner.

3.2.5 Distribution of Appraisal Documents

Appraisal and review appraisal documents may be kept confidential until the property is acquired and/or the appraisal is admitted as evidence in court. As required by applicable state eminent domain law or local custom, appraisals may be shared with property owners, subject to discovery, or exchanged for the property owner's appraisals in preparation for trial.

3.2.6 Global Settlements

A global settlement is the combination of all payments, acquisition and relocation, into one payment. This is not permitted on FTA projects as global settlements are considered in conflict with the intent of the URA. Under the URA, an appraisal is made prior to the initiation of negotiations on a particular parcel. The relocation of personal property, on the other hand, is reimbursed based on the actual, reasonable and necessary costs that most often cannot be determined until after the move or relocation is complete.

3.3 Acquisition of Tenant-Owned Improvements

When acquiring any interest in real property, the grantee must offer to acquire at least an equal interest in all buildings, structures or other improvements located on the real property to be acquired, which he or she requires to be removed or which he or she determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term. Tenant-owned improvements shall be appraised and acquired in conformance to the following:

1. A 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 acquisition.



2. Just compensation for a tenant-owned improvement is the amount that the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.
3. No payment shall be made to a tenant-owner for any real property improvement unless:
 - The tenant-owner, in consideration for the payment, assigns, transfers and releases to the grantee 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.
 - The payment does not result in the duplication of any compensation otherwise authorized by law.
4. Nothing shall be construed to deprive the tenant-owner of any right to reject payment under section 3.3 and to obtain payment for such property interests in accordance with other applicable law.

3.4 Administrative Settlements

Administrative settlements consist of two segments, negotiated settlements and legal settlements. A negotiated settlement is an amount that exceeds the acquiring agency's approved offer of just compensation. Where circumstances indicate that it is reasonable, prudent and in the public

FTA reimbursement of administrative settlements depends on adequate documentation and justification of the settlement as being in the public interest.

interest, an administrative settlement should be used as a means of effecting amicable settlements. Administrative settlements may have significant benefits, when justified, for acquisitions made under threat of condemnation. However, settlements should not be accepted simply

to avoid the costs of litigation, without adequate consideration of the risk of increased costs on the remaining properties to be acquired on the project.

A legal settlement is the next step should negotiations fail. FTA has oversight responsibility of the parcel up to when the case goes to a jury. Litigation is a viable option where the grantee's case is strong and/or the effect of settlement on pending negotiations entails unacceptable risk of excessive cost.

The trial appraisal is most often potential evidence that is assembled by the grantee that will help the trial lawyer in supporting his/her case in court or to assist in a legal settlement. Therefore, a



trial appraisal is not the base for the calculation of a settlement. The trial appraisal is not subject to a review and the amount was not determined to be the agency's just compensation offer to the owner. The proper basis of determining the settlement amount is the difference between the final settlement amount and the last approved offer.

FTA participation in administrative settlements depends on adequate documentation and justification of the settlement as being in the public interest. The extent of documented justification shall be commensurate with the dollar amount of the

settlement. The documentation should lead a reader to conclude that the administrative settlement was prudent and in the public interest. Some of the issues to be discussed in the documentation are:

- The probable range of testimony in litigation including the grantee's approved appraisals and the property owner's appraisals;
- The type of property involved and damages, if any;
- Recent court awards in the vicinity, particularly involving similar property;
- A summary of the negotiation effort and the recommendation of the negotiator;
- The estimate of trial costs, including preparations; and
- The advice and opinion of legal counsel.

The settlement shall ultimately be approved by the appropriate transit agency official with management responsibility for the acquisition project. Unless alternative concurrence levels are approved, FTA must concur in proposed settlements that are \$50,000 more than the offer amount.

3.5 Condemnation

3.5.1 Filing Condemnation

For those grantees with eminent domain authority and/or for projects where eminent domain is required, when negotiations with the property owner have reached an impasse and administrative settlement within reasonable limits of the established just compensation is not practical, condemnation should be initiated. Even though grantees are required to make every reasonable effort to acquire real property expeditiously by negotiation, condemnation is sometimes necessary. Furthermore, the grantee may not defer condemnation in order to force an agreement on the price of the property.



3.5.2 Grantee's Responsibility

The extent to which FTA will participate in a condemnation award depends upon the grantee's diligent pursuit of both the acquisition and the subsequent litigation. Both activities should be adequately justified and documented by the grantee. FTA reimbursement of costs may be made for items normally compensable under eminent domain. Payments for noncompensable items (e.g. loss of business, frustration of development plans, loss of goodwill) are not eligible for FTA reimbursement and should be excluded from grantee requests for reimbursement.

3.5.3 Inverse Condemnation

If the grantee intends to acquire any interest in real property by exercise of the power of eminent domain, he or she will institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the taking of real property for an FTA-assisted project.

3.5.4 Certain Litigation Expenses

The grantee shall reimburse the property owner for any reasonable expenses, including reasonable attorney, appraisal and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- The final judgment of the court is that the grantee cannot acquire the real property by condemnation (e.g. lack of public necessity);
- The condemnation proceeding is abandoned by the grantee other than an agreed-upon settlement; or
- The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the grantee effects a settlement of such proceeding.

3.6 Excess Land

When the grantee acquires a tract of land that is in excess of transit needs or a tract that contains improvements not needed for transit purposes, the excess property may be disposed of by the transit agency. See Chapter 8 “Property Management” of this guide for a full explanation. The URA requires acquiring agencies to offer to acquire parcels that meet the URA’s definition of “uneconomic remnant” even though the property is not needed in the project. Administrative settlements and late design changes can also result in excess property.

3.7 Donations

After approval of the NEPA document, property owners whose real property is to be acquired for a transit project may make a gift or donation to the agency of the property, or any part of it, or any of the just compensation amount. At the time of the donation, the property owner must be informed of his or her right to receive just compensation. In addition, the grantee has the obligation to perform an appraisal of just compensation and disclose the amount to the property owner, unless the owner releases the grantee from this obligation. The owner must sign a statement acknowledging the right to just compensation and/or the right for his property to be appraised. The grantee is cautioned that prior to accepting a donation, ownership of the property must be verified and adequate title assured, and assurance secured that the property is not subject to hazardous waste contamination and/or cleanup liability that may exceed the value of the property. Grantees can use the market value of donated property that is incorporated into the project as an in-kind contribution for credit toward local share.

3.8 Minimum Payment Negotiation

An agency may establish a minimum payment (e.g. \$500) to offer as the “floor” for any acquisition of a real estate interest. This process indicates that every interest is worth something and that a property owner requires some motivation to cooperate in the sale. For any minimum payment in excess of \$500, a grantee must obtain FTA concurrence.

The written offer letter presented to the property owner at the initiation of negotiations must acknowledge that the offered amount was based on an administratively determined payment. If negotiation and settlement efforts fail, the grantee may be required to formally appraise these properties prior to any condemnation action.

3.9 Utility Relocation

In the development of a transit project, there are times when a utility (e.g. electric, gas, telephone, sewer, water) must be relocated to accommodate the proposed work and use of a property. If the utility company owns an interest, either fee or easement, in the utility right of



way to be acquired and the utility must be moved to another location as a result of the project, the relocation, adjustment and resulting costs can be reimbursed to the utility company as an eligible project cost. The grantee should enter into a reimbursable agreement with the utility company in order to establish the total costs involved in the relocation, including a new right of way if necessary. Utility interests may be handled outside the land acquisition process by the utility section.

3.10 Expenses Incidental to Transfer of Title

As soon as practicable, the grantee will reimburse the property owner for all reasonable expenses necessarily incurred for the following:

1. Miscellaneous. 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 transit agency are reimbursable expenses. However, the transit owner is not required to pay costs solely required to perfect the property owner's title to the real property.
2. Penalty Costs. Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the real property also are reimbursable.
3. Prepaid Real Estate Taxes. The owner is reimbursed the pro rata portion of any prepaid real property taxes that are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the transit agency shall pay these costs directly, so that the property owner will not have to pay such costs and then seek reimbursement at a later date. If applicable, the grantee, or the grantee's closing agent, may be required to submit IRS Form 1099 as part of the closing process.

3.11 Voluntary Transactions

An acquisition may be considered a voluntary transaction, as specifically defined in 49 CFR 24.101(b), and exempt from the acquisition regulations in subpart B of 49 CFR part 24 when *all* of the following conditions are met:

—No specific site or property needs to be acquired. When the agency purchases more than one property within a geographic area, all property owners are to be treated similarly.

—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.

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

—The agency will inform the property owner of what it believes to be the fair market value of the property.

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 must perform the following:

—Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement.

—Inform the owner of what it believes to be fair market value of the property.

—The acquisition of real property from a federal or state agency, if the agency desiring to make the purchase does not have authority to acquire the property through condemnation.

A voluntary acquisition typically renders the owner occupant ineligible for relocation assistance and payment benefits. However, tenant-occupants of acquired property are eligible for all applicable relocation payments and assistance provided for under the URA (see section 4.1.2.2). By definition, the voluntary transaction exemption may not be applied to a transit project that requires multiple parcels for a designated right of way.

Chapter 4

RELOCATION ASSISTANCE REQUIREMENTS



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 4

RELOCATION ASSISTANCE REQUIREMENTS

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Chapter 4

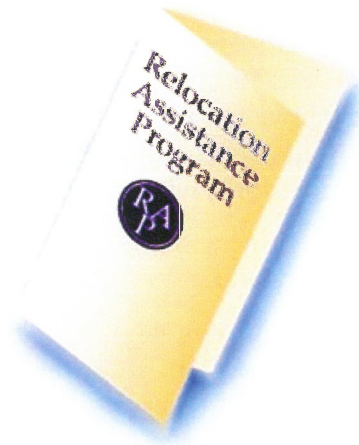
RELOCATION ASSISTANCE REQUIREMENTS

4.1 Relocation Assistance Program

4.1.1 General

It is the project owner's obligation under the URA to provide an adequate relocation assistance program that ensures the prompt and equitable relocation and reestablishment of displaced persons as a result of its federally assisted transit projects. The term "person" as defined in the URA, and as will be used herein, refers to any individual (residential or business occupant), family, partnership, corporation or association. Grantees shall provide advisory assistance and conduct the relocation program so that displaced persons receive uniform and consistent services and payments regardless of race, color, sex or national origin. The grantee shall maintain adequate documentation to evidence compliance to the URA regulation of 49 CFR part 24 and its grant assurances provided to FTA.

Relocation payments must be provided if the land is to be incorporated into a project receiving federal assistance, even if nonfederal funds were used in the acquisition.



4.1.2 Eligible for Relocation Payments

All persons displaced from or for an FTA-assisted project may be eligible for relocation assistance and payments.

4.1.2.1 Displaced Persons

The term "displaced person" as defined in 49 CFR 24.203(d) means any person who moves from the real property or moves personal property from the real property as a direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;
- Rehabilitation or demolition for a project; or
- 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 applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

4.1.2.2 Persons Not Displaced

The following is a nonexclusive listing of persons who do not qualify as displaced persons under the URA:

- A person who moves before the initiation of negotiations, unless the grantee determines that the person was displaced as a direct result of the program or project.

—A person who initially enters into occupancy of the property after the date of its acquisition for the project.

—A person who has occupied the property for the purpose of obtaining assistance under the URA.

—A person who is not required to relocate permanently as a direct result of a project. Because occupants in this category are not necessarily considered displaced persons, 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, including moving expenses and increased housing costs during the temporary relocation.

—An owner-occupant who moves as a result of a “voluntary” acquisition, as specifically defined in section 3.11, or as a result of the rehabilitation or demolition of the real property. However, a tenant displaced as a direct result of any acquisition, rehabilitation or demolition for a federal or federally assisted project is entitled to the relocation assistance and payments for which he may be otherwise eligible.

—A person whom the grantee determines is not displaced as a direct result of a partial acquisition.

—A person who, after receiving a notice of relocation eligibility, is notified in writing that displacement from the project will not occur. Such subsequent notice shall not be issued unless the person has not moved and the sponsor 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.

—An owner-occupant who voluntarily conveys his or her property, as described at 49 CFR 24.101(b)(1) and (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 these cases, however, any resulting displacement of a tenant is subject to the regulations in this part.

—A person who retains the right of use and occupancy of the real property for life following its acquisition by the sponsor.

—A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause under applicable law. Eviction for cause must conform to applicable state and local law. Any person not in unlawful occupancy at the initiation of negotiations is presumed to be entitled to relocation assistance and payments unless the sponsor determines that:

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

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

—In either case, the eviction was not undertaken for purpose of evading the obligation to make available the relocation assistance and payments.

—A person who is not “lawfully present” in the United States and who has been determined to be ineligible for relocation benefits in accordance with section 4.1.3 of this guide. An alien not lawfully present in the United States is as defined in 8 CFR 103.12 and includes:

A person who is not “lawfully present” in the United States and who has been determined to be ineligible for relocation benefits in accordance with section 4.1.3.

—An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the U.S. attorney general.

—An alien who is present in the United States after the expiration of the period of stay authorized by the U.S. attorney general or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

4.1.3 Person Not Lawfully Present in the United States

4.1.3.1 Denial of Relocation Benefits

No relocation payments or relocation advisory assistance shall be provided to a person who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the grantee’s satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person’s spouse, parent or child who is a citizen of the U.S., or is an alien lawfully admitted for permanent residence in the United States.

4.1.3.2 Self Certification

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify the following:

1. Individual. In the case of an individual, that he or she is either a citizen or national of the United States or a lawfully present alien. The term “citizen,” for purposes of determining eligibility under the URA and 49 CFR part 24, includes both citizens of the United States and noncitizen nationals.
2. Family. 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. Business, Farms or Nonprofit Organization (Unincorporated). 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. Business, Farms or Nonprofit Organization (Incorporated). In the case of incorporated business, farm or nonprofit organization, that the corporation is authorized to conduct business within the United States.

4.1.3.3 Certification Acceptance

The displacing agency shall consider the certification provided to be valid, unless the displacing agency determines that it is invalid based on a review of an alien's documentation or other information that the agency considers reliable and appropriate.

4.1.3.4 Exceptional and Extremely Unusual Hardship

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

- A significant and demonstrable adverse impact on the health or safety of such spouse, parent or child;
- 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
- Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent or child.

4.1.3.5 Payments

When computing relocation payments under the URA (see Chapters 5 and 6 of this guide), if any member 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 or it. Any payment for which such household, unincorporated business, farm or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.



4.1.4 Relocation Personnel

Each transit project where relocation will occur should have assigned to it qualified individuals who will have the primary responsibility of administering the relocation assistance program. The individuals should have adequate experience and training in the administration of a relocation assistance program.

4.1.5 Acquisition Stage Relocation Planning

Before commencing negotiations on the project, an acquisition stage relocation plan is prepared based on personal interviews of the identified people who have been displaced. Based on the complexity of the project, the plan may vary. For simple projects, there will typically not be a formal document prepared, although the relevant information must be in the project file. For large or complex projects, a formal document should be prepared summarizing all of the relevant information.

Interviews facilitate identification of problems associated with the displacement of individuals, families, businesses, farms and nonprofit organizations in order to identify the relocation services

necessary for the grantee to minimize the adverse impacts of displacement. The grantee should conduct this interview in person at the displaced person's residence or place of business. Information to be gathered at this initial contact, as applicable, is the length of occupancy on the property, the number and characteristics of the family members, habitable living area, household income, and other information needed to determine the relocation needs and payment eligibility of the displaced person.

For tenant-occupied properties, the grantee should obtain a statement of occupancy from the property owner specifying the name of the occupants, date of occupancy, amount of rent and any other pertinent information. The property owner should be advised that tenant-occupants are being contacted to determine their relocation eligibilities and entitlements. Figure 4-1A provides a sample questionnaire to conduct the interview and record necessary information for a residential displacee and Figure 4-1B for a business/nonprofit organization (NPO) displacee.

The information gathered at this stage is the fundamental information required for the grantee to determine the replacement property needs and time frame required to complete an adequate relocation of people who have been displaced.

For businesses, farms and nonprofit organizations, the interview must include questions to permit the agency to determine the displacement needs of the business. There are six key points:

1. The business's replacement site needs including current lease terms, contractual obligations and the financial capability of the business to accomplish the move.
2. The need for outside specialists to assist the business with planning the move, the actual move and the reinstallation of personal property.
3. A resolution of realty and personalty issues prior to the appraisal of the property.
4. The time required to complete the move.
5. The anticipated difficulty of locating a replacement property.
6. The need for advance relocation payments from the displacing agency.



At this initial interview, the grantee should advise and emphasize to displaced persons that their eligibility for relocation payments is not established until the initiation of negotiations for the acquisition of the property. The grantee's interviewer should clearly advise the displaced person not to take any action in anticipation of receiving benefits until the agency notifies them in writing that the property will be acquired and that they are entitled to relocation payments. The grantee should advise the displaced person of the anticipated date for the initiation of negotiations and that the displaced person may contact the grantee at any time should they have questions about their relocation.

Project: _____ Parcel No.: _____
 How long at this address: _____ Name: _____
 Address: _____
 Owner: _____ Tenant: _____

Household Composition:

Relationship	Age	Sex	Employer/School-Distance-Transportation	Gross Income

Remarks (Special needs for relocation, consideration, etc.): _____

Distance to:

Public Transportation: _____ Groceries: _____ Shopping: _____ Heat: _____
 Church: _____ Other: _____

Acquired Property Data (Appraisal and on-site verification):

Structural Type: _____ Age: _____ Condition: _____
 Total Rooms: _____ Bedrooms: _____ Bath(s): _____
 Bsmt: _____ F _____ P _____ Finished _____ Laundry/Mud Rm: _____ Storage: _____ Heat: _____
 Fuel: _____ A/C: _____ Fireplace: _____
 Other interior amenities/features: _____

Exterior:

Garage: _____ Deck/Patio: _____ Pool: _____ Outbldgs/Sheds: _____
 Other: _____
 DSS? _____ If no, cite deficiencies: _____

Ownership Info:

Mortgage Amt: _____ Mortgage Date: _____ Original Term: _____
 Interest Rate: _____ Fixed/ARM: _____
 Current Balance: \$ _____ Remaining Term: _____
 Current Monthly Payment: \$ _____ Escrow Amounts: _____

SAMPLE DISPLACED OCCUPANT QUESTIONNAIRE**(Residential)****Figure 4-1A**

Monthly Rent: _____ Monthly Utilities: _____ (only heat/elect./water/sewer)

Housing of Last Resort Required? _____ Yes _____ No

[illegible]

Figure 4-1A (Continued)

Project No.: _____	Parcel No.: _____
How long at this address: _____	Name: _____
Address: _____	
Owner: _____	Tenant: _____

Business/NPO Name: _____

Description of Business: _____

Estimated Average Annual Net Income: \$ _____ Source: _____

Number of Employees on site: _____

Acquired Property Data:

Major Building (appraisal and on-site verification):

Structure Type: _____ Age: _____ Condition: _____

Floors: _____ Total Sq. Ft.: _____ Office Sq. Ft.: _____

Warehouse/Plant Sq. Ft.: _____ Loading Dock: _____ Bays: _____

Floor Spans: _____ Flooring: _____

HV/AC: _____ Furnace: _____ Cold Stg: _____ Etc.: _____

Exterior:

Parking Area: _____ %Paved: _____ Storage: _____

Garages/Sheds/Storage Bldgs: _____

Tanks: _____ Ponds: _____ Excess land: _____

Utilities: Elec: _____ Gas: _____ Oil: _____

Water: _____ (gal. cap) Sewer: _____ (gal. cap.)

On-site tanks: Fuel: _____ Chemical: _____ Waste: _____

Business Site Features:

Street/Highway Access: _____ Visibility: _____ Rail: _____

Airport: _____

Phone/Communications/Computer Facilities: _____

Zoning: _____

Licenses/Permit (operational, zoning, waste disposal): _____

SAMPLE DISPLACED OCCUPANT QUESTIONNAIRE**(Business – NPO)****Figure 4-1B**

Other Features: _____ _____ _____
Customer/Trade Area Description: _____ _____
Personal Property (General Description/Volume): _____ Machinery (List types): _____ _____
Replacement Property Requirements: Locations: _____ Zoning: _____ Utilities: _____ Buildings: _____ Site: _____ Purchase/Rental Range: \$ _____ to \$ _____
Business/NPO Owner/Operator's Concerns/Contractual Obligations/Need for Outside Specialists: _____ _____ _____ _____ _____
Summary: What is the estimated difficulty of locating replacement property for this business? _____ _____ What is the estimated time to move this business? _____ What are the needs of the business for advanced relocation payments? _____ _____

SAMPLE DISPLACED OCCUPANT QUESTIONNAIRE
(Business – NPO)
Figure 4-1B (Continued)

4.1.6 Advisory Services: Information to Be Maintained

On a project-wide basis, the grantee shall maintain current listings of comparable replacement dwellings available, without regard to race, color, religion or national origin, drawn from various sources and suitable in price, size and condition for the individuals and families to be displaced for the project. Listing information may be secured from multiple listing services (MLS) of the local realtor boards, newspaper and other published and private listings. This information will be maintained, current and relied on to document the thoroughness of the relocation assistance efforts.

Relocation assistance advisory services shall be offered to all persons occupying property to be acquired,

To assist displaced businesses, farms or nonprofit organizations, the grantee shall maintain available listings and contacts with commercial and agricultural real estate brokers, commercial lenders and government economic development agencies to assist displaced person's to locate suitable replacement sites.

4.1.7 Eligibility for Relocation Advisory Services

Relocation assistance advisory services, as described in section 4.1.8, will be offered to all persons occupying property to be acquired and may be offered to all persons occupying property immediately adjacent to the real property acquired if the grantee determines that such person is caused substantial economic injury because of the acquisition.

4.1.8 Minimum Advisory Services Requirements

The grantee's relocation advisory services program must include, at a minimum, measures, facilities and services as may be necessary or appropriate to:

1. Determine 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 will include a personal interview with each person and business owner.
2. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings and explain that a person cannot be required to move unless at least one comparable replacement dwelling is made available.
3. As soon as feasible, the grantee will 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. Where feasible, selected replacement housing shall be inspected prior to being made available to ensure that it meets comparability requirements and decent, safe and sanitary (DSS) standards. If an inspection is not made, the person to be displaced will be notified that a replacement housing payment may not be made unless the replacement dwelling to be purchased is subsequently inspected and determined to be decent, safe and sanitary.



4. Whenever possible, people with minority status will 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 a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.
5. All persons will be offered transportation to inspect housing to which they are referred.
6. Provide 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.
7. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loans, programs administered by the Small Business Administration and other federal and state programs offering assistance to displaced persons. Technical help should be provided to those persons applying for such assistance.
8. Minimize hardships to persons in adjusting to relocation by providing counseling and advice for other sources of assistance that may be available, and such other help as may be appropriate.
9. Provide that any person, who occupies property acquired by the grantee, 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, will be eligible for advisory services, as determined by the grantee.

4.1.9 Coordination with Other Agencies



To conduct a successful relocation program, relocation staff should maintain personal contact and exchange information with other agencies providing services useful to persons being relocated. These agencies may include community development agencies, redevelopment authorities, public housing authorities, the Department of Housing and Urban Development (HUD), Veterans Administration (VA) and Small Business Administration (SBA). Personal contacts should also be maintained with local sources of information on private replacement properties, including

real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

4.1.10 Advance Payments

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the sponsor shall issue the payment, subject to safeguards as are appropriate, to ensure the objective of the payment is accomplished.

4.1.11 Deductions from Relocation Payment

The grantee will deduct the amount of any advance relocation payment from the relocation payment to which a displaced person is otherwise entitled.

4.1.12 Claims for Relocation Payments

The grantee must provide reasonable assistance to the displaced person to complete and file any required claim for relocation payment. Claims for relocation payments will be made by the displaced person within 18 months following either the date of moving from the acquired property or the date of the final payment for the acquired property, whichever is later. This time period may be extended for good cause. Claims for a relocation payment shall be signed, dated and supported by such documentation as may be reasonably required to support expenses incurred (e.g. lowest approved bid or estimate, bills, certified prices or other evidence).

If the grantee disapproves all or part of a payment claimed, or refuses to consider the claim on its merits because of untimely filing or other grounds, he or she shall promptly notify the claimant in writing of his or her determination, the basis for his or her determination and the procedures for appealing that determination.

4.1.13 Waiver of Relocation Benefits and Rights

An agency may not suggest, propose or request a person to waive any rights or entitlements to relocation benefits. This includes any such actions as part of a global settlement of pending acquisitions.

4.2 Relocation Notices

4.2.1 Relocation Information to Be Provided at a Public Hearing

Relocation information should be presented at public hearings or meetings that may be required as part of the environmental documentation (e.g. NEPA) process or other project procedures, when pertinent. This information describing relocation benefits and limitations may be provided by the relocation brochure described in section 4.2.2.1.



4.2.2 Manner of Notices

Relocation notices shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the grantee's files. The grantee will provide notices with appropriate language translation or with adequate interpretative assistance to those displaced persons who may be unable to understand a written English language notice. Each notice shall indicate the name and telephone number of the person who may be contacted for answers to questions or other needed help. Required notices are as noted in the following sections.

4.2.2.1 Relocation Information Packet

The project grantee will distribute an information packet free of charge that explains the relocation program for FTA-assisted projects to each displacee. The packet may be a brochure or other printed materials. The information will also be distributed at public hearings and given to any prospective displaced person upon request.

4.2.2.2 General Information Notice

As soon as feasible, persons scheduled to be displaced shall be given a general written description of the grantee's relocation program. The relocation information packet referenced above may be used for this purpose when personally presented. An explanation of the application shall be provided to the displaced person's case.

4.2.2.3 Notice of Relocation Eligibility

At or promptly following the initiation of negotiations, the grantee will notify all occupants in writing of their eligibility for applicable relocation assistance and payments. This notice shall cite the specific relocation payment eligibility for the displaced person and shall identify and

At or promptly following the initiation of negotiations, the grantee will notify all occupants in writing of their eligibility for applicable relocation assistance and payments.

offer relocation assistance to the displaced person. Figures 4-2A, 4-2B and 4-2C provide sample letters of notice for an owner, tenant and a nonresidential relocation, respectively. Figure 4-2C can be used for providing notice to farms and nonprofit organizations that are displaced.

Tenant-occupants are entitled to relocation payments as of the initiation of negotiations, and a tenant-occupant will be advised of relocation payment eligibility on or promptly after this date. At delivery of this notice, tenant-occupants should be advised that they remain liable to their existing lease with the property owner until the grantee acquires possession of the property. For voluntary transactions, tenant-occupants should further be advised that the property may not be acquired if agreement is not secured with the property owner, and that the tenant should not initiate a move from the property until the tenant is advised by the sponsor that property is actually to be acquired. Project grantees may not require a landlord to evict tenants as a condition of settlement.

After the initiation of negotiations but prior to any occupant moving from the property, should the agency decide not to acquire a property, either amicably or by exercise of eminent domain, the owner and/or tenant-occupants shall be advised in writing that the property will not be acquired and that they will not be displaced from the property. Occupants may claim for payment actual, reasonable and necessary relocation expenses they may have incurred prior to being notified that they will not be displaced.

4.2.2.4 90-Day Notice to Vacate

No lawful occupant shall be required to move unless he has received at least 90 days advance written notice of the earliest date by which they may be required to move. The 90-day notice will either state a specific date as this earliest date, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date to vacate the property. For residential property, if the 90-day notice is issued before a comparable replacement dwelling is made available, the notice shall state the occupant will not have to move earlier than 90 days after such a dwelling is made available.

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 they may be required to move.

Dear Mr. & Mrs. Homeowner:

As you are aware, the Transit Agency (Agency) is currently acquiring property needed for the proposed construction of the city-wide link. Negotiations to acquire your property were initiated on (date). As an owner-occupant for at least 180 consecutive days prior to the initiation of negotiations for the property, you are eligible for the certain relocation assistance payments to assist you to secure a replacement property. Your eligible payment amounts have been determined in accordance with the agency's relocation assistance program for federally assisted projects. Please refer to the enclosed brochure for detailed information on the agency's relocation assistance process. Your payment eligibility is estimated as follows:

1. Moving Expenses. The actual reasonable and necessary expenses for moving personal property, accomplished by a commercial mover and supported by receipted bills, or a fixed payment of \$ (amount), based on a schedule of payments for the number of rooms of personal property you are required to move.

2. Replacement Housing Payment. A survey and study of the property available to replace your dwelling finds that you are eligible for a maximum replacement housing payment of \$ (amount), provided you purchase and occupy a decent, safe and sanitary dwelling with a total cost of \$ (amount), or more. This replacement housing payment eligibility is based on a property located at (address) which is available for purchase.

3. Incidental Expenses. You will be reimbursed actual and reasonable expenses incurred on closing the purchase of a comparable replacement dwelling. This amount will vary based on your situation. A list of eligible costs is set out in the relocation brochure.

4. Increased Mortgage Interest. You are eligible for the increased interest cost you incur for a conventional mortgage on a replacement property to the extent of the remaining balance and term of the mortgage on the acquired property. This payment is estimated to be \$ (amount), which compensates the increased interest cost of a replacement mortgage (maximum*) interest rate of (interest rate)% versus the (interest rate)% rate of your current mortgage, for a loan amount equal to your current mortgage balance of \$ (amount), and a remaining term of (months) months. In addition, loan origination fees incurred on a replacement mortgage, **not to exceed cost corresponding to the amount of the mortgage balance on the acquired dwelling**, are reimbursable. Please discuss the details of this payment with the person presenting this letter.

**NOTICE OF ELIGIBILITY AND 90-DAY NOTICE TO VACATE
(Residential Owner)**

Figure 4-2A

Ms. Karen Wilson is the agency's representative assigned to assist your relocation. Ms. Wilson will further explain the relocation process and answer your questions concerning your relocation payments. In order for you to maintain eligibility for subsequent relocation payments, please advise and consult with Ms. Wilson before committing to or taking any action regarding purchasing a replacement property or moving your personal property.

Ms. Wilson will also provide you advisory assistance to locate a replacement dwelling and assist you in obtaining it.

Option 1: Advance 90-Day Notice

At this time, it is necessary to advise you that you will have at least 90 days to remain on your property. At a later date, and after the agency has acquired the property, you will be provided a 30-day notice citing a specific date for you to vacate the acquired property.

Option 2: 90-Day After Purchase

After the agency acquires your property, you will be provided at least a 90-day notice of when you will be required to move.

Ms. Wilson's phone number and address are given below. Please do not hesitate to contact her with questions or concerns regarding these matters.

Sincerely,

Transit Agency Manager

Ms. Karen Wilson

Phone: 555-1234

NOTICE OF ELIGIBILITY AND 90-DAY NOTICE TO VACATE

(Residential Owner)

Figure 4-2A (Continued)

Dear Mr. Tenant:

As you may be aware, the Transit Agency (Agency) is currently acquiring property needed for the proposed construction of the city-wide link and has initiated negotiations to acquire the property you currently are renting. As a tenant occupant for at least 90 consecutive days prior to the initiation of negotiations for the property, you are eligible for the certain relocation assistance payments. Your eligible payment amounts have been determined in accordance with the agency approved relocation assistance program for federally assisted projects. Please refer to the enclosed brochure for detailed information on the relocation assistance process. Your payment eligibility is estimated as follows:

- 1. Moving expenses.** Actual reasonable and necessary expenses for moving personal property, accomplished by a commercial mover and supported by receipted bills, or a fixed payment of \$ (amount), based on a schedule of payments for the number of rooms of personal property you are required to move.
- 2. Replacement Housing Payment.** A survey and study of the property available to replace your dwelling finds that you are eligible for a maximum replacement housing payment of \$ (amount), provided you rent and occupy a decent, safe and sanitary dwelling with monthly rent and utilities of \$ (amount) or more. This replacement housing payment eligibility is based on a property located at (address) which is available for rent at \$ (amount), and estimated monthly utility cost of \$ (amount).
- 3. Down Payment Option.** You may, at your option, use your replacement housing payment eligibility as a down payment for the purchase of a replacement dwelling. Specific rules apply to this option and you should discuss it with your transit authority representative.

Ms. Karen Wilson is the Transit Agency's representative assigned to assist your relocation. Ms. Wilson will further explain the relocation process and answer your questions concerning your relocation payments. In order for you to maintain eligibility for subsequent relocation payments, please advise and consult with Ms. Wilson before committing to or taking any action regarding purchasing a replacement property or moving your personal property.

Ms. Wilson will also provide advisory assistance to locate, rent or purchase a replacement dwelling.

**NOTICE OF ELIGIBILITY AND 90-DAY NOTICE TO VACATE
(Residential Tenant)
Figure 4-2B**

Option 1: Advance 90-Day Notice

At this time, it is necessary to advise you that you will have at least 90 days to remain on your property. At a later date, and after the agency has acquired the property, you will be provided a 30-day notice citing a specific date for you to vacate the acquired property.

Option 2: 90-Day After Purchase

After the agency acquires your property, you will be provided at least a 90-day notice of when you will be required to move.

However, please be advised that prior to the Transit Agency purchase of the property you occupy, you remain obligated to your present landlord for payment of rent and other terms and conditions of your agreement. Ms. Wilson's phone number is given below, please do not hesitate to contact her should have any questions or concerns regarding your potential relocation.

Sincerely,

Transit Agency Manager

Ms. Karen Wilson

Phone: 555-1234

**NOTICE OF ELIGIBILITY AND 90-DAY NOTICE TO VACATE
(Residential Tenant)
Figure 4-2B (Continued)**

Dear Ms. Business Operator:

Upon the Transit Agency's (Agency) acquisition of your present business site, you will be entitled to certain payments and assistance to move your personal property to a replacement property, certain costs of reestablishing your business at the replacement site and other authorized related expenses. The eligible payment amounts will be determined in accordance with the agency's approved relocation assistance program for federally assisted projects. Please refer to the enclosed brochure for detailed information on the relocation assistance process. Your payment eligibility is generally as follows, subject to the cited conditions and the requirements set out in the brochure:

1. Moving and Storage Expenses. You are entitled to actual, reasonable and necessary expenses for moving your personal property to the replacement site, and for the reconnection and reinstallation of machinery and equipment relocated to the replacement site. The cost of this move may be accomplished by a **COMMERCIAL MOVER** and other required services supported by receipted bills. At your option you may choose to take responsibility for a **SELF MOVE**, and upon completion of a move you may claim an amount negotiated based on the estimated cost of the work you propose to assume. You are eligible for reasonable and necessary storage expense for up to 12 months following your move date. The brochure also lists other eligible moving costs which may apply to your situation. You may also be eligible for expenses related to searching for a replacement business location.

2. Reestablishment Expenses. You may be eligible for up to \$10,000 for cost to reestablish your business at the new location. These costs include certain costs not eligible for reimbursement as moving cost. Eligible reestablishment expenses are enumerated in the brochure provided.

