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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 5 Ordinance/Resolution# 12-116

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of January 17, 2012  
 (Adoption Date)

**TITLE: A RESOLUTION APPROVING AN AMENDED RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN AS REQUIRED BY THE CONSOLIDATED PLAN REGULATIONS FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT PARTNERSHIPS PROGRAM FOR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**

**PURPOSE(S) OF ACTION:**

Approve the Residential Anti-Displacement and Relocation Assistance Plan as amended.

<b>COUNCIL DISTRICT:</b> All		
<b><u>Drafter/Staff Contact:</u></b> Jan Lauterbach	<b><u>Department/Section:</u></b> Community_Development/ Neighborhood Services	<b><u>Phone:</u></b> 528-3134
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

In accordance with the consolidated plan regulations for the Community Development Block Grant (CDBG) program and HOME Investment Partnerships (HOME) program, the City of Las Cruces, as an entitlement community as designated by the U.S. Department of Housing and Urban Development (HUD), is required to have in effect a Residential Anti-Displacement and Relocation Assistance Plan ("Plan") as mandated under Section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

The purpose of the Plan is to have the City of Las Cruces define its policy and procedures for displacement or relocation, including acquisition of property using CDBG, HOME or other HUD funds. The Plan prepared by City staff establishes a policy in which the City of Las Cruces will be committed to make all reasonable efforts to ensure that activities undertaken through the use of CDBG, HOME and/or other HUD funding will not cause unnecessary displacement or relocation.

City Council approved the Plan December 15, 2003, through Resolution 04-204. Due to a recent audit by HUD, HUD has made recommendations and provided guidance to update the City's Plan. City staff are recommending to have the Plan amended to: 1) clarify temporary relocation requirements for the City's Home Rehabilitation Program, 2) update temporary relocation requirements for all other HOME and CDBG activities, 3) adopt the use of the New

Mexico Department of Transportation's Right-of-Way Handbook for internal procedures and guidance, 4) implement the Acquisition, Relocation, and Replacement Questionnaire for all CDBG and HOME funding requests, 5) develop and require usage of Voluntary Acquisition & Market Value Notices, and 6) implement self-monitoring guide forms added to the appendix of the Plan. The amended Plan has been submitted to HUD for approval.

**SUPPORT INFORMATION:**

1. Resolution
2. Exhibit "A", Residential Anti-Displacement and Relocation Assistance Plan, as amended in legislative format.

**SOURCE OF FUNDING:**

Is this action already budgeted?  N/A			
	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?  N/A			
	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY ____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Residential Anti-Displacement and Relocation Assistance Plan, as amended.
2. Vote "No"; this will not approve the Residential Anti-Displacement and Relocation Assistance Plan, as amended.

3. Vote to "Amend"; this action would come from Council direction.
4. Vote to "Table"; this action would come from Council direction.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 04-204

**RESOLUTION NO. 12-116****A RESOLUTION APPROVING AN AMENDED RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN AS REQUIRED BY THE CONSOLIDATED PLAN REGULATIONS FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT PARTNERSHIPS PROGRAM FOR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces is an entitlement community as defined by the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs; and

**WHEREAS**, in accordance with the consolidated plan regulations, the City of Las Cruces must comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, in connection with any activity assisted with funding under the CDBG, HOME, or other HUD-funded programs; and

**WHEREAS**, on December 15, 2003, the Las Cruces City Council approved Resolution No. 04-204 adopting the Residential Anti-displacement and Relocation Assistance Plan (Plan), as required by the consolidated plan regulations for the CDBG and HOME programs; and

**WHEREAS**, City staff, under recommendation and guidance from HUD, are seeking to amend the Plan to clarify requirements for temporary relocation, acquisition, and self-monitoring, including the adoption of the New Mexico Department of Transportation's Right-of-Way Handbook and additional guide forms as part of the Plan; and

**WHEREAS**, in order to comply with Consolidated Plan regulations for the CDBG

and HOME programs, the Residential Anti-displacement and Relocation Assistance Plan, as amended, is submitted for City Council approval and adoption.

**NOW, THEREFORE,** Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the Residential Anti-displacement and Relocation Assistance Plan, as amended, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

**(II)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this \_\_\_\_\_ day of, \_\_\_\_\_ 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

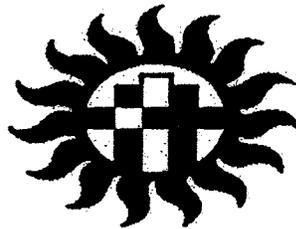
APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Smith: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

**RESIDENTIAL  
ANTI-DISPLACEMENT  
AND  
RELOCATION ASSISTANCE PLAN  
"RELOCATION AND ACQUISITION  
POLICIES"**



**City of Las Cruces**



**Community Development Department  
P.O. Box 20000  
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Las Cruces, NM 88004  
(575) 528-3022, (575) 528-3101 (FAX)  
(555) 528-3157 (TTY)**

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- A. Acquisition, Relocation and Replacement Questionnaire
- B. Voluntary Acquisition & Market Value Notice
- C. Recordkeeping and Monitoring Checklists- additional checklists may be used as applicable.
- D. NM DOT Right of Way Handbook Volume VII and subsequent volumes as applicable.

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## I. Introduction

The City of Las Cruces (CLC) is an entitlement grantee under the Community Development Block Grant (CDBG) program and HOME Investment Partnerships (HOME) program. The CLC certifies in its Consolidated Plan that it has in effect and is following a Residential Anti-displacement and Relocation Assistance Plan, hereinafter referred to as "Plan," as per Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42.

Projects or programs funded with federal assistance may be covered by relocation requirements contained in:

- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)**, as amended, and its implementing regulations at 49 CFR Part 24. These requirements cover displacement of persons resulting from rehabilitation, demolition, or acquisition carried out with federal assistance.
- **Section 104(d) of the Housing and Community Development Act** (known as "The Barney Frank Amendments") and HUD's Residential Anti-Displacement and Relocation Assistance Plan. This extra level of relocation assistance may be triggered for low-income households<sup>1</sup> when units are covered or demolished with CDBG or HOME funds. In addition, when Section 104(d) is triggered, grantees may need to replace any low/moderate income dwelling units that are lost to conversion or demolition.
- **Individual Program Regulations.** The HOME regulations at 24 CFR Part 92.353 clarify relocation with specific regard to the HOME program. The CDBG regulations at 24 CFR 570.606 clarify relocation with specific regard to the CDBG program. HUD Handbook 1378 covers the federal relocation requirements.
- **New Mexico Department of Transportation Right of Way Bureau, Right of Way Handbook Volume VII Tribal/Local Governments Agency.** This handbook and any future volumes as written located in Appendix A, meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR Part 24 as they relate to the Right of Way

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<sup>1</sup> "Low-income person" or "low-and moderate-income person" is defined as a family or individual whose gross annual income does not exceed 80 percent of the area's median income, i.e., Las Cruces MSA, as determined by HUD, with adjustments for smaller or larger families.

program, is adopted as part of the City policies regarding acquisition and relocation for projects utilizing federal-aid funds in complying with both state and federal laws, regulations, directives, and standards.

The purpose of the Plan is to have the CLC define its policy and procedures for displacement or relocation. This Plan establishes a policy in which the CLC will be committed to make all reasonable efforts to ensure that activities undertaken through the use of CDBG, HOME, and/or other U.S. Department of Housing and Urban Development (HUD) funding will not cause unnecessary displacement or relocation. The Plan identifies various ways that displacement can be minimized.

This Plan was written to mirror the federal regulations as identified in the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA), Section 104(d) - Title 1 of the Housing and Community Development Act of 1974, and HUD Handbook 1378. The Plan defines the displacement avoidance policy, defines standard and substandard conditions for rehabilitation activities as well as provides a basic overview of displacement. The Plan also provides information concerning the procedures that need to be followed if displacement or relocation were to occur with a CDBG or HOME activity.

## **II. Displacement Avoidance Policy**

The CLC is committed to a policy to make all reasonable efforts to ensure that activities undertaken through the use of CDGB, HOME, and/or other U.S. Department of Housing and Urban Development (HUD) funding will not cause unnecessary displacement or relocation. There are various ways that displacement can be minimized. The following steps that will be taken to minimize the involuntary displacement of low-income persons when CDBG/HOME funds are involved:

1. Screening of Applications: All CDBG and HOME applications will be reviewed to determine whether involuntary displacement is likely to occur. Applications will also be screened to determine if sufficient funds are budgeted to comply with URA and/or Section 104(d) regulations. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that other alternatives are unavailable.
2. Acquisition of Property: Applicants who apply for CDBG or HOME funds to acquire property for affordable housing, economic, and/or community development will be encouraged to purchase vacant land. If the purchase of vacant land is not feasible, residential tenants of dwellings to be rehabilitated shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling in the existing building/complex of the project.

Applicants who utilize CDBG or HOME funds to rehabilitate or convert a low-income unit to a non-residential use will be required to supply replacement housing consistent with the One-for-One Replacement Housing Requirements as discussed in Section VI.

#### Definitions of "Standard" and "Non-Standard Suitable for Rehabilitation" Dwelling Unit Condition

In the absence of federal- and state-provided definitions, the following is provided to establish a frame of reference and context when dealing with matters of displacement and/or relocation as defined in 49 CFR Part 24, 24 CFR Part 92 and 24 CFR Part 570.

#### **A. Standard Condition**

A dwelling unit is considered "standard" if it has no major defects or only slight defects that are correctable through the course of regular maintenance. It must be in total compliance with applicable CLC housing and occupancy codes; be structurally sound, watertight, and in good repair; be adequate in size with respect to the number of rooms and area of living space and contain the following:

1. Meet the Section 8 Housing Quality Standards (HQS).
2. Comply with the lead-based paint requirements of 24 CFR Part 35.
3. Meet the requirement of the local building code, as amended.

Failure to meet any of these criteria automatically causes a dwelling to not be considered "standard."

#### **B. Substandard Condition Suitable for Rehabilitation**

A dwelling unit is considered substandard if it does not fully comply with the standard criteria as defined in the previous section. A dwelling unit is considered substandard if it does not comply with the adopted, existing building code at the time the structure was built.

### **III. Displacement - Basic Overview**

HUD relocation requirements cover two types of households: those who are "displaced" and those who remain in the property after completion of the federally funded activity.

## A. *Who is Displaced?*

Displacement occurs when a person, e.g., family, individual, business, farm, or nonprofit organization, moves from real property, permanently, as a **direct result** of federally assisted acquisition, demolition, or rehabilitation.

A person may also be considered a displaced person when necessary notices are not given or provided in a timely manner, regardless of the reason for the person's move-out.

### 1. **DIRECT RESULT** includes the following:

- The person is required to move from the property after the property owner issues a notice to vacate or refuses to renew a lease in order to avoid relocation assistance (at application or site control, if later<sup>2</sup>);
- The person leaves for whatever reasons after initiation of negotiations AND the necessary notices to assure that the person was fully informed about relocation rights and assistance were not given or were not given in a timely fashion;
- The person leaves the property after initiation of negotiations because a decent, safe, sanitary, and affordable unit on the property was not offered;
- The person leaves the property because of unreasonable temporary relocation requirements or unreasonable terms for permanent moves within the existing property;
- A nonresidential tenant who receives a Notice of Non-displacement but moves permanently, if the terms and conditions of remaining are not reasonable; or
- A tenant of a dwelling who moves from a residential structure permanently as a direct result of leasing the other units in the structure for a HUD-assisted project that changes the residential character or use of the structure to a public character, e.g., certain homeless or supportive housing uses.

## B. *Who is NOT Displaced?*

Persons who permanently move out of the property, but who are **NOT** considered displaced include those who:

- Were evicted for cause, **BUT NOT** if the eviction is taken to avoid paying relocation costs;
- Have no legal right to occupy the property (e.g., squatters);
- Occupied the property for the purpose of obtaining relocation benefits;

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<sup>2</sup> The phrase "at application" refers to the submittal of a HOME/CDBG application for funds to the City of Las Cruces.

- Before leasing and occupying the property, but after application, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided;
- After being fully informed of their rights, waive them; and
- The CLC and the grantee have decided, and HUD agrees in writing, that individuals were not displaced as a direct result of the project.

Based upon the nature of the project activity, it may be necessary for households to **temporarily** relocate to another unit within the property or to an off-site unit. These households are **not** considered displaced persons if:

- The conditions of the temporary move are reasonable;
- Appropriate temporary move costs are covered;
- The person(s) are allowed to return to a decent, safe, and sanitary unit in the project; and
- The person(s) rent has not increased or if it has gone up, it has not increased above their ability to pay.

Households may also be required to permanently move to another unit within the property. These households are **not** considered displaced if:

- The conditions of a move within the complex are reasonable;
- Appropriate move costs are covered;
- The person's new unit is decent, safe, and sanitary; and
- The person's rent has not increased or if it has gone up, it has not increased above their ability to pay.

#### **IV. Temporary Relocation**

The grantee may provide relocation payments and other relocation assistance to families, individuals, nonprofit organizations, and farms displaced by a HOME/CDBG-assisted project where the displacement is not subject to URA.

##### **Temporary Relocation with the City's Home Rehabilitation Program**

The CLC will provide assistance for temporary relocation to eligible persons that must move temporarily during the rehabilitation of their homes as part of the CLC's adopted Home Rehabilitation Handbook, as amended. The owner-occupant must be approved by the CLC to receive homeownership rehabilitation assistance under either the CDBG or HOME Program. This policy also applies to households affected the Lead Based Paint Final Rule as defined in 24 CFR Part 35 and any other environmental concerns.

~~No person is required to accept the assistance described herein. Any person may choose alternate living accommodations paid for by the person, without the assistance provided by the CLC.~~

~~A relocation allowance will be made available to each qualified family unit that is temporarily displaced in accordance with the adopted Home Rehabilitation Handbook, as amended. This allowance will be managed by the CLC's Home Rehabilitation Program and will be disbursed, as needed, to defray relocation expenses which include, but are limited to: rental of storage units, rental of a dwelling, rental insurance, moving expenses from their homes to the temporary dwelling, and moving from the temporary dwelling to the rehabilitated house.~~

~~The relocation assistance is limited to those rehabilitation projects that require relocation based on the scope of work proposed and as determined by the Home Rehabilitation staff of the CLC. The relocation assistance funds will come from the total amount of the loan/grant/deferred payment loan (DPL) allocated to the proposed rehabilitation project. Up to 50 percent of the total relocation assistance may be provided in the form of a grant to the qualified applicants whose annual median income qualifies them for a deferred payment or low-interest loan, in accordance with the qualification criteria of the Home Rehabilitation Program. For further information about the Home Rehabilitation Program, please consult the Home Rehabilitation Handbook.~~

### **Temporary Relocation for all other HOME and CDBG Activities**

All subrecipients of HOME or CDBG funds, excluding those assisted by the City home rehabilitation program, for projects that will require temporary relocation for tenants are require reimbursement of actual expenses incurred, with no provisions for flat rates based on a schedule or estimate.

## **V. Notices & Advisory Services**

*All* households must receive advisory services. These advisory services include providing information, counseling, and timely notices. Displaced households receive a special type of advisory service: the offer of a comparable unit.

### **A. Advisory Services - Notices**

Everyone involved in relocation assistance will need one or more of the following notices. All occupants are entitled to a timely notice explaining whether or not they will be displaced.

- Occupants *to be displaced* must be informed of their eligibility for relocation assistance and the nature of the assistance.

- Occupants *not to be displaced* must be informed of the terms and conditions under which they may occupy the property upon completion of the project.

Different notices serve different purposes and must be tailored both to the specific project circumstances, and the individual circumstances of the residents. There are several different types of notices that may be required by the relocation process.<sup>3</sup>

- General Information Notice (GIN): Informs residential and non-residential occupants of a possible project and of their rights under URA and/or Section 104(d). The notice must explain that the project has been proposed and caution the occupant(s) not to move prematurely. The notice informs the occupant(s) of the terms for continued occupancy if the resident will not be displaced or of the assistance available if the person is displaced. If displacement is possible, the notice should enclose additional information about available relocation assistance, e.g., HUD Booklet 1042-CPD, *Relocation Assistance to Tenants Displaced From Their Homes*.

This notice is delivered as soon as possible after the project application is received. **This notice is ALWAYS needed.**

- Move-in Notice: Informs households moving into potential projects that they may be displaced and that they will not be entitled to assistance. This notice may be issued after a date specified in applicable program regulations to each prospective tenant BEFORE the tenant agrees to move into the project. It explains that the project has been proposed and informs residents that they may be displaced or sustain a rent increase as a result AND that they will not be entitled to relocation assistance in either event. **This is a REQUIRED notice.**
- Notice of Non-Displacement: Informs residential and non-residential occupants who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of the household remaining at the property. This notice is issued to persons who will remain in the project. It is issued at the time of the initiation of negotiations and contains the offer of a suitable, affordable unit in the project and the terms and conditions under which the occupant(s) may lease and occupy the unit.

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<sup>3</sup> Please contact the Neighborhood Development and Planning Section of the Community Development Department for sample notices. Sample notices can also be found in HUD Handbook 1378. In addition, the Community Development Department has HUD Information Booklets available that review the general information requirements about relocation assistance: "Relocation Assistance to Tenants Displaced From Their Homes; Relocation Assistance to Displaced Homeowners; and Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms."

