



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Office of the Secretary**

**49 CFR Part 24**

**[FHWA Docket No. FHWA-2018-0039]**

**RIN 2125-AF79**

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

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA is proposing to amend its Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) regulations. The revisions are prompted by enactment of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which increases statutory relocation benefits and reduces length of occupancy requirements. This proposal is intended to update existing regulations on the use of those amendments. The FHWA is also proposing to update the Uniform Act regulations to reflect the Agency's experience with the Federal-aid highway program since the last comprehensive rulemaking for the part, which occurred in 2005. The updates include streamlining processes to better meet current Uniform Act implementation needs and eliminating duplicative and outdated regulatory language.

**DATES:** Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12-140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.
- Instructions: You must include the Agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Arnold Feldman, Office of Real Estate Services, (202) 366-2028, e-mail address: [Arnold.Feldman@dot.gov](mailto:Arnold.Feldman@dot.gov); or David Sett, Office of the Chief Counsel (HCC), (404) 562-3676, e-mail address: [David.Sett@dot.gov](mailto:David.Sett@dot.gov); Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

This document and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. The website is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <https://www.federalregister.gov>.

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### **I. EXECUTIVE SUMMARY**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.* (Uniform Act) provides important protections and assistance for people affected by federally funded projects. Congress enacted this law to ensure that people whose real property is acquired, or who move as a result of projects receiving Federal funds, are treated fairly and equitably and receive just compensation for, and assistance in moving from, the property they occupy. The governmentwide regulation implementing the Uniform Act is title 49 CFR part 24.

The Surface Transportation and Uniform Relocation Assistance Act (STURAA) (Public Law 100-17) of 1987 designated the U.S. Department of Transportation (DOT) as the Federal Lead Agency (Lead Agency) for the Uniform Act. Duties of the Lead Agency include developing, issuing, and maintaining the governmentwide regulation, providing assistance to other Federal Agencies, and reporting to Congress on Uniform

Act implementation issues. The DOT has delegated these responsibilities to the FHWA at 49 CFR 1.85(d)(7).

Acting as Lead Agency, FHWA is proposing to amend and update 49 CFR part 24, which would affect the land acquisition and displacement activities of all Federal Agencies subject to the Uniform Act. The proposed changes to this regulation are necessitated in part by Section 1521 of the MAP-21 (Public Law 112-141, July 6, 2012). Section 1521 included increases in benefit levels for displaced persons, authority to develop a regulatory mechanism to consider and implement future adjustments to those benefit levels, the requirement for an annual report on governmentwide real property acquisitions subject to the Uniform Act, and provisions for the funding of Lead Agency services. In addition to these required changes, FHWA proposes to amend the regulations to clarify existing requirements for implementing the Uniform Act, meet modern needs, and improve the Agencies' service to individuals and businesses affected by Federal or federally assisted projects. The proposed changes would also reduce the paperwork and administrative burdens of Government regulations on Agencies subject to the Uniform Act.

The costs of the proposed rule for all Uniform Act Agencies are estimated to be minor: \$1.8 million when discounted at 7 percent and \$2.0 million when discounted at 3 percent. The 10-year annualized costs are estimated to be: \$255,000 per year when discounted at 7 percent and \$230,000 per year when discounted at 3 percent. Therefore, the costs associated with this rule are de minimis. Moreover, these minor costs should be fully offset, if not outweighed, by cost savings resulting from new flexibilities and streamlining contained in this proposal. These cost savings are not quantifiable.

The larger impact of this rule is in the form of transfers from the government to property owners whose real estate is acquired for Federal projects. The estimated amount of transfers resulting from this rule are \$115 million when discounted at 7 percent and \$146 million when discounted at 3 percent. This rule can therefore be thought of as predominantly a transfer rule, as the estimated costs are significantly smaller than the estimated transfers. The FHWA was the only agency that provided data upon which to base estimates of the transfers. Therefore, the magnitude of the change in transfers for all Federal Agencies may be larger than is reported here. The Regulatory Impact Analysis for this rulemaking contains further breakdown of costs associated with FHWA's program. Other Federal Agencies may have additional regulatory or administrative updates specific to their programs as a result of this rulemaking.

The benefits of the proposed rule primarily relate to improved equity and fairness to entities that are displaced from their properties or that move as a result of projects receiving Federal funds. For example, the proposed rule raises the statutory maximums for payments to displaced entities to assist with the reestablishment of the business, farm, or nonprofit organization. There is strong evidence that entities experience reestablishment costs well above the current maximum amount. Raising the maximum payment levels will compensate those entities more fairly and equitably for the negative impacts they experience as a result of a Federal or federally assisted project. However, the fairness and equity benefits of the proposed rule cannot be definitively quantified or monetized. The higher level of payments may also contribute to more entities being able to successfully reestablish after displacement.

## **Background**

The FHWA last updated 49 CFR part 24 in 2005. Since publication of the 2005 rule, FHWA has undertaken a comprehensive effort to identify potential opportunities for improving implementation of the Uniform Act. The FHWA initiatives have included research on the need for regulatory and statutory change to the Uniform Act; co-sponsorship of national symposiums on Uniform Act implementation issues; implementation of pilot projects designed to determine the effect of changes in certain Uniform Act requirements and procedures; and an examination of the experiences of several State departments of transportation (State DOT) in providing payments required by State law that supplemented Uniform Act benefits. These activities confirmed that there are a number of enhancements that could be made to clarify existing requirements, reduce administrative burdens, and improve the Government's service to individuals and businesses affected by Federal or federally assisted projects and programs.

The Uniform Act and the common rule govern the relocation and land acquisition programs of all Federal Agencies. Those Federal Agencies that, for convenience, provide a cross reference to this part, and the location of those cross-references, are listed below:

Department of Agriculture

7 CFR Part 21

Department of Commerce

15 CFR Part 11

Department of Defense

32 CFR Part 259

Department of Education

34 CFR Part 15

Department of Energy

10 CFR Part 1039

Environmental Protection Agency

40 CFR Part 4

General Services Administration

41 CFR Part 105-51

Department of Health and Human Services

45 CFR Part 15

Department of Housing and Urban Development

24 CFR Part 42

Department of Justice

41 CFR Part 128-18

Department of Labor

29 CFR Part 12

National Aeronautics and Space Administration

14 CFR Part 1208

Tennessee Valley Authority

18 CFR Part 1306

Veterans Administration

38 CFR Part 25

Department of Homeland Security

44 CFR Part 25

The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally assisted programs or projects; the Uniform Act's application is not affected by the absence of a cross reference to 49 CFR part 24 in an Agency's regulations. Further, Federal or federally assisted activities involving land acquisition or displacement, undertaken by a newly constituted Federal Agency, would be covered by the Uniform Act.

After the publication of the 49 CFR part 24 final rule, FHWA began a process to identify additional needs for regulatory updates and elicit input from Federal stakeholders and conducted research projects, which resulted in many of the regulatory changes proposed here. The primary focus of the various efforts was to identify opportunities to streamline processes to better meet current Uniform Act implementation needs and eliminate duplicative and outdated regulatory language in that rule. Beginning in 2012, and culminating in 2018, FHWA held working group meetings with

representatives of the Federal Agencies subject to the Uniform Act. The meetings included a section-by-section review of the regulation, consideration of comments received during the 2005 rulemaking process, review of listening session comments, and consideration of research findings. Contributions from working group members were based on their experiences implementing the rule and feedback they had received from their partners and customers. The early review by the working group led to a compilation of potential changes to the rule. The FHWA considered the group's recommendations and proposed changes for each of the regulation's subparts and developed an initial draft rulemaking. Over a series of several working group meetings, the draft was refined and revised based on proposed edits and comments of the working group. When the working group meetings concluded, FHWA worked internally to finalize the draft rulemaking and continued to share drafts and receive additional comments from the Federal Agencies.

This rulemaking also considers comments received from two DOT Federal Register documents requesting public comments and recommendations for evaluating existing regulations. The DOT published these documents on June 8, 2017 (82 FR 26734) and October 2, 2017 (82 FR 45750). The FHWA received several comments requesting streamlining and updates of this rule. The NPRM is responsive to comments received through the DOT Federal Register documents and deregulatory efforts to update regulations and streamline processes.

### **Federal Agency Reporting Requirement**

The Lead Agency convened a separate working group of Federal Agencies to discuss the reporting requirements contained in Section 1521(d) of MAP-21. Federal Agencies that are subject to the Uniform Act and have programs or projects requiring the

acquisition of real property or causing a displacement from real property must provide the Lead Agency an annual summary report describing activities conducted by the Federal Agency.

This group discussed the new reporting requirements and developed a proposed template for the annual report. Each Federal Agency participant was given an opportunity to review and comment on draft versions of a proposed annual Agency report template. The proposed annual report template in appendix B of this NPRM is based on the feedback FHWA received from this group. The FHWA believes that the proposed report template provides Federal Agencies with a streamlined reporting format that balances the need to provide Federal Agencies with appropriate time to develop necessary reporting systems with the need to compile this information into a meaningful report. The FHWA understands that developing a data collection mechanism and system may take Federal Agencies several years. In the interim Agencies may elect to provide an annual narrative summary report instead of the statistical report in appendix B.

### **Section-by-Section Discussion of Proposed Changes**

Descriptions of the regulatory changes proposed in this part are set forth below. All members of the public who are affected by relocation or land acquisition activities undertaken or funded by Federal Agencies are encouraged to comment on this NPRM. Comments from interested State and local governments are particularly requested.

#### **Subpart A—General**

##### *Section 24.2 Definitions and acronyms*

In response to comments and questions from Federal and State partners, FHWA proposes to make additions and modifications to certain definitions and acronyms in

order to provide clarification. The FHWA proposes several minor corrections, including renumbering definitions and acronyms and organizing them alphabetically. In addition, FHWA proposes updating appendix A references to reflect the proposed renumbering and alphabetizing of definitions.

#### *Section 24.2(a) Definitions*

##### *Agency*

Throughout this regulation, references are made to those who are carrying out real property acquisition and relocation assistance, which are subject to Uniform Act requirements. The current regulations use a combination of definitions--Agency, Acquiring Agency, and Displacing Agency--to describe Uniform Act applicability to those parties. The FHWA is proposing to simplify these references by revising the current definition of Agency so it can be used throughout the proposed regulation to describe all parties carrying out real property acquisition and relocation assistance which are subject to Uniform Act requirements. The FHWA is also proposing to delete definitions of Acquiring Agency and Displacing Agency as the singular definition of Agency will be used throughout the regulation to describe responsible parties and Uniform Act applicability.

##### *Comparable replacement dwelling*

The MAP-21 amended Section 203(a)(1) of the Uniform Act by reducing the number of days that a person must have occupied a displacement dwelling in order to be eligible for a replacement housing payment from 180 to 90 days. The FHWA proposes to modify this definition accordingly, and in each place it appears throughout the regulation.

Many readers of this NPRM will notice that the length of time a valid lien (mortgage) must be in place to qualify for an increased mortgage interest costs payment remains 180 days prior to the initiation of negotiations. The MAP-21 did not change this requirement. The FHWA also proposes to combine portions of the appendix for this definition with the regulatory text with no change in requirement or meaning resulting from this reorganization.

#### *Contribute Materially*

The FHWA has received a number of questions regarding the correct interpretation of this definition, especially in regard to displaced businesses that have not been in operation for 2 full years prior to displacement. Practitioners have questioned whether this definition means a business must be in operation for 2 full taxable years prior to displacement in order to be eligible for the payment. They have also questioned how to correctly calculate a prorated fixed payment if a business were in operation for less than 2 full years. While there is no proposed change to this definition, FHWA is reiterating that a displaced business may be eligible to receive payment for a business that is open for less than 2 full years. The FHWA believes that this definition and the regulations at § 24.305(a)(6) and (e), as currently written, give clear direction for calculating the prorated payment and provide broad latitude for equitable treatment. The FHWA proposes a clarification of appendix A, *Section 24.305(e)*, to provide a more detailed discussion about calculating a benefit and, if necessary, prorating the average annual net earnings of a business or farm operation. The proposed clarifications include sample calculations for businesses with less than 1 year in operation, more than 1 year but not 2 full years in operation, and seasonally operated businesses.

### *Decent, Safe, and Sanitary Dwelling*

The Uniform Act requires that displaced persons must have decent, safe, and sanitary (DSS) housing made available to them. The FHWA has received a number of questions about which DSS requirements to apply, especially in cases where local housing codes are more stringent than DSS requirements. The FHWA proposes to revise the definition of “DSS dwelling” by adding language which states that an Agency must use the more stringent of either the local housing code, the regulations, or the Agency’s regulation or written policy. The purpose of this change is to clarify that the requirements in the definition of DSS in § 24.2(a) are minimum requirements. The FHWA also proposes to strike the portion of this definition which states that a Federal funding Agency with good cause could waive those regulatory DSS requirements which were not met by local code. The FHWA believes this portion of the regulation is unnecessary because Federal Agencies retain such authority under § 24.7. The FHWA proposes to move a portion of the previous appendix from this item to the regulation to streamline the new rule. The proposed new organization does not change requirements or create new requirements.

In addition, the definition of DSS dwelling in § 24.2(a) uses the term “housekeeping dwelling.” However, several Federal Agencies have noted that housekeeping dwelling is undefined in the regulation and open to varying interpretations. The FHWA agrees that the lack of a definition for the term is contrary to the Uniform Act’s goal of providing uniform and equitable treatment of persons displaced. The FHWA proposes to remove the “housekeeping dwelling” term from the regulation. The FHWA also proposes changes to this definition to clarify that the requirement that a

kitchen be part of a comparable replacement dwelling is dependent on local housing code standards for residential occupancy. In parallel, FHWA proposes a new appendix A discussion to further clarify that FHWA recommends, as a good practice, that even in instances where local housing codes do not require a kitchen, Agencies select a comparable replacement dwelling that has a kitchen.

### *Displaced person*

At the request of Federal Agencies that have programs or projects that do not require the acquisition of real property, but instead may require the rehabilitation or demolition of real property, FHWA proposes adding the terms “rehabilitate or demolish” to the definition of a displaced person. The purpose of this addition is to clarify that the term displaced persons includes those required to move, or move their personal property, from the real property as a result of a written notice of intent to rehabilitate or demolish, even if the real property is not being acquired.

The term displaced person is used in the Uniform Act to describe persons that move because of a Federal or federally assisted project or program. “Persons not displaced” is a term used to describe persons who do not qualify for Uniform Act benefits. Persons not displaced generally include those who will be temporarily relocated. The FHWA proposes to reorganize the definition to specifically address persons who are temporarily displaced and is proposing a new addition, § 24.202(a), to describe the required assistance and services that must be made available for persons temporarily displaced.

The FHWA also proposes to eliminate the use of the term “guidelines” in this definition. Several Federal Agencies have noted that their recipients often have questions

regarding the use and meaning of this term despite the explanation in the appendix.

Federal Agencies have also noted that they do not have “guidelines,” but instead have relevant policies. The FHWA proposes to clarify the definition of persons not displaced by deleting “guidelines” and replacing it with “policy or guidance.” The FHWA believes that the terms “policy or guidance” more accurately reflect how Federal Agencies provide programmatic direction to their recipients.

One Federal Agency requested an addition to this regulation that would require that a non-displacement relocation notice be provided which clearly states that a person will not be displaced by a program or project. It is FHWA’s opinion that the current definition of persons displaced or not displaced already accomplishes this objective, that such a notice is generally not necessary for a majority of the Federal Agencies’ programs, and that the clarification should not be included in the regulation. However, such a notice can be necessitated by Federal Agency policy. Based on the discussions in the working groups, FHWA also believes that Federal Agencies can and should ensure that informative materials and advisory services provide clear information on how to determine when someone is or is not displaced. Agencies may develop guidance to address questions specific to their programs to better direct those carrying out relocation assistance for their programs and projects.

The FHWA proposes adding a reference to a new definition of “Federal down payment assistance.” In addition to the new reference, FHWA proposes removing the existing example of 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). The proposed removal would provide for a more general reference to

similar programs. In some instances, a person may have Federal down payment assistance funds provided for the purpose of purchasing and occupying a dwelling. These funds are not Uniform Act benefits. Agencies providing persons with only such Federal down payment assistance funds are not Agencies causing displacement as defined by this regulation, and persons using those funds are not causing displacements as defined in this regulation. For example, a person using Federal down payment assistance to purchase a home that a tenant also occupies would not be causing displacement as defined by this regulation, and the tenant who would have to move as a result of the acquisition of the home would also not be a displaced person as defined by this regulation.

The FHWA has received numerous questions in recent years about whether persons in occupancy at temporary, daily, or emergency shelters that are acquired are in fact displaced persons. Persons who are occupying a shelter that only allows overnight stays, requires the occupants to remove their personal property and themselves from the premises on a daily basis, and offers no guarantee of reentry in the evening typically would not meet the definition of displaced persons. The FHWA believes that each relocation is unique and requires a fact-based determination in each instance. Those acquiring a shelter should consider factors including, but not limited to, whether the shelter has specific rules and requirements as to who can occupy or use the shelter and whether prolonged and continuous occupancy is allowed.

In order to clarify when a person would not be displaced in these scenarios, FHWA proposes three changes to this definition. First, FHWA proposes to add “occupants of temporary, daily or emergency shelters” to the definition of “persons not displaced.” Second, FHWA also recommends that, at a minimum, all occupants should

receive advisory assistance at initiation of negotiations. Finally, FHWA proposes adding a new appendix item for this definition that provides a discussion of FHWA's view of determining occupancy and eligibility for those who occupy a shelter. It offers a discussion of certain shelter occupants who may be considered displaced persons due to extenuating reasons, such as employment by the shelter. The FHWA believes that acquisition of a shelter and/or displacement from a shelter creates many unique challenges and that Agencies should address potential acquisition of shelters early in the project development process and in the project environmental review process. Doing so can facilitate the identification of required environmental justice mitigation measures and ensure that all available assistance is provided to shelter occupants.

The FHWA also proposes to add a definition of "temporary, daily, or emergency shelter (shelter)" at § 24.2(a) to further assist Agencies in making a determination of whether a person residing in a shelter can be considered displaced.

#### *Dwelling*

The FHWA proposes to delete the term "non-housekeeping unit" from this definition as it is a term that is not defined elsewhere in the regulation and will not enhance an Agency's ability to implement the regulation. The FHWA also proposes to modify the definition of "other residential units" in this definition to include clarification that residential units that may seem to be non-standard dwellings, but that meet minimum Uniform Act requirements and local codes for residential occupancy as a dwelling, such as motel rooms, must be considered "dwellings."

#### *Federal down payment assistance*

Some Federal programs provide some financial assistance to homebuyers to purchase a dwelling. These programs provide funds to an individual who will be buying a dwelling through an arm's length market transaction. The FHWA has responded to several questions about whether the use of Federal down payment assistance in purchasing a dwelling would trigger Uniform Act requirements. The FHWA is proposing to add a new definition of Federal down payment assistance to clarify that individuals using only Federal down payment assistance to purchase a home as their residence would not be considered users of *Federal financial assistance* for the Uniform Act as it is defined in § 24.2(a). To supplement this proposed change, this proposed rule also includes a new appendix item that provides further clarification and explanation on the use of Federal down payment assistance and Uniform Act applicability.

*Federal financial assistance*

Federal down payment assistance provided to a private individual to purchase a residence is Federal financial assistance, as defined by the Uniform Act. It results in an acquisition-based displacement under the Uniform Act, however, only when the purpose of the acquisition is to advance a Federal project or program designed to benefit the public as a whole, such as highways, hospitals, and other public works projects. The FHWA believes that the purchase of a dwelling using Federal down payment assistance, standing alone, does not constitute an acquisition as contemplated by the Uniform Act.

Therefore, those who may relocate as a result of an acquisition funded in part with down payment assistance are not displaced persons within the meaning of the Uniform Act. The Federal Government's interest is only that the property would serve as the purchaser's dwelling and that it meets general criteria including those related to

habitability. The lack of a conscious governmental decision requiring that a selected or specific property be acquired to advance a program or project demonstrates that the nature of the acquisition utilizing down payment assistance funds is nothing more than a person purchasing a dwelling with limited Federal financial assistance.

The FHWA also proposes to add a reference to low income housing tax credit (LIHTC) to this definition. Over the last several years, the FHWA has received numerous questions about the use of LIHTCs and whether they are Federal financial assistance as defined in this rule. The LIHTC is described by the Office of the Comptroller of the Currency as a program “... established as part of the Tax Reform Act of 1986 and is commonly referred to as section 42, the applicable section of the Internal Revenue Code. The LIHTC program provides tax incentives to encourage individual and corporate investors to invest in the development, acquisition, and rehabilitation of affordable rental housing. The LIHTC is an indirect Federal subsidy that finances low-income housing. This allows investors to claim tax credits on their Federal income tax returns. The tax credit is calculated as a percentage of costs incurred in developing the affordable housing property, and is claimed annually over a 10-year period. Some investors may garner additional tax benefits by making LIHTC investments.”<sup>1</sup> Given the nature of these tax credits and because they are not a grant, loan, or contribution provided by the United States, FHWA does not believe that LIHTC is Federal financial assistance as it is defined in § 24.2(a) and therefore is not subject to Uniform Act requirements.

### *Recipient*

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<sup>1</sup> <https://www.occ.gov/topics/community-affairs/publications/insights/insights-low-income-housing-tax-credits.pdf>

The proposed rule would add a new definition for the term “recipient.” The term would mean the party that is the direct recipient of Federal program funds, is not a Federal Agency and is accountable to the Federal funding Agency for the use of the funds and for compliance with applicable Federal requirements. This NPRM proposes to emphasize that the recipient remains responsible for ensuring compliance with Federal requirements when the recipient provides funds to a subrecipient.