3. Related Nonresidential Eligible Expenses. You may be eligible for reimbursement of expenses in this category, which will be explained to you by the relocation agent assigned to your case.

To ensure your eligibility for moving payments, you must advise the agency at least five working days prior to commencing your move. The agency is required to monitor your move and verify cost claimed represent actual, necessary and reasonable costs incurred on your move. The agency requires adequate documentation of all cost incurred, which you will want to claim for reimbursement. Ms. Karen Wilson has been assigned to assist you with this process. Ms. Wilson's phone number is 555-1234.

**NOTICE OF ELIGIBILITY
(Nonresidential Relocation)
Figure 4-2C**

Option 1: Advance 90-Day Notice

At this time, it is necessary to advise you that you will have at least 90 days to remain on your property. At a later date, and after the agency has acquired the property, you will be provided a 30-day notice citing a specific date for you to vacate the acquired property.

Option 2: 90-Day After Purchase

After the agency acquires your property, you will be provided at least a 90-day notice of when you will be required to move.

Sincerely,

Transit Agency Manager

Ms. Karen Wilson

Phone: 555-1234

**NOTICE OF ELIGIBILITY
(Nonresidential Relocation)
Figure 4-2C (Continued)**

Chapter 5

PAYMENTS FOR MOVING AND RELATED EXPENSES



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 5

PAYMENTS FOR MOVING AND RELATED EXPENSES

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Chapter 5

PAYMENTS FOR MOVING AND RELATED EXPENSES

5.1 General Requirements

5.1.1 Eligibility

A displaced person, as defined in section 4.1.2.1 of this guide, is eligible for the payment of actual, reasonable and necessary moving and related expenses to move personal property from the acquired property to a replacement property and, as applicable for nonresidential moves, for the loss of tangible personal property, other related expenses and reestablishment expenses.

5.1.2 Ineligible Moving and Related Expenses

A displaced person is NOT entitled to payment for the following situations:

- 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 section 6.2.4 of this guide.
- Interest on loans to cover moving expenses.
- Loss of goodwill
- Loss of profits.
- Loss of trained employees.
- Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as permitted as part of reestablishment expenses.
- Personal injury.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the grantee.
- Expenses for searching for a replacement dwelling.
- Physical changes to the real property at the replacement location of a business or farm operation except as permitted as part of reestablishment expenses or related nonresidential eligible expenses.
- Costs for storage of personal property on real property already owned or leased by the displaced person.

5.1.3 Statutory Limits

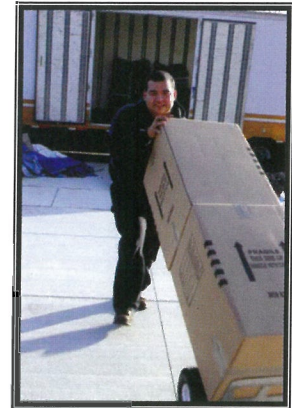
Congress established maximum monetary limits for certain relocation benefits in the URA. These limits are statutory; set by Congress. The statutory limits affect two business benefits: the reestablishment expense payment (maximum \$10,000) and the fixed business payment (maximum \$20,000). A few states have passed laws allowing increased amounts to be paid on these payments. The FTA can only participate in the statutory limit set by Congress. On projects in states allowing additional compensation, FTA will participate up to the maximum statutory

limit. Additional amounts above the \$10,000 reestablishment expense payment and the \$20,000 business fixed payment will be paid with non-federal funds.

5.1.4 Moving Claims and Payments

A displaced person may claim moving expenses within 18 months following the later of either the date that they move from real property, or the date of the final acquisition payment. Claims shall be supported by documentation of actual costs (e.g. bids, paid invoices, certified inventories of moved personal property, other evidence of actual and reasonable costs).

The grantee shall promptly pay claims that are determined to be acceptable. The grantee will provide a displaced person technical assistance as needed to claim all eligible actual, reasonable and necessary moving expenses. Where a hardship exists, a partial payment of moving costs may be advanced to assist a displaced person to initiate a move. A displaced person may appeal moving claims that are denied by the grantee in accordance with the appeal procedures found in 49 CFR 24.10.



5.2 Moves

5.2.1 Actual, Reasonable and Necessary Moving Expenses (Residential)

Any displaced owner-occupant or tenant-occupant who qualifies as a displaced person is entitled to payment of his or her actual moving and related expenses, as the grantee determines to be reasonable and necessary, including expenses for:

Any displaced owner-occupant or tenant-occupant who qualifies as a displaced person is entitled to payment of his or her actual moving and related expenses, as the grantee determines to be reasonable and necessary.

1. Transportation. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the grantee determines that relocation beyond 50 miles is justified.
2. Packing. Packing, crating, unpacking and uncrating of the personal property.
3. Appliances. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.
4. Storage. Storage of personal property for a period not to exceed 12 months, unless the grantee determines that a longer period is necessary.
5. Insurance. Insurance is for the replacement value of the property in connection with the move and necessary storage. Displaced occupants should be advised to specifically request full replacement value insurance when contracting with a commercial moving and storage company for the move.
6. Lost Property. 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. Other actual moving-related expenses that are not listed as ineligible under section 5.1.2 of this guide.

The displaced homeowner or tenant may be paid for actual, reasonable and necessary costs of the move accomplished by a commercial mover. Such reimbursement cannot exceed the cost that would have been paid for labor and equipment by a commercial mover. In accordance with 49 CFR 24.301(1)(ii). The moving cost bid and invoice must be of sufficient detail to support the moving expenses claimed.

5.2.2 Fixed Payment for Residential Moving Expenses

In lieu of an actual cost move, a person displaced from a residential dwelling may choose to receive a fixed payment for moving expenses. The Federal Highway Administration (FHWA), as the designated lead agency for the URA and its regulations, maintains the schedule of allowable fixed payment amounts. The schedule is periodically updated and published in the *Federal Register* by the USDOT through FHWA. The grantee may access the latest schedule on the FHWA Office of Real Estate Services Web site (<http://www.fhwa.dot.gov/realestate/index.htm>).

When a displaced person chooses this moving payment option, only the amount set out in the schedule is eligible for reimbursement.

A dislocation allowance is included in the schedule amounts. This allowance, included with the moving cost rate, is for offsetting expenditures for telephone and utility hookups, etc., at the replacement dwelling. The moving expense payment is computed on the number of occupied rooms in the dwelling unit plus basements, attics, garages, and “out” buildings if such spaces do in fact contain sufficient personal property to constitute a room.

5.2.3 Self-Move

A displaced occupant of a residence may be reimbursed for actual costs incurred in moving their personal property provided they are supported by receipted bills for labor and equipment where such labor and equipment rates do not exceed the cost paid by commercial movers.

5.2.4 Combination of Various Moving Methods

To address specific needs residential occupant may elect to combine moving options. This is permitted so long as there is no duplication of payments.

5.3 Nonresidential Moves

5.3.1 Actual, Reasonable and Necessary Moving Expenses

Any business, farm operation or nonprofit organization (NPO) which qualifies as a displaced person is entitled to payment of actual moving and related expenses that the grantee determines to be reasonable and necessary for the moving of personal property, including expenses for:

1. Transportation. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the grantee determines that relocation beyond 50 miles is justified.
2. Packing. Packing, crating, unpacking and uncrating of the personal property.

3. Equipment. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property, including substitute personal property described in section 5.3.3 of this guide. This includes connection to existing utilities within



the building on the property. It also includes modifications to the personal property to adapt it to the replacement structure, the replacement site or the utilities at the replacement site, and modifications necessary to adapt utilities at the replacement site to the personal property.

4. Storage. Storage of personal property for a period not to exceed 12 months unless the grantee determines that a longer period is necessary.
5. Insurance. Insurance for the replacement value of the personal property in connection with the move and necessary storage.
6. License. Any license, permit 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 or certification.
7. Lost Property. 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.
8. Professional Services. Professional services necessary for planning the move of personal property, moving the personal property and/or installing the relocated personal property at the replacement site.
9. Signs. Re-lettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.
10. Utilities. Connection to available nearby utilities from the right of way to improvements at the replacement site.
11. Professional Services. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies, excluding any fees or commissions directly related to the purchase or lease of such site. At the discretion of the agency, a reasonable preapproved hourly rate may be established.
12. Impact Fees. Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the agency.
13. Other. Other actual moving related expenses that are not listed as ineligible under section 5.1.2 of this guide, as the grantee determines to be reasonable and necessary.

5.3.2 Actual Direct Loss of Tangible Personal Property

A displaced business, farm operation or NPO that decides to discontinue operations rather than relocate or elects not to relocate some items of personal property may claim actual, reasonable and necessary expense for the direct loss of personal property. The payment shall consist of the lesser of:

1. **Fair Market Value.** The fair market value of the item “as-is” for continued use at the displacement site, less the proceeds from sale. To be eligible for payment, the displaced person must make a good faith effort to sell the personal property, unless the grantee determines such effort is not necessary, (e.g. it is determined that the cost of sale will likely exceed any potential proceeds). When the property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.
2. **Estimated Cost to Move.** The estimated cost of moving the item “as-is,” but with no allowance for storage. If the business, farm operation or NPO is discontinued, the estimated cost shall be based on a moving distance of 50 miles. For equipment in storage or not in use, the move cost will not include potential reconnection costs.

The term “as is” is used in the two sections above to indicate that code-related adjustments, which might be needed if the item were actually going to be reinstalled, should not be considered if no reinstallation is intended or the business is terminating. The fair market value of the item should likewise consider that it may not meet present codes. Likewise, if an item is in storage and not installed, then its value should reflect only the value of the item, not including any installation costs.

The reasonable cost incurred in attempt to sell (i.e. advertising, agent/auctioneer expense) an item that is not relocated may be reimbursed in addition to the payment amount determined above. Ownership of personal property that is not sold after good faith attempts are made may be transferred to the grantee, or at the discretion of the grantee, retained and removed from the acquired property by the displaced person at their expense, if they have already been paid the lesser of the fair market value or the estimated cost to move.

5.3.3 Purchase of Substitute Personal Property

If the displaced business, farm or NPO is to be reestablished and an item of personal property which is used in connection with the business is not moved, but promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person may claim the lesser of the:

1. **Cost of Substitute.** The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item.
2. **Estimated Cost to Move.** The estimated cost of moving and reinstalling the item, but with no allowance for storage. At the grantee’s discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

The reasonable cost incurred in attempt to sell (e.g. advertising, agent/auctioneer expense) an item that is not relocated may at the discretion of the grantee be reimbursed. Ownership of personal property that is not sold after good faith attempts are made may be transferred to the grantee or retained and removed from the acquired property by the displaced person at their expense, if they have already been paid the lesser of the cost of the substitute or the estimated cost to move.

5.3.4 Low Value and High Bulk

In the case of low value, high bulk personal property (e.g. junk, stockpiled sand, gravel, minerals, metals, hay, silage or similar items used in connection with a relocated business or farm operation), payment for actual reasonable moving expenses is the lesser of the cost of

replacing that property at the replacement site, or the amount which would have been received if the property were sold at the displacement site. It is the grantee's decision as to whether the move will be handled in this manner and will necessarily consider issues related to disposal of the material that is not moved, including whether any contaminants may be involved.

5.3.5 Direct Loss of Advertising Signs

An advertising sign that is otherwise eligible for moving payments will not be eligible when it is moved to a site in violation of federal, state or local outdoor advertising control regulations. The amount of payment for direct loss of an advertising sign that is personal property shall be the lesser of the following:

- The depreciated reproduction cost of the sign, as determined by the grantee, less sale proceeds; or
- The estimated cost of moving the sign, but with no allowance for storage.

5.3.6 Searching Expenses for a Replacement Site

The owner of a displaced business, farm operation or NPO is entitled to reimbursement for the actual reasonable expenses in searching for a replacement site, not to exceed \$2,500. Expenses claimed must be supported by receipted bills and, as applicable, a certified statement of the time spent actually searching at a reasonable hourly wage rate(s). Such expenses may include transportation cost, cost for meals and lodging away from home, time actually spent in searching, based on reasonable salary or earnings, and fees paid to others to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site. Such costs may include the time spent attending permit, zoning, variance type hearings and negotiating for the purchase or lease of the new location.



5.3.7 Commercial Move

A displaced business, farm operation or NPO may be paid for actual, reasonable and necessary costs of the move accomplished by a commercial mover. Such reimbursement can not exceed the lower of two acceptable bids or estimates and must be supported by an inventory of items of personal property actually moved and invoices of the actual costs incurred. The general procedure to be used when using a commercial mover is as follows:

1. **Inspection.** The grantee should inspect the displacement and replacement sites and generally determine the extent of personal property to be moved, loading and unloading requirements, and what disconnect and reconnect work will be required. This inspection should be done in company with the displacee or displacee's agent in order to coordinate the move with the business requirements of the displaced operation. If the move is expected to be complicated, the grantee may want to contract with a specialist knowledgeable of the specific type of personal property being moved. The grantee should reasonably accommodate the business concerns and needs to minimize the impact of the relocation on the business operation.

2. Moving Company Arrangement. Upon establishing the general move parameters (see section 5.3.1 of this guide) with the displaced person, the grantee shall make an arrangement with qualified commercial moving companies to provide firm bids of the cost to move the personal property of the displaced business. Where possible, at least two firm bids should be obtained. Bids are to be based on an inventory of the personal property to be moved and on work specifications and equipment required to load and unload, place at the replacement site and disconnect and reconnect personal property. The grantee should provide these move requirements to all bidding movers at the inspection of the displacement and replacement sites to ensure that the bids received are comparable. The bids submitted shall be prepared in sufficient detail and shall reference the inventory and moving specifications. If there is a significant amount of plumbing, electrical, carpentry, communications, computer or other services involved in the disconnect and reconnection of personal property, it is likely more cost effective to obtain these services through separate bids arranged independent of the commercial mover. When bids are not available, estimates should be obtained.
3. Property Certification by Owner. Upon completion of the move, the owner of the displaced business shall certify in the claim submitted for payment that the items listed were actually relocated. Those items that the owner elects not to relocate may be claimed under actual direct losses of tangible personal property as described in sections 5.3.2, 5.3.3, 5.3.4 and 5.3.5 of this guide. The amount claimed and paid by the grantee must only reflect the "as moved" inventory.

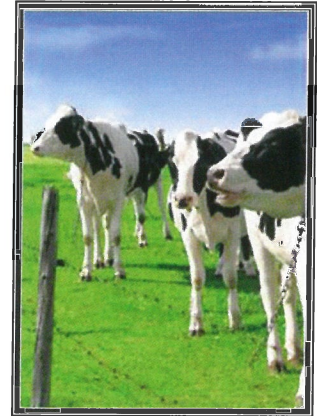
5.3.8 Self-Moves

There are three acceptable methods for providing payment to displaced businesses, farms and nonprofit organizations that elect a self-move. These options are:

1. Lower of Two Bids or Estimates. If the displaced person elects to take full responsibility for the move of the business, farm operation or NPO, the grantee may make a payment for the person's moving expense in an amount not to exceed the lower of two acceptable bids or estimates obtained by the grantee. The same general procedure to secure the two bids is followed as described in section 5.3.7 of this guide for the commercial move option. Upon satisfactory completion of the move, the displaced person may claim payment for actual reasonable moving expenses not to exceed the lower of two acceptable firm bids or estimates. If not included in the bid amount secured, a displaced person may claim other removal and reinstallation expenses as actual costs upon submitting actual cost invoices or other adequate evidence of actual cost.
2. Low Cost Move. FTA allows what is commonly referred to as a low cost move. At the grantee's discretion, a payment for a low cost or uncomplicated move may be based on an amount prepared by a qualified staff employee. The maximum amount of staff prepared estimates cannot exceed \$3,000. For this type of move, additional documentation (e.g. receipts of moving expenditures) is not necessary as long as the payment is limited to the amount of the staff prepared estimate.

FTA allows what is commonly referred to as a low cost move. At the grantee's discretion, a payment for a low cost or uncomplicated move may be based on an amount prepared by a qualified staff employee. The maximum amount of staff prepared estimates cannot exceed \$3,000.

3. **Self-Move, Actual Cost.** If reliable bids or estimates cannot be obtained, or if circumstances (e.g. large fluctuations in inventory) prevent reasonable bidding in the opinion of the grantee, the displaced business may be paid for actual reasonable moving costs when the costs are supported by receipted bills or other evidence of actual expenses incurred. The allowable expenses of a self-move under this provision may include:



—Amounts paid for truck and/or equipment hired.

—If vehicles or equipment owned by a business being moved are used, a reasonable amount to cover gas and oil, the cost of insurance and depreciation allocable to hours and/or days the equipment is used for the move.

—Wages paid for the labor of people who physically participate in the move. Labor costs shall be computed on the basis of actual hours worked at the hourly rate paid, but the hourly rate shall not exceed that paid by commercial movers or contractors in the locality for each profession or craft involved.

—If the displaced business proposes to use a working foreman or group leaders, regularly employed by the business, to supervise services in connection with the move, the amount of their wages covering time spent in actual supervision of the move may be included as a moving expense.

In all three options, upon completion of the self-move, the owner of the displaced business shall certify in the claim submitted for payment that the items listed were actually relocated. Those items that the owner elects not to relocate may be claimed under actual direct losses of tangible personal property as described in sections 5.3.2, 5.3.3, 5.3.4 and 5.3.5 of this guide. Claim and payment shall only be made for the inventory of personal property actually moved.

5.3.9 Reestablishment Expenses

In addition to the other payments available under this section, a small business, farm operation 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 operation or nonprofit organization at the replacement site. As used herein, the term “small business” means a business having not more than 500 employees working at the site being acquired or displaced, 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 reimbursement for reestablishment expenses (see FTA statutory limits under section 5.1.3 of this guide).

5.3.9.1 Eligible Expenses

Reestablishment expenses must be actual, reasonable and necessary, as determined by the grantee. The expenses include, but are not limited to, the following:

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

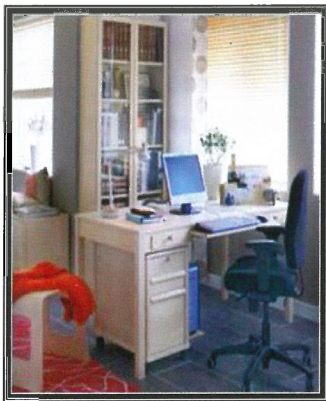
—Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

—Construction and installation costs for exterior signing to advertise the business.

- Redecoration or replacement of soiled or worn surfaces at the replacement site (e.g. paint, paneling, carpeting).
- Advertisement of replacement location.
- Estimated increased costs of operation during the first two years at the replacement site for such items as lease or rental charges, personal or real property taxes, insurance premiums, utility charges, excluding impact fees.
- Other items that the grantee considers essential to the re-establishment of the business.

5.3.9.2 Ineligible Expenses

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise eligible:



- Purchase of capital assets (e.g. office furniture, filing cabinets, machinery, trade fixtures).
- Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home which does not contribute materially to the household income (see section 5.3.12 of this guide).

5.3.10 Notification and Inspection

As a requirement to receive moving expense payments, the displaced person must provide the grantee reasonable advance notice of the date of the start of the move, sale or removal of the personal property. The displaced person must also permit the grantee to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

5.3.11 Grantee Monitoring of the Move

Nonresidential moves, including self-moves, must be adequately monitored by the grantee to ensure reimbursement is only made for actual costs incurred conforming to moving specifications. Costs claimed may not exceed bid amounts justified. Acceptance of bid adjustments for unforeseen or unusual conditions encountered on the move should be verified by documentation secured through grantee monitoring. The level and extent of monitoring should reflect the complexity and cost of a proposed move.

5.3.12 Fixed Payment for Moving Expenses

5.3.12.1 Business

A displaced business may be eligible to choose a fixed payment in lieu of payments for actual moving and related expenses and actual reasonable reestablishment expenses. Such fixed payment shall equal the average annual net earnings of the business as computed in accordance

with section 5.3.12.5 of this guide, except that this payment will not be less than \$1,000 nor more than \$20,000 (see statutory limits under section 5.1.3). The displaced business is eligible for the payment if the grantee determines that the business:

- Owns or rents personal property that 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.
- Cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). (*Note: A business is assumed to meet this test unless the grantee determines that the business will not suffer a substantial loss of its existing patronage.*)
- Is not part of a commercial enterprise having more than three other entities which are not being acquired by the grantee and are under the same ownership and engaged in the same or similar business activities.
- Is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others. (*Note: The owner, as landlord renting out a dwelling(s) to tenants, is not eligible for this type of payment.*)
- Is not operated at the displacement site solely for the purpose of renting the site to others.
- Contributed materially to the income of the displaced person during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the grantee determines to be more equitable. (*Note: The term “contribute materially” means that the business had average annual gross receipts of at least \$5,000, or had average annual net earnings of at least \$1,000, or had contributed at least 33 1/3 percent of the owner’s annual gross income from all sources, including welfare.*)

5.3.12.2 Determining the Number of Businesses

More than one business may operate at an acquired location. These may be distinct operations or intertwined. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment in lieu of moving costs, all pertinent factors shall be considered, including the extent to which:

- The same premises and equipment are shared.
- Substantially identical or interrelated business functions are carried out, and business and financial affairs are commingled.
- The entities are held out to the public, and to those customarily dealing with them, as one business.
- The same person or closely related persons owns, controls or manages the affairs of the entities.

5.3.12.3 Eligibility of Farm Operations

A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable re-establishment expenses, in an amount equal to its average annual net earnings as computed in accordance with section 5.3.12.5 of this guide, 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 grantee determines that:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land.
- The partial acquisition caused a substantial change in the nature of the farm operation.

5.3.12.4 Eligibility of Nonprofit Organizations (NPO)

A displaced NPO may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the grantee determines that it cannot be relocated without a substantial loss of patronage (e.g. membership or clientele). An NPO is assumed to meet this test, unless the grantee 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 two years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes and receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative activities (e.g. rent, utilities, salaries, advertising and other like items, as well as fund raising 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 the grantee.

5.3.12.5 Payment Determination

The term “average annual net earnings” of a business or farm operation are one-half of its net earnings before federal, state and local taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation was displaced. Average annual net earnings include any compensation obtained from the business or farm operation by its owner, the owner’s spouse and dependents. In the case of a corporate owner, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by the husband, wife and dependent children shall be treated as one unit.

If the two taxable years immediately preceding displacement is not representative of the average annual earnings of the business or farm operation, the grantee may use another two-year period that more closely represents the historic average annual earnings. Before this alternative procedure can be used, however, it must be determined that the proposed project has been the cause of the outflow of patronage, thereby resulting in a decline in net earnings for the business or farm operation. The file should be documented to support this alternative.

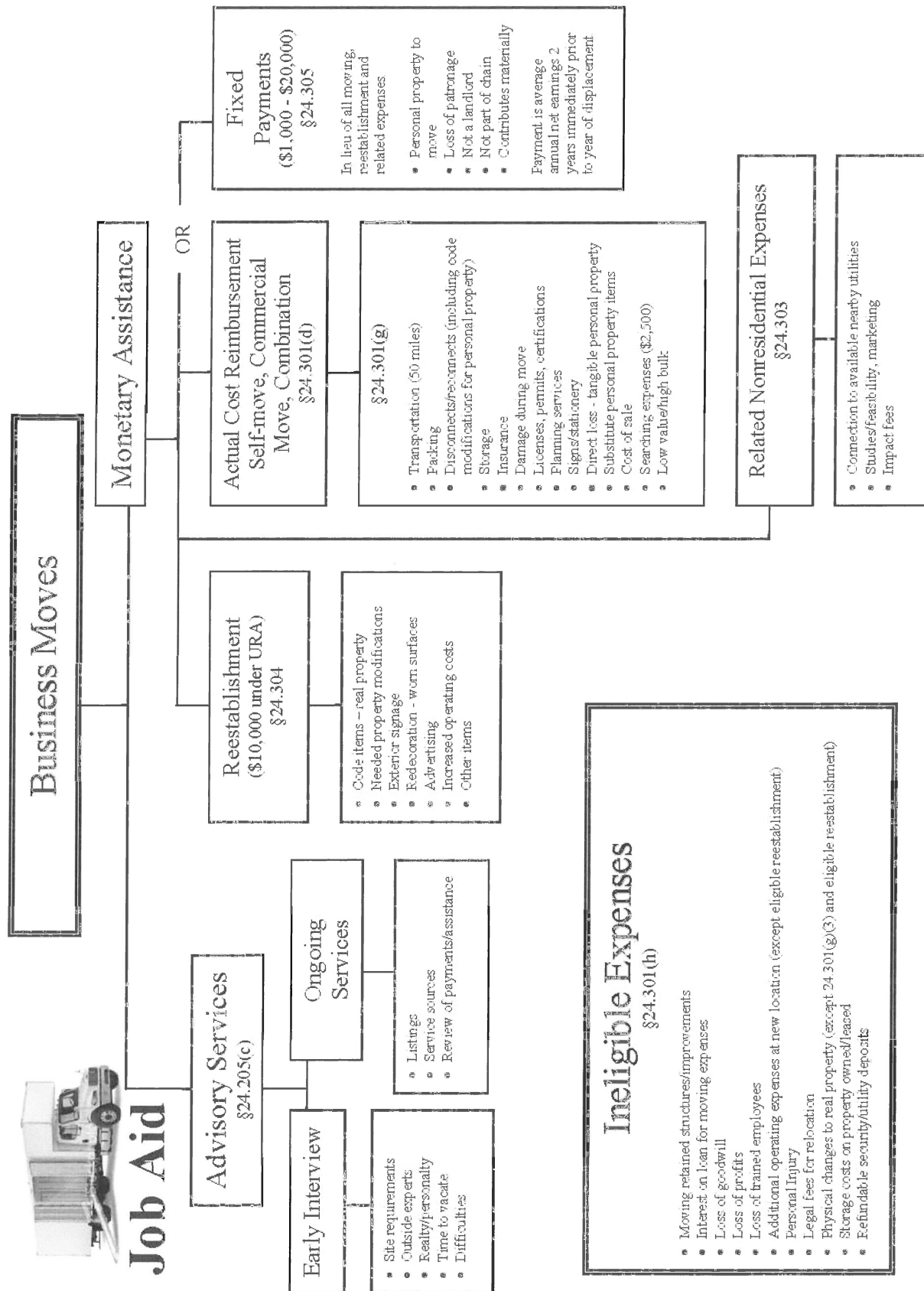
If the business or farm operation affected was not in operation for the full two taxable years prior to displacement, but had income during such period and is otherwise eligible, net earnings may be based on the actual period of operation at the displacement site, projected to an annual rate. In this situation, the payment will be based on the actual period of operation at the displacement site by dividing the net earnings by the number of months the business or farm was operated and multiplying by 12. A taxable year is defined as any 12-month period used by the business or farm operation in filing income tax returns.

5.3.12.6 Owner Information

For the owner of a business or farm operation to be entitled to a payment, it must provide information to the grantee to support its net earnings. City, county, state or federal tax returns for the tax years in question are the best source of this information and would be acceptable as evidence of earnings. Any commonly used method could be accepted, such as certified financial statements or an affidavit from the owner stating the net earnings, provided the grantee has the right to review the records and accounts of the business or farm operation. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of \$1,000.

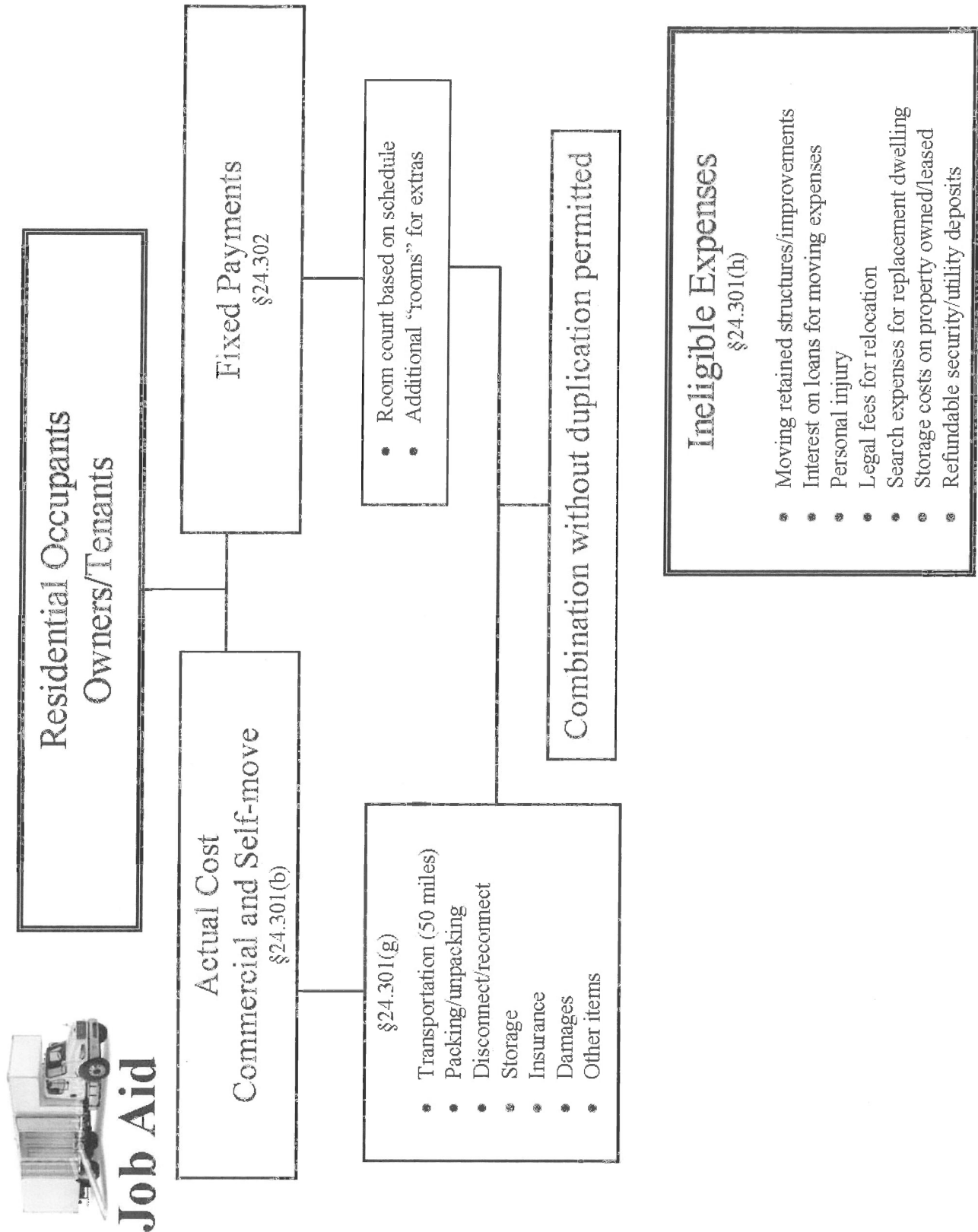
NONRESIDENTIAL MOVING CHART

Figure 5-1



RESIDENTIAL MOVING CHART

Figure 5-2



Chapter 6

REPLACEMENT HOUSING PAYMENTS



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 6

REPLACEMENT HOUSING PAYMENTS

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Chapter 6

REPLACEMENT HOUSING PAYMENTS

6.1 Background

6.1.1 General Grantee Obligation

No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (section 6.1.2 of this guide) has been made available to the person. Where 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:

No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling has been made available to the person.

- The person is informed of its location;
- The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- 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.

6.1.2 Comparable Replacement Dwelling

The term “comparable replacement dwelling” means a dwelling that is:

- Decent, safe and sanitary as described in section 6.1.3 of this guide.
- 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 grantee may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.



- Adequate in size to accommodate the occupants.
- In an area not subject to unreasonable adverse environmental conditions.

—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.

—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 (e.g. outbuildings, swimming pools, greenhouses) (see section 6.2.4.3).

—Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.

—Within the financial means of the displaced person, as follows:

—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 (see section 6.2.3 of this guide), all increased mortgage interest costs (section 6.2.6), and all incidental expenses (section 6.2.7), plus any additional amount required to be paid under replacement housing of last resort (section 6.4).

—A replacement dwelling rented by an eligible displaced person is considered to be within that person's financial means if, after receiving rental assistance (see section 6.3.3) 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.

—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 the replacement housing is available at a cost that does not exceed the person's base monthly rent for the displacement dwelling. See sections 6.3.3 and 6.4.3. Any such rental supplement is paid under authority of 49 CFR 24.402 (b) (2), replacement housing of last resort.



6.1.3 Decent, Safe and Sanitary

The term decent, safe and sanitary (DSS) means a dwelling that meets local housing and occupancy codes. However, any of the following standards that are not met by an applicable code shall apply unless waived for good cause by the FTA:



—Be structurally sound, weather tight, and in good repair.

—Contain a safe electrical wiring system adequate for lighting and other devices.

—Contain a heating system capable of sustaining a healthful temperature (i.e. approximately 70 degrees [22 C] or for a displaced person, except in those areas where local climatic conditions do not require such a system.

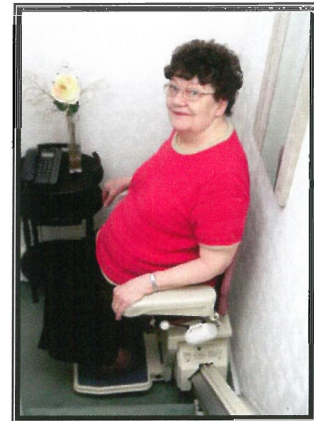
—Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced persons. There shall be a separate, well-lit and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and

toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In 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.

The issue of the number of bedrooms needed by a displaced family is often an item of controversy. The replacement dwelling should have sufficient bedrooms to allow mature children (adolescents and older) to be separated by sex, and that the number of persons per bedroom reflect the size of the room. In the absence of applicable housing codes, the FTA's policy requires separate bedrooms and gender separation for children over 12 years of age. Local occupancy codes must also be considered and prevail as to a minimum standard, including:

- Contains unobstructed egress to safe, open space at ground level.
- For a displaced person who is disabled, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling. If comparable replacement properties available are not barrier free adequate to the needs of the displaced persons, then the grantee shall add amounts necessary to provide a barrier-free dwelling required.

The grantee should inform the displacee that the agency DSS inspection is not a substitute for a professional home inspection and a careful investigation. Professional home inspections are encouraged and are an eligible closing cost item and can be reimbursed to displacees.



6.1.4 Sponsor Decent, Safe and Sanitary Certification

The grantee shall certify that the dwelling to be purchased by the displaced person is DSS (see Fig. 6-1). The DSS certification is made solely for purposes of providing the replacement housing payment in accordance with the URA. A displacee may not be paid any replacement housing payments for a dwelling that does not meet DSS standards. The grantee must advise displaced persons that the sponsor's DSS certification must be made prior to or as a condition to be satisfied in a sales contract for the purchase of the replacement dwelling, or rental agreement for a rental dwelling.