- Temporary Relocation Notice: Informs households who will be temporarily relocated of their rights and of the conditions of their temporary move. Residents who are required to move permanently may be required to move temporarily IF all conditions of the move are reasonable. Those persons to be temporarily relocated must receive reasonable advance written notice of the location, terms and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses.
- Notice of Eligibility: Informs both residential and non-residential occupants to be displaced of their rights and levels of assistance provided by the URA and/or Section 104(d). This notice is issued to persons who will be displaced indicating their eligibility for relocation assistance. The notice is issued at the time of the execution of initiation of negotiations and contains a commitment for relocation assistance including:
  - Information that the homeowner or tenant will not be required to move without a referral to at least one comparable unit and they will have at least 90-days notice from the date of referral;
  - If feasible, addresses of comparable replacement units will be provided;
  - The amount of moving expenses the displaced person would receive; and
  - A specified maximum amount of the replacement housing payment based on the comparable unit.
- 90 and 30-Day Notices: Informs displaced households of the day by which they must vacate the property. Each lawful occupant to be displaced must receive at least 90 days written advance notice before being required to move. The notice cannot be given before the person is issued a notice of eligibility for relocation assistance OR before being notified of the availability of a comparable replacement dwelling. The notice must specify the date by which the property must be vacated or if the date is unknown, indicate the earliest date that the occupant may be required to move. If no date is specified in the 90-day notice, the occupants must be informed that they will receive at least 30 days advance written notice of the specific date of the move.

All notices **must** be delivered in a timely manner. The grantee may issue the notices; however, the CLC is ultimately responsible to ensure that timely and correct notices are provided. Notices must be personally served or sent by certified or registered first-class mail with return receipt requested. Evidence of delivery must be documented.

## ***B. Advisory Services - Information and Counseling***

Information and counseling for all households should include:

- Referrals to other available assistance and human services (e.g., health services, public assistance, child care);
- Information about Federal, state, and local housing programs and how to apply for them;
- Information about the household's rights under the Fair Housing Act.

For those who are displaced, this counseling should also include: information, to the extent possible, about replacement housing opportunities that may promote fair housing and moves to neighborhoods outside areas of racial concentration.

### **C. *Advisory Services - Comparable Units***

Tenants who are displaced must be referred to at least one comparable replacement unit. The comparable must be an actual unit that is available to the displaced person and meets HUD's definition of decent, safe, and sanitary. Generally, comparable units must be:

- ***Decent, safe, and sanitary*** as defined in Section III-A of this document and HUD Handbook 1378, paragraph 1-7, includes standards for electrical, structural, plumbing, and egress;
- Similar in size to the original unit;
- Similar in function, service, or purpose of the original unit;
- Contain the same principal features of the original unit;
- Reasonably accessible to the tenant's employment; and
- Located in equal to or better area than the original unit, vis-à-vis public utilities, commercial, and public facilities.

## **VI. Relocation Requirements - URA**

Relocation assistance must be provided to displaced persons who leave the project as well as to persons who are expected to remain in the project. Displaced households must receive:

- Appropriate notices and other advisory services;
- Replacement housing; and
- Moving and related expenses.

Those person who are expected to remain in the project may receive:

- Appropriate notices and other advisory services;
- Suitable housing;
- Affordable housing;
- Temporary relocation assistance; and
- Moving and related expenses.

Displaced households are eligible to receive replacement housing assistance as necessary to enable them to afford a new unit. This assistance is available to both displaced renters and displaced homeowners. The income of the displaced person is not a factor in determining basic eligibility, but it is a factor in calculating the amount of assistance they will receive. Rental assistance may be in the form of a replacement housing payment, or for eligible households, tenant-based rental assistance under Section 8 or HOME, if it is available.

Displaced households are also entitled to moving and related expenses. The displaced person has the option of payment for actual reasonable moving and related expenses or a moving expense and relocation allowance based on a Department of Transportation (DOT) schedule that is published periodically.

Residents who will be forced to temporarily relocate must be offered a temporary dwelling that is suitable and decent, safe, and sanitary. All other conditions of the move must be reasonable. In addition, this household must receive reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move, including any increase in monthly rent/utility costs.

Residents who are required to permanently move within the project must receive reimbursement for any reasonable moving costs associated with relocating to their new unit. Although the terms and conditions of this move must be reasonable, the household's new unit need not necessarily be comparable to their old unit. However, the new unit must be decent, safe, and sanitary and must be suitable for the household size.

Rents for all tenants who will remain in the property after completion of the project must either not increase or must be affordable to those tenants. If this condition is not met and the tenant moves, they are considered economically displaced and are entitled to all of the assistance offered to other displaced persons.

#### ***A. Replacement Housing Assistance - URA***

Under the URA, the amount of the Replacement Housing Payment a displaced tenant receives varies upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the agreement.

The URA Replacement Housing Payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a \$5,250 limitation on payments, it also requires that persons receive the calculated payment. Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed \$5,250.

The payment to which the family is entitled is calculated using the lower of the cost of the family's actual new unit (including estimated utilities) or a comparable replacement dwelling. The following chart explains the replacement housing calculation:

Table 1: URA Replacement Housing Calculation

ASSISTANCE FOR TENANTS IN OCCUPANCY MORE THAN 90 DAYS	ASSISTANCE FOR TENANTS IN OCCUPANCY LESS THAN 90 DAYS
<p>Replacement Housing Payment makes up (for a 42 month period) the <b>difference between:</b></p> <ul style="list-style-type: none"> <li>• The lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and</li> </ul> <p style="text-align: center;">The <b>lesser</b> of:</p> <ul style="list-style-type: none"> <li>• 30% of the tenant's average monthly gross income, or</li> <li>• The monthly rent and estimated average utility costs of the displacement dwelling</li> </ul>	<p>Replacement Housing Payment makes up (for a 42 month period) the <b>difference between:</b></p> <ul style="list-style-type: none"> <li>• The lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and</li> <li>• 30% of the tenant's average monthly gross income</li> </ul>

**EXAMPLE: URA Replacement Housing Payment - Tenant**

(Tenant in occupancy for more than 90 days)

\$600 Rent and utilities at actual replacement dwelling

\$500 Rent and utilities at comparable replacement dwelling

*Choose the lesser: \$500*

\$400 Rent and utilities at the displacement dwelling

\$300 30% of gross monthly income

*Choose the lesser: \$300***Replacement Housing Payment is \$500 - \$300 = \$200 x 42 months = \$8,400**

Replacement housing payment must be made in installments unless the tenant wishes to purchase a home. If the tenant wishes to purchase a home, the full amount of the payment must be paid in a lump sum and contributed to the purchase cost of the home.

### **B. Rent Burden/Economic Displacement**

Tenants who intend to remain in the project must receive a notice of non-displacement and the offer of a suitable unit that can be rented at an affordable price. Tenants who move permanently after execution of the agreement because they did not receive such an offer are considered "economically displaced."

If there is **no increase in rent**<sup>4</sup>, the unit is considered affordable and the tenant is not considered "rent burdened," even if the percentage of income that the family is paying is high.

Under the URA, for HOME/CDBG projects, if the rent is increased for a low-income tenant, as a result of federal assistance, it may not exceed the total tenant payment (TTP). This is also the economic displacement test for all tenants covered by Section 104(d).

Under the URA, for HOME/CDBG project tenants who do not qualify as low-income, 30% of the gross monthly income is used as the affordability test. A family whose increased rent exceeds this threshold is "rent burdened." If any family moves permanently from the project as a result of being rent burdened, the family is considered "economically displaced."

**Table 2: Determination of Rent Burden/Economic Displacement**

<b>Low-Income Tenant is Rent Burdened</b>	
\$400 Pre-rehab Unit Rent	\$20,000 Gross Income
<u>50 Estimated Average Utilities</u>	<u>\$ 1,440 Adjustments (\$480x3)<sup>5</sup></u>
\$450 Pre-rehab Gross Rent	\$18,560 Adjusted Income
\$500 Post Rehab Rent	$\$20,000 \div 12 \text{ months} \times .10 = \$167$
<u>50 Estimated Average Utilities</u>	$\$18,560 \div 12 \text{ months} \times .30 = \$464$
\$550 Post Rehab Gross Rent	<b>TTP = \$464</b>
Family is rent burdened. The rent increases and new rent plus utilities (\$550) exceeds the TTP (\$464).	

<sup>4</sup> "Rent" for this purpose means gross rent - the rent paid to the owner plus an estimate for utilities paid by the tenant.

<sup>5</sup> The adjustment is for three dependents.

To avoid economic displacement, eligible lower income tenants may be offered tenant-based rental assistance to make units affordable. Rent burdened families offered such assistance **before they move** may use the assistance in the project or move - **BUT** they are not considered displaced. Tenant-based rental assistance can be provided only if the affected family is eligible under program rules. In general, to be eligible the family's income cannot exceed 50% of the area median income.

## VII. Relocation Requirements - Section 104(d)

Section 104(d) requirements may be triggered whenever CDBG or HOME funds are used for a project. Section 104(d) requirements focus on the "loss" of low-income housing (both rental and owner occupied) in the community through demolition or conversion. There are two distinct components of Section 104(d):

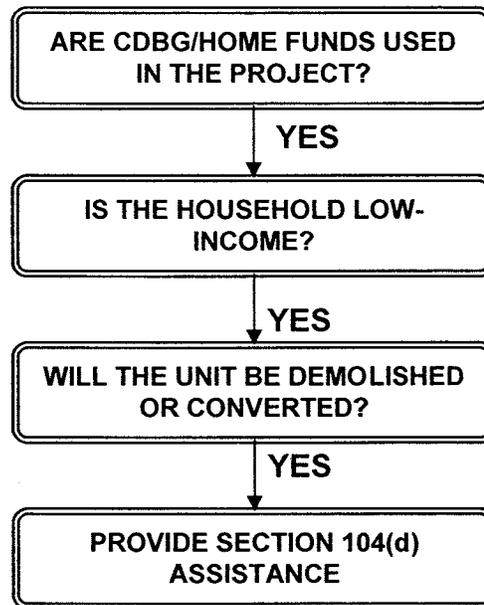
- **People:** Section 104(d) specifies relocation assistance for displaced low-income families. Section 104(d) does not provide protection or assistance for families with incomes above 80 percent of the area median income.
- **Units:** Section 104(d) requires one-for-one replacement of low-income dwelling units that are demolished or converted to other use.

### A. *Tenant Assistance & Relocation Requirements*

Section 104(d) tenant assistance rules apply whenever:

- A unit occupied by a low-income person is demolished with HOME/CDBG funds;
- A HOME/CDBG funded conversion displaces a low-income person; or
- Non-low-income residents of a HOME/CDBG funded project who are displaced are ***not eligible for Section 104(d) assistance but are eligible for URA assistance.***

**Table 3 Section 104(d) Tenant Assistance Triggers Flowchart**



### ***B. Section 104(d) and URA: Similarities***

Both URA and Section 104(d) provide assistance for persons who have been displaced as a direct result of HUD-funded projects. Specific similarities between the two sets of regulations include:

- *Minimizing displacement* - Both regulations stress that displacement should be minimized when possible.
- *Notices* - Both require that a general information notice and a notice of non-displacement or a notice of eligibility for relocation benefits be provided.
- *Relocation assistance and procedures.*

### ***C. Replacement Housing Assistance - Section 104(d)***

Section 104(d) provides an extra level of relocation protection and assistance to some families in some projects. The Section 104(d) Replacement Housing Payment is available only to low-income households, i.e., households at or below 80 percent of the area median income. Displaced tenants with incomes above the Section 8 Lower Income Limit, i.e., above 80 percent of the area median income, receive assistance under the URA.

The Section 104(d) Replacement Housing Payment is intended to provide affordable housing for a **60-month period**. There is no cap on the Section 104(d) Replacement Housing Payment. As with the URA, the payment is calculated using the lower of the cost of the tenant's replacement dwelling, including utilities, or a comparable replacement dwelling. This is further explained in the table below.

Section 104(d) Replacement Housing Payment makes up the (for a 60 month period) **difference between:**

- The lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and
- The Total Tenant Payment (TTP)<sup>6</sup>, calculated as the greater of:
  - 30% of adjusted income
  - 10% of gross income

**Table 4: Section 104(d) Replacement Housing Calculation**

<b>EXAMPLE: SECTION 104(d) REPLACEMENT HOUSING CALCULATION</b>	
\$500 Replacement Unit Rent	\$20,000 Annual Income
50 <u>Estimated Average Utilities</u>	<u>\$ 1,440 Adjustments (\$480 x 3)</u>
\$550 Replacement Unit Gross Rent	\$18,560 Adjusted Income
\$490 Comparable Rent Unit	\$20,000 ÷ 12 months x .10 = \$167
50 <u>Estimated Average Utilities</u>	\$18,560 ÷ 12 months x .30 = <b>\$464</b>
\$540 Comparable Unit Gross Rent	
<b>TTP = \$464</b>	
Replacement Housing Payment:	
	\$540 Comparable Unit Gross Rent
Minus	<u>\$464 Total Tenant Payment (TTP)</u>
	\$76 Monthly Difference
	X 60 <u>Months</u>
	<b>\$4,560 Replacement Housing Payment</b>

<sup>6</sup> The CLC requires all of its grantees to use the annual income definition found at 24 CFR Part 5. The Part 5 definition of annual income is the *gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period*. Adjusted income is defined in 24 CFR Part 5.611 and is used to determine TTP, which is a measure of a household's ability to pay housing costs.

As with URA, cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment, including incidental expenses. All of the payment must be towards the purchase of the home.

Under Section 104(d), cash purchase assistance can only be used to buy a unit as part of a housing cooperative or mutual housing association<sup>7</sup>. If the displaced tenant wishes to purchase housing other than a cooperative unit or a mutual housing unit, replacement housing benefits may be calculated using the URA formula and be paid in one lump sum. The household may then use the URA assistance to purchase any type of unit.

For further information regarding the one-for-one replacement of housing requirements for Section 104(d), please refer to Section VI of this document.

#### ***D. Tenant-Based Rental Assistance***

While not a requirement, grantees may work with the local Public Housing Authority (PHA) to offer eligible displaced tenants a Section 8 Housing Choice Voucher as an alternative to cash rental assistance. Please consult HUD Handbook 1378, Paragraph 7-16 for more information.

### **VIII. Section 104(d) One-for-One Replacement**

CDBG and HOME funds may not be used to reduce a jurisdiction's stock of affordable housing. All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units, in connection with an activity assisted with CDBG/HOME funds, must be replaced with low/moderate-income dwelling units.

#### ***A. Which Dwelling Units Must Be Replaced?***

Units that meet ALL of the following criteria must be replaced:

1. The dwelling unit, **before** demolition or conversion, the market rent, ***including utilities***, did not exceed the fair market rents (FMR) established by HUD for the Section 8 Housing Choice Voucher program;
2. The dwelling unit is either **occupied or is a vacant occupiable** dwelling unit; and

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<sup>7</sup> Please note that housing cooperatives and mutual housing associations are not common in the City of Las Cruces. Therefore, those persons qualified under Section 104(d) who choose cash purchase assistance will have their replacement housing benefits calculated using the URA formula and be paid in one lump sum.

3. The dwelling unit is either going to be **demolished OR converted** so that it no longer serves as permanent housing.

**NOTE: Anytime a structure is converted from permanent housing with the use of HOME/CDBG funds, whether owner or tenant occupied, to temporary or transitional housing, it is considered a public facility and the units must be replaced.**

**Prior to committing any funds that will result in the demolition or conversion of low/moderate-income dwelling(s), the grantee must make public by publication in a newspaper of general circulation and submit it to the CLC's Community Development Department the following:**

- A description of the proposed activity;
- Location on a map and number of dwelling units by size that are affected;
- Time schedule for commencement and completion of demolition or conversion;
- Location on a map of replacement dwelling units by size;
- Source of funding and time schedule for replacement (replacement housing must be initially made available for occupancy at any time during the period beginning **one year before** the grantee's submission of this information and ending **three years after** the commencement of demolition or conversion);
- Basis of ensuring that replacement units will remain low/moderate-income for **at least 10 years** from initial occupancy; and
- If any proposed replacement units are smaller than previous units, information demonstrating that it is consistent with the housing needs of low-income households in the jurisdiction.

