

5501:2-5-01 **General provisions.**

(A) General: The purpose of rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code is to amplify sections 163.51 to 163.62 of the Revised Code and to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

- (1) To ensure that owners of real property to be acquired for projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in land acquisition programs;
- (2) To ensure that persons displaced as a direct result of federally assisted projects and state highway projects are treated fairly, consistently, and equitably and receive relocation assistance benefits so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and
- (3) To ensure that agencies implement rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code in a manner that is efficient and cost effective.

(B) Definitions

- (1) "Agency" means the state, state agency, or person that acquires real property or displaces a person.
 - (a) "Acquiring agency" means a state agency, person, private agency or public agency which has the authority to acquire property by eminent domain under state law, and a state agency, private agency or public agency or person which does not have such authority.
 - (b) "Displacing agency" means any state agency, person, private agency or public agency or person carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.
 - (c) "Federal agency" means 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.
 - (d) "State agency" means any department, agency or instrumentality of the state or of a political subdivision of the 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 under state law.

(e) "Public agency" means any governmental corporation, unit, organization, or officer authorized by law to appropriate property in the courts of this state. "Private agency" means any other corporation, firm, partnership, voluntary association, joint-stock association, or company authorized by law to appropriate property in the courts of this state. "Agency" includes any public agency or private agency.

(2) Alien not lawfully present in the United States.

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

(a) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by the United States Attorney General; and,

(b) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

(3) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(4) "Business" means any lawful activity, except a farm operation, that is conducted:

(a) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

(5) Citizen.

The term citizen for purposes of this part includes both citizens of the United States and noncitizen nationals.

(6) "Comparable replacement dwelling" means a dwelling which is:

(a) Decent, safe and sanitary;

(b) Functionally equivalent to the acquired dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

(c) Adequate in size to accommodate the occupants;

(d) In an area not subject to unreasonable adverse environmental conditions;

(e) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(f) On a site that is typical in size for residential development with normal site improvements including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(g) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply; and

(h) Within the financial means of the displaced person.

(i) A replacement dwelling, purchased by a homeowner in occupancy at the displacement dwelling for at least one hundred eighty days prior to initiation of negotiations, is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in paragraph (A)(2) of rule 5501:2-5-04 of the Administrative Code, all increased interest costs as described in paragraph (A)(4) of rule 5501:2-5-04 of the

Administrative Code, and all incidental expenses as described in paragraph (A)(5) of rule 5501:2-5-04 of the Administrative Code, plus any additional amount required to be paid under paragraph (D) of rule 5501:2-5-04 of the Administrative Code.

(ii) A replacement dwelling rented by a displacee is considered to be within his/her financial means if, after receiving the rental assistance payment as described in paragraph (B)(2)(a) of rule 5501:2-5-04 of the Administrative Code, the displacee's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental cost for the displacement dwelling as described in paragraph (B)(2)(b) of rule 5501:2-5-04 of the Administrative Code.

(iii) 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 an agency pays that portion of the monthly housing costs of a replacement dwelling 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 as described in paragraph (D) of rule 5501:2-5-04 of the Administrative Code.

(i) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

(7) "Contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the agency determines to be more equitable, a business or farm operation:

(a) Had average annual gross receipts of at least five thousand dollars; or

(b) Had average annual net earnings of at least one thousand dollars; or

(c) Contributed at least one third of the owner's or operator's average annual gross income from all sources.

(d) If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate.

(8) "Decent, safe, and sanitary dwelling" means a dwelling which meets applicable

housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived by the federal agency funding the project. The dwelling shall:

- (a) Be structurally sound, weathertight and in good repair.
 - (b) Contain a safe electrical wiring system adequate for lighting and other devices.
 - (c) Contain a heating system capable of sustaining a healthful temperature (of approximately seventy degrees) for a displaced person.
 - (d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall and 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.
 - (e) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.
 - (f) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.
- (9) "Displaced person" means any person who moves from the real property or moves his or her personal property from the real property as a direct result of:
- (a) 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; or
 - (b) Rehabilitation or demolition for a project; or
 - (c) 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 under paragraph (E)(3) of rule 5501:2-5-02 of the Administrative Code and moving

expenses under paragraphs (A)(1) and (A)(2) and paragraph (B) of rule 5502:2-5-03 of the Administrative Code.

