

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Part 24**

[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:** Final rule.

**SUMMARY:** This final rule amends the 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 increased statutory relocation benefits and reduced length of occupancy requirements. This final rule updates existing regulations on the use of those provisions. The FHWA is also updating the Uniform Act regulations in response to comments received during this rulemaking's public comment period and 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include streamlining processes to better meet current Uniform Act implementation needs and eliminating duplicative and outdated regulatory language.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:** This final rule is effective June 3, 2024.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Electronic Access and Filing**

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of the Federal Register's website at: [www.federalregister.gov](http://www.federalregister.gov) and the Government Publishing Office's website at [www.GovInfo.gov](http://www.GovInfo.gov).

**Executive Summary**

The Uniform Act, as amended, 42 United States Code (U.S.C.) 4601 *et seq.*, provides important protections and assistance for people affected by Federal and federally assisted projects. Congress enacted this law to ensure that people whose real property is acquired, or who move as a result of Federal projects or projects receiving Federal funds, are treated fairly and equitably and receive just compensation for, and assistance in moving from, the property they own or occupy. The Government-wide regulation implementing the Uniform Act is 49 Code of Federal Regulations (CFR) part 24.

The Surface Transportation and Uniform Relocation Assistance Act (STURAA) (Pub. L. 100–17) of 1987 designated DOT as the Federal Lead Agency (Lead Agency) for the Uniform Act. Duties of the Lead Agency include developing, issuing, and maintaining the Government-wide 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 publishing this final rule to amend and update 49 CFR part 24, which affects the land acquisition and displacement activities of all Federal agencies subject to the Uniform Act, as well as the activities of the recipients of funding from those Federal agencies. The proposed changes to this regulation are necessitated in part by Section 1521 of MAP–21 (Pub. L. 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 Government-wide real property acquisitions subject to the Uniform Act, and provisions for the funding of Lead Agency services. In addition to these required changes, FHWA is amending 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 final rule's changes will also reduce the paperwork and administrative burdens of Federal Government regulations on agencies

subject to the Uniform Act. The 10-year costs of the final rule for all Uniform Act agencies are estimated to be minor: \$2.2 million when discounted at 7 percent and \$2.4 million when discounted at 3 percent. The 10-year annualized costs are estimated to be: \$311,000 per year when discounted at 7 percent and \$283,000 per year when discounted at 3 percent. Therefore, the costs associated with this rule are minimal.

The larger impact of this rule is in the form of fund transfers from the displacing agencies to persons whose real property is acquired or whose personal property must be moved for Federal or federally assisted projects. The estimated amount of transfers resulting from this rule over a 10-year period are \$169.5 million when discounted at 7 percent and \$214.6 million when discounted at 3 percent. This rule can therefore be thought of as predominantly a transfer rule, as the estimated social costs are significantly smaller than those transfers between displacing agencies and those compensated. 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 (RIA) for this rulemaking contains further breakdown of costs associated with FHWA's program and can be found on the docket. Other Federal agencies may have additional regulatory or administrative updates specific to their programs as a result of this rulemaking.

The benefits of this final rule primarily relate to improved equity and fairness to persons that are displaced from their properties or that move as a result of Federal projects or projects receiving Federal funds. For example, this final rule raises the maximum for payments to displaced persons to assist with the reestablishment of the business, farm, or nonprofit organization. There is strong evidence that displaced persons experience reestablishment costs well above the current maximum amount. Raising the maximum payment levels will compensate those displaced persons 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 rule cannot be quantified or monetized. The higher level of payments may also contribute to more small businesses, farms, and nonprofit organizations being able to successfully reestablish after displacement.

## Background

FHWA last updated 49 CFR part 24 in 2005. Since publication of the 2005 rule (70 FR 611), FHWA undertook a comprehensive effort to identify potential opportunities for improving implementation of the Uniform Act. FHWA initiatives 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 DOTs) 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 real property acquisition programs of all Federal agencies. For convenience, those Federal agencies that provide a cross reference to this part and the location of those cross-references, are listed below:

U.S. Department of Agriculture  
7 CFR part 21

U.S. Department of Commerce  
15 CFR part 11

U.S. Department of Defense  
32 CFR part 259

U.S. Department of Education  
34 CFR part 15

U.S. Department of Energy  
10 CFR part 1039

U.S. Environmental Protection Agency  
40 CFR part 4

U.S. General Services Administration  
41 CFR part 105–51

U.S. Department of Health and Human Services  
45 CFR part 15

U.S. Department of Housing and Urban Development (HUD)  
24 CFR part 42

U.S. Department of Justice  
41 CFR part 128–18

U.S. Department of Labor  
29 CFR part 12

National Aeronautics and Space Administration  
14 CFR part 1208

Tennessee Valley Authority  
18 CFR part 1306

U.S. Department of Veterans Affairs  
38 CFR part 25

U.S. 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 applicability 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.

FHWA began a process more than 15 years ago 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 in the NPRM and incorporated in this final rule. 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 numerous 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 to identify potential areas of focus and change, 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 review by the working group led to a compilation of potential changes to the rule. FHWA considered the group's recommendations and proposed changes for each of the regulation's subparts and developed an initial draft NPRM. 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 NPRM and continued to share drafts and receive additional comments from the Federal agencies.

On December 18, 2019, at 84 FR 69466, FHWA published an NPRM in the **Federal Register**. FHWA received 103 submissions to the docket resulting in more than 250 comments on various aspects of the proposed rule.

## Summary of Significant Changes Made in the Final Rule

This final rule was revised in response to comments received on the NPRM. The following paragraphs summarize the most significant of those changes. Editorial or minor changes in language are not addressed in this section. A detailed summary of the significant issues raised by the commenters and an explanation of the changes made in response to those comments can be found in the section-by-section analysis.

### Subpart A—General

Section 24.2 was revised by removing the proposed definition of “Federal down payment assistance” and revising the definition of “Federal Financial Assistance.” The discussion of Federal down payment assistance in the proposed appendix was also removed.

Section 24.11 was revised to allow adjustments of waiver valuation limits, conflict of interest limits, and search cost reimbursements for nonresidential relocations. This section's title was revised to indicate these changes. This section was also revised by eliminating the fixed 5-year period for review and consideration of the need to update benefits.

### Subpart B—Real Property Acquisition

Throughout subpart B the word “develop(ed)” was replaced with the word “perform(ed)” when referring to waiver valuations, appraisals, or appraisal reviews to avoid confusion with long standing interpretations in the Uniform Standards of Professional Appraisal Practice (USPAP). The USPAP recognizes performing valuation assignments involves two separate functions: (1) development of a valuation, appraisal, or appraisal review, and (2) reporting the results of a valuation, appraisal, or appraisal review to clients, and intended users of valuation services. The intent of this change is to ensure that readers of this regulation understand that performance of a valuation, appraisal, or appraisal review includes both development of the assignment results and reporting those results to the client and intended users of the product. This change will provide clarity and consistency between this rule and certain USPAP requirements.

In § 24.101, FHWA removed (b)(2) and (3) and reorganized (b)(1) to clarify the requirements and qualifications for determining when a voluntary acquisition may be advanced for all Federal and federally assisted programs and projects desiring to use voluntary

acquisition. FHWA revised and streamlined § 24.101(b)(1)(i), which clarifies that if eminent domain will not be used and if the additional requirements of this section are met, then an agency may use the voluntary acquisition requirements of this section. The FHWA also removed the § 24.101(b)(2)(iii) discussion of the use of eminent domain.

Section 24.102(c)(2)(ii)(C) was revised to increase the waiver valuation thresholds for property acquisitions with an estimated fair market value from \$10,000 to \$15,000 for the first tier, and \$25,000 to \$35,000 for the second tier, to address comments requesting additional waiver valuation flexibility.

Section 24.102(c)(2)(ii)(D) was revised to eliminate some of the NPRM's proposed requirements for waiver valuations above \$35,000 and up to \$50,000 (third tier).

Section 24.102(n)(3) was revised to increase the conflict of interest limits to \$15,000 and \$35,000 to allow additional flexibility and to align with the increase in waiver valuation limits changes in § 24.102(c)(2)(ii)(C).

#### Subpart D—Payments for Moving and Related Expenses

Section 24.301(g)(7) added a new provision for reimbursement of costs for rental replacement dwelling application fees and credit reports.

#### Section-by-Section Discussion

##### General Comments

One commenter indicated that they believed that “market value” and “fair market value” were not the same.

*FHWA Response:* FHWA believes that “market value” and “fair market value” refer to the same concept, *i.e.*, the value of the property. FHWA acknowledges that some jurisdictions may ascribe different legal definitions to these terms, however the terms “fair market value,” which is used throughout this final rule, and “market value,” which may be more commonly used in private transactions, are synonymous for purposes of this rule.

As a result, no changes were made to the final rule.

##### Section 24.2(a) Definitions

###### Appraisal

One commenter suggested that FHWA adopt the definition of appraisal in the USPAP rather than the definition of an “appraisal” in the NPRM.

*FHWA Response:* The definition of an “appraisal” can be found at 42 U.S.C. 4601(13). This final rule continues to include that definition. FHWA received questions and concerns about the

definition of an appraisal as it relates to most State licensure boards’ view that any opinion of value issued by one of their licensees is by their definition of an appraisal (see discussion in this preamble, below, on the definition of “waiver valuation.”) FHWA continues to believe the definition of appraisal in this regulation is consistent with the statutory description of an appraisal for Federal and federally assisted projects and programs.

FHWA believes that adoption of USPAP definition of an appraisal would create administrative and fiscal burdens by effectively broadening the definition of appraisal in this regulation to include waiver valuations as appraisals. The programmatic consequence of redefining a waiver valuation as an appraisal would require those performing uncomplicated valuations for Federal and federally assisted projects or programs to comply with additional requirements for performing an appraisal, which would require additional time and increase costs to develop and report an opinion of value. FHWA does not believe that such increases in cost and time will afford any additional protections or benefits to those whose property is acquired for a Federal or federally assisted project or program. FHWA has more than 30 years of experience with the use of waiver valuations under this regulation. FHWA previously conducted national waiver valuation surveys, research, and several informal program reviews and has not noted any significant instances of abuse or mishandling of program responsibility by any agency authorized to implement this flexibility in their program.

As a result of the above analysis, no changes were made to this section of the final rule.

###### Comparable Replacement Housing—Unreasonable Adverse Environmental Conditions

FHWA received one comment suggesting that it revise the definition of comparable replacement dwelling by removing the term “unreasonable.” The commenter stated, in part, that “unreasonable” is undefined in the rule and therefore its use subjects this important protection to ambiguity, and consequently, uncertain or unpredictable implementation.

*FHWA Response:* FHWA believes that removing the word “unreasonable” from § 24.2(a)(6)(iv) in the definition of a “comparable replacement dwelling” is not necessary. The FHWA notes that this part of the definition of a “comparable replacement dwelling” has been in previous regulations for almost

40 years. In that time, FHWA has not noted any confusion about the definition or questions about correct application.

As a result of this analysis no change was made to the definition.

###### Comparable Replacement Housing—Government Housing Assistance

FHWA received one comment suggesting revising the definition of comparable housing for a displaced person receiving Government housing assistance before displacement. The commenter felt that changes to this section are needed to better reflect the reality of assisted units, unit availability, and the interests of assisted households who are displaced. The commenter felt the primary provisions of item (ix) in this definition (§ 24.2(a), Comparable Replacement Dwelling) were useful clarifications regarding application of housing assistance program rules to both previously assisted and previously unassisted households. However, the commenter felt that the proposed additions of paragraphs (ix)(A) through (C) (§ 24.2(a), Comparable Replacement Dwelling), are unnecessary and potentially harmful to displaced persons. The commenter believes that the proposed requirements of (ix)(A) through (C) may lead some displaced persons to view the potential absence of desired public housing units from these formal documented offers as confusing and may imply that utilizing public housing units as comparable dwellings are not an option. The commenter also was concerned that paragraphs (ix)(A) through (C) limits the units an agency may offer as a comparable unit, increasing costs and burdens of complying with the regulation. The commenter offered several suggestions for replacing paragraphs (ix)(A) through (C) to ensure that residents of subsidized dwellings are offered comparable replacement dwellings that are not limited to public housing. One proposal was to require that when a person is displaced from a privately owned dwelling which has unit-based assistance, at least one of the comparable replacement units offered may not be a public housing unit. The commentor also proposed that a displaced person who had tenant-based assistance must be provided at least one comparable privately owned unit where the displaced household’s tenant-based assistance can be utilized.

*FHWA Response:* FHWA reviewed the proposed changes in this section and the commenter’s proposed deletions and additions. FHWA does not agree that the NPRM’s proposed addition of paragraphs (ix)(A) through (C) in this

section limits or restricts choices or eligibility determinations that a displacing agency may make when a person is receiving Government housing assistance before displacement. FHWA believes that it is important to endeavor to provide the displaced person with options, which may include government assisted housing units, which are at minimum similar to their displacement dwelling. The inclusion of the renumbered paragraphs (9)(i) through (iii) in this final rule ensures that certain comparability standards are understood and met. FHWA does not agree with the commenter's proposed changes to this section to set a required number of government housing units, or market sale comparable dwellings, as such a standard will not ensure that a displaced person understands their replacement housing options. Effective advisory services are a required part of a relocation and include a discussion and identification of a displaced person's needs and preferences (§ 24.205(c)(2)(ii)). These requirements will both guide an agency in identifying appropriate comparable dwellings and ensure that the displaced person understands their options and eligibility.

FHWA also does not view the language as drawing distinctions about the quality or desirability of certain types of Government housing assistance. FHWA believes the Federal funding agencies may want to develop additional policies or guidance to ensure that those displaced persons who are receiving Government housing assistance before displacement are provided comparable dwellings, which allows the agency to ensure that appropriate comparable housing has been made available.

FHWA revised this section to clarify that Government housing and assistance programs' requirements and considerations include fair housing and civil rights compliance. The revisions require that a displacing agency determine that owners of the comparable properties will accept a government housing subsidy when determining and selecting a comparable dwelling. FHWA also included portions of the NPRM's appendix A discussion in this section to further clarify these requirements.

#### Decent, Safe, and Sanitary (DSS)

Four commenters provided comments on the NPRM's proposed changes to the definition of "DSS." One commenter expressed support for the changes to the definition and believed the changes will provide needed flexibility. Two commenters requested that all

references to lead-based paint be moved to appendix A, with one stating that policies and practices to address lead-based paint should be considered to be a best practice. One commenter provided comments on the inclusion of a requirement to comply with local standards requiring the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, where they exist. This commenter was supportive of the requirement but believes that the final rule should be revised to require additional specific testing because few State and local jurisdictions have housing or public health codes requiring pre-occupancy lead hazard inspections. This commenter also proposed an alternative requirement be added to the final rule which would require a proactive inspection for lead-paint hazards in any replacement housing units to be made available to displaced persons, with remediation and cleaning as necessary. This commenter also proposed an addition to this definition to clarify that comparable and replacement dwellings should be free of other health hazards, including mold, infestations, and radon, and that comparable dwellings have operable fire and carbon dioxide alarms.

*FHWA Response:* FHWA appreciates the support for the proposed changes to this definition. FHWA also appreciates the comments and rationale that every measure should be taken to ensure that a displaced person is able to move to a dwelling where all known health risks have been identified and addressed. However, as was discussed in the NPRM's preamble, this rule and its definition of "DSS" are minimum requirements. Further, the NPRM also proposed to add that in cases where either local code or agency policy or regulation were more stringent, then the most stringent of those requirements must be applied. FHWA believes that the requirement to follow the most stringent policy or regulation ensures that agencies will take the required steps to ensure that a dwelling is DSS. FHWA does agree that if lead-based paint is specifically listed in this part of the regulation, other likely requirements, for example those related to asbestos or radon, should also be listed. Therefore, FHWA does not believe that adding additional specific requirements to this definition is practical. FHWA may develop one or more frequently asked questions (FAQ) listing examples where local code or agency requirements may be more restrictive. Where required, Federal funding agencies can develop the additional policies and requirements

necessary to identify and address potential deficiencies in comparable and replacement dwellings that may impact a displaced person's health.

As a result of the above analysis, the term "the most stringent of the local housing code, Federal agency regulations, or the agency's regulations or written policy" was used throughout this section for clarity and consistency. No other changes were made to this section of the final rule.

#### DSS—Appendix A at Section 24.2(a)—Standards for Inclusion of a Kitchen

The FHWA received one comment expressing some concerns about the proposed addition in appendix A at § 24.2(a), DSS, addressing kitchens in comparable and replacement properties. The commenter believes that the proposed appendix A discussion that recommends and encourages agencies to select comparable replacement dwellings with a kitchen, when the displacement dwelling does not have one, and local codes do not require it, seems excessive. The commenter believes the recommendation and encouragement will needlessly increase the cost of a replacement dwelling and add unnecessary complexity and inconsistency in the program.

*FHWA Response:* FHWA considered the comment and reviewed the NRPM's description of the proposed addition in the appendix A language. FHWA notes that the NPRM's proposed addition in appendix A addresses instances where local code standards for occupancy do not require kitchens. Appendix A notes that even though it is not required by local code, providing a kitchen is recommended. FHWA believes the appendix A discussion is consistent with and supports the Uniform Act's expression of Congressional intent found at 42 U.S.C. 4621(c)(3), Declaration of findings and policy, which states that the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals. The NPRM's proposed addition, which will be included in this final rule, contains no mandatory language, but does express a goal that where practical and possible, displacing agencies should endeavor to meet. FHWA will consider whether an FAQ may be necessary to further clarify the intent and purpose of this appendix A item.

As a result of the above analysis, no changes were made to this section of the final rule.

Displaced Person (Persons Not Displaced)—Occupants of a Temporary, Daily or Emergency Shelter and Appendix A of This Part

Three commenters provided comments on the NPRM's proposal to address occupants of shelters. One commenter was concerned that the addition of an item in the definition of persons not displaced addressing shelter occupants might cause shelter operators to change their method of operation to a "lottery based" system to more clearly align with this rule's definition of persons not displaced. This commenter was further concerned that this potential change in agreement or operation methods would ensure that shelter occupants would not be defined as displaced persons and would thereby cause impacts to shelter occupants, both inside a project or program area and outside. The commenter believes that shelters currently have many regulatory and statutory methods of providing accommodation to shelter occupants which provides those occupants with necessary temporary housing resources. The commenter suggests adding additional language to the proposed addition of persons not displaced to include the many types of agreements shelter operators use to provide temporary shelter. One commenter believed that temporary shelter is not defined in the NPRM. One commenter indicated that anyone who has a place to stay and store their belongings for more than a single night should be provided some relocation benefits and at a minimum, be provided another shelter to use. One commenter stated that if someone is in occupancy for only one night, at a minimum, connecting them with similar services elsewhere should be required.

*FHWA Response:* FHWA reviewed the NPRM's proposed additions to address occupants of a shelter that is acquired for a Federal or federally assisted project or program. FHWA does not agree that the NPRM's proposed additions addressing occupants of a shelter will cause shelters to revise their operating methods or agreements because if it is determined that a shelter's occupants meet the definition of "displaced persons," any additional administrative burden or relocation costs will be borne by the acquiring agency rather than the shelter's operators. Additionally, the final rule provides another potential resource, the replacement housing payment, that may be used to provide shelter or housing to those in need.

The FHWA notes that the NPRM's proposed language describes circumstances in which shelter

occupants may be required to move or more commonly, no longer have access to or use of the shelter because of its acquisition for a Federal or federally assisted project or program. The NPRM language also stressed that the proposed language and discussion was simply a clarification. It did not create or require that new eligibilities be granted or conferred. Instead, it provided additional factors to be considered when determining if an occupant of a temporary, daily, or emergency shelter impacted by a Federal or federally assisted project or program, who in most instances would not meet the definition of a displaced person, may be displaced due to a fact-based determination.

FHWA believes those acquiring a shelter and making a determination of whether a person is displaced 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. Shelters should not be advised or directed to change their operating agreements in order to conform to this rule's definition of persons not displaced.

FHWA also considered the commenter's concerns about requiring agencies acquiring a shelter to either ensure a replacement shelter is available to those required to move or to provide information on available shelters. FHWA notes that the final rule will include the NPRM's proposed requirement in the definition of "Persons Not Displaced; L) Occupants of an Emergency Shelter" to provide, at a minimum, all occupants of an acquired shelter with advisory assistance beginning at the initiation of negotiations.

FHWA notes that certain HUD programs use the term "emergency shelter" based on the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*). HUD defines "emergency shelter" in 24 CFR 91.5 as "[a]ny facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupants to sign leases or occupancy agreements."

Relatedly, the NPRM proposed defining "Temporary, daily, or emergency shelter." The proposed definition stated in part that 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. The final rule includes a revised

definition that includes replacing the term "typically" with "in most cases." FHWA believes that the proposed change more accurately reflects the unusual situations in which a person living in a shelter would be a displaced person as defined in this regulation.

FHWA may consider developing one or more FAQ to further provide guidance on how to determine when certain occupants of a temporary, daily, or emergency shelter are displaced persons and instances when they would not be displaced persons.

#### Dwellings

Eleven commenters expressed support for a modification to the definition of "dwelling." The NPRM proposed a minor modification to this definition by removing the term "non-housekeeping unit" and also included language in the preamble which discussed and clarified that a DSS dwelling may be unconventional or non-standard. There were no comments on the proposed removal of the term "non-housekeeping unit." The discussion of determining whether persons occupying a non-standard dwelling may qualify as a displaced person was the focus of most of the comments received on this proposed change. The primary focus of the comments was in refining the definition of dwelling. One commenter suggested including the word "unconventional" instead of inclusion of "other residential units" such as motels. Six commenters supported the addition of "primary" and "customary place of abode" in the definition of dwelling. Four commenters questioned the inclusion and meaning of "local custom or law."

One commenter asked for some guidance for dealing with individuals who are not occupying a legal dwelling, but who are living on their property in a temporary structure that does not meet the definition of a legal dwelling per local code. They stated that while it seems clear that the intent of the Uniform Act was not to treat these individuals as an owner-occupant eligible for a replacement housing payment, the Uniform Act and the regulations also do not provide any viable alternative.

The primary concern was that the definition would lead to lawful occupants of a non-DSS or non-standard displacement dwelling being determined to be a person not displaced under this regulation, resulting in a denial of Uniform Act relocation eligibility. One commenter requested temporary, transitional, or court-ordered housing be included in the definition.

*FHWA Response:* FHWA reviewed the regulatory history of these regulations and notes that the definition in this final rule, with the minor modifications proposed in the NPRM, is largely the same definition that has been in the regulations for almost 40 years. The primary purpose of the NPRM's proposed changes was to ensure that there is a clear understanding that great care must be taken in determining whether and when an occupant is a displaced person as defined under the regulation. A number of questions were raised about the meaning of the phrase ". . . place of permanent or customary and usual residence according to local custom or law." FHWA believes that throughout the history of these regulations, agencies have understood the plain language of this phrase to be focused on the facts considered when determining if the dwelling was the occupant's permanent or customary and usual residence (also referred to as "dwelling"). Local custom or law would therefore be determinative in making a fact-based determination as to whether the occupant was occupying a seasonal home, or a residence other than their place of permanent or customary and usual residence. The use of local law or custom can also be used to determine that a person is in a residential landlord-tenant relationship and therefore occupying a dwelling for purposes of determining eligibility under the Uniform Act. FHWA may develop one or more FAQs with fact-based information that can be used in making a determination as to whether a dwelling is an occupant's permanent or customary and usual residence.

Several commenters raised concerns that the proposed revisions to this definition could be interpreted in a manner which might deny eligibility for persons living in a non-standard and or non-DSS dwelling. FHWA notes that a non-standard or non-DSS unit can still meet the definition of "dwelling" when determining eligibility. For example, if an occupant resides in a non-standard dwelling, key information will include whether State or local law or code allows the person to lawfully occupy the otherwise DSS non-standard dwelling. For a dwelling for which State or local law or code allows occupancy but is non-DSS, an occupant might be determined to be in lawful occupancy and would then be a displaced person. If the occupancy of the dwelling were not permitted by State or local law or code in the same example or the occupants were not in lawful occupancy, they would not be displaced persons. For occupants found not to be

in lawful occupancy, the final rule continues to allow that such persons may be provided advisory services which may assist them by identifying available replacement dwellings, local and State services, and other assistance which may be available to them. While these persons may not be displaced persons, agencies should provide such advisory services to the extent practical.

As a result of the above analysis, no changes were made to this section of the final rule.

#### Federal Down Payment Assistance

FHWA received four comments supportive of the NPRM's proposed addition of a definition of "Federal down payment assistance." One commenter asked that the NPRM's proposed appendix A addition be revised in the final rule to include a further discussion and examples of what constitutes "funds" other than the funds subject to the Uniform Act requirement. Two commenters asked that the appendix A discussion of Federal down payment assistance be revised by separating the discussion of "Federal down payment assistance" and "Federal financial assistance." The commenters reasoned that the combination of the two topics might lead to confusion in determining Uniform Act applicability. One commenter asked that FHWA clarify that the use of Uniform Act benefits does not create a displacing activity and eligibility for Uniform Act benefits.

*FHWA Response:* FHWA considered the comments and requests for clarification about the NPRM's proposed addition of a definition of Federal down payment assistance. FHWA believes that the comments, while generally supportive, also indicate uncertainty about the proposed concept. The uncertainty includes whether there is an established funding threshold to be used in determining if a purchase of property funded in some portion by Federal down payment assistance, would create a displacing activity. After further considering whether additional clarifications or changes in this final rule could address those questions, FHWA determined that the implementation of this proposed change may continue to raise questions and uncertainty, which will lead to an uneven understanding and application that may result in benefits and protections being provided to some but not all whose dwellings are acquired by those using Federal down payment assistance.

As a result of the above analysis, FHWA declines to adopt the proposed

changes relating to "Federal down payment assistance" in the final rule.

#### Federal Financial Assistance (FFA)

One commenter requested that the definition of "FFA" be modified to include the concept of rental subsidies.

*FHWA Response:* The definition of FFA in part assists in determining whether the requirements of the Uniform Act apply. FHWA does not believe that revising the definition by adding a term, phrase, or benefit that is specific to one or more Federal agency's program is practical. The FHWA believes that Federal agencies should implement policies and procedures for program grants, loans, and contributions that are necessary to implement their program.

As a result of this analysis, the final rule will not include a definition of "Federal down payment assistance" as explained in the preceding preamble discussion on *Section 24.2(a), Definitions and Acronyms, Federal Down Payment Assistance*.

#### Federal Financial Assistance—Low Income Housing Tax Credits (LIHTC)

Two commenters provided comments on the NPRM's proposal to clarify that LIHTC are not FFA for purposes of determining eligibility for Uniform Act benefits and assistance. One commenter supported the proposed clarification that LIHTC are not FFA as defined in the Uniform Act and therefore, projects receiving LIHTC alone would not be subject to the Uniform Act. This commenter further stated that it is their understanding that LIHTC projects that do receive a federally assisted grant, loan, or other Federal contribution would still be subject to the Uniform Act. The other commenter did not support the proposed clarification. This commenter stated in part that the LIHTC program provides approximately \$10 billion in direct, concrete financial assistance to housing developers for the acquisition, rehabilitation, and development of LIHTC projects around the Nation. This commenter also stated the LIHTC program serves a key public purpose—generating affordable housing development by federally subsidizing, or assisting, such development. This commenter additionally stated that the LIHTC program also plays an enormous role in financing the acquisition and rehabilitation of existing affordable housing units, noting that nearly 1 out of every 3 housing units funded by the LIHTC program in the United States involved the acquisition or rehabilitation of existing dwellings, some 950,000 units in all.

*FHWA Response:* FHWA noted in the NPRM that 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.”

