

**Land Acquisition and Relocation Assistance for Airport Projects  
FAA Order 5100.37B  
August 1, 2005**

---

# **LAND ACQUISITION AND RELOCATION ASSISTANCE FOR AIRPORT PROJECTS**



**August 1, 2005**

**DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

# RECORD OF CHANGES

DIRECTIVE NO. 5100.37B

REC NO

CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL	CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL

## FOREWORD

**PURPOSE.** This Order provides guidelines and identifies responsibilities for FAA acceptance and monitoring of airport sponsor compliance with provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) (42 USC 4601 et seq), as amended, on airport projects receiving Federal financial assistance. This Order incorporates all applicable requirements as provided in the Uniform Act implementing regulation 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (70 FR 590, January 4, 2005 and as may be amended).

**DISTRIBUTION.** This Order is distributed to the division level of the Office of Airport Safety and Standards, and the Office of Airport Planning and Programming; to the branch level at Regional Airport Divisions and all Airport District/Field Offices.

**CANCELLATION AND EXPLANATION OF CHANGES.** Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects, dated April 4, 1994, is cancelled. The Change 1, dated May 1, 1997, and Change 2, dated December 1, 2000, to Order 5100.37A are also cancelled.

**FORMS AND REPORTS.** The sample forms depicted in the Appendix are in digital format and are available on the web for review and download as may be desired.

Dennis Roberts  
Director, Airport Planning  
and Programming

This page left intentionally blank.

# CONTENTS

**CHAPTER 1. INTRODUCTION AND POLICY ..... 9**

**Section 1. General ..... 9**

1-1. Purpose..... 9

1-2. Uniform Relocation Assistance And Real Property Acquisition Policies Act (Uniform Act). ..... 9

1-3. Title 49 Code Of Federal Regulations Part 24, Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally Assisted Programs. .... 9

1-4. Sponsor Must Keep Acceptable Acquisition And Relocation Records..... 10

1-5. Sponsor Certifications..... 10

1-6. Required Appeal Procedure To Address Grievances Under 49 CFR 24. .... 10

1-7. FAA Monitoring And Corrective Action..... 11

1-8. to 1-19. Reserved..... 11

**Section 2. Policy And Application To AIP Projects..... 11**

1-20. Sponsor Acquisition Of Real Property Required For AIP Projects..... 11

1-21. Sponsor Organization And Staffing Requirements..... 11

1-22. Voluntary Transaction Exception under 49 CFR 24.101(b)..... 12

1-23. Does The Uniform Act Apply To Projects Using Passenger Facility Charges (Pfc's)?.. 13

1-24. Long Term Lease In Lieu Of Displacement. .... 14

1-25. Is a Fixed-Base Operator (FBO) Or Airport Tenant A Displaced Person? ..... 14

1-26. Transfer Of Federal Lands For Airports, FAA Order 5170.1 ..... 14

1-27. Conditional Options To Purchase, Land Contracts, Sale-Leaseback, Other Advance Land Acquisition Agreements For Airport Projects..... 14

1-28. FAA Waiver Of Regulations. .... 15

1-29. Reserved ..... 15

**Section 3. 49 CFR 24 Definitions ..... 15**

1-30. Alien Not Lawfully Present In The United States. .... 15

1-31. Appraisal..... 15

1-32. Business. .... 15

1-33. Citizen..... 15

1-34. Comparable Replacement Dwelling. .... 16

1-35. Contribute Materially..... 17

1-36. Decent, Safe, And Sanitary Dwelling. .... 17

1-37. Displaced person..... 18

1-38. Dwelling..... 19

1-39. Dwelling site. .... 19

1-40. Farm operation..... 19

1-41. Household income. .... 19

1-42. Initiation of negotiations. .... 19

1-43. Mobile home. .... 20

1-44. Mortgage..... 20

- 1-45. Nonprofit organization..... 20
- 1-46. Owner of a dwelling..... 20
- 1-47. Person..... 20
- 1-48. Salvage value. .... 20
- 1-49. Small business..... 21
- 1-50. State..... 21
- 1-51. Tenant. .... 21
- 1-52. Uneconomic remnant. .... 21
- 1-53. Unlawful occupant. .... 21
- 1-54. Utility costs. .... 21
- 1-55. Utility facility..... 21
- 1-56. Utility relocation. .... 21
- 1-57. Waiver valuation..... 22

**CHAPTER 2. REAL PROPERTY APPRAISAL FOR AIP PROJECTS ..... 23**

**Section 1. General Requirements ..... 23**

- 2-1. Required Sponsor Appraisal Process (49 CFR 24.103 and 24.104). .... 23
- 2-2. Appraiser and Review Appraiser Qualifications. .... 23
- 2-3. Appraisal Waiver. .... 24
- 2-4. Conflict Of Interest. .... 24
- 2-5. Non Allowable Land Cost. .... 24
- 2-6. to 2-19. Reserved..... 25

**Section 2. Minimum Appraisal Requirements ..... 25**

- 2-20. Appraisal Assignment Scope Of Work..... 25
- 2-21. Appraisal Report Requirements..... 26
- 2-22. Short Form Appraisal Report for Low Value and Simple Acquisitions. .... 26
- 2-23. Appraiser And Review Appraiser Certification..... 26
- 2-24. Number of Appraisals Needed..... 27
- 2-25. Partial Acquisitions - Before and After Valuation..... 27
- 2-26. Realty / Personalty Determination. .... 27
- 2-27. Appraisal Of Avigation Easements..... 27
- 2-28. Appraisal of Property Containing Hazardous Materials. .... 28
- 2-29. Reserved ..... 29

**Section 3. Appraisal Review ..... 29**

- 2-30. Responsibility of Airport Sponsor..... 29
- 2-31. Review Appraisal Report. .... 29

**CHAPTER 3. REAL PROPERTY ACQUISITION FOR AIP PROJECTS ..... 31**

**Section 1. Requirements ..... 31**

- 3-1. Sponsor Offer of Just Compensation. .... 31
- 3-2. Basic Negotiation Procedures. .... 32
- 3-3. Expenses Incidental to Transfer Of Title. .... 33

- 3-4. Closing on Acquired Land..... 34
- 3-5. Acquisition of Easements or Other Partial Interests in Real Property..... 34
- 3-6. Acquisition of Tenant-Owned Improvements. .... 34
- 3-7. Protective Lease prior to Acquisition. .... 35
- 3-8. Acquisition of Property Containing Hazardous Materials..... 35
- 3-9. Donations. .... 35
- 3-10. Purchase of Life Estates..... 35
- 3-11. Eligible Litigation Expenses Under 49 CFR 24.107. .... 36
- 3-12. to 3-19. Reserved..... 36
  
- Section 2. Acceptance of Administrative Settlement ..... 36**
- 3-20. Administrative Settlement. .... 36
- 3-21. Adequate Written Documentation Required For FAA Acceptance Of An  
Administrative Settlement. .... 37
- 3-22. to 3-29 Reserved..... 37
  
- Section 3. Condemnation Awards ..... 37**
- 3-30. Condemnation. .... 37
- 3-31. Mediation and Condemnation Settlements. .... 38
- 3-32. Condemnation Awards..... 38
- 3-33. to 3-39 Reserved..... 38
  
- Section 4. Functional replacement of real property in public ownership..... 38**
- 3-40. Does Not Apply to Federally Owned Property..... 38
- 3-41. Basis for Functional Replacement. .... 38
- 3-42. Required Procedures. .... 39
- 3-43. Federal Participation. .... 40
  
- CHAPTER 4. RELOCATION ASSISTANCE..... 41**
  
- Section 1. General Requirements ..... 41**
- 4-1. Required Sponsor Relocation Program (49 cfr 24, Subpart C). .... 41
- 4-2. Illegal Aliens..... 41
- 4-3. Voluntary Transaction. .... 41
- 4-4. Eviction for Cause..... 41
- 4-5. Property Adjacent to Project Acquired Property. .... 41
- 4-6. No Waiver of Relocation Assistance. .... 42
- 4-7. to 4-19. Reserved..... 42
  
- Section 2. Relocation Planning..... 42**
- 4-20. Project Planning Stage. .... 42
- 4-21. Acquisition Stage Relocation Plan..... 42
- 4-22. to 4-29 Reserved..... 43
  
- Section 3. Relocation Advisory Services ..... 43**
- 4-30. Sponsor Relocation Assistance Advisory Program. .... 43
- 4-31. Services To Be Provided..... 44

4-32. Coordination of relocation activities..... 45

4-33. to 4-39 Reserved..... 45

**Section 4. Required Relocation Notices ..... 45**

4-40. Manner of Notices..... 45

4-41. General Information Notice..... 45

4-42. Notice of Relocation Eligibility..... 46

4-43. Ninety-day Notice To Vacate..... 46

4-44. Availability of Comparable Replacement Dwelling Before Displacement (Grant Condition)..... 46

4-45. Notice of Intent To Acquire..... 47

4-46. to 4-49 Reserved..... 47

**Section 5. Claims For Relocation Payments..... 48**

4-50. Documentation..... 48

4-51. Expeditious Payments..... 48

4-52. Advanced Payments..... 48

4-53. Time for Filing..... 48

4-54. Notice of Denial Of Claim..... 48

4-55. Expenditure of Payments..... 48

4-56. Relocation Payments Not Considered As Income..... 48

**CHAPTER 5. PAYMENTS FOR MOVING AND RELATED EXPENSES..... 49**

**Section 1. General Provisions..... 49**

5-1. Eligibility..... 49

5-2. Ineligible Moving And Related Expenses..... 49

5-3. to 5-19 Reserved..... 49

**Section 2. Residential Moves..... 50**

5-20. Eligible Moving Expenses for Displaced Residential Occupants..... 50

5-21. Moving a Mobile Home..... 50

5-22. Moving Expense Payment Options..... 51

5-23. to 5-29 Reserved..... 51

**Section 3. Non-Residential Moves ..... 51**

5-30. Eligible Moving Expenses for Displaced Business, Farm, or Non-Profit Organization..... 51

5-31. Moving Expense Payment Options..... 53

5-32. Related Non-Residential Eligible Expenses..... 54

5-33. Move Personal Property Only..... 54

5-34. Notification and Inspection..... 55

5-35. Reestablishment Expenses — Non-Residential Moves..... 55

5-36. Fixed payment for Moving Expenses — Non-Residential Moves..... 56

5-37. Discretionary Utility Relocation Payments..... 57



<b>CHAPTER 6. REPLACEMENT HOUSING PAYMENTS.....</b>	<b>59</b>
<b>Section 1. Replacement Housing Payment for 180-Day Homeowner-Occupants.....</b>	<b>59</b>
6-1. Eligibility.....	59
6-2. Amount of Payment.....	59
6-3. Price Differential.....	59
6-4. Increased Mortgage Interest Costs.....	60
6-5. Incidental Expenses.....	61
6-6. Rental Assistance Payment For 180-Day Homeowner.....	61
6-7. to 6.19 Reserved.....	61
<b>Section 2. Replacement housing payment for 90-day occupants.....</b>	<b>62</b>
6-20. Eligibility.....	62
6-21. Rental Assistance Payment.....	62
6-22. Downpayment Assistance Payment.....	63
6-23. to 6-29 Reserved.....	63
<b>Section 3. Eligible Replacement Housing Payment Claims .....</b>	<b>63</b>
6-30. Determining Cost Of Comparable Replacement Dwelling.....	63
6-31. Inspection of Replacement Dwelling.....	64
6-32. Purchase of Replacement Dwelling.....	64
6-33. Occupancy Requirements For Displacement Or Replacement Dwelling.....	64
6-34. Conversion of Payment.....	65
6-35. Displaced Persons/Households Move to Separate Replacement Dwellings.....	65
6-36. Mixed-use And Multifamily Properties.....	65
6-37. Payment After Death.....	65
6-38. Insurance Proceeds.....	65
6-39. Deductions From Relocation Payments.....	66
<b>Section 4. Replacement Housing Of Last Resort .....</b>	<b>66</b>
6-40. Determination To Provide Replacement Housing Of Last Resort.....	66
6-41. Basic Rights Of Persons To Be Displaced.....	66
6-42. Methods Of Providing Comparable Replacement Housing.....	67
6-43. Subsequent Occupants.....	67
6-44. to 6-49 Reserved.....	68
<b>Section 5. Mobile Homes .....</b>	<b>68</b>
6-50. Applicability.....	68
6-51. Is the Mobile Home Occupant Displaced From the Mobile Home? .....	68
6-52. Replacement Housing Payment for 180-Day Owner Displaced From A Mobile Home or Acquired Mobile Home Site.....	68
6-53. Amount of Payment, Eligible 180-day Owner.....	69
6-54. Owner-occupant Not Displaced From The Mobile Home.....	70
6-55. Replacement Housing Payment For 90-Day Mobile Home Occupants.....	70
<b>CHAPTER 7. MANAGEMENT OF ACQUIRED PROPERTY .....</b>	<b>71</b>
7-1. General.....	71

7-2. Owner Retention. .... 71

7-3. Interim Rental of Acquired property..... 71

7-4. Sale of Acquired Improvements. .... 72

7-5. Demolition of Acquired Improvements. .... 72

7-6. Rodent and Pest Control. .... 73

7-7. Income From Property Management. .... 74

**CHAPTER 8. ACCEPTANCE OF SPONSOR CERTIFICATIONS ..... 75**

8-1. Title Evidence. .... 75

8-2. Compliance to the Uniform Act (49 CFR Part 24). .... 75

8-3. FAA Program Monitoring..... 75

8-4. Sponsor Compliance Review and Quality Control. .... 76

**APPENDIX 1: SAMPLE FORMS..... 77**

# Chapter 1. INTRODUCTION AND POLICY

## Section 1. GENERAL

### 1-1. PURPOSE.

FAA has specific duties under Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). This Order describes these mandates and provides the basis for FAA Airports monitoring and acceptance of airport sponsor real property acquisition and relocation assistance for AIP assisted projects and programs. FAA may not accept work that does not conform to the implementing Federal regulation, 49 CFR Part 24.

### 1-2. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT (UNIFORM ACT).

The Uniform Act (42 USC 4601 et seq.) was enacted January 2, 1971. This law applies to any Federal project or program that requires real property acquisition and people to be displaced from their acquired home, business, farm, or nonprofit organization real property. The purpose of the Uniform Act is:

a. To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs:

b. To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

c. To ensure that Agencies implement these regulations in a manner that is efficient and cost-effective.

### 1-3. TITLE 49 CODE OF FEDERAL REGULATIONS PART 24, UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS.

a. Title 49 Code of Federal Regulations Part 24 (49 CFR 24) implements the Uniform Act on FAA programs. Airport sponsors must comply with 49 CFR Part 24 for AIP assisted airport development and Federal Aviation Regulation (FAR), Part 150, Airport Noise Compatibility Planning projects and programs.

b. Chapter 7 of the AIP Handbook, FAA Order 5100.38, describes the sponsor grant requirements and eligibility for land acquisition and relocation costs. As described in the AIP Handbook, grant agreements require that:

(1) The sponsor will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24.

