Effective Acquisition Under the Updated Uniform Act Regulation

SUBMITTED BY THE FEDERAL HIGHWAY ADMINISTRATION

INTRODUCTION

State and local agencies that receive funding from the following Federal agencies are affected by this regulatory change (See Figure 1).

URA FEDERAL AGENCIES

- Agriculture
- Commerce
- Defense
- Education
- Energy
- Environmental Protection Agency
- General Services Administration
- Health & Human Services
- Housing & Urban Development
- Interior
- Justice
- Labor
- National Air & Space Administration
- Homeland Security
- Tennessee Valley Authority
- Transportation
- Veterans Affair

Figure 1

The final rule that modified the government-wide regulation for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (commonly referred to as the Uniform Act or URA), made several important changes. The agencies that must comply with the revised rule either have or are in the process of developing revised operating procedures to implement the changes. There are significant advantages, in addition to the legal requirements of the rule, for the affected agencies and their program beneficiaries to implement these changes as soon as possible. Affected Federal agencies may administer both direct federal and federally-assisted programs that involve acquisition of private property.

BACKGROUND

Published by the Federal Highway Administration (FHWA) on January 4, 2005, the final rule represents the latest in a series of changes to the URA implementing regulations (as codified in Title 49 CFR Part 24) since 1989. The 1989 unified rule was undertaken primarily to implement changes resulting from the statutory changes made in the URA in 1987. The final rule issued in January is the culmination of a four-year effort to assess how the URA could be improved to better serve the individuals and businesses affected by Federal or Federally assisted projects. The revision also sought to lessen the impact of governmental regulation on the agencies that must work within the context of the URA to acquire property and relocate individuals and businesses. Figure 2 is a timeline depicting the sequence of events leading to the recent change.

After the final rule was published, FHWA advised all affected agencies— those that use Federal funds in any portion of a project that requires land acquisition — of the URA implementing regulation changes. These agencies were expected to implement the changes by the effective date of February 3, 2005. In the months after the final rule went into effect, FHWA and other agencies and organizations provided additional guidance and training opportunities. FHWA will post on its website (http://www.fhwa.dot.gov/realestate/) an online tutorial and summary report that highlight the key changes to the regulations.

These instructional offerings provide the basics needed for agencies to become familiar with the revised regulation. However, understanding where each section was reworded or revised is only the beginning of taking advantage of the new provisions.

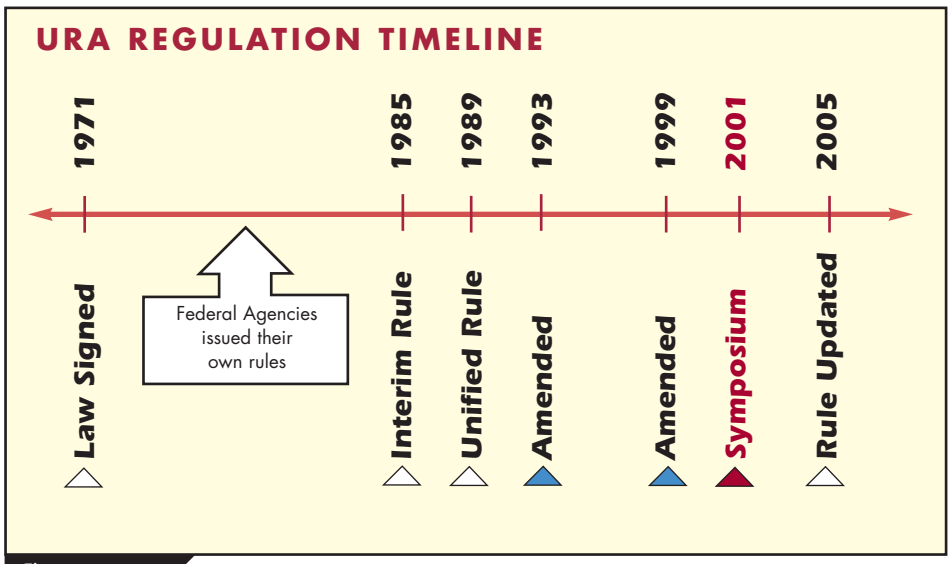


Figure 2

The revisions clarify known requirements or provide more specific direction for implementing pre-existing requirements, some changes introduce new procedures. This gives agencies opportunities to streamline acquisition practices and improve delivery of relocation services, especially to those businesses displaced because of projects subject to the URA.