#### *Home equity conversion mortgage*

A home equity conversion mortgage (HECM) is the Federal Housing Administration's mortgage program that enables seniors to withdraw some of the equity in their homes. The HECMs are commonly referred to as reverse mortgages. Agencies can face unique challenges when displacing a homeowner whose dwelling has a HECM.

The FHWA proposes to add a definition for HECM to the regulation given that these mortgages are being encountered more frequently on federally-funded projects. The definition identifies a HECM as a valid lien and describes common terms and conditions of the HECM. To supplement the proposed definition, FHWA proposes to add a new provision at § 24.401(e), which would clarify how HECM expenses are an eligible replacement housing payment incidental expense and a new section to appendix A, *Section 24.401(e)*, with examples of types of HECMs and sample calculations, both of which will be discussed later in this NPRM.

#### *Household income*

Agencies have pointed out an inconsistency between the definition of “household income” and the corresponding appendix text. The regulation can be incorrectly read to state that a fulltime student must be under the age of 18. The FHWA proposes to clarify

that income from “dependent children under 18 or fulltime students” is excluded from the household income calculation. For clarification, FHWA also proposes to adopt the standard definition of a fulltime student in accordance with the requirements set by the Working Families Tax Relief Act of 2004, Public Law 108-311. Under this regulation’s revised definition, a fulltime student must be under the age of 24 and a fulltime student for at least 5 months of the year.

#### *Initiation of negotiations*

At the request of Federal Agencies that have programs or projects that require rehabilitation or demolition of real property but do not necessarily require the acquisition of the real property, FHWA proposes to add “rehabilitate and demolish” real property to the definition. The FHWA agrees that some Federal Agency programs that rehabilitate or demolish establish eligibility criteria on a basis other than the initiation of negotiations. In most instances, a displaced person’s eligibility for benefits is established at the initiation of negotiations. However, in some instances a person’s eligibility may be established prior to the initiation of negotiations. This addition will serve to clarify that when persons move, or move their personal property from the real property as a result of a written notice of intent to rehabilitate or demolish, or move after that notice but before delivery of the initial written offer, initiation of negotiations means the actual move of the person from the property. These changes also allow Agencies to tailor their notices and more clearly describe when a displaced person may be eligible for benefits while ensuring that Federal funds are used in a manner that prevents waste, fraud and abuse.

The Federal Agencies that often acquire property as voluntary acquisitions, as defined in this regulation, have noted the current regulation provides that tenants are

immediately eligible for relocation assistance at the initiation of negotiations for a property that the Agency may not ultimately be able to acquire through a voluntary and amicable agreement. Furthermore, in many cases, until an Agency approves or administratively accepts a conditional sale or purchase agreement, there is no obligation on the Agency's part to consummate or finalize a sale.

To address these concerns, FHWA proposes to modify the definition of "initiation of negotiations" by changing the timing for establishing the eligibility of tenants affected by an option to purchase, conditional sales, or purchase agreement as the result of the voluntary acquisition of real property described in § 24.101(b)(1)-(5). Under the current rule, tenants are eligible for relocation assistance at the initiation of negotiations. The new rule provides, when an option is being acquired, eligibility of tenants for relocation assistance occurs when there is a binding agreement for sale between the buyer and seller. An option to purchase, conditional sale, or purchase agreement is not considered a binding agreement to purchase real property. See appendix A, *Section 24.2(a) Initiation of negotiations, Tenants, (iv)*. The use of the term "binding" in the context of this regulation refers to an agreement in which both parties have formally accepted the conditions contained in the agreement, have documented their agreement in writing, and with their signature acknowledged their acceptance. It is a legally enforceable document in which the property owner agrees to sell certain property rights necessary for a project and the Agency agrees to that purchase for a specified consideration.

Because State laws may require differing elements in an agreement in order to make it a legally binding contract under State law each recipient or displacing agency

should consult with their legal counsel and develop required documents and documentation necessary to make a sufficiency determination under State law.

The FHWA also proposes including a similar change to the discussion in the appendix that describes the timing of eligibility for Uniform Act assistance, or trigger date, for a tenant. The FHWA believes that this change, from initial offer to acquire to acceptance of a binding written agreement, will not reduce benefits or assistance to tenants because it is coupled with the requirements for a clearly written notification to the tenant of the process being followed, an explanation of the trigger date of their eligibility, and for providing a notification that negotiations have failed to result in a binding agreement.

#### *Owner's representative*

Several Federal Agencies believe that the current regulation requires that notifications and documents be given only to the property owner and thus is unnecessarily restrictive. The FHWA agrees that such a requirement, or interpretation, is too restrictive and believes that allowing either an owner or a designated representative to receive a written offer in no way diminishes a property owner's rights. The FHWA proposes to add a new definition for owner's designated representative.

#### *Small business*

The FHWA has often been asked for guidance on the question of whether sites occupied solely by outdoor advertising signs, displays, or devices qualify for benefits under §§ 24.303 and 24.304.

The FHWA proposes to clarify that sites occupied solely by outdoor advertising signs, displays, or devices do not qualify for benefits under § 24.303 or § 24.304, by

adding a reference to § 24.303 in the last sentence of the definition. The FHWA believes that outdoor advertising signs which are eligible for relocation benefits under this part are to be treated as personal property and, as such, would not be eligible for benefits under § 24.303. The FHWA continues to believe that § 24.301 provides owners of sites occupied solely by outdoor advertising signs, displays, or devices with sufficient allowances for the relocation of their personal property.

#### *Subrecipient*

This NPRM proposes to define “subrecipient” as a governmental Agency or other legal entity that enters into an agreement with a recipient to carry out part or all of the activity funded by Federal program grant funds.

There are instances when recipients enter into subgrant agreements with cities, towns, and other governmental entities, collectively often referred to as “local public Agencies” or “local transportation Agencies,” under which those public Agencies administer projects and construct facilities. This NPRM makes a number of changes to emphasize that the recipient remains responsible for ensuring compliance with Federal funding Agency requirements when the recipient delegates project activities to subrecipients, including public Agencies.

#### *Temporary, daily, or emergency shelter*

The FHWA has responded to a number of questions about temporary, daily, or emergency shelters, and whether persons in occupancy at these shelters are displaced persons. The FHWA proposes to add a new definition of the term “shelter.” The definition of shelter clarifies that emergency, temporary, or daily shelters are typically intended as overnight, short term, short duration accommodation. Persons who are

occupying a shelter that only allows overnight stays, requires the occupants to remove their personal property and themselves from the premises on a daily basis, and offers no guarantee of reentry in the evening, typically would not meet the definition of displaced persons.

The FHWA believes that each relocation is unique and requires a fact-based determination in each instance. Those acquiring a shelter should consider factors including, but not limited to, whether the shelter has specific rules as to who can occupy or use the shelter and whether prolonged and continuous occupancy is allowed. Also, there may be certain shelter occupants who may be considered displaced persons due to extenuating reasons such as employment by the shelter.

#### *Utility facility*

The FHWA has received a number of questions regarding the interpretation of the phrase “any transportation system” as used in this definition. The common concern is that “any transportation system” can be viewed to mean a highway system or other similar transportation system. The FHWA believes that the current phrase can lead to an overly expansive view of what constitutes a utility facility for purposes of this regulation. The FHWA is proposing to replace the current definition of “utility facility” with the definition of “utility facility” found at 23 CFR 645.207. The proposed new definition will address the questions raised by offering a clear and consistent definition, along with several examples of utilities.

#### *Section 24.2(b) Acronyms*

The Bureau of Citizenship and Immigration Services (BCIS) has been renamed the U.S. Citizenship and Immigration Service (USCIS). The UA has been added as an

acronym for the Uniform Relocation Assistance and Real Property Acquisition Policy of 1970. The FHWA proposes to make these changes in the acronym listing of this paragraph, remove numbers, and alphabetize the acronyms.

*Section 24.5 Manner of notices*

The current regulation requires that Agencies personally serve or send notices to property owners or occupants by certified or registered first-class mail, return receipt requested. The FHWA proposes providing additional flexibility in the types of notices that can be used to communicate with property owners. The first type of flexibility we are proposing is to allow trackable delivery and signed receipts via companies other than the United States Postal Service that provide the same function as certified mail with return receipts.

The FHWA also believes that delivery of notices by digital or electronic means can provide Agencies and property owners with an optional communications method that can streamline the notice process while not reducing any benefits or protections to property owners. Delivery of notices by digital or electronic means must be done in a manner that will provide verification of delivery and receipt and acceptance confirmation similar to the current standard of certified mail. The proposed regulation provides several minimum requirements that an Agency must follow if they choose to allow electronic notices and electronic signatures.

The FHWA proposes to require that property owners or occupants must voluntarily elect to receive notices by electronic means. The FHWA continues to believe that there is no substitute for face-to-face meetings with property owners but also recognizes that for a variety of reasons face-to-face meetings may not be practical.

Agencies may not determine in advance to use this proposed flexibility for all property owners on a project or program-wide basis. The acquisition of a person's real property and or displacement from their real property usually requires an Agency to make every effort to make personal contact.

The FHWA proposes to add a new appendix item that further explains FHWA's position regarding when the use of electronic notifications may be appropriate and provides several examples of when it may and may not be a good option. The new appendix item describes additional safeguards that should be included as part of an Agency's process. It also reemphasizes that, should an owner or occupant elect not to receive offers and notices by electronic means, an Agency must accommodate that property owner or occupant by using certified first class mail, return receipt requested, or by personally serving notices. The FHWA is also proposing a new addition to this section, paragraph (d), which provides property owners with the flexibility to designate a representative to receive required notices and documents. This proposal requires that a designation of an owner's representative must be in writing and must identify any notices or documents that the designated representative is not authorized to receive. A properly designated property owner's representative would be able to receive required notices and information including acquisition and relocation information and/or the written offer of the property's fair market value on behalf of the owner.

#### *Section 24.9(c) Recordkeeping and reports*

Section 1521(d) of MAP-21 requires that each Federal Agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of the Uniform Act provide an annual summary report

to the Lead Agency that describes the activities conducted by the Federal Agency. The FHWA proposes to modify the reporting requirements in this paragraph accordingly by changing the first sentence requiring that a Federal Agency submit a report of its real property acquisition and displacement activities to the Federal Agency funding the project from “if required” to “as required.” We also propose to delete the second sentence requiring the reports not more than every 3 years and unless the Federal Agency shows good cause for requiring the report. The last sentence in this paragraph is deleted and further discussion of reporting requirements has been added in the appendix.

The FHWA proposes to add new language in this paragraph to detail the annual reporting requirements that Section 1521 of MAP-21 introduced. The proposed paragraph will discuss the new annual reporting requirements for each Federal Agency subject to the Uniform Act. It includes a narrative on the overarching program and/or related activities, as well as specific program metrics, including the number of acquisitions, relocations, condemnations, total dollars spent, and use of housing of last resort. The report would be due by November 15<sup>th</sup> of each year.

The FHWA also proposes to add a new appendix section explaining that FHWA realizes that not all Federal Agencies subject to this reporting requirement currently have the ability to collect all information requested on the reporting form. However, FHWA envisions that the Federal Agencies may elect to provide a narrative report focusing on their respective efforts to improve and enhance delivery of Uniform Act benefits and services. Narrative report information would include training offered, reviews conducted, or technical assistance provided to recipients.

*Section 24.10(g) Determination and notification after appeal*

The FHWA proposes to revise the language in the last sentence of this paragraph to clarify that the determination on appeal is the Agency's final decision. The language on content and procedures for the written determination on appeal, including informing a displaced person of the right to judicial review of the final decision, is not substantively changed. The proposed changes are intended to more clearly describe the authorities and rights created by the appeals process and to more directly provide information on the process to follow should a determination on the appeal be desired.

#### *Section 24.11 Adjustments of payments*

The FHWA proposes to add a new section to the regulation to implement the new provision in MAP-21 at Section 1521(d)(2) which provides that if the head of the Lead Agency determines that the cost of living, inflation, or other factors indicate the relocation assistance benefits should be adjusted to meet the policy objectives of the Uniform Act, that the head of the Lead Agency may adjust: the amounts of relocation benefits for reestablishment expenses-nonresidential moves; fixed payment for moving expenses-nonresidential moves; replacement housing payment for 90-day homeowner-occupants; and replacement housing payment for 90-day tenants and certain others.

Prior to MAP-21, FHWA led research projects to examine whether inflation had an effect on relocation benefit levels. The research concluded that since publication of the final rule in 1989, the benefit levels were not able to meet the policy objectives of the Act due to inflation.

The FHWA's research focused primarily on the use of indexes as a tool to evaluate inflation's effects on Uniform Act benefits. In considering the most appropriate

indexes, several Consumer Price Indexes appeared to provide a suite of goods and services that are related to housing and other costs associated with displacement.

The FHWA is proposing to evaluate inflation's effect on the benefits for reestablishment for nonresidential moves, fixed payment for non-residential moving expenses, replacement housing payments for 90-day owners, and rental assistance payments for 90-day tenants and certain others by using the Consumer Price Index for All Urban Consumers (CPI-U) Seasonally Adjusted.<sup>2</sup> Guidelines FHWA used in choosing this index:

1. The CPI-U is a measure of the average change in consumer prices over time for a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, and charges for medical and dental services and drugs. The all urban consumers group represents about 87 percent of the total U.S. population. It is based on the expenditures of almost all residents of urban or metropolitan areas, including professionals, the self-employed, the poor, the unemployed and retired persons as well as urban wage earners and clerical workers. Bureau of Labor Statistics (BLS) publishes a CPI-U report monthly and releases an Annual Report at the end of each fiscal year.
2. It is available on a monthly basis, free of charge and can be expected to be tabulated regularly into the future. The CPI-U is widely used by other Federal Agencies including FEMA and HUD.

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<sup>2</sup> <https://www.bls.gov/news.release/cpi.t01.htm>

3. The CPI-U is used by other Federal Agencies for inflation adjustment indexing.

The CPI-U is produced by the BLS and is subject to verification and oversight.

Additional information on consumer price indexes can be found on the Bureau of Labor Statistics website.<sup>3</sup> The FHWA is proposing that this determination of whether an increase in benefit amounts is necessary would be made no more frequently than every 5 years. If the FHWA determines that the cost of living, inflation, or other factors indicate the relocation assistance benefits should be adjusted to meet the policy objectives of the Uniform Act, FHWA will issue a Federal Register notice of that determination and the specific adjustments of the relocation assistance benefits that are being made. The FHWA believes Federal and State partners will benefit from several years of stable and predictable regulatory benefit amounts.

The FHWA proposes a new item in appendix A, *Section 24.11*, which provides a sample calculation showing how FHWA will determine whether future adjustments to these benefit amounts should be proposed. In addition to a temporal limit on adjustments, FHWA attempted to identify an inflationary impact threshold or other regulatory condition indicating when an adjustment should be proposed. The FHWA recognizes that prior to MAP-21, relocation benefit amounts had not been adjusted for several decades. The FHWA welcomes comments on use of the CPI-U Seasonally Adjusted Index, and suggestions on the inflationary impact threshold that would warrant adjustments to the maximum benefit amounts.

### **Subpart B--Real Property Acquisition**

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<sup>3</sup> <https://www.bls.gov/cpi/>.

The FHWA intends for the terms “fair market value” and “market value,” which may be more typical terminology in private transactions, to be synonymous in this regulation. In order to make this clarification, FHWA proposes to modify the appendix item for subpart B by deleting “may be” and inserting “are” to indicate that “fair market value” (as used throughout this subpart) and “market value” are the same.

*Section 24.101(a)(2) Applicability of acquisition requirements*

Section 24.101(a)(2) currently includes the same reference twice, which may create confusion. The FHWA is proposing to modify this paragraph by deleting the first reference to 49 CFR 24.2(a) and by editing the second reference at the end of the paragraph to cross reference § 24.2(a). The FHWA believes that making a single reference at the end of the paragraph to this definition accurately points readers to the requisite section and eliminates the need for redundant references in this paragraph.

*Section 24.101(b)(1)(i) Applicability of acquisition requirements*

Some Federal Agencies reported that the terms “site” and “geographic area” were close enough in meaning that they caused confusion in the second sentence. They stated that the term “site” did not accurately describe the type of project needs encountered in delivering their programs and recommended changing the term to property. The FHWA proposes to strike the term “site(s)” and insert “property or properties.” The FHWA believes the proposed change accurately reflects the types of acquisitions that Agencies may make and this requirement’s goal of ensuring that voluntary acquisitions are truly independent of site and corridor.

The FHWA also proposes to revise the appendix item for this paragraph. A Federal Agency suggested that the appendix to this paragraph be changed to further

define the term “general geographic area.” Some Federal Agencies expressed concern that the appendix definition was too restrictive for their programs or some projects. The FHWA reviewed the NPRM and final rule comments and was unable to determine why the term “geographic area” was inserted into the appendix during the 2005 rulemaking. That rulemaking stated that it was “not to be construed to be a small limited area.” The FHWA proposes to delete that clause and insert a sentence that describes a “general geographic area” as any of several properties that are not necessarily contiguous or are not limited to a specific group of properties.

*Section 24.101(b)(1)(iii) - (iv) and (b)(2)(i) - (ii) Applicability of acquisition requirements*

Several Federal Agencies believe that the current language of these paragraphs requiring that notification be given only to the property owner is unnecessarily restrictive. The FHWA agrees and believes that allowing either an owner or a designated representative to receive a written offer in no way diminishes a property owner’s rights. The FHWA proposes to make minor revisions to the language of these parts by adding allowances for an owner’s properly designated representative to be able to receive acquisition and relocation information and/or the written offer of the property’s fair market value on behalf of the owner. The FHWA is proposing that such designation must be in writing.

*Section 24.101(b)(2)(iii) Applicability of acquisition requirements*

Some Agencies possess the power of eminent domain but do not use it for specific projects. The FHWA has received questions about the interpretation of this paragraph from several Agencies. Some Agencies have interpreted this paragraph to mean that if an Agency possesses the power of eminent domain but will not use it on the project, the

Agency would not be able to use the voluntary acquisition authority for its project or program. The FHWA proposes to clarify this paragraph's applicability by simplifying the language so it clearly states that if eminent domain will not be used, then an Agency may use the voluntary acquisition requirements provided by this section. The FHWA believes that whether an Agency has such authority is not the relevant issue in determining whether this section's requirements are being met. The relevant issue is that eminent domain may not be used as part of the offer and negotiation to acquire property needed for the project.

Also, FHWA proposes adding language in appendix A that recognizes some Agencies may have an unanticipated need that may require use of eminent domain authority. The FHWA views the clear purpose of the provision as ensuring that voluntary acquisitions are not simply preludes to an eminent domain acquisition, should voluntary acquisition negotiations fail.

The FHWA is proposing a new paragraph to allow the Federal funding Agency to permit acquisitions by eminent domain in extraordinary circumstances when negotiations were initially undertaken under the requirements for voluntary acquisitions. The FHWA further recognizes that property owners subjected to such acquisitions should be assured that they are being afforded all protections and eligibilities of this regulation. Therefore, FHWA is proposing that, should an Agency carrying out a project advanced as a voluntary acquisition find an extraordinary instance requiring the use of eminent domain, it must request a waiver of regulations, under authority of § 24.7 of this part, from the Federal Agency funding the project. This proposed addition is in response to requests from Agencies that often acquire property as voluntary acquisitions. The FHWA is

interested in commenters' opinions on whether the use of a waiver of regulations should be required, whether criteria necessary for a waiver should be included in this regulation, what that criteria should include, and whether and how to define the exceptional circumstances under which eminent domain authority may be permitted under this section.

*Section 24.101(d) Federally assisted projects*

The FHWA is proposing to add a new paragraph to respond to questions it has received about the applicability of Uniform Act requirements to properties that were acquired in advance of a federally-funded project. The FHWA recognizes that Agencies may acquire or own previously acquired properties for several reasons. This proposed change will clarify that if such a property were acquired with the intent of including it in a planned, anticipated, or designated federally-funded program or project, then the acquisition would be subject to the requirements in subparts B-F, as applicable. This proposed change would incorporate guidance that FHWA has included in its Frequently Asked Questions for 49 CFR part 24, see current question number five.<sup>4</sup> This proposed change does not create a new requirement but is proposed to ensure that those Agencies acquiring properties which may be incorporated into a planned, anticipated, or designated federally assisted program or project understand when, why, and how the requirements of this rule apply. The FHWA is interested in commenters' suggestions on how to further clarify when, how, and why the requirements of this rule apply.

*Section 24.102 Basic Acquisition Policies*

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<sup>4</sup> see current question number five at:  
[https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafaqs.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm)

The term “waiver valuation” in this regulation and the more commonly used term “appraisal waiver” 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). In 1989, FHWA first adopted a rule on appraisal waivers. Under that rule, Agencies were allowed to decide when an appraisal was not needed if they first determined that the valuation was uncomplicated and the property was “low-value.” Over the years, we have used the terms “low-value” and “uncomplicated” interchangeably. The FHWA is proposing to eliminate the term “low-value” since this proposed regulation now defines the range of values to which a waiver can be applied. The rule initially defined uncomplicated as being \$2,500 or less.

Beginning in 1995, FHWA approved, for its recipients, increases for the uncomplicated definition of up to \$10,000 on a State-by-State basis. Since 2002, some agencies have received approval to use a \$25,000 uncomplicated threshold when applying the appraisal waiver provisions of the 1989 rule. In January 2005, FHWA issued an updated rule that acknowledged the trend toward increasing the threshold for uncomplicated acquisitions. The current rule contained in § 24.102(c)(2)(ii) provides Agencies the latitude to define “uncomplicated” as being up to \$10,000. It also permits an increase in the amount up to \$25,000 provided the Federal funding Agency approves, and the Agency agrees to provide the property owner the option to request an appraisal.