(2) The sponsor will pay or reimburse property owners for necessary expenses as specified in Subpart B.

(3) The sponsor will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subparts D and E of 49 CFR Part 24.

(4) The sponsor will make available within a reasonable period of time prior to displacement comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

c. FAA Advisory Circular 150/5100-17. This advisory circular provides detailed procedural and documentation guidance to airport sponsors to conform to 49 CFR 24. This AC should be provided airport sponsors to develop their procedures.

d. Acquisition, Relocation, and Certification (ARC). ARC is an instructional guide for sponsors to apply 49 CFR 24 requirements on small airport land projects involving only a few properties and little if any relocation. This instructional program is available online at <http://www.flashgov.com/arc.htm> or available on a CD from APP600.

#### **1-4. SPONSOR MUST KEEP ACCEPTABLE ACQUISITION AND RELOCATION RECORDS.**

The airport sponsor shall maintain adequate records, including real estate appraisals, acquisition, relocation, and property management records, and other documentation necessary to show compliance to 49 CFR Part 24. Documentation must be in an easily retrievable form and must be available during regular business hours for inspection by representatives of the FAA, Office of the Secretary of Transportation, and General Accounting Office. The airport sponsor must keep records for at least 3 years after FAA grant closeout. Chapter 9 of AC 150/5100-17 provides sponsor guidance on required documentation to support its grant assurance and certifications to FAA. Appendix 1 provides a documentation checklist for sponsor parcel or project files. For larger and more complex land projects FAA encourages sponsor use of cost effective computer or web based document management and quality control systems.

#### **1-5. SPONSOR CERTIFICATIONS.**

The FAA may accept sponsor certification of compliance to Uniform Act requirements ([see Chapter 8](#)).

#### **1-6. REQUIRED APPEAL PROCEDURE TO ADDRESS GRIEVANCES UNDER 49 CFR 24.**

The sponsor must have an appeal procedure that meets the requirements of 49 CFR 24.10. The sponsor must conduct the appeal consistent with the regulation and must adequately document the appeal decision.

**a. Actions that may be appealed.** Any aggrieved person may file a written appeal with the sponsor in any case which the person believes that the sponsor has failed to properly consider the person's application or claim for payments or assistance prescribed under 49 CFR 24. Such assistance subject to appeal may include, but is not limited to, the person's eligibility for, or the amount of, relocation assistance payments or eligible cost incidental to the sponsor's acquisition of real property (described at paragraph 3-3). The sponsor shall consider a written appeal regardless of form and shall promptly review appeals.

**b. Written Appeal Finding Required.** Promptly after receipt of all information submitted by a person in support of an appeal, the sponsor shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. A displaced person's reasonable request for assistance conforming to regulatory and relocation program guidelines may be accepted as an eligible cost for Federal reimbursement.

An appeal that exceeds eligible limits and is rejected must be fully explained by the sponsor and documented citing the governing regulations. If the full relief requested is not granted, the sponsor shall advise the person of their right to seek judicial review of the sponsor's decision.

**c. FAA's Role in an Appeal.** The FAA is not a party in the appeal or any subsequent litigation. The FAA may advise sponsors of the applicable regulatory requirements and eligibility limits on specific issues or appeal claims. The sponsor must assure that its parcel and project documentation will provide a sufficient administrative record to support their decision for judicial review. Lacking sufficient documentation to support its determinations the sponsor may be found to be "arbitrary and capricious" and its appeal determinations reversed or remanded for reconsideration consistent with the governing regulations and any findings of the court. If an appeal is accepted for judicial review in Federal court the sponsor should advise FAA to allow review of the issues that may have precedent or involve Federal policy or regulatory issues.

#### **1-7. FAA MONITORING AND CORRECTIVE ACTION.**

FAA will monitor sponsor compliance with grant assurances and 49 CFR 24. For any deficiencies in compliance the airport sponsor shall take corrective action as is necessary to comply with the Uniform Act. The FAA will withhold its approval of reimbursement of project or grant expenditures given noncompliance and/or violation of the requirements of the Uniform Act. FAA reviews of sponsor programs should be made as necessary to ensure adequate sponsor compliance to 49 CFR 24. Appendix 1 provides a "[Spot Check](#)" review format that may be used by FAA project managers for review of sponsor programs and certifications.

#### **1-8. TO 1-19. RESERVED**

### **Section 2. POLICY AND APPLICATION TO AIP PROJECTS**

#### **1-20. SPONSOR ACQUISITION OF REAL PROPERTY REQUIRED FOR AIP PROJECTS.**

This Order applies to AIP assisted airport projects that, after January 1, 1971, cause the displacement of persons or the acquisition of real property, including acquisition by an airport owner for an AIP project but without Federal funding in the land cost. For the purposes of this Order, airport development projects and FAR Part 150 Noise Compatibility Programs involving land will be referred to only as airport projects. This Order also covers the acquisition of real property and related displacement of people prior to a sponsor entering into an AIP grant where the sponsor will need to provide FAA its assurance of Uniform Act Compliance for an anticipated AIP project grant.

#### **1-21. SPONSOR ORGANIZATION AND STAFFING REQUIREMENTS.**

Conformance to Uniform Act requirements necessitates sufficient professional staff and operational procedures to assure property owners and displaced persons are provided all entitlements and protections contained in the Uniform Act. Sponsor staff and/or their consultant must demonstrate an adequate working knowledge of the requirements of 49 CFR Part 24 and the capability and expertise credentials to successfully complete the work proposed in conformance to applicable requirements. FAA AC 150/5100-17 provides detailed procedural guidance, sample documentation formats and Quality Control requirements to assist sponsor compliance and AIP reimbursement eligibility.

When soliciting consultants<sup>1</sup>, sponsors should include the following qualification requirements in their request for proposals/qualifications:

- ◆ An understanding of the governing regulations provided at 49 CFR Part 24, FAA policies described in AC 150/5100-17 and other applicable law and regulation provided under state and local law.
- ◆ Experience and expertise to undertake real property acquisition and relocation assistance functions as prescribed under the governing regulations and FAA AC.
- ◆ Ability to undertake and complete the required work within the proposed project schedule. ***(Sponsor project schedule must be realistic and correspond to the availability of qualified resources).***
- ◆ A listing of references for current jobs and completed projects that the Sponsor may contact.
- ◆ Education and training evidencing expertise and competence to perform professional real property acquisition and relocation assistance work.
- ◆ Professional designation, license, or certification.
- ◆ Quality Control and Document Management system to ensure Uniform Act Compliance and adequate documentation to ensure maximum FAA reimbursement. Appendix 3 to FAA AC 150/5100-17 describes minimum Quality Control criteria and sample documentation formats. Quality Control may be separately contracted or provided by qualified Sponsor staff.

## **1-22. VOLUNTARY TRANSACTION EXCEPTION UNDER 49 CFR 24.101(B)**

a. The regulation at 49 CFR 24.101(b) provides that a property owner's sale may be considered a "voluntary transaction" and exempt from the regulatory requirements when the sale to the airport meets ALL of the following requirements. Figure 1-1 applies these requirements to typical airport project land acquisitions to assist a determination if an owner's sale may be considered a voluntary transaction. Specific questions may be forwarded to APP 600.

**(1)** The acquisition and possession of the property is not a necessity to complete the airport project (e.g. Airport purchase of a home under Purchase Assurance program, easements conveyed under Sales Assistance or outright easement acquisition as described in FAA Order 5100.38 at paragraph 811(b)). When the sponsor purchases more than one property for such project, all selling property owners are to be treated similarly.

**(2)** The owner's property is not part of an intended, planned, or within a designated project area where all or substantially all of the property within the areas is eligible and proposed for acquisition within specific time limits. An owner's sale to the airport for an airport expansion project or for a noise buy-out project to change or redevelop acquired property to compatible land use does not meet this requirement (see FAA Order 5100.38 at paragraph 811(a)).

**(3)** The property owner is informed in writing that should negotiations fail to result in an amicable agreement for the purchase the airport will not purchase the owner's property.

---

<sup>1</sup> FAA requirements for contracting professional services are detailed in the AIP Handbook (FAA Order 5100.38) in Chapter 9.

(4) The sponsor informs the property owner in writing of the market value of the property.

b. The owner of a property sold as a “Voluntary Transaction under 49 CFR 24.101(b)” to a qualified airport project is not a displaced person and is not eligible for relocation assistance and payment benefits. However, any tenants in occupancy when agreement is reached to purchase the property are eligible for all applicable relocation payments and assistance provided for under the Uniform Act, (also see paragraph 1-37, regulatory definition of Persons Not Displaced).

**Figure 1-1 Is the Owner’s Sale to an Airport Project a Voluntary Transaction?**

Property is Purchased For:		Is Selling Owner Displaced?
<p><b>Current or Planned Airport Expansion Project</b></p>		<p><b>Yes, and entitled to relocation payments.</b></p>
<p><b><u>Airport Noise Compatibility Program</u></b>  <b>Buy-Out of Homes</b>  <b>Redevelopment of Acquired Property to Compatible Land Use</b>  <i>(See FAA Order 5100.38 at paragraph 811(a))</i></p>		<p><b>Yes, and entitled to relocation payments.</b></p>
<p><b><u>Airport Noise Compatibility Program</u></b>  <b>Purchase /Sales Assurance</b>  <b>No Change in Land Use</b>  <i>(See FAA Order 5100.38 at paragraph 811(b))</i></p>		<p><b>No</b></p>
<p><b>Open Market Sale</b>  <b>Purchased for Eligible Standards</b>  <b>At the time of sale, property was not required for a current or planned FAA Assisted Expansion Project.</b></p>		<p><b>No</b></p>

**1-23. DOES THE UNIFORM ACT APPLY TO PROJECTS USING PASSENGER FACILITY CHARGES (PFC's)?**

Passenger Facility Charges (PFC's) are not Federal funds and when a project or sponsor program is funded solely with PFC's (e.g. also no Federal funding in the planning, environmental, construction phases of a current or planned project) the Uniform Act does not apply. When PFC's are used to acquire land for a current of planned Federally funded project, the Sponsor must comply with the provisions of 49 CFR Part 24. Where a sponsor may have other unrelated AIP funded projects the sponsor should be encouraged to continue to conform to 49 CFR Part

24 to preclude a perception of disparate treatment. A sponsor may apply PFC's for acquisition and relocation payments consistent with Uniform Act requirements.

#### **1-24. LONG TERM LEASE IN LIEU OF DISPLACEMENT.**

A sponsor shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and payments provided by the Uniform Act. However, there may be situations where the continued occupancy of sponsor acquired property may be mutually beneficial, e.g. advance acquisition of land tenant occupied by airport dependent business. After the airport sponsor has advised and provided required written notice to an occupant of their rights and payments that they may be eligible to receive under provisions of the Uniform Act, an occupant may elect to enter into a long term lease with the airport for continued occupancy of the acquired property.

Any such lease agreement must clearly show that such a long-term lease was made and agreed by the eligible occupant in lieu of displacement and with their acknowledgement of their specific relocation payment eligibility. The initiation of the agreed lease with the airport would be considered the date of displacement for a tenant occupant. Lease terms should at a minimum span the eligibility time frame of 18 months to avoid potential dispute concerning a lessee's relocation payment eligibility.

#### **1-25. IS A FIXED-BASE OPERATOR (FBO) OR AIRPORT TENANT A DISPLACED PERSON?**

A FBO or other airport tenant may be determined to be a displaced person and entitled to relocation assistance if the airport must acquire the tenant's real property interest to force possession of the land needed for project development. A person who initially enters into occupancy of real property that the airport had acquired for the AIP project after the date of the acquisition, or is not required to move permanently due to demolition or rehabilitation of the leased airport property is by definition [not a displaced person](#).

The lease terms with the airport owner will determine the occupancy rights of the tenant and if the airport must acquire the tenant leasehold or "break" (extinguish) the current lease. In lieu of displacement from the airport, the sponsor may renegotiate a lease for continued occupancy elsewhere on airport property. See the AIP handbook at paragraph 593 for AIP eligibility on the [Purchase, Relocation, or Demolition of Ineligible Facilities](#).

#### **1-26. TRANSFER OF FEDERAL LANDS FOR AIRPORTS, FAA ORDER 5170.1**

The conveyance of Federal land for the public airports should be in accordance with Title 49, United States Code (USC), section 47125, unless other laws apply. FAA Order 5170.1 sets forth policies and procedures for review as well as coordination of the applications by non-Federal public agencies to approve conveying Federal Government-owned land involving the establishment, development, improvement, use, closure, and/or replacement of a public airport.

#### **1-27. CONDITIONAL OPTIONS TO PURCHASE, LAND CONTRACTS, SALE-LEASEBACK, OTHER ADVANCE LAND ACQUISITION AGREEMENTS FOR AIRPORT PROJECTS.**

APP 500 has evaluated innovative measures to protect or secure land in advance of project need. Pilot and innovative finance projects have successfully applied these measures in compliance to 49 CFR Part 24. Generally any agreement or contract that proposes to purchase land for future AIP project need must ensure Sponsor compliance to 49 CFR 24. Detailed guidance on AIP eligibility and prerequisite conditions for Uniform Act and environmental compliance is provided in Chapter 7 of the FAA AIP Handbook. On a sponsor proposal for



advance acquisition APP 500 should be contacted to ensure AIP eligibility and APP 600 should be contacted to ensure acquisition procedures meet 49 CFR 24.

#### **1-28. FAA WAIVER OF REGULATIONS.**

The sponsor may not waive the regulations. The FAA may waive any requirement not required by law if the waiver does not reduce any assistance or protection provided to an owner or displaced person under 49 CFR 24. Any request for a waiver must be justified on a case-by-case basis. A proposed waiver must be submitted to APP 600 for review and prior approval.

#### **1-29. RESERVED**

### **Section 3. 49 CFR 24 DEFINITIONS**

The following terms are defined by 49 CFR 24 and apply to airport sponsor land acquisition and relocation programs. These terms are referenced through out this Order.

#### **1-30. ALIEN NOT LAWFULLY PRESENT IN THE UNITED STATES.**

The phrase "alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

- a.** An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by the United States Attorney General, and
- b.** An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

#### **1-31. 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.

#### **1-32. BUSINESS.**

The term business means any lawful activity, except a [farm operation](#), that is conducted:

- a.** Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;
- b.** Primarily for the sale of services to the public;
- c.** Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- d.** By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

#### **1-33. CITIZEN.**

The term citizen includes both citizens of the United States and noncitizen nationals.

**1-34. COMPARABLE REPLACEMENT DWELLING.**

The term comparable replacement dwelling means a dwelling that is:

- a. Decent, safe and sanitary as described in paragraph (8) of this section;
- b. Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;
- c. Adequate in size to accommodate the occupants;
- d. In an area not subject to unreasonable adverse environmental conditions;
- e. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- f. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses.
- g. Currently available to the displaced person on the private market except as provided in paragraph (i) below.
- h. Within the financial means of the displaced person:
  - (1) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all incidental expenses as described at [Chapter 6, Section 1](#), plus any additional amount required to be paid under Replacement housing of last resort, as described at [Chapter 6, Section 4](#).
  - (2) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance described at Chapter 6, Section 2, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at [paragraph 6-21\(b\)](#).
  - (3) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if a Sponsor pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in paragraph [6-21\(b\)](#). Such rental assistance must be paid under replacement housing of last resort.
- i. For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the

government housing assistance program relating to the size of the replacement dwelling shall apply.