FHWA does not believe that LIHTC is FFA as it is defined in § 24.2(a) because of the nature of these tax credits and the fact that they are not a grant, loan, or contribution provided by the United States, and therefore not subject to Uniform Act requirements. Given that they are described as an “indirect Federal subsidy” and as a “tax incentive” by the Office of the Comptroller of the Currency, it follows that investors and developers would make self-directed determinations on where and how they should pursue development opportunities that maximize financial benefits for themselves. In considering the commenter’s concern about the nature of the LIHTC program, FHWA does not believe that use of LIHTC alone would require the developer to comply with the requirements in this regulation. However, if other Federal funds are used on the same projects to incentivize the developer’s participation, then the use of that Federal financial assistance may need to be subjected to a fact based determination of Uniform Act applicability. While the Uniform Act does not require relocation assistance when only LIHTC is used in a project, Federal funding agencies nonetheless may develop policy or requirements which authorizes relocation assistance to those displaced by a project or program which uses or receives LIHTC’s, to the extent they are legally empowered to do so. FHWA does not believe that Federal funding agencies making such a determination to provide additional benefits or assistance would result in a reduction of required benefits and assistance available to others. FHWA may develop one or more FAQs

to provide further assistance in determining when and if Uniform Act requirements would be applicable for individuals who claimed or will claim LIHTC credits for development, acquisition, and rehabilitation of affordable rental housing.

As a result of the above analysis, no changes were made to this section of the final rule.

#### Initiation of Negotiations—Voluntary Acquisition

The FHWA received seven comments on the proposed revision to the definition of “Initiation of Negotiations” related to voluntary acquisitions. One commenter supported waiting until there is a binding legal agreement before tenant relocation eligibility begins on voluntary acquisitions. The commenter reasoned that because purchase options/agreements can fail to result in a sale of the property for various reasons, it would not make sense for persons to be fully eligible for relocation assistance until closing. The commenter then posed the following question: “Where is the relocation funding expected to come from for an agency that executes a purchase agreement (which triggers ‘full eligibility’ for a tenant who moves for the project) but has the project fall through before Federal funds are ever used?” One commenter did not support the change to the tenant relocation eligibility because changing this eligibility would slow the relocation process and is too big of a deviation from the current rule. Two commenters requested clarification of the term “Initiation of Negotiations,” and one commenter believes the term is a misnomer since the Initiation of Negotiations does not start until the contract is executed (rather than the purchase option). Another commenter agreed that a purchase option or conditional contract has contingencies that must be satisfied before the buyer executes their right to purchase real property, but also commented that a written purchase agreement, as used in their acquisition activities, typically is a written contract that does bind the buyer and seller to the terms of the agreement. The commenter therefore requested that the reference to a purchase agreement be removed from this sentence or further clarification be provided as to what FHWA considers to be a binding agreement to purchase real property in lieu of a written purchase agreement. Two commenters raised questions, specific to the HUD program, about determining or establishing eligibility for a tenant who moves prior to a negotiation resulting in a binding

agreement between the agency and the property owner.

*FHWA Response:* An agency pursuing a voluntary acquisition may use a conditional sale agreement or option to purchase agreement. Those agreements do not impose an obligation on the agency to purchase the property until either the agreement’s conditions are met, or the agency elects to exercise its right to purchase. The previous rule’s requirements were sometimes misunderstood as requiring an agency to provide relocation assistance for tenants occupying real property even when the agency ultimately could not acquire through a voluntary agreement. This final rule will clarify the date of relocation assistance eligibility for tenants who occupy real property that is acquired by voluntary acquisition. Such eligibility is established when there is a binding written agreement between the agency and the property owner that obligates the agency, without further election, to purchase the real property. These revisions in the final rule will allow an agency to more efficiently carry out voluntary acquisitions and ensure they will not incur costs for relocation assistance unless and until there is a binding legal agreement for the sale between the agency and the property owner.

FHWA notes that for acquisitions carried out under the authority of eminent domain, the meaning of the term “Initiation of Negotiations” and the date when negotiations begin was not proposed to be and has not been changed in this final rule.

FHWA included a clarification in the final rule that the term “binding written agreement” in the context of paragraph (iv) of the definition of *initiation of negotiations* requires several conditions to be true. To be a binding written agreement within the meaning of paragraph (iv), the agreement must be a legally enforceable commitment no longer subject to elections or conditions, in which the property owner agrees to sell certain property rights necessary for a project and the agency agrees to make that purchase for a specified consideration. In other words, any elections and conditions have been satisfied, so that the agency is obligated to purchase the real property. Both parties have formally accepted the terms contained in the agreement, documented their agreement in writing, and acknowledged their acceptance with their signatures. FHWA will include the language proposed in the NPRM which stated in part that “An option to purchase, conditional sale, or purchase agreement is not considered a binding agreement to purchase real

property”. However, FHWA believes that each Federal funding agency will need to develop policies or requirements identifying the types of agreements used in its programs or projects which it considers to be binding and which would therefore trigger eligibility for tenants as displaced persons.

FHWA does not believe that clarifying the eligibility-triggering criteria for voluntary acquisition reduces benefits or assistance to tenants because it is not substantively different than the standard in the regulation adopted in 2005, 49 CFR 24.2(15)(iv). In addition, application of this provision’s protection for displaced persons is supported by 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 when negotiations fail, a required written notification that negotiations failed and assurance that the tenant will not be required to move from the property. (See § 24.2(a) Initiation of Negotiations and Appendix A, § 24.2(a) Initiation of Negotiations, Tenants (iv)). FHWA may develop one or more FAQs to ensure clarity about tenant eligibility for relocation assistance when a property is purchased voluntarily.

#### Initiation of Negotiations—Voluntary Acquisition, Other Federal Agency Programs

One commenter requested a clearer definition of the term “Initiation of Negotiations” for Section 8 contracts. The commenter was unclear about the relationship between the date that is the Initiation of Negotiations and the NPRM’s new concept of a notice of intent to acquire/rehab/demolish.

One commenter had a question that appears to be related to a HUD program. The commenter asked about the overlap in the terms for Initiation of Negotiations when the acquisition is privately undertaken, which the commenter believes places Initiation of Negotiations under both subparagraphs, § 24.2(a) Definitions and Acronyms. Initiation of Negotiations, (i) and (iv). The commenter requests that FHWA clarify if a displaced tenant is eligible upon execution of a binding written agreement to purchase the property, § 24.2(a) Definitions and Acronyms. Initiation of Negotiations, (iv), or whenever the tenant receives a notice they will be displaced (or the date they actually move, if there is no notice), § 24.2(a) Definitions and Acronyms. Initiation of Negotiations, (ii).

*FHWA Response:* FHWA believes a discussion of HUD-specific policy for

Section 8 tenants’ eligibility for voluntary acquisition is beyond the scope of this rulemaking; however, FHWA notes that tenant eligibility requirements discussed in this rulemaking are applicable to Federal and federally assisted projects and programs. (see § 24.203(d)).

FHWA understands the questions about Federal participation in voluntary acquisition costs; however, because of the wide variation in the scenarios that may occur, FHWA cannot reasonably or comprehensively describe the applicability of initiation of negotiations or, more generally, policies for determining eligibility for Federal participation in voluntary acquisition costs for each Federal agency. FHWA has information on its website<sup>1</sup> which describes FHWA’s Federal participation eligibilities for voluntary acquisitions and may develop one or more FAQs to generally respond to Federal eligibility questions and point to some FHWA informational resources. However, it is important to note that displacing agencies should check with the Federal funding agency to receive additional guidance on voluntary acquisition eligibility determinations.

As a result of the above analysis, no changes were made in response to these comments.

#### Mortgage

One commenter advised that use of the term “mortgage” for mortgages instead of “lien” is preferred as there are many types of liens, and not all create a possessory interest in the subject property.

*FHWA Response:* There was no proposed change in the NPRM to the definition of the term “mortgage” found in § 24.2(a). The definition found in the statute at 42 U.S.C. 4601(9), describes a mortgage as classes of liens 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. The definition in the statute and regulation continues to provide the various Uniform Act partner agencies with a comprehensive definition, which meets their needs and ensures Uniform Act requirements are met.

As a result of the above analysis, no changes were made to this section of the final rule.

<sup>1</sup> [https://www.fhwa.dot.gov/real\\_estate/index.cfm](https://www.fhwa.dot.gov/real_estate/index.cfm).

Reverse Mortgages (Also Known as Home Equity Conversion Mortgages (HECM)), and Section 24.401(e)

The NPRM included a preamble discussion of HECMs, a new definition (which acknowledged HECMs also are known as “reverse mortgages”), and changes to other parts of the regulation and appendix A. One commenter was supportive of the proposed additions of a definition and a regulatory section describing requirements to calculate and document eligibility and reimbursement for costs associated with replacing a HECM.

*The FHWA Response:* The FHWA appreciates the comments. After publication of this final rule, FHWA will continue to monitor the development and growth of this market.

After further analysis, FHWA will revise the final rule by replacing the term “HECM” with “Reverse Mortgage.” The FHWA believes that making this change will help to provide a clearer reference in the final rule. “Reverse Mortgage” is a more generic term, while HECM is a specific term used in the Federal Housing Administration (FHA) Program for reverse mortgages. The more common term should be easier to understand and more clearly encompasses reverse mortgages that may not qualify as an FHA HECM. FHWA also thinks it is important to note that this rule does not guarantee that a displaced person will be eligible for an FHA reverse mortgage. Displaced persons seeking a replacement reverse mortgage will continue to have to meet the financial institution’s lending and underwriting requirements. For example, those displaced persons who want to obtain an FHA-insured reverse mortgage will have to meet FHA’s eligibility requirements at 12 U.S.C. 1715z–20 and HECM regulations at 24 CFR part 206.12. Appendix A for the final rule has also been revised to include additional discussion of FHA reverse mortgage counseling requirements that are applicable to a displaced person who wishes to purchase an FHA insured mortgage and other counseling resources that a displaced person with a reverse mortgage may utilize.

The NPRM also discussed development of a calculator for reverse mortgage interest differential payments. FHWA determined that development of such a tool is not immediately practical. FHWA may consider revisiting this determination once agencies have had more experience with reverse mortgages and more data on payments is available. FHWA will look for information and opportunities to develop best practices,



case studies, and other similar tools to document and share practical methods of calculation of eligibility and reimbursements due to displaced persons.

#### Owner's Designated Representative and Manner of Notices

FHWA received six comments on the proposal to allow owners to designate a representative. Three of the six comments supported allowing an owner to designate a representative and the requirement that the designation must be in writing. One commenter inquired about the authority of the representative to elect to receive electronic notices without express written authorization from the property owner and asked whether occupants can similarly designate a representative. Two commenters recommended keeping the current regulation's language requiring that offers be made to the property owner instead of the NPRM's proposal to allow either the owner or the owner's designated representative to receive the offer. They reasoned that this is the only time there will be a face-to-face meeting with the owner to explain the project and present the offer. (See § 24.102(f)).

*FHWA Response:* FHWA believes that allowing an owner or tenant to provide a written notice designating a representative to receive offers, required notices, correspondence, and information in no way diminishes a property owner's or tenant's rights. FHWA agrees that the preferred method of making an offer to acquire is to make the offer directly to the property owner, and at that time, the property owner may designate in writing, a representative to receive all subsequent required notifications and documents from the agency. This ensures the owner receives the offer and the owner designates the representative. However, FHWA recognizes that occasionally there may be instances where an owner may wish to designate a representative prior to the initial offer. For example, designation could be used when the owner may not be able to meet because of illness or may be out of the country. FHWA agrees that the ability to designate a representative should include displaced occupants.

This final rule will include a revision to the definitions at §§ 24.2(a) and 24.5(d) to clarify that tenants may also designate a representative. It is noted, however, that relocations require an interview during which the displaced person provides information on their needs and preferences. FHWA believes it is always preferable that the displaced person be present with their representative when a home inspection

and interview are conducted because the purpose of the interview is to determine the displaced person's needs, which sometimes requires answers to questions concerning their preferences and the displaced person is likely the only person who can fully respond to such questions. FHWA believes that when the owner or tenant designates a representative, they should stipulate in writing specifically what the representative is authorized to do. As a best practice, FHWA also believes that the written designation should specifically state what the representative is not authorized to do. For example, if an owner does not want the representative to use electronic means to communicate, then it should be stipulated within the written designation.

#### Program or Project

FHWA received one comment requesting the addition of a definition for the word "undertaking" within the definition of "program or project."

*FHWA Response:* FHWA reviewed the use of the word "undertaking" in this NPRM and notes that the use of the term is not a proposed change. The term can be found in use in the definition of program or project and in an Appendix A discussion of § 24.103(b), Influence of the project on just compensation. The FHWA believes that in both instances where this term occurs in the regulation it does not carry any meaning beyond the commonly understood use of the term and its use does not change or impact either the definition or the appendix A item.

As a result of the above analysis, no changes were made to this section of the final rule.

#### Small Business

One comment agreed that signs on property to be acquired should be relocated as personal property, and without the reestablishment benefits such as utility hook-ups at a replacement location.

*FHWA Response:* The NPRM preamble discussion of the definition of small business acknowledges that 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 as a small business under §§ 24.303 and 24.304. FHWA clarified that sites occupied solely by outdoor advertising signs, displays, or devices do not qualify for these benefits by adding a reference to § 24.303 in the last sentence of the definition of small business, as proposed in the NPRM. FHWA believes that outdoor advertising

signs are to be treated as personal property. The final rule allows that owners of outdoor advertising signs may receive either an amount for a direct loss of an outdoor advertising sign, § 24.301(f), or when applicable the estimated cost of moving the sign to include those costs discussed in § 24.301(g), but with no allowance for storage.

As a result of the above analysis, no changes were made to this section of the final rule.

#### Temporary, Daily, or Emergency Shelter

FHWA received two comments regarding the definition of "temporary, daily, or emergency shelter." One commenter expressed support of the definition and reasoned that it affirms the commenter's belief that persons with informal non-shelter living arrangements may be considered displaced. One commenter believed that "temporary shelter" is not defined in the NPRM.

*FHWA Response:* FHWA believes this definition only applies to occupants of emergency, temporary, or daily shelters. These shelters are typically intended as an overnight, short term, short duration accommodation, and therefore the persons utilizing these accommodations are in most cases not "displaced persons" because their accommodations do not meet the definition of a "dwelling." This final rule will define a "dwelling" as "the place of permanent or customary and usual residence of a person according to local custom or law."

FHWA notes that the NPRM and this final rule include a discussion of those who temporarily occupy a shelter in the definition of displaced persons and persons not displaced. FHWA believes that the definition and the discussion of persons not displaced in this final rule provide details that will ensure displacing agencies can make the appropriate determination of whether a person is a displaced person or a person not displaced for those occupants who are required to move from a shelter.

Certain HUD-assisted emergency shelters do not allow for continued or prolonged occupancy and may not be considered dwellings under HUD programs or projects. The McKinney-Vento Homeless Assistance Act defines a "homeless person" to include "an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate

shelters, and transitional housing).” 42 U.S.C. 11302(a)(3).

As a result of the above analysis, no changes were made to this section of the final rule.

#### Waiver Valuation

Two commenters stated that the definition of “waiver valuation” needed to be augmented with language that clearly states that a waiver valuation is not an appraisal. One of those two commenters proposed moving language found previously in the appendix A explanation for the definition directly into the regulatory text. A third commenter suggested that the regulation be revised to acknowledge a waiver valuation is an appraisal. One commenter suggested that the waiver valuation language in §§ 24.102(c) and 24.102(d) was unnecessary if it was indeed an appraisal.

*FHWA Response:* The Uniform Act permits the Lead Agency to prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. In such circumstances, the current regulatory text allows the use of a waiver valuation procedure in lieu of an appraisal. State licensure boards have generally viewed any opinion of value issued by one of their licensees to be an appraisal. Those who are licensed find themselves looking for clarity as to when and how the Uniform Act regulation requirements intertwine with the standards of their State licensure boards. As a result, FHWA revised the definition by including declarative statements within the body of this final rule including those at § 24.2(a), definition of “waiver valuation” and § 24.102(c) “Appraisal, waiver thereof, and invitation to owner” that waiver valuations are not appraisals as defined in the Uniform Act and this rule. FHWA may also develop an FAQ to provide additional guidance and clarity on the requirements and use of a waiver valuation in this regulation.

#### Section 24.5 Manner of Notices and Electronic Signatures

Four commenters strongly supported the additional flexibility of using e-delivery and e-signatures as a positive change that should expedite service and reduce waste. They noted that allowing the use of electronic notifications are long overdue and supports allowing more flexibility in notice delivery, particularly the ability to notify tenants via electronic means. One commenter agreed that personal contact is the best practice but acknowledged that property owners sometimes do not want to meet or in some instances may prefer very

limited meetings. One commenter noted that Appendix A provided examples of instances when electronic deliveries of notices are appropriate and suggested since the examples are not actual notices required by agencies, the examples should be stricken. One commenter requested clarification on whether agencies who have existing policies for providing electronic notices, with residents’ or owners’ permission, which meet the requirements outlined in the NPRM, are sufficient to permit the agency to serve notices by electronic means. One commenter was concerned that the NPRM, at times, seems to blend the e-delivery and e-signature requirements when they are two distinct processes, e-signature requiring more robust technology, more procedural adaptations, and greater financial investment than e-delivery. The commenter requested clarification on whether both are allowed and asked whether an agency could elect to use one and not the other. Also, the commenter suggested removal of the additional language in the appendix, e.g., “agencies must determine and document instances when electronic deliveries of notices are appropriate.”

*FHWA Response:* FHWA believes that delivery of notices by digital or electronic means can provide agencies and property owners and displaced persons with an optional communication method that can streamline the offer, negotiation, and notice processes while not reducing any benefits or protection to property owners and displaced persons. FHWA agrees that the examples listed in appendix A, § 24.5, are not examples of required notices. However, electronic delivery is not limited to agency required notices. In addition to notices, offers, correspondence, and information may be sent by electronic means. (See § 24.5(d)). FHWA revised the language in appendix A to provide some examples of the various acquisition and relocation assistance requirements and activities such as notices, offers, and documents that may be delivered by electronic means. Appendix A was also revised by adding in references and additional information on the process for approval and use of electronic signature.

FHWA agrees that an agency with an existing program for providing electronic notices to residents and owners that meets the final rule’s requirements and is documented in the approved agency’s policies and procedures, could meet the requirements in the final rule for serving notices electronically.

FHWA agrees with one commenter that the e-delivery and e-signatures are two distinct processes. FHWA believes the NPRM identifies those differences and discusses their use. Those changes have been incorporated into the final rule by revising the title of § 24.5 to include reference to electronic signatures, by revising the language in § 24.5(b) to refer to a required “process” instead of a “method” to clarify that a Federal funding agency must approve a process that would include methods used to comply with requirements, and by revising § 24.5(d) to clarify that this section applies to property owners and tenants, and that property owners and tenants may also elect to provide signatures needed by the agency electronically. The final rule includes a new § 24.5(e) which was included to specifically address electronic signature requirements.

An agency requesting use of electronic delivery of notices must include 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. In addition, an agency requesting to use electronic signature must include a method to link the electronic signature with an electronic document in a way that can be used to verify the signature and determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.

As requested by one commenter, FHWA clarified in the final rule’s appendix A that an agency may use electronic delivery or electronic signatures and must document the circumstances under which they are allowed.

#### Section 24.9(c) Recordkeeping and Reports

FHWA received one comment regarding the annual reporting of Uniform Act program activities required of Federal agencies. The commenter believes that the additional reporting requirement needs more clarification or a form to be used.

*FHWA Response:* As discussed in the NPRM preamble, the change in the reporting requirement in § 24.9(c) is being implemented in accordance with Section 1521(d) of MAP-21 and impacts Federal agencies only. The current regulatory text for this section states that the form for completing this activity is in appendix B. This final rule will include reporting options available to Federal agencies in appendix A. The two options are to use the reporting

form in subpart B or develop a narrative report on the Federal agency's efforts during the year to enhance delivery of Uniform Act benefits and services. Each Federal agency is required to provide an annual summary report of its acquisition and displacement activity to the Lead Agency by November 15. FHWA revised this section of appendix B by including a further discussion of some of the information that Funding agencies may want to include in their annual report.

#### *Section 24.11 Adjustments of Limits and Payments*

FHWA received eight comments on the adjustment of relocation benefits proposal in the NPRM.

One commenter requested that the 2012 MAP-21 statutory benefit updates be included in this final rule. This same commenter recommends that FHWA immediately adjust the statutory maximum rental assistance payment, irrespective of the proposed rulemaking, based upon the cost of living, and other factors, where the Lead Agency "determines that cost of living, inflation or other factors indicate that the payments should be adjusted to meet the policy objectives of this chapter." (42 U.S.C. 4633(d)). One commenter stated that the maximum statutory benefit limit amount of \$25,000 for eligible nonresidential reestablishment expenses should be raised to \$50,000 because many businesses incur costs that exceed the current maximum benefit amount when required to relocate. Another commenter also recommended increasing the nonresidential re-establishment benefit limit of \$10,000 to \$65,000, based on a market average of \$55,000, and the nonresidential fixed payment for moving expenses from \$20,000 to \$70,000, based on a market average of \$60,000 and incidental inflation rates ranging from 2.1 percent to just over 6 percent over the past 5 years. This same commenter recommends increasing the Replacement Housing Payment (RHP) for 180-day homeowner-occupants from \$22,500 to \$75,000, based on a market average RHP of \$55,000 for rural and suburban areas, and over \$100,000 for the commenter's local urban markets, and average increases in property values in the commenter's State of around 4.9 percent per year; housing demand compared to supply; and listings selling for an average of 2-5 percent over the listing price.

One commenter asked if the final rule could include a method to develop an index to be used annually to automatically update certain payments and benefits in the final rule. One

commenter asked for details on how and when updates to the regulatory amounts would be made and had concerns about how projects in process when the regulatory limits were updated would be handled, and specifically asked how the requirement for fair, uniform, and equitable treatment of all affected persons would be met when an update to certain benefits occurred. This same commenter also asked whether FHWA would adjust certain benefits downward or would only adjust upwards to account for inflation. Another commenter recommended that FHWA post proposed revised UA benefit levels for a public comment period prior to adopting them so that recipients can assess the impact and adequacy of the new benefit levels.

One commenter proposed that FHWA consider using other indexes for this section because the use of specific inflation measures is best suited to specific types of benefits, such as the Federal Housing Finance Administration House Price Index for replacement housing and rental assistance payments. The commenter believes that using more specific measures as the basis for payment adjustments would best reflect the cost of living and reduce hardship for displaced persons.

*FHWA Response:* FHWA noted some confusion from recipients about the effective dates for amendments to the Uniform Act in section 1521 of MAP-21. By law, these changes became effective on October 1, 2014. MAP-21 amended the maximum statutory benefit for replacement housing payments for displaced homeowners to \$31,000, and replacement housing payments for displaced tenants to \$7,200. The length of occupancy requirement for homeowners was reduced from 180 days to 90 days in occupancy before the initiation of negotiations. MAP-21 also amended the maximum statutory benefit for business reestablishment benefits to \$25,000, and the fixed payment for nonresidential moves to \$40,000. The confusion may stem from the fact that the current regulatory text was not amended after the passage of MAP-21 to reflect the new statutory amounts, until this rulemaking. These benefit amounts are established in the statute. However, it is important to note that this final rule does include authority to adjust certain benefit levels to account for inflation.

FHWA has included adjustments to certain benefit levels established by statute in this final rule. These have remained unadjusted since October 1, 2014, and consequently their ability to meet the policy objectives of the Uniform Act has been diminished by

the effects of inflation. The adjustments to those benefit levels were made by calculations using the June 2023 Consumer Price Index for All Urban Consumers (CPI-U) adjustments.

In developing this regulation, FHWA considered the practical effects of updating certain benefit amounts periodically. FHWA notes that in past final rules for this part and implementation of certain MAP-21 updates to the Uniform Act, there has usually been an implementation period of one or more years. Recipients may need time to allow for local legislative changes necessary for implementation; others may require time to develop an update to their program manuals and to then have them approved by the Federal funding agency. However, FHWA agrees that limiting consideration of the need to update benefit limits to every 5 years may not allow FHWA to make necessary timely updates.

In response to the commenter who asked about making downward adjustments, this final rule does not contain a prohibition against making a downward benefit adjustment should a calculation indicate that a downward adjustment might be warranted.

FHWA reviewed the commenter's request to use other indexes as the basis for determining the necessity of an update to certain regulatory benefit amounts. As FHWA noted in the NPRM preamble, the CPI-U represents 87 percent of the total U.S. population, is available on a monthly basis free of charge, and is used by several other Federal agencies. FHWA understands that many indexes are available, and each may have some specific advantage or measure. In considering the measures that may currently best determine whether a benefit update is needed, at this time FHWA continues to believe that CPI-U best represents the costs incurred by our relocatees and therefore is a good indicator for determining the effects of inflation that are experienced by those displaced. However, FHWA also agrees with several comments suggesting that FHWA further consider whether there may be indexes that provide more specific measures as the basis for payment adjustments that would best reflect the cost of living and reduce hardship to displaced persons.

FHWA also received comments discussed in § 24.102(c)(2)(ii) Basic Acquisition Policies—Negotiation procedures; appraisal, waiver thereof, and invitation to owner which in part suggested that some waiver valuation limits should also be adjusted as described in this section.

As a result of the above analysis, FHWA has revised this section by

eliminating the language restricting consideration of benefit updates to no more frequently than every 5 years. The final rule will allow the head of the Lead Agency to carry out an evaluation when there is concern that certain benefit levels no longer support the policy objectives of the Uniform Act. Such determinations will in part consider implementation challenges and concerns including allowing appropriate time for Federal agencies and recipients to take the necessary administrative steps to implement benefit updates and changes. The FHWA believes that should an update to the benefit amounts be necessary, each Federal funding agency will need to develop policies and procedures for ensuring that the implementation of updates to benefit amounts is fair, uniform, and equitable. One method to ensure that the updating of benefits is fair, uniform, and equitable might be to decide that for projects underway before an update is effective, displaced persons will continue to be eligible for the amount in the regulations at the initiation of negotiations.

After publication of the final rule, FHWA intends to publish a Request for Information (RFI) to ask stakeholders whether there may be an index which better reflects costs associated with specific relocation benefits and which provide more precise indication of the effects of inflation. Based on the RFI, FHWA may consider further regulatory changes to address issues including whether additional or other indexes should be used to determine the need to update benefit levels, whether additional relocation benefits should be adjusted based on use of new indexes or other comments provided in the RFI, what basis should be used for the adjustments, and at what intervals adjustments should be made.

FHWA also revised this section by changing the section title and including additional benefit level payments that may be adjusted including waiver valuation limits and applicable sections on mobile homes at § 24.502 and § 24.503. FHWA believes that as discussed in response to comments in § 24.102(c)(2)(ii) Basic Acquisition Policies—Negotiation Procedures; appraisal, waiver thereof, and invitation to owner, allowing adjustment of waiver valuation limits in this section will ensure that the effects of inflation do not unnecessarily restrict appropriate use of waiver valuations. FHWA also revised this section by adding in specific references to tenants of mobile homes to more clearly provide applicable references to all tenant eligibilities

which may be adjusted as described in this section of the regulation.

#### **Subpart B—Real Property Acquisition**

##### *Section 24.101(b) Applicability of Acquisition Requirements—Voluntary Acquisitions*

FHWA received 15 comments on this section of the regulations. The comments focused on several related questions regarding proposed changes including: application and interpretation of § 24.101(b); use of § 24.7, Federal agency waiver of regulations of this part; applicability to specific Federal funding agency programs, interpretation and applicability of § 24.101(b)(1)(i) through (iii); and the proposed addition of § 24.101(d)(2) and (3).