**NOTE: The income of the particular owner-occupant or renter is irrelevant in one-for-one replacement.**

**Table 5: Examples That Trigger One-for-One Replacement Requirement**

<ul style="list-style-type: none"> <li>An apartment building with units in standard condition and rents below FMR is converted to an emergency shelter for the homeless using CDBG/HOME funds.</li> </ul>	<ul style="list-style-type: none"> <li>A seriously dilapidated unit that is vacant for less than one year before remodeling with CDBG/HOME funds into transitional housing for the homeless and had a market rent below FMR.</li> </ul>
<ul style="list-style-type: none"> <li>A dwelling unit that was owner-occupied before CDBG/HOME demolition and comparable units had a market rent below FMR.</li> </ul>	<ul style="list-style-type: none"> <li>An occupied dwelling unit that was below FMR before CDBG/HOME rehab and above FRM after rehab.</li> </ul>
<ul style="list-style-type: none"> <li>A dwelling unit that was substandard but suitable for rehab, vacant for 2 years and had a market rent below FMR prior to conversion and was converted with CDBG funds into commercial space.</li> </ul>	

### ***B. What Counts as a Replacement Dwelling Unit?***

Replacement of low/moderate-income dwelling units may be provided by **any** public agency or private development and must meet all of the following criteria:

1. Replacement units **must be located in the CLC's jurisdiction** and, to the extent feasible, be located within the same neighborhood as the units replaced.
2. Replacement units **must be sufficient in number and size** to house no fewer than the number of occupants who could have been housed in the units that were demolished or converted and must be in accordance with applicable local housing occupancy code. The grantee may not replace demolished or converted units with smaller units. For example, a two-bedroom unit cannot be replaced with two, one-bedroom units, unless before committing funds, the grantee has provided information to citizens and to the CLC demonstrating that the proposed replacement is consistent with the housing needs of low-income households in the jurisdiction.
3. The grantee **cannot count rehabilitation of owner-occupied units** as replacement units. The grantee **cannot count rehabilitation of tenant-occupied units** as replacement units **unless**:
  - The unit was raised from substandard to standard condition;
  - No person was displaced from the unit as a direct result of the activity; and
  - The unit was vacant for at least three months before the execution of the agreement between the grantee and the property owner.
4. Replacement units must be made available for occupancy at any time during the period beginning **one year before** the grantee submits the necessary information to the public and the Community Development

Department and ending **three years after** the start of the demolition or conversion.

5. Replacement units must be designed to **remain low/moderate-income dwelling units for at least 10 years** from the date of initial occupancy. They may include, but are not limited to, public housing or existing housing receiving Section 8 project-based rental assistance.

## IX. Acquisition Requirements

### A. Overview

URA acquisition rules cover all *involuntary* purchases by a grantee. Because *voluntary* sales are negotiated between the seller and the grantee without the threat of eminent domain or condemnation, URA does not regulate them except for certain notification provisions outlined below. **Section 104(d) regulations do not apply to acquisition.**

It is assumed that all of the acquisitions undertaken by grantees will be voluntary. Thus, this section provides only brief information about involuntary acquisition requirements. If a project will involve an involuntary acquisition, please refer to Chapter 5 of HUD Handbook 1378 for more detailed information about these requirements.

In general, grantees undertaking *involuntary* acquisitions must:

- Notify owners of the agency's intentions and owner and tenants of their rights;
- Conduct an appraisal of the property in order to determine its fair market value;
- Offer just compensation for the property being acquired; and
- Make every reasonable effort to complete the property transaction expeditiously.

Owners may offer to donate properties and these transactions would also be considered voluntary. But:

- The owner(s) must be informed of their rights under URA; and
- The owner(s) must waive these rights in a written consent document.

In general, URA recognizes three potential types of **voluntary** purchases:

1. Purchases where the grantee can exercise the **power of eminent domain** but agrees in writing not to do so;

2. Purchases where the grantee **does not** have the power of eminent domain; and
3. Purchases of property **from government agencies** (federal, state, or local) if the purchasing grantee does not have the power of condemnation.

The definition of voluntary sales varies across these three types of purchases. The following sections further explain these three types of voluntary sales.

### ***B. Grantees with the Power of Eminent Domain***

In order to be considered voluntary, purchases by grantees with the power of eminent domain must meet **all** of the following criteria:

- The grantee must inform the owner **in writing** that it will not use the power of eminent domain to acquire the property;
- The grantee must not have a specific site it requires for the program or activity it is planning to undertake. The search for alternative sites may be limited to one general geographic area, but, all owners within the same geographic area must be treated similarly; and
- To be considered voluntary, the property may not be part of a planned or designated project area where substantially all property within the area is to be purchased within a specific time frame.

The grantee must inform the owner of the fair market value of the property in question:

- This notice must be in writing and done before a sales contract is signed; and
- The URA does not require a formal appraisal. However, the estimate of market value must be done by a person with knowledge of the local market and the grantee's files must include an explanation for the estimate.

### ***C. Grantees Without the Power of Eminent Domain***

A sale to a grantee without the power of eminent domain can be considered voluntary if the grantee notifies the seller that (1) it does not have the power of eminent domain, and (2) of its determination of market value estimate for the property.

- When feasible, the above noted information must be provided prior to the purchase offer; and
- When it is infeasible to deliver the notice before the purchase offer, owner(s) must be allowed to withdraw from the purchase agreement after receipt of the grantee's information.

### ***D. Government Property and Grantees Without the Power of Condemnation***

Acquisitions are considered voluntary if federal, state, or local government owns the property in question and the grantee does not have the authority to acquire property by the power of eminent domain.

## **X. Record Keeping Requirements**

Record keeping is an important part of the relocation process. The recipient must maintain a separate case file on each displaced household for three years after project completion or after relocation payment, whichever is later. The relocation file checklist identifies all the information required for each file. The recipient will keep a copy of the checklist in the front of each relocation file for tracking purposes and to facilitate local review.

Common deficiencies in relocation record keeping include the following:

- Failure to document the claim;
- Inaccurate computation of relocation payments;
- Rental assistance payment is made in a lump sum;
- Incorrect time of 90-Day Notice;
- Failure to send the 30-Day Notice;
- Incomplete records; and
- Failure to maintain records for three years.

City staff are responsible for monitoring both internal and external acquisition and relocation projects using the checklists' located in the Appendix B. Completed applicable checklists' are to be kept in the project file.

## **XI. Appeals**

All persons have the right to appeal a determination made by the agency regarding:

- The eligibility for relocation assistance as a displaced person; and
- The amount of the relocation payments being offered by the agency;

Residential claimants may appeal:

- The adequacy of referrals to comparable units;
- The timeliness of an inspection of the replacement unit; or

- The time limit to file a claim for a replacement housing payment.

A person must file their appeals with the CLC 90 calendar days from receiving the CLC's determination on a person's claim. All appeals must be submitted in writing to the Community Development Director (CD Director). The CD Director will review the appeal and provide a written notification of determination within 15 calendar days of receiving the appeal. All persons have a right to appeal the determination of the CD Director to the Las Cruces City Council, within 15 calendar days of receiving the written notification from the CD Director.

If the person seeks further review of the determination of an appeal, the person must prepare a written request to the Albuquerque HUD Field Office. A person is also eligible to appeal the determination through the courts. A person has a right to be represented by legal counsel or other representatives in connection with his/her appeal, but solely at the person's expense.

## **XII. References**

For more information on the issues discussed in this Plan, please refer to:

- Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA)
- Section 104(d), Title 1 of the Housing and Community Development Act of 1974
- HUD Handbook 1378
- Federal Fair Housing Act (Title VIII)
- Civil Rights Acts (Title VI and VII)
- Section 8, Existing Housing Quality Standards (HQS) (24 CFR 882.109)
- Lead-based paint requirements (24 CFR Part 35)

**APPENDIX**

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## ACQUISITION, RELOCATION AND REPLACEMENT QUESTIONNAIRE

- 1) Will the proposed project involve the acquisition of any land or building(s)?  
 YES     NO
- 2) Has the property been identified?  
 YES     NO  
 If yes, please provide the property address: \_\_\_\_\_  
**NOTE:** This form needs to be completed for each project or property address.
- 3) Does your agency have the power of eminent domain?  
 YES     NO  
 If you answered YES continue with #4, If you answered No, skip to # 5.
- 4) **VOLUNTARY ACQUISITION DETERMINATION (you must answer A thru D):**  
 Given the current status of the project:  
 A: has a specific site or property been identified that must be acquired in order to facilitate the project?     YES (I)     NO (V)  
 B: has your agency opted to limit its search for sites to a general geographic area in order to facilitate the project?     YES (I)     NO (V)  
**NOTE:** If you agency wishes to purchase more than one site within a geographic area on this basis, the City must be consulted in order to assure that all owners are treated similarly.  
 C: is the nature of the project such that the property to be acquired is not part of an intended, planned, or designated project area where all or substantially all the of property within the area is to be acquired within specific period of time?  
 YES (V)     NO (I)  
 D: is the nature of the project such that the property to be acquired, prior to making the offer to the owner that they can be clearly advised by your agency that you will not acquire the property in the event negotiations fail to result in an amicable agreement?     YES (V)     NO (I)  
**NOTE:** If you answer yes to D: above, you are requested to provide a copy of the notice to City Staff.
- 5) Has the Fair Market Value of the property been established by an appraisal or market comparison with at least three other properties?  
 YES (IF SO, PLEASE ATTACH COPIES OF THE APPRAISAL OR COMPARABLES)  
 NO (IF NO, how was the "Fair Market Value" estimated? \_\_\_\_\_)  
 N/A Property has not been identified and/or value has not been determined)

- 6) If a property has been identified for acquisition, has the seller/owner been notified of the Fair Market Value and signed the appropriate Voluntary Transaction forms.
- YES (please provide a copy of the notice to the sellers)
- NO (please coordinate with City staff on providing proper notices)
- N/A (please coordinate with City staff on providing proper notices)
- 7) Will the proposed project activity directly result in permanent or economic displacement or temporary relocation?
- YES (If yes, See Note immediately below) - go to question 8
- NO (skip question 8)
- NOTE:** You must be in a position to provide the City a copy of the current rent roll to ensure all occupants are provided General Information Notices prior to the execution of the HOME Agreement.
- 8) Are the displaced individuals considered low-income families or individuals?
- YES (provide documentation of the current residents' incomes)
- NO
- 9) What steps have been taken to minimize displacement?
- a. What assistance/benefits will be provided to the displaced individuals?
- Note: Assistance for temporary relocation must reimburse for actual reasonable expenses incurred.**
- 10) Will the proposed project result in the demolition or change in the use of any existing low-income housing units?
- YES (If yes, answer next question)
- NO
- a) If yes, what plans have been developed to replace the units and ensure that they stay at or below "Fair Market Rent" for 10 years? (You may attach additional sheets)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOTES:

### Voluntary Acquisition & Market Value Notice

Date:

To: \_\_\_\_\_:

I/We, the undersigned representing \_\_\_\_\_ (agency), is/are interested in acquiring property you own at \_\_\_\_\_ (street address and legal), for a proposed project for \_\_\_\_\_ which will receive funding assistance from the U.S. Department of Housing and Urban Development (HUD).

Please be advised that \_\_\_\_\_ (agency name), does/does not possess the power of eminent domain and \_\_\_\_\_ (agency name) will be unable to acquire the property in the event that negotiations fail to result in an amicable agreement.

We are offering you \$\_\_\_\_\_ to purchase your property (see attached formal offer). We believe this amount represents the Fair Market Value (FMV) of your property as evidenced by the attached appraisal/fair market estimate.

If you have any questions about this notice or the proposed property purchase, please contact me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Seller's initials

\_\_\_\_\_  
Date

**Note: a copy of this executed notice and the FMR must be provided to appropriate City of Las Cruces staff.**

Voluntary Acq. & Mkt Value Notice

**Exhibit 25-7  
Relocation and Real Property Acquisition**

6509.2 REV-5 CHG-2

<b>Guide for Review of Real Property Acquisition</b>			
<b>Name of Program Participant:</b>			
<b>Staff Consulted:</b>			
<b>Program and Project No.:</b>		<b>Parcel No.:</b>	
		<b>Address of Acquired Property:</b>	
<b>Name(s) of Reviewer(s)</b>		<b>Date</b>	

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a "finding."

**Instructions:** This Exhibit is designed to monitor compliance with statutory and regulatory requirements governing the acquisition of real property under HUD-assisted projects. The guidance on sampling in the introduction to this Chapter is to be followed but, generally, the acquisition sample shall be based on cases in which settlement has been completed. If necessary to provide a representative sample of acquisition activities, the reviewer may include incomplete transactions in which negotiations have been initiated. The sample of cases should be representative (e.g., residential, commercial and industrial).

**Questions:**

1.

<b>a. Property Use: (Check one)</b>	
<input type="checkbox"/> Single Family Residential	<input type="checkbox"/> Commercial
<input type="checkbox"/> Nonprofit Organization	<input type="checkbox"/> Multifamily Residential
<input type="checkbox"/> Industrial	<input type="checkbox"/> Other _____
<b>b. Owner (check here if occupant):</b> _____	
Tenants: _____	
Current Address of Owner: _____	
Home/Business Telephone Numbers: _____	
<b>Describe Basis for Conclusion:</b>	

6509.2 REV-5 CHG-2

**Exhibit 25-7  
Relocation and Real Property Acquisition**

2.

What is the date of the official determination to acquire the real property?
Describe Basis for Conclusion:

3.

What is the date the owner was notified of the program participant's interest in acquiring the property?
Describe Basis for Conclusion:

4.

Was the owner provided written information explaining the basic URA acquisition protections at 49 CFR 24.102? (If yes, include date information was provided in response below.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

5.

Was the owner invited to accompany each appraiser on his/her inspection of the property? [49 CFR 24.102(c)(1)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

Exhibit 25-7  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

6.

What are the dates and dollar amounts of the following:		
<input type="checkbox"/> 1 <sup>st</sup> appraisal	Date: _____	Amount: \$ _____
<input type="checkbox"/> 2 <sup>nd</sup> appraisal	Date: _____	Amount: \$ _____
<input type="checkbox"/> 3 <sup>rd</sup> appraisal	Date: _____	Amount: \$ _____
<input type="checkbox"/> Review appraisal	Date: _____	Amount: \$ _____
<input type="checkbox"/> Just compensation determination	Date: _____	Amount: \$ _____
<input type="checkbox"/> Initial written offer	Date: _____	Amount: \$ _____
<input type="checkbox"/> Acquisition price	Date: _____	Amount: \$ _____
Describe Basis for Conclusion:		

7.

Did the appraiser determine the highest and best use of the property? (See paragraph 4.c of Attachment 3 to Chapter 25, Guidelines for HUD Monitoring Review of Appraisals) [49 CFR 24.103(a)(2)(i)]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

8.

Did the appraisal(s) contain information on comparable sales and/or other documentation used to determine fair market value? [49 CFR 24.103(a)(2)(iii)]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

9.

Do each appraiser's standards and practices/techniques reflect established Federal and federally assisted program appraisal practices, as applicable? (See paragraphs 3 and 4 of Attachment 3 to Chapter 25, Guidelines for HUD Monitoring Review of Appraisals) [49 CFR 24.103(a)(2)(ii)]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

Exhibit 25-7  
Relocation and Real Property Acquisition

10. Is the program participant's determination of just compensation acceptable (i.e., the amount is not less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property)? (Explain "yes" or "no" answer.)  
[49 CFR 24.102(d)]

	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No

Describe Basis for Conclusion:

---

11. Were tenant-owned improvements considered in the appraisal(s) of fair market value and determination of just compensation?  
[49 CFR 24.105(a)]

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A

Describe Basis for Conclusion:

---

12. Does the file contain review appraisal(s)?  
[49 CFR 24.9; 49 CFR 24.104]

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A

Describe Basis for Conclusion:

---

13. Did the program participant provide the owner a summary statement of the basis for its determination of just compensation?  
[49 CFR 24.102(e)(1)]

	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No

Describe Basis for Conclusion:

Exhibit 25-7  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

14.

What is the date the owner executed the negotiated purchase agreement?
Describe Basis for Conclusion:

15.

Were condemnation proceedings instituted? (If "yes," provide date in response below.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

16.

If property was condemned, what is the date the program participant deposited the fair market value of the property with the Court?
Describe Basis for Conclusion:

17.

What is the date title vested in the program participant?
Describe Basis for Conclusion:

18.

Has the owner received the purchase price proceeds? (If "yes," include date in response below).	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

19.

Did the program participant pay all required settlement costs? (If not, explain in response below).	<input type="checkbox"/>	<input type="checkbox"/>
Yes No		
Describe Basis for Conclusion:		

20.

a. Was there a written appeal or complaint filed by the owner? [49 CFR 24.10]	<input type="checkbox"/>	<input type="checkbox"/>	
Yes No			
b. If the answer to a, above is "yes," was the appeal or complaint to the program participant or with HUD?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yes No N/A			
c. How was the appeal or complaint handled?			
Describe Basis for Conclusion:			

Exhibit 25-8  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-1

<b>Guide for Review of Relocation and Real Property Acquisition Activities of State CDBG Grantees and State HOME PJs</b>			
Name of Program Participant:			
Staff Consulted:			
Name(s) of Reviewer(s)		Date	

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a "finding."

**Instructions:** State program participants must maintain records which are adequate to allow HUD to determine whether or not the State's program is being carried out in compliance with policies and procedures governing implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, section 104(d) of the Housing and Community Development Act of 1974, and the optional relocation policies adopted pursuant to 24 CFR 92.353d (HOME) or 24 CFR 570.606d (CDBG). This Exhibit is to be used to monitor compliance by State CDBG and State HOME program participants. One Exhibit should be completed for each State program being reviewed. The sample guidance discussed in the introduction to this Chapter is to be followed in answering the questions in this Exhibit.

State records must demonstrate that the State program participant has provided appropriate training and technical assistance and conducted monitoring reviews of its recipients that were sufficient in depth and frequency for the State to determine whether recipients were complying with applicable laws and regulations and whether the State satisfied any applicable monitoring or review requirements. This Exhibit will assist in the review of State program participant records, but should be supplemented with an in-depth review, using Exhibits 25-1, 25-2, 25-3, 25-4, 25-5, 25-6 and 25-7, as applicable, of one or more recipients.

**Questions:**

1.