### **1-35. CONTRIBUTE MATERIALLY**

The term contribute materially means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

- a. Had average annual gross receipts of at least \$5,000; or
- b. Had average annual net earnings of at least \$1,000; or
- c. Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.
- d. If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

### **1-36. DECENT, SAFE, AND SANITARY DWELLING.**

The term decent, safe, and sanitary dwelling means a dwelling that meets local housing and occupancy codes. However, any of the following standards that are not met by the local code shall apply unless waived for good cause by the FAA (contact APP600). For purposes of the Uniform Act a DSS dwelling shall:

- a. Be structurally sound, weathertight, and in good repair;
- b. Contain a safe electrical wiring system adequate for lighting and other devices;
- c. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;
- d. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the sponsor shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, FAA Airports policy that separate bedrooms are allowed;
- e. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;
- f. Contains unobstructed egress to safe, open space at ground level; and
- g. For a displaced person with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the

Agency is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Sponsor shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

### **1-37. DISPLACED PERSON.**

**a.** The term displaced person means, except as provided in paragraph b, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act for displaced homeowners or tenants as described in Chapter 6.)

(1) As a direct result of a [written notice of intent to acquire](#), the [initiation of negotiations](#) for, or the acquisition of, such real property in whole or in part for a project;

(2) As a direct result of rehabilitation or demolition for a project; or

(3) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

**b. Persons not displaced.** The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(1) A person who moves before the initiation of negotiations unless the sponsor determines that the person was displaced as a direct result of the program or project;

(2) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(3) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(4) A person who is not required to relocate permanently as a direct result of a project. Because occupants in this category are not necessarily considered displaced persons care must be exercised to ensure that they are treated fairly and equitably on the sponsor's AIP assisted programs. If the occupant of a residential dwelling will not be displaced, but is required to relocate temporarily in connection with an AIP assisted project, the temporarily occupied housing must be decent, safe, and sanitary, and the occupant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary. If an airport tenant business will be shut-down for any significant length of time due to rehabilitation or demolition of a leased site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses. The airport sponsor may determine that an airport tenant is displaced if the airport lease must be broken and/or tenant leasehold must be acquired to secure possession of needed land (see Paragraph 1-25). Any person who disagrees with the sponsor's determination that he or she is not a displaced person may file an [appeal](#) with the airport sponsor.

(5) An owner-occupant who conveys their property as a "[Voluntary Transaction](#)", described in Paragraph 1-22. **However, tenants in occupancy on the purchased property are displaced and entitled to eligible relocation assistance and payments.**

(6) A person whom the sponsor determines is not displaced as a direct result of a partial acquisition;

(7) A person who, after receiving a notice of relocation eligibility is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Sponsor agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(8) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Sponsor;

(9) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been [evicted for cause](#) (see Paragraph 4-3). However, advisory assistance may be provided to unlawful occupants at the option of the Sponsor in order to facilitate the project; or

(10) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance as prescribed under the Uniform Act.

#### **1-38. DWELLING.**

The term dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

#### **1-39. DWELLING SITE.**

The term dwelling site means a typical site upon which a dwelling is located.

#### **1-40. FARM OPERATION.**

The term farm operation means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

#### **1-41. HOUSEHOLD INCOME.**

The term household income means total gross income received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation social security, or the net income from a business. It does not include income received or earned by dependent children and full time students less than 18 years of age.

#### **1-42. INITIATION OF NEGOTIATIONS.**

The initiation of negotiations means the delivery of the initial written offer of just compensation by the sponsor to the owner or the owner's representative to purchase the real property for the project. If the sponsor should issue a Notice of Intent to Acquire, and a person

moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.

In the case of permanent relocation of a tenant as result of a an [Voluntary Transaction](#), the initiation of negotiations as described above, does not become effective for purposes of establishing the tenant eligibility for relocation assistance until there is a written purchase agreement for the real property with the property owner.

#### **1-43. MOBILE HOME.**

The term mobile home includes manufactured homes and recreational vehicles used as residences.

#### **1-44. MORTGAGE.**

The term mortgage means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

#### **1-45. NONPROFIT ORGANIZATION.**

The term nonprofit organization means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

#### **1-46. OWNER OF A DWELLING.**

The term owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

- a. Fee title, a life estate, a land contract, a 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
- b. An interest in a cooperative housing project which includes the right to occupy a dwelling;  
or
- c. A contract to purchase any of the interests or estates described above in (21)(i) or (ii) of this or,
- d. Any other interest, including a partial interest, which in the judgment of the sponsor warrants consideration as ownership.

#### **1-47. PERSON.**

The term person means any individual, family, partnership, corporation, or association.

#### **1-48. SALVAGE VALUE.**

The term salvage value means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

**1-49. SMALL BUSINESS.**

A small business is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of reestablishment expenses.

**1-50. STATE.**

Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

**1-51. TENANT.**

The term tenant means a person who has the temporary use and occupancy of real property owned by another.

**1-52. UNECONOMIC REMNANT.**

The term uneconomic remnant means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Sponsor has determined has little or no value or utility to the owner.

**1-53. UNLAWFUL OCCUPANT.**

A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. A Sponsor, at its discretion, may consider such person to be in lawful occupancy.

**1-54. UTILITY COSTS.**

The term utility costs means expenses for electricity, gas, other heating and cooking fuels, water and sewer

**1-55. UTILITY FACILITY.**

The term utility facility means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

**1-56. UTILITY RELOCATION.**

The term utility relocation means the adjustment of a utility facility required by the program or project undertaken by the Sponsor. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

**1-57. WAIVER VALUATION.**

The term waiver valuation means the valuation process used and the product produced when the Sponsor determines that an appraisal is not required, pursuant to the [appraisal waiver provisions](#) provided in Paragraph 2-3.



## **Chapter 2. REAL PROPERTY APPRAISAL FOR AIP PROJECTS**

### **Section 1. GENERAL REQUIREMENTS**

#### **2-1. REQUIRED SPONSOR APPRAISAL PROCESS (49 CFR 24.103 AND 24.104).**

On AIP projects the Uniform Act obligates the sponsor to provide an appraisal process that at a minimum shall provide for the following.

- a.** The sponsor shall appraise the fair market value of the real property to be acquired before the initiation of negotiations with an owner, (unless the appraisal waiver provision is applied as described in Paragraph 2-3 below).
- b.** The sponsor's appraiser shall afford the owner or designated representative an opportunity to accompany the appraiser during the inspection of the property.
- c.** As provided in Section 3, the sponsor shall maintain an adequate appraisal review process to establish just compensation prior to the initiation of negotiations. The amount of just compensation established shall not be less than the sponsor's approved appraisal of the fair market value of the property to be acquired.
- d.** The appraisal of the property to be acquired shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.
- e.** Appraisers shall not give consideration to, or include in their appraisals, any allowance for relocation assistance benefits.

#### **2-2. APPRAISER AND REVIEW APPRAISER QUALIFICATIONS.**

The sponsor shall establish qualification criteria that at a minimum assure the competency of its appraiser is consistent with the scope of work and level of difficulty of the appraisal assignment. The sponsor shall review the experience, education, training, and other qualifications of appraisers and review appraisers, and will use only those determined to be qualified. The sponsor may obtain referrals for qualified appraisers and reviewers from other airport sponsors, the local offices of the state highway department, or local housing agencies.

All states now license or certify private appraisers in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) providing minimum education and experience requirements for real estate appraisers. Generally, an active state licensed or certified appraiser will have adequate qualifications and is bound by ethics and state law only to accept work for which they are competent. However, a sponsor should not simply rely on the license or certification when hiring appraisers, but should actively solicit the most qualified appraisers available. If the appraisal assignment requires the preparation of a detailed appraisal, and a private fee appraiser is hired to perform this appraisal, such appraiser shall be certified under applicable state law that conforms to FIRREA requirements.

### **2-3. APPRAISAL WAIVER.**

An appraisal is not required if:

a. The owner is donating the property and releases the Sponsor from its obligation to appraise the property, or

b. The Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the market value is estimated at \$10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the sponsor shall prepare a [waiver valuation](#) of the proposed acquisition.

c. The FAA may approve a Sponsor exceeding the \$10,000 appraisal waiver threshold, up to a maximum of \$25,000. If approving an increase the FAA must ensure that the Sponsor offer the property owner the option of having the Sponsor appraise the property. If the property owner elects to have the Sponsor appraise the property, the Sponsor shall obtain an appraisal meeting all applicable requirements.

### **2-4. CONFLICT OF INTEREST.**

a. No appraiser, review appraiser or other person making an appraisal or a waiver valuation shall have any interest, direct or indirect, in the real property being valued for the Sponsor that would in any way conflict with the preparation of the appraisal, the waiver valuation or the review of the appraisal. The compensation for making an appraisal or a waiver valuation shall not be based on the amount of the valuation estimate.

b. The Sponsor must ensure an adequate separation of functions in its project organization to preclude any conflict of interest in the performance of professional and independent real property appraisal. On complex and high value acquisitions and on large long term projects, persons functioning as the property negotiator may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work for the project. **On any real property acquisition for a FAA assisted project no person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation (49 CFR 24.102(n)).**

c. No appraiser or other person making an appraisal or a waiver valuation shall act as a negotiator for real property for which that person has made an appraisal or a waiver valuation, except that the Sponsor may permit such person to negotiate an acquisition where the offer to acquire the property is \$10,000, or less.

### **2-5. NON ALLOWABLE LAND COST.**

State law may require a Sponsor to include with its market value appraisal, additional compensation for items required under state law. It is FAA policy that these costs exceed entitlements prescribed in Title 49 CFR, Part 24. Items generally held to be non-compensable in eminent domain include loss of business, payment for goodwill, frustration of development plans, and other limitations described in the Uniform Appraisal Standards for Federal Land Acquisitions as ineligible for Federal reimbursement. The Sponsor's review appraisal report must identify such items separate from the appraised market value for the acquired real property.

### **2-6. to 2-19. Reserved**

**2-6. TO 2-19. RESERVED****Section 2. MINIMUM APPRAISAL REQUIREMENTS****2-20. APPRAISAL ASSIGNMENT SCOPE OF WORK.**

Appraisals are to be prepared according to the requirements described in this Chapter, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP)<sup>2</sup>. The Sponsor has a role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The sponsor's appraisal assignment (solicitation) should contain a scope of work statement to ensure an acceptable appraisal is secured for the FAA assisted project. The scope of work should be commensurate with the complexity of the appraisal problem and at a minimum the appraisal scope of work should include the following:

- a. The purpose and/or function of the appraisal (e.g. appraise market value).
- b. The appraiser is to perform a Complete Appraisal as defined under Uniform Standards of Professional Appraisal Practice (USPAP).
- c. The appraisal report shall be a written "Self-Contained" or "Summary" appraisal report, as the Sponsor determines necessary for the assignment (**also see paragraph 2-21 below for report requirements**). "Restricted Appraisal Reports" allowable under USPAP are not acceptable for FAA assisted airport projects.
- d. The definition of the estate being appraised e.g. fee simple, easement, leased fee, etc.;
- e. As applicable for improved commercial or industrial property a [realty/personalty determination](#) is provided the appraiser;
- f. The appraiser in developing and reporting the appraisal shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. If necessary, the appraiser may cite Jurisdictional Exception or Supplemental Standards under USPAP to ensure application of this regulatory requirement.
- g. The appraiser shall afford an opportunity for the property owner to accompany the inspection of the property.
- h. Assumptions and limiting conditions affecting the appraisal.
- i. The data search requirements and parameters.
- j. Identification of the technology requirements, including approaches to value, to be used to analyze the data.
- k. Other specification required to adequately appraise the property and meet FAA and regulatory requirements.

---

<sup>2</sup> Uniform Standards of Professional Appraisal Practice (USPAP.) Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2003/toc.htm>.

## **2-21. APPRAISAL REPORT REQUIREMENTS.**

The Sponsor must assure that its appraisal reports are relevant to its program needs and reflect established and commonly accepted Federal and federally assisted program appraisal requirements, including to the extent appropriate the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA)<sup>3</sup>. The appraisal report must also conform to applicable state eminent domain law and requirements. At a minimum the appraisal report must conform to the regulatory definition of [appraisal](#) and must include:

**a.** An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), **including** items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

**b.** All relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

**c.** A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

**d.** A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

**e.** The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

## **2-22. SHORT FORM APPRAISAL REPORT FOR LOW VALUE AND SIMPLE ACQUISITIONS.**

A short-form appraisal report is acceptable for low value and simple acquisitions. Examples of an uncomplicated acquisition are a single-family residence; unimproved residential or small commercial lot or a strip taking from a large parcel not involving significant benefits or damages to the remaining property. The Federal National Mortgage Association (FannieMae) or Federal National Home Loan Bank (FreddieMac) appraisal forms or comparable appraisal report forms in common use are acceptable summary report forms. [FAA Form 5100-112URAR](#) provides a cover sheet for summary appraisal reports citing the applicable FAA requirements to include with the form report.

## **2-23. APPRAISER AND REVIEW APPRAISER CERTIFICATION.**

Each appraisal and review appraisal report shall contain the appraiser's certification that states that to the best of his or her knowledge and belief, the appraisal was conducted in an objective manner and that the conclusions are correct. A new certificate will be prepared when there is a change in the appraisal report that affects the estimate of just compensation or

---

<sup>3</sup> The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/land-ack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/ecom/publications/Books.asp?Books=All> or call 888-570-4545.

changes the date of valuation. [FAA Form 5100-111](#), Certificate of Appraiser, is an example of a format that the appraiser may use. (Note: This certification is required in addition to the certification that may be required of the appraiser in accordance with the Uniform Standards of Professional Appraisal Practice.)

#### **2-24. NUMBER OF APPRAISALS NEEDED.**

Unless waived, at least one appraisal is necessary for each parcel to be acquired. The sponsor may secure additional appraisal(s) for a proposed acquisition the Sponsor considers to be of a high value and/or contain complex or unusual features or damages.

#### **2-25. PARTIAL ACQUISITIONS - BEFORE AND AFTER VALUATION.**

A partial acquisition is where only a only part of a property parcel is acquired or only some property rights are to be conveyed leaving the property owner with the fee simple interest. Typical partial acquisitions are a taking of a portion of a property's front yard for a road widening or the acquisition of an avigation easement over an owner's property to protect approach slopes. The sponsor shall use the "Before and After" method to appraise partial acquisitions, except where there is clearly no damage or benefit to he remaining land or improvements due to a relative minor acquisition of real property. Generally, the value of a partial acquisition (i.e. the part taken) is appraised as the difference in the Before and After appraised values of the property. The "Before Value" is the appraised pre-project value of the real property disregarding any project influence. The "After Value" is the appraised value of the remaining real property without the acquired part or rights and subject to project impacts.

