



RIGHT OF WAY OPERATIONS MANUAL

Revised August 2025

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SECTION 1

ORGANIZATION

1.1. GENERAL

The Right of Way Division (Right of Way) of the Arkansas Department of Transportation (Department) has the responsibility of acquiring and managing all right of way necessary for the construction and maintenance of highways in the State of Arkansas.

Right of Way is under the direction of the Division Head of Right of Way (Division Head). The Division Head is responsible to the Assistant Chief Engineer-Design, who is in turn responsible to the Deputy Director and Chief Engineer.

The Division Head has the overall authority and responsibility for right of way functions. The Division Head is responsible for the activities of the Section Heads in the following Sections: Acquisition, Administrative, Appraisal, Engineering, Relocation, Utilities, and Beautification. Each Section Head is given the authority and responsibility for the phase of right of way duties assigned to that specific section. All Right of Way operations are centralized and located in the Central Office Complex in Little Rock.

1.2. DIVISION HEAD

The Division Head is responsible for the administration of all functions of Right of Way, coordination between Right of Way and other affected Department Divisions and the establishment of policies and procedures and performance of work in accordance with federal, state, and Department laws, rules, and regulations.

1.3. ASSISTANT DIVISION HEAD

The Assistant Division Head assists the Division Head in carrying out the duties and responsibilities of the Division in all matters relative to the administration and operation of the Division, and acts as liaison officer in coordinating the work of the various Right of Way Sections. This position is in charge of the Division in the absence of the Division Head.

1.4. ACQUISITION SECTION (ACQUISITION)

The Acquisition Section under the direction of the Section Head is responsible for the acquisition of real property for highway right of way. Acquisition maintains records on the status of each project, which enables this position to suggest a termination date for negotiations and to recommend condemnation. This position is also responsible for coordinating federal land transfers.

1.5. ADMINISTRATIVE SECTION (ADMINISTRATIVE)

The Administrative Section under the direction of the Section Head is responsible for the administrative functions of Right of Way. These include maintaining and establishing the permanent record system, processing payments made by Right of Way and the Legal

Division (Legal) involving right of way activities, preparing documents necessary for reimbursement of funds expended for right of way, auditing right of way charges, and coordinating and finalizing uniform policies and procedures as directed by the Division Head. This position is also responsible for the delivery of state warrants, securing signatures on deeds, and coordinating right of way use agreements. Responsibility for property management functions including the ultimate disposal of surplus real and personal property is also assigned to Administrative.

1.6. APPRAISAL SECTION (APPRAISAL)

The Appraisal Section under the direction of the Section Head is responsible for the preparation, review, and approval of all appraisals submitted by staff and fee appraisers. This position advises the Division Head on complicated appraisal matters and assists with difficult appraisals. They also consult with and advise the Division Head and Legal for settlements and condemnation proceedings.

1.7. ENGINEERING SECTION (ENGINEERING)

The Engineering Section under the direction of the Section Head is responsible for the preparation of right of way plans and legal descriptions of property pertinent to the appraising and acquiring of right of way necessary for highway construction. Engineering maintains records on and researches existing right of way on state highways.

1.8. RELOCATION SECTION (RELOCATION)

The Relocation Section under the direction of the Section Head is responsible for the supervision of the relocation coordinators in the planning, scheduling and directing of the activities and functions in administering the relocation program on all projects where the displacement of individuals and operations are involved.

1.9. UTILITIES SECTION (UTILITIES)

The Utilities Section under the direction of the Section Head is the liaison between the utility companies and the Department. Utilities Section is responsible for the determination of required adjustments to clear highway projects, and the initiation and completion of negotiations as required to make contractual arrangements for the relocation and adjustment of affected utilities. Utilities Section is also responsible for the review and issuance of utility permits per the Utility Accommodation Manual.

1.10. BEAUTIFICATION SECTION (BEAUTIFICATION)

The Beautification Section under the direction of the Section Head enforces the Federal Highway Beautification Act of 1965 and Act 640 of the 1967 Arkansas Legislature along highways in the state. Beautification is responsible for billboard control, junkyard control, logo signing, and tourist oriented directional signing.

1.11. STEWARDSHIP AND OVERSIGHT AGREEMENT

The Arkansas State Highway Commission (Commission) and Federal Highway Administration (FHWA) have adopted a Stewardship and Oversight Agreement outlining the standards and procedures for the administration of those projects for which the Department has oversight responsibilities.

In accordance with 23 CFR 710, the Department has overall responsibility for the acquisition, management and disposal of real property on Federal-aid highway projects. This responsibility includes assurance that acquisitions and disposals are made in compliance with legal requirements of federal, state, and Department laws, rules, and regulations.

The Department has prepared and maintains this Right of Way Operations Manual that describes the functions and procedures for all phases of its Right of Way Program including appraisal and appraisal review, negotiation and eminent domain, property management and relocation assistance. The functions and procedures contained in the manual comply with 23 USC and 49 USC, implemented through 23 CFR and 49 CFR, and all applicable federal, state, and Department laws, rules, and regulations. The manual is updated and certified by the Department every five years. These updates are coordinated with and approved by FHWA.

The functions and procedures contained in the manual are used by the Department for both Federal-aid funded and non-Federal-aid funded highway projects.

1.12. RIGHT OF WAY ACQUISITION AND UTILITY ADJUSTMENTS – STATE HIGHWAY PROJECTS

The acquisition of right of way and the coordination of utility adjustment activities are performed by the Department in adherence to this manual as follows:

- 1) Arterials – Proposed right of way, containing an arterial as any part of the project, is acquired by the Department. All necessary utility adjustment activities are coordinated by the Department.
- 2) Collectors and Locals - The Department acquires right of way in cooperation with appropriate County Judge and/or City Official. All necessary utility adjustment activities are coordinated by the Department. In order to expedite project schedule, other entities may participate in project costs.

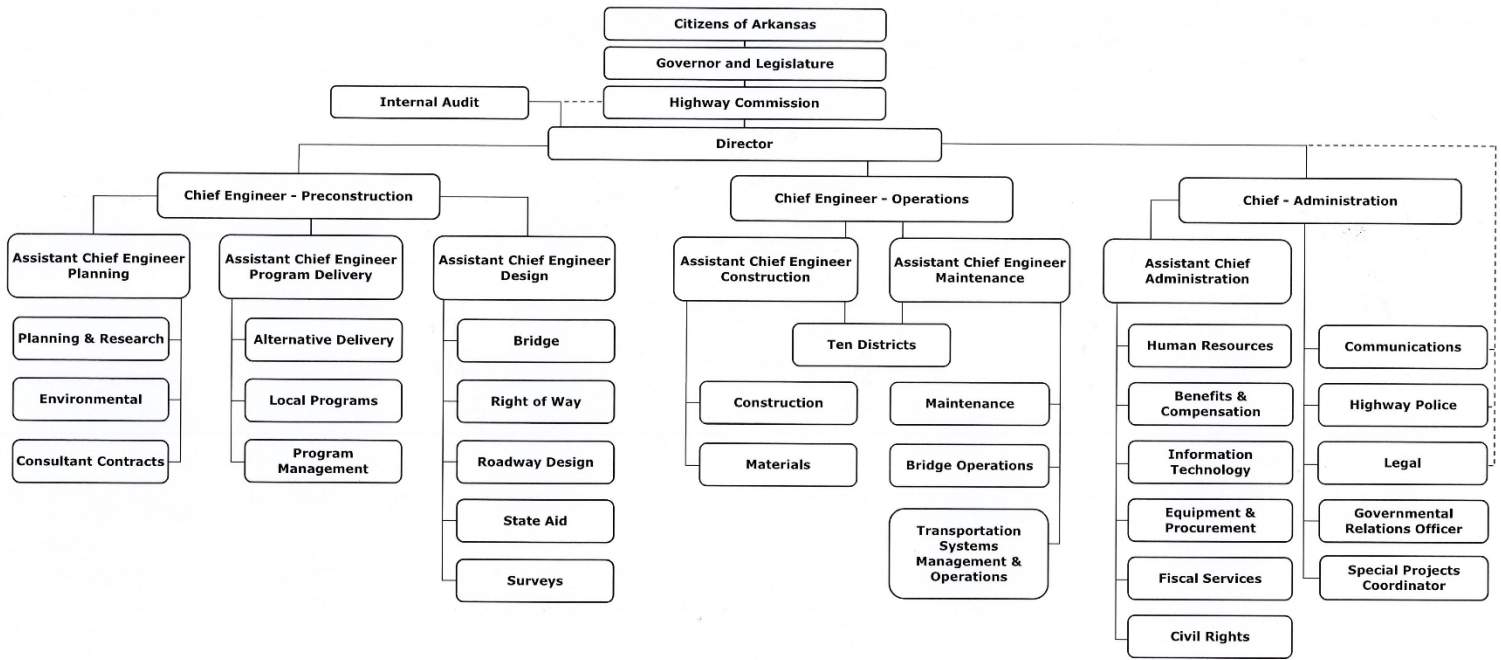
1.13. RIGHT OF WAY ACQUISITION AND UTILITY ADJUSTMENTS – NON-STATE HIGHWAY PROJECTS

The acquisition of right of way and the coordination of utility adjustment activities are performed by the project Sponsor (appropriate County or City) or by the Department upon request of the project Sponsor. These activities will follow the functions and procedures contained in this manual.

1.14. PROJECT AUTHORIZATION AND RIGHT OF WAY CERTIFICATION

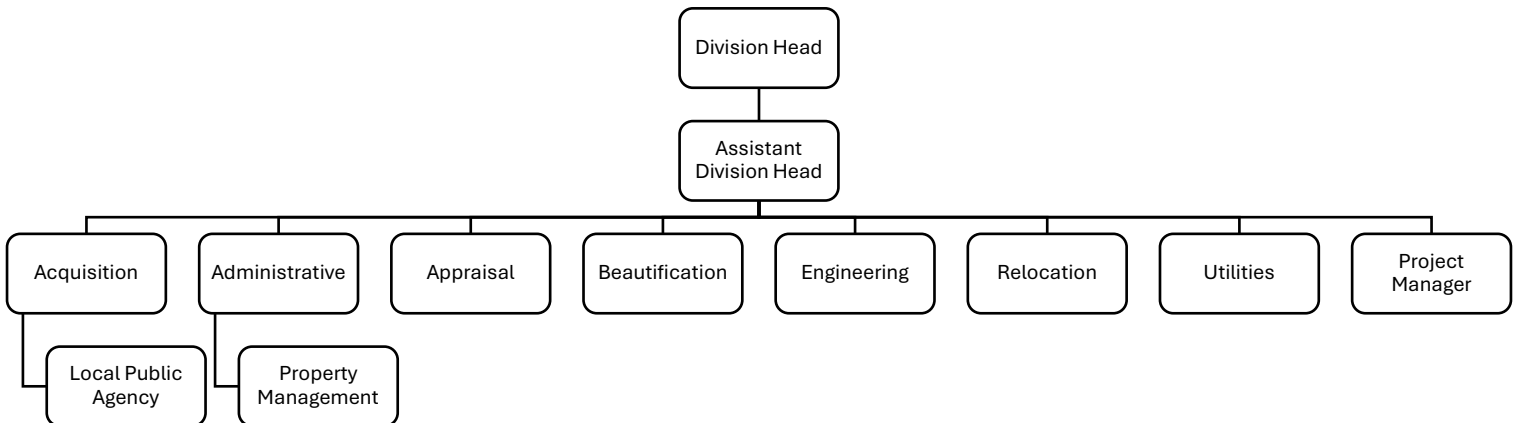
- 1) Prior to submittal to FHWA for authorization, the Department will ensure that the project is included in the Statewide Transportation Improvement Program (STIP) and subsequently satisfies National Environmental Policy Act (NEPA) requirements. The Department will ensure that projects located in Metropolitan Planning Organization (MPO) areas are included in the applicable Transportation Improvement Program (TIP).
- 2) The Department provides Right of Way Certifications for all its projects. Federal oversight projects are certified to FHWA by the Division Head. State oversight projects are certified by the Division Head and concurred with by the Assistant Chief Engineer-Design and the Deputy Director and Chief Engineer. Copies of the certifications of State oversight projects are provided to FHWA.

FIGURE 1-1. ARKANSAS DEPARTMENT OF TRANSPORTATION ORGANIZATION CHART



 January 13, 2025
Director Date

FIGURE 1-2. RIGHT OF WAY DIVISION ORGANIZATION CHART



SECTION 2

GENERAL PROCEDURES

2.1. GENERAL

The Department has the responsibility for acquisition, management, and disposal of real property on all highway projects. Right of Way will take the necessary actions to assure compliance with applicable federal, state, and Department laws, rules, and regulations for implementation of the Department's Right of Way Program.

The Department will acquire an interest in real property adequate for the construction, operation and maintenance of the highway facility and for the protection of both the facility and the traveling public.

When the location and design of a highway project have been finalized, Right of Way will undertake the following activities to acquire the needed right of way:

- 1) Engineering prepares right of way plans based on information furnished by the Roadway Design (Roadway Design) and the Surveys (Surveys) Divisions.
- 2) Just compensation for the real property is established and handled as follows:
 - a) For uncomplicated acquisitions with an anticipated valuation of \$15,000 or less, Appraisal or Acquisition, as assigned, prepares the appropriate valuation and acquisitions documents then initiates negotiations to acquire the property.
 - b) For acquisitions requiring appraisals, Appraisal invites the owner to attend the property inspection, establishes just compensation, and prepares the appropriate valuation documents. After appraisals have been made, reviewed and approved, they are forwarded to Acquisition. Acquisition prepares the appropriate acquisition documents and initiates negotiations to acquire the property.
 - c) If displaced persons are involved, the appraisal is sent to Relocation, and a Relocation Coordinator meets with the property owner to discuss relocation benefits.
- 3) Prior to or during the negotiation process, Administrative obtains the necessary ownership information to assure that the Department acquires clear title to the property.

2.2. FEDERAL AID PROJECTS (FAP) – FUNDING AUTHORIZATION

- 1) A project is formally originated by a Minute Order approved by the Commission. This action authorizes the initiation of the necessary steps to establish federal participation in a project.
- 2) Upon receipt of the Minute Order, the Program Management Division (Program Management) will request project approval for additions to the Surface

Transportation Improvement Program (STIP) from FHWA after a right of way cost estimate is furnished by Right of Way.

- 3) Upon STIP approval of the project by FHWA, an allotment is prepared by Program Management and all authorized activities, including right of way and utilities, may begin. After preliminary right of way and utility costs have been determined by field investigations, project agreements authorizing the Federal-aid funding based on these estimates are transmitted to FHWA.

2.3. RIGHT OF WAY PROJECT AUTHORIZATION

- 1) Upon completion of right of way plans and environmental clearance, an authorization request for a project is prepared by the Administrative Section. The initial request includes a preliminary amount and is updated upon completion of an estimate of right of way cost furnished by Appraisal plus an estimate of relocation cost (if needed) furnished by Relocation.
- 2) This request is provided to the Program Funding Section of Program Management for the preparation of a Project Agreement.
- 3) Upon approval and return from the Program Funding Section, the Project Agreement and request for authorization is forwarded to FHWA for approval.
- 4) After notification of FHWA authorization, Administrative Section updates the right of database with the Authority Received date.

2.4. INITIAL RIGHT OF WAY ACTIVITIES

- 1) Right of way work preliminary to acquisition includes title searches, gathering of real estate market sales data and other necessary information pertinent to actual appraisals, searching for comparable properties for potential displaced persons, identifying replacement neighborhoods and available public services, the checking of plans as to correctness and accuracy, and the actual preparation of right of way plans.
- 2) Preliminary acquisition activities that can be advanced under preliminary engineering and prior to environmental clearance may also include appraisal, appraisal review, waiver valuation, and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services.
- 3) Acquisition activities involving contact with affected property owners for purposes of negotiation or relocation assistance must be deferred until environmental clearance is received, except in the cases of early acquisition, hardship acquisition or protective buying.
- 4) Right of Way work preliminary to the adjustment of affected utilities includes field inspections and notification to the various utility companies that their facilities may require adjustment.

2.5. FIELD INSPECTION

During plan preparations, representatives from Roadway Design, Right of Way, and other affected Divisions or Districts conduct a joint field inspection in order to coordinate the various interests of the Divisions and to resolve any issues that may have arisen concerning the proposed improvement.

2.6. CONDEMNATION PROCEEDINGS

Right of Way assists Legal as needed in the adjudication of lawsuits. This includes providing expert testimony primarily by appraisers, preparation of exhibits, and any other assistance requested by Legal.

2.7. ACQUISITION OF STATE-OWNED LANDS

Acquisition of State-owned lands needed for highway purposes is made by deed, or condemnation, when necessary, with no payment of compensation except in special circumstances. When necessary, appraisals are made in the same manner as for acquisition of privately owned property.

2.8. ACQUISITION OF FEDERALLY OWNED LANDS

Acquisition of Federally owned lands needed for highway purposes is made by deeds or easements prepared in conformity with the granting agency's legal requirements. These are Federal Land Transfers outlined in the "Manual for Federal Land Transfers for Federal-Aid Projects," as well as federal regulations at 23 CFR 710.601.

2.9. LAND FOR REPLACEMENT HOUSING

The State has authority to acquire property outside the right of way on which to construct replacement sale or rental housing. If such acquisitions become necessary, the same procedures as used for all other right of way acquisitions will apply.

2.10. ACQUISITION FINANCED BY STATE FUNDS

The authority for acquisition of right of way with State funds comes from the Director of the Department. A non-participating allotment is requested by Right of Way and upon approval of the allotment the acquisition may start and proceed through the appraisal process, to the negotiating phase, and when necessary, the condemnation proceedings.

When Federal funds participate in any phase of a project, all right of way functions shall be accomplished in accordance with 23 CFR and 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (Uniform Act) as described in this Manual.

2.11. CIVIL RIGHTS

- 1) The Department complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in the programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the

basis of race, sex, color, age, national origin, religion, disability, or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices.

- 2) Consistent with this policy, all programs and activities administered by Right of Way shall comply with the current Department Title VI Program Plan (Title VI Plan).
- 3) As described in the Department Policy Statement (see Title VI Plan, Appendix A), the Department assures through its policies and procedures that no person shall on the grounds of race, color, national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any Department program or activity receiving federal assistance under this title or carried out under this title. While the Department receives funds from various sources, there is no distinction between the sources of funding.
- 4) The Division Head serves as the liaison between the Right of Way Division and the Civil Rights Division for compliance of the Title VI Plan.
- 5) The Division Head of Civil Rights Division is the Department's ADA/504/Title VI Coordinator. All complaints of alleged discrimination shall be reported to the Civil Rights Division immediately. The investigation and processing of alleged complaints of discrimination will be accomplished in accordance with the procedure described in the Department's Title VI Program Plan.

2.12. RIGHT OF WAY OVERSIGHT AND COMPLIANCE

In order to ensure right of way activities are conducted in accordance with federal, state, and Department laws, rules, and regulations, the following levels of responsibility have been established:

1) Section

The Section Head is responsible for ensuring each Section's activities are performed in accordance with the federal, state, and Department laws, rules, and regulations. The Section Head accomplishes this by daily involvement in Section activities. This is supplemented by periodic review of specific process areas.

2) Division

The Division Head, through the Assistant Division Head and Section Heads, is responsible for providing oversight of the activities of Right of Way and ensuring that Right of Way activities are performed in accordance with the applicable federal, state, and Department laws, rules, and regulations. The Division Head meets this responsibility by constant interaction with the Section Heads and Division personnel on right of way activities.

- a) The Division Head directs periodic process reviews of selected functional areas of Right of Way.

- b) The Division Head designates, as necessary, individuals to review and make recommendations of program areas within Right of Way activities. Designated individuals may include Right of Way, Department and FHWA personnel.
- c) The Division Head assesses the level of expertise and knowledge of Right of Way personnel and develops a training program to maintain an appropriate level of expertise.

3) Arkansas Department of Transportation

- a) The Internal Audit Section (Internal Audit) periodically conducts a complete audit of Right of Way activities. Internal Audit makes a comprehensive review of the procedures and controls relating to all functions of Right of Way, including:
 - i) Interviews with Right of Way and Department personnel.
 - ii) Investigation of a sufficient number of records to determine the degree of financial accountability and compliance with existing laws and regulations. Consideration is also given to the efficiency, economy, and effectiveness of Right of Way operations.
- b) The objective of the audit is to review and evaluate the procedures and controls to the extent necessary to provide a basis for the auditor to express an opinion as to the effectiveness of the discharge of Right of Way's fiscal responsibilities.
- c) The auditor will report to Department management any actual or potential adverse conditions relative to the procedures and controls, propriety, validity and accuracy of cost, and compliance with federal, state, and Department laws, rules, and regulations.
- d) On those projects that are not NHS or Interstate, the Department has oversight responsibility.

4) Federal Highway Administration

- a) FHWA provides oversight by its approval of all Federal-aid project agreements and approval of Right of Way Certifications for Federal Oversight designated projects.
- b) FHWA provides oversight with its technical assistance, training, and performance of process review in various functional areas. Process review teams can be composed of FHWA and Department employees.

2.13. RIGHT OF WAY CERTIFICATION

Right of Way Certifications and other supporting documents are prepared by the Assistant Division Head for the Division Head's signature. The Director delegates the authority for the Division Head to certify that the project has been acquired in accordance with the Uniform Act.

- 1) Where all right of way has been acquired or legally placed at the disposal of the Commission in accordance with current FHWA directives, the certification will so state.
- 2) In those instances where right of way has not been fully acquired, the certification will list the tracts and indicate the date the acquisition will be complete.
- 3) In those instances where the right of way is not clear of improvements, the certification will indicate the date the improvements are to be removed under a demolition contract administered by Property Management of the Administrative Section, or that the improvements have been included as demolition items to be removed by the highway contractor.
- 4) The relocation statement of the certification will certify that adequate replacement housing is in place and has been made available to all residential displaced persons on the project, and that all applicable provisions of FHWA's relocation program have been complied with.
- 5) In instances where displaced persons remain on the project, the certification will list the tract number, the vacancy date, and the date that the right of way will be cleared.
- 6) Projects acquired by a Local Public Agency sub-grantee (LPA) are certified to the Department in accordance with the above criteria and the Department in turn certifies to FHWA. Information submitted to the Department from the LPA is maintained in the Department's files.

2.14. PUBLIC HEARINGS ON FEDERAL- AID PROJECTS

- 1) The Environmental Division (Environmental), in cooperation with Roadway Design and Surveys, schedules public hearings and public information meetings and notifies the affected Sections and Divisions of the date, time and location.
- 2) Representatives from Acquisition, Appraisal and Relocation attend the meetings to inform the public of the Department's policies and procedures of acquiring realty and providing relocation assistance.
- 3) Written information is supplied to the public in the form of public information brochures prepared by Acquisition and Relocation.

2.15. EARLY ACQUISITION AND ADVANCE ACQUISITION

- 1) Based on program and property considerations, the Department may choose to initiate the acquisition of real property at any time after it has the legal authority. This type of early acquisition will typically be paid with State funds and does not require any Federal action at the time of purchase.
- 2) Prior to the Department's obtaining final environmental approval, the Department may proceed to initiate the acquisition of parcels for the anticipated project. These

parcels may be considered to be an “early acquisition” under 23 CFR 710.501, or as “protective buying” or a “hardship acquisition” under 23 CFR 710.503.

- 3) Hardship acquisitions will be a determination by the Department, through the Division Head, with substantiated evidence that it is for the purpose of alleviating hardship to a property owner or owners on the preferred location.
- 4) Protective buying will be a determination by the Department, through Right of Way, with substantiated evidence that it is the public interest to prevent imminent development and increased costs on the preferred location.
- 5) The Department’s request for hardship acquisition will be supported by a letter from the owner describing his/her particular hardship. The request will also be supported by information from persons knowledgeable in real estate values in the area, to support the decision that the owner is unable to sell their property at a reasonable price due to the development of the project.
- 6) The Department will document its request for protective buying with the circumstances surrounding the proposed advance acquisition.
- 7) If Department desires federal participation in the proposed early or advance acquisition at either the time of the acquisition or when normal project activities commence, then Administrative will request a NEPA evaluation and determination of the parcel(s) to be acquired.
- 8) Upon receipt of the approved NEPA document, the Division Head will request in writing to FHWA that the acquisition be approved as either a “early acquisition,” “protective buying,” or a “hardship acquisition” as defined by federal regulations at 23 CFR 710.501 and 710.503.
- 9) Upon approval by FHWA, Right of Way will proceed with acquisition activities in accordance with federal, state, and Department laws, rules, and regulations.
- 10) If the Department does not desire federal participation in the early acquisition but would desire to be eligible for project credit match at a later date, then federal approval is not necessary, however, all applicable regulations and procedures must be followed, including but not limited to 23 CFR 710.501.
- 11) Early acquisition actions may include real property rights such as fee title, permanent easements, options to purchase, or property reservations.

2.16. FUNCTIONAL REPLACEMENT OF REAL PROPERTY IN PUBLIC OWNERSHIP

The acquisition of real property for highways or highway related projects from public ownership sometimes results in the necessity for functional replacement of land and/or facilities. In these instances, it becomes necessary to functionally replace the real property with realty of equivalent utility. This determination will be made at an early stage of project development and included in the Department’s environmental

assessments, negative declaration and Environmental Impact Statement. The guidelines for replacing real property are as follows:

- 1) The property to be functionally replaced will be in accordance with State Law and must be in public ownership.
- 2) The Department will secure concurrence and authorization from FHWA to proceed with functional replacement when federal funds are participating in the acquisition.
- 3) Replacement sites and improvements or construction will be in accordance with all applicable state and local codes, laws and zoning regulations for the area in which the facility is located.
- 4) The Department will request concurrence and authorization from FHWA only when replacement will actually take place and costs are to be incurred.
- 5) The need and request for functional replacement sites will originate by request from the public facility being affected or from the Department's determination that the functional replacement need exists.
- 6) The need will be established by meetings with Department personnel and the officials of the public facility involved. These activities will be coordinated with the FHWA, if federal funds are participating.

2.17. DESIGN-BUILD PROJECTS

In the case of a design-build project, right of way acquisition will normally be the responsibility of the Right of Way Division. In the case where the Design-Builder is responsible for right of way acquisition, Right of Way will coordinate with the Department's Alternative Project Delivery Administrator to ensure necessary appraisal, acquisition, and relocation assistance requirements are followed to comply with federal, state, and Department laws, rules, and regulations.

Federal regulations applicable to design-build projects are set out at 23 CFR 710.309. Some of the basic provisions of the regulations include:

- 1) The right of way must be acquired and cleared in accordance with all applicable federal, state, and Department laws, rules, and regulations.
- 2) Right of Way must ensure that right of way is available prior to the start of construction on individual properties.
- 3) The decision to advance a right of way segment to construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right of way.
- 4) If a design-build project includes right of way activities in the scope of work, the request for proposals document must contain information outlined in 23 CFR 710.309(d).

- 5) Right of Way shall submit a Right of Way Certification in accordance with 23 CFR 635.309(p) when requesting FHWA authorizations.
- 6) Construction may not commence until all property has been acquired and relocations have been completed; or phased construction may be permitted in a manner satisfactory to the Department's Alternative Project Delivery Administrator. Right of Way Certifications will be prepared for each phase or segment.

2.18. EXCEPTIONS

The Division Head may authorize exceptions for special circumstances. Exceptions must be documented in writing and supported with appropriate justification.

SECTION 3

ADMINISTRATIVE

3.1 GENERAL

Administrative is responsible for the administrative functions of Right of Way such as maintaining and establishing a permanent record system, processing payments including those chargeable to highway projects; as well as title examination and preparation of legal documents relating to the transfer of property. Administrative is also responsible for delivery of state warrants; closing real estate transactions; document recording; preparation, reporting and distribution of 1099s for all real estate transactions; collection and payment of real estate taxes for whole takings and preparation of annual reports on productivity and expenditures associated with tracts appraised and acquired.