Identify the State official responsible for acquisition. (Indicate name, title and telephone number)
Describe Basis for Conclusion:

6509.2 REV-5 CHG-1

**Exhibit 25-8  
Relocation and Real Property Acquisition**

2.

Identify the State official responsible for relocation. (Include name, title and telephone number.)

**Describe Basis for Conclusion:**

3.

Briefly describe materials distributed to recipients and timing of distribution (e.g., informational booklets, claim forms, recordkeeping requirements, appraisal contract forms, technical guides, guideform deed, and amortization tables).

**Describe Basis for Conclusion:**

4.

Do non-HUD materials comply with applicable Federal laws, regulations and HUD requirements? (If not, describe any deficiencies in response below.)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yes	No	N/A

**Describe Basis for Conclusion:**

5.

Describe (or attach copy of) State instructions to recipients for policies governing optional relocation programs.

[HOME: 24 CFR 92.353(d); CDBG: 24 CFR 570.606(d)]

**Describe Basis for Conclusion:**

Exhibit 25-8  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-1

6.

Describe the State's policy for making cash rental assistance payments in installments.  
[See 42 U.S.C. 3537c; 24 CFR 42.350(e)(1)]

Describe Basis for Conclusion:

7.

Does the State program participant's Consolidated Plan contain definitions for  
"standard condition" and "substandard condition but suitable for rehabilitation?"  
[24 CFR 42.305 and 24 CFR 91.305(b)(1)]

Yes

No

Describe Basis for Conclusion:

8.

Briefly describe State program participant training and technical assistance provided to recipients (particularly those new to relocation/acquisition).

Describe Basis for Conclusion:

9.

Briefly describe the State program participant's follow-up efforts to ensure continuing capacity of recipient staff to carry out relocation/acquisition requirements.

Describe Basis for Conclusion:

10.

Briefly describe the State program participant's methods for identifying type and size of recipient workload. (Methods may include application forms, telephone surveys, and written reports.)

**Describe Basis for Conclusion:**

11.

Describe phase(s) of the program at which the State program participant monitors recipients and the factors used to select recipients for review.

**Describe Basis for Conclusion:**

12.

Describe any strengths and weaknesses of the State program participant's selection procedures.

**Describe Basis for Conclusion:**

13.

Identify State reviews of recipients that you examined.

**Describe Basis for Conclusion:**

Exhibit 25-8  
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14.

Did each recipient certify, before approval of a grant by the State program participant, that it will comply with the URA, implementing regulations at 49 CFR Part 24, and the pertinent section of the HUD program regulations? (For CDBG and HOME programs, this includes a certification that it is following a residential antidisplacement and relocation assistance plan.) [49 CFR 24.601 and 24 CFR 42.325; HOME: 24 CFR 92.353(e); CDBG: 24 CFR 570.606(c)]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

15.

For recipients reviewed, identify, by recipient, the number of personal interviews with displaced persons (residential and non-residential) and former owners of property acquired and the number of replacement housing or site inspections conducted by the State program participant, as applicable. [49 CFR 24.205(c)(2)(i) and (ii)]				
Recipient	Interviews		Inspections	
	Residential	Non-residential	Residential	Non-residential
Describe Basis for Conclusion:				

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Exhibit 25-8  
Relocation and Real Property Acquisition

16.

Describe, by recipient, significant findings made by the State program participant and your comments on the quality of reviews and review documentation. (The State program participant should review eligibility determinations, timeliness of notices, local procedures for selecting appraisers, the quality of local appraisals and appraisal reviews, advisory services, timeliness of referrals to comparable replacement housing, the inspection of replacement housing, relocation payment computations and receipt of payments by affected persons.)

Describe Basis for Conclusion:

17.

For recipients reviewed, are State program participant's findings and required corrective actions clearly stated and properly supported? (Explain.)



Yes

No

Describe Basis for Conclusion:

Exhibit 25-5  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

Guide for Review of Relocation of Residential Occupant Not Displaced -- Individual Case File			
Name of Program Participant:			
Staff Consulted:			
Project Name and Number:		Funding Source:	
Location:			
Name(s) of Reviewer(s)		Date	

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a "finding."

**Instructions:** This Exhibit is designed to monitor compliance with statutory and regulatory requirements governing displacement, relocation and the provision of assistance to certain residential occupants who are not displaced under HUD-assisted projects. It is important to review cases where occupants were not considered displaced by a project that resulted in acquisition, rehabilitation or demolition. An occupant who is not displaced may or may not move temporarily or may be required to move to another site within the same building. In selecting the sample of files to review, the HUD reviewer's initial file selection is to follow the guidance in the introduction to this Chapter. If possible, at least five files should be reviewed. Consideration should be given to:

- whether a occupant was designated as temporarily relocated in accordance with applicable program requirements;
- whether occupants were required to move to another unit within the same building.

The reviewer may also add files to the selection where complaints have been made, where there is alleged noncompliance, or where the project is large and/or complex.

**Questions:**

1. Client Information

Provide the following client information:
Name(s) of Person(s): _____
Telephone Number(s): _____
Address: _____
Address of Temporary Unit, if applicable: _____
Address of Permanent Unit: _____
Date of Initial Occupancy: _____
Date of Temporary Move, if applicable: _____
Date Final Move Completed, if applicable: _____



Exhibit 25-5  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

4.

Does the file contain a written General Information Notice? (If yes, include date of General Information Notice in response below.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

5.

If the answer to question 4 is "yes," did the General Information Notice:			
a. Explain that the project has been proposed and caution the person not to move?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Explain that the person will not be displaced or, if there is a possibility that the person may be displaced, generally describe the relocation payment(s) and assistance for which the person may be eligible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. Generally explain the terms and conditions under which the person will be able to lease and occupy a suitable, decent, safe and sanitary unit in the same building upon completion of the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. Inform the 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
e. Describe the person's rights to appeal the program participant's determination as to the person's application for assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
f. Include the pertinent HUD information booklet(s) or the equivalent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

Relocation and Real Property Acquisition

6.

Was the occupant issued a Notice of Non-Displacement? (If yes, include date of Notice in response below.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

7.

If the answer to question 6 is "yes," was the occupant offered an opportunity to lease and occupy a suitable, decent, safe and sanitary unit in the same building/complex at the same rent or at a rent/estimated utility cost not exceeding 30% of average monthly gross household income? [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

8.

Does the occupant file contain evidence that advisory services were provided?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

9.

a. Was the occupant required to move? (If yes, include below whether the move was temporary or a permanent move within the project.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

Exhibit 25-5  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

<p>b. If the occupant moved temporarily, was he/she reimbursed for all reasonable out-of-pocket expenses for the duration of the temporary move? [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]</p>	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Yes</td> <td>No</td> <td>N/A</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No	N/A
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
Yes	No	N/A					
<p>Describe Basis for Conclusion:</p>							

<p>c. If the occupant was temporarily relocated, was (or is) the duration of the temporary move 12 months or less? (If no, indicate below the duration of the temporary move.) [49 CFR 24.2(a)(9)(ii)(D)]</p>	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Yes</td> <td>No</td> <td>N/A</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No	N/A
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
Yes	No	N/A					
<p>Describe Basis for Conclusion:</p>							

<p>d. If the occupant was temporarily relocated, were other terms and conditions of the temporary move reasonable (e.g., access to schools, employment; services including transportation, medical and religious facilities, shopping; accommodations for pets)? [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]</p>	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Yes</td> <td>No</td> <td>N/A</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No	N/A
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
Yes	No	N/A					
<p>Describe Basis for Conclusion:</p>							

<p>e. If temporary relocation extended beyond 12 months, was the occupant offered permanent relocation assistance in addition to the temporary relocation assistance received? NOTE: If temporary relocation lasted more than 12 months, case file should also be reviewed using Exhibit 25-3.</p>	<table border="1"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Yes</td> <td>No</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No
<input type="checkbox"/>	<input type="checkbox"/>				
Yes	No				
<p>Describe Basis for Conclusion:</p>					

f. If temporary relocation lasted more than 12 months, did the occupant retain the option to return to the project in accordance with any past assurances?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

10.

a. Does the file contain evidence that occupant received payment for increased temporary housing costs? [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

b. What was the amount of increased housing costs for temporary housing? (Check computation using the attached Worksheet for Temporary Housing Costs, Item 15. If incorrect, explain.)
Describe Basis for Conclusion:

11.

a. What was the initial rent offered to the occupant at completion of the project? <input type="checkbox"/> Rent/utility cost not increased      \$ _____ <input type="checkbox"/> Increased rent/utility cost              \$ _____ [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]
Describe Basis for Conclusion:

Exhibit 25-5  
Relocation and Real Property Acquisition

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<p>b. Does the increased rent/utility cost exceed 30% of gross household income? [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>Describe Basis for Conclusion:</p>		

12.

<p>a. Does the file contain evidence that occupant received a payment for moving and related expenses (for moving from their unit and for returning from the temporary unit)? [May be required under certain HUD program regulations. See definition of "displaced person" and/or "temporary relocation" under appropriate HUD program regulations, where applicable. Attachment 1 contains a list of HUD programs covered by the URA and/or Section 104(d) and their program-specific relocation citations.]</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>Describe Basis for Conclusion:</p>		

<p>b. What was the amount of payment for moving and related expenses?</p>
<p>Describe Basis for Conclusion:</p>

<p>c. Was the payment for one move or two moves?</p>
<p>Describe Basis for Conclusion:</p>

d. Was the computation correctly calculated? [49 CFR 24.301 and 49 CFR 24.302]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

13.

Were the following notices personally served or sent registered or certified mail, return receipt requested:			
a. General Information Notice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Notice of Nondisplacement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

14.

a. Was there a written appeal or complaint filed by the occupant?	<input type="checkbox"/>	<input type="checkbox"/>	
	Yes	No	
b. If the answer to a, above, is "yes," is the occupant a lower-income person?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. If the answer to b, above, is "yes," was the appeal or complaint also filed with HUD?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. How was the appeal handled?			
Describe Basis for Conclusion:			

Exhibit 25-5  
Relocation and Real Property Acquisition

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Attachment I: Worksheet for Temporary Housing Costs			
Name of Program Participant:			
Project Name and Number:		Location:	
Name(s) of Reviewer(s)		Date	

**Instructions:** To calculate the amount of increased housing costs for temporary housing costs in item 10, please complete the following for occupants who moved temporarily.

<b>Increased Housing Costs:</b>	
1. Monthly rent/utilities at property moved to:	\$ _____
2. Monthly rent/utilities at property moved from:	\$ _____
3. Line 1 minus line 2 (for negative numbers, use "0")	\$ _____
4. No. of months of temporary move	_____
5. Line 3 \$ _____ x Line 4 _____	\$ _____
<b>Moving Costs:</b>	
6. Amount of moving expenses for Move 1	\$ _____
7. Amount of moving expenses for Move 2	\$ _____
8. Line 6 plus line 7	\$ _____
<b>Storage Costs:</b>	
9. Total storage costs	\$ _____
<b>Deposits:</b>	
10. Gas	\$ _____
11. Electric	\$ _____
12. Cable TV	\$ _____
13. Water/sewer	\$ _____
14. Garbage service	\$ _____
15. Other	\$ _____
16. Add lines 10, 11, 12, 13, 14, and 15	\$ _____
<b>Other Costs:</b>	
Per diem for unit without cooking facilities:	
17.	
\$ _____ per adult x No. of adults _____	\$ _____
\$ _____ per child under age 12 x No. of children _____	\$ _____
Total	\$ _____
18. Other costs (itemize)	\$ _____
19. Other costs (itemize)	\$ _____
20. Other costs (itemize)	\$ _____
Add lines 5, 8, 9, 16, 17, 18, 19 and 20	_____



Exhibit 25-3  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

Guide for Review of Relocation of Residential Displaced Person – Individual Case File			
Name of Program Participant:			
Staff Consulted:			
Project Name and Number:		Funding Source:	Location:
Name(s) of Reviewer(s)		Date	

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a "finding."

**Instructions:** This Exhibit is designed to monitor compliance with statutory and regulatory requirements governing displacement, relocation and the provision of assistance to certain residential occupants who are displaced under HUD-assisted projects. (NOTE: For review of individual case files for persons temporarily relocated, use Exhibit 25-5.) Generally, the displacement sample shall include completed cases in which payments have been made. However, if necessary to provide a representative sample, other cases may be included. The sample should provide a basis to determine not only whether payments were computed properly and made promptly, but also whether displaced persons received the full range of relocation payments and services to which they were entitled. Cases in which an appeal has been filed or the program participant has determined that a person is ineligible for relocation assistance shall be given a high priority. Following the guidance on the selection of projects to review in the introduction to this Chapter, the sample of cases should include residential tenants and owners, with particular emphasis on lower-income tenants.

**Questions:**

**1. Client Information**

Provide the following client information:	
Name(s) of Person(s) Displaced:	_____
Telephone Number(s):	_____
Address From Which Displaced:	_____
Address of Replacement Property:	_____
Date of Initial Occupancy:	_____
Date Final Move Completed:	_____
Describe Basis for Conclusion:	

2.

<b>a. Occupant Characteristics</b> Check As Appropriate: <table style="display: inline-table; vertical-align: top; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Owner</td> </tr> <tr> <td><input type="checkbox"/> Tenant</td> </tr> </table> Check One: <table style="display: inline-table; vertical-align: top; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Family</td> </tr> <tr> <td><input type="checkbox"/> Individual</td> </tr> </table>		<input type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> Family	<input type="checkbox"/> Individual					
<input type="checkbox"/> Owner										
<input type="checkbox"/> Tenant										
<input type="checkbox"/> Family										
<input type="checkbox"/> Individual										
<b>b. Household Composition (indicate number)</b> Adults (lawfully present in U.S.) _____ Adults (not lawfully present in U.S.) _____ Children (under 18 & lawfully present in U.S.) _____ Children (under 18 & not lawfully present in U.S.) _____ <p style="text-align: center;"><b>Total</b> _____</p>										
<b>c. Head of Household</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Check One:</td> <td style="width: 33%;">Check One:</td> <td style="width: 33%;">Check One:</td> </tr> <tr> <td><input type="checkbox"/> Male</td> <td><input type="checkbox"/> Under 65</td> <td><input type="checkbox"/> Lawfully present in U.S.</td> </tr> <tr> <td><input type="checkbox"/> Female</td> <td><input type="checkbox"/> 65 and Over</td> <td><input type="checkbox"/> Not lawfully present in U.S.</td> </tr> </table>		Check One:	Check One:	Check One:	<input type="checkbox"/> Male	<input type="checkbox"/> Under 65	<input type="checkbox"/> Lawfully present in U.S.	<input type="checkbox"/> Female	<input type="checkbox"/> 65 and Over	<input type="checkbox"/> Not lawfully present in U.S.
Check One:	Check One:	Check One:								
<input type="checkbox"/> Male	<input type="checkbox"/> Under 65	<input type="checkbox"/> Lawfully present in U.S.								
<input type="checkbox"/> Female	<input type="checkbox"/> 65 and Over	<input type="checkbox"/> Not lawfully present in U.S.								
<b>d. Racial/Ethnic Data</b> (Check one or more, if applicable) <input type="checkbox"/> Alaskan Native or American Indian <input type="checkbox"/> Asian <input type="checkbox"/> Black/African American <input type="checkbox"/> Hispanic/Latino <input type="checkbox"/> Native Hawaiian/Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> American Indian/Alaskan Native and White <input type="checkbox"/> Asian and White <input type="checkbox"/> Black/African American and White <input type="checkbox"/> American Indian/Alaskan Native and Black/African American <input type="checkbox"/> Other Multi-racial										
<b>Describe Basis for Conclusion:</b>   										

3.

Is there evidence that the displaced person was interviewed to determine his/her relocation needs and preferences and to explain his/her rights and options? (If yes, include date of interview in response below.) [49 CFR 24.205(c)(2)(ii)]	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;"><input type="checkbox"/></td> <td style="width: 50%; text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> </tr> </table>	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No
<input type="checkbox"/>	<input type="checkbox"/>				
Yes	No				
<b>Describe Basis for Conclusion:</b>   					

Exhibit 25-3  
Relocation and Real Property Acquisition

6509.2 REV-5 CHG-2

4.

a. Is the displaced person's average monthly gross household income "low-income" as classified by HUD's Annual Survey of Income Limits for the Public Housing and Section 8 programs?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. If the answer to "a" above is "yes," was the person's replacement housing payment calculated using the lesser of the following (check one and complete): <input type="checkbox"/> 30% of average monthly gross household income \$ _____ <input type="checkbox"/> Average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement \$ _____ [49 CFR 24.402(b)(2)(ii)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Describe Basis for Conclusion:	

5.

Does the file contain a written General Information Notice (GIN)? (If yes, include the date of the GIN in response below.) [49 CFR 24.9 and 49 CFR 24.203(a)]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

6.

If the answer to 5 above is "yes," did the General Information Notice:	
a. Include a description of the program participant's relocation program? [49 CFR 24.203(a)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
b. Inform the person that he/she may be displaced for the project and generally describe the relocation payment(s) for which he/she may be eligible? [49 CFR 24.203(a)(1)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
c. Inform the person that he/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 person successfully relocate? [49 CFR 24.203(a)(2)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
d. Inform the person that he/she will not be required to move without at least 90 days advance written notice and that he/she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available? [49 CFR 24.203(a)(3)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Exhibit 25-3  
Relocation and Real Property Acquisition

e. Inform the 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? [49 CFR 24.203(a)(4)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
f. Describe the person's rights to appeal the program participant's determination as to his/her application for assistance? [49 CFR 24.203(a)(5)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
g. Include the pertinent HUD information booklet(s) or the equivalent?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Describe Basis for Conclusion:	

7.

