

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, DC 20314-1000

ER 405-1-16

CEMP-CR


Regulation
No. 405-1-16

31 January 2014

Real Estate
RELOCATION ASSISTANCE PROGRAM

1. Purpose. This regulation provides guidance and procedures supplementing the Uniform Regulations at 49 CFR Part 24, which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, codified at 42 U.S.C. Section 4601, et seq., the "Uniform Act".
2. Applicability. This Regulation applies to all Divisions and Districts having a real estate mission and real estate responsibilities.
3. Distribution Statement. This regulation is approved for public release; distribution is unlimited.
4. References.
 - a. 42 U.S.C. Chapter 61, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
 - b. Pub. L. No. 99-662, Water Resources Development Act of 1986
 - c. 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
 - d. U.S. Department of Justice Title Standards 2001, December 29, 2000 (reprint March 23, 2001)
 - e. ER 1105-2-100, 22 Apr 2000, Planning Guidance Notebook
 - f. ER 1165-2-131, 15 Apr 1989, Local Cooperation Agreement for New Start Construction Projects

FOR THE COMMANDER:


R. MARK TOY, P.E.
Colonel, Corps of Engineers
Chief of Staff

ER 405-1-16
31 Jan 14

(This page intentionally left blank)

CEMP-CR

Regulation
No. 405-1-16

31 January 14

Real Estate
RELOCATION ASSISTANCE PROGRAM

TABLE OF CONTENTS

	<u>Paragraph</u>	<u>Page</u>
Chapter 1 - General- Purpose and Applicability		
Purpose	1-1	1-1
Applicability	1-2	1-1
Delegations	1-3	1-2
Written Notices	1-4	1-2
Organizational Responsibility for Relocations	1-5	1-3
Chapter 2 - Real Property Acquisition		
General	2-1	2-1
Basic Acquisition Policies	2-2	2-1
Compliance with Basic Policies	2-3	2-1
Chapter 3 - General Relocation Requirements		
Relocation Planning	3-1	3-1
Coordination of Planned Relocation Activities	3-2	3-1
Relocation Advisory Services	3-3	3-1
Public Information	3-4	3-2
Loans for Planning and Preliminary Expenses for Additional Housing	3-5	3-2
Aliens Not Lawfully Present in the United States and the Uniform Act	3-6	3-2
Willing Seller (Voluntary) Transactions	3-7	3-2
Waiver of Policy	3-8	3-2

Chapter 4 - Moving and Related Expenses

Eligibility	4-1	4-1
Allowable Moving and Related Expenses	4-2	4-1
Applicability of Approval Levels	4-3	4-1
Approval of Actual Moving Expenses – Residential Moves	4-4	4-1
Approval of Actual Moving Expenses – Nonresidential Moves	4-5	4-1
Waiver of Limits on Searching Expenses – Nonresidential Moves	4-6	4-1
Reasonableness of Claims	4-7	4-2
Nonresidential Fixed Move Payment	4-8	4-2
Reestablishment Expenses	4-9	4-2
Reestablishment Expenses Payment Eligibility – Leasing of Space	4-10	4-2

Chapter 5 - Replacement Housing- General

Comparable Replacement Dwelling	5-1	5-1
Section II – Payment for Homeowners		
Replacement Housing Payments for 180-Day Owner-Occupants	5-2	5-2
Differential Payment for Replacement Housing – Appraisal Breakout	5-3	5-2
Contract for Rehabilitation or Construction of Replacement Dwelling	5-4	5-3
Providing Information to Other Parties	5-5	5-3
Administrative Settlements	5-6	5-4
Advance Replacement Housing Payment in Condemnation Cases	5-7	5-4
Requirement to Receive Payment	5-8	5-4
Verification and Records	5-9	5-5
Section III – Payment for Tenants and Certain Others		
Payments for Tenants and Certain Others	5-10	5-5
Section IV – Mobile Homes		
Mobile Homes	5-11	5-5

Chapter 6 - Application Processing

Relocation Data Worksheet	6-1	6-1
Application	6-2	6-1
Determination of Relocation Benefits	6-3	6-1
Documentation	6-4	6-1

Chapter 7 - Appeals

Appeal Process	7-1	7-1
Filing of Appeal	7-2	7-1
Late-Filed Appeals	7-3	7-1
Processing of Appeals	7-4	7-2
Review of Appeal by Division Chief of Real Estate	7-5	7-3
Final Review of Appeal by USACE	7-6	7-3
Dissemination of Decisions	7-7	7-3

Chapter 8 - Cost Shared Projects

Purpose	8-1	8-1
Relocation Planning	8-2	8-1
Non-Federal Sponsor's Responsibilities	8-3	8-1
District Real Estate Responsibilities	8-4	8-1
Credit for Relocation Costs Prior to Project Partnership Agreement (PPA)	8-5	8-2
Monitoring for Compliance	8-6	8-2
Appeals of Decisions of non-Federal Sponsors	8-7	8-3

ER 405-1-16
31 Jan 14

(This page intentionally left blank)

Chapter 1

General- Purpose and Applicability

1-1. Purpose. This regulation provides guidance and procedures supplementing the Uniform Regulations at 49 CFR Part 24, which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, codified at 42 U.S.C. Section 4601, et seq., the “Uniform Act”. U.S. Department of Transportation (DOT) is the Federal Lead Agency for the Uniform Act. DOT duties include the development, issuance, and maintenance of the government-wide regulation, providing assistance to other Federal agencies, and reporting to Congress. These responsibilities have been delegated to the Federal Highway Administration (FHWA) and are carried out by the Office of Real Estate Services. The U.S. Army Corps of Engineers may deviate from any policy in this regulation as necessary unless required by law or another binding regulation.