Administrative is responsible for maintenance of the necessary records to document expenditures and billing of funds in accordance with federal, state, and Department laws, rules, and regulations. Administrative is responsible for the audit, verification, and correction of all right of way charges prior to request for reimbursement under the provisions of the concurrent audit system. Administrative prepares reimbursement requests for utility relocations and verifies charges are in accordance with the Utility Accommodation Manual.

Administrative coordinates acquisition, transfer, maintenance, and disposal of minor fixed assets; prepares the Right of Way budget for Management's approval; orders office supplies; and distributes mail.

Additionally, Administrative is responsible for the preparation and oversight of Right of Way (ROW) Use Agreements along with other property management functions located in Section 8 of this manual.

3.2 PROJECT DEVELOPMENT

1) Preliminary Engineering

Ownership research and appraisal activities may be conducted prior to environmental clearance and expenditures are charged to Function 3000 (Preliminary Engineering - Participating) or 3001 (Preliminary Engineering - Non-Participating).

2) Environmental Clearance

To establish funding for a project, or federal funding in the case of early acquisition or advance acquisition, Environmental must provide Right of Way with one of the following approved National Environmental Policy Act (NEPA) documents:

- EA/FONSI – Environmental Assessment – Finding of No Significant Impact

- Categorical Exclusion
- EIS/ROD – Environmental Impact Statement – Record of Decision

3) Request for Funding

When right of way plans are 50% complete, Appraisal and Relocation submit an estimated job cost to Administrative. (These costs are submitted by the Local Public Agency (LPA), if they are performing those tasks.) If an estimate for Appraisal and Relocation costs have not been submitted to Administrative upon receipt of the environmental clearance, Administrative prepares an initial request. The initial request includes a preliminary amount and is updated upon completion of an estimate of right of way cost furnished by Appraisal plus an estimate of relocation cost (if needed) furnished by Relocation.

Administrative submits a request for funding to Program Management. The amount requested is the total of the job estimates from Appraisal and Relocation plus an additional 10-20% to cover any administrative costs or adjustments. Depending on the defined funding for the project, Program Management uses these values to request and establish allotments prior to negotiations.

a) Projects Requiring Federal Funds:

- i) Administrative sends a funding request for the federally funded project to Program Management.
- ii) Program Management prepares a Federal-Aid Project (FAP) Agreement to request authority.
- iii) The funding request is entered into the Financial Management Information System (FMIS) and sent to FHWA for approval.
- iv) Upon approval by FHWA, Program Management updates the allotment system and forwards an approved copy of the FAP Agreement and allotment to Right of Way.
- v) Once the approved FAP Agreement is received by Right of Way, the Staff Minutes and right of way database are updated with the authorization date.

b) Projects Requiring State Funds:

- i) Administrative sends a funding request for the state funded project to Program Management.
- ii) Program Management establishes an allotment on the Department system, and a copy of the allotment is forwarded to Right of Way.
- iii) Once the allotment is received by Right of Way, the Staff Minutes and right of way database are updated with the allotment date.

c) Projects Requiring Local Public Agency (LPA) Funds:

- i) Upon receipt of the Right of Way funding request for an LPA funded project, the Local Programs Division prepares a letter to the LPA requesting their portion of the funding.
- ii) Once these funds are received by the Department, any additional funding sources are addressed.
- iii) If the Department is acquiring with only LPA funding, an allotment is established on the Department system, and a copy of the allotment is forwarded to Right of Way.
- iv) If the LPA is acquiring with only LPA funding, no allotment is established.

d) Donations

On LPA projects where the entity is seeking donations, Right of Way may request a nominal amount of federal funding be established to cover any administrative cost associated with acquisition. The request ensures that should the LPA be unable to obtain donations resulting in a need for a negotiated settlement or condemnation, a possible reimbursement would not be jeopardized. Program Management reviews funding sources for the project to determine if federal funds are available for right of way acquisition and either rejects the request or submits a Federal-aid Project Agreement.

3.3 TYPE OF RECORDS MAINTAINED

Administrative maintains project records of varied types. These records and the nature of their scope are as follows:

- 1) Right of Way database itemizing costs incurred on a given project by tract number or incidental cost, where necessary.
- 2) Files containing deeds, correspondence, payments, and tract documents on right of way projects; as well as subject files containing information about a subject not related to a specific project; and county files containing information regarding land purchases for capital assets acquired for Department use. Administrative coordinates the scanning and long-term digital file storage of these documents.
- 3) Federal and state reports documenting annual right of way activities.
- 4) Minor fixed assets

3.4 RIGHT OF WAY PLANS

When right of way plans are complete, Administrative receives a memorandum from Engineering documenting the computer link to access plans.

3.5 EXAMINATION OF TITLE EVIDENCE

Title evidence examined for determination of resulting title status is normally of two classes:

- 1) Certificates of Title supplied by title companies in the county where the property is located or by Right of Way Abstractors/Title Agents, and
- 2) Title Commitments supplied by a State Licensed Abstractor/Title Agent within the county where the property to be acquired is located.

3.6 TITLE CERTIFICATES/ABSTRACTORS SEARCH

- 1) Surveys furnishes current ownership title certificates to Right of Way. These title certificates are used by Engineering to prepare the initial right of way plans. In the case of a collector project, current ownership title certificates are provided by the Abstractors/Title Agents.
- 2) Once the plans are completed, the Administrative Section Head will assign an Abstractor/Title Agent to secure the needed certificates of title or if the workload necessitates, negotiate a contract with a local title company to furnish title work or issue a task order to an On-Call Consultant. The Abstractor/Title Agent will verify that the legal description on the certificate's deed has been accurately shown on the plans. The Abstractor/Title Agent will verify the accuracy of the section, township and range used on the plans as well as location within the county.
- 3) The Abstractor/Title Agent will search county records for the chain of title. This search may be accomplished by a search of the county records at the courthouse or using the tract books of an established title company in the area. The time span of the search is determined by the value of the property to be acquired. The search spans are as follows:

Tract Value:	Title Information:
\$500.00 or less (Current owner search)	Current owner deed Judgment and tax lien search on current owner for past 10 years (probate, chancery, and civil records) Current real estate property tax status
\$501.00 – \$5,000.00 (20-year search)	Current owner deed Copies of deeds and unreleased mortgages for past 20 years Judgment and tax lien search for past 10 years (probate, chancery, and civil records) Current real estate property tax status

<p>\$5,001.00 - \$499,000.00 (30-year search)</p>	<p>Current owner deed Copies of deeds and unreleased mortgages for past 30 years Judgment and tax lien search for past 10 years (probate, chancery, and civil records) Current real estate property tax status</p>
<p>\$500,000.00 and above (30-year search)</p>	<p>Order a title insurance policy with exceptions and requirements when the Highway Commission deed is \$500,000.00 and above</p>
<p>Department Capital Assets (30-year search)</p>	<p>Order a title insurance policy with exceptions and requirements including a mineral search</p>
<p>Mitigation (30-year search)</p>	<p>Order a title insurance policy with exceptions and requirements may include a mineral search* *Environmental Division will notify Right of Way if a mineral search is required</p>

- 4) The chain of title will include all instruments of conveyance (deeds, quiet title suits, partition orders, foreclosures, probates, etc. plus any supporting documents, court cases, deed reference, mortgages including assignments, modifications and releases). Documents such as certificates of death, affidavits, divorce decrees and property settlement agreements, declarations of trust, trust agreements, power of attorney etc. will also be included in the search.
- 5) The Abstractor/Title Agent is to search for encumbrances on the property such as mortgages, deeds of trust, mechanic or materialmen liens, foreclosure suits, etc. Include any encumbrances against the owner of record, which will attach to the property including default judgments, deficiencies in foreclosure sales, support payments, state and federal taxes, etc.
- 6) The Abstractor/Title Agent will review county tax records to determine if real estate taxes are current and assessed in the name of the owner of record. (Certification to the State is considered a change in ownership.)
- 7) If the Abstractor/Title Agent finds that roads are indicated on the deeds in the chain of title, it may be necessary to have them added to the plans (consultation with a Lead Abstractor and the Engineering Section Head is required).
- 8) The Abstractor/Title Agent should search for public road dedications in court orders. In some instances, it may be necessary to obtain a road affidavit from a County Judge or Mayor to attest to the roads impacting the area needed for right of way.

- 9) Once the search is completed, the Abstractor/Title Agent should prepare a title certificate using the above noted information. Also included on the title certificate are Abstractor's/Title Agent's Notes, which explain any problems in the chain of title (i.e. gap in ownership, incomplete legal description, etc.) or call attention to issues in the instruments (i.e. subject to mortgage; undivided fractional interest, life estate, etc.).
- 10) The source documents are then organized in date order with the most recent shown first. These are attached to the certificate.
- 11) All completed title certificates with support documentation are placed in the files to be used when the signed file is received for title review and for use in property negotiations by Acquisition.
- 12) All title certificates and source documents with unresolved title issues are flagged with a title coversheet describing the issues and submitted to the Lead Abstractor assigned to the project. The certificate and coversheet are also provided to Acquisition.
- 13) The Lead Abstractor will review the title, clear up any issues or, after consultation with the Department Title Attorney, recommend condemnation to the Acquisition Section Head.
- 14) Title certificates showing a change of ownership, sell-off from an existing tract that affects the residual area, or new tracts are submitted by the Abstractor/Title Agent to Engineering for review and update of right of way plans.
- 15) Right of way is ordinarily acquired in fee simple through the execution of a Warranty Deed. When appropriate, temporary or permanent easements for purposes of construction and/or maintenance are utilized. Title certificates are required on all tracts to be acquired.
- 16) On tracts in which the just compensation is less than \$15,000.00 title examination and document preparation will be the responsibility of Administrative. Upon completion of the search and preparation of documents by the Abstractor Aide and review by the Lead Abstractor, the file will be forwarded to Legal for approval, and the Closing Agent will complete the acquisition.
- 17) On tracts in which the just compensation is \$15,001.00 or more document preparation and review will be the responsibility of the Legal Division. The Title Attorney, under the supervision of the Chief Counsel, develops an opinion as to ownership of tracts to be acquired based on title certificates, and the Closing Agent will complete the acquisition.
- 18) Tracts having an acquisition value of between \$15,001.00 and \$499,000.00 will have at a minimum, a thirty (30) year title search performed by a Department Abstractor/Title Agent or a title company, as need demands. This search must include the same information as a formal abstract search.

- 19) For property where the acquisition value exceeds \$500,000.00, or where it is otherwise determined to be necessary, a title insurance policy is ordered from a title company, which furnishes a title commitment showing requirements to acquire a clear title. After the closing transaction, the Warranty Deed is filed, and the title company will issue a title policy.
- 20) When purchasing real property for use as a capital asset, a title insurance policy is ordered from a local title company, which furnishes a title commitment showing requirements to acquire a clear title. After the closing transaction, the Warranty Deed is filed, and the title company will issue a title policy.
- 21) When purchasing real property for use as mitigation, a title insurance policy is ordered from a local title company, which furnishes a title commitment showing requirements to acquire a clear title. After the closing transaction, the Warranty Deed is filed, and the title company will issue a title policy.

3.7 CONTRACTS TO SELL

The Contract to Sell is the document that details the negotiated settlement on parcels. The contract indicates the legal description and quantity of the acquisition (square feet and/or acreage); any items to be retained or salvaged; a bond amount if required and any administrative settlement agreed upon during negotiations. The Contract to Sell must be signed by all parties having interest in the property as indicated on the title certificate and notarized. This document is included in the files submitted by Acquisition and used as a source document in the requisition of a state warrant for payment.

3.8 AUDIT AND REVIEW PROCEDURES

Administrative personnel make a detailed audit of each payment request received to ensure compliance with procedures and that the necessary documentation has been obtained for future Federal reimbursement:

1) Procedures for Tracts Acquired Through Negotiated Settlements:

a) Administrative Audit:

- i) Administrative reviews the packet to ensure all documents are signed (including acquisition agent's certificate and notes), the acceptance letter and administrative settlement memorandum for accuracy (property owner, address, job information, acquisition agent notes are signed, signature date is on or after the contract date and amount). The administrative settlement memorandum is also reviewed for appropriate approval signatures:

Adjustment Amount	Approval Required
Up to \$10,000.00	Acquisition Section Head
\$10,001.00 to \$100,000.00	Right of Way Division Head
Over \$100,000.00	Assistant Chief Engineer – Design

- i) Administrative returns deficient packets to Acquisition for completion and continues the review process on completed packets.
- ii) The dollar amounts on Contract to Sell, temporary & permanent easements (less any administrative settlement) are compared with the appraised value; the legal description on the Contract to Sell is compared with the appraisal report; and signed documents are reviewed for proper notarization. The file is checked for inclusion of copies of the necessary documents indicating who can convey the property. A list of these items is included on the Acquisition Agent's Certificate.
- iii) For transactions with an administrative settlement, verification is made that the administrative settlement memorandum and contract value match.
- iv) The Contract to Sell is reviewed for oil and gas requirements. Property acquired for right of way should exclude oil and gas rights, but residual tracts (R tracts) and capital assets should not exclude oil and gas rights. Mitigation purchases may include oil and gas rights if deemed necessary by Environmental Division.
- v) The Contract to Sell is reviewed for proper notarization of the property owner's signature and properly prepared/executed W-9 Request for Taxpayer Identification Number and Certification. The contract is reviewed to ensure disposal of all improvements is reflected properly as to removal, retention by the property owner or the Department and true reflection of salvage value is shown.
- vi) The Department Oracle payment system is checked to determine if the Tax ID# on the W-9 is set up as a supplier for payment. If the supplier is not in the system, the information is submitted to Fiscal Services to be entered into the system per the New Supplier requirements in the Department Accounting Manual. Only tax-exempt entities defined by the IRS and government agencies are exempt for 1099 purposes.
- vii) Acceptance of file is noted by adding initials and a date on the contract. If the file is not acceptable, it is returned to Acquisition.
- viii) For acceptable packets, the tract information is entered into the right of way database. For TCE and right of entry payments, the Expenditure Type is 52440 and for all other real estate transactions the Expenditure Type is 56130.
- ix) The acceptance letter is submitted to the Division Head for approval.
- x) The acceptance letter is mailed to the property owner (in the case of multiple property owners a copy is mailed to each property owner).

b) Title Review:

- i) The title certificate and source documents are placed in the file.
- ii) The legal description from Engineering files on the "R" drive is checked using the Deed Plotter software to determine if it creates a closed parcel of property for acquisition.
- iii) The County Tax Collector records are reviewed, and current tax information is noted on the title certificate.
- iv) Inquiries are made to the Bankruptcy Court, to see if the property owners have filed for bankruptcy causing a cloud on the title.
- v) The file is forwarded to the Lead Abstractors for title review and clearance.
- vi) Each job is assigned to one of the Lead Abstractors by the Administrative Section Head. This assignment allows for an overall knowledge of a job, since often something may be noted in title work on a single tract that results in clouding the title on other tracts within the same locale.
- vii) The Acquisition Agent's Notes are reviewed to determine if there is a contract buyer, a lease or a bankruptcy, which will require additional signatures or action to clear.
- viii) The Contracts to Sell, easements, acceptance letters and appraisals are compared for consistency in dollar values.
- ix) The Contract to Sell is reviewed for correct signatures, proper acknowledgements, and notary seals.
- x) The Mortgage Authorization completed by the property owner is compared with the title certificate. In cases where there is a difference between name on mortgage authorization and the title certificate, the property owner is contacted to reconcile the difference. Assignments or mergers may be unrecorded.
- xi) If the Contract to Sell indicates that the payment is to be made to someone other than the property owners, the file is reviewed for a Payment Authorization and Concurrence form.
- xii) The title certificate and source documents are examined to verify whether the property owner has clear title to the tract.
- xiii) The legal description included on the Contract to Sell is plotted and compared with the Right of Way plans. In cases where there is a discrepancy Administrative coordinates with Engineering to rectify any changes that need to be made in the description and/or plans regarding any selloffs, change of ownerships, etc.

c) Legal Review and Document Preparation:

i) Fee Simple Acquisitions \$15,000.00 or Less:

- (1) Once all documents are in order, an Abstractor's Review is prepared for fee simple property valued at \$15,000.00 or less. The review is attached to the title certificate and Administrative prepares closing documents (documents include warranty deed; affidavit of no liens, partial release, and notice of tax exception).
- (2) Once the closing documents are prepared and reviewed on fee simple property valued at \$15,000.00 or less, the file is forwarded to Legal for approval and date is noted in the Right of Way database.
- (3) Legal performs a cursory review of fee simple acquisitions valued at \$15,000.00 or less, initials and stamps the deed, and returns the file to Administrative for closing.

ii) Fee Simple Acquisitions \$15,001.00 or more:

- (1) If the fee simple property is \$15,001.00 or more, an Abstractor's Checklist is completed and attached to the title certificate and placed in the file for review and processing by Legal.
- (2) Legal prepares a title opinion and the closing documents, as well as instructions to be followed in the closing process.
- (3) Documents are prepared by the Legal Division, reviewed and approved by the Title Attorney.
- (4) The file is returned to Administrative to begin closing procedures.

d) Transaction Closing:

- i) The Closing Agent reviews the file, noting any special instructions on the Abstractor's Review and Title Opinion.
- ii) The Closing Agent conducts a final review of the legal documents for accuracy (i.e. names, amount, legal description), and the county tax offices are contacted to determine if real estate taxes are current. The packet is reviewed for inclusion of a closing statement; state warrant(s) and a notice to property owners on tracts valued at \$5,000.00 or less, excepting any damages or in the event of a reverse mortgage, informing the property owners that the Department is not requiring a partial release and that they are responsible for forwarding any required funds to the mortgage company.
- iii) For tracts over \$5,000.00 encumbered by a mortgage, involving damages or a reverse mortgage, the Closing Agent will coordinate with the mortgage company(s) to satisfy payoff requirements and obtain executed partial releases.

- iv) Once all mortgage requirements are met and special instructions have been followed, the closing documents are either mailed to the property owner for execution or a closing appointment is made.
- v) In some instances, the Closing Agent collects property taxes that are due and payable from the property owner and submits monies to the County Tax Collector.
- vi) The Closing Agent also collects a prorated share for the current tax year only in cases where taxes are delinquent or whole takings are involved, and the collection amount is over \$50.00. The collection is recorded, and monies are submitted to Fiscal Services for deposit.
- vii) At closing, performance bonds are secured as required for the removal of improvements retained by the owner for salvage. The check and bond agreement are included in the file with the other executed documents. The monies collected are forwarded to Property Management for processing.
- viii) If it is determined through title examination that outstanding encumbrances need to be satisfied by release documents requiring payment, these documents are prepared under direction of the Title Attorney and satisfied at closing. Separate warrants are made for the mortgagee or lien holder only with the knowledge and consent of the owners.
- ix) Once the executed and notarized documents are received, signed closing statements are obtained, and state warrants are distributed to property owners.
- x) Closing date is noted in the right of way database.

e) Document Recording:

- i) Executed deeds and partial releases are forwarded to the county offices for recording.
- ii) Once the recorded documents are returned to Administrative, they are scanned and saved to the Department files and the originals are placed in the job deed file or the county file for any capital asset or mitigation purchases. A notice of tax exemption is mailed to the Assessor.

2) Procedures for Tracts Acquired Through Eminent Domain:

It may be necessary for the Department to acquire property through condemnation. This process is generally necessary because of title issues, inability to locate property owners, and inability to reach a settlement during negotiations.

a) Initiation of Condemnation is handled by the Acquisition Section (See Section 6).

b) Administrative Section Review:

- i) The condemnation file is forwarded to the Lead Abstractor for title review.
- ii) The Lead Abstractor updates the condemnation memorandum with title certificate information, reviews the regrets letter for accuracy and initials. The file is held until receipt of aerial photograph, the construction plan sheet and legal descriptions for TCEs.
- iii) Once all documents have been received, the condemnation memorandum is updated as to date and appraised value.

c) Condemnation Approval:

- i) The condemnation memorandum, regrets letter, and the file are forwarded to the Division Head for signature.
- ii) The Division Head signs the regrets letter and returns it to Acquisition for mailing.
- iii) The condemnation memorandum and file are submitted to the Assistant Chief Engineer-Design for approval.
- iv) The tract packet is returned to Administrative, and copies of the condemnation memorandum are placed in the file.
- v) The file and condemnation memorandum are submitted to Legal for processing.

d) Condemnation Reporting and Records:

Once the case is filed and the monies are deposited with the Circuit Court, Administrative receives a notification memorandum from Legal noting filing date and case information. Also included with the notification memorandum are scanned copies of the recorded Complaint, Declaration of Taking and Order of Possession, when it becomes available.

e) Judgments and Settlements:

- i) Once a consent judgment or judgment has been rendered, Legal submits a request for payment justification memorandum with a copy of the executed order, consent judgment or judgment and trial reports. Administrative calculates the additional amount of monies to be deposited to the court (including interest on jury trial judgments) and orders a state warrant through the normal payment procedures.
- ii) Once the warrant is received it is forwarded to Legal for remittance to the court.

3.9 PAYMENT PROCEDURES

Administrative personnel prepare all payment requisitions for land, relocation assistance payments or incidentals expenses incurred during the acquisition of right of way. Digital copies of all requisitions and payments are retained in the Department files. Data is entered in the right of way database.

- 1) Requisitions, Purchase Orders and Invoicing are performed per the Fiscal Services Division requirements and the Department Accounting Manual.
- 2) All checks/warrants received are scanned and saved to the files prior to distribution.
- 3) Check/Warrant Cancellation
 - a) When a warrant is cancelled, the original warrant is stamped "Cancelled".
 - b) The cancelled stamped warrant and a justification cover memorandum are forwarded to Fiscal Services for processing.

3.10 JOB COST FINALS

1) Statement of Final Right of Way Cost

A reconciliation is performed using the right of way database to review the payments made for the project. All payments for land, TCEs, vendors, condemnations, and filing fees charged to the job are shown in the right of way database. The information from the database is reconciled with the Expenditure Report from Oracle. Any discrepancies are addressed prior to completing the Statement of Final Right of Way Cost.

Once all right of way acquisition, relocation claims and property management payments (including final judgments) have been made on a project, and the reconciliation is complete, a Statement of Final Right of Way Cost must be completed and saved to the files for Fiscal Services to close out the allotment.

2) Statement of Final Utility Cost

A reconciliation is performed using the utility payments from the files and the Expenditure Report from Oracle. Any discrepancies are addressed prior to completing the Statement of Final Utility Cost.

Once all final utility reimbursements have been made on a project, and the reconciliation is complete, a Statement of Final Utility Cost must be completed and saved to the files for Fiscal Services to close out the allotment.

3.11 PROPERTY CONVEYANCE

Most conveyances of property rights (save and except the oil and gas rights) by deed to the Commission are made with warranty of title. In certain instances, title is obtained by the securing of Quitclaim Deeds/Special Warranty Deeds and in other instances by the conveyance of an easement, either through individual easement deeds, or through easement description based on a centerline description. Centerline easement

descriptions are applicable only to collector projects and State-aid projects. All individual instruments of conveyance are prepared by Legal or by Administrative under the direction of the Title Attorney.

Right of way on all interstate projects is purchased in fee simple except for TCEs. Other roadway projects are usually acquired in fee simple. Collector road projects are acquired through the county based on a County Court Order prepared from a centerline description. In these cases, the Department acquires a perpetual easement on the property and pays fee simple value. Fee ownership is retained by the original property owner and use reverts to the County should the Department cease use of the easement for highway purposes.

Other deeds, including deeds where the Commission is conveying to another party, must be composed to suit the particular occasion. The conveyance must be approved through Commission Minute Order, a copy of which accompanies the deed for recording.

1) Deeds

The usual form of a deed is comprised of the designation of the job and tract to be conveyed, together with the caption, the source of title contained in the granting clause, the consideration, the description, the Habendum clause, the covenant of warranty, the relinquishment of dower or curtesy, if any, the testimonium clause, and the signature(s) of the grantor(s). The Acknowledgment is attached through which the grantor(s) make acknowledgment of their conveyance and of their relinquishment of dower or curtesy, if relinquished.

a) Individual(s)/Partnership(s)

The printed form of the deed used is dictated by the marital status of the grantor as is the form of the acknowledgment. In instances where title is conveyed by partnerships not incorporated, the partners together with their spouses, if any, are all signatories to the deed and there is a relinquishment of dower or curtesy by each spouse, if applicable. In some instances, the form of the deed used is dictated by circumstances found peculiar to and pertinent to the conveyance.

b) Corporation(s)

In the instance of a corporation making a conveyance for right of way purposes, a Corporation Deed is executed. The duly constituted corporation official, whose capacity it is to make sales and sign deeds, executes the deed for the corporation; the official's signature is attested by a corporate employee and a corporation acknowledgment executed.

c) Group Conveyance(s)

In instances of a group conveyance, a determination is made as to the manner in which that particular group can make a conveyance both under its rules and

regulations and under State law. That group in accordance with the determination makes the conveyance in fee simple.

2) Releases

The procedure for the release of mortgages and other encumbrances is to secure either a Release or a Quitclaim Deed of the premises so encumbered to the party conveying in fee simple to the Commission. A mortgage release is not required on property with a consideration of \$5,000.00 or less, excepting any damages or in the event of a reverse mortgage.

Leases on property being conveyed to the Commission are required to be released to the proposed grantor(s) or the release holder(s) are required to join in the deed of the grantor(s) to the Commission. In some cases, an Indemnity/Hold Harmless Agreement from the landowner agreeing to take responsibility for any or all loss regarding leases will be signed.

In instances where easements exist, this interest in the property is either acquired through a release from the holder(s) of the easement to the grantor(s) prior to the taking of the deed of conveyance or is vitiated through a working agreement reached between the holder(s) of the easement(s) and Acquisition Section.

3.12 ACQUISITION OF MAJOR FIXED ASSETS

Land may be purchased by the Department for purposes other than highway right of way. Land to be used for Department facilities or mitigation, such as a District headquarters, county area headquarters, Resident Engineer offices, etc. is purchased and capitalized. The following procedures are followed for this type of land acquisition and in accordance with the Department Accounting Manual Section 40.

- 1) The requesting District or Division office submits a memorandum recommending that certain property be considered for purchase.
- 2) The State Maintenance Engineer inspects the property, and an estimate of value is requested from Right of Way.
- 3) If the proposed site meets all the necessary requirements and the estimate of value is deemed reasonable, Appraisal will prepare an appraisal report.
- 4) The State Maintenance Engineer prepares a Minute Order for purchase of the site and presents it to the Commission for approval.
- 5) Upon approval of the Minute Order, the District or Division will prepare a Special Project Authorization (Form 45-196).
- 6) Upon receipt of Form 45-196, Fiscal Services sets up an allotment, Right of Way Administrative prepares a survey cert and Right of Way Acquisition initiates the acquisition process.

- 7) Once a negotiated price has been accepted, Right of Way Administrative will obtain a title commitment. In addition to the title commitment, a mineral search may be required for mitigation land purchases if deemed necessary by the Environmental Division.
- 8) Right of Way Engineering will request a survey of the property for preparation of a deed description.
- 9) Upon receipt of an acceptable survey, Administrative submits to the Legal Division for review and a title opinion.
- 10) Upon receipt of a title opinion, Administrative prepares a requisition with the proper budget code with the Minute Order attached. The requisition is submitted through the approval process adding the State Maintenance Engineer to the approval list of the requisition. Once approved, the requisition is processed to a Purchase Order.
- 11) Administrative enters an invoice in the ERP system and marks the invoice for warrant to be returned to the Department. The Minute Order, contract to sell, and all supporting documentation are attached to the invoice.
- 12) Administrative clears the title, obtains executed conveyance documents, pays the property owner through normal procedures, the deed is recorded, and a policy is provided by the title company.

3.13 CONTROL OF ACCESS REVISIONS OR ADDITIONS

For partially controlled access facilities, the changes in the location of access breaks must be approved by the Department. Depending upon the provisions of the "Stewardship and Oversight Agreement on Project Assumption and Program Oversight by and between FHWA, Arkansas Division and the Department" (S&O Agreement), FHWA approval may also be necessary. The following procedures are followed to move access breaks on this type of facility.