*FHWA Response:* FHWA developed the proposed changes in the NPRM to address questions it has received over the years about the intent and applicability of the voluntary acquisition provisions. These questions have been raised by both our Federal agency partners and the public. The NPRM preamble noted that one of the goals of the proposed reorganization was to clarify the meaning, interpretation, and application of the terms geographic area and site (§ 24.101(b)(1)(i)). The NPRM noted that some Federal agencies reported that terms were close enough in meaning that they caused confusion. Those Federal agencies 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 NPRM further noted that some agencies possess the power of eminent domain but do not use it for specific projects. FHWA 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.

FHWA’s approach in the NPRM was to attempt to clarify and simplify the language in § 24.101(b)(1)(i) through (iii). The comments received on various issues related to or involving voluntary acquisitions led FHWA to believe that the NPRM’s proposed changes addressed some of the issues and questions, but not all. In considering the comments and the variety of questions, FHWA proposes to further revise this section in the final rule. The FHWA removed §§ 24.101(b)(2) and (3) and

reorganized § 24.101(b)(1) in the final rule to clarify the requirements and qualifications for determining when a voluntary acquisition may be advanced for Federal and federally assisted programs and projects. FHWA believes these revisions streamline the voluntary acquisition requirements and clarify applicability. FHWA will include a new § 24.101(b)(1) which clearly states that if eminent domain will not be used and certain other conditions are met, then an agency may use the voluntary acquisition requirements provided by this section. FHWA is proposing no change to § 24.101(a) applicability and requirements. FHWA will address all other questions related to aspects of voluntary acquisition separately in this preamble and will incorporate the revised requirements of § 24.101(b)(1) in the responses and changes to the regulatory text.

##### *Section 24.101(b) Applicability of Acquisition Requirements—Voluntary Acquisitions, Comments Related to Federal Agency Policies and Procedures*

FHWA received several comments requesting clarification of voluntary acquisition requirements applicability to HUD programs. The commenters suggested that they had significant difficulties in applying the Uniform Act’s voluntary acquisition regulations to HUD programs. One commenter asked how an existing Section 8 contract being transferred to an owner acquiring and rehabbing a project fit into § 24.101(b) since Section 8 contract funds are rental subsidies that cover operating costs; the funds are not being used to acquire real property for a project or program. The commenter also noted that the acquisition notice at § 24.101(b)(2)(iii) has been applied by HUD to transactions between private parties. The commenter does not believe this application is consistent with the voluntary acquisitions requirements and further explains that there is no need for a private buyer to inform a private seller that they are not using their eminent domain authority to acquire their property because it is an authority they do not have.

Another commenter believes that the Uniform Act presumes a Federal agency is the acquiring party and a private homeowner, business, or farm owner is the seller. The commenter noted that this dynamic is entirely distinct from the Federal affordable housing programs when an owner of existing federally assisted rural housing is selling or refinancing their rural affordable multifamily property. The commenter requested that the following be exempt from § 24.101(b) compliance: “transfers,

rehabilitations or demolitions of affordable housing assets restricted, subsidized or otherwise assisted or to be restricted, subsidized or otherwise assisted under Federal housing programs.”

*FHWA Response:* Because several Federal agencies have programs, policies, and procedures that have aspects unique to that Federal agency, this rulemaking does not address the interplay between these requirements and other Federal agency programs. Some programs focus on planned and federally assisted rehabilitation which requires a temporary move. Others may require demolition and rebuilding of the structure which also may require a temporary move or permanent displacement. There are many scenarios that are not clearly either a voluntary acquisition or an acquisition of real property rights. To qualify as a voluntary acquisition under § 24.101(b)(1) an acquisition of real property rights would be pursuant to a Federal or federally assisted project or program and would not use the authority of eminent domain to acquire the real property rights. Voluntary acquisitions that meet these two requirements would be subject to compliance with the voluntary acquisition requirements of this rule.

In another commenter’s example, another Federal agency was providing Federal financial assistance to support the rehabilitation or redevelopment of privately owned real property. After redevelopment or rehabilitation of that property, it would continue to be privately owned but would be required to be used for Section 8 housing. In this instance, an agency must determine whether and how the use of Federal funding or Federal financial assistance provided would require compliance with the requirements of the Uniform Act. Generally, when Federal funding or Federal financial assistance is used for a project or program and there is either an acquisition of real property rights or occupants will be displaced the Uniform Act requirements would apply. If the Uniform Act requirements apply, then tenants and owners who were in occupancy on the real property that is being redeveloped would be eligible for assistance because they would be either displaced persons or persons required to move temporarily.

If the determination was made that the acquisition of real property rights was done in anticipation of receiving subsequent Federal financial assistance for a planned or anticipated project or program, then tenants and owners occupying the real property would be either displaced persons or persons

required to move temporarily as defined in this rule and would be entitled to benefits and assistance under this regulation. Similarly, FHWA does agree that a private market sale carried out between a willing buyer and seller, which was not done in anticipation of later incorporating that property into a planned or anticipated project or program which would receive Federal financial assistance, would not be subject to the voluntary acquisition requirements of this part because the purchase of the real property rights was not a part of or required by a Federal or federally assisted project or program.

While the Uniform Act’s overarching goal is to ensure equitable treatment of those impacted by Federal and federally assisted projects and programs, each Federal funding agency may have programs with unique characteristics and requirements and the Federal funding agency would need to provide specific guidance on Uniform Act compliance. HUD should be consulted for guidance on voluntary acquisition for HUD-funded or -supported projects and programs.

As a result of the above analysis, no changes were made to the final rule in response to these comments.

#### *Section 24.101(b)(1) Applicability of Acquisition Requirements—Voluntary Acquisitions; Waiver of Regulations To Use Eminent Domain*

FHWA received nine comments on the proposal to allow, in limited instances, a waiver of regulations to allow the use of eminent domain to acquire needed property when a voluntary acquisition did not result in an agreement. One commenter supported the proposed ability to seek a waiver to use eminent domain if a voluntary acquisition cannot be finalized. Four commenters object to an agency using eminent domain authority after a failed voluntary acquisition and believed that it rewards poor policy and planning, will lessen public respect and trust for the agency, and it could be used coercively. Commenters also noted that if an agency was to use a waiver, it would naturally lead to inconsistent treatment of property owners if some properties on a project are acquired by voluntary acquisition and others are acquired under threat of eminent domain.

One commenter agrees that if the NPRM provision is adopted, a waiver of regulations could be justified when an unanticipated and unplanned need arises. The commenter specifically mentioned a scenario where a voluntary acquisition resulted in an agreement to sell but there are liens or other

encumbrances on the property’s title. The commenter noted that agencies sometimes make what is referred to as a friendly condemnation in order to clear the property’s title.

All commenters requested additional guidance clarifying when such waivers may be acceptable. One commenter believes the NPRM’s proposed revisions to §§ 24.101(b)(1) and (2) are more ambiguous as to when the voluntary acquisition project should comply with the various requirements and in determining when these criteria are applicable in different acquisition scenarios, such as when an agency has eminent domain authority and when an agency does not.

Two commenters focused on the term “voluntary acquisition”. One commenter requested that the opening paragraph of § 24.101(b) use the term “voluntary” acquisitions since this is the common term used in the regulations. Also, one commenter requested further clarification or examples for the use of voluntary acquisitions.

*FHWA Response:* The intent of the proposed changes was to address questions FHWA received in the past about use of eminent domain authority and voluntary acquisitions and to clarify interpretations of long-standing policy and requirements.

The purpose of the voluntary acquisition regulations and requirements is to allow a streamlined method for acquiring real property for public projects when a property owner is not compelled or required to sell his real property. This streamlined method ensures that property owners are informed in writing that their property will not be acquired if negotiations fail to result in an amicable agreement and are provided a statement of what the acquiring agency believes to be the fair market value of the property.

FHWA believes that the comments received indicate that the NPRM’s proposed changes to this portion of the rulemaking focused on possible use of eminent domain after a voluntary acquisition offer raised as many additional questions as were answered. FHWA understands and agrees with the commenters’ concerns about allowing acquisitions by eminent domain when negotiations were initially undertaken as a voluntary acquisition. FHWA also agrees that opportunities for coercive actions using the threat of possible eminent domain is an important concern. However, FHWA does not agree that the intent of the NPRM proposal was to more frequently allow an agency to simply change its mind about using eminent domain. 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. However, FHWA also recognizes that there may be an extraordinary circumstance in which use of eminent domain may be necessary. For example, the use of eminent domain may be necessary in the aftermath of a major disaster or a presidentially declared national emergency, as indicated in § 24.404(b) of this final rule, or to clear properties with clouded titles or similar defects in the title. In those instances, the Federal funding agency may consider granting a waiver of regulations under authority of § 24.7 of this part. The Federal funding agency will make a fact-based, case-by-case determination as to whether a waiver of the regulation's requirements may be allowed.

FHWA believes that the best way to clarify this section of the regulation is to simplify the discussion by removing the discussion of use of eminent domain and waiver of regulations from this section. As a result of this analysis, the final rule will be modified by eliminating the provisions describing the use of eminent domain both in the regulation and in Appendix A to focus only on the use of voluntary acquisition and its requirements. As discussed earlier in this preamble, FHWA removed §§ 24.101(b)(2) and (b)(3) and reorganized § 24.101(b)(1) in the final rule to clarify when a voluntary acquisition may be used for a Federal and federally assisted program or projects. The Appendix A discussion of Section 24.101(b)(2)(iii) was also removed. FHWA believes these revisions streamline the voluntary acquisition requirements and clarify applicability.

*Section 24.101(b)(1) Applicability of Acquisition Requirements—Voluntary Acquisitions; Owner Occupant Eligibility as a Displaced Person as a Result of a Voluntary Acquisition Project*

One commenter asked about owner-occupants whose property was acquired by voluntary acquisition not being eligible for relocation assistance as a displaced person if an agency should later acquire adjoining properties owned by the same person by eminent domain for a public improvement project.

*FHWA Response:* FHWA believes that agencies, when acquiring property through voluntary acquisition, are obligated to advise owner-occupants that, as a willing seller, they are not eligible for relocation assistance as displaced persons, prior to making the

offer to acquire. FHWA notes that as stated in the NPRM preamble if eminent domain will not be used, then an agency may use the voluntary acquisition requirements provided by this section. 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. An agency using voluntary acquisition provisions of this rule must, in part, inform the owner of the property or the owner's designated representative in writing if the agency will not acquire the property if negotiations fail to result in an amicable agreement.

FHWA believes an initial use of voluntary acquisition of a property to advance a project or program, in most, if not all instances, prohibits the later use of eminent domain authority to acquire the property in order to advance that same project or program.

As a result of the above analysis, no changes were made to the final rule in response to this comment.

*Section 24.101(b) and 24.101(d); Questions About Inconsistency of Requirements*

One commenter believes there is a conflict between §§ 24.101(b) and (d) when compliance with subpart B is discussed. The commenter requested additional information in this section to explain when acquisitions are exempt from this subpart and if agencies can still require appraisals for these transactions as stated in appendix A § 24.101(b).

*FHWA Response:* FHWA believes the language in §§ 24.101(b) and (d) do not conflict. The applicability of subpart B and those instances where the requirements of subpart B may not apply are described in § 24.101(b). Section 24.101(d) continues to apply to projects and programs that are not exempted in § 24.101(b). The language in § 24.101(d) was discussed in the 1989 final rule which notes that the discussion of applicability and to the greatest extent practicable under State law is the same as that found in section 46555(a) of the Uniform Act. FHWA interprets this to mean an agency must comply if compliance is legally possible under State law. This should be considered in an agency's assurances pursuant to § 24.4(a). This section does not duplicate or nullify the requirements of § 24.101(b).

While voluntary acquisitions do not require appraisals, agencies may continue to decide that an appraisal or

wavier valuation is necessary to support their determination of the fair market value of these properties. However, properties acquired in advance of approval of a Federal or federally assisted project or program (including prior to a NEPA decision where such acquisitions are allowed under an agency's programs) with the purpose or intent of being incorporated into a Federal or federally assisted project or program must meet the applicable Subpart B requirements.

As a result of this analysis, no changes were made to these sections of the regulation.

*Sections 24.101(b)(1) and 24.101(d)(2) and (3); Acquisition of Real Property in Advance of Federal Authorization or a Federal Project Designation With the Intent of Later Incorporated Into a Federally Assisted Project.*

FHWA received three comments on determining the intent of some real property acquisitions completed in advance of Federal authorization or of a Federal project designation which these commenters identified as acquisitions that are completed prior to a project or program that will receive Federal financial assistance. One commenter requested clarification on whether determining the intent of the original acquisition of property matters, and if so, what documentation would be needed. The commenter further noted that the word "intent" is used to clarify that property acquired with the intent of including it in a Federal or federally assisted project or program, would require compliance to the requirements in subparts B–F; however, the commenter noted the NPRM proposal simply states that any property acquired which may later be incorporated requires compliance. The second commenter requested that additional language be added to 49 CFR part 24 regarding the applicability of the Uniform Act when an agency contracts with a private third-party to satisfy the necessary environmental wetland mitigation requirements. Specifically, whether the Uniform Act applies at all, and if so, whether voluntary acquisitions under § 24.101(b)(2) can be utilized to comply with the Uniform Act. One commenter suggested that owners of property for sale on the open market before the acquisition began or that intend to sell their property despite the transportation project be considered as a voluntary acquisition and excluded from receiving relocation benefits because a property owner that intends to sell his/her property despite the transportation project is already planning for these expenses.

*FHWA Response:* FHWA believes that an agency's or person's intent when acquiring real property is relevant in determining if and how the requirements of 49 CFR part 24 apply. The FHWA currently has guidance in the form of an FAQ for 49 CFR part 24 as referenced in the NPRM's Section-by-Section Discussion of Proposed Changes. The guidance states that the funding agency will review the acquisition records and consider the relevant facts for the properties acquired by the local agencies or third parties to determine if the intent of the acquisition was to incorporate the real property into, or in some other way support or otherwise advance, a Federal or federally assisted program or project. If the property is being acquired with the intent of incorporating it into a federally assisted project or program and the agency is certain that eminent domain authority will not be used for the intended project or program, then the limited requirements of voluntary acquisition would apply. However, the agency must also consider that acquiring the property and applying only the voluntary acquisition requirements would in most cases preclude the agency from later using eminent domain authority to acquire the property should voluntary acquisitions not result in an agreement to sell the property to the agency. However, there are a very limited number of cases where an agency can start the process of a voluntary acquisition under § 24.101(b) before later using eminent domain, such as in the aftermath of a major disaster or a presidentially declared national emergency, as indicated in § 24.404(b) of this final rule. If the property was acquired by other means (*e.g.*, local government acquisition via tax delinquency or exaction), documentation may be provided to show that the property was not acquired with the intent of including it in a Federal or federally assisted program or project. However, if at the time of acquisition, there is a nexus between the property's acquisition and a Federal or federally assisted program or project and if the intent was to acquire the property for a Federal or federally assisted program or project, the Uniform Act requirements must be followed to maintain Federal eligibility.

FHWA believes there is not one answer that fits all third-party environment mitigation scenarios. These determinations are fact-based by nature. However, the key issue is whether the acquisition of property for wetlands is specifically for mitigation of

impacts on federally assisted projects or programs.

Private entities who acquire property to create wetlands for wetland banking purposes cannot be required to comply with the Uniform Act if there is no planned or anticipated use by federally assisted projects or programs. Establishment of such wetland banks, which may include a Federal or federally funded project or program among its future users, does not necessarily trigger application of the Uniform Act requirements. When making a fact-based determination, the purpose of the wetland bank, the existence of any agency funding for the bank or commitment to use the bank, and whether the wetland bank restricts who may purchase mitigation credits from it, are among the factors to consider in determining applicability of Uniform Act requirements.

If an agency provides Federal financial assistance for creating a wetland bank or has a prior agreement that the banked wetlands will be used to mitigate impacts on a specific federally funded or assisted project(s) or programs(s), then the property acquisitions for the wetland bank must conform to Uniform Act requirements. If an agency contracts with a private third-party provider that does not use the power of eminent domain, the acquisition may qualify for treatment as a voluntary acquisition and only the limited requirements as set forth in § 24.101(b)(1) would apply.

If the wetland bank has received Section 404 of the Clean Water Act (33 U.S.C. 1344) approval, was established without any Federal-funding participation prior to use of Federal funds for acquisition of wetland mitigation credits and was not planned to be used only for mitigation of impacts due to Federal and federally assisted projects and programs, the Uniform Act requirements do not apply. The actions that the wetland bank developer took in carrying out their private activity can be viewed with regard to the Uniform Act in the same manner as other actions taken by private parties without the anticipated or actual benefit of Federal financial assistance.

FHWA does not believe that a property for sale on the open market before the acquisition began or that an owner intended to sell despite the transportation project would automatically make this property subject to the voluntary acquisition provisions of this regulation and therefore would not require relocation assistance be provided to the property owner. As discussed in responses to other comments in this section, the

applicability of the voluntary acquisition requirements is determined primarily by consideration of whether the acquisition of the property will be carried out under authority or subject to use of eminent domain authority. The fact that the property is listed for sale is in almost all cases not a factor that can be used to deny a property owner relocation assistance they would otherwise be entitled to receive.

As a result of the above analysis, FHWA deleted the proposed §§ 24.101(d)(2) and (3) provisions because they were identified in comments as confusing and raised questions about applicability and purpose. As discussed earlier in this preamble, FHWA revised § 24.101(b) to address properties acquired in advance and in anticipation of a Federal or federally funded project or program and added a discussion on wetlands banking to § 24.101(b)(1)(iii), appendix A.

*Appendix A, Section 24.102(c)(2) Appraisal, Waiver Thereof, and Invitation to Owner*

FHWA received four comments regarding the appendix A explanations of waiver valuations. Three of those four comments discussed the term "uncomplicated" while one comment objecting to the idea that waiver valuations should have similar unit values to appraisals of similar property on the same project.

*FHWA Response:* FHWA appreciates the supportive comments about the explanation of uncomplicated valuations found in appendix A and recognizes that agencies can further define the term in their approved procedures and manuals. FHWA does not believe that the final rule should further explain or define uncomplicated. agencies and recipients should develop procedures and policies where necessary to better understand the determination of what qualifies as an uncomplicated valuation. FHWA does not believe that a national standard defining an uncomplicated valuation should be included in this final rule, as such determinations are fact-based determinations based on State law and local real estate market practices, which may include determinations of what is real property and what is personal property.

FHWA believes that waiver valuations should reflect the land value conclusions of similar properties on a project reflected in appraisal reports provided on behalf of the acquiring agency for other properties which it will be acquiring for the project. This is fundamental to project consistency and uniform treatment of property owners.

As a result of the above analysis, no changes were made to appendix A.

*Section 24.102(c)(2)(ii) Basic Acquisition Policies—Negotiation Procedures; Appraisal, Waiver Thereof, and Invitation to Owner*

Thirteen commenters indicated support for increased regulatory limits for the waiver valuation. One commenter cautioned against increases in the waiver valuation limits suggesting that “most State DOTs are not adequately staffed with talented and trained individuals to handle any increase in their program parameters.” Five commenters suggested the different tiers of the waiver valuation limits should be tied to inflation. They reasoned that if the limits are not adjusted through another rulemaking or regulatory process, the effects of inflation would effectively reduce some flexibility this rule seeks to provide. Commenters suggested many alternatives including using CPI-U as the appropriate index, increasing the limits each year by 2 percent, or establishing a schedule to review and adjust the limits every 5 years to avoid the administrative confusion and burden of having limits adjusted annually. Other commenters suggested specific valuation limit amounts or suggested valuation limits be established based on local market real estate prices.

*FHWA Response:* While there was support from some of the commenters for raising the waiver valuation limits, there is little uniformity in the comments and recommendations other than the references to inflationary pressures since the last publication of this rule in 2005 and the streamlining effect any increase in waiver valuation limits would have on land acquisition programs. FHWA believes the appraisal waiver requirements have proven to be an effective tool in containing costs and in fostering accelerated project delivery which have proven to be consistent with the overarching goal of protecting the rights of property owners whose property is acquired for a Federal or federally assisted project or program. A national survey and various FHWA process reviews of State DOT programs confirmed this to be the case.

In response to comments received, and in consideration of the feedback from a recently completed national waiver valuation survey and research, FHWA will revise the waiver valuation regulations by making four changes, which are changes to the first tier waiver valuation limit (§ 24.102(c)(2)(ii)), changes to the

second tier waiver valuation limits (§ 24.102(c)(2)(ii)(C)), changes to requirements to implement the third tier of the waiver valuation limits (§ 24.102(c)(2)(ii)(D)), and the addition of a process for updating the waiver valuation limits in § 24.11. Three of these four changes are described in the following paragraphs with the fourth change which relates to the third tier of the waiver valuation requirements discussed in responses to comments on § 24.102(c)(2)(ii)(D) *Basic Acquisition Policies; Requirements for use of the Third Tier of Waiver Valuation* later in this preamble.

After reviewing and considering comments received during the NPRM comment period, FHWA has revised the final rule by increasing the waiver valuation limits for the first tier to \$15,000, the second tier to \$35,000, and the third tier limits to allow for properties with an uncomplicated valuation problem and fair market value estimate of more than \$35,000 and up to \$50,000.

FHWA has also revised the final rule to include a process for updating of waiver valuation limits in § 24.11. FHWA believes including waiver valuation limits adjustment provisions in § 24.11 will ensure that the effects of inflation do not unnecessarily restrict appropriate use of waiver valuations.

Future determinations on the need for adjustments will be based on the CPI-U, which includes a measure of the average change in the consumer prices for a fixed market basket of goods and services that includes costs of shelter. The CPI-U considers the cost of shelter for renter-occupied housing. For an owner-occupied unit, the cost of shelter is the rent that owner-occupants would have to pay if they were renting their homes. Because market rent is a function of, and linked to market value, FHWA believes use of CPI-U is appropriate for this adjustment. FHWA does not believe that adjustments based on local market conditions are appropriate. FHWA believes that a single national standard ensures equitable treatment for those whose real property rights are acquired and reduces opportunities for confusion in understanding and applying the appropriate waiver valuation limits. FHWA also notes that such a scheme would likely create administrative burden which would outweigh any programmatic benefits that might be achieved.

*Section 24.102(c)(2)(ii) Basic Acquisition Policies; Competency Requirement*

Two commenters indicated support for the language that clarifies that 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 valuation is uncomplicated. One commenter suggested that more definitive decision-making processes be developed for waiver valuations.

*FHWA Response:* FHWA believes it is important to emphasize that the person making the determination of whether the waiver valuation is the appropriate valuation tool to develop and report an amount believed to be just compensation must themselves have sufficient understanding of the local markets; knowledge of appraisal principles; and the proper use of valuation methodologies to be able to determine whether the valuation problem is uncomplicated and whether the use of a waiver valuation would be appropriate. FHWA will consider developing an FAQ to clarify that waiver valuations follow a multi-step decision-making process emphasizing that it must be apparent the valuation problem is uncomplicated, and that the compensation limits for the waiver valuation cannot be exceeded.

As a result of the above analysis, FHWA replaced the reference to employee or contractor with “representative” to clarify that responsibility to ensure competency in the administration of the waiver valuation program remains the agency’s responsibility, regardless of the title of the person making the valuation assignment.

*Section 24.102(c)(2)(ii)(A) Basic Acquisition Policies; Uniform Act and USPAP Compliance*

FHWA received ten comments related to the interrelationship between the Uniform Act regulations and the USPAP with a wide diversity of opinions about how licensed and certified appraisers can perform waiver valuations and appraisals while remaining compliant with both the USPAP and the regulation. At least one comment acknowledged that more clarification is needed.

*FHWA Response:* FHWA understands that licensed and certified appraisers continued to perceive a conflict between the requirements of the regulatory provisions and USPAP standards, and FHWA addressed most of those concerns with the modifications to the regulation discussed under the definitions of appraisal and waiver valuation. These concerns primarily focus on an appraiser’s need to comply with USPAP licensure standards while



simultaneously meeting the requirements of this rule. One remaining conflict for license holders is that USPAP recognizes performing valuation assignments involves two separate functions: (1) development of a valuation, appraisal, or appraisal review, and (2) reporting the results of a valuation, appraisal, or appraisal review to clients, and intended users of valuation services. By comparison, the regulation has traditionally viewed the terms developing and reporting when used in reference to valuations, appraisals, and appraisal reviews, as meaning the same thing. To address this conflict, FHWA revised Subpart B by replacing the word “develop(ed)” with the word “perform(ed)” when referring to waiver valuations, appraisals, or appraisal reviews to avoid confusion with long standing interpretations in the USPAP. The intent of this change is to ensure that readers of this regulation understand that performance of a valuation, appraisal, or appraisal review includes both development of the assignment results and reporting those results to the client and intended users of the product. This modification will provide clarity regarding the interrelationship and applicability of Uniform Act requirements to USPAP.

*Section 24.102(c)(2)(ii)(A) Basic Acquisition Policies; Jurisdictional Exception Language and USPAP Compliance*

FHWA received six comments related to the proposed Jurisdictional Exception language which states that licensed or certified appraisers preparing or reviewing a waiver valuation are precluded from complying with Standards Rules 1, 2, 3, and 4 of the USPAP, as promulgated by the Appraisal Standards Board of The Appraisal Foundation.<sup>2</sup> Four commenters indicated support for the language, while two commenters opposed the proposed language, with one commenter suggesting that the Jurisdictional Exception language in USPAP was never intended to be used in this manner. The second commenter opposed the jurisdictional exceptions indicating that the proposed language is likely to have unintended negative consequences.

*FHWA Response:* FHWA believes performing appraisals when a waiver valuation would be sufficient can cause unnecessary delay, add unnecessary cost to an acquisition, and deliver no appreciable benefit to the property

owner. FHWA notes that the final rule’s revised definition of a waiver valuation and the language precluding compliance with Standard Rules 1, 2, 3, and 4 of USPAP will allow a licensed or certified appraiser to perform or review a waiver valuation which, by definition in this rule, is not an appraisal. One ongoing concern that has been raised over the years is that those with an appraisal license or appraisal certification are unsure how to meet seemingly different requirements of USPAP and the Uniform Act.

As a result of the above analysis, FHWA has revised the definition of “waiver valuation” in § 24.2(a) to clarify that waiver valuations are not appraisals. The language precluding compliance was added to § 24.102(c)(2)(ii)(A) to provide appraisers with the clear language necessary to remove any confusion with regard to violation of professional standards and State licensure requirements when an appraiser complies with the Jurisdictional Exception requirements. The severability clause in USPAP’s Jurisdictional Exception Rule allows the appraisers’ obligation to comply with the rest of USPAP to remain intact, including the requirements to be competent, ethical, and to not produce misleading reports. FHWA believes the final rule language will provide States, and licensed or certified appraisers, with clarity about the requirements of this regulation, and the implications of performing a waiver valuation. FHWA recognizes that while a formal review of a waiver valuation is not required by the regulation, some agencies may adopt a formal review of waiver valuations as part of their quality control process. In those instances, the final rule will also provide clarity to licensed or certified appraisers regarding their obligations to comply with USPAP under the Jurisdictional Exception language while performing a waiver valuation review assignment. FHWA will also develop FAQs to demonstrate how appraisers may comply with USPAP’s Jurisdictional Exception Rule while performing this type of assignment.

As a result of the comments received, FHWA will also change the term “licensed or certified appraisers” to “persons” when describing the requirements for performing waiver valuations to clarify that the final rule’s requirements apply to all who perform waiver valuations.

*Section 24.102(c)(2)(ii)(B) Basic Acquisition Policies; Minimum Qualifications of Waiver Valuation Preparer*

FHWA received two comments on minimum qualifications of a waiver valuation preparer. One commenter indicated a desire for language that clarifies that a highly regulated State agency can approve persons performing waiver valuations. Another commenter recommended that all persons performing waiver valuations receive basic training in appraisal principles.

*FHWA Response:* FHWA believes that Federal agencies, States, and other recipients can continue to make necessary policy determinations on the most effective methods for training and qualifying those performing waiver valuations.