Because of the wealth of training materials available, this article does not re-summarize the changes to each subpart made by the final rule. This article highlights the important changes and discusses, in practical terms, what the change was, why it was made and how it can be effectively implemented. The major areas in which agencies must comply with Title 49 CFR Part 24 are appraisal/appraisal review, acquisition and relocation assistance (with an emphasis on business relocations).

IMPORTANT CHANGES IN THE REVISED REGULATIONS

The discussion will highlight the important changes for acquiring agencies and private citizens affected by public projects. In the property acquisition area the main changes relate to the valuation process. The rule includes a "scope of work" requirement for appraisals, places greater emphasis on the role of the review appraiser, and increases the limits for non-complicated valuations and conflict of interest determinations.

WAIVER VALUATION (WAIVER OF AN APPRAISAL)

The URA mandates an appraisal for every proposed acquisition, but it also provides that the requirement for an appraisal may be waived in cases that involve the acquisition of property with a low market value. Under the new rule, the threshold that agencies can adopt for defining what constitutes a low-value acquisition was increased from the former limit of $2,500 to $10,000, with a conditioned option available to set a higher limit. More than 40 State Departments of Transportation used approved value thresholds (based on a waiver from the FHWA) exceeding the 1989 limitation prior to the revised rule going into effect. In addition, some states had experimented successfully with a $25,000 upper limit, so the new rules reflect those successes and provide greater flexibility.

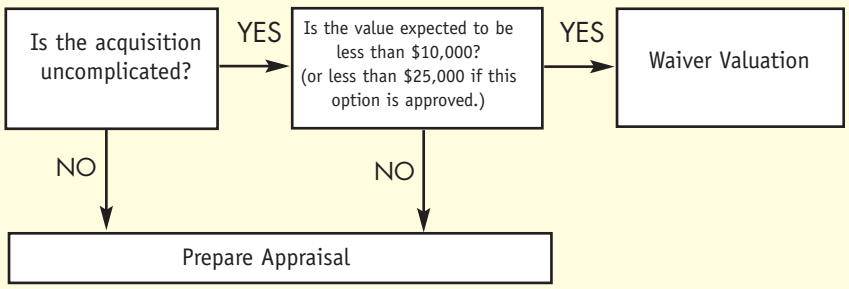
Under the new rule the agency has the prerogative to set any threshold up to the $10,000 ceiling. Setting a ceiling up to $25,000 may be possible with the approval of the Federal funding agency. For a ceiling over $10,000, the agency must offer the owner the right to request an appraisal. For those agencies looking to expedite project delivery, the use of a waiver valuation may be a very useful tool. The level selected to define the upper limit of what constitutes a low-value parcel will depend on the jurisdiction and the reliability of general market activity.

Agencies should evaluate how the use of an appraisal waiver can complement their operations and the impact it might have on the public they serve. The process is not new, but when used correctly, it can free appraisal personnel to focus on more complex properties. The use of the waiver of appraisals as shown in Figure 3 assures savings in both time and staff resources for the agency. The process also benefits property owners by assuring a quicker valuation process. The new definition of waiver valuation and the provisions indicating the agencies' responsibilities to provide a knowledgeable preparer of such valuations protects the interests of affected property owners.