1-2. Applicability.

a. This regulation applies to the Headquarters, U.S. Army Corps of Engineers (USACE) and to all Divisions and Districts. It applies to full federal and cost-shared projects. Work performed for another federal agency, including Air Force, is covered by that agency’s authorities, policy and decision levels and does not have to comply with Army policy, but all federal agencies must comply with b.(1) and (2). These regulations may be used, as appropriate, for such real estate work to fill in a void where the other agency has no policy or procedure that covers the particular issue or where legal authority is the same and this regulation is citing legal requirements.

b. All Federal agencies must follow:

(1) The Department of Justice (DOJ) Title Standards, currently the Title Standards 2001, A guide for the preparation of title evidence in land acquisitions by the United States of America (DOJ Title Standards). The DOJ Title Standards include approved forms. DA must also follow special DOJ regulations.

(2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended, 42 U.S.C. § 4601 et seq.) (Uniform Act). Title 49 CFR part 24 implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq. The Uniform Act was referred to as Public Law 91-646 in earlier versions of our regulations.

c. DA must follow the DOJ delegation to DA. “Delegation to the Department Of The Army for the Approval of the Title to Lands Being Acquired for Federal Public Purposes”, December 4, 1970.

d. Acquisition on behalf of the local sponsor, where title will be in the name of the local sponsor, is not considered federal acquisition.

1-3. Delegations.

a. The Secretary of the Army has delegated all authority to the Director of Real Estate under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), with authority to redelegate Real Estate Contracting Authority. A qualified Executing Official must meet the qualifications for the level of delegation required for the type of document and be delegated appropriate authority. Support on actions covered by this regulation may be by a contractor, with appropriate oversight performed by qualified USACE employees; however, all inherently governmental decisions on price, terms, conditions, and execution of documents must be by an appropriate USACE official with delegated authority.

b. Unless specifically reserved to a higher level by these regulations, all references in the Uniform Regulations which require agency (USACE) determinations or action will refer to the District Chief of Real Estate. The District shall maintain any records required by the Uniform Act and its implementing regulations except in the case of cost-shared projects, where the non-Federal sponsor is responsible for maintaining such records.

1-4. Written Notices.

a. Written Notices. 49 CFR Part 24 requires that certain written notices be provided to displaced persons. These include:

(1) General Information Notice [49 CFR 24.203(a)]

(2) Notice of Relocation Eligibility [49 CFR 24.203(b)]

(3) Ninety-Day Notice [49 CFR 24.203(c)]

(4) Notice of Intent to Acquire [49 CFR 24.203(d)]

(5) Notification of the Selection of Comparable Replacement Property [49 CFR 24.205(c)(2)(ii)(B)]

(6) Notice of Denial of Claim [49 CFR 24.207(e)]

b. Method of Delivery. The General Information Notice may be accomplished by delivering a brochure providing the displaced person with a general written description of the relocation program. The Federal Highway Administration produces such a brochure entitled RELOCATION – Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program. All required notices shall be delivered to the displaced person in person or by certified or registered first-class mail, return receipt requested, according to the procedure established in 49 CFR 24.5. Various written notices required by the Uniform Regulations may be provided separately or combined, where appropriate.

1.5. Organizational Responsibility for Relocations. Responsibilities and policy for relocations are governed by the Uniform Act, and implementing regulations found at 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs, or its replacement regulation, and in supporting manuals. The procedures of this regulation are to be used for planning and executing relocation actions on military and civil works projects. The District works primarily with the Project Manager and project team. For cost-shared projects executed pursuant to a Project Partnership Agreement (PPA), a legally binding agreement between the federal government and a non-federal sponsor (state, municipal government, flood control district, port authority, etc.) for construction of a water resources project, the non-Federal sponsor is required to acquire the necessary property interests and complete all relocations associated with the project. The non-Federal sponsor must comply with the Uniform Act and 49 CFR Part 24, and with state laws and regulations that accomplish the same purpose and effect. See also ER 1105-2-100, Planning Guidance Notebook, ER 1165-2-131, Local Cooperation Agreement for New Start Construction Projects, and other ERs in these series.

ER 405-1-16
31 Jan 14

(This page intentionally left blank)

CHAPTER 2

Real Property Acquisition

2-1. General. In order to qualify for relocation assistance benefits, a displaced person must have moved from the real property or moved personal property from the real property as a result of a written notice of intent to acquire, or actual acquisition, rehabilitation or demolition of such real property in whole or in part. The Uniform Act and the Uniform Regulations apply to acquisition of any real property interests for a Federal project, and to acquisition of any real property interests for projects where there is Federal financial assistance in any part of project costs, except as set out in 49 CFR 24.101.

2-2. Basic Acquisition Policies. Guidance, procedures, and documents described in other policy on appraisal and acquisition of real property and related interests will be followed, except as modified by the Uniform Act or the Uniform Regulations.

a. Acquisition Policies. Reference is made to 49 CFR 24.102, 103, 104, and 105 for basic acquisition policies regarding notice to the landowner, appraisals, negotiation procedures and other acquisition issues. Also, see ER 405-1-11, Acquisition, for further information and discussion of the acquisition process. Close coordination should be maintained between the Realty Specialist negotiating for the acquisition of the real property and the Realty Specialist providing relocation assistance.

b. Expenses Incidental to Transfer. Reference is made to 49 CFR 24.106 for guidance on reimbursement of reasonable expenses incidental to transfer of title to the Government.

c. Litigation Expenses. Reference is made to 49 CFR 24.107 for guidance regarding the circumstances when certain litigation expenses shall be reimbursed to the owner.

d. Donations. Reference is made to 49 CFR 24.108 for guidance regarding donations of real property interests to the Government.