#### **2-26. REALTY / PERSONALTY DETERMINATION.**

On complex acquisitions of improved commercial/industrial property where a business (farm or non-profit organization) is being displaced for the project a realty/personalty determination must be made and provided the appraiser. Items of personalty are not appraised, and real estate items must not be excluded from the valuation. A formal realty/personalty determination is necessary for complex appraisals and should be developed in consultation with the property owner and any affected displaced businesses (also see [acquisition stage relocation plan](#) requirements described In Paragraph 4-21(b)). Some items may require advice of legal counsel to determine whether the item is real estate or personalty. Generally an item is considered a fixture and real estate, if removal of the item would destroy the item or would substantially damage the real estate.

Where tenant ownership of real estate items is established, the inventory of tenant owned improvements is provided the appraiser for a valuation of the contributory value of this property to the real estate to be acquired. Specific regulatory and procedural requirements apply to the acquisition of tenant owned improvements, as described in [Paragraph 3-6](#).

#### **2-27. APPRAISAL OF AVIGATION EASEMENTS.**

Chapter 7 o f the AIP Handbook, FAA Order 5100.38 describes the required sponsor title certification and eligibility to acquire less than the fee simple interest for airspace and airport approach areas. Consistent with these AIP requirements, acquisition of fee title may not be necessary where an avigation easement (or other real property encumbrance benefiting the airport property) is determined sufficient. Also the acquisition of avigation easement may be an approved measure and acquired for an airport noise compatibility program. Appraisal requirements for easement acquisition are generally described below. More detailed appraisal guidance is provided in FAA AC 150/5100-17.

**a. Protection of the Airport Approach Area.** An appraisal shall be prepared by the "Before and After" method except in those cases where the value is nominal and there is little if any damage to the property affected. The easement acquired must provide for the height restrictions required to protect FAR Part 77 surfaces and restrict current and future use of the land surface to preclude incompatible uses. Where significant damages due to imposition of the easement will occur, the appraiser must fully explain the legal and physical restrictions imposed on the continued use of the property that result in the loss of market value. This explanation by the appraiser on the effect of the easement must include complete consideration of all potential property uses in determining the highest and best use of the property following the easement acquisition. The easement shall be enforceable to preclude any incompatible use of the property.

**b. Runway Protection Zone (RPZ).** The RPZ is trapezoidal in shape and centered about the extended runway centerline and begins 200 feet beyond the end of the area usable for takeoff and landing. FAA Advisory Circular AC 150/5300-13, Airport Design, describes in detail the dimensions, configuration and location of an RPZ to the associated airport runway. It is recommended that the RPZ be acquired in fee, however if this is determined to be not practical, an easement may be acquired that adequately restricts land use. The easement acquired must provide for the height restrictions required to protect FAR Part 77 surfaces and restrict current and future use of the land surface to preclude incompatible uses. Incompatible uses within the RPZ include land use for residences and places of public assembly (churches, schools, hospitals, office buildings, shopping centers, and other uses with similar concentrations of persons) and other uses inconsistent with airport operations.

**c. Avigation Noise Easements Acquired for Noise Compatibility.** An appraisal is not required for easements conveyed in exchange for other noise mitigation measures provided under an airport's Noise Compatibility Program (NCP), such as soundproofing, or purchase/sales assurance or transaction assistance. An appraisal may be required for the outright purchase of a noise avigation easement acquired for an airport Noise Compatibility Program. The easement appraisal values the market value of the easement conveyance to the airport from the property "as is" affected by airport noise. Detailed appraisal guidance on the appraisal of avigation noise easements is provided in FAA AC 150/5100-17.

## **2-28. APPRAISAL OF PROPERTY CONTAINING HAZARDOUS MATERIALS.**

Property cleanup (remediation) or waste disposal costs are normally reflected in a property's market value. In appraising such property for airport project purposes, the impact of any hazardous materials affecting the property and the level of treatment needed to control or cleanup the property needs to be considered and reflected in the appraised market value.

However, the appraiser is not a specialist or expert to identify or determine costs of control, cleanup or removal. Therefore, prior to commencing an appraisal, the appraiser must be given specific instructions regarding known contamination. The appraiser will then determine the degree that the confirmed hazardous contamination impacts the market value of the property. General guidance for the appraisal of contaminated property is provided in the FAA AC 150/5100-17.

**2-29. RESERVED****Section 3. APPRAISAL REVIEW****2-30. RESPONSIBILITY OF AIRPORT SPONSOR.**

For any acquisition of real property for an AIP assisted project, the sponsor shall have an appraisal review process at a minimum ensures that:

a. A qualified review appraiser shall examine the presentation and analysis of market information in all appraisal reports to assure that they:

- (1) Conform to the definition of [appraisal](#),
- (2) Meet FAA and 49 CFR 24 appraisal requirements described in Section 2 of this Chapter.
- (3) Provide adequate documentation and support of the appraiser's opinion of value.

b. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions.

c. The review appraiser shall report the approved appraised value as the recommended amount of just compensation to be offered the property owner.

d. The review appraiser shall identify each appraisal report reviewed as:

- (1) **Recommended** as the basis for the establishment of the amount believed to be just compensation,
- (2) **Accepted** and meets all requirements, but not selected as approved, or
- (3) **Not Accepted**. The appraisal failed to meet requirements for acceptance and value opinion is not considered correct or supported.

e. If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the Sponsor that it is not practical to obtain an additional appraisal, the review appraiser may develop appraisal documentation in accordance FAA requirements described in Section 2 to support an estimate of just compensation. The review appraiser report shall include the additional analysis and documentation required to supplement the reviewed appraisals and support the approved appraised value. No further appraisal review is required.

**2-31. REVIEW APPRAISAL REPORT.**

The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review report should identify those damage items compensable under state law but not generally held to be compensable under eminent domain and [not eligible for Federal reimbursement](#), if any. The appraisal review report shall include the review appraiser's [certification](#) and state the approved appraised value as the basis for the sponsor's offer of just compensation.





## Chapter 3. REAL PROPERTY ACQUISITION FOR AIP PROJECTS

### Section 1. REQUIREMENTS

#### 3-1. SPONSOR OFFER OF JUST COMPENSATION.

At a minimum the sponsor shall meet the following requirements to present an acceptable purchase offer to a property owner for their real property or an interest in their real property. The sponsor should plan and schedule its acquisition process in order to accommodate the following steps to prepare its offer of just compensation to initiate purchase negotiations with the property owner.

**a. Expeditious acquisition.** The Sponsor shall make every reasonable effort to acquire the real property expeditiously by negotiation of an amicable purchase agreement. The sponsor will need to provide sufficient time prior to project need (lead time) to allow for an adequate appraisal and appraisal review, and sufficient time for the property owner to consider the sponsor's just compensation offer.

**b. Adequate property survey and description.** Whole property may be acquired by deed description, as supported by adequate title investigation. Partial acquisitions must be described by adequate survey of the part required and description of the remainder tract.

**c. Property title search.** The sponsor shall determine the legal property owner and the condition of marketable title for acquisition. Typically a title insurance commitment is secured to evidence marketable title and any exceptions to be cleared. The appraiser shall include at least a 5-year sales history of the property in the appraisal report.

**d. Notice to owner.** As soon as feasible, (and not later than the initiation of negotiations) the Sponsor shall notify the owner in writing of the Sponsor's interest in acquiring the real property and the basic protections provided to the owner by law and this part. The FAA brochure, Land Acquisition for Public Airports, may be used to provide this general information notice.

**e. Appraisal Requirement.** Before the [initiation of negotiations](#), the real property to be acquired shall be appraised, unless the [appraisal waiver](#) is applicable as described in Chapter 2; or the owner is donating the property and releases the sponsor from its obligation to appraise the property

**f. Appraisal Review and Sponsor Just Compensation Offer.** Before the initiation of negotiations, the Sponsor shall establish an amount which it believes is just compensation for the real property. The just compensation offered at the initiation of negotiations shall not be less than the amount of the appraised market value of the property approved by the review appraiser. In the case of a partial acquisition the approved market value will take into account the value of allowable damages or benefits to any remaining property.

**g. Written Offer Required.** Promptly after the review appraiser approves the appraisal, the sponsor shall make a timely written offer to the owner to acquire the property for the full amount of just compensation.

**h. Summary Statement Required.** The written offer shall include a summary statement of the basis of the just compensation offer that shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be stated separately.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

### **3-2. BASIC NEGOTIATION PROCEDURES.**

The sponsor shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses (as described in paragraph 3-3 below). The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. In order to satisfy this requirement, Sponsors must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

**a. Updating offer of just compensation.** The sponsor shall consider the owner's presentation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the sponsor shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Sponsor shall promptly reestablish just compensation and offer that amount to the owner in writing.

**b. Coercive action.** The sponsor shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

**c. Administrative settlement.** The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and the Sponsor approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. Also see Section 2.

**d. Payment before taking possession.** Before requiring the owner to surrender possession of the real property, the Sponsor shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Sponsor's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional

circumstances, with the prior approval of the owner, the Sponsor may obtain a right-of-entry for construction purposes before making payment available to an owner.

**e. Uneconomic remnant.** If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Sponsor shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

**f. Fair rental.** If the Sponsor 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 Sponsor on short notice, the rent shall not exceed the fair market rent for such occupancy.

**g. Inverse condemnation.** If the Sponsor intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

**h. Conflict of interest.** No appraiser or other person making an appraisal or a waiver valuation shall act as a negotiator for real property for which that person has made an appraisal or a waiver valuation, except that the Sponsor may permit such person to negotiate an acquisition where the offer to acquire the property is \$10,000, or less.

**i. Negotiations Contact Record.** To document compliance the Sponsor's negotiator must maintain adequate records of the negotiation contacts with the property owner and/or the owner's representative. The record shall be written in permanent form and completed within a reasonable time after each contact with the property owner. Contact entries should indicate the date, place of contact, persons present, offers made (dollar amounts), counteroffer, and the sponsor's response to any valuation information provided by the property owner. When negotiations are successful, the negotiator will certify that the written agreement embodies all considerations agreed to between the negotiator and the property owner and that agreement was reached without coercion. When negotiations are unsuccessful, the negotiator shall record recommendations for whatever action is considered appropriate along with any additional information essential to further processing of the acquisition. The report will be signed and dated by the negotiator.

### **3-3. EXPENSES INCIDENTAL TO TRANSFER OF TITLE.**

**a.** The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

**(1)** Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the airport owner. However, the airport owner is not required to pay costs solely required to perfect the property owner's title to the real property;

**(2)** Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

**(3)** The pro rata portion of any prepaid real property taxes which are allocable to the period after the airport owner obtains title to the property or effective possession of it, whichever is earlier.

**b.** Whenever feasible, the sponsor shall pay these costs directly at closing or provide in escrow so that the property owner will not have to pay such costs and then seek reimbursement at a later date.

### **3-4. CLOSING ON ACQUIRED LAND.**

The Sponsor must provide evidence to the FAA that adequate title has been obtained. The interest obtained must be sufficient to allow the airport owner to carry out the obligations and covenants in the grant agreement and be free of encumbrances that might deprive the airport of possession or control for public airport purposes. Appendix 4 to FAA AC 150/5100-17 provides a sample Sponsor Title Certification.

### **3-5. ACQUISITION OF EASEMENTS OR OTHER PARTIAL INTERESTS IN REAL PROPERTY.**

The sponsor shall acquire property rights sufficient for the operation and maintenance of the AIP assisted project. Eligible land acquisition for airport development is described in the AIP Handbook at Chapter 7 and Chapter 8 for Noise Compatibility projects. Consistent with AIP eligibility generally fee simple acquisition is required for airside development and for the Runway Protection Zone (RPZ). If fee simple acquisition is determined to be not practical for the RPZ, the sponsor may acquire an aviation easement that adequately restricts land use and precludes incompatible land use. Acceptable restrictions for the RPZ easement acquisition are described in Paragraph 2-27(b).

### **3-6. ACQUISITION OF TENANT-OWNED IMPROVEMENTS.**

When acquiring any interest in real property, the Sponsor shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

**a.** Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of acquisition.

**b.** Just compensation for a tenant-owned improvement is the amount that the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. FAA AC150/5100-17 provides detailed guidance on the valuation of tenant owned improvements to be acquired.

**c.** No payment shall be made to a tenant-owner for any real property improvement unless:

**(1)** The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the airport owner all of the tenant-owner's right, title, and interest in the improvement; and

**(2)** The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

**(3)** The payment does not result in the duplication of any compensation otherwise authorized by law.

**d.** Nothing shall be construed to deprive the tenant-owner of any right to reject payment under this paragraph to obtain payment for such property interests in accordance with other applicable law concerning the purchase or condemnation of the tenant's interest.

### **3-7. PROTECTIVE LEASE PRIOR TO ACQUISITION.**

Where it may be shown to be cost effective the sponsor may enter into agreements with a property owner to preclude leasing of the property in anticipation or during purchase negotiations. The protective lease agreement will preclude new or additional tenants from entering occupancy on the property and possibly becoming eligible for relocation payments. Any protective leasing of needed property must be on a short term basis (e.g. less than 6 months) in anticipation of closing or filing condemnation for a property. There is no obligation or need to compensate for rental income subsequent to the sponsors purchase of a property. The rental rate on a protective lease should also recognize the property owner's reduced cost in leasing vacant space to the sponsor. A protective lease agreement may be cost effective to preclude [subsequent occupants](#) on residential property as well to maintain commercial property vacant in anticipation of acquisition for a project. APP-600 may be contacted to discuss the merits of specific proposals.

### **3-8. ACQUISITION OF PROPERTY CONTAINING HAZARDOUS MATERIALS.**

The Sponsor must not acquire property contaminated with hazardous materials without adequate prior investigation and proper contractual and valuation safeguards. As is feasible, the sponsor should not acquire the property in its contaminated state, and all efforts possible should be extended to obtain cleanup prior to acquisition. It is necessary that hazardous material contamination problems be dealt with at the earliest stage of the project development; see FAA AC 150/5100-17, paragraph 1-11 and FAA Order 5050.4.

### **3-9. DONATIONS.**

Property owners whose real property is to be acquired for an airport project may make a gift or donation of the property, or any part of it, or any of the just compensation amount to the airport sponsor. A donation may be made at any time during the development of a project or during the acquisition phase of the project. At the time of the donation the property owner must be informed of his or her right to receive just compensation. Also the sponsor has the obligation to perform an appraisal of just compensation and disclose the amount to the property owner, unless the owner releases the sponsor from this obligation. The sponsor shall document in writing the owner's acknowledgment and waiver of the right to just compensation. The sponsor is cautioned that prior to accepting a donation, ownership of the property must be verified and adequate title assured, and assurance secured that the property is not subject to hazardous waste contamination and/or clean-up liability that may exceed the value of the property.

