



Apsaalooke Nation Housing  
Authority

Real Property Acquisition

# **REAL PROPERTY ACQUISITION** **POLICIES AND PROCEDURES**

These policies and procedures were adopted by the APSAALOOKE NATION HOUSING AUTHORITY BOARD OF COMMISSIONERS by Resolution # \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_.

## **SECTION 1. Policy Statement**

The APSAALOOKE NATION HOUSING AUTHORITY (hereinafter ANHA) Board of Commissioners (hereinafter BOC) recognize that it is necessary to adopt and implement Real Property Acquisition Policies and Procedures in order to operate as a property management entity. The governing body intends these policies to be applicable to the APSAALOOKE NATION programs developed or operated with or without funds provided through the Native American Housing and Self-Determination Act (NAHASDA).

The acquisition of real estate is an eligible activity under NAHASDA as described in section 202(2) under Development. The regulations implementing NAHASDA regarding real property acquisition are described at 24CFR Part 1000.14 that is included as an appendix (A) to this policy. The acquisition of real property for a NAHASDA assisted activity is also subject to 49CFR part 24, subpart B that is also included as an appendix (B) to this policy.

Certain acquisitions may be in the interest of the ANHA that will not meet the requirements of Federal Regulations. In those instances, non-restricted funds must be utilized. Often it is in the best interests of the ANHA to utilize Tribally controlled Trust Property for its development purposes. When suitable Trust property does exist it shall be the policy of the ANHA to attempt to purchase needed property.

In all cases, it shall be the policy of the ANHA to only consider purchasing real property after the following conditions have been met:

1. An unmet need has been identified through the Indian Housing Plan (IHP).
2. Funding has been identified. (NAHASDA, non-restricted, grant funds, Tribal, other Federal)
3. No suitable Tribal Trust Land is currently available.
4. It is in the best interest of the ANHA.

## **SECTION 2. Acquisition Requirements**

- a. **General Information.** The requirements of this chapter apply to any acquisition of real property for a project utilizing NAHASDA, non-restricted, Tribal, or other grant funds.
- b. **Less-Than-Full-Fee Interest in Real Property.** In addition to acquisitions of fee simple title, the provisions of this chapter apply to:
  - (1) the acquisition of fee title that is subject to retention of a life estate;
  - (2) a life use;
  - (3) acquisitions by leasing or purchasing a leasehold interest, including option(s) for extension;
  - (4) land held in Trust by the U.S. Government for a tribe or Indian individual;
  - (5) the acquisition of permanent easements;
- c. **Persons Acting as Agent of ANHA.** In some cases, the ANHA may determine that a property meets the requirements for acquisition and acts through a non-related party to acquire the identified property. This may be a developer, or licensed real estate agent. In such cases, the person is performing as the agent of the ANHA and the acquisition must be treated as a ANHA acquisition that is subject to all provisions of these policies and procedures.

### **SECTION 3. Basic Acquisition Policies**

- a. **Expeditious Acquisition.** The ANHA shall make every effort to acquire the real property expeditiously by good faith negotiation.
- b. **Notice to Owner.** As soon as a property has been identified through offer or inquiry by the ANHA, the owner or agent for the owner shall be given written notice of the ANHA interest in acquiring the property. If the property is located on Trust or Restricted land or involves the purchase of Trust or Restricted Land, this notice is required to go through the local Bureau of Indian Affairs (BIA) office.
- c. **Appraisal and Invitation to Owner**
  - (1) All properties identified for acquisition shall be appraised by a qualified appraiser. If the acquisition involves the purchase of Trust or Restricted land or long-term leases on Trust or Restricted lands and related improvements, the BIA must conduct the appraisal. In all cases, the owner or his/her representative shall be given the opportunity to



accompany the appraiser during the appraiser's inspection of the property, unless:

- (a) The property is being donated; or
  - (b) The ANHA determines, after reviewing the available data, that the valuation is uncomplicated and the fair market value of the property does not exceed \$25,000. The determination shall be based on a review by a person who is familiar with real estate values. If the owner requests an appraisal, the ANHA shall obtain an appraisal subject to paragraph c. 1.
- (2) The ANHA recognizes that adequate market information necessary for balanced appraisals may not be available on the Crow Indian Reservation and will recognize the "replacement value approach" when it is determined that inadequate sales information exists.
- (3) When acquiring commercial property and/or property with tenant-owned improvements, the ANHA should provide the appraiser with the appropriate legal guidance with respect to the classification of the land, (Trust, Restricted Fee) ownership, documents and the necessary reviews subject to various ownership possibilities in Indian Country.
- d. **Establishment and Offer of Just Compensation.** Once the ANHA determines the amount which it believes is just compensation, the ANHA shall tender a written offer to the owner or in the case of restricted lands, the BIA.
- e. **Summary Statement.** In addition to the written offer to purchase, the owner shall be given a written statement of the basis for the offer and shall include:
- (1) A statement of the amount of the offer and the method of establishing the amount.
  - (2) A description and location of the real property and the interest in the property to be acquired.
  - (3) An identification of the buildings, structures, and other improvements (including building equipment and fixtures) that are considered to be part of the real property for which the offer includes. Where appropriate, the statement shall identify any separately held ownership in the property, e.g., a tenant-owned improvement, easement, etc. that is not covered by the offer.
- f. **Basic Negotiations.** The ANHA shall contact the owner or the owner's representative (BIA) and discuss its offer to purchase. Whenever feasible, personal face-to-face contact and discussion will take place or an attorney may



represent the ANHA in negotiations. The owner shall be given reasonable opportunity to consider the offer and present material that the owner believes is relevant to determining the value of the property and may suggest modifications in the proposed terms and conditions of the purchase.

- g. Updating Offer of Just Compensation.** If the information presented by the owner, or a material change of the character or condition of the property indicates a need for a new appraisal, or if a significant delay has occurred since the time of the appraisal(s) of the property, the ANHA shall have the appraisal updated.
- h. Settlement.** The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed. This action requires the approval of the (Board of Commissioners or governing body of the TDHE). A written justification shall accompany the request.
- i. Payment Before Taking Possession.** Before requiring the owner to surrender possession of the real property, the ANHA shall pay the agreed price to the owner, or in the case of Restricted Lands, the BIA.
- j. Fair Rental.** If the ANHA permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the ANHA on short notice, the rent shall not exceed the fair market rent for such property.

#### **SECTION 4. Appraisals**

- a. Definition of Appraisal.** The term “appraisal” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- b. Standards of Appraisal.** The ANHA will recognize the Uniform Appraisal Standards or if the Tribe chooses, an alternate method of identifying and qualifying individuals familiar with the real property values on the CROW INDIAN Reservation. Each appraisal will contain at a minimum, the following items:

  - (1) The purpose and/or the function of the appraisal, a definition of the property being appraised and a statement of the assumptions and limiting conditions affecting the appraisal.
  - (2) A description of the physical characteristics of the property, a statement of the known observed encumbrances, if any, title information, (title

insurance, title status report if trust) location, zoning, present use, and an analysis of highest and best use.

- (3) An analysis of reliable approaches consistent with Indian reservation land sales. In most cases, inadequate market sales will necessitate other approaches such as cost of replacement, or rental value if information exists.
- (4) A statement of the value, in the opinion of the appraiser.
- (5) The effective date of valuation, date of appraisal, signature and credentials/certification of the appraiser.

**c. Qualifications of Appraisers.**

- (1) The ANHA shall establish criteria for determining the minimum qualification of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. A contract (fee) appraiser making a “detailed appraisal” under a contract executed after December 31, 1992 must be certified under State law implementing Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).
- (2) Usually, BIA Appraisers meet the necessary qualification and must be utilized on Trust and Restricted land appraisals.
- (3) Conflict of Interest. No appraiser shall have any interest, direct or indirect, in the real property being appraised for the ANHA that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation.