- 1) The District Engineer sends a memorandum to the Division Head proposing a change in the control of access. Accompanying the memorandum is documentation supporting the change in the form of requests from the property owner and/or adjacent property owner(s).
- 2) Engineering prepares a set of plans showing the existing access breaks and the proposed change.
- 3) The Division Head forwards the request and tentative plans to the Assistant Chief Engineer-Design for approval.
- 4) Upon approval by the Assistant Chief Engineer-Design, Right of Way personnel review the proposed change to determine that private ownerships are not adversely affected; that the proper authority is making the request; and if the change impacts the property; and, if so, establish a fair market value attributable to the proposed change.

- 5) A memorandum with attached supporting documents is submitted to Roadway Design and Environmental requesting concurrence in the proposed change.
- 6) In accordance with the S&O Agreement for routes where FHWA is responsible, a letter requesting concurrence in the change in control of access is submitted to the FHWA Division Administrator. Copies of all supporting memorandums, letters, a copy of the proposed plans, and valuation attributable to the proposed change are included.
- 7) In accordance with federal regulations at 23 CFR 710.403(e), the FHWA must approve the use or disposal of all real property interests including access control for less than market value if those property interests were obtained with Title 23 U.S.C. funding (certain exceptions are set out in the referenced regulation).
- 8) After review, the FHWA informs the Department by letter of the decision regarding the access revision and when applicable, the request for marketing at less than the fair market value, and the Department provides a memorandum to the District Engineer and Engineering notifying of the decision.
- 9) For approved access changes, Engineering revises the legal description to reflect the new access breaks.
- 10) Administrative prepares a revised deed (if the original owner still retains title) or a Modification Agreement (if property has been sold since the original acquisition), and a compensation agreement if necessary.
- 11) Legal reviews the documents and stamps and initials their approval.
- 12) The documents are forwarded to the requestor(s) for execution and returned to Administrative.
- 13) Administrative files the properly executed and notarized documents.
- 14) Administrative forwards to Fiscal Services revenues collected because of the change in access to be used on other eligible projects under Title 23 U.S.C.
- 15) Upon notification of the receipt of recorded documents, Engineering makes permanent revisions to the plans and forwards copies to the District Office.

3.14 FEDERAL TAX REPORTING (1099s)

Administrative is responsible for mailing 1099 tax forms for land transactions and miscellaneous transactions.

1) 1099-S – Proceeds from Real Estate Transactions

This tax document is sent to property owners who received a real estate payment.

2) 1099-MISC – Miscellaneous Income

This tax document is sent to property owners who received rental income (including TCE and Right of Entry payments).

3) 1099-NEC – Non-Employee Compensation

This tax document is sent to vendors (consultants and contractors) who receive payments from the Department. These are generated and from the Department's accounting system and completed by the Fiscal Services Division.

3.15 REAL ESTATE TAXES

In situations where an entire parcel of property is being acquired, the Department has the statutory authority to collect real estate taxes.

- 1) In some instances, the Closing Agent collects property taxes that are due and payable from the property owner and submits monies to the County Tax Collector.
- 2) The Closing Agent also collects a prorated share for the current tax year only in cases where taxes are delinquent or whole takings are involved, and the collection amount is over \$50.00. The collection is recorded, and monies are submitted to Fiscal Services for deposit.
- 3) The next year when the books are opened for the previous year's real estate taxes, a review of collected monies is made.
- 4) The County Tax Collector is contacted to pay the previous year's real estate taxes. Since the Department is tax exempt, no payment will be made for any following tax year the property is owned by the Department.
- 5) Any prorated taxes collected and unused are to be refunded to the previous property owner.

3.16 ANNUAL RIGHT OF WAY REPORTING

1) Federal

Each year a federal report of right of way activities is prepared for the period of October 1st through September 30th. The following information is included:

- a) Real Property Acquisitions
 - i) Total Number of Parcels Acquired
 - ii) Number of Parcels Acquired by Condemnation
 - iii) Number of Parcels Acquired by Administrative Settlement
 - iv) Total Compensation Paid
- b) Residential Relocations – Information is provided to Administrative by the Relocation Section.

- i) Total Number of Residential Displacements (Households)
 - ii) Residential Moving Payments – Total Costs
 - iii) Replacement Housing Payments – Total Costs
 - iv) Number of Last Resort Housing Displacements
 - v) Number of Tenants Converted to Homeowners
 - vi) Total Costs for Residential Relocation Expenses and Payments
- b) Nonresidential Relocations – Information is provided to Administrative by the Relocation Section.
- i) Total Number of Nonresidential Displacements
 - ii) Nonresidential Moving Payments – Total Costs
 - iii) Nonresidential Reestablishment Payments – Total Costs
 - iv) Total Costs for Nonresidential Relocation Expenses and Payments
- c) Relocation Appeals under the Uniform Act – Information is provided to Administrative by the Relocation Section.
- i) Total Number of Relocation Appeals (Residential and Nonresidential)

2) State

Each year a state report of right of way activities is prepared for the period of July 1st through June 30th. All statistics on this report are shown based on task number on the payment (3150, 3151, 3160, 3161, 3470, and 3471). The task number, job number, supplier name, amount, budget, expenditure type, requisitions number, purchase order number, date invoiced, invoice number, check number, cancellation status, and any notes are included in the spreadsheet submitted to the Fiscal Services Division. This spreadsheet is reconciled with the capital outlay information and submitted to Legislative Audit.

3.17 MINOR FIXED ASSETS

The Division Administrative Assistant is responsible for the acquisition, maintenance, transfer, and disposal of all minor fixed assets. Minor assets are handled in accordance with the Department Accounting Manual Section 40.

3.18 PROCUREMENT OF SERVICES

The following procedures are to be utilized when obtaining services from outside the Department. See Department Account Manual Section 30.

1) For services estimated to cost \$20,000.00 or less.

- a) A vendor(s) in the area is contacted for an estimate of cost. The estimate must be documented using the Telephone and Verbal Quotations (Form 30-186).
- a) If the cost estimate is deemed reasonable, a recommendation for the source to be utilized is made, and a contract prepared. Both the 30-186 and the contract are submitted to Section Head for concurrence and then forwarded to the Division Head for approval.
- b) Once approved, the vendor is advised to proceed with the work.
- c) The invoice is to be paid using the "SO" procurement code for payment unless the vendor is considered a minority vendor, the purchase code is "MO".

2) Competitive Bidding

For services estimated to cost \$20,000.01 to \$75,000.00. (The limit of \$75,000.00 is absolute and should include all costs except tax.)

- b) Vendor(s) are contacted; three (3) quotes are obtained and recorded on Form 30-186. If three vendors for the type of service needed are not available, notation is made on the form. If one of the three quotes is under the \$75,000.00 limit, the award is to be made to the lowest bidder. However, if the vendor quote to be used is over \$75,000.00, the process must start again using the sealed bid procedures.
- c) A recommendation for the source to be utilized is made, and a contract prepared. If source other than low bidder is recommended, reasons are noted at the bottom of the Form 30-186. Both the Form 30-186 and the contract are submitted to Administrative Section Head for concurrence.
- d) After review by the Administrative Section Head, Form 30-186 will be forwarded to Equipment and Procurement for bid approval.
- e) After approval is received, the Form 30-186 and contract are submitted to the Division Head for authorization.
- f) The vendor and the Division Head execute the contract.
- g) The vendor is advised to begin work.
- h) The invoice is to be paid using the "CB" procurement code for payment unless the vendor is considered a minority vendor, the purchase code is "MB".

3) Sealed Bids

For services estimated to cost \$75,000.01 or more or when such bidding would result in better pricing for the Department.

- a) A memorandum is prepared with a detailed description of needed good(s) or service(s), and a copy of the specifications is attached.

- b) A requisition is prepared in Oracle with the memorandum and specifications attached using procurement code "AX". Adjust the approvers of the requisition to add the Division Head of Equipment and Procurement and the end stage (after the Right of Way Division Head approval).
- c) The requisition and additional documentation are submitted to the Division Head for approval.
- d) Once the Division Head has signed the requisition, the requisition is forwarded to Equipment and Procurement for handling of the bid advertisement (14-day advertisement unless otherwise indicated), performance bond, and bid opening.
- e) Once the Purchasing Committee has awarded the bid, a purchase order is issued by the Equipment and Procurement Division based on the award after any specified requirements (bonding, insurance, etc.) have been met.
- f) Equipment & Procurement notifies the vendor of acceptance. An approved copy of the recommendation for award is returned to Right of Way Division.
- g) The vendor is advised to begin work.

4) Appraisal Services

At the discretion of the Division Head, appraisal services may be obtained from a single provider without competitive bidding, in accordance with the Department Accounting Manual Section 30.

The hiring of appraisal services should be handled as an exempt item. This means this type of work is exempt from the competitive bidding process and coded using the EL purchase code.

- a) Quotes are obtained from at least three (3) vendors.
- b) A recommendation and contract are submitted to the Division Head for concurrence.
- c) A transmittal memorandum from the Division Head and the contract are forwarded to the Assistant Chief Engineer-Design for signature.
- d) After receiving the necessary approvals, the contract is signed by the vendor.

3.19 PROCUREMENT OF SUPPLIES

Administrative orders office supplies every two (2) weeks. Mail and Supply furnishes a Supply Stock Catalog for regular orders (in-stock items). Special orders are items not stocked by the Department. These items are only ordered with the Division Head's approval.

There are three (3) categories of items that cannot be ordered from a vendor without using the competitive bidding process. Listed below are the three categories and what they include:

- 1) Printing – printed paper documents: letterhead; envelopes; pamphlets; booklets and forms.
- 2) Stationery – imprinted letterhead and envelopes used by the General Assembly and other Departments of State government to identify a Department, Agency, Board, Commission, etc.
- 3) Supplies – paper and inks used to produce stationery (including computer printer cartridges).

When ordering items that are stocked by Equipment and Procurement, a requisition must be completed. These items include hard hats, raincoats, deicer and insect repellent. Equipment and Procurement supplies a catalog of these items. These types of requisitions are made to Equipment and Procurement and completed as the regular orders are to Mail and Supply as written above.

3.20 BUDGET PREPARATION

Fiscal Services requests that Right of Way develop a proposed budget for the upcoming fiscal year. Administrative reviews the current year's expenditures by type and projects the cost for the last quarter of the fiscal year. After reviewing the projected total cost, Administrative estimates the needed budget by expenditure type for the next fiscal year. These estimates are submitted to the Division Head for approval and forwarded to the Chief Fiscal Officer.

Once the budget is approved, Fiscal Services sends out a memorandum notifying Right of Way of the approved expense budget for the next fiscal year.

3.21 TITLE VI REPORTING

An annual report is prepared regarding Title VI – Preventing Discrimination in the Federal-Aid Project. This report documents the Right of Way's adherence to this program. Each Section is required to submit statistical data for the period of October 1st through September 30th, which is combined into a report and submitted to EEO.

3.22 MONTHLY MOBILE USAGE VERIFICATION

Right of Way employees use a Department cell phone for work related purposes. Should an employee use the telephone for personal use, they are required to reimburse the Department for those calls.

- 1) The Division Administrative Assistant receives monthly telephone bill to process for payment.
- 2) The Division Administrative Assistant prepares a cover memorandum, indicating deadline for turning in reimbursement.

- 3) The additional pages of the bill are divided by cell phone number and attached to a blank telephone log for notation of personal calls and amount owed.
- 4) A copy of the deadline memorandum, a blank telephone log to note personal calls and the individual user page from telephone bill are distributed to those field employees assigned cell phones.
- 5) All cell phone documents and reimbursements are submitted to the Division Administrative Assistant.
- 6) A summary of reimbursements is prepared and submitted with the money to Fiscal Services.
- 7) Cash receipts recording individual reimbursements are received from Fiscal Services and distributed to those field employees.
- 8) All source documents are filed for audit purposes.

3.23 OFFICE MACHINE MAINTENANCE

1) Fax Machine:

Administrative Section Administrative Assistant is responsible for maintaining the fax machine.

- a) Administrative personnel distribute incoming faxes, by notifying the office receiving the fax and placing the document in the Section mail basket.
- b) Administrative personnel order toner, drum units, and paper.
- c) Administrative personnel contact the vendor when the unit needs repair.

2) Copiers:

The Division Administrative Assistant is responsible for the maintenance and care of the copier.

- a) Administrative personnel stock 7th floor copier with paper daily. Upon request by Legal, Administrative will order paper for the 8th floor copier.
- b) Administrative personnel maintain adequate supplies to keep copier running. Cartridges are ordered from the contracted company as part of the maintenance contract. When placing an order or service call, have the serial number for the current copier available.
- c) Division Administrative Assistant personnel resolve any paper-jams or machine problems. If unsuccessful, the vendor is contacted, and a service call is requested.

3.24 AUDIT OF UTILITY BILLINGS, CHANGE ORDERS AND AGREEMENTS

Cost estimates for utility relocation agreements and change orders are audited and verified by the Administrative Section prior to approval by the Right of Way Division Head. Utility reimbursement requests are audited, verified and prepared by the Administrative Section.

- 1) Utility reimbursement requests are received by the Utilities Section and then submitted to the Administrative Section for preparation of the payment request.
- 2) The Utility Billing Coordinator reviews the invoice and verifies that all necessary information has been submitted to process the payment. If additional information is required, the utility owner is notified of the specific items or information needed.
- 3) If all required information has been submitted but a change order is needed, the Utility Coordinator assigned to the job will be contacted to prepare a change order. Only minor reconciliation change orders with less than ten percent (10%) changes in all respective categories will be prepared by the Billing Coordinator; once approved, a copy of the change order will be sent to Program Management.
- 4) When a change order is not required, the Utility Billing Coordinator confirms the mathematical accuracy of the invoice. Unit quantities and costs should be consistent with the agreement or most recent change order. Supporting documentation for each type and amount of expense should be provided. Proof of actual expenditures, such as cancelled checks or receipts, should also be included with the request (unless prior arrangements have been made).
- 5) Once all required information has been verified, the Utility Billing Coordinator prepares the Utility Payment Sheet. The completed Utility Payment Sheet, along with all supporting documents are saved to the files and processed for approval according to the Utilities Section Internal Policies and Procedures Manual.

SECTION 4

ENGINEERING

4.1 GENERAL

Engineering is responsible for the preparation and distribution of right of way plans, legal descriptions and title certificates for use in the appraisal and acquisition of property needed for construction and maintenance of state highway facilities. Appropriate detail is provided in the plans to facilitate an accurate assessment of the value of the property being acquired and to assist Right of Way personnel in the explanation to property owners of proposed impacts to the affected properties.

The Section writes legal descriptions of the proposed centerline and centerline station offsets on Secondary and State-Aid projects. Right of Way plans are created showing ownership information and acquisition areas to be utilized as additional documentation for the County Court Order.

Engineering is responsible for cataloging and dissemination of existing right of way information on all highways within the Arkansas State Highway System; preparation of exhibits used in court cases on condemned tracts and preparation of plans and descriptions for the release of surplus property and changes in control of access.

4.2 RIGHT OF WAY PLANS

Right of way plans are based on the three (3) essential elements listed below.

- 1) Parcel surveys provided by Surveys are used as the foundation of the right of way plans. These surveys are performed by Licensed Professional Surveyors according to the Requirements and Procedures for Control Surveys, Design Surveys and Land Surveys, prepared by Surveys and the current version of Standards of Practice, Arkansas Minimum Standards for Property Boundary-Surveys and Plats published by the State Land Surveyor's Office.
- 2) Roadway Design provides the construction centerline and the right of way line based on construction limits.
- 3) All land surveys are to be performed using coordinates from the Arkansas State Plane Coordinate System in which the project is projected to ground coordinates. The ground coordinates shall be based on the combination adjustment factor assigned by or approved by the Department. The ground coordinate data is used as the basis of the right of way coordinate geometry database.

4.3 RIGHT OF WAY PLAN SHEETS

Close collaboration is maintained between Right of Way, Roadway Design and Surveys to ensure the accuracy and completeness of the plans, as required for federal and state highway projects. Right of way plans should contain the following:

- 1) Title Sheet (project name and number, vicinity map with township, range, begin and end project stationing)
- 2) Survey Control Detail Sheet (Survey Control and Construction Centerline Data)
- 3) Layout Sheets (reduced scale plan sheets used when total parcel cannot be shown on the plan sheets)
- 4) Plan Sheets (11" x 17") to contain the following, as applicable:
 - a) Job number and name
 - b) County name
 - c) Scale
 - d) Ownership Block
 - e) North Arrow
 - f) Subdivisions (name, lot and block numbers)
 - g) Proposed right of way and easements
 - h) Construction Centerline with bearing and curve data
 - i) Construction limits
 - j) Centerline Station Offsets on proposed right of way, existing right of way and easements
 - k) Existing right of way on highways, county roads and city streets
 - l) Property lines
 - m) Bearings to the nearest second and distances to the nearest one hundredth of a foot on all property lines and along all sides of property to be acquired
 - n) All relevant bearings and distances from the parcel surveys
 - o) All topography and real estate improvements such as buildings, structures, fences, etc. that may affect the value of the proposed acquisition or damages to the residual property
 - p) Recorded access easements
 - q) Tract number – The following suffix codes are used for special designations:
 - A – Acquired by ASHC (Only used when a “B” tract designation is necessary)
 - B – Acquired by ASHC with outside maintenance agreement
 - E – Easement areas

- H – Advanced acquisition tracts or Hardship tracts
 - M – Mitigation tracts
 - PR – Partial uneconomic remnant tract
 - R – Uneconomic remnant tracts
 - S – Supplemental acquisition tracts
 - X – Relocation tracts
- r) Total area of each tract (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- s) Area of acquisition of each tract (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- t) Area of each easement (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- u) Residual area of each tract (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- v) Current owner information
- w) Certificate of title number
- x) Quarter Section, Section, Township and Range lines
- y) Existing survey monuments
- z) Lot schedule containing the total area of each lot, acquisition area in each lot, residual area of each lot
- aa)Revision box
- bb)Existing Right of Way Authority information
- cc)Access control (if any) including breaks in access control on partially controlled access facilities

4.4 RIGHT OF WAY PLAN DEVELOPMENT

Right of way plans and legal descriptions are prepared using the criteria, included in Sections 4.2 and 4.3, and presented in a clear and concise manner. MicroStation CADD software and Bentley Inroads software are utilized to calculate total parcel, area to acquire, residual and stationing of centerline offsets on each tract to be acquired. Size of lettering, style and width of lines on right of way plans vary in relation to their importance. The stages of right of way plan development are as follows:

1) 0%-10%

The Engineering Section Head creates a project folder and assigns the designers who performs a preliminary review of the following information:

- a) Existing right of way documents
- b) Current owner title information
- c) Electronic Roadway Design files
- d) Electronic parcel survey and design survey files

2) **10% - 20%**

Plans Designer creates electronic design and geometry files, register files on Engineering Document Manager (EDM), determines the right of way limits, requests any additional information from the Surveys Division, and checks for any relocation, railroad, state or federal involvement. Prepare right of way plans and legal descriptions for any relocation and railroad tracts.

3) **20%-30%**

Plans Designer reviews the current owner title work, compares deed descriptions to the parcel surveys, provides title certificates to Administrative Section, reviews existing right of way, and determines preliminary tract count to report to the Engineering Section Head.

4) **30%-40%**

Plans Designer sets proposed right of way, easements, and offsets, coordinates with Roadway Design on proposed right of way adjustments and creates right of way plan sheets.

5) **40%-50%**

Plans Designer creates preliminary plans set and geographic information file (KMZ) for use by Utilities Section, Relocation Section, Beautification Section and Administrative Section. The minimum requirements for the preliminary plans set are as follows:

- a) Title Sheet including Project name and number, Route and Section, County name, north arrow, Township and Range, vicinity map with begin and end project stationing.
- b) Ownership Sheet including tract number, owner names and certificate numbers.
- c) Survey Control Detail Sheet including survey control and construction centerline coordinate data.
- d) Layout Sheet including tract numbers, highway and street names, section, township, range, north arrow, section calls, total parcel areas crosshatched, project information and scaled.

- e) Plan Sheet including tract numbers, scaled, highway and street names, north arrow, station offsets, topography, parcel boundaries, proposed right of way, beginning and ending station numbers.

6) **50%-60%**

Plans Designer calculates total parcel, area to acquire, residual, and easement areas on each tract, calculates areas for the Lot Schedule as needed, prepares sign summary and encroachment summary.

7) **60%-70%**

Plans Designer updates preliminary plans to include additional information as follows:

- a) Revise Ownership Sheet to include total parcel of ownership, area of acquisition, easement areas, signs, sheet number, and project information.
- b) Revise Design and Plan models to include sign tract numbers, residual areas, curve data, subdivision names, lot and block numbers, control of access, bearing and distances, linework labels, and lot schedule.

8) **70%-80%**

Plans Designer creates a metes and bounds legal description, written in a clockwise direction around the area of acquisition and permanent easement areas on each tract. The legal descriptions are checked with the deed plotter. Legal descriptions of temporary construction easements are not written unless the tract is recommended for condemnation. The encroachment and sign summaries are prepared. All Engineering files are updated on EDM. Copies of the Right of Way plans, legal descriptions, and summaries are provided for the project review.

9) **80%-90%**

Lead Right of Way Plans Designer reviews the plans and provides corrections to the Plans Designer before distributing completed plans to appropriate Department and consultant personnel.

- a) Lead Right of Way plans Designer will review the following:
 - i) Project information (job number, name, vicinity map, begin and end stationing)
 - ii) Current owner title information (name and property boundary)
 - iii) Existing right of way (how it was established and that it matches the existing right of way documents)

- iv) Compare the Parcel Survey and Roadway Design file information (bearings and distances, monument call outs, Quarter calls, Township and Range, Subdivision names, Street names)
 - v) Construction centerline
 - vi) Proposed right of way and easement calculations
 - vii) Station and offsets calculations and correlate with Roadway Design files
 - viii) Stored figures and area calculations
 - ix) Legal descriptions (compare to finished right of way plans and check with deed plotter)
 - x) Sign and encroachment summaries (check station and offset, advertisement information and encroachment)
 - xi) Lot schedule
 - xii) Survey Control Detail sheet
 - xiii) Verify all drafting elements are on the appropriate level and all points have been stored with the correct feature
 - xiv) Check labeling of the existing right of way, proposed right of way, construction limits, control of access, property lines, easements
- b) The Plans Designer will make the review corrections to the plans and legal descriptions.
 - c) Final correlation with the Roadway Design is performed to ensure that roadway plans and right of way plans match.
 - d) The electronic copies of the Right of Way Plans, Roadway Plan and Profile sheets, legal descriptions, summaries and the KMZ files are placed in the project folder and the files are updated on EDM. A memorandum stating that the Right of Way Plans are complete is sent to Legal, the District Engineer, District Construction Engineer and other Right of Way Sections.
 - e) Appraisal Section will send a request to the Engineering Section for staking of the proposed right of way. A memorandum is sent to the Surveys Division requesting the proposed right of way and easements be staked.

10) **90%-100%**

When the project goes to contract the Right of Way plans are sent to the Reprographics Section for archiving in the Reprographics Section archive database. The project number and location are added to the existing right of way index map.

4.5 RIGHT OF WAY PLAN CHANGES

1) Request for Right of Way Plan Change

Agreements made with the property owners, revisions and errors that affect the right of way or construction plans are reviewed by Right of Way Division personnel before submitting to the Engineering Section in the form of a "Request for Right of Way Plan Change."

- a) The Appraiser or Acquisition Agent first proposes the change to Roadway Design.
- b) The Request for Right of Way Plan Change, with the appropriate signatures, is then delivered to Engineering. Engineering Section Head provides to the Lead Right of Way Plans Designer for review. The Lead Right of Way Plans Designer will direct the Plans Designer to make changes to the plans and descriptions.
- c) After the changes have been reviewed and corrections have been made, Engineering Section project folder is updated with the revised right of way plans, construction plan and profile sheets, legal descriptions, summaries and the KMZ files are placed in the project folder and the files are updated on EDM. A memorandum will be sent to the appropriate Department personnel detailing the changes. If the change has modified the proposed right of way or easement area a request for a re-stake and copy of the revised Right of Way plan sheet with the changes highlighted will be sent to the Surveys Division.

2) Updated Certificate of Title Information

During the Appraisal, Negotiations and Abstractors research, changes in current owner title information are found. They are submitted to Engineering in the form of an updated Certificate of Title.

- a) A copy is provided to the Engineering, Appraisal and Acquisition Section Heads. The updated certificate of title is given to the Lead Right of Way Plans Designer who reviews the updated certificate of title and provides the plans designer with the information.
- b) The Plans Designer verifies that the updated certificate of title covers the area of acquisition. If additional parcel survey information is required a request for additional parcel survey and the updated Certificate of Title are submitted to Surveys by memorandum.
- c) The Plans Designer revises the Right of Way Plans and legal descriptions according to the updated certificate of title and parcel survey information.
- d) After review by the Lead Right of Way Plans Designer, Engineering Section project folder is updated with the certificate of title, revised plans and legal description. The revised right of way files are updated on EDM. A memorandum is sent to the appropriate Department personnel detailing the changes.

3) Roadway Design Changes

Changes to the design that are not requested by Right of Way Division personnel are submitted to the Engineering Section by memorandum from Roadway Design.

- a) The Engineering Section Head sends the request to the Lead Right of Way Plans Designer who determines the tracts effected by the change and notifies the appropriate Sections.
- b) Lead Right of Way Plans Designer directs the Plans Designer to revise the right of way plans according to the updated roadway design.
- c) After review by the Lead Right of Way Plans Designer, the Engineering Section project folder is updated with the revised plans, legal descriptions, summaries and the KMZ files. The revised right of way files are updated on EDM. A memorandum is sent to the appropriate Department personnel detailing the changes.

4.6 PLANS AND LEGAL DESCRIPTIONS FOR PROJECTS ACQUIRED THROUGH COUNTY COURT ORDER – COLLECTOR PROJECTS

- 1) The Lead Right of Way Plans Designer saves electronic copies of the right of way plans, plan and profile sheets, court orders, and deeds that establish the existing right of way on the requested area to Engineering Section project folder. An affidavit of right of way will be sent to the District Engineer upon request by the Division Head. A link to the file is e-mailed to the Surveys Division.
- 2) The Surveys Division will access this information and provide a survey of the existing right of way and centerline.
- 3) Upon receipt of Right of Way and Utility Requirements from Roadway Design, the proposed right of way is set. The Plans Designer, under the supervision of the Lead Right of Way Plans Designer, creates electronic and geometry files and places the quarter section grid, and registers on EDM. The plans are furnished to Administrative Section for use in researching property ownership.
- 4) When the ownership information is received from the Administrative Section, the Plans Designer:
 - a) Plots the property lines and add the ownership information to the design file
 - b) Adds the surveyed existing right of way and land monument information to the coordinate geometry file and design file.
 - c) Sets station and offset points on the proposed right of way and easements. The area to acquire on each ownership is calculated and added to the plans.
 - d) Creates Survey Control Detail sheet including the survey control data, construction centerline data, coordinate data for the proposed right of way station and offset points.

- e) The legal description is written tying the project to a surveyed land monument and describes the construction centerline. The station and offsets for the proposed right of way and temporary easements are written in table form referenced from the construction centerline.
 - f) The design and coordinate geometry files are updated on EDM, and a centerline description is completed.
- 5) Lead Right of Way Plans Designer reviews the job number, name, and vicinity map, begin and end stationing, current owner title information, construction centerline, proposed right of way and easement calculations, station and offsets drafting, Survey Control detail sheet, and area calculations.
 - 6) The Plans Designer corrects the electronic design and coordinate geometry files. The files are updated on EDM and electronic copies of the certificate of title, right of way plans, and construction plan and profile sheets, and centerline description are added to the Engineering Section project folder.
 - 7) A memorandum is sent to Appraisal stating that the plans have been completed.
 - 8) Division requesting staking of the proposed right of way and easements.
 - 9) Upon notification the court order has been recorded the right of way plans are sent to the Reprographics Section to be added to the Archives and are added to the Existing Right of Way Index Map.