### **3-10. PURCHASE OF LIFE ESTATES.**

A life estate, in lieu of full fee title, may be considered an eligible project expense with concurrence of FAA. A life estate may be desirable for a property owner and an acceptable acquisition where possession of the property may be deferred indefinitely. Property owner requests to convey life estates have been found acceptable for FAR Part 150 projects. Where life estates may be acceptable the following terms and conditions should be included in life estate transactions:

**a.** The life use occupant shall not add to or materially alter the character of existing improvements or structures, initiate any new construction, or change the topography of the land without first having obtained permission of the airport owner.

**b.** Any building or structure damaged or destroyed by fire or other casualty, deteriorated by the elements, or wear and tear may be maintained, repaired, renovated, remodeled, or reconstructed as long as the basic character of the building or structure is not materially altered.

c. The life use occupant shall keep the grounds of the property in a clean and neat condition and shall maintain all structures and improvements in good repair. The occupant is responsible for all costs of maintenance, repair, and utility charges.

c. The life use occupant is responsible for the payment of any taxes or assessments that may be levied against the occupant's interest in the reserved property.

d. The life use occupant shall hold the airport owner harmless for any liability arising out of the use of the reserved property. The occupant shall carry such public liability insurance as is customary by homeowners in the vicinity, provided such insurance is available. The occupant is also responsible for insuring his or her interest in the reserved property.

### **3-11. ELIGIBLE LITIGATION EXPENSES UNDER 49 CFR 24.107.**

a. There is no obligation under 49 CFR 24 for the Sponsor to reimburse the property owner for legal, appraisal, or other expenses of condemnation necessary to secure possession for a AIP assisted project. However, if any one of the three following conditions exist, the sponsor is required under 49 CFR 24.107 to reimburse the property owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees for necessary services that were actually incurred:

(1) If the acquiring airport starts a condemnation action, but the court decides that the airport owner does not have authority to acquire the property by condemnation.

(2) If the acquiring airport owner starts a condemnation action and abandons it other than under an agreed-upon settlement.

(3) If the property owner successfully maintains, by judgmental award or by settlement, an inverse condemnation suit or similar proceeding.

b. Federal participation in settlement and litigation expenses will be handled on a case-by-case basis depending on the airport owner's compliance with its commitments to accomplish airport development under a project receiving Federal financial assistance and documentation that the airport has followed proper action in the processing of the case. FAA procedures for reimbursement of condemnation and litigation expenses is further referenced in Order 5100.38A, Airport Improvement Program (AIP) Handbook. Also see Section 3 of this chapter for FAA acceptance of condemnation awards of just compensation.

### **3-12. TO 3-19. RESERVED**

## **Section 2. ACCEPTANCE OF ADMINISTRATIVE SETTLEMENT**

### **3-20. ADMINISTRATIVE SETTLEMENT.**

If the owner presents credible documented appraisal information, then the just compensation offer is updated to complete negotiations (see paragraph 3-2(a), [Basic Negotiations Procedure, Updating Offer of Just Compensation](#)). However, in some cases that lack credible appraisal support, justification may also be apparent for a settlement amount that exceeds the sponsor's approved appraisal. There is no need to inflate or diminish the airport's appraisal as support for an administrative settlement (also see conflict of interest prohibition at paragraph [2-4\(b\)](#)).

Administrative settlements are simply that – agreed settlement in excess of the sponsor's offer of just compensation made for acceptable administrative reasons to reflect the public

interest. During negotiations, an administrative settlement may be proposed to preclude more costly and unfavorable litigation and/or to settle a disputed acquisition at reasonable cost. Under the Uniform Act reasonable attempts to expedite acquisitions by agreements with owners to avoid litigation and relieve congestion in the courts are encouraged. Significant cost savings may be documented in the use of administrative settlements versus condemnation or terminating stalemated negotiations.

An administrative settlement is a judgmental matter to be carefully considered by the sponsor as an option to condemnation or termination of a proposed acquisition where negotiations have reached an impasse on the amount of just compensation. Sound project management requires any administrative settlements to reflect the public interest and are not merely a matter of convenience. Adequately supported settlements are an eligible property acquisition cost, as described in paragraph 3-21 below.

### **3-21. ADEQUATE WRITTEN DOCUMENTATION REQUIRED FOR FAA ACCEPTANCE OF AN ADMINISTRATIVE SETTLEMENT.**

The sponsor must prepare and maintain adequate written justification that the settlement is reasonable, prudent and in the public interest. At a minimum the items listed below shall be stated, as applicable, to support a settlement amount. The written explanation must be commensurate with the settlement amount involved. Small settlements or within 10% of the appraised value may only require brief discussion noting the amounts involved and evidencing the sponsor's approval. Settlements that involve substantial amounts or large increases require full analysis and discussion to verify the settlement amount is clearly cost effective and reflects the public interest. Amounts attributed to noncompensable items under Federal law, should be excluded from Federal participation (see Paragraph 2-5, [Non Allowable Land Cost](#)).

- a. The probable range of testimony in litigation including the airport's approved appraisals and the property owner's appraisals.
- b. The type of property involved and damages, if any.
- c. Recent court awards in the vicinity (particularly involving similar property).
- d. A summary of the negotiation effort and the recommendation of the negotiator to conclude the purchase with a settlement.
- e. The estimate of trial cost, including preparations.
- f. The advice and opinion of the sponsor's legal counsel.
- g. The settlement shall ultimately be approved by the appropriate airport sponsor official with management responsibility for the acquisition project.

### **3-22. TO 3-29 RESERVED**

## **Section 3. CONDEMNATION AWARDS**

### **3-30. CONDEMNATION.**

When negotiations conforming to this Chapter for an amicable purchase agreement are not successful, the sponsor may apply its eminent domain authority and file condemnation for possession of needed property. The sponsor's legal counsel represents the sponsor in condemnation and is responsible for subsequent negotiations, the selection of trial witnesses,

and settlement and appeal determinations. Legal counsel must consult with the sponsor and its project management prior to the settlement of the condemnation case for an amount substantially different from the established just compensation or any other legal decision that affects the cost for possession of the needed property.

Prior to requiring an owner to surrender possession of the real property the Sponsor shall deposit with the court, for the benefit of the owner, an amount not less than the Sponsor's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property.

### **3-31. MEDIATION AND CONDEMNATION SETTLEMENTS.**

At any time prior to court trial the Sponsor's legal counsel may secure a settlement in lieu of trial. An administrative settlement may be made if justified as described in Section 2. Where the Sponsor's legal counsel makes a settlement, the administration settlement justification described in Section 2 should be supplemented by the following:

- a. A signed statement by the attorney who handled the case describing reasons that the settlement is in the sponsor's interest with supporting data and analysis as appropriate.
- b. A signed statement by the sponsor management indicating concurrence in the proposed settlement and explanation of any reservations on the proposed settlement.
- c. Amounts attributed to noncompensable items under Federal law, should be excluded from Federal participation (see Paragraph 2-5,2 [Non Allowable Land Cost](#)).

### **3-32. CONDEMNATION AWARDS.**

A condemnation award is eligible for reimbursement with Federal funds provided that the amount of the award is reasonable. Amounts attributed to noncompensable items under Federal law, should be excluded from Federal participation (see Paragraph 2-5, [Non Allowable Land Cost](#)). The condemnation award must be supported by adequate trial report citing the range of value testimony, major issues, and any comments and recommendations on possible legal error and possible success in requesting a new trial, remittitur, and/or appeal. The sponsor should indicate their concurrence and/or acceptance in the trial report and any legal recommendations.

### **3-33. TO 3-39 RESERVED**

## **Section 4. FUNCTIONAL REPLACEMENT OF REAL PROPERTY IN PUBLIC OWNERSHIP.**

### **3-40. DOES NOT APPLY TO FEDERALLY OWNED PROPERTY.**

Functional replacement is not applicable to replace Federal owned real property. FAA Order 5170.1 sets forth policies and procedures for review as well as coordination of the applications by non-Federal public agencies to approve conveying Federal Government-owned land involving the establishment, development, improvement, use, closure, and/or replacement of a public airport.

### **3-41. BASIS FOR FUNCTIONAL REPLACEMENT.**

Functional replacement means the replacement of real property owned by Non-Federal public agency acquired as a result of an airport project with lands or facilities, or both, which will provide functionally equivalent utility. Generally the amounts to be paid for lands or



improvements in public use or ownership should be justified in the same manner and to the same extent as though the acquisition involved a private use or ownership. An exception to the foregoing would be when the airport owner requests and can, pursuant to state law, incur costs for the functional replacement of lands or improvements in public use or ownership. In such instances, Federal funds may be used to participate in justifiable costs incurred pursuant to state law, provided it is demonstrated and FAA concurs that functional replacement is necessary to obtain the land or its use and preserve and protect the public interest. Functional replacement of publicly owned real property is optional and is **not** required under 49 CFR 24.

### **3-42. REQUIRED PROCEDURES.**

Functional replacement exceeds the “just compensation” requirement for the non-voluntary acquisition of public owned property and sponsor requests for reimbursement must conform to the following procedures. These procedures are the same as those described in the FHWA regulations for the Federal-aid Highway Program, 23 CFR 710.509, “Functional replacement of real property in public ownership”. Lands and facilities owned by any state, county, city, municipality, or other governmental entity that is devoted to public use **may be** considered for functional replacement. (This does not include, however, airport owned buildings as discussed in Order 5100.38A, paragraph 595.) The needed acquisition for the airport project must adversely affect the use of the property so that such use cannot reasonably be continued.

**a.** The airport owner shall have the property appraised, establish an amount it believes to be just compensation, and advise the public owner of the amount. Provided the airport owner elects to utilize functional replacement, the public owner has the option of accepting either the amount of compensation so established or functional replacement. If the public owner initially states that functional replacement is desired, it may waive the right to the appraisal process.

**b.** If the public owner desires functional replacement, it must initiate a formal request to the airport owner and fully document its reasoning why it is in the public interest.

**c.** If the airport owner agrees that functional replacement is in the public interest, it must submit a request for FAA approval. The request shall include:

**(1)** Cost estimate data relative to contemplated solutions.

**(2)** Agreements reached at meetings between the airport owner and the public owner.

**(3)** An explanation of the basis for its request.

**d.** After approval of the airport owner's request under subparagraph d above, FAA may authorize the airport owner to proceed with the necessary work after the public owner and airport owner execute an agreement covering the work to be accomplished. The agreement shall set forth the rights, obligations and duties of each regarding the property being replaced, the acquisition of a replacement site, construction of replacement facilities, how the costs are to be shared, and that any betterment to be claimed for Federal participation will be identified and justified to FAA.

**e.** Subsequent to review and approval by the airport owner, the plans, specifications, estimates, and modifications shall be submitted to FAA for approval. The submission, where applicable, shall include provisions for airport owner inspection during construction of the replacement facility. Where major improvements are involved, advertising for bids and letting of the contract to construct the replacement facility may follow the procedures utilized by the public owner, if acceptable to the airport owner and FAA.

f. Replacement sites and construction must be in compliance with existing codes, laws and zoning regulations.

### **3-43. FEDERAL PARTICIPATION.**

a. Federal funds may be used to participate in the actual reasonable functional replacement costs incurred for the property required to be replaced on the following basis:

(1) The appraised current market value of the land to be acquired when the public owner has other land which is available and suitable for the replacement, or the reasonable cost of acquiring a functionally equivalent substitute site.

(2) The cost to construct a functionally equivalent facility.

(3) If costs are incurred to acquire and modify an existing building, Federal funds can participate in an amount not to exceed the estimated cost to construct a new functionally equivalent facility.

b. Federal funds may be used to participate only in those betterment acceptable to and approved by FAA as being necessary to replace utility; required by existing codes, laws, and zoning regulations; or related to reasonable prevailing standards for the type of facility being replaced. The public owner and the airport owner must resolve any conflict between reasonable prevailing standards and existing codes, laws, or zoning regulations.

c. Unless otherwise approved by FAA, Federal funds may not be used to participate in costs to functionally replace utility that is created subsequent to FAA approval of the Functional Replacement.

d. The airport owner's request for final payment shall include a statement signed by an appropriate official of the public owner and the airport owner certifying that:

(1) The cost of the functional replacement property has actually been incurred in accordance with the executed agreement.

(2) The cost of the functional replacement claimed for Federal participation has been incurred in accordance with this paragraph.

(3) A final inspection of the functional replacement property was made by the Sponsor that accepts the replacement property as meeting applicable specifications and requirements. The public owner must agree that upon final inspection the Sponsor is released from any further responsibility.

## Chapter 4. RELOCATION ASSISTANCE

### Section 1. GENERAL REQUIREMENTS

#### 4-1. REQUIRED SPONSOR RELOCATION PROGRAM (49 CFR 24, SUBPART C).

On AIP projects the Uniform Act obligates the sponsor to provide a relocation assistance program to ensure [eligible displaced persons](#) will receive uniform and consistent services and payments. Any person who qualifies as a displaced person must be fully informed of his or her rights and benefits to relocation assistance and payments provided by the Uniform Act and 49 CFR Part 24. Each airport project where relocation will occur must have sponsor staff or consultant staff [qualified to provide relocation assistance and payments in conformance to 49 CFR 24 requirements](#).

#### 4-2. ILLEGAL ALIENS

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. See FAA AC 150/5100-17 at paragraph 4-17 for self-certification and other documentation and procedural requirements concerning illegal aliens.

#### 4-3. VOLUNTARY TRANSACTION.

Owner-occupants who sell their property under the [voluntary transaction exemption](#) provisions (see paragraph 1-22) are not displaced persons and are not eligible for relocation payments. The sponsor may offer selling owners relocation advisory services (see Section 3). However, eligible tenant occupants are displaced persons and entitled to relocation assistance and payments.

#### 4-4. EVICTION FOR CAUSE.

Eviiction 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 Sponsor determines that:

- a. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- b. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- c. In either case the eviction was not undertaken for the purpose of evading the obligation to make available required relocation assistance and payments.

#### 4-5. PROPERTY ADJACENT TO PROJECT ACQUIRED PROPERTY.

If the sponsor 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 (see Section 3). However, such persons are not displaced persons or eligible for relocation payments.

**4-6. No WAIVER OF RELOCATION ASSISTANCE.**

The Sponsor **shall not** propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and payments provided by the Uniform Act and 49 CFR Part 24. (Also see Paragraph 1-28, [FAA Waiver of Regulation](#))

**4-7. TO 4-19. RESERVED****Section 2. RELOCATION PLANNING****4-20. PROJECT PLANNING STAGE.**

Early in project development a Sponsor shall identify relocation assistance measures sufficient to recognize 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 the Sponsor that will cause displacement, and should be scoped to the complexity and nature of the anticipated project displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Typically relocation planning at this stage is normally conducted as part of the NEPA approval processes as is described in FAA Order 5050.4. However, it is recommended that the sponsor's relocation staff develop a separate relocation plan that will serve as a working document throughout the relocation process. This relocation plan at the project planning stage may be developed by secondary sources based on a relocation survey or study that may include the following:

**a.** 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.

**b.** 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 Sponsor should consider housing of last resort actions.

**c.** 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.

**d.** 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 that 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.

**e.** Consideration of any special relocation advisory services that may be necessary from the Sponsor and other cooperating Agencies.