(10) "Person not displaced" means a person who does not qualify as a displaced person under rules 5501:2-5-01 to 5501:2-5-05 of the Administrative Code. The following is a non-exclusive listing of persons who do not qualify as displaced persons:

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

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

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

(d) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the agency in accordance with any guidelines established by the federal agency funding the project; or

(e) An owner-occupant who moves as a result of a voluntary transaction. (See paragraph (B)(34) of this rule for definition of a voluntary transaction)

(f) Acquisitions for programs or projects undertaken by an agency or person that receives federal financial assistance but does not have authority to acquire property by eminent domain, provided that such agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(g) A person whom the agency determines is not displaced as a direct result of a partial acquisition; or

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

- (i) An owner-occupant who voluntarily conveys his or her property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to rules 5501:2-5-01 to 5501:2-5-05 of the Administrative Code; or
- (j) A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency; or
- (k) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause under applicable law as provided in paragraph (F) of rule 5501:2-5-02 of the Administrative Code. However, advisory assistance may be provided to unlawful occupants at the option of the Agency in order to facilitate the project;
- (l) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with paragraph (H) of rule 5501:2-5-02 of the Administrative Code; or
- (11) "Dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
- (12) "Dwelling site" means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.
- (13) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (14) "Federal financial assistance" means 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.
- (15) "Financial information" means information concerning the assets and liabilities, of the displaced person. Financial information includes, but is not limited to, bank statements, mortgage statements, federal or state tax documents, check stubs and payroll records.

(16) "Household income" means total gross income received for a twelve 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 under eighteen years of age.

(17) "Initiation of negotiations" means

(a) The delivery of the initial written offer of just compensation, by the agency, to the owner or owner's representative, to purchase the real property for the project whenever displacement results from the acquisition of the real property by a state agency. However, if the 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.

(b) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a federal agency or a state agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(c) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub.L. 96-510, or "Superfund") (CERCLA) the "initiation of negotiations" means the formal announcement of such relocation or the federal or federally coordinated health advisory where the federal government later decides to conduct a permanent relocation.

(d) In the case of permanent relocation of a tenant as a result of an acquisition of real property described in paragraph (B)(34) of this rule, the initiation of negotiations means the actions described in paragraphs (B)(17)(a) and (B)(17)(b) of this rule, except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under this part, until there is a written agreement between the Agency and the owner to purchase the real property.

(18) "Lead agency" means the Ohio department of transportation unless otherwise designated by the governor.

(19) "Mobile home" includes manufactured homes and recreational vehicles used

as residences.

- (20) "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of a state in which the real property is located, together with the credit instruments, if any, secured thereby.
- (21) "Nonprofit organization" means 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 (26 U.S.C. 501).
- (22) "Owner of a dwelling" means that a person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:
- (a) Fee title, a life estate, a land contract, ninety-nine-year lease, or a lease including any options for extension with at least fifty years to run from the date of acquisition; or
 - (b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
 - (c) A contract to purchase any of the interests or estates described in paragraphs (B)(22)(a) or (B)(22)(b) of this rule; or
 - (d) Any other interest, including a partial interest, which in the judgment of the agency warrants consideration as ownership.
- (23) "Person" means any individual, family, partnership, corporation, or association.
- (24) "Program or project" means any activity or series of activities undertaken with federal or state financial assistance received or anticipated in any phase of an undertaking in accordance with the federal or state funding agency guidelines.
- (25) "Salvage value" means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.
- (26) "Small business" is a business having not more than five hundred employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity.