Appraisal waiver requirements have proven to be an effective tool in containing costs and in fostering accelerated project delivery while protecting the rights of property owners under the Uniform Act. A national survey and various process reviews have

confirmed this to be the case.<sup>5</sup> The FHWA is proposing changes to § 24.102(c)(2)(ii)(C) waiver valuation requirements, as described in the following three sections, in recognition of the positive experience using them.

*Section 24.102(b) Notice to owner*

The FHWA is proposing to add a new appendix item which states that when condominiums and other types of housing with common areas or community property are being acquired, an Agency should determine who must receive notification, which could include a condo or homeowner's board, a designated representative, or all individual owners when common or community property is being acquired for the project.

*Section 24.102(c)(2) Appraisal waiver*

The FHWA proposes to modify the appendix for this paragraph to further explain the term "uncomplicated acquisitions." The FHWA also proposes to modify the regulation to emphasize that the person making the determination to use the waiver valuation must have sufficient understanding of the local markets, and should have knowledge of appraisal principles and use of valuations to be able to determine whether the valuation problem is uncomplicated. The FHWA also proposes to add to this appendix that Agencies should put procedures in place to ensure that waiver valuations are accurate and are consistent with the unit values as determined by appraisals and appraisal reviews. The FHWA proposes to strike the term "sophisticated" and insert "complex" in the appendix to more accurately reflect the intent that the waiver valuation

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<sup>5</sup> The FHWA has developed, collected or reviewed several supporting documents. They include an FHWA national survey of waiver valuation in 2005, results from 4 SDOTs which carried out waiver valuation pilot projects and a Colorado study of Waivers. FHWA is also embarking on a new national survey of waiver valuations in support of this NPRM effort.

frees up appraisers to do more complicated appraisal work. The FHWA also proposes inserting in the appendix that those who prepare waiver valuations have an understanding of appraisal principles and use of appraisals so as not to imply that they must be appraisers. The FHWA is also proposing to add a reference to the appendix item for this paragraph.

*Section 24.102(c)(2)(ii)(A) Appraisal waiver*

The FHWA has received questions about whether and how a licensed appraiser could develop a waiver valuation which would be consistent with professional standards and licensure requirements. The appendix states that waiver valuations are not appraisals under this rule. There is no national consensus or standard about the implications of having a licensed or certified appraiser prepare a waiver valuation. In some States, when a State-certified or licensed appraiser estimates a value, they may be obligated under the licensing requirements of their State to perform an appraisal even if the client requests something less than an appraisal. Performing appraisals rather than waiver valuations in situations where the valuation problem is not complex can cause unnecessary delay and adds unnecessary cost to an acquisition. However, some States have laws that interpret waiver valuations as appraisals, and those States only permit appraisers to perform appraisals, which effectively nullifies the benefits of the waiver valuation. In order to encourage those States to take advantage of the streamlining efficiencies offered by the waiver valuation, and in an effort to avoid the increased time and increased cost associated with providing fully documented appraisals, FHWA proposes to incorporate a jurisdictional exception that preserves the original intent of the waiver valuation process while offering appraisers that wish to perform this type of work for Agencies an avenue

for accepting waiver valuation assignments while remaining compliant with the provisions of the State appraisal licensing enforcement Agencies. The FHWA also recognizes that some States prefer to have waiver valuations reviewed even though this regulation does not require a formal review of waiver valuations. Appraisers can accept these types of assignments as well with this proposed language. The FHWA is proposing to add language to this paragraph that would preclude an appraiser from complying with standards rules 1, 2, 3, and 4 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as promulgated by the Appraisal Standards Board of The Appraisal Foundation.<sup>6</sup> This proposed modification would afford those States a solution that preserves the intent of this regulation to streamline processes and provide programmatic efficiencies. This proposal would provide States and licensed or certified appraisers with clarity about the requirements of this regulation and the implications of developing a waiver valuation. The FHWA invites comments or suggestions on this proposed change.

*Section 24.102(c)(2)(ii)(D) Appraisal waiver thereof, and invitation to owner*

The FHWA proposes to add a new paragraph (c)(2)(ii)(D) to this section to institute a three-tiered approach to waiver valuations. The proposed new third tier of waiver valuations would be a \$50,000 waiver value ceiling available under clearly defined circumstances. This change is presented as an option that Federal funding Agencies and recipients may consider using on a project-by-project basis. In proposing this change, it is important to note that additional safeguards have been created to ensure

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<sup>6</sup> <http://www.uspap.org>

the full protection of property owners' rights and interests. The safeguards include the use of the third tier being limited to Federal funding Agencies and recipients, with no delegation to subrecipients, and that approvals may be granted on a project-by-project basis with requests made in writing and when the six pieces of information required in this paragraph are provided. The required information is: the anticipated benefits of raising the ceiling, administrative/managerial oversight mechanisms, names and credentials of those performing the waiver valuations, quality controls to be used, performance metrics with quarterly reports, and a close-out report measuring cost/time benefits and lessons learned. The FHWA believes that the proposed required information provides a set of requirements that ensure use of waiver valuations above \$25,000 would be carefully considered and used in appropriate circumstances with specific safeguards. An important safeguard of this proposal is the requirement that the Agency offer an appraisal. The procedures described in this paragraph may not be used if the property owner elects to have the Agency appraise the property.

*Section 24.102(n)(1) Conflict of interest*

The FHWA proposes to change the word "making" to "developing" an appraisal in this paragraph to more accurately describe the activity of preparing an appraisal or waiver valuation. This paragraph ensures that the valuation process continues to operate in an independent manner by prohibiting the compensation for an appraisal or waiver valuation to be based on the amount of the valuation estimate.

*Section 24.102(n)(3) Conflict of Interest*

The current regulation allows single agents who valued properties to also perform negotiations on properties that were valued at less than \$10,000. The FHWA has

conducted reviews that provided no indication that the use of the single agent created a problem to administer, or led to property owners receiving offers that were less than the Agency's best estimate of just compensation. The FHWA's experience is that the \$10,000 limit has been managed effectively and property owners' rights and protections have not been diminished by this process.

The FHWA now proposes to raise the limit to \$25,000 with a two-tiered approach. Under the proposed changes, the single agent concept could still be applied with waiver valuations up to the \$10,000 amount. The FHWA is proposing that acquisitions estimated to be greater than \$10,000 but less than \$25,000 would require an appraisal, and review of the appraisal, if the valuation preparer is also acting as the negotiator.

The FHWA also proposes that the Agency or recipient desiring to exercise this option for acquisitions estimated to be greater than \$10,000 but less than \$25,000 on a project or a program basis must submit a request in writing to the Federal funding Agency. The FHWA proposes to require that Agencies and recipients that implement this provision have a separate and distinct quality control process in place and written procedures which include an outline of the quality control process approved by the Federal funding agency. Federal Agencies may elect whether to use this single agent tool and to establish guidance for its use. The proposed increase to a \$25,000 limit may be extended to a subrecipient when the Agency or recipient determines and documents that the subrecipient has a separate and distinct quality control process in place and outlined in written procedures approved by the Federal funding agency. The FHWA is also proposing to add a new appendix item for this paragraph, which explains the objective of

using the conflict of interest provisions, the purpose of the three parts of this provision, and the new third tier of the conflict of interest provisions.

*Section 24.103(a) Appraisal requirements*

The FHWA proposes to delete date and publication information from the description of “Uniform Standards of Professional Appraisal Practice (USPAP).” The FHWA believes this change is needed because the USPAP has been updated several times since the publication of the current rule and may be updated several times over the next several years. The FHWA also proposes to add new updated web links for the USPAP in this paragraph. The FHWA will monitor future publications of USPAP to ensure that those publications continue to be consistent with the requirements of this rule and will make technical corrections when necessary.

We also propose to modify the appendix item for this part by changing “Standard Rules 1, 2, 3” by striking the word “Rules” to “Standards 1, 2, 3 & 4” and inserting “2018-2019 edition of the” before “USPAP” to ensure consistency with USPAP. The FHWA also proposes to delete “Supplemental Standard Rule” as it is no longer contained in USPAP.

**Subpart C--General Relocation Requirements**

*Section 24.202(a) Persons required to move temporarily.*

Several Agencies have questioned whether persons temporarily displaced should receive benefits because they are identified in the rule as persons not displaced. The FHWA is proposing to revise the definition of displaced persons and to specify the services and assistance that must be provided to a temporarily displaced person in this part. The FHWA also proposes to incorporate the majority of the appendix discussion on

minimum Agency actions for temporary displacements into this section of the regulation. Several Federal Agencies noted that the proposed reorganization will provide their recipients with a more easily understood and concise discussion of minimum standards and actions required when temporarily displacing a person.

The FHWA believes that the proposed change to the regulation aligns the regulation more closely with the language and requirements of Section 4621 of the Uniform Act. These requirements include a recognition that relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons. In addition, FHWA believes that providing services and assistance to temporarily displaced persons is necessary to minimize the impacts of displacement and to maintain the economic and social well-being of communities. The proposed changes require that persons displaced from their dwelling or business be reimbursed for out-of-pocket expenses associated with the move and that temporary relocations may not last more than 12 months. The FHWA believes that the language in the current appendix that limits temporary relocations to no more than 12 months reflects a standard that some recipients were not aware of due to its placement in the appendix. The FHWA believes that more clearly establishing this standard as a regulatory requirement by incorporating it into the regulatory text will provide recipients with a more easily understood requirement for persons who are temporarily displaced. The new proposal also requires that appropriate advisory services be provided. The FHWA is not proposing to develop an all-inclusive list of actual and reasonable out-of-pocket expenses because each temporary relocation is unique and fact-specific. However, reimbursement should be provided for those additional costs necessitated by the temporary move, including lodging, cost of meals

when temporary lodgings do not include kitchen facilities, and cost to move personal property when necessary.

The FHWA is also proposing to add an item to this part to explicitly state that aliens not lawfully present in the United States are not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with § 24.208(g). This clarification is not an additional prohibition or change to the regulation. The addition is intended to assist Agencies that frequently do temporary relocations by ensuring that the existing provisions and prohibitions are easily understood.

*Section 24.203(a) General information notice*

Several Agencies have indicated that the term “scheduled” in this paragraph does not have a clear meaning in the context of their programs. These Agencies believe that “may be displaced” more closely fits the processes they follow since a large part of their programs are voluntary acquisitions and “scheduled to be displaced” could be interpreted to mean a decision to displace had been made regardless of the outcome of the negotiation process. The FHWA believes that the proposed change would fit both voluntary and eminent domain acquisitions and subsequent relocations. This proposed change would also promote consistency between this paragraph and the following paragraph since the phrase “may be displaced” is already used in § 24.203(a)(1).

*Section 24.203(b) Notice of relocation eligibility and Section 24.203(d) Notice of intent to acquire*

One Agency has requested that the existing “Notice of intent to acquire” in § 24.203(d) be revised to eliminate confusion and to expand its applicability to

rehabilitation and demolition activities where no acquisition is involved. They propose to replace it with an “Advanced Notice of relocation eligibility” which would serve to establish relocation eligibility.

Rather than rewriting § 24.203(d) and eliminating § 24.203(b) in the regulation, FHWA proposes to simply rename the “Notice of intent to acquire” as “Notice of intent to acquire, rehabilitate, or demolish” to cover the situations unique to the Agency and similar programs when an acquisition does not occur but persons are required to move for some period of time. As a result, several other parts of the regulation will be modified to reflect this new title. Specifically, FHWA proposes to reword the definition of a “displaced person” at § 24.2(a) and the definition of “initiation of negotiations” at § 24.2(a) wherever this it appears. The FHWA also proposes to add “rehabilitate or demolish” wherever “notice of intent to acquire” occurs in § 24.203(b) and (d). In § 24.203(d), FHWA proposes to also strike “acquired” from “property acquired” to again emphasize that the Notice of Intent to Acquire clearly includes rehabilitation and demolition projects.

The FHWA believes that renaming the notice of intent to acquire to include rehabilitation and demolition clearly conveys the many types of displacements to which this notice is intended to apply. The FHWA believes that this is the simplest solution to tailor applicability of this notice to all programs.

*Section 24.204(a) introductory text through (a)(1) Availability of comparable replacement dwelling before displacement*

The FHWA has received a number of questions regarding the meaning of the term “made available” in the context of this paragraph’s discussion of comparables. The

questions are focused on the general requirements of this paragraph's language providing direction on the number of comparables that should be used in the determination process and is not focused on benefit determination or eligibility. A majority of practitioners believe that "made available" simply requires that information on the comparable replacement dwellings be provided to a displaced person. Others believe that the regulation requires that all comparables be inspected before being used in estimating eligibility.

The FHWA proposes to modify the language in this paragraph to clearly state that "made available" means providing information in writing on the location of actual comparable replacement dwellings that were used in the determination process. The regulation continues to state that three or more comparable replacement dwellings shall be made available, whenever possible in the determination process. The FHWA believes that providing information on at least three comparable replacement dwellings should be the standard practice because it provides the displaced person with the assurance that the selected comparable replacement dwellings fairly represent comparable properties available on the market. The FHWA is also proposing changes to § 24.205(c)(2)(ii)(C) *Relocation Planning, Advisory Services, and Coordination* which are discussed in detail below. The FHWA agrees that an inspection of a comparable dwelling should be made prior to its use in any eligibility determination. The proposed change requires Agencies to inform displaced persons in writing of the reason(s) a DSS inspection of a comparable replacement dwelling was not made (in cases where inspections were not made) and to indicate that, should a displaced person select one of the comparable dwellings, a

replacement housing payment cannot be made until a DSS inspection is made of that dwelling.

*Section 24.205(c)(2)(ii)(C) Relocation Planning, Advisory Services, and Coordination*

The FHWA proposes to modify the language in this paragraph to require Agencies to inform displaced persons in writing of the reason(s) a DSS inspection of a comparable replacement dwelling was not made (in cases where inspections were not made) and to indicate that, should a displaced person select one of the comparable dwellings, a replacement housing payment cannot be made until a DSS inspection is made of that dwelling.

The FHWA also proposes adding a new item to appendix A, *Section 24.205(c)(2)(ii)(C)*, explaining what constitutes a DSS inspection and a further discussion of the requirement that an Agency must make full disclosure and explanation to the displaced person if the comparable replacement dwelling was not inspected.

It is the position of FHWA that comparable replacement housing must be inspected whenever possible and that the selected comparable replacement dwelling should be inspected (e.g., walk through/physical inspection). The FHWA proposes to add a part in the appendix which explains that reliance on an exterior visual inspection, or examination of an MLS listing, does not constitute a full DSS inspection as required by the regulation in most cases.

*Section 24.205(c)(2)(ii)(D) Relocation Planning, Advisory Services, and Coordination*

The FHWA is proposing to revise the appendix for this part to include a reminder that Agencies should ensure that they are appropriately documenting their efforts to

provide comparables and replacement dwellings which are not in areas of minority concentration.

*Section 24.207(f) No waiver of relocation assistance*

The FHWA proposes to add a reference to appendix A, *Section 24.207*, which further explains the requirements when a displaced person chooses not to accept some or all of the payments or assistance to which they are entitled.

*Section 24.207(h) Entitlement to payments-deductions from relocation payments*

To date, the practice of withholding a portion of, or deducting from, a relocation replacement housing payment to satisfy non-payment of rent to an Agency, or to satisfy an obligation to any other creditor, has been clearly prohibited. Because the current prohibition is only found in § 24.404(a)(6) pertaining to replacement housing payments, several questions have been raised regarding whether the withholding prohibition applies to all relocation assistance payments or only to replacement housing payments. The FHWA proposes to add a new paragraph to the general requirements for claims for relocation payments to emphasize that withholdings or deductions may not be made from any type of relocation payments for non-payment of rent or to satisfy an obligation to any other creditor. The proposed addition would also clarify that Agencies must deduct any advanced relocation payment from the relocation payments to which the displaced person is otherwise entitled.

*Section 24.208(c) Aliens not lawfully present in the United States*

The FHWA proposes to add a reference to a new addition to the appendix for this paragraph that provides examples of how to calculate relocation payments if some members of a displaced family are lawfully present but others are aliens not lawfully

present. The new addition would provide calculations that are based on the ratio of ownership between aliens not lawfully present and eligible displaced persons. The proposed addition to appendix A also incorporates several current Uniform Act Frequently Asked Questions,<sup>7</sup> to provide specific calculation examples.

*Section 24.208(f)(1)*

The FHWA proposes to update the acronym for the BCIS to the current USCIS and add a corrected link to that Agency's website. The FHWA also proposes to amend this paragraph by requiring the use of the USCIS's Systematic Alien Verification for Entitlements (SAVE) program to confirm certifications which an agency believes may be invalid. The FHWA seeks comments on whether there may be other resources that can be used when an agency considers a certification invalid. The FHWA would also like comments on whether and how the certification process in this part should be updated. The FHWA is interested in comments on whether revisions should include document review and collection for all displaced persons.

*Section 24.208(g) Aliens not lawfully present in the United States*

The FHWA has received questions from several Federal Agencies about providing temporary relocation assistance to aliens not lawfully present in the United States. The question arises because the requirements focus on displaced persons. In instances of temporary relocation, persons are not displaced persons but are eligible for certain temporary benefits. The Federal Agencies question whether this paragraph's restriction on providing relocation benefits or assistance would prohibit or allow an

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<sup>7</sup> [https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafaqs.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm)

Agency to deny temporary relocation assistance to an alien not lawfully present in the United States. The FHWA believes that the clear intent in statute and this regulation do not allow for any Uniform Act benefits or assistance to be provided to an alien not lawfully present in the United States, with the exception being cases where an exceptional and extremely unusual hardship to a spouse, child, or parent who is a U.S. citizen or alien lawfully admitted for permanent residence would be created by denying such benefits and assistance. This regulation provides specific considerations and requirements that allow for benefits to be provided in this limited instance. Given that this regulation allows and defines instances when an alien not lawfully present in the United States may receive Uniform Act benefits, the FHWA believes that the hardship exception also applies to temporary relocations in cases where an exceptional and extremely unusual hardship to a designated family member would be created by denying such benefits and assistance. The FHWA does not believe that any additional changes are needed to this regulation given the restrictive and specific language in this paragraph.

*Section 24.208(h) Aliens not lawfully present in the United States*

Some Agencies have asked FHWA how to determine when there is an “exceptional and extremely unusual hardship” to a spouse, parent, or child of a person not lawfully present in the United States when the determination results in more than the loss of relocation payments and/or assistance alone. The FHWA proposes to add a reference to appendix A, *Section 24.208(h)*, which incorporates FHWA’s previously published FAQ explaining the meaning and intent of the term “exceptional and extremely unusual

hardship.”<sup>8</sup> The FHWA believes that including existing guidance into the appendix will provide a clear resource to address the questions raised.

## **Subpart D--Payments for Moving and Related Expenses**

### *Section 24.301(b)(2) Moves from a dwelling*

The FHWA requests comments on adding an option, similar to that found in this part for business self-moves, to allow self-moves from dwellings to be eligible for reimbursement in the amount of the lower of two bids or estimates prepared by a commercial mover or based on an estimate prepared by a qualified Agency staff person. The FHWA would like comments on whether and how adding new self-move options for moves from a dwelling would reduce administrative burden on the displaced person and the Agency. The FHWA believes that self-move options would reduce administrative burden and eliminate the burden to the property owner of providing receipts or proof of expenditures to support residential self-move claims for payment. The FHWA is also interested in comments on how reimbursement should be made if a self-move reimbursement is based on a commercial move bid. Should the reimbursement be for the full commercial move bid, or should it be made after subtracting an amount to account for overhead and profit in the commercial move bid?

### *Section 24.301(b)(3), (c)(2)(ii), and (d)(2)(ii) Moving Cost Finding and (d)(2)(iii) Non-Residential Moving Cost Schedule*

The FHWA is interested in incorporating methods in this regulation that can reduce administrative burdens and improve the government’s service to individuals and

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<sup>8</sup> [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/illegaqa.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/illegaqa.cfm)

businesses affected by Federal or federally assisted projects and programs. In previous rules, there was a provision that allowed moving expenses to be determined by a qualified staff person for small, uncomplicated personal property moves, commonly called a “moving cost finding” or “a finding.” Persons displaced from their dwellings can elect to receive reimbursement for moving their personal property by use of a streamlined process that does not require commercial move estimates or receipts documenting moving costs. The Fixed Residential Moving Cost Schedule allows an Agency to determine, document, and establish moving cost eligibility based on the number of rooms of furniture being moved. The FHWA is considering a similar tool for nonresidential moves. A business move cost schedule would conceptually be established by regulation and would allow an SDOT to determine eligibility for reimbursement based on a predetermined metric such as number of rooms or number of items. If a non-residential moving cost schedule were allowed by regulation, Agencies would no longer need to document costs based on moving estimates or receipted bills.

The FHWA would like comments about move cost findings and development of a non-residential moving cost schedule, and whether they should be considered for incorporation in a final rule. Specifically, FHWA would like to know if any Agencies use a similar process for their programs and projects which are not subject to the requirements of the Uniform Act; whether that process has produced administrative cost savings; and, whether the process has been found satisfactory by displaced persons relocated by the Agency.

*Section 24.301(e) Personal property only*

The FHWA proposes to modify appendix A, *Section 24.301(e)*, to provide Agencies with additional flexibility for use in residential moves where the only personal property to be moved is located outside of the dwelling. The FHWA recognizes that in some instances the costs of obtaining moving bids for moving personal property located outside of the dwelling may exceed the cost of the actual move. The FHWA proposes to allow a payment for moves of residential personal property located outside of the dwelling to be based on the “additional room” category of the Fixed Residential Move Cost Schedule. We also propose to include the link to the Schedule on the FHWA website in this appendix.