**4-21. ACQUISITION STAGE RELOCATION PLAN.**

Prior to initiation of negotiations on a property, and as is feasible for business displacement prior to defining the appraisal scope of work; an acquisition stage relocation plan is prepared based on personal interview of the identified displaced persons. This interview must be made prior to developing the relocation eligibility offer as described in Paragraph 4-42. The sponsor

should conduct this interview in person at the displaced person's residence or place of business. If not already provided, the sponsor must provide the displaced person the General Information Notice (see Paragraph 4-41) at this interview and advise the displaced person may contact the sponsor's relocation agent for any subsequent questions. Sample interview forms are provided in the FAA AC 150/5100-17 to assist the sponsor to document its compliance with this requirement.

The following describes the regulatory requirements for interview and sponsor determination of needed relocation assistance and eligible relocation payment eligibility notices and offers to displaced persons.

**a. Residential Displacement.** Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

**b. Business Displacement.** Determine the relocation needs and preferences of each business (farms and non-profit organizations) 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:

(1) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(2) Determination of the need for outside specialists 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.

(3) For businesses, an identification and resolution of realty/personalty issues. To ensure an acceptable and orderly relocation, every effort must be made to provide the appraiser an acceptable realty/personalty determination prior to, or at the time of, the appraisal of the property.

(4) An estimate of the time required for the business to vacate the site.

(5) An estimate of the anticipated difficulty in locating a replacement property.

(6) An identification of any advance relocation payments required for the move, and the Sponsor's legal capacity to provide them.

#### **4-22. TO 4-29 RESERVED**

### **Section 3. RELOCATION ADVISORY SERVICES**

#### **4-30. SPONSOR RELOCATION ASSISTANCE ADVISORY PROGRAM.**

**a. Displaced Persons.** The sponsor shall carry out a relocation advisory program that 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 below in this section.

**b. Other persons eligible for advisory services.** In addition to displaced persons, any person who occupies property acquired by the sponsor for an airport project, 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 sponsor. Also, if the sponsor 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.

#### **4-31. SERVICES TO BE PROVIDED.**

The sponsor's advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

**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.

**b.** As soon as feasible, the Sponsor 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 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, (see paragraphs 4-41, 4-42 and 4-43 for required relocation notices).

**c.** Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable Decent Safe and Sanitary (DSS) standards. If prior inspection is not made, the Sponsor shall notify the displaced person that a replacement housing payment may not be made unless the replacement dwelling is 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 does not require a Sponsor to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

**e.** The Sponsor 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, as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

**g.** Provide, for non-residential 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.

**h.** 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.

i. 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.

#### **4-32. 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.

#### **4-33. TO 4-39 RESERVED**

### **Section 4. REQUIRED RELOCATION NOTICES**

#### **4-40. MANNER OF NOTICES.**

Relocation notices shall be personally served or sent by certified or registered first-class mail, return receipt requested and documented in the sponsor's files. The sponsor shall provide notices with appropriate language translation and with adequate interpretative assistance to those displaced persons who may be unable to understand a written English language notice. Each notice shall indicate the name and telephone number of the person who may be contacted for answers to questions or other needed help. Required notices are as follows:

#### **4-41. GENERAL INFORMATION NOTICE.**

As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the airport owner's relocation program which provides at least the following information. The FAA brochure "Land Acquisition for Public Airports" may be used to provide this notice.

**c.** Informs the person that he or she may be displaced from the project area, 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).

**d.** Informs the 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 person successfully relocate.

**e.** Informs the person that he or she will not be required to move without at least 90 days advance written notice, 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.

**f.** Describes the persons right to appeal the airport owner's determination as to a person's application for assistance for which a person may be eligible. (Refer to Chapter 1, Section 5, of this Order for description of the appeal procedure.)

**g.** Informs 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 (See FAA AC 150/5100-17 for qualifying criteria.).

#### **4-42. NOTICE OF RELOCATION ELIGIBILITY.**

Eligibility for relocation assistance shall begin as of the date of the initiation of negotiations. At or promptly following this date the sponsor shall notify all occupants in writing of their eligibility for applicable relocation assistance and payments. This notice shall identify and offer relocation assistance to the displaced person, and to the extent feasible cite the specific relocation payment eligibility for the displaced person.

**a.** For residential displacement the replacement housing payment (computed purchase/rent differential amount) shall be offered near the time the displaced person will be actively looking for a replacement dwelling. In any event the displaced homeowner or tenant shall be notified at least 90 days prior being required to vacate the acquired property (also see paragraph 4).

**b.** For acquisitions where the airport owner will not use condemnation (or on [voluntary transactions](#) as described in paragraph 1-22), tenant occupants should further be advised that should the property not be acquired they will not be displaced, and that the notice of relocation payment eligibility will be withdrawn.

#### **4-43. NINETY-DAY NOTICE TO VACATE.**

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. Airport projects shall be scheduled so that any eligible person displaced will not be required to move from a dwelling, or to move a business or farm operation or non-profit organization, without at least 90 days advance written notice of the earliest date by which the displaced person may be required to move.

**a. Timing of notice.** The sponsor may issue the notice 90 days or earlier before it expects the person to be displaced.

**b. Content of notice.** The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available (see paragraph 5 below), the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available.

**c. Urgent need.** In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the sponsor 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 Sponsor's determination shall be included in the applicable case file. However, a comparable dwelling shall be made available prior to requiring a person to move, unless this requirement is waived by FAA for the circumstances described in paragraph 5 below.

#### **4-44. AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT ([GRANT CONDITION](#)).**

No person to be displaced shall be required to move from his or her dwelling unless at least one [comparable replacement dwelling](#) has been made available to the person. Where 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. (See Chapter 6, Replacement Housing Payments)

**b. Circumstances permitting waiver.** The FAA may only grant a waiver of the requirement described in paragraph (a) in any case where it is demonstrated that a person must move from their dwelling because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(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 for a temporary period because of an emergency as described above in paragraph (a), the sponsor 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.)

#### **4-45. NOTICE OF INTENT TO ACQUIRE.**

This is an explicit written notice the sponsor provides a person to be displaced for a project that establishes eligibility for relocation payments and assistance prior to the [initiation of negotiations](#). This is not a required notice but when justified, may be used in lieu of the subsequently required notice of relocation eligibility described above at paragraph 4-42. This "early" eligibility notice may be beneficial to assist the successful relocation of the displaced person or expedite project clearance. This notice should also provide the anticipated date of the initiation of negotiations, how additional information pertaining to relocation assistance payments and services can be obtained, and the effective date of the notice. If a property is tenant-occupied, both the owner and the tenant will be provided a notice of intent to acquire.

#### **4-46. TO 4-49 RESERVED**

## **Section 5. CLAIMS FOR RELOCATION PAYMENTS**

### **4-50. 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. Appendix 1 provides sample documentation formats that may be used as payment claims forms, i.e. forms 5100-124 & 5100-125.

### **4-51. EXPEDITIOUS PAYMENTS.**

The sponsor 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.

### **4-52. ADVANCED PAYMENTS.**

If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Sponsor shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

### **4-53. TIME FOR FILING.**

a. All claims for a relocation payment shall be filed with the Sponsor no later than 18 months after:

(1) For tenants, the date of displacement;

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

b. The Sponsor shall waive this time period for good cause.

### **4-54. NOTICE OF DENIAL OF CLAIM.**

If the Sponsor 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.

### **4-55. EXPENDITURE OF PAYMENTS.**

Relocation payments, provided pursuant to 49 CFR 24, shall not be considered to constitute Federal financial assistance to the displaced person.

### **4-56. RELOCATION PAYMENTS NOT CONSIDERED AS INCOME.**

No relocation payment received by a displaced person under 49 CFR 24 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.

## **Chapter 5. PAYMENTS FOR MOVING AND RELATED EXPENSES**

### **Section 1. GENERAL PROVISIONS**

#### **5-1. ELIGIBILITY.**

Any owner-occupant or tenant who qualifies as a [displaced person](#) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or non-profit organization is entitled to payment of his or her actual moving and related expenses, as the Sponsor determines to be reasonable and necessary.

#### **5-2. INELIGIBLE MOVING AND RELATED EXPENSES.**

A displaced person is not entitled to payment for:

**a.** The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this requirement does not preclude a replacement housing payment eligibility for a displaced homeowner who retains and moves a dwelling as their replacement dwelling, see Chapter 6, Section 1, Paragraph 3(b)).

**b.** Interest on a loan to cover moving expenses;

**c.** Loss of goodwill;

**d.** Loss of profits;

**e.** Loss of trained employees;

**f.** Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as an eligible reestablishment expense described in paragraph of Section ;

**g.** Personal injury;

**h.** Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Sponsor;

**i.** Expenses for searching for a replacement dwelling;

**j.** Physical changes to the real property at the replacement location of a business or farm operation except as an eligible reestablishment expense described in paragraph of Section ;

**k.** Costs for storage of personal property on real property already owned or leased by the displaced person.

**l.** Refundable security and utility deposits.

#### **5-3. TO 5-19 RESERVED**

## Section 2. RESIDENTIAL MOVES.

### 5-20. ELIGIBLE MOVING EXPENSES FOR DISPLACED RESIDENTIAL OCCUPANTS.

- a. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Sponsor determines that relocation beyond 50 miles is justified.
- b. Packing, crating, unpacking, and uncrating of the personal property.
- c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
- d. Storage of the personal property for a period not to exceed 12 months, unless the Sponsor determines that a longer period is necessary.
- e. Insurance for the replacement value of the property in connection with the move and necessary storage.
- f. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- g. Other moving-related expenses that are not listed as ineligible under paragraph 5-2, as the sponsor determines to be reasonable and necessary.

### 5-21. MOVING A MOBILE HOME

**a. Owner-occupant moves their mobile home.** Eligible expenses for moving personal property move from an acquired mobile home or mobile home site include those actual, reasonable and necessary expenses described in paragraph 5-20 a through f of this section (residential moves). In addition, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling is also eligible for the following moving expenses.

(1) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.

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

(3) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Sponsor determines that payment of the fee is necessary to effect relocation.

**b. Non-occupant owner of a rented mobile home.** A non-occupant owner of a mobile home that is not acquired as real estate (personal property) is eligible for actual expenses described in paragraph 5-21 to relocate the mobile home and to move personal property from an acquired mobile home site.

**c. Personal property mobile home not relocated.** If the mobile home is personal property, but the sponsor determines the homeowner-occupant is displaced and eligible for a replacement housing payment under one of the circumstances described in paragraph [6-51\(c\)](#) ,

the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home, as described in paragraph 5-20 above.

#### **5-22. MOVING EXPENSE PAYMENT OPTIONS.**

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods, but not by the lower of two bids or estimates.

- a. Commercial move--moves performed by a professional mover.
- b. Self move--moves that may be performed by the displaced person in one or a combination of the following methods:

(4) Fixed Residential Moving Cost Schedule. Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses. This payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis. The FAA AC 150/5100-17 is also updated to provide the current schedule. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule.

(5) Actual cost move. Supported by receipted bills for labor and equipment. Hourly labor rates and equipment rental fees should not exceed the cost paid by a commercial mover.

#### **5-23. TO 5-29 RESERVED**

### **Section 3. NON-RESIDENTIAL MOVES**

#### **5-30. ELIGIBLE MOVING EXPENSES FOR DISPLACED BUSINESS, FARM, OR NON-PROFIT ORGANIZATION.**

Eligible expenses for non-residential moves include the following:

- a. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Sponsor determines that relocation beyond 50 miles is justified.
- b. Packing, crating, unpacking, and uncrating of the personal property.
- c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, business machinery, equipment, and other personal property, including substitute personal property. For businesses, this includes connection to utilities available within the building. It also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
- d. Storage of the personal property for a period not to exceed 12 months, unless the Sponsor determines that a longer period is necessary.

**e.** Insurance for the replacement value of the property in connection with the move and necessary storage.

**f.** The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

**g.** Other moving-related expenses that are not listed as ineligible under paragraph 2 of Section 1. as the sponsor determines to be reasonable and necessary.

**h.** Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

**i.** Professional services as the Sponsor determines to be actual, reasonable and necessary for:

**(1)** Planning the move of the personal property;

**(2)** Moving the personal property; and

**(3)** Installing the relocated personal property at the replacement location.

**j.** Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

**k.** Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

**(1)** The market value in place of the item as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Sponsor determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices.); or

**(2)** The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.

**(3)** The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of the depreciated reproduction cost of the sign, as determined by the Sponsor, less the proceeds from its sale; or he estimated cost of moving the sign, but with no allowance for storage.

**l.** The reasonable cost incurred in attempting to sell an item that is not to be relocated.

**m.** Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(1) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(2) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Sponsor's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

n. Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the Sponsor determines to be reasonable, which are incurred in searching for a replacement location, including:

(1) Transportation;

(2) Meals and lodging away from home;

(3) Time spent searching, based on reasonable salary or earnings;

(4) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites; and

(5) Time spent in obtaining permits and attending zoning hearings.

(6) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

o. Low Value/High Bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the Sponsor, the allowable moving cost payment shall not exceed the lesser of:

(1) The amount which would be received if the property were sold at the site, or

(2) The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Sponsor.

### **5-31. MOVING EXPENSE PAYMENT OPTIONS.**

Personal property as determined by an inventory from a business, farm or non-profit organization may be moved by one or a combination of the following methods. Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described above in paragraph 5-31.

a. Commercial move. Based on the lower of two bids or estimates prepared by a commercial mover. At the Sponsor's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

b. Self-move. A self-move payment may be based on one or a combination of the following:

(1) The lower of two bids or estimates prepared by a commercial mover or qualified person. At the Sponsor's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(2) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

c. Transfer of ownership. Upon request and in accordance with applicable law, the claimant shall transfer to the Sponsor ownership of any personal property that has not been moved, sold, or traded in.

### **5-32. RELATED NON-RESIDENTIAL ELIGIBLE EXPENSES.**

The following expenses, in addition to those provided above for moving personal property, shall be provided if the Sponsor determines that they are actual, reasonable and necessary:

a. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

b. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).

c. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Sponsor.

### **5-33. MOVE PERSONAL PROPERTY ONLY.**

Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization include the following.

a. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Sponsor determines that relocation beyond 50 miles is justified.

b. Packing, crating, unpacking, and uncrating of the personal property.

c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, business machinery, equipment, and other personal property, including substitute personal property. For businesses, this includes connection to utilities available within the building. It also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

d. Storage of the personal property for a period not to exceed 12 months, unless the Sponsor determines that a longer period is necessary.

e. Insurance for the replacement value of the property in connection with the move and necessary storage.



f. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

g. Other moving-related expenses that are not listed as ineligible under paragraph 2 of Section 1. as the sponsor determines to be reasonable and necessary.