The newly defined term "waiver valuation" complements the increased threshold that agencies can adopt for defining what constitutes a low-value acquisition. As defined by the URA, waiver valuations are not appraisals. Therefore, the final rule allows non-appraisal personnel to make waiver valuations. The individual conducting the waiver valuation must have a sufficient understanding of appraisal principles to interpret and understand local market indicators for preparing the waiver valuation. A waiver valuation does not require the property owner be offered the right to accompany the person doing the waiver valuation during any inspection of the property nor a formal appraisal review. However, a procedure must be in place for an agency official to approve the amount to be offered as just compensation. Agency implementation should be relatively easy as the process hasn't changed, only the amount of the limit.

Figure 3

WAIVER VALUATION



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APPRAISAL SCOPE OF WORK

The addition of the "scope of work" concept provides greater flexibility to link the appraisal assignment to the scope of inquiry and research necessary to document a property's value. The term "scope of work" (see Figure 4) is used in place of the former criteria referred to as "abbreviated or detailed appraisal report formats." As such, it provides more of a sliding scale of effort depending on the complexity of each appraisal assignment. Existing appraisal report formats can continue to be used so long as they fit the scope of work that has been developed.

The rule clarified the criteria expected to be applied for an appraisal prepared subject to the URA. This is the first time the appraisal issue has been addressed since the Uniform Standards of Professional Appraisal Practice (USPAP) was issued in 1989. USPAP standards, developed by The Appraisal Foundation, complement the requirements stated in the rule for appraisals prepared under the URA, but do not supplant them.

The revised language regarding USPAP, the URA appraisal requirements, and the new scope of work requirements for appraisals should help improve the compatibility of the appraisal criteria and minimize perceived conflicts that existed previously.

APPRAISAL/APPRAISAL REVIEW RESPONSIBILITIES

In addition to being able to use non-appraisal personnel to perform waiver valuations, agencies now have a clearer picture of the responsibilities of various appraisal personnel. This provides agencies with a valuable tool for scoping and aligning the appraisal problem with practitioners. The final rule addresses the agency's role in defining the problem and collaborating with the appraisal personnel on the appropriate scope of work. It also places expectations on the agency to ensure that the qualifications of individual personnel match the complexity of the appraisal assignment. These expectations are related to the following:

- The definition of appraisal review responsibilities
- The requirement for defining the scope of work and the appraisal problem
- The distinction between appraisal requirements of the URA and USPAP

The final rule includes additional language to clarify the appraisal review function. The term "review appraiser" was adopted and given similar treatment to the term "appraiser" regarding qualifications and responsibilities. Both the review appraiser and the appraiser must be found qualified based on stated agency criteria before being assigned to a specific appraisal problem. And both must be able to handle the scope of work necessary to complete the assignment.

SCOPE OF WORK

- Written Statement
- Developed together by appraiser and Agency
- Defines general parameter of work
- Prepared before appraisal work starts
- May be updated as needed
- Match the URA and URA rule requirements to the appraisal problem, covering:
  - — The definition of "appraisal" in the URA
  - — Specific rule requirements in § 24.103(a)(2) and § 24.103(b)

Figure 4

REVIEW APPRAISER ROLES

- During Review:
  - — Consult with appraisers to clarify report conclusions
  - — May need to prepare an independent valuation that meets § 24.103 requirements
- Prepare a written report on results of reviews
- May be an in-house consultant on appraisal

Figure 5

The rule is also clear that agencies using the review appraiser to approve the amount to be offered as just compensation must authorize this person to do so in the agency's policy statement. The review process must now be documented by a written report and, as before, include a certification statement. The review appraiser must also make a determination regarding each report reviewed to:

- Recommend the report as an indicator of fair market value, or
- Accept the report as complying with standards/requirements, or
- Not accept the report for noncompliance with standards/requirements.

The new rule adds substance to the role of the review appraiser (Figure 5). Both in the body and appendix A the rule solidifies what has been expected of the position under the URA.