As a result of the above analysis, no changes were made to this section of the final rule.

*Section 24.102(c)(2)(ii)(D) Basic Acquisition Policies; Requirements for Use of the Third Tier of Waiver Valuation*

FHWA received 12 comments related to the proposed requirements for the new third tier of the waiver valuation. Eleven comments voiced concerns about the requirements proposed for this tier. One comment was supportive of the proposed requirements but suggested that the requirement for quarterly reports be changed to milestone reports in the right-of-way phase of the project. Of the 11 comments that voiced concerns about the requirements for use of this tier, 4 of those commenters did not support limiting this tier’s use only to Federal agencies and their recipients, suggesting that subrecipients should also be allowed to use this tier. Two comments were in favor of not allowing subrecipients to use this tier. Five comments were received that indicated complying with the six requirements for Federal agency approval to use the third tier would be overly burdensome.

*FHWA Response:* FHWA believes a primary purpose of the Uniform Act is to ensure that just compensation offers are provided to property owners fairly, timely, and efficiently. After considering the commenters’ concerns of administrative burden created by the NPRM’s proposed requirements for use of the third tier of waiver valuations, FHWA revised the final rule requirements for use of the third tier of waiver valuations by eliminating the documenting and reporting of names or credentials of individuals who will be performing the waiver valuations; eliminating the administrative/

<sup>2</sup> [https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal\\_Standards/TAF/Standards.aspx](https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/TAF/Standards.aspx).

managerial oversight mechanisms used to assure proper use and review of this additional level of authority; eliminating the development and use of the quality control procedures to be utilized; and revising the reporting requirements.

As noted in the response to comments pertaining to § 24.102(c)(2)(ii) Basic Negotiation Procedures; Appraisal, Waiver Thereof, and Invitation to Owner” and in this part seeking to increase the limits for the third tier waiver valuations, the final rule includes a revised third tier of the waiver valuations which includes properties with an estimated compensation amount of more than \$35,000 and up to \$50,000.

FHWA agrees with several commenters that some of the requirements related to reporting could be revised by streamlining or eliminating some of the requirements. FHWA revised the reporting requirement to require that within 6 months of completion of acquisition activities, the agency must submit a close-out report measuring cost/time benefits; condemnation rate; settlement rate; and any other relevant metric which can document both the administrative savings, and accuracy and efficacy of the waiver valuations.

FHWA acknowledges that recipient agencies continue to have oversight responsibilities with their subrecipient agencies and can best provide oversight and stewardship of those subrecipient agencies. The FHWA agrees with several commenters that limiting the use of the third tier waiver to Federal agencies and their recipients may be unnecessarily restrictive and eliminated the proposed requirements limiting the use of the third tier of waiver valuations to Federal funding agencies and recipients. Therefore, recipient agencies should consider developing policies for allowing the use of the third tier waiver valuations by subrecipients.

*Section 24.102(c)(2)(ii)(E) Basic Acquisition Policies; Requirements for Agencies To Offer Property Owners the Option To Have the Agency Provide Appraisals Instead of Waiver Valuations*

One commenter indicated that the regulatory language as proposed may have caused an unintended consequence. They noted that § 24.102(c)(2)(ii)(E) is a subsection of § 24.102(c)(2)(ii), which authorizes the agency to determine that an appraisal is unnecessary for acquisitions under \$10,000. The commenter noted that it appears that § 24.102(c)(2)(ii)(E), as proposed, would require the agency to perform an appraisal in all instances

where an owner elects to have the property appraised, including acquisitions under \$10,000.

*FHWA Response:* FHWA agrees that the requirement to perform an appraisal when requested by the property owner does not apply to waiver valuations for acquisitions under the limit specified in § 24.102(c)(2)(ii), which is raised in the final rule to \$15,000. FHWA acknowledges that the structure and organization of the paragraphs was unclear and has modified the language in this final rule to clarify that § 24.102(c)(2)(ii)(E) applies only to §§ 24.102(c)(2)(ii)(C) and (D).

*Section 24.102(f) Basic Negotiation Procedures; Appendix A, Minimum Negotiation Period*

One commenter requested FHWA strengthen the statement in appendix A, § 24.102(f), regarding the 30-day minimum negotiation period to find a balance between fairness and project delivery in the acquisition phase.

*FHWA Response:* FHWA believes the current language is sufficient in that it addresses a need to ensure fairness in allowing the property owner a reasonable amount of time to consider the agency’s offer regardless of project delivery pressures. The current appendix A language allows that the time needed to consider an offer can vary significantly depending on the circumstances but that 30 days would seem to be the minimum time these actions can be reasonably expected to require. It also notes that regardless of project time pressures, property owners must be afforded this opportunity. (appendix A, § 24.102(f)). The current language also makes it permissible to complete negotiations in less than 30 days if the parties can reach an agreement. FHWA believes that it is important to note that this requirement is not satisfied by simply establishing a minimum or maximum number of days for a negotiation process. Instead, it is focused on developing policies and practices necessary to ensure that an agency does not cause those whose property is being acquired to suffer an undue burden or to be treated in a manner that is coercive in nature.

As a result of the above analysis, no changes were made to this section or appendix A of the final rule.

*Section 24.102(g) and (i)—Updating Offer of Just Compensation & Administrative Settlements*

One commenter described a court case related to a State’s use of its administrative revision process and requested guidance on the proper use of

administrative revisions and when they are appropriate.

*FHWA Response:* FHWA declines to comment on ongoing State court litigation but notes the underlying and applicable Uniform Act requirement for good faith negotiations, the provisions on revising appraisals, and making an administrative settlement. Section 24.102(f) requires that a property owner be given a reasonable opportunity to consider the agency’s offer and to present relevant material which they believe provides a basis for a change or update in the agency’s offer of the amount believed to be just compensation and offer to purchase. Agencies must update their waiver valuations and appraisals and, when necessary, obtain a new appraisal or waiver valuation if new or relevant information on the real property’s value is presented by the owner, a material change in the character or condition of the property occurred, or a significant delay has occurred since the time of the appraisal or waiver valuation was developed. If the updated or new appraisal or waiver valuation information indicates that a change in the value of real property being acquired, the agency shall promptly revise its offer of the amount believed to be just compensation and make that offer to the owner in writing (§ 24.102(g)). Section 24.102(i) of this final rule continues to permit use of an administrative settlement as a means to reach a negotiated settlement when possible. The use of an administrative settlement is consistent with the Uniform Act (42 U.S.C. 4651), which has an underlying goal of encouraging and expediting the acquisition of real property by reaching agreements with owners, avoiding litigation, assuring consistent treatment for owners and to promoting public confidence in Federal land acquisition practices.

In addition, appendix A section 24.102(i) advises that appraisers, including review appraisers, must not be pressured to adjust or revise their opinions of value and recommendations (or approvals) of the amount believed to be just compensation for the purpose of justifying such administrative settlements.

As a result of the above analysis, no changes were made to the final rule.

*Section 24.102(j)—Payment Before Taking Possession*

One commenter suggested a language change to clarify what is intended by “shall pay” at § 24.102(j).

*FHWA Response:* FHWA reviewed the relevant regulations and believes the current regulations accurately list the

different ways payment can be made to a property owner depending on the circumstances. FHWA believes the appropriate language for negotiated agreement is the agency “shall pay” the agreed purchase price to the owner. In the case of condemnation, in contrast, the agency “makes the funds available” for the benefit of the owner, by depositing with the court an amount not less than the approved fair market value. In addition, FHWA notes that the use of the word “pay” in this regulation is consistent with the description found in section 4651(4) of the Uniform Act, which states that no owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court, for the benefit of the owner, an amount not less than the agency’s approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property (for additional Federal condemnation see also §§ 3114(a) through (d) of Title 40). FHWA does not believe that making the agreed purchase price available to the owner as opposed to paying the owner are synonymous and believes that that “paying” more accurately describes this requirement.

As a result of the above analysis, no changes were made to this section of the final rule.

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

FHWA received four comments on the NPRM’s proposed changes to the conflict of interest requirements. One commenter indicated a desire for clearer explanation of the difference between conflict of interest provisions for acquisitions of \$10,000 and below, and acquisitions from \$10,001 to \$25,000. Another commenter recommended that the final rule increase the previous rule’s limit for conflict of interest from \$10,000 to \$15,000 and eliminate the NPRM’s proposed second tier because the requirements are too complicated and would not be used. A third commenter suggested the existing limits be increased to account for inflation and to eliminate the proposed requirements for the second tier as they would increase administrative costs and slow down project delivery. A fourth commenter suggested increasing the existing limits to \$25,000 and eliminating the proposed additional requirements for the sake of simplicity.

*FHWA Response:* The FHWA’s experience is that the conflict of interest limit has been managed effectively and that protections for property owners’ rights have not been diminished by this

process. In recognition of that experience and in response to comments on this part, FHWA revised this final rule to increase the upper limit of the first tier of the conflict of interest provision to \$15,000 and the second tier to \$35,000. FHWA believes increasing the limits of the second tier of the conflict of interest provision to \$35,000 to coincide with the new second tier limits of the waiver valuation in § 24.102(c)(2)(ii), offers agencies opportunities for single agent activities that can be performed in a way that encourages efficient results, and does not unnecessarily burden them with administrative costs. Use of this tier will continue to require an appraisal, and review of the appraisal, if the valuation preparer is also acting as the negotiator.

These changes will align the conflict of interest limits with the increased limits of both the first tier of the waiver valuation in this final rule at § 24.102(c)(2)(ii), and the second tier of the waiver valuation at § 24.102(c)(2)(ii)(C).

FHWA believes that additional requirements for use of the second tier of the conflict of interest provision are prudent and necessary to minimize opportunities for waste, fraud, and abuse. FHWA revised this section for clarity by moving the discussion on providing approval for use of conflict of interest provisions to subrecipients to § 24.102(n)(4). FHWA also revised appendix A to § 24.102(n)(2) to include mention of prohibitions against negotiators supervising the persons performing waiver valuation.

#### *Section 24.103 (a) Criteria for Appraisals*

FHWA received four comments on criteria for appraisals. Three commenters indicated a desire for language that more strongly emphasized the importance of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). One commenter recommended that FHWA update all USPAP references to the 2020–2021 version of USPAP.

*FHWA Response:* FHWA believes the appraisal standards outlined in the UASFLA continue to be suitable for Federal and federally assisted projects and programs. The recognition of USPAP as an appraisal standard in the 2005 version of these regulations was not intended to diminish the UASFLA’s importance but instead to ensure that it is understood that licensed and certified appraisers could comply with these regulations, and to the extent appropriate, the UASFLA, while still complying with their State’s appraisal licensing requirements under USPAP.

FHWA is aware that the final rule language modification in 2005 was seen by some appraisers performing assignments for Federal agencies to indicate that compliance with the UASFLA was not required because the language was interpreted to mean that compliance with USPAP alone was sufficient. FHWA may develop FAQs to emphasize and clarify that non-compliance with UASFLA standards is neither required nor suggested by this rule. The FAQs would offer clarity regarding the importance for appraisers to understand their obligation for competency in the jurisdictional area they are working.

As a result of this analysis, no changes were made to this section of the final rule.

#### *Section 24.104(a) Review of Appraisal*

FHWA received two comments on the review of appraisal. One commenter indicated that since appraisal review was not identified specifically in the law, it should be eliminated from the regulation to save time and costs to the acquiring agency, or alternatively, that appraisal review only be imposed upon all appraisals that estimated compensation above \$250,000. One commenter thought that the acquiring agency should be allowed to determine when an appraisal review should be required.

*FHWA Response:* FHWA notes that the previous final rules also recognized a need for appraisal review and its important role in ensuring agencies provide just compensation. The 2005 final rule preamble, 70 FR 599 (January 4, 2005), noted that FHWA does not believe that it has flexibility under the Uniform Act to make appraisal review optional. The discussion described the Uniform Act’s requirement for an approved appraisal, which FHWA interprets and implements as requiring a technically reviewed appraisal. The discussion also noted that while the Uniform Act specifically grants authority for waiver of the appraisal, it does not do so for approving an appraisal and that for over 30 years, the regulation has been consistent in the description and requirements for this function.

FHWA continues to believe that the appraisal review function’s primary purpose is to serve as a necessary quality control tool. The appraisal review requirement is not a requirement to perform a second appraisal, or in some other way duplicate the effort and work necessary to perform and report an opinion of value.

The appraisal review requirement ensures that agency officials charged

with approving amounts believed to be just compensation have reliable, relevant, and consistent information which is necessary to approve an amount believed to be just compensation, and when necessary, in approving administrative settlements. The appraisal review process also ensures that opinions of value are appropriately supported and meet agency requirements, and that offers to property owners are based on coherent and consistent land values. The appraisal review process also ensures that appraisals are competently scoped, developed, and documented.

As a result of the above analysis, no changes were made to this section of the final rule.

### Subpart C—General Relocation Requirements

#### *Section 24.202(a) Persons Required To Move Temporarily*

FHWA received 13 comments with suggested changes and general support for the proposed temporary relocation reorganization and clarification. The comments were grouped below into smaller subcategories in order to provide succinct responses to each of the comments received.

#### *Section 24.202(a) Persons Required To Move Temporarily—Temporary Displacement vs. Permanent Displacement*

Two comments supported the proposed addition and use of “persons required to move temporarily.” One commenter suggested that the term “temporarily displaced” be replaced with “temporarily relocated.” Two commenters asked for clarification on the NPRM’s proposal to add a new § 24.202(a), “Persons temporarily displaced,” which they felt needed to be revised because they interpreted the rule to say that a person required to move temporarily is not displaced and therefore not eligible for assistance under this rule. One commenter suggested revising the title of the section to clarify applicability of the requirements, while another commenter requested examples be added to aid in determining who is temporarily displaced. One commenter expressed concern that the NPRM’s proposed changes and addition of regulatory requirements for persons who are temporarily displaced create deep structural disconnects between Uniform Act terms and requirements and conditions that housing authorities and others working within affordable housing programs and other similar programs encounter. The commenter

expressed concern that the NPRM also fails to recognize the overlapping regulatory and contractual requirements of owners of properties assisted by the Federal loan and subsidy programs to provide notices and avoid displacement that exist outside of the Uniform Act.

*FHWA Response:* FHWA revised the final rule to consistently use the term “persons required to move temporarily” to ensure that there is clarity and consistency in describing the benefits and assistance that would be provided to those who are temporarily displaced.

FHWA considered the request to include examples of persons required to move temporarily in this rule. FHWA believes that the definition of “displaced person” provides agencies with the factors used in determining when a person is permanently displaced. To ensure that there is a clear distinction between “displaced person” and “persons required to move temporarily”, FHWA added the word “permanently” to the definition of “displaced person” in § 24.2 to more clearly describe those who are permanently displaced. This same definition has separate provisions that can be applied when a person is required to either temporarily discontinue the use of their property or to move temporarily from their property. FHWA understands that some of the activities that may require a person to move temporarily or to temporarily discontinue the use of their property are either unique, episodic, or in some other fashion impose temporary limits on the use of real property. FHWA has added language in §§ 24.202 through 24.204 to more clearly indicate which requirements apply to those who are temporarily displaced. Because temporary relocations can be episodic or unique in nature, FHWA has also added language which clarifies when certain actions require determinations of applicability by the funding agency. The FHWA believes that Federal funding agencies can develop policies or guidance which may assist it and its recipients in making a determination of when their Federal and federally assisted projects or programs cause persons to move temporarily or to temporarily discontinue use of their property.

FHWA considered the proposed use of the term temporarily “relocated” in place of temporarily “displaced.” In reviewing the proposed addition of requirements for those who are required to move temporarily or to temporarily discontinue the use of their real property FHWA notes that the definition of displaced person now

includes a subsection which addresses those required to move temporarily.

As a result of the above analysis, FHWA has revised the final rule by adding a definition in § 24.2(a)(ii) to discern the differences between those permanently displaced and those required to move temporarily and by revising the requirements in § 24.202 to explain what benefits and assistance are provided to persons required to move temporarily.

The final rule also includes a section describing moving costs and allows for storage for persons required to move temporarily with Federal agency approval.

FHWA believes the final rule’s requirements for persons required to move temporarily, the discussion and clarification about development of funding agency specific policies, and the revision of the title of the notice at § 24.203(b) ensure that those carrying out relocations have the tools necessary to correctly implement the funding agency’s program in compliance with Uniform Act requirements. As noted in the NPRM’s preamble at 84 FR 69476, FHWA believes this change aligns the regulation more closely with the language and requirements of Section 4621 of the Uniform Act. These requirements include a recognition that assistance policies must provide for fair, uniform, and equitable treatment of all affected persons. In addition, FHWA believes that providing services and assistance to persons required to move temporarily is necessary to minimize the impacts of displacement and to maintain the economic and social well-being of communities.

FHWA will consider development of FAQs describing requirements for persons required to move temporarily under the final rule.

#### *Section 24.202(a) Persons Required To Move Temporarily—Payment for Temporarily Closing of a Business*

Two commenters noted some businesses that might temporarily discontinue use of their property would not qualify for assistance because a business might only be eligible for payment of expenses when a person’s business is required to move temporarily due to rehabilitation of a site. These same commenters suggested the final rule should be revised to ensure that businesses required to move temporarily for reasons other than rehabilitation of a site be eligible for temporary relocation benefits as well. One commenter requested clarification in the final rule focused on temporary business displacement. This commenter suggested allowing payment to

businesses to compensate the business for temporarily closing instead of moving temporarily. The proposed payment would be determined by using average daily income. The commenter reasoned that the proposed payment would allow the business to remain in place but closed for business until the project or program activity is completed.

*FHWA Response:* FHWA believes that this regulation does not contain language that would limit eligibility for temporary nonresidential moves to when the temporary displacement was caused by rehabilitation. The NPRM's preamble discussion of proposed changes to the definition of displaced person addresses eligibility for those who are required to move temporarily.

The preamble discussion at 84 FR 69476 noted that several Federal agencies have programs or projects that do not require the acquisition of real property, but instead may require the rehabilitation or demolition of real property, and that FHWA proposed adding the terms "rehabilitate or demolish" to the definition of a displaced person. The addition would clarify that the term "displaced person" includes those required to move, or move their personal property, or who are required to temporarily move from or to temporarily discontinue use of their 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 final rule adopts the NPRM proposals addressing businesses that are required to move temporarily at § 24.202(a).

The term "displaced person" is used in the Uniform Act to describe persons who move permanently 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. FHWA revised and reorganized the definition to specifically address persons who are required to move temporarily and included a new addition in the final rule, § 24.202(a), to describe the required assistance and services that must be made available for persons who are required to move temporarily. FHWA notes that the final rule will continue to include a notice of intent to rehabilitate or demolish but does not agree or believe that the notice would restrict eligibility for those required to move temporarily to only residential occupants.

FHWA considered the comments on allowing a business owner to decide to claim a payment for temporary closure of a business in lieu of temporary relocation and does not agree that such a payment should be allowed. Such a

payment is specifically disallowed under the current regulations in § 24.301(h), Loss of profits, and FHWA sees no rationale for allowing such a payment to a business required to move temporarily. FHWA also believes that determination of a temporary loss of business payment due to temporary closure of a business raises questions about calculation methodology. Several considerations would make such a determination and calculation imprecise, unworkable, and impractical to document including uncertainty about determining if businesses' customers would all return after the temporary closure, calculation of temporary loss of temporary loss of goodwill, and whether such payments would be available to all businesses required to move temporarily or only certain types of businesses that have machinery and equipment requiring substantial costs to move and reinstall.

FHWA recognizes that a temporary move and a return to the site may not be practical or possible for some businesses for several reasons, including, but not limited to, prohibitive costs to move and equipment that cannot be relocated temporarily due to cost or specific requirements related to installation (including the need for new pits, pads, utility service requirements, modifications necessary due to code requirements, etc.). The FHWA believes that, in these instances, displacing agencies will need to make a fact determination and document the reasons why a temporary displacement may not be possible for a business and determine that instead, such a business should be provided relocation assistance to permanently relocate the business.

FHWA similarly does not agree that a business required to move temporarily for reasons other than rehabilitation of a site would be ineligible as defined in this rule. Such an eligibility determination would be a fact-based determination which would consider the project's impacts on the business in making an eligibility determination.

As a result of the above analysis, no change was made to this section of the final rule.

#### *Section 24.202(a) Persons Required To Move Temporarily—12 Month Time Limit*

Two commenters raised concerns about the 12-month time limit for temporary relocations. Both commenters were concerned that some projects might require a temporary relocation longer than 12 months. One commenter reasoned that § 24.207(f) would prohibit

an occupant from agreeing to a temporary relocation of longer than 12 months.

*FHWA Response:* The FHWA considered the comments raising concerns that some projects may require a temporary relocation for a period of more than 12 months. The commenters raised additional concerns that the language in the proposed rule might be interpreted to prohibit a displaced person from agreeing to a temporary relocation longer than 12 months after being informed of their eligibility as a displaced person. FHWA agrees that projects often experience unexpected delays for a number of reasons. Given the longstanding regulatory flexibility, history, and application, FHWA does not agree that the requirements in § 24.207(f) would prohibit an occupant from agreeing to a temporary relocation of longer than 12 months after being informed of their eligibility as a displaced person. The 2005 final rule preamble discussion of § 24.2(a)(9)(ii)(D) Temporary Relocation, 70 FR 592 (January 4, 2005), provided details on how and why a temporarily displaced person may elect to continue to be temporarily displaced. The rule reasoned that "Such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with Uniform Act assistance." FHWA continues to believe that when a person who is required to move temporarily, or temporarily discontinue use of their property, is fully informed about their eligibilities, that they may make a choice which can include to remain temporarily displaced for more than a 12-month time period. This choice must be documented by having the person required to move temporarily, or to temporarily discontinue use of their property, sign a written agreement documenting their intent to elect to remain temporarily displaced while they wait for the project to conclude.

Appendix A, § 24.207(f) also addresses the commenters' concern that a person required to move temporarily could not agree to remain classified as a "person required to move temporarily" for more than 12 months after being informed of their eligibility as a displaced person. The appendix A discussion points out that while the regulation prohibits an agency from proposing or requesting that a displaced person waive their 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 in anticipation of returning to their dwelling or a similar dwelling in the building when the project is completed. The written statement must clearly document that the individual knows which benefits and assistance they are entitled to receive, a copy of the Notice of Eligibility that 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.

The 2005 final rule allows waiver of regulatory requirements when that waiver does not reduce benefits or assistance otherwise available to an owner or displaced person. This provision, found at 49 CFR 24.7, has been a part of the Uniform Act regulation for almost 40 years. The 1989 final rule preamble at 54 FR 8917 (March 2, 1989); section 24.7 Federal agency Waiver of Regulations, noted that requirements imposed by the Uniform Act may, necessarily, create some delay and administrative burden and that it would be inappropriate to grant a waiver based on the general proposition of delay and administrative burden. A waiver proposal would need to be specific, protect the rights of owners and displaced persons, and not be designed to provide administrative relief to the acquiring agency. The 1989 preamble also noted that the waiver provision, in turn, is explicit regarding two major considerations. The first is that the Federal agency, before waiving any requirement, must determine that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this regulation. The second is that any request for a waiver shall be justified on a case-by-case basis. FHWA noted in this passage that it does not interpret case-by-case to mean, necessarily, a parcel-by-parcel basis, neither does it encompass the waiver of a requirement on a program-wide scope, and therefore the broader the scope of the waiver, the more carefully the Federal agency must weigh its effect on the assistance and protection to be provided an owner or displaced person. This final rule does not propose changes to the § 24.7 waiver provisions or any changes in interpretation and application of the waiver of regulations.

Federal agencies should develop policies for determining when a waiver

of the 12-month requirements may be allowed. FHWA notes that previous regulatory preambles also addressed the question of whether a waiver of regulations in § 24.7 allows for project- or program-based waiver of regulations by the funding agency. FHWA continues to believe that Federal funding agencies considering approving a waiver of regulations must ensure that any waiver of regulations does not reduce any benefits or assistance due to displaced owners and tenants. FHWA believes that Federal funding agencies may grant approval to allow a waiver of the 12-month requirement on a project by project basis. Such a waiver would need to establish the new maximum duration for requiring a person to move temporarily and be approved by the funding agency prior to initiation of the project because each person who is or will be required to move temporarily, or temporarily discontinue use of their property, and must be informed of their eligibilities and entitlements. To the extent practicable, agencies should consider the need for a waiver of the 12-month requirement in advance of the project's initiation. This must include documentation of why the waiver is necessary and why a waiver would not reduce required benefits or assistance. In some cases, the need to extend temporary relocation beyond 12 months will not be foreseeable at the initiation of the project but will become apparent at some later stage of the project. In such instances, agencies are not required to request a § 24.7 waiver, if the agency fully informs the temporarily displaced persons of their eligibility as a permanently displaced person before giving them the option of continuing in a temporarily displaced status. If that option is selected, it should be memorialized in a written agreement between the agency and the temporarily displaced person.

Given the history and longstanding interpretation of the waiver of regulations provisions, FHWA does not believe that additional regulatory changes are necessary and that agencies can develop further policy and procedures that describe safeguards necessary to ensure that displaced persons are provided all eligibilities and assistance required under this rule. Such policies and procedures should include consideration of what the agency believes to be the maximum duration that a person can be required to remain a person required to move temporarily and when such waivers may and may not be granted.

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.202(a) Persons Required To Move Temporarily—Requirement for Notices*

One commenter raised a question about notice requirements for those who are required to move temporarily, or to temporarily discontinue use of their property, and specifically asked about the applicability of the 90-day notice requirement for those required to move temporarily or to temporarily discontinue use of their property.

*FHWA Response:* FHWA considered the commenter's questions about notices for persons who are required to move temporarily or to temporarily discontinue use of their property. The final rule includes specific eligibilities in § 24.202(a) for persons required to move temporarily as proposed in the NPRM, which include notice requirements.

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.202(a) Persons Required To Move Temporarily—Advisory Services*

Two commenters raised a question about meeting the requirements for providing advisory services to persons required to move temporarily.

*FHWA Response:* FHWA believes that the requirements of § 24.205(c) provide detailed requirements for advisory services for those displaced are applicable in part to those persons required to move temporarily. However, the primary purpose of advisory services is to ensure that a displaced person is fully informed about the assistance and benefits that may be available to them. Such advisory services necessarily require an agency to develop and maintain ongoing communication with a person required to move temporarily. Such communication will ensure that the agency understands the needs of the person required to move temporarily and addresses those needs as required and allowed in this rule.

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.203 Relocation Notices*

FHWA received responses from two commenters on relocation notices. One commenter asked that the final rule clarify when and how notice requirements in this rule should be applied to Federal rental housing programs. This commenter pointed out that some programs do not have a readily identifiable initiation of negotiations. One commenter suggested the elimination of the notice of intent to

acquire, rehabilitate, or demolish, and reasoned that the General Information Notice already serves the same purpose; and also asked that the final rule include a discussion of timing for the various notices. This commenter reasoned that the NPRM contains a description of notices, which do not always clearly fit into Federal agency acquisition and relocation processes, and which are sometimes dissimilar to what is described in the final rule. One commenter suggested that Federal funding agencies ensure that notices are written in easily understood terms and organized in a way to ensure that displaced persons or occupants are provided with information they need in as basic a manner as possible.

*FHWA Response:* The requirement for notices is one of the most basic, but also one of the most important, requirements in this rule. Notices serve to ensure that those impacted by a Federal or federally assisted project or program receive information and assistance that they will need to successfully relocate.

FHWA understands the concerns about how some of the requirements are not easily applied to all Federal programs but does not believe that changes to the final rule can adequately address concerns that are specific to each Federal agency's program. FHWA believes agencies should develop policies and guidance to clarify how requirements in this rule are implemented, as necessary.