2-3. Compliance with Basic Policies. Pursuant to the Uniform Act, non-federal acquiring agencies will provide satisfactory assurance of compliance with the acquisition provisions of the Uniform Act, to the greatest extent practicable under State law.

ER 405-1-16
31 Jan 14

(This page intentionally left blank)

CHAPTER 3

GENERAL RELOCATION REQUIREMENTS

3-1. Relocation Planning. Relocation impacts must be identified early in the planning stage of a Federal or Federally-assisted project to ensure problems associated with the displacement of individuals, families, businesses, farms, and non-profit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Procedures for relocation planning are set forth in 49 CFR 24.205.

3-2. Coordination of Planned Relocation Activities.

a. Federal Coordination. When two or more Federal agencies contemplate displacement activities in a given community or area, the District will establish appropriate channels of communication for planning relocation activities and coordinating available housing resources. In coordination with other concerned agencies, the District Chief of Real Estate shall consult with the appropriate Housing and Urban Development Regional/Area Office about the availability of housing.

b. Local Coordination. The District Chief of Real Estate shall coordinate relocation activities with displacement causing activities of other Federal, state, and local agencies to ensure that to the extent feasible, persons displaced receive efficient and consistent treatment and the duplication of functions is minimized.

3-3. Relocation Advisory Services. The Uniform Act requires establishment of a relocation assistance advisory program for persons displaced as a result of Federal or Federally-assisted programs or projects. Services to be provided are further described in 49 CFR 24.205(c), and shall include the following:

a. Determine the relocation needs and preferences of each person to be displaced by conducting a personal interview. Interviews with displaced business owners should include the items outlined in 49 CFR 24.205(c)(2)(i)(A) through (F);

b. Explain the relocation benefits and other assistance for which the person may be eligible;

c. Provide current and continuing information on the availability, prices and rentals of comparable housing, commercial properties and farms, as applicable;

d. Provide transportation as necessary to persons displaced from residential dwellings to inspect comparable replacement housing to which they are referred;

e. Assist a person who is displaced from his/her business, non-profit organization, or farm operation in obtaining and becoming established in a suitable replacement location;

f. Supply information regarding Federal, state and other programs offering assistance to displaced persons;

g. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to such relocation.

3-4. Public Information. The displacing agency shall ensure the public receives adequate knowledge of programs involving relocations and that persons to be displaced are provided full information, at the earliest possible time, of matters covered by the Uniform Act. Such matters include the benefits available, the application method for these benefits, and the right of administrative review, where applicable. In some cases, it may be necessary for the District to establish a relocation office reasonably convenient to the majority of potential displaced persons. The District Chief of Real Estate may establish liaison with real estate firms and realtors in the area to provide them with knowledge of the number of displaced persons and their replacement housing needs. Although this is a Government service for the benefit of displaced persons, considerable care and judgment should be exercised not to provide services in a manner which would usurp the prerogative of private realtors or give the appearance of favoring any firms or individuals.

3-5. Loans for Planning and Preliminary Expenses for Additional Housing. Applications for loans proposed under the Uniform Act must be forwarded, with supporting facts and recommendations, to the Headquarters, USACE, ATTN: CEMP-CR, for approval and coordination with the lead agency as set out in 49 CFR 24.205(b).

3-6. Aliens Not Lawfully Present in the United States and the Uniform Act. In accordance with the Uniform Act and 49 CFR 24.208, a displaced person is prohibited from receiving any relocation payments or any advisory assistance under the Uniform Act if the displaced person is an alien not lawfully present in the United States, unless such person can demonstrate to the displacing Agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States [49 CFR 24.208(g)]. Requests for approval of hardship cases should be referred to the Division Chief of Real Estate.

3-7. Willing Seller (Voluntary) Transactions. In the event that an owner-occupant qualifies as a "person not displaced" under 49 CFR 24.2(a)(9)(ii)(H) as a result of the voluntary conveyance of his or her property, the owner-occupant is not eligible for relocation benefits. However, in such cases, a displaced tenant is eligible for relocation benefits. All acquisition requirements set forth in 49 CFR Part 24, Subpart B, must be followed by Federal agencies in the case of a voluntary transaction, including payment of incidental expenses.

3-8. Waiver of Policy. Division Chiefs of Real Estate with appropriate delegated authority may authorize the waiver of any requirement of the Uniform Regulations not required by law in accordance with 49 CFR 24.7. Any question of legal interpretation or requirement should be reviewed by the Division Counsel. The District Chief of Real Estate will submit a request for a

waiver with recommendations and supporting documentation. If the Division determines that the issue is controversial, requires HQUSACE clarification, or has national precedence, then the question should be submitted to HQUSACE (CEMP-CR). If there are legal issues, CEMP-CR will coordinate with CECC-R.

ER 405-1-16
31 Jan 14

(This page intentionally left blank)

CHAPTER 4

Moving and Related Expenses

4-1. Eligibility. Any person who qualifies as a displaced person and moves from real property, or moves personal property from real property as a result of the acquisition of such real property, in whole or in part, is eligible to receive a payment for moving expenses.

4-2. Allowable Moving and Related Expenses. A displaced person can choose from several options for accomplishing a move, which are further described in 49 CFR Part 24, Subpart D. For residential moves, there are four potential ways that a displaced person can accomplish the move: 1) a commercial move performed by professional movers; 2) a self-move with reimbursement of actual costs based on receipted bills; 3) a self-move based on a fixed moving schedule; or 4) a combination of these methods. Moves by businesses, farms or non-profit organizations can also be accomplished in various ways: 1) by commercial movers; 2) through a self-move based on the lower of two bids or estimates prepared by a commercial mover or qualified staff person; 3) through a self-move supported by receipted bills for labor and equipment; or 4) through a combination of these methods. The fixed residential moving schedule is updated periodically and published by the Department of Transportation.