BUYER	CONDITIONS	SUBPART B COMPLIANT?
Federal Aid or Grant Replacement	**DOES** have Eminent Domain authority, but will meet ALL conditions: • No specific site • Not part of a project • Will **NOT USE** Eminent Domain 1,2 • Inform owner of market value 1	NO
	Does **NOT HAVE** Eminent Domain Authority and will not have any way to use to Eminent Domain • Inform owner no Eminent Domain 1, 2 • Inform owner of market value 1	
	The Acquisition is from a government agency	
	The acquisition is by a co-op from a member	
Federal Agency (except TVA or RUS)	Will use Eminent Domain, if necessary	YES
	Will NOT use Eminent Domain	YES Must inform owner no Eminent Domain 1,2
Federally-assisted projects	*§ 24.102, § 24.103, § 24.104, § 24.105, apply to the greatest extent practicable under State Law, with any exceptions noted and approved in assurance required by § 24.4*	

Figure 7

CONFLICT OF INTEREST INCREASE

The maximum amount for valuation preparer-negotiator has increased to $10,000. The former limit was $2,500 (Figure 6). The overall objective is to minimize the risk of fraud while allowing agencies to operate as efficiently as possible. The provisions in § 24.102(n)(2) are part of an emphasis in the new rule to assure the valuation process is not inappropriately influenced. As noted above, a preparer of a waiver valuation would need to certify having no interest in the property under appraisal. Existing required certifications should suffice for appraisers and review appraisers.

Appraisers and others doing valuation work are not to be supervised by those responsible for and actively involved in the acquisition negotiations with property owners. This was done to remove valuation staff or contractors doing valuation work from possible undue influence by those responsible for property negotiation. This may necessitate certain organizational changes in acquisition agencies; a waiver of this requirement may be available if it creates a hardship for the agency.

The use of an appraiser/value preparer to negotiate is not required, but an option available to agencies. It does not require approval, but if adopted, it should be a standard policy and applied with consistency. The change is that the preparer of a waiver valuation is added. This applies to everyone doing the work, including consultants.

CONFLICT OF INTEREST

Reference : Rule and Appendix A § 24.102 (n)

- Requirements - appraisers, review appraisers, waiver valuation preparers:
  - — Shall not have any interest in property.
  - — Shall not be subject to influence or coercion regarding valuation
  - — May be authorized to act as a negotiator where valuation role is for acquisitions <$10,000

Figure 6

DIRECT FEDERAL ACQUISITIONS — NOT EXEMPT FROM SUBPART B

One of the important changes affecting Federal agency practices will be to follow the provisions of Subpart B in their entirety when they acquire property directly. Direct Federal Acquisition refers to property acquisitions undertaken directly by a Federal agency with its staff or a contractor in the employ of the agency using agency authorized funds for that purpose. For example, the Department of the Interior now has to comply with Subpart B whether it is a voluntary transaction or not. It is a significant change for Federal agencies' Direct Federal Acquisitions Programs. This effectively eliminates existing voluntary or willing seller exemptions now used by some Federal natural resource and conservation agencies.

FHWA has developed a chart that will assist in determining how the new requirements are applied. Please refer to the "Applicability Decision Chart" (Figure 7) located in this section. As the chart illustrates for Federally-assisted projects (projects carried out using Federal funds) there is no significant change. In this case, the work is undertaken by the

staff or contractors of the state, local or other sponsor and expenditures are billed to and reimbursed by the Federal funding agency. The Federal funding agency has an oversight or stewardship responsibility for the work undertaken by its partners to ensure compliance with all Federal governing laws and regulations. Compliance with the URA and its implementing regulations is a condition of receiving Federal assistance.

As indicated, the requirements for Federally-assisted acquisitions are unchanged with one exception. Now owners must be given an early notice in writing. Previously, early interest/likelihood of acquisition notices may have been given at public hearings or meetings. The final rule also requires that a written notice be given to voluntary transaction owners about what the agency is doing/intends to do.