4.7 PLANS AND LEGAL DESCRIPTIONS FOR PROJECTS ACQUIRED THROUGH COURT ORDER – STATE AID PROJECTS

- 1) Engineering receives a memorandum from State Aid Division (State Aid) to prepare a Court Order legal description on the subject job.
- 2) The Right of Way Specialist saves electronic copies of the right of way plans, plan and profile sheets, court orders, and deeds that establish the existing right of way on the requested area to Engineering Section project folder. A link to the file is e-mailed to the Surveys Division.
- 3) The Surveys Division will access this information and provide a survey of the existing right of way and centerline.
- 4) The Right of Way Specialist creates electronic and geometry files and places the quarter section grid, and registers on EDM.
- 5) When the ownership information is received from the Acquisition Section, the Right of Way Specialist:
 - a) Plots the property lines and add the ownership information to the design file
 - b) Adds the surveyed existing right of way and land monument information to the coordinate geometry file and design file.

- c) Sets station and offset points on the proposed right of way and easements. The area to acquire on each ownership is calculated and added to the plans.
 - d) Creates Survey Control Detail sheet including the survey control data, construction centerline data, coordinate data for the proposed right of way station and offset points.
 - e) The legal description is written tying the project to a surveyed land monument and describes the construction centerline. The station and offsets for the proposed right of way and temporary easements are written in table form referenced from the construction centerline.
 - f) The design and coordinate geometry files are updated on EDM, and a centerline description is completed.
- 6) The Right of Way Specialist reviews the job number, name, and vicinity map, begin and end stationing, current owner title information, construction centerline, proposed right of way and easement calculations, station and offsets drafting, Survey Control detail sheet, area calculations, centerline description, and correlation of the Construction and Right of Way plans. Any necessary corrections are made to the electronic design and coordinate geometry files. The files are updated on EDM and electronic copies of the certificate of title, right of way plans, and construction plan and profile sheets, and centerline description are added to the Engineering Section project folder.
- 7) A copy of the plans and court order legal description are sent by memorandum to State Aid for review.
- 8) Upon completion of the review by the State Aid Engineer, Engineering Section project folder is updated with the corrected information and the files are updated on EDM.
- 9) A memorandum is sent to Acquisition Section stating the plans and legal description are complete.
- 10) Upon notification from the Acquisition Section the court order has been recorded, the plans are sent to the Reprographics Section to be added to the Archives and are added to the Existing Right of Way Index Map.

4.8 EXISTING RIGHT OF WAY

The Right of Way Specialist maintains a current file and county index map on all state highway projects. Requests for right of way information may be received in person, by memorandum, telephone, facsimile and E-Mail.

- 1) The Right of Way Research Assistant, under the supervision of the Right of Way Specialist, locates the requested area on the index map and the corresponding job number is identified.

- 2) The Right of Way Research Assistant collects the information (right of way plans, plan and profile sheets, court orders, and deeds) that will establish the existing right of way on the requested area. It is mailed, faxed or e-mailed to the person requesting the information. The request is filed in the Engineering Section Research Request folder or the corresponding project folder.

4.9 CONDEMNATIONS AND COURT EXHIBITS

1) Condemnations

Engineering receives requests from the Acquisition Section to prepare plans and legal descriptions on tracts recommended for condemnation.

- a) The Right of Way Specialist sends a copy of the request to the Lead Right of Way Plans Designer and the Plans Designer.
- b) The Plans Designer adds bearings and distances to any temporary construction easements on the tract. Legal descriptions are written for the temporary construction easements on the subject tract. Any temporary demolition easements and a legal description is written.
- c) After review by the Lead Right of Way Plans Designer, the Right of Way plans and legal descriptions are added the Engineering Section project files. The files are updated on EDM.
- d) Legal requests 8½ x 11-inch copies of the Right of Way and Construction plans showing the tract(s) that is being condemned. The acquisition and easement areas are highlighted on the Right of Way plans. The highlighted copies of the Right of Way plans and the Plan and Profile sheets are delivered to Legal.

2) Court Exhibits

Court exhibits are prepared by Engineering when tracts are condemned by Legal.

When the request for an aerial court exhibit is received from Legal, a color copy of the right of way design covering the condemned tract is generated with an aerial photograph attached. The property owner's name and tract number are labeled. Total parcel area and area to acquire and easements are delineated using different colored lines. The exhibit is delivered to Legal.

4.10 SURPLUS PROPERTY

Engineering receives requests for the release of surplus property.

- 1) When Engineering receives a request for release of surplus property the Right of Way Specialist creates a folder in Engineering's Surplus Property folder. The Right of Way Specialist makes copies of all Court Orders, Deeds, Right of Way plans, and Plan and Profile sheets of the requested area. Electronic copies are filed in the Surplus Property folder and are sent to Property Management.

- 2) When Property Management receives approval for the release of the surplus property a memorandum is sent to the Engineering Section requesting plans and a legal description be prepared on the area that has been declared surplus.
- 3) Utilizing the approved parcel survey data, the Right of Way plans are modified. Copies of the approved plans and descriptions are added to the Surplus Property folder.
- 4) The Minute Order number is added to the revised Right of Way plans when Property Management provides a copy of the approved Minute Order and recorded deed.
- 5) The revised plans are sent to the Reprographics Section and added to the Reprographics Section Archive. The Minute Order number is added to the Existing Right of Way Index Map.

4.11 CHANGES IN CONTROL OF ACCESS

When Engineering receives requests for changes in the control of access on Partially Controlled Access Facilities:

- 1) The Engineering Section Head creates a project folder in Engineering Section files.
- 2) The Right of Way Specialist collects the Right of Way plans, deeds, and Plan and Profile sheets on the control of access location. A copy of the Right of Way plan is modified to show the proposed control of access break and saved to the project folder.
- 3) Upon receipt of the approved change in control of access, the legal description is modified, and the right of way plan sheet is revised to show the change in control of access. The legal description is updated and saved to the project folder. A copy of the legal description and Right of Way plan sheet are delivered to the Administrative Section for deed preparation.
- 4) Engineering receives the recorded instrument from the Administrative Section and updates the EDM and project folder with the revised Right of Way plan information. The revised Right of Way plans are sent to the Reprographics Section and added to the Reprographics Section Archive database.
- 5) A memorandum and copies of the revised right of way plans are sent to the District Engineer.

SECTION 5

APPRAISAL

5.1. GENERAL POLICIES

Appraisal is responsible for the appraisals on right of way projects; as well as providing cost for job cost estimates and alignment studies.

- 1) The format and level of documentation for the appraisal report are dependent upon the complexity of the appraisal.
- 2) All appraisals shall conform to the Uniform Act and appropriate federal, state, and Department laws, rules, and regulations.
- 3) Appraisals shall not include any payment of relocation assistance benefits or consider that such relocation payments will be made.
- 4) Appraisals shall be independently prepared, and each appraisal must be signed by the individual(s) making the appraisal and include the appropriate certification prior to submittal for review.
- 5) Information and materials contained in the Department files may be referenced by an appraiser in support of the presentation and analysis made in setting forth the concluded opinion of fair market value.
- 6) Qualifications of all appraisers and all technicians who contribute to the report must be in the Department files or in the report.
- 7) No appraiser shall have any interest, direct or indirect, in the real property being appraised and must sign a certificate to that effect.
- 8) The minimum compensation for any acquisition is \$100.00.

5.2. VALUATION FORMATS

The forms adopted by Appraisal shall be in compliance with the Uniform Appraisal Standards for Federal Land Acquisitions and 49 CFR §§ 24.102, 103, 104 and 105. Three basic valuation formats may be used.

1) Waiver Valuation

This is an uncomplicated valuation method, which may be used for valuations of \$15,000.00 or less. A waiver valuation, also known as a Compensation Estimate, is not considered an appraisal report and does not technically qualify as one.

2) Uncomplicated Appraisals

This form may be used when the acquisition is uncomplicated, and compensation is estimated to be \$35,000.00 or less.

3) Detailed Appraisals

This format is designed to include the more complex and difficult acquisitions. Appraisals in this category range from unimproved land to extensively improved properties.

5.3. CONFLICT OF INTEREST

- 1) No Appraiser or Review Appraiser shall have any interest, direct or indirect, in the real property being appraised that would in any way conflict with the preparation or review of the appraisal.
- 2) The person preparing the waiver valuation or the person approving the waiver valuation shall have no interest, direct or indirect, in the real property being valued.
- 3) Payment and fees for making an appraisal or preparing a waiver valuation shall not be based on the amount of the valuation.
- 4) No Appraiser or Review Appraiser shall act as a negotiator for real property, which that person has appraised or reviewed.
- 5) An appraiser or acquisition agent may act as the negotiator for real property, for which that person has prepared a waiver valuation.

5.4. INVITATION TO OWNER

- 1) As soon as feasible, Appraisal staff will send a first contact letter to the property owner with notification of the Department's interest in acquiring the real property, including the Department's obligation to secure an appraisal. A questionnaire is sent with the first contact letter to request contact information and determine if there are any ownership issues to be resolved prior to completing negotiations.
- 2) The appraiser will contact the property owner to invite the property owner or the owner's designated representative to attend an inspection of the property. The appraiser shall give sufficient lead time for the owner to arrange to be present or to request an alternative time.
- 3) The property owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. The purpose of this requirement is to ensure that the owner has the opportunity to advise the appraiser of any features of the property which might affect the valuation of the property, as well as indicate any features of the property which might not be obvious to the appraiser.
- 4) The appraiser will include in the report the date of the inspection and the name(s) of the person(s) who participated in the inspection of the property. If the owner declines

the invitation to accompany the appraiser, a statement to that effect will be in the appraisal report.

5.5. JUST COMPENSATION

Just Compensation represents a full and complete equivalent (usually monetary) to the owner whose land has been taken or damaged for the fair market value of the property taking into account the value of allowable damages or benefits to any remaining property.

The Review Appraiser shall approve fair market value. In cases where the fair market value is below \$100,000.00 a staff Review Appraiser is authorized to establish the fair market value as the amount believed to be just compensation. In cases where the fair market value equals or exceeds \$100,000.00 the Review Appraiser may recommend the amount believed to be just compensation and the Appraisal Section Head will establish the amount believed to be just compensation. In no event will the amount believed to be just compensation be less than the Department's approved appraisal of fair market value and which:

- 1) Disregards any project caused decrease or increase in the fair market value of the real property taken.
- 2) Separately states the just compensation for real property acquired and the amount of damages, if any.
- 3) Identifies and includes allowable benefits.
- 4) Considers the possibility that the remaining property or portion thereof is an uneconomic remnant.
- 5) Includes compensation for all buildings, structures and other improvements located upon the property that are required to be removed, including such buildings, structures, and other improvements owned by a tenant, even if classified as personal property under state law.

5.6 WAIVER VALUATION

- 1) When the Department determines an appraisal is unnecessary because the valuation problem is uncomplicated, and the total compensation is estimated to be \$15,000.00 or less, based on analysis of available data, it will prepare a waiver valuation document.
- 2) The decision to use the waiver valuation is handled during the appraisal assignment process by the Review Appraiser or designated agent.
- 3) Even though an appraisal is not required, the Department must establish and offer just compensation for the property to be acquired. The Appraisal Section will provide support for the amount to be offered, which may include sales and/or other market information in the project area.

- 4) If the property owner requests an appraisal of the property to be acquired, the Department will prepare an appraisal.

5.7. APPRAISALS

1) General Requirements

After receiving tract assignments, the staff or fee appraisers:

- a) Review the Department's Plans (Right of Way plans and Construction plans)
- b) Prepare a Scope of Work, which is a written document between the Department and the Appraiser describing the Appraiser's work and the assignment. This will be reviewed by the Review Appraiser and will be retained in Appraisal files.
- c) Follow the requirements of 49 CFR 24.102(c) and Section 5.4 of this chapter for contacting property owners and property owner's inspection.
- d) Conduct a field inspection of affected property.

2) Uncomplicated Appraisal

This form may be used when the acquisition is uncomplicated, and compensation is estimated to be \$35,000.00 or less. The form includes a Certificate of Appraiser, a property data page which describes the property, and the comparable sales used to arrive at the indicated value. In the event of condemnation, the appraiser will be required to provide a detailed appraisal showing the before and after value of the property.

3) Detailed Appraisal

A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition and requirements found in 49 CFR Part 24. All applicable approaches to value are included. The reasons for omitting any one of the traditional approaches to value shall be clearly stated in the report.

The appraiser may be instructed to limit the appraisal analysis to one specific valuation approach. The Department may do this when inclusion of the additional approaches would not significantly add to the reliability and support of the final estimate of value.

5.8. JOB COST ESTIMATES

Job Cost Estimate refers to a preliminary estimate of right of way costs for a particular project to be used by the Department in considering budget priorities.

- 1) Engineering will furnish Appraisal with a set of preliminary Right of Way plans. These preliminary plans are used to establish an estimated cost of acquiring the needed right of way for the project.

- 2) A staff appraiser will make a field inspection of the proposed project and collect limited market information in order to determine estimated land and improvement values.
- 3) A memorandum is sent to Administrative indicating the estimated cost of acquiring the needed right of way.

5.9. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) vs. 49 CFR PART 24 REQUIREMENTS

Although the appraisal reporting standards of USPAP and 49 CFR Part 24 are generally compatible, the Uniform Act regulation requirements are somewhat more restrictive and must be recognized by any licensed appraiser who is preparing an appraisal report for the Department. The following are some of the more detailed Uniform Act regulation requirements, as opposed to basic USPAP requirements.

- 1) The report must contain a 5-year sales history of the subject property as opposed to a 3 years sales history.
- 2) The appraiser must disregard any project valuation influence on the before value of the property being appraised.
- 3) Any comparable sales must be verified by a party to the actual transaction.
- 4) The property owner, or their representative, must be offered the opportunity to accompany the appraiser during their inspection of the real property being acquired.
- 5) Any appropriate non-compensable damages must be set out in the appraisal report.
- 6) Any tenant-owned real property must be identified in the appraisal report.
- 7) The appraisal report must set apart real property vs. personal property to the extent warranted.

5.10. NUMBER OF APPRAISALS

- 1) The Department will make two reports on any tract, regardless of the amount, if warranted by the complexity of the appraisal problem when the Appraisal Section Head, after consultation with the Review Appraiser(s), believes it is justified.
- 2) The Department will make two reports on any tract, regardless of the amount, on any appraisal problem deemed necessary by the joint determination of the Legal and Right of Way Divisions.

5.11. COMPARABLE SALES

Staff Appraisers and Fee Appraisers shall develop a Sales Brochure for projects acquired in fee; thereby, saving the time and expense of duplicate individual data searches. Sales shall normally be limited to transactions that have occurred during the past five years, unless there has not been sufficient market activity within this period of

time. If subject property was a sale within the past five years and the appraisal value deviates from the sale price, the appraiser shall give adequate reasoning for the difference.

Individuals concerned about potential appraiser ethics conflicts between the Uniform Standards of Professional Appraisal Practice (USPAP) and the minimum appraisal standards required by FHWA should note that the Appraisal Standards Board has determined the provisions of 49 CFR 24.103 and 104 are consistent with USPAP.

5.12. APPRAISAL REVIEW

In accordance with 49 CFR 24.104, the Review Appraisers review appraisal and specialty reports of real property to be acquired in connection with State and Federal-aid programs or projects to establish an amount believed to be just compensation for such acquisition before the initiation of the negotiations or the exercise of eminent domain.

- 1) The Review Appraiser examines the appraisal report to determine that it:
 - a) Is completed in accordance with the Department's appraisal specifications and/or contract (for Fee Appraisers).
 - b) Adheres to accepted appraisal principles and techniques in the valuation of real property in accordance with federal, state, and Department laws, rules, and regulations.
 - c) Contains or references the information necessary to explain, substantiate, and document the conclusions and estimate of fair market value.
 - d) Considers compensable items, damages and benefits, if any, and does not include compensation for non-compensable items.
 - e) Contains an identification or listing of the buildings, structures, and improvements on the land as well as the fixtures, which were considered as part of the real property.
 - f) Contains an estimate of fair market value for the acquisition, and where appropriate in the case of a partial acquisition, an allocation of the estimate of fair market value for the real property and for damages to the remaining property.
- 2) Prior to approving an appraisal and recommending or approving just compensation, the review appraiser:
 - a) Requests and obtains from the appraiser any needed corrections or revisions.
 - b) Makes minor corrections, such as mathematical ones, and note and initial his/her action.
 - c) Makes comments and provides additional supporting data as necessary, then initialing.

- 3) Upon completion of the review, the Review Appraiser reaches one of three possible conclusions:
 - a) The appraisal is recommended or approved as the basis for just compensation in accordance with Section 5.5;
 - b) The appraisal is accepted but not recommended or approved; or
 - c) The appraisal is not accepted.
- 4) The review appraiser also attaches a signed and dated certification to the appraisal report setting forth:
 - a) The estimate of just compensation including, when applicable, an allocation of compensation for the real property acquired and for damages to the remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which are considered to be a part of the real property to be acquired, if such allocation or listing differs from that in the appraisal(s).
 - b) Whether or not field inspections of the subject tract and the comparable sales were a part of the appraisal review. If a field inspection was not made, the reason(s) should be recited.
 - c) That the review appraiser has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from its acquisition.
 - d) That the estimate of just compensation has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.
 - e) If appropriate, a value estimate of items compensable under State law but not eligible for Federal reimbursement.
- 5) Upon completion of the review process, the fair market value is approved by Review Appraiser and just compensation is established by the Division Head or LPA official, as required.

5.13. FEE APPRAISERS

Fee Appraisers and specialists may be employed to provide cost studies, estimates or appraisals when:

- 1) Department staffing is insufficient to perform the work within a reasonable time.
- 2) A fee appraisal or specialist report is needed for use in a condemnation case.
- 3) The unusual character of the work requires the services of a person(s) with highly specialized knowledge and experience not available on the Department staff.
- 4) Fee Appraisers will conform to appraisal procedures included in Section 5.7 and 5.9-5.11 of this manual.

- 5) Contracts, agreements, or assignment letters for fee appraisal and specialist services will be handled in accordance with 23 CFR 635 Subpart A, 49 CFR 18.26 and Section 3.18 of this manual.

5.14. VALUATION OF LEASEHOLD INTERESTS

A leasehold interest may exist in a property that is under a lease. A lease is distinguished from month to month rent by a time frame terminating the rent. A positive leasehold interest exists only when economic rent or market rent exceeds actual rent. The positive leasehold is an advantage to the tenant and creates an economic interest in the property.

5.15. VALUATION OF TENANT-OWNED IMPROVEMENTS

- 1) 49 CFR, 24.105 (c), requires that all buildings, structures and improvements located upon the property to be acquired, or which will be adversely affected, be considered real property, even if owned by a tenant who is required to remove such buildings, structures or improvements, at the expiration of the lease. This regulation will apply even if the buildings, structures or improvements are considered personal property under State law relating to landlord and tenants or taxation.
- 2) Any buildings, structures or other improvements 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 real property for appraisal purposes.
- 3) Just compensation for a tenant-owned improvement is the amount the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.
- 4) No payment shall be made to a tenant-owner for any real property improvement unless:
 - a) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Department all of the tenant-owner's right, title, and interest in the improvements; and
 - b) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
 - c) The payment does not result in the duplication of any compensation otherwise authorized by law.

5.16. TEMPORARY AND PERMANENT EASEMENTS

- 1) It is often necessary during highway construction to obtain land for temporary purposes. Since the Department does not wish to burden itself with excess property, land needed for these purposes is conveyed in the form of a temporary construction easement that reverts to the property owner upon completion of construction. When appraising property that is to be affected in this manner, the Appraiser will estimate

the fair rental value and add any damages that may accrue as a result of the Department's use of the land.

- 2) Permanent construction easements may be required for purposes such as drainage, access or other highway purposes as determined by the Department. Permanent construction easements are appraised as if the fee interest is being acquired, and the remaining lands are treated accordingly.

5.17. UPDATED OR REVISED APPRAISALS

- 1) At the discretion of the Appraisal Section Head, an updated or new appraisal will be obtained should the following affect the property value:
 - a) Additional information presented by the property owner,
 - b) A material change in the character or condition of the property, or
 - c) A significant time delay since the most recent appraisal.
- 2) Whenever an appraisal is updated or revised, the Appraiser or Review Appraiser will stamp the notation "Revised Appraisal" on the front of the report and include a brief note explaining the circumstances necessitating an updated or revised appraisal. The previous appraisal will be clearly marked "Void" by the Review Appraiser and retained for documentation purposes.

5.18. ROADSIDE SIGNS

- 1) On-premise signs considered as real property to be acquired are recognized and itemized in the appraisal.
- 2) If the sign is a part of the real estate, it is appraised as any other improvement that is located on the property and a salvage value should be assigned.
- 3) Any sign or billboard that is erected and encroaching on existing right of way is not eligible for consideration within the appraisal.
- 4) If any doubt or question arises concerning the payment for roadside signs, the matter should be resolved by Right of Way, Legal and Environmental.

5.19. DAMAGES AND BENEFITS

- 1) Arkansas Case Law requires that just compensation is to be established by determining the difference between the fair market value of the whole property immediately before the taking and the fair market value of the remaining lands immediately after the taking.
- 2) The Arkansas Supreme Court has held that where the public use for which a portion of a property owner's land is taken so enhances the value of the remainder property so as to make it of greater value than the whole property before the taking, the property owner has received just compensation in the form of benefits.

- 3) In instances where the remainder is diminished in value by the taking, the courts have awarded "severance damage." Severance damage is the difference between the value of the remainder before the taking and the value of the remainder after the taking.
- 4) The following is a list of items which in and of themselves are not compensable in highway condemnation cases in Arkansas. This list is not inclusive of all non-compensable items.
 - a) Loss of business profits (possible exception - farm property).
 - b) Loss of goodwill.
 - c) Interruptions of or loss of business, inconvenience, etc. during temporary period of construction.
 - d) The loss of expected profits from a projected subdivision.
 - e) Loss of tenants, business, etc. because of anticipated taking.
 - f) Damage to personal property and moving expense.
 - g) Cost of obtaining or inability to obtain new quarters.
 - h) Annoyance, discomfort, dust, etc. during period of construction.
 - i) Diversion of traffic.
 - j) Circuitry of travel.
 - k) Inability to gain access to a newly located highway. (This does not necessarily exclude severance damages where a unit of land has been severed.)
 - l) Dust, and other such items incident to living on a public highway.
 - m) Bringing about the change in the character of the neighborhood.

5.20. CONDEMNATION

When the Division Head and the Assistant Chief Engineer-Design have determined that property must be acquired by condemnation and the case resolved in Court, Appraisal coordinates with Legal to prepare for trial. In some cases, the attorney handling the case requests an additional appraisal through the Chief Legal Counsel.

5.21. RECORDS

Project records are maintained by Appraisal personnel. The records are entered into a computer database file.

5.22. SURPLUS PROPERTY

The only specific reference to the valuation of surplus highway property is found at Arkansas Code Annotated 27-67-322.

- 1) A.C.A 27-67-322(c)(3), requires that the market value of the remnants or portions of parcels acquired as right-of-way shall be determined by two (2) appraisers certified or licensed under A.C.A 17-14-101 et seq. This applies to situations where a portion of a tract purchased as right-of-way is being sold to a former owner or assignee.
- 2) A.C.A 22-67-22(d) provides that the market value of real property and improvements acquired as capital assets, which includes real property acquired by the ASHC and improved with offices shops, storage yards, or other necessary facilities, or property purchased as an uneconomic remnant, shall be determined by two (2) appraisers licensed under the Arkansas Appraiser Licensing and Certification Act, unless the market value of the real property is less than \$50,000.00, in which case the market value shall be determined by one (1) appraiser certified or licensed under the Arkansas Appraiser Licensing and Certification Act.

5.23. MISCELLANEOUS ITEMS

- 1) An Appraiser may be assigned to assist on any valuation issues, project field inspections, right of way estimates and cost comparisons needed for any phase of project development.
- 2) Fences not shown on plans as construction items are included in the appraisal report.
- 3) Structures, water wells, driveways and entrances are considered in the appraisal report as to their contributory value to the property.
- 4) Merchantable timber on timberland is graded and quantified by a qualified appraiser and shown in the appraisal report as to its market value.
- 5) Crop appraisals are made on crops which will not be harvested prior to entry by the contractor.
- 6) With the exception of capital assets and uneconomic remnants, oil and gas mineral rights are not acquired by the Department. Special appraisals may be necessary due to physical involvement of existing production facilities or due to disruption of proposed plans for production or exploration. Minerals such as rock and coal that involve extensive surface rights are considered in the appraisal report based on their contribution to the property.
- 7) Salvage values on all major improvements are estimated in accordance with market information.
- 8) Economic rents are estimated from market information and provided to Relocation.

- 9) The Review Appraiser will review appraisals submitted by property owners in a similar manner as Department commissioned appraisal reports, and comment on the findings.

5.24. HAZARDOUS WASTE SITES

Hazardous waste is an area of concern, as the potential liability of a hazardous waste site or sites within the project alignment can seriously affect proposed projects.

The Appraiser must closely examine the subject property and every sale for issues related to possible contamination and be aware of the past uses of the property and the surrounding area. If past uses indicate potential of contamination, these sales will be subject to further investigation.

SECTION 6

ACQUISITION

6.1. GENERAL

The Arkansas Department of Transportation (the Department or Department) intends to acquire all needed right of way in an expeditious manner, minimizing litigation and fostering public confidence in federally assisted real property acquisition programs. Property owners shall be treated fairly and consistently. All negotiations are conducted with the goal of ensuring property owners receive just compensation in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) and applicable Arkansas State laws.

The Department recognizes the importance of transparency, consistency, and timely communication in all acquisition efforts. Acquisition staff must act professionally and respectfully, maintaining the highest standards of public service throughout the negotiation and acquisition process. The dignity of every property owner must be respected, and efforts should be made to provide a clear understanding of the project's purpose, timeline, and impact on individual properties.

To achieve this, the Department acquisition staff will:

- 1) Maintain clear and courteous communication with property owners and their representatives.
- 2) Provide comprehensive documentation explaining the acquisition process, legal rights, and the valuation basis for the offer.
- 3) Coordinate with other Department divisions and Right of Way sections, such as Environmental, Roadway Design, Appraisal, and Relocation, to ensure a seamless experience for affected property owners.
- 4) Work diligently to resolve questions, address property owner concerns, and provide opportunities for discussion and review before recommending with any legal action.
- 5) Maintain project records in the Right of Way database.

It is the Departments desire that acquisition policies and processes reflect fairness, professionalism, and integrity, minimizing hardship while efficiently delivering transportation improvements for the benefit of the public.

6.2. NEGOTIATION REQUIREMENTS AND ACTIVITIES

- 1) Negotiations may begin after the Department receives Authority to Acquire from the Federal Highway Administration (FHWA), appraisals or waiver valuations have been completed, and any necessary relocation studies have been finalized. Issues such as title discrepancies or design revisions are reviewed with the Acquisition Section Head.