FHWA agrees with the commenter who suggested that notices should be written in a manner that ensures that those impacted or affected by a Federal or federally assisted project or program receive notices that are clear, concise, and ensure that the necessary information is efficiently and effectively provided. FHWA believes that the final rule provides the requirements necessary to develop such notices but believes that each Federal agency must develop its own processes and policies to ensure that the notices being provided serve the purpose of providing needed information as effectively and efficiently as possible.

Similarly, FHWA does not agree that the notice of intent to acquire, rehabilitate, or demolish be removed from this regulation. As indicated in the regulatory language, the notice's specific purpose is to provide written assurance that the agency intends to acquire the real property, in whole or in part. This notice is provided to an occupant who is either required to move temporarily or who may be permanently displaced. An important purpose of this notice is to allow a person who may be either required to move temporarily or who

may be permanently displaced to move in advance of offers or other notices while not jeopardizing any potential relocation assistance to which they may be entitled.

As a result of the above analysis, FHWA revised § 24.203(d) to specifically include persons who are required to temporarily move. FHWA believes that the modifications to § 24.203(d) will clarify the purpose, intent, and timing of this notice. The FHWA does not believe an additional discussion in § 24.203 on timing of notices is warranted.

#### *Section 24.205(c) Relocation Planning Advisory Services and Coordination*

FHWA received one comment requesting that as part of relocation assistance advisory services, and to ensure active citizen participation throughout the whole project, agencies should establish a relocation committee to include agency personnel, community residents, and community leaders. The commenter noted such a committee could be essential in cultivating a bond of trust with the residents, moving proposed projects forward in a timely manner, and in helping to identify the needs of displaced persons.

*FHWA Response:* FHWA appreciates this information on best practices but does not believe that such a process should be a requirement. However, FHWA does agree with the commenter's insight that establishing trust with tenants encourages participation and provides a good method to ensure successful relocation outcomes and advance projects in a timely manner. The FHWA notes that the relocation planning requirements remained largely unchanged for almost 40 years, in this final rule and the rulemakings that preceded it; beginning with the final rule in 1989, 59 FR 8909 (March 2, 1989), and in the 2005 rulemaking, 70 FR 590 (January 4, 2005). The 1989 final rule preamble explained in part that “. . . FHWA believes that most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. FHWA does not view relocation planning as a complicated, time-consuming activity. FHWA sees relocation planning as a process which provides meaningful information to program and project decisionmakers. It does not need to result in a detailed document containing unnecessary data and needless problem solving. Instead, it should be a process which is scoped

to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of agency resources.”

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 notes that “This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.” 42 U.S.C. 4621. This section also includes congressional findings and declarations which note that the: “. . . (2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons; (3) the displacement of businesses often results in their closure . . .”

While this final rule will not include additional requirements for relocation planning, FHWA believes that modern projects and attendant right-of-way needs are becoming more complex and, in some cases, more impactful to those displaced and the surrounding communities. Such planning necessitates a thorough analysis and understanding of the potential displacements a proposed project or its alignments may cause. Such analysis and understanding are critical to ensuring that those displaced do not suffer disproportionate injuries and that they receive uniform, fair, and equitable treatment.

FHWA encourages each funding agency to carefully review its policies and procedures while implementing this rule in order to ensure that the relocation planning requirements are being carried out. FHWA believes that the consequences of not carrying out the requirements of relocation planning may cause disproportionate injury to those displaced, project delay, escalation of project costs, and difficulty in timely development and advancement of projects. FHWA will consider developing new FAQ and other supporting materials to explain the need for effective relocation planning, emphasize best practices and success stories, and to examine lessons learned.

FHWA also revised the appendix A, § 24.205(a) discussion by adding a reference to those who live in other federally subsidized housing to ensure that agencies are aware of the need to assess and plan for effective advisory

services. The FHWA encourages agencies to creatively and collaboratively develop methods to provide advisory services that meet the needs of those displaced.

*Section 24.205(c) Relocation Planning Advisory Services and Coordination*

FHWA received one comment requesting that as part of relocation assistance advisory services, and to ensure active citizen participation throughout the whole project, agencies should establish a relocation committee to include agency personnel, community residents, and community leaders. The commenter noted that at the public corporation where the commenter works, a housing committee was established. The commenter relayed that the committee was essential in cultivating a bond of trust with the residents, moving proposed projects forward in a timely manner, and in helping to identify the needs of displaced persons.

*FHWA Response:* FHWA appreciates the information about the housing committee and its processes and best practices. FHWA however does not believe that such a process should be a requirement. In addition, appendix A § 24.205(a) addresses the need to ensure that relocations that may take additional time for advisory services and coordination are properly addressed through the relocation planning process.

However, FHWA agrees with the commenter's insight about the importance of the relationship with residents to ensure active citizen participation and to move the proposed project in a timely manner. FHWA also agrees with the commenter that residents can help identify the specific needs of some families.

As a result of the above analysis, no changes were made to this section of the final rule.

*Section 24.205(c)(2)(II)(C) Relocation Assistance Advisory Services; Services To Be Provided—Inspection Criteria*

One commenter believes that improvements could be made to the requirements necessary to establish that a dwelling is DSS. They reasoned that updating, revising, and clarifying inspection requirements in the Uniform Act would be consistent with current requirements in many federally assisted housing programs. They noted that the Housing Opportunity Through Modernization Act of 2016 (Pub. L. 114–201) designated both lead-based paint, and missing or defective carbon monoxide detectors, as life-threatening conditions for the purposes of initial housing quality standards inspections

for Housing Choice Voucher and Project-Based Voucher units. They also noted that the Lead Safe Housing Rule, 24 CFR 35.80 *et seq.*, which applies to all target housing that is federally owned or assisted, also requires lead paint inspections, and risk assessments/remediation, if necessary, prior to occupancy in all programs (excluding mortgage insurance), except the Housing Choice Voucher Program and project-based units receiving less than \$5,000. The commenter believes that updating Uniform Act inspection language to include similar provisions would be consistent with current requirements.

*The FHWA Response:* A DSS inspection in this final rule requires a determination that the dwelling meets the more stringent requirements of this rule, local housing code, Federal agency regulations, or the agency's regulations or written policy. For example, in instances in which the funding agency has established requirements or standards for DSS that are more stringent than the regulation's requirements, the funding agencies' requirements would need to be met. Displacing agencies will need to ensure that they understand which DSS requirements are most stringent and apply them when making a DSS inspection and determination.

FHWA appreciates that some agencies require that a DSS inspection include inspection and determination protocol in addition to those required by this rule. These additional considerations or requirements may be established through specific agency policy, regulation, or statute. FHWA, however, does not believe that requiring a certain inspection criterion, in this case a criterion for lead-based paint, in this final rule is necessary. FHWA believes that such inspections and testing should best be done by providers who have the requested training and tools to ensure effective lead-based paint testing. FHWA believes that the regulation's requirement that the dwelling meets the more stringent requirements of this rule, local housing code, Federal agency regulation or the agency's regulations or written policy, ensures that each Federal funding agency and its recipients will be aware of and use the required criteria that ensure a dwelling is DSS. Funding agencies may determine that additional guidance or requirements, which require additional considerations or standards be met when making DSS determinations, are necessary for their program.

As a result of this analysis, no additional change was made in the final rule.

*Section 24.205(c)(2)(II)(C) Relocation Assistance Advisory Services; Services To Be Provided—Comparable Inspection*

One commenter understands the proposed changes to allow an agency to forego the required DSS inspection. One commenter felt that the requirement for the agency to inspect a comparable dwelling prior to using it in any eligibility determination is overly burdensome to the agency. One commenter advised that the agency currently relies on an outside visual inspection and review of MLS listing information when selecting comparable replacement housing. This commenter has the belief that most displaced persons do not choose the comparable housing made available to them, and when they do select a replacement dwelling, the agency requires the dwelling to pass an extensive DSS inspection prior to occupancy and a replacement housing payment being made. One commenter stated if agencies do not inspect comparable replacement units, the rule should specify that the maximum replacement housing payment must be recalculated if the unit upon which it was based is later found to not be DSS. Two commenters were uncertain if the new language regarding inspection of the dwellings used in the comparable replacement housing determination means that all the comparable dwellings must be inspected, or if only the selected comparable dwelling must be inspected. One of these commenters requested guidance on what would be an acceptable reason for not being able to walk through and physically inspect the interior and exterior of comparable dwellings.

*FHWA Response:* Prior to requiring a residential occupant to move from their dwelling, an agency must make at least one DSS comparable replacement dwelling available to them. This final rule at § 24.205(c)(2)(ii)(C) continues to require that where feasible, comparable housing should be inspected prior to being made available. A walkthrough and physical inspection of the interior and exterior of the displaced person's replacement dwelling also continues to be required to ensure that the replacement dwelling is DSS prior to a payment being provided to the displaced person. The requirement for a physical inspection of the replacement dwelling is unchanged in this final rule. FHWA also believes that given the importance of ensuring displaced persons are treated fairly, consistently, and equitably, so they will not suffer disproportionate injuries as a result of



projects designed for the benefit of the public as a whole, an agency should develop policies that limit or prohibit the use of uninspected comparable dwellings. As a result of this analysis, FHWA has reorganized the appendix A sections of both § 24.205(c)(2)(ii)(C) and § 24.403(a)(1) to more clearly relate to the relevant regulation section requirements and for purposes of organizational clarity.

As a result of this analysis, no additional change was made in the final rule.

*Section 24.205(c)(2)(ii)(C), Relocation Advisory Assistance Services—Notification Requirements When DSS Inspection of Comparable Replacement Housing Is Not Performed*

One commenter advised that the notice requirement may suggest the agency is not providing all relocation services to the displaced person. One commenter suggested that providing a written justification of why a DSS inspection was not done for a comparable dwelling before determination of the RHP should not be a requirement in the final rule. This commenter felt that the agency should be allowed to provide an alternative justification in the RHP calculation and package that is eventually presented to the displaced person.

*FHWA Response:* The NPRM proposal required that in unusual or extraordinary circumstances when a physical inspection of a comparable dwelling is not possible, the agency is required to provide the displaced person written justification. FHWA does not believe that acknowledging that a comparable dwelling was not physically inspected in unusual or extraordinary circumstances and requiring a written notice in these instances will limit required assistance and services to those displaced. FHWA notes that the required written notice must be provided to a displaced person as soon as possible but not later than the notice of relocation eligibility, § 24.203(b). FHWA also notes that the primary question here is typically whether the interior of the comparable dwelling was physically walked through and inspected.

FHWA understands that not all comparable dwellings may be available for physical inspection for a variety of practical reasons but believes agencies must balance that against the critical requirement that a comparable dwelling must be DSS in order to be deemed made available. FHWA believes that a walk through and physical inspection of the interior and exterior are the only realistic and reliable ways an agency

can ensure that it has met the requirements to ensure a comparable replacement dwelling is DSS. Therefore, it is important to emphasize that instances in which a physical walk through and inspection of a comparable dwelling is not possible, should be the exception and not the normal course of business. When possible, agencies should consider removing uninspected comparable dwellings from consideration. Nothing in this rule prohibits agencies from establishing additional policies or requirements for physical inspection of comparable dwellings.

In addition, an agency should provide clear direction and policy or requirements on how to document and communicate why an inspection was not made both to the displaced person and in the agency's records. Should the selected comparable dwelling later be found to not be DSS then the agency's policies and procedures must ensure that a displaced person's eligibility determination will be recalculated. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure that a decent, safe and sanitary dwelling be made available are met.

As a result of this analysis, FHWA has reorganized the appendix A sections of both § 24.205(c)(2)(ii)(C) and § 24.403(a)(1) and added language to more clearly indicate the relevant regulation section requirements and for purposes of organizational clarity.

As a result of this analysis, no additional change was made in the final rule.

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

One comment was received regarding language in the NPRM encouraging agencies “. . . whenever possible . . .” to provide minority persons who reside in communities of minority concentration with opportunities to relocate to DSS housing in areas other than those of minority concentration. The commenter believes these preferences should be up to the persons being relocated. Further, they state that there is a likelihood that this will lead to non-uniform treatment of displaced persons. The commenter further raised concerns that the requirement to document efforts to meet the goals of this section would be administratively burdensome.

*FHWA Response:* FHWA believes the needs and preferences of all displaced persons are determining factors in developing a relocation assistance eligibility comparable determination.

The role of the acquiring agency is to give displaced persons reasonable opportunities to relocate to comparable housing without mandating or limiting areas of that housing. However, it is the displaced person's right to make the final replacement dwelling selection for themselves. FHWA notes that the goals and statements in this section of the current final rule have been consistently stated in preceding final rules for almost 40 years. During that time, FHWA received little indication that this section's goals and permissive language were unclear or impractical. FHWA reviewed the statutory language in the Uniform Act at Section 4621(b)(2) and (3), Declaration of Findings and Policy. The primary purpose of the relocation assistance is described as ensuring that displaced persons do not suffer disproportionate injuries as a result of being displaced for programs or projects undertaken by a Federal agency or with Federal financial assistance. It further states that “the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible . . .”

FHWA revised appendix A to more clearly indicate that agencies should continue to, where practical and feasible, provide those displaced persons who live in areas of minority concentration opportunities to improve their housing conditions and living situations, and that agencies should maintain adequate written documentation of efforts made to locate such comparable and replacement housing.

*Section 24.208(c) Aliens Not Lawfully Present in the United States*

FHWA received five comments on this section's proposed changes. One commenter expressed concerns that the NPRM's proposed changes might involve the collection of sensitive personally identifiable information and would require implementing new processes to ensure the information is appropriately safeguarded. One commenter asked that the word “alien” not be used as it may be perceived to be offensive. One commenter felt that the proposed changes to the verification process would be administratively burdensome and suggested simply retaining the requirement for verification on a case-by-case basis. One commenter noted that they viewed the proposed change as creating a new requirement. One commenter noted that they run an essentially parallel system, which results in a certification from their recipients verifying citizenship

and immigration status, and believes it meets the requirements of this section.

**FHWA Response:** FHWA appreciates the comments, perspectives, and concerns expressed. FHWA believes that it is important to note that this section of the regulation continues to require that displaced persons provide a certification that they are a citizen or national of the United States, or an alien lawfully present in the United States. The statutory requirement found at 42 U.S.C. 4605 was added to the regulations by a final rule in 1999 (64 FR 7127, February 12, 1999). Should the agency deem an alien's certification to not be credible or invalid, the regulation continues to require that the agency take the additional step of verifying the person's United States citizenship status. The primary change in this final rule is to the method for verification. The final rule requires agencies to utilize the United States Citizenship and Immigration Services (USCIS) Systematic Alien Verification System (SAVE) rather than the previous requirement to contact the local Bureau of Citizenship and Immigration Services office for verification. Agency processes for obtaining and handling personal information as part of their Uniform Act programs should be secure and collect the fact-specific information required for verification.

FHWA acknowledges a need to ensure that in verifying citizenship status, a displaced person should be afforded deference and consideration to ensure that derogatory or otherwise insensitive language is not used. The use of the term "alien" as it relates to this rule can be found in statute in Public Law 105-117, November 21, 1997. FHWA considered whether other terms might reasonably be used. FHWA notes that the term "alien not lawfully present in the United States" appears in the Uniform Act, 42 U.S.C. 4605(a). Moreover, the term "alien" has a specific legal meaning and is used in several other Federal agency regulations and statutes describing citizenship status for those who live in the United States. (See Title 8, U.S.C. and 8 CFR Chapter I). Consequently, FHWA has not made any changes in this final rule.

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

*Section 24.301(b)(2) Moves From a Dwelling, Self-Moves; Section 24.301(c)(2) Moves From a Mobile Home, Self-Moves: Use of Commercial Moving Bids or Agency Staff Prepared Estimates for Self-Moves*

FHWA received responses from eight commenters regarding the proposed

alternative reimbursement methodology for residential self-moves. The NPRM included a request for comments on adding an option for residential self-moves based on either the amount of the lower of two commercial moving bids, or an estimate prepared by a qualified agency staff person. FHWA also asked for comments on whether a commercial mover's overhead and profit should be subtracted from a self-move payment eligibility determination or if the self-move payment should be based on the full amount of the lowest bid. FHWA received a wide variety of suggestions in response.

One commenter stated that reducing the administrative burden on the displaced person is a positive thing and that payment to the displaced person for a residential self-move should be based on either the lower of two moving bids, or the average of the two bids. Another commenter was concerned that allowing a residential self-move payment based on the lower of two bids from a commercial mover would result in an increase in administrative burden to agency personnel. The commenter believes that it may be preferable to only add or adopt the use of a moving cost finding for nonresidential moves as described in the preamble that allows a qualified agency staff person to prepare estimates.

Five commenters believe that determining a moving company's overhead costs would be difficult and impractical. One commenter suggested that any adjustment to the bid amount should be a flat percentage deduction, and that overhead in this rule should only include administrative expenses and office space costs, while another suggested that 20 percent of the lowest bid amount is a fair amount to deduct for a commercial mover's overhead. This same commenter stated that this percentage is used in their State and is based on their poll of several commercial movers.

One commenter believes that the administrative costs should not include costs of vehicle, gas, labor, etc., used during a move. The commenter reasoned that the costs for vehicle, gas, and labor are costs that are also borne by the displaced person as part of a self-move and should be compensated.

One commenter asked whether FHWA would monitor the hourly fees charged to a consumer when using self-moves. The commenter further wanted to know if a person can submit a Freedom of Information Act request to FHWA for movers' rates. The commenter also wanted to know what the displaced person's eligibility for reimbursement would be if the rates are

not within the limit scales of the U.S. Department of Labor's Consumer Price Index.

One commenter did not support using commercial moving bids to determine eligibility for reimbursement of a residential displaced person's self-move. Another commenter believes that adding an additional residential self-move payment option may have drawbacks and would add additional complexity to each residential relocation. This same commenter expressed the belief that residential displaced persons may be less able than nonresidential displaced persons to determine whether a self-move would be advantageous.

One commenter noted, that in their experience, reimbursement based on actual costs is not a viable option for a residential self-move, because it is often very difficult to obtain actual cost receipts from the displaced person, or alternatively for a displaced person to obtain information and documentation from commercial movers, which would be needed to calculate reimbursement eligibility.

**FHWA Response:** FHWA appreciates the supportive and constructive comments received and program insight offered. FHWA believes the addition of a self-move option is beneficial in that it provides more choices to the displaced person. FHWA believes it is the responsibility of the agency to provide adequate advisory services to ensure that the displaced person clearly understands the moving options available and makes a selection that best meets their needs. FHWA noted both the support and concerns raised about use of commercial bids to determine reimbursement amount eligibility for residential self-moves and about whether and how to adjust the amount of the lowest commercial bid to account for overhead. FHWA notes that overhead costs across the Nation and in individual markets vary based on a number of factors. FHWA does not believe that establishing a national and Federal Government-wide flat percentage to account for overhead in this final rule is practical. For these reasons, the final rule will not require a deduction from a move cost estimate to account for overhead. FHWA considered whether allowing reimbursement on this basis might lead to waste, fraud, or abuse and believes that proper funding agency oversight and stewardship will ensure that this provision is appropriately and effectively administered. Federal funding agencies that believe more financial control is needed may develop policies and procedures that include the

deduction of an amount from the commercial bids which represents overhead and profit but are not required to do so.

The current regulation allows a qualified staff person to prepare the moving cost payment estimate for a nonresidential self-move; therefore, allowing similar method to establish reimbursement eligibility for a residential move should not be burdensome. FHWA also notes that the self-move reimbursement for labor based on hourly rates, etc. is not new to this rulemaking. The Federal funding agencies may also utilize policies and guidance on how best to administer this requirement. For example, in its role as a Federal funding agency, FHWA provides stewardship and oversight by requiring approved manuals that describe approved processes its grantees follow in determining actual reasonable and necessary reimbursement. FHWA received little or no feedback over the years that would lead FHWA to conclude that this additional residential move cost reimbursement option may create waste, fraud, or abuse.

FHWA revised the final rule by making similar revisions in § 24.301(b)(2)(ii) through (iv) (moves from a dwelling) and (c)(2)(ii) through (iv) (moves from a mobile home). Section 24.301(b)(2)(ii) and (c)(2)(ii) add criteria needed to determine and document self-move reimbursement eligibilities. Section 24.301(b)(2)(iii) and (c)(2)(iii) adds new flexibility to allow use of a move cost estimate prepared by qualified agency staff. Section 24.301(b)(2)(iv) and (c)(2)(iv) adds new flexibility to base residential self-move cost reimbursement eligibility on the lower of two commercial moving cost bids.

*Section 24.301(d) Moves From a Business, Farm, or Nonprofit Organization—Moving Cost Finding and Nonresidential Moving Cost Schedule*

FHWA received three comments on whether a moving cost finding for nonresidential moves should be reinstated, or if a nonresidential moving cost schedule should be developed and included in the final rule. Both methods were proposed to streamline the process for determining moving cost benefit amounts for low-cost, uncomplicated nonresidential moves. One commenter was opposed to a Fixed Moving Cost Schedule for Nonresidential Moves because there are too many variables but supported adding a nonresidential fixed moving cost schedule for use when developing a benefit amount for personal property located in storage facilities. Another commenter concurred

with the proposal to adopt the use of a moving cost finding for businesses and to consider development of a nonresidential moving cost schedule for uncomplicated moves because these methods would provide streamlined approaches that will reduce the burden for both the nonresidential displaced person and the agency. A final commenter supported development of a tool similar to the Fixed Residential Moving Cost Schedule and preferred any type of schedule to take jurisdictional cost differences into account. This same commenter believed that the proposed schedule would reduce administrative burden and expedite the payment of moving expenses to displaced businesses and use of such a tool would eliminate the time-consuming tasks of soliciting at least two commercial moving bids or seeking backup documentation from displaced businesses to support their reimbursement requests.

*FHWA Response:* FHWA appreciates receiving the comments regarding the proposal to reinstate a nonresidential move cost finding and to develop a nonresidential moving cost schedule. FHWA recently completed a research project examining possible nonresidential moving cost estimation and reimbursement methods in use by a study group of nine State DOTs and four Federal agencies. The comments received in the NPRM are in line with the findings in the study's final report, which will be published shortly.

FHWA agrees that including additional streamlining methods for developing moving cost eligibility determinations can provide additional options and reduce administrative burden to both displaced persons and agencies. However, FHWA does not have enough supportive materials and data to institute a fixed cost schedule for nonresidential moves in this final rule. FHWA will continue to explore potential options and may consider at a later date the possibility of adding a nonresidential moving cost schedule option to a future rulemaking.

FHWA believes that for nonresidential moves, a move cost finding would only be appropriate for moves of personal property which are uncomplicated and therefore do not require disconnect and reconnection, and for items which do not require specialty movers, such as a rigger, or equipment to provide specialty moving services. FHWA believes that it is important to establish a maximum amount for nonresidential move cost findings. The final report of nonresidential moving cost methods included a survey group of nine State

DOTs and identified any current move cost finding threshold levels currently used with respect to nonresidential moving costs. The criteria for the use of these findings vary by State DOT for an uncomplicated move. State DOTs used thresholds to determine uncomplicated moves which could be accomplished using a schedule ranging from \$2,500 to \$10,000 in costs. Several State DOTs also used additional criteria to further identify non-complex moves that could be accomplished using a schedule move. Based on this research and information, FHWA included in the final rule a move cost finding option that may be used for uncomplicated nonresidential moves of no more than \$5,000 in estimated cost. FHWA revised the final rule at § 24.301(d)(2) by adding § 24.301(d)(2)(iii) Move Cost Finding.

The FHWA will develop FAQ to provide additional examples of when a move cost finding may be appropriate for nonresidential moves.

*Section 24.301(e) Payment for Actual Reasonable Moving and Related Expenses—Personal Property Only*

FHWA received seven comments regarding the use of the additional room method to establish moving cost eligibility when moving personal property located outside of a dwelling. Five commenters supported using the additional room method as a sensible way to deal with small, residential personal property only—outside moves. Three of these commenters believe that use of the additional room method would be much more convenient and cost effective as opposed to doing a separate residential personal property only—outside move. One commenter suggested that the use of the additional room method be allowed for moving personal property outside the dwelling when the occupants will be displaced. This same commenter asked if it would be appropriate to use the additional room method to establish a minimum payment or if there would be a way to pro-rate that amount for a smaller residential personal property only—outside move where an additional room could be considered a windfall.

*FHWA Response:* FHWA's NPRM proposed changes to appendix A section 24.301(e), Personal Property Only, recognize that in some instances the costs of obtaining moving bids for moving personal property located outside of the dwelling are prohibitive. The appendix A discussion provides examples of when it may be appropriate to use the additional room method to determine moving cost reimbursement eligibility. FHWA does not believe that the moving cost schedule can be used to

either establish a minimum payment or to determine a fractional or a percentage payment amount for personal property moves. The fixed residential moving cost schedule is meant to be a simplified method for determining eligibility and documenting determinations of eligibility; therefore, attempting to establish a minimum payment or calculating a fractional amount is not allowed. The appendix A link to the schedule on the FHWA website will be updated when the new schedule is published, however, the current schedule is available on the FHWA website via this link: [www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm).

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.301(e) Personal Property Only*

One comment was received suggesting agencies be permitted to prepare relocation plans and negotiate directly with property owners when relocation is for personal property only move, such as moving a shed. The commenter believes that allowing some types of simple moves of personal property should not necessarily need to wait until the project commences. The commenter expressed concern with the time necessary for the agency to meet the relocation planning requirements and the added costs of plan preparation that may impact project budgets and project delivery.

*FHWA Response:* Any real property acquisition and relocation activity must be completed in compliance with Uniform Act requirements if Federal funding or Federal financial assistance will be used for the program or project, even if such funds have not yet been approved as of the date of the displacement. Agencies are required to identify and plan for displacements in the early stages of project development, and prior to any action that will cause displacements, as discussed in § 24.205(a). The planning includes scoping the nature and complexity of any displacements, and evaluation of agency resources available to carry out timely and orderly relocations. This necessarily includes providing moving expenses of personal property only.

As proposed in the NPRM, this final rule in appendix A, § 24.301(e), includes a streamlined method for residential moves where only a limited amount of personal property is moved. For these residential moves, agencies may make an eligibility determination and payment based upon the use of the “additional room” category of the Fixed

Residential Move Cost Schedule. This option provides the owner of the personal property the option of performing a self-move. Agencies may also use a single commercial bid or estimate may be used for low-cost, uncomplicated residential moves as discussed in §§ 24.301(b) and (c) and for nonresidential moves, § 24.301(d) allows similar options.

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.301(g)(7) Payment for Actual Reasonable Moving & Related Expenses—Tenant Replacement Housing Search Costs, Credit Checks*

One commenter expressed concern that some tenant occupants cannot afford to pay out-of-pocket costs for numerous credit checks when searching for a replacement rental dwelling, which often require credit checks for each adult that will be residing in the dwelling. The commenter proposed the addition of a credit check allowance of at least \$500 as a “related expense.” Under the commenter’s proposal, the tenant occupant would be required to provide receipts to the agency showing actual costs for any credit checks completed, and if not provided, that amount would be deducted from their moving cost reimbursement.

*FHWA Response:* FHWA recognizes that a credit check or application fee are a typical cost for the process of obtaining tenant replacement housing. The FHWA revised the final rule by adding a new § 24.301(g)(7) to allow reimbursement of a tenant’s credit checks and applications fees incurred while searching for a replacement rental dwelling; revising § 24.301(h)(9) to list ineligible costs associated with a tenant’s search for a replacement rental dwelling, and renumbering § 24.301(g)(7) accordingly. FHWA anticipates that there will be differences in fees depending on the location and that in some markets, tenants may have to make several applications to lease a dwelling. Agencies may also consider making advanced payments for necessary tenant credit checks to relieve a hardship as allowable under § 24.207(c).

#### *Section 24.301(g)(12) Payment for Actual Reasonable Moving and Related Expenses—New Construction Permits*

FHWA received a response from one commenter who believes excluding new construction permit fees from moving cost reimbursement eligibility creates a hardship for the displaced person, since they are being required to relocate.