4-3. Applicability of Approval Levels. The approval levels described in this section do not apply to work for other agencies, or for cost-shared projects except when the District is acquiring on behalf of the non-Federal sponsor. Approval of moving and related expenses must be based on documentation sufficient to demonstrate to the reviewing and approving offices that the expenses incurred are reasonable and necessary.

4-4. Approval of Actual Moving Expenses – Residential Moves. Claims for moving and related expenses for residential moves which are in excess of \$25,000 require approval of the Division Chief of Real Estate. The District must provide complete documentation of expenses incurred, justification, and recommendation.

4-5. Approval of Actual Moving Expenses – Nonresidential Moves. Claims for moving expenses and actual direct losses by a business, farm or non-profit organization that are in excess of \$250,000 require approval of the Division Chief of Real Estate. The District must provide complete documentation of expenses incurred, justification, and recommendation.

4-6. Waiver of Limits on Searching Expenses – Nonresidential Moves. Pursuant to 49 CFR 24.7, the Division Chief of Real Estate may waive the limit on searching expenses to relocate a business, farm or non-profit organization. Appropriate documentation of such expenses along with a justification statement shall be forwarded to the Division Commander or his designee for review and pre-approval on a case-by-case basis.

4-7. Reasonableness of Claims. The reasonableness of any amount claimed shall be governed, to the greatest extent possible, by the estimated cost of performing the service by commercial

means. Hourly labor rates for self-moves should not exceed the rates paid by a commercial mover to its employees performing the same activity.

4-8. Nonresidential Fixed Move Payment. A person displaced from a business, farm or non-profit organization may be eligible for a fixed payment in lieu of a payment for actual moving and related expenses and reestablishment expenses. The “in-lieu” payment shall be based on average annual net earnings for the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, unless the Agency determines that a different period should be used. Refer to 49 CFR 24.305 for the specific eligibility criteria and amounts of such payments.

a. Computing Payment. When computing payment for average annual net earnings of a business or farm, a zero will be used in lieu of any actual net loss.

b. Substantial Change. Determination of “substantial change” in the nature of a farm operation by the appraiser shall not be governed solely by earnings. When the partial acquisition causes a substantial change in the use of the whole property, the fixed payment may be based on the earnings of the entirety.

4-9. Reestablishment Expenses. A displaced business, farm or non-profit organization may be entitled to a payment, not to exceed the amount provided for in 49 CFR 24.304, for reestablishment expenses in connection with a move. Allowable items and ineligible expenses under this category are detailed in 49 CFR Part 24.

4-10. Reestablishment Expenses Payment Eligibility – Leasing of Space. A business whose sole activity at the site is providing space at the site to others is eligible for payments for reestablishment expenses and search expenses. However, when a lessee subleases space, the lessee generally will not be eligible for a reestablishment expense and search expense payment for the business of leasing space.

Chapter 5

SECTION I- Replacement Housing - General

5-1. Comparable Replacement Dwelling. The key to replacement housing is to find a “comparable replacement dwelling.” Such a dwelling must meet the criteria set out in 49 CFR 24.2(a)(6). Additionally, the Uniform Act and 49 CFR 24.204 provide that the occupant cannot be required to move from the acquired dwelling unless comparable replacement housing is available.

a. Determination of Most Comparable Property. Where possible, at least three comparable replacement dwellings should be identified to the displaced person. Documentation of available replacement housing should be recorded in a format similar to that in the Available Housing Form. For the purposes of establishing the upper limit of the housing differential payment, the most comparable dwelling should be determined and documented on the Determination of Comparable Replacement Form. See the latest format issued by CEMP-CR.

b. Unusual Circumstances. As described in Appendix A, 49 CFR 24.2(a)(6) and 24.404(c), only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequently, less living space than the acquired dwelling. The District may use any available resources such as state and local building codes, occupancy restrictions, housing authority guidelines, or other similar rules and regulations as a guide in determining what is adequate in size to accommodate the occupants.

c. Availability of Comparable Housing. If housing meeting the comparability criteria defined in the Uniform Regulations is not available on the market, the District may, upon a proper finding of need, consider available housing exceeding these basic criteria.

d. Use of Mobile Homes for Conventional Dwellings. In accordance with Appendix A, 49 CFR 24.404(c)(2), a new mobile home may be considered as a replacement dwelling for a very substandard conventional dwelling provided it meets decent, safe, and sanitary (DSS) standards where comparable conventional dwellings are not available.

e. Last Resort Housing. Whenever comparable replacement housing is not available, last resort housing provisions of the Uniform Act will apply for owners and tenants. Procedural requirements set forth in 49 CFR 24.404 will be followed. Agencies have broad latitude in implementing last resort housing provisions, including but not limited to providing a replacement housing payment in excess of the limits set forth in 49 CFR 24.401 and 24.402, construction of a new dwelling, or provision of a direct loan.

(1) The Division Chiefs of Real Estate may award benefits for last resort housing for Military and Civil Works projects. CEMP-CR approval is required, regardless of the amount, if the relocation is controversial or politically sensitive. The authority for benefits in amounts up to

\$100,000 per displaced household may be delegated by the Division, in whole or in part, to District Chiefs of Real Estate in accordance with published delegation policy.

(2) When approving or submitting a request for approval of last resort housing benefits, the District must prepare a Decision Memorandum documenting the necessity of using last resort housing and indicate the method of last resort housing recommended is cost-effective considering all elements which contribute to project costs.