#### **5-34. NOTIFICATION AND INSPECTION.**

The sponsor shall inform the displaced person, in writing, of payment eligibility requirements for a non-residential move as soon as possible after the initiation of negotiations. This information may be included in the [relocation eligibility notice](#) as described in Chapter 4. To be eligible for moving expense payments the displaced person must:

a. Provide the Sponsor reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the Sponsor may waive this notice requirement after documenting its file accordingly.

b. Permit the Sponsor to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

#### **5-35. REESTABLISHMENT EXPENSES — NON-RESIDENTIAL MOVES.**

In addition to the eligible moving expense payments, a displaced [small business](#), farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

a. Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Sponsor. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location,

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(a) Lease or rental charges,

(b) Personal or real property taxes,

(c) Insurance premiums, and

(d) Utility charges, excluding impact fees.

(7) Other items that the Sponsor considers essential to the reestablishment of the business.

b. Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home that does not contribute materially (defined at [paragraph 1-36](#)) to the household income.

### **5-36. FIXED PAYMENT FOR MOVING EXPENSES — NON-RESIDENTIAL MOVES.**

a. Business. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 49 CFR 24.301, 24.303 and 24.304 (described at paragraphs 5-31, 5-34 and 5-36). Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Sponsor determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings.) A business is assumed to meet this test unless the Sponsor determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Sponsor, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement.

b. Determining the number of businesses. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

**c. Farm operation.** A displaced farm operation (defined at § 24.2(a)(13)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Sponsor determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

**d. Nonprofit organization.** A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Sponsor determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele.) A nonprofit organization is assumed to meet this test, unless the Sponsor demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See appendix A, § 24.305(d).)

**e. Average annual net earnings of a business or farm operation.** The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Sponsor determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Sponsor proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Sponsor determines is satisfactory.

### **5-37. DISCRETIONARY UTILITY RELOCATION PAYMENTS.**

A relocation payment to a utility facility owner for moving costs may not exceed the cost to functionally restore the service disrupted by the airport project, less any increase in value of the new facility and salvage value of the old facility. The airport owner and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. To facilitate and aid in reaching such agreement, it is recommended that the airport owner follow the procedures in the

Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocation, Adjustment and Reimbursement<sup>4</sup>.

**a.** Whenever the Sponsor's project causes the relocation of a utility facility and the relocation of the facility creates extraordinary expenses for its owner, the Sponsor may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

**(1)** The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

**(2)** The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

**(3)** Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing Agency;

**(4)** There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing Agency's program or project; and

**(5)** State or local government reimbursement for utility moving costs or payment of such costs by the displacing Agency is in accordance with State law.

**b.** For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing Agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

**c.** A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally-assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing Agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment.

---

<sup>4</sup> The FHWA publication "Utility Relocation and Accommodation on Federal-Aid Highway Projects" provides procedural guidance for utility relocation and adjustment in conformance to 23 CFR 645. This guidance is available at <http://www.fhwa.dot.gov/reports/utiliquid/index.htm>.

## **Chapter 6. REPLACEMENT HOUSING PAYMENTS**

### **Section 1. REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER-OCCUPANTS**

#### **6-1. ELIGIBILITY.**

A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

**a.** Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

**b.** Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

**(1)** The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

**(2)** The date the displacing Agency's obligation to make a comparable dwelling available is met (see [Paragraph 4-44](#)).

#### **6-2. AMOUNT OF PAYMENT.**

The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500, unless additional measures are required under Housing of Last Resort provisions to provide a comparable replacement dwelling (See Section 3)). The payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

**a.** The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph 6-3;

**b.** The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph 6-4; and

**c.** The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph 6-5.

#### **6-3. PRICE DIFFERENTIAL.**

**a.** The price differential payment is the amount which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

**(1)** The reasonable cost of a comparable replacement dwelling as determined in accordance with Section 3 below ;or

(2) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

b. Owner retention of displacement dwelling. If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(1) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(2) The cost of making the unit a decent, safe, and sanitary replacement dwelling; and

(3) The current market value for residential use of the replacement dwelling site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(4) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

#### **6-4. INCREASED MORTGAGE INTEREST COSTS.**

The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs a through d below shall apply to the computation of the increased mortgage interest costs payment. The FAA AC 150/5100-17 provides detailed guidance on determining eligible mortgage interest differential payments. FAA Forms 5100-123 (for Fixed and Adjustable Rate mortgages) may be used to calculate eligible amounts, see [appendix 1](#). The 180-day homeowner's payment claim is contingent upon a mortgage being placed on their replacement dwelling.

a. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

b. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

c. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

d. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(1) They are not otherwise paid as incidental expenses;

(2) They do not exceed rates normal to similar real estate transactions in the area;

(3) The Agency determines them to be necessary; and

(4) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

#### **6-5. INCIDENTAL EXPENSES.**

The incidental expenses to be paid are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

a. Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

b. Lender, FHA, or VA application and appraisal fees.

c. Loan origination or assumption fees that do not represent prepaid interest.

d. Professional home inspection, certification of structural soundness, and termite inspection.

e. Credit report.

f. Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

g. Escrow agent's fee.

h. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

i. Such other costs as the Agency determine to be incidental to the purchase.

#### **6-6. RENTAL ASSISTANCE PAYMENT FOR 180-DAY HOMEOWNER.**

A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is then computed and disbursed in accordance with Section 2, Replacement Housing Payment for 90-day Occupants, at paragraphs 6-21(a) and (c) except that the limit of \$5,250 does not apply. Under no circumstance would the rental assistance payment exceed the amount that could have been received under this Section as an eligible displaced 180-day homeowner had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

#### **6-7. TO 6.19 RESERVED**

## **Section 2. REPLACEMENT HOUSING PAYMENT FOR 90-DAY OCCUPANTS**

### **6-20. ELIGIBILITY.**

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph 2 of this section, or downpayment assistance, as computed in accordance with paragraph 3 of this section, if such displaced person:

**a.** Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

**b.** Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

**(1)** For a tenant, the date he or she moves from the displacement dwelling; or

**(2)** For an owner-occupant, the later of:

**(a)** The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

**(b)** The date he or she moves from the displacement dwelling.

### **6-21. RENTAL ASSISTANCE PAYMENT.**

**a. Amount of payment.** An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, unless additional measures are required under Housing of Last Resort provisions to provide a comparable replacement dwelling (See Section 3)). Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

**(1)** The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

**(2)** The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

**b. Base monthly rental for displacement dwelling.** The base monthly rental for the displacement dwelling is the lesser of:

**(1)** The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

**(2)** Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban



Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs.<sup>3</sup> The base monthly rental shall be established solely on the criteria in (b)(1) above for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise or,

(3) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

c. Manner of disbursement. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing (except as described in paragraph 8 of Section 3, "Payment After Death")

## **6-22. DOWNPAYMENT ASSISTANCE PAYMENT.**

a. Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph 6-21 if the person rented a comparable replacement dwelling. At the Sponsor's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under Section 1 if the homeowner met the 180-day occupancy requirement. If the Agency elects to provide the maximum payment of \$5,250 as a downpayment, the Agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) (as described Section 1) is not eligible for this payment.

b. Application of payment. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

## **6-23. TO 6-29 RESERVED**

# **Section 3. ELIGIBLE REPLACEMENT HOUSING PAYMENT CLAIMS**

## **6-30. DETERMINING COST OF COMPARABLE REPLACEMENT DWELLING.**

The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling.

a. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

b. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming

<sup>3</sup> The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available annually on the Federal Highway Administration's website at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>.

pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. (See FAA AC 150/5100-17 for procedural guidance.)

c. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

d. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

### **6-31. INSPECTION OF REPLACEMENT DWELLING.**

Before making a replacement housing payment or releasing the initial payment from escrow, the sponsor or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at [paragraph 1-37](#).

### **6-32. PURCHASE OF REPLACEMENT DWELLING.**

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- a. Purchases a dwelling;
- b. Purchases and rehabilitates a substandard dwelling;
- c. Relocates a dwelling which he or she owns or purchases;
- d. Constructs a dwelling on a site he or she owns or purchases;
- e. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- f. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

### **6-33. OCCUPANCY REQUIREMENTS FOR DISPLACEMENT OR REPLACEMENT DWELLING.**

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- a. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or
- b. Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

**6-34. CONVERSION OF PAYMENT.**

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1 year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

**6-35. DISPLACED PERSONS/HOUSEHOLDS MOVE TO SEPARATE REPLACEMENT DWELLINGS.**

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments based on a comparable dwelling to the occupied portion of the acquired dwelling. (See FAA AC 150/5100-17 for procedural guidance).

**6-36. MIXED-USE AND MULTIFAMILY PROPERTIES.**

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment. (See AC 150/5100-17 for procedural guidance).

**6-37. PAYMENT AFTER DEATH.**

A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

- a. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
- b. Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.
- c. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

**6-38. INSURANCE PROCEEDS.**

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

### **6-39. DEDUCTIONS FROM RELOCATION PAYMENTS.**

The Sponsor shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

## **Section 4. REPLACEMENT HOUSING OF LAST RESORT**

### **6-40. DETERMINATION TO PROVIDE REPLACEMENT HOUSING OF LAST RESORT.**

Whenever a FAA assisted project cannot proceed on a timely basis because comparable replacement dwellings are not or are expected not to be available within the statutory limits of \$22,500 for owners or \$5250 tenants, the sponsor shall provide additional or alternative assistance under the provisions of this section to ensure comparable replacement housing is made available to displaced residential occupants. Any decision to provide last resort housing assistance must be adequately justified and documented either:

**a.** On a **case-by-case basis**, for good cause, which means that appropriate consideration has been given to:

- (1) The availability of comparable replacement housing in the program or project area;
- (2) The resources available to provide comparable replacement housing; and
- (3) The individual circumstances of the displaced person, **or**

**b.** On a **project wide basis** by a determination that:

(1) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(2) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(3) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(4) The FAA project manager should concur in the sponsor's determination and Last Resort Housing plan to provide needed comparable housing for the project displacement. Paragraph 6-42 below describes some general methods of providing comparable replacement housing under last resort housing procedures. Assistance on developing and FAA acceptance of last resort housing methods is available from APP-600.

### **6-41. BASIC RIGHTS OF PERSONS TO BE DISPLACED.**

Notwithstanding any provision of this section, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or 49 CFR 24. The Sponsor shall not require any displaced person to accept a dwelling provided by the Sponsor under housing of last resort procedures (unless the Sponsor and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

## **6-42. METHODS OF PROVIDING COMPARABLE REPLACEMENT HOUSING.**

Sponsors shall have broad latitude in implementing last resort housing procedures, but implementation shall be for reasonable cost, on a case-by-case basis or as justified for an entire project.

a. The methods of providing replacement housing of last resort include, but are not limited to:

(1) A replacement housing payment in excess of the statutory amounts for replacement housing payments as described in Section 1 and 2 (i.e. \$22,500 for displaced 180-day owners and \$5250 for 90-day residential occupants). A replacement housing payment under this section may be provided in installments or in a lump sum at the Agency's discretion.

(2) Rehabilitation of and/or additions to an existing replacement dwelling.

(3) The construction of a new replacement dwelling.

(4) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(5) The relocation and, if necessary, rehabilitation of a dwelling.

(6) The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

(7) The removal of barriers for persons with disabilities.

(8) Reimbursement of reasonable fees when incurred to secure a loan on a replacement property for a person suffering from credit difficulties or similar situations. Such fees should be limited to that amount normal for conventional loans in the area; however, fees in excess of the norm may be reimbursed when considered necessary and reasonable in the context of the financial ability of the person to pay such fees on a purchase of a comparable dwelling.

(9) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see appendix A, § 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a)(6)(ii) of this part.

## **6-43. SUBSEQUENT OCCUPANTS.**

Subsequent occupants are displaced persons who occupied a dwelling acquired for a FAA assisted project for less than 90 days before the initiation of negotiations or entered occupancy after the initiation of negotiations and are in occupancy on the date the property is acquired. The Agency shall provide assistance under this subpart to such displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means, see paragraph [1-35\(h\)\(c\)](#). Such assistance shall cover a period of 42 months.

**6-44. TO 6-49 RESERVED****Section 5. MOBILE HOMES****6-50. APPLICABILITY.**

This section describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic payment eligibility requirements described in this Chapter. Eligible moving expenses for owners and displaced occupants of mobile homes are described in Chapter 5, Section 2 at paragraph 2.

**6-51. IS THE MOBILE HOME OCCUPANT DISPLACED FROM THE MOBILE HOME?**

The Sponsor must determine if mobile home occupants are displaced from their mobile home for a project, applying the following considerations. This determination should be made uniformly to ensure an orderly and equitable relocation of all displaced residents.

**a.** If the mobile homes are real estate under state law (e.g. bought and sold by deed, taxed as real estate, etc.) the mobile home is acquired for the project. The owner or tenant occupants are displaced from their acquired dwelling.

**b.** If the mobile homes are personal property under state law (e.g. not taxed as real estate, bought and sold by transfer of vehicle registration, etc) and the mobile homes can be moved to a comparable replacement sites and provide DSS dwellings to the acquired mobile home park residents; THEN the occupants are not displaced from their dwelling.

**c.** If the mobile homes are personal property under state law (e.g. not taxed as real estate, bought and sold by transfer of vehicle registration, etc) BUT the Sponsor determines that the mobile homes:

- (1)** Are not, and cannot economically be made decent, safe, and sanitary;
- (2)** Cannot be relocated without substantial damage or unreasonable cost;
- (3)** Cannot be relocated because there is no available comparable replacement site; or
- (4)** Cannot be relocated because it does not meet mobile home park entrance requirements.

THEN the owner or tenant occupants are displaced from their dwelling.

**d.** Whether or not displaced from the mobile home itself, the owner or tenant occupant of the acquired mobile home site is eligible for a replacement housing payment for the purchase or lease of a comparable replacement home site.

**6-52. REPLACEMENT HOUSING PAYMENT FOR 180-DAY OWNER DISPLACED FROM A MOBILE HOME OR ACQUIRED MOBILE HOME SITE.**

An owner-occupant that is displaced from a mobile home or acquired mobile home site is entitled to a replacement housing payment not to exceed \$22,500 (also see Section 4 Last Resort Housing), if:

**a.** The person occupied the mobile home on the displacement site for at least 180 days immediately before:

**(6)** The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

**(7)** The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

**(8)** The date of the Agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraph [6-51\(c\)](#) above.

**b.** The person meets the other basic eligibility requirements for a 180-day owner replacement housing payment described in paragraph [6-1\(b\)](#); and

**c.** The Agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Sponsor determines that the mobile home cannot be relocated to provide to a comparable site or be made DSS.

### **6-53. AMOUNT OF PAYMENT, ELIGIBLE 180-DAY OWNER.**

The replacement housing payment for an eligible displaced 180-day owner is computed as described at Paragraph [6-2](#) incorporating the following, as applicable:

**a.** If the Agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

**b.** If the Agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph [6-51\(c\)](#) above, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Agency's selected comparable mobile home less the Agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

**c.** If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

**d.** Rental assistance payment for a 180-day owner-occupant that is displaced from a leased or rented mobile home site. If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described paragraph 6-55 below. This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.