- 2) Upon initiating project activities, the Acquisition Section Head will review tract packets to assess their complexity. Assignments will be made accordingly, with complex or high-impact acquisitions delegated to Acquisition staff agents or specialists (collectively Acquisition Agents) with advanced experience.
- 3) Acquisitions involving displaced persons are coordinated with Relocation so that the Acquisition Agent and Relocation Coordinator can schedule a simultaneous visit to the property owner, if possible. It is the Acquisition Agent's responsibility to notify Relocation of the first scheduled appointment with the property owners.
- 4) The Acquisition Agent shall make reasonable and documented efforts to locate and contact the property owner, their heirs, or designated representatives. If contact cannot be made after sufficient attempts, the matter is reviewed by the Acquisition Section Head to determine whether all avenues of contact have been exhausted. If so, appropriate legal proceedings may be recommended.
- 5) The Acquisition Agent will inform the property owner of the public necessity for the proposed highway improvement as it affects the property. The property owner will be presented with the following information: Acquisition Brochure, Offer Letter, copy of the waiver valuation or appraisal (as applicable), Right of Way Plans, Construction Plans, and Mortgage Authorization Form. Other documents applicable to the specific project may also be provided including but not limited to cross sections, standard drawings, and construction specifications.
- 6) The property owner will be presented with an offer letter summarizing the basis for the total amount offered for the acquisition, including compensation for the real property to be acquired and any severance damages to the remaining property. If applicable, an offer letter to purchase the residual property will also be presented. The Arkansas Supreme Court has held that where the public use for which a portion of a property owner's land is taken so enhances the value of the remainder property as to make it of greater value than the whole property before the taking, the property owner has received just compensation in the form of benefits.
- 7) The Acquisition Agent will explain the waiver valuation or appraisal to the property owner and clarify that the offer reflects the full amount of just compensation. While avoiding legal advice, the agent will inform the property owner of their rights under eminent domain law, including that unresolved matters may be addressed through legal proceedings in Circuit Court, where the property owner's rights will be fully considered.
- 8) The Acquisition Agent will advise the property owner that they are allowed reasonable time to review the offer and may submit additional information believed relevant. The Department will consider such information, although not obligated to revise the offer. The Department will evaluate such information and respond appropriately. Issues such as title discrepancies or design revisions are reviewed with the Acquisition Section Head.

- 9) At the time the offer is presented, the Acquisition Agent will identify and explain any support documents needed to complete the transaction. These may include a copy of necessary trust documents, corporate documents, partnership agreement, etc. The Acquisition Agent will ask the owner the questions on the Acquisition Agent Checklist to determine if there are any ownership issues to be resolved prior to completing negotiations.
- 10) When personal contact efforts are unsuccessful or impractical (e.g., out-of-state owners), the property owner will be contacted via certified mail or other acceptable means. A letter requesting timely response will be mailed to the address on record.
- 11) In cases where attempts to contact the property owner have failed and the Department is unable to negotiate for the property, the property owner is mailed a condemnation letter restating the Department's intent to acquire and making a final offer of just compensation.
- 12) Leasehold interests or tenant-owned improvements will be handled in the same manner as fee interests. Releases from the fee interest holder must be obtained during negotiation.
- 13) Negotiations shall not commence until the Department has established just compensation for the property to be acquired. The amount offered shall not be less than the approved appraisal or waiver valuation.
- 14) When a waiver valuation is used, the same person may establish market value and negotiate on acquisitions with a value of \$15,000.00 or less.
- 15) The Acquisition Agent shall make reasonable efforts to contact the property owner, heirs, or representatives. If personal contact is not feasible, the offer and related materials will be sent via certified mail with return receipt.
- 16) All negotiations will be documented in the Acquisition Agent's Notes, detailing each contact, method, location, discussion points, and property owner responses.
- 17) Coercive actions are prohibited. This includes deferring negotiations, advancing or delaying condemnation to influence agreement, or employing intimidation or undue duress.
- 18) Negotiations conclude when:
 - a) The property owner agrees to the offer.
 - b) The Acquisition Section Head deems, and the Right of Way Division Head concurs, that further contact would be unproductive.
 - c) The property must be acquired immediately for project advancement.

6.3. TRACT PACKETS

- 1) Upon receipt of appraisals or waiver valuations, Administrative Assistants will prepare tract packets. Generally, tract packets will include:
 - a) Acquisition Agent's checklist and certification
 - b) Offer letter
 - c) Contract to Sell
 - d) W-9
 - e) Mortgage Authorization
 - f) Title certification
 - g) Right of Way and Construction Plans and Cross Sections
 - h) Any additional documentation as required
- 2) Tract packets with improvements are reviewed by Property Management to determine handling or bonding requirements.
- 3) After review, packets are assigned to Acquisition Agents who verify accuracy and completeness.
- 4) Agents must confirm all documents align with the appraisal and right of way plans, then present the packet to the property owner.
- 5) The Acquisition Agent signs and dates their certification upon receipt of an executed Contract to Sell.
- 6) Tract packets are returned to the Administrative Assistant for updates of the Project Log, preparation of acceptance letters and transmittal memorandums, and submission to the Acquisition Section Head for review and approval.
- 7) Upon approval, tract packets are sent to Administrative Section for further processing.

6.4. NEGOTIATION ACTIVITIES – COURT ORDER PROJECTS

- 1) The Preliminary Right of Way Coordination (PRWC) for the project occurs upon receipt of the preliminary design plans. Those who are requested to attend the PRWC include the County Judge, District Engineer, representative of Roadway Design, and representatives from Acquisition, Utilities and Relocation, if necessary. The purpose of the PRWC is to:
 - a) Allow each representative the opportunity to inspect the project with attention given to items such as drainage, road grade, home sites, improvements and utilities and the impact that the proposed acquisition will have on each of these.

- b) Identify necessary adjustments to the right of way limits or the alignment of the road to be recommended where it is deemed feasible.
 - c) Identify problem areas, suggests revisions, and documents findings in a report. If applicable, the report will note any changes to the plans that were agreed upon during the inspection.
 - d) Explain the project and the Court Order process to the County Judge.
 - e) Obtain agreement from the County Judge that, if condemnation is necessary, the County Judge will execute the Court Order with the understanding that the Department will be responsible for all costs involved.
 - f) Present the proposed letting date and the right of way acquisition schedule to the County Judge.
- 2) Improvements located within the proposed acquisition and any adjustment of man-made features, including utility facilities, will be identified so that the responsibility for handling these items can be stipulated within the report.
 - 3) Engineering prepares a centerline description and delivers it to Acquisition.
 - 4) Appraisal completes a valuation and transmits them to Acquisition.
 - 5) Negotiation activities are conducted in accordance with the all applicable federal, state, and Department laws, rules, and regulations in Sections 6.2 and 6.3 of this manual. If displaced persons are involved, appraisals are completed and sent to Relocation and Acquisition for handling.

6.5. REVISED APPRAISALS

If a revised appraisal is required, the property owner is notified and provided the updated valuation once available.

6.6. CONTRACT TO SELL AND COMPENSATION DOCUMENTS

- 1) Upon agreement, the owner signs the appropriate compensation documents. Compensation documents may include but are not limited to the Contract to Sell, Agreement for Compensation, Temporary Construction Easements and/or Permanent Construction Easements. The Compensation Document(s) record all terms of the transaction and are used to authorize payment to the property owner for the acquired property.
- 2) If the property owner retains improvements on the acquired land, the Compensation Document(s) shall specify the appraised salvage value of the improvements.
- 3) The Compensation Document(s) must include the time for removal of improvements if retained by the property owner.

- 4) A bond may be required to ensure removal and clearance of improvements by the property owner, as determined by the nature of the acquisition.
- 5) The appropriate documents are notarized, and the final package is submitted to Administrative for further processing.

6.7. ADMINISTRATIVE SETTLEMENTS

- 1) Counteroffers are evaluated and may result in an administrative settlement.
- 2) Approval authority:

Adjustment Amount	Approval Required
Up to \$10,000.00	Acquisition Section Head
\$10,001.00 to \$100,000.00	Right of Way Division Head
Over \$100,000.00	Assistant Chief Engineer – Design

- 3) Administrative settlements will consider the following:
 - a) All available appraisals, including property owner's appraisal.
 - b) The approved amount of just compensation.
 - c) Recent court awards for similar type properties.
 - d) Information recorded in the Acquisition Agent's Narrative.
 - e) The range of probable testimony as to fair market value should condemnation be filed.
 - f) The estimate of trial cost considered in conjunction with other information.
 - g) The opinion of legal counsel when appropriate.

6.8. DONATIONS

Owners may donate property or a portion of their property to the project. The property owner must be informed of their right to receive just compensation for the property and the option to have the property appraised. An appraisal is required unless the valuation issue is uncomplicated, and the value is less than \$15,000.00. If the owner decides to donate, the owner will sign the Donation Agreement provided by the Department.

6.9. DONATIONS FOR CONSTRUCTION FEATURES

In accordance with 23 CFR 710.505(c), the Department may accept a property owner's offer to donate property or a portion of their property in exchange for construction features that will benefit the property owner. The construction features may include, but are not limited to, improvements such as driveways, roads, utilities, or landscaping that enhance the property. If the fair market value of the property donated exceeds the cost of the construction feature, the Department will pay the difference to the property owner.

Conversely, if the cost of the construction feature exceeds the fair market value of the property donated, the property owner will be required to pay the difference.

6.10. CONDEMNATION

1) CIRCUMSTANCES FOR CONDEMNATION

The Department will take every available precaution to ensure that it does not advance the time to condemn or defer negotiations. The Department will acquire the needed property through an eminent domain lawsuit as outlined in this manual under the following circumstances:

- a) The Department and the property owner(s) are unable to reach an agreement.
- b) The owners of record cannot be reached.
- c) Other issues prevent the transfer of clear title.

2) INITIATION OF CONDEMNATION

a) Fee Simple Acquisitions Projects

- i) The Acquisition Section Head, after consultation with the Division Head, will recommend that condemnation proceedings be initiated.
- ii) A Condemnation Memorandum is signed by the Division Head.
- iii) Administrative Section requests updated title work, an aerial photograph, and legal descriptions for temporary construction easements (TCEs) with a requested completion date.
- iv) A condemnation letter to the property owner is prepared, and Administrative Section reviews it for accuracy.
- v) The signed regrets letter is returned to Acquisition to be mailed to the property owner.

b) Court Order Projects

The Department will recommend condemnation to the County Judge. The County Judge will initiate an eminent domain lawsuit.

- a) A Condemnation Memorandum is signed by the Division Head and sent to the County Judge for approval.
- b) The tract packet is sent to Administrative Section for updating the title to the current date and ordering a check for County. Once the state warrant is received, it is forwarded to the Acquisition Section for delivery to the County Judge.
- c) The County Judge will direct the Sheriff to serve a copy of the recorded County Court Order to each property owner condemned.

6.11. RIGHTS OF ENTRY

In exceptional cases, and with owner approval, a Right of Entry may be used to permit construction access prior to payment or title transfer.

6.5. FEDERAL LAND TRANSFERS

The procedures to be followed in event of a Federal Land Transfer are developed with reference to Chapter 1 and Chapter 2 of Title 23 United States Code, 23 CFR 710.601 and Memorandum of Understanding between FHWA and the U. S. Forest Service (FS) dated November 23, 1999, and in accordance with the Manual for Federal Land Transfers for Federal-Aid Projects dated February 27, 2009. Federal Land Transfers with agencies other than the three specified will use the procedures set forth for the National Park Service.

1) Forest Service (FS)

- a) Environmental notifies the Forest Service (FS) and FHWA by letter of the need for federal property in the construction of a highway project.
- b) Environmental coordinates with FS to determine if the appropriation of the lands or interest in lands for the highway is consistent with the National Forest Land and Resource Management Plan (Forest Plan). If the proposal is consistent with the Forest Plan, a time schedule will be developed to assure that the requested appropriation will be processed within a reasonable time. If the proposal is not consistent with the Forest Plan, the FS will determine whether the proposal justifies a plan amendment. If so, then a time schedule will be developed for the completion of the plan amendment prior to processing the requested appropriation.
- c) Roadway Design will coordinate a field inspection with the FS to aid in the determination of right of way and utility requirements. Roadway Design will submit the requirements to the FS and the Department.
- d) Environmental will provide an environmental analysis of the proposed project, and the FS will act as a cooperating agency or in limited situations, as a joint lead agency in the development of any required NEPA document. FHWA and the FS will coordinate on the determination of the appropriate environmental analysis.
- e) The FS will respond with a decision memorandum indicating any stipulations and conditions.
- f) Environmental and Roadway Design will review the FS response and determine if the Department can accommodate all stipulations and conditions. The two (2) Divisions will resolve any issues with the FS.
- g) Once agreement is made regarding stipulations and conditions, Right of Way will request for Legal to prepare an easement deed.

- h) Upon receipt of the easement deed, Administrative will prepare a letter of application to FHWA for the property including copies of the plans; a legal description of the property needed; a copy of the environmental documentation, any special provisions, and the easement deed for the transfer.
- i) FHWA will submit a letter to the FS requesting the "Letter of Consent" for the Federal Land Transfer and requests any additional stipulations. This letter will also serve as a transfer of authority to FHWA to convey the property.
- j) Upon receipt of the Letter of Consent, FHWA will execute the highway easement deed and transfer the deed to the Division Head for execution.
- k) Administrative will have the deed recorded.
- l) A copy of the recorded deed will be returned to FHWA for distribution to the FS.

2) National Park Service (NPS)

- a) Environmental notifies FHWA and National Park Service (NPS) by letter of land needed for a proposed highway project.
- b) Environmental notifies the affected NPS facility of the proposed Federal Land Transfer.
- c) Environmental prepares and develops the required NEPA evaluation and actions. The NPS will act as a cooperating or joint agency in developing the required NEPA document.
- d) Right of Way submits a request for a federal land transfer to FHWA. The request includes: purpose for which land is to be used; the estate or interest in the land required for the project; the Federal-aid project number; the name of the Federal Agency exercising jurisdiction over the land and identity of the installation in possession of the land; a map showing the survey of lands to be acquired; legal description of the lands desired and a statement of compliance with NEPA and any other applicable Federal environmental laws.
- e) FHWA requests consent from the NPS for the transfer of land to the Department.
- f) If the NPS consents to the transfer, FHWA and the Department negotiate with NPS to reach a determination of mutually acceptable conditions, including stipulations. After conditions are decided, Legal drafts a deed including these conditions.
- g) The draft deed is submitted to FHWA, which forwards the document to the NPS along with all documentation, including plans and environmental documentation.
- h) Upon acceptance by NPS, the Division Administrator executes the deed and transfers it to the Division Head for execution.
- i) Administrative records the deed and sends a copy to NPS.

3) Department of the Army

Any property needed for a highway project involving property owned by the US Army is handled through the normal negotiation and payment process, not as a Federal Land Transfer.

SECTION 7

LOCAL PUBLIC AGENCIES

7.1. RIGHT OF WAY AND UTILITY ADJUSTMENTS

Whenever right of way acquisition is the responsibility of a Local Public Agency (LPA), the Right of Way Division will assist by coordinating right of way inspections and supplying the LPA with the materials necessary to complete right of way activities.

Right of Way Division will verify that right of way acquisition and utility adjustments have been handled in compliance with all appropriate provisions of the Uniform Act, pertinent Federal Regulations, ARDOT Right of Way Operations Manual, and the Stewardship and Oversight Agreement.

7.2. PRELIMINARY RIGHT OF WAY CORRELATION (PRWC) INSPECTION

- 1) Right of Way Acquisition Specialist will schedule a field inspection on local road projects when Roadway Design has completed the preliminary design for the project. Individuals who may be involved with this inspection are:
 - a) County Judge or Mayor
 - b) District Engineer
 - c) Representative from Roadway Design
 - d) Representative from Utilities Section
 - e) Right of Way Acquisition Specialist
- 2) The project is inspected, and the plans are reviewed with attention being given to items such as drainage, road grade, home sites, improvements, and utilities and the effect that the proposed right of way may have on each of these. Attendees should identify potential problem areas and suggest right of way revisions to be incorporated into the final design plans. If approved by the Design Engineer, suggested adjustments to the right of way limits or the alignment of the road may be made.
- 3) The Right of Way Acquisition Specialist will identify property lines, whenever possible, indicate them on the construction plans and provide the marked-up plans to Engineering for further handling.
- 4) The Right of Way Acquisition Specialist is responsible for preparing a written report relative to the findings as determined by the PRWC inspection.
 - a) The report will note any changes to the plans that were agreed upon during the inspection.

- b) The report will identify the responsible party(s) for specific right of way activities and adjustment of man-made features, including utility facilities.
- c) The report is reviewed and approved by the Division Head and Assistant Chief Engineer - Design and distributed to the parties that were present at the PRWC.

7.3. COURT ORDER PROCESS

1) Preparation of The Court Order

- a) Upon receipt of preliminary construction plans from Roadway Design or State Aid, Right of Way will examine the county tax records to determine the correct owner of each parcel of land abutting the proposed improvement.
- b) Upon receipt of ownership information and right of limits from Roadway Design or State Aid, Engineering will prepare the Right of Way plans and centerline description in accordance with this manual.
- c) Upon receipt of the Right of Way plans and centerline description from Engineering, Acquisition will prepare the Court Order including a petition form listing all affected property owners. The Right of Way Acquisition Specialist will deliver the Court Order and acquisition documents to the LPA. Signatures must be secured for property owners donating or receiving just compensation for their property on the road project.

2) Preliminary Acquisition Conference

Upon delivery of the Court Order and acquisition documents to the LPA, the Right of Way Acquisition Specialist will:

- a) Review the Court Order and acquisition documents addressing any issues and questions expressed by the LPA.
- b) Review the Court Order making sure the local official is aware of what responsibilities he/she is to assume, and also what ARDOT will assume.
- c) Explain the following items:
 - i) Section 112 of the Federal Highway Amendments of 1974.
 - ii) Title III of the Uniform Relocations Assistance and Real Property Acquisition Policies Act.
 - iii) An outline of the right of way requirements that must be adhered to by the LPA official in the acquisition process.
 - iv) Information Sheet on Real Estate for County or City Acquisition
 - v) Confidential records for files.
 - vi) Petition for granting right of way.

- vii) Compensation document.
- viii) Sample letter for those refusing to donate.
- d) The Court Order is delivered in triplicate and will be distributed when completed, as follows:
 - i) One of the copies, normally the original copy, will be for filing for record in the office of the County Clerk.
 - ii) The office initiating the order will keep a copy for their records, if needed.
 - iii) The third copy will be returned to the Department for their records. Should the initiating agency desire not to keep a copy of the order, two copies will then be returned to the Department.
- e) A copy of the recorded order is sent to the appropriate District Engineer.

3) Acquisition Process

- a) Each LPA will, without exception, follow the provisions of the Uniform Act.
- b) The LPA will obtain an estimate of value, from a person knowledgeable of real estate values in the area, on all property for which right of way will be needed. If this value is less than \$15,000.00, no appraisal will be required. Obtain an appraisal when the value is more than \$15,000.00, by a qualified appraiser and approved by Right of Way prior to the beginning of negotiations with the property owner.
- c) When requested by the LPA, the Department may consent to perform the appraisal work and provide it to them for further action.
- d) Every owner will have the right to examine the plans on the project. All questions relative to the property or construction, which cannot be answered by the LPA, will be referred to the Right of Way Acquisition Specialist, Resident Engineer or District Engineer.
- e) When a property owner wishes to donate all or a portion of their property, the owner shall be informed of the right to receive just compensation for the property. The owner will also be advised of the right to an appraisal of the property by a qualified appraiser unless it is determined that the appraisal is unnecessary because the valuation problem is uncomplicated, and the value estimate is no more than \$15,000.00. If the owner decides to donate, the owner will sign the Donation Agreement provided by the Department.
- f) Filing of a condemnation order on any owner is done if, after repeated contacts and attempts to negotiate, the owner refuses to sign the petition or compensation document.

- g) The LPA will be responsible to see that the condemned owner is properly and legally served the order as furnished by the Department.
- h) In those cases where a value of just compensation is determined due to the taking of the right of way or being assigned damages, a petition is prepared whereby the owner agrees to accept the amount of the determined compensation. The LPA will make payment to the owner promptly upon receipt of the owner signing the petition.

7.4. ARKANSAS TRANSPORTATION ENHANCEMENT PROGRAMS (ATEP)

The Department and Local Sponsor, in cooperation with the FHWA, will participate in a cooperative program for implementation of enhancement projects. These projects are subject to the requirements of the Uniform Act.

1) Project Initiation

The general steps necessary to implement the right of way acquisition functions of an enhancement project are listed below.

- a) Project application submitted by Sponsor.
- b) Approval letters sent to Sponsors by Commission.
- c) Sponsor's Consultant prepares plans, specifications and estimate.
- d) If additional right of way is needed, authority to appraise and acquire will be obtained from FHWA upon completion of environmental handling.
- e) Construction allotment issued by the Department.

2) Sponsor Responsibilities

- a) Before acquiring additional property, the Sponsor will submit a letter to Right of Way which either:
 - i) Stipulates the services relative to right of way acquisition, appraisal, relocation, and utilities that the Sponsor will assume, or
 - ii) Requests that the Department handle some or all of these services. Acquisition of property must be accomplished in accordance with the Uniform Act and Federal regulations.
- b) The Sponsor will begin acquisition of right of way upon notification by the Right of Way Acquisition Specialist.
- c) Sponsor submits a letter certifying the ownership of the needed right of way was acquired in accordance with Federal regulations.
- d) After acquisition activities are complete, the Sponsor will submit a certification letter to the Department stating the Sponsor has clear and unencumbered title to

any real property to be used for the project in accordance with the applicable federal, state, and Department laws, rules, and regulations.

- e) The Sponsor will retain all records for five (5) years from the release date relating to inspection, certification, and any other files necessary to document the acquisition and ownership of right of way in accordance with applicable federal, state, and Department laws, rules, and regulations.
- f) The Sponsor will grant the right of access to Sponsor's records pertinent to this project with the right to audit by the Department, state, or federal officials.
- g) Sponsor will advertise for construction bids.
- h) Sealed bids received by Sponsor and opened at public meeting.
- i) Upon completion and close out of the project, the sponsor will be required to submit a signed right of way reimbursement release.

3) Right Of Way Division Responsibilities

- a) When requested, provide the necessary services relative to right of way acquisition, appraisal, relocation, and utility adjustments in accordance with the Uniform Act and Section 6 of this manual.
- b) When the Sponsor is acquiring right of way, the Right of Way Acquisition Specialist may periodically review the acquisition files for compliance with the Uniform Act, documenting the review by memorandum.
- c) Upon receipt of the Sponsor's certification of right of way (property) ownership, the Right of Way Acquisition Specialist will conduct a final review of the acquisition file for compliance with the Uniform Act, documenting the review by memorandum.
- d) Upon verification of compliance with the Uniform Act, the Right of Way Acquisition Specialist recommends certification of the project.
- e) The Department certifies right of way based on Sponsor's documentation and Right of Way Acquisition Specialist's review.

7.5. NEGOTIATION ACTIVITIES- COLLECTOR PROJECTS

The procedures for Collector Projects, including coordination with the County Judge, delivery of the Court Order, environmental clearance, and involvement with displaced persons, are addressed in full under Section 6.4. for applicable Collector Project procedures.

7.6. REIMBURSEMENT REQUEST REQUIREMENTS

The sponsor must provide a written request detailing the amount requested for reimbursement. The request must be signed by a designated representative for the

sponsor. The following items for each tract are required as documentation for reimbursement:

- 1) Title Report or Commitment
- 2) Appraisal or Waiver Valuation
- 3) Offer Letter
- 4) Contract to Sell /Purchase Agreement/TCE/ PCE (as applicable)
- 5) Administrative settlement documentation, if appropriate
- 6) Proof of Payment (Cancelled Check/ACH Deposit)
- 7) Recorded Conveyance Documents (Easements/Deeds)

SECTION 8

PROPERTY MANAGEMENT

8.1 GENERAL

Property Management activities are performed by the Property Manager, under the direction of the Administrative Section Head.

8.2 RESPONSIBILITIES

Property Management is responsible for maintenance, management and disposal of properties acquired for proposed highway projects in a manner consistent with the public interest to reflect the maximum long-range public benefit. These responsibilities include, but are not limited to, the following activities:

- 1) Maintaining a current and accurate inventory of land and improvements needed as right of way in connection with each proposed highway project until the project is let, as well as additional land and improvements the Department acquires in connection with a proposed highway project.
- 2) Collecting samples for asbestos testing and, when necessary, hiring an asbestos testing lab and/or asbestos abatement contractor in accordance with Department policies and procedures contained in Section 8.5.
- 3) Clearing the right of way for construction through hiring demolition contractors in accordance with Department policies and procedures and guidance contained in Section 8.6.
- 4) Leasing property acquired by the Department and disposing of surplus property in accordance with applicable federal, state, and Department laws, rules, and regulations.

8.3 PROPERTY INSPECTIONS PRIOR TO INITIATION OF NEGOTIATIONS

When the acquisition of right of way requires the Department to purchase real property, Property Management will complete the following steps prior to the initiation of negotiations.

- 1) Conduct a field inspection of the project area to identify improvements that will be acquired or impacted by the proposed highway project, including a thorough investigation of each tract for other improvements such as: water wells and risers, septic systems and private lines.
- 2) Make a list of all affected improvements identified during the field inspection noting the location of each improvement on the preliminary right of way plans. This listing shall include all improvements that could interfere with the proposed highway construction or relocation of utilities.

- 3) Photograph all improvements within the project area.
- 4) Search for evidence of USTs, tank pumping systems, and any other indications of other hazardous waste or materials in accordance with Section 8.8. Property Management should be aware of the current use or past use of a property concerning the following activities (this list is not intended to be all inclusive):
 - a) Wood preservative manufacturing
 - b) Bulk oil or gasoline terminals
 - c) Insecticide manufacturing
 - d) Electroplating
 - e) Computer chip and/or printer circuit board manufacturing
 - f) Coal gasification plants
 - g) Sanitary landfills
 - h) Machine shops with degreasing operations
 - i) Chemical manufacturing and/or distribution
 - j) Dry cleaning operations
- 5) This information will be retained as a reference for identifying possible demolitions and for inclusion, if appropriate, in the Removal and Disposal (R & D) List provided to Roadway Design.

8.4 PROPERTY MANAGEMENT ACTIVITIES AFTER ACQUISITION

Property Management is notified at closing on all relocation and remnant tracts. The Property Manager is responsible for conducting activities necessary to ensure the removal of all improvements located within the project area in a timely manner to prevent delay of scheduling of projects to letting.

8.5 ASBESTOS

Asbestos inspection, sampling, abatement, and abatement monitoring will be initiated by Property Management as needed. The Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) is the state agency with jurisdiction over asbestos removal. The Property Manager is required to be certified as an Accredited Asbestos Inspector by the DEQ.

1) Inspection

- a) Prior to the sale or demolition of improvements (including mobile homes) located on tracts acquired by the Department, each improvement must be inspected to

determine the presence of asbestos. If asbestos is found in any improvement, it must be removed prior to sale or demolition.

- b) The inspection process may be initiated prior to the Department's obtaining possession of a property. Property Management may obtain the grantor's permission to enter the premises to collect the necessary samples for laboratory testing and analysis. If permission cannot be obtained, the inspection should be completed after possession is obtained or the final vacate notice is issued.
- c) The inspection can be performed by the Property Managers or contract in accordance with Section 3.18.
- d) Upon completion of the inspection, samples are sent to a laboratory for testing and a detailed report is completed including specifications, attachments, and pictures.

2) Abatement and Removal

- a) If asbestos is found to be present, Property Management will solicit bids from contractors licensed by the DEQ to remove asbestos in accordance with Section 3.18.
- b) The contractor will be required to abate the structure(s) in accordance with the contract by a specified date.
- c) Property Management will verify that work was performed in accordance with the contract or requests that the contractor fulfill contractual obligations.

8.6 REMOVAL AND DISPOSAL OF IMPROVEMENTS

1) Retention by Grantor.

The owner pays the salvage value determined by Appraisal, posts a performance deposit or bond, and then removes the improvements within thirty (30) days of the closing date. When the improvements are removed, the grantor will notify Property Management. Property Management will inspect the site to verify it is cleared and the performance deposit or bond will be released.

2) Public Sale/Auction

If Property Management determines the improvements can be sold and moved prior to the proposed letting date, and a sale of the improvements is in the best interest of the state, a public sale will be held unless there is more than one interested buyer, a public auction will be held. Bids for the sale of improvements will be solicited by Property Management in accordance with Section 3.18. Payments received from public sales are submitted to Administrative Section personnel for deposit.

3) Demolition Contract

Bids for demolition of improvements and clearance of the land will be solicited by Property Management in accordance with Section 3.18.