6.1.5 Claims for Replacement Housing Payments

In order to obtain a replacement housing payment, a displaced person must file a written claim with the grantee on a form provided by the grantee for that purpose. The claim shall be filed within 18 months after the date the applicant moves from the displacement dwelling, or the date of the final payment for the acquisition, whichever is later.

6.1.6 Multiple Occupancy of One Displacement Dwelling

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to and may claim a reasonable prorated share, as determined by the sponsor, 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. However, all persons occupying a dwelling unit should be generally considered one “family” for purposes of determining relocation benefits.

All occupants of a single dwelling unit should be considered one family unit for purposes of payment computation. It is an exception to do otherwise and would require written justification.

6.1.7 Conversion of Payment

During the prescribed one-year period, a displaced person may elect to change their status—that is, a person who rented a replacement dwelling may opt to purchase, etc. However, the amount of any replacement housing previously paid to the person must be deducted from any subsequent amount due that person.

6.2 180-Day Owner-Occupants

6.2.1 Replacement Housing Payment Eligibility

A displaced owner-occupant is eligible for a replacement housing payment if the displaced person:

- Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations, or the issuance of a written notice of intent to acquire the property.

- Purchases and occupies a decent, safe and sanitary replacement dwelling within one year after the later of the following dates (except that the sponsor may extend the one year period for good cause):

- The date the displaced person receives final payment for the displacement dwelling.

- In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court (filing date).

- The date the sponsor has made available to the displaced person at least one comparable replacement dwelling (see section 6.2.3.1 of this guide).

6.2.2 Replacement Housing Payment

The replacement housing payment for an eligible 180-day owner-occupant may not exceed \$22,500, except when under housing of last resort procedures. The payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced owner-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 the following:

Parcel: _____ Project: _____
 Displacee Name: _____ 180-Day Owner: _____ 90-Day Occupant: _____ Other: _____
 Displacement Address: _____

Replacement Dwelling Address: _____

Dwelling Type: Owned _____ Rented _____

Single Family: _____ Multi-Family: _____ Apartment: _____ Room/Dorm: _____
 Condo/Coop: _____ Mobile Home: _____ ID/Tag #: _____

Bedrooms required for displaced household: _____ Bedrooms provided in replacement: _____

INSPECTION REPORT

Does the replacement dwelling conform with the following standards for Decent, Safe, and Sanitary Housing?

- | | YES | NO |
|---|-------|-------|
| 1. Conforms with local housing and occupancy codes? | _____ | _____ |
| 2. Structurally sound, weather tight, and in good repair? | _____ | _____ |
| 3. Contains a heating system able to maintain 70°F in living area? | _____ | _____ |
| 4. Has an adequate, safe electrical wiring system? | _____ | _____ |
| 5. Has separate bathroom facilities that conform to DSS standards?
(private, hot/cold water to sink & shower/tub, sewer connection, flush
water closet, all in working order) | _____ | _____ |
| 6. Has kitchen facilities which conform to DSS standards?
(hot/cold water to sink, connected to sewer, range/refrig space &
utility connection, all in working order) | _____ | _____ |
| 7. Has adequate unobstructed egress? | _____ | _____ |
| 8. Is property barrier free to accommodate disabled displaced person? ____Yes____* No____ N/A ____ | | |

* If No, describe property improvements to be made to provide barrier free ingress, egress, or use of property as required to accommodate impaired person(s) prior to occupancy _____

*******CERTIFICATION*******

TO THE BEST OF MY KNOWLEDGE, BASED ON VISUAL INSPECTION OF THE PROPERTY, THE REPLACEMENT DWELLING (MEETS OR DOES NOT MEET) THE STANDARDS FOR DECENT, SAFE, AND SANITARY HOUSING, AS ESTABLISHED IN THE RELOCATION ASSISTANCE PROCEDURES OF THE LOCAL TRANSIT AGENCY, THE LOCAL OCCUPANCY CODE (IF ANY), AND CONFORMING TO 49 CFR PART 24 FOR FEDERALLY ASSISTED PROJECTS.

SIGNED _____

DATE _____

SAMPLE INSPECTION AND CERTIFICATION STATEMENT FORM

Figure 6-1

1. **Price Differential.** The price differential (see section 6.2.3 of this guide), should the eligible cost of the replacement dwelling exceed the acquisition cost of the displacement dwelling.
2. **Increased Interest Costs.** The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as described in section 6.2.6 of this guide.
3. **Incidental Expenses.** The reasonable expenses incidental to the purchase of the replacement dwelling, as described in section 6.2.7.

6.2.3 Price Differential

The price differential is the amount, if any, which must be added to the acquisition cost of the displacement dwelling to provide the reasonable cost of a comparable replacement dwelling, or the purchase price of a decent, safe and sanitary dwelling actually purchased and occupied by the displaced person, whichever is less. The grantee will determine the amount necessary to purchase a comparable decent, safe and sanitary dwelling by analyzing, when available, at least three comparable dwellings that are available on the open market and are most nearly representative of, and equal to, or better than, the displacement dwelling.

6.2.3.1 Comparable Replacement Properties

Comparable replacement properties shall be selected from current listings of properties available for sale. Listed properties sold under a pending sales contract may not be used in determining the price differential. All sources of listing information available should be pursued including multiple listing services (MLS), local broker exclusive listings, and owner listings. An obviously overpriced listed dwelling should be ignored. 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 at reasonable cost, in nearby comparable neighborhoods.

Comparable replacement properties shall be selected from current listings of properties available for sale.

6.2.3.2 Selected Comparable Replacement Property

Of the comparable listings searched, the property judged the most comparable, referencing the definition of comparable housing provided in section 6.1.2 of this guide, will be used as the “selected” comparable to calculate the replacement housing payment eligibility for the displaced person. The grantee shall fully and systematically search the available replacement properties and select that comparable which represents the “most” comparable property. Figure 6-2A provides a format for comparing the features of available replacement property to the comparability requirements of the acquired dwelling to determine the selected comparable.

6.2.3.3 List Price Adjustment

No adjustment to the list price will be made, although obviously overpriced listings may be ignored.

6.2.3.4 Government Subsidized Housing

A person who may be eligible for government subsidized housing assistance (generally programs provided by local housing authorities) must be provided assistance to apply to such programs and informed that such programs may limit the size and type of replacement they may occupy. When such programs set occupancy standards, those standards determine “comparability” and the DSS minimum for that displaced person, not the URA criteria. A person not utilizing government subsidized housing at the time of displacement may not be required to occupy such housing, but elect to do so, if available.

For a person receiving government housing assistance before displacement, a comparable replacement is defined as another such housing unit (reference 49 CFR 24.2(a)(6)(ix)). The size of the replacement unit is determined by the standards of the subsidy program.

6.2.4 Special Situations Affecting Price Differential

Various situations typically arise that will affect the calculated and actual amount of the price differential that a displaced person is eligible to receive. These situations generally result in an adjustment of some type, as described for the following occurrences.

6.2.4.1 Effect of Administrative Settlement on RHP

An administrative settlement is any settlement made by the grantee for acquisition of real property that exceeds an approved amount offered as just compensation. Such an increase may reduce the amount of replacement housing price differential if the amount paid for the subject residence and its land is increased.



6.2.4.2 Condemnation Award

An advance replacement housing payment may be computed and paid to a property owner when the final settlement amount will be delayed pending the outcome of condemnation proceedings. Payment of such amount may only be made upon the owner-occupant's agreement that upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court and the displaced person will refund to the grantee the amount of any excess payment.

6.2.4.3 Carve-Outs

Carve-outs must be made when the acquired property has certain exterior attributes, as discussed below, which are not available at reasonable cost on otherwise comparable available dwellings, or the acquired dwelling is part of a mixed use property. The following describes the specific situation where carve-outs are used:

1. Site Attributes and Improvements. If the selected comparable replacement property does not contain a site improvement found on the displacement property, the contributory value of the improvement (e.g. a garage, outbuilding, swimming pool) will be deducted (i.e. carved-out) from the cost of the acquired dwelling in calculating the replacement housing price differential eligibility. A carve-out is not necessary unless the particular site improvement represents a significant value as indicated in the appraisal of the acquired property.

Project: _____

Parcel: _____

Name: _____

Owner: _____

Tenant: _____

Address: _____

Property Comparison Chart: Rate each against the subject property using
(=) equal (+) better (-) inferior

Comparison Item	Subject Property	Comparable 1 Address	Comparable 2 Address	Comparable 3 Address	Comparable 4 Address
Habitable Living Area (sq.ft.)					
# Rooms					
# Bedrooms					
# Baths					
Location: (Neighborhood, Access to Employment)					
Lot Size					
Style/Construction					
Age					
Quality					
Condition					
Sewer/Water					
Heat/Fuel					
AC					
Flooring					
Fireplace					
Basement					
Storage					
Deck/Patio					
Garage/Car Port					
Appliances					
Other					
List Price	\$	\$	\$	\$	\$

Selected Comparable Determination:

Applying selection criteria contained in the definition of "comparable replacement" dwelling (49 CFR 24.2(a)(6)), Comparable #___ is selected as the most comparable to the acquired property, including the decent, safe and sanitary requirements for the displaced persons. The indicated price difference is \$ _____.

Comments/justification: _____

COMPARABLE PROPERTY EVALUATION**Figure 6-2A**

Where a site attribute consists of a land or location feature, such as waterfront location or golf course frontage, which is unavailable at a reasonable cost on the selected most comparable property available, the contributing market value of the attribute shall also be carved-out from the acquisition cost of the property in determining the replacement housing payment eligibility. A carve-out is only necessary to the extent of the contributory value set out for the attribute from the approved appraisal of the acquired property.



2. Tracts Larger than Typical Residential Size. When the acquired tract is significantly larger than the typical residential tract available as comparable replacement properties, the grantee shall carve-out the value of the dwelling and typical home site for the area from the total acquisition price and use this value as the acquisition cost to calculate the price differential eligibility. However, should comparable property be available at reasonable cost with the larger lot feature, a carve-out is not necessary. In addition, exact one-to-one correspondence between lot sizes is not necessary, as it is likely that the market regards and values a range of lot sizes permitted for single home site as relatively equal.

Use the appraisal as a guide. If a significant adjustment is shown for excess land or lot size, then a carve-out is warranted. If the contributory value of a potential carve-out item is small, it may be ignored.

3. Dwelling on Land with Higher and Better Use. When the acquired dwelling is located on a property where the appraised and/or final settlement value is established on a higher and better land use than residential, the price differential eligibility is the list price of a comparable replacement dwelling minus the value of the land for an area of a typical residential lot (at the established per unit highest and best use value) plus the contributory value of the dwelling. For example, the agency is acquiring a 40,000 square foot commercially zoned lot improved with an owner-occupied residence. The per-square-foot commercial value is \$10/sq. ft.; the dwelling has no contributory value. The offer for the parcel is \$400,000. Ten thousand square feet is determined to be a typical residential site. A comparable replacement dwelling is available in a residential neighborhood for \$115,000. The calculation for replacement housing benefit eligibility is: \$115,000 minus \$100,000 (i.e. 10,000 sq. ft. \$10/sq. ft) or \$15,000.
4. Residential/Business or Farm Operation Properties. When a displacement dwelling is part of an acquired mixed-use property containing a business or part of a significant farm operation, the value of the residence and typical home site may be carved out from the acquisition payment in calculating the price differential eligibility for purchase of a replacement dwelling. A carve-out is not necessary for small in-home businesses where substantial alterations have not been made to accommodate the business (i.e., bookkeeping service, small beauty salon, small engine repair shop, etc).

6.2.4.4 Partial Acquisition

When 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 grantee should offer to purchase the entire property. If the owner refuses to sell the remainder to the grantee, 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.

6.2.4.5 Owner-Occupant of Multi-Family Dwelling

The comparable dwelling shall be the same as that acquired (i.e., if the acquired property is a triplex, then the comparable shall be a triplex). If triplex comparables are not available, then structures of the next lowest density (duplex) must be used. If there are no comparable multi-family structures available, then single family property may be used as comparable housing. When a comparable multi-family property is not available at reasonable cost, then the portion of the acquisition cost that constitutes the owner's occupied unit is used to calculate the price differential eligibility.

In cases where the displaced household is occupying more than one unit of a multi-family unit, single family replacement housing may be offered as the available replacement dwelling. However, it is not necessary to replace or carve-out duplicated residential property components that may occur on the acquired occupied property (e.g., additional kitchens and heating systems).

6.2.4.6 Occupant with a Partial Ownership

When a single family dwelling is owned by two or more people and occupied by one or more of the owners, the replacement housing payment will be the lesser of:

1. The actual cost of the replacement dwelling less the owner-occupant's share of the acquisition payment for the displacement dwelling.
2. The amount determined by the grantee as necessary to purchase a comparable dwelling less the total acquisition cost of the displacement dwelling.

6.2.4.7 Owner Retention

The payment, when based on the cost of relocating the retained dwelling, may not exceed the displaced person's calculated eligibility for the purchase of the selected comparable 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 the following:

- The cost of moving and restoring the dwelling to a condition comparable to that prior to the move.
- The cost of making the unit a decent, safe and sanitary replacement dwelling.
- The current fair market value for residential use of the replacement site unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site.
- The retention value of the dwelling, if such retention value is reflected in the acquisition cost used when computing the replacement housing payment.

6.2.4.8 Upgrading of Replacement Dwelling

A displaced person upgrading a decent, safe and sanitary replacement dwelling with added features may claim and be reimbursed only when the upgrading is included in the purchase price, will take place prior to the closing of the conveyance of the property, and costs are determined reasonable for residential dwellings.

6.2.4.9 Previously Owned Dwelling

When a displaced person relocates to a previously owned DSS dwelling the price differential eligibility is the lesser of the list price of a comparable replacement dwelling or the current fair market value of the previously owned dwelling; minus the acquisition cost of the acquired property.

6.2.5 Rental Assistance Payment for 180-Day Homeowner

A 180-day homeowner-occupant, eligible for a replacement housing payment and elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed the replacement housing price differential. In other words, the rental amount potentially payable to an owner who elects to rent, cannot exceed what the owner would have received if they had relocated as an owner. Such payment would be computed and disbursed in accordance with section 6.3.3 of this guide, except that the owner's income will not be a consideration in the determination.

6.2.6 Mortgage Interest Differential (MID)



A MID payment is provided to a displaced person to compensate for the increased interest costs the person would otherwise incur when financing a replacement dwelling. The MID payment is an amount which will reduce or “buy down” the displaced person's mortgage principle balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest cost. To compute the MID eligibility, the remaining principal balance, interest rate, and monthly principal

and interest payments for the pre-displacement mortgage, as well as an available replacement mortgage, must be obtained and documented. The interest rate on the acquired dwelling shall be based on a bona fide recorded mortgage or other recorded documentation. In addition, the MID payment shall include other debt service costs normal to the area of the replacement dwelling, if not paid as incidental cost, and shall be based only on bona fide mortgages and amounts that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

6.2.6.1 MID Eligibility Calculation

The MID eligibility is the amount required to compensate for any additional interest cost necessary to purchase a replacement dwelling, not to exceed the cost of a conventional mortgage available at the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. For acquired properties subject to a fixed rate mortgage, the pre-displacement interest rate is compared to the prevailing fixed interest rate. For acquired properties subject to an adjustable rate mortgage (ARM), the computation of the MID eligibility is based on the lesser of the interest rate variance between the pre-displacement rate as of the date of acquisition versus the current fixed rate, or the issue rate of a similar adjustable rate mortgage.

6.2.6.2 MID Payment Calculation

Actual payment of a MID to a displaced person is contingent upon a mortgage being placed on the replacement dwelling. The MID payment eligibility is based on the unpaid mortgage balance

and remaining term of the mortgage on the displacement dwelling, or the term of the new mortgage, whichever is shorter. In the event the person obtains a smaller mortgage than the pre-displaced mortgage balance, the computed payment eligibility is prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance used to calculate the payment is the balance which existed 180 days prior to the initiation of negotiations, or the balance on the date of acquisition, whichever is less.

6.2.6.3 Reimbursable Loan Points

In addition to the computed buy down amount, the MID payment includes purchaser's points and loan origination or assumption fees to the extent:

- They are not paid as incidental expenses.
- They do not exceed rates normal to similar real estate transactions in the area.
- The agency determines them to be necessary.
- The computation of such points and fees is based on the loan balance of the displacement dwelling less the buy down amount.

It is sometimes cost effective to buy down the mortgage rate by paying extra points. If the payment of extra points is less costly to the agency than the routine calculation of the MID, it is an acceptable practice which may benefit both the agency and displacee.

6.2.6.4 Additional Pre-Displacement Mortgage Liens

When a displaced person has second or lesser priority mortgage liens, an overall MID eligibility is computed based on the available conventional mortgage financing of the total outstanding loan balance on the acquired property. Normally, it would be expected that a single first lien mortgage would be secured to purchase a replacement property and an MID payment would be made to the extent which this mortgage interest exceeded the interest rates on the mortgage loan balances of the acquired property, not to exceed the prevailing fixed interest rate cost. Where second mortgage financing is required for a displaced person to secure a replacement dwelling, the MID calculation and actual payment shall be based on a comparison of the second mortgage rates.

In some cases when multiple loans on the displacement property are replaced with a single loan on the replacement property, the interest rate of the second and subsequent mortgages will be higher than the replacement rate. These loans are not considered in the calculation of the interest differential, as they would yield a negative payment, but are considered for purposes of reimbursing for the cost of points.

6.2.7 Incidental Expenses

The incidental expenses to be paid are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling. Such costs, customarily paid by the buyer, may include the following items:

1. Legal, Closing and Related Costs. Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
2. Application and Appraisal Fees. Lender, FHA or VA application and appraisal fees.

3. Loan Origination Fees. Loan origination or assumption fees that do not represent prepaid interest up to the amount of the mortgage on the displacement dwelling.
4. Certifications. Certification of structural soundness and termite inspection when required.
5. Credit Report. The cost associated with obtaining a credit report.
6. Evidence of Title. Owner and mortgagee evidence of title (e.g., title insurance, not to exceed the costs for a comparable replacement dwelling).
7. Escrow Fee. The costs associated in determining escrow (i.e., escrow agent's fee).
8. Local Government Costs. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
9. Inspection. The cost of professional home inspection, termite inspection and structural inspection.
10. Other Cost. Such other costs as the grantee determines to be incidental to the purchase.

6.3 90-Day Occupant, Owner or Tenant

6.3.1 Eligibility

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance or down payment assistance, 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.
2. Has rented, or purchased, and occupied a decent, safe and sanitary replacement dwelling within one year (unless the sponsor extends this period for good cause) after:
 - For a tenant, the date the displaced person moves from the displacement dwelling.
 - For an owner-occupant, the later of:
 - The date the displaced person receives final payment for the displacement dwelling, or in the case of condemnation, date the full amount of the estimate of just compensation is deposited with the court.
 - The date the displaced person moves from the displacement dwelling.

6.3.2 Rent Schedule

A “rent schedule” refers to an array of rent and utilities charged in an area or neighborhood for various sized dwellings based on a survey of available dwellings listed for rent. FTA does not allow the use of rent schedules for the calculation of rental housing cost differentials as it is not compliant with 49 CFR sections 24.2(a)(6), 24.204(a), 24.402(b)(1)(i) and 24.403(a) that require three comparable and currently available rental properties be identified and provided to the displacee.

Mortgage Maintenance Payment Computation	
Required Information	
Displacee:	Parcel Number:
1. Remaining principal balance on old mortgage.	<u>\$100,000</u>
2. Remaining amortization term of old mortgage as of date of acquisition. (Calculated in Step A. of Payment Calculation section below.)	<u>336 Months</u>
3. Annual interest rate on old mortgage.	<u>6.5%</u>
4. Monthly Payment: Existing monthly payment (actual payment as of date of acquisition) or ; If the term of the replacement mortgage (line 6) is less than existing mortgage (line 2), use the shorter amortization term of the replacement mortgage to calculate a hypothetical monthly payment for the existing mortgage.	<u>\$647</u>
5. Replacement mortgage amount (Enter lesser of actual amount or old balance amount, line 1).	<u>\$100,000</u>
6. Amortization term of replacement mortgage.	<u>360 Months</u>
7. Annual interest rate of replacement mortgage. (Shall not exceed the prevailing fixed-term interest rate for conventional [non-government insured] mortgages currently charged by lenders in the area in which the replacement dwelling is located.)	<u>8.25%</u>
8. Purchaser's points and loan origination or assumption fees which are not paid as an incidental expense. (Not to exceed market norms.)	<u>1%</u>
Payment Calculation	
A. Amortization period, LESSER OF:	
(1) Existing Mortgage Calculated Term:	
<u>\$100,000</u> with a monthly payment <u>\$647</u> @ interest rate <u>6.5%</u> = <u>336</u> months. (Line 1) (Line 4) (Line 3)	Actual Amount: <u>336 Months</u>
(2) Term of Replacement Mortgage: <u>360</u> months. (Line 6)	
B. Amount of reduced loan having a monthly amortization payment of:	
<u>\$647</u> for <u>336</u> months at an annual rate of <u>8.25%</u> . (Line 4) (Line A) (Line 7)	<u>\$84,696</u>
C. Amount of mortgage reduction: <u>\$100,000</u> less <u>\$84,696</u> (Line 1) (Line B)	
D. Points and fees. <u>1%</u> X <u>\$84,696</u> (Line 8) (Line B)	
E. PAYMENT: Total of Lines C and D.	
<u>\$16,151</u>	
F. If the actual new mortgage is less than Line B:	
\$ _____ divided by \$ _____ = _____ % X \$ _____ (New Mortgage Amount) (Line B) (Line E)	
\$ _____	

FAA Form 5100-123

SAMPLE MID ELIGIBILITY CALCULATION**Figure 6-2B**

6.3.3 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. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:
 - The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling.
 - 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 determined as follows:
 - The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement.
 - For an owner-occupant, fair market rent and utilities for the displacement dwelling as determined by the sponsor.
 - For a tenant who paid little or no rent at the displacement dwelling, the fair market rent (economic rent), unless its use would result in a hardship because of the person's income or other circumstances.
 - Thirty percent of the person's average monthly gross household income, if that person is determined to be low income per the URA income standards (the HUD Public Housing and Section 8 Program Income Limits, which are updated annually and can be referenced at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>). If a person refuses to provide appropriate evidence of income, the base monthly rental shall be established solely on the criteria in the first bullet in this list.
 - The total of the amounts designated for shelter and utilities, if receiving a welfare assistance payment from a program, that designates the amounts for shelter and utilities.
3. **Manner of Disbursement.** A rental assistance payment may, at the sponsor's discretion, be disbursed in either a lump sum or in installments. Under last resort housing procedures, installment payments shall be made.

6.3.4 Income

Household income means the total gross income of all occupants of a dwelling unit (excepting the earning of minor children and full time students under the age of 18; and items excluded by law, e.g., food stamps) from all sources, earned and unearned, for a 12-month period including, but not limited to, wages, child support, alimony, unemployment benefits, workers compensation, social security and the net income from a business. One-twelfth of such annual amount is the monthly gross household income.



6.3.5 Down Payment Assistance

A tenant of at least 90 days or a 90- to 179-day owner-occupant who purchases a replacement dwelling is eligible to receive a down payment assistance payment. An eligible displacee is entitled to a down payment assistance payment in the amount the person would receive under section 6.3.3. At the discretion of the grantee, on a project-wide basis, and if in compliance to state law, the down payment assistance may be increased to any amount, not to exceed \$5,250. A down payment assistance payment to a 90- to 179-day owner-occupant shall not exceed the amount the owner would receive if the person met the 180-day occupancy eligibility for a replacement housing payment.

6.4 Replacement Housing of Last Resort

Whenever a project cannot proceed on a timely basis, because comparable replacement sale or rental housing is not available within the monetary limits for owners (\$22,500) or tenants (\$5,250), the sponsor shall provide additional or alternative assistance known as replacement housing of last resort.

6.4.1 Determination to Provide Replacement of Last Resort

The sponsor is permitted to use broad latitude and innovative measures to implement last resort housing solutions to clear a project. Statutory limitations of \$22,500 and \$5,250 may be exceeded when the last resort housing provision is utilized. Any decision to provide last resort housing assistance must be adequately justified and, as required, submitted to the FTA for prior approval either on:

1. A case-by-case basis, for good cause, with appropriate consideration given to:
 - The availability of comparable replacement housing in the project area.
 - The resources available to provide comparable replacement housing.
 - The individual circumstances of the displaced person.
2. A project-wide determination that:
 - There is little, if any, comparable replacement housing available to displaced persons within an entire project area.
 - The project cannot be advanced to completion in a timely manner without last resort housing assistance.
 - The method selected for providing last resort housing assistance is the most cost effective, resulting in timely project clearance.

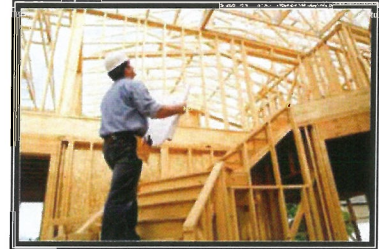
6.4.2 Methods of Providing Last Resort Replacement Housing

The grantee has broad latitude in implementing the housing of last resort provision, but implementation shall be at a reasonable cost, and on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project, and has prior FTA concurrence.

6.4.2.1 Typical Methods

Methods of providing replacement housing of last resort include, but are not limited to:

1. A replacement housing payment in excess of the limits set forth in sections 6.2.2 and 6.3.3 of this guide.
2. Rehabilitation of and/or additions to an existing replacement dwelling to meet decent, safe and sanitary requirements provided the cost of acquisition and/or rehabilitation does not exceed the estimated cost of constructing a new comparable dwelling meeting the decent, safe and sanitary requirements of the displaced person and can be constructed on a timely basis.
3. The construction of a new replacement dwelling. If new housing is to be constructed, submit the following information:
 - a. A statement that the methods proposed to provide comparable replacement housing can be legally accomplished in accordance with state and local statutes and ordinances.
 - b. How, when and where housing will be provided.
 - c. The environmental impact and suitability of the location of the proposed housing.
 - d. How it will be financed and the amount of project funds to be diverted to such housing:
 - By contractual arrangement with state and local housing agencies.
 - By contractual arrangement with HUD or the Farmer's Home Administration.
 - Contract with public and private organizations experienced in the provision of affordable housing.
 - Interest subsidy payments.
 - Direct construction by the transit agency.
 - e. The prices at which the housing will be sold or rented. These must be within the financial means of the families and individuals to be displaced.
 - f. The arrangements for maintaining rent levels for 42 months appropriate for the persons to be re-housed.
 - g. The arrangements for rental housing management.
 - h. The disposition of the proceeds from rental, sale or resale of such housing.
 - i. How and by whom the construction will be monitored. Inspection of construction may be by the transit agency's own work forces or by qualified fee personnel. Upon the final inspection of a dwelling, a signed certification of acceptability of the construction shall be placed in the grantee's files.
 - j. Any other comments pertinent to providing replacement housing.
4. The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property, although it is recommended that it be a secured loan. The loan may bear interest or be interest-free; however, the same procedure shall be consistent for all last resort housing recipients on a project.
5. The relocation and, if necessary, the refurbishing or rehabilitation of a dwelling.



6. The purchase of land and/or a replacement dwelling by the grantee and subsequent sale, lease to or exchange with a displaced person. When such acquisitions are made under the grantee's power of eminent domain or the threat of eminent domain, provisions of 49 CFR part 24 will apply. Part 24 provisions are not required if property purchased has been offered for sale on the open market, or the property owner voluntarily acts to sell property to the grantee and the owner so certifies in a statement maintained in the grantee's file. Any displacement of a tenant in conjunction with such a voluntary sale on the open market requires the offering of relocation benefits to eligible tenant displacees.
7. The removal of barriers to the disabled.
8. The change in status of the displaced person with such person's concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.
9. When several agencies are administering programs in the same geographical area that result in residential displacement, seek out opportunities for joint development and financing in order to combine resources to provide replacement housing in sufficient quantity to satisfy the aggregate needs of such programs.
10. Assisting a displaced person in financing a replacement dwelling when the outstanding mortgage balance on the displacement dwelling is greater than the purchase price. This may include:

—Negotiation with the lender on behalf of the displacee to seek some reduction in mortgage principle.

—A portion of the replacement housing price differential may have to be disbursed to close out the mortgage on the displacement dwelling. The balance of the price differential would then be allocated to purchase of the replacement dwelling, with the new mortgage amount being the same as the mortgage balance on the displacement dwelling. Closing on both the acquired and replacement properties should be simultaneous to ensure that full equity from the acquired property is applied to the replacement property.



—If the displaced person needs additional monetary resources to purchase a replacement dwelling, the grantee may increase the relocation payment. However, if the payment is increased, the grantee should attach a lien on the property for a specified period of time (5 years, for example) stipulating that if the displaced person sells the property within such time period, the sale proceeds would revert to the grantee. If the property were not sold within the specified time period, the lien on the property would then be removed.

11. Reimbursement of mortgage brokerage fees when incurred to secure a loan on a replacement property for a person suffering from credit difficulties or similar situations. Such fees should be limited to that amount normal for conventional loans in the area; however, fees in excess of the norm may be reimbursed when considered necessary and reasonable in the context of the financial ability of the person to pay such fees.

6.4.2.2 Special Circumstances

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, provided that while innovative measures may be used, they should always be the most cost-effective alternative. The following will apply:

1. Modifications may include 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.
2. 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. Examples of variations that may be used are the following:
 - The use of a new mobile home to replace a substandard conventional dwelling in an area where comparable conventional dwellings are not available.
 - The use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, substandard dwelling, only a portion of which is necessary for use as living quarters by the occupants.

6.4.3 Displaced Person Not Meeting Length of Occupancy Requirements

The grantee shall provide assistance to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length of occupancy requirements, in the same manner as discussed in section 6.3 of this guide. **Note:** As per URA regulations dated Jan. 4, 2005, the length of occupancy is not a factor in the method of providing replacement housing.

6.4.4 Consequential Displacement

Any person displaced because of the acquisition of real property for a last resort housing project under the grantee's power of eminent domain, including amicable agreements under the threat of such power, is entitled to all eligible benefits under the relocation assistance provisions. This provision is not applicable to an owner-occupant who voluntarily acts to sell property to the grantee for replacement housing of last resort.

6.4.5 Disbursement of Housing of Last Resort Payments

Replacement housing payments are paid on approved claims. However, for a 90-day occupant who rents, the rental assistance payment to be disbursed under replacement housing of last resort should be made in installments. However, in rare situations a lump-sum payment may be made. The number of installments is at the discretion of the transit agency. The grantee may disburse the payments or deposit the rental assistance payment into an escrow account to be disbursed by the escrow agent. Last resort housing rental payments can be disbursed in the full amount or lump sum toward the purchase of a DSS dwelling that is occupied by the displacee.

Chapter 7

MOBILE HOMES



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 7

MOBILE HOMES

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Chapter 7

MOBILE HOMES

7.1 General

Relocation payments for mobile home displacement are generally the same as for persons displaced from conventional dwellings (see Chapters 5 and 6 of this guide). However, given that the mobile home is a movable item and that the tenancy and ownership status of displaced persons may vary between the site and the mobile home, the acquisition and relocation payment options possible for mobile home displacement may be somewhat more complex. For example, a person may own the mobile home they occupy, but have it situated on a site they rent. This chapter presents the criteria to be used to determine applicable payments. It also provides replacement housing payment eligibilities for the possible combinations of grantee mobile home and/or site acquisition and the displacement and relocated occupancy status of displaced persons.

The procedures contained in this chapter for mobile home occupants may also be appropriate for persons who occupy recreational vehicles, boats and other dwellings which are personal property.

The procedures contained in this chapter for mobile home occupants may also be appropriate for people who occupy recreational vehicles, boats and other dwellings which are personal property.

7.2 Actual Moving Expenses

An owner-occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving the mobile home on an actual cost basis in accordance to section 5.2.1 of this guide. A nonoccupant owner of a mobile home is also eligible for actual cost reimbursement under section 5.2.1. However, if the mobile home is not acquired, but the owner-occupant obtains a replacement housing payment under one of the circumstances described in section 7.3 of this guide, the owner 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.

Additional eligible moving expenses for mobile homes are as follows:

1. Attached Appurtenances. A displaced mobile homeowner who moves the mobile home to a replacement site is eligible for the reasonable cost of disassembling, moving and reassembling any attached appurtenances (e.g., porches, decks, skirting, awnings) which were not acquired, anchoring of the unit and utility connection charges. Occasionally, it may be less expensive to replace these appurtenances rather than move them.
2. Repairs. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the grantee determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.
3. Mobile Home Park Entrance Fee. A nonreturnable mobile home park entrance fee is reimbursable 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 grantee determines that payment of the fee is necessary to effect relocation.

7.3 Replacement Housing Payment for 180-Day Mobile Home Owner-Occupant

A displaced owner occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under section 6.2.1 of this guide, if:

- The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations.
- The person meets the other basic eligibility requirements as described in section 6.2.1.
- The grantee acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the grantee but the owner is displaced from the mobile home because the grantee determines that the mobile home:
 - Is not and cannot economically be made decent, safe and sanitary.
 - Cannot be relocated without substantial damage or unreasonable cost.
 - Cannot be relocated because there is no available comparable replacement site.
 - Cannot be relocated because it does not meet mobile home park entrance requirements.



If the mobile home is not acquired and the grantee determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described in section 6.2.3 of this guide, will be the salvage value or trade-in value of the mobile home, whichever is higher.

7.4 Replacement Housing Payment for 90-Day Mobile Home Occupant

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, see section 6.3.3 of this guide, if:

- The person actually occupied the displacement mobile home on the displacement site prior to the acquisition by the agency.
- The person meets the other basic eligibility requirements.
- The grantee acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the grantee, but the owner or tenant is displaced from the mobile home because of one of the circumstances described in section 7.3 of this guide.

7.5 Additional Rules Governing Relocation Payments to Mobile Home Occupants

7.5.1 Replacement Housing Payment Based on Dwelling and Site

Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home

and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In these cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Chapter 6. However, the total replacement housing payment under Chapter 6 shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under section 6.4 of this guide.

7.5.2 Cost of Comparable Replacement Dwelling

If a comparable replacement mobile home and site are not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling, modular housing or other functionally equivalent units.

If the grantee determines that it would be practical to relocate the mobile home, but the owner occupant elects not to do so, the grantee may permit the displaced owner to claim as replacement housing the sum of the following:

- The cost of any necessary repairs or modifications.
- The estimated cost of moving the mobile home to a replacement site.

This replacement housing payment requires the displaced owner to expend a sum of money equal to the above two items, plus any sale or proceeds obtained for the subject mobile home, for the purchase of a decent, safe and sanitary replacement dwelling.