**d. Property Owner with Conflict of Interest.**

- (1) A conflict of interest exists whenever the owner of an interest in real property that is to be acquired by a ANHA serves as an officer of the ANHA or it's designated acquiring agent or exercises any other responsible function in connection with that acquisition. The ANHA prohibits employees from using positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- (2) Examples of Safeguards. Among the various measures which a ANHA could adopt to prevent the possibility of undue personal enrichment by real property owners who may be in a conflict of interest position are:

- (a) Disclosure. The ANHA may require disclosure of any potential conflict of interest to the BOC, ANHA's Legal Counsel, and as otherwise may be appropriate.
- (b) Review by BIA or separate Tribal agency.



# APPENDIX A

## 24 CFR PART 1000 FINAL RULE IMPLEMENTING THE NATIVE AMERICAN HOUSING & SELF-DETERMINATION ACT OF 1996 (NAHASDA)

### Sec. 1000.14 What relocation and real property acquisition policies are applicable?

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

- (a) **Real Property acquisition requirements.** The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:
  - (1) Before discussing the purchase price, inform the owner:
    - (i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.
    - (ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.
  - (2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.
- (b) **Minimize displacement.** Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.
- (c) **Temporary relocation.** The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate

temporarily for the project. Such residential tenants and homebuyers shall be provided:

- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).
- (2) Appropriate advisory services, including reasonable advance written notice of:
  - (i) The date and approximate duration of the temporary relocation;
  - (ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;
  - (iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and
  - (iv) The provisions of paragraph (c)(1) of this section.
- (d) **Relocation assistance for displaced persons.** A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.
- (e) **Appeals to the recipient.** A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient.
- (f) **Responsibility of recipient.**
  - (1) The recipient shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The recipient shall ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with the provisions in this section.
  - (2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the recipient from any other source.

- (3) The recipient shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) **Definition of displaced person.**

- (1) For purposes of this section, the term “*displaced person*” means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term “*displaced person*” includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (g)(1)(i) of this section, that the recipient determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the agreement between the recipient and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or



- (B) Other conditions of the temporary relocation are not reasonable.
- (v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:
  - (A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or
  - (B) Other conditions of the move are not reasonable.
- (2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:
  - (i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "*displaced person*" or for any assistance provided under this section as a result of the project.
  - (ii) The person is ineligible under 49 CFR 24.2(g)(2).
  - (iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.
- (3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.
- (h) **Definition of initiation of negotiations.** For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "*initiation of negotiations*" means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

# APPENDIX B

**Note:** *On January 4, 2005, the Federal Highway Administration as lead Federal Agency for the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act or URA), published a final rule revising the government-wide regulations implementing the Uniform Act under 49 CFR Part 24. The Final Rule was effective February 3, 2005.*

## 49 CFR PART 24

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

([www.fhwa.dot.gov/realestate/49cfr.htm](http://www.fhwa.dot.gov/realestate/49cfr.htm))

#### Subpart C—General Relocation Requirements

##### Sections

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

#### **Sec. 24.201 Purpose.**

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

### Sec. 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at Sec. 24.2(a)(9). Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation. (See appendix A, Sec. 24.202.)

### Sec. 24.203 Relocation notices.

- (a) **General information notice.** As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing Agency's relocation program which does at least the following:
- (1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
  - (2) Informs the displaced person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;
  - (3) Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
  - (4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in Sec. 24.208(h); and
  - (5) Describes the displaced person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.
- (b) **Notice of relocation eligibility.** Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire (described in Sec. 24.203(d)), the initiation of negotiations (defined in Sec. 24.2(a)(15)), or actual acquisition, whichever occurs first. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.
- (c) **Ninety-day notice.**



- (1) **General.** No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.
  - (2) **Timing of notice.** The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.
  - (3) **Content of notice.** The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See Sec. 24.204(a).)
  - (4) **Urgent need.** In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.
- (d) **Notice of intent to acquire.** A notice of intent to acquire is a displacing Agency's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the Agency intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. (See Sec. 24.2(a)(9)(i)(A).)