- a) Prior to the demolition of any improvements, Property Management will complete the necessary steps to have each improvement tested for asbestos. If positive results are obtained, the asbestos will be abated in accordance with Section 8.5.
- b) Property Management will compile a list of improvements to be removed, including buildings, slabs, footings, foundations, wells, septic systems, storm cellars or any other man-made object within the acquisition area and solicit bids from demolition contractors
- c) The contractor will be required to clear the land by a specified date. Contracts awarded over \$20,000.00 require the contractor to guarantee clearance with a performance deposit or bond in accordance with ACA §22-9-402 to be determined by the Property Manager. Contracts awarded over \$50,000.00 require the contractor to provide the Department with a copy of their license in accordance with ACA §17-25-101.
- d) The contractor will be required to notify Property Management upon completion. The Property Manager will inspect the site to verify it has been cleared. When clearance is satisfactory, the performance deposit or bond will be released.

4) Removal at Highway Construction

Removal of improvements are included in the Roadway Construction Contract as removal and disposal items.

8.7 ENCROACHMENTS

The District Engineer is responsible for the removal of encroachments within the existing right of way. Property Management should ascertain and note any encroachments on the initial project inspections and advise the District Engineer of the type and location of the encroachments. If requested, Property Management will coordinate with the District Engineer and the Legal Division to complete the steps necessary to allow the encroachment to be included as an item on the Removal and Disposal (R & D) List.

8.8 UNDERGROUND STORAGE TANKS (UST)

When an underground storage tank (UST) has been discovered, Property Management solicits bids from contractors licensed by the DEQ to remove or close the UST.

- 1) Property Management completes a change of ownership and submits to the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) to register the tank as owned by the Department.

- 2) Upon receipt of the Certificate of Ownership, Property Management compiles the specifications and location of the UST to solicit bids from contractors licensed by the DEQ to remove the UST in accordance with Section 3.18.
- 3) The contract will be required to remove the UST by a specified date. After removal of the UST, the contractor will test the soil for contamination. Any contaminated soil must be removed and backfilled.
- 4) When the UST and any contaminated soil is removed, the contractor will notify Property Management of completion. Property Management will inspect the site to verify removal.

8.9 RODENT CONTROL

Property Management will inspect all vacant Department owned buildings to determine the need for rodent control. If deemed necessary, Property Management will secure rodent control services from a licensed and bonded exterminator, in accordance with Section 3.18. A copy of the exterminator's certification is to be maintained in the file. Property Management's file will reflect any findings and any rodent control measures taken.

8.10 LEASE OF DEPARTMENT OWNED PROPERTY

Properties not immediately needed for highway construction may be temporarily leased to the grantor until the property is required for the relocation of utilities, actual highway construction, or disposition of the property. The determination to lease property is made by the Division Head upon recommendation of Property Management. Most leases are on a month-to-month basis pending final disposition of the property but cannot exceed five (5) years.

8.11 RIGHT OF WAY USE/AIRSPACE AGREEMENT (AGREEMENT)

The Department may allow the use of real property or real property interests for non-highway purposes by a public entity or private party, if the use is in the public interest and does not interfere with the operations of the road facility nor jeopardize its safety. The Department may grant these rights through a Right of Way Use Agreement or Airspace Agreement (Agreement). In accordance with the Stewardship and Oversight Agreement, FHWA approval of the Agreement is required if the real property boundaries encompass any part of the Interstate System. The process for transmitting and executing an Agreement requiring state oversight is handled as a District Special Permit processed by the District Engineer.

The process for preparing and transmitting the Agreement for approval is as follows.

- 1) Upon receipt of a written request stating the proposed use, the District Engineer will confer with Planning, Roadway Design, any other Division or outside agency necessary to confirm the proposed use will not interfere with the future use of the area for highway purposes and will not affect the safe and proper operation and maintenance of the existing highway facility.

- 2) The District Engineer submits a recommendation to the Assistant Chief Engineer of Operations for approval or denial. If the request is denied, the District Engineer will advise the requesting party in writing. If the request is approved, the approved recommendation is transmitted to the Right of Way Division to initiate the necessary steps to execute the Agreement.
- 3) Property Management will request a legal description, plans and aerial photographs of the proposed area from the Engineering Section.
- 4) Upon receipt of the legal description, Property Management will request the Environmental Division to evaluate and document the effects of the proposed usage.
- 5) Upon receipt of environmental clearance, Property Management will request the Legal Division to prepare the Agreement.
- 6) Division Head transmits the Agreement by letter to FHWA requesting approval.
- 7) Upon approval by FHWA, the original copy is transmitted to the requesting party for signature.
- 8) After the signed copy has been returned from the requesting party, the Agreement is transmitted to the Director for signature.
- 9) One fully executed copy is returned to the requesting party, and a scanned copy is retained in the Right of Way Division files.

8.12 RELINQUISHMENT OF RIGHT OF WAY (TRANSFER AGREEMENT)

Highway facilities no longer needed for Department purposes in which Federal funds participated in either the right of way or construction may be relinquished to another government agency for continued transportation use. The other government agency usually furnishes the right of way to the Department for construction of the project. After construction, the lands are relinquished to that agency and permanent maintenance becomes their responsibility.

8.13 SURPLUS PROPERTY

When right of way is no longer needed for highway purposes, the property may be declared surplus by the Commission. Refer to ACA §27-67-321 and §27-627-322 in accordance with Act 1315 of 1997.

1) Property Acquired by Fee

- a) Upon receipt of a written request, the District Engineer will confer with Planning, Roadway Design, any other Division or outside agency necessary to confirm the proposed purchase will not interfere with the future use of the area for highway purposes and will not affect the safe and proper operation and maintenance of the existing highway facility.

- b) The District Engineer submits a recommendation to the Assistant Chief Engineer of Operations for approval or denial. If the request is denied, the District Engineer will advise the requesting party in writing. If the request is approved, the approved recommendation is transmitted to the Right of Way Division to initiate the necessary steps to execute the sale.
- c) If a survey of the property is required, the interested buyer must obtain the survey and provide to Property Management.
- d) Property Management will request a legal description, plans and aerial photographs of the proposed area from the Engineering Section.
- e) Upon receipt of the legal description, Property Management will request the Environmental Division to evaluate and document the effects of the proposed usage.
- f) Upon receipt of environmental clearance, Property Management will advertise for the sale of the property. The party from whom the property was originally acquired, their heirs, successors, or assignees are notified in accordance with ACA §27-67-322. Property Management will request the interested buyer provide an appraisal in accordance with ACA §27-67-322.
- g) In accordance with the Stewardship and Oversight Agreement, FHWA approval is required to release the property as surplus property if the real property boundaries encompass any part of the Interstate System or if the property was acquired using federal funds and if disposal is less than fair market value.
- h) Upon receipt of the letter of approval from FHWA, Property Management prepares the Minute Order. The Minute Order, legal description, plans, aerial photographs, and the appraisal are transmitted to the Legal Division for the deed to be prepared.
- i) Upon receipt of the deed from the Legal Division, Property Management submits the Minute Order and deed with the attachments to the Commission for approval and signature.
- j) Upon receipt of the executed deed, Property Management requests payment from the buyer.
- k) Upon receipt of payment, Property Management files the Minute Order and deed with the circuit clerk. The payment is submitted to Administrative Section personnel for deposit. A copy of the Minute Order and deed is provided to the Engineering Section.

2) **Property Acquired by Court Order**

Right of way acquired through the Court Order process only acquires a surface easement necessary for construction and maintenance of the highway. While this property interest may be used for highway purposes, it cannot be sold. The

Commission may abandon all or a portion of the easement obtained by court order effecting a reduction in width of the needed right-of-way. The Commission may direct the right of way be reduced, re-monumented and the plans changed. This is the extent of the action available to the Commission.

- a) Upon receipt of a written request, the District Engineer will confer with Planning, Roadway Design, any other Division or outside agency necessary to confirm the proposed reduction will not interfere with the future use of the area for highway purposes and will not affect the safe and proper operation and maintenance of the existing highway facility.
- b) The District Engineer submits a recommendation to the Assistant Chief Engineer – Maintenance for approval or denial. If the request is denied, the District Engineer will advise the requesting party in writing. If the request is approved, the approved recommendation is transmitted to the Right of Way Division to initiate the necessary steps to execute the release to the county.
- c) If a survey of the property is required, the interested party must obtain the survey and provide to Property Management.
- d) Property Management will request a legal description, plans and aerial photographs of the proposed area from the Engineering Section.
- e) Upon receipt of the legal description, Property Management prepares the Minute Order. The Minute Order, legal description, plans, and aerial photographs are transmitted to the Legal Division for review.
- f) Upon receipt of approval from the Legal Division, Property Management submits the Minute Order with the attachments to the Commission for approval and signature.
- g) Property Management files the Minute Order with the county clerk.

SECTION 9

RELOCATION

9.1. PLANNING

The initial relocation process for a specific job can be initiated from different sources: Relocation Cost Estimate Request, Conceptual Stage Study Request, or Relocation Determination/Field Inspection.

1) Cost Estimates

When the right of way plans are 50% complete, Relocation submits a relocation cost estimate to Administrative for use to obtain authority to appraise or acquire right of way. Requests for cost estimates may be received for other purposes from Environmental, Roadway Design, and the Division Head.

Upon receipt of a request, the Relocation Section Head will assign staff to inspect the proposed right of way based upon available right of way and construction plans, aerial photographs, or alignment maps. Some requests may include multiple alignments that will require a separate estimate for each.

To complete a cost estimate, the assigned staff will:

- a) Conduct an on-site inspection and note all possible displacements on the mapping provided.
- b) Prepare and submit the Relocation Inspection Report, along with maps and other supporting documents, to the Relocation Section Head for review.
- c) Upon approval by the Relocation Section Head, the cost estimate is forwarded to Administrative. For requests from the Division Head or other Divisions the requested materials and supporting documents will be forwarded to the Division Head for review and distribution.

2) Conceptual Stage Relocation Statement (CSRS)

The Environmental Division submits requests for CSRS to the Right of Way Division Head. The following information will be included in the CSRS:

- a) An estimate of the number of households to be displaced, including owner or tenant status.
- b) An estimate of the price ranges and rental rates for the displaced residences.
- c) An estimate of the displaced family's characteristics, with special consideration of the impacts upon minorities, the elderly, large families, and persons with disabilities.

- d) An estimate of the number, type, and size of businesses, farms, and nonprofit organizations to be displaced, and the approximate number of employees that may be affected.
- e) 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 if the households are displaced. If adequate replacement housing is not available, the agency will consider replacement housing of last resort actions.
- f) An estimate of the availability of replacement commercial and farm properties. If an adequate supply of replacement commercial and/or farm properties are not expected to be available, the impacts of the displacement of those businesses, farms, and/or nonprofit organizations will be considered and addressed.
- g) A description of special relocation advisory services that will be necessary for identified unusual conditions and a description of the actions proposed to remedy insufficient replacement housing, including, if necessary, Housing of Last Resort.
- h) Once the CSRS has been prepared, the Conceptual Stage Inventory Record Forms and other supporting documentation will be submitted to the Relocation Section Head for review. The Relocation Section Head will approve the CSRS and forward to the Division Head for distribution.

3) Public Meetings

The Relocation Section Head and/or Relocation Section staff attend public meetings to answer specific and general questions about relocation payment eligibility and advisory services. The assigned staff will discuss the relocation program and benefits with potential displaced persons, the general public, and/or public officials who attend the meetings. Relocation Assistance Program booklets will be distributed for informational purposes. Attending these meetings also provides Relocation preliminary project and area information.

4) Initial Relocation Interview

The Relocation Section Head will determine the personnel needs for each relocation project and assign Relocation staff to interview potential displaced persons.

The potentially displaced person should be interviewed at the displacement site. Meeting at the subject property will allow the Relocation staff to become more familiar with the displaced persons and the property to be acquired. If an on-site interview is not possible, then an off-site or telephone interview will be conducted. The following tasks will be performed at the time of the interview:

- a) Emphasize that the project plans are not final and may change
- b) Explain that the relocation contact is being made to determine the replacement housing needs of those who may be displaced by the proposed highway project.

- c) Emphasize to the potential displaced person(s) that the ARDOT is not suggesting they move now and if they do move in advance of the initiation of negotiations for the acquisition, they will most likely lose their eligibility for relocation payments and assistance.
- d) Complete the relocation occupancy and property questionnaire forms.
- e) Explain the potential relocation payments and assistance based on the type of occupancy including that Relocation Assistance includes advisory services, help in filing claims for relocation payments, and referrals to potential replacement properties.
- f) Explain that each displaced person seeking relocation payments or relocation advisory services shall, as a condition of eligibility, certify that they are a citizen or national of the United States, or an alien who is lawfully present in the United States.
- g) For residential displacements, explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling has been made available.
- h) Explain that the displaced person cannot be required to move without at least 90 days advance written notice from the ARDOT.
- i) Deliver a Relocation Assistance Program booklet, a copy of the certification of lawful presence form, and a business card to the displaced person(s).
- j) Forward a notice of the initial contact including occupancy information to the Appraisal Section Head.

9.2. RELOCATION NOTICES

The Relocation Notices set forth below will be hand delivered or sent by certified or registered first-class mail, return receipt requested. All notices are written in plain, understandable language.

1) General Information Notice

Persons determined to be displaced will be contacted as soon as feasible. After the initial contact, the potentially displaced persons will be provided a general written description of the ARDOT's Relocation Assistance Program.

2) Ninety-Day and Final Vacate Notices

Displaced persons will be given the following notices:

a) Ninety-Day Notice

Relocation will prepare and give to lawful occupants of improvements on a project, a 90-day written notice. This notice will specifically state that the occupant will not

be required to vacate and/or give possession of the tract and/or improvement, and/or remove personal property before 90 days from the date of the notice. The notice will inform the occupant that they will receive a further written notice, at least 30 days in advance of the specific date by which the property must be vacated and/or personal property removed. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice will state that the occupant will not have to move earlier than 90 days after such a dwelling is made available.

For residential owners, this notice will be delivered at the initiation of negotiations. For residential tenants, businesses, farms, nonprofit organizations, and personal property owners, this notice will be delivered as soon as feasible after the initiation of negotiations.

b) Final Vacate Notice

The final vacate notice cannot be given until the ARDOT has control of the property. The ARDOT is considered to be in control if the following has occurred:

- i) In cases of negotiated settlement, the displaced person has been paid for the acquired property.
- ii) In cases of condemnation, the acquisition amount has been deposited in the Court.

Final vacate dates that exceed the minimum required advance written notification, by more than 30 days, must have the concurrence of the Division Head. Final vacate notices will not be required if an occupant moves on their own volition prior to the time the notice is to be given.

c) Urgent Need

An occupant may be required to vacate the property on less than 90 days' advance written notice if the ARDOT 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 the person's health or safety. The case file shall be documented accordingly.

3) Notice of Relocation Eligibility

- a) Eligibility for relocation assistance begins on the earliest of the Notice of Intent to Acquire, the initiation of negotiations, or actual acquisition. When relocation eligibility occurs, the occupants will be notified in writing of their eligibility for applicable relocation assistance.
- b) The Notice of Relocation Eligibility is delivered in conjunction with the 90-Day Notice following the initiation of negotiations or in conjunction with the Notice of Intent to Acquire.

4) Notice of Intent to Acquire

This notice, along with the brochure, shall be furnished to owners and tenants when the ARDOT establishes eligibility for relocation benefits prior to the actual initiation of negotiations for acquisition of the tract.

- a) This notice may be issued prior to the FHWA authorizing initiation of negotiations on the project or authorizing acquisition of individual tracts solely for protective buying or because of hardships.
- b) The notice shall contain the statement of eligibility and any restrictions thereto and how additional information pertaining to relocation assistance payments and services can be obtained.
- c) When a notice of intent to acquire is furnished to a tenant, it will be done with the knowledge of the property owner, and a copy of the notice will be delivered to the property owner.

9.3. COORDINATION WITH OTHER SECTIONS

1) Inspection with Appraiser

Assigned Relocation staff may attend the Appraiser's inspection in order to distinguish personal property from real property. Real and personal property distinctions will be discussed and resolved between the Appraiser and Relocation staff prior to the completion of the appraisal, and with the approval of the Appraisal and Relocation Section Heads. The Appraisal and Relocation Section Heads will also review the property in question when the Appraiser and Relocation staff do not agree or cannot establish the nature of the property, real or personal. The Division Head will make the final determination when the Section Heads do not agree. On this inspection, Relocation staff will determine and identify unusual situations, further establish relocation needs, and current occupancy. The Relocation staff and Appraiser will inspect the property separately when scheduling will not allow the Appraiser and Relocation staff to inspect the property together. Any potential property, occupancy, rental rates, or general discrepancies will be discussed prior to the review and release of the appraisal. If the occupant is present, complete tasks as described in Section 9.1(4)(a-j).

2) Receipt and Review of Appraisal

- a) On tracts involving displaced persons, the appraisal is delivered to Relocation from Appraisal.
- b) The Relocation Section Head and assigned relocation staff will discuss the relocation needs, schedule, potential problems, solutions and expectations for the displaced person.
- c) For Non-residential Displacements, the appraisal can be released to Acquisition for the initiation of negotiations, once Relocation staff has completed the review and obtained all preliminary information necessary to begin the relocation process.

- d) For residential displacements, the replacement housing studies will be completed at this time. Upon approval of the replacement housing studies, the appraisal is released to the Acquisition Section for the Initiation of Negotiations.

3) Presentation of Offers and Relocation Eligibility

To assure that residential owner occupants are offered relocation assistance and payments simultaneously with the offer of just compensation, and to assure that residential tenant occupants are offered relocation assistance and payments in a timely manner, it will be necessary for the Acquisition Agent and Relocation Coordinator to coordinate the timing of their calls. Displaced businesses, farms, nonprofit organizations and personal property owners will be contacted in a timely manner following the initiation of negotiations.

9.4. RESEARCH AND PREPARATION FOR RELOCATION ELIGIBILITY PRESENTATIONS

Prior to delivering the Notice of Relocation Eligibility to a displaced person, the assigned Relocation Staff should:

1) Applicable to All Displaced Persons

- a) Verify occupancy status including the type (residential owner, residential tenant, business, personal property, etc.), length, and continuity of occupancy.
- b) Obtain a signed certification of lawful presence form; and

2) Applicable to Residential Displaced Persons

For displaced residential owners and tenants, complete the required replacement housing studies.

3) Business, Farm, and NPOs

- a) Meet with the displaced persons and visually inspect the property to review the site and improvements.
- b) Obtain copies of documentation verifying the displaced person's status as listed in Section 9.1(4)(a-j) of this manual.
- c) Review any changes in the operation since the initial interview. Discuss tenant improvements if applicable.
- d) Review personal property and verify ownership of personal property.
- e) Obtain copies of applicable documents such as rental or lease agreements, tenant improvements, special licensing, etc.
- f) If applicable, evaluate the number of businesses eligible for relocation assistance in accordance with Section 9.12(2)(a-d) of this manual.

- g) Submit the file including the 90-day notice, relocation eligibility notice and any other pertinent forms to the Relocation Section Head for approval.

4) Personal Property Owners

- a) Meet with the owner of the personal property at the displacement site to establish their eligibility and ownership of the personal property.
- b) Submit the file including the 90-day notice, relocation eligibility notice and any other pertinent forms to the Relocation Section Head for review.
- c) Upon completion of the review, the original appraisal will be released to the Acquisition Section for the Initiation of Negotiations. Relocation staff will schedule an appointment with the displaced person in accordance with Section 9.3(3) of this manual.

9.5. RELOCATION ELIGIBILITY PRESENTATIONS

1) Residential Owners

The ARDOT policy is that residential owner-occupants are provided relocation assistance assurances and information on benefits simultaneously with the offer of just compensation. The assigned Relocation staff and the Acquisition Agent will meet jointly with the residential owner-occupant. After the offer to acquire the real property is made to the owners, the Relocation staff will deliver the Ninety-Day Notice and Notice of Relocation Eligibility and explain the relocation assistance program requirements, information regarding how to claim the relocation payments, and provide advisory services.

2) Residential Tenants

ARDOT policy is that tenant-occupants are promptly contacted after the initiation of negotiations and offered relocation assistance and payment information. Promptly after the initiation of negotiation with the owner of the property, the residential tenant-occupants will be contacted to apprise them of their eligibility, relocation program requirements, payment amounts, advisory services, and to deliver the Ninety-Day Notice and Notice of Relocation Eligibility.

3) Businesses, Farms, Nonprofit Organizations, and Personal Property Owners

Promptly after the initiation of negotiation for the property on which the business, farm or non-profit organization is sited, the owner (or representative) of the business, farm or non-profit organization will be contacted to apprise them of their eligibility, relocation program requirements, payment amounts and advisory services, and to deliver the 90-Day Notice and Notice of Relocation Eligibility. For owners, this may occur simultaneously with the initiation of negotiations.

9.6. RELOCATION ASSISTANCE AND ADVISORY SERVICES

Subsequent contacts will be made throughout the relocation process by Relocation staff for purposes of obtaining and furnishing assistance and information.

- 1) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the ARDOT to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- 2) The ARDOT shall offer all displaced persons transportation to inspect housing to which they are referred.
- 3) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable replacement properties. Assist the displaced person in obtaining and becoming established in a suitable replacement location.
- 4) Minimize hardships to displaced 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.
- 5) Supply displaced persons 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.
- 6) The ARDOT shall carry out a relocation assistance advisory program that satisfies the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and CFR 49 part 24. If the ARDOT determines that a person adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to the person.
- 7) The amount and extent of the advisory services shall be administered on a reasonable basis commensurate with the displaced person's needs.
- 8) No waiver of relocation assistance: The ARDOT shall not propose or request that a displaced person waive his or her rights or entitlement to relocation assistance and benefits provided by the Uniform Act.

9.7. RELOCATION PAYMENTS

1) General

a) Certification

A signed Certification of Lawful Presence in the United States of America form is required before any relocation payments can be made to a displaced person.

b) Documentation

Any 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. Relocation staff will provide assistance in obtaining the supporting documentation when needed.

c) Time Period for Filing Claims

Displaced persons must file all claims for relocation payments within 18 months after:

- i) For tenants, the date moved.
- ii) For owners, businesses, farms, non-profit organizations, and personal property displacements, the date moved or the date paid for the acquisition, whichever is later. In cases of condemnation, the date the just compensation is deposited in court.
- iii) For owners and tenants determined to be displaced but the acquisition does not demand the physical move of the occupant, the date moved will be the date the basis for the displacement occurs. For example, loss of parking, loss of access, and loss of utilities.

d) Expeditious payments

The Relocation Section Head shall review claims in an expeditious manner. The displaced person 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.

e) Advanced payments

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

f) Delivery of warrants

The Administrative or Relocation Sections will handle delivery of payments. Payments will be made by either of the following methods.

- i) By mail to the displaced person or the closing agent of replacement dwellings.
- ii) Delivered to the displaced person by a third party.
- iii) Hand delivered to the displaced person by Relocation staff in urgent situations, or to the closing agent of replacement dwellings with Section Head approval.

g) Deductions from relocation payments

ARDOT shall deduct the amount of any advance relocation payment from the relocation payments to which a displaced person is otherwise entitled. ARDOT shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

h) Duplicate Payments

Arkansas State law does not provide for payments to persons under eminent domain proceedings, which would duplicate payments made to persons under the Uniform Act. Also, no person shall receive any payment under the Uniform Act if that person receives a payment under Federal, State, or local law, or insurance proceeds which are determined to have the same purpose and effect. An exhaustive search for other payments is not required.

i) Payments nontaxable

No relocation payment received by a displaced person 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.

j) Expenditure of payments

Payments provided pursuant to the Uniform Act shall not be considered to constitute Federal financial assistance.

k) 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:

- i) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.
- ii) The full payment shall be disbursed in any case in which a member of a displaced family dies, and the other family member(s) continue to occupy a decent, safe and sanitary replacement dwelling.
- iii) 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.

2) Claim Forms

Relocation payments processed by a claim form must be signed by the displaced person, approved by the Relocation Section Head and authorized by the Division Head. Relocation payments are made to or on the behalf of the displaced person as eligible relocation expense payments. Relocation staff determines the eligibility and amount of relocation payments and provides assistance in obtaining necessary bids. The following information or documents are applicable to these types of claims.

- a) **Taxpayer Identification:** Relocation staff will obtain a completed Request for Taxpayer Identification Number and Certification (W-9) before any payment can be processed.
- b) **Claim Form Preparation:** Relocation staff will prepare a payment claim form for eligible relocation expenses based on adequate supporting documentation. The claim form will be delivered to and explained to the displaced person for their signature.
- c) **Relocation claim form payments to third party vendors:** Payments can be made to the vendor and processed with a claim form. The following process shall be followed when ordering a payment payable to the vendor.
 - i) Claim forms shall be completed and signed by the displaced person.
 - ii) Vendors name and the last four digits of the Taxpayer Identification number shall be included on the claim form as reflected on the vendor's W-9.
 - iii) Claim form shall be submitted with a completed Third Party Authorization form.
 - iv) Upon completion of the services, the check will be forwarded to the displaced person and it is the displaced person's responsibility to deliver the payment to the vendor upon their satisfaction of the services rendered, unless otherwise documented by agreement and approved by the Section Head.
 - v) The contractual agreements for the services rendered by a third party are between the displaced person and the service provider.

3) Other than Claim Forms

Payments to a third party by a vendor's invoice that are not processed on a relocation claim form are handled in accordance with Section 3.18 of this manual.

9.8. MOVING EXPENSES

1) General

Any person required to move because of the acquisition and who moves from real property or moves his or her personal property from the real property is entitled to a payment of his or her actual moving and related expenses, as the ARDOT determines to be reasonable and necessary. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements for a replacement housing payment.

2) Eligible Moving Expenses

- a) Transportation of the displaced person and personal property to the new location up to 50 miles. Such costs may be on a mileage basis, not to exceed the per mile rate established by the ARDOT.
- b) If commercial transport is used, including special services such as the costs of an ambulance, the actual cost will be paid up to 50 miles.
- c) Meals and lodging when the ARDOT determines that such costs are required because of owner retention and reoccupation or because of unforeseen circumstances or the practical necessities of the moving operation are also eligible. Temporary lodging is to be for a period not to exceed thirty-days.
- d) Packing, crating, unpacking and uncrating of personal property.
- e) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.
- f) Storage of personal property not to exceed 12 months.
- g) Insurance for the replacement value of the property in connection with the move and necessary storage.
- h) 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, or damage is not reasonably available.
- i) A displaced residential tenant is eligible for payment of their actual expenses, not to exceed \$1,000.00, incurred for application fees or credit reports required to lease or purchase a replacement dwelling.
- j) Other moving expenses that are not listed as ineligible expenses in Section 9.8 (3)(a-l).
- k) Reasonable and actual cost of disassembling, moving and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired and anchoring of the unit are eligible expenses. Utility "hook-up" charges are also reimbursable.
- l) Reasonable costs for repairs or modification to render a mobile home suitable for moving and/or meeting the decent, safe, and sanitary requirements.
- m) A non-returnable mobile home park entrance fee is reimbursable 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 ARDOT determines that payment of the fee is necessary to effect relocation.

- n) Any license, permit, 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, or certification.
- o) Professional services (e.g. specifications and bids) necessary for
 - i) Planning the move of the personal property,
 - ii) Moving the personal property, and
 - iii) Installing the relocated personal property at the replacement location.
- p) Re-lettering signs and replacing stationary, business cards and etcetera that are rendered obsolete because of the move. The expense shall be based on the quantities on hand at the time of the displacement.
- q) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business, farm or NPO is an eligible moving expense. The payment shall consist of the lesser of:
 - i) The fair market value of the item for continued use at the displacement site, 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 ARDOT determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.) or
 - ii) The estimated cost of moving the item, but with no allowance for storage, or for reconnecting a piece of equipment if the equipment is in storage or not being used at the occupied site. (If the operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)
- r) The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- s) 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
 - i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
 - ii) The estimated cost of moving and reinstalling the replacement item but with no allowance for storage. The estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.
- t) Searching for a replacement location for a displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed \$5,000.00 (all expenses must be documented) or a one-time payment of

\$1,000.00 with minimal documentation, as the ARDOT determines to be reasonable and incurred in searching for a replacement location. Expenses incurred prior to initiation of negotiations may be allowed at the ARDOT's discretion.