7.5.3 Initiation of Negotiations

If the mobile home is not actually acquired, but the occupant is considered a displaced person, as defined in section 4.1.2.1 of this guide, the “initiation of negotiations” is the initiation of negotiations to acquire the land or, if the land is not acquired, the written notification that such occupant is a displaced person.

7.5.4 Person Moves Mobile Home

If the owner is reimbursed for the cost of moving the mobile home under this part, they are not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

7.5.5 Partial Acquisition of a 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 grantee determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and assistance.

7.6 Motor Homes and Houseboats

The ownership and rental status for permanent occupants of motor homes and houseboats are basically the same as that for mobile homes. Relocation payments will be calculated using the appropriate mobile home ownership or tenant status as described in this chapter.

A motor home or houseboat selected by a displaced person, otherwise eligible for a replacement housing payment, as their replacement dwelling must meet minimum DSS requirements and represent a permanent place of residence in order to claim replacement housing payments. The following criteria assist grantees in determining the acceptability of a motor home or houseboat for replacement housing payment eligibility:

1. Decent, Safe and Sanitary (DSS). The motor home or houseboat must meet decent, safe and sanitary, requirements as defined in section 6.1.3 of this guide. The dwelling must provide adequate kitchen and bathroom facilities, sewerage, water supply, heat, etc., per the normal DSS requirements. A useful rule of thumb for determining the adequacy of the size of the unit for a family is that the habitable living area of the motor home or houseboat should be at least 150 square feet for the first occupant and 70 square feet for each additional occupant. Habitable square footage is an interior wall-to-wall measurement, except bathrooms, closets and hallways.

2. Permanent Residence. The motor home or houseboat must be a legally established permanent residence (i.e., parked, berthed). The motor home must be able to locate legally in a mobile



home park, or a houseboat must be legally berthed at a suitable marina (i.e., it must meet mobile home park or marina requirements concerning sewer and water hookups and other requirements to permanently reside in the park). A motor home or houseboat proposed only to locate at a temporary transient location (e.g., short term, 120 days or less), legal occupancy of a campground or marina or, if only to be occupied on a seasonal basis, would not qualify

as a replacement dwelling to claim replacement housing payments.

3. Down Payment. Rental assistance payments used as a down payment are limited to \$5,250 (see section 6.3.3 of this guide) or, if a last resort housing payment, the down payment may not exceed the minimum typical down payment required to purchase a motor home or houseboat.
4. Replacement Housing Payment Eligibility. For a person displaced from real property or a mobile home, the amount of the replacement housing payment eligibility is based on available replacement comparable DSS real property or mobile home.

People occupying motor homes or houseboats as a seasonal residence, who are required to vacate a site acquired for a transit project, are eligible only for actual, reasonable and necessary moving costs or a fixed moving payment (see sections 5.2.1 and 5.2.2 of this guide).

Chapter 8

PROPERTY MANAGEMENT



*FTA Uniform Relocation Assistance
and Real Property Acquisition
Policies Act Guide (URA)*

Chapter 8
PROPERTY MANAGEMENT

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Chapter 8

PROPERTY MANAGEMENT

8.1 General

Property management refers to the control and administration of lands and improvements until the property is disposed of or incorporated into a project. This involves the maintenance and protection of the property acquired, including improvements, the responsibility for occupancy and rental of improved and unimproved lands, and the disposition of improvements by sale or demolition. Project airspace and the granting of easements may also be subject to property management requirements.

8.2 Property Possession

When the grantee receives title for each property that has been acquired, it should maintain inventories of project-needed property and of excess property. The inventories should include a complete description of each improvement, the improvement's location and other pertinent identification in the manner described below. The grantee should also record the term of occupancy of those inhabiting the improvement and/or removal of improvement under the acquisition agreement. The grantee should consider the following:



1. Inspection. During the initial management inspection of the property, the grantee should:
 - Determine the present condition of the improvements and fixtures acquired.
 - Determine that all fixtures and equipment acquired by the transit agency as real property remain on the property.
 - Make a preliminary estimate of the sale value of improvements for removal or salvage, or determine to demolish improvements.
 - Evaluate the ability to rent the property short-term until needed by the project.
2. Protection of Property. After the property has been acquired, the grantee should:
 - Disconnect all utilities.
 - Remove fire and other hazards.
 - Board up the property, if necessary.
 - Post property with notice of ownership.
 - Perform rodent control.
 - Notify local police departments to provide security.
 - Install security fence if property is a public hazard.

8.3 Owner Retention

If the grantee determines it to be practical and feasible, the owner of improvements or appurtenances on lands being acquired may be offered the option of retaining (i.e. buying back) the improvements or appurtenances at a retention (i.e. salvage) value determined by the grantee. If the grantee permits retention, this value estimate should be made prior to the start of negotiations. Retention value may be determined by using the “sale for removal value” of similar acquired improvements. When buying back the improvement, the owner agrees to remove the improvement from its present site, leaving the former site at an at-grade level free from rubble and any hazardous substance associated with the improvement being relocated, including the appropriate disconnection and capping of all utilities.

8.4 Rental of Property

After acquisition of the property, the grantee may permit a former owner or tenant to occupy the real property for a short term or a period subject to termination on short notice. However, before entering into a rental agreement, the grantee should consider the liability it assumes on such property, the expenses involved in the maintenance and upkeep of the property while occupied, and the possible difficulty of collecting rent from the short-term occupant. If the grantee has decided that continued occupancy of the property is prudent, it will:

—Establish a rental rate that does not exceed the fair market rent for such occupancy. Because the grantee has the right to terminate occupancy on short notice, he also has the flexibility to establish a lower rental rate than might be found in a longer, fixed-term situation. However, rental rates must be applied uniformly throughout the project area.

—When preparing an agreement, the grantee may permit a former owner-occupant or tenant of a dwelling to rent the dwelling in which he or she was residing at the time of acquisition. A tenant of an acquired dwelling should continue to pay the current market rent until vacating the property.

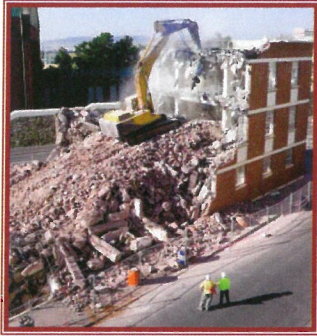
—Supervise property and rental collections through terms of the lease. The grantee should also ensure that all conditions of a lease are complied with and that improvements are vacated in time for clearance by sale and/or demolition before project construction or other need that requires clearance.

8.5 Disposal of Acquired Improvements

As soon as a sufficient number of improvements are vacated, they should be scheduled for disposition. The following applies:

1. Sale for Removal. Competitive bids shall be obtained through public auction or sealed bids whenever practicable. Where feasible, a marketing study should be made to determine the demand and the optimal offering price for sale of the property. At a minimum, the sale shall be advertised sufficiently to ensure adequate buyer competition. Advertised public auction is recommended as the most effective means to secure adequate competition. Should an improvement fail to sell at a public sale, a negotiated private sale of the real property may be pursued to dispose of the property.
2. Specifications for an acceptable bid or a negotiated sale should require the purchaser to remove the improvements and all debris, and leave the site cleared and ready for project use

within a set time frame. Normally, foundations should be removed and basements or excavations filled to allow required drainage. Bid and sale offerings should cite the removal requirements and state that the purchaser is required to provide cash or bond in an amount sufficient to adequately clear the property.



3. Demolition. Where sale for removal is not successful or is not feasible given the condition of the property or project schedule, the property may be advertised for demolition or adequately secured and left for the construction contractor to remove. If the property is contaminated with hazardous materials, the grantee shall identify abatement measures that are necessary to clean up or dispose of such materials in compliance with applicable law. Restrictions should not be placed on the method used by the contractor to clear the improvement other than adhering to local ordinance and other statutory requirements.

8.6 Rodent and Pest Control

On all projects, the grantee should determine if conditions are such that rodent and pest control measures are necessary. The measures determined necessary by a grantee are a proper project cost and eligible for grant payment. The intent of pest control and extermination is to prevent infestation of adjoining or proximate properties not being acquired.

8.7 Asbestos Removal and Disposal

Asbestos-containing materials (ACM) were commonly used in construction between 1950 and 1975. Emissions of asbestos to the air that may result due to demolition and removal activities are controlled under section 112 of the Clean Air Act, and as provided by the National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR part 61, subpart M. A contractor locally accredited under NESHAP will most likely be required to inspect and supervise the demolition of acquired improvements that do or may contain ACM in its building components.

8.8 Income from Property Management

Rental or disposal income generated by real property held by a transit agency is considered program income and can be used for either capital or operating costs. Proceeds from qualifying joint development projects, including sales proceeds for joint development are also considered program income.

8.9 Sales/Dispositions of Property

When real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from FTA. Disposition instructions are not necessary for the sale or owner-retention of improvements that require removal for project construction; nor are FTA disposition instructions necessary for disposal of excess lands and improvements during and immediately after construction of a major capital project. The following are the allowable alternative disposition methods a grantee might request and FTA can allow. For sales, the file must support that the sales price represents the best obtainable price. Unless the property was

recently purchased, a grantee will usually need an appraisal on other reliable market information in order to adequately document the value of the property. The following applies:

1. Sell and Reimburse FTA. The grantee may competitively market and sell the property and pay FTA its share of the fair market value of the property. This is the percentage of FTA participation in the original grant times the best obtainable price, less reasonable sales costs.
2. Offset. The grantee may competitively market and sell the property, and apply the net proceeds from the sale to the cost of replacement property under the same program. Excess proceeds, if any, can be used as described in item 3. For example, if a transit agency plans to build a new garage to replace an obsolete or outgrown facility, it can use the net sales proceeds of the former garage to offset the cost of its replacement.
3. Sell and Use Proceeds for Other Capital Projects. The grantee may competitively market and sell property and use the proceeds to reduce the gross project cost of another FTA-eligible capital transit project. The grantee will have to restrict the funds within its accounting records for use in a subsequent capital project(s). The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with the proceeds from the earlier transaction.
4. Competitively Market and Sell Property and Keep Proceeds in Open Project. If the grant is still open, the grantee may sell excess property and apply the proceeds to the grant's real estate line item.
5. Transfer Excess Land to a Public Agency for Non-Transit Use without Repayment to FTA. The grantee will follow FTA's procedures in order for FTA to publish availability of the property for transfer in the *Federal Register*. This is a competitive process and there is no guarantee that a particular public agency will be awarded the excess property.
6. Transfer to Other Project. The grantee may transfer the property to another FTA-eligible project. Federal interest will continue.
7. Retain Title with Buyout. The grantee may compensate FTA by computing the percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The grantee must document the basis for value determination, typically through an appraisal.



The Uniform Relocation and Real Estate Acquisition Policies Act of 1970, as amended.

(Note 1) Public Law 91-646
91st Congress, S. 1
January 2, 1971

((Note 2) As amended by Public Law 100-17,
Apr. 2, 1987, Title IV, Uniform
Relocation Act Amendments of 1987.)

((Note 3) As amended by Public Law 102-240,
Dec. 18, 1991, Sec. 1055, Relocation
Assistance Regulations Relating to the
Rural Electrification Administration.)

((Note 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 Hardship** - 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 his 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 implement 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 therefore 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 therefore.

(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.

Notes:

1. Original text appears in regular typeface.
2. **Amended text is displayed in boldface.**



Federal Register

Tuesday,
January 4, 2005

Part V

Department of Transportation

Federal Highway Administration

49 CFR Part 24

**Uniform Relocation Assistance and Real
Property Acquisition for Federal and
Federally-Assisted Programs; Final Rule**

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**

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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.

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

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>.

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 effect, 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 its 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/realstate/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).

DERIVATION TABLE—Continued

New section	Old section
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.
24.205(e)	24.205(c)(2)(vi).
24.207(e)	24.205(c)(2)(iv).
24.207(f) and (g)	24.207(g).
24.301(a)	None.
24.301(a)(1) and (2) ..	24.303(a) and 24.502(b).
24.301(b)(1) and (2) ..	24.502(a).
24.301(b)(1)	24.301 Intro. para.
24.301(b)(2)(i)	24.303(a).
24.301(b)(3)	24.302 First sentence.
24.301(c)	None.
24.301(d)	None.
24.301(d)(1) and (2) ..	24.303(a).
24.301(f)	24.303(c).
24.301(g)(1)	24.303(e).
24.301(g)(2)	24.303(a)(1) and 24.301(a).
24.301(g)(3)	24.301(b) and 24.303(a)(2).
24.301(g)(4)	24.303(a)(3).
24.301(g)(5)	24.303(a)(4) and 24.301(d).
24.301(g)(6)	24.303(a)(5) and 24.301(e).
24.301(g)(7)	24.303(a)(7) and 24.301(f).
24.301(g)(8)	24.303(a)(14) and 24.301(g).
24.301(g)(9)	24.502(b)(1).
24.301(g)(10)	24.502(b)(2).
24.301(g)(11)	24.502(b)(3).
24.301(g)(12)	24.303(a)(6).
24.301(g)(12)(i) through (iii).	24.303(a)(8).
24.301(g)(13) through (17).	24.303(a)(8)(i) through (iii).
24.301(g)(17)(v) and (vi).	24.303(a)(9) through (13)(iv).
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).

DERIVATION TABLE—Continued

New section	Old section
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.

DISTRIBUTION TABLE—Continued

Old section	New section
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.	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.

DISTRIBUTION TABLE—Continued

Old section	New section
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	
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.

DISTRIBUTION TABLE—Continued

Old section	New section
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) and (B) ..	24.205(c)(2)(ii)(A) Redesignated and text unchanged.
24.205(c)(2)(ii)(C) and (D) ..	24.205(c)(2)(ii)(B) and (C) Redesignated and text unchanged.
None	24.205(c)(2)(ii)(D) and (E) Redesignated and revised.
24.205(c)(2)(iii)	24.205(c)(2)(ii)(F) Added.
24.205(c)(2)(iv) and (v) ..	24.205(c)(2)(iii) Revised.
24.205(c)(2)(vi)	24.205(c)(2)(iv) and (v) Text unchanged.
24.205(d)	24.205(e) Redesignated and text unchanged.
24.206	24.205(d) Text unchanged.
24.207(a) through (d)(1) ..	24.206 Text unchanged.
24.207(d)(2)	24.207(a) through (d)(1) Text unchanged.
	24.207(d)(2) Revised.

DISTRIBUTION TABLE—Continued

Old section	New section
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 24.401(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. 601-612) 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.

- 24.1 Purpose.
- 24.2 Definitions and acronyms.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal Agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

Subpart B—Real Property Acquisition

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.

- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
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Subpart C—General Relocation Requirements

- 24.201 Purpose.
- 24.202 Applicability.
- 24.203 Relocation notices.
- 24.204 Availability of comparable replacement dwelling before displacement.
- 24.205 Relocation planning, advisory services, and coordination.
- 24.206 Eviction for cause.
- 24.207 General requirements claims for relocation payments.
- 24.208 Aliens not lawfully present in the United States.
- 24.209 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses.
- 24.302 Fixed payment for moving expenses' residential moves.
- 24.303 Related nonresidential eligible expenses.
- 24.304 Reestablishment expenses' nonresidential moves.
- 24.305 Fixed payment for moving expenses' nonresidential moves.
- 24.306 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
- 24.402 Replacement housing payment for 90-day occupants.
- 24.403 Additional rules governing replacement housing payments.
- 24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

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

Subpart G—Certification

- 24.601 Purpose.
 - 24.602 Certification application.
 - 24.603 Monitoring and corrective action.
- Appendix A to Part 24—Additional Information
- Appendix B to Part 24—Statistical Report Form

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

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) MDP. 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 12446—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/html/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 Schedule³ 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/realstate/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 as § 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 Programs⁴. 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).

BILLING CODE 4910-22-P

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) | |
|---|--|



U.S. Department
of Transportation

Federal Transit
Administration

CIRCULAR

FTA C 5010.1D

November 1, 2008

Subject: GRANT MANAGEMENT REQUIREMENTS

1. PURPOSE. This circular is a re-issuance of guidance for post-award grant administration and project management activities for all applicable Federal Transit Administration (FTA) grant programs. This revision incorporates provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and includes the most current guidance for the Federal public transportation program as of the date of publication.

These requirements are intended to assist grantees in administering FTA-funded projects and in meeting grant responsibilities and reporting requirements. Grantees have a responsibility to comply with regulatory requirements and to be aware of all pertinent material to assist in the management of federally assisted grants.

2. CANCELLATION. This circular cancels FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
3. AUTHORITY.
 - a. Federal Transit Laws, codified at 49 U.S.C. Chapter 53.
 - b. 49 CFR 1.51.
4. WAIVER. FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on September 30, 2008 (73 FR 56892), addressing comments received during the development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment without further notice and comment on this circular. FTA will post updates on our website: www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance; visit the website and click on "sign up for e-mail updates."

Distribution: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)

OPI: Office of Program
Management

7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, telephone FTA's Administrative Services Help Desk, at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

/S/ Original Signed by

James S. Simpson
Administrator

PROGRAM CIRCULAR

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CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten modal administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator who is appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices that assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa and federally recognized Indian tribes.

Public transportation includes buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways, people movers, and vans. Public transportation can be either fixed-route or demand-response service.

The Federal Government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of State and local transit providers, primarily through its regional and metropolitan offices. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. Most Federal transit laws are codified at 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a Federal program or agency. Congress typically amends FTA's authorizing legislation every four to six years. FTA's most recent authorizing legislation is the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, signed into law August 10, 2005. SAFETEA-LU authorizes FTA programs from Federal Fiscal Year (FY) 2006 through FY 2009. Changes have been added to this circular to reflect the SAFETEA-LU changes to Federal transit law and to reflect changes required by other laws that have become effective since the circular was last published in 1998.
3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial assistance to FTA grantees and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix H of this circular for additional information.

Visit FTA's website, <http://www.fta.dot.gov>, or contact FTA Headquarters at the following address and phone number:

Federal Transit Administration
Office of Communication and Congressional Affairs

1200 New Jersey Avenue SE.
Room E56-205
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. GRANTS.GOV. FTA posts all competitive grant opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary Federal grant opportunities. Led by the U.S. Department of Health and Human Services (DHHS) and in partnership with Federal grant-makers including 26 agencies, 11 commissions, and several States, Grants.gov is one of 24 Federal cross-agency E-government initiatives. It is designed to improve access to government services via the Internet. More information about Grants.gov is available at <http://www.grants.gov>.
5. DEFINITIONS. All definitions in 49 U.S.C. 5302(a) apply to this circular as well as the following definitions:
 - a. Accrual Basis of Accounting: The accounting method where income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid.
 - b. Administrative Amendment: A minor change in a Grant Agreement normally initiated by FTA to modify or clarify certain terms, conditions, or provisions of a grant.
 - c. Administrative Settlement: Purchase price for 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 an arrangement. Such an arrangement must be reasonable, prudent, and in the public interest.
 - d. Acquisition Cost of Project Property and Purchased Equipment: The purchase price of equipment. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges such as the cost of inspection, installation, transportation, taxes, duty or protective in-transit insurance should be treated in accordance with the grantee's regular accounting practices, as separate line items. The cost of items separately installed and removable from rolling stock, such as fareboxes and radios, is treated as a separate acquisition and not as part of the cost of the vehicle.
 - e. Air Rights: The space located above, at, or below (subterranean) the surface of the ground, lying within a project's property limits.
 - f. Brownfields: The Environmental Protection Agency (EPA) defines "Brownfields" (one type of contaminated property), as abandoned, idled, or under-used industrial and commercial land, often found in urban areas, where redevelopment is complicated by real or perceived hazardous contamination. These properties have lower levels of

contamination than Superfund sites, but they are a health risk and economic detriment to the communities where they are located.

- g. Budget Revision: Any change within the scope that has impact on budget allocations of the original grant. A budget revision may be a transfer of funds within a project scope or between existing activity line items (ALIs) within an approved grant. It could also include the addition or deletion of an ALI.
- h. Capital Asset: Facilities or equipment with a useful life of at least one year, which are eligible for capital assistance.
- i. Capital Lease: Any transaction whereby the grantee acquires the right to use a capital asset without obtaining ownership.
- j. Cash Basis of Accounting: Cash basis of accounting is the method when revenue is recorded when received, rather than when earned, and expenses are recorded when paid, rather than incurred. FTA does not allow the Financial Status Report to be prepared in the cash method of accounting.
- k. Catalog of Federal Domestic Assistance (CFDA): The Catalog of Federal Domestic Assistance is a government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and establishments of the Federal Government. As the basic reference source of Federal programs, the primary purpose of CFDA is to assist users in identifying programs that meet specific objectives of the potential applicant, and to obtain general information on Federal assistance programs. In addition, the intent of CFDA is to improve coordination and communication between the Federal Government and State and local governments. The CFDA number assigned to each program is used to report and track audit findings related to Federal grants.
- l. Concurrent Non-Project Activities: Also known as betterments, concurrent non-project activities are improvements to the transit project desired by the grant recipient that are nonintegral to the planned functioning of the Federal transit project and are carried out simultaneous with grant execution and are not included in the Federal grant.
- m. Contingency Fleet: Inactive rolling stock reserved/retained for emergencies and separate from spare fleet.
- n. Cost of Project Property: The purchase price of project property. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges, such as the cost of inspection, installation, transportation, taxes, duty, or in-transit insurance, should be treated in accordance with the grantee's regular accounting practices, in the same or as separate line items. The cost of items separately installed and removable from rolling stock, such as fareboxes and radios, is treated as a

separate acquisition and not as part of the cost of the vehicle if not included in the procurement of rolling stock.

- o. Depreciation: Method used to calculate the reduction in value of an item of personal or real property over time. Is the term most often used to indicate that personal property has declined in service potential. For the purpose of this circular, it is also a method of determining fair market value when disposing of an asset prior to the end of its useful life.
- p. Discretionary Funding: Grant funds distributed at the discretion of the agency as distinct from formula funding.
- q. Economic Useful Life: The period over which an improvement or structure contributes to property value. This concept is used in conjunction with the concept of "Economic Age," which is defined as the age of a structure that is based on the amount of observed deterioration and obsolescence it has sustained, which may be different from its chronological age. Appraisers sometimes use an "age-life" ratio to estimate a building's depreciation. This factor is developed by dividing the structure's "Economic Age" by its "Economic/Useful Life." Available building cost services provide guidelines for estimating the economic life of property structures using various construction materials and architectural designs and thus assist in conducting this analysis. Useful life assumes a normal level of on going maintenance of the structure. This applies only to real estate (for vehicular useful life see "Useful Life" in definitions).
- r. Electronic Clearing House Operation (ECHO): ECHO is a Web-based application that processes draw down requests and makes payments to FTA grantees.
- s. Equipment: An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. Includes rolling stock and all other such property used in the provision of public transit service.
- t. Equipment Inventory: A physical inventory of project (non-real) property taken and results reconciled with the personal property records.
- u. Excess Property: Property which the grantee determines is no longer required for its needs or fulfillment of its responsibilities and has not met its useful life under an FTA assisted grant.
- v. Excess Real Property Inventory and Utilization Plan: The document which lists each real estate parcel acquired with participation of Federal funds that is no longer needed for approved FTA project purposes and which states how the grantee plans to use or dispose of the excess real property.

- w. Facilities: All or any portion of a building or structure including roads, walks, and parking lots.
- x. Fair Market Value: The most probable price equipment or project property would bring in a competitive and open market.
- y. Federally Recognized Indian Tribal Government: The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community, (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act (ANCSA), (43 U.S.C. 1601 *et seq.*) certified by the Secretary of the Interior as eligible for the special programs and service provided through the Bureau of Indian Affairs.
- z. Fleet Management Plan: The management plan includes an inventory of all buses among other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification. The plan also calculates the number of rolling stock needed to operate at peak normal days.
- aa. Force Account: The use of a grantee's own labor force to accomplish a capital grant project.
- bb. Formula Funding: Grant funding allocated using factors that are specified in the law, or in an administrative formula developed by FTA.
- cc. Global Settlement: In real estate this means the combination of all payments, acquisition and relocation, into one payment. This is not permitted on FTA projects as global settlements are considered in conflict with the intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Under the Uniform Act, an appraisal sets Just Compensation for the real estate and is made prior to the initiation of negotiations on a particular parcel. The relocation of personal property, on the other hand, is reimbursed based upon the actual, reasonable, and necessary costs that most often cannot be determined until after the move is complete.
- dd. Grant: An award of financial assistance, including Cooperative Agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee or recipient. Used interchangeably with Grant Agreement.
- ee. Grant Amendment: The modification of a grant that includes a change in scope and/or change in Federal funds.
- ff. Grantee: An entity to which a grant is awarded directly by FTA to support a specific project in which FTA does not take an active role or retain substantial control, as set forth in 31 U.S.C. 6304. In this circular FTA uses the term grantee interchangeably with grant recipient and recipient.

- gg. Grant Scope: The broad purpose or objectives of a grant. The scope of a grant may encompass one or more specific projects identified by scope codes in each grant project budget.
- hh. Incidental Use of Project Property and Equipment: The authorized use of real property and equipment acquired with FTA funds for purposes of transit service but which also has limited non-transit use due to transit operating circumstances. Such use must be compatible with the approved purposes of the project and not interfere with intended public transportation uses of project assets.
- ii. Lapsed Funds: Funds no longer available for obligation to a grantee or project.
- jj. Large Urbanized Area: Any urbanized area with a population of at least 200,000.
- kk. Legal Settlement: Used in the context of an eminent domain property acquisition. A legal settlement can occur in one of several ways. First, once an acquisition case is referred to legal counsel to initiate condemnation proceedings, a settlement between the parties may occur before a condemnation complaint is filed. The second situation, involves the settlement of a case after the condemnation action has been filed. This may be referred to as a legal or stipulated settlement. In this case a stipulation agreement is prepared and signed by the parties involved after which the court may approve or issue an order approving the stipulation agreement and dismissing the court case. In either case such a settlement would necessarily be justified in writing similarly to an administrative settlement as described in 49 CFR 24.102(i) of the URA regulations.
- ll. Local Governmental Authority: Includes (A) a political subdivision of a State; (B) an authority of at least one State or political subdivision of a State; (C) an Indian tribe; or (D) a public corporation, board, or commission established under the laws of a State.
- mm. Master Agreement: The official FTA document containing FTA and other cross-cutting Federal requirements applicable to the FTA recipient and its project. The Master Agreement is typically revised annually in October. The Master Agreement is incorporated by reference and made part of each FTA grant, Cooperative Agreement, and amendment thereto.
- nn. NEPA: National Environmental Policy Act (NEPA), signed into law by President Nixon January 1, 1970, 42 USC Section 4321–4370d declared a national policy to safeguard the environment and created the Council on Environmental Quality in the Executive Office of the President. To implement the national environmental policy, NEPA requires that environmental factors such as historic resources, noise, air, vibration, groundwater, habitat, and wildlife be considered when Federal agencies make decisions and that a detailed statement of environmental impacts be prepared for all major Federal actions significantly affecting the quality of the human environment.

- oo. Net Present Value: The discounted monetized value of expected net benefits (i.e., benefits minus costs). It is calculated by assigning monetary values to benefits and costs, discounting future benefits and costs using an appropriate discount rate to obtain a present value, and subtracting the sum total of discounted costs from the sum total of discounted benefits.
- pp. Net Proceeds from the Sale of Project Equipment and Real Property: The amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and any necessary expenses associated with repairs to make saleable.
- qq. Overhaul: Systematic replacement or upgrade of systems whose useful life is less than the useful life of the entire vehicle in a programmed manner. Overhaul is performed as a planned or concentrated preventive maintenance activity and is intended to enable the rolling stock to perform to the end of the original useful life.
- rr. Preventive Maintenance: Is defined as all maintenance costs related to vehicles and non-vehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.
- ss. Program Income: Gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the Grant Agreement during the grant period (the time between the effective date of the grant and the ending date of the grant reflected in the final financial report).
- tt. Program of Projects (POP): A list of projects to be funded in a grant application submitted to FTA by a designated recipient. The POP lists the subrecipients and indicates whether they are private non-profit agencies, governmental authorities, or private providers of transportation service, designates the areas served (including rural areas), and identifies any tribal entities. In addition, the POP includes a brief description of the projects, total project cost, and Federal share for each project.
- uu. Project: For the purposes of the FTA program, public transportation improvement activities funded under an executed grant.
- vv. Project Activity Line Item (ALI): The description and dollar amount contained in the budget for an approved grant activity associated within a particular scope approved as part of a grant. ALIs under each scope are informational and are used as tools for FTA and the grantee to manage the grant.
- ww. Project Property: Includes equipment, real property, supplies, and rolling stock.
- xx. Project Scope: The broad purpose of a specific project within a grant. There may be multiple scopes identifying each of the different projects within a grant and each

scope may contain a number of activities which represent the estimate of actions needed to complete the project. FTA reserves the right to consider other information in determining the "scope of the project" when that term is used for legal purposes. See the Master Agreement.

- yy. Public Transportation: Transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, sightseeing or intercity bus transportation or intercity passenger rail transportation provided by AMTRAK. The terms "transit," "mass transportation," and "public transportation" are used interchangeably in transit law.
- zz. Real Property: Land, including affixed land improvements, structures, and appurtenances. It does not include movable machinery and equipment.
- aaa. Realty/Personalty Report: A realty/personalty report is a listing of items of real estate to be appraised and items of personalty to be moved. Real estate is the land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, which if removed, deface the structure or integrality of the building, such as plumbing, heating fixtures, etc. Personal property, on the other hand, is the right or interest in things of a temporary or moveable nature. State law varies on the definition of real property and personal property; therefore, the grantee should rely on its State law's definition of real property and personal property.
- bbb. Rebuild: A recondition at the end of useful life that creates additional useful life. Rebuild is a capital expense incurred at or near the end of the rolling stock's useful life that results in a new useful life of the rolling stock that is consistent with the extent of the rebuilding.
- ccc. Recipient: An entity that receives funds from FTA, whether as a direct recipient or a subrecipient. For purpose of this circular, FTA uses the term recipient interchangeably with the terms grant recipient and grantee and subgrantee.
- ddd. Refurbishment: Same as overhaul.
- eee. Remaining Federal Interest for Dispositions Before the End of Useful Life: Is the amount calculated by multiplying the current fair market value or proceeds from sale by FTA's share of the equipment. Fair market value is the greater of the unamortized value of the remaining service life based on straight line depreciation of the original purchase price or the Federal share of the sales proceeds.
- fff. Remaining Federal Interest for Real Property: Federal interest is the greater of the Federal share of the fair market value of the property, or the straight line depreciated value of improvements plus the Federal share of the current appraised land value.

- ggg. Rent Schedules: This refers to a method used to document an array of rent and utilities charged in an area or neighborhood for various sized dwellings based on a survey of available dwellings listed for rent.
- hhh. Rolling Stock Status Report: A report that identifies rolling stock to be retired, or disposed of and identifies both its mileage and age at the time of removal from service, and it discusses the proposed anticipated spare ratio.
- iii. Sales Proceeds: Sales Proceeds are the net proceeds generated by the disposition of excess real property or equipment that was purchased in whole or in part with FTA grant funds.
- jjj. Shared Use: Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time of grant award.
- kkk. Straight Line Depreciation: In absence of fair market value, straight line depreciation method is used to determine the remaining useful life of property. This method is considered as a function of time instead of a function of usage. This method is widely used in practice because of its simplicity. It basically assumes that the asset's economic usefulness is the same each year.
- lll. Subrecipient: A State or local government authority, non-profit organization, or operator of public transportation services that receives a grant indirectly through a recipient.
- mmm. Supplies: All tangible project property other than equipment with a unit value of less than \$5,000.
- nnn. TEAM-Web: Web-based application used to apply for, administer, and manage FTA grants most commonly referred to as "TEAM." TEAM stands for Transportation Electronic Award and Management (TEAM) system.
- ooo. Transit Enhancements: Projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to transit facilities. Eligible enhancements include historic preservation, rehabilitation and operation of historic public transportation buildings, structures, and facilities; bus shelters; landscaping and other scenic beautification; public art; pedestrian access and walkways; bicycle access; transit connections to parks within the grantee's transit service area; signage; and enhanced access for persons with disabilities to public transportation.
- ppp. Uneconomical Remnant: A parcel of real property in which the owner is left with an interest after the partial acquisition or use of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

- qqq. Uniform Act: Refers to 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.* as amended). This act also is referred to with the abbreviation URA per the regulations codified at 49 CFR part 24. All real estate acquisition and relocation assistance undertaken with FTA Federal assistance must be compliant with this act and its implementing regulations at 49 CFR part 24.
- rrr. Unliquidated Obligations: Funding commitments that have been incurred, but for which outlays have not yet been recorded because goods and services have not been received. Unliquidated obligations should be accounted for on Line D of the Financial Status Report (FSR).
- sss. Urbanized Area: An urbanized area is an incorporated area with a population of 50,000 or more that is designated as such by the Bureau of the Census.
- ttt. Useful Life: The expected lifetime of project property, or the acceptable period of use in service. Useful life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. See Chapter IV of this circular; and current Circular 9030.1 and Circular 9300.1 Capital Program. Used interchangeably with "service life." **Note:** Land does not depreciate and therefore does not have a useful life.
- uuu. Value Engineering: Value engineering is the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost. In all instances, the required function should be achieved at the lowest possible life-cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

CHAPTER IV

PROJECT MANAGEMENT

1. GENERAL. Real property, equipment and supplies, rolling stock, and facilities purchased or constructed for project purposes must be managed, used, and disposed of in accordance with applicable laws and regulations. This chapter provides guidance on the management, use, and disposition of Federal Transit Administration (FTA) funded real property, equipment, supplies, rolling stock, and facilities.
2. REAL PROPERTY. Real property must be acquired, managed, and used in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91–646) and 49 CFR part 24, the implementing regulation. The following requirements govern the acquisition, use, or disposition of real property purchased with Federal funds. All regulatory references in this Section are to 49 CFR part 24, unless specified otherwise.
 - a. General. If a grantee is using Federal funds to acquire real property or provide relocation assistance necessary to secure property for a project, the grantee must comply with the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA), as amended. The Uniform Act is implemented by regulation (49 CFR part 24).

The objective of the Uniform Act is to ensure equitable treatment of property owners of real property to be acquired for Federal and federally assisted projects; that people displaced by a federally supported project be treated fairly, consistently, and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective. The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives.

FTA must review and concur in appraisals and review appraisals for acquisitions over \$500,000 or in-kind contributions of any value before Federal funds are expended, or the value is used as local match. The requirements and processes for conducting appraisals, review appraisals, providing relocation assistance, and requesting FTA's concurrence are described as follows:

- (1) To ensure eligibility for Federal funding, the grantee should follow the typical process sequence when acquiring real property for a project:

National Environmental Policy Act (NEPA) Approval → Title Search → Appraisal → Appraisal Review → Just Compensation Determination → FTA Concurrence (if required) → Offer to Owner → Settlement.

