

# The Final Rule: **An Overview**

## **An Interview with the U.S. Federal Highway Administration**

*On May 3, 2024, the U.S. Federal Highway Administration (FHWA) published the final rule — the first update in nearly 20 years — which amends the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) regulations. The Uniform Act protects and assists those who have been affected by Federal or federally assisted projects. The final rule will further help those who are displaced by raising relocation benefit levels and providing new authority to ensure future adjustments to the benefit levels are completed expeditiously. In addition, the final rule also reduces the administrative burden for agencies that are subject to the Uniform Act. We invited FHWA to tell us a little more about the final rule and how it affects the right of way industry.*

### **What is important to know about the final rule?**

Congress passed the Uniform Act over half a century ago to protect people whose lives were impacted by federally funded projects. This final rule includes critical updates that make sure those protections match the needs of the 21st century — and offers just compensation and moving assistance to the people and businesses impacted by projects. The final rule enhances benefits and services focused on improving equity and fairness for tenants, homeowners, businesses and other entities.

This update to the Uniform Act demonstrates the Biden-Harris Administration's continued commitment to improving equity for all Americans. Increasing benefit levels helps keep pace with inflation and makes a big difference for those impacted. This update ensures we meet the needs and preferences for folks impacted by displacement, and helps the federal government minimize impacts throughout the relocation process.









### **How did FHWA identify the updates and changes which are included in the final rule?**

The final rule publication is the culmination of a 20-year collaborative effort to identify opportunities for improving the Uniform Act's implementation. The FHWA initiatives include research on the need for regulatory and statutory change to the Uniform Act, co-sponsorship of national symposiums on Uniform Act implementation issues, implementation of pilot projects designed to determine the effect of changes in certain Uniform Act requirements and procedures and an examination of the experiences of several state departments of transportation (SDOT) in providing payments required by state law that supplemented Uniform Act benefits. The final rule streamlines processes to more easily and quickly provide just compensation to those persons whose homes, businesses or properties are affected by federally assisted projects and improves the service and assistance to individuals and businesses affected by Federal or federally assisted projects.

### **Can you give us a summary of the significant changes that the final rule will bring?**

The final rule updates key Uniform Act benefit levels to account for inflation since 2012, resulting in a 33% increase in benefit levels for people and businesses that are required to move as a result of federally funded projects. The final rule also provides new flexibilities which reduces administrative burdens for those being displaced and for the agencies administering the program.

Some of the key changes provide clarity to areas of the regulation that were previously ambiguous, or perhaps misunderstood. For example, definitions for a "comparable replacement dwelling" and "decent, safe, and sanitary dwelling" have been revised, adding language to clarify that Agencies may set more stringent standards by regulation or policy. Also, the definition for "displaced person" has been revised to include a new paragraph covering "persons required to move temporarily" and clarifies when tenants become eligible for relocation assistance under "voluntary acquisitions." Other key changes provide Agencies additional flexibilities in the way they deliver their programs and interact with property owners and displaced persons. Agencies can now use services other than United States Postal Service for required notices, and property owners and displaced persons can elect to receive notices electronically. Agencies can use appraisal waivers at higher thresholds, up to \$50,000 under certain conditions, and have more defined requirements to prevent conflicts of interest. The final rule also includes move cost reimbursement options not previously available, providing displaced persons with more options and reducing the administrative burden on displacing agencies.

### **Can you give us a specific example of one of the more significant changes that the final rule will bring?**

One of the more significant changes results from the addition of Section 24.11 regarding the adjustment of limits and payments. This new section implements a provision in MAP-21 at Section 1521(d)(2) which provides that if the head of the Lead Agency determines that the cost of living, inflation, or other factors

indicate Uniform Act benefits and assistance should be adjusted to meet the policy objectives of the Uniform Act, then the head of the Lead Agency may adjust certain valuation limits and maximum relocation benefit payments.

Prior to MAP-21 and this final rule, certain relocation benefit limits were established in statute and therefore FHWA could not adjust them by regulation. Examples include replacement housing payments for owners and tenants, reestablishment expenses for nonresidential moves, and searching expenses. The final rule ensures adjustments to these benefit levels are completed expeditiously in the future if inflation, cost of living or other factors indicate that an adjustment to relocation benefits is warranted.