A certified statement of the type and amount of the expense incurred searching for a replacement location shall be submitted with the moving cost claim form. Support for such expenses must be attached to the certified statement. Statements must identify person(s) conducting the search, the amount of time spent searching, the dates and hours spent searching, and their hourly wage. Eligible expenses include:

- i) Time spent searching, based on reasonable salary or earnings of the person conducting the search.
- ii) 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 site.
- iii) Time spent obtaining permits and attending zoning hearings.
- iv) Time spent negotiating the purchase of a replacement site based on a reasonable salary or fee, including actual, reasonable, and necessary attorney's fees.
- v) Transportation cost based on:
 - (1) Actual costs supported by receipts
 - (2) Mileage based on the current reimbursement rate per mile established by the ARDOT.
 - (3) Meals and lodging away from home.

u) 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 ARDOT, the allowable moving cost payment shall not exceed the lesser of:

- i) The amount that would be received if the property were sold at the site, or,
- ii) The replacement cost of comparable quantities delivered to the new business location.
- iii) 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 ARDOT.

v) Multiple Moves

The ARDOT may determine that more than one move will be allowed for a displaced person. The eligible moving expenses may apply to part or all of the

move. The Division Head must approve the provision of expenses for more than one move of a displaced persons' personal property (For example, if the displaced person moves their personal property into storage on an interim basis and later moves the personal property to a final destination).

3) Ineligible Moving Expenses

A displaced person is not entitled to payment for:

- a) The cost of moving any structure or other real property improvement, or any item paid for as real property that is owned by the displaced person; or
- b) Interest on a loan to cover moving expenses; or
- c) Loss of goodwill; or
- d) Loss of profits; or
- e) Loss of trained employees; or
- f) Any additional operating expense of a business, farm or nonprofit organization incurred because of operating in a new location except as provided under the re-establishment payment; or
- g) Personal injury; or
- h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the ARDOT; or
- i) Expenses for searching for a replacement dwelling; or
- j) Physical changes to the real property at the replacement location of a business, farm or nonprofit organization, or
- k) Costs for storage of personal property on real property owned or presently leased by the displaced person; or
- l) Refundable security and utility deposits.

4) Personal Property Inventory

Moving expense payments will be supported by a personal property inventory or list of the items to be moved and completed prior to determining the eligible moving payments. The owner and Relocation staff will sign all inventories. If a substantial amount of the items in the inventory were not moved the moving expense will be appropriately adjusted for payment.

5) Abandonment of Personal Property

Any personal property that the displaced person does not intend to move should be noted on an Abandoned Personal Property Agreement as soon as possible. Relocation staff

shall make a reasonable attempt to encourage the displaced person to move all personal property unless the estimated cost of the potential abandoned items would be considerably less when removed by Property Management.

- a) The Abandoned Personal Property Agreement shall be signed by the displaced personal property owner and include a description and photos of the items abandoned.
- b) A copy of the Abandoned Personal Property Agreement will be furnished to Property Management as soon as possible. Any items with potential hazardous waste or environmental concerns shall be referenced.

6) Reasonable Advance Notice

The displaced person shall provide reasonable advance notice of the approximate date of the start of the move or disposition of personal property. However, the ARDOT may waive this notice requirement after documenting the file. (The displaced person will be informed of the inventory and advance notice requirements in the Relocation Eligibility Notification.)

7) Monitoring the Move

When the ARDOT determines it is necessary, applicable surveillance will be conducted on the move. This will allow the ARDOT to make timely inspections of the personal property at both the acquired and replacement sites and to monitor the move.

8) Commercial Moves

Eligible expenses for professional movers are determined by bids and/or estimates prepared by commercial movers. Payment will be based on the lower of the bids or estimates. The following procedures are to be utilized when determining these eligible expenses.

- a) An inventory of the displaced person's personal property to be moved will be made prior to obtaining estimates. Relocation staff and the displaced person will both review and sign the personal property inventory. The eligible moving expense will be based on the inventory as of the date of the presentation of relocation eligibility.
- b) For moves up to \$20,000.00, the following applies to each type of relocation.
 - i) For residential moves up to \$20,000.00, payment will be based on the lower of two bids from a commercial mover.
 - ii) For all other moves, payment can be based on one bid or estimate prepared by a commercial mover.
 - iii) Two commercial bids or estimates must be obtained for complicated moves and/or in cases when deemed necessary by the Department.

- c) For moves above \$20,000.00 obtain three bids or estimates prepared by commercial movers. If three commercial movers are not available, note this on the bid/estimate form with an explanation. The eligible moving expense is based on the lowest of the bids/estimates. Prepare bid/estimate form with recommendation and submit to the Relocation Section Head for approval.
- d) The Relocation Section Head will forward the bid/estimate form to the Division Head for review and concurrence when the payment eligibility exceeds \$50,000.00.
- e) ARDOT may offer to compensate vendors for their bid or for the preparation of a good faith estimate of moving costs in certain situations. This includes but is not limited to situations in which the displaced person does not select the moving company with the lowest bid or estimate and in cases when it is not expected that a vendor will be hired to complete the work, but an estimate is necessary to establish an appropriate moving cost payment amount. The Section Head – Relocation must approve hiring the vendor to create the good faith estimate.

9.9. RESIDENTIAL MOVES - ELIGIBLE MOVING EXPENSES

1) Eligible Moving Expenses

Any displaced person who moves from a dwelling is entitled to payment for actual moving and related expenses as the ARDOT determines to be reasonable and necessary, including, but not limited to Section 9.8(2)(a-j). Any displaced person who moves from a mobile home that is personal property and moves the mobile home for the replacement dwelling is also eligible as specified in Section 9.8(2)(j-m). A displaced person may be compensated for moving their personal property as determined by one or a combination of the following methods:

2) Self-Move – Fixed Schedule

A Fixed Schedule Claim Form can be used to request payment based on room count.

- a) Any person displaced from a dwelling (including a mobile home), a seasonal residence, or a dormitory style room is entitled to receive a fixed payment (includes a dislocation allowance) in lieu of payment for actual moving and related expenses. (See schedule on back of the Residential Fixed Schedule Claim Form).
- b) The schedule is to be based on the "number of rooms of furniture" owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (thereby simplifying the computation and payment of moving expenses) the ARDOT may increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if there is the equivalent of two rooms worth of possessions located in the basement.

In addition, the ARDOT may elect to pay for items stored outside of the dwelling unit by adding the appropriate number of rooms.

- c) If the displaced person elects to accept the allowable payment under the fixed residential moving cost schedule they will complete the move and file a written claim for payment of the exact amount determined from the schedule. Supporting evidence of the cost incurred or information as to how the move was accomplished is not required.
- d) Owner Retention Move: When an owner retains their dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement as part of the cost of moving personal property. However, if the owner chooses to use the dwelling as a means of moving personal property the cost of moving personal property may be considered eligible for Federal Participation. Payment in these cases would be on a fixed schedule basis.

3) Self-Move – Actual Costs

In the case of a self-move the displaced person may be paid actual moving costs, supported by receipted bills for labor and equipment or other evidence of expenses incurred. Such payment may not exceed the estimated cost of moving commercially as established in accordance with Section 9.8(8)(b-c).

4) Self-Move – Estimates

In the case of a self-move the displaced person may be paid based on an estimate established in accordance with Section 9.8(8)(b-c), with the option that estimates developed by Relocation staff may be used in place of or in conjunction with commercial estimates.

5) Commercial Moves

The displaced person will be eligible to receive a payment equal to their actual costs, not to exceed the eligible payment amount determined in accordance with Section 9.8(8)(b-e) of this manual.

9.10. NON-RESIDENTIAL MOVING EXPENSES

1) Eligible Expenses

Any business, farm operation, nonprofit organization, or personal property owner that qualifies as a displaced person is entitled to a payment for such actual moving and related expenses as the ARDOT determines to be reasonable and necessary, including personal property described at Section 9.8.(2)(a-h), (j-s), and (u-v). Businesses, Farms, and Non-Profit Organizations are also eligible for the searching expense payment described at 9.8(2)(t). Personal property moves may be moved by one or a combination of the following methods:

2) Self-Move Based on Bids and Estimates

a) The lower of bids and estimates:

The same process and procedures described at Section 9.8(8) with the option that estimates developed by Relocation staff may be used in place of or in conjunction with commercial estimates.

- i) The displaced person will be notified of the eligible moving expense determination. The displaced person will have the option of rejecting or accepting the amount. If accepted, a moving cost claim form will be prepared and forwarded to the displaced person for their signature. The approved moving expense may be paid to the displaced person without supporting evidence for actual expenses incurred.
- ii) The Relocation Coordinator is responsible for monitoring and verifying the move. If the displaced person rejects an estimate developed by Relocation staff, the displaced person can utilize the commercial move option as explained in Section 9.8(8).

b) Low Cost, Uncomplicated Moves of Loose Personal Property – Residential Fixed Schedule

- i) If the Relocation Coordinator determines that the personal property to be moved by any non-residential displaced person requires no disconnection, reconnection, disassembly, or reassembly, is easily transportable, and will cost less than \$5,000.00 the Relocation Coordinator may determine that the move is a Simple Move of Loose Personal Property.
- ii) In these situations, the moving payment eligibility for a self-move may be determined based upon the use of the “additional room” category of the Fixed Residential Move Cost Schedule.

3) Actual Moving Costs

Actual moving costs supported by receipted bills for labor and equipment or other evidence of expenses incurred. Such payment may not exceed the estimated cost of moving commercially based on bids or estimates prepared by qualified moving companies and obtained by the ARDOT. Hourly labor rates should not exceed the commercial rates paid to employees performing the same activity. Rates and rental fees charged for equipment should be based on actual cost and should be comparable to market rates and fees for these expenses.

4) Commercial Moves

The displaced person will be eligible to receive a payment equal to their actual costs, not to exceed the eligible payment amount determined in accordance with Section 9.8(8) of this manual.

9.11. NOTIFICATION OF MOVES

When the displaced person no longer occupies the acquisition area, and the personal property has been moved the following actions shall be taken:

- 1) Notify Property Management by memorandum.
- 2) Update displaced persons status for staff minutes.

9.12. DISPLACED BUSINESS, FARM AND NON-PROFIT ORGANIZATIONS

1) Eligibility

A displaced person may be eligible for relocation assistance as a displaced small business, farm, or non-profit organization if:

- a) It is displaced from a site of lawful economic activity and meets the definition of Business, Farm, or Non-Profit Organization in Section 10 of this manual, and
- b) At least one of the following must be provided:
 - i) Tax Returns for the operation
 - ii) Business License for subject location
 - iii) Articles of Incorporation
 - iv) Certified Financial Statements
 - v) Sales Tax Identification Number
 - vi) Other reasonable evidence that the operation is a viable and legal business entity

2) Determining the Number of Eligible Entities

In determining whether two or more displaced legal entities constitute a single business, farm, or non-profit organization which is displaced, all pertinent factors shall be considered, including the extent to which:

- a) The same premises and equipment are shared.
- b) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.
- c) The entities are held out to the public, and to those customarily dealing with them, as one business.
- d) The same person, or closely related persons own, control, or manage the affairs of the entities.

When applicable, a Memorandum documenting the consideration of all pertinent factors, including those listed above, shall be prepared and submitted to the Section Head-Relocation for approval.

3) Reestablishment Expenses

In addition to the moving cost payments available as described in Section 9.8(a-h), (j), and (n-v), a small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$50,000.00, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

a) Reasonable and Necessary Eligible Reestablishment Expenses

Reestablishment expenses must be reasonable and necessary, as determined by the ARDOT including, but not limited to:

- i) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- ii) Modifications to the replacement property to accommodate the business operation or to make replacement structures suitable for conducting the business.
- iii) Construction and installation costs for exterior signing to advertise the business.
- iv) Refurbishment or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- v) Advertisement of replacement location.
- vi) Increased costs of operation during the first two years at the replacement site for such items as:
 - (1) Lease or rental charges,
 - (2) Personal or real property taxes,
 - (3) Insurance premiums, and
- vii) Utility charges, excluding impact fees.
- viii) Other items the ARDOT considers essential to the reestablishment of the business.

b) Expenses Not Considered Reasonable and Necessary, Ineligible Reestablishment Expenses

The following is a non-exclusive listing of reestablishment expenditures that are not considered to be reasonable, necessary, or otherwise eligible:

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

- ii) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of business operation.
 - iii) Interest on money borrowed to make the move or purchase replacement property.
 - iv) Payment to a part-time business in the home that does not contribute materially to the household income.
 - v) Construction costs for a new building at the business replacement site, or costs to construct, reconstruct or rehabilitate an existing building.
- c) Determination of Payment Amount
- i) For reestablishment expenses up to \$20,000.00 that are uncomplicated the payment can be based on one bid or estimate prepared by a tradesperson.
 - ii) For reestablishment expenses above \$20,000.00 the payment can be based on the lowest of three bids or estimates prepared by tradespersons.
 - iii) If the displaced person does not select the tradesperson with the lowest bid/estimate the ARDOT will offer to pay the low bidder for preparing the bid/estimate. In some cases, all of the tradespersons preparing bids can be compensated preparing the bid/estimate. The charge for preparing the bid/estimate(s) should be reasonable and based on the actual time spent preparing the bid/estimates.

Relocation Personnel will stay in close contact with the business, farm, or nonprofit organization in order to assist with and organize the information and documentation necessary to establish eligible payments and complete reestablishment expenses. It is important to emphasize the importance for assigned personnel and displaced person to communicate often and clearly regarding all reestablishment expenses, especially construction items. Relocation personnel will verify and help communicate reestablishment expenses that are eligible because of requirement by Federal, State or Local law, code or ordinance.

4) Searching Expenses

A displaced business, farm operation, or nonprofit organization may claim a searching expense payment in accordance with Section 9.8.2.t of this Manual.

5) Fixed Payment In Lieu Of Moving and Reestablishment Expenses

A displaced small business, farm operation or nonprofit organization may be able to choose a fixed payment in lieu of moving and reestablishment expenses. If a displaced business, farm operation, or nonprofit organization elects the fixed payment option, the payment represents its full and final payment for all relocation expenses. Should the business elect to receive this payment, it would not be eligible for any other relocation assistance payments.

a) Displaced Business Eligibility

The fixed payment will be equal to the average annual net earnings of the business except that such payment shall be not less than \$1,000.00 or more than \$53,200.00. This includes a partial taking, if it is determined by the ARDOT that total displacement could occur as a result of the acquisition. The ARDOT must determine that the additional qualification requirements outlined below are fully satisfied:

- i) The business owns or rents personal property that must be moved in connection with such displacement and for which an expense would be incurred in such move (via sale or removal), and the business vacates or relocates from its displacement site. If the business is totally displaced it may rebuild or relocate on the residual and still be eligible for the payment as long as it vacates the right of way; and
- ii) 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 ARDOT determines that it will not suffer a substantial loss of its existing patronage; and
- iii) The business is not part of a commercial enterprise having more than three other entities, which are not being acquired by the ARDOT, and which are under the same ownership and engaged in the same or similar business activities; and
- iv) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others; and
- v) The business is not operated at the displacement site solely for the purpose of renting the site to others (commercial property), mainly for their long term use; and
- vi) The business contributed materially to the income of the displaced person during the two taxable years prior to displacement.

b) Displaced Farm Eligibility

- i) The fixed payment will be an amount equal to the farm operation's average annual net earnings except that such payment shall not be less than \$1,000.00 or more than \$53,200.00. Farms that meet all eligibility requirements for this type of payment are qualified even though they have no personal property that would have to physically be moved if the farm could be relocated.
- ii) The farm operation must have contributed materially to the income of the displaced person during the two taxable years prior to displacement.
- iii) In the case of a partial acquisition of land that was a farm operation before the acquisition, the displaced farm payment shall be made only if the ARDOT 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.

c) Displaced Nonprofit Organization Eligibility

- i) The fixed payment will be an amount not less than \$1,000.00 or more than \$53,200.00. If the ARDOT 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 ARDOT demonstrates otherwise.
- ii) The amount used for the payment is the average of 2 years gross revenues less administrative expenses.
- iii) Any payment in excess of \$1,000.00 must be supported with financial statements for the two 12-month periods prior to the acquisition.
- iv) Annual gross revenues may be based on a different period of time when the ARDOT determines it to be more equitable, and if the organization has not been in operation for the full 2 years, the actual period of operation may be projected as in the Displaced Business Payment.

d) Request for Consideration

The displaced person will request the fixed payment through written correspondence explaining their reasoning and verification of the requirements. Relocation staff will prepare a memorandum along with the displaced person's request with all the pertinent information and calculation based on supporting financial information for the operation.

e) Review

Relocation staff will review and establish that the necessary factors have been met. If so, a memorandum will be submitted to the Relocation Section Head regarding the displaced persons eligibility to claim the in-lieu payment.

f) Determination

Upon review, the Relocation Section Head will concur with the Relocation Coordinator's decision or object to the decision pending further documentation. If it is determined that the displaced operation is eligible for the payment, then the necessary income information will be obtained.

g) Verification of income

This information can be provided through the following documentation.

- i) Tax returns
- ii) Certified Profit and Loss Statements
- iii) Other reasonable evidence the ARDOT determines is satisfactory. Other evidence can be used when income tax returns are provided but additional profit and loss information is necessary to determine specific earnings for the displaced location or when income tax returns and/or certified financial statements cannot be provided for documented and justifiable reasons.

6) Business or Farm Operation - Average Annual Net Earnings

- a) The average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced.
- b) 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 two taxable years prior to displacement, projected to an annual rate. Therefore, if the business was in operation less than 12 months the amount of income for this period will be projected for a 12-month period and the payment would be computed by dividing the net earnings by the number of months in operation and multiplying by 12.

c) Examples

- i) In business for less than 12 months

Computation: Income projected to 12 months (if business was in operation for 1 month and made \$2,000.00 projected annual income would be \$24,000.00)
 $\$2,000.00 \text{ divided by } 1 \text{ (months in operation)} \times 12 = \$24,000.00$ - payment not to exceed \$53,200.00.

- ii) In business for 12 months or more but less than 24 months

Computation: Net earnings divided by number of months in operation $\times 12 =$ payment not to exceed \$53,200.00.

- d) Average annual net earnings may be based upon a different period of time when the ARDOT determines it to be more equitable.
- e) Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse and dependents.

7) NPO - Average Annual Net Revenues

- a) The amount to be used for the payment is the average of 2 years' annual gross revenues less administrative expenses.

- b) Gross revenues include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate.
- c) Administrative expenses are used for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses.
- d) Operating expenses for carrying out the purposes of the NPO are not included in administrative expenses.
- e) The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

9.13. REPLACEMENT HOUSING PAYMENTS

1) Comparable Replacement Housing

The ARDOT may provide equal or better housing than the displacement dwelling in regard to the number of rooms, square footage, age, etc., if it is available. If not available, housing meeting the minimum requirements as specified and defined in this manual for comparable replacement housing will be utilized.

Mobile homes may be utilized as comparable housing when the displacement dwelling is not decent, safe and sanitary or the displaced person(s) are displaced from marginal or substandard housing with functional obsolescence. However, a displaced person(s) will not be required to move to a replacement dwelling that is not functionally equivalent as specified and defined in this manual for comparable replacement housing. Comparables with a higher density may also be utilized.

Comparable replacement housing will be made available prior to displacement with sufficient time to negotiate and enter into a purchase agreement or lease agreement for the replacement property. Relocation assistance and acquisition compensation to which the displaced person is entitled will be provided so that in sufficient time to complete the purchase or lease of the replacement property can be completed in a timely manner.

2) 90 Day - Residential Owner Occupants

The Replacement Housing Payment (RHP) for an eligible 90-day owner-occupant is the sum of three payments: Price Differential Payment, Increased Mortgage Interest Cost Payment, and Incidental Expenses Payments. If the sum of the three payments exceeds \$41,200.00 the RHP is classified as a Housing of Last Resort (HLR) payment and handled as set forth in Section 9.13(7).

a) Eligibility

The Relocation Section will be responsible for the determination of eligibility and amount of RHP's. An owner occupant is entitled to RHP's if:

- i) The displaced person has actually owned and occupied the displacement dwelling for at least 90 days immediately prior to the date of initiation of negotiations.
- ii) The property was acquired from the person by the ARDOT, or the ARDOT issued an order to vacate even though the property is not acquired.
- iii) The person purchases and occupies a decent, safe and sanitary dwelling within a one-year period beginning on the latter of the following dates. The ARDOT may extend the one-year period for good cause.
 - (1) The date the person receives final payment for the acquired dwelling or, in the case of condemnation, the date the amount is deposited in the court, or
 - (2) The date the ARDOT presents the RHP eligibility notice which must include at least one available comparable replacement dwelling.

If the displaced person locates a prospective replacement dwelling and finds it necessary to make an offer before an inspection has been made, he/she does so at the risk of the dwelling not meeting the requirements necessary to receive part or all of a RHP. The displaced person should seek advice from their real estate agent and/or attorney before making the offer contingent on receiving any funds from the ARDOT.

b) Price Differential Payment (PDP)

The PDP is the lesser of the difference between the actual cost that the displaced person pays for a decent, safe and sanitary dwelling and the acquisition amount paid by the ARDOT for a displaced person's dwelling, or the amount determined by the ARDOT as necessary to purchase a comparable replacement dwelling.

i) Upper Limit Determination

The upper limit of the PDP is determined by a replacement housing study and based on the cost of a comparable replacement dwelling. A thorough search of the market will be completed to locate the most comparable replacement dwelling. If available at least three comparable replacement dwellings will be researched and included in the RHS. The Relocation Section Head or their designee will review and approve the RHS. A justification memorandum will be included with the study when PDP calculations exceed Housing of Last Resort limitations. PDP calculations exceeding \$50,000.00 require Division Head approval prior to presentation. Variations to typical PDP determinations may include, but are not limited to, the following:

ii) Major Exterior Attributes

If the acquired dwelling has what is determined to be a major exterior attribute, such as a detached garage, swimming pool, extra-large lot (that is considered typical for the area), golf course or lake frontage, etc., a search will be made for comparable dwellings that contain the particular attribute to compute the PDP. If a

replacement dwelling with similar attributes cannot be located, then the compensation attributed to the attribute will be deducted from the compensation for the acquired dwelling when computing the price differential payment.

Example:

Total Acquisition Price	\$52,500.00
Depreciated Value of Major Exterior Attribute	- \$2,500.00
<u>Value of Dwelling and Dwelling Site</u>	<u>\$50,000.00</u>
Comparable Dwelling and Dwelling Site	\$60,000.00
<u>Value of Acquired Dwelling and Dwelling Site</u>	<u>- \$50,000.00</u>
TOTAL PRICE DIFFERENTIAL PAYMENT (PDP)	\$10,000.00

iii) Uneconomic Remnant

When the acquisition of a portion of the dwelling site causes the displacement of the owner from the dwelling, the after value of the remainder dwelling site and improvements will be included in the original PDP calculation when the acquisition offer includes an uneconomic remnant. If the owner does not sell the uneconomic remnant to the ARDOT, the after value of the remainder dwelling site and improvements will not be added to the acquisition cost of the displacement dwelling in determining the actual PDP.

iv) Economic Remnant of Typical Residential Property

When the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder retains its economic value, the ARDOT may offer to purchase the entire property. If the owner refuses to sell the remainder to the ARDOT, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the RHP.

v) Mixed-use and Multi-Family Properties Acquired

If the acquired 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 acquired dwelling (which will be determined by Appraisal) shall be considered its acquisition cost when computing the PDP.

vi) Multiple Occupants of One Acquired Dwelling

If two or more occupants of the acquired dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the ARDOT, of any relocation payments (RHP and/or moving) that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the ARDOT determines that two or more occupants (families

or individuals) maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments. These payments would be based on housing which is comparable to the quarters occupied by each occupant plus a pro-rata share of community rooms that have been shared with other occupants.

vii) Partial-Ownership of Acquired Dwelling

The actual RHP for displaced residential occupant(s) with a partial ownership interest in the acquired dwelling and dwelling site will be computed based on the residential occupant’s actual portion of the compensation for the acquisition of the dwelling and dwelling site.

Example price differential computation (Residential Owner Occupant with 50% ownership interest in acquired house and dwelling site.):

Listing Price, Comparable Replacement Dwelling	\$125,000.00
Total compensation, Acquired Dwelling	- \$108,000.00
<hr/>	
Price Differential Payment Eligibility	\$17,000.00
Actual Purchase Price, Replacement Dwelling	\$70,000.00
Occupants compensation for interest in Acquired Dwelling	- \$54,000.00
<hr/>	
Actual Price Differential Payment	\$16,000.00

viii) Life Estate in Acquired Dwelling

The PDP for displaced residential occupant(s) with a life estate interest in the acquired dwelling and dwelling site will be computed in the same manner as described in Section 9.13(2)(b). The Legal Division determines the value of the life estate and the displaced person’s portion of the acquisition compensation in accordance with Arkansas State Law.

ix) Recalculation of Price Differential Payment

When the displacement dwelling has been acquired or condemned within a reasonable amount of time from the initiation of negotiations and the displaced person voluntarily remains in the dwelling, the ARDOT is under no obligation to recompute the PDP when the displaced person(s) moves. However, if the property is not acquired for a long period of time, then housing within the same price range may be offered or, if it is not available, a new PDP may be prepared and presented.

x) Actual Price Differential Payment

To receive a PDP the cost of the replacement must exceed the acquisition cost of the acquired dwelling. The following shall be considered in determining the acquisition cost of the displaced dwelling and the actual cost of the replacement dwelling:

(1) Acquisition Cost

(a) Acquisition Amount Increased

If the residential portion of the acquisition amount is changed through an administrative settlement, appraisal revisions, consent or court judgment, the PDP will be recalculated based on the revised compensation for the dwelling and dwelling site.

(b) Condemnation Agreement

The displaced person shall sign a "Condemnation Agreement" (along with the RHP Claim), prior to final adjudication of an eminent domain action to claim the RHP. The agreement stipulates that upon adjudication, the PDP will be recomputed using the amount attributable to the dwelling and dwelling site awarded through the proceedings as the new acquisition value. If the revised PDP is reduced the displaced person will refund the difference derived from the condemnation judgment.

(2) Actual Cost of Replacement Dwelling Determination

For purposes of computing the price differential payment, the actual cost of the replacement dwelling can include, but is not limited to, the following:

(a) Purchase price of a dwelling; or

(b) Purchase price and rehabilitation cost of a substandard dwelling; or

(c) Cost of a relocated dwelling the displaced person owns or purchases, including the displaced dwelling if retained.

(i) Cost of the dwelling

(ii) The moving expenses and the cost of necessary restoration cost.

(iii) The cost of making the replacement dwelling and site decent, safe and sanitary.

(d) The actual cost of the replacement site and site improvements. If the retained dwelling is moved to the residual or a site previously owned by the displaced person, the FMV of the site and site improvements will be used for the replacement cost. The guidelines for determining FMV are established in Section 9.13(2)(b)(x)(2)(f).

(e) Construction of a dwelling on a site the displaced person owns or purchases.

(f) FMV of a currently owned dwelling and/or site. The assigned Relocation personnel will obtain records and data to verify the ownership of the

property, prepare an FMV analysis, and submit to the Relocation Section Head for review and approval.