- (2) If a grantee is considering leasing real property, whether facilities or equipment, rather than outright purchase of the same, and such lease is a capital not operating

lease, then the grantee must comply with 49 CFR part 639 including these specific procedures:

- (a) Section 639.11 requires the grantee to demonstrate that the lease of a capital asset is more cost effective than the purchase or construction of the asset.
- (b) Section 639.23 requires the calculation of the purchase or construction cost and Section 639.25 requires the calculation of the lease cost. These two calculations are used to determine which is the most cost effective approach.

b. Appraisal of Real Estate.

- (1) General. Except as discussed in Chapter IV, Subsections b.(2)–(4) below, an offer of just compensation will be established on the basis of a recent independently prepared appraisal that estimates a fair market value.
- (2) Appraisers. Appraisers must be certified or licensed with a State Appraisal Board as required by the URA regulations at Section 24.103(d)(2). However, staff employees may be exempt from this requirement. FTA recommends that appraisals and review appraisals be completed by appraisers experienced with State and Federal laws for valuing properties for public acquisitions under the threat of eminent domain. Appraisers and grantees making appraisal assignments should be familiar with the implementing regulations of the Uniform Act (49 CFR part 24), especially Subpart B—Real Property Acquisition. State subrecipients may use the State’s staff appraisers to prepare required independent appraisals and appraisal reviews.
- (3) Requirements. Appraisals must be fully compliant with all of the appraisal requirements as cited in Section 24.103(a). This includes compliance with the Scope of Work, i.e., defining the appraisal requirements and, as appropriate, a realty/personalty report. The appraiser will also appropriately address the requirements of Section 24.103 (b) and (c) in the report concerning the effects of project influence and owner retention of improvements.

Depending on the individual State Appraisal Board, certified/licensed appraisers may need to utilize the jurisdictional exception provisions of Uniform Standards of Professional Appraisal Practice (USPAP) in order to complete the assignment for a public agency in full compliance with the requirements of Section 24.103.

If the acquisition leaves the owner with an uneconomic remnant, the appraiser or review appraiser may be assigned the responsibility to make this determination and appraise the fair market value of the remnant. See Section 24.102(k).

The owner also has a right to accompany the appraiser during the inspection of the property pursuant to Section 24.102(c)(1).

When valuing properties that contain contamination or hazardous material, the appraiser must consider the effect, if any, the contamination's or material's presence has on the market value.

Grantees should update appraisals over six months old in an active real estate market before fair market value is determined and submit to the FTA Regional Office for review and concurrence, when required. If the documents are not updated, the letter of transmittal to FTA shall provide adequate justification explaining why the appraisal was not updated.

- (4) Exceptions. Full appraisal and/or negotiation procedures are not necessary in certain instances. While an appraisal of the property may not be required in some of the following instances, the agency must have some reasonable basis for its determination of fair market value in accordance with Section 24.101(b) and Appendix A. In the case of a donation an appraisal may not be required; however, an appraisal is required if the grantee proposes to use the property as an in-kind contribution as part of the local matching share. FTA should be contacted for further guidance when any one of the following situations occurs:

- (a) The owner is donating the property, reference Sections 24.102(c)(2) and 24.108.
- (b) The grantee does not have authority to acquire property by eminent domain as set out in Section 24.101(b).
- (c) The property qualifies as a voluntary acquisition as defined in Section 24.101(b).
- (d) The valuation is uncomplicated, and the fair market value is estimated at \$10,000 or less, based on a review of available data, using the waiver valuation provision found at Section 24.102(c) and Section 24.2(a)(33).
- (e) State subrecipients may use the State's staff appraisers to prepare required independent appraisals.

c. Appraisal Review of Real Estate.

- (1) General. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act and 49 CFR 24.104. The review appraisal should determine the soundness of the report's value estimate. A qualified review appraiser (see Section 24.103(d)(1) and Appendix A thereof, and Section 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of an appraisal found in Section 24.2(a)(3), as well as other appraisal requirements found in Section 24.103 and other applicable State and local requirements.

The review appraiser is often expected to determine if the value conclusion is consistent with State laws as to what is compensable in eminent domain for public acquisitions and with the Uniform Act. The review appraiser is also responsible for assuring that value estimates are consistent when multiple parcels of property are needed for the project. The review appraiser cannot determine the soundness of a report's value estimate without possessing familiarity with the subject property, the comparable sales used, and other market factors; thus rarely will only a desk review be sufficient. The appraisal review report is expected to be a technical analysis of the appraisal, not merely an administrative review.

- (2) Requirements. In accordance with Section 24.104(a), the review appraiser shall prepare a written report identifying each appraisal report as:
- (a) Recommended (as the basis for the establishment of the amount believed to be just compensation) or,
 - (b) Accepted (meets all requirements, but not selected as recommended or approved), or
 - (c) Not accepted.
- (3) Establishment of Just Compensation. If authorized by the grantee, a staff review appraiser may also establish the approved appraisal amount as the offer of just compensation. Under no circumstances can the establishment of the just compensation amount be delegated to a contractor (i.e., a fee review appraiser) who is not a governmental official of the agency.

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 Section 24.103 to support a recommended (or approved) value (see Section 24 Appendix A related to Section 24.104(b)).

Review appraisers who are not staff employees must be State certified appraisers.

- d. Appraisal Concurrence Process. Prior FTA concurrence is required when the grantee's recommended offer of just compensation exceeds \$500,000, or when a property appraised at \$500,000 or more must be condemned. Appraisals under \$500,000, not requiring FTA concurrence, must follow the applicable appraisal standards (see Section 24.103). The grantee is required to maintain a parcel file with the proper support and documentation. Appraisals and Review Appraisals must be submitted to FTA for review and concurrence for acquisitions over \$500,000 or in-kind contribution of any value before Federal funds are expended, or the value is used as local match.

e. Acquisition of Real Estate and Concurrence Requirements.

- (1) General. In accordance with URA requirements every effort should be made to acquire real property by negotiation based on the approved just compensation amount that has been determined by the acquiring agency and considering the requirements described in the following:
- (2) Market Value. Before making an offer to the property owner, the grantee must first establish market value of the parcel to be purchased. Property acquisition activities will be conducted in compliance with the requirements of Section 24.101 and 102. Market value is to be established through a current appraisal and appraisal review accomplished in accordance with the requirements of Section 24.103 and 104 respectively. Once the appraisal and the appraisal review are complete, a determination of just compensation must be made by the grantee in accordance with Section 24.102(d).
- (3) Making an Offer. After the just compensation determination has been made by the agency, with FTA concurrence, if required, an offer can be made to the owner.

No owner shall be required to surrender possession of real property without either payment of the agreed purchase price to the owners or deposit of the established just compensation amount in condemnation court as set out in Section 24.102(j). The full amount of the deposit must be made available to the owner without prejudice pending the ultimate determination of just compensation by the judicial process. The grantee must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title pursuant to Section 24.106.

- (4) Uneconomic remnant. If the acquisition leaves the owner with an uneconomic remnant, the grantee must offer to acquire that remnant; and its value will be presented as an element of the written offer that is made (see Section 24.102(k)).
- (5) Filing Condemnation. Additionally FTA concurrence is required before filing for condemnation if the appraised amount exceeds \$500,000.
- (6) Administrative Settlements. Any settlement in excess of the grantee's approved just compensation must be addressed as an administrative settlement (see definition, Chapter 1, Subsection 5.c. and Section 24.102(i)). The term "administrative settlements" encompasses both negotiated settlements and legal settlements. Legal settlements are those arrived at prior to a trial on the merits.
 - (a) Requirements. Administrative settlements in excess of \$50,000 more than the current fair market value require prior FTA concurrence. Instead of using its power of eminent domain when a property cannot be purchased at appraised value, a grantee may propose acquisition through negotiated settlement, as explained previously in Chapter IV, Subsection 2.e.(6). The grantee must

document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent, and in the public interest. Such a settlement will be handled in accordance with administrative settlement requirements at Section 24.102(i). If the settlement request represents a significant increase over the just compensation and if trial risks are a key factor in the settlement justification, a litigation attorney for the agency must be consulted to provide advice in this regard. The decision to recommend a settlement should evaluate among other relevant matters, the risks of settling for the proposed amount versus the risks of trying the condemnation in court. **Note:** Any global settlements of a property acquisition that involve the inclusion of relocation payments based on other than relocation costs that are actual, reasonable, and necessary are not eligible for FTA reimbursement in accordance with Section 24.207(f) of the URA regulations.

- (b) Settlement Concurrence Process. All settlements must be justified in writing and be available in the project files. The justification shall be thorough, document the entire settlement process, demonstrate the logic and reason supporting the settlement, and be able to withstand the scrutiny of an independent review. If either type of settlement exceeds FTA's threshold for approval, it must be submitted to FTA for advance concurrence before the settlement is consummated.
- f. Relocation Assistance. The relocation assistance program provides a variety of advisory services and benefits to displaced people, businesses, and non-profit organizations. The highlights of this program element and FTA policies related to it are summarized in the following:
 - (1) Early provision of written notices and explanations of acquisition and relocation programs must be provided to displacees as required by 49 CFR part 24.
 - (2) No individual, family, business, farm, partnership, corporation, or association will be required to move without at least 90 days advance notice per Section 24.203(c).
 - (3) In the case of residential displacees, the 90-day notice must also include the availability of at least one comparable replacement dwelling. Rental assistance and replacement housing payments are provided to make the dwellings affordable and available at the time the notice is given. See Section 24.203(c)(3).
 - (4) All displacees, both business and residential, are reimbursed for certain moving expenses per Section 24.301 through Section 24.306.
 - (5) There must be as many residential dwellings available as there are families who will be displaced. The dwellings must be comparable to the ones from which the people are displaced. In addition, the comparable replacement dwellings must be decent, safe, and sanitary (DSS); located in the same area or in areas generally not

less desirable in regard to public utilities and public and commercial facilities; reasonably accessible to the displacees' places of employment and within the financial means of the displaced families; and adequate in size to accommodate the occupants in accordance with 49 CFR 24.204.

- (a) The definition of DSS at Section 24.2(a)(8) contains the following requirements regarding the number of rooms and area of living space for the displacee. "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."
 - (b) In the absence of applicable housing codes, FTA's policy requires separate bedrooms and gender separation for children over 12 years of age.
 - (6) Replacement housing must be open to all people regardless of race, color, religion, sex, or national origin as required by Section 24.8 of the URA regulations.
 - (7) Any relocation benefits required by State or local law exceeding the specified limits in the Uniform Act will not be reimbursed by FTA.
 - (8) Any global type settlements of a property acquisition that involve the inclusion of relocation payments based on other than relocation costs that are actual, reasonable, and necessary are not eligible for FTA reimbursement in accordance with Section 24.207(f) of the URA regulations.
 - (9) Rental and for-sale dwellings used in the determination of replacement housing benefits must be actually and currently available for sale or rent. A rent schedule method cannot be used to calculate a rental differential payment, since the grantee is required to offer the displacee specific rental replacement properties that are actually available as explained in Chapter 1, Section 5., "Definitions," of this circular. FTA does not allow the use of rent schedules for the calculation of rental housing cost differentials as it is not compliant with Sections 24.2(a)(6), 24.204(a), 24.402(b)(1)(i), and 24.403(a) of the URA regulations that require that three comparable and currently available rental properties be identified and provided to the displacee.
- g. Special Real Estate Acquisition Program Strategies/Issues. Several real estate program strategies or issues are worthy of discussion in some detail as follows:
- (1) Alternative Procedure. A grantee with a qualified and fully staffed real estate department conducting a major capital project may request an alternative process, which permits higher dollar thresholds before FTA prior concurrence is needed.

An FTA real estate specialist will review the acquisition process and grantee capabilities. Grantees may request a review through the FTA Regional Office.

The request for the approval for alternative real property procedures at a minimum should include the following:

- (a) A statement providing an overall justification and reasoning for why the alternative procedure is requested;
 - (b) Copy of Real Estate department operating procedures;
 - (c) Real Estate department organization staffing chart; and
 - (d) Strategy for using and qualifying Real Estate services contractors, if used;
 - (e) Estimate of the number of transactions that may exceed requested threshold(s);
 - (f) Discussion of Real Estate acquisition schedule/status relative to the overall project schedule; and
 - (g) Discuss Real Estate department program Quality Assurance/Quality Control procedures that are in place to assure program delivery is in compliance with Uniform Act requirements and effective/efficient operational standards given the higher thresholds requested.
- (2) In-Kind Contributions. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as local match and the remaining sub-parcel is intended to be used at a future date for future match, the grantee is cautioned to clearly indicate the limits of the sub-parcel to be used as local match and the appraised amount associated with the sub-parcel. The remnant sub-parcel can then follow the same procedure for future local match. If the entire parcel is provided as a local match and no delineation is made related to possible use of the excess sub-parcel as over-match, eligibility of the over-match sub-parcel may be lost. If Federal funds were used to purchase the property, only the non-Federal share of such property may be counted as the value of the in-kind contribution, see 49 CFR 18.24(f).

- (3) Functional Replacement. Functional replacement provides a method of paying the cost necessary to replace a publicly owned facility (i.e., a fire station or public school) being acquired with a similar needed facility. The FTA regional or metropolitan office should be contacted for further information.

A determination to use functional replacement should be made early in the project development process. The use of this approach would usually be addressed during the environmental assessment (EA) phase of the project and be presented as a mitigation measure to be undertaken by the project.

- (4) Contaminated Property (including Brownfields). Appropriate due diligence for contamination is conducted as a part of the NEPA process and discussed in the NEPA document before selection of a contaminated property in a capital project. Appraisals should consider the effect, if any, contamination has on the market value of the property being valued. The terms, "contamination" and "hazardous material" should be interpreted broadly to include all contaminants that can affect property value.

- (a) The legal responsibility for hazardous material clean up and disposal rests with parties within the property title chain and with parties responsible for the placement of the material on the property. Grantees must attempt to identify and seek legal recourse from those potentially responsible parties or substantiate the basis for not seeking reimbursement.
- (b) During the NEPA process, the grant applicant will have considered not only the estimated project cost of appropriate remediation (remediation being any action, developed in consultation with appropriate regulatory agencies, to reduce, remove, or contain contamination), the applicant will also have considered and taken action regarding the short and long-term liabilities associated with Brownfields, if applicable.
- (c) To encourage the complete assessment of contamination prior to project decisionmaking, FTA generally will not participate in the remediation of contamination discovered during construction.
- (d) The grantee should contact FTA for technical assistance regarding contaminated property.

- h. Real Estate Acquisition Management Plan (RAMP). A RAMP is required for all major capital projects as a part of the Project Management Plan (PMP) under 49 CFR 633.25 and in accordance with 49 CFR part 24. A full RAMP is not required for other capital projects with real estate acquisition; however, all capital projects must be in compliance with 49 CFR part 24, if real estate acquisition or relocation assistance is involved. The RAMP is a planning document for the acquiring agency and is a control document for FTA that includes real estate goals and methodology from the perspective of timing, staffing, statutory, and policy issues. The RAMP should be periodically reviewed for

needed changes. See Appendix B of this circular for a model in the development of a RAMP.

i. Property Management and Joint Development.

- (1) General. This area concerns the post construction management of property acquired for the facility during project development to ensure that it is properly maintained and operated efficiently for the benefit of the transit system.
- (2) Incidental Use and Joint Development. Title to real property is vested in the grantees or other public bodies. FTA's policy is to permit grantees maximum flexibility in determining the best and most cost-effective use of FTA-funded property. To this end, FTA encourages incidental uses and joint development of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. For example, grantees may be able to encourage joint development of air rights at and over transit facilities and project areas. FTA approval is required for both joint development and for incidental uses of real property and must be compatible with the original purposes of the grant.

Incidental and joint development uses of real property are subject to the following considerations:

- (a) Needed Property. This policy applies only to property that continues to be needed and used for an FTA project or program. It is FTA's intention to assist only in the purchase of property that is needed for an FTA project.
- (b) Purpose & Activity. The use must not compromise the safe conduct of the intended purpose and activity of the initial public transit project activity.
- (c) Continuing Control. The use must not in any way interfere with the grantee's continuing control over the use of the property or the grantee's continued ability to carry out the project or program.
- (d) Non-Profit Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, non-profit uses are also permitted under certain circumstances.
- (e) Income. Proceeds from licensing and leasing of air rights or other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental or joint development uses of air rights may be retained by the grantees (without returning the Federal share) if the income is used for eligible transit capital, and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.

j. Disposition.

- (1) Excess Real Property Inventory and Utilization Plan. The grantee shall prepare and keep up to date an excess property inventory and utilization plan for all property that is no longer needed to carry out any transit purpose. The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost, and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.

Grantees are also required to notify FTA when property is removed from the service originally intended at grant approval and if property is put to additional or substitute uses. The grantee's plan should identify and explain the reason for excess property. Such reasons may include one or more of the following:

- (a) The parcel, when purchased, exceeded the grantee's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.);
- (b) The property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed;
- (c) The intended use of the parcel is no longer possible because of system changes, such as alignment, or amendments to the project Grant Agreement;
- (d) Improvements to real property were damaged or destroyed, and therefore the property is not being used for project purposes, but it is still needed for the project. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed; and/or
- (e) A portion of the parcel remains unused, will not be used for project purposes in the foreseeable future, and can be sold or otherwise disposed.

Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan is to be retained by the grantee, available upon FTA request and during the triennial review process.

- (2) Disposition Alternatives. If the grantee determines that real property is no longer needed, FTA may approve use of the property for other purposes. This may include use in other Federal grant programs or in non-Federal programs that have consistent purposes with those authorized for support by FTA.
 - (a) Valuation of Property Pending Disposal. For properties no longer needed for transit purposes, the grantee is expected to follow the valuation requirements of 49 CFR part 24 and obtain an appraisal to ascertain the value of the property considered for disposal.

- (b) Net Proceeds from Disposition. In those situations where a grantee or subgrantee no longer needs the real property for any transit purpose and is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, FTA may permit the net proceeds from the disposition to be used as an offset to the cost of the replacement property.
- (c) Alternative Disposition Methods. When real property is no longer needed for any transit purpose, the grantee will request disposition instructions from FTA. The allowable alternative disposition methods are as follows:
- 1 Sell and Reimburse FTA. Competitively market and sell the property and pay FTA the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original grant multiplied by the best obtainable price, net of reasonable sales costs.
 - 2 Offset. Sell property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA in accordance with 49 CFR 18.31.
 - 3 Sell and Use Proceeds for Other Capital Projects. Sell property and use the proceeds to reduce the gross project cost of another FTA eligible capital transit project. See 49 U.S.C., 5334(h)(4). The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. FTA must approve the application of the proceeds to a subsequent capital grant, which should clearly show that the gross project cost has been reduced with proceeds from the earlier transaction.
 - 4 Sell and Keep Proceeds in Open Project. If the grant is still open, the grantee may sell excess property and apply the proceeds to the original cost of the total real property purchased for that project. This may reduce the Federal share of the grant.
 - 5 Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in *Federal Register* to transfer property (land or equipment) to a public agency with no repayment to FTA. This is a competitive process, and there is no guarantee that a particular public agency will be awarded the excess property. See 49 U.S.C., 5334(h)(1)–(h)(3).
 - 6 Transfer to Other Project. Transfer property to another FTA eligible project. The Federal interest continues.

7. Retain Title With Buyout. Compensate FTA by computing percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The grantee must document the basis for value determination; typically, this is an appraisal or market survey. Alternatively, the grantee may pay the straight line depreciated value of improvements plus land value, if this is greater than FTA's share of the fair market value.
 8. Sales Procedure. Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.
 9. Joint Development. A transfer meeting the tests for joint development is not a disposition, and the proceeds are deemed program income. For additional information on use and eligibility of joint development projects see FTA Guidance (72 FR 5788, Feb. 7, 2007) as the final agency guidance on the "Eligibility of Joint Development Improvements Under Federal Transit Law." See also the definition of a capital project at 49 USC 5302(a)(1)(G).
- k. FTA Management and Project Oversight of Property Acquisition. FTA project stewardship includes various strategies, and in some cases involves the application of risk management techniques. Based on various conditions including dollar thresholds and the complexity of the property acquisitions involved, FTA may require the submission of all transactions meeting certain criteria for prior approval. Refer to the discussion of prior concurrence for certain appraisal, condemnation, and settlements issues discussed in Chapter IV of this circular.
- FTA may also conduct process or transactional reviews at any time during or after project implementation of the real estate acquisition program to ensure compliance with governing laws and regulations.
- EQUIPMENT, SUPPLIES, AND ROLLING STOCK. Certain management standards apply to equipment, supplies, and rolling stock purchased with Federal funds. The term, project property, as used in this section, includes equipment, supplies, and rolling stock. Light duty vehicles such as vans, sedans, and pick-up trucks employed in administrative and maintenance purposes are considered equipment. Light duty vehicles employed to transport passengers are considered rolling stock. The following requirements are for the acquisition, use, management, and disposition of project property:
- a. State Recipients. A State will use, manage, and dispose of project property acquired under a grant by the State in accordance with State laws and procedures (49 CFR 18.32(b)) as long as they comply with Federal requirements. Grantees, other than States, will follow FTA requirements and procedures outlined below.

- b. Title. Subject to the obligations and conditions, the grantee holds title to project property acquired under a grant.
- c. Federal Interest. FTA retains a Federal interest in any project property financed with Federal assistance until, and to the extent that, FTA relinquishes its Federal interest in that project property.
- d. Acquisition. Acquisition cost of project property means the purchase price of project property. This is the net invoice unit price, including the cost of modifications, attachment, accessories, or auxiliary apparatus necessary to make the project property usable for the intended purpose. Other charges such as the cost of inspection, installation, transportation, taxes, duty, or protective in-transit insurance should be treated in accordance with the grantee's regular accounting practices as separate line items. Grantees must follow procurement procedures set forth in the current version of Circular 4220.1; additional guidance is provided in FTA's Best Practices Procurement Manual. Two areas of particular importance for rolling stock procurements are:
 - (1) Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR part 661). FTA's Buy America requirements at 49 CFR part 661 differ from Federal Buy American regulations at 48 CFR part 25. The former applies to third party contracts funded by FTA. The latter applies to direct Federal procurements. FTA strongly advises recipients to review these regulations before undertaking any procurement.
 - (2) Pre-Award and Post Delivery Audits for Rolling Stock. FTA requires that grantees purchasing revenue passenger rolling stock undertake reviews of the rolling stock before award of the bid, during manufacture, and following vehicle delivery. Grant applicants seeking to acquire rolling stock must certify that they will comply with Pre-Award and Post-Delivery Review requirements.

The requirement to undertake the pre-award and post-delivery reviews arises from 49 U.S.C. 5323(m) and is implemented by FTA regulations at 49 CFR part 663. The reviews are intended to improve compliance with Buy America requirements, the grantee's bid specifications, and Federal motor vehicle safety standards. FTA has tried to carry out the intent of the law in a way that builds on current practices by many grantees and that improves the monitoring of compliance in the least burdensome manner. Reviews may be conducted by the grantee's staff or by a contractor for the grantee. The regulations require a resident inspector who is not an agent or an employee of the manufacturer to review specification compliance for the grantee at the manufacturing site, unless the procurement is for unmodified vans, 10 or fewer buses acquired by an operator serving an urbanized area with a population of over 200,000 persons, or 20 or fewer buses acquired by an operator serving other than urbanized areas or urbanized areas with populations of 200,000 or fewer. The grantee must keep on file and make available to FTA upon request

written reports resulting from the reviews. Compliance must be certified on the Annual List of Certifications and Assurances. FTA has published a handbook titled "Conducting Pre-Award and Post-Delivery Audits for Bus Procurements," which contains copies of all the required certifications to assist grantees in complying with this requirement. A copy of this handbook can be found at: http://www.fta.dot.gov/laws/leg_reg_5423.html.

- e. Use of Project Property. Project property is to be used by the grantee in the programs or project for the purpose it was acquired as long as needed, whether or not the program or project continues to be supported by Federal funds. When need no longer exists, see disposition requirements in Chapter IV, Subsection 3.1., "Disposition," of this circular.

- (1) Continuing Control. The grantee agrees to maintain continuing control of the use of project property and constructed improvements to the extent satisfactory to FTA. The grantee agrees to use project property for appropriate project purposes for the duration of the useful life of that property, as required by FTA. If the grantee unreasonably delays or fails to use the project property during the useful life of that property, the grantee agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The grantee further agrees to notify FTA immediately when any project property is withdrawn from project use or when any project property is used in a manner substantially different from the representations the grantee made in the Grant Agreement or Cooperative Agreement for the project.

The grantee may make project property available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the project or program for which it was originally acquired. FTA reserves the right in the Grant Agreement to require the grantee, with FTA approval, to transfer title to project property no longer needed or used for the purposes of the grant (or program) to the Federal Government or an otherwise eligible grantee. (49 CFR 18.32).

The grantee must not use project property acquired with grant funds to provide services to compete unfairly with private companies that provide equivalent services. Non-transit use of FTA financially assisted project property is acceptable so long as it is incidental, does not interfere with transit use (transit has priority), and income generated is retained by the grantee for transit use. See Chapter IV, Subsection 3.e.(3) below for more information on incidental use.

The grantee agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement, or any other obligation pertaining to project property, that in any way would affect the continuing Federal interest in that project property, without written FTA approval.

- (2) Shared Use. Shared use of project property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to non-transit use for construction, maintenance, and operation costs.
- (3) Incidental Use. Any incidental use of project property will not exceed that permitted under applicable Federal laws, regulations, and directives. Incidental use requires prior FTA approval except when it involves coordinated public transit human services transportation. Consult your FTA regional or metropolitan office prior to incorporating incidental use activities in projects. Incidental use will be permitted if:
 - (a) The incidental use does not interfere with the grantee's project or public transportation operations;
 - (b) The grantee fully recaptures all costs related to the incidental use from the non-transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements;
 - (c) The grantee uses revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation; and
 - (d) Private entities pay all applicable excise taxes on fuel.
- f. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, facilities, and some equipment. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office shall "make the case" by identifying a useful life period for all equipment and facilities with an acquisition value greater than \$5,000 to be procured with Federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with Federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the Federal interest for the disposition of the project property in later years.
 - (1) Determining Useful Life for Project Property. The grantee should identify the method used to determine the useful life. Acceptable methods to determine useful life include but are not limited to:
 - (a) Generally accepted accounting principles.
 - (b) Independent evaluation.
 - (c) Manufacturer's estimated useful life.

- (d) Internal Revenue Service guidelines.
 - (e) Industry standards.
 - (f) Grantee experience.
 - (g) The grantee's independent auditor who needs to concur that the useful life is reasonable for depreciation purposes.
 - (h) Proven useful life developed at a Federal test facility.
- (2) Bus, Van, Trolley, Rail Rolling Stock, and Ferries Useful Life Policy. Useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from revenue service. The useful life in years refers to total time in revenue transit service, not time spent stockpiled or otherwise unavailable for regular transit use.

Grant applicants need to specify the expected useful life category in requests for bids when acquiring new vehicles. Minimum useful life of rail rolling stock is 25 years. Minimum useful life for buses, vans, and trolleys is determined by years of service or accumulation of miles whichever comes first as follows:

(a) Buses:

- 1 Large, heavy-duty transit buses including over the road buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
 - 2 Small size, heavy-duty transit buses (approximately 30'): at least 10 years or an accumulation of at least 350,000 miles.
 - 3 Medium-size, medium-duty transit buses (approximately 25'-35'): at least seven years or an accumulation of at least 200,000 miles.
 - 10 Medium-size, light-duty transit buses (approximately 25'-35'): at least five years or an accumulation of at least 150,000 miles.
 - 11 Other light-duty vehicles used as equipment and in transport of passengers (revenue service) such as regular and specialized vans, sedans, and light-duty buses including all bus models exempt from testing in the current 49 CFR part 665: at least four years or an accumulation of at least 100,000 miles.
- (b) Trolleys: The term "trolley" is often applied to a wide variety of vehicles. Thus, the useful life depends on the type of "trolley." FTA classifies "trolleys" and the suggested useful life as described in Chapter IV,

Subsections 3.f.(2)(b) 1–3 below. For disposition actions, FTA will use the following minimum useful life determinations:

- 1 A fixed guideway steel-wheeled “trolley” (streetcar or other light rail vehicle): at least 25 years.
 - 2 A fixed guideway electric trolley-bus with rubber tires obtaining power from overhead catenary: at least 15 years.
 - 3 Simulated trolleys, with rubber tires and internal combustion engine (often termed “trolley-replica buses”): please refer to bus useful life criteria in Chapter IV, Subsection 3.f.(2)(a) above.
- (c) Rail Vehicles: At least 25 years. At time of grant application, the grantee may propose an alternative useful life to be reviewed by FTA. A grantee that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the grantee proposes to retire a rail vehicle before reaching FTA’s useful life.
- (d) Ferries: The useful life of a ferry depends on several factors, including the type and use of the ferry. FTA recommends using one of the methods outlined in Chapter IV, Subsection 3.f.(2)(a) above or offers the following suggested minimum service lives:
- 1 Passenger Ferries: 25 years
 - 2 Other Ferries (without refurbishment): 30 years
 - 3 Other Ferries (with refurbishment): 60 years
- (e) Facilities: Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. Based on any of methods identified in Chapter IV, Subsection 3.f.(2)(a) above, a railroad or highway structure has a minimum useful life of 50 years, and most other buildings and facilities (concrete, steel, and frame construction) 40 years.
- g. Rolling Stock Rebuilding Policies. FTA laws, regulations, policies, and procedures allow the use of capital funds for vehicle rebuilding programs that meet the vehicle requirements in Federal Motor Carrier Vehicle Safety Standards and Americans with Disabilities Act Accessibility Specifications for Transportation (49 CFR part 571 and 49 CFR part 38). Requirements for Bus and Rail fleets are summarized below:

- (1) Buses to be rebuilt should be at the end of the minimum useful life and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. The eligibility of this major capital bus rebuild work is in addition to the eligibility of vehicle overhauls as described in Chapter IV, Subsection 3.h., "Rolling Stock Overhauls," below. Grantees should contact the regional or metropolitan office to determine the extent which the useful life of the bus is affected by the rebuild. The minimum extension of useful life is four years.
- (2) Rail cars to be rebuilt must have reached the end of its minimum useful life (end-of-life rebuild). The minimum extension of useful life is ten years. The eligibility of this major capital rail rebuild work is in addition to the eligibility for vehicle overhauls as described in Chapter IV, Subsection 3.h., "Rolling Stock Overhauls," below.

Depending upon the extent of rebuilding planned, the rebuild may be subject to the Americans with Disabilities Act (ADA) requirements.

- h. Rolling Stock Overhauls. Rolling stock overhauls are an eligible capital expense as preventive maintenance. This eligibility for capital assistance applies also to leasing and to contracted service. Overhauls are usually done to make sure rolling stock reaches its useful life. Overhaul does not extend the useful life of rolling stock. This eligibility is in addition to eligibility of rebuilding specifically discussed above in Chapter IV, Subsection 3.g. For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life.
 - i. Rolling Stock Spare Ratio Policies. Spare ratios will be taken into account in the review of projects proposed to replace, rebuild, or acquire additional vehicles. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required and 20 spare vehicles is a 20 percent spare ratio.
- (1) Bus Fleet. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for grantees operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed-route service.

For purposes of the spare ratio calculation, "vehicles operated in maximum fixed-route service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, on the week and day that maximum service is provided. It excludes atypical days and special events that do not accurately depict normal peak maximum service requirements. Whether vehicles are locally funded, FTA-funded, or have exceeded their service life, the vehicles are not relevant factors. Scheduled standby vehicles are permitted to be included as "vehicles operated in maximum service."

Buses delivered for future expansion and buses that have been replaced, but are in the process of being disposed of, should not be included in the calculation of spare ratio.

For each grant application identified to acquire vehicles, a grant applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced including information on age and mileage, and the applicant's conformance with FTA's spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award.

- (2) Rail Fleet. Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the grantee's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined during the triennial review whenever FTA assistance is used to purchase or rebuild rail vehicles.

The following guidance should be used to support an operator's proposed rail vehicle spare ratio when the spare ratio is under review by FTA:

- (a) An operator of a rail system must have in its file available upon request by FTA a rail fleet management plan that addresses operating policies (level of service requirements, train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul program (schedules, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
- (b) Spare ratio justification should consider: average number of cars out of service for scheduled maintenance, unscheduled maintenance and overhaul program; allowance for ridership variation (historical data); ridership changes that affect car needs caused by expansion of system or services; contingency for destroyed cars; and car procurements for replacements and system expansions.
- (c) Cars delivered for future expansion and cars that have been replaced, but are in the process of being disposed of, should not be included in the calculation of spare ratio.
- (d) Peak Vehicle Requirement includes "standby" trains that are scheduled, ready for service, and have a designated crew.
- (e) Factors that may influence spare ratio are: equipment make-up (locomotive hauled trains; married pair units or single cars; equipment design, reliability

and age); environmental conditions (weather, above ground or underground operation, loading and track layout); operational policies (standby trains, load factors, headways); maintenance policies (conditions for removing cars from service, maintenance during nights and weekends, and labor agreement conditions); and maintenance facilities and staff capabilities.

- (3) Contingency Fleet. FTA recognizes two types of vehicles—active and contingency. Revenue rolling stock stockpiled in a contingency fleet in preparation for emergencies must have met their minimum normal service life requirements and must be properly stored, maintained, and documented in a contingency plan. These vehicles are not included in the calculation of spare ratio. Contingency plans are subject to review during triennial reviews and other FTA oversight reviews. Any rolling stock not supported by a contingency plan will be considered part of the active fleet.