**In addition to agencies, who else will be most impacted by the changes?**

FHWA believes that property owners and displaced persons will be impacted in a positive way by the final rule. The rule updates key Uniform Act relocation benefit levels to account for inflation since the last time these benefit levels

were increased in 2012. For displaced tenants, the rule clarifies that additional fees, such as credit check fees and application fees, are eligible for reimbursement. The rule clarifies that to the extent feasible, comparable replacement dwellings are to be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher. The rule includes a focus on the purpose of the relocation planning process, requiring agencies to plan projects to better identify problems and solutions to minimize adverse impacts of displacement on individuals, families, businesses, farms and nonprofit organizations. The rule also clarifies how the Uniform Act applies, particularly in regard to voluntary acquisitions, and will ensure that Agencies are transparent with property owners during negotiations regarding the Agency’s eminent domain authority and intentions.

**Can you give us specifics on the relocation benefit levels?**

All relocation benefit limits that were previously set by statute, and last amended by MAP-21, have been increased in this final rule as shown in the table below:

Benefit Category	2005 Maximum (as amended by MAP-21)	2024 Final Rule Maximum	Regulatory Citation
Application fees or credit reports for residential tenants	n/a	\$1,000	\$24.301(g)(7)
Move cost finding	n/a	\$5,000	\$24.301(d)(2)(iii)
Search expenses	\$2,500	\$5,000 <sup>1</sup>	\$24.301(g)(7)
Homeowner replacement housing payments	\$31,000 <sup>2</sup>	\$41,200 <sup>2</sup>	\$ 24.401 and \$ 24.502
Tenant replacement housing payment	\$7,200 <sup>2</sup>	\$9,570 <sup>2</sup>	\$ 24.402 and \$ 24.503
Reestablishment expenses – nonresidential moves	\$25,000	\$33,200	\$ 24.304
Fixed payment for nonresidential moving expenses	\$40,000 <sup>3</sup>	\$53,200 <sup>3</sup>	\$ 24.305

- 1. The Federal funding agency may, on a program wide or project basis, allow a one-time payment of \$1,000 for search expenses with minimal or no documentation as an alternative payment method. See to 49 CFR 24.301(g)(18)(ii).
- 2. See also 49 CFR 24.404 (Replacement housing of last resort)
- 3. This payment has a minimum of \$1,000.

### **What is FHWA doing to educate the public of the changes and the impact they will have on individuals involved in an acquisition funded with Federal dollars?**

Immediately after publishing the final rule, FHWA began holding a series of webinars to inform Federal, State, and local public agencies, the consultant community and other interested parties about key changes to the Uniform Act implementing regulations. We delivered a presentation on the key changes at IRWA's Annual International Education Conference in Long Beach in June. We use these opportunities to inform Uniform Act practitioners and the public and to hear from those stakeholders about questions they may have. We will be preparing responses to questions received and developing Frequently Asked Questions (FAQs) to be posted on our website and may hold additional webinars and presentations in the future. We are updating our brochures and resources, and we encourage IRWA members to keep an eye on our website for additional information. [https://www.fhwa.dot.gov/real\\_estate/index.cfm](https://www.fhwa.dot.gov/real_estate/index.cfm).

### **What are some of the costs associated with the final rule?**

The Federal rule making process requires that each proposed rulemaking consider the costs and benefits associated with a proposed rulemaking. The regulatory impact analysis for the final rule is available for review here at: <https://www.regulations.gov/document/FHWA-2018-0039-0002>. It details the costs and benefits associated with this final rule.

### **The final rule is the first update in almost 20 years. Why do you think it was needed?**

The revisions were prompted by the Moving Ahead for Progress in the 21st Century Act (MAP-21), which increased statutory relocation benefits and reduced length of occupancy requirements and revised the authority for FHWA to adjust certain benefit levels by regulation. The FHWA also updated the Uniform Act regulations in response to comments received, and to reflect FHWA's experience with the Federal-aid highway program since the last comprehensive Uniform Act rulemaking, which occurred in 2005. The Uniform Act implementing regulations is somewhat unique, being that it is a governmentwide regulation that impacts 19 different Federal agencies. Accommodating all Federal agency programs can be a challenge, and it requires extensive coordination efforts to ensure that the regulation is not favoring one program over another. When we were rolling out the last update in 2005, nearly 20 years ago, we began holding listening sessions to hear from our Federal agency partners and other Uniform Act practitioners to help us to start thinking about where the regulation would need to be revised in the future. So, this update has been nearly 20 years in the making.