Does the file contain a Notice of Eligibility for Relocation Assistance? (If yes, include date of Notice of Eligibility in response below.) [49 CFR 24.9 and 49 CFR 24.203(b)]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

8.

If the answer to question 7 above is "yes," does the Notice of Eligibility:	
a. Inform the person of his/her eligibility for relocation assistance effective on the date of the initiation of negotiations?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
b. If the answer to question 7 above is "yes," does the Notice of Eligibility adequately describe the assistance, the estimated amount of assistance and the procedures for obtaining the assistance?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
c. If the answer to question 7 above is "yes," does the Notice of Eligibility identify the specific comparable replacement dwelling and the rent/utility costs used for establishing the upper limit of the replacement housing payment? (Include, in response below, the cost of comparable replacement dwelling monthly rent/utility costs or proposed sale price used to establish replacement housing payment.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

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d. If the answer to question 7 is "yes," did the Notice of Eligibility correctly explain to the person the moving expense choices that were available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A

**Describe Basis for Conclusion:**

9.

How many referrals were made to comparable replacement dwellings?  
[49 CFR 24.204 and 49 CFR 24.403(a)(1)]

**Describe Basis for Conclusion:**

10.

Was a 90-day notice issued? (If yes, include date of 90-day notice in response below.) [49 CFR 24.203(c)(1)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No

**Describe Basis for Conclusion:**

11.

If the 90-day notice did not state a specific day as the earliest date by which the occupant would be required to move, was a 30-day vacate notice issued? (If yes, include date of 30-day notice in response below.) [49 CFR 24.203(c)(3)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A

**Describe Basis for Conclusion:**

12.

Does the file contain evidence that advisory services were provided in accordance with 49 CFR 24.205(c)? [49 CFR 24.9]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

13.

Does the file contain evidence that the displaced person received a payment for moving and related expenses? (If yes, include date of final payment in response below.) [49 CFR 24.9]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

14.

If the answer to question 13 above is "yes":	
a. What type of moving and related expenses payment was made: <input type="checkbox"/> Actual Expenses? <input type="checkbox"/> Fixed Payment? <input type="checkbox"/> Self-Move (may be combination) [49 CFR 24.301]                      [49 CFR 24.302]                      [49 CFR 24.301(b)(2)]	
b. What was the amount of payment for moving and related expenses? _____	
c. What was the date of final payment? _____	
d. Was the computation correct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

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15.

Does the file contain evidence that, before making a replacement housing payment or releasing the initial payment from escrow, the following units were inspected to determine they were decent, safe and sanitary: [49 CFR 24.205(c)(2)(ii)(C) and 49 CFR 24.403(b)]	
a. Comparable replacement unit (prior to referral)? _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. Actual replacement unit? _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

16.

Does the file contain evidence that the displaced person received a replacement housing payment? [49 CFR 24.9 and 49 CFR 24.401-24.404, as applicable]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

17.

If the answer to question 16 above is "yes":	
a. What date was the Replacement Housing Payment Claim Filed? _____	
b. What was the amount claimed? _____	
c. What date was the claim paid? _____	
d. What was the amount paid? _____	
e. Was the replacement housing payment accurate? (Complete Attachment I Worksheet to respond to this question or attach copy of claim form.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

18.

Were the following Notices personally served or sent registered or certified mail, return receipt requested: [49 CFR 24.5]			
a. General Information Notice? _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Notice of Eligibility? _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. 90-Day Notice (as applicable)? _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. 30-Day Notice to Vacate? _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

19.

a. Was the displaced person advised of his/her rights under the Fair Housing Act?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

b. If the comparable replacement dwelling to be provided to a displaced person who is a minority was located in an area of minority concentration, was the displaced person also given referrals to comparable not located in such area?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

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c. Did the reviewer learn of any other issues that may be of interest to FHEO?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

20.

If a written appeal or complaint was filed by the displaced person, did the program participant promptly review the appeal in accordance with the requirements of 49 CFR Part 24 and/or 24 CFR 42.390? (If yes, describe issue raised and program participant's conclusion.) [49 CFR 24.10]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

Attachment I: Worksheet for Replacement Housing Payment	
Name of Program Participant:	Project Name/Number: Location:
Name of Reviewer:	Date Form Completed:

**Instructions:** Complete this worksheet to answer question 17.e of this Exhibit. "CRD" means "Comparable Replacement Dwelling" and "MRU" stands for "Monthly Rent Plus Utilities."

**A. Uniform Relocation Act**

180-Day Homeowner Payment	Rental Assistance Payment	Downpayment Assistance
1. Cost of replacement dwelling or CRD, whichever is less: \$ _____	1. MRU of replacement dwelling or CRD, whichever is less: \$ _____	1. MRU of CRD: \$ _____
2. Cost of displacement dwelling: \$ _____	2. MRU of displacement dwelling (For low-income enter MRU of displacement dwelling or 30% of income, whichever is less): \$ _____	2. MRU of Displacement Dwelling (For low-income enter MRU of displacement dwelling or 30% of income, whichever is less): \$ _____
3. Price Differential (Subtract Line 2 from Line 1): \$ _____	3. Monthly Need (subtract line 2 from line 1): \$ _____	3. Monthly need (subtract line 2 from line 1): \$ _____
4. Mortgage Interest Differential: \$ _____	4. Line 3 x 42: \$ _____	4. Line 3 x 42: \$ _____
5. Add lines 3 + 4: \$ _____		

**B. Section 104(d)**

Sec. 8 Housing Choice Voucher and/or Cash Assistance Provided	Section 8 Housing Choice Voucher Accepted	Purchase Assistance
1. MRU of replacement dwelling, or CRD, whichever is less: \$ _____	1. Security Deposit: \$ _____	1. MRU of CRD: \$ _____
2. Voucher subsidy (if none enter "0"): \$ _____	2. Reimbursement for credit check: \$ _____	2. TTP: \$ _____
3. Out-of-pocket cost (subtract line 2 from line 1): \$ _____	3. Gap/monthly need: * \$ _____	3. Monthly need (subtract line 2 from line 1): \$ _____
4. Total Tenant Payment (TTP): \$ _____	4. Line 3 x 60: \$ _____	4. Capitalized value of 60 monthly installments of amount on line 3: \$ _____
5. Monthly need (subtract line 4 from line 3. If less than "0," skip line 6): \$ _____	5. Add lines 1+2 + 4: \$ _____	5. Reimbursement for credit check: \$ _____
6. Line 3 x 60: \$ _____	* NOTE: If tenant was referred to a comparable unit for which the MRU exceeds the subsidy amount plus TTP, a cash rental assistance payment must be made. Such cash rental assistance payment must be made in installments.	6. Add lines 4 +5: \$ _____
7. Security Deposit: \$ _____		
8. Reimbursement for credit check: \$ _____		
9. Add lines 6 + 7 + 8: \$ _____		

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Guide for Review of Relocation of Non-Residential Displaced Person – Individual Case File			
Name of Program Participant:			
Staff Consulted:			
Project Name and No:		Funding Source:	
Location:			
Name(s) of Reviewer(s)		Date	

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a "finding."

**Instructions:** This Exhibit is designed to monitor compliance with statutory and regulatory requirements governing displacement, relocation and the provision of assistance to certain non-residential tenants and owner-occupants who are displaced as a direct result of HUD-assisted projects. The sampling guidance included in the introduction to this Chapter is to be followed but, generally, the displacement sample shall include completed cases in which payments have been made. However, if necessary to provide a representative sample, other cases may be included. The sample should provide a basis to determine not only whether payments were computed properly and made promptly, but also whether displaced persons received the full range of relocation payments and services to which they were entitled. Cases in which an appeal has been filed or the program participant has determined that a person is ineligible for relocation assistance shall be given a high priority. The sample of cases should include tenants and owner-occupants.

**Questions:**

1. Client Information

Provide the following client information:
Name(s) of Person(s) Displaced: _____
Telephone Number(s): _____
Address From Which Displaced: _____
Address of Replacement Property: _____
Date of Initial Occupancy: _____
Date Final Move Completed: _____
Describe Basis for Conclusion:

2.

<b>a. Occupant Characteristics:</b> Check As Appropriate: <input type="checkbox"/> Owner-occupant <input type="checkbox"/> Tenant		<input type="checkbox"/> Lawfully present in U.S. <input type="checkbox"/> Not lawfully present in U.S.	
<b>b. Check All That Apply:</b> <input type="checkbox"/> Business <input type="checkbox"/> Farm <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Business Reestablished <input type="checkbox"/> Any Other Non-Natural Person (e.g., limited liability company, unit of general local government)		<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Business Discontinued	
<b>c. Racial/Ethnic Data</b> (Check one or more, if applicable) <input type="checkbox"/> Alaskan Native or American Indian <input type="checkbox"/> Asian <input type="checkbox"/> Black/African American <input type="checkbox"/> Hispanic/Latino <input type="checkbox"/> Native Hawaiian/Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> American Indian/Alaskan Native and White <input type="checkbox"/> Asian and White <input type="checkbox"/> Black/African American and White <input type="checkbox"/> American Indian/Alaskan Native and Black/African American <input type="checkbox"/> Other Multi-racial			
<b>Describe Basis for Conclusion:</b>  			

3.

Is there evidence that the displaced person was personally interviewed to determine his/her relocation needs and preferences and to explain his/her rights and options? (NOTE: Evidence at a minimum should include information on the businesses' replacement site requirements, the need for outside specialists, identification and resolution of personal/realty issues, estimate of time required for the business to vacate the site, an estimate of anticipated difficulty in locating a replacement site and identification of any required advance relocation payments.) [49 CFR 24.9; 24 CFR 24.205(c)(2)(i)]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	<b>Describe Basis for Conclusion:</b>  	

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4.

Does the file contain a written General Information Notice? (If yes, include date of GIN in response below.) [49 CFR 24.9; 49 CFR 24.203(a)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

5.

If the answer to question 4 is "yes," did the General Information Notice:			
a. Inform the person that displacement may occur and generally describe the relocation payment(s) for which the person may be eligible? [49 CFR 24.203(a)(1)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Inform the person that the person will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate? [49 CFR 24.203(a)(2)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. Inform the person that the person will not be required to move without at least 90 days advance written notice and that the person cannot be required to move permanently unless at least one comparable replacement dwelling has been made available? [49 CFR 24.203(a)(3)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. Inform 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? [49 CFR 24.203(a)(4)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
e. Describe the person's rights to appeal the program participant's determination as to the person's application for assistance? [49 CFR 24.203(a)(5)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
f. Include the pertinent HUD information booklet(s) or the equivalent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

6.

Does the file contain a Notice of Eligibility for Relocation Assistance? (If yes, include the date of the Notice of Eligibility in response below.) [49 CFR 24.9; 49 CFR 24.203(b)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

7.

If the answer to question 6 above is "yes," does the Notice of Eligibility:			
a. Inform the business of its eligibility or relocation assistance effective on the date of the initiation of negotiations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Adequately explain to the business the assistance, the estimated amount of assistance and the procedures for obtaining the assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. Adequately explain to the business the moving expense choices that are available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

8.

Was the displaced person provided information on the availability, purchase prices, and rental costs of suitable replacement sites? [49 CFR 24.205(c)(2)(iii)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

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9.

Does the file contain evidence that advisory services were provided in accordance with 49 CFR 24.205(c)? [49 CFR 24.9]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

10.

Was a 90-day notice issued? (If yes, include the date of the 90-day notice in response below.) [49 CFR 24.203(c)]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

11.

If the answer to question 10 is "yes," did the 90-day notice state a specific date by which the displaced person would be required to move?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Describe Basis for Conclusion:			

12.

If the answer to question 11 is "no," was a 30-day vacate notice issued? (If yes, include the date of the 30-day notice in response below.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Describe Basis for Conclusion:		

13.

Does file contain evidence that the displaced person received a payment for moving and related expenses? [49 CFR 24.9; 49 CFR 24.301(a)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

14.

Was the payment for moving and related expenses a payment for:		
a. Actual Expenses pursuant to 49 CFR 24.301(d)?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
b. Fixed Payment In Lieu of Actual pursuant to 49 CFR 24.305?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
c. Reestablishment Expenses pursuant to 49 CFR 24.304?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
d. Self-Move (may be a combination) pursuant to 49 CFR 24.301(d)(2)?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

15.

Was the computation correctly calculated for the following: (If not, explain.)			
a. Actual Expenses? [49 CFR 24.301(d)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Fixed Payment In Lieu of Actual? [49 CFR 24.305]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. Reestablishment Expenses? [49 CFR 24.304]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. Self-Move (may be a combination)? [49 CFR 24.301(d)(2)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

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16.

<b>Provide the following information:</b>	
Date Claim Filed: _____	Amount Claimed: _____
Date Claim Paid: _____	Amount Paid: _____
<b>Describe Basis for Conclusion:</b>	

17.

<b>Were the following notices personally served or sent registered or certified mail, return receipt requested:</b> [49 CFR 24.5]			
a. General Information Notice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Notice of Eligibility?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. 90-Day Notice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. 30-Day Notice to Vacate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
<b>Describe Basis for Conclusion:</b>			

18.

a. If a written appeal or complaint was filed by the displaced person, did the program participant promptly review the appeal in accordance with the requirements of 49 CFR Part 24? [49 CFR 24.10 (for appeals)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
<b>Describe Basis for Conclusion:</b>		

b. If the answer to a, above is yes, did the program participant seek HUD's review of the appeal or complaints?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

c. How was the appeal or complaint handled?
Describe Basis for Conclusion:

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<b>Guide for Review of Non-Residential Occupant Not Displaced -- Individual Case File</b>			
<b>Name of Program Participant:</b>			
<b>Staff Consulted:</b>			
<b>Project Name and No.</b>		<b>Funding Source:</b>	
<b>Location:</b>			
<b>Name(s) of Reviewer(s)</b>		<b>Date</b>	

**NOTE:** All questions that address requirements contain the citation for the source of the requirement (statute, regulation, NOFA, or grant agreement). If the requirement is not met, HUD must make a finding of noncompliance. All other questions (questions that do not contain the citation for the requirement) do not address requirements, but are included to assist the reviewer in understanding the participant's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised, but not a "finding."

**Instructions:** This Exhibit is designed to monitor compliance with statutory and regulatory requirements governing displacement, relocation and the provision of assistance to certain non-residential occupants who are not displaced under HUD-assisted projects. (Non-residential occupants include businesses, non-profit organizations and farms, and will hereafter be referred to as "businesses.") It is important to review cases where businesses were not displaced by a project that resulted in acquisition, rehabilitation or demolition. A business that is not displaced may or may not move temporarily or may be required to move to another site within the same building. In selecting the sample of files to review, the HUD reviewer's initial file selection should follow the guidance in the introduction to this Chapter and be randomly selected. If possible, at least five files should be reviewed. Consideration should be given to:

- whether a business is temporarily relocated
- whether businesses were required to move to another unit within the same building.

The reviewer may also add files to the selection where complaints have been made, where there is alleged or suspected noncompliance, or where the project is large and/or complex.

**Questions:**

1.

<b>Provide the following client information:</b>
<b>Name(s) of Business:</b> _____
<b>Telephone Number(s):</b> _____
<b>Address:</b> _____
<b>Address of Temporary Site:</b> _____
<b>Date of Initial Occupancy:</b> _____
<b>Date Move Completed:</b> _____

2.

<b>a. Occupant Characteristics:</b>	
Check As Appropriate: <input type="checkbox"/> Owner <input type="checkbox"/> Tenant	Check One: <input type="checkbox"/> Lawfully Present in U.S. <input type="checkbox"/> Not Lawfully Present in U.S.
<b>b. Check All That Apply:</b>	
<input type="checkbox"/> Business <input type="checkbox"/> Farm <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Business Reestablished <input type="checkbox"/> Other	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Business Discontinued
<b>c. Racial/Ethnic Data</b>	
(Check one or more, if applicable)	
<input type="checkbox"/> Alaskan Native or American Indian <input type="checkbox"/> Asian <input type="checkbox"/> Black/African American <input type="checkbox"/> Hispanic/Latino <input type="checkbox"/> Native Hawaiian/Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> American Indian/Alaskan Native and White <input type="checkbox"/> Asian and White <input type="checkbox"/> Black/African American and White <input type="checkbox"/> American Indian/Alaskan Native and Black/African American <input type="checkbox"/> Other Multi-racial	
<b>Describe Basis for Conclusion:</b>	

3.

Is there evidence that the business was personally interviewed to determine the business' relocation needs and preferences and to explain the business' rights and options? (If yes, include date of interview in response below.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Describe Basis for Conclusion:</b>	

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4.

Does the file contain a written General Information Notice?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

5.

If the answer to question 4 is "yes," did the General Information Notice:			
a. Explain that the project has been proposed and caution the business not to move?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
b. Explain that the business will not be displaced or, if there is a possibility that the business may be displaced, generally describe the relocation payment(s) and assistance for which the business may be eligible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
c. Generally explain the terms and conditions under which the business will be able to lease and occupy a unit at the same site upon completion of the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
d. Inform the business that 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
e. Describe the business' rights to appeal the program participant's determination as to the business' application for assistance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
f. Include the pertinent HUD information booklet(s) or the equivalent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

6.