EXPANDED BUSINESS RELOCATION ADVISORY SERVICES

The new rule emphasizes planning. In § 24.205(a)(4), an estimate of available business sites and preliminary planning to identify and develop solutions are both required. Relocation planning and advisory services are enhanced in the regulatory changes. Several of these were driven by findings and recommendations in the National Business Relocation Study.

The revised section requires a greater emphasis on analysis of business relocation difficulties, including analysis of available relocation sites and other issues related to the successful move of the business. Evidence from this study indicated that enhanced planning and advisory services facilitate greater opportunities for a successful relocation. This study can be accessed through the FHWA website mentioned in Figure 8 above.All such changes have some impact on federal, state, and local acquiring Agencies and require revision of procedures, program emphasis areas, and strategies for dealing with overall relocation planning and advisory services implementation.

BUSINESS RELOCATION PLANNING

✓ *National Business Relocation*
www.fhwa.dot.gov/realestate/nbrs2002.htm

•§ 24.205(a)(4) Availability of replacement business site:

— Impacts of any shortage
— Complexity and length of moving process
— Impact on small financially constrained businesses

Figure 8

Significant changes in the rule related to nonresidential (business) relocation include the following:

- Inventory emphasis on replacement business sites
- Required personal interviews with business owners that must cover:

  — Site requirements
  — Time required to move
  — Site availability
  — Personality/realty issues
  — Advance payment needs
  — Outside specialists needed

NON RESIDENTIAL MOVES RELATED ELIGIBLE EXPENSES

✓ § 24.303 Actual, reasonable, and necessary cost for:

- Utility connection from right of way:
  — Not related to personal property
- Professional services prior to purchase/lease to determine suitability:
  — soil testing, feasibility, and marketing studies to determine site suitability
- Impact fees and one-time assessments

Figure 9

EXPANDED BUSINESS RELOCATION EXPENSES

The new § 24.303 (Figure 9) includes the same expense items that had been part of the re-establishment expenses in § 24.304. As such, they are not new. The difference is that they are now not restricted by the $10,000 limitation for total re-establishment costs and are handled individually on an "actual, reasonable, and necessary" basis.

Additionally, expenses for licenses, permits, fees or certification required at the displacement location have also been removed from re-establishment expenses and can now be reimbursed under § 24.301 on the same basis. This change has the effect of removing the caps on certain types of expenses and stretching the existing $10,000 limitation that remains over the remaining eligible items left in § 24.304.

Related to professional services and prior to purchase/lease of a site, certain investigative costs are reimbursable, but these must be reasonable and justified. If a site is rejected, further site testing may be justified at an alternative site following a "due diligence" rationale. The agency should be involved and provide advice in such situations. Agencies should work with displaced persons to establish acceptable rates for professional services needed to determine site suitability.

RENTAL ASSISTANCE PAYMENT — 30% RULE

The revision in the rule for calculating benefits for tenants and occupants of less than 90 days, now limits the use of the 30% average monthly household income to only those situations where the income falls below the low-income limit (Figure 10) established by the Department of Housing and Urban Development (HUD) for the area. The HUD information on "Low Income Limits" for your area and "Income Exclusions" necessary to process a tenant application can also be accessed through links maintained on the FHWA website at http://www.fhwa.dot.gov/realestate/. Low income levels for each area are available by referring to the latest HUD-compiled tables. The new 2005 limits were effective February 11, 2005 and are revised annually.