SECTION II- Payment for Homeowners

5-2. Replacement Housing Payments for Owner-Occupants. A displaced owner-occupant may be eligible for a replacement housing payment not to exceed the amount provided for in 49 CFR 24.401 if the acquired dwelling is owned and occupied for the required timeframe provided in 49 CFR 24 prior to the initiation of negotiations, and purchases and occupies a replacement dwelling which is DSS within one year of the later of the date the owner-occupant received final payment for the dwelling, or the date on which a comparable replacement dwelling is made available. The replacement housing payment is comprised of the purchase price differential payment, increased mortgage interest payment, and expenses incidental to the purchase of a replacement dwelling. Any duplicate payments made by other federal, state or local agencies or insurance payments that are paid for the same purpose shall be included in the acquisition cost of the displacement dwelling when computing the purchase price differential payment in accordance with 49 CFR 24.3 and 24.403(g).

5-3. Differential Payment for Replacement Housing – Appraisal Breakout.

a. Lot Breakout. Whenever the displacement dwelling is located on part of a tract which is larger than the average residential lot in the area or is part of a mixed use property, or if the displacement site contains a major exterior attribute not found in the replacement dwelling or is on a tract whose value is based on a higher and better use than residential, 49 CFR 24.403 and the Uniform Act require that the replacement housing payment be based on the acquisition cost of the displacement dwelling. This means a portion of the purchase price paid for the entire property must be attributed to the dwelling and the home site. In such cases, the appraiser will insert a statement in the appraisal report reading substantially as follows: “The total appraised value of this property is \$ X, of which \$ Y constitutes the appraised value of the dwelling and home site. The value of \$ Y will be considered the ‘acquisition cost’ of the dwelling for the purpose of calculating the displaced person’s benefits.” However, if the eventual purchase price of the entire property should exceed the Government’s appraised value, a proportionate share of the increase over and above the entire property’s appraised value will be applied to the dwelling and home site, unless there is evidence justifying a different acquisition cost for the dwelling and home site in relation to the value of the tract.

b. Buildable Lot. In the case of a partial acquisition of a residential property where the owner is left with a buildable lot, an offer may be made to purchase that lot. If the owner refuses to sell the lot, the market value of the remainder shall be added to the acquisition cost of the displacement dwelling for the purpose of computing the replacement housing payment.

c. **Damages to Remainder.** In the case of a partial acquisition of a residential property where there are damages to the remainder, the amount of damages shall be added to the acquisition cost of the displacement dwelling for the purpose of computing the replacement housing payment.

d. **Uneconomic Remnants.** In the case of a partial acquisition of a residential property where the owner is left with an uneconomic remnant, an offer will be made to purchase the remnant. If the owner sells the uneconomic remnant to the Government, the value of the uneconomic remnant will be added to the cost of the displacement dwelling for the purpose of computing the replacement housing payment.

e. **Notification to Owner of Breakout.** In situations such as the ones described above, the owner shall be advised of the separate dwelling and homesite value, the contributory value of the exterior attributes, and/or the value attributed to any remainder in connection with an explanation of the owner's overall benefits. A contact for this purpose should be made prior to the conclusion of negotiations for purchase of the property.

5-4. Contract for Rehabilitation or Construction of Replacement Dwelling. Pursuant to 49 CFR 24.403(c), in lieu of purchasing a DSS dwelling, a displaced person may contract for the rehabilitation of an existing dwelling, contract for the purchase of a dwelling to be constructed on a site provided by a builder or developer, or contract for the construction of a dwelling on a site which the displaced person owns or acquires for that purpose.

(a) Should the completion date of the rehabilitation or construction of the replacement dwelling be delayed for reasons not within the reasonable control of the displaced person, beyond the time required for eligibility for payment, the District Chief of Real Estate (or the non-Federal sponsor in the case of a cost-shared project) may determine the occupancy date as the date the displaced person enters into a contract for such rehabilitation and construction or for the purchase.

(b) Displacement should not occur before an available comparable replacement dwelling has been identified. However, the displaced owner may elect to contract for the purchase of a dwelling to be constructed by a developer or contract for rehabilitation or construction of a dwelling and relocate into interim housing. Where comparable DSS housing is available and the person makes such election, rental assistance may be available in accordance with 49 CFR 24.403(e); however, any such payment will be deducted from available housing differential benefits. (This also applies to a tenant who originally rents then later converts to an owner-occupant.)

5-5. Providing Information to Other Parties. Whenever a displaced person is eligible for a replacement housing payment, the District Chief of Real Estate (or the non-Federal sponsor in the case of a cost-shared project) may, at the displaced person's request, provide a written statement to any interested person, financial institution, or lending agency about the displaced person's eligibility and the requirements that must be satisfied before such payment can be made. If the proposed replacement dwelling has been selected or if plans and specifications are

31 Jan 14

available for the construction or rehabilitation of the proposed dwelling, the District Chief of Real Estate may, after inspecting the dwelling or plans and finding that they meet the required standards, include such findings and the amount of the payment to be available in such statement.

5-6. Administrative Settlements. If the owner rejects the Government's initial purchase offer, the owner should be advised at that time that purchase of the entire property for any amount in excess of the Government's appraised value will result in the proportionate decrease in any housing differential payment to which the owner may be entitled. However, in the case of a homeowner who has negative equity because a mortgage or other qualified lien exceeds the current market value of the property, the District should consult with Division and HQUSACE (CEMP-CR) as to waiver of policy.