Was the business issued a Notice of Non-Displacement? (If yes, include date of Notice in response below.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

7.

Does the business file contain evidence that advisory services were provided in accordance with 49 CFR 24.205(c)? (If yes, describe advisory services provided.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

8.

Does the program participant have a policy for paying temporary moving expenses? (If yes, briefly describe policy in response below.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

9.

a. Was the business required to move?	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

b. If yes, was the move (select one):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> temporary OR	Yes	No	N/A
<input type="checkbox"/> permanent move on-site?			
Describe Basis for Conclusion:			

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10.

Was the business required to move more than once? (If yes, include the number of moves in the response below.)	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

11.

If the business moved temporarily, were temporary moving expenses reimbursed? [49 CFR Part 24, Appendix A, Section 24.2(a)(9)(ii)(D)]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	N/A
Describe Basis for Conclusion:			

12.

If the business was/is to be temporarily relocated, indicate the time period for the temporary relocation below (number of months).
Describe Basis for Conclusion:

13.

Were all terms and conditions of the temporary move reasonable (i.e., temporary move did not exceed 12 months; business was reimbursed for out-of-pocket expenses)? [49 CFR Part 24, Appendix A, Section 24.2(a)(9)(ii)(D)]	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No
Describe Basis for Conclusion:		

14.

Does the file contain evidence that the business received payment for moving and related expenses [for moving from its unit and for returning from the temporary unit]? (If yes, include amount of payment in response below.) [49 CFR Part 24, Appendix A, Section 24.2(a)(9)(ii)(D)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Describe Basis for Conclusion:	

15.

Were the following notices personally served or sent registered or certified mail, return receipt requested:	
a. General Information Notice? [49 CFR 24.203(a)]	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
b. Notice of Non-displacement?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Describe Basis for Conclusion:	

16.

a. Was there a written appeal or complaint filed by the business? (If yes, describe issue raised and program participant's conclusion.) [49 CFR 24.10]	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

b. If the answer to a, above, is "yes," did the program participant seek HUD's review of the appeal or complaints?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe Basis for Conclusion:	

**Exhibit 25-6  
Relocation and Real Property Acquisition**

6509.2 REV-5 CHG-2

<b>c. How was the appeal or complaint handled?</b>
<b>Describe Basis for Conclusion:</b>

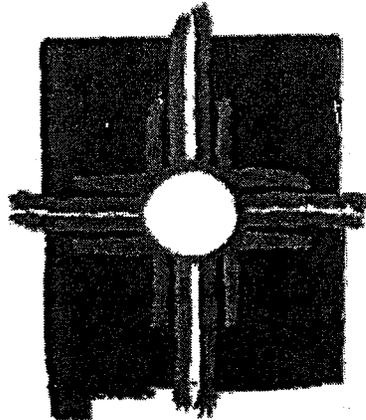


**RIGHT OF WAY HANDBOOK**

**VOLUME VII**

**TRIBAL/LOCAL GOVERNMENT  
AGENCY**

**January 1, 2011**



**NMDOT**

**New Mexico Department of Transportation  
Right of Way Bureau  
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## **CHAPTER 1 PURPOSE**

### **SECTION 1-GENERAL**

The purpose of the Right of Way Procedural Manual (Handbook) is to present the legal authority and the administrative procedures governing the functions of the Right of Way Bureau.

It is the responsibility of Department staff or persons contracting with the Right of Way Bureau to know, understand and to adhere to the provisions of the Handbook when conducting right of way business.

This Handbook will help to ensure that state and federal laws and regulations pertaining to the right of way program are implemented in a manner that is efficient and cost-effective.

The Department's practice for all right of way functions shall be conducted to assure that no individual shall be subjected to discrimination or be denied benefits to which he/she is entitled, on the grounds of race, color, sex, national origin, age, religion or handicap.

The Handbook is intended to ensure that owners of property, displaced persons, and/or others are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injury as a result of projects designed for the benefits of the public as a whole and to ensure that the Department implements these regulations in a manner that is efficient and cost-effective.

In general, the Handbook has been developed for the Department's use in administration of the right of way program and is designed to assist Department right of way personnel and other governmental agencies when utilizing Federal-aid funds in complying with both state and federal laws, regulations, directives, and standards. The Handbook is intended to be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished.

### **SECTION 2-FHWA PROVISIONS**

The Handbook meets the requirements and is written in compliance with Title 23 CFR and Title 49 CFR Part 24 as they relate to the Right of Way program.

The Department follows uniform procedures, as contained in the Handbook, for applicable projects regardless of the source of funding, that is, state funded projects will be administered in the same manner as federally funded projects.

Until the Handbook is accepted and approved by FHWA under the provisions of this section, previously accepted policy and procedure statements currently applicable will remain in effect.

The Department is responsible for full compliance with FHWA requirements whether or not its Handbook currently reflects proper coverage of the requirements. Changes to the Handbook, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for acceptance within thirty days after notification. FHWA approval of Handbook changes is required prior to implementation by the Department. In-house administrative type Handbook changes shall be transmitted to FHWA for approval

### **SECTION 3-STRUCTURE OF HANDBOOKS**

The Handbook meets the requirements of 23 CFR 710.201 and is approved by the Office of the General Counsel (OGC) and the Federal Highway Administration (FHWA) in accordance with established Department procedures and federal regulations. The Handbook consists of ten volumes as follows:

Number	Title
I	Preliminary Right of Way Studies
II	Lands Abstracting
III	Appraisal
IV	Acquisition
V	Relocation Assistance
VI	Property Asset Management
VII	Local Public Agencies
VIII	Budget and Audit
IX	Office Procedures
X	Water Acquisition

The Property Asset Management Volume VI has been established as a Procedural Manual; however, it will be considered and referenced as part of the Handbook for purposes of State/Federal law and regulatory compliance.

Each volume is published in a separate loose leaf format.

Each volume is available on the Department's website at [www.New Mexico Department Of Transportation.state.nm.us](http://www.New Mexico Department Of Transportation.state.nm.us), linked through Divisions and can be printed to be in a separate loose-leaf format. Volumes are subdivided into chapters, sections and subsections.

Forms and sample documentation are available from each unit's supervisor. The main information phone number at Right of Way is (505) 827-5635.



## **CHAPTER 2 AUTHORITY**

### **SECTION 1-GENERAL**

The authority for the Right of Way Bureau functions is contained in the following.

1. New Mexico State Law and Regulations as promulgated by the New Mexico Department of Transportation and State Highway Commission.
2. Executive Order No. 89-15 signed by Governor Garrey Carruthers, 3/30/89.
3. New Mexico Statutes (NMSA) 1978 annotated, Chapter 13, specifically the Procurement Code, Section 13-1-28 through 13-1-199 which imposes civil and criminal penalties for its violation.
4. New Mexico State Law and Regulations as promulgated by the New Mexico State Natural Resource Department, Office of the State Engineer.
5. United States Code of Federal Regulations (CFR) Title 23 and Title 49.
6. Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.
7. New Mexico Eminent Domain Code, with Special Alternative Condemnation Procedures, Sections 42-2-1 through 42-24 and 42A-1-1 through 42A-1-33, NMSA, 1978, as applicable.
8. New Mexico Relocation Assistance Act, Sections 42-3-1 through 42-3-15, NMSA, 1978.
9. New Mexico Real Estate Appraisers Act, Sections 61-30-1 through 61-30-23, NMSA, 1978.
10. Administrative Directives as issued by the Office of Inspector General with the New Mexico Department of Transportation.
11. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (Uniform Act, Title 42 USC 4601).

Sections of laws and regulations may be referred to in this Handbook for the user's reference in conducting their duties. It is the intent of the Department to update this Handbook to incorporate amendments to state and federal law and regulations; however, it is the responsibility of the user to refer to the law and/or regulations for the complete and up-to-date handbook/legal foundation. Updates will be presented to FHWA prior to implementation.

The Department is to follow uniform applicable procedures, as contained in the Handbook, for all projects regardless of the source of funding, that is, State funded projects will be administered in the same manner as Federally funded projects. This will ensure compliance with federal funding requirements in case of state funded projects that become federalized.

## **CHAPTER 3 ORGANIZATION**

### **SECTION 1-GENERAL**

The Tribal/Local Government-Agent is located in the Right of Way Bureau and assists Tribal & Local Government Agencies (T/LGA) with many phases of construction but not acquisition of property.

If during the planning stage a T/LGA anticipates the need for right-of-way, the Right of Way Bureau should be contacted as soon as possible.

L/TGA shall contact the Right of Way Bureau when property must be permanently or temporarily acquired for roadway projects. The Right of Way Bureau Chief authorizes right of way certification. Without this certification, a T/LGA shall not be eligible to receive federal-aid.

### **SECTION 2-DUTIES**

L/LGA should select a liaison to coordinate activities with the New Mexico Department of Transportation (Department). Only qualified personnel or contractors can be assigned right of way work. The appraisal, negotiation, and acquisition of property processes are subject to state/federal regulations in most situations.

The Right of Way Bureau will monitor, approve and offer guidance through various milestones in the process of acquiring right-of-way for federal-aid projects.

The Right of Way Bureau Chief shall only certify those right of way projects that conform to state/federal regulations.

### **SECTION 3-CONFLICT OF INTEREST**

If the T/LGA liaison has a personal or family relationship with, or involvement in, the past ownership or sales history of the real property, or a participating business association with the owner, or any other party of interest in the property sought, the T/LGA must consult the Tribal/Local Government Agent for guidance.

**SECTION 4-FORMS**

Please contact the Right of Way Bureau for any needed form or additional guidance. The Tribal/Local Government Agent can be phoned at (505) 827-0660.

## CHAPTER 4 PROCEDURES

### SECTION 1-TRIBAL & LOCAL GOVERNMENT AGENCIES

#### Section 1.1-General

This document was developed specifically for providing guidance to T/LGAs and Department staff in understanding and working through the right of way process, from project scoping and title search through Right of Way Certification, as it relates to local government transportation projects funded with federal-aid monies and some state-funded projects. Generally, the procedures outlined herein do not apply to Severance Tax (ST), General Fund (GA), Municipal Arterial (MAP), County Arterial (CAP), School Bus Route (SBR), and Co-op projects.

However, if one or more of these state funding sources is used in conjunction with federal-aid funds, all phases of the project, including the right of way process, becomes “federalized” and the federal processes must be followed. Additionally, in certain situations, usually when State Road Funds used for a project where a road exchange is involved or the facility to be improved is on the State Highway System, the federal process described herein must be followed. This is also true if future federal-aid funds will be used for the project. The Project Agreement between the Department and the T/LGA will stipulate the federal processes that must be followed.

The primary federal legislation that regulates the right of way process is the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” as amended (Uniform Act). One of its main purposes is to assure that property owners, from whom property is acquired for projects using Federal funds in any phase, are treated fairly, consistently, and equitably.

Oversight and guidance in complying with Uniform Act requirements on T/LGA transportation projects will be provided by the Department’s Right of Way Bureau. Oversight, guidance, and interpretation are provided to the Department by the FHWA New Mexico Division Office, Right of Way Officer. The right of way process is admittedly complex and one that should not be entered into without the availability of an experienced and knowledgeable right of way professional (staff or consultant).

It is important to recognize early that completing the right of way process can also be time consuming. While the exact time to correctly go through the process is driven by the number of owners, one can generally expect that the time necessary will usually be a minimum of six months and more likely nine or more months. It is not uncommon, however, for the process to take 12 to 18 months, and T/LGAs need to be cognizant of

how this relates to project development process as a whole. Generally, there is no such thing as a one, two, or three-month acquisition process.

### **Section 1.2-Qualification to Perform Right of Way Activities**

Qualification is the process whereby the Right of Way Bureau reviews the T/LGA's staff (or consultants), policies, and procedures to perform right of way activities. Using qualified personnel allows the T/LGA to perform these activities for federal-aid projects. Performing these activities without qualified personnel will jeopardize project funding. Related Volumes shall be used as applicable.

If the project is state funded and involves a road exchange project or a road that will become or remain on the State Highway System or if current or future federal-aid funds will be used for the project, then Right of Way Bureau review of procedures and use of qualified personnel is required, as specified in the project agreement. Use of qualified personnel, however, does not imply that the work product will automatically be acceptable to the Department.

Qualification of the T/LGA should begin when it has become apparent during the scoping stage that right of way might be required on the project.

FHWA requirements concerning state and T/LGA qualifications are based on the following regulations:

1. The Department has overall responsibility for the acquisition of right of way on all federal-aid highway systems, even if a T/LGA is the lead agency. (23 CFR 710.201 (b).
2. The Department shall have a right of way organization adequately staffed, equipped, and organized to conduct its right of way responsibilities. (23 CFR 710.201(a).
3. The Department may, by means of a written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights of way for federal-aid projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices are in conformity with the Department's accepted procedures or it will follow the Department's procedures. It is the responsibility of the Department to fully inform political subdivisions of their responsibilities in connection with federally assisted highway projects and for imposing sanctions in cases of non-compliance.

Due to the possible changes of personnel within T/LGAs and various changes in federal and state laws and requirements, a review of all qualified agencies will be conducted

periodically to determine whether T/LGA procedures appear to be adequate to perform in conformance with state and federal requirements. The Right of Way Bureau will make T/LGA aware of any changes in state and federal policies or procedures.

1. A T/LGA that has not used its right of way procedures for an extended period will be reviewed prior to starting any new projects. A new or “re” qualification is necessary.
2. All T/LGAs are required to notify the Right of Way Bureau of any policy or procedure changes that might affect their qualification status.
3. A T/LGA could lose its status as a qualified agency if discrepancies are brought to its attention but are not immediately corrected. Upon identification of the discrepancy by the Department, an appropriate notice shall be sent to the T/LGA informing the agency it may lose its status. Subsequent to the notification, if an T/LGA is still unable or unwilling to correct its procedures, a notice shall be sent to the T/LGA informing it that it is no longer qualified to perform right of way activities for federal-aid funded projects. The T/LGA will be notified that failure to comply will jeopardize funding for its project(s).

### **Section 1.3-Monitoring Process**

Monitoring (review) of T/LGA right of way work is the process whereby the Department assures that T/LGA right of way practices are in accordance with applicable state and federal laws and regulations, and provides the necessary documentation for “Right of Way Certification”. A Right of Way Certification is an important prerequisite to requesting funding authorization for construction activities on all federal-aid and some state projects. It should be stressed that failure to conform to accepted policies and procedures will likely result in loss of reimbursement for all or part of a project.

It is Department practice to monitor right of way work on T/LGA transportation projects whenever federal funding (and certain state funding) is included in any phase of such projects. Monitoring must be sufficient to ensure that federal and state requirements are being met. If the T/LGA obtained qualification based on their own procedures, monitoring will be done to substantiate conformance with those procedures. Monitoring will be performed to ensure that each right of way function is being completed according to state/federal requirements. Monitoring allows corrective action, if necessary, to be performed in a timely manner. If a Right of Way Certification is prepared on the basis of an authorization to enter or right of entry, monitoring will continue until all the property rights have been acquired.

The Right of Way Bureau (ROW) may be contacted by the T/LGA to explain the monitoring program and offer guidance to identify and minimize potential problems. Following the initial contact, the T/LGA shall notify the Right of Way Bureau at each

stage of right of way activity. Monitoring of the Right of Way process will be done according to this section.

Monitoring procedures will cover the following right of way elements:

1. Project Scoping Report (or combined Project Identification Form / Scoping Report.)
2. Title Search and Title Reports
3. Property Survey and Right of Way Mapping
4. Right of Way Map Review
5. Appraisal and Appraisal Review
6. Acquisition (including administrative settlements)
7. Condemnation
8. Relocation
9. Right of Way Certification
10. Property Asset Management

If an agency has established a good record, and monitoring reveals compliance with federal/state regulations, then only minimal monitoring may be required. If monitoring reveals noncompliance or repeated errors, then project funding may be jeopardized.

A compliance check sheet for each right of way function being monitored will be completed by the T/LGA on each parcel that has been selected for review, and shall be retained in the project file. If any work needs to be corrected, the Right of Way Bureau will communicate the proposed corrections to the T/LGA in writing. A follow-up inspection will be performed to ensure that the corrections have been performed.

### **Section 1.4-Training**

The Department is responsible for informing the T/LGA of the specific right of way requirements for different types of projects. The T/LGA is responsible for training of T/LGA personnel. The Department also has an obligation to assist and educate the T/LGA in the proper procedures that must be followed during the entire right of way process. The Right of Way Bureau can provide information on any laws and regulations that must be complied with. The Right of Way Bureau may also provide sample forms for the guidance for possible use of the T/LGAs.

### **Section 1.5-Environmental**

It is important to recognize the interrelationship, during project development, between environmental documentation and various right of way activities. The Environmental Document, whether it is a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement, must be approved by FHWA prior to obtaining Federal Authorization to Proceed for right of way activities.

Once FHWA has approved the Environmental Document and Federal Authorization to Proceed for Right of Way Activities has been obtained, the Department's Technical Support Engineer will notify the Right of Way Section, and in turn the T/LGA will be notified that, assuming everything else is in order, right of way acquisition may commence.