INCOME CONSIDERATIONS

✓ § 24.402(B)(2)(ii) - 30% Rule

- Use 30% of monthly household income only when tenants and occupants are considered "low income"
- Apply HUD "Low Income" limit criteria from www.huduser.org/datasets/ura/ura05/RelocAct.html

Figure 10

COMPARABLE REPLACEMENT DWELLING

✓ § 24.2(a)(6)- Slightly revised definition

- Removed "style of living" phrase
  -Reason- functionally equivalent, but not a "twin"
- Added § 24.2(a)(6)(ix) only applies to persons displaced from government-assisted housing
  -Permits use of smaller units to match current housing program requirements
- Decent, Safe, & Sanitary based on local codes

Figure 11

The rule also added a definition for "household income" at § 24.2(a)(14) to standardize the calculation process. In appendix A, guidance is provided on how to determine appropriate exclusions from identified household income when making these calculations. Refer to http://www.fhwa.dot.gov/realestate/exclusions.htm for FHWA's guidance on income exclusions. Any questions regarding the intent or purpose of certain income sources from governmental programs not covered in the list should be directed to the Federal agency administering the program.

COMPARABLE REPLACEMENT DWELLINGS

The changes to the definition of "comparable replacement dwelling" as indicated in Figure 11 are minor, but important. The "style of living" phrase was removed because it sometimes led to interpretations that comparable meant identical, even in unique features. Applying style of living criteria consistently was difficult due to varying interpretations between the agencies regarding its meaning. It was not meant to restrict the selection of a comparable dwelling to only those possessing every feature of the displacement property. Congress intended a reasonable standard for the criteria of comparability and not a duplication of every feature. Thus a home with a wooden dance floor might be comparable to a home without such flooring but with adequate space and room count. Or a dwelling on a "horse property" does not necessarily have to be similarly situated in the replacement. The comparable home should serve the same functional purposes as the subject, but does not need to be a twin. Short summary: Functionally equivalent and substantially the same.

DECENT, SAFE, SANITARY STANDARDS(DSS) — LOCAL CODES

The primary determinants of housing standards are local occupancy and housing standards codes. Absent a local code, or when the local codes are less protective than the regulatory definition of DSS, then the provisions of § 24.2(a)(8) apply as a minimum. As indicated in Figure 12, the "core" of the DSS standard is the definition of Decent, Safe and Sanitary contained in §24.2(a)(8), but the real "meat" of the standard is the local codes.

This applies to all points of consideration including the number of bedrooms needed in relation to the number of individuals that can share a bedroom, especially considering the requirement for separate bedrooms for children of different genders. Within the appendix the explanation of particular requirements, such as lead based paint considerations, point to the standards found in local housing codes. In the absence of any code requirement, the policy of the displacing agency will be followed.

REPLACEMENT HOUSING PAYMENTS(RHP)

The rule made only minor changes to the calculation and benefit determinations relating to replacement housing payments. With regard to renters who opt to purchase, one change provides, at the agency's discretion, a full rent supplement allowance of $5,250 may be applied toward the down payment. Additionally, should the rental assistance payment exceed the purchase price of the replacement dwelling, the payment would be limited by the cost of the dwelling. Stated differently, the amount of the down payment required by conventional financing is no longer a limiting factor in the administration of the down payment benefit.

DECENT, SAFE AND SANITARY

Primary Considerations: Local Codes

Secondary: § 24.2(a)(8)