5-7. Advance Replacement Housing Payment in Condemnation Cases. A property owner should receive the earliest possible payment of replacement housing benefits. The following procedure will be utilized for Federal projects in cases involving condemnation.

a. Amount of Payment. An advance replacement housing payment can be computed and paid to a property owner after a declaration of taking is filed in condemnation proceedings. The District may make a provisional payment of the estimated replacement housing differential payment due the displaced homeowner. Such payment will be based on the amount of the Government's deposit with the court as estimated just compensation for the dwelling and home site. The homeowner must enter into an agreement with the Government that provides:

(1) Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed as being the increased difference, if any, between the acquisition price determined by the court and the lesser of: (a) the price paid for the actual replacement dwelling, or (b) the amount determined by the District as necessary to acquire a DSS replacement dwelling; and

(2) If the amount awarded in the condemnation proceedings for the dwelling acquired, plus the amount of the provisional replacement housing payment, exceeds the lesser of (a) the price paid for the actual replacement dwelling or (b) the amount determined by the District as necessary to acquire a comparable DSS replacement dwelling, the owner will refund the excess to the Government. However, in no event shall the owner be required to refund more than the amount advanced as a provisional replacement housing payment.

(3) A copy of the agreement shall be provided to the U.S. Attorney, along with a request to deduct any amount due the Government from the final settlement.

b. Refusals. If the property owner refuses to enter into such agreement, the replacement housing differential payment shall be deferred until the case is adjudicated, after which the replacement housing differential will be computed on the basis of the final determination, using the award as the acquisition price.

5-8. Requirement to Receive Payment. Before an eligible owner-occupant may receive a replacement housing payment, the displacing agency must verify the displaced person has purchased and occupied DSS housing within the required time limit. The displaced person is not required to purchase and occupy the agency identified comparable replacement dwelling, but must purchase and occupy DSS housing to otherwise qualify for payment of housing benefits. Upon such verification, the displacing agency will certify the owner-occupant did purchase and occupy such housing within the prescribed time limit. Exceptions are granted for payments advanced in hardship cases pursuant to the Uniform Act whereby occupancy may occur after the payment has been advanced.

5-9. Verification and Records. A written record of the determination that the replacement dwelling is DSS, with supporting details, will be made and placed with the records of the case, together with written verification of the purchase and occupancy of such dwelling.

SECTION III- Payment For Tenants and Certain Others

5-10. Payments for Tenants and Certain Others.

a. Rental Assistance Payment. A displaced tenant or owner-occupant who has occupied the displacement dwelling for the timeframe provided in 49 CFR 24 may be eligible for a rental assistance or downpayment assistance payment not to exceed the amount provided for in 49 CFR 24.402. Agencies are required to provide last resort housing assistance to tenants not eligible to receive a replacement housing payment due to their failure to meet length of occupancy requirements, if replacement housing is not otherwise available within their financial means.

b. Downpayment Assistance. Eligible displaced persons electing downpayment assistance under 49 CFR 24.402(c) shall receive the full amount allowed (to include last resort housing benefits) to apply toward the purchase of a DSS replacement dwelling. However, if a displaced person purchases a DSS replacement dwelling before applying for downpayment assistance and the actual downpayment and closing costs total less than the full amount allowed, remaining benefits will be applied to the principal balance.

SECTION IV- Mobile Homes

5-11. Mobile Homes.

a. Mobile Homes Qualify as a Dwelling. A mobile home is a “dwelling” within the meaning of the Uniform Act, regardless of whether the mobile home is considered real or personal property under the appropriate state law, if it is the place of permanent or usual and customary residence of the occupant. See 49 CFR 24.2(a)(10). However, it is important to distinguish whether the mobile home is considered real or personal property in order to determine the proper benefits available to the displaced person. Benefits under the Uniform Act are also determined based upon the type of interest that the displaced person holds in the mobile home and in the land. A person displaced from a mobile home and/or mobile home site is eligible to receive relocation benefits in accordance with 49 CFR Part 24, Subpart F.

b. **Types of Benefits Available.** A mobile home occupant may be eligible for moving costs in accordance with 49 CFR 24.301, and a replacement housing payment as outlined below.

(1) **Mobile Home Owner.** A person displaced from a mobile home may be eligible for a replacement housing payment in accordance with Subpart F of 49 CFR 24 if the mobile home is acquired from the owner as real property and/or the mobile home site is acquired from the owner as real property and the owner meets the time requirements. If the mobile home is considered to be personal property, the owner can also be eligible for a replacement housing payment if the mobile home is not DSS or cannot be relocated.

(2) **Mobile Home Site Tenant.** If the displacement site is rented, he or she may be entitled to a rental assistance payment as described in Subpart F of 49 CFR 24. The computed payment may be used to rent or purchase a replacement site or it may be applied, along with any replacement housing payment attributable to the mobile home, to the purchase price for a conventional dwelling or mobile home.

(3) **Owner Not Displaced from Mobile Home.** If a mobile home is considered to be personal property and may be relocated, the owner is not entitled to a replacement housing payment for the mobile home [see Subpart F, 49 CFR 24. However, he or she may be eligible for moving costs and a replacement housing payment for the purchase or rental of a comparable site.

Chapter 6

Replacement Housing – Application Processing

6-1. Relocation Data Worksheet. Upon notification of initiation of negotiations, a qualified Realty Specialist with appropriate Relocation Assistance training will complete the Relocation Data Worksheet (RDW) for each owner, tenant or other person living on the premises who is not a family member of the owner or tenant. A RDW will also be completed for each business, non-profit organization and farm. This RDW will be used as a coversheet for each application submitted throughout the relocation process to annotate all payments of benefits. Each application must be properly documented with the authorizing section of the Uniform Act and/or 49 CFR Part 24 and include any necessary documents, receipts, etc. to demonstrate eligibility for payment of benefits.

6-2. Application. Although application documents may be self-explanatory, the displacing agency will render such assistance to the applicant as may be necessary to complete the appropriate application documents.

6-3. Determination of Relocation Benefits. Applications for benefits will be reviewed within 30 days. After determining the amount of benefits payable, the Determination of Relocation Benefits Due Applicant shall be completed and processed for payment. The Determination of Relocation Benefits Due Applicant document will accompany all applications for benefits as the authorization for payment coversheet. See the latest format issued by CEMP-CR. When there is a difference between the amount claimed and the amount determined payable, the applicant will be advised of the reason for adverse action taken on the application and will be informed of the right to appeal (refer to Chapter VII).