*Section 24.301(g)(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.*

The FHWA proposes to add a clarification in the appendix of this paragraph to address questions received about the eligibility of certain costs to build or rehabilitate structures as a reimbursable expense. Generally, costs to construct, rehabilitate, or reconstruct are capital expenditures and are ineligible for reimbursement. In instances where these costs may be required, a waiver of regulation by the Federal funding Agency must be obtained.

*Section 24.301(g)(11) Eligible actual moving expenses- license, permit, fees*

The FHWA proposes to add “actual, reasonable, and necessary” before the words “license, permit, fees or certification” and “farms or non-profits” and after “business” in this paragraph. The FHWA believes that each business, farm, or non-profit move is unique due to varying local, State, and Federal requirements and requires a careful review of the facts in order to determine whether a permit or fee should be reimbursable for a

specific move. The FHWA also proposes to clarify that the permit or fees allowed under this paragraph are for those necessary to operate a business, farm, or non-profit by adding “to operate a business, farm, or non-profit” after “required” in the first sentence of this paragraph. The proposed change would clarify that permit fees associated with construction are not included as an actual moving expense. In most instances, reimbursing for building a new structure at the replacement location is not a permissible actual moving cost expense. Consequently, the cost of a permit for new construction in almost all instances is not an eligible expense under this part. A new construction permit for repairs or improvements to the replacement property or modification to accommodate the business, farm, or non-profit operation or make the replacement structure suitable for conducting the business, farm, or non-profit may, however, be eligible for reimbursement if determined to be reasonable and necessary under § 24.304 *Reestablishment expenses* or if required by local law, code, or ordinances.

*Section 24.301(g)(13) Re-lettering signs and replacing stationary on hand*

Currently, the regulation specifies that re-lettering signs and replacing stationery made obsolete at the time of the displacement are eligible moving expenses. The FHWA proposes to modify this paragraph to recognize that many businesses use media other than printed media by adding the phrase “and making updates to other media.” We propose making a reference to a new item in appendix A, *Section 24.301(g)(13)*, which includes examples of other potentially reimbursable costs for other media such as DVDs or CDs and modification of websites to update contact and location information made necessary because of the move. This proposed change would allow Agencies to determine if expenses incurred to update media on hand, such as DVDs, CDs, or updating

a website to reflect information on the new location of the business, are actual, reasonable, and necessary expenses which would be eligible under this paragraph. The FHWA intends that the compensation would be limited to costs to reproduce the number of DVDs and CDs on hand at the time of displacement, and, in the case of a website update, only those costs necessary to edit and modify the location information.

*Section 24.301(g)(14)(i) – (ii) Actual direct loss of tangible personal property*

The FHWA has received a number of questions regarding the appropriate method for calculating the actual direct loss of tangible personal property and the meaning of “value in place for continued use” as used in these paragraphs. Some Agencies have reported that it can be difficult and very costly to find machinery and equipment (M&E) valuation experts who are able to determine value in place for continued use. Other Agencies have noted that considering the value in place for continued use ensures that payments made under provisions of these paragraphs are reasonable and that procuring the services of an M&E valuation expert is relatively easy. The FHWA believes that procuring the services of an M&E valuation expert is achievable but perhaps not always easily.

The FHWA proposes to modify these paragraphs to allow for a new two-part consideration of the actual direct loss of tangible personal property payment. First, FHWA proposes separate paragraphs for calculating payments for items currently in use and for items not currently in use. For items in use, reimbursement is based on the lesser of the cost to move and reinstall the item or fair market value in place of the item “as is for continued use.” The FHWA believes that by using “the lesser of” consideration, the eligibility determination provides options to both the Agency and the displaced person.

For items not currently in use, FHWA proposes to base the reimbursement on the cost to move the item as is, with no allowance for storage.

The FHWA also proposes to reorganize these paragraphs by proposing a separate subordinate paragraph for goods held for sale. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices. The FHWA proposes to add a reference to appendix A for this paragraph.

The FHWA also proposes to add a discussion to the end of appendix A about procuring M&E valuation expert services. The FHWA welcomes comments that identify such services and methods that may be used to direct the reader to reasonable methods of estimating value in place either by hiring an M&E appraiser or by estimating via websites available for M&E valuations. Finally, FHWA proposes updating regulatory references in the appendix for these paragraphs due to renumbering and reorganization of the regulation section.

*Section 24.301(g)(17)(i) – (ii) Searching for a replacement location*

The FHWA's Business Relocation Assistance Retrospective Study<sup>9</sup> reported that businesses incur searching expenses that routinely exceed the current regulatory limit of \$2,500. The report recommended increasing the limit on searching expenses to \$5,000 and lessening the burden of documentation. The FHWA proposes to increase searching expenses' eligibility from \$2,500 to \$5,000. The FHWA believes that in some instances

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requiring documentation for all searching expenses can be administratively burdensome to both the Agency and the displaced person. As such, FHWA proposes to add a new provision at § 24.301(g)(17)(ii) of this regulation that would provide Federal Agencies with the option to allow, on a project or program wide basis, a one-time alternative searching payment of up to \$1,000 with little or no documentation. The FHWA believes that the potential savings in administrative costs offset the possibility of fraud, waste, and abuse. The FHWA also proposes to modify the appendix for these paragraphs by striking \$2,500 and inserting \$5,000 and by proposing new flexibility by allowing one time alternative searching payments of up to \$1,000 with little or no documentation.

The FHWA also proposes to incorporate a frequently asked question into the appendix to clarify that search expenses may be incurred anytime the business anticipates it may be displaced, including prior to project authorization or the initiation of negotiations. However, such expenses should not be reimbursed until the business has received the notice, required in § 24.203(b), and only after the Agency has determined such costs to be actual, reasonable, and necessary.

*Section 24.301(g)(17)(i)(F) Searching for a replacement location*

The FHWA proposes to change this paragraph to allow expenses to include attorney's fees. The FHWA recognizes that displaced business owners may incur actual, reasonable, and necessary costs for either time spent or fees paid for services necessary to determine the adequacy of a potential replacement property. These costs may include those necessary to determine appropriate zoning and resolve other issues during a search for a replacement location. Several State Agencies have reasoned that in a number of instances having attorneys negotiate for the purchase of replacement sites could be an

actual, reasonable, and necessary expense. The FHWA agrees that attorney's fees for negotiating a purchase can be considered a reasonable expense under this part. The FHWA also proposes to strike "time spent" and insert "expenses" negotiating the purchase of a replacement site.

The FHWA is proposing to amend the appendix for this paragraph to clarify that attorney's fees could be considered eligible as a searching expense. The FHWA also believes that because the fees are reimbursed at the Agency's discretion based on the actual, reasonable, and necessary test, the potential for waste, fraud, and abuse is manageable.

*Section 24.301(h)(13) Ineligible moving and related expenses*

State DOTs have asked about the eligibility of costs to make cosmetic alterations or improvements to replacement dwellings, such as painting, fitting draperies, and replacing carpet or flooring. The FHWA believes that expenses for cosmetic changes to a dwelling are not moving costs which are reimbursable under the Uniform Act. This proposed change is not intended to prohibit alterations to a dwelling to make it accessible and free of barriers for ingress, egress, or use as required under the definition of a *DSS dwelling*, for a displaced person with a disability at § 24.2(a).

*Section 24.302 Fixed Payment for moving expenses-residential moves*

Persons displaced from a seasonal residence or dormitory style room may receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses. A number of questions have been raised about the appropriate uses of the moving cost schedule, including whether storage can be included as part of a fixed cost move and what the allowance for storage can include. The FHWA proposes to add

language to the appendix to clarify that if an Agency determines that storage is an actual, reasonable, and necessary expense in conjunction with this schedule, payment may be paid in accordance with § 24.301(g)(4) for a period not to exceed 12 months. The FHWA also proposes to revise language in appendix A, *Section 24.302*, to clarify the applicability of the Fixed Residential Move Cost Schedule (Schedule) to seasonal residents and temporary moves from a dwelling and to add a reference to the revised appendix item.

The FHWA proposes to add a new paragraph to this section to allow for actual reasonable and necessary storage. This proposed addition requires that the Agency notify the displaced person in writing that the Fixed Residential Move Cost Schedule is only for one move. In instances where storage was approved, only the costs to move the personal property from the displacement location to storage would be reimbursable. The FHWA believes that in most cases the use of a fixed cost move is meant to be a one-time uncomplicated move, and if storage is necessary, it would be in the displaced person's interest to use a commercial move to ensure that all costs related to moving and storage are reimbursed.

#### *Section 24.303(a) Related Non-Residential Eligible Expenses*

The FHWA has received a number of questions regarding the meaning of “nearby utilities” and whether “nearby” allows for reimbursement for certain utility service modifications and reconnection costs. In general, there has been confusion about whether “nearby” meant from the property line or some other defined point. The intent of this paragraph was to recognize that relocating a business may require some utility service modifications and reconnection costs. “Nearby” has sometimes been interpreted to mean

anywhere from several feet to several miles away. The FHWA proposes to strike “nearby” and “right-of-way” and add “from the replacement site’s property line.” The FHWA believes that the proposed changes will more clearly and accurately indicate the kinds of expenses that are eligible under this part. The FHWA proposes adding a new appendix item for this paragraph that includes examples to more clearly describe eligible costs. The FHWA also proposes to add a reference to the new appendix A, *Section 24.303(a)*, to the end of this paragraph.

*Section 24.303(c) Related nonresidential eligible expenses--impact fees or one-time assessments*

Impact fees or one-time assessment for anticipated heavy utility usage are eligible expenses. The FHWA is proposing to clarify that “impact fees” are only related to anticipated “heavy utility usage” at the replacement location. Generally, the terms “heavy utility usage” and impact fees recognize costs associated with utility usage including water, sewer, gas, and electric. Impact fees associated with major infrastructure construction, such as adding a lane for additional traffic capacity or other similar required infrastructure improvements, fire stations, regional drainage improvements, and parks are not eligible. The FHWA proposes changing the “or” before “one time assessments” to “and.” The FHWA believes this change, a subsequent new appendix A, *Section 24.303(c)*, and a reference to it in the regulation will adequately respond to the questions about correctly interpreting and applying this benefit.

*Section 24.304 Reestablishment expenses--non-residential moves*

Section 1521(a)(1) of MAP-21 amends Section 202 of the Uniform Act by raising the statutory limit to \$25,000. The FHWA proposes to revise this section to reflect the new statutory limit of \$25,000.

*Section 24.304(b) Ineligible expenses*

Several Federal Agencies and FHWA have received questions from their program partners regarding whether construction of a facility, where little or no structure currently exists, would be an eligible reestablishment expense. They have reasoned that § 24.401(a)(1), which allows for “improvements to the real property,” and § 24.401(a)(2), which allows for “modifications to the replacement property,” may be read to allow for new construction or substantially new construction where there is little or no structure.

The FHWA proposes to add a new § 24.304(b)(5) to clarify exclusion of costs to construct a new facility such as a new business building on a vacant replacement property or to substantially construct or reconstruct a building. These costs are considered capital expenditures and are generally ineligible for reimbursement as a reestablishment expense. The FHWA believes that building from the ground up or substantially reconstructing a building, or the rehabilitation or rebuilding of a shell, is beyond the intended scope of § 24.304(a). The FHWA recognizes that there may be special cases where substantial reconstruction or building from the ground up may be necessary. Agencies will need to consider each request for eligibility on a case-by-case basis and determine whether that eligibility should be requested. Agencies that determine that eligibility should be provided must request a waiver of § 24.304(b)(1) under the provisions of § 24.7 from the Federal Agency funding the project or program

The FHWA also proposes incorporating two current Frequently Asked Questions into a new appendix item with an example of when such a waiver is requested and discusses the costs that may be eligible for reimbursement.

*Section 24.305 Fixed Payment for moving expenses-nonresidential moves, Paragraphs (a) Business, (c) Farm operation, and (d) Nonprofit organization*

Section 1521(a)(2) of MAP-21 amends Section 202 of the Uniform Act by raising the statutory limit for a fixed payment for moving expenses-nonresidential moves to \$40,000. The FHWA proposes to revise these three paragraphs to reflect the new statutory limit of \$40,000.

Several Federal Agencies and some program partners have raised questions about whether a fixed payment for moving expenses in nonresidential moves prohibits other relocation assistance payments for moving and related expenses and reestablishment payments. The FHWA proposes to add clarifying language to ensure that the regulation is clearly understood to prohibit payments for any moving and related expenses or reestablishment payments when a displaced person elects to receive a fixed cost moving payment under this section of the regulation. The fixed payment option's purpose is to provide a displaced person with an alternative method of receiving reimbursement for all costs associated with a move. This alternative fixed payment is a one-time payment that exhausts and eliminates other eligibilities and payments for any moving and related expenses (including actual direct loss of tangible personal property and searching) or reestablishment payments.

The FHWA also proposes a new appendix item for these parts to further clarify that this fixed payment represents a one-time alternative for businesses, farms, and non-profits.

*Section 24.305(e) Average annual net earnings*

Practitioners have asked FHWA about the requirement that a business must have been in operation for at least 2 full years to qualify for the fixed payment based on the average annual net earnings and what to do in instances where the business was not in operation for two full years. The FHWA proposes to add a reference in this paragraph to a revised appendix A, *Section 24.305(e)*. The revisions clarify that a business must only contribute materially to the income of the displaced person for a period of time during the 2 taxable years prior to displacement but does not have to be in existence for 2 full years prior to displacement in order to be eligible for this benefit. The proposed new appendix item also provides sample calculations of benefits when a business was in operation for less than 1 year, more than 1 year but not 2 full years, and when a business only operates seasonally. We propose that the seasonal net income be considered the entire income for that year when making the payment calculation. The appendix also restates, as currently provided for in the regulation, that average annual net earnings may be based upon a different period of time that an Agency determines to be more equitable. The FHWA believes that the combination of the proposed new item in appendix A and the specific examples of calculations will ensure that businesses that contribute materially, but are in operation less than 2 years prior to displacement, will have their annual net earnings correctly determined.

*Section 24.306(a) Discretionary utility relocation payments*

The FHWA proposes to revise the reference to § 24.2(a), *Utility facility*.

### **Subpart E--Replacement Housing Payments**

#### *Section 24.401- Replacement housing payment for 90-day homeowner-occupants*

Section 1521(b)(2) of MAP-21 amends Section 203(a)(1) of the Uniform Act by reducing the number of days a person must have owned and occupied a displacement dwelling from 180 days to 90 days in order to be eligible for a replacement housing payment. The FHWA proposes to modify the heading for § 24.401 and paragraphs (a) introductory text and (a)(1) and the appendix entries for these parts by deleting “180 days” and inserting “90 days” in each place it appears.

#### *Section 24.401(b) Amount of payment*

Section 1521(b)(1) of MAP-21 amends Section 203(a)(1) of the Uniform Act by raising the statutory limit for replacement housing payments to \$31,000. The FHWA proposes to modify this section by deleting \$22,500 and inserting \$31,000 in each place it appears.

#### *Section 24.401(d) introductory text through (d)(1) Increased mortgage interest costs.*

The FHWA is not proposing a change in this section but believes it is important to note that MAP-21 did not change the requirement that a lien must have been in place for 180 days prior to the initiation of negotiations in order to be considered a valid lien and to be eligible for an increased mortgage interest cost payment under this part. Prior to MAP-21, the eligibility requirements for occupancy of a displacement dwelling and for a valid lien were both 180 days prior to the initiation of negotiations.

The FHWA proposes to modify the appendix item for § 24.401(d) to improve clarity by striking “and that the 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” from the sentence after the sample computation. This does not necessarily occur often in practice since a displaced person may obtain a lesser mortgage amount or term on their replacement dwelling. The rest of the sentence remains to inform the displaced person of the approximate amount of the payment and interest rate and points used to calculate the payment.

The FHWA also proposes to add a link in the appendix to increased interest cost calculators available on its website.

#### *Section 24.401(e) HECM*

The FHWA proposes to add a new definition, paragraph, and appendix item to address HECM (also known as reverse mortgages). Although the actual number of HECM type mortgages is still relatively low in comparison to all types of mortgages, FHWA believes that this may change in the future due in part to the number of aging homeowners in the marketplace and also because the marketplace and marketing practices for HECMs are evolving and growing.

Since these mortgages did not exist when the Uniform Act was enacted, their unique and particular financial construction was not accounted for in the development of relocation assistance benefits. Because there are unknown factors in calculating exact costs to replace a HECM, the services of a mortgage broker are required. The FHWA believes that there is ample authority in the Uniform Act, its legislative history, and implementing regulations to support the strategies proposed in this NPRM for addressing displaced persons with HECMs.

We have incorporated in the NPRM information from a 2013 Study of Reverse Mortgages in Relocation Assistance conducted by FHWA. These mortgages often have unique terms. We are proposing that every reasonable attempt should be made to make available a replacement HECM with similar terms. The FHWA is also proposing that the displaced homeowner is eligible for costs associated with origination of a replacement HECM, such as mortgage insurance, origination fee, and other incidental expenses, in accordance with § 24.401(f).

Our research has revealed that the cost of replacing a HECM can be substantial, especially when the owner has little or no equity left and their equity is being dispersed as term or tenure payments. The FHWA is also proposing options to replace the HECM with a mortgage with terms similar to the displacement HECM loan or the use of other methods such as a life estate for securing a dwelling for the person's remaining lifetime. In cases where there is a tenure or term payment, FHWA has developed a simple online calculator to estimate the cost to purchase a replacement HECM. However, the exact payment required to purchase a replacement HECM includes information and calculations which are proprietary to HECM mortgage brokerages. The FHWA believes the use of a calculator which provides an estimate will serve to inform the Agency and displaced person of approximate eligibility and a method for determining whether HECM replacement costs are actual, reasonable, and necessary.

The new item in appendix A presents the various HECM terms that can be encountered with solutions for Agencies to consider. It also provides a link to the FHWA online calculator to estimate the eligibility and costs to replace the HECM. This calculator uses basic information readily available to an Agency to calculate this

estimated payment. It only requires the value of the acquired dwelling, existing balance of the displacement HECM, and price of the selected comparable or actual replacement dwelling. Next, it calculates an estimate of the remaining equity on the displacement HECM, the initial principal limit of the replacement HECM (current HUD rules require 60 percent minimum equity in the dwelling be available at the time of purchase of the HECM) and funds needed to purchase a replacement HECM. Then, it subtracts the remaining equity and price differential payment from the total funds needed to arrive at the estimated HECM supplemental payment eligibility.

*Section 24.401(f) Rental Assistance Payment*

This paragraph has been re-lettered (g) due to the insertion of the new § 24.401(e) on HECMs. Section 1521(c)(1) of MAP-21 amends Section 204(a) of the Uniform Act by increasing the statutory limit for rental assistance payments to \$7,200. Similarly, section 1521(b)(2) of MAP-21 also amends Section 203(a)(1) of the Uniform Act by reducing the number of days a person must have owned and occupied an acquired dwelling in order to be eligible for a rental assistance payment from 180 days to 90 days. The FHWA proposes to modify this paragraph and the appendix to reflect both changes.

*Section 24.402 Replacement housing payments for 90-day tenants and certain others*

The FHWA proposes to strike “90-day occupants,” which included tenants or owner-occupants, from this section’s current title and replace it with “tenants and certain others.” The FHWA is proposing this change to be consistent with the heading “Tenants and certain others” contained in both the Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended in 1987, and the statute Title 42, U.S.C. Chapter 61, section 4624- *Replacement housing for tenants and certain others*.

### *Section 24.402(a) Eligibility*

Section 24.402 of the regulations sets out criteria for when 90-day tenants and certain others displaced from a dwelling are eligible for a payment for rental assistance or down payment assistance. Section 1521(b)(2) of MAP-21 amends Section 204(a) of the Uniform Act by increasing the statutory limit for replacement housing payment to tenants to \$7,200. The FHWA proposes to update the amount listed in this paragraph accordingly.

### *Section 24.402(a)(2) Eligibility*

The FHWA proposes to add “the date he or she moves from the displacement dwelling” to the end of § 24.402(a) and to delete the remainder of this paragraph. These changes are necessary because of changes to eligibility criteria for owners in Section 1521(a)(1) of MAP-21, which reduced the number of days a person must have owned and occupied a displacement dwelling in order to be eligible for a replacement housing payment from 180 days to 90 days. This change eliminates the need or requirement to discuss eligibilities for homeowners of more than 90 but less than 180 days. Consequently, FHWA is proposing to reorganize the section.

### *Section 24.402(b) Rental assistance payment*

Section 1521(a)(1) of MAP-21 amends Section 204(a) of the Uniform Act by increasing the statutory limit for replacement housing payment to tenants to \$7,200. The FHWA proposes to update the amount listed in this paragraph accordingly.

The FHWA also proposes to correct the web link to the Uniform Act Low Income Limits Survey, which currently points to an inactive website.

### *Section 24.402(b)(1)(i) Rental Assistance Payment*

The FHWA has received some questions about calculating and developing a base monthly rental. Developing a base monthly rental requires information on costs of utilities. The question that arises is whether the allowance in § 24.402(b)(1)(i) of using the "... estimated average monthly cost of utilities for a comparable replacement dwelling" can be applied, as opposed to the actual utility costs, when determining base monthly rental of the displacement dwelling. The FHWA believes that Agencies should attempt to secure actual costs of utilities from the displaced person in order to calculate and determine base monthly rental, to the extent practicable. Should those costs not be available, the Agency should so document its file and then utilize an estimate to develop a base monthly rental at the displacement dwelling. The FHWA invites comments and suggestions as to what estimates may best approximate actual monthly utility costs and what additional guidance or support may be needed in meeting the requirements of this paragraph.

*Section 24.402(b)(2) Rental Assistance Payments*

The FHWA is proposing to revise the low income calculation example in the appendix by striking reference to "(a)(14)" and inserting to refer to the definition of "household income" in § 24.2(a).