- j. Leases. FTA and standard accounting rules distinguish between operating and capital leases. A grantee may enter into an operating lease as Lessee (the party leasing the property from another) without following any special rules if it receives no Federal operating assistance. If it receives Federal operating assistance, it is FTA's policy that this business opportunity be competed. A grantee may enter into a capital lease as a Lessee as described below in Chapter IV, Subsection 3.j (2). In all instances in which the grantee is a Lessor (the party leasing an asset to another), the grantee must obtain FTA's written concurrence (as described in Section 2(a) of this Chapter) before leasing FTA-funded assets to others. In addition, for equipment leasing, grantees must comply with both the Charter Rule and with requirements below:

- (1) Leasing FTA-funded Assets to Others for Transit Service. The grantee may enter into a contract for leasing its project property to a private operator (the lessee). The lease shall be subject to and incorporate by reference the terms and conditions of the FTA grant. Under this arrangement, the grantee (the lessor) should include the following provisions in the proposed lease agreement:
 - (a) The project property shall be operated by the lessee to serve the best interest and welfare of the project sponsor lessor and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
 - (b) The lessee shall maintain project property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor lessor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project property.
 - (c) The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

- (2) Capital Lease. A capital lease is any transaction whereby the grantee acquires the right to use a capital asset. If a lease does not have the following characteristics, it is an operating lease:
- (a) the lease cannot be cancelled; and
 - (b) any one of the following is true:
 - 1 the term of the lease is equal to or greater than 75 percent of the useful life of the asset;
 - 2 the grantee will become the owner of the asset at the end of the lease term;
 - 3 the lease contains a bargained for option date;
 - 4 the present value of the rent is equal to 90 percent of the value of the property.
 - (c) Based on standard FTA project management guidelines, grantees must maintain an inventory of assets acquired through capital leasing and must maintain on their accounting records the lease liability. Eligible lease costs may include: charges including interest, legal fees, and financial advisor fees; ancillary costs such as delivery and installation charges; and maintenance costs. The purchase calculation should include an estimate of residual value. A lease may qualify for capital assistance if it meets the following criteria:
 - 1 The capital asset to be acquired by lease is eligible for capital assistance;
 - 2 There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect; and
 - 3 Leasing the capital asset is more cost-effective than purchase or construction of the asset.
- (3) Cost Effectiveness. Grantees shall obtain FTA review of the cost-effectiveness determination prior to entering into any capital lease. Grantees should reference Circular A-94 for cost-effectiveness calculations and to obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit.
- (4) Calculation of Lease Cost. The estimated lease costs must be reasonable, based on realistic market conditions applicable to the grantee and must be expressed in present value terms. The lease cost of the asset or operations function is the cost to lease the asset or operations function for the same use and the same time period as that time specified in any purchase or construction documents or scope of any operations activity. The lease cost also includes any ancillary costs, such as

delivery and installation costs, and it includes the net present value of the estimated future cost to provide any other service or benefit.

- (5) Calculation of Purchase/Construction Cost or Operations Cost. The purchase/construction or operations cost is the estimated costs for that activity plus ancillary costs such as delivery and installation costs plus the net present value of the estimated future cost to provide any other service or benefit for that activity. The estimated cost must be reasonable, based on realistic current market conditions and based on the expected useful life of the item to be utilized.

k. Project Property Management. Rolling stock and equipment management procedures include the following minimum requirements:

- (1) Rail systems are required to submit a rail fleet management plan that addresses operating policies (level of service requirements, train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul program (scheduled, unscheduled, and overhaul); system and service expansions; rail car procurements and related schedules; and spare ratio justification.
- (2) A transit system with a fixed guideway system must also submit a Bus Fleet Management Plan along with its PMP for approval of funding through the Section 5309 New Starts program. This requirement is applicable to all transit agencies that are expanding an existing fixed guideway system or planning a new fixed guideway system to be funded with Section 5309 New Starts funding. This requirement is explained in detail in the current FTA Circular 5200.1, "Full-Funding Grant Agreements Guidance."
- (3) Equipment records must be maintained by the grantee. Records must include:
 - (a) a description of the asset,
 - (b) identification number,
 - (c) source of property (the grant project number under which it was procured),
 - (d) acquisition date,
 - (e) cost,
 - (f) percentage of Federal participation in the cost,
 - (g) location,
 - (h) use and condition,
 - (i) useful life ,

- (j) any disposition data, including the date of disposal and sale price, or, where applicable, method used to determine its fair market value, and
 - (k) who holds title to the equipment including rolling stock.
- (4) A physical inventory of equipment must be taken and the results reconciled with equipment records at least once every two years. Any differences must be investigated to determine the cause of the difference.
 - (5) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of project property. Any loss, damage, or theft must be investigated and documented by the grantee.
 - (6) Tagging or otherwise identifying property as government property.
 - (7) Adequate maintenance procedures must be developed and implemented to keep the project property in good condition. These procedures should be consistent with the maintenance plan required of grantees for equipment funded under 49 U.S.C. 5309 and 5307 and should be documented and available during an audit or triennial review.
 - (8) Warranty standards, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These should specify coverage and duration and meet currently available industry standards. General warranty incorporating industry standards and extended warranty are eligible capital costs. FTA's Best Practices Procurement Manual encourages grantees to evaluate the cost of an extended warranty in an analysis separate from the equipment's acquisition cost, in order to make a good business decision. Grantees are responsible for:
 - (a) Establishing and maintaining a system for recording warranty claims. This system should provide information needed by the grantee on the extent and provisions of coverage and on claims processing procedures;
 - (b) Identifying and diligently enforcing warranty system for recording warranty claims; and
1. Disposition.
- (1) Replacement at End of Minimum Useful Life. Project property to be replaced must have achieved at least the minimum useful life. For purposes of bus replacement projects, the age of the bus to be replaced is its years of service or mileage at the time the proposed new bus is introduced into service. For purposes of a rail vehicle replacement project, the age of the vehicle to be replaced is its age at the time the new vehicle is introduced into service. Official property records (or a

Rolling Stock Status Report), in which future needs (expansion and replacement) are discussed, must be available upon request by FTA.

- (2) Disposition Before the End of Useful Life. Any disposition of project property before the end of its useful life requires prior FTA approval. FTA is entitled to its share of the remaining Federal interest. The Federal interest is determined by calculating the fair market value of the project property immediately before the occurrence prompting the withdrawal of the project property from appropriate use. If project property is being removed from service before the end of its useful life, the Federal interest and the return to FTA is the greater of FTA's share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less). The following example is provided to determine the straight-line depreciation of a vehicle: for a 12-year, 500,000 mile minimum service life, the vehicle's value decreases each year by one-twelfth of its original purchase price. Alternatively, the value decreases for each mile driven 1/500,000 of its original purchase price. The unamortized value of the remaining service life per unit is the greater value obtained by calculating the straight line depreciation based on either miles or years, whichever is more advantageous to the grantee.
- (3) Retain and Use Elsewhere. After the minimum useful life of project property is reached and is no longer needed for the original project or program, it may be used by the grantee for other transit projects or programs. FTA prior approval of this alternative is not required. FTA retains its interest if the fair market value of the project property is over \$5,000.
- (4) Fair Market Value of Over \$5,000. After the service life of project property is reached, rolling stock and equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold. Reimbursement to FTA shall be an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original grant. The grantee's transmittal letter should state whether the equipment will be retained or sold. Use of sales proceeds are discussed elsewhere in Chapter IV of this circular.
- (5) Fair Market Value of Less than \$5,000 Value. After the service life of project property is reached, rolling stock and equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained.
- (6) Like-Kind Exchange Policy. With prior FTA approval, a vehicle may be traded in or sold before the end of its minimum normal service life, if a grantee so chooses.

In lieu of returning the Federal share to FTA, a grantee may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" is defined as a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange Policy, proceeds from the vehicle sales are not returned to FTA; instead, all proceeds are re-invested in acquisition of the like-kind replacement vehicle. If sales proceeds are less than the amount of the Federal interest in the vehicle at the time it is being replaced, the grantee is responsible for providing the difference, along with the grantee's local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest of the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost. An example of like-kind exchange is:

- (a) A recipient purchased a new bus in 2002 for \$220,000; 80 percent of the total price, or \$176,000, was Federal funding while 20 percent, or \$44,000, was local. Thus, there was an initial \$176,000 "Federal interest" in the new vehicle.
- (b) Instead of keeping the bus in service for 12 years, the useful life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.
- (c) Since the bus had a minimum useful life of 12 years and its depreciation was determined on a "straight-line" basis, the depreciated value of the vehicle after six years was half the original price, or \$110,000. The remaining Federal interest was 80 percent of that figure, \$88,000.
- (d) Assume, for example, the recipient realized \$80,000 from the sale of the six-year-old bus, or \$30,000 less than the straight-line depreciated value of the original vehicle. The recipient then purchased a new bus in 2008 for \$240,000. The transaction looked like this:

Net project cost calculation:

Gross project cost of new bus	\$240,000
Less straight-line depreciated value of replaced bus.	- 110,000
Net project cost	\$130,000
Federal share 80%	104,000
Local share 20%	26,000

Sources of funds for new bus:

Net sales proceeds from replaced bus	\$ 80,000
New local cash	
Straight-line depreciated value shortfall	- 30,000
Local share of net project cost	26,000

Federal share	<u>104,000</u>
TOTAL	\$240,000

The Federal interest in the new bus is \$192,000 (\$88,000 transferred from the old vehicle and \$104,000 in the new).

- (7) Transfer of Rolling Stock—Grantee-to-Grantee. For property where the useful life has been met and with prior FTA approval, a grantee may transfer rolling stock to another grantee. In such event that transfer of rolling stock is desired prior to the end of useful life, the Federal interest of the vehicles will be transferred, and therefore, there is no obligation to reimburse FTA. However, no additional FTA funds may be used to acquire the vehicles. Both grantees should coordinate with their FTA Regional Office and the following information should be submitted:

- (a) A written request for approval to transfer/receive vehicles. The request should include the transferor/transferee grantee name, list of vehicles (year, make, model), date placed in revenue service, date removed from revenue service, grant number which originally funded the vehicle, mileage, remaining useful life, Federal share of remaining useful life, reasons for transfer.
- (b) A Board Resolution (or other appropriate legal action) from each grantee. The transferring grantee's board resolution (or other appropriate legal action) should identify the receiving grantee, a statement that the vehicles are no longer required, a list of the vehicles to be transferred including VINs, and the remaining Federal interest that is transferred to the receiving grantee.

The receiving grantee's board resolution (or other appropriate legal action) should identify the transferring grantee, a statement that the vehicles are needed for revenue service, a list of the vehicles to be acquired including VINs, the remaining Federal interest for each vehicles, agreement that the vehicles will be maintained in accordance and in compliance with FTA requirements, and that the transferred vehicles will be included in its equipment inventory records.

- (c) A Rolling Stock Status Report. Each grantee should provide a Rolling Stock Status Report that includes all information as identified in Chapter IV, Subsection 3.1.(1). The Rolling Stock Status report should reflect the impact that the transfer/addition of the vehicles will have on the grantee's total fleet and spare ratio.

If approved, the receiving grantee will be directed to include the transferred vehicles in its next grant application.

- (8) Transfer of assets no longer needed [49 U.S.C. 5334(h)(1)–(3)]. For property that has not met its useful life and with prior FTA approval, the grantee may follow

procedures for publication in the *Federal Register* to transfer project property (including land or equipment) to a public agency for non-public transportation use and can be approved if FTA confirms:

- (a) the asset will remain in public use for at least five years after the date the asset is transferred;
- (b) there is no purpose eligible for assistance for which the asset should be used;
- (c) the overall benefit of allowing the transfer is greater than the FTA interest in liquidation and return of the FTA remaining Federal interest in the asset, after considering fair market value and other factors; and
- (d) through an appropriate screening or survey process (usually by following procedures for publication in the *Federal Register*), that there is no interest in acquiring the asset for the Federal Government use if the asset is a facility or land.

Additional information regarding this type of disposition is available from the FTA regional or metropolitan office.

- (9) Sell and Use Proceeds for Other Capital Projects [49 U.S.C. 5334(h)(4)]. After the useful life is met and with prior FTA approval, the grantee may sell project property for which there is no longer any public transportation purposes and use the proceeds to reduce the gross project cost of other FTA eligible capital transit grants. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital grant, and reduce the liability as the proceeds are applied to one or more FTA approved capital grants. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
- (10) Unused Supplies. For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds \$5,000, the grantee shall compensate FTA for its share, or transfer the sales proceeds to reduce the gross project cost of other capital project(s). (49 U.S.C. 5334(h)(4)).
- (11) Casualty, Fire, Natural Disaster, and Misused Property. When project property is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. If any damage to project property results from abuse or misuse occurring with the grantee's knowledge and consent, the grantee agrees to restore the project property to its original condition or refund the value of the Federal interest in that property. The grantee may fulfill its obligations to remit the Federal interest by either:

- (a) With prior FTA approval, investing an amount equal to the remaining Federal interest in like-kind property eligible for assistance, if the like-kind property is within the scope of the project that provided Federal assistance for the property prematurely withdrawn from use; or
 - (b) Returning to FTA an amount equal to the remaining Federal interest in the withdrawn project property.
- (12) Insurance Proceeds. If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee agrees to:
- (a) Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service (Listed below are two examples of the application of insurance proceeds.), or
 - (b) Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

Application of Insurance Proceeds:

Example 1:

Insurance Proceeds **Greater than** the Remaining Federal Interest in the Damaged or Destroyed Property.

The remaining Federal interest in the damaged or destroyed property is \$1,800. The grantee receives insurance proceeds in the amount of \$2,500. The grantee is required to apply \$1,800 of the \$2,500 insurance proceeds towards the Federal share of replacing the destroyed property.

Cost of replacement property:	\$6,000
Less Federal Share of Insurance Proceeds:	< 1,800>
The remaining funds needed :	\$4,200

If the funding ratio for this property were 80 percent Federal and 20 percent local, the replacement property could be purchased for \$4,800 Federal/\$1,200 Local funds. The insurance proceeds of \$1,800 needed to cover the remaining Federal interest in the damaged and destroyed property must be applied to the Federal share of the replacement property. The grantee could use an additional \$3000 in Federal funds. The grantee must provide \$1,200 in local match to replace the property.

Example 2:

Insurance Proceeds **Less than** the Remaining Federal Interest in the Damaged or Destroyed Property:

If the Federal interest in the damaged or destroyed property is \$1,800 and the grantee receives insurance proceeds in the amount of \$500, the grantee is required to apply the \$500 of insurance proceeds and \$1,300 of non-Federal funds to equal the remaining Federal interest, towards the cost of the replacement property.

Cost of replacement property: \$6,000

Less: Insurance Proceeds: \$500

Non-Federal Funds to cover: \$1,300
the rest of the Federal Interest

The remaining funds needed: \$4,200

If the funding ratio for this property were 80 percent Federal and 20 percent local, the replacement property could be purchased for \$4,800 Federal/\$1,200 Local funds. The insurance proceeds of \$500 plus an additional \$1,300 in non-Federal funds are needed to cover the remaining Federal interest in the damaged and destroyed property. These funds must be applied to the Federal share of the replacement property. The grantee could use an additional \$3,000 in Federal funds, and an additional \$1,200 in other local match, to replace the property.

- m. Maintenance. The grantee agrees to maintain project property in good operating order and in compliance with any applicable Federal regulations or directives that may be issued, except to the extent that FTA determines otherwise in writing. The grantee agrees to keep satisfactory records pertaining to the use of project property, and to submit to FTA upon request such information as may be required to assure compliance with Federal requirements. The grantee is required to have a written vehicle maintenance plan and facility/equipment maintenance plan. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.
- n. Insurance. At a minimum, the grantee agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing. This includes the requirements of Section 102(a) of the Flood Disaster Protection Act of

1973, 42 U.S.C. Section 4012a.(a), related to flood insurance provisions for any project activity involving construction or an acquisition having an insurable cost of \$10,000 or more.

4. DESIGN AND CONSTRUCTION OF FACILITIES. Grantees are encouraged to consult FTA's website to review the Project and Construction Management Guidelines and the Construction Project Management Handbook for guidance on the development and management of construction projects. The two resources can be found at http://www.fta.dot.gov/funding/oversight/grants_financing_104.html. The Project and Construction Management Guidelines have been developed to assist those involved in advancing transit capital projects to achieve implementation success in terms of the project scope, function, schedule, cost, and quality. Use of the Project and Construction Management Guidelines should contribute to effective project management on the part of the grantee, and effective oversight and guidance by FTA and the Project Management Oversight (PMO) contractor. Each project phase should: 1) start with inputs or a baseline, 2) have a process that refines the project definition and generates outputs that, 3) become the inputs or baseline for the subsequent phase. By defining the requirements for each phase and sound approaches to their accomplishment, the Project and Construction Management Guidelines allow grantees to define project requirements, allocate resources, perform project activities, monitor progress, and make adjustments, as required, to obtain the proper information and assure decisions are made at the appropriate time. Adherence to the guidelines should minimize scope changes, schedule slippages, cost overruns, and quality problems, and contribute to fully meeting all the performance objectives of the transit capital project.

The purpose of the Construction Project Management Handbook is to provide guidelines for use by public transit agencies undertaking substantial construction projects, either for the first time or with little prior experience with construction project management. The handbook provides a comprehensive introduction to construction project management, including the applicability of the principles of project management and of all phases of project development—from project initiation through planning, environmental clearance, real estate acquisition, design, construction, commissioning, and closeout. The handbook provides guidance tailored more to agencies that are constructing maintenance and operational facilities, intermodal terminals, park-and-ride stations, and other similar supporting transit facilities.

- a. Environmental Mitigation. Many Federal environmental statutes and Executive Orders establish requirements for transit projects that must be considered before FTA and the grantee take any action that limits the choice of reasonable alternatives or that have an adverse environmental impact. FTA tends to refer to the multiplicity of Acts and Orders as the "NEPA Process." More specifically, NEPA is the National Environmental Policy Act (42 U.S.C. Section 4321). FTA's implementing procedures for environmental reviews (23 CFR part 771) require that the environmental effects of proposed transit projects be documented and that environmental protection be considered before a decision can be made to proceed with a project. According to 49

U.S.C. Section 5324(b), FTA is required to take into account the economic, social, and environmental interests affected, and requires that alternatives be considered to avoid those effects. If there is no feasible and prudent alternative which avoids the adverse environmental effects, then all reasonable steps must be taken to minimize those effects. If effects cannot be avoided or minimized, they must be mitigated.

Measures to avoid or mitigate environmental harm are described in the environmental documents prepared for projects. These measures are developed jointly by FTA and the grantee to respond to State and local as well as Federal environmental requirements. The mitigation measures in final environmental documents are expressed as commitments on the part of the grantee which must be implemented if the project receives Federal funding. When a grant is made, the mitigation measures are incorporated by reference in the Grant Agreement for construction and become legally binding terms and conditions of the grant which cannot be withdrawn or substantively changed without FTA's approval.

The progress in implementing adopted mitigation measures is monitored by FTA regional staff through periodic project reviews, on-site inspections, and special meetings when necessary. The grantee has the responsibility to apprise FTA at the earliest possible time of any problems in implementing the adopted measures and any need for changes. Where mitigation options are being considered, FTA will maintain a role in the decision-making process to ensure continuing compliance with Department of Transportation (DOT) Regulation 23 CFR part 771 implementing 49 U.S.C. Section 5324 (b).

Information about FTA's environmental review process is available through the FTA Regional Office.

- b. Project Management Plan. A written PMP is required by 49 U.S.C. 5327 for all major capital projects. Grantees are required to develop and implement a PMP for all major capital projects funded by FTA as part of the PMO Program. This plan covers a grantee's detailed project management strategy to control the project scope, budget, schedule, and quality (49 CFR part 633). The requirements for PMP can be found in the most recent version of Project Management Oversight Rule and FTA's website at <http://fta.dot.gov>.

As a general rule, if the project meets the definition of major capital project, the grantee must submit the PMP during the grant application review process. FTA may also request that a PMP must be submitted for other projects as deemed appropriate. If FTA determines the project is major capital project after the grant has been approved or if FTA determines that a PMP be submitted for other projects after the grant has been approved, FTA will inform the grantee of its determination and will require submission of the plan. An approval of a PMP can be made after grant approval.

c. Utility Relocation.

- (1) General. The construction of transit systems may require the relocation and/or rearrangement of privately and publicly owned utilities. These utilities include, but are not limited to, systems and physical plants for producing, transmitting, or distributing communications, electricity, gas, oil, crude oil products, water, steam, waste storm water, or other substances; publicly owned fire and police signal systems; and railroads and streets which directly or indirectly serve the public. Relocating and/or rearranging utilities and facilities necessary to accommodate an FTA-funded transit project may be considered an eligible expense as part of the project. Exceptions to this include those situations where State and local law expressly prohibit the financing of such by the public entity.
- (2) Eligibility for FTA Funding. In order to qualify for FTA funding, the grantee must execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the FTA funded project. Prior FTA approval is not required in reaching a utility relocation agreement.
- (3) Utility Relocation Agreement. These agreements are distinguishable from third party contracts in that:

Only actual allowable, allocable, and reasonable costs are reimbursable. Where the work is to be performed by the public utility's forces, no profit is allowed; and reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments or enhancements to the existing utility system, except for meeting current State and local codes. Indirect costs of governmental entities incurred under a utility relocation agreement are eligible for FTA reimbursement only in accordance with an approved Cost Allocation Plan (CAP) as prescribed in OMB Circular A-87.

- d. Force Account. One of four conditions may warrant the use of a grantee's own labor forces. These are: (1) cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement. Force account is the use of a grantee's own labor force to carry out a capital grant project. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement under the grant. Incremental labor costs from flagging protection, service diversions, or other activities directly related to the capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account can include major capital project work on rolling stock. An example of this is preventive maintenance activities.

FTA prior review of a force account plan and justification are required where the total estimated cost of force account work to be performed under the grant is greater than \$10,000,000. When work to be performed is less than \$10,000,000 but over \$100,000, a force account plan is required to be in the grantee's file, but does not require prior FTA approval. When work to be performed using force account is less than \$100,000, a detailed plan is not required.

- e. Basis for Reimbursement. To be eligible for reimbursement for force account work, the grantee must provide the following before incurring costs:
- (1) Justification for using grantee forces;
 - (2) Preparation of a force account plan;
 - (3) A description of the Scope of Work;
 - (4) A copy of the construction plans and specifications which includes:
 - (a) A detailed estimate of costs;
 - (b) A detailed schedule and budget; and
 - (c) A copy of the proposed Cooperative Agreement when another public agency is involved.
 - (5) Submit documentation equivalent to a sole source justification stating the basis for a determination that no private sector contractor has the expertise to perform the work. In addition, the required documentation must provide the basis for the grantee decision to use force account labor including the following information;
 - (6) Provide the present worth of the estimated cash drawdown for both the force account and private sector contract options. In the analysis, use the current interest rate paid on one-year Treasury Bills as the discount rate;
 - (7) Include the cost of preparing documents; cost of administration and inspection; cost of labor, materials and specialized equipment; cost of overhead; and profit for private contract;
 - (8) Include the unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract;
 - (9) Provide certification that costs presented are fair and reasonable;
 - (10) Provide an analysis of force account labor availability, considering normal operations and maintenance activities as well as other programmed and existing capital projects. This must be consistent with costs of labor, material, and specialized equipment; and

- (11) Provide relevant citations from labor union agreements and an analysis of how it pertains to the work in question.

Base the present value calculation on the midpoint of construction; and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation. For example, if the work is to replace leased facilities, the cost of continuing the lease until the work is complete should be taken into account in the cost estimate for each option considered.

Safety considerations may be addressed by a statement of the transit operator's safety officer that performing the work with private sector contractors would have an adverse effect on public safety. Efficiency concerns may be addressed by a present worth calculation, including an estimate of the value of lost transit operation efficiency.

Special care must be taken to ensure that requirements of OMB Circular A-87 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity codes.

Most general purpose equipment and tools can be used in force account work and thereby benefit more than one project. Therefore, the cost of these items normally should not be treated as a direct charge to the project. However, an appropriate use or depreciation charge is an allowable indirect cost if otherwise provided for in the project budget. Unusual circumstances may call for purchase of specialized equipment that is unique to the force account work that is being performed. If such equipment is required, prior FTA approval must be obtained. The usual FTA equipment disposition requirements apply.

The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget.

- f. Seismic Standards and Reporting. New federally funded buildings, and additions to existing buildings and bridges, built with Federal assistance must be designed and constructed in accordance with State, local, and industry required standards or codes. The applicant is responsible for determining before accepting delivery that the building complies with the seismic design and construction requirements and certifies to the same through the annual Certifications and Assurances, as required by 49 CFR part 41.
- g. Value Engineering. Value Engineering (VE) is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes, and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating, and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety, and esthetics.

- (1) Applicability.
 - (a) Major Capital Projects. VE must be used on major capital projects. A major capital project is usually identified during the grant application process. (See, Chapter IV, Subsection 4.b., "Project Management Plan," for a definition of major capital project.)
 - (b) Non-Major Capital Projects. Grantees are encouraged to conduct VE on all construction projects including but not limited to bus maintenance and storage facilities, intermodal facilities, transfer facilities, revenue railcar acquisition and rehabilitation, and offices, with the level of VE study to be commensurate with the size of the project.
- (2) Timing. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (PE) or prior to final design. Some large or complex projects may need to conduct two VE studies.
- (3) Reporting. Grantees with major capital projects are required to submit a VE report to the appropriate FTA Regional Office at the end of each Federal fiscal year (FY) (October 1) indicating the results of their VE efforts. Copies of the VE report form are available in each Regional Office.
- h. Constructability and Design Peer Reviews. Peer review is a process used by the grantee in the planning, design, and implementation of capital projects. The concept of peer review can be applied to any problem or situation where a second opinion can be useful to decision makers. FTA encourages the grantee to confer with other transit operations and maintenance experts in order to benefit from their experience. These reviews have been used to review rail extensions, New Starts projects, and transit facilities. These reviews have provided an in-depth critique of designs at the preliminary and final engineering stages. They have provided operations and maintenance information with respect to a variety of subsystems and have validated the process used by a grantee's planning staff to locate bus facilities. The purpose of constructability and design peer reviews is to improve the performance of the process or product being reviewed and optimize the design and subsequent construction of the project. The review should be able to answer such questions as: Can this be constructed? Is there a better process that could be employed to achieve the desired results? Is the product safe? Although the grantee is encouraged to conduct peer reviews with all capital projects, in some instances it may be required by FTA, and the process should be fully documented through the recipient's document control process.
- i. Crime Prevention and Security Review. Grantees are encouraged to develop, refine, and train on security and emergency response plans. Emergency response drills should be conducted with public transportation agencies and fully coordinated with local first response agencies. Other security training should be provided for public transportation employees that will serve to better prepare an agency during an emergency including

such things as bomb treats, detection of chemical and biological agents, and other disruptive incidents. Grantees are encouraged to perform crime prevention reviews during the design phase of all FTA funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should serve to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of review should be commensurate with the project size and scope. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the grantee and be available for FTA review upon request. Safety and security publications and training information can be found at <http://transit-safety.volpe.dot.gov/Publications> and at <http://transit-safety.volpe.dot.gov/Training>.

- j. Concurrent Non-Project Activities. Concurrent Non-Project Activities, also known as betterments, are improvements to the transit project desired by the grant recipient that are not part of the base functioning of the Federal transit project. They are not integral to the base functioning of the transit project and are viewed as enhancements or upgrades to a level beyond what is normally required for the base functioning of the transit project. The concurrent non-project activities are performed in conjunction with grant-funded project work to afford the opportunity to have the non-project work performed economically and efficiently in conjunction with grant-funded project work. Examples of betterments include; increased utility pipe sizes, road widening projects for local reasons, environmental mitigation measures not identified in an environmental document, increased landscaping, signal upgrades beyond the base requirements of the transit project, etc. Costs for Concurrent Non-Project Activities are to be paid for by the grantee. Related but different than Concurrent Non-Project Activities are activities involving an overbuild situation. Guidance should be obtained from the FTA Regional Office related to any overbuild situation to determine the Federal eligibility of such an activity. An example of an over-build situation is over-designing the foundation and base stories of a multi-story facility in order to better accommodate future vertical expansion of the project. Outside of a joint development project, such an over-build is generally not an allowable grant cost.
- k. FTA Technical and Construction Oversight Review. The grantee agrees to permit FTA to review, as deemed necessary by FTA, the technical plans and specifications and requirements to the extent FTA believes necessary to ensure project execution, consistency with scope and need, and incorporation of FTA requirements. The grantee agrees to comply with any FTA request pertaining to its review of construction plans and specifications. The FTA Regional Office should be consulted to determine if FTA review of construction plans and specifications is necessary to advance the project to the next level of design. The grantee agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the plans and specifications and that the intent of the scope of the project is carried out. To the extent applicable, the grantee agrees to comply with FTA PMO regulations, 49 CFR part 633.

1. Energy Conservation. The grantee agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.* The grantee, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, Subpart C. FTA assistance for the construction, reconstruction, or modification of buildings for which applications are submitted to FTA will be approved only after the completion of an energy assessment. An energy assessment shall consist of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The Energy Assessment should consider: overall design of the facility or modification; materials and techniques used in construction or rehabilitation; special innovative conservation features that may be used; fuel requirements for heating, cooling, and operations essential to the function of the structure, projected over the life of the facility and including projected costs of this fuel; and energy to be used.
- m. Intelligent Transportation System (ITS). Grantees that have transportation projects that include ITS must be participants in a regional or statewide ITS Architecture process and their ITS projects must be included in the locally approved Regional ITS Architecture. Grantees are required to use a Systems Engineering process for the development of ITS projects.

The project level requirements include undergoing a Systems Engineering Analysis for the ITS and communications components of the project or grant, and developing ITS Project Architectures for all Major ITS Projects (prior to the adoption of the regional ITS architecture). The ITS components and FTA National ITS Architecture Consistency Policy for Transit Projects conformity status also should be included in FTA grant applications within TEAM. The policy can be found at:
[http://www.fta.dot.gov/documents/FTA ITS Policy.pdf](http://www.fta.dot.gov/documents/FTA_ITS_Policy.pdf).

A systems engineering analysis is a "structured process for arriving at a final design of a system," and is a method for identifying needs and developing/procuring the best possible configuration for a particular situation. The Policy requires that the systems engineering analysis includes how the project fits into the regional (or National) ITS architecture, how the system will be implemented and operated (roles, requirements), and analyses of alternatives for system configuration, financing, and procurement. Applicable (DOT-developed and supported) ITS standards also must be identified.

Prior to the adoption of a regional ITS architecture, all Major ITS Projects must also include the development of a project level architecture. Major ITS Projects are any projects that implement part of a regional ITS initiative that is multi-jurisdictional, multi-modal, or otherwise affects regional integration of ITS systems. Examples include regional traveler information, regional electronic payment, new AVL systems that may set the standard for the region, or transit signal priority systems. A project

architecture is similar to a regional ITS architecture but focuses on the project and its implementation. Again, all agreements that are needed to implement and operate the ITS systems must be included as part of the project architecture.

- n. Americans with Disabilities Act (ADA). New facilities and any/all additions and/or alterations to existing facilities are required to comply with regulations issued by DOT implementing the transportation provisions of ADA (49 CFR parts 27, 37 & 38). Compliance is a condition of eligibility for Federal funding under 49 CFR part 27, but is required whether or not the facility or alteration is federally funded. Depending upon the nature of the facility, compliance with implementing regulations issued by other Federal agencies with ADA responsibilities may also be required. The applicant is responsible for ensuring that new facilities and additions/alterations to existing facilities are designed in accordance with DOT and ADA regulations and related guidance in effect as of the date construction begins and for verifying compliance prior to accepting delivery.

APPENDIX B

REAL ESTATE ACQUISITION MANAGEMENT PLAN

A Model for the development of a Real Estate Acquisition Management Plan (RAMP)

1. GENERAL. The purpose of a RAMP is to guide the assessment of real estate goals and the methodology for real estate acquisition. RAMPs are the grantee's planning tool. If done correctly, they will identify schedule issues, difficult parcels, the need for expanded advisory assistance, and staff issues. For projects participating in the New Starts or Small Starts programs, RAMPs are required as part of the Project Management Plan (PMP).
2. RAMP CONTENT.
 - a. Introduction.
 - (1) Short history of pertinent elements of project
 - (2) Control agreements; intergovernmental contracts, pending solicitations, etc.
 - (3) Legal requirements; Uniform Act, various State laws, local requirements, etc.
 - (4) Geographical description of project
 - (5) Physical description of proposed acquisitions; number of parcels, total acquisitions, partial acquisitions, anticipated number of relocations; etc.
 - (6) General outline of process; and authority to condemn
 - b. Organizational Structure.
 - (1) Identification of staff functions
 - (2) Identification of contractual functions
 - (3) Identification of plan source; process for plan changes, corrections, modifications as a result of negotiations, etc.
 - (4) Party who can establish offer of just compensation
 - (5) Party who can authorize condemnation
 - c. Acquisition Schedule.
 - (1) Set out the timeframe for acquisition and relocation; total length of time needed
 - (2) Date for initiation of negotiations for project

- (3) Difficulties and potential delays
- (4) How will progress reporting be handled; who will receive this information
- (5) Identification of a critical path for right-of-way
- d. Real Estate Cost Estimate.
 - (1) Background of estimate; when was it done; what was the basis of the estimate
 - (2) Need for any update of cost estimate
 - (3) How will estimate be compared to actual costs as project progresses
- e. Acquisition Process.
 - (1) Plans—who prepares, who can modify, what is process for considering property owner's request to modify, etc.
 - (2) Ownership and title information—how is this gathered, what is the contractual requirements, are those contracts in place, what is the process to update and correct errors and omissions
 - (3) Appraisal—who will do appraisals, what are the contracting requirements if necessary, what is the estimate duration of this task, how many copies of appraisals will be obtained, will appraisals be shared with property owners
 - (4) Appraisal Review process—who will do this task, what is the scope of the task in general, what is the turn around time for this work, will review handle updates of appraisals, will review handle modification of appraisals based on owner claims, will review be used to support administrative settlements
 - (5) Establishment of offer of Just Compensation—who does this, what is the basis of this offer
 - (6) Negotiations—who will negotiate, what is their authority, who must approve administrative settlements and other concessions to property owners, what documentation is required for the negotiations' process, who signs letter of offer, will negotiator also handle relocation payments, how is interface between negotiations and condemnation handled, what documents will negotiator be expected to provide to legal for settlement and condemnation, will negotiator be present at closing
 - (7) Closing/Escrows—who will provide this service, how will it function, what is the estimated length of time to deposit funds to escrow for closing, what documents will be necessary, how will closings be conducted, what form of deeds will be used, how will property taxes be paid and exempted

- (8) Condemnation—who will authorize suits, who will file, what is relationship between grantee and its legal personnel, what authority does attorney have for settlement, what are the progress reporting requirements

f. Relocation.

- (1) Staffing and Administration—how will the relocation function be staffed, who is authorized to compute payments, who will approve payments, what is the relocation process to be utilized in the project, what level of advisory services will be needed, who will provide advisory services, what is the claims payment process, what is the time to pay a relocation claim, what authority and controls will be needed for advanced claims, what documentation will be retained in the files, what forms will be used
- (2) Appeals—what are the legal requirements for administrative appeals, how will the agency establish and staff an appeal function, who is the recipient of appeal requests, what is the appeal process

g. Other Components.