6-4. Documentation. Each application for relocation benefits must be accomplished using an appropriate document signed by the applicants.

ER 405-1-16
31 Jan 14

(This page intentionally left blank)

Chapter 7

Appeals

7-1. Appeal Process.

a. Adverse Determinations. Prompt written notice will be given to an applicant of any adverse determination or payment of any amounts due on the applicant's claim. This written notice should be identified as the final official decision and include a full explanation of the determination, together with a reference to, or quotation of, the provision of the Uniform Act or regulations which may be involved in the decision. There may have been correspondence prior to this point, but this official decision letter is the start of the appeal process.

b. Notification of Appeal Rights. The applicant shall be advised that if there is a belief the decision made in connection with the application for benefits is in error, the applicant may file an appeal with the District Chief of Real Estate in writing, within 60 days from the date of the notice of such decision, identifying any claimed errors and stating the basis for appeal; that the applicant may be represented by counsel or other representatives in connection with the appeal (but solely at the applicant's expense); and that the applicant may submit additional information at any time prior to final action on the appeal.

c. Inspection of Materials. The applicant will be permitted to inspect and copy all materials pertinent to the appeal, except materials which may not be released under the Freedom of Information Act. The District may impose reasonable conditions, including copy fees and times of access on the person's right to inspect, consistent with applicable laws, including the Freedom of Information Act and the Privacy Act.

7-2. Filing of Appeal. An applicant may file a written appeal on an unfavorable determination of eligibility for payment of benefits or the amount of such payments. After receipt of the final official decision letter made on the case or a determination of benefits due to the applicant, a written objection by the applicant will be considered an appeal and will be promptly acknowledged as such. Notwithstanding any additional correspondence or communication with the applicant, the appeal will be processed in accordance with the procedures in this chapter unless formally withdrawn by the applicant. An appeal which has been forwarded to a higher level of review may not be settled at a lower level without the concurrence of the highest level to which the appeal has been transmitted. The District Chief of Real Estate should coordinate appeals based on any issued besides value with District Counsel.

7-3. Late-Filed Appeals. Although appeals are to be filed within 60 days after notice to the applicant of an adverse decision, the District Chief of Real Estate may authorize acceptance of a late-filed appeal if it within a subsequent 30 days when the applicant can show undue hardship. If beyond a total of 90 days, the Division Chief of Real Estate must make the determination to accept a late-filed appeal.

7-4. Processing of Appeals. Appeals will be processed as set out below, or where the initial decision on the claim was made by the Division Chief of Real Estate in accordance with Section 4-4 or 4-5 of this regulation. In those cases, the initial decision on the appeal will be made at the Division level. An attempt will be made at each level to resolve the matter. If a proposed solution at any level is satisfactory to the applicant, the case will be considered closed without further processing.

a. Preparation of Report of Review. After receipt of the appeal, the issues cited by the applicant and any additional information furnished in support of the appeal will be investigated promptly by the District Chief of Real Estate, District Counsel, and other offices as appropriate. A report of review will be prepared and submitted, which will include the following subheadings in chronological order:

- (1) TABLE OF CONTENTS,
- (2) OUTLINE OF THE FACTS upon which the application was based,
- (3) INITIAL DECISION which the applicant has appealed,
- (4) BASIS FOR THE APPEAL,
- (5) SCOPE OF THE INVESTIGATION (to include attorney's opinion, if necessary),
- (6) FACTORS CONSIDERED in reviewing the case, and
- (7) DECISION on the appeal and reasons in support thereof.

b. Notification to Applicant. The District will provide a written decision to the applicant. This written decision will state that it will be considered the final administrative decision unless the applicant requests, in writing, within 60 days from the date of the decision, that the appeal be referred to the Division Chief of Real Estate for additional review. The written decision will notify the applicant to identify any claimed errors or provide additional information that may be helpful in the review of the appeal. The applicant shall be informed that acceptance of any amounts determined payable will not prejudice his appeal rights.

c. Appeal Assembly. An appeal assembly may be submitted electronically to the Division. Paper copies will include an original and copy. Regardless of medium used, it will consist of the following items, which will be assembled in the order shown below with such variations or additions as circumstances may require:

- (1) Report of review.
- (2) Written appeal and any amendments.
- (3) Application with attachments.

(4) Pertinent correspondence in chronological order.

(5) Any other documents and information which have a significant bearing on the case.

7-5. Review of Appeal by Division Chief of Real Estate.

a. Division Level Review. The Division will review the appeal as expeditiously as possible to ensure the following:

(1) The initial decision agrees with the facts, the provisions of the Uniform Act, and the Uniform Regulations;

(2) The appeal assembly contains the necessary information in support of the decision and has been assembled as required by this regulation;

(3) The applicant has received proper notice of action taken on the application and has filed and submitted all information in support thereof; and

(4) The District's decision on the appeal is supported by the record.

b. Appeals must be reviewed by Division Counsel, and other offices as appropriate.

c. Division Disposition. If the Division does not concur with the District's recommendation, the assembly will be returned to the District for further consideration or for a directed solution. The Division will provide a written decision to the applicant, either favorable or unfavorable. This written decision will state that it will be considered the final administrative decision unless the applicant requests, in writing, within 60 days from the date of the decision, that the appeal be referred to HQUSACE (CEMP-CR) for additional review. The written decision will notify the applicant to identify any claimed errors or provide additional information that may be helpful in the review of the appeal.