### **Could you share some insight into the process behind developing the final rule?**

Beginning in 2012, and culminating in 2018, FHWA held numerous working-group meetings with representatives of the Federal agencies subject to the Uniform Act. The meetings included a section-by-section review of the regulation to identify potential areas of focus and change, with consideration to prior feedback from partners and customers and earlier research findings. The working group recommended a compilation of potential changes to the rule, which FHWA considered in developing an initial draft Notice of Proposed Rulemaking (NPRM). After further coordination with the other Federal Agencies—where the draft was refined and revised, on December 18, 2019 –FHWA published an NPRM in the Federal Register. The final rule was then further revised in response to more than 250 comments received during the NPRM's public comment period, and in coordination with the other Federal Agencies. The preamble summarizes the most significant of those changes. While we are excited to have reached the finish line for this final rule, this only starts the process again for FHWA. As we did in 2005, we will begin taking feedback on the implementation of the final rule and start thinking about possible revisions for the future.



**Pictured: Sr Lead Realty Specialist Arnold Feldman answering questions from Plenary Session attendees. (Photo Credit: Carl Krockenberger and Aimee Resoco)**





On Tuesday, June 25, 2024, the Federal Highway Administration sent five Final Rule subject matter experts to IRWA's 2024 conference to serve as a panel for the Plenary Session. Pictured from left to right: Chad Crawford, Realty Specialist; Marshall Wainright, Realty Specialist; Arnold Feldman, Sr., Lead Realty Specialist; Michael Dawson, Realty Specialist; Derrick Roma, SR/WA, Realty Specialist. (Photo Credit: Carl Krockenberger and Aimee Resoco)

## What were some of the challenges faced in the development stage?

In developing a rule that will cover 19 different Federal agencies, FHWA must be cautious to avoid revising definitions, terms, phrases or benefits that are specific to one or a limited number of Federal agency's programs, and instead ensure the regulation is generally applicable. With so many stakeholders, each with unique programs, it can be a challenge to balance competing interests. However, FHWA believes program specific policy is beyond the scope of the rulemaking, and that if other Federal Agencies desire to implement more stringent requirements in their programs, they may do so. The regulations at 49 CFR Part 24 are intended to be a floor, not a ceiling, for complying with the Uniform Act.

## When will the final rule be in effect?

The effective date of the final rule is June 3, 2024. All provisions of the final rule, including modifications of entitlements and benefits to displaced persons, became effective as of June 3, 2024. The FHWA has issued implementation guidance that is applicable to FHWA's programs only. The implementation guidance is available on FHWA's website and may be useful to other Federal agencies in developing their own guidance for implementing the final rule.

## Where can one find helpful resources for implementing the new regulations?

In addition to FHWA's Realty website, we strongly recommend reading the preamble to the final rule and the NPRM as it provides additional context to the regulation. The preamble explains the rationale for changes in the rule and responds to questions and comments received during the public comment period.

Additionally, while the appendix does not change or create new requirements that do not exist elsewhere in the regulation, the appendix provides additional context and insights and is an integral part of the regulation. We encourage Uniform Act practitioners to view FHWA's final rule webinars and look for our FAQs to be posted. Finally, the Office of Real Estate Services is available to provide training or other resources to help with implementation.

## In addition to this interview, how else can IRWA and its members assist FHWA with promoting the final rule?

We encourage IRWA to consider updating their courses to reflect the revisions to the Uniform Act regulations to ensure that they are consistent with the final rule. We also encourage members who are Uniform Act practitioners to promote and utilize the flexibilities that the final rule offers. The FHWA believes that the provisions in the final rule for streamlining government processes will reduce paperwork and administrative burdens on the public and agencies subject to Uniform Act requirements without reducing benefits or assistance available to an owner or displaced person. ★