T/LGAs must be alert to the possible existence of contaminated soil or hazardous waste within properties that may potentially be acquired, including for use as easements. The early detection of contaminated soil or hazardous waste in the right of way to be acquired is a major issue with regard to project cost and liability that may be potentially incurred. The possibility of soil contamination or the presence of hazardous waste should be addressed as soon as the potential for its existence is discovered during project scoping. The Department's "Hazardous Material Assessment Handbook" outlines the procedure of investigating the possibility of and dealing with contaminated properties. Every effort must be made to avoid contaminated sites.

### **Section 1.6-Title Search**

The acquiring agency must obtain title information for each parcel prior to initiating property survey and right of way mapping necessary for right of way acquisition. This is to ensure that all interest holders on a project are identified. The following elements are required:

1. A thirty-three (33) year certified title search (or longer if required) for every parcel affected in the right of way acquisition. This applies to right of way takes and Construction Maintenance Easements (CMEs).
2. A Chain of Title (Index) reflecting all transactions affecting each parcel and copies of all pertinent documents described in the Chain of Title (Index).
3. A five year Tax Search (or computer printout) reflecting the current assessed owner, address, description of property, and the status and amount of taxes for the current assessed year - whether paid or unpaid.
4. Title sheet(s) that show current owner and address of record and description of property being abstracted.
5. Work map and index identifying each parcel abstracted.

Only mortgages, liens, encumbrances on the property, and judgments that have not been released should be shown. On any probate or district court proceedings, only pertinent proceedings need to be shown. The complete case file is not required. A licensed and bonded title company should prepare all title reports.

For Temporary Construction Permits (TCPs), the Title Sheet should show the current owner and address of record, the description of the property, and the document creating ownership.

Federal regulations provide that eligible expenses incidental to transfer of real property to the agency are reimbursable on federal-aid projects.

The owner of the real property shall be reimbursed for all reasonable and necessary expenses the owner necessarily incurred for the following:

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 T/LGA. However the T/LGA is not required to pay cost solely required to perfect the owner's title to the real property.
2. Penalty costs and other charges for prepayment of any pre-existing recorded mortgages that were entered into in good faith and are encumbering the real property.

3. The pro rata portion of any prepaid real property taxes which are allocable to the period after the T/LGA obtains title to the property or effective possession of it, whichever is earlier. (49 CFR 24.106 (a).
4. Whenever feasible, the T/LGA should pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the T/LGA. (49 CFR 24.106.

### **Section 1.7-Property Survey / Right of Way Mapping**

The property survey must be done by a licensed surveyor who shall certify (and stamp) the right of way map(s) and legal descriptions. The current version of the Department's "Right of Way Mapping Development Procedures" in the NMDOT Survey Handbook explains in detail all right of way mapping requirements. A copy of this document may be obtained from the Department's Survey and Lands Engineering Section.

Right of Way Maps shall be submitted by the T/LGA to the appropriate Department District Technical Support Engineer, who will transmit the maps to the Department's Lands Engineering Bureau for review. Lands Engineering will not accept direct submittals from T/LGAs. Once the review is completed, Lands Engineering will transmit the materials and a memo to the Right of Way Bureau with recommendations and/or a statement that the maps are approved for use in appraisals. The T/LGA will be notified of the review results.

Additionally, if the proposed construction is contained within right of way previously acquired by the T/LGA or within the State Highway System right of way, the T/LGA shall transmit to the Right of Way Bureau the following:

1. Two (2) sets of the construction plans on which the existing right of way lines are clearly shown, labeled, and referenced to centerline of survey. The right of way should be shown crosshatched.
2. Two (2) copies of the documentation substantiating the method (deed, plat, etc.) by which the right of way was acquired. This shall include deed and plat reference dates.
3. For any existing right of way acquired after January 2, 1971, a certification with documentation that this right of way was acquired in conformance with the Federal "Uniform Relocation Assistance and Real Property Acquisition Act of 1970" is necessary.

The requirements of the Uniform Act are very specific. They apply to property acquired after January 2, 1971, for Federal-aid projects. T/LGAs contemplating right of way acquisition on or adjacent to such a route are advised to contact the Right of Way Bureau. Failure to comply will jeopardize the use of federal funds on the project.

## **Section 1.8-Appraisal**

Before the initiation of the acquisition process, the fair market value of parcels to be acquired must be determined by a qualified appraiser. T/LGAs (or fee appraisers) must be properly qualified in accordance with the New Mexico Real Estate Appraisers Act. The minimum qualifications for an appraiser, as set forth in the Department's Right of Way Handbook, Volume III, - Appraisal, shall be certified to the Right of Way Bureau. The Right of Way Bureau may review the qualifications of the proposed individual(s). If the T/LGA hires a consultant for the appraisal function, a copy of the contract between the T/LGA and the consultant shall be provided to the Right of Way Bureau.

Establishing "just compensation" is regulated by Department's standards and procedures. The T/LGA's staff or fee appraiser must recommend the just compensation in compliance with current Department policy and federal regulations. On request, the Right of Way Appraisal Supervisor may provide guidance of the appraisal function.

The format and level of documentation for an appraisal depend upon the complexity of the appraisal situation. Detailed information on requirements is contained in the Department's Right of Way Handbook, Volume III - Appraisal. The Right of Way Bureau Appraisal Unit Supervisor may coordinate with a Department Review Appraiser to provide answers to any specific questions or guidance.

The T/LGA must give the property owner the opportunity, in writing, to accompany the appraiser on a tour of the property.

Under certain conditions the T/LGA may request permission in writing to use the Department's appraisal waiver process. An appraisal may not be required if the property owner is donating the property and releases the T/LGA from this obligation or the T/LGA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the land value is estimated at \$2,500 or less, based on a review of available data.

Unless a property owner waives his/her right to an appraisal of the real property to be donated or the T/LGA determines to use the Appraisal Waiver option, an appraisal must occur as in any other property acquisition. Additionally, a property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on the "Donation of Real Property Form", which may be obtained from the Department's Right of Way Bureau.

If the property owner wishes to use the donation for tax purposes, an appraisal must be done by a qualified fee appraiser to satisfy the Internal Revenue Service Code. It is also important to note that even if property is donated, the project's routine environmental requirements must still be met. Additionally, caution must be used to assure that

contaminated property will not be donated unless and until appropriate hazardous waste remediation measures are accomplished to the satisfaction of the Department.

### **Section 1.9-Appraisal Review**

The Department may conduct the Appraisal Review actions unless specific prior arrangements have been made and documented. The Department's Right of Way Bureau Review Appraiser is responsible for the sufficient review of appraisal reports of real property to be acquired in connection with federal and some state funded transportation projects.

The appraisal review will assure that the appraisal conforms to federal and state statutes and regulations prior to the initiation of acquisition. In no event will the appraisal review function be contracted to a consultant.

### **Section 1.10-Acquisition**

While one goal of the T/LGA is the completion of its project in a timely manner, there are no short cuts around the acquisition process. The type of project, its design, and method of construction may vary, but the acquisition process will remain the same. Acquisition is one of the most sensitive aspects of the activities that the T/LGA will be involved with since it involves direct personal contacts with property owners.

The T/LGA's primary goal during the acquisition process is to acquire any property rights required to construct, operate and maintain the project. The Acquisition Agent should be a person on the T/LGA staff (or their fee negotiator) that is qualified to perform acquisition. In cases where the T/LGA has untrained or insufficient staff to perform the acquisitions, fee negotiators hired under contract may be used, with certain stipulations. The T/LGA will be required to furnish a summary, such as a resume, of the individual(s) being proposed for use by the T/LGA. The Right of Way Bureau will review the person's qualifications.

Fee negotiators must be employed through written contract, a copy of the proposed contract with selected bidder must be supplied for concurrence with the Right of Way Bureau. The amount of the compensation (fees) should be established on a parcel or owner basis and shall not be determined as a percentage of fair market value. The fee shall represent a fair payment for the work performed.

Before any offer can be made to a property owner, the Acquisition Agent must have the reviewed and approved appraisal, stating fair market value and including any damages or benefits for the parcel. Right of Entry may not be used prior to presentation of a written offer of fair market value based on a reviewed and approved appraisal. An agency official

is required to make the determination of what it believes to be just compensation which is the basis of the offer. This action cannot be delegated to a consultant or non-agency official.

Any T/LGA utilizing state and/or federal-aid funds for any portion of a transportation project must ensure that owners of property rights to be acquired are treated fairly, equitably, and consistently.

The Acquisition Agent must make all reasonable efforts to personally contact each property owner or their designated representative at a time and place convenient to the property owner. The property owner must receive an explanation of the acquisition process, which should be supplemented by a copy of the acquisition brochure. Copies of the brochure are available from the Right of Way Bureau.

A formal Letter of Offer must be presented to the property owner showing the determination of fair market value for the property. The formal Letter of Offer must contain a Statement of Offer, a description and location of the parcel to be acquired, and a summary statement identifying compensation for fee land, easements, improvements, damages, etc. Identification of any buildings, structures, and improvements being acquired that are considered part of the real property must be included.

The Acquisition Agent must give the property owner the 30 days to review the offer and any opportunity to present any information that the owner feels might affect the value of the property and was not considered in the appraisal. Any new information must be considered, and the appraisal should be updated if necessary to establish a new offer.

Right of way acquisition by exchange for additional construction features, may be used in certain cases. This form of compensation must be clearly noted in the contract (contact the Right of Way Bureau for sample forms) and must be approved by the Tribal/Local Government Agent, the Department District Technical Support Engineer, and Right of Way Bureau Chief, who shall initial and date the contract.

Under certain conditions, the purchase price for property to be acquired may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have failed and an authorized T/LGA official justify in writing to the ROW Acquisition Supervisor such "administrative settlement" as being reasonable, prudent, and in the public interest according to the Department's Right of Way Handbook, Volume IV - Acquisition. The T/LGA shall identify to the Right of Way Section the responsible official who has authority to approve administrative settlements. In arriving at a determination whether to approve an administrative settlement, the designated official must give full consideration to all pertinent information and prepare a written justification which indicates that available information (e.g., appraisals, including the owner's appraisal if one is available, recent court awards, estimated trial costs, and valuation problems) support such a settlement. The extent of the written justification is a judgmental determination and should be consistent with the situation, circumstances, and amount of money involved.

Reimbursement of right of way costs will not occur unless all written justifications have been transmitted to the Right of Way Bureau for approval. All counter offers proposed by a property owner shall be made in writing and shall be addressed to the appropriate T/LGA official.

Real property may be donated for project right of way. Property owners who wish to donate all or part of their property, any interest thereof, or the compensation which they could have received for the property must be fully informed by the T/LGA that they may receive just compensation. Property owners must not be coerced or pressured into donating property.

Unless a property owner waives his/her right to an appraisal of the real property to be donated or the T/LGA determines to use the Appraisal Waiver option, an appraisal must occur as in any other property acquisition. Additionally, a property owner waiver of the right to receive an appraisal and/or just compensation shall be documented on the "Donation of Real Property Form", which may be obtained from the Department's Right of Way Bureau.

If the property owner wishes to use the donation for tax purposes, an appraisal must be done by a qualified fee appraiser to satisfy the Internal Revenue Service Code. It is also important to note that even if property is donated, the project's routine environmental requirements must still be met. Additionally, caution must be used to assure that contaminated property will not be donated unless and until appropriate hazardous waste remediation measures are accomplished to the satisfaction of the Department.

An individual file shall be maintained for each ownership. The Acquisition Agent shall maintain timely, complete, and adequate records of all negotiations, on an ownership basis. The record shall be written in a permanent form and completed within a reasonable time after each contact with the property owner. The need to document each property owner contact and/or any pertinent information concerning every parcel should be emphasized. The finished report shall be signed and dated by the Acquisition Agent. Samples of this "negotiator's log" may be requested from the Right of Way Bureau.

Records shall also be maintained on a individual parcel/project basis. Furthermore, all records shall be kept for at least three (3) years from submittal of the final request for right of way reimbursement by the T/LGA. The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State. The parcel file shall contain copies of the Title Report, Reviewed and Approved Appraisal, formal Letter of Offer, Right of Way Map, copies of the signed contract, signed and notarized conveyance documents, any loan releases, justification for settlements, and the signed and dated negotiator's log. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.

### **Section 1.11-Relocation**

Federal and state laws and regulations mandate specific rights and entitlement of individuals, families, and businesses displaced by transportation projects and required to relocate due to the public acquisition of right of way. Generally speaking, all families and businesses meeting occupancy requirements on or before the date negotiations began are eligible for relocation assistance.

Legal requirements for implementing relocation assistance are lengthy and detailed. T/LGAs are required to relocate any persons or businesses displaced by projects that are funded with federal or certain state funds. T/LGAs must contact the ROW Relocation Unit for guidance and a proposed list of T/LGA staff or fee relocation agents must be submitted to the Right of Way Bureau for review prior to the initiation of relocation activities (See Volume V for Relocation Procedure). Relocation actions are subject to ROW oversight and approval.

### **Section 1.12-Encroachments**

An illegal encroachment is the unauthorized use of public right of way for any purpose other than that of public travel and/or the placing of any type of structure or personal property into public rights of way without the expressed written consent of the Department. Rule 88-5 (L), (18 NMAC 20.5), defines encroachments as “An intrusion into, under, upon, or over highway right of way by a permanent structure or fixture. This term shall include, but not be limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, Christmas displays, parking areas and banners.” All encroachments should be noted on project plans so that appropriate action can be taken to remove them. For projects on state and federal highways, contact the Property Asset Management Unit of the Department’s Right of Way Bureau for guidance.

### **Section 1.13-Right of Way Certification**

Following completion of all right of way activities (title search, property survey, right of way mapping, appraisals and review, acquisition, and relocation) and prior to receiving authorization to advertise the physical construction for bids, the T/LGA shall complete a Right of Way Certification and submit it to the Right of Way Bureau certifying that:

1. A statement is received from the T/LGA, either separately or combined with the information required by 23 CFR 635.309(c), that either all right of way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made

2. A statement is received from the T/LGA certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the state has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

#### Full Certification

- A. All necessary rights of way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right of way but all occupants have vacated the lands and improvements and the state has physical possession and the rights to remove, salvage, or demolish these improvements and enter on all land.

#### Conditional Certification

1. Although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the state has physical possession and right to remove, salvage, or demolish these improvements.
2. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them. The state may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the state shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the T/LGA requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore including identification of each such parcel will be set forth in the T/LGA's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

3. The T/LGA certifies either that there are no encroachments on the right of way or that all encroachments have been removed from the right of way on the project.
4. A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.
5. All steps required for Relocation Assistance have been completed in accordance with federal and state procedures or no relocation assistance was required for the project.
6. Right of Way has been acquired or will be acquired in accordance with current state and FHWA directives covering the acquisition of real property, or that acquisition of real property was not required.

Upon receipt of the Right of Way Certification, the Right of Way Bureau will review it. If the certification letter from the T/LGA is not acceptable, the Right of Way Bureau will inform the T/LGA as to what steps are required for compliance. After review of the Certification, the Right of Way Bureau agent will prepare an appropriate certification and submit it to the FHWA if federal-aid funds are being used. If only state funds are involved, the T/LGA will be notified in writing by the Right of Way Bureau that the certification is complete and correct or that changes are required.

#### **Section 1.14-Reimbursement for Right of Way Activities**

Reimbursement for any of the costs of right of way activities must be specifically addressed in the Joint Powers or Cooperative Project Agreement.

For processing of reimbursements, copies of the following documents shall be submitted:

1. Any contracts between the T/LGA and fee appraisers, fee title examiners, or fee negotiators;
2. All invoices showing specific charges, and proof that payment has been made for the actual parcels;
3. Copies of all appraisals, and;
4. Any settlements above the reviewed and approved amount of the original appraisals, with supporting documents justifying the settlement.

All submittals will be reviewed for accuracy and duplication before payment is made according to Right of Way Monitoring Procedures as stated in Section 1.3. The

reimbursement must be approved by the Technical Support Engineer (TSE) prior to payment being made. The Right of Way Bureau will provide guidance to the T/LGA with any questions or issues concerning the reimbursement process.

When all requirements have been met, the Right of Way Bureau Chief will certify the work to the FHWA, as necessary and send a copy to the TSE.

### **Section 1.15-Property Management**

Whenever right of way is acquired in the name of the T/LGA, the T/LGA is responsible for control of the right of way and all property management functions. By definition, property management is managing, administering, maintaining, and protecting any property acquired for transportation project purposes so that the public interest is served - property managers are stewards of the public interest. Property management begins when title is vested in the T/LGA.

The T/LGA property inventory should be continually updated for acquisitions and disposals. Rental of airspace, disposals of unneeded property, encroachment agreements, and changes in access control are all part of the management function. The T/LGA shall request state approval prior to any disposals, airspace agreements, changes in access control, or similar activities.

If federal-aid funds are used for any portion of property acquisition or project construction, the T/LGA is required to adhere to the Department's procedures regarding property management as defined in the Right of Way Handbook, Volume VI - Property Asset Management.

### **Section 1.16-Records and Reports**

All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance, payment records, and any other data or documents relative to any right of way activities shall be available for inspection at reasonable times by authorized representatives of the Department, FHWA, and other authorized federal representatives. These records shall be kept and maintained for a minimum of three (3) years after the final voucher of the project; the date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or the date a credit toward the Federal share of a project is approved based on early acquisition activities of the State.