**6-54. OWNER-OCCUPANT NOT DISPLACED FROM THE MOBILE HOME.**

If the Sponsor determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described paragraph [5-21\(a\)](#) and any replacement housing payment for the purchase or rental of a comparable site as described above if a site owner (180-day owner) or as described in paragraph 5 below if a site tenant or less than 90-day owner occupant of the acquired site.

**6-55. REPLACEMENT HOUSING PAYMENT FOR 90-DAY MOBILE HOME OCCUPANTS.**

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed \$5,250 (also see Section 4 Last Resort Housing), computed as described under [Section 2](#) of this Chapter if:

- a.** The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- b.** The person meets the other basic eligibility requirements at Section 2, paragraph b; and
- c.** The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the Agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at paragraph [6-51\(c\)](#) above.



## Chapter 7. MANAGEMENT OF ACQUIRED PROPERTY

### 7-1. GENERAL.

When the Sponsor takes possession and title to acquired real property it assumes the liabilities and obligations as a property owner. The Sponsor must ensure that its property management actions comply with applicable laws and regulations that govern its ownership and the removal or demolition of acquired property improvements.

In addition to applicable local requirements, this Chapter describes the FAA requirements concerning any interim use and the cost effective removal of improvements and clearance of land for eligible project purposes. After project development the ongoing use or release and disposal of airport owned real property is subject to the FAA Compliance Program requirements as described in FAA Order 5190.6A.

### 7-2. OWNER RETENTION.

If the airport owner determines it to be practical and feasible, the owner of improvements or appurtenances on lands being acquired may be offered the option of retaining (buying back) the improvements or appurtenances at a retention (salvage) value. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the [salvage value](#) of the retained improvement. In addition, when buying back the improvement the owner agrees to remove the improvement from its present site, leaving the former site at an at-grade level free from rubble and any hazardous substance associated with the improvement being relocated.

In lieu of a retention offer, the owner may be advised to purchase the acquired improvements under Sale of Improvements procedures described at paragraph 7-4.

### 7-3. INTERIM RENTAL OF ACQUIRED PROPERTY.

The airport owner may permit a former owner or tenant, after acquisition of the property, to occupy the real property for a short term or a period subject to termination on short notice. However, before entering into a rental agreement, the airport owner should consider the liability it assumes on such property, the expenses involved in the maintenance and upkeep of the property while occupied and the possible difficulty of collecting rent from the short-term occupier. If the airport owner has decided that continued occupancy of the property is prudent, it shall:

**a. Rental Rates.** Establish a rental rate that does not exceed the fair market rent for such occupancy. Since the airport owner has the right to terminate occupancy on short notice, it also has the flexibility to establish a lower rental rate than might be found in a longer, fixed-term situation. However, rental rates must be applied uniformly throughout the project area.

**b. Prepare rental agreements.** When preparing an agreement the airport owner may grant a free rent period of up to but not more than 90 days to a former owner-occupant of a dwelling in which he or she was residing at the time of acquisition.

**c. Supervise property and rental collections through terms of the lease.** The airport owner should also assure that all conditions of a lease are complied with and that improvements are vacated in time for clearance by sale and/or demolition before project construction or other needs that requires clearance.

#### **7-4. SALE OF ACQUIRED IMPROVEMENTS.**

The sale for removal or salvage should generate the greatest return or savings to the project. As soon as a sufficient number of improvements are vacated they should be offered for sale and removal in accordance with the following:

**a. Competitive Bids.** Competitive bids shall be obtained through public auction, or sealed bids whenever practicable. Established acceptable advertising and bidding procedures should be utilized, and acceptance or rejection of the high bid shall be subject to approval by the airport owner. Strict accounting and fiscal controls must be incorporated into the sale procedures and provisions made for adequate performance by the successful bidder. Greater benefits are generally received when:

(1) A marketing study has been initiated to ascertain the demand for the improvements available for sale.

(2) There has been adequate advertising of the sale.

(3) The sale includes a sufficient number of structures to attract buyer interest but not so many as to glut the market.

(4) Buyers are afforded the opportunity to bid on individual improvements or on the basis of taking the entire group offered for sale. However, the airport owner still retains the right to accept bids in the manner that will yield the maximum return to the public.

**b. Negotiated Private Sale.** Only when an improvement fails to sell at a public sale shall a negotiated private sale of the real property be considered. In such instances, justification for the private sale shall be explained and documented prior to approval of the transaction by the airport owner. However, a nonprofit organization can obtain improvements through a private sale with the airport owner for an amount not less than the approved documented salvage value of the improvement.

**c. Contract Obligation.** Upon acceptance of a successful bid, the airport owner should follow up to see that all conditions of the sales contract are met. The cost to remove portions of improvements left by a former owner or purchaser who strips the saleable item of all salvable material, forfeits the performance bond, and leaves the airport owner to remove the remainder by force account, demolition contract, or as an item in the general contract, is not an eligible airport project cost. To prevent the airport owner from incurring additional expenses should the purchaser forfeit the bond, the amount of the bond required of the purchaser should be increased to where it would cover the cost of the removal of any remaining material.

**d. Disposal of Abandoned Personal Property.** Personal property not moved by the displaced person because of simply abandoning the item, utilizing the tangible loss of personal property provision, or the purchase of a substitute item for a new location. If an item has not been sold or otherwise been disposed of, the airport owner is responsible for the removal. As is cost effective and feasible abandoned personal property should be disposed of in the same manner as described in subparagraphs 8-5 a thru c above. In any event the manner which personal property is disposed or transferred must be documented.

#### **7-5. DEMOLITION OF ACQUIRED IMPROVEMENTS.**

**a. Sponsor Obligation.** For proper disposal of remaining improvements on the project site, it is recommended that the airport owner.

(1) Perform a survey to determine whether any hazardous materials exist on the property. If the survey reveals the presence of any hazardous materials, the airport owner shall identify abatement measures that are necessary to clean up or dispose of such materials in compliance with applicable law.

(2) Obtain or prepare an estimate of the cost of demolition.

(3) Using accepted contracting procedures, advertise and solicit bids for the proposed demolition.

(4) After an award of contract, perform intermediate and final inspections to assure compliance with contract provisions.

**b. Timeliness of Clearance.** The airport owner should implement procedures to ensure that permanently vacated improvements are removed as early as practicable after they are vacated, or otherwise kept under protective surveillance. This action is encouraged so as to avoid vandalism or illegal uses of the property. The prompt clearance of vacated improvements when there are no plans to reoccupy the premises is necessary to reduce the cost to an acceptable level as well as to protect the public's interest that involves public safety, aesthetics, neighborhood preservation, and public health.

**c. Demolition Contract.** Demolition contracts should be of sufficient size to develop maximum competition in bidding.

(1) Bid proposals should provide for plus or minus bids on each structure to be included in the demolition contract. Only in this manner can the airport owner be reasonably certain that it is receiving credit for any salvage value contained within the building.

(2) Except in unusual circumstances, restrictions should not be placed on the method used by the contractor to clear the improvement other than local ordinance or other statutory requirements.

## **7-6. RODENT AND PEST CONTROL.**

On all projects, the airport owner should determine if conditions are such that rodent and pest control measures are necessary. This action should not be necessary on rural projects unless they contain a substantial number of buildings, garbage dumps, landfills, etc.

**a. Inspection.** If a project inspection indicates that rodent and pest control is desirable, action should be taken to eliminate the rodents and pests prior to demolition or removal of improvements located on the project area. Where an inspection is required, the files of the airport owner should contain documentation of the inspection and the decision as to whether or not extermination is necessary. The participation of other interested agencies such as state, county, or city health departments is highly desirable and should be requested.

**b. Procedures.** The airport owner should submit its proposed procedures for accomplishing the intent of this paragraph to the FAA for review and comment. This submission should state that the procedures comply with all state and local laws and regulations governing rodent and pest control. It should also explain the method the airport owner will use to assure the reasonableness of costs to be incurred.

**7-7. INCOME FROM PROPERTY MANAGEMENT.**

FAA project manager will provide appropriate instruction to the Sponsor on the use or disposition of any proceeds derived from the management of acquired property. Generally income may offset against expenses, with net income properly accounted for as program income.

## **Chapter 8. ACCEPTANCE OF SPONSOR CERTIFICATIONS**

### **8-1. TITLE EVIDENCE.**

When requested by FAA, the sponsor is required to provide evidence that adequate title has been obtained for acquired property. As applicable the property interest obtained must be sufficient to permit possession and control for public airport purposes and allow the sponsor to carry out the obligations and covenants in the grant agreements. Adequate title evidence must be secured and certified by the sponsor's attorney to support the sponsor's certification. Appendix 4 to FAA AC 150/5100-17 entitled "Guidelines for Sponsor Certification of Title" provides guidelines that may be used by the sponsor's attorney in the preparation and submittal of the title certification when requested by the FAA.

### **8-2. COMPLIANCE TO THE UNIFORM ACT (49 CFR PART 24).**

The AIP Handbook, FAA Order 5100.38 details the grant management process and procedures that FAA project manager's follow when entering grants and authorizing work. These procedures apply both to funded and non-funded land acquisition work required for an AIP assisted project or program. In particular paragraph 1204 of the AIP Handbook, allows Sponsor Certification as follows:

"Title 49, U.S.C., Section 47105(d), authorizes the Secretary to require certifications from sponsors that they will comply with statutory and administrative requirements. Use of sponsor certifications is permitted in the following areas: "Project Plans and Specifications", "equipment and construction Contracts", "Real Property Acquisition" and "Construction Project Final Acceptance". Acceptance by the FAA of a sponsor certification does not limit the FAA's ability to request and review documentation to ensure the accuracy of a certification. (See Chapter 10, Section 3.)"

Concerning construction authorization, the handbook provides in paragraph 710, that

"Authorization for the sponsor to issue a notice to proceed with construction work should not be given until it has been determined that all required property interests on which construction is to be performed have been or will be acquired in conformance to the Uniform Act and that comparable replacement dwellings have been made available to persons displaced from their homes. The Sponsor Uniform Act Certification and Certification of Title may be accepted in making these determinations and should be provided FAA prior to notice to proceed being issued.

To support its certification the airport sponsor must maintain adequate documentation to evidence compliance on each property acquisition and relocation case. The FAA AC 5100/150-17 at Chapter 9 provides a documentation checklist to assist sponsor's to develop its certification to FAA. Also appendix 3 to AC 150/5100-17 describes a Quality Control/Assurance system which airport sponsor's are encouraged to develop and maintain on their projects.

### **8-3. FAA PROGRAM MONITORING.**

In addition to the acceptance of work the FAA must be able to review and consult with airport sponsor's on the requirements of 49 CFR 24. FAA project managers may review project documentation as part of routine reviews or in response to audit or property owner inquiries. Review of sponsor's records and documentation is made to ensure compliance to 49 CFR 24 and that, as applicable, costs incurred are documented as eligible and reasonable cost for AIP

reimbursement. Sponsors are required to maintain adequate [records](#) of their real property acquisition and relocation assistance activities to show compliance to the Uniform Act and 49 CFR Part 24.

Appendix 1 provides a sample [spot check review](#) form that notes the applicable regulatory requirement for a particular work item. This form is available for use by FAA project managers and airport sponsors to review program compliance. This sample form notes the applicable regulatory requirement and AC reference to the particular work item.

#### **8-4. SPONSOR COMPLIANCE REVIEW AND QUALITY CONTROL.**

It is recommended that the sponsor institute a compliance review and quality control function to assure maximum Federal reimbursement of eligible costs. The [Quality Control](#) form provided in Appendix 1 provides a recommended Quality Control Program (QCP) review format that sponsors may complete prior to billing costs for Federal reimbursement. A sponsor instituted QCP will provide greater assurance of the reasonableness of cost incurred to FAA. Depending on the complexity of the project and of the sponsor's organization and fiscal operations the exact structure for this review may vary. However, the review process relies on the detection and correction of errors as they may occur, and generally it may be expected that a simple review process may easily be incorporated into the operational and fiscal functions of the sponsor's existing organizational structure. Chapter 9 and Appendix 3 of the FAA AC 150/5100-17 provides procedural guidance to sponsor to develop their quality control programs.

**APPENDIX 1: SAMPLE FORMS**  
**Land Acquisition and Relocation Assistance**  
**FAA Order 5100.37B / AC 150/5100-17**

Forms May be downloaded from the FAA Website @:

[http://www.faa.gov/airports\\_airtraffic/airports/resources/forms/index.cfm](http://www.faa.gov/airports_airtraffic/airports/resources/forms/index.cfm)

<b>FAA FORM</b>	<b>TITLE</b>	<b>eFORM</b>
Sponsor Certification	Sponsor Certification Statement to FAA	<a href="#">Certification.doc</a>
49 CFR 24 Spot Check	Parcel Spot Check	<a href="#">SpotCheck.dot</a>
Documentation List	Parcel Documentation Checklist	<a href="#">Cheklist.doc</a>
Quality Control	Parcel Quality Control Review	<a href="#">preaudit.doc</a>
RHP Certification	180 Day Owner-Occupant	<a href="#">rhp180.doc</a>
FAA 5100-111	Certificate of Appraiser	<a href="#">frm111.pdf</a>
FAA 5100-112(URAR)	Summary Appraisal Reports	<a href="#">frm112URAR.dot</a>
FAA 5100-123 Revised	Mortgage Interest Differential (MID) Payment Eligibility Computation	<a href="#">mids.doc</a>
	MID Computation - Fixed Mortgage	<a href="#">midfrm1.xlt</a>
	MID Computation - ARM	<a href="#">midarm.xlt</a>
FAA 5100-124 Revised Non-Residential Relocation Payment Claim Forms	Claim Certification	<a href="#">frm124cert.dot</a>
	Schedule A - Moving Payments	<a href="#">frm124a.dot</a>
	Schedule B - Loss of Tangible Personal Property	<a href="#">frm124b.dot</a>
	Schedule C - Search Expense	<a href="#">frm124c.dot</a>
	Schedule D - Reestablishment Expense	<a href="#">frm124d.dot</a>
	Schedule E – Related Eligible Expense	<a href="#">Frm124e.dot</a>
FAA 5100-125 Revised Residential Relocation Payment Claim Forms	Claim Certification (includes DSS)	<a href="#">frm125cert.dot</a>
	Schedule A - Moving Payments	<a href="#">frm125a.dot</a>
	Schedule B - RHP 180-day Owner (imbeds MID computation)	<a href="#">frm125b.dot</a>
	Schedule C - RHP 90-day Occupant	<a href="#">frm125c.dot</a>
	Schedule D - Downpayment & Incidentals	<a href="#">frm125d.dot</a>
DSS Certification	Decent, Safe, & Sanitary (DSS) Certification	<a href="#">dssinsp.doc</a>