*Section 24.402(b)(3) Manner of disbursement*

The FHWA proposes to add the word "replacement" to housing in this paragraph to clarify the type of housing covered. The sentence states that the full amount of the rental assistance payment vests with a tenant regardless of the later condition or location of the replacement dwelling.

*Section 24.402(c) Down payment assistance payment*

Section 204 of the Uniform Act sets criteria for when 90-day tenants and certain others displaced from a dwelling are eligible for a payment for rental assistance or down payment assistance. Section 1521(c)(1) of MAP-21 amends Section 204(c) of the Uniform Act by increasing the statutory limit for down payment assistance to \$7,200. The FHWA proposes to update the amount listed in this paragraph and the appendix accordingly.

The FHWA also proposes to modify this paragraph by deleting “180 days” and inserting “90 days” in each place it appears in this paragraph and appendix. The FHWA also proposes to add clarifying language in the appendix to describe rental assistance payment eligibilities for a displaced homeowner who fails to meet the 90-day occupancy requirements.

*Section 24.403(a)(1) Additional rules governing replacement housing payments*

Comparable replacement housing must be inspected whenever possible. The selected comparable replacement dwelling should be inspected with a walk through or physical inspection. Reliance on an exterior visual inspection of comparables, or examination and review of an MLS listing’s details, does not, in most cases, constitute a full DSS inspection as required by the regulation and may not reveal deficiencies in a property that would render it not decent, safe, and sanitary.

The FHWA proposes to modify language in this paragraph to require that Agencies inform displaced persons in writing of the reason the full DSS inspection of the comparable replacement dwelling was not made and that, should a displaced person

select one of the comparable dwellings as a replacement dwelling, a replacement housing payment cannot be made until a DSS inspection is made of that dwelling.

The FHWA also proposes to add a new item to appendix A, *Section 24.205(c)(2)(ii)(C)*, explaining what constitutes a DSS inspection and a further discussion of the requirement that an Agency must make full disclosure and explanation to the displaced person if the comparable replacement dwelling did not receive a full DSS inspection.

The FHWA also is proposing to change the sentence in the regulation “if available, at least three comparable replacement dwellings shall be examined” to “shall be considered.” The FHWA also proposes to add an appendix clarification at *Section 24.403(a)(1)* that the term “examined” does not necessarily equate to “inspected” for the payment computation.

*Section 24.403(a)(3) Acquisition of a portion of a typical residential property*

The FHWA has received questions regarding the term “buildable lot,” in particular regarding circumstances when a lot might not be buildable but the Agency determines it does have economic value to the owner and/or the market. The FHWA believes clarification of the term buildable lot is warranted and thus proposes to replace the phrase “is a buildable lot” with the phrase “and the Agency determines that the remainder has economic value to the owner, which more accurately describes these remainders.

In the past, some Agencies, when a remainder had economic value to the owner or market, would allow a displaced person to decide to retain the “buildable lot” or remainder and would calculate a replacement housing eligibility based on only the

portion of the property that the Agency was acquiring. This could cause a substantial increase in calculated eligibility or a windfall by virtue of the property owner electing to retain the remainder. The FHWA believes that it is more reasonable to allow Agencies the option to offer to purchase the remainder and to base the replacement housing eligibility on the offer for the entire parcel regardless of the owner's decision to sell or retain the remainder.

The FHWA also proposes to offer a sample calculation and to add language to appendix A, *Section 24.403(a)(3)*, to explain that the purpose of this paragraph is to clarify when to apply this calculation method and how to correctly calculate relocation eligibility and payments. Also in appendix A, *Section 24.403(a)(3)*, FHWA proposes to explain that if an Agency presents a written offer to acquire the whole parcel, the price differential portion of the replacement housing payment should be based upon the difference between the comparable replacement dwelling and the Agency's written offer to acquire the whole parcel. Under the proposed changes, property owners may elect to retain the remainder, but the decision to do so would not require a recalculation of relocation assistance eligibility.

### **Subpart F- Mobile Homes**

In the 2005 rulemaking, FHWA reorganized the mobile home section to streamline and better describe the requirements for determining eligibility and calculating benefits for mobile home occupants. We continue to receive questions which point to an undue complexity in both determining eligibility and calculating benefits in this subpart. The FHWA believes that the majority of the questions arise because there is a two-part benefit determination process that considers the dwelling and the site the mobile home is

on as independent eligibilities. Because they are independent eligibilities (for example, a displaced person could be a dwelling owner and a tenant on the land), the permutations and combinations of eligibilities and related policy questions about proper application of benefits are complex and unwieldy. The FHWA has several FAQs on the FHWA website<sup>10</sup> to address these issues but continues to receive questions about the determination and calculation of benefits.

During the development of this NPRM, FHWA conducted several meetings with its Federal Agency partners to identify methods of restructuring and reorganizing Subpart F. Several proposed changes were considered but ultimately not adopted. One method of clarifying mobile home occupant payment eligibility and computation would be based on the displaced person's ownership or rental of the mobile home dwelling (dwelling test). If the displaced person owns the mobile home, he or she would be considered an owner regardless of whether he or she owns or rents the site, and, as a dwelling owner, would not be eligible for a utility payment. If the displaced person is a tenant in the mobile home, he or she would be a tenant regardless of whether he or she owns or rents the site, and, as such, would be eligible for a utility payment. Ultimately this approach was not included in this NPRM. Some Agencies were concerned that the dwelling test would reduce overall benefits available to displaced mobile home occupants under the current two-part eligibility calculation method and specifically to those who are displaced low income mobile home occupants.

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<sup>10</sup> [https://www.fhwa.dot.gov/real\\_estate/](https://www.fhwa.dot.gov/real_estate/)

The FHWA would like comments and suggestions on methods to reorganize and streamline the calculation and determination of benefits for displaced mobile home occupants, or whether further changes are warranted. The FHWA is interested in comments on whether the dwelling test would streamline and improve the process of calculating and determining benefits for a mobile home occupant, why and how would benefits be reduced using the dwelling test for mobile home occupants, examples of how and why the current regulation and method of benefit determinations work well, or have not worked well and implementation challenges which the current rule creates.

*Section 24.502 Replacement housing payment for 90-day mobile homeowner displaced from a mobile home, and/or from the acquired mobile home site*

Section 1521(b)(2) of MAP-21 amends Section 203(a)(1) of the Uniform Act by reducing the eligibility requirement from 180 days to 90 days the number of days a person must have owned and occupied a displacement dwelling in order to be eligible for a replacement housing payment. The FHWA proposes to update this paragraph accordingly.

*Section 24.502(a) Eligibility*

Section 1521(b)(1) of MAP-21 amends Section 203(a)(1) of the Uniform Act by raising the statutory limit for replacement housing payments to \$31,000. The FHWA proposes to modify this paragraph by deleting \$22,500 and inserting \$31,000 in each place it appears.

*Section 24.502(b) Replacement housing payment computation for a 90-day owner that is displaced from a mobile home*

Section 1521(a)(1) of MAP-21 amends Section 203(a)(1) of the Uniform Act by reducing the number of days a homeowner-occupant must have owned and occupied a displacement dwelling in order to be eligible for a replacement housing payment from 180 days to 90 days. The FHWA proposes to update this paragraph accordingly.

*Section 24.502(c) Rental assistance payment for a 90-day owner-occupant displaced from a leased or rented mobile home site*

Section 1521(b)(2) of MAP-21 amends Section 203(a)(1) of the Uniform Act by reducing the eligibility requirement for the number of days a person must have owned and occupied a displacement dwelling in order to be eligible for a replacement housing payment from 180 days to 90 days. The FHWA proposes to update this section and the appendix accordingly.

This paragraph of the regulation was not substantially changed except to clarify that the base monthly rent for the displacement site shall be the actual cost paid to the landlord for the site. If the tenant paid little or no rent, the new regulation states that the market rent is to be used, unless it would result in a hardship to the displaced person.

*Section 24.502(d) Owner-occupant not displaced from a mobile home*

This paragraph was not substantially changed. The FHWA continues to believe that if a mobile home is personal property and may be relocated, but the owner elects not to move it, that the owner is not entitled to a replacement housing payment (RHP) for the purchase of a replacement mobile home, but that they are entitled to moving costs.

*Section 24.503 Replacement housing payment for 90-day mobile home tenants and certain others*

Section 1521(c)(1) of MAP-21 amends Section 204(a) of the Uniform Act by increasing the statutory limit for replacement housing payment to tenants to \$7,200. The FHWA proposes to update this section accordingly.

The FHWA also proposes to change this section heading from “90-day mobile home occupants,” which included tenants or owner-occupants, to “tenants and certain others” since all possible entitlements for 90-day owner-occupants are now addressed in § 24.401. This section now addresses only 90-day tenants “and certain others” to cover displaced persons under § 24.404, housing of last resort. The FHWA proposes this change because the heading “Tenants and certain others” is contained in the statutory language. Those persons may not meet length of occupancy requirements, or a project may not be able to proceed on a timely basis, because replacement rental dwellings are not available within the monetary limits for those owners and tenants, as specified in §§ 24.401 – 24.402. When these situations arise, the Agency provides additional or alternative assistance under the section housing of last resort, which then may include a calculation of a replacement rental assistance payment covering 42 months.

A displaced person may claim a rental assistance payment to apply it to the purchase of a DSS conventional dwelling or mobile home. The FHWA also proposes to add language to appendix A, *Section 24.503*, to clarify that the combined mobile home and site replacement housing payment cannot exceed the cost of the actual replacement dwelling or site.

### **Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at

the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA may also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

The FHWA filed a redline version of 49 CFR part 24 in the docket to show all changes to the regulation text and facilitate public review and comment.

**Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures**

Executive Orders (EO) 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is a significant regulatory action within the meaning of EO 12866 and DOT's regulatory policies and procedures (44 FR 11032). This action complies with EOs 12866, 13563, and 13771 to improve regulation.

A more detailed discussion of the economic analysis associated with this rulemaking can be found in the Regulatory Impact Analysis, which is available in the docket. The FHWA invites comments on its cost estimates and discussion of benefits.

Many of the changes that this rule proposes are requirements mandated by MAP-21, which increased the statutory limits of relocation residential and business benefit eligibility and reduced the length of occupancy requirements prior to initiation of negotiations for homeowners from 180 days to 90 days. This NPRM also proposes to streamline program requirements and carry out a comprehensive update of 49 CFR part 24 to better align the language of the regulations with current program needs and best practices. This proposed rule would also address changes identified by the public in response to the DOT's initiative on implementation of January 18, 2011, EO 13563, Improving Regulation and Regulatory Review in Federal Register Notice 82 FR 45750 published on October 2, 2017.<sup>11</sup> The FHWA believes that the proposed streamlining and updating in this NPRM will result in a reduction of Federal requirements and will afford the States and Federal Agencies subject to the Uniform Act new flexibilities to more efficiently acquire real property and relocate displaced persons.

The FHWA has had an ongoing dialog with stakeholders and has developed the proposed rule in a manner that balances stakeholder concerns and practical implementation issues to allow SDOTs and Federal Agency recipients to utilize the new flexibilities while minimizing their effects on existing requirements and procedures.

The Uniform Act provides important protections and assistance for people affected by federally-funded projects. Congress passed the law to safeguard people whose real property is acquired or who move from their homes, businesses, or farms as a

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<sup>11</sup> <https://www.federalregister.gov/documents/2017/10/02/2017-21101/notification-of-regulatory-review>

result of projects receiving Federal funds. The most recent Federal act authorizing surface transportation spending modified the statutory payment levels for which displaced persons may be eligible under the Uniform Act's implementing regulations, necessitating the current proposed rulemaking. In addition, FHWA is proposing to make changes to wording and section organization to better reflect the Federal experience implementing Uniform Act programs. At the Federal level, 18 departments and Agencies are subject to the Uniform Act and their input is reflected in the proposed changes.

The costs of the proposed rule for all Uniform Act Agencies over a 10-year analysis period from 2019 to 2028 are estimated to be: \$1.8 million when discounted at 7 percent and \$2.0 million when discounted at 3 percent. The bulk of the costs are related to updating program materials to reflect the changes in the regulation.

The benefits of the proposed rule primarily relate to improved equity and fairness to entities that are displaced from their properties or that move as a result of projects receiving Federal funds. For example, the proposed rule raises the statutory maximums for payments to displaced businesses to assist with the reestablishment of the business. There is strong evidence that businesses experience reestablishment costs well above the current maximum amount.<sup>12</sup> Raising the maximum payment levels, as required by statute, will compensate those businesses more fairly and equitably for the negative impacts they experience as a result of a Federal or federally-assisted project. However, the fairness and equity benefits of the proposed rule cannot be quantified or monetized.

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<sup>12</sup> The FHWA and other Agencies have conducted studies over the years which conclude that benefit levels are inadequate. Examples include FHWA's business relocation retrospective study: [https://www.fhwa.dot.gov/real\\_estate/publications/business\\_relocation\\_assistance/index.cfm](https://www.fhwa.dot.gov/real_estate/publications/business_relocation_assistance/index.cfm) and GAO report GAO-07-28GA, Eminent Domain, <https://www.gao.gov/assets/260/253929.pdf>

The higher level of payments may also contribute to more businesses being able to successfully reestablish after displacement.

The proposed rule contains changes, such as a requirement for annual reporting, that can be expected to improve transparency, and, therefore, oversight of the program. Again, that benefit cannot be quantified or monetized. The proposed rule changes also provide clarity on how to implement the Uniform Act and offer Agencies additional options for streamlining the administration of their Uniform Act programs. These benefits have not been quantified. Some minor administrative cost savings have been estimated. The FHWA was the only Agency that had a detailed dataset available for its Uniform Act program, and, therefore, only the administrative cost savings to FHWA have been estimated here. Based on communications with other Uniform Act Agencies, FHWA analysts believe that FHWA has the largest Uniform Act program; however, other Agencies have sizable programs, as well. Therefore, the total cost savings across all Agencies will likely be larger.

The table below offers a summary of the costs and benefits of the proposed rule over the 10-year analysis period. Given that the benefits of the rule related to equity and fairness have not been quantified, it would be misleading to report a calculation of net benefits for this proposed rule. Nonetheless, the benefits related to equity and fairness are believed to be sufficient to justify the modest cost of the rule.

## Summary of Costs and Benefits for Analysis Period 2019—2028

Item	Discounted 7%	Discounted 3%	Annualized 7%	Annualized 3%
<b>Costs</b>				
Home Equity Conversion Mortgage (HECM)	\$11,947	\$15,073	\$1,701	\$1,767
Revising Program Material	\$1,787,731	\$1,947,651	\$254,533	\$228,324
Federal Agency Reporting Requirement	\$166,290	\$209,804	\$23,676	\$24,595
Revising Max. RHP/RAP (FHWA Cost Savings)	(\$160,025)	(\$204,380)	(\$22,784)	(\$23,960)
Homeowner 90 Eligibility (FHWA Cost Savings)	(\$7,040)	(\$8,882)	(\$1,002)	(\$1,041)
Appraisal Waivers	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Third Tier of Waiver Valuations	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Use of Single Agents	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Inspection of Comparable Housing	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Clarity & Streamlining	Not Quantified	Not Quantified	Not Quantified	Not Quantified
<b>Total Costs*</b>	<b>\$1,798,903</b>	<b>\$1,959,266</b>	<b>\$256,123</b>	<b>\$229,686</b>
<b>Benefits</b>				
Equity & Fairness	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Program Oversight	Not Quantified	Not Quantified	Not Quantified	Not Quantified

\*Totals may not match sums due to rounding

The proposed rule would result in additional payments made to displaced

businesses. However, these expenditures are reimbursements for costs that these businesses incur regardless of the proposed rule and are therefore considered transfers in the context of a benefit-cost analysis. The table below presents the estimated amount of these transfers for FHWA’s Uniform Act program. The FHWA was the only Agency that provided data upon which to base estimates. Therefore, the magnitude of the change in transfers for all Federal Agencies may be larger than is reported here.

**Transfers to Displaced Persons for Analysis Period 2019—2028**

<b>Item</b>	<b>Discounted 7%</b>	<b>Discounted 3%</b>	<b>Annualized 7%</b>	<b>Annualized 3%</b>
<b>Residents</b>				
Revising Replacement Housing and Rental Assistance Payments	\$1,792,926	<b>2,272,671</b>	<b>255,272</b>	<b>266,426</b>
Homeowner 90-day Eligibility	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Home Equity Conversion Mortgages	Not Quantified	Not Quantified	Not Quantified	Not Quantified
<b>Non-residential displaced persons</b>				
Reimbursement for Updating Other Media	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Search Expenses	\$8,117,037	\$10,285,293	\$1,164,226	\$1,249,723
Re-Establishment Expenses	\$82,335,367	\$104,271,810	\$11,722,704	\$12,223,837
Fixed Payments	\$22,649,659	\$28,709,348	\$3,224,802	\$3,365,611
<b>Total</b>	<b>\$114,954,990</b>	<b>\$145,539,123</b>	<b>\$16,357,004</b>	<b>\$17,061,625</b>

\*Totals may not match sums due to rounding

## **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FHWA has evaluated the effects of this proposed rule on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities, which includes SDOTs, Local Public Agencies, other State governmental Agencies or recipients and subrecipients of Federal Agencies subject to this regulation. This action proposes to update the government-wide regulation that provides assistance for persons, including small businesses, displaced by government acquisition of real property. One of the reasons for proposing the update is to increase assistance for the small number displaced small businesses impacted by the Uniform Relocation Act. We anticipate this proposal would have a positive impact on those relatively few small businesses that are affected by government acquisition of real property. We anticipate the number of small businesses potentially impacted at all by this proposed rule to be small. For example, between 2013 to 2017 FHWA had an average of 1,511 non-residential relocations annually. The FHWA does not have the data to determine how many of the 1,511 non-residential moves were small businesses, but even if one were to assume each of those moves impacted a small business, that impact would account for .005 percent of all U.S. small businesses.<sup>13</sup> Financial impacts on local governments are mitigated by the fact that any increased costs would accrue only on federally-assisted programs, which would include participation of Federal funds. For

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<sup>13</sup> The United States Small Business Administration's 2018 Small Business Profile estimates 30.2 million small businesses in the United States.

these reasons, FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

### **Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4,109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any 1 year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA would evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. In addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government.

### **Executive Order 13132 (Federalism Assessment)**

Executive Order 13132 requires Agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed action has been analyzed in accordance with the principles and criteria contained in EO 13132, and FHWA has preliminarily determined that this proposed action would not warrant the preparation of a federalism

assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect any State's ability to discharge traditional State governmental functions.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this action under EO 13175 and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on tribal governments; and, would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 13211 (Energy Effects)**

The FHWA has analyzed this action under EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that the proposed action is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under EO 13211 is not required.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal Agencies must obtain approval from the OMB for collections of information they conduct, sponsor, or require through regulations. The PRA applies to Federal Agencies'

collections of information imposed on 10 or more persons. “Persons” include a State, territorial, tribal, or local government, or branch thereof, or their political subdivisions.

This NPRM would call for a collection of information under the PRA. As defined in 5 CFR 1320.3(c), “collection of information” comprised of reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. This action contains amendments to the existing information collection requirements previously approved under OMB Control Number 2125-0586. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow and are outlined in full in the RIA contained in the docket for this rulemaking.

The Uniform Act provides important protections and assistance for people affected by federally funded projects. Congress passed the law to safeguard people whose real property is acquired or who move from their homes, businesses, nonprofit organizations, or farms as a result of projects receiving Federal financial assistance. The Moving Ahead for Progress in the 21st Century Act (MAP-21) modified the statutory payment levels for which displaced persons may be eligible under the Uniform Act’s implementing regulations, necessitating the current proposed rulemaking. Additionally, FHWA is proposing to make changes to wording and section organization to better reflect the Federal experience implementing Uniform Act programs, since the last comprehensive rulemaking for 49 CFR part 24 occurred in 2005.

This proposed requirement would amend an existing collection of information by increasing the number of instances requiring information to be collected under OMB control number 2125-0586. The burden hours reserved under these requirements are not

sufficient to cover the additional in-depth updates resulting from regulatory revisions; thereby necessitating this request for additional burden hours. The hours requested are in addition to the hours already set aside.

Agencies conducting a program or project under the Uniform Act must carry out their legal responsibilities to affected property owners and displaced persons. Recipients and subrecipients must collect information in order to determine, document and provide Uniform Act benefits and assistance. Federal agencies are also required to develop and provide to the lead agency, FHWA, an annual summary report that describes the Uniform Act activities conducted by the Federal agency and their funding recipients.

The FHWA does not have available to it information which would allow for the calculation of burden hours for each Federal agency's administration and oversight of the government-wide program. Each Federal agency will separately develop information collection requests for their program's administration and oversight. The FHWA has developed a separate regulatory impact analysis which documents the costs for its program administration and oversight. That analysis is included as part of the 49 CFR part 24 NPRM publication.

The FHWA can estimate the one-time government-wide cost of implementing the new provisions of this rule to be 37,800 hours. This estimate includes costs and benefits for the necessary updates and revisions to program materials including operations manuals. The FHWA bases this estimate on approximately 168 respondent's efforts to perform the necessary updates and revisions. The estimated burden hours are for a one-time update and result from the publication of a final rule.

The FHWA is required to submit this proposed collection of information to OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**Executive Order 12988 (Civil Justice Reform)**

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

**Executive Order 12898 (Environmental Justice)**

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (the DOT Order), 91 FR 27534 (May 10, 2012)<sup>14</sup> require DOT Agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT Agencies to address compliance with EO 12898 and the DOT Order in all rulemaking activities. In addition, FHWA has issued additional documents relating to

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<sup>14</sup> Available online at [www.fhwa.dot.gov/environment/environmental\\_justice/ej\\_at\\_dot/order\\_56102a/index.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm)

administration of EO 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations (the FHWA Order).<sup>15</sup>

The FHWA has evaluated this proposed rule under the EO, the DOT Order, and the FHWA Order. The FHWA has determined that the proposed regulations, if finalized, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations. The proposed regulations, if finalized, would establish procedures and requirements for agencies and others when acquiring, managing, and disposing of real property interests. The EJ principles, in the context of acquisition, management, and disposition of real property, should be considered during the planning and environmental review processes for the particular proposal. The FHWA will consider EJ when it makes a future funding or other approval decision on a project-level basis.