*FHWA Response:* The NPRM did not propose a change to the eligibility of new construction permit fees. In most instances, such fees are not an eligible expense. FHWA notes that the NPRM clarified that permit fees are eligible expenses when a construction permit is necessary for repairs, improvements, or modifications to make to the replacement property suitable for the operation of the displaced person’s business, farm, or nonprofit organization. FHWA believes that construction or substantial reconstruction of a structure at the replacement site to make it fit for occupancy is not generally an allowable moving cost expense, except in justifiable circumstances, such as, when no replacement site with existing improvements fit for occupancy is available to accommodate the business, farm, or nonprofit organization, or if determined to be reasonable and necessary under § 24.304 or if required by local law, code, or ordinances.

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.301(g)(13) Payment for Actual Reasonable Moving and Related Expenses—Professional Services*

FHWA received one comment on § 24.301(g)(13) recommending that professional services eligibility determinations be pre-approved and in writing.

*FHWA Response:* FHWA believes that the actual, reasonable, and necessary test for eligibility for reimbursement of expenses is generally explained and discussed with a displaced person when providing advisory services. The purpose of the discussion is to ensure that the displaced person is informed about both eligibility and the relevant agency procedures for establishing eligibility. FHWA agrees that it is good practice to maintain written documentation during a relocation. For a complicated relocation, Agencies may want to provide certain written approvals or explanations of eligibility to a displaced person. However, FHWA believes requiring written preapproval of professional services in this rule is unnecessary. Agencies may establish policies and procedures as they deem necessary, which may require certain preapprovals; however, FHWA notes that each move and determination of actual reasonable and necessary costs are fact specific issues.

As a result of the above analysis, no changes were made to this section of the final rule.

*Section 24.301(g)(15)(i)–(ii) Eligible Actual Moving Expenses—Actual Direct Loss of Tangible Personal Property*

FHWA received two comments regarding the proposed changes related to calculating a payment for actual direct loss of tangible personal property. One commenter supports the proposal to expressly reimburse for moving items not currently in use but disagrees with the proposal to exclude reimbursement for storage. One commenter agrees with the proposal to modify these paragraphs to allow for a new two-part consideration and provide separate paragraphs for calculating payments for property currently in use and items not currently in use. The commenter also concurs with the proposal to have a separate subordinate paragraph for goods held for sale, and believes these changes clarify the payment calculation requirements.

*FHWA Response:* The final rule will incorporate the NPRM’s proposed changes including separate methods for calculating payments for items currently in use and for items not currently in use. For items in use, reimbursement will be based on the lesser of the cost to move and reinstall the item or fair market value of the item in place at the displacement site “as is for continued use.” For items not currently in use, the reimbursement will be based on the cost to move the item, as is, with no allowance for storage. FHWA believes that basing the reimbursement eligibility for nonresidential personal property items not currently in use on the cost to move the item “as is,” with no allowance for storage, is appropriate in most circumstances. However, FHWA included clarifying language in § 24.301(g)(15)(ii) addressing instances when storage may be appropriate because the replacement site is not yet ready. This final rule change allows an agency to address those instances where the process of moving from the acquired nonresidential site to the replacement site is delayed. In those instances, the final rule will require an agency to approve storage before these costs can be reimbursed.

*Section 24.301(g)(18)(i) Searching for a Replacement Location*

Five comments were received regarding the increase of the maximum eligibility for search expenses to \$5,000. Two comments were received regarding the addition of attorney’s fees as an eligible cost when searching for a replacement location. Two commenters support the payment being increased to the maximum of \$5,000. One of those commenters added that if the amount is

increased, documentation of the expenses should be required. One commenter noted that attorney’s fees should not be included as an eligible expense because the bulk of the eligibility could be used for attorney’s fees and limit other costs incurred by the displaced person. This commenter indicated that attorney’s fees associated with the purchase and closing should be eligible under § 24.301(g)(8), Other Moving and Related Expenses. One commenter believes that the inclusion of attorney’s fees within search expenses would cause confusion between eligibility in this section and those for professional services eligible under § 24.303(b). The commenter suggests that attorney’s fees which are determined to be reasonable and necessary be made explicitly eligible under § 24.303(b). One commenter expressed concern about the current FAQ being proposed for incorporation into § 24.301(g)(18)(i)(F) in appendix A, to provide clarification that search expenses may be incurred anytime the business anticipates it may be displaced will create eligibility issues, especially with a project that eventually does not go forward. The commenter speculated that businesses would not keep track of their expenses prior to agency involvement with them and suggested limiting the period of time from anytime to 90 days prior to the Initiation of Negotiations.

*FHWA Response:* FHWA believes the increased reimbursement limits will allow a displaced person to be reimbursed for more of the search costs they may incur. The FHWA also believes the option to use legal counsel to negotiate the purchase or lease of a replacement site is an option elected by the business owner and eligibility would be subject to an agency’s determination that the costs are actual reasonable and necessary.

The final rule includes eligibility for attorney’s fees in § 24.301(g)(18)(i)(F) with clarification in the corresponding section of appendix A, by striking “time spent” and inserting “expenses” to allow eligibility for attorney’s fees necessary for negotiating the purchase of a replacement site. The changes clarify that expenses for reimbursement of documented, reasonable, and necessary attorney’s fees for such negotiations is an eligible expense up to the \$5,000 maximum for search expenses in this final rule. FHWA believes attorney’s fees are separate and distinct from negotiations under searching expenses when applied under § 24.303(b) as a professional service for determining the suitability of the replacement site for the nonresidential

relocation. The FHWA believes incorporating these changes in this final rule will allow clarity and flexibility for displaced nonresidential occupants. As discussed in the NPRM preamble, FHWA will incorporate a current FAQ into the appendix A to clarify that search expenses may be incurred anytime the business anticipates it may be displaced, to include the period prior to project authorization or the initiation of negotiations if the agency determines them to be actual, reasonable, and necessary.

FHWA believes displaced nonresidential occupants may need the opportunity to search for a suitable replacement site at the earliest opportunity. These changes in the final rule allow that should the nonresidential person be displaced, such expenses may be eligible for reimbursement when the business received the notice required in § 24.203(b) and may only qualify for payment after the agency determined such costs to be actual, reasonable, and necessary.

*Section 24.301(g)(18)(i)–(ii) Searching for a Replacement Location—One Time Minimal Documentation Payment*

FHWA received responses from six commenters regarding the proposed addition of an alternative \$1,000 payment eligibility, requiring little or no documentation, for costs associated with searching for a replacement location. One commenter supported the change and, in concert with two other commenters, requested the words “up to” be removed from the language for this section, so the minimum payment would be \$1,000. One of these same commenters also suggested the word “little” be replaced with minimal. Several commenters suggested that FHWA consider the little or no documentation search payment eligibility be a minimum of \$2,500.

Two of the commenters stated that the flexibility of not requiring documentation will relieve an administrative burden for both the displaced person and agencies. One of these commenters reasoned that increasing the alternative payment amount to \$2,500 is supportable because the payment amount of \$1,000 does not provide adequate incentive for the displaced person to accept the lower amount, and it is likely a business will incur searching expenses that exceed the \$1,000. This same commenter cited the FHWA’s 2010 Business Relocation Assistance Retrospective Study, which found that the administrative burden placed on both businesses and agencies by the extensive documentation

required to claim searching expenses caused a number of businesses not to claim them.

One commenter was not supportive of the \$1,000 alternative search expense payment option and believes that most business relocations result in search costs in excess of \$1,000. This commenter also does not find the existing documentation requirement for search expenses to be too burdensome and stated the additional option would create more complexity in relocation notices and advisory services.

*FHWA Response:* FHWA supports displaced persons having flexibilities and options, and the opportunity to make informed choices about benefits the Uniform Act provides to meet their needs. FHWA also supports streamlining efforts that benefit displaced persons and funding agencies where possible. As an alternative to § 24.301(g)(18)(i) reimbursement, the proposed provision at § 24.301(g)(18)(ii) provides Federal agencies with the option to allow, on a project or program wide basis, a one-time alternative searching expense payment of \$1,000 with little or no documentation. FHWA agrees that “up to” should be removed from the paragraph, and that “little” documentation be replaced with “minimal” documentation where applicable.

FHWA agrees with several comments that stated, in part, that businesses sometimes elect not to request reimbursement for search costs due to the perceived administrative burden of making the claim. The FHWA also agrees with the comments that noted businesses frequently incur search costs well above \$1,000. FHWA believes that a minimal documentation option for search costs addresses both concerns while balancing the need for funding agencies to ensure that waste, fraud, and abuse do not occur when making Uniform Act payments. This new flexibility will reduce administrative burden on both the displaced person and the agency. FHWA does not agree that this alternative search expense payment option should be increased to a minimum of \$2,500. FHWA believes that should a displaced person expect to have more than \$1,000 in search costs, they should elect to document those costs in order to claim reimbursement for actual, reasonable, and necessary search expenses associated with their relocation.

As a result of the above analysis, FHWA revised § 24.301(g)(18)(ii) as noted above.

*Section 24.301(h)(5) Payment for Actual Reasonable Moving and Related Expenses—Ineligible Moving and Related Expenses; Loss of Trained Employees*

One commenter requested the inclusion of the cost to train new employees as an eligible nonresidential moving cost expense when a move to a nonresidential replacement site location results in a loss of trained employees. The commenter shared that some businesses relocated further away than expected due to lack of availability of suitable replacement property, resulting in many businesses losing trained employees. Since it is not cost effective to relocate all the employees, a suggested alternative to cover training costs of new employees could be allowed as an eligible reestablishment or moving cost.

*FHWA Response:* The loss of trained employees continues in this final rule to be an ineligible expense under § 24.301(h)(5); however, an agency may request a waiver of the requirement under § 24.7 from the Federal funding agency, when appropriate.

As a result of the above analysis, no changes were made to this section of the final rule.

*Section 24.302(a) Fixed Payment for Moving Expenses—Residential Moves*

FHWA received two comments related to the Fixed Payment for Moving Expenses—Residential Moves. One commenter asked if the proposed change means an agency will pay to move items into storage instead of to replacement housing with no allowance for moving them out. One commenter did not agree with the proposed change as it would limit fixed residential move payments to one move, and when storage is deemed reasonable and necessary, the displaced person should be entitled to two moves; one to put personal property into storage, and again to move personal property to their replacement home/rental from storage.

*FHWA Response:* FHWA believes the fixed schedule allows for a one-time self-move but not additional moves from storage. FHWA notes that the fixed schedule move is a simplified and streamlined method of reimbursement and is predicated on the cost of moving personal property from the acquired property. In most cases, the need for storage may best be met by using other moving eligibilities that have been provided to allow for storage as necessary.

Agencies should ensure that adequate advisory services are provided so that a displaced person can make an informed

decision about which moving cost eligibility would best meet their needs.

As a result of the above analysis, FHWA reviewed this section of the regulations and has edited the section to improve clarity about the requirements. No substantive changes were made to this section of the final rule.

*Section 24.303(a) Related Nonresidential Eligible Expenses; Connections to Utilities at the Replacement Site*

FHWA received three comments in relation to eligible nonresidential moving expenses for connection to utilities when the replacement site is being developed, or when constructing a new building or structure at the replacement site. The commenters asked for clarification of whether fees for connecting to local municipal water and sewer infrastructure is an eligible expense when the nonresidential displaced person is constructing a new building. A commenter also requested clarification of whether a new construction site would no longer be eligible for utilities to be connected from the right-of-way or property line to a newly constructed building as discussed in § 24.303(a) and appendix A. This commenter also requests that the regulation specify that utility connections are for the operational needs of the business, and that appendix A specify whether capital improvements, such as storm water improvements, are an eligible expense. One commenter appreciated the change for utility installation eligibility from “nearby” to “from the replacement site’s property line,” while another did not based on the belief that this change is too restrictive for nonresidential displaced persons and would cause financial hardship.

*FHWA Response:* The NPRM’s proposed change to this section clarified that costs associated with upgrading or installing needed utility service from the property line to the structure are eligible costs under this part when the agency determines them to be actual, reasonable, and necessary. The previous rule was unevenly applied by agencies, with some agencies using a liberal interpretation of “nearby” and others being more conservative. Over the years, FHWA found that determining what “nearby” meant, and consequently what costs might be reimbursable, was impractical. FHWA believes that the NPRM’s proposed change reasonably describes the types of costs that may be eligible for reimbursement under this part because it focuses on costs incurred on the replacement property and further specifies that this section allows for

only those costs from the property line to the structure. FHWA also believes that costs for connecting utilities from the right-of-way line to a newly constructed or to be constructed building are neither clearly eligible nor ineligible. The regulation and appendix A both require an agency to make actual, reasonable, and necessary determinations which rely on the individual facts of each case. FHWA agrees with commenters' understanding that such a determination includes consideration of what costs are essential to the continuing operation of the business. FHWA also does not believe that installation of storm water management improvements on real property are eligible costs as contemplated in §§ 24.303(a) or (c) because they are neither costs necessary to connect to utilities nor impact fees and one-time assessments as described in this section of the regulation. The FHWA adopts the NPRM's language as proposed. FHWA may however, develop one or more FAQs to respond to additional practical questions that are raised during the introduction and implementation of this rule.

*Section 24.303(c) Related Nonresidential Eligible Expenses; Impact Fees or One-Time Assessments for Anticipated Heavy Utility Usage*

FHWA received two comments regarding impact fees or one-time assessments for anticipated heavy utility usage. One commenter disagrees with limiting eligibility of impact fees or one-time assessments for utilities to anticipated heavy utility usage as it may discourage business relocation. One commenter asked for clarification about whether the fees were reimbursable under this part and noted that the fees often can be tens of thousands of dollars or more.

*FHWA Response:* FHWA is not making a change in requirements or imposing new limits on eligibility for § 24.303(c) reimbursement for impact fees or one-time assessments for anticipated heavy utility facility service usage such as water, sewer, gas, electric, steam, etc. FHWA notes that current Uniform Act, FAQ #75 ([https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafqs.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/uafqs.cfm)) discusses and clarifies eligibility for reimbursement of impact fees and one-time assessments under this part. FHWA believes that the current policy, as articulated in FAQ #75, provides sufficient reimbursement for impact fees or one-time assessments for anticipated heavy utility facility service usage. FHWA also notes that both the NPRM's preamble and appendix A for this section provide

additional details on impact fees or one-time assessments for anticipated heavy utility facility service usage eligibility. FHWA will consider developing additional FAQs to further clarify the eligibility. FHWA believes providing information on the potential eligibility of impact fees for anticipated heavy utility usage and increased costs are important advisory services.

As a result of the above analysis, no changes were made to this section of the final rule.

*Section 24.304(b)(5) Reestablishment Expenses—Nonresidential Moves; Ineligible Expenses, New Construction or Reconstruction of a Replacement Site Structure*

FHWA received four comments related to reestablishment and moving expenses eligibilities for new construction or reconstruction of a structure for a nonresidential replacement site. One commenter asked for the terms "substantially construct" and "substantially reconstruct" to be defined. One commenter expressed an opinion that building out a shell for office space should be approved as part of reestablishment when it does not qualify as a reimbursable expense for modifying the structure so that personal property can be reconnected. One commenter believes there are times when substantial reconstruction or building out of a shell is necessary as it relates to personal property, such as a dental practice where installation of water and gas lines for connection to the dental chairs is necessary. This commenter interprets the clarification related to new construction or reconstruction of a structure for a nonresidential replacement site as too stringent and believes that those costs should be allowed as an eligible moving expense.

*FHWA Response:* FHWA proposed a new § 24.304(b)(5) in the NPRM to clarify that costs to construct or substantially reconstruct a building are considered capital expenditures and are generally ineligible for reimbursement as a reestablishment expense for a nonresidential displacement. The FHWA revised the regulatory language and discussion in appendix A in this final rule to more clearly focus the discussion of ineligible expenses on construction, reconstruction, and rehabilitation of a building. The FHWA removed the terms "substantially construct" and "substantially reconstruct" and in this final rule uses the terms "construct," "reconstruct," or "rehabilitate" to more clearly focus on ineligible reestablishment expenses. FHWA does not believe that it is

practical to try to define or describe all the scenarios where an agency may determine these costs to be ineligible due to the need to "construct," "reconstruct," or "rehabilitate."

FHWA believes that construction or reconstruction or rehabilitation of a building are usually ineligible expenses; however, there may be special cases where construction, reconstruction or rehabilitation may be necessary. Such instances usually arise when a replacement building suitable for occupancy cannot be found. Eligible costs for making a building suitable for occupancy, as discussed in this regulation, may require the addition of necessary facilities such as bathrooms, room partitions, built-in display cases, and similar items, either because they are required by Federal, State, or local codes, ordinances, or because the agency determines that such costs are reasonable and necessary for the operation of the business. Agencies will need to consider eligibility and requests for reimbursement of costs to construct, reconstruct, or rehabilitate a building on a case-by-case basis and determine whether that eligibility should be requested via a § 24.7 waiver of the requirements of § 24.304(b)(5). As proposed in the NPRM, FHWA incorporated two current FAQs into a new appendix A item with an example of when such a waiver is requested and discusses the costs that may be determined eligible for reimbursement pursuant to such waiver.

*Section 24.305(e); Fixed Payment for Moving Expenses—Nonresidential Moves; Average Annual Net Earnings Appendix A*

FHWA received one comment regarding an addition in appendix A § 24.305(e) expressing support for the expansion of flexibility being provided for benefits to businesses in operation for less than 2 full years.

*FHWA Response:* FHWA believes the revision to appendix A § 24.305(e) clarifies 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 relocation benefits. FHWA notes that there is no change to the definition of "contributes materially" or §§ 24.305(a)(6) and (e), in this final rule, because as currently written, they give clear direction for equitable treatment of businesses in operation either seasonally or for less than 2 full years, and for calculating a prorated benefit payment. FHWA believes the final rule's

revision to appendix A, § 24.305(e), confirms and supports the regulatory allowance that a displaced business may be eligible to receive payment for a business that is open for less than 2 full years, and provides a more detailed discussion and practical examples of calculating benefits for a variety of circumstances, including prorating the average annual net earnings of a business or farm operation, and sample calculations for businesses with less than 2 full years in operation, and seasonally operated businesses.

As a result of the above analysis, no change was made to appendix A.

### Subpart E—Replacement Housing Payments

#### *Section 24.402(b) Replacement Housing Payment for 90 Day Tenants and Certain Others; Low-Income Rental Replacement Housing Calculations*

FHWA received one comment regarding the determination of whether a tenant occupant is determined to have low income for the purpose of the rental replacement housing payment calculation based on 30 percent of the displaced household's income. The commenter stated that the proposed change ties the income calculation to a new index.

**FHWA Response:** The NPRM did not include a proposal to change low-income calculation and determination methodology. The change in the NPRM's proposed regulatory text only included a corrected URL reference to the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for Public Housing and Section 8 Programs at: [www.fhwa.dot.gov/real\\_estate/policy\\_guidance/low\\_income\\_calculations/index.cfm](http://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm).

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.402(b)(2)(i) Replacement Housing Payment for 90 Day Tenants; Tenant RHP for Little or No Rent*

One commenter requested that FHWA provide guidance on what constitutes "little rent" as discussed in § 24.402(b)(2)(i), which requires that if a tenant is paying "little to no rent," a fair market rent must be determined. The commenter asked for clarification of whether "little rent" is 50 percent or 25 percent below fair market rent for this instance.

**FHWA Response:** FHWA does not believe that "little rent" can be defined in this rule in a way that could reasonably be expected to apply to all instances an agency may encounter.

However, FHWA believes that when little or no rent is paid, the important aspect is not the definition of the term, but rather ensuring that the agency establishes policies and procedures to ensure that a uniform process exists to make that determination. After an agency determines fair market rent and establishes base monthly rent, a hardship determination can be made. Agencies making the determination would consider whether the use of the base monthly rent for the rental replacement housing payment calculation would create a hardship for the displaced person. Such hardship is discussed in §§ 24.402(b)(2)(i) for low income or other circumstances.

FHWA does not believe that changing "little or no rent" to "less than fair market rent or no rent" would resolve the commenter's concern. The FHWA agrees that the word "little" does not have a meaning specific to the regulation; however, it has been used in several instances throughout the regulatory history of this part. Over that period of time, FHWA has not noted requests for clarifications or questions about interpretations on the meaning of "little rent." Often, fair market rent is defined within a range of value, so determining if the amount of rent being paid is within that range and using the amount paid should be appropriate.

FHWA will prepare an FAQ to provide examples of best practices and potential scenarios that may assist an agency in uniformly identifying and addressing instances when little rent is paid.

As a result of the above analysis, no changes were made to this section of the final rule.

#### *Section 24.402(b) Replacement Housing Payment for 90 Day Tenants; Tenant RHP—Base Monthly Rent, Utilities*

FHWA received four comments about calculating base monthly rent and the utility costs portion of that payment. One commenter believes that the best method to calculate monthly utility costs are to use the actual costs to the owner or tenant at the replacement site. One commenter thinks an "apples to apples" comparison using either estimates or actual bills needs to be made. They pointed out that it would be unfair to mix actual vs. estimated costs. Two commenters stated that in the event that different utility providers are in use at the replacement and the acquired subject property, then the regulations should permit the use of an existing methodology available for estimating these costs such as the HUD Utility Schedule Model, a tool based on a national survey of energy

consumption produced by the U.S. Energy Information Administration. The commenters believe that such a tool is familiar and can be used in the public housing and Section 8 programs to expedite rental assistance payment calculations. Another commenter's preferred method is a utility allowance schedule for a city/county that would be used to determine estimated utility payment obligations. The commenter believes it is fairer to the tenant and allows an apple (displacement) to apples (comparable) to apples (replacement) comparison regarding utility costs and consideration of a rent/utility cost differential. The commenter expressed concern that utility allowance schedules consistently show costs that are lower than the actual utility costs tenants pay for their dwellings, and consequently they often end up being penalized and receive less rental assistance if differing sources for utility costs are used. Another commenter expressed the view that the NPRM language requiring actual utility costs be used "to the extent practicable" in determining the base monthly rental at the displacement dwelling is extremely burdensome.

**FHWA Response:** The NPRM notes that § 24.402(b) charges the agency with making the determination of the appropriate method to use for determining the estimated average monthly utility costs. The NPRM also states the base monthly rental shall be established solely on the criteria in § 24.402(b)(2)(i) of this section for persons with income exceeding the U.S. Department of Housing and Urban Development's Annual Survey of Low Income Limits for Public Housing and Section 8 Programs "low income" limits, or for persons refusing to provide appropriate evidence of income, or for persons who are dependents. FHWA agrees that, when possible, the use of actual utility costs will provide the most accurate basis for calculating eligibility and reimbursement. FHWA also recognizes that information or documentation of actual costs may not always be available for various reasons. FHWA will continue to encourage agency to document, file, and then utilize an estimate to develop a base monthly rent at the displacement dwelling when documentation of those costs is not available. This final rule does not require use of a specific method or source for estimating utility costs but encourages each agency to develop policies and procedures to ensure uniformity in calculation.

As a result of the above analysis, no changes were made to this section of the final rule.



*Section 24.402(c) Replacement Housing Payment for 90 Day Tenants and Certain Others; Tenant RHP—Down Payment Assistance Payment; Less Than 90-Day Owner Occupant*

FHWA received one comment regarding a down payment assistance payment for a less than 90-day owner-occupant. The commenter pointed out that the NPRM proposed to add clarifying language to appendix A to describe rental assistance payment eligibilities for a displaced homeowner who fails to meet the 90-day occupancy requirements, which is not in appendix A. Also, the appendix A section only refers to displaced homeowners who elect to rent and does not include the proposed clarifying language.

*FHWA Response:* FHWA revised the language in § 24.402(c) and appendix A of this part to include a reference to the last resort housing requirements when a displaced person has been in occupancy less than 90 days as discussed in § 24.404(c)(3) for such owners and tenants.

*Section 24.403(a)(1)—Additional Rules Governing Replacement Housing Payments—Number of Comparable Dwellings To Be Used and Related Inspection Requirements*

One commenter asked about using the same three dwellings for more than one replacement housing computation.

*FHWA Response:* FHWA believes that considering three or more comparable dwellings for a replacement housing computation ensures there are several comparable dwellings available for the displaced person, and that if the selected comparable is no longer available, provides the agency with alternative comparable dwellings that it can use to recalculate a displaced person's eligibility. FHWA also notes that the requirements of § 24.403(a)(1) were not proposed for change in the NPRM. FHWA does agree with the commenter's apparent concern about using the same comparable dwellings for several displacements and agrees that such a practice is generally inconsistent with the requirements of this final rule. Agencies must, at minimum require that the comparable dwellings they use are available by frequently checking to ensure that the comparable dwellings remain available while the displaced person continues their search for a replacement dwelling. The final rule will continue to require that at least three comparable replacement dwellings 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.

As a result of this analysis, no changes were made to this section of the regulation.

*Section 24.403(a)(1)—Additional Rules Governing Replacement Housing Payments—Inspection Requirements*

One commenter stated that the proposed new appendix A language for 49 CFR 24.403(a)(1) regarding inspections of comparable replacement dwellings for the purposes of computing the cost is extremely unclear as to the standards and requirements for DSS inspections under this section. Although the proposed language states that “[r]eliance on an exterior visual inspection, or examination of an MLS listing does not, in most cases constitute a full DSS inspection,” the standards for what constitutes a full inspection are not stated and also lack a description of the proper protocol if the housing unit fails inspection.

*FHWA Response:* Appendix A at § 24.403(a)(1) explains that the purpose and limits of a DSS inspection “. . . as required by this part is a visual inspection to ensure that certain requirements as they relate to the definition of DSS in the rule are being met.” These DSS inspections are not the same as a full home inspection that a home inspector would be hired to do. Some Federal funding agency requirements, such as those of the Department of Housing and Urban Development, prohibit reliance on an exterior visual inspection when selecting a comparable replacement dwelling or as part of determining the cost of comparable replacement dwellings.

As a result of this analysis, FHWA has reorganized both this section and § 24.205(c)(2)(ii)(C) of appendix A and added language to more clearly relate the requirements in the relevant section of the regulation and to clarify the sections.

*Section 24.403(a)(2) Additional Rules Governing Replacement Housing Payments, Carve-Outs and Major Exterior Attributes*

FHWA received one comment requesting additional guidance for agencies in addressing major exterior attributes at the residential displacement property that are not readily available in comparable replacement housing. Examples include, but are not limited to, properties that contain more than one dwelling unit and parcels that are larger than a typical dwelling site for the area. The commenter requested additional

guidance for determining the portion of a mixed-use property that will be attributed to the residential portion of the property for the purposes of calculating a replacement housing payment. The commenter noted that such determinations are typically referred to as “carve-outs” in practice, however the words “carve-out” never actually appear in the Uniform Act. The commenter further asked if the residential portion, or the business portion should be carved out from a mixed-use property involving relocations. The commenter stated that in practice, the value of the property rarely equals the sum of the two parts, causing the determination of which part is carved out to potentially change the price differential payment significantly. The commenter suggested instructions such as those contained in the May/June 2009 IRWA magazine article titled, “Residential Carve-Outs, Uncovering the Mystery”, by David Leighow, or a well-written FAQ, be provided to address this concern.

*FHWA Response:* FHWA believes the discussion in § 24.403(a)(2) is clear on the requirement that the contributory value of major exterior attributes must be subtracted from the acquisition price of the displacement dwelling, for purposes of computing the Replacement Housing Payment when the comparable dwelling site lacks a major exterior attribute. However, FHWA believes that the addition of language in this final rule, additional new discussion in appendix A, and a few general examples in appendix A will ensure that the users of the regulation are able to consistently develop carve-out calculations. The agency's first effort should always be to attempt to locate a comparable dwelling with the attribute before selecting a dwelling without the attribute. The FHWA will also consider revising current FAQ #108, [https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/uafaqs.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm), which addresses major exterior attributes and or adding an additional FAQ, if necessary.

