

RIGHT-OF-WAY MANUAL CHAP 4 SECT 2 – GENERAL RELOCATION REQUIREMENTS

7. A person who, after receiving a notice of relocation eligibility (described at Sec. 24.203(b)) is notified in writing that he 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;
8. An owner-occupant who conveys his property, as described in Sec. 24.101(a)(2) or 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;
9. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;
10. An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93-477, Appropriations for National Park System, or Pub. L. 93-303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;
11. 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 Sec. 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;
12. 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 Sec. 24.208; or
13. Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided under the American Dream Down Payment Initiative (ADDI) authorized by section 102 of the American Dream Down Payment Act (Pub. L. 108-186; codified at 42 U.S.C. 12821).

- E. Initiation of Negotiations of the Parcel. The term “initiation of negotiations” for a parcel means the date the acquiring agency makes the first personal contact with the owner of the property to be acquired or his designated representative where price is discussed.
- F. Displacee. Any person who meets the definition of a displaced person.
- G. Dwelling.⁴ Any single-family house, a single family unit in a multi-family, two family purpose property, a unit of a condominium or cooperative housing project a non-housekeeping unit, a mobile home, or any other residential unit.
- H. Comparable Replacement Dwelling.⁵ A comparable replacement dwelling is one which is:
1. Decent, safe and sanitary⁶

The term decent, safe, and sanitary dwelling means a dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

- a. Be structurally sound, weather tight, and in good repair;
- b. Contain a safe electrical wiring system adequate for lighting and other devices;
- c. 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;

⁴ 49 CFR 24.2 (10)

⁵ 49 CFR 24.2 (6)

⁶ 49 CFR 24.2 (a) (8)

- d. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies;
- e. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;
- f. Contains unobstructed egress to safe, open space at ground level; and
- g. 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, Sec. 24.2(a) (8) (vii).)

2. Functionally equivalent to the displacement dwelling⁷ (means it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living) and substantially the same as (but need not possess every feature of the displacement dwelling and reasonable trade-offs for specific features may be considered when the replacement unit is “equal to or better than”) the acquired dwelling with respect to:
 - a. Number of Rooms;
 - b. Adequate Area of Living Space;
 - c. Type of Construction;
 - d. Age;
 - e. State of Repair;
 - f. Typical in Size;
 - g. Agency may consider reasonable trade-offs for specific features;
 - h. Not subject to unreasonable adverse environmental conditions;
 - i. Location not less desirable than the location of the displaced person’s dwelling with respect to public utilities, reasonable access to employment and commerce facilities;
 - j. Currently available.
3. Fair housing is open to all persons regardless of race, color, religion, gender, or national origin and consistent with the requirements of applicable law.
4. Located in an area not subject to adverse environmental conditions.
5. Located in an area not generally less desirable than the dwelling to be acquired in regard to:
 - a. Public utilities;
 - b. Public and commercial facilities;
 - c. Reasonably accessible to the displacee’s place of employment.
6. Adequate to accommodate the displacee.
7. Located in an equal or better neighborhood on a site that is typical in size for residential development with normal improvements, including customary landscaping. The site need not include special improvements like swimming pools or greenhouses or natural site features of the property to be acquired like views, ponds, streams or ocean and beach frontage.

⁷ 49 CFR 24.2 (6) (ii)

8. Currently available on the market to the displaced person.
9. Within the financial means of the displaced family or individual.
- I. Business.⁸ Any lawful activity, excepting a farm operation, conducted primarily:
 1. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities or any other personal property.
 2. For the sale of services to the public.
 3. By a nonprofit organization.
 4. Solely for the purpose of moving and related expenses under Part 8, Chapter 4, Section 3, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, or personal property.
- J. Nonprofit Organization.⁹ A corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institutional activity on the premises under applicable laws of the State as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the IRS code.
- K. Farm Operation.¹⁰ 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.

The farm operation contributes at least one-third of the operator's income. However, in instances where such operations are obviously a farm operation, it need not be eligible for relocation payments.

⁸ 49 CFR 24.2 (4)

⁹ 49 CFR 24.2 (19)

¹⁰ 49 CFR 24.2 (12)

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- L. Federal Agency. Any department, agency or instrumentality in the Executive Branch of the Government any wholly owned Government Corporation and 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.
- M. State.¹¹ Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands or any political subdivision under these jurisdictions.
- N. State Agency. Any department, agency, or instrumentality of a state, or of a political subdivision of a state, or any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state(s) and any person who has the authority to acquire property by eminent domain under State Law.
- O. Lead Agency.¹² The Department of Transportation acting through the Federal Highways Administration.
- P. Federal Financial Assistance.¹³ A grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.
- Q. Mortgage.¹⁴ Such classes of liens as are commonly given to secure advances on, or the unpaid purchase 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.
- R. Owner of a Dwelling ¹⁵
 - 1. Owning, legally or equitable, the fee simple estate, a life estate, land contract (agreements of sales), 99 year lease, lease with option to extend that is more than 50 years at the time of taking or other proprietary interest in the property.