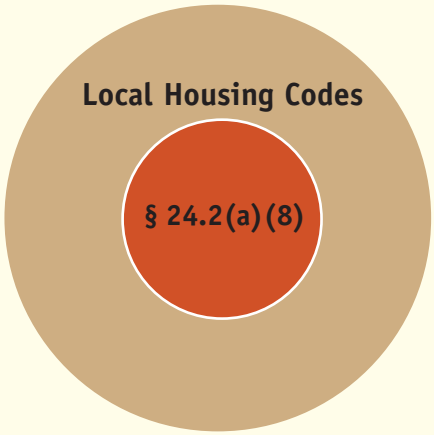

Figure 12

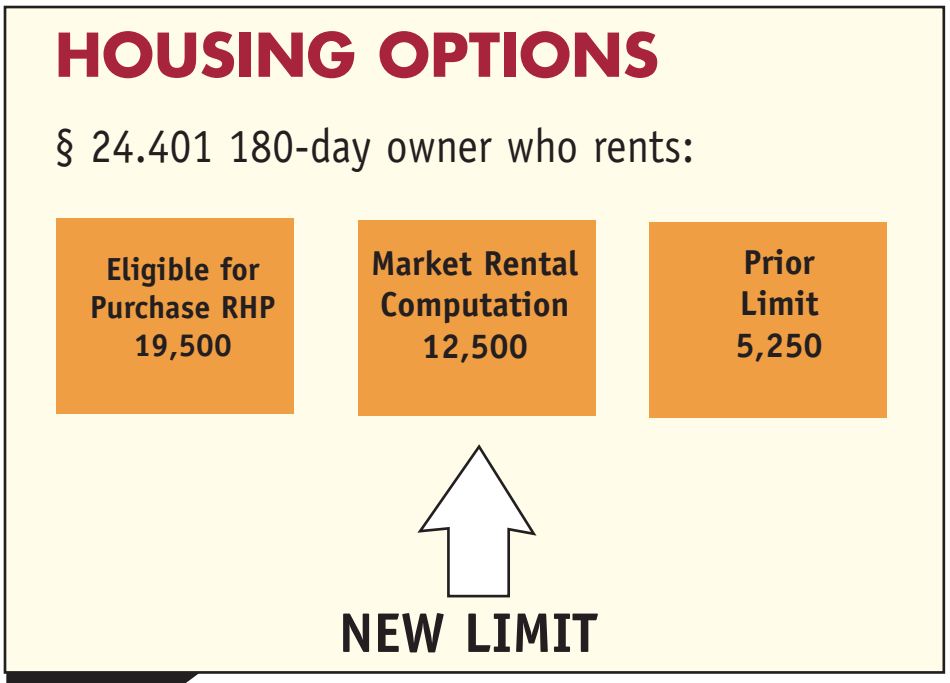

Figure 13

For the owner who decides to rent, the rule now provides an increased benefit, if the market supports a rental supplement exceeding the $5,250 limitation. The owner could get "up to" the amount of the purchase RHP if the rental computation supports the supplement. Income is not considered when calculating a rental assistance payment for a 180-day owner electing to rent. Figure 13 diagrams how this revised feature works. In the situation depicted in the diagram, the 180-day owner is eligible to receive $19,500 as a replacement housing payment if he were to purchase a replacement property. Since he has indicated a desire to rent, instead of purchase, a rent supplement calculation is required based on the fair market rent of his property. Under the prior rule, if this calculation exceeded the rent supplement statutory limit of $5,250, his benefit would be limited to that amount. Under the new rule he is eligible for the full rent supplement calculated ($12,500 for this example, but it could be as high as the computed purchase supplement), provided the property actually rented supports such a payment.

NO WAIVER OF RELOCATION ASSISTANCE BENEFITS

A new requirement was added in § 24.207(f) and in the related item in Appendix A to prohibit agencies from proposing or requesting that displaced persons waive their rights to relocation assistance or benefits. The purpose is to make sure displacees understand their benefits and are not pressured into foregoing those benefits. The relocation agency may not suggest or request a waiver. A displaced person may refuse the benefits on his/her own initiative.

CONCLUSION

Most professionals who work with the URA and its implementing regulation consider it to be an excellent program that ensures fair treatment to all persons and businesses affected by the acquisition of private property for public purposes. It also ensures that government funding is spent prudently and not wasted. The changes contained in the revised regulation add clarity and provide opportunities to make an excellent program even better. Whether the rule achieves its full potential will depend on the diligence State and local Agencies use to adapt their policies and procedures to utilize the opportunities afford by the rule.

For questions, contact Mamie Smith-Fisher, Federal Highway Administration contact, for the new rule at mamie.smith@fhwa.dot.gov.