*Section 24.403(a)(3) Additional Rules Governing Replacement Housing Payments; Acquisition of a Portion of a Typical Residential Property*

FHWA received one comment stating the commenter's preference of using the whole displacement property value for computing the replacement housing payment.

*FHWA Response:* FHWA believes calculation of a replacement housing eligibility based on only the portion of the property that the agency is acquiring, could cause a substantial increase in a displaced person's

replacement housing eligibility, which may not be necessary to ensure the availability of comparable housing. The NPRM proposal, and its incorporation into this final rule, allows Federal funding agencies to determine when it would be appropriate to make an offer on the entire parcel or just the portion needed for the project. FHWA believes that agencies should be given the option to offer to purchase the remainder, and then calculate the replacement housing eligibility based on the purchase offer for the entire parcel.

FHWA also understands that in some instances, owners may not wish to sell the remainder. FHWA believes the changes to § 24.403(a)(3) proposed in the NPRM and incorporated in this final rule will allow property owners to either retain the remainder or to sell it, depending on which option best suits their needs. However, should they elect to retain the remainder, they should understand that such an election would not require an agency to recalculate the relocation assistance eligibility. FHWA believes that when using this option, the agency will need to ensure the displaced person is provided advisory services explaining that should the displaced person elect to retain the remainder, they will be responsible for providing the contributory value of the remainder, as determined in the agency's valuation, in order to purchase the comparable dwelling or a similar replacement dwelling. FHWA included a sample calculation and added language to appendix A of § 24.403(a)(3) of this final rule, to clarify when and how to apply this calculation method. FHWA believes the two options discussed in the regulation and appendix A sections of this part, to either include or exclude the contributory of the remainder, provides flexibility for the agencies when making a replacement housing eligibility calculation. FHWA notes that recipients will need to work with the funding agency to document and implement applicable policies and procedures.

As a result of the above analysis, no change was made to this section of the final rule.

#### *Sections 24.401(b), 24.402(b) and 24.404; Replacement Housing of Last Resort*

FHWA received one comment regarding the monetary limits for Replacement Housing Payments. The NPRM states that a replacement housing payment “may not exceed \$31,000” for a 90-day homeowner-occupant replacement housing payment determination in § 24.401(b), or “shall not exceed \$7,200” for 90-day tenants or

certain others rental replacement housing payment determination in § 24.402(b). The commenter recommends alternatives under § 24.404, Replacement Housing of Last Resort, be referenced in §§ 24.401(b) and 24.402(b) to ensure agencies are aware that replacement housing payments may exceed these thresholds when circumstances for making the replacement housing payment determination meet the requirements of Replacement Housing Last Resort.

*FHWA Response:* FHWA agrees with the commenter that for clarification, additional language should be added to the regulation to reference replacement housing of last resort. FHWA modified §§ 24.401(b) and 24.402(b) to include a reference to § 24.404, Replacement Housing of Last Resort, to ensure the applicable provisions are applied when costs related to a replacement housing payment determination will exceed the otherwise prescribed thresholds.

#### **Subpart F—Mobile Homes**

FHWA received various comments, suggestions, and statements from two commenters on methods to streamline this section of the regulation. One commenter is supportive of continuing the two-part benefit determination process for persons displaced from their mobile home. This same commenter stated that the proposed dwelling test would reduce benefits for low-income displaced persons and would also create significant challenges in locations with limited mobile home options. One commenter believes the existing provisions of the rule pertaining to mobile homes should not be reorganized or streamlined, as doing so is likely to risk undermining the attributes of the present rule. This same commenter described the current rule's method of calculating the replacement housing payments for mobile home occupants as rational, as they provide much-needed, appropriate protections for displaced mobile home occupants and are not difficult to implement. This same commenter believes appendix A only clarifies the definition of mobile home with regard to allowable types of replacement housing, and all other requirements contained in the definition should be removed from appendix A because they impose barriers on displaced recreational vehicle residents' Uniform Act eligibilities. This same commenter suggests changing the definition of mobile home in § 24.2(a) to include manufactured homes and recreational vehicles used as primary residences.

*FHWA Response:* FHWA appreciates the support expressed for the current

Subpart F mobile home regulations, the reasoning regarding streamlining, the definition of mobile home, and the dwelling test. FHWA believes the requirements for comparable replacement housing apply to all types of replacement dwellings. The NPRM explains that identification of comparable dwellings for a person displaced from a mobile home need not be restricted to another mobile home as a matter of policy or practice. Dwellings, other than those defined as mobile homes, may be used when selecting comparable replacement housing for calculating a replacement housing payment. FHWA notes the one change discussed in the NPRM and incorporated in this final rule is to § 24.502(c) for determining base monthly rent. It clarifies that the actual cost paid to the landlord for the site will be used, except market rent is to be used when little or no rent is paid for renting the site. FHWA also believes appendix A discusses the DSS requirements for comparable and replacement mobile homes. Removal of this discussion would be detrimental to the protections being provided to displaced persons because they explain, in part, minimum requirements for non-standard replacement dwellings selected by the displaced persons.

FHWA revised the definitions sections in this final rule to include the term “manufactured home” and a reference to the regulations at 24 CFR 3280.2. This revised definition includes the term “mobile home”.<sup>3</sup> The appendix A discussion for this definition has similarly been reorganized for clarity. This regulation will continue to use the term “mobile home” for purposes of clarity and consistency.

#### **Rulemaking Analyses and Notices**

##### **Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

The Office of Management and Budget (OMB) has determined that this rulemaking would be a significant regulatory action within the meaning of Executive Order (E.O.) 12866 (as amended by E.O. 14094 “Modernizing Regulatory Review”). However, the rulemaking is not economically significant for purposes of E.O. 12866. The rule will not have an annual effect

<sup>3</sup> HUD regulates safety and design features for manufactured homes, including but not limited to mobile homes. Under Federal law governing safety and design of manufactured homes and for HUD programs and projects, the term “manufactured home” is used as found in regulation at 24 CFR 3280.3. (See 42 U.S.C. 5401 *et seq.*)

on the economy of \$200 million or more. The rule will not adversely affect in a material way the economy, any sector of the economy, productivity, competition, or jobs. In addition, the changes would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

A more detailed discussion of the economic analysis associated with this rulemaking can be found in the RIA, which is available in the docket. The RIA is largely similar to the regulatory evaluation of the NPRM. However, it has been revised to reflect changes in the final rule and to update the analysis given the time passed since the analysis conducted for the NPRM. The FHWA did not receive any public comments directly related to the RIA during the NPRM comment period.

The costs of the final rule over 10 years for all Uniform Act agencies are estimated to be \$2.2 million when discounted at 7 percent and \$2.4 million when discounted at 3 percent. The annualized costs are estimated to be \$311,000 per year when discounted at 7 percent and \$283,000 per year when discounted at 3 percent. The larger impact of this final 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 for the Government-wide program over the 10-year analysis period resulting from this rule are estimated to be \$169.5 million

when discounted at 7 percent and \$214.6 million when discounted at 3 percent, or roughly \$24.1 million per year when annualized at 7 percent or \$25.2 million per year when annualized 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. 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 somewhat larger than is estimated here.

The bulk of the estimated costs are related to updating program materials to reflect the changes in the final rule. In addition, some smaller recipient and Federal agency administrative cost savings have been estimated.<sup>4</sup> Again, FHWA was the only agency that had a detailed data set 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 benefits of the final 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 final 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 would 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 final rule cannot be quantified or monetized. The higher level of payments may also contribute to more entities being able to successfully reestablish after displacement.

The final 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 is not quantified or monetized in the analysis.

The table below offers a summary of the costs and benefits of the final 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 final rule. Nonetheless, the benefits related to equity and fairness are believed to be sufficient to justify the cost of the final rule.<sup>5 6</sup>

TABLE 1—SUMMARY OF COSTS AND BENEFITS FOR ANALYSIS PERIOD 2023–2032

Item	Discounted 7%	Discounted 3%	Annualized 7%	Annualized 3%
<b>Costs:</b>				
Reverse Mortgages .....	\$29,046	\$36,647	\$4,136	\$4,296
Revising Program Materials .....	2,216,271	2,451,123	315,547	287,346
Federal agency Reporting Requirement .....	184,582	232,883	26,280	27,301
<b>Cost Savings:</b>				
Revising Max. RHP/RAP (FHWA Only) .....	(235,772)	(300,627)	(33,569)	(35,243)
Homeowner 90 Day Eligibility (FHWA Only) .....	(7,286)	(9,193)	(1,037)	(1,078)
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
Other Clarity & Streamlining Changes .....	Not Quantified	Not Quantified	Not Quantified	Not Quantified
<b>Total Costs *</b> .....	<b>2,186,841</b>	<b>2,410,833</b>	<b>311,357</b>	<b>282,623</b>
<b>Benefits:</b>				
Equity & Fairness .....	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Program Oversight .....	Not Quantified	Not Quantified	Not Quantified	Not Quantified

<sup>4</sup> A recipient 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.

<sup>5</sup> These estimates are an upper bound estimate, based on the maximum amount that program expenditures could increase based on the final rule's changes in maximum reimbursement amounts.

<sup>6</sup> There may be additional increases in search expense due to the final rule's inclusion of attorney's fees as a category of reimbursement.

TABLE 2—TRANSFERS TO DISPLACED PERSONS FOR ANALYSIS PERIOD 2023–2032 (FHWA)

Item	Discounted 7%	Discounted 3%	Annualized 7%	Annualized 3%
<i>Residential displaced persons:</i>				
Revising Max. RHP/RAP .....	\$0	\$0	\$0	\$0
Homeowner 90-day Eligibility <sup>5</sup> .....	1,770,513	2,231,474	252,081	261,597
Reverse Mortgages .....	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Rental Application and Credit Check Fees .....	2,239,669	2,825,733	318,879	331,262
<i>Nonresidential Displaced Persons:</i>				
Reimbursement for Updating Other Media .....	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Search Expenses <sup>6</sup> .....	8,072,686	10,257,668	1,149,369	1,202,512
Re-Establishment Expenses .....	125,461,485	158,817,606	17,862,893	18,618,268
Fixed Payments In-Lieu-Of Moving Expenses .....	31,997,535	40,514,920	4,555,729	4,749,585
Total .....	169,541,889	214,647,402	24,138,951	25,163,224

\* 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 rule on small entities and has determined that it is not anticipated to have a significant economic impact on a substantial number of small entities, which includes State DOTs, Local Public agencies, other State governmental agencies or recipients and subrecipients of Federal agencies subject to this regulation. This action updates the Government-wide regulation that provides assistance for persons, including small businesses, displaced by Government acquisition of real property. One of the reasons for this rulemaking is to increase assistance for the small number of displaced small businesses impacted by the Uniform Act. The FHWA has determined this rulemaking would have a positive impact on those relatively few small businesses that are affected by Government acquisition of real property. 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 these reasons, FHWA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$168 million or more in any one year (2 U.S.C. 1532). 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)

This rule has been analyzed in accordance with the principles and criteria contained in E.O. 13132, “Federalism” 64 FR 43255 (Aug. 10, 1999), and FHWA has determined that this rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect any State’s ability to discharge traditional State government functions.

### Paperwork Reduction Act of 1995

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 final rule 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. 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. In addition, FHWA is making changes to wording and section organization in this final rule to better reflect the Federal experience implementing Uniform Act programs.

This requirement amends 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 in this final rule.

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.

FHWA does not have available to it information that 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. FHWA has developed a separate regulatory impact analysis which documents the costs for its program administration and oversight. That analysis is available in the docket for this rulemaking.

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. FHWA bases this estimate on approximately 168 respondents' 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.

A notice seeking public comments on the collection of information was included in the NPRM published in the **Federal Register** on Wednesday December 18, 2019, at 84 FR 69466. No comments on the information collection were received.

The FHWA is required to submit this collection of information request to OMB for review and approval.

#### **National Environmental Policy Act**

FHWA has analyzed this rule pursuant to NEPA (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded under 23 CFR 771.117(c)(20), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under the Council on Environmental Quality regulations and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This regulation provides the policies, procedures, and requirements for acquisition of real property interests for Federal and federally assisted projects. This action has no potential for environmental impacts until the regulations 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 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). FHWA has evaluated whether the 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 rulemaking would not result in significant impacts on the human environment.

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

FHWA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13175, "Consultation and Coordination with Indian Tribal Governments" 65 FR 67249 (Nov. 9, 2000). This measure applies to States that receive Title 23, U.S.C. Federal-aid highway funds, and it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

#### **Executive Order 12898 (Environmental Justice)**

The E.O. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" 59 FR 7629 (Feb. 16, 1994), requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that this rule does not raise any environmental justice issues. The regulations would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations. The regulations establish procedures and requirements for agencies and others when acquiring, managing, and disposing of real property interests. The environmental justice principles, in the context of acquisition, management, and disposition of real property, should be considered during the planning and environmental review process for the particular proposal. FHWA will consider environmental justice when it makes a future funding or other approval decision on a project-level basis.

#### **Regulation Identifier Number (RIN)**

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 the spring and fall 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 under authority delegated in 49 CFR 1.81 and 1.85:

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

■ In consideration of the foregoing, FHWA revises 49 CFR part 24, to read 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 and electronic signatures.
- 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 limits and payments.

#### **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.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

#### **Subpart C—General Relocation Requirements**

Sec.

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

24.209 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

Sec.

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

#### Subpart E—Replacement Housing Payments

Sec.

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

#### Subpart F—Mobile Homes

Sec.

- 24.501 Applicability.
- 24.502 Replacement housing payment for a 90-day mobile homeowner displaced from mobile home.
- 24.503 Rental assistance payment for 90-day mobile home tenants and certain others.

#### Subpart G—Certification

Sec.

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

**Authority:** 42 U.S.C. 4601 *et seq.*; 49 CFR 1.85.

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

#### 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* 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* 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* 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* means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the U.S. Secretary of Homeland Security; and

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

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

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

(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, including fair housing, civil rights, and those 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 and the implications of accepting a different form of assistance than the assistance that the person may currently be receiving. If a person accepts assistance under a Government housing assistance program, the rules of that program 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 housing 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 unit with a housing project-based rental program subsidy (*e.g.*, tied to the unit or building) may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.

(C) An offer for tenant-based rental assistance, such as a HUD Section 8 Housing Choice Voucher, may be provided along with an offer of a comparable replacement dwelling to a person receiving a similar subsidy assistance or occupying a privately owned subsidized unit or public housing unit before displacement. The displacing agency must confirm that the owner will accept tenant based rental assistance before offering the unit as comparable replacement housing. (*see* appendix A to this part, section 24.2(a), definition of *comparable replacement dwelling*)

*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))

*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 the most stringent of the local housing code, Federal agency regulations or requirements, or the agency's regulations or written policy. 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 to 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* means:

(i) *Generally*. Except as provided in paragraph (ii) of this definition, any person who permanently 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 required to move or moves his or her personal property from the real property as a direct result of the project but is not required to relocate permanently. 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 to this part, section 24.2(a)). All benefits for persons required to move on a temporary basis are described in § 24.202(a).

(iii) *Voluntary acquisitions.* A tenant who moves as a direct result of a voluntary acquisition as described in § 24.101(b)(1) through (3) is eligible for relocation assistance when there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. Federal Funding agencies should develop policies identifying the types of agreements used in its programs or projects which it considers to be binding and which would therefore trigger eligibility for tenants as displaced persons. Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this paragraph (iii) until all conditions to the agency's obligation to purchase the real property have been satisfied. Provided that, the agency may determine that a tenant who moves before there is a binding agreement is eligible for relocation assistance once a binding agreement exists allowing

establishment of eligibility (*see* appendix A to this part, section 24.2(a)).

(iv) *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 Public Law 93-477, Appropriations for National Park System, or Public Law 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) Temporary, daily, or emergency shelter occupants are in most cases 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 to this part, section 24.2(a), definition of *displaced persons.*)

*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* means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (*See* appendix A to this part, section 24.2(a).)

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

*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 to 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, means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the term 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 term 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 term 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), the term 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) the tenant is not eligible for relocation assistance under this part, until there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. (See appendix A to this part, section 24.2(a).) Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this part unless such agreements satisfy the requirements of the Federal agency providing the Federal financial assistance or until all conditions to the agency's obligation to purchase the real property have been satisfied.

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

*Mobile home (manufactured home)*, when used in this part, includes manufactured homes and recreational vehicles used as residences. The term *manufactured home* is defined at 24 CFR part 3280 (see appendix A to this part, section 24.2(a)).

*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* 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* 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 or tenant's designated representative* means a representative designated by a property owner or tenant to receive all required notifications and documents from the agency. The owner or tenant must provide the agency a written notification which states that they are 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* means any individual, family, partnership, corporation, or association.

*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* 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.

*Reverse mortgage (also known as a Home Equity Conversion Mortgage (HECM))* means 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 for additional information. It is a class of lien generally available to persons 62 years of age or older. Reverse mortgages do not require a monthly mortgage payment and can also be used to access a home's equity. The reverse mortgage 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.

*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* means 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* means 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* 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)* means any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not 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 in most cases does not

meet the definition of dwelling as used in this part.

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

*Uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owners' property, and which the agency has determined has little or no value or utility to the owner.

*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* means 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* means expenses for electricity, gas, other heating and cooking fuels, water, and sewer.

*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* 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* 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. Waiver valuations are not appraisals as defined by the Uniform Act and this part.

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

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

#### § 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the agency to have the same purpose and effect as such payment under this part. (See appendix A to 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 4630 and 4655 of the Uniform Act. The agency's Uniform Act section 4655 assurances must contain specific reference to any State law which the agency believes provides an exception to sections 4651 or 4652 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 4630 and 4655 of the Uniform Act assurances in one document.

(2) If a Federal agency or recipient provides Federal financial assistance to a 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 agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603)

(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 and electronic signatures.

(a) Each notice that 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 a process to permit the displaced person to elect to receive required notices by electronic delivery 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. A Federal funding agency may approve a process to permit the use of electronic signature which meet the requirements of paragraph (e) of this section.

(b) An agency requesting use of electronic delivery of notices must include the following safeguards:

(1) A process to inform property owners and occupants they will continue to receive Notices as described in paragraph (a) of this section unless they 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 process 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 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 to this part, section 24.5.)

(d) A property owner or tenant may designate a representative to receive offers, correspondence, and information and to provide any information on their behalf required by the displacing agency by providing a written request to the agency (see § 24.2(a), definition of *owner's or tenant's designated representative*).

(e) An agency requesting use of electronic signature of documents must include the following safeguards:

(1) 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.

(2) A process 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.

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

#### **§ 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 ensure 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 1964 (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) The Fair Housing Act (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 (42 U.S.C. 4002 *et seq.*).

(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.

#### **§ 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 Uniform 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 prior calendar year. (See appendix A to 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 limits and payments.

(a) The Lead Agency may adjust the following valuation limits and maximum relocation benefits payments:

(1) The waiver valuation limits at § 24.102(c)(2)(ii) introductory text and (c)(2)(ii)(C);

(2) The conflict of interest valuation limits at § 24.102(n)(3); and

(3) The maximum amounts of relocation payments provided at

§§ 24.301, 24.304, 24.305, 24.401, 24.402, 24.502, and 24.503.

(b) The head of the Lead Agency will evaluate whether the cost of living, inflation, or other factors indicate that limits, and payments provided 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 (current year), by the CPI-U index for the year of the previous assessment (base year index/year of last adjustment) 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 benefit limits eligible for Federal participation in the **Federal Register**. (See appendix A to 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 to 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, and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (See § 24.2(a).)

(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 (3) of this section. The relocation assistance provisions in this part are not applicable to owner-occupants who move as a result of a voluntary acquisition. (See § 24.2(a), definition of *displaced person*.) The relocation assistance provisions in this part are applicable to tenants who must permanently relocate as a result of an acquisition described in paragraphs (b)(1) through (3) of this section. Such

tenants are considered displaced persons. (See § 24.2(a), definition of *displaced person*.)

(1) The agency will not use the power of eminent domain to acquire the property, and the following conditions are met:

(i) No later than the time of the offer the agency informs the owner of the property or the owner's designated representative in writing of the following:

(A) The agency will not acquire the property if negotiations fail to result in an amicable agreement; and

(B) The agency's estimate of fair market value for the property to be acquired. (See appendix A to this part, sections 24.101(b)(1)(i) and 24.101(b)(1)(i)(B).)

(ii) 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 to this part, section 24.101(b)(1)(ii).)

(iii) 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 must be acquired within specific time limits. (See appendix A to this part, section 24.101(b)(1)(iii).)

(2) 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.

(3) 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.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

**§ 24.102 Basic acquisition policies.**

(a) *Expeditious acquisition.* The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the agency shall notify the owner in writing of the agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See §§ 24.203 and 24.5(d) and appendix A to 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 has a low fair market value, and the anticipated value of the proposed acquisition is estimated at \$15,000 or less, based on a review of available data. The agency representative 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 valuation of the proposed acquisition is uncomplicated and has a low fair market value. (See appendix A to this part, section 24.102(c)(2).)

(A) When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation.

(1) Waiver valuations are not appraisals by definition in this part (See § 24.2). Persons 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," as promulgated by the Appraisal Standards Board of The Appraisal Foundation<sup>1</sup> (see appendix A to this part, sections 24.102(c) and 24.103(a).)

(2) Because a waiver valuation is not an appraisal, a review of a waiver valuation is not required. However, some recipients may also be subject to

State laws or agency requirements to review a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market in order to be qualified to perform the waiver valuation.

(C) The Federal agency funding the project may approve exceeding the \$15,000 threshold, up to an amount of \$35,000, 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 has a low fair market value, 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 for properties with estimated values of more than \$35,000 and up to \$50,000. Approval for using a waiver valuation of more than \$35,000, 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 the anticipated benefits of, and reasons for, raising the waiver valuation ceiling above \$35,000. Within 6 months of completion of acquisition activities a close-out report measuring cost/time benefits, condemnation rate, settlement rate, and any other relevant metric which the funding agency requires to adequately document both the administrative savings and accuracy and efficacy of the waiver valuations of more than \$35,000, but up to \$50,000 shall be submitted to the funding agency.

(E) Under paragraphs (c)(2)(ii)(C) and (D) of this section, 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 in paragraphs (c)(2)(ii)(A) through (D) of this section. (See appendix A to 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 to 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 to 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

<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.

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 to 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 to 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 to 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 reported opinion of value.

(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, waiver valuation preparer, 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 performed an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$15,000, or less. Agencies that wish to use this same authority to act as the negotiator on a valuation greater than \$15,000, and up to \$35,000, may not use a waiver valuation, and these acquisitions are subject to the following conditions:

(i) For those acquisitions where the appraiser or review appraiser will also act as the negotiator, an appraisal must be performed in compliance with § 24.103 and reviewed in compliance with § 24.104;

(ii) Agencies and recipients desiring to exercise this option must request approval in writing from the Federal funding agency;

(iii) 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; and

(4) Agencies wishing to allow subrecipients to use conflict of interest waivers of more than \$15,000 must determine and document that the subrecipient has a separate and distinct quality control process in place which is set forth in written procedures approved by the agency or in an agency approved subrecipient's written procedures. (See appendix A to this part, section 24.102(n).) Agencies and recipients desiring to exercise this

option must request approval in writing from the Federal funding agency.

#### § 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 performed according to this section, which is intended to be consistent with the USPAP. (See appendix A to this part, section 24.103(a).) The agency may have appraisal requirements that supplement this section, including, and 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 UASFLA is published by the Appraisal Foundation in partnership with the Department of Justice on behalf of the Interagency Land Acquisition Conference. The UASFLA is a compendium of Federal eminent domain appraisal law, both case and statute, regulations, and practices.<sup>1</sup> Copies of the USPAP and the UASFLA may be ordered from The Appraisal Foundation in print and electronic forms.<sup>2</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 performance 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 to this part, sections 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 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 to this part, section 24.103(a)(1).)

<sup>1</sup> [www.justice.gov/file/408306/download](http://www.justice.gov/file/408306/download).

<sup>2</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).

(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 use that is sufficient to support the appraiser's opinion of value. (See appendix A to 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 to 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 to 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 to this part, section 24.104) shall examine the presentation and analysis of market information in all appraisals to ensure that they meet the definition of appraisal found in § 24.2(a), appraisal requirements found in § 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 (see § 24.103(a)(1) and appendix A, section 24.104(a)). As needed, the review appraiser shall, prior to acceptance of an appraisal report, 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 to 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 to 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 to 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 owned by 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 permanently or temporarily displaced person, as defined at § 24.2(a). Any

person who qualifies as a permanently or temporarily 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 to this part, section 24.202.)

(a) *Persons required to move temporarily.* (1) Appropriate notices must be provided in accordance with § 24.203 and appropriate advisory services must be provided in accordance with § 24.205;

(2) For persons occupying a dwelling, at least one comparable 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) (see appendix A, to this part, section 24.202);

(3) Similarly, if a person's business will be shut down due to a project which either requires the occupant to vacate the property or which denies physical access to the property, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be permanently 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, associated with comparable replacement dwelling, and incidental to selecting a temporary comparable replacement dwelling. Such payments may include the reasonable and necessary costs of temporarily moving personal property from the real property and returning to the real property. Storage of the personal property may be allowed when approved by the displacing agency;

(5) A person's temporary move from their dwelling or business for the project may not exceed 12 months. The agency must contact any person who has temporarily moved from their dwelling or business when that temporary move has lasted for a period beyond 12 months because that person is considered permanently displaced and eligible as a displaced person. The agency shall offer such eligible persons all required relocation assistance benefits and services for permanently displaced persons. An agency may not deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility; and

(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(h).

(b) [Reserved]

#### **§ 24.203 Relocation notices.**

(a) *General information notice.* As soon as feasible, a person who may be displaced or who may be required to move temporarily 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 (or, if appropriate, required to move temporarily from his or her unit) 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 (or person required to move temporarily from his or her unit, if appropriate) 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 (or person required to move temporarily from his or her dwelling when required by the Federal funding agency) 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, either permanently or temporarily (when required by the Federal funding agency), that he or she cannot be required to move unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced person or person required to move temporarily that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments under this part, 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 to the displaced person (or persons required to move temporarily) their 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)); the date that an agreement for



voluntary acquisition becomes binding (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 persons required to temporarily move, 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 to the activity. (See § 24.2(a).)

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

(a) *General*. No person to be permanently displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(a)) has been made available to the person. Information on comparable replacement dwellings that were used in the determination process must be provided

to permanently 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 or lease agreement 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 requirement 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 move 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 who is required to move from their dwelling is 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 emergency move; 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 their dwelling due to the emergency.)

**§ 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 permanently or temporarily 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 or temporarily moving the businesses should be considered and addressed. Planning for permanently and temporarily 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 4635 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.*, *as amended.*), 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 or, when determined to be necessary by the funding agency, temporarily 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)(13) 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, or temporarily displaced when the funding agency determines it to be necessary, 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 and, when the funding agency determines it to be necessary, each temporarily 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 to this part, section 24.205(c)(2)(ii)(C).)

(D) Whenever possible, minority persons, including those temporarily displaced, 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 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 to 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 Federal, 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 to 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 or person required to move temporarily 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 or temporary move.

(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 person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this part. (See appendix A to 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 person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a 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) through (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 to 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 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 to 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 or person required to move temporarily 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.C.), 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.C. 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 homeowner-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 for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(iii) *A moving cost estimate.* Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of

materials should equal those readily available locally.

(iv) *Commercial mover estimate.* Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

(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 for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(iii) *A moving cost estimate.* Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved, and documented estimated costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost

of materials should equal those readily available locally.

(iv) *Commercial mover estimate.* Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

(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.