#### **Executive Order 13045 (Protection of Children)**

The FHWA has analyzed this action under EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not concern an environmental risk to health or safety that might disproportionately affect children.

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<sup>15</sup> Available online at [www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm](http://www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm)

### **Executive Order 12630 (Taking of Private Property)**

The FHWA does not anticipate that this proposed action would effect a taking of private property or otherwise have taking implications under EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This action proposes to update the government-wide regulation that provides assistance for persons displaced by government acquisition of real property. This action updates this regulation to reflect increases in benefit levels for displaced persons and to improve the Agencies' service to individuals and businesses affected by Federal or federally assisted projects.

### **National Environmental Policy Act**

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and; those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The proposed action is the adoption of regulations that provide the policies, procedures, and requirements for acquisition of real property interests for Federal and federally assisted projects. The proposed action has no potential for environmental impacts until the regulations, if adopted, are applied at the project level. The FHWA would have an obligation to evaluate the potential environmental impacts of such a future project-level action if the action constitutes a major Federal action under NEPA.

This proposed action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction). The FHWA has evaluated whether

the proposed action would involve unusual circumstances or extraordinary circumstances and has determined that this proposed action would not involve such circumstances. As a result, FHWA finds that this proposed rulemaking would not result in significant impacts on the human environment.

### **Regulation Identification Number**

A 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**

Appraisal, Appraisal review, Just compensation, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation, Waiver valuations.

Issued on November 19, 2019 under authority delegated in 49 CFR 1.85(d)(7):

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Nicole R. Nason,  
Administrator,  
Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to revise title 49, Code of Federal Regulations, part 24 as follows:

### **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 in this part.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.
- 24.11 Adjustments of relocation benefits.

## **Subpart B – Real Property Acquisition**

Sec.

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
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**Authority:** 42 U.S.C. 4601 *et seq.*; 49 CFR 1.85.

### **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 the regulations in this part 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:

*Agency.* The term *Agency* means any entity utilizing Federal funds or Federal financial assistance for a project or program that acquires real property or displaces a person.

(i) *Federal Agency.* The term *Federal Agency* means any department, Agency, or instrumentality in the executive branch of the United States Government, any wholly owned U.S. 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.

(ii) *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.

*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.

(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 Secretary of Homeland; and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the Secretary of Homeland Security or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

*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.

*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.

*Citizen.* The term *citizen* for purposes of this part includes both citizens of the United States and noncitizen nationals.

*Comparable replacement dwelling.* The term *comparable replacement dwelling* means a dwelling which is:

(i) Decent, safe, and sanitary as described in the definition of *decent, safe, and sanitary* in this paragraph (a);

(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 of this part, *Section 24.2(a) Comparable replacement dwelling*);

(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 (ix) of this definition (*see* appendix A of this part, *Section 24.2(a) Comparable replacement dwelling*); 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 90 days prior to initiation of negotiations (90-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.

(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. 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, subject to the eligibility requirements of the government housing assistance program. An 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 and associated utilities after the applicable government assistance has been applied. In determining comparability of housing under this part:

- (A) A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.
- (B) 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 unit.
- (C) 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. (*See appendix A of this part, Section 24.2(a) Comparable replacement dwelling.*)

*Contribute materially.* The term *contribute materially* means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

- (i) Had average annual gross receipts of at least \$5,000; or
- (ii) Had average annual net earnings of at least \$1,000; or
- (iii) Contributed at least  $33\frac{1}{3}$  percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(See appendix A of this part, *Section 24.305(e) Average annual net earnings of a business or farm operation.*)

*Decent, safe, and sanitary dwelling.* The term *decent, safe, and sanitary (DSS) dwelling* means a dwelling which meets the requirements of paragraphs (i) through (vii) of this definition or the most stringent of the local housing code, Federal Agency regulations, or the Agency's regulations or written policy. The DSS dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(A) 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;

(B) [Reserved]

(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 the more stringent the Federal funding Agency requirements. In addition, the Federal funding 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. When required by local code standards for residential occupancy, 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 (*see* appendix A of this part, *Section 24.2(a)*, definition of *DSS*);

(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 of this part, *Section 24.2(a)*, definition of *DSS*.)

*Displaced person--(i) General.* The term *displaced person* means, except as provided in paragraph (ii) of this definition, 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, rehabilitate, and/or demolish (*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 (i)(C) 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 required to move temporarily.* 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 requirement, policy, or guidance established by the Federal Agency funding the project (*see* appendix A of this part, *Section 24.2(a)*). At a minimum, for persons required to move on a temporary basis, Agencies must ensure that required services and assistance are provided (*see* § 24.202(a)).

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

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

(F) 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;

(G) An owner-occupant who conveys his or her property, as described in § 24.101(a)(2) or (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;

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

(I) 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;

(J) 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;

(K) 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

(L) Tenants required to move as a result of the sale of their dwelling to a person using *Federal down payment assistance* funds as they are defined in this section (*See* appendix A of this part, *Section 24.2(a)*).

(M) Temporary, daily, or emergency shelter occupants are typically not considered displaced persons. However, Agencies may determine that a person occupying a shelter is a displaced person due to factors which could include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, Agencies shall provide advisory assistance to all occupants at initiation of negotiations. (*See* appendix A of this part, *Section 24.2(a) (Displaced persons)*.)

*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 mobile home; or any other residential unit.

*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 of this part, *Section 24.2(a)*.)

*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.

*Federal down payment assistance.* The term *Federal down payment assistance* means funds other than Uniform Act benefits provided to an individual for the purpose of purchasing and occupying a residence. (See appendix A of this part, *Section 24.2(a)*.)

*Federal financial assistance.* The term *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any Federal down payment assistance, tax credits such as the Low Income Housing Tax Credit (LIHTC), guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

*Home Equity Conversion Mortgage (HECM) (also known as a reverse mortgage).* A HECM is a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor is authorized to make under any Federal law or State constitution, law, or regulation. See 12 U.S.C. 1715z-20. It is a class of lien generally available to persons 62 years of age or older. HECMs do not require a monthly mortgage payment and can also be used to access a home's equity. The HECM becomes due when none of the original borrowers lives in the home, if taxes or insurance become delinquent, or if the property falls into disrepair.

*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 under 18, or full-time students who are students for at least 5 months of the year and are under the age of 24. (See appendix A of this part, Section 24.2(a), for examples of exclusions to income.)

*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, rehabilitate, or demolish 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 a voluntary acquisition of real property described in § 24.101(b)(1) through (5), the initiation of negotiations means the actions described in paragraphs (i) and (ii) of this definition, except that the tenant is not eligible for relocation assistance under this part, until there is a binding written agreement between the Agency and the owner to purchase the real property. An option to purchase, conditional sale, or purchase agreement is not considered a binding agreement to purchase real property. (*See* appendix A of this part, *Section 24.2(a).*)

*Lead Agency.* The term *Lead Agency* means the Department of Transportation acting through the Federal Highway Administration.

*Mobile home.* The term *mobile home* includes manufactured homes and recreational vehicles used as residences. (*See* appendix A of this part, *Section 24.2(a).*)

*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.

*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).

*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 this section; or

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

*Owner's designated representative.* A property owner may designate a representative to receive all required notifications and documents from the Agency. The owner must provide the Agency a written notification which states that they will be designating a representative, provide that person's name and contact information and what if any notices or information, the representative is not authorized to receive.

*Person.* The term *person* means any individual, family, partnership, corporation, or association.

*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.

*Recipient.* The term *recipient* means a non-Federal entity that receives a Federal award directly from a Federal Agency to carry out an activity under a Federal program. The recipient is accountable to the Federal-funding Agency for the use of the funds and for compliance with applicable Federal requirements. The term recipient does not include subrecipients.

*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.

*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 § 24.303 or § 24.304.

*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.

*Subrecipient.* The term *subrecipient* means a government Agency or legal entity that enters into an agreement with a recipient to carry out part or all of the activity funded by Federal program grant funds. A subrecipient is accountable to the recipient for the use of the funds and for compliance with applicable Federal requirements.

*Temporary, daily, or emergency shelter (shelter).* The phrase *temporary, daily, or emergency shelter (shelter)* means any facility, the primary purpose of which is to

provide a person with a temporary overnight shelter which does not generally allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and does not meet the definition of dwelling as used in this part.

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

*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.

*Uniform Act.* The term *Uniform Act* or *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.

*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 for the purpose of determining eligibility for assistance under the Uniform Act.

*Utility costs.* The term *utility costs* means expenses for electricity, gas, other heating and cooking fuels, water, and sewer.

*Utility facility.* The term *utility facility* means:

(i) Any line, facility, or system for producing, transporting, transmitting, or distributing communications, cable, television, power, electricity, light, heat, gas, oil,

crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; 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.

(ii) The term shall also mean the utility company including any substantially owned or controlled subsidiary. For the purposes of this part the term includes those utility-type facilities which are owned or leased by a government Agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are part of its operating plant.

*Utility relocation.* The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the Agency. It includes removing and reinstalling the facility, including necessary temporary facilities; necessary right-of-way on a new location; moving, rearranging, or changing the type of existing facilities; and, taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

*Waiver valuation.* The term *waiver valuation* means the valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions.

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

DOT (U.S. Department of Transportation).

FEMA (Federal Emergency Management Agency).

FHA (Federal Housing Administration).

FHWA (Federal Highway Administration).

FIRREA (Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

HLR (Housing of last resort).

HUD (U.S. Department of Housing and Urban Development).

MIDP (Mortgage interest differential payment).

RHP (Replacement housing payment).

STURAA (Surface Transportation and Uniform Relocation Act Amendments of 1987).

UA or URA (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970).

USCIS (U.S. Citizenship and Immigration Service).

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 of this part, *Section 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, an 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 Agency must provide appropriate assurances that it will comply with the Uniform Act and this part. An Agency's assurances shall be in accordance with sections 210 and 305 of the Uniform Act. The Agency's section 305 assurances must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal Agency, Uniform Act compliance will be served, an 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 sections 210 and 305 assurances in one document.

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

(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 recipient after it has accepted a certification by such recipient 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 recipient 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.*)

(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.**

- (a) 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 (or by companies other than the United States Postal Service that provide the same function as certified mail with return receipts) and documented in Agency files. A Federal funding Agency may approve the use of electronic delivery of notices in lieu of the use of certified or registered first-class mail, return receipt requested, or personally served notices, when an Agency demonstrates a means to document receipt of such notices by the property owner or occupant.
- (b) An Agency requesting use of electronic delivery of notices must include the following safeguards:
- (1) A process to inform property owners and occupants that they must voluntarily elect to receive electronic notices.
  - (2) A process to document and record when information is legally delivered in digital format. A date and timestamp must establish the date of delivery and receipt with an electronic record capable of retention.
  - (3) A method to link the electronic signature with an electronic document in a way that can be used to determine whether the electronic document was

changed subsequent to when an electronic signature was applied to the document.

(4) A certification that use of electronic notices or signatures is consistent with existing State and Federal laws.

- (c) 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. (*See* appendix A of this part, *Section 24.5.*)
- (d) A property owner may designate a representative to receive offers, correspondence, and information by providing a written request to the Agency (§ 24.2(a)).

#### **§ 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 in this part.**

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

**§ 24.8 Compliance with other laws and regulations.**

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

- (a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.
- (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
- (e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).
- (f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
- (g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).
- (h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.
- (i) Executive Order 11246—Equal Employment Opportunity, as amended.
- (j) Executive Order 11625—Minority Business Enterprise.

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

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

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

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

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

#### **§ 24.9 Recordkeeping and reports.**

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

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

(c) *Reports.* Each Federal Agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of the Act shall provide to the Lead Agency an annual summary report by

November 15 that describes the real property acquisitions, displacements, and related activities conducted by the Federal Agency for the calendar year. (*See* appendix A of this part, *Section 24.9(c)*.)

**§ 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 inform the person that the determination is the Agency's final decision and that the person may seek judicial review of the Agency's determination.

(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.

#### **§ 24.11 Adjustments of relocation benefits.**

(a) The Lead Agency may adjust the amounts of relocation benefits provided under this part at §§ 24.304, 24.305, 24.401, and 24.402.

(b) No more frequently than every 5 years the head of the Lead Agency will evaluate whether the cost of living, inflation, or other factors indicate that relocation benefits provided in the sections in paragraph (a) of this section should be adjusted to meet the policy objectives of the Uniform Act. The Lead Agency will divide the Consumer Price Index for All Urban Consumers (CPI-U) index for the year of the assessment (base year index), by the CPI-U index for the year of assessment to determine the effect of inflation over the assessment period. If adjustments are determined to be necessary, the head of the Lead Agency will publish the new maximum benefits

eligible for Federal participation in the Federal Register. (*See* appendix A of this part, *Section 24.11.*)

## **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 of this part, *Section 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 or the owner's designated representative shall be so informed in writing. Owners of such properties are not displaced persons, 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).)

(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).)

(1) The requirements of this subpart do not apply to acquisitions that meet all of the conditions in paragraphs (b)(1)(i) through (iv) of this section:

(i) No specific property needs to be acquired, although the Agency may limit its search for alternative properties to a general geographic area. Where an Agency wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly. (*See* appendix A of this part, *Section 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) No later than the time of the offer the Agency shall inform the owner of the property or the owner's designated representative in writing that it will not acquire the property if negotiations fail to result in an amicable agreement.

(iv) No later than the time of the offer the Agency shall inform the owner of the property or the owner's designated representative in writing of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an Agency that receives Federal financial assistance and will not use eminent domain to acquire the property. (*See* appendix A of this part, *Section 24.101(b)(2)*.) When making an offer to acquire such Agency or person shall:

(i) No later than the time of the offer clearly advise the owner of the property or the owner's designated representative that the Agency will not acquire the property if negotiations fail to result in an amicable agreement.

(ii) No later than the time of the offer inform the owner of the property, or the owner's designated representative, in writing of what it believes to be the fair market value of the property. (See appendix A of this part, *Section 24.101(b)(1)(iv) and (b)(2)(ii).*)

(iii) Not use eminent domain to acquire properties for that project should the negotiations for purchase fail to result in an agreement to sell the real property. In extraordinary situations in which an unanticipated and unplanned need arises after carrying out voluntary acquisition activities, the Agency may request a waiver of regulation under § 24.7 to pursue acquisition by eminent domain for a specific parcel or parcels while remaining in compliance with the Uniform Act's prohibition on coercive actions. Such request must identify the specific parcels that would be acquired by eminent domain, the reason for the need, and the steps the Agency will take to ensure that property owner's assistance and protection are not reduced.

(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 the regulations in this subpart 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.* (1) 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).)

(2) For real property acquired which may later be incorporated into an anticipated, designated, or planned federally-funded or assisted project or program 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).)

(3) The Relocation assistance provisions included in this part are applicable to any property owner or tenants who must move as a result of an acquisition described in paragraph (d)(2) of this section. Such owners and tenants are to be considered displaced persons. (*See* § 24.2(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 and 24.5(d) and appendix A of this part, *Section 24.102(b).*)

(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 paragraph (c)(2) of this section, 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. The Agency employee or contractor making the determination to use the waiver valuation option must understand valuation principles, techniques, and use of appraisals in order to be able to determine whether the proposed acquisition is uncomplicated. (*See* appendix A of this part, *Section 24.102(c)(2).*)

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation. Licensed or certified appraisers preparing, or reviewing a waiver valuation are precluded from complying with standards rules 1, 2, 3, and 4 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as

promulgated by the Appraisal Standards Board of The Appraisal Foundation.<sup>1</sup>

(See appendix A of this part, *Section 24.103(a)*.)

(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 an amount of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property.

(D) If the Agency determines that the proposed acquisition is uncomplicated, and if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property, the Agency may request approval from the Federal funding Agency to use a waiver valuation of up to \$50,000. The use of waiver valuations between \$25,000 and \$50,000 is limited to the Federal funding Agencies and recipients and shall not be further delegated. Approval for utilizing a waiver valuation of more than \$25,000, but up to \$50,000, may only be requested on a project-by-project basis and the request for doing so shall be made in writing to the Federal funding Agency setting forth:

(1) The anticipated benefits of, and reasons for, raising the waiver valuation ceiling above \$25,000;

(2) The administrative/managerial oversight mechanisms used to assure proper use and review;

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<sup>1</sup> Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation.

- (3) The names/credentials of individuals who will be performing the waiver valuations;
- (4) The quality control procedures to be utilized;
- (5) Performance/results metrics with quarterly reports provided to the Federal funding Agency; and
- (6) Within 6 months of completion of acquisition activities a close-out report measuring cost/time benefits, lessons learned, best practices, etc., shall be submitted to the Federal funding Agency.

(E) If the property owner elects to have the Agency appraise the property, the Agency must obtain an appraisal and shall not use the waiver valuation procedures described above. (*See* appendix A of this part, *Section 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 or waiver valuation of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (*See* § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner or the designated owner's representative to acquire the property for the full amount believed to be just compensation. (*See* appendix A of this part, *Section 24.102(d)*.)

(e) *Summary statement.* Along with the initial written purchase offer, the owner or the designated owner's representative 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 designated 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 or the designated owner's representative's presentation. (*See appendix A of this part, Section 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 waiver valuation or appraisal information, or if a significant delay has occurred since the time of the appraisal(s) or waiver valuation of the property, the Agency shall have the

appraisal(s) or waiver valuation updated or obtain a new appraisal(s) or waiver valuation. If the latest appraisal or waiver valuation 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 of this part, Section 24.102(i).*)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner or the owner's designated representative, the Agency may obtain a right-of-entry for

construction purposes before making payment available to an owner. (See appendix A of this part, *Section 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).)

(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 of this part, *Section 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 developing 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 aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations. 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 may be authorized by the Agency to act as a negotiator for the acquisition of 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. If the valuer will also act as the negotiator on a valuation greater than \$10,000, and up to \$25,000, an appraisal must be prepared and reviewed. Agencies desiring to exercise this option must request approval in writing from the Federal funding Agency. The requesting Agency shall have a separate and distinct quality control process in place and set forth in the written procedures approved by the Federal funding agency. Agencies wishing to extend their Federal funding Agency approval for conflict of interest waivers of more than \$10,000 to their subrecipients must determine and document that the subrecipient has a separate and distinct quality control process in place and set forth in written procedures approved by the Federal funding agency or in approved subrecipient written procedures. (*See* appendix A of this part, *Section 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 this section, which is intended to be consistent with the USPAP. (*See* appendix A of this part, *Section 24.103(a).*) The Agency may have appraisal requirements that supplement this section, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), also

commonly referred to as the “Yellow Book”.) The USPAP is published by The Appraisal Foundation. The USFLA is published by the Appraisal Foundation in partnership with the Department of Justice on behalf of the Interagency Land Acquisition Conference. The USFLA is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices.<sup>2</sup> Copies of the USPAP and the UASFLA may be ordered from The Appraisal Foundation in print and electronic forms.<sup>3</sup> The USPAP may be viewed on The Appraisal Foundation’s website.<sup>4</sup> A free electronic version of the UASFLA is available for download on the U.S. Department of Justice website.<sup>5</sup>

(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 this section 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 at a minimum, comply with the definition of appraisal in § 24.2(a) and the requirements in paragraphs (a)(2)(i) through (v) of this section (*see* appendix A of this part, *Section 24.103* and *Section 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

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<sup>2</sup> [www.justice.gov/file/408306/download](http://www.justice.gov/file/408306/download)

<sup>3</sup> [http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal\\_Standards/TAF/Standards.aspx](http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/TAF/Standards.aspx)

<sup>4</sup> <http://www.uspap.org>

<sup>5</sup> <http://www.justice.gov/file/408306/download>

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 of this part, *Section 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 of this part, *Section 24.103(a)*.)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A of this part, *Section 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 not be less than the difference between the amount determined to be just compensation for the owner's interest in the real property and the salvage value (defined at § 24.2(a)) 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 of this part, Section 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 (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 of this part, *Section 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 § 24.2(a), 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 of this part, *Section 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 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 of this part, *Section 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 of this part, *Section 24.104(c).*)

**§ 24.105 Acquisition of tenant-owned improvements.**

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and establishment of just compensation for a tenant-owned improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a).)

(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.**

The requirements in this subpart apply to the relocation of any displaced person as defined at § 24.2(a). 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 part. (*See appendix A of this part, Section 24.202.*)

(a) *Persons temporarily displaced.* (1) Appropriate advisory services must be provided;

(2) For persons occupying a dwelling, at least one DSS dwelling is made available prior to requiring a person to move, except in the case of an emergency move as described in § 24.204(b)(1), (2), or (3);

(3) Similarly, if a person's business will be shut-down 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;

(4) Payment is provided for all out-of-pocket expenses incurred in connection with the temporary relocation as the Agency determines to be reasonable and necessary;

(5) A person's temporary relocation from their dwelling or business for the project may not exceed 12 months. The Agency must contact any person who has been temporarily relocated for a period beyond 12 months because that person is a displaced person. The Agency shall offer all required relocation assistance benefits and services. An Agency may not deduct any temporary relocation assistance benefits previously provided from these benefits;

(6) 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 is not eligible for temporary relocation assistance. Unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with § 24.208(g).