## **SECTION 2-TRIBAL/LOCAL PUBLIC AGENCY RIGHT OF WAY ACCEPTANCE PLAN**

### **Section 2.1-General**

1. The T/LGA shall be responsible for certifying that all work has been performed as required according to federal and state statutes, rules, and regulations.
2. The Department's Right of Way Bureau will review selected portions of the work to ascertain whether it has been performed according to Department standards.
3. Based on this acceptance plan, a written evaluation of the performance of all Right of Way activities by the T/LGA shall be made by the Right of Way Bureau Chief when appropriate statements have been received from the Lands Abstracting, Appraisal Review, Relocation, and Acquisition Unit Supervisors.
4. When all requirements have been met, the Right of Way Bureau Chief will certify the work to the FHWA, as necessary.

### **Section 2.2-Land Abstracting**

1. The T/LGA shall deliver a copy of the title reports and preliminary Right of Way maps to the Lands Abstracting Unit of the Right of Way Bureau for review.
2. The Lands Abstracting Unit will review a number of reports to determine whether the work was performed in conformance with applicable state and federal rules and regulations.
3. In the event that the work is found to be unacceptable, all submitted reports will be returned to the T/LGA.
4. When the work has been determined to be in compliance, the Lands Abstracting Unit will inform the Right of Way Bureau Chief in writing that the work is acceptable.

**Section 2.3-Appraisals**

1. Before beginning any acquisition activities, the T/LGA shall deliver all appraisals, including the basic data, to the Appraisal Review Unit of the Right of Way Bureau.
2. The Appraisal Review Unit will review all reports to determine if the work was performed in conformance with applicable state and federal rules and regulations.
3. In the event that the work is found to be unacceptable, all submitted reports will be returned to the T/LGA.
4. The purpose of this appraisal review is to not to determine just compensation, but rather to determine whether the T/LGA appraisals conform to federal and state statutes and regulations.
5. In no event shall the appraisal review function be contracted by the T/LGA to a consultant.
6. When the work has been determined to be in compliance, the Appraisal Review Unit will inform the ROW Bureau Chief in writing that the appraisals are acceptable.

**Section 2.4-Acquisition**

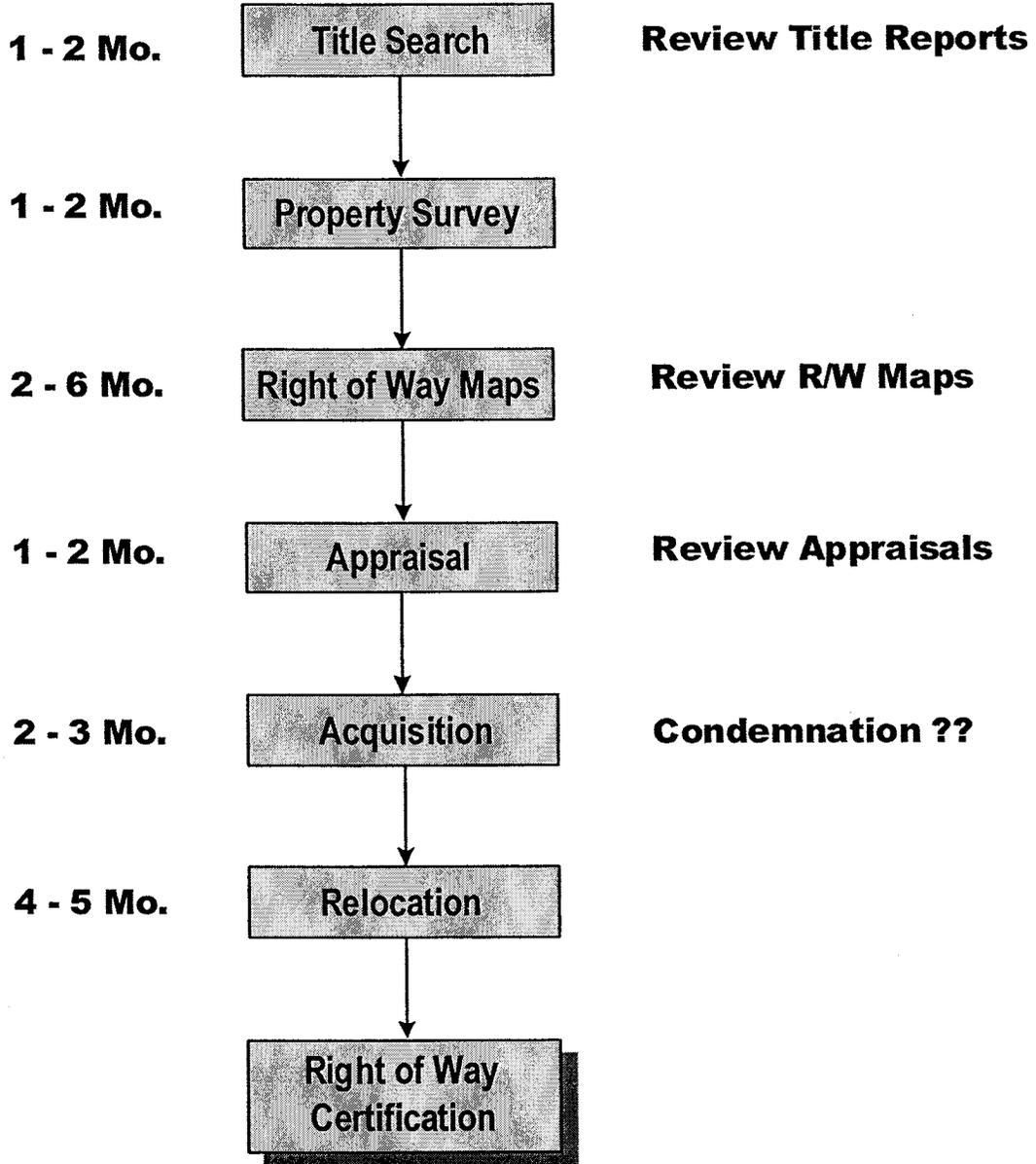
1. When the appraisals have been sufficiently reviewed and accepted by the Right of Way Bureau Appraisal Review Unit, the T/LGA may begin acquisition activities.
2. When acquisition is complete, the T/LGA shall inform the Tribal/Local Government agent of the Right of Way Bureau and schedule an on-site review.
3. The Tribal/Local Government agent will review a number of payment packages to determine if the work was performed in conformance with the applicable state and federal rules and regulations.
4. All actions and documents relating to the acquisition of any particular parcel are subject to review by the Department and the FHWA. This includes, but is not limited to, offer amounts, settlement agreements, applicable dates (title and/or appraisal), contracts, and signatures. Documentation supporting each acquisition must be maintained in a parcel file in the proper order.
5. In the event that a work is found to be unacceptable, all submitted payment packages will be returned to the T/LGA. No approval will be issued for the

project until the Department's Right of Way Bureau is satisfied that the work meets federal and state requirements.

6. When the work has been determined to be in compliance, the T/LGA will inform the Right of Way Bureau Chief that acquisition activities are acceptable.

# RIGHT OF WAY PROCESS

-Minimum Times-



**IT TAKES TIME . . .**

**START EARLY!**

**T/LGA RIGHT OF WAY  
ACCEPTANCE PLAN  
MONITORING PROCEDURES**

**General**

All items submitted to the Right of Way Bureau for approval must be made through the Cost Scheduling Manager. The Cost Scheduling Manager will assure that the appropriate ROW Unit receives the submittals sent from the TLGA.

In order to assure compliance with applicable regulations, and in view of the fact that not all of the work will be reviewed, the following minimum considerations will be included in the assessment made by the appropriate Right of Way Bureau unit prior to certifying the portion of the work relating to their responsibility:

**Land Abstracting**

1. The qualifications of the firm and of the individual actually doing the research and/or examination will be determined.
2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees.
3. The date of the last update relative to the signing of the conveyance documents and approval of the ROW maps will be noted to assure that the update is within the allowed limits.
4. The appropriateness of the type of search to the ROW need will be reviewed.
5. No less than one review of each type of research required will be conducted (Take, CME, TCP).
6. Is Title Insurance provided?
7. Have all encumbrances been satisfied?

**Appraisals**

1. The qualifications of the firm and of the individual actually doing the appraisal will be determined (Appraisal Unit Supervisor).
2. The contract between the public entity and the fee service providers will be examined to determine the reasonableness of the fees (Appraisal Unit Supervisor)-

3. If the Waiver of Appraisal was used, was written permission obtained from the Department prior to the initiation of the appraisal process (Appraisal Unit Supervisor)?
4. Were the appraisals begun after the approval of the ROW maps.
5. Was the owner provided an opportunity to accompany the appraiser
6. Does the name and date on the ROW map correspond to the title report (Contract Coordinator)?

### **Acquisition**

1. The qualifications of the firm and of the individual actually doing the acquisition will be determined by the Tribal/Local Government agent.
2. The contract between the public entity and the fee service providers will be examined by the Tribal/Local Government agent to determine the reasonableness of the fees.
3. The Letters of Offer will be checked to assure that they were not presented prior to the date of the reviewed and approved appraisal, and the Federal Authorization to Proceed if Federal-aid funds are sought for this activity.
4. The process for Legal and Administrative settlements will be reviewed in all cases to assure that procedures were followed.
5. When donated property is involved, the Tribal/Local Government agent will review the proper documentation to authenticate the acquisition process.

## **SECTION 3-RAILROADS**

### **Section 3.1-Railroad Adjustments**

During the process of project development it may become apparent that it will be necessary to relocate and/or adjust railroad facilities, install warning systems, and/or provide new crossings. The state can, in some cases, use an existing railroad Department Master Agreement or the Railroad and State can negotiate a new one. Agreement shall conform to the most current CFR relating to Railroad-Highway Projects.

Railroad Agreements differ from other type agreements for several reasons, the main ones being:

1. Each railroad favors a separate form of agreement;
2. A transfer of real property or use of railroad property is involved, for which provisions must be made in the agreement;
3. When Highway construction is performed on railroad property, the railroad is interested in the highway construction plans for the proposed work on railroad property and/or rail operations;
4. Construction on railroad property entails certain risk of damage to railroad property and rail traffic. Provisions must be made in the agreement for protective services that provide for railroad flagmen, or other watchmen, and for protection of the railroad by the highway contractor in the form of insurance. The insurance provided by the highway contractor, obtained on behalf of the railroad, shall conform to the most recent CFR relating to, Railroad-Highway Insurance Protection and the Department's current Standard Specifications for Highway and Bridge Construction, Section 107.25, Insurance Requirements, and any modifications thereto. In some cases, the insurance requirements may differ from those previously outlined, in which case such requirements must be handled as per arrangements between the Department and the railroad.

In projects involving railroad right of way, the railroad company shall be furnished plans illustrating a tie from the highway project centerline to a railroad milepost. A proposed project typical section and other appropriate drawings and information shall also be supplied.

If the project involves an existing grade separation, the Railroad/DOT No. of crossings shall also be included in the plans and documents.

The intent of this effort is to provide the railroad as much information as possible so that its engineers may evaluate the impact of the T/LGA's construction project on the railroad's facilities and tracks and also to develop the agreement and cost estimate in a timely fashion. Typically it takes the railroad six to twelve months to process an agreement. If any project changes occur that affect railroad property after the engineering authorization has been provided, the process will most likely need to begin all over again, as railroad personnel who reviewed the project plans prior to the change shall review other potential impacts to the railroad due to these changes.

For more detailed information on railroad considerations, impacts, and guidance, please refer to the Department's Railroad Unit Supervisor

### Section 3.2-Railroad Agreement Provisions

Standard Agreements - The written agreement between the T/LGA and the railroad shall, as a minimum, include the following, where applicable:

1. A reference to the provisions of the 23 CFR, Part 646, Subpart A, and Subpart B, and also 23 CFR, Part 140, Subpart I, as a part of the text;
2. A detailed statement of the work to be performed, including the obligations of both parties;
3. The method of payment, lump sum or actual cost of the work performed;
4. On projects which are not for the elimination of hazards at highway/railroad crossings, the extent to which the railroad is obligated to move or adjust its facilities at its own expense shall be outlined;
5. The railroad's share of the project cost, if any;
6. An itemized estimate of the cost, and description of the work to be performed by the railroad;
7. Provisions regarding reimbursement record keeping and audits.
8. Method to be used for performing the work, either by the forces of the railroad, or by contract awarded to the lowest qualified bidder, or by a contractor on a continuing contract at reasonable rates;
9. Maintenance responsibilities;
10. Form, duration, and the face amount of the insurance policy(s) required, or certificates of insurance attesting to the adequacy of coverage required for contractor work on railroad property;
11. Appropriate reference to or identification of plans and specifications;
12. Statements defining the conditions under which the railroad will provide or require protective services during the performance of the work, the type of protective services and the method of reimbursement to the railroad; and
13. Provisions regarding inspection of any reimbursable work performed.
14. The T/LGA must send a draft of the proposed agreement to the Railroad Unit Supervisor. The Railroad Unit will review the agreement or discuss any necessary changes with T/LGA.

## **SECTION 4-UTILITIES**

During the process of project development it may become apparent that it will be necessary to relocate and/or adjust utilities in order to accommodate the construction effort. For more detailed information on utility considerations, impacts, and guidance, please refer to the Department's current Railroad and Utilities Manuals. A copy of the manual may be obtained from the Department's Railroad and Utilities Section.

### **Section 4.1-Reimbursable Relocation Costs**

NMSA 1978, Sections 62-1-2 and 67-3-12, as amended, provide for use of public right of way by utilities. NMSA, 1978, Sections 67-8-15 and 67-8-21, as amended, provide the authority for the Department to reimburse for utility adjustments under limited circumstances. If the utility can provide the following, then the utility relocation may be compensable:

1. The utility owner must demonstrate a compensable property right, or that the relocation is necessary to accommodate a project on the Interstate System;
2. A pre-existing FHWA agreement between the parties, that has been executed and provides for reimbursement.

The T/LGA must send a draft of the proposed agreement to the Utilities Unit Manager. The Utilities Unit will review the agreement or discuss any necessary changes with T/LGA.

All records pertaining to utility relocation on federal-aid or state projects must be retained by the utility and the T/LGA for three (3) full years from the date of the final reimbursement has been received by the utility. Department and FHWA personnel shall be provided access to project records upon reasonable notice.

### **Section 4.2-Documentation for Reimbursable Relocations**

The minimum documentation required for relocations is listed below:

1. Copies or proof of compensable property interest, such as a private easement, warranty deed, or other property interest documentation;

2. A relocation plan diagrammed on the highway construction plan and profile sheets showing the existing and proposed roadway features and utility relocation plan. The plan shall be drafted so that the utility relocation plans become a part of the original construction plan assembly, if possible;
3. A detailed estimate of the proposed relocation costs. A format of the detailed estimate is available from the Department's Utilities Unit;
4. A contractual agreement with prior approval from the Right of Way Bureau and FHWA if federally funded between the utility owners and the T/LGA addressing the relocations. Forms may be obtained from the Department's and Utilities Unit;
5. Permit Application and Plans, if required, to install the utility or relocate the utilities within the public right of way;
6. As-built plans of the relocated/installed building utilities;
7. If road or street work involving utilities takes place within a railroad's right of way, a railroad agreement and related documents (e.g., railroad permit) may be required;
8. Other documentation as deemed appropriate by the Department.

#### **Section 4.3-Non-Reimbursable Relocations**

Non-Reimbursable relocations require that the utility owner pay for the relocations. Items 2, 5 and 8, outlined above, are also applicable in these cases.

### **SECTION 5-RAILROAD CERTIFICATION AND UTILITY CERTIFICATION**

T/LGAs must recognize that railroad and utility certifications are a critical component in the process of preparing a project for construction bids. This certification is a prerequisite to FHWA authorizing project funding and therefore, must be prepared in a timely manner. The T/LGA must certify that all railroad and/or utility relocation coordination and arrangements have been made. The T/LGA must identify all conflicts caused by the proposed construction and certify that negotiations to resolve these conflicts have been completed. If no relocations are required, the Certification Letter must so state.

The Railroad and Utilities certification letters must be received by the Department's Railroad Unit Supervisor and Utility Unit Supervisor at least thirty (30) calendar days

prior to the anticipated PS&E Review date. This is to allow sufficient time to coordinate with the FHWA.

The following is required in the certification letter:

1. Identification of the railroad utility owner.
2. Description and scope of relocation work, including the type and size of the facility and the extent of the relocation, including locations of relocations.
3. Who will perform the relocation and when the work will begin and end. If the exact dates are not known, the utility owner shall provide an estimate of time.
4. Who will be financially responsible for the relocation; are the costs reimbursable or non-reimbursable (participating or non-participating).

#### **SECTION 6-RAILROAD NOTICES TO CONTRACTOR AND UTILITY NOTICE TO CONTRACTOR FOR INCLUSION IN HIGHWAY CONTRACTS**

On projects involving railroad facilities, it may be necessary to include a notice to contractor so as to include previously unavailable information that may affect bids in the Railroad T/LGA Agreement.

On projects that will involve concurrent utility and highway work, the T/LGA must develop and submit a Notice to Contractors that details which utility will perform concurrent utility work, the location(s) where the work will occur, who will perform the work, when it will start and end, a contact person and phone number, and any other details that may impact highway construction and operation. The Notice to Contractors must be submitted in final form along with the Certification Letter.

More information on either of these processes is available from the Railroad and Utilities Units.