(iii) A qualified agency staff person may develop a move cost finding by estimating and determining the cost of a small uncomplicated nonresidential personal property move of \$5,000 or less, with the written consent of the person. This estimate may include only the cost of moving personal property which does not require disconnect and reconnect and/or specialty moving services necessary for activities including crating, lifting, transportation, and setting of the item in place.

(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 to 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) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person or person required to move temporarily under this part. Agencies may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. Storage may not be longer than 12 months, starting at the date of vacation from the acquired site and ending when the replacement site becomes available. Agencies may approve storage for more than 12 months in unusual instances as justified, documented, and approved by the agency.

(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) A displaced tenant is entitled to reasonable reimbursement, as

determined by the agency, for actual expenses not to exceed \$1,000, incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

(8) 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.

(9) 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.

(10) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(11) 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 or temporarily moved from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

(12) Any actual, reasonable, or necessary costs of a license, permit, fee, or certification required of the displaced person to operate a business, farm, or nonprofit at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees, or certification.

(13) 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.

(14) Relettering signs, replacing stationery on hand at the time of displacement or temporary move, and making reasonable and necessary updates to other media that are made obsolete as a result of the move. (See appendix A to this part, section 24.301(g)(14).)

(15) 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 the item up to 50 miles and reinstall; or

(B) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal

property, unless the agency determines that such effort is not necessary.

(ii) If the item is not currently in use: The estimated cost of moving the item 50 miles, as is.

(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)(15).)

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

(17) 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.

(18) 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 \$1,000 for search expenses with minimal or no documentation as an alternative payment method to paragraph (g)(18)(i) of this section. (See appendix A to this part, section 24.301(g)(18).)

(19) 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)(19) 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.* The following is a nonexclusive listing of payments a displaced person is not entitled to:

(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 temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney's fees;

(10) Physical changes to the real property at the temporary or 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 or person to be moved temporarily;

(12) Refundable security and utility deposits; and

(13) Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

(i) *Notification and inspection (nonresidential).* The agency shall inform the displaced person and persons required to move temporarily, 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

person as set forth in § 24.203. To be eligible for payments under this section the 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 FHWA 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. In addition, an agency may approve storage for a displaced person's personal property for a period of up to 12 months as a reasonable, actual and necessary moving expense under § 24.301(g)(4).

(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 a fixed cost moving payment made under this section, 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, 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, if applicable, represent a full reimbursement of their eligibility for moving costs under this part. (See appendix A to this part, section 24.302.)

(b) [Reserved]

(c) The Fixed Residential Moving Cost Schedule is available at the following URL: [www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/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 to 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 to 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 to 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 \$33,200, 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 construct, reconstruct or rehabilitate an existing building. (See appendix A to 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 \$53,200. 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 \$53,200. 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 \$53,200, 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 to 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 to 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 to 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 requirement 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 to 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 \$41,200 (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) or (e) of this section, as applicable; 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));

(iii) The current fair market value for residential use of the replacement dwelling site (*see* appendix A to 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. Except as otherwise provided in paragraph (e) 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 to 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) *Reverse mortgages.* The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage 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 reverse mortgages 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 required under paragraph (d) of this section, which payment shall be contingent upon a new reverse mortgage being purchased for the replacement dwelling.

(1) The payment shall be based on the difference between the reverse mortgage balance and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the displacement dwelling; however, in the event the displaced person obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (*See* appendix A to this part, section 24.401(e).) The reverse

mortgage balance shall be that balance which existed 180 days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.

(2) The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages 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 reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.

(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 reverse mortgage 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 reverse mortgage 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 determines 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 \$9,570 does not apply, and is 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. Payments allowed under § 24.402(c) are not applicable.

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

(a) *Eligibility.* A tenant or homeowner displaced from a dwelling is entitled to a payment not to exceed \$9,570 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 under paragraph (a) of this section who rents a replacement dwelling is entitled to a payment not to exceed \$9,570 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);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development (HUD) in its most recently published Uniform Relocation Act Income Limits ("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

(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.

Note 1 to paragraph (b)(2): The Survey's income limits are updated annually and are available on FHWA's website at [https://www.fhwa.dot.gov/real\\_estate/low\\_income\\_calculations/index.cfm](https://www.fhwa.dot.gov/real_estate/low_income_calculations/index.cfm).

(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 under paragraph (a) of this section 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 \$9,570 may be increased to any amount not to exceed \$9,570. However, the payment to a displaced person shall not exceed the amount the homeowner 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 \$9,570 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 to this part, section 24.402(c) for payments to less than 90-day occupants and for a discussion of those who fail to meet the 90-day occupancy requirements.)

(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 to 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 contributory value of such attribute as determined by the agency shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. (See appendix A to this part, section 24.403(a)(2).)

(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 to 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) When there are multiple occupants of one displacement dwelling and 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) For mixed-use and multifamily properties, if the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a 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 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 in § 24.2(a), 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 to 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 housing.

(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 (11).

(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 and/or from the acquired mobile home site.

(a) *Eligibility.* An owner-occupant displaced from a mobile home is entitled to a replacement housing payment, not to exceed \$41,200, 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 homeowner.

(2) If the agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner 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 homeowner-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 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$9,570, 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 Federal or local law does not mandate adherence to standards requiring the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, 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 comparable dwellings 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 comparability for 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. Requirements include but are not limited to Fair Housing Act (FHA), 42 U.S.C. 3604 (f)(3)(A)–(C), and/or HUD's regulations for newly constructed assisted housing under section 504, 24 CFR 8.22.

*Section 24.2(a) Displaced person—Occupants of a temporary, daily, or emergency shelter, (iii)(L).* 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 may be considered displaced. These determinations are fact-based determinations. Facts that might assist in the determination include whether the person is employed because they work to pay their rent or there may be a residential landlord-tenant relationship. The FHWA expects it would be unusual to displace a shelter occupant who meets the criteria for making a determination that he or she is a displaced person. Agencies should make reasonable effort to provide information about proposed vacation date or other plans for the shelter to relocate. Providing advisory assistance to shelter occupants may be a challenge due to the transient nature of shelter occupancy, but such assistance must be provided to the maximum extent practicable.

*Section 24.2(a) Dwelling site.* This definition ensures that the computations 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) 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 FHWA, 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 Public Law 96–510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, FHWA has 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, 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. 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 provide these notifications and document its efforts in writing. As used in this definition, agreements such as options to purchase and conditional purchase and sale agreements are not considered binding agreements until all conditions to the agency's obligation to purchase the real property have been satisfied. A right to purchase property is not binding agreement because it does not require the State to purchase the property necessary for the project unless they elect to do so. A binding agreement as used in this definition 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.

Applications for many Federal programs permit site control to be demonstrated by option contracts. Once the application for Federal financial assistance is approved, the acquiring agency must execute the purchase contract to receive the Federal financial assistance for the program or project.

Therefore, if the purchase agreement satisfies the site control requirements of the Federal agency providing the Federal financial assistance, then the application date is the date of the initiation of negotiations for that program or project. Setting the initiation of negotiations at the earlier of the date of application or when all conditions to the obligation to purchase the real property have been satisfied, ensures that residents of a project are treated fairly, given that application approval and the ultimate sale of the property could be as long as six months to a year after the application date taking into account the application review and processing periods.

A binding agreement as used in this section 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.* In this part, the term “mobile home” will continue to be used to include those homes that are defined at 24 CFR part 3280 as a “manufactured home.”

Regulations at 24 CFR 3280.2 defines “manufactured home.” The term “mobile home” was changed to “manufactured home” in 24 CFR part 3280 in 1979.

The following examples provide additional guidance on the types of mobile homes that can be found acceptable as 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.)

*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 and Electronic Signatures.* Property owners or occupants must voluntarily elect to receive notices, offers, correspondence and information via electronic methods. Alternatively, property owners or occupants may request delivery of notices, offers, correspondence and information 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,

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

offers, correspondence and information by either first-class mail or electronic means should not 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.

An agency must be able to demonstrate to the Federal funding agency the ability to securely document the notice delivery and receipt confirmation in order to receive approval from the Federal funding agency for use of electronic delivery of notices, offers, correspondence, information, and electronic signature. Additional minimum safeguards that the agency must put in place prior to delivering notices, offers, correspondence, and information by electronic means and for the use of electronic signatures are included in the regulation at § 24.5. Prior to the use of electronic delivery or electronic signature, there must be an agency process or procedure outlined in writing and approved by the Federal funding agency that details the requirements and rules the agency will follow when using electronic means for delivery of notices, offers, correspondence, and information. Should an agency decide to allow electronic signature the agency must develop procedures to ensure that signatures can be verified and documented appropriately. The FHWA understands that certain documents that are essential to the conveyance of the real property interests may not allow for electronic signature(s).

Agencies must determine and document instances when electronic deliveries of notices or use of electronic signature are appropriate. An example of an appropriate use of electronic delivery of notices, offers, correspondence, and information might be to notify a property owner of his or her right to accompany an appraiser as required at § 24.102(c)(1). 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 or electronic signatures may not be appropriate is when the document being signed requires notarization or other similar verification. Electronic delivery of notices, offers, correspondence, and information 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. The FHWA notes that relocation assistance in part requires ongoing and continuous advisory services be provided (§ 24.205(c)). This may be best accomplished by face to face meetings during which the displaced person may more easily raise questions, request assistance, or indicate a need for additional advisory assistance.

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

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.

Agencies are not required by the Uniform Act to keep records of their efforts to improve the housing conditions of economically disadvantaged persons. However, agencies must ensure that their relocations are carried out in a manner which is consistent with the requirements of section 4621 of the Uniform Act.

*Section 24.11 Adjustment of Limits and Payments.* 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 was 110.0 when the final rule was published. The fixed payment for nonresidential moving expenses has a ceiling of \$53,200. During a subsequent evaluation after publication of the final rule, 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 nonresidential moving expenses ceiling should be increased 5 percent.

Calculate fixed payment benefit ceiling =  $\$53,200 \times 1.05 = \$55,860$ .

#### 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.

*Section 24.101(b)(1)(i)(B).* This section provides that, for programs and projects receiving Federal financial assistance described in § 24.101(b)(1), 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.

*Section 24.101(b)(1)(i)(B).* While this part does not require an appraisal or waiver valuation for these transactions, agencies may still decide that an appraisal or waiver valuation 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 sufficient knowledge of the local market (§ 24.102(c)(2)(ii)(B)) in order to establish 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 determinations. 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 ensure that estimates of fair market value are documented and shared with the property owner during negotiations, and 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.

There may be an extraordinary circumstance in which use of eminent domain may be necessary. In those instances, the Federal funding agency may consider granting a waiver of regulations in this part under authority of § 24.7. The Federal funding agency will make a fact based, case by case determination as to whether a waiver of this part's requirements may be allowed.

*Section 24.101(b)(1)(ii).* 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)(ii) and (iii)—nexus.* The funding agency should review the acquisition records and consider the relevant facts for the properties acquired to determine if the intent of the acquisition was to incorporate the real property into, or in some other way support or otherwise advance, a Federal or federally assisted program or project. If the property was acquired by other means (e.g., local government acquisition via tax delinquency or exaction), documentation may be provided to show that the property was not acquired with the intent of including it in a Federal or federally assisted program or project. However, if at the time of acquisition, there is a nexus between the property's acquisition and a Federal or federally assisted program or project and if the intent was to acquire the property for a

Federal or federally assisted program or project, the Uniform Act requirements must be followed to maintain Federal eligibility. If the agency is certain that eminent domain authority will not be used for the intended project or program, then the limited requirements of voluntary acquisition would apply. The agency must also consider that acquiring the property and applying only the voluntary acquisition requirements would in most cases preclude the agency from later using eminent domain authority to acquire the property should voluntary acquisitions not result in an agreement to sell the property to the agency. (See also discussion in 24.101(b)(1)(i)(B) of this appendix.)

*Section 24.101(b)(1)(iii) Private entities who acquire property to create wetlands.* Private entities who acquire property to create wetlands for wetland banking purposes cannot be required to comply with the Uniform Act if there is no planned or anticipated use by a Federal or federally assisted program or project. Establishment of such wetland banks, which may include a Federal or federally funded project or program among its future users, do not necessarily trigger application of the Uniform Act requirements.

There is not one answer that fits all third-party (private entities) environment mitigation scenarios. These determinations are fact-based by nature. However, the key issue is whether the acquisition of property for wetlands is specifically for mitigation of impacts on Federal or federally assisted programs or projects. When making a fact-based determination, the purpose of the wetland bank, the existence of any agency funding for the bank or commitment to use the bank, and whether the wetland bank restricts who may purchase mitigation credits from it, are among the factors to consider in determining applicability of Uniform Act requirements.

If an agency provides Federal financial assistance for creating a wetland bank or has a prior agreement that the banked wetlands will be used to mitigate impacts on a specific Federal or federally assisted programs or projects, then the property acquisitions for the wetland bank must conform to Uniform Act requirements. If an agency contracts with a private third-party provider which does not use the power of eminent domain, the acquisition may qualify for treatment as a voluntary acquisition and only the limited requirements as set forth in § 24.101(b)(1) would apply.

If the wetland bank proposal has received necessary permits and was established without any Federal funding participation prior to use of Federal funds for acquisition of wetland mitigation credits and was not planned to be used only for mitigation of impacts due to Federal and federally assisted projects and programs, the Uniform Act requirements do not apply. The actions which the wetland bank developer took in carrying out their private activity can be viewed with regard to the Uniform Act in the same manner as other actions taken by private parties without the anticipated or actual benefit of Federal financial assistance.

*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 condominium 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 valuation problems within the low fair market value limits established in this part. In most cases, uncomplicated valuation problems 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 representative 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 and within the low fair market value limits in this part.

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) (see § 24.102(d)).

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 or waiver valuation of the fair market value of the property 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 requires 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 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 § 24.102(f), and the agencies adhere to the Uniform Act ban on coercive action Section 4651(7) of the Uniform Act and § 24.102(h).

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, shall not be unduly influenced or coerced to adjust an estimate of value for the purpose of justifying such settlements (see § 24.102(n)(2)). Such actions are contrary to the requirements of this part and to the overarching goal of providing just compensation.

*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 4651(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, waiver valuation preparer, 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 waiver valuation independence and to prevent inappropriate influence. It is not intended to prevent agencies or recipients from providing appraiser and/or waiver valuers with appropriate project information or participating in determining the scope of work for the appraisal or waiver 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 perform a waiver valuation or appraisal and negotiate that acquisition, if the waiver valuation or appraisal estimate amount is \$15,000 or less. Agencies or recipients are not required to use those who perform a waiver valuation or appraisal of \$15,000 or less to negotiate the acquisition. All appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$15,000, or less.

The third provision has been expanded to allow Federal funding agencies to permit use of a single agent for values of more than \$15,000, but less than \$35,000, but, as a safeguard, requires that an appraisal and appraisal review be done if the waiver valuation preparer or the appraiser will also act as the negotiator. Agencies or recipients 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 for implementing this authority in place and set forth in the written procedures approved by the Federal funding agency. Agencies and recipients may delegate this authority to 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.

*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 Rules 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 Office of Management and Budget (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 within 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 the requirements in this part 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 additional skills. The review appraiser should possess both appraisal technical abilities and the ability to comprehend and communicate to the appraiser the agency’s real property valuation needs, while recognizing and respecting the professional standards to which an appraiser is required to adhere.

Agency review appraisers typically perform a role in land acquisition project management in addition to technical appraisal review. They are often involved in early project development by assisting the agency with project cost estimates for alternative project scenarios, identifying particularly complicated valuation problems that may need additional valuation specialties. In addition, they often provide the acquiring agency preliminary determinations about valuation problems, scope of work considerations, and types of appraisal reports necessary to complete a project. 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 performance 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 performing and reporting 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 performs their review assignment and reports an independent value different from the conclusions in the appraisal being reviewed, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for Uniform Act section 4651(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 create a review report that documents the reviewer's determination 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. See § 24.102(d).

At the agency's discretion, for a low value property requiring only a simple appraisal solution, 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(a).* *Expenses incidental to transfer of title to the agency.* Generally, the

agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

#### **Subpart C—General Relocation Requirements**

*Section 24.202 Applicability and Section 24.205(c) Relocation Advisory 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 24.205(c) and 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 or other federally subsidized housing. In each of these examples, the nature of the relocation means that the unique needs of the relocated person should be determined early and that the relocation agent should 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).* Where feasible, comparable replacement housing must be inspected. The comparable replacement dwellings should be inspected by a walk through and physical interior and exterior inspection before being offered to a displaced person. 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 displaced person must be informed in writing that an inspection was not possible and be provided an explanation of why the inspection was not possible. They also must

be informed in writing that if the uninspected comparable is selected as a replacement dwelling a replacement housing payment may not be made until the replacement dwelling is inspected and determined to be decent, safe, and sanitary. Should the selected comparable later be found to not be DSS then the agency's policies and procedures must ensure that the requirements of § 24.2(a), definition of *decent, safe and sanitary dwelling*, are met. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure comparable housing is made available to the displaced person can be met.

Each agency should clearly inform displaced persons that a DSS inspection as required by this part is only a brief inspection to ensure that certain requirements as they relate to the definition of DSS in this part are being met. These DSS inspections are not the same as a full home inspection similar to that which a home inspector would be hired to do.

Agencies may develop more restrictive DSS inspection requirements which may include required DSS inspections for selected comparable dwellings, all comparable dwellings used to establish a displaced persons replacement housing payment eligibility, or other more stringent DSS inspection requirements for comparable dwellings.

*Section 24.205(c)(2)(ii)(D)* This section 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 to improve their housing condition when they relocate.

The focus on those displaced from areas of minority concentration in this section has been consistently applied for almost 40 years. The FHWA believes that where practical and feasible, agencies carrying out relocations should provide those who live in areas of minority concentration opportunities to improve their living situations.

To the extent practical, agencies should maintain adequate written documentation of efforts made to locate such comparable replacement housing.

*Section 24.206 Eviction for cause.* An eviction necessitated by project related non-compliance (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) does 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 person waive his or her rights or entitlements to relocation assistance and payments, an agency may accept a written statement from the 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.**

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.

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 unless use of the two permitted methods discussed in this section would create an exceptional and extremely unusual hardship (consistent with Pub. L. 105-117; codified at 42 U.S.C. 4605). Following such a calculation would require that the agency disregard 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 \$1,200/month

Housing requirements for all lawful occupants (six) is a 3 BR unit  
Comparable dwelling  
3 BR unit with rent/utilities of \$1,300/month  
Calculation of RHP under § 24.208(c) (alien not lawfully present excluded)  
\$1,300 (comparable) – \$1,200 (displacement unit) = \$100 RHP × 42 months = \$4,200 RHP

**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—Payments 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, farm, nonprofit or residence will not be acquired and the business 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/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](http://www.fhwa.dot.gov/real_estate/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) Modifications to personal property or to utilities.** Construction costs for a new building at the business replacement site, costs to substantially reconstruct a building, or rehabilitate a building are generally ineligible for reimbursement as are expenses for disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property.

**Section 24.301(g)(14) Relettering signs and replacing stationery.** This may include changes to the content of other media that need correcting due to the displacement, 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 when these costs are actual, reasonable, and necessary.

**Section 24.301(g)(15)(i)** This section only applies when equipment is not being moved to replacement site and therefore it becomes an actual loss of tangible personal property. Under § 24.301(g)(15)(i), 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)(15)(i)(B)) and moving cost estimate 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 (§ 24.301(g)(15)(ii)). 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 appraisers. Another example of available resources can be found on the website of The American Society of Appraisers, a multi-discipline, nonprofit, international organization of professional appraisers. They maintain a separate web page 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 appraiser's 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.

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

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

The information provided in this appendix is strictly informational.

**Section 24.301(g)(18) 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. Expenses negotiating the purchase of a replacement business site are 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 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 \$1,000 with minimal 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 procedures 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 as a result of the displacement.

**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 levied for anticipated heavy utility usage to utilities, e.g., water, sewer, gas, and electric. Impact fees and one time assessments that may be levied on a nonresidential 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, reconstructing, or rehabilitating a replacement structure, is a capital expenditure, normally beyond the scope of § 24.304(a)(2) and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction, reconstruction, or rehabilitation of a replacement structure, an agency or recipient may request a waiver of § 24.304(b)(5) 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 rehabilitation of 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 rehabilitation of a replacement structure will be considered an eligible reestablishment expense subject to the regulatory 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 referred to as shells. The cost of constructing, reconstructing, or rehabilitating a shell is not an eligible reestablishment expense because the shell is considered a capital real estate improvement (a capital asset). However, this determination does not preclude the consideration by an agency of certain modifications to an existing replacement business building as reestablishment costs if the agency applies a waiver under § 24.7.

A certain degree of construction costs are generally expected by the market because shells are designed to be customized by the tenant. An agency using a waiver may determine costs for these types of improvements or modifications are eligible for reimbursement, up to the amount of \$33,200. Such costs 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. By contrast, a structure or shell which is dilapidated or is in disrepair and which requires construction, reconstruction, or rehabilitation would not be eligible for reimbursement under this part.

**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 × 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 (49 CFR 24.305(a)).

*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 23 CFR part 645, subpart A, 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 [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/midpcalcs/](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcalcs/).

*Section 24.401(e) Reverse Mortgage.* The provision in § 24.401(e) sets forth the factors to be considered to estimating an amount, after paying off the existing balance,

sufficient to purchase a replacement reverse mortgage 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 reverse mortgage, remaining equity, and price of the selected comparable or actual replacement dwelling, to compute the estimated reverse mortgage supplement payment for a replacement reverse mortgage. 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 reverse mortgage broker.

Below are four scenarios for relocation payment eligibilities. As you will note, the eligibility is the same in each case; however, benefit amounts will vary depending on the

individual’s circumstance and existing reverse mortgage 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 reverse mortgage.

Situation 1—Owner has sufficient remaining equity to obtain a replacement reverse mortgage for purchase.

Situation 2—Owner’s existing reverse mortgage has a tenure disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

Situation 3—Owner’s existing reverse mortgage has a term disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

Situation 4—Owner’s existing reverse mortgage is a line of credit and there is not

sufficient remaining equity to obtain a replacement reverse mortgage.

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 reverse mortgage.

Incidental costs incurred with a replacement reverse mortgage 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 reverse mortgage.

The payment would be based on the difference between the displacement adjustable-rate mortgage (ARM) cap rate at the initiation of negotiations 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 reverse mortgages 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, the owner will pay off the balance of the reverse mortgage 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 reverse mortgage 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 reverse mortgage with a reverse mortgage with terms and equity similar to the displacement reverse mortgage.

*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 reverse mortgage 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 classified as having “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: [https://www.fhwa.dot.gov/real\\_estate/policy\\_guidance/low\\_income\\_calculations/index.cfm](https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm)); (3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA),\* or Primary Metropolitan Statistical Area (PMSA)\* in which the displacement property is located; and (4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (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:  
\$35,000 + 12,000 + \$18,000 = \$65,000

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a five person household is: \$77,950. (2022 Income Limits)

This household is considered “low income.”

\* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item “Income Limit Area Definition” posted on the FHWA’s website at: [https://www.fhwa.dot.gov/real\\_estate/](https://www.fhwa.dot.gov/real_estate/).

*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 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 \$9,570 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 or requirement that affords equal treatment for displaced persons in like circumstances and this or requirement should be applied uniformly throughout the agency’s programs or projects.

For the purpose of this section, a displaced homeowner who elects to rent a replacement dwelling may not receive more than the eligibility the homeowner would have received as an eligible displaced homeowner purchasing a home.

Section 24.404(c)(3) requires the agency to provide assistance to a displaced owner or tenant occupant who fails to meet the 90-day requirement for length of occupancy of the displacement dwelling, prior to the initiation of negotiations, which is required for eligibility to receive a replacement housing payment under §§ 24.401 and 24.402.

*Section 24.403(a)(1) Determining cost of comparable replacement dwelling.* The requirement that if available at least 3 comparable dwellings should be considered when selecting a comparable dwelling when determining and calculating a replacement housing payment eligibility. Consideration, examination, or the viewing of an MLS listing does not equate to the inspection of the comparable dwelling required by § 24.205(c)(2)(ii)(C), which requires that at a minimum, the comparable dwelling should be physically inspected. When an inspection is not feasible, the displaced person must 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. Should the selected comparable dwelling later be found to not be DSS then the agency’s policies and procedures must ensure that the requirements of § 24.2(a), definition of *decent, safe and sanitary dwelling*, are met. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure comparable housing is made available to the displaced person can be met.

Some Federal funding agency requirements, such as those of the Department of Housing and Urban Development, prohibit reliance on an exterior visual inspection when selecting a comparable replacement dwelling or as part of determining the cost of comparable replacement dwellings. This is because the physical condition standards for such governmental housing assistance programs could not be met without an in-person physical inspection.

*Section 24.403(a)(2) Carve Out of a Major Exterior Attribute.* When determining the cost of a replacement dwelling, this section requires that the contributory value of a major exterior attribute, as determined in the real property valuation, be subtracted from the acquisition price of the displacement dwelling for purposes of computing the replacement housing payment if the comparable replacement dwelling lacks the major exterior attribute. The adjustment to the value of the displacement dwelling for the purpose of computing a replacement housing payment eligibility when a major

exterior attribute is not available in the comparable replacement housing on the open market is often referred to as a “carve out.” Examples of such major exterior attributes may include land in excess of that typical in size for the neighborhood, a swimming pool, shed, or garage. Use of a carve out allows agencies to ensure comparable dwellings are available to the displaced person. The displaced person has received just compensation for the carved out attribute and may decide to use that compensation to replace the attribute. However, it should be noted that some carved out attributes, acreage

as one example, cannot always be replaced in the immediate market and a displaced person may then have to decide whether they want to expand their search area and reconsider their desired replacement home location. The following are examples of the calculation process.

*(Example A)*

*RHP Computation for Carve Out of a Major Exterior Attribute of a Displacement Property’s Land in Excess of a Typical Lot:*

<i>Value of residential displacement real property on a larger lot than typical site for the neighborhood .....</i>	<i>\$200,000</i>
<i>Minus the value of displacement property’s land in excess of a typical site &amp; not in comparable housing .....</i>	<i>15,000</i>
<i>Adjusted value of the displacement real property less carve out of the excess land .....</i>	<i>185,000</i>
<i>List Price of the Selected Comparable Housing .....</i>	<i>210,000</i>
<i>Minus the adjusted value of the displacement real property resulting from carve out of the excess land .....</i>	<i>185,000</i>
<i>Replacement Housing Payment Price Differential Payment Eligibility .....</i>	<i>25,000</i>

*(Example B)*

*RHP Computation for Carve Out of a Major Exterior Attribute of Displacement Property’s Inground Swimming Pool:*

<i>Value of residential displacement real property with an inground swimming pool .....</i>	<i>\$250,000</i>
<i>Minus the contributory value of displacement property’s inground swimming pool not in the comparable .....</i>	<i>14,000</i>
<i>Adjusted value of the displacement real property less carve out of the inground swimming pool .....</i>	<i>236,000</i>
<i>List Price of the Selected Comparable Housing .....</i>	<i>245,000</i>
<i>Minus the adjusted value of the displacement real property less the inground swimming pool carve out .....</i>	<i>236,000</i>
<i>Replacement Housing Payment Price Differential Payment Eligibility .....</i>	<i>11,000</i>

*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 of this section shows the effect that a property owner’s decision to retain a remainder or a State’s inability to, or election not 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 following examples, 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 \$165,000, the 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 Eligibility .....	20,000

**(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 Eligibility .....	35,000

*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 Federal 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 is 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).

**BILLING CODE 4910-22-P**



FEDERAL FISCAL YEAR ENDING SEPT. 30, 20 \_\_\_\_\_

REPORTING AGENCY: \_\_\_\_\_

STATE: \_\_\_\_\_

CITY/COUNTY (For Local Government Agencies): \_\_\_\_\_

FEDERAL FUNDING AGENCY: \_\_\_\_\_

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