(b) [Reserved]

**§ 24.203 Relocation notices.**

(a) *General information notice.* As soon as feasible, a person who may be displaced shall be furnished with a general written description of the 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, pursuant to § 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 earliest of: the date of a notice of intent to acquire, rehabilitate, and/or demolish (described in paragraph (d) of this section); the initiation of negotiations (defined in

§ 24.2(a)); or actual acquisition. 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 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 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, rehabilitate, and/or demolish*. A notice of intent to acquire, rehabilitate, and/or demolish is an Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation and/or demolition activities from property prior to the commitment of Federal financial

assistance to the activity, which clearly sets forth that the Agency intends to acquire, rehabilitate, and/or demolish the property. A notice of intent to acquire, rehabilitate, and/or demolish 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).)

**§ 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) has been made available to the person. Information on comparable replacement dwellings that were used in the determination process must be provided to displaced persons. 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 in writing 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 DSS 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 Agency displacing a person 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 (3 CFR, 1959-1963 Comp., p. 652), 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 and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty 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, comparable housing shall be inspected prior to being made available to assure that it meets applicable standards (*see* § 24.2(a).) If such an inspection is not made, the Agency shall notify the person to be displaced in writing of the reason that an inspection of the comparable was not made and, that if the comparable is purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. (*See* appendix A of this part, *Section 24.205(c)(2)(ii)(C).*)

(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 paragraph (c)(2)(ii)(D), 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 of this part, *Section 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)), 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) *Subsequent occupants.* 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 in lawful 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 of this part, *Section 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.* An 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 part. (*See appendix A of this part, Section 24.207(f).*)

(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.

(h) *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 any other obligation.

**§ 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 they are a citizen, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is a citizen 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 a citizen 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), (2), and (3) of this section shall specify the person's status as a citizen or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this section shall be within the discretion of the Federal funding Agency and, within those parameters, that of the Agency carrying out such displacements.

(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 lawfully 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. (See appendix A of this part, *Section 24.208(c)*.)

(d) The Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of documentation or other information that the Agency considers reliable and appropriate.

(e) Any review by the Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each 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 a person's documentation or other credible evidence, an 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) For a person who has certified that they are an alien lawfully present in the United States, the Agency shall obtain verification of the person's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by U.S. Citizenship and Immigration Services (USCIS) to verify immigration status.

(2) For a person who has certified that they are a citizen or national, if the Agency has reason to believe that the certification is invalid, the Agency shall request evidence of United States citizenship or nationality and, if considered necessary, verify the accuracy of such evidence with the issuer or other appropriate source.

(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 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 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 (*see* appendix A of this part, *Section 24.208(h)*):

(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 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.

(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)) 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 this section 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 methods in paragraphs (b)(1) and (2) of this section (eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (7) 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.* The 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.* Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (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 (10) of this section. 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:

(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*. The 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*. Eligible expenses for moves from a business, farm, or nonprofit organization include those expenses described in paragraphs (g)(1) through (7) and (11) through (18) of this section and § 24.303.

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:

(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 (7) and (18) of this section. (*See appendix A of this part, Section 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 paragraph (h) of this section, 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 actual, reasonable, or necessary costs of a license, permit, fee, or certification required of the displaced person to operate a business, farm, or non-profit 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, replacing stationery on hand at the time of displacement, and making reasonable and necessary updates to other media that are made obsolete as a result of the move. (*See* appendix A of this part, *Section 24.301(g)(13)*.)

(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:

- (i) If the item is currently in use, the lesser of:
  - (A) The estimated cost to move and reinstall (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); or
  - (B) The fair market value in place of the item, as is for continued use, less the proceeds from its sale.

(ii) If the item is not currently in use: The estimated cost of moving the item as is but not including any allowance for storage.

(iii) When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices. (*See appendix A of this part, Section 24.301(g)(14).*)

(15) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(16) 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.

(i) A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$5,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(A) Transportation;

(B) Meals and lodging away from home;

(C) Time spent searching, based on reasonable salary or earnings;

(D) 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;

(E) Time spent in obtaining permits and attending zoning hearings; and

(F) Expenses negotiating the purchase of a replacement site based on a reasonable salary or fee, including actual, reasonable, and necessary attorney's fees.

(ii) The Federal funding Agency may, on a program wide or project basis, allow a one-time payment of up to \$1,000 for search expenses with little or no documentation as an alternative payment method to paragraph (g)(17)(i) of this section. (*See* appendix A of this part, *Section 24.301(g)(17)*.)

(18) 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 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 paragraph (g)(18) 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 paragraph (g)(3) of this section and § 24.304(a);
- (11) Costs for storage of personal property on real property already owned or leased by the displaced person;
- (12) Refundable security and utility deposits; and
- (13) Cosmetic changes to a replacement dwelling such as painting, draperies, or replacement carpet or flooring.

(i) *Notification and inspection (nonresidential)*. The Agency shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in § 24.203. To be eligible for payments under this section the displaced person must:

- (1) Provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to

be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership (nonresidential)*. Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

**§ 24.302 Fixed payment for moving expenses—residential moves.**

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under § 24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule 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.

(a) An Agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person under this part. The determination shall be based on the needs of the displaced person; the nature of the move; the plans for permanent relocation; the amount of time available for the relocation process; and, whether storage will facilitate relocation. If the Agency determines that storage is reasonable and necessary in conjunction with this

payment, the Agency shall pay the actual, reasonable, and necessary storage expenses in accordance with §24.301(g)(4). However, regardless of whether storage is approved, the Fixed Residential Move Cost Schedule provides a one-time payment for one move from the displacement dwelling to the replacement dwelling, dwelling, or storage facility. Consequently, displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage represent a full reimbursement of their eligibility for moving costs under this part. (*See* appendix A of this part, *Section 24.302.*)

(b) [Reserved]

(c) The Fixed Residential Moving Cost Schedule is available at the following

URL:

[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm).

**§ 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 utilities from the replacement site's property line to improvements at the replacement site. (*See* appendix A of this part, *Section 24.303(a).*)

(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 or 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 of this part, *Section 24.303(b)*.)

(c) Impact fees and one-time assessments for anticipated heavy utility usage, as determined necessary by the Agency. (*See* appendix A of this part, *Section 24.303(c)*.)

**§ 24.304 Reestablishment expenses—nonresidential moves.**

In addition to the payments available under §§ 24.301 and 24.303, a small business, farm, or nonprofit organization is entitled to receive a payment, not to exceed \$25,000, 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), to the household income.

(5) Construction costs for a new building at the business replacement site, or costs to build out a shell, or costs to substantially reconstruct a building. (*See* appendix A of this part, *Section 24.304(b)(5).*)

**§ 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 both actual moving and related expenses, as well as 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 \$40,000. 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).)

(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)) may choose a fixed payment, in lieu of the payments for both actual moving as well as 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 \$40,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$40,000, in lieu of the payments for both actual moving as well as 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 of this part, *Section 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. (*See* appendix A of this part, *Section 24.305(e)* for sample calculations.) 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 of this part, *Section 24.305(e)*.)

**§ 24.306 Discretionary utility relocation payments.**

(a) Whenever a program or project undertaken by an Agency causes the relocation of a utility facility (defined at § 24.2(a)) and the relocation of the facility creates extraordinary expenses for its owner, the 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 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 Agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the Agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses mean those expenses which, in the opinion of the 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 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 of this part, *Section 24.306*.)

## **Subpart E—Replacement Housing Payments**

### **§ 24.401 Replacement housing payment for 90-day homeowner-occupants.**

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of the following dates (except that the Agency may extend such 1 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 Agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed \$31,000. (*See also* § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within 1 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 (f) 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)) 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 DSS 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 DSS replacement dwelling (*see* § 24.2(a)); and

(iii) The current fair market value for residential use of the replacement dwelling site (see appendix A of this part, *Section 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 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 (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 of this part, *Section 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) *Home equity conversion mortgage.* The payment for replacing a HECM shall be the difference between the existing HECM balance and the minimum dollar amount

necessary to purchase a replacement HECM which will provide the same or similar terms as that for the HECM 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 HECMs that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (e)(1) through (4) of this section shall apply to the computation of the mortgage interest differential payment (MIDP) required, which payment shall be contingent upon a new HECM mortgage being purchased for the replacement dwelling.

(1) The payment shall be based on the difference between the HECM balance and the minimum amount needed to qualify for a HECM with the similar terms as the HECM mortgage on the displacement dwelling; however, in the event the displaced person obtains a smaller HECM than the HECM balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (*See appendix A of this part, Section 24.401(e).*) The HECM balance shall be that balance which existed 180 days prior to the initiation of negotiations or the HECM balance on the date of acquisition, whichever is less.

(2) The interest rate on the new HECM used in determining the amount of the eligibility shall not exceed the prevailing rate for HECMs currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.

(3) Purchaser's points and loan origination, 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 HECM balance on the displacement dwelling plus any amount necessary to purchase the new HECM.

(4) The displaced person or their representative shall be advised of the approximate amount of this eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to the person's current HECM are known; the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new HECM as intended.

(f) *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.

(g) *Rental assistance payment for 90-day homeowner.* A 90-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 \$7,200 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 paragraph (b)(1) of this section had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling.

**§ 24.402 Replacement housing payment for 90-day tenants and certain others.**

(a) *Eligibility.* A tenant displaced from a dwelling is entitled to a payment not to exceed \$7,200 for rental assistance, as computed in accordance with paragraph (b) of this section, or down payment 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 DSS replacement dwelling within 1 year (unless the Agency extends this period for good cause) after 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 \$7,200 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 DSS 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); or

(ii)(A) 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 Uniform Relocation Act Income (“Survey”). 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,

(B) The Surveys U.S. Department of Housing and Urban Development's Public Housing Uniform Relocation Act Income Limits are updated annually and are available on FHWA's website.<sup>6</sup>

(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 replacement housing.

(c) *Down payment assistance payment--(1) Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a down payment 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 down payment assistance payment that is less than \$7,200 may be increased to any amount not to exceed \$7,200. However, the payment to a displaced homeowner

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[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/policy\\_and\\_guidance/low\\_income\\_calculations/index.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/policy_and_guidance/low_income_calculations/index.cfm).

shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 90-day occupancy requirement. If the Agency elects to provide the maximum payment of \$7,200 as a down payment, 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 90-day owner-occupant under § 24.401(a) is not eligible for this payment. (*See* appendix A of this part, *Section 24.402(c)*.)

(2) *Application of payment.* The full amount of the replacement housing payment for down payment 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. (*See* § 24.2(a).)

(1) If available, at least three comparable replacement dwellings shall be considered and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. (*See* appendix A of this part, *Section 24.403(a)(1)*.)

(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 Agency determines that the remainder has economic value to the owner, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment. (*See appendix A of this part, Section 24.403(a)(3).*)

(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) 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) 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) 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 DSS dwelling as defined at § 24.2(a).

(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 to a dwelling which he or she owns or purchases;

(4) Constructs a dwelling on a site he or she owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part 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 Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (See § 24.3.)

**§ 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 the procedures in this part (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 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 of this part, *Section 24.404(c)*), including upgraded, but smaller replacement housing that is DSS 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), *comparable replacement dwelling*.

(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).) 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:

(1) A moving expense payment in accordance with subpart D of this part; and

(2) 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 (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 a 90-day mobile homeowner displaced from a mobile home.**

(a) *Eligibility.* An owner-occupant displaced from a mobile home is entitled to a replacement housing payment, not to exceed \$31,000, under §24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 90 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 90-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 90-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 home owner.

(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 home owner-occupant'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) *Replacement housing payment for a 90-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile home owner-occupant's site is leased or rented, a 90-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance replacement housing 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, toward the purchase of a replacement mobile home and the purchase or lease of a site or the purchase of a 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 as applicable.

**§ 24.503 Rental assistance payment for 90-day mobile home tenants and certain others.**

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$7,200, 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.

#### **§ 24.602 Certification application.**

An Agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding Agency, in accordance with application procedures.

#### **§ 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) Comparable replacement dwelling, (ii).* The requirement 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. The section states that it need not possess every feature of the displacement dwelling. However, 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) Comparable replacement dwelling, (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) Comparable replacement dwelling, (ix).* 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 and associated utilities after the applicable government assistance has been applied.

*Section 24.2(a) Decent, safe, and sanitary, (i)(A).* 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) Decent, safe, and sanitary, (v).* Some local code standards for occupancy do not require kitchens. However, selection of comparables that provide a kitchen is recommended. The FHWA believes this is good practice and in most cases should be easily achievable. If the displacement dwelling had a kitchen, the comparable dwelling must have a kitchen. If the displacement dwelling did not have a kitchen but local code standards for occupancy require one, the comparable dwelling must contain a kitchen. If the displacement dwelling did not have a kitchen and local code standards for occupancy do not require one, an Agency does not have to provide a kitchen in the comparable dwelling. If a kitchen is provided in the comparable dwelling, at a minimum it must contain 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.

*Section 24.2(a) DSS-Persons with a disability, (vii).* 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) Displaced person-Occupants of a temporary, daily, or emergency shelter, (iii)(M).* Shelters can serve many purposes and each will have specific rules and requirements as to who can occupy or use the shelter and whether prolonged and continuous occupancy is allowed. Persons who are occupying a shelter that only allows overnight stays and requires the occupants to remove their personal property and themselves from the premises on a daily basis and that offers no guarantee of reentry in the evening typically would not meet the definition of displaced persons as used in this part, nor would the shelter meet the definition of dwelling as used in this part. Persons who live at the shelter on a continuous, prolonged, or permanent basis for reasons including that they are employed there or because they work to pay their rent there may be considered displaced. Providing advisory assistance to shelter occupants may be a challenge due to their transient nature. Agencies should make reasonable effort to

provide information about proposed vacation date or other plans for the shelter to relocate.

*Section 24.2(a) 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) Federal down payment assistance.* In some instances, a person may have Federal down payment assistance funds provided for the purpose of purchasing and occupying a dwelling. These funds are not Uniform Act benefits and are not used in combination with Uniform Act benefits. The FHWA believes that the purchase of a dwelling using Federal down payment assistance, standing alone, does not constitute an acquisition as contemplated by the Uniform Act. However, Federal down payment assistance provided to a private individual to purchase a residence is Federal financial assistance, as defined by the Uniform Act. It results in an acquisition-based displacement under the Uniform Act, however, only when the purpose of the acquisition is to advance a Federal project or program designed to benefit the public as a whole, such as highways, hospitals, and other public works projects. Therefore, those who may relocate as a result of an acquisition funded in part with down payment assistance are not displaced persons within the meaning of the Uniform Act. Furthermore, in the vast majority of instances where Federal down payment assistance is provided, the Federal Government does not have an interest in whether a specific property is acquired. The Federal Government's interest is only that the property would serve as the purchaser's dwelling and that it meets

general criteria including those related to habitability. The lack of a conscious governmental decision requiring that a selected or specific property be acquired to advance a program or project demonstrates that the nature of the acquisition utilizing down payment assistance funds is nothing more than a person purchasing a dwelling with limited Federal financial assistance. For instance, a person using Federal down payment assistance to purchase a home that a tenant occupies would not be an Agency causing a displacement, and the tenant who would have to move as a result of the acquisition of the home would not be a displaced person.

*Section 24.2(a) Household income (exclusions).* Household income for purposes of this part does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services website.<sup>1</sup> Contact the Federal Agency administering the program, if there is a question on whether to include income from a specific program.

*Section 24.2(a) 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

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<sup>1</sup> <http://www.fhwa.dot.gov/realestate/>

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) Initiation of negotiations, Tenants, (iv).* Tenants who occupy property that may be voluntarily acquired amicably, without recourse to the use of the power of eminent domain, must be fully informed as to their potential eligibility for relocation assistance when negotiations are initiated. An option to purchase property, or similar instrument, is not a binding agreement because it gives the Agency a right, but not an obligation, to elect to purchase the property necessary for the project. A binding agreement as used in this appendix is a legally enforceable document in which the property owner agrees to sell certain property rights necessary for a project and the Agency agrees, without further election, to make that purchase.

If negotiations fail to result in a binding agreement the Agency should notify tenants that negotiations have failed to result in a binding agreement and that the Agency has concluded its efforts to acquire the property. 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. For example, as used in this part, an option to purchase property is not a binding agreement because it gives the Agency a right to choose whether or not to purchase the property necessary for the project. A binding agreement as used in this appendix is a legally enforceable document in which

the property owner agrees to sell certain property rights necessary for a project and the Agency agrees to that purchase for a specified consideration.

*Section 24.2(a) 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 has available all necessary utilities for functioning as a housing unit on the date of the 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 DSS dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

Title 24 CFR 3280.2 defines mobile home. In 1979 the term “mobile home” was changed to “manufactured home.” For purposes of this part, 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 this part 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.

*Section 24.5 Manner of notices.* Property owners or occupants must voluntarily elect to receive notices via electronic methods. Alternatively, property owners or occupants may request delivery of notices via certified or registered first class mail, return receipt requested, instead of electronic means. Agencies must accommodate the property owner's or occupant's preference. The FHWA continues to believe that providing notices by either first class mail or electronic means should not to be used as a substitute for face-to-face meetings, but rather as a supplemental means of communication that accommodates an owner's or occupant's preference. The FHWA understands that certain documents that are essential to the conveyance of the real property interests may not allow for electronic signature(s).

In order to use electronic delivery notices, an Agency must be able to demonstrate the ability to securely document the notice delivery and receipt confirmation. Additional minimum safeguards that the Agency must put in place prior to delivering notices by electronic means are included in the regulation at § 24.5. Prior to the use of electronic delivery, there must be a process or procedure outlined in written procedures approved by

the Federal funding Agency that details the requirements and rules the State will follow when using electronic means for delivery of notices.

Agencies must determine and document instances when electronic deliveries of notices are appropriate. An example of an appropriate use of electronic delivery of notices might be to notify a property owner of his or her right to accompany an appraiser as required at § 24.102(c). Other appropriate uses may be to secure a release of mortgage or to confirm a property owners' receipt of the acquisition and relocation brochures.

An example of when the use of electronic delivery of notices may not be appropriate is when the document being signed requires notarization or other similar verification. Electronic delivery of notices may not always be a good option for relocation assistance where many actions are conducted in person at the displacement or replacement dwelling or business and require advisory services to be provided as part of the process.

These examples are not intended to be all-inclusive, nor are they exclusive of other opportunities to use this tool. For additional information, the specific Federal regulations that set out the format and examples for an electronic signature can be found at 37 CFR 1.4(d)(2). The regulations in 37 CFR 1.4(d)(2) fall under the purview of the United States Patent and Trademark Office, which provides examples of what is considered to be proper format in a variety of electronically signed documents.

*Section 24.9(c) Reports.* The Moving Ahead for Progress in the 21st Century Act (MAP-21) amended 42 U.S.C. 4633(b)(4) to require that each Federal Agency subject to the Uniform Act submit an annual report describing activities conducted by the Agency.

The FHWA believes that such a report that details activity provides a good indication of program health and scope.

The FHWA realizes that not all Agencies subject to this reporting requirement currently have the ability to collect all information requested on the reporting form. However, Federal Agencies may elect to provide a narrative report that focuses on their respective efforts to improve and enhance delivery of Uniform Act benefits and services. Narrative report information would include information on training offered, reviews conducted, or technical assistance provided to recipients.

*Section 24.11 Adjustment of relocation benefits.* No more frequently than every 5 years, FHWA will use the Consumer Price Index for All Urban Consumers (CPI-U) Seasonally Adjusted to determine if inflation, cost of living, or other factors indicate that an adjustment to relocation benefits is warranted.

Sample calculation:

Assume CPI-U is 110.0 as of [EFFECTIVE DATE OF FINAL RULE]. The fixed payment for non-residential moving expenses has a ceiling of \$40,000. Five years after [EFFECTIVE DATE OF FINAL RULE], or during a subsequent 5th year evaluation, the CPI-U is calculated to be 115.5.

Divide the new index by the base year index =  $115.5/110.0 = 1.050$  or 5 percent. This means there has been a 5 percent increase in prices and the fixed payment for non-residential moving expenses ceiling should be increased 5 percent.

Calculate fixed payment benefit ceiling =  $\$40,000 \times 1.05 = \$42,000$ .

SUBPART B—REAL PROPERTY ACQUISITION

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, are synonymous.

*Section 24.101(a) Direct Federal program or project.* All the requirements in subpart B of this part (real property acquisition) 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 an Agency carrying out a project or program can achieve the purpose of the project or program by purchasing any of several properties that are not necessarily contiguous or are not limited to a specific group of properties.

*Section 24.101(b)(1)(iv) and (b)(2)(ii).* Section 24.101(b)(1)(iv) and (b)(2)(ii) 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) or their designated representative(s) in writing of the Agency's estimate of the fair market value for the property to be acquired.

While this part does not require an appraisal for these transactions, Agencies may still decide that an appraisal is necessary to support their determination of the fair market value of these properties, and, in any event, persons developing a waiver valuation must have some reasonable basis for their determination of fair 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 fair 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 this part, 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 fair 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(b)(2)(iii).* The intent of this section is to ensure that a property owner or their designated representative is clearly informed that an Agency will not utilize its eminent domain authority to acquire the property if negotiations fail to result in an amicable agreement. In instances where an unanticipated or unplanned need arises which may require use of eminent domain authority to acquire a property on which the Agency has made a voluntary acquisition offer, the Agency must request permission to waive the requirements of the applicable parts of the regulations in this part. Because the purpose of this section is to allow for voluntary acquisitions, the subsequent use of eminent domain authority must only be in exceptional circumstances which must be infrequent and well documented as to the reason for needing to use eminent domain authority to acquire a property after failing to acquire it voluntarily.

*Section 24.101(c) Less-than-full-fee interest in real property.* Section 24.101(c) provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

*Section 24.102(b) Notice to owner.* In the case of condominiums and other types of housing with common or community areas, notification should be given to the appropriate parties. The appropriate parties could be a condo or homeowner's board, a designated representative, or all individual owners when common or community property is being acquired for the project.