- (i) If approved, the FMV will be incorporated into the actual replacement property calculation.
- (ii) If not approved or there is insufficient data or knowledge to complete the FMV analysis, the Relocation Section Head will send a memorandum with the FMV analysis to the Appraisal Section Head requesting a valuation for the property in question.

c) Incidental Expenses

- i) Incidental expenses 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:
 - (1) Legal, closing and related costs, including those for title search, abstracting and preparing conveyance instruments, notary fees, surveys and plats, and recording fees.
 - (2) Lender, FHA, or VA application and appraisal fees.
 - (3) Loan origination, points or assumption fees that do not represent prepaid interest. Payment will be based on the lesser mortgage balance. If there was no mortgage on the displacement dwelling, then these costs would not be considered necessary costs.
 - (4) Certification of structural soundness, professional home inspection and termite inspection.
 - (5) Credit Report.
 - (6) Owner's and mortgagee's evidence of title, e.g. title insurance, not to exceed the costs for a comparable replacement dwelling.
 - (7) Escrow agent's fee.
 - (8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
 - (9) Conventional loan application and appraisal fees if not a part of the debt service charge or finance charge.
 - (10) Mortgage Insurance Premiums - Reimbursement should be limited to an amount based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less. If there were no mortgage on the displacement dwelling, then this cost would not be considered a necessary cost.

- (11) Such other costs as the ARDOT determines to be incidental to the purchase.
- ii) Any displaced person who is qualified for an RHP is entitled to receive an incidental closing cost payment, except as limited by Section 9.13.3.
 - iii) A displaced owner occupant who meets the qualification requirements for an RHP, but does not receive the price differential payment because he or she purchased a decent, safe and sanitary replacement dwelling for an amount less than the acquisition payment for his or her dwelling and dwelling site, or did not have a higher interest rate on the loan on the replacement dwelling, shall qualify for an Incidental Closing Cost payment (including mortgage insurance, loan origination fees and other debt service charges based on the lesser mortgage balance).
 - iv) Incidental Closing Cost payments may be claimed subsequent to the closing on a separate claim form from the RHP or down payment assistance.

d) Increased Mortgage Interest Costs

- i) Increased mortgage interest costs are payments available under the Relocation Program to displaced residential owners to compensate for the additional expense they will encounter, if any, by paying higher interest rates for a new mortgage on a replacement property than they were paying on an existing mortgage on the property acquired from them by the ARDOT, plus other debt service costs paid by the displaced person, if not paid as incidental costs.
- ii) The payment shall be an amount that will reduce the mortgage balance on the replacement dwelling to an amount that could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.
- iii) Payment Qualification Requirements. The following conditions must exist before a displaced person can qualify for an increased interest payment:
 - (1) The displaced person must meet all basic qualification requirements necessary to be eligible for a RHP. The displaced person would not be disqualified for an increased interest payment even though they did not actually receive a RHP for the reason that comparable replacement property was available for an amount that did not exceed the acquisition cost, if otherwise qualified, and
 - (2) The subject owner-occupied residential property being acquired by the ARDOT must have been encumbered, not less than 180 days prior to the initiation of negotiations, by a bona fide mortgage which was a valid lien on such property, and

- (3) The replacement is also encumbered by a bona fide mortgage that bears a higher interest rate than the mortgage on the property being acquired by the ARDOT.

v) Payment Computations

- (1) The increased interest payment computation will be made by Relocation staff with the approval of the Relocation Section Head.
- (2) The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known and, if all pertinent documents are provided by the displaced person, the payment shall be made available at or near the time of the closing on the replacement dwelling.
- (3) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity of the replacement dwelling.
- (4) The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance computed in the buy down determination, the payment will be prorated and reduced accordingly.
 - (a) 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.
- (5) Debt Service Costs: Purchaser's points and loan origination or assumption fees, but not seller's points, shall be added to the increased interest payment to the extent:
 - (a) They are not paid as incidental expenses:
 - (b) They do not exceed rates normal to similar real estate transactions in the area.
 - (c) The ARDOT determines them to be necessary; and
 - (d) 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 such mortgage balance under this Section.

v) Partial Acquisition

- (1) Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except the reduction shall not apply when the mortgagor required the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.
 - (2) Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.
- vi) Multi-Use Properties: The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.
 - vii) Other Highest and Best Use: If a dwelling is located on a tract where the fair market value is established on higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided in the appropriate paragraphs above. If the mortgage is based on the higher use; however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.
 - viii) Multiple Mortgages: If the displaced person has had a first and second mortgage on the displacement dwelling and obtains a first and second mortgage on the replacement dwelling then two increased interest payment computations may be made. If only a first mortgage on the replacement dwelling is obtained, only one computation will be made. If the displaced person has one mortgage on the displacement dwelling and obtains a first and second mortgage on the replacement dwelling only one computation will be made.

3) Rental Assistance Payments

a) General

Individuals and families displaced by an ARDOT project from dwelling units who rent rather than purchase, are entitled to a rental assistance payment if they meet the payment qualification requirements noted below.

Rental assistance payments that exceed \$9,570.00 are HLR. Rental assistance payment calculations exceeding \$50,000.00 require Division Head approval prior to presentation.

The "three comparable method" of determining the rental rates of comparable housing will be used by the Relocation Section as outlined in Section 9.13(1).

b) Payment Qualification Requirements

i) Tenants, ninety-day or more occupants

- (1) The displaced person must have actually and lawfully occupied the subject dwelling unit for at least ninety (90) days immediately prior to the initiation of negotiations for the property.
- (2) Decent, Safe and Sanitary Replacement Housing must be rented and occupied within one year from the date the displaced person moves from the acquired property (unless the ARDOT extends this period for good cause).

ii) Less Than Ninety-Day and Subsequent Occupant

- (1) These occupants are entitled to receive rental assistance as provided under Replacement Housing of Last Resort as described in Section 9.13(8)(d).
- (2) The displaced person must meet the same qualifications set out for a tenant except that the 90 day occupancy time requirement is not applicable.
- (3) The one-year period allowed for occupying a replacement dwelling shall be measured from the following dates:
 - (a) For Owner Occupants, the latter of the date the displaced person receives final payment for the acquired dwelling or the date the amount is deposited in the court, or the date the ARDOT presents the RHP eligibility notice.
 - (b) For Tenant Occupants, the date on which the displaced person actually moves from the acquired dwelling.

iii) Long Term Owners, 90-Day Occupants

- (1) The displaced person must meet the same qualifications set out for a tenant except that the one-year period allowed for renting and occupying a replacement unit shall be measured from the latest of the date which they received the payment for the acquisition, or in the case of condemnation, the date the deposit was made in court; or the date the displaced person moves from the acquired property. (unless the ARDOT extends this period for good cause).
- (2) A long-term owner qualified for a RHP can elect to rent in lieu of purchasing a replacement dwelling. The rental assistance payment would be made in lieu of the PDP and is based on an economic rent determined by the Appraisal Section.
- (3) The rental assistance payment cannot exceed the amount the displaced person would have been entitled to receive as a PDP.
- (4) The displaced person remains eligible during the one-year occupancy period for the amount of the PDP less the rental assistance claimed.

iv) Sleeping Rooms

A displaced tenant of a sleeping room who meets the payment qualification requirements is entitled to a rental assistance payment.

c) Computation of Payment

- i) An eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment. Such payment shall be forty-two (42) months 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 DS&S replacement dwelling actually occupied by the displaced person. However, if the monthly rent alone is enough to qualify the displaced person for the full payment, the utilities need not be added.
- ii) 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. For an owner occupant, use economic rent (as determined by the Appraisal Section), plus utility cost for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling due to services provided or family relation, use economic rent (plus utility cost) unless its use would result in a hardship because of the person's income or other circumstances; or
 - (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. The base monthly shall not be based on income for persons whose income exceeds the "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 is assumed to be a dependent, unless the displaced person demonstrates otherwise, or,
 - (3) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

d) Unfurnished Versus Furnished Dwellings

In order to compare like situations, comparables for an unfurnished displacement dwelling will be unfurnished and comparables for a furnished displacement dwelling will be furnished. When a displacement dwelling is furnished and all that is available

is unfurnished comparables then an appropriate amount for rental of furniture will be added to the rent of the comparable.

e) Utility Costs

The average monthly utility costs for the displacement dwelling, the comparable or the replacement dwelling are established with the best information available.

f) Change of Occupancy

If a tenant, after moving to a decent, safe and sanitary dwelling, relocates within a one-year period to a higher cost rental unit, he or she may present another claim for the amount in excess of what was originally claimed, but not to exceed the total rent supplement computed by the ARDOT.

g) Multiple Occupants of One Acquired Dwelling Unit

Provisions for this paragraph are the same as Section 9.13(2)(b)(vi).

h) Manner of Disbursement

A rental assistance payment may, at the ARDOT's discretion, be disbursed in either a lump sum or in installments. However, except as limited in the paragraph entitled "Payment After Death" in this manual, the full amount vests immediately, whether or not there is any later change in the displaced person's income or rent, or in the condition or location of the displaced person's housing.

4) Down payment Assistance

a) Amount of Payment

- i) Any displaced tenant, who meets the eligibility requirements for a rental assistance payment and elects to purchase in lieu of renting a replacement dwelling, is eligible to receive down payment assistance in the amount determined as their rental assistance payment eligibility. The full amount claimed must be applied toward the purchase price of the replacement and/or incidental expenses. The replacement dwelling must be decent, safe, and sanitary. The displaced person must occupy the replacement as their residence. The one year period for occupying the replacement is the same as for the Rental Assistance Payment.
- ii) A displaced person eligible to receive a PDP as a 90-day owner occupant is not eligible for this payment.

b) Application of Payment

The full amount of the RHP claimed for the down payment assistance must be applied to the purchase price of the replacement dwelling and/or related incidental expenses. Eligible costs for down payment assistance include, but are not limited to:

- i) Purchase of a dwelling, or
- ii) Construction of a replacement dwelling; or
- iii) Purchase of a mobile home and purchase or rental of a replacement site; or
- iv) Purchase of a replacement site and occupancy of a dwelling on that site; or
- v) Purchase of dwelling and movement to a replacement site; and
- vi) Expenditures to correct decent, safe and sanitary deficiencies in a replacement dwelling.

c) Multiple Occupants

In cases of multiple occupants of one acquired dwelling that move separately the eligible payment will be based on a pro rata share. It is permissible for one of the displaced persons to elect to purchase a replacement and receive a down payment assistance payment and another to rent and receive a rental assistance payment.

5) Mobile Homes - Replacement Housing Payments

Replacement Housing Payments for occupants displaced from a mobile home, and/or from the acquired mobile dwelling site: Both the mobile home and mobile dwelling site must be considered when computing a replacement housing payment.

- a) An owner-occupant displaced from a mobile home or site is entitled to a price differential payment, if:
 - i) The person occupied the mobile home on the displacement site for at least 90 days immediately before:
 - (1) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property.
 - (2) The initiation of negotiations to acquire the mobile dwelling site if the mobile home is personal property, but the person owns the mobile dwelling site; or
 - (3) The date of the ARDOT's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in Section 9.2.3.
 - ii) The displaced person meets the other basic eligibility requirements under RHP's in Section 9.13.
 - iii) The ARDOT acquires the mobile home as real estate, or acquires the mobile dwelling site from the displaced owner, or the mobile home is personal property, but the owner is displaced from the mobile home because the ARDOT determines that the mobile home:
 - (1) Is 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.
- iv) The PDP for an eligible displaced 90-day owner is computed as described in Section 9.13(2)(b). incorporating the following, as applicable:
- (1) If the ARDOT 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.
 - (2) If the ARDOT 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 RHP, 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 ARDOT's selected comparable mobile home less the ARDOT's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.
 - (3) If a comparable replacement mobile dwelling site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.
- v) If the displacement mobile home site is leased or rented, a displaced 90-day owner-occupant is entitled to a rental assistance payment computed as described in Section 9.13(5). 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.
- vi) If the ARDOT determines that a mobile home is personal property and may be relocated to a comparable replacement site and the owner-occupant does so or 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 under moving costs in Section 9.8(2)(a-m) and any replacement housing payment for the purchase or rental of a comparable site.

vii) If the mobile home is not acquired but the owner is eligible for a PDP, the owner is not eligible for payment of moving expenses for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

b) Rental Assistance Payments for Ninety-Day Mobile Home Occupants (Tenants and Short Term Owner). A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, if:

- i) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations.
- ii) The person meets the other basic eligibility requirements under rental assistance payments in Section 9.13.3.
- iii) The ARDOT acquires the mobile home and/or site, or the mobile home is not acquired by the ARDOT, but the ARDOT determines that the occupant is displaced from the mobile home.

c) Situations Concerning Mobile Home Payments

i) A Mobile Home Occupant who owns a mobile home (determined to be personalty), rents the site, and meets qualifications, may be eligible for:

- (1) Rental Assistance Payment based on comparable site; or
- (2) Down payment assistance for a site.

ii) A Mobile Home Occupant who owns a mobile home (determined to be realty), rents the site, and meets qualifications may be eligible for:

- (1) Replacement Housing Payment based on comparable mobile home; and
- (2) Rental Assistance Payment based on comparable site; or
- (3) Down payment assistance for a site.

iii) A Mobile Home Occupant who owns a mobile home (determined to be realty), owns the site, and meets qualifications may be eligible for:

- (1) Replacement Housing Payment based on comparable site and mobile home combined; or
- (2) Rental Assistance Payment based on comparable site and mobile home combined if he or she chooses.

iv) A Mobile Home Occupant who owns a mobile home (determined to be personalty), owns the site, and meets qualifications may be eligible for:

- (1) Price Differential Payment based on comparable site; or

- (2) Rental Assistance Payment based on comparable site if he or she chooses.
- v) A Mobile Home Occupant who rents a mobile home (determined to be personalty), rents the site, and meets qualifications may be eligible for:
 - (1) Rental Assistance Payment based on comparable mobile home and site combined; or
 - (2) Down payment assistance for a mobile home and site combined.
- vi) A Mobile Home Occupant who rents a mobile home (determined to be realty), rents the site, and meets qualifications, may be eligible for:
 - (1) Rental Assistance Payment based on comparable site and mobile home combined; or
 - (2) Down payment assistance for a site and mobile home combined.

6) Occupancy Requirements for Displacement or Replacement Dwelling

No person shall be denied eligibility for a RHP 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 State; or
- b) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the ARDOT.

7) Housing of Last Resort (HLR)

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, the ARDOT shall provide additional or alternate assistance under the provisions of this Section. Any decision to provide last resort housing assistance must be adequately justified either:

- a) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
 - i) The availability of comparable housing in the project or program area; and
 - ii) The resources available to provide comparable housing; and
 - iii) The individual circumstances of the displaced person; or
- b) By a determination that:

- i) There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and therefore, last resort housing assistance is necessary for the area as a whole; and
 - ii) A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and
 - iii) The method selected for providing last resort housing assistance is cost effective, considering all elements that contribute to total project or program costs.
- c) 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 Part 24. The ARDOT shall not require any displaced person to accept a dwelling provided by the ARDOT under these procedures (unless the ARDOT 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.

8) Methods of Providing Replacement Housing as a Last Resort (HLR)

- a) The ARDOT shall have broad latitude in implementing this Section, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.
- b) The methods of providing HLR include, but are not limited to:
 - i) Replacement Housing and Rental Assistance payments in excess of the limits set forth in this regulation. A Rental Assistance payment may be paid in installments or in a lump sum at the ARDOT's discretion.
 - ii) Rehabilitation of and/or additions to an existing replacement dwelling.
 - iii) The construction of a new replacement dwelling.
 - iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property and may bear interest or be interest free.
 - v) The relocation, and, if necessary, rehabilitation of a dwelling.
 - vi) The purchase of land and/or a replacement dwelling by the ARDOT and subsequent sale or lease to, or exchange with a displaced person.
 - vii) The removal of barriers to the handicapped and any other DS&S deficiency.
 - viii) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

- c) Under special circumstances consistent with the definition of a comparable replacement dwelling, modified methods of providing HLR permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling 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.
- d) The ARDOT shall provide assistance under this subpart to a displaced person who is not eligible to receive a RHP because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means. As defined herein. Such assistance shall cover a period of 42 months.

9) Eviction For Cause

Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this regulation unless the ARDOT 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) This 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 the payments and other assistance set forth in this regulation.

9.14. ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES

- 1) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:
 - a) In the case of an individual, that he or she is either a citizen or an alien who is lawfully present in the United States.
 - b) In the case of a family, that each family member is a citizen or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.
 - c) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is a citizen or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

- d) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.
- 2) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner (s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be lawfully present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for: 1) the household, based on the number of eligible household members, or 2) the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.
- 3) The ARDOT shall consider the certification provided pursuant to Part A of this Section to be valid, unless the ARDOT determines in accordance with Part D of this Section that it will be invalid based on a review of an alien's documentation or other information that the ARDOT considers reliable and appropriate. Any review by the ARDOT of the certification to be provided pursuant to Part A of this Section shall be conducted in a nondiscriminatory fashion. The ARDOT will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.
- 4) If, based on a review of an alien's documentation or other credible evidence, the ARDOT has reason to believe that a person's certification will be invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, the following information shall be obtained before making a final determination:
 - a) For a person who has certified that they are an alien lawfully present in the United States, the agency shall obtain verification of the person's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by USCIS to verify immigration status.
 - b) For a person who has certified that they are a citizen or national, if the agency has reason to believe that the certification is invalid, the agency shall request evidence of United States citizenship or nationality and, if considered necessary, verify the accuracy of such evidence with the issuer or other appropriate source.
- 5) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this Section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the ARDOT's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. Exceptional and extremely unusual hardship means that the denial of relocation payments and advisory assistance to such person will directly result in:

- a) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
- b) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
- c) Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

9.15. APPEALS

1) General

Any person(s) may file a written appeal with the ARDOT in any case in which the person believes that the ARDOT has failed to properly determine the person's eligibility for or the amount of a relocation payment as prescribed by the Uniform Act. The Appeal procedures shall be conducted in an orderly manner with the person or his selected representative giving evidence showing why the relocation payment involved is not satisfactory. The appeal will be conducted in accordance with the Arkansas Administrative Procedure Act.

Statutory or regulatory maximum payment amounts and payment limitations cannot be appealed.

2) Relocation Appeal Procedures

- a) Relocation Personnel will explain the Appeal Procedure to the appellant.
- b) The appellant will submit a written request for review to the Relocation Section Head. The request can be in any form but must include an explanation of the application for relocation assistance the appellant believes the ARDOT has failed to properly consider under the relocation program.
- c) The Relocation Section Head will review the request upon receipt in a timely manner.
- d) If the Relocation Section Head concurs with the request, relocation assistance will be provided.
- e) If the request is rejected, the Relocation Section Head will notify the appellant(s) in writing.
- f) The time period for the appellant to file an appeal request is 60 days from written notification.
- g) The appellant may file an appeal by completing the Appeal Request Form along with any other supporting documentation to support their appeal. The ARDOT shall consider a written appeal regardless of form. The appeal request must be forwarded to the Division Head.
- h) The Division Head will review the appeal request in a timely manner.

3) Appeal Hearing

- a) Appeal Hearing Panel shall consist of three persons:
 - i) At least one member that possesses a good working knowledge of the Uniform Act appointed by the Division Head,
 - ii) The District Engineer, or their appointee, from the District in which the respective highway project is located,
 - iii) An Attorney appointed by the Chief Legal Counsel. The Attorney will serve as Chairperson of the Panel.
 - (1) The Chairperson or their appointee will make arrangements for the appropriate clerical personnel and accommodations for the appeal hearing, as well as the scheduling, communications, notifications, and coordination for the hearing.
 - (2) The Chairperson shall preside over the appeal hearing and meetings of the Panel.
 - iv) The ARDOT shall permit the appellant to inspect and copy all materials pertinent to their appeal, except materials that are exempt from disclosure as defined in the Arkansas Freedom of Information Act (FOIA). The ARDOT may impose reasonable conditions on the appellant's right to inspect, consistent with applicable laws.
 - v) The Appeal Hearing shall be conducted in an orderly manner with the appellant or their selected representative giving evidence showing why the ARDOT has failed to properly consider the person's eligibility for or the amount of a relocation payment prescribed by the Uniform Act. Any legal counsel will be solely at the appellant's own expense. The hearing will be conducted in accordance with the Arkansas Administrative Procedure Act.
 - vi) The Appeal Hearing Panel will review and consider the available information, pertinent justification, evidence, and material submitted and needed to ensure a fair and full review. The Panel will make a written determination which will include an explanation of the basis on which the decision was made within 30 days after the hearing.
 - vii) If any part of the appeal is upheld, the Chairperson will notify the appellant and the Division Head of the decision.
 - viii) Upon notification that the appeal or any part thereof was upheld, the Division Head will notify the Relocation Section Head to begin the process of providing relocation assistance in accordance with the Panel's decision.

- ix) If the entire appeal or any part of the appeal is denied, the Chairperson will notify the appellant and advise them of their right to seek judicial review of the decision.

SECTION 10

DEFINITIONS

Accepted Appraisal - An appraisal accepted by the Department review appraiser.

Acquired - The time at which the Department or government agency with jurisdiction obtains legal possession of the real property; legal possession occurs at closing in negotiated settlements and at the date of deposit in court in litigated cases.

Acquiring Agency – The Department or other agency, which has the authority to acquire property by eminent domain under Arkansas law, and an agency or person which does not have such authority.

Acquisition – Activities to obtain an interest in, and possession of, real property.

Administrative Settlement - A settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

Agency - The Government agency or person that acquires real property or displaces a person.

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:

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 and whose stay in the United States has not been authorized by the United States Attorney General, and

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.

Appraisal - A written statement or report 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 data.

Approved Appraisal - An accepted appraisal that is approved by the Department review appraiser and used in support of the recommended just compensation.

Building - A constructed structure designed to stand, more or less, permanently, covering a space of land, usually covered by a roof and more or less, enclosed by walls and serving as a dwelling, storage building, factory or shelter for animals and thus generally designed for some type of occupancy.

Business: Any lawful activity, except a farm operation, that is conducted:

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; or

Primarily for the sale of services to the public; or

By a nonprofit organization that has established its nonprofit status under applicable Federal or State Law (will obtain legal opinion as to status if the Department deems it necessary).

Citizen - Includes both citizens of the United States and noncitizen nationals.

Comparable Replacement Housing - means housing that is:

Decent, safe and sanitary as defined in this manual.

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 Department may consider reasonable trade-off for specific features when the replacement unit is "equal to or better than" the displacement dwelling.

Adequate in size to accommodate the occupants.

In an area that is not subject to unreasonable adverse environmental conditions and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and is reasonably accessible to the person's place of employment.

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 and greenhouses. If the exact size home site in the same type of neighborhood cannot be found after a search, then what is available (even if smaller) may be utilized. If the difference in size is not significant then no adjustment will be made to the purchase price.

Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In such cases the displaced person will be advised of any requirements of the government housing assistance programs related to the size of the replacement dwelling as well as of the long- term nature of the rent subsidy and the limited (42 month) duration of the rental assistance payment.

Within the financial means of the displaced person.

A replacement dwelling purchased by a homeowner in occupancy for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full RHP, all increased mortgage interest cost, and all eligible incidental expenses, plus any additional amount required to be paid under housing of last resort.

A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance the person's monthly rent and estimated utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

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 the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under Replacement Housing of Last Resort.

Fair housing---open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968.

Contributory Value - The dollar amount that buildings, structures, or other improvements contribute to fair market value of the total property. Contributory value is normally synonymous with "value in place".

Court Settlement or Court Award - Any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

Damages – The loss in the value attributable to remainder property due to the severance or consequential damages that arise when only part of an owner's real property is acquired.

Decent, Safe and Sanitary (DSS) Housing – A dwelling that meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code, such following standards shall apply, unless waived for good cause by the FHWA. The following minimum standards shall apply:

Be structurally sound, weather tight, and in good repair.

Contain a safe electrical wiring system adequate for lighting and other electrical devices.

Contains 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.

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 Department. In addition, the Department shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes. The following will be used to determine the number of bedrooms required to accommodate a family of a given size and composition if local codes do not apply:

No. of Bedrooms	No. of Persons	
	Minimum	Maximum
1	1	3
2	2	5
3	4	7
4	6	9

An unborn child will not be counted as a person.

Dwelling requirements will be of sufficient size that it will not be necessary, (a) for persons of opposite sex other than husband and wife and children under 12 years of age, to occupy the same bedroom, (b) for room other than a bedroom to be used regularly as a bedroom unless it is used in this manner at acquired dwelling.

There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains 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.

Contains unobstructed egress to safe, open space at ground level.

For a displaced person(s) with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

The decent, safe and sanitary inspection is made solely for the purpose of determining the eligibility of displaced individuals and families for payment for replacement housing and are not intended to be, nor do such constitute, warranties or guarantees by the Department and the officers, agents and employees thereof, that a dwelling is decent, safe and sanitary.

Displaced Person - Except as provided in the definition of persons not displaced, 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 regulations.):

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.

As a direct result of rehabilitation or demolition for a project.

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 advisory services and moving expenses.

Displacing Agency - Any Federal Agency carrying out a program or project, Department, and any State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

Disposal – The transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway right of way.

Dwelling - 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 unit; a non-housekeeping unit, a mobile home, or any other residential unit.

Dwelling Site - A land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

Early Acquisition - Acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project.

Fair Market Value - The most probable price in terms of money which the real property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it is adapted, and it is capable of being used.

Family: Two or more individuals living together in a single family dwelling unit who:

Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit, or

Are not related by blood or legal ties but live together by mutual consent.

Farm Operation: 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.

Federal Agency: FHWA or any Department, Agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

Federal Financial Assistance: A grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

Household Income: The 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.

Improvement – Buildings or other relatively permanent structures or developments located or attached to the land.

Initiation of Negotiations - Unless a different action is specified in applicable Federal program regulations, the term initiation of negotiations means the following:

Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the initiation of negotiations means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, 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.

Lead Agency - Department acting through the FHWA.

Legal Settlement - A settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation suit had been filed.

Mobile Home - Includes manufactured homes and recreational vehicles used as residences.

Mortgage - Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under Arkansas law, together with the credit instruments, if any, secured thereby.

Nonprofit Organization - An organization that is incorporated under the applicable laws of a State as a nonprofit organization and exempt from paying Federal Income Taxes under Section 501 of the Internal Revenue Code.

Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance - Written notice furnished to a person to be displaced from property acquired prior to the commitment of Federal financial assistance to the activity that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

Option - The purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

Owner - Any persons, corporation, agency or body having an interest in the real property, including not only the fee owner(s), or owners of various interests or estates in the property as well as leasehold and/or tenant owner(s). "Owners" also includes a contract purchaser of any estate or interest or one who possesses such other proprietary or equitable interest in the property acquired which, in the judgment of the head of the agency, should be considered an ownership.

Person - Any individual, family, business, farm, nonprofit organization, partnership, corporation, or association.

Personal Property - Generally, movable items; that is, those not permanently annexed to and a part of real estate. In deciding whether or not a thing is personal property or real estate, usually there must be considered (1) the manner in which it is affixed; (2) the intention of the party who made the annexation (that is, to leave permanently or to remove at some time); (3) the purpose for which the premises are used. Generally, and with exceptions, items remain personal property if they can be removed without serious injury either to the real estate or to the item itself.

Program or Project - Any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

Real Property or Real Property Interest - Any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve right of way for a transportation facility.

ROW Use Agreement - Real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent

with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic.

Salvage Value - 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. This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

Small Business - 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 under 49 CFR § 24.304.

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

State Agency - Any department, agency or instrumentality of a State or of a political subdivision of a State, any department, agency or instrumentality of two or more States or of two or more political subdivisions of a state or States, and any person who has the authority to acquire property by eminent domain, for public purposes, under Arkansas law.

Stewardship/Oversight Agreement - The written agreement between the Department and FHWA that defines the respective roles and responsibilities of FHWA and the Department for carrying out certain project review, approval, and oversight responsibilities.

Structure - Includes other things that are built covering or upon a space of land, such as fences, monuments, fixtures, paving and signs, regardless of whether considered real or personal property under local laws.

Tenant - A person who has the temporary use and occupancy of real property owned by another.

Uneconomic Remnant - 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 Department has determined has little or no value or utility to the owner.

Uniform Act - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 et seq.), and the implementing regulations at 49 CFR part 24.