- (1) Document Control—How are documents filed, what length of time will original paper documents be maintained, what is the organization of parcel files, condemnation files, etc., what is the contents of a typical file
- (2) Property management—who will perform property management, what is included in the Scope of Work for property management, who contracts for demolition, what are contracting requirements, what are reporting requirements, what is the statement of policy regarding rental property for extended possession by tenants and owners
- (3) Excess property inventory and utilization plan—who will prepare and track excess parcels, what is the process to evaluate these tracts, who will determine when to sell excess, what is the disposition of proceeds, what are agency, State, or local restrictions on the sale of public property

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APPENDIX C

GUIDE FOR PREPARING AN APPRAISAL SCOPE OF WORK

1. **GENERAL.** The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use and intended user; definition of market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's approved Right-of-Way or Appraisal Manual. The Scope of Work must address the unique, unusual, and variable appraisal performance requirements of the appraisal. Either the appraiser or the agency may recommend modifications to the initial Scope of Work, but both parties must approve changes.
2. **EXAMPLE.** The example below is intended to be a guide for agencies preparing a Scope of Work for real estate appraisals.
 - a. **Scope of Work:** The appraiser must, at a minimum:
 - (1) Provide an appraisal meeting the agency's definition of an appraisal, or, at a minimum, the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).
 - (2) Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
 - (3) Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:
 - (a) The extent of the inspection and description of the neighborhood and proposed project area,
 - (b) The extent of the subject property inspection, including interior and exterior areas, and
 - (c) The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property).
 - (4) In the appraisal report, include a sketch of the property and provide the location and dimensions of any improvements. Also, it should include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales.
 - (5) In the appraisal report, include items required by the acquiring agency, usually including the following list:

- (a) The property right(s) to be acquired, e.g., fee simple, easement, etc.,
 - (b) The value being appraised (usually fair market value), and its definition,
 - (c) Appraised as if free and clear of contamination (or as specified),
 - (d) The date of the appraisal report and the date of valuation,
 - (e) The realty/personalty report required at 49 CFR 24.103(a)(3)(i)–(v),
 - (f) The known and observed encumbrances, if any,
 - (g) Title information,
 - (h) Location,
 - (i) Zoning,
 - (j) Present use, and
 - (k) At least a 5-year sales history of the property.
- (6) In the appraisal report, identify the highest and best use. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
- (7) Present and analyze relevant market information. Specific requirements should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.
- (8) In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under Uniform Standards of Professional Appraisal Practice (USPAP) to ensure compliance with USPAP while following this Uniform Act requirement.
- (9) Report his or her analysis, opinions, and conclusions in the appraisal report.
- b. Additional Requirements for a Scope of Work:
- (1) Intended Use: This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, etc.) for a federally assisted project.

- (2) Intended User: The intended user of this appraisal report is primarily the acquiring agency, but its funding partners may review the appraisal as part of their program oversight activities.
- (3) Definition of Market Value: This is determined by State law, but includes the following:
 - (a) Buyer and seller are typically motivated;
 - (b) Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest;
 - (c) A reasonable time is allowed for exposure in the open market;
 - (d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
 - (e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- (4) Certification: The required certification should be in the State's approved Appraisal Procedures or part of State law.
- (5) Assumptions and Limiting Conditions: The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:
 - (a) The data search requirements and parameters that may be required for the project.
 - (b) Identification of the technology requirements, including approaches to value, to be used to analyze the data.
 - (c) Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
 - (d) Instructions to the appraiser to appraise the property "As Is" or subject to repairs or corrective action.
 - (e) As applicable include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

Uniform Act Frequently Asked Questions (FAQs)

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act - URA)

Frequently Asked Questions (FAQs) on 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Published in the Federal Register on January 4, 2005

1. What is the Uniform Act?

It is the short name for the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended](#). This law was enacted as Public Law 91-646, and brought a minimum standard of performance to all Federally funded projects with regard to the acquisition of real property and the relocation of persons displaced by the acquisition of such property.

2. Has it been amended since passage?

Yes, there have been several amendments over the years, with the most significant taking place as a part of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

3. Where can I find the law and the rules created to carry out the law?

The law is codified in [42 U.S.C. 4601](#) et seq. The regulation governing the law is found in [49 CFR, Part 24](#). There may be other laws, regulations, policies and procedures established by agencies that elaborate or expand upon these minimum standards. Links to the basic law and regulation can be found at <http://www.fhwa.dot.gov/hep/legreg.htm>.

4. Which Federal agencies must abide by the provisions of the Uniform Act?

All acquiring agencies meeting the definition set out in Section (§) [24.2\(a\)\(1\)\(iii\)](#) are required to comply with the Uniform Act and the implementing regulation, 49 CFR Part 24.

5. Does the Uniform Act apply to local agencies or third parties who acquire properties in advance of federal authorization or a federal project designation?

The funding agency will review such acquisitions to determine if the intent of the acquisition was for a federally funded program or project, in which case the provisions of the Uniform Act and the implementing regulation apply.

 [TOP](#)

SUBPART A - GENERAL

6. Appendix A. The word "should" is used. Does this mean that the appendix provisions are suggestions rather than requirements?

Appendix A is an integral part of the regulation. While it does not impose additional mandatory requirements, it provides important guidance and information concerning the purpose, intent and implementation of many of the provisions in the regulation. "Should," when used in the appendix to describe a mandatory requirement of the regulation, cannot alter or reduce that requirement.

When used to provide guidance, it explains how a regulatory provision is to be implemented under most circumstances.

7. [§24.2\(a\)\(6\)](#). In localities where houses sell for a premium over the list price, can the relocation agent adjust the relocation housing payment to account for this premium?

The regulation does not call for adjusting the asking price, either upward or downward. The regulation does say the comparable must be available. If a comparable is not available for the amount calculated, a new calculation may be in order.

8. [§24.2\(a\)\(6\)\(ix\)](#) and appendix A, Subpart A, [§24.2\(a\)\(6\)\(ix\)](#). Can the displaced occupant of a public housing unit be offered other public housing units as comparable replacement housing?

Yes. A person displaced from a public housing project may be offered a comparable public housing unit as a replacement dwelling or they may be offered a unit subsidized under another housing program, e.g., Section 8 Housing Choice Voucher. Only if no subsidized housing is available should a subsidized tenant be offered a non-subsidized unit as a comparable. A person who is displaced from subsidized housing and placed in private-market housing will potentially lose the security of affordable housing after the 42-month Uniform Act payment is exhausted. While the Uniform Act replacement housing payment softens the blow of a move, after the payment is exhausted a formerly-subsidized tenant may not be able or eligible to return to subsidized housing, either because no subsidized units are available or because their income exceeds the admission income limits. For this reason, every effort should be made to find another subsidized unit as replacement housing so that the tenant will continue receiving the housing subsidy as long as it is needed.

9. [§24.2\(a\)\(8\)](#). Can an eligible displaced person ever occupy a non-decent, safe and sanitary (DSS) replacement dwelling and still receive a replacement housing payment?

No, unless one or a very few of the DSS conditions listed in [§24.2\(a\)\(8\)](#) were waived under [§24.7](#) or [§24.2\(a\)\(8\)](#), so that the dwelling could then be considered to be DSS. However, all the DSS conditions could not be waived.

10. [§24.2\(a\)\(9\)\(A\)](#). Can an eligible displaced person be paid relocation benefits prior to completion of negotiations or acquisition of the property that they occupy?

Yes. Persons who move as a result of the initiation of negotiations are eligible displaced persons entitled to benefits and should be paid promptly. Payments to such persons are eligible for Federal funding or reimbursement at the time that residential occupants move to DSS dwellings adequate to accommodate them or non-residential occupants vacate the property

11. [§24.2\(a\)\(15\)\(iv\)](#). What do I look for in determining whether there is a written agreement that meets the definition of initiation of negotiations in order to establish tenant eligibility for relocation payments?

The written agreement must bind the agency to purchase the property from which a tenant would be displaced. That is, both the agency and the property owner are subject to legally enforceable commitments to proceed with the purchase.

SUBPART B - REAL PROPERTY ACQUISITION

12. Subpart B. The preamble to the revised regulation published January 4, 2005, states that the FHWA decided to retain the term "fair market value" throughout Subpart B except for §24.101(b)(1) and (5). Yet the term "market value" appeared in the final regulation in a number of other places, including §24.102(d) and (j), §24.103(b), and §24.105(c). Which is correct?

The preamble is correct. The FHWA published a technical correction on Monday, May 2, 2005, in the Federal Register (70 FR 22610) that resolved the problem by changing the term to "fair market value" in all parts of the regulation except §24.101(b)(1) through (5).

13. §24.101, §24.108, and Subpart E. If property is acquired through donation, exchange, or some method other than purchase, are the occupants entitled to relocation assistance and payments for vacating the property?

The occupants are eligible as "displaced persons" if they meet the definition of a displaced person [24.2(a)(9)].

14. §24.101(a)(2) and §24.101(b)(1) through (5). If a Federal agency operating in accordance with §24.101(a)(2), or an agency acquiring in accordance with §24.101(b)(1) through (5), will not acquire a property except through amicable negotiation, is the owner entitled to relocation assistance? Are tenants on such properties eligible for relocation assistance?

Owners of such properties are not displaced persons. Tenants of such properties are eligible for relocation assistance and benefits.

15. §24.102(b). Can the required early notice be provided at a public meeting? When is the best time to give this notice?

No. When property is to be acquired, each owner should be notified in such a way that an administrative record exists to attest to the delivery to the owner. There is no assurance when using a public meeting that all affected owners will be present and each owner is due the courtesy of receiving a timely notice of the agency's intent. The notice should be provided as early as possible, when it is known a property interest will be acquired, and no later than when the appraisal or waiver valuation assignments are made.

16. §24.102(c)(2)(ii)(C). Is a §24.7 waiver required to provide a waiver valuation, rather than an appraisal, for properties estimated to be worth over \$10,000 and up to \$25,000?

No. §24.102(c)(2)(ii)(C) contains its own waiver provision that specifically permits the use of the waiver valuation for these properties provided the Federal funding agency approves the higher threshold beyond \$10,000 and the agency agrees to offer the owner the right to have an appraisal prepared.

17. §24.102(c)(2)(ii)(C). If an agency routinely uses waiver valuations on properties with an estimated value of up to \$25,000, does it have to offer an owner the option of receiving an appraisal if the property being acquired was estimated to be worth \$3,000? How should agencies document that they have offered a property owner the option of having the property appraised and the owner has elected not to have an appraisal prepared?

No, the agency does not need to offer the owner an appraisal if the estimated value is under \$10,000. The owner must be offered the option of receiving an appraisal, prior to using the waiver

valuation, if the property is estimated to be worth more than \$10,000, up to a maximum of \$25,000. No set form of documentation is prescribed. However, to be consistent with other property contact requirements in the regulation, the agency should offer the option to have the property appraised to the property owner in writing (when over \$10,000), and obtain a written response from the owner. An agency must maintain adequate records, as set out in §24.9(a), in sufficient detail to demonstrate that it offered the owner the option of receiving an appraisal for the property.

18. §24.102(c)(2). What constitutes a knowledgeable person who is qualified to prepare waiver valuations?

The regulation calls for a waiver valuation preparer to have sufficient understanding of the local market. The funding agency may issue further guidance, however, it is expected that the person will be knowledgeable of local real estate sales.

19. §24.102(f). If the waiver valuation preparer makes an \$8,000 offer and the owner makes a counter offer for \$10,000, can the waiver valuation preparer/negotiator adjust the amount of the waiver valuation?

Yes, if market data supports such a change.

20. §24.102(i). If there is no market data to support an adjustment to the waiver valuation amount, can an administrative settlement be considered, even if the administrative settlement amount is over \$10,000?

Yes, if justified and in accordance with the funding agency's approved procedure. Safeguards should be considered when the waiver valuation preparer is the negotiator and recommends an administrative settlement. It is appropriate to have a different agency official approve the administrative settlement. This can be accomplished in a cost effective manner, such as by phone, fax, or email. Administrative settlements may also be used if the funding agency is operating at the \$25,000 waiver valuation level. It is not necessary to complete an appraisal in these situations.

21. §24.102(d). Who determines the offer of just compensation for the property to be acquired?

The agency determines the just compensation amount to be offered the property owner in a two-step process. An appraiser researches the real estate market and presents an appraisal of the fair market value. A review appraiser evaluates that appraisal and recommends an amount for an agency official to approve as the agency's estimate of just compensation. For some uncomplicated, low value acquisitions, the agency may determine an appraisal is not required and prepare a waiver valuation that will be the basis upon which an agency official will approve the offer of just compensation.

22. §24.102(d) and §24.102(g). Must all offers by an agency to acquire property be made in writing?

The first time an agency makes an offer to purchase; it must be in writing and be in the full amount approved by the agency as its estimate of just compensation. Subsequent formal offers and notices are also required to be in writing. This does not preclude the use of verbal value discussions during negotiations to arrive at an agreed purchase price for the property, depending upon agency policy and applicable law.

23. [§24.102\(i\)](#) and [§24.102\(j\)](#). What if the owner doesn't agree with the amount offered? Is condemnation the only solution when an agency can't reach agreement on the purchase of property for the project?

The possibility of an administrative settlement should be explored, reference [§24.102\(i\)](#). Agency officials may approve the use of an administrative settlement if it is reasonable, prudent and in the public interest. Agencies may also use other alternative dispute resolution options, such as mediation or arbitration. If all efforts to negotiate/settle fail then the laws of the agency set forth the legal steps the agency must take when they wish to purchase property that an owner does not want to sell.

24. [§24.102\(f\)](#). Can property owners provide their own appraisal to the acquiring agency?

Yes. The agency should consider all relevant information in its negotiations with property owners.

25. [§24.102\(f\)](#). Which agency official is authorized to make the final settlement offer?

This is a matter of agency policy, as well as laws governing the agency. The regulation does not address or require a final settlement offer. The agency is required to consider valuation information and suggested modifications provided by the owner.

26. [§24.102\(j\)](#). When should property owners be paid for their property?

Property owners should be paid as quickly as possible under the applicable laws, on or before the time the owner is required to give up physical possession. This must occur when the property owner transfers title. The agency should work with the property owner to resolve any liens against the property.

27. [§24.102\(j\)](#). When can a property owner be required to turn possession of the property over to an agency?

A property owner may voluntarily turn control of his or her property over to an agency at any mutually agreeable time. An agency may not require a property owner to give them possession until the sale of the property is complete, payment is made and title transferred. In the case of property used for business, residence, or farm, the owner must be given the 90-day notice in writing. In situations where condemnation is necessary, the laws governing the agency set forth the steps the agency must take to gain legal and physical possession. As in negotiated settlements, the 90-day notice on occupied property further governs the physical possession date.

28. [§24.102\(n\)](#). Do the conflict of interest provisions in 49 CFR [§24.102](#) apply to consultants?

Yes. [§24.102\(n\)](#) applies to all acquisitions that are subject to the Uniform Act acquisition requirements, including those undertaken by consultants. The intent of [§24.102\(n\)\(2\)](#) is to insure appraiser independence and to shield appraisers from inappropriate influence. In the case of an appraiser who is hired by an agency or a consultant, the agency or consultant may not attempt to influence or coerce the appraiser regarding valuation, or any other aspect of an appraisal, review or waiver valuation.

29. [§24.102\(n\)\(2\)](#). What does conflict of interest mean?

The purpose of this section is to assure the agency has a valid approved appraisal, or, if appropriate, waiver valuation, that represents the fair market value for the needed real property. It is intended to prohibit attempts to coerce the appraiser or review appraiser to meet a certain target or "pre-agreed-on" value to be reported as the approved appraised value to support a contrived determination of just compensation to be offered a property owner. To prevent this, each situation needs to be evaluated on a case-by-case basis. It is critical to prevent inappropriate influence on the valuation process that leads to, and results in, the initial offer of just compensation. To accomplish this, it is necessary for the appraiser and review appraiser's first-line supervisor to be independent of the negotiation process and not function as a negotiator. Conversely, any person functioning as a negotiator is prohibited from being the appraiser or review appraiser's first-line supervisor.

For the FHWA, "functioning as a negotiator" means initiating price negotiations with the property owner. It does not include occasional involvement in subsequent negotiations by senior level personnel. For the FHWA, "supervise or formally evaluate the performance," refers to the first-line supervisor.

When an agency has contracted, or a consultant has subcontracted, with an appraiser, review appraiser, or waiver valuer, there may not be a typical supervisory relationship. Nevertheless, the conflict of interest provision applies. The person who the contract appraiser, review appraiser, or waiver valuer is responsible to on an operational basis may not be the negotiator, or attempt to influence or coerce the appraiser, review appraiser or waiver valuer regarding valuation, or any other aspect of an appraisal, review, or waiver valuation process.

30. [§24.102\(n\)\(2\)](#). Does the conflict of interest provision preclude an upper level agency manager, director, or other agency administrative settlement official, who technically is the "supervisor" over the appraisal/appraisal review section, from negotiating a claim for an administrative settlement or appeal?

No, as long as the person is not the individual appraiser, review appraiser or waiver valuer's first-line supervisor, or the supervisor is not the person initiating price negotiations with the property owner. There is no restriction against higher-level supervisors being involved in the later stages of negotiation.

31. [§24.102\(n\)\(2\)](#). Is this waiver, and the exception in [§24.102\(n\)\(3\)](#), related to the general waiver provision in [§24.7](#)?

No. [§24.102\(n\)\(2\)](#) provides that a person functioning as a negotiator may not supervise or formally evaluate the performance of an appraiser or review appraiser except that, on a federally assisted project, the Federal funding agency may waive the application of this requirement to an acquiring agency if the Federal agency determines it would create a hardship for the agency. This is intended to accommodate a Federal aid recipient with a small staff, where this provision would be unworkable. [§24.102\(n\)\(3\)](#) provides that an appraiser may be permitted to act as a negotiator if the offer to acquire the property is \$10,000 or less. Because of the specific language in [§24.102\(n\)](#), an agency can exercise the waiver described in [§24.102\(n\)\(2\)](#), or the \$10,000 or under exception in [§24.102\(n\)\(3\)](#), without recourse to the general waiver provision provided for by [§24.7](#).

32. [§24.103](#). What does "consistent" mean with respect to the appraisal criteria and the provisions of Uniform Standards of Professional Appraisal Practice (USPAP)?

The appraisal criteria in [§24.103](#) are considered to be consistent with USPAP. Both are designed and intended to produce accurate valuation information. [§24.103](#) and the rest of the regulation implement the Federal statutory requirements in the Uniform Act that specifically apply to the

acquisition of real property for Federal and federally assisted projects. Those statutory requirements, and their implementing regulations, are not exactly the same as the USPAP provisions, but are generally similar and compatible. This subject was carefully considered during the development of the regulation, and is discussed in some detail in appendix A, [§24.103\(a\)](#).

33. [§24.103\(a\)](#). How does the scope of work requirement relate to abbreviated appraisal formats?

The scope of work requirement applies to all appraisal formats. The extent of the scope of work statement depends on the circumstances of each acquisition. Additional scope of work guidance is provided in appendix A [§24.103\(a\)](#). The scope of work statement should consider the five specific requirements in [§24.103\(a\)\(2\)\(i\)](#) through (v), and address them as appropriate. A scope of work is not required for a waiver valuation because a waiver valuation is not an appraisal.

34. [§24.103\(d\)](#). Who are qualified appraisers?

Qualified appraisers are those determined by the agency to be capable to perform the appraisal work needed. The regulation requires agencies to establish criteria for determining qualifications and competency. Only those appraisers and review appraisers who meet those requirements should be hired. The regulation lists several standards the agency shall review when determining an appraiser or review appraiser's qualifications.

35. [§24.103](#). Are contract (fee) review appraisers required to have a state certification or license in the same manner as is required of contract (fee) appraisers?

No. However, the FHWA encourages partner agencies to include State certification or licensing as a factor to judge the qualification of the review appraiser. If contract (fee) review appraisers are used, the regulation only requires the agency to match the review appraiser's qualifications with the scope of work of the appraisals he/she reviews. Selection of the appraiser is an agency decision.

36. [§24.103\(a\)\(2\)\(i\)](#) and appendix [§24.103\(a\)\(1\)](#). Does the requirement to include items identified as personal property and real property, as part of an adequate description of the property being appraised, require the appraiser and relocation agent to prepare lists of both real and personal property for residential and commercial property?

The intent of this provision is to avoid situations where an item is included in the appraised value and subsequently also relocated at agency expense. To avoid this, the appraiser and the relocation agent should agree on which questionable items are to be appraised and which are to be relocated. The personal property items included in the appraisal should be listed in the appraisal report. This should be done in all situations, whether the property is residential, commercial, or other use, where there is a question how a particular item is to be handled.

Items of real property being appraised should identify ownership, i.e., tenant-owned or lessor-owned, if applicable. The relocation advisory services interview with business owners should address and resolve these issues.

37. [§24.104](#). Is the review appraiser acting as an appraiser under USPAP? How do USPAP standards apply?

For appraisal review activities related to acquisition performed under the Uniform Act, all of the review appraiser's actions are specified by, and are considered to be part of the appraisal review process required by 49 CFR Part 24. Note that, even though [§24.104](#) does require the review

appraiser to comply with [§24.103](#) appraisal requirements when developing an independent approved or recommended value, it also specifically cites this work as being part of the review itself. USPAP is not an appropriate measure of the review appraiser's activities.

Compliance with USPAP standards is not required by this regulation. Appraisal and appraisal review reports are to be prepared in accordance with the Uniform Act regulation, which the FHWA believes is consistent with, but not necessarily identical to, USPAP. The FHWA believes that appraisal reviews performed in compliance [§24.104](#) requirements do comply with USPAP Standard 3.

38. [§24.104\(a\)](#). Can a fee review appraiser approve the appraisal or just recommend it?

A fee review appraiser, or any review appraiser, may recommend an appraisal, as the basis for establishing the amount believed to be just compensation by the agency. However, based upon the language in the Uniform Act, Section 301(3), the approval of the appraisal must be by the agency, that is to say, an in-house approval.

Any review appraiser may also accept the appraisal as meeting all requirements but not select it as recommended. This may be appropriate when there are multiple appraisals, or determine the appraisal to be not acceptable. Only an agency staff employee, including a staff review appraiser, may be authorized by the agency to approve the appraisal as the basis for establishment of the amount believed to be just compensation. Such employee may, if authorized, develop and report the amount believed to be just compensation.

39. [§24.104\(a\)](#). What constitutes a review appraiser's written report? What if there are multiple appraisals? Is a stamp and signature procedure sufficient, and if so, would it raise USPAP issues?

The review appraiser's written report must identify the appraisal reports reviewed, identify any damages or benefits to any remaining property, document the findings and conclusions arrived at during the review of the appraisals, and provide a signed certification that states the parameters of the review and the approved value. If authorized to do so, the review appraiser's certification shall establish the amount believed to be just compensation.

The review appraiser shall identify each appraisal as recommended, accepted, or not accepted. Each appraisal reviewed should be identified in the review appraiser's report. A stamp (recommended, accepted, or not accepted) and a review appraiser's signature would not be sufficient to satisfy [§24.104\(c\)](#) requirements. However, as described in the appendix, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation and/or approval, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

40. [§24.103\(a\)\(2\)\(iii\)](#). Is the requirement to verify property sales information by a party involved in the transaction limited to the grantor or grantee?

Sales verification is an essential part of the research underlying the data used to support an appraisal and the degree of inquiry should be commensurate with the scope of work of the appraisal assignment. Verification can be with any party involved in the transaction that has sufficient knowledge of the specific components of the sale to provide insight into the considerations and motivations that lead to the agreed upon sale price at the date of sale.

41. [§24.102\(f\)](#) Can an agency use the Global Settlement method when negotiating the acquisition of property for federal and federal-aid projects? This method as currently defined is the combining of just compensation for acquired real property including incidental acquisition expenses and all relocation benefits in the offer of settlement by the

acquiring agency. In most acquiring agencies this settlement offer is made prior to the expenditure of relocation expenses by the property owner or tenant?

The Uniform Act and implementing regulations in 49 CFR Part 24 require that certain incidental expenses and relocation benefits including relocation housing payments be based on actual costs. These costs are not generally available at the time negotiations for the real property are completed by acquiring agencies. In addition, most residential moving costs and many business moving expenses must also be based on actual expenditures. FHWA is requesting proponents of the Global Settlement method to provide an explanation of their proposed use and the perceived advantage/s of using this settlement concept. When we receive supporting information on their proposed methodology we will determine if their proposals can meet current Uniform Act and regulatory provisions.

Until such a determination is completed, the use of Global Settlements on federal and federal-aid projects is not permitted.

 [TOP](#)

SUBPART C - GENERAL RELOCATION REQUIREMENTS

42. §24.203. How early can the agency give a 90-day notice. Does it have to be written?

The notice must be in writing and can be given at the initiation of negotiations or later, providing at least 90 days advance notice of the specific date possession will be required. When given at the initiation of negotiations it will include an assurance that another notice will be given at least 30 days before the property needs to be vacated. This latter date shall not be any earlier than the date provided in the initial 90-day notice.

43. §24.203. Is there a requirement to give illegal aliens a 90-day notice?

The regulation prohibits Federal participation in relocation payments or relocation advisory services to illegal aliens but does not prohibit notices. Often illegal aliens and legal residents reside together. Giving every resident, legal and illegal, the 90-day notice will assure compliance with the Uniform Act.

44. §24.203 and §24.5. Is an agency required to prepare a relocation brochure?

A relocation brochure is not required; however, each displaced person must be provided a general written description of the agency's relocation program. Brochures are very effective for providing accurate general relocation information in a uniform manner. It is strongly recommended that each agency have brochures available to furnish displaced persons at the initial contact and to the public, as appropriate.

The FHWA relocation brochure <http://www.fhwa.dot.gov/realestate/rights/index.html> is available for this purpose. Translation of relocation notices and brochures to another language may be appropriate to assist displacees in understanding their rights and benefits. Several Spanish brochures and notices can be found on HUD's website at <http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>. Where translation of documents is not practical, the use of a translator is strongly encouraged.

45. §24.203(d) and §24.2(a)(9)(i)(A). Can an agency issue a notice of intent to acquire a parcel in order to establish a date of eligibility for relocation benefits prior to the initiation of negotiations?

Yes. Eligibility for benefits can be established prior to the initiation of negotiations by issuing a notice of intent to acquire to a person who will be displaced by a program or project.

46. §24.203(b). Can an owner of a property to be acquired prevent the agency from contacting the tenants of the property?

An owner may not prevent authorized agency employees from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. The agency should advise the owner that it is better to explain to the tenants the requirements and obligations for the eligibility for benefits and to advise them there is no rush to relocate. In situations where the owner is concerned the tenants will move and there will be loss of rental income, the agency may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

47. §24.203(c). Must the agency restart the 90-day clock if the original comparable replacement dwelling has been sold?

No. The 90-day time period continues to run without interruption. However, if the original comparable dwelling is no longer available, the agency must assure itself that equally comparable dwellings are still available in the same price range. If the agency finds it necessary to initiate eviction actions, its records must contain sufficient documentation to confirm that a comparable replacement dwelling is available for occupancy.

48. §24.204. Can the agency reduce the relocation payment offer if, after 90 days have passed, the displaced person has not acquired replacement housing and the agency locates another comparable dwelling that is available for less than the comparable used for the offer?

Yes. If the displaced person has made little or no effort to acquire a replacement dwelling, it would be permissible, after a reasonable period of time, to reduce the offer if a less-expensive, comparable dwelling becomes available. If an agency elects to lower a payment offer, it should document the files with the rationale and make every effort to avoid acting in a coercive manner.

49. §24.205. How does a Federal funding agency insure that an agency is engaged in relocation planning and providing the advisory services described in this section? How does an agency demonstrate compliance?

The regulations do not prescribe any particular form of monitoring or recordkeeping. §24.4(b) requires that Federal agencies shall monitor compliance with the regulation, and, if necessary, apply sanctions in accordance with applicable program regulations. Compliance with all aspects of the Uniform Act should be part of a Federal agency's overall program management and oversight functions. §24.9 requires that agencies maintain adequate records in sufficient detail to demonstrate compliance.

50. §24.205. Does lack of cooperation on the part of the displacee relieve the agency of its obligation to provide required relocation advisory assistance?

The agency must provide notices and advisory services to all displacees. All contacts and efforts to contact a displacee must be documented in the agency files. The agency is not relieved of its responsibility regardless of displacee cooperation. In some cases, the relocation agent should seek advice early in process from legal counsel.

51. §24.205(c)(2)(i). When should an agency conduct the interview with owners of businesses and provide the other advisory services? How can agency compliance be documented?

General information can be included in a relocation plan, survey or study, §24.205(a), or in an environmental document. Interviews with business owners and early advisory services are an important part of relocation planning, and are intended to facilitate the successful reestablishment of the business. Interviews should be conducted with enough lead-time to maximize the likelihood that information obtained from the interviews can assist in the successful relocation of the business. An agency can conduct more than one interview with a business. The timing of the business interview(s) and planning may depend on the nature of the business and kind of issues involved in its relocation. While no particular documentation is prescribed, an agency must maintain adequate records in sufficient detail to demonstrate compliance.

52. §24.205(c)(2)(ii)(E). Since agencies are required to provide transportation for displaced persons, what is an agency to do in a rural area where there is no public transportation, and agents are prohibited by agency policy from using a company car for anyone who is not an agency employee? [Private insurance doesn't cover the passenger if there were an accident in their privately owned vehicle.]

The agency needs to assess the needs of the displaced person and develop viable alternatives to meet the needs identified. The agency may need to rent a car for the displaced person, hire someone to take them around (possibly a local realtor), etc. In a rural setting, it may be even more critical to assist a displaced person who has no means of transportation. If the person has their own transportation, the agency may pay for their mileage costs.

53. §24.206. What changes were made in the eviction for cause provision?

A person who is a lawful occupant on the date of initiation of negotiation is presumed to be entitled to relocation benefits, and can only be denied benefits if the person has been evicted under applicable local law prior to the initiation of negotiations, or is evicted "for serious or repeated violation of material terms" of a lease or occupancy agreement, and in either case the eviction is not undertaken to evade Uniform Act obligations. The appendix A clarifies that a failure or refusal to move for a project cannot be considered to be a "serious or repeated violation of material terms" of a lease or agreement for purposes of this section.

54. §24.208. Is there any background or clarification on how I can best stay within the law when my project displaces someone who may not be in the United States legally?

The background and tips for success in this are found in the comprehensive discussion at <http://www.fhwa.dot.gov/realestate/illegaqqa.htm>.

55. §24.208. How should payments be computed if some members of a displaced family are present lawfully but others are present unlawfully?

There are two different computation methods, one for moving expenses and one for replacement housing payments (RHP). For moving expenses, the payment is to be based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

For the RHP, the unlawful occupants are not counted as a part of the family and its size is reduced accordingly. Thus a family of five, one of whom is a person not lawfully present in the

U.S., would be counted as a family of four. The comparable for the family would reflect the makeup of the remaining four persons and the RHP would be computed accordingly.

A "pro rata" approach to an RHP calculation disregarding alien status for comparability determination and applying a percentage to the RHP amount based upon the number of legal household members divided by the total number of household members is not permitted (consistent with Public Law 105-117).

- The "pro rata" approach may result in a higher RHP eligibility than the displaced persons would otherwise be eligible to receive.
- The "pro rata" approach of providing a percentage of the calculated eligibility is contrary to the requirements of the Uniform Act and 49 CFR Part 24.

Example:

Household of seven (including one illegal alien individually occupying one bedroom.)
Displacement dwelling - 4 BR unit, with rent/utilities of \$1200/month
Housing requirements for all lawful occupants (six) is a 3 BR unit
Comparable dwelling
3 BR unit with rent/utilities of \$1300/month
Calculation of RHP under regulations (illegal alien excluded)
 $\$1300 \text{ (comparable)} - \$1200 \text{ (displacement unit)} = \$100 \text{ RHP} \times 42 \text{ months} = \$4,200 \text{ RHP}$

56. §24.208. If a person who is a member of a family being displaced is not eligible for and does not receive Uniform Act benefits because he or she is in not lawfully in the United States, is that person's income excluded from the computation of family income?

No. The person's income is still counted unless the agency is certain that the ineligible person will not continue to reside with the family. To exclude the ineligible person's income would result in a windfall by providing a higher relocation payment. This is an example of a payment that the illegal alien provision is trying to avoid.

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SUBPART D - PAYMENT FOR MOVING AND RELATED EXPENSES

There have been changes to this subpart. A [side-by-side comparison](#) of these changes is available.

57. §24.301. When a business is relocating, for which expenses related to the purchase or lease of a replacement site, can the owner be reimbursed?

A business owner is entitled to compensation for actual reasonable expenses incurred in searching for a replacement site, up to \$2,500, including, but not limited to, the expenses described in §24.301(g)(17). These expenses could include costs for the time spent negotiating the purchase or the lease of a replacement site.

In addition, an owner can also be compensated for professional services performed prior to the purchase or lease, to determine the suitability of the replacement site for the business, if the agency determines that they are actual, reasonable and necessary. These services include such things as soil tests or marketing studies, but do not include fees or commissions directly related to the purchase or lease, as covered in §24.303(b).

In other words, reimbursement can be provided for time spent negotiating the purchase or lease as part of the \$2,500 searching expenses, and for professional fees to determine the suitability of the site, but cannot be provided for fees or commissions directly related to the purchase or lease.

58. §24.301(d). If a project is not impacting the entire business but only a portion of the business's personal property, is the business eligible for a move payment based on direct loss of tangible personal property or substitute personal property? These options are not listed under §24.301(e), personal property moves.

Yes. While the regulation does not list the tangible personal property or substitute personal property options, they are always available at the agency's option when it makes sense to use them.

59. §24.301(e). What is covered by the "personal property only" moving provision in this section?

This section covers personal property that must be moved for a Federal or federally assisted project, and is owned by a person who is not displaced from a dwelling, business, farm or nonprofit organization. This includes personal property in a mini-storage facility that is being acquired, or personal property located on vacant land that is being acquired.

60. §24.301(g)(3) and §24.304(a)(1). Are costs incurred in complying with OSHA and other code requirements at the replacement location considered eligible costs in situations where the business was not subject to the requirement at the displacement property because of a grandfathered provision?

Modifications to personal property mandated by Federal, State or local law, code, or ordinance that are necessary to reassemble or reinstall the personal property or adapt it to the replacement structure, the replacement site, or the utilities at the replacement site are eligible for reimbursement under §24.301(g)(3). The modifications authorized by this subsection must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment or facility. Finally, expenditures for authorized modifications must be reasonable and necessary.

Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid under §24.304(a)(1) and are limited to the \$10,000 maximum payment under this subsection. Any costs in excess of \$10,000 are ineligible.

61. §24.301(g)(3). Can the costs of pits, pads, and foundations necessary for the installation of machinery or equipment in the replacement business site be reimbursed as a moving cost?

The costs of pits, pads, and foundations can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery or the installation of substitute items that are necessary for the business operation. Normally, pits, pads, and foundations only add value to a property for a particular business operation and would not generally enhance real property. In the case where the pits, pads and foundations are ascribed a contributory value, then that value may be deducted from the cost of the newly constructed pit, pads and foundations.

62. §24.301(g)(3). Are the costs incurred for site preparation for installing underground tanks eligible moving expenses?