7-6. Final Review of Appeal by USACE. HQUSACE (CEMP-CR) will make final decisions on appeals based on recommendations received from the Division. If there is a legal issue raised, then CEMP-CR will coordinate with CECC-R. Where recommendations are not approved, the appeal will be returned to the Division for further consideration or for a directed solution. HQUSACE will provide a written decision to the applicant, either favorable or unfavorable. If the appeal is denied, or full relief not granted, HQUSACE (CEMP-CR) will advise the applicant of their right of judicial review. The written determination on the appeal will include an explanation of the basis on which the decision was made and an explanation that this is the highest level of administrative review. The applicant's appeal assembly, with original papers, will be sent to the District for filing.

7-7. Dissemination of Decisions. HQUSACE appeal decisions may be periodically disseminated to the Division and District real estate staffs. However, except as authorized by

ER 405-1-16

31 Jan 14

HQUSACE, the District will not refer to such decisions in letters sent to other applicants when notifying them that favorable action cannot be taken on their application.

(This page intentionally left blank)

Chapter 8

Cost-Shared Projects

8-1. Purpose. This section provides guidance regarding relocation assistance for cost-shared projects.

8-2. Relocation Planning. The District shall provide, as part of the total real estate cost estimate for all planning documents, an estimate of cost of relocation benefits and administrative costs to carry out a local cooperative project. This should be coordinated with the non-Federal sponsor.

8-3. Non-Federal Sponsor's Responsibilities. The Water Resources Development Act of 1986 (WRDA 86), Pub. L. 99-662, as amended, requires that non-Federal sponsors acquire all lands, easements, rights-of-way, relocations, and disposal areas (LERRD) needed for construction and subsequent operation and maintenance of the project. Non-Federal sponsors must comply with the Uniform Act and 49 CFR Part 24, and with state laws and regulations that accomplish the same purpose and effect.

8-4. District Real Estate Responsibilities.

a. Capability. Evaluate the non-Federal sponsor's capability to comply with the Uniform Act and Uniform Regulations.

b. Housing Availability. Determine the availability of sufficient DSS replacement housing.

c. Notices. Ensure that the non-Federal sponsor has procedures in place to ensure that notices required by the Uniform Act and Uniform Regulations are provided.

d. Appeal Process. Ensure that the non-Federal sponsor has a process in place for appeals of relocation benefits in accordance with 49 CFR 24.10.

e. Provide Samples. Provide a package to the non-Federal sponsor containing sample relocation documents, sample letters, etc.

f. Assist. Provide assistance and guidance when necessary.

g. Monitor, Review and Approve. Monitor the non-Federal sponsor for compliance with the Uniform Act and Uniform Regulations. Review and approve decisions made by the non-Federal sponsor (particularly selections of comparable replacement housing and differential payment computations) to advise the non-Federal sponsor on credit for relocation costs.

h. Relocation Benefits Review. Review incidental costs associated with the Uniform Act relocation assistance benefits submitted by the non-Federal sponsor for crediting purposes with

sufficient supporting documentation to determine if the costs are allowable, allocable and reasonable. As a minimum, each package should include:

- (1) Copies of written notices required by law.
- (2) Copies of claim forms submitted by applicants with supporting documentation of each cost claimed.
- (3) Written notice of determination of benefits due applicant by line item.
- (4) Notifications of denial of benefits, if applicable.
- (5) Copies of appeals and their determinations, if applicable.

i. Review Credit Amounts. After Real Estate has preliminarily approved a credit amount for documented LERRD and incidental costs in accordance with delegated authority, this amount should be reviewed and discussed with the Project Manager before the credit amounts are approved.

j. Approved Credit Claims. District and Division Chiefs of Real Estate may approve LERRD and documented incidental costs up to the amounts set forth in their respective delegations.

8-5. Credit for Relocation Costs Prior to Project Partnership Agreement (PPA). In accordance with guidelines issued by the Secretary of the Army under WRDA 86, non-Federal sponsors may receive credit for documented incidental costs associated with LERRD acquired for project purposes up to five years prior to execution of a PPA. Relocation benefits paid in connection with LERRD acquired within that five-year period may be credited if the non-Federal sponsor complied with the provisions of the Uniform Act and state laws and regulations and the costs are allowable, allocable and reasonable.

8-6. Monitoring for Compliance.

a. Acquisition of LERRD. PPAs require non-Federal sponsors to ensure that the acquisition of LERRD will be in compliance with the Uniform Act and the Uniform Regulations. In accordance with such assurances, the non-Federal sponsor must follow the provisions of the Uniform Act, which sets out the relocation payments, assistance, and services required. The District must monitor the acquisition of LERRD to ensure that the non-Federal sponsor has complied. The District shall require monitoring functions be adequate to assure the non-Federal sponsor's compliance.

b. District Responsibilities for Monitoring and Corrective Action.

(1) The District will monitor compliance by the non-Federal sponsor with the Uniform Act and Uniform Regulations.

(2) Any sanctions proposed against the non-Federal sponsor will be submitted to HQUSACE (CEMP-CR) for review and approval unless specifically set out in the approved agreement between the Department of the Army and the non-Federal sponsor.

c. Land Acquired Prior to PPA Execution. Land acquired by the non-Federal sponsor for project purposes prior to the execution of a PPA may not be accepted by the District until a determination is made that the provisions of the Uniform Act have been satisfied. If the non-Federal sponsor has failed to comply with those provisions, such failure must be reported immediately to HQUSACE (CEMP-CR) for resolution before the land can be accepted.

8-7. Appeals of Decisions of non-Federal Sponsors. In cases involving a cost-shared project, an applicant shall have the right to appeal an unfavorable decision concerning eligibility for payments, or the amount of such payments. All procedures established by the non-Federal sponsor shall conform to the requirements of the Uniform Act and 49 CFR 24.10.

ER 405-1-16
31 Jan 14

(This page intentionally left blank)