*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 uncomplicated acquisitions. In most cases, uncomplicated acquisitions are considered to be those involving unimproved strips of land. Acquisitions involving improvements, damages, changes of highest and best use, or significant costs to cure are considered to be complicated and, as such, are beyond the application of waiver valuations as contemplated in this part. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more complex work.

The Agency employee or contractor making the determination to use the waiver valuation option must have enough understanding of appraisal principles, techniques, and use of appraisals to be able to determine whether the proposed acquisition is uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and this part; therefore, appraisal performance requirements or standards, regardless of their source, are

not required for waiver valuations by this part. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. Agencies should put procedures in place to ensure that waiver valuations are accurate and that they are consistent with the unit values on the project as determined by appraisals and appraisal reviews. 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 waiver valuation provisions of the Uniform Act and this part 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 the requirement in § 24.102(f), 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. The provisions of § 24.102(f) 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 in the preceding paragraph, 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 their 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, waste, and abuse while allowing Agencies to operate as efficiently as possible. There are three parts to the provision in § 24.102(n).

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 valuation), 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, valuer, or review appraiser performing appraisal, waiver valuation, or appraisal review work for that project or program. The intent of this provision is to ensure appraisal and/or valuation independence and to prevent inappropriate influence. It is not intended to prevent Agencies or recipients from providing appraiser and/or valuers with appropriate project information or 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 or recipient. The intent is to accommodate Federal financial 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) 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. Agencies or recipients are not required to use those who prepare a waiver valuation or appraisal of \$10,000 or less to negotiate the acquisition. All appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$10,000, or less.

The third provision has been expanded to allow Federal Agencies to permit use of a single agent for values of more than \$10,000, but less than \$25,000, but, as a safeguard, requires that an appraisal and appraisal review be done to allow the appraiser to also act as the negotiator. Agencies or recipients desiring to exercise this option must request approval in writing from the Federal funding Agency. The Agency request to exercise single agent option for properties with a value of between \$10,000 and \$25,000 must include the anticipated benefits of, and reasons for, raising the ceiling above \$10,000, the oversight mechanism used to assure proper use and review, the names and credentials of individuals who will be performing as single agents, and quality control procedures to be utilized. Agencies and recipients may allow a subrecipient to use their approved authority if the subrecipient has an Agency or recipient approved oversight mechanism to assure proper use and review of the authority. This mechanism must include

documentation of, the names and credentials of individuals who will be performing as single agents, and quality control procedures to be utilized.

*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) 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 this part. 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.

The appraisal requirements in § 24.103(a) 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 1, 2, 3, and 4 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 part. Compliance with any other appraisal requirements is not the purview of this part. 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 Scope of Work 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, whether it is fair market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in § 24.103(a)(2)(i) through (v) and address them as appropriate.

*Section 24.103(a)(1).* The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

*Section 24.103(a)(2).* All relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property

being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

*Section 24.103(b) Influence of the project on just compensation.* As used in this section, the term “project” means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

*Section 24.103(d)(1).* The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

*Section 24.104 Review of appraisals.* The term “review appraiser” is used rather than “reviewing appraiser,” to emphasize that “review appraiser” is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

Agency review appraisers typically perform a role greater than technical appraisal review. They are often involved in early project development. Later they may be involved in devising the scope of work statements and participate in making appraisal

assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on Agency policy and requirements, to appraisers, both staff and fee. In addition, review appraisers are frequently technical advisors to other Agency officials.

*Section 24.104(a).* Section 24.104(a) 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.

#### 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 § 24.202 and section 205(c) of the Uniform Act and document its efforts in writing.

*Section 24.204 Availability of comparable replacement dwelling before displacement.*

*Section 24.204(a) General.* Section 24.204(a) 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(a).* As part of the relocation planning process Agencies should, to the extent practical, identify relocations that may require additional time for advisory services and coordination for their relocations. Such relocations may include the elderly,

those with medical needs, and those in public housing. In each of these examples, the relocation requires that the unique needs of the relocated person be determined early and that the relocation agent make full use of available social services and other program support (examples include local transportation services that may be available in certain areas, financial support available from local, Federal, and State Agencies, and community support services that may be available) in considering and developing a relocation plan.

*Section 24.205(c)(2)(ii)(C).* Whenever possible, comparable replacement housing must be inspected. The selected comparable replacement dwelling should be inspected by a walk through and physical interior and exterior inspection. Reliance on an exterior visual inspection or examination of a multiple listing service (MLS) listing, in most cases, does not constitute a complete DSS inspection. If an inspection is not possible, the relocated person must be informed in writing that an inspection was not possible and be provided an explanation of why the inspection was not possible.

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. Agencies should maintain adequate written documentation of compliance with this requirement. Documentation should address efforts made to locate such comparable and replacement housing to the extent practical.

*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.

*Section 24.208(c) Aliens not lawfully present in the United States-computing relocation payments if some members of a displaced family are present lawfully but others are present unlawfully.*

There are two different methods for computing relocation payments in situations where some members of a displaced family are present lawfully but others are present unlawfully. For moving expenses, the payment is to be based on the proportion of lawfully present 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. Similarly, unlawful

occupants are not counted as a part of the family for RHP calculations. 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 replacement dwelling 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 is not permitted (consistent with Public Law 105-117; codified at 42 U.S.C. 4605). Following such a calculation would require that the Agency disregards alien status for comparability determination, select a comparable and then apply a percentage to the RHP amount. A "pro rata" calculation approach for RHP 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 RHP eligibility is contrary to the requirements of the Uniform Act and this part.

A correct example of a calculation would be:

Household of seven (including one alien not lawfully present 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 § 24.208(c) (alien not lawfully present excluded)

$\$1300$  (comparable) -  $\$1200$  (displacement unit) =  $\$100$  RHP x 42 months =  $\$4,200$

RHP

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 not lawfully in the United States, that person's income shall not be excluded from the computation of family income. The person's income is 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.

*Section 24.208(h).* The meaning of the term "exceptional and extremely unusual hardship" focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the Agency and does not lend itself to an absolute standard applicable in all situations.

When considering whether a hardship exemption is appropriate, an Agency may examine only the impact on an alien's spouse, parent, or child who is a citizen or an alien lawfully admitted for permanent residence in the United States. In determining who is a spouse, Agencies should use the definition of that term under State or other applicable law.

A standard of hardship involves more than the loss of relocation payments and/or assistance alone. Also, income alone (for example, measured as a percentage of income spent on housing) would not make the denial of benefits an "exceptional and extremely unusual hardship" and qualify for a hardship exemption. In keeping with the principle of allowing Agencies maximum reasonable discretion, FHWA believes the decision regarding what documentation is required to support a claim of hardship is one best left to the Federal funding Agency, as long as the decision is handled in a nondiscriminatory manner.

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 acquired and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; or, personal property that is stored on vacant land that is to be acquired. For such a residential personal property move, there may be situations in which the costs of obtaining moving bids may exceed the cost to move. In those situations, the Agency may allow an eligibility determination and payment based upon the use of the “additional room” category of the Fixed Residential Move Cost Schedule at [www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm).

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 Agency may obtain estimates from qualified movers to use as the standard in determining the payment.

*Section 24.301(g)(3) through (5).* Construction costs for a new building at the business replacement site, costs to build out a shell, or costs substantially reconstruct a building are generally ineligible for reimbursement of expenses for disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and

other personal property. (See *Section 24.304(b)(5)* of this appendix for further discussion of ineligible capital expenses).

*Section 24.301(g)(13) Relettering signs and replacing stationery.* This may include the content of other media that need correcting such as DVDs and CDs. This may also include modifications to websites that would modify and edit contact and new location information made necessary because of the move. Agencies will need to determine whether these costs are actual, reasonable, and necessary.

*Section 24.301(g)(14)(i) through (iii).* 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 part, the allowable in-place value estimate (§ 24.301(g)(14)(ii)) and moving cost estimate (§ 24.301(g)(14)(iii)) 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. The in-place value estimate may also not include installation costs for machinery or equipment that is not operable or not installed at the displacement site. Value in place can be obtained by hiring a machinery and equipment (M&E) appraiser or value can be estimated via websites available for M&E valuations. An example of one resource is The Association of Machinery and Equipment Appraisers (AMEA) website.<sup>2</sup> The AMEA is a nonprofit professional association whose mission is to accredit certified equipment

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<sup>2</sup> <http://www.amea.org/>.

appraisers. Another example of available resources can be found on the website of The American Society of Appraisers; a multi-discipline, non-profit, international organization of professional appraisers. They maintain a separate webpage for machinery and equipment appraisers.<sup>3</sup> Should an Agency find itself in need of a machinery and equipment appraisal a web search for either “machinery and equipment appraisers” or “machinery and equipment appraisers organizations” will provide a number of resources which can be used to find the necessary services and resources. It is important to note that FHWA does not endorse or recommend any organization, society or professional group. The information provided in this appendix is strictly informational.

*Section 24.301(g)(17) Searching expenses.* In special cases where the 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’s 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 \$5,000, the Agency may consider requesting a 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 of authority. As an

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<sup>3</sup> <http://www.appraisers.org/Disciplines/Machinery-Technical-Specialties>

alternative to the preceding sentences in this section, Federal funding Agencies may determine that it is appropriate to allow for payment of searching expenses of up to \$1,000 with little or no documentation under this part. It is expected that each Federal funding Agency will consider and address the potential for waste, fraud, or abuse and may develop additional requirements to implement this provision. Such requirements may include development of policy or procedure or by requiring specific changes or inclusions in the written procedures approved by the Federal funding agency.

Search expenses may be incurred anytime the business anticipates it may be displaced, including prior to project authorization or the initiation of negotiations. However, such expenses cannot be reimbursed until the business has received the notice in § 24.203(b) and only after the Agency has determined such costs to be actual, reasonable, and necessary.

*Section 24.302.* The occupant of a seasonal residence could receive a payment based upon the Fixed Residential Move Cost Schedule or actual moving expenses in accordance with § 24.301. Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than personal property moving expenses.

*Section 24.303(a).* Actual, reasonable, and necessary reimbursement for connection to available utilities are for the necessary improvements to utility services currently available at the replacement property. Examples include (a) a Laundromat business that requires a larger service tap than the typical business service tap already on the property, and (b) a business that requires an upgrade or enhancement of the existing single phase electrical service to provide 3-phase electrical service.

*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 24.303(c) Impact fees and one-time assessments for anticipated heavy utility usage.*

Section 24.303(c) limits impact fees or one-time assessments to those for anticipated heavy utility usage to utilities, i.e., water, sewer, gas, and electric. Impact fees and one time assessments that may be levied on a non-residential relocated person in their replacement location for other major infrastructure construction or use such as roads, fire stations, regional drainage improvements, and parks are not eligible. Providing information on the potential eligibility of impact fees for anticipated heavy utility usage is an important advisory service.

*Section 24.304(b)(5) Ineligible expenses.* The cost of constructing a replacement structure, building out of a shell, or substantially reconstructing a building 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 or recipient may request a waiver of § 24.304(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 new construction, reconstruction, or build out of a shell as a replacement structure is the only option that will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of new construction, reconstruction, or build out of a shell as a

replacement structure will be considered an eligible reestablishment expense subject to the \$25,000 statutory limit on such payment.

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). A certain degree of construction costs are generally expected by the market because shells are designed to be customized by the tenant. However, a shell which is dilapidated or is in disrepair and which requires major reconstruction or rehabilitation would not be eligible for reimbursement under this part. 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 \$25,000 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.

*Section 24.305 Fixed payment for moving expenses—nonresidential moves.*

*Section 24.305(a) Business.* If a business elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the business elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

*Section 24.305(c) Farm operation.* If a farm operation elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the farm elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, and reestablishment expenses.

*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.

If a nonprofit organization elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the nonprofit organization elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

*Section 24.305(e) Average annual net earnings of a business or farm operation.* Section 24.305(a)(6) 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 to be eligible for this payment.

If a business has been in operation for only a short period of time (i.e., 6 months) prior to displacement, 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. If a business was not in operation for a full 2 years, the existing net earnings income data should be used to project what the net earnings could be if the business were in operation for a full 2 years. If the business is seasonal, the business' operating season net income represents the full annual income for the purposes of calculating this benefit.

For Example:

1) Business in operation for only 6 months earned \$ 10,000.

Computation:  $(\$10,000/6) \times 12 = \$20,000$  annual net earnings  $\times 2$  years = \$40,000 divided by 2 = \$20,000; Eligibility = \$20,000. (Average annual net earnings.)

2) Business in operation 18 months earned \$20,000.

Computation: \$20,000 divided by 18 months = \$1,111 per month  $\times 24$  months = \$26,664 divided by 2 years = \$13,332;

Eligibility = \$13,332 (Average annual net earnings)

3) Business is seasonal- open summer only for 4 months and earns \$5,000.

Computation: \$5,000 was the seasonal net earnings 1 year and \$6,000 was the seasonal net earnings a second year.  $\$11,000$  divided by 2 = \$5,500; Eligibility = \$5,500. (Average annual net earnings)

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 90-day homeowner-occupants.*

*Section 24.401(a)(2).* An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

*Section 24.401(c)(2)(iii) Price differential.* The provision in § 24.401(c)(2)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

*Section 24.401(d) Increased mortgage interest costs.* The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the down payment) 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 Annual 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 to advise the displaced person of the interest rate and points used to calculate the payment.

The FHWA has an online tool to calculate increased mortgage interest costs for fixed, and interest only loans at:

[www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/relocation/midpcalcs/](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/midpcalcs/).

*Section 24.401(e) Home equity conversion mortgage (HECM).* The provision in § 24.401(e) sets forth the factors to be considered to estimating an amount, after paying off the existing HECM balance, sufficient to purchase a replacement HECM that provides a tenure or term payment, line of credit, or lump-sum disbursement. The Agency must know the value of the acquired dwelling, existing balance of displacement HECM, remaining equity, and price of the selected comparable or actual replacement dwelling, to compute the estimated HECM supplement payment for a replacement HECM. The FHWA website provides a simple calculator to estimate the HECM supplement payment needed to purchase a replacement HECM at [www.fhwa.dot.gov/realty/](http://www.fhwa.dot.gov/realty/). In cases where there is a tenure or term payment additional information such as the age of the youngest borrower, amounts of the tenure payment, amount and remaining term of term payment and the current interest rate, is needed to calculate the payment and will require the assistance of a HECM mortgage broker.

Below are four scenarios and suggestions for relocation payment eligibilities. As you will note, the eligibility is the same in each case; however, amounts will vary depending on the individual's circumstance and existing HECM terms. This appendix also contains a list of other possible Agency options, should a displaced person elect to use them; however, they are not recommended by FHWA because they do not place the person into a replacement HECM.

Situation 1- Owner has sufficient remaining equity to obtain a replacement HECM for purchase.

Situation 2- Owner's existing HECM has a tenure disbursement payment and there is not sufficient remaining equity to obtain a replacement HECM.

Situation 3- Owner's existing HECM has a term disbursement payment and there is not sufficient remaining equity to obtain a replacement HECM.

Situation 4- Owner's existing HECM is a line of credit and there is not sufficient remaining equity to obtain a replacement HECM.

The displaced homeowner may be eligible for the following relocation payments:

- **A price differential payment in accordance with § 24.401(c).**

The owner would be eligible for a price differential payment (the difference between the comparable replacement dwelling and the acquisition cost of the displacement dwelling).

- **The administrative costs and incidental expenses necessary to establish the new HECM.**

Incidental costs incurred with a replacement HECM are reimbursable and fall into three categories- Mortgage insurance premium (MIP), loan origination fee, and closing costs.

- **A mortgage interest differential payment if the homeowner incurs a higher interest rate on the new HECM.**

The payment would be based on the difference between the displacement adjustable-rate mortgage (ARM) cap rate and the available ARM cap rate and those rates would be used as the components to calculate the MIDP in accordance with the sample calculation provided at *Section 24.401(d)* of this appendix. The Agency must advise the displaced person of the interest rate used to calculate the payment. Note that most

HECMs are monthly adjustable rate mortgages, so any interest differential payment would be minimal.

- **If the displaced homeowner elects to relocate into rental housing rather than remain a homeowner, then the Agency will calculate relocation assistance payments in accordance with § 24.401(g).**

For example, the Agency computes a rental assistance payment of \$10,000 for the owners based on a comparable replacement rental dwelling. When the owners settle with the Agency they will pay off the balance of the HECM and retain any remaining equity in the property. They are eligible for the rental assistance payment when they rent and occupy the DSS replacement dwelling.

***NOTE: In all situations, if the displaced homeowner elects to relocate into rental housing rather than remain homeowner, then the Agency will calculate relocation assistance payments in accordance with § 24.401(g).***

***NOTE: If the existing HECM was a lump-sum or line-of-credit which has been exhausted, then the Agency is not under obligation to replace those amounts, but only to replace the HECM with a HECM with terms and equity similar to the displacement HECM.***

**Other Agency options (not recommended unless elected by the displaced person, since they do not place the person into the same situation as the displacement HECM provided):**

- A direct loan as set forth in § 24.404 under housing of last resort

- A life estate interest in a comparable replacement dwelling under replacement housing of last resort
- Agency purchases a comparable replacement dwelling and retains ownership and conveys a leasehold interest to the owner for his/her lifetime
- Agency offers a comparable replacement rental dwelling to convert the homeowner occupant to tenant status.

*Section 24.402 Replacement Housing Payment for 90-day tenants and certain others.*

*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),<sup>4</sup> or Primary

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<sup>4</sup> 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 website at: <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

Metropolitan Statistical Area (PMSA)<sup>5</sup> 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 (defined at § 24.2(a)) 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 five 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 five person household is: \$64,300. (2014 Income Limits)

This household is considered “low income.”

*Section 24.402(c) Down payment assistance.* The down payment assistance provisions in § 24.402(c) limit such assistance to the amount of the computed rental

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<sup>5</sup> See footnote 4.

assistance payment for a tenant. It does, however, provide the latitude for Agency discretion in offering down payment assistance that exceeds the computed rental assistance payment, up to the \$7,200 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The 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, for a displaced homeowner who elects to rent a replacement dwelling may not be more than the eligibility the homeowner would have received as an eligible displaced home owner.

*Section 24.403(a)(1) Determining cost of comparable replacement dwelling.* In § 24.403(a)(1) the term “examined” an MLS listing does not equate to “inspected” but rather to “considered” for the payment eligibility computation. At a minimum, the selected comparable dwelling should be physically inspected or, if an inspection is not feasible, the displaced person shall be informed in writing that a physical inspection of the interior or exterior was not performed, the reason that the inspection was not performed, and that if the comparable is selected as a replacement dwelling a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. Reliance on an exterior visual inspection, or examination of an MLS listing does not in most cases constitute a full DSS inspection.

Each Agency should clearly inform displaced persons that a DSS inspection as required by this part is only a cursory inspection to ensure that certain minimum requirements (e.g., local housing codes) are being met versus doing a full home inspection of all systems similar to that which a home inspector would be hired to do.

*Section 24.403(a)(3) Additional rules governing replacement housing payments.*

The economic value to the owner of a remainder may be as an actual buildable lot for sale to an adjoining property owner, or for some other purpose for which the Agency attributes an economic value to the owner. When allowed for under applicable law, a single offer that includes the value of the remainder property should be made. The purpose of making an offer to purchase the remainder is to allow for an RHP calculation and benefit determination that includes the value of the remainder as part of the compensation offered to the owner for acquisition, whether the property owner sells the remainder or chooses to retain it. Should a property owner decide to retain a remainder then he would be responsible for the value of the remainder when he purchases his replacement property. Example B shows the effect that a property owner's decision to retain a remainder or a States inability to make an offer to purchase the remainder would have on the calculation of benefits.

The price differential portion of the replacement housing payment would be the difference between the comparable replacement dwelling and the Agency's highest written acquisition offer. In the examples below, the before value of the typical residential dwelling and lot is \$180,000; the remnant is valued at \$15,000, and the part needed for the project, including the dwelling, is valued at \$165,000the comparable

replacement dwelling is valued at \$200,000. The price differential would be calculated as follows in the two scenarios:

(Example A) Agency offers to acquire remainder

Comparable Replacement Dwelling		\$200,000
Before value of parcel	\$180,000	
Minus: Remainder Value	\$ 15,000	
Acquisition of Part Needed	\$165,000	
Agency's highest written offer		\$180,000
Price Differential Payment		\$20,000
Eligibility		

(Example B) Agency does not offer to acquire remainder

Comparable Replacement Dwelling		\$200,000
Before value of parcel	\$180,000	
Minus: Remainder Value (owner retains)	\$ 15,000	
Acquisition of Part Needed	\$165,000	
Agency's highest written offer for part needed		\$165,000
Price Differential Payment		\$35,000
Eligibility		

*Section 24.404 Replacement housing of last resort.*

*Section 24.404(b) Basic rights of persons to be displaced.* Section 24.404(b) affirms the right of a 90-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). 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.* Section 24.404(c) 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), 1200 New Jersey Avenue, SE., Washington, DC 20590.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts of this section A, B, and C to the nearest dollar.

6. *Regulatory references.* The references in Parts A, B, C, and D of this section indicate the subpart of this part 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.

*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 down payment 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).

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

<b>PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT</b>	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer—see 24.102(i))	
4) Compensation – Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
<b>PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT</b>	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments – Total Costs	
7) Replacement Housing Payments – Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	
<b>PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT</b>	
11) Total Number of NonResidential Displacements	
12) NonResidential Moving Payments – Total Costs (Including 24.305)	
13) NonResidential Reestablishment Payments – Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	
<b>PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT</b>	
15) Total Number of Relocation Appeals (Residential & NonResidential)	