Underground tanks are generally considered realty and purchased as part of the real estate. If under state law, the underground tanks are personal property and will be moved and used at the replacement site, then they can be considered an eligible moving expense.

63. §24.301(g)(11). Are there any limitations on the costs *that* can be reimbursed for licenses, permits, or certifications required of the displaced person at the replacement location?

The costs must be actual, reasonable, and necessary. The licenses, permits, or certification requirements necessary to operate the particular business being relocated are eligible for payment as moving expenses. Occupancy permits, licenses and such fees paid for the replacement real property, which were formerly eligible as reestablishment expenses, can now be reimbursed as moving expenses. Reimbursement of actual, reasonable, and necessary costs may be limited to those amounts that are for the remaining useful life of the licenses, etc., at the site acquired.

64. §24.301(g)(14). What changes were made to the provision that covers actual direct loss of tangible personal property?

The wording was revised to clarify that current estimated cost to move and reconnecting an item "as is" at the replacement site will not include upgrades for code requirements. If the equipment is in storage or not being used at the acquired site the estimated cost to move it cannot include storage or cost to reconnect. The intent of the revision of the actual direct loss of tangible personal property provision is to insure the payment is based on the lesser of the fair market value "in place, as is" or the estimated cost to "move and reconnect, as is." The fair market value in place, as is, is based on the current fair market value of the item at the displacement site. The payment shall consist of the lesser of A. or B., as shown in this example:

A. Calculate the amount for the continued use of an item, in place, as is, at the displacement site, and subtract the (net) proceeds from the sale:

Current fair market value of the equipment in place, as is, installed and fully operational	\$10,000
Subtract the proceeds from the sale	- 7,000
	\$ 3,000

B. The wording in §24.301(g)(14)(ii) was revised to clarify that current estimated cost to move and reconnecting an item "as is" at the replacement site will not include upgrades for code requirements. If the equipment is in storage or not being used at the acquired site the estimated cost to move cannot include storage. Calculate the estimated cost to move and reconnect the item, as is, with no upgrades:

Current estimated cost to move and reconnect, as is with no upgrades for code requirements
\$2,500
Payment is the lesser of A. or B., in this case \$2,500.

65. §24.301(g)(14). What is the difference between actual direct loss and substitute personal property?

Actual direct loss is intended to be used by businesses, farms and non-profits that are either going out of business or elect not to move a particular piece of equipment. The payment for substitute personal property is intended to pay for an item that will not be moved, but will be promptly replaced at the replacement site. The payment is the lesser of A. or B., as shown in this example:

A. Cost of a substitute item	\$10,000
Add the cost of installation	+ 1,000
	\$11,000
Subtract the proceeds of sale or trade-in	- 2,500
	\$ 8,500

B. Cost to move and reinstall the replaced item with no allowance for storage \$12,500.
Payment is the lesser of A. or B. above, in this case \$8,500.

66. §24.301(g)(17). How early can search costs be incurred by a displaced business and still be reimbursable? Could they be incurred prior to authorization or award of a grant for the project or program? Can search expenses ever exceed \$2,500?

While searching costs may be incurred by the displaced business at any time after there is a reasonable expectation that the business will be displaced, the agency cannot reimburse the displaced business for any searching costs incurred until the displaced business qualifies as a displaced business as defined in §24.2(a)(9).

In unusual circumstances search expenses over \$2,500 may be reimbursed when the agency verifies that the expenses are justified and obtains a waiver from the funding agency, per §24.7.

67. §24.301(g)(17)(vi). Is a business or farm displacee entitled to payment for time spent negotiating the lease of a replacement site under actual, reasonable moving and related costs? Or does that provision apply only to displacees who purchase a replacement property?

The benefit applies to leases as well as purchases. The list in §24.301(g)(17) provides examples of qualifying costs; it is not an all-inclusive list.

68. §24.301(g)(18). What is low value/high bulk and when should I use it?

Low value/high bulk is an eligible moving expense for certain types of personal property encountered with nonresidential properties. Low value/high bulk materials are items of personal property owned by a displaced business, farm or non-profit organization that the agency determines would cost more to move than replace. Some examples of low value/high bulk materials include but are not limited to stockpiled sand, gravel, metals, etc.
Low value/high bulk may also be applied to personal property only moves in §24.301(e).

The application of the low value/high bulk provision is at the agency's discretion. The agency should only use this provision if it is willing to accept ownership and the ultimate cleanup costs of the material. If the agency opts to offer this provision to the displaced business, the agency

makes the decision on whether the material is to be moved to the new location. If the agency determines that the cost to move is disproportionate to the property's value, the moving cost payment shall not exceed the lesser of the value of the property or the cost to move it. It may be in the agency's best interest to have the owner remove it, since the material will have to be removed as a project expense otherwise. Generally, if the agency requires the material to be moved by the owner, then this provision should not be used.

69. [§24.301\(i\)](#). Can the agency withhold payment for a move solely because the displaced person does not provide advance written notice to the agency of the date of the proposed move?

Yes. However, the records of the agency should provide documentation of the advice provided to the displaced person concerning the responsibility to provide notice and the necessity for the notice. Advance notice allows the agency to monitor the move and make reasonable and timely inspection of the personal property at both the displacement and replacement sites. If the displaced business provides verifiable records, bills, and receipts documenting actual expenses incurred and identifies the personal property moved, withholding payment is inappropriate. A displaced person has the right to appeal a decision to withhold payment under §24.10

70. [§24.301\(d\)\(2\)](#). Should a moving cost estimate prepared by an agency employee be based on the costs charged by a professional moving firm or on the actual costs a displaced person may incur? Is it permissible to negotiate with the owner of a business the amount to be paid to him/her for a self-move?

The moving cost estimate for a non-residential self-move prepared by a qualified agency employee should be based on the cost that would be charged by a professional moving firm. If the estimate includes profit, overhead, or other additional costs that the business will not actually incur, it is permissible for the agency to negotiate a payment for an amount that would reflect the actual costs the business would incur in the move. This procedure does not preclude the owner from electing to make an actual cost, documented self-move.

71. [§24.301\(g\)\(4\)](#). Is storage of personal property an entitlement of every displaced person? Who determines if an agency should pay for the storage of personal property, the terms of such storage, and the length of time for storage payment?

The agency determines if the storage of personal property is a reasonable and necessary moving expense for a displaced person. The determination should be based on the needs of the displaced person, the nature of the business, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage will facilitate relocation. It is the agency's responsibility to set the terms for storage.

72. [§24.302](#). When a new fixed residential moving cost schedule is published how does the effective date affect moves being processed?

Unless the agency selects an earlier date to begin operating under the new schedule than the effective date published in the Federal Register, the date of the move is the operative date. The newly published moving cost schedule applies even if the initiation of negotiation occurred prior to the effective date of the new schedule. The key is the date of the actual move.

73. [§24.302](#). Is the fixed moving payment the only coverage for a seasonal residence?

No. The occupant of a seasonal residence could receive actual moving expenses in accordance with [§24.301](#). Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than for moving expenses.

74. [§24.303](#). Can a displaced business obtain reimbursement for professional services to determine the suitability of more than one site?

Yes. If, as a result of the professional services performed, one or more sites are found to be unsuitable for the business. An agency may also agree to provide reimbursement for multiple site assessments. In all cases the agency must determine that the cost of such additional professional services are actual reasonable and necessary. If professional services indicate that a particular replacement site would be suitable, but an owner simply changes his/her mind and decides not to move to that site, additional professional services to assess other sites should normally not be considered reasonable and necessary.

75. [§24.303\(c\)](#). What are some examples of impact fees or one-time assessments?

Actual and reasonable impact fees for anticipated heavy utility usage are eligible for payment as a related moving expense. In the past these fees were eligible as a reestablishment expense and limited to \$10,000. Examples include (a) water and sewer tap fees for a laundromat business which requires a larger service tap than a typical business, (b) a fee to provide 3-phase electrical service required by the displaced business when replacement sites available were served by single phase transformers, or (c) other one-time charges or fees a utility requires to finance infrastructure necessary to provide increased usage.

The intent is to reimburse a business for impact fees for anticipated heavy utility usage when the move requires the business to move to a new location where impact fees for anticipated heavy utility usage are being charged. If suitable replacement sites or properties are available where impact fees for anticipated heavy utility usage are not being charged, reimbursement is at the agency's discretion, based on what is reasonable and necessary. Potential eligibility of impact fees for anticipated heavy utility usages an important advisory service. The regulation limits impact fees or one-time assessments for anticipated heavy utility usage to utilities, i.e., water, sewer, gas, and electric. Impact fees for other major infrastructure such as roads, fire stations, regional drainage improvements and parks, for example, are not eligible.

76. [§24.304](#). Is new construction at the replacement site eligible for reimbursement as a reestablishment expense?

The cost of constructing a new business building on the vacant replacement property is a capital expenditure and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, an agency may request a waiver of §304(b)(1) under the provisions of [§24.7](#). An example of such an instance would be in a rural area where there are no suitable buildings available and the construction of a replacement structure will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of constructing the new building will be considered an eligible reestablishment expense subject to the \$10,000 statutory limit on such payment.

77. [§24.304](#). What reestablishment expense costs are eligible for reimbursement if a displaced business occupies a shell structure?

Basically all of the costs listed under [§24.304\(a\)](#) are eligible if considered actual, reasonable and necessary for the operation of the business. In markets where existing and new buildings are available for rental (and sometimes for purchase), the buildings or the various units available within the buildings often have only the basic amenities such as heat, light, and water, and sewer available. These buildings or units are shells. The cost of the building (shell) is not an eligible expense because the shell is considered a capital real estate improvement (a capital asset). However, this determination does not preclude the consideration by an agency of certain modifications to an existing replacement business building. Eligible improvements or

modifications up to the amount of \$10,000 may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases and similar items, if required by Federal, State or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business.

78. §24.304. If the nature, character, or type of business established after displacement is different from the business displaced by acquisition, would it be eligible for a reestablishment payment?

Yes. A change in a displaced business does not affect eligibility for actual, reasonable, and necessary reestablishment expenses incurred in reestablishing a business. In some instances, it is not economically feasible to relocate a particular business operation and a change in the nature, character, or type of business may be the most practical solution for the business operator. Expenditures of funds for reestablishing the business must be reviewed for acceptability. Costs of new or used equipment purchased to serve the changed business operation are not eligible for reimbursement as reestablishment expenses. Similarly, general repairs or improvements to the replacement property made to the structure because of the personal choice of the business operator are ineligible. The costs of utility upgrades and necessary and reasonable modifications to the real property to accommodate the changed business may be eligible when properly supported. All reestablishment payments are limited by the \$10,000 statutory maximum.

79. §24.304. Is a business operation that consists solely of leasing real estate to others at the displacement site eligible for the reestablishment payment?

Yes. The business of leasing real estate to others is considered to be a small business for the purposes of the regulations for the Uniform Act. The owner of the business is eligible for reimbursement of the actual, reasonable, and necessary expenses for the reestablishment of a rental property. The agency should provide the same advisory services to real estate leasing operations as performed for other businesses including providing information on suitable replacement properties. It is the agency's responsibility to determine if the expenses to be reimbursed under reestablishment are reasonable and necessary.

80. §24.305(e). If the net income of a displaced business is very low in one or both years prior to displacement, can the payment be based upon a different period?

Yes. Average annual net earnings may be based upon a different time period when the agency determines it to be more equitable.

81. §24.305(e). If a business experienced a loss in one of the two years, should the amount of the loss be offset against the net income from the other year, or should the income be considered as zero for the year in which the loss was incurred?

If a loss of net income occurs in one year and a gain in the other year, the income of the year in which the loss was incurred should be computed as zero when determining the average net income for the 2-year period.

82. §24.305(e). If a business has been in operation for only a short period of time (e.g., six months) prior to displacement, what method is used for determining the amount of the fixed payment?

The fixed payment would be based on the net earnings of the business at the displacement site for the actual period of operation projected to an annual rate. The existing net earnings income data should be extrapolated and used to project what the net earnings could be if the business

was in business for a full two years. If the business is seasonal, this fact should be taken into account in the computations. Paragraph (a)(6) of this section requires that the business contribute materially to the income of the displaced person during the 2 taxable years prior to displacement. This does not mean that the business needed to be in existence for a minimum of 2 years prior to displacement, only that the business contributes materially to the income of the displaced person during that 2-year period.

83. [§24.305](#). Is it permissible to combine different types of moves on the same parcel?

It is permissible except for [§24.305](#), fixed payment of moving expense - nonresidential. If a fixed payment for moving expense - nonresidential payment is selected, then all other types of moves are ineligible. Otherwise, there is no restriction on combining the various types of moves. For example, when moving from a dwelling, the displacee may elect to use a commercial mover to move the heavy items (such as pianos, appliances and dressers) and request a self-move based on receipted bills or use the fixed residential moving costs schedule found at [§24.302](#), to move the remaining items. If the displacee elects to use a combination of the fixed residential moving costs schedule and a commercial mover for personal property within the dwelling, an agency adjustment to the actual room count used for the fixed schedule may be required to offset the items moved by the commercial mover. When these two moving cost methods are combined, the fixed residential moving cost schedule typically includes the cost for utility service transfer fees.

The same is true for a nonresidential move (business, farm or nonprofit organization). For example, a business owner may want to use company employees to move items of personal property in the office area and a commercial mover to move the heavy equipment requiring special disconnection and reconnection expertise. For the office area, the company could submit for payment the lower of two bids or estimates from a commercial mover or actual cost based on receipted bills.



SUBPART E - REPLACEMENT HOUSING PAYMENTS - GENERAL

There have been changes to this subpart. A [side-by-side comparison](#) of these changes is available.

84. [§24.2\(a\)\(6\)](#). Can a replacement housing payment computation be based upon a comparable property that may have a minor decent, safe, and sanitary (DSS) deficiency?

If the availability of comparable replacement properties is limited, the agency may base a replacement housing payment on an available property having minor DSS deficiencies, provided the deficiencies can be easily corrected for a nominal amount.

Use of non-DSS properties with minor deficiencies should be limited to unusual situations. The payment computation must reflect the cost to correct the deficiencies supported by contractor bids or estimates. If such housing is used to meet the "make available" requirement, the housing must be available and DSS at the time of the move.

In cases where a displacee moves to a non-DSS replacement dwelling when comparable DSS housing is available, the displacee must bring the replacement up to DSS standards within 12 months in order to receive a replacement housing payment.

85. 49 CFR [24.2\(a\)\(8\)\(iv\)](#). If it is "culturally" a part of the lifestyle for six children to share a bedroom, would it be acceptable to base the computation of the replacement housing payment on a dwelling that would require the six children to share a bedroom?

No. The comparable must reflect appropriate local housing codes or, in the absence of local codes, the policy of the displacing agency.

86. [§24.2\(a\)\(6\)\(viii\)\(C\)](#). How does the change in part of the definition of comparable replacement dwelling change the treatment of "less than 90-day occupants" or "subsequent occupants"?

Displaced persons failing to meet the length of occupancy requirements continue to be eligible for relocation benefits under last resort housing. What has changed is how the benefit is calculated. Benefits for low-income tenants will still be calculated using the 30% of income rule contained in [§24.402\(b\)\(2\)](#). For others who are not low income, the calculation will be rent-to-rent. The reason for the change is to ensure consistent treatment of displacees. Across an agency's programs, the net effect of the change in the 30% rule is expected to be a reduction in financial liability. However, with respect to some individual displacees who do not meet the length of occupancy requirements, the calculation of benefits may result in a higher payment than in the past. Agencies may wish to consider using loss-of-rent agreements to limit and manage financial liability when they believe that there is substantial risk that a subsequent occupant situation will occur.

Under the last resort housing provision [§24.404\(c\)](#) and the downpayment assistance provision [§24.402\(c\)\(1\)](#), the less than 90-day occupant or subsequent occupant rental assistance can be converted to a downpayment to purchase at the discretion of the agency on a case-by-case basis. 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. The agency shall apply this discretion in a uniform and consistent manner. If you require further clarification on the less than 90-day occupants or subsequent occupants, please contact your funding agency.

87. [§24.2\(a\)\(8\)\(vii\)](#). How should the replacement housing payment be computed and paid when accommodations need to be provided for a displaced person with disabilities?

The regulation permits sufficient flexibility for each agency to develop procedures for accommodating the needs of a displaced person with disabilities. The replacement housing payment computation may: (1) be based on a dwelling designed for physically disabled persons, (2) include the estimated costs of any needed modifications, or (3) contain provisions for the adjustment to reflect the actual cost of modifications to the replacement housing payment computation.

Arrangements for modifications to the replacement dwelling purchased by the displaced person may be made by either the individual or by the agency, and the agency shall provide reimbursement for the actual reasonable costs paid for such modifications. The agency could also elect to obtain bids or to contract directly for needed modifications.

Rental replacement housing should be provided in the same manner, with the consent of the landlord, or the rental assistance payment could be increased to appropriately compensate the landlord for any necessary modifications or accommodations necessary for the replacement property to be considered DSS. If a financial hardship would be created for the displaced person, the agency could provide an advance replacement housing payment for the needed modifications.

88. §24.401(c). If the replacement property purchased by the displaced person is a part of a property that contains another dwelling unit and/or space used for non-residential purposes or is located on a tract which is significantly larger than typical for residential purposes, must there be an adjustment to the purchase price of the replacement property to reflect the cost of the replacement dwelling for the replacement housing payment computation?

When the residential replacement property contains another dwelling unit and/or space used for non-residential (commercial/industrial) purposes, an adjustment to the price of the property shall be made to reflect the cost of the replacement dwelling and a typical dwelling site.

When the replacement residential property does not contain another dwelling unit or space used for non-residential purposes, but is significantly larger than a typical residential site, an adjustment to the price of the property may be appropriate.

In determining the need for an adjustment, the agency shall apply its policy uniformly to persons in like circumstances. The agency should be aware that the land in excess of a typical site might have a different unit value than land valued for residential use on a typical site.

89. §24.2(a)(20). Is a displaced person who holds a life estate in the displacement property an owner or a tenant?

A displaced person who holds a life estate is considered to be an owner. A person who holds a life estate has the right to occupy the property for life. A life estate may have been created and retained by a person who conveyed the remainder interest to another person; or the life estate may have been granted by another person. It makes no difference how the life estate was created. However, the replacement housing payment may depend upon the distribution of the acquisition payment in accordance with state law. Each agency should develop procedures in accordance with applicable law. The replacement housing payment computation should be sufficient to enable the displaced person to relocate as an owner with an interest at least equivalent to the interest held prior to the acquisition of the property by the agency. The payment computation will be based on the total amount of the acquisition payment for a dwelling comparable to the acquired dwelling. As an alternative, the agency may acquire a dwelling and provide a life estate to the displaced person. All such agreements should clearly establish the responsibilities and rights of each party.

90. §24.401(c). How much money must an owner-occupant with a partial interest in the acquired property spend in order to receive the maximum computed supplemental payment?

The owner-occupant with a partial interest must spend his/her share of the acquisition payment plus the computed supplemental payment in order to receive the maximum payment.

91. §24.401(c)(2). When an owner-occupant retains the displacement dwelling and moves it to the remainder or to a previously owned tract of land is the historical cost or the current fair market value of the replacement site used as the "acquisition cost" for the RHP computation?

The acquisition cost will be based on the current fair market value of the replacement site for residential use as determined by the agency. If an agency uses the buildable lot procedure in accordance with §24.403(a)(3), the value of the buildable remainder will have been added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

92. §24.401(d)(3). If the interest rate charged for a new mortgage exceeds the prevailing interest rate because the displaced person is a poor credit risk or for other similar reasons, may the actual rate be utilized when determining the amount of the mortgage interest differential payment?

The interest rate for a new mortgage should generally not exceed the current range of prevailing mortgage interest rates of lending institutions in the area of the replacement dwelling. If the displaced person's unique circumstances require payment of a higher interest rate and the agency determines that the additional cost could prevent the displaced person from obtaining comparable housing, the higher rate may be used as the basis for determination of the mortgage interest differential. The file should contain justification for the rate used. The agency must exercise reasonable, consistent latitude in these decisions and the computation of the payments.

93. §24.401. Are reverse mortgages eligible for increased interest payments, and is the cost to create such a loan on a replacement property eligible for payment of incidental costs?

A reverse mortgage, such as a Federal Housing Administration (FHA) home equity conversion mortgage (HECM) is a first mortgage lien. A property owner who has an HECM is entitled to be placed in similar circumstances. Therefore, payments to enable an in-kind replacement, including costs to create another HECM, are eligible expenses.

The agency may be required to supplement the equity position on the replacement home to the degree necessary for a comparable reverse mortgage to be written to provide the same monthly payment that the displacee was receiving at the displacement dwelling. Or the agency may be required to supplement the equity position to provide a similar "net available cash" position. Agency procedures should be developed to address how a reverse mortgage will be handled should one be encountered. To date very few reverse mortgages have been written

94. §24.401(d) and in appendix A. How is the mortgage interest differential payment (MIDP) computed in instances where the displaced homeowner has a combination of several types mortgages on their acquired residence?

The current method for payment of increased costs for replacement home mortgages is to provide a lump-sum payment at the origination of the new mortgage that will enable displaced home owners to borrow a reduced amount so their monthly mortgage payment on the replacement home will remain the same as that at the acquired residence.

New loans with differing characteristics are currently available from mortgage companies. The relocation agent should work with the displacee to determine what is the best mortgage replacement available at the replacement dwelling. This may mean advising the displacee to consider a fixed rate mortgage at the replacement dwelling, especially in times of rising interest rates.

The FHWA is developing guidance on MIDP for variable rate mortgages. An important component of the calculation will depend on the mortgagee's selection of the replacement mortgage.

95. §24.401(d). Is 49 CFR 24.401(d) and Appendix A, Section 24.401(d) consistent as it relates to the amount and term of the replacement mortgage required to receive the full amount of the increased mortgage interest payment?

Yes. The increased mortgage interest payment (also known as the mortgage interest differential, MIDP or MID) is based upon the unpaid mortgage balance on the displacement dwelling. The

intent of [Appendix A](#) is to recognize the increased mortgage interest cost and provide a payment that will reduce the replacement mortgage balance in accordance with 49 CFR [24.401](#)(d).

49 CFR [24.401](#)(d)(5) provides that the agency shall inform the displaced person of the approximate amount of the MIDP payment and the conditions that must be met in order to receive the full amount of the payment. Each agency must develop appropriate measures to ensure proper documentation of increased mortgage interest expense.

If the replacement mortgage is less than the calculated buydown amount, the payment is pro-rated and reduced accordingly. The formula to determine the reduced buydown payment is: The (actual mortgage divided by the calculated mortgage amount) multiplied by the calculated buydown amount. An example of this calculation may be found in 49 CFR 24 [Appendix A](#), Section [24.401](#)(d).

96. [§24.401](#)(d)(1). Is the increased mortgage interest payment pro-rated or otherwise reduced if the replacement mortgage amount is between the computed buydown amount and the displacement mortgage amount?

No. In accordance with 49 CFR [24.401](#)(d)(1) and [Appendix A](#), Section [24.401](#)(d), an increased mortgage interest payment may only be reduced by pro-ration if the new mortgage amount is less than the calculated buydown amount. However 49 CFR [24.401](#)(d)(5) provides that the agency shall inform the displaced person of the approximate amount of the MIDP payment and the conditions that must be met in order to receive the full amount of the payment. Each agency must develop appropriate measures to ensure proper documentation of increased mortgage interest expense.

97. [§24.401](#)(e). Can the agency limit the reimbursement for all incidental expenses to those that would have been incurred incident to the purchase of a comparable replacement dwelling?

No. However, the incidental expenses of owner-occupants are limited to the expenses that would have been necessary for purchase of a comparable replacement dwelling for owner's or mortgagee's evidence of title, state revenue or documentary stamps, and sales or transfer taxes. Participation in incidental expenses should be limited to those that are actual, reasonable, and necessary and required by the mortgagee or necessary for the protection of the owner. In accordance with [§24.402](#)(c)(2), tenants are eligible to receive reimbursement for incidental expenses related to the purchase of a replacement dwelling to the extent that the total payment, downpayment plus closing costs, does not exceed the amount of the computed rental assistance payment.

98. [§24.401](#)(e). Which of the incidental expenses for purchase of a replacement dwelling can be limited to what would be required to obtain a new mortgage in the same amount as the remaining balance of the mortgage on the acquired dwelling?

Incidental costs that can be limited are those additional costs incurred for a new mortgage that is greater than the remaining balance on the acquired dwelling. Examples include mortgage guarantee insurance premiums, loan origination or loan assumption fees, and purchaser's points. When there was no mortgage on the acquired dwelling, there is no requirement to reimburse mortgage costs on the replacement dwelling.

99. [§24.401](#)(e). Can a lump-sum payment for mortgage guarantee insurance be included as an incidental expense?

Yes. Required lump-sum payments for mortgage guarantee insurance may be included as part of the mortgage interest differential payment (MIDP), if they are necessary for the displacee to obtain financing. For those paid to an owner-occupant, any payment made should be based upon the computed replacement mortgage for MIDP purposes or the new mortgage, whichever amount is less. Payments to tenants may be made if the computed rental assistance payment is sufficient to cover this expense.

100. [§24.401\(f\)](#). If an owner occupant of at least 180 days elects to rent a replacement dwelling, do you consider the owner's income in the calculation of the replacement housing payment?

No. The income of an owner who elects to rent a replacement dwelling is not considered in the calculation of a rent supplement for a 180-day owner. The income test is not appropriate to use for an owner who goes from an owner to a tenant status. 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. There is no income test for owners, and it was not the intent of this subpart to impose such as test.

101. [§24.402\(c\)](#). What are the limitations on the payment of incidental expenses for a tenant who elects to purchase a replacement dwelling?

All incidental expenses actually incurred by a tenant for the purchase of a replacement dwelling and which are customarily paid by the buyer, can be included in the computation of down payment assistance to the extent the total payment does not exceed the amount of the computed rental assistance.

102. [§24.402\(c\)\(2\)](#). Are loan origination fees incurred by a tenant in the purchase of a replacement dwelling eligible for reimbursement as incidental expenses?

Yes. [§24.401\(e\)\(3\)](#) and [§24.401\(e\)\(9\)](#) provide for payment of loan origination fees and other similar costs the agency determines to be incidental to the purchase. The total payment for a tenant may not exceed the amount computed under [§24.402\(c\)](#).

103. [§24.2\(a\)\(6\)](#) and appendix A, [§24.2\(a\)\(6\)\(ix\)](#). Can a person receiving government housing assistance before displacement, be offered a replacement dwelling that reflects similar government housing assistance and conditions?

Yes. In the case of a person receiving government housing assistance a comparable replacement dwelling may include a dwelling that reflects similar government housing assistance. 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 unit with a housing 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. In such cases any requirements of the government housing assistance program, related to the size of the replacement dwelling would apply. Further, nothing prevents any fully informed displaced person not previously receiving government housing assistance from accepting such assistance. Additional details are provided in appendix A, [§24.2\(a\)\(6\)\(ix\)](#). If a person is no longer eligible for government housing assistance, a comparable replacement dwelling from the private market should be made available.

104. [§24.402\(c\)](#). Is a displaced person whose rental assistance payment is determined to be zero, eligible for a downpayment assistance payment for the purchase of a replacement home?

Yes. Any eligible displaced person whose rental assistance payment is determined to be zero may qualify for downpayment assistance of up to \$5,250 at the agency's discretion. One of the

objectives of the Uniform Act is to provide assistance to displaced tenants in order to become homeowners. The regulation provides that any rental assistance payment that is calculated to be less than \$5,250, and is to be used for downpayment assistance, may be increased to any amount not to exceed \$5,250 as a downpayment, at the agency's discretion. If the agency elects to provide the maximum payment of \$5,250 as a downpayment, the agency must apply this policy in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. The full amount of the downpayment assistance must be applied towards the purchase price of the replacement dwelling and related incidental expenses. The agency must also provide relocation advisory services in compliance with §24.205(c)(iv) to minimize hardships to such persons in adjusting to relocation.

105. §24.402(b)(2)(ii). What is excluded from household income when calculating the replacement housing payment for low-income tenants?

Household income does not include income received or earned by dependent children or full-time students under 18 years old, §24.2(a)(14). However, full-time students over 18 may be assumed to be a dependent, unless the person demonstrates otherwise. It also does not include benefits that are not considered income by Federal law, such as food stamps, or the Women Infants and Children (WIC) program. For a more detailed list of income exclusions, see Federally Mandated Exclusions from Income under Real Estate Topics of Special Interest on <http://www.fhwa.dot.gov/realestate>.

106. §24.402(c). Can an occupant using HUD Section 8 housing, whose Uniform Act rental supplement is computed to be zero (based on returning to HUD Section 8 housing) elect to purchase in the private sector and qualify for a down payment up to \$5,250?

Yes, provided the agency decided to use the option provided in this section to increase any downpayment assistance up to \$5,250 to support a tenant purchasing a replacement property. Appendix A contains the conditions the agency should consider to assure its policy regarding providing this additional benefit is applied uniformly.

107. §24.403(a)(6). In addition to advanced relocation payments, can the agency deduct rent due from the displacee if it does not create a situation that would prevent the displacee from relocating?

No. Relocation payments are separate from other obligations, and, even if the displacee had been a tenant of the agency, the use of relocation funds to satisfy those obligations is not permitted.

108. §24.403(a)(2). Can an alternative procedure which would enable the displaced person to replace a major exterior attribute be utilized for determining the replacement housing payment in cases where the comparable replacement dwelling site lacks a major exterior attribute of the displacement dwelling?

No. §24.403(a)(2) requires that the value of major attributes be subtracted from the acquisition price of the displacement dwelling for purposes of computing the replacement housing payment if the comparable replacement dwelling site lacks such major exterior attribute. The agency should always attempt to locate a comparable dwelling with the attribute before selecting a dwelling without the attribute.

109. §24.403(a)(5). What is the intent of the paragraph regarding multiple occupants of one displacement dwelling?

In general, all of the occupants of a single dwelling unit should be considered one family for purposes of payment calculations. However, two or more occupants of a dwelling may maintain separate households within that dwelling. If they do, they have separate entitlement to relocation payments. The agency is responsible for determining the number of households in a dwelling based on the use of the dwelling, the relationship of the occupants, and any other information that may be obtained. The payment computation for each household should be based on the part of the dwelling that the household occupies and the space that is shared with others. An attempt should be made to locate similar comparable DSS living facilities. The record should be sufficiently documented to support the decision reached.

110. §24.403(c). Will the purchase and occupancy of a motor home or a boat meet the requirement for purchase of a replacement dwelling?

A motor home or a boat capable of providing living accommodations may be considered a replacement dwelling if (a) the motor home or boat is purchased and occupied as the primary place of residence; (b) the motor home or boat is located on a purchased or leased site and connected to all necessary utilities for functioning as a housing unit on the date of the agency's inspection, and (c) the dwelling, as sited, meets all local, State, and Federal requirements for a DSS dwelling. It should be noted that the regulations of some local jurisdictions would not permit the consideration of these vehicles as DSS dwellings.

A motor home or a boat designed to provide living accommodations may also meet the requirement of a rental replacement dwelling if it is occupied as the primary place of residence and qualifies under (b) and (c) above.

111. Appendix A, §24.404(b). How do you relocate a partial owner-occupant who cannot afford to finance a replacement dwelling? Can a direct loan under the provision of §24.404(c) be provided?

If an agency determines that the relocation of a partial owner-occupant should be as an owner, the agency may provide a direct loan, lien or other financial assistance under §24.404(c) if other financing is not available to the person, in addition to the computed replacement housing payment. A partial owner-occupant who cannot afford to purchase comparable replacement housing may be relocated as a tenant and provided a rental assistance payment in accordance with §24.402.

112. §24.404(c)(iv). Can a direct loan as provided for in this section be used as a substitute for a replacement housing payment?

No. A direct loan would be provided in addition to any replacement housing payment computed for the displaced person. A direct loan may be provided under housing of last resort if financing is not otherwise available to the displaced person. It cannot be used as a substitute for a replacement housing payment.

113. §24.404(c). Are there other ways to assist displaced persons to purchase and occupy replacement housing other than the ones listed in §24.404(c)?

Yes. The agency has many options for assisting people to become owners of replacement dwellings. A first mortgage or a lien can be placed on a property that would become due and payable if the displaced person ceased to occupy the property or conveyed or sold the property to someone else. A life estate, based on the displaced person's life, could be offered in a property owned or purchased by an agency. The displaced person would have the right to occupy the property until death when the full ownership of the property would revert to the agency for other uses or sale. The agency could also "buy down" the interest or the mortgage of a property with a financing agency to make the payments affordable for the displaced person. Or the agency could

initiate mortgage financing for a displaced person and then sell the mortgage to a person or institution who would become the new mortgagee. Several agencies have also assisted displaced persons in establishing credit at credit unions that then financed the mortgages for them.

It is recommended that agencies use the provisions of housing of last resort to maximize housing opportunities in a cost efficient manner.



SUBPART F - MOBILE HOMES

There have been changes to this subpart. A side-by-side comparison of these changes is available.

114. §24.502. If a displaced owner-occupant of a mobile home is a partial owner of the mobile home site, what payments would he or she be entitled to receive?

The displaced person would be treated as an owner in accordance with the guidance in appendix A, §24.404(b). If the mobile home is acquired or cannot be relocated, the owner would be eligible for a replacement housing payment to purchase a mobile home. He/she would also receive a replacement housing payment based upon the difference between the asking price of a comparable mobile home site and the acquisition price of the site (as improved for a mobile home) from which he/she is displaced. If there is no mobile home site available for purchase within his/her financial means as a partial owner, then he/she could receive a rental assistance payment sufficient to rent a comparable mobile home site.

115. §24.502. Is a mobile home owner-occupant who leases or rents his/her site at the displacement location eligible for a down payment for a replacement site?

The owner of a mobile home, who rents the site from which he/she is displaced, may either rent a replacement site and receive a rental assistance payment in accordance with §24.402(b) or purchase a replacement site and receive down payment assistance in accordance with §24.402(c).

116. §24.502(d). Does the revised regulation change the treatment of mobile home owner-occupants who elect not to move their mobile homes when they are determined to be personal property?

The revised regulation reorganized and rewrote the provisions that apply to owner-occupants who elect not to move their mobile homes when determined to be personal property. The regulation establishes that an owner-occupant who elects not to relocate his/her mobile home is not entitled to a replacement housing payment for the purchase of a replacement dwelling. However, the owner-occupant, as a displaced person, is entitled to moving costs to relocate the mobile home and their personal property to a replacement site. The regulation allows such an owner to claim moving expenses under §24.301. If the mobile home is not moved by the owner, it may be sold on site, traded in on a replacement mobile home, or an agency could choose to purchase and dispose of it at its salvage value. The net benefit to the displaced person is expected to be similar to those available in the past.