¹¹ 49 CFR 24.2 (25)

¹² 49 CFR 24.2 (16)

¹³ 49 CFR 24.2 (13)

¹⁴ 49 CFR 24.2 (18)

¹⁵ 49 CFR 24.2 (20)

2. The contract purchaser of any of the foregoing estates or interest or estates described in this Section.
3. Who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law. For the purpose of this procedure in the event of acquisition of ownership by any of the foregoing methods in this paragraph, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.
4. Any other interest, including a partial interest which in the judgment of the agency warrants consideration as ownership.

Written Notices:

The following written notices shall be furnished to each displaced person so he is fully informed of the benefits and services available to him:

Relocation Notices¹⁶

- A. General Information Notice. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:
 1. Informs the person that he may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
 2. Informs the displaced person that he will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;
 3. Informs the displaced person that he will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;

¹⁶ 49 CFR 24.203

4. Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in §24.208(h); and
5. Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

B. Notice of Relocation Eligibility. Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in §24.203(d)), the initiation of negotiations (defined in §24.2(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

C. 90-Day Notice

1. General. No lawful occupant shall be required to move unless he has received at least 90 days advance written notice of the earliest date by which he may be required to move.
 - a. Timing of Notice. The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.
 - b. 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 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)),
 - c. Urgent Need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

- D. Notice of Intent to Acquire. A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (See §24.2(a) (9) (i) (A).)

Availability of Comparable Replacement Dwelling Before Displacement: ¹⁷

- A. General. No person to be displaced shall be required to move from his dwelling unless at least one comparable replacement dwelling (defined at §24.2 (a) (6)) has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:
1. The person is informed of its location;
 2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
 3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.
- B. Circumstances Permitting Waiver. The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:
1. A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);
 2. A presidentially declared national emergency; or
 3. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

¹⁷ 49 CFR 24.204

- C. Basic Conditions of Emergency Move. Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:
1. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;
 2. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and
 3. Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling).

Relocation Planning, Advisory Services and Coordination: ¹⁸

- 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.

¹⁸ 49 CFR 24.205

2. An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.
3. An estimate of the number, type and size of the businesses, farms, and non-profit organizations to be displaced and the approximate number of employees that may be affected.
4. An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
5. Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.

Loans for Planning and Preliminary Expenses. In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

Relocation Advisory Services:

A. General

1. The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968(42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c) 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:
 - a. Determine, for nonresidential businesses, farms and nonprofit organizations displacements, the relocation needs and preferences of each business, farm and non-profit organization to be displaced and explain the relocation payments and other assistance for which the business, farm and nonprofit organization may be eligible, the related eligibility requirements and the procedures for obtaining such assistance. This shall include a personal interview with each business, farm and non-profit organization. At a minimum, interviews with displaced business owners and operators should include the following items:
 - i. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
 - ii. Determination of the need for outside specialists in accordance with §24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
 - iii. For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve personalty/realty issues prior to, or at the time of, the appraisal of the property.
 - iv. An estimate of the time required for the business to vacate the site.
 - v. An estimate of the anticipated difficulty in locating a replacement property.
 - vi. An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.
 - B. Residential Displacements. Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall

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include a personal interview with each residential displaced person.

1. 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).
2. 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.
3. Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See §24.2(a) (8).) If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.
4. Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A, §24.205(c) (2) (ii) (D).)
5. The Agency shall offer all persons transportation to inspect housing to which they are referred.
6. Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see §24.2(a) (6) (ix)), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

- C. Nonresidential Moves. Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.
1. 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.
 2. 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.
 3. 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.)

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.

- A. An inventory of the characteristics and needs of individuals and families to be displaced based on:
1. A complete occupancy survey; or
 2. A sampling survey process which shall be representative of the characteristics and needs of the displacees.
- B. An estimate of currently available comparable replacement housing setting forth the type of buildings, state of repair, number of rooms, adequacy of such housing as related to the needs of the persons or families to be relocated, type of neighborhood, proximity of public transportation and commercial shopping area, and distance to any pertinent social institutions, such as churches, community facilities, etc.

- C. Analysis and correlation of the needs of the individuals and families with the estimate of currently available comparable housing which will:
1. Outline the various relocation problems, if any;
 2. Provide an analysis of current and future Federal, State and community programs currently in operation in the project areas, and nearby areas affecting the supply and demand for housing including detailed information on concurrent displacement and relocation by other governmental agencies or private concerns and coordinate the availability of replacement housing with other governmental agencies or private concerns currently in operation close to the project area;
 3. Provide an analysis of the problems involved and the method of operation to resolve such problems and relocate the displacees in order to provide maximum assistance;
 4. Estimate the amount of lead time required and demonstrate its adequacy to carry out a timely, orderly and human relocation program; and
 5. Furnish the names of the agency or agencies, if other than the Highways Division, which will provide the relocation assistance including the analysis of their present workload and ability to perform and the estimated number and job titles of relocation personnel servicing the project.

Relocation Program at Construction Stage:

A. Authorization for Construction

1. Adequate replacement housing shall mean a dwelling which is:
 - a. Decent, safe and sanitary;
 - b. Fair housing - open to all persons, regardless of race, color, religion, gender or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968;
 - c. In areas not generally less desirable than the dwelling to be acquired in regard to:
 - i. Public utilities; and
 - ii. Public and commercial facilities.