- (27) "Tenant" means a person who has the temporary use and occupancy of real property owned by another.
- (28) "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the acquiring agency has determined has little or no value or utility to the owner.
- (29) "Uniform act" means the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 et seq.), and amendments thereto.
- (30) "Unlawful occupant" means a person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.
- (31) "Utility costs" means expenses for electricity, gas, other heating and cooking fuels, water and sewer.
- (32) "Utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.
- (33) "Utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalence of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.
- (34) "Voluntary transactions" means a transaction that meets all of the following conditions:
- (a) No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area. Where an agency wishes to purchase more than one site within a geographic

area on this basis, all owners are to be treated similarly.

(b) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(c) The agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(d) The agency will inform the owner of what it believes to be the fair market value of the property.

(35) "Waiver valuation" means the valuation process used and the product produced when the agency determines that an appraisal is not required, pursuant to appraisal waiver provisions in paragraph (B)(3)(b) of rule 5501:2-5-06 of the Administrative Code.

(C) No duplication of payments: no person shall receive any payment under rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code if that person receives a payment under federal, state, or local law or insurance proceeds which is determined by the agency to have the same purpose and effect as such payment under rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code.

(D) Assurances

(1) Before a state agency may approve any grant to, or contract, or agreement with, a public agency or private agency under which federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the public agency or private agency must provide appropriate assurances that it will comply with the Uniform Act. These same assurance shall be given for any highway project. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any state law which the agency believes provides an exception to section 301 or section 302 of the Uniform Act. If, in the judgment of the state agency, Uniform Act compliance will be served, a public agency or private agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects. An agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(E) Prevention of fraud, waste, and mismanagement: the agency shall take appropriate measures to carry out rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code in a manner that minimizes fraud, waste, and mismanagement.

(F) Manner of notices: each notice which the agency is required to provide to a property owner or occupant under rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code, except the notice described under paragraph (B)(2) of rule 5501:2-5-06 of the Administrative Code, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

(G) The agency funding the project may waive any requirements in rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under these rules. Any request for a waiver shall be justified on a case-by-case basis.

(H) The implementation of rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code must be in compliance with other applicable federal and state laws and implementing regulations.

(I) Recordkeeping and reports:

(1) The agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code. These records shall be retained for at least three years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under rules 5501:2-5-01 to 5501:2-5-06 of the Administrative Code, or in accordance with the applicable regulations of the federal funding agency, which ever is later.

(2) Financial information submitted to the agency by the displacee(s) shall be considered confidential.

(J) Appeals

(1) Actions which may be appealed: Any aggrieved person may file a written appeal with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this rule. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under paragraph (F) of rule 5501:2-5-06 of the Administrative Code, or a relocation payment required under rules 5501:2-5-02 to 5501:2-5-05 of the Administrative Code. The agency shall consider a written appeal regardless of form.

(2) Time limit for initiating appeal.

- (a) Relocation assistance appeals under rules 5501:2-5-02 to 5501:2-5-05 of the Administrative Code: the appeal shall be filed within one hundred twenty days of the person receiving written notification of the agency's determination on the person's claim. All supporting documentation must accompany the notice of appeal.
- (b) Acquisition expense appeals under paragraph (F) of rule 5501:2-5-06 of the Administrative Code: the appeal shall be filed within one hundred twenty days of the disbursement of funds to the property owner. All supporting documentation must accompany the notice of appeal.
- (3) Right to representation: A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.
- (4) Review of files by person making appeal: The agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the agency.
- (5) Scope of review of appeal: In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.
- (6) Determination and notification after appeal: After receipt of the notice of appeal, the agency shall make a written determination. The written determination shall include an explanation of the basis on which the decision was made, and the appellant shall be furnished a copy.
- (7) Agency official to review appeal: The agency official conducting the review of the appeal shall be either the head of the agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Replaces: 5501:2-5-01

Effective:

R.C. 119.032 review dates:

Certification

Date

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