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

- (a) **General.** No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at Sec. 24.2 (a)(6)) has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:
  - (1) The person is informed of its location;
  - (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

- (3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.
- (b) **Circumstances permitting waiver.** The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:
- (1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);
  - (2) A presidentially declared national emergency; or
  - (3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.
- (c) **Basic conditions of emergency move.** Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:
- (1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;
  - (2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and
  - (3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

**Sec. 24.205 Relocation planning, advisory services, and coordination.**

- (a) **Relocation planning.** During the early stages of development, an Agency shall plan Federal and federally assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be



scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

- (1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.
  - (2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Agency should consider housing of last resort actions.
  - (3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
  - (4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
  - (5) Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies.
- (b) Loans for planning and preliminary expenses. In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.
- (c) **Relocation assistance advisory services.**
- (1) **General.** The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offer the services described in paragraph (c)(2)



of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

- (2) **Services to be provided.** The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:
- (i) Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:
    - (A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
    - (B) Determination of the need for outside specialists in accordance with Sec. 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
    - (C) For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.
    - (D) An estimate of the time required for the business to vacate the site.
    - (E) An estimate of the anticipated difficulty in locating a replacement property.
    - (F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.
  - (ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the

relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

- (A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Sec. 24.204(a).
- (B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Sec. 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.
- (C) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See Sec. 24.2(a)(8).) If such an inspection is not made, the Agency shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.
- (D) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A, Sec. 24.205(c)(2)(ii)(D).)
- (E) The Agency shall offer all persons transportation to inspect housing to which they are referred.
- (F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see Sec. 24.2(a)(6)(ix)), as well as of the long term nature of such rent subsidy, and the limited

(42 month) duration of the relocation rental assistance payment.

- (iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.
  - (iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.
  - (v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.
- (d) **Coordination of relocation activities.** Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (See Sec. 24.6.)
- (e) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

**Sec. 24.206 Eviction for cause.**

- (a) Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:
  - (1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
  - (2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and



- (3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.
- (b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (See appendix A, Sec. 24.206.)

**Sec. 24.207 General requirements -- claims for relocation payments.**

- (a) **Documentation.** Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.
- (b) **Expeditious payments.** The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.
- (c) **Advanced payments.** If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.
- (d) **Time for filing.**
  - (1) All claims for a relocation payment shall be filed with the Agency no later than 18 months after:
    - (i) For tenants, the date of displacement.
    - (ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.
  - (2) The Agency shall waive this time period for good cause.
- (e) **Notice of denial of claim.** If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

- (f) **No waiver of relocation assistance.** A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.
- (g) **Expenditure of payments.** Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

**Sec. 24.208 Aliens not lawfully present in the United States.**

- (a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:
  - (1) In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
  - (2) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.
  - (3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
  - (4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.
- (b) The certification provided pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal funding Agency and, within those parameters, that of the displacing Agency.
- (c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the



unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

- (d) The displacing Agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the displacing Agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of an alien's documentation or other information that the Agency considers reliable and appropriate.
- (e) Any review by the displacing Agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each displacing Agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.
- (f) If, based on a review of an alien's documentation or other credible evidence, a displacing Agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:
  - (1) If the Agency has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the displacing Agency shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list of local BCIS offices is available at <http://www.uscis.gov/graphics/fieldoffices/alphaa.htm>. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. (If an Agency is unable to contact the BCIS, it may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.)
  - (2) If the Agency has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the displacing Agency shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.
- (g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.



- (h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:
- (1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
  - (2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
  - (3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.
- (i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in Sec. 24.207 of this part. (Approved by the Office of Management and Budget under control number 2105-0508.)

**Sec. 24.209 Relocation payments not considered as income.**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 et seq.) or any other Federal law, except for any Federal law providing low-income housing assistance.