

Federal Highway Administration

Every Day Counts

Innovation Initiative



Flexibilities in Right-of-Way FAQs

- Why are flexibilities needed in right-of-way (ROW) activities?
- What flexibilities can be incorporated into the ROW process?
- How do these flexibilities affect project time?
- What is functional replacement?
- Are functional replacements possible on federal projects?
- Can the same person now appraise a property and negotiate its sale?
- What are the advantages and disadvantages of the flexibility in appraising and negotiating?
- What is a “conditional” right-of-way certification?
- What is a right-of-entry for Federal Land Transfers?
- How are incentive payments used?
- What is Waiver Valuation?
- What is the difference between a waiver valuation and an appraisal?
- What flexibilities are available to coordinate ROW with project development?

Why are flexibilities needed in right-of-way (ROW) activities?

Right-of-way practices and procedures determine how Federal, State, MPO, and local agencies can acquire the land and property needed for transportation projects. The use of a streamline and concurrent ROW process will lead to better project decision-making and expedite the project delivery process.

What flexibilities can be incorporated into the ROW process?

The flexibilities are already available under federal, state, and local statutes and regulations. Flexibilities include functional replacements, conditional right of way certifications, appraisal waiver, incentive payments to advance acquisition and relocation, appraisals and negotiations, and right-of-entry for federal land transfers.

How do these flexibilities affect project time?

Employing and coordinating the flexibilities already provided for in Statute and Federal Highway Administration (FHWA) regulations can save considerable time. A more streamlined ROW process will lead to better project decision-making and an improved and expedited project delivery. Some steps can be done concurrently. Other flexibilities include approaches to shorten existing steps.

What is functional replacement?

When publicly owned and publicly used land and facilities, such as fire stations or police departments, are needed for a highway project, the acquiring agency may replace the property instead of providing monetary compensation. The replacement property must provide equivalent functionality as the acquired property.

Are functional replacements possible on federal projects?

Yes. Use of functional replacement on a project with Federal participation must have concurrence by FHWA.

Can the same person now appraise a property and negotiate its sale?

The Federal regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, allow the same person who appraised, conducted the appraisal review, or made an appraisal waiver determination to negotiate the acquisition of a property whose value is \$10,000 or less.

What are the advantages and disadvantages of the flexibility in appraising and negotiating?

Where projects have limited staffing or are in remote locations, considerable money can be saved. A State DOT or local public agency can make more efficient use of its appraisal and acquisition staff and save travel money. The disadvantage is the possible public perception of conflict of interest. This is why some States and LPAs may choose not to use this flexibility.

What is a “conditional” right-of-way certification?

A “conditional” right-of-way certification is provided for in 23 CFR 635.309(c)(3). Sometimes called a “cert 3.” This certification is used when some properties on the project that have not yet been acquired, which means the agency is in the process but does not yet have the right of occupancy and use for those properties. Cert 3 can also be used when some displaced persons remain on a project. This initiative provides training when these certifications may be used, helping DOTs, MPOs, and local agencies understand the risks and benefits.

What is a right-of-entry for Federal Land Transfers?

A right-of-entry is a right to enter and begin construction on property that will be acquired for a highway project. A right-of-entry may be requested from FHWA when the State or its nominee processes a Federal land transfer application through FHWA. If the right-of-entry is granted, the State may begin project construction immediately rather than waiting an extended period to execute a highway easement deed transferring the land to the State or nominee. This efficiency can significantly shorten project construction.

How are incentive payments used?

Incentive payments for relocation assistance and acquisition are a relatively new and exciting initiative for moving projects quickly through the right-of-way process. The purpose of incentive payments is to reduce overall project costs and delivery time in the right-of-way phase. Incentive can also minimize litigation and reduce other associated project costs. For example, offering an incentive for people to move early can cut project completion time.

What is Waiver Valuation?

Waiver valuation refers to the valuation process used and the product produced when the Agency determines that an appraisal is not required. The waiver valuation is an efficiency that allows State DOTs and local public agencies to maximize their appraisal staff's productivity. Instead of using an appraiser for low-value and uncomplicated appraisal assignments, an agency may use a qualified negotiator or other staff member to make a value determination.

What is the difference between a waiver valuation and an appraisal?

The requirements for a waiver valuation are less stringent than for an appraisal. The waiver provides significant cost savings, particularly when the acquiring agency has to depend on fee appraisers. The valuation thresholds for waiver determinations are \$10,000. With Federal agency approval, the threshold is up to \$25,000. Waivers apply to many parcels of land because agencies often acquire strips of property for highway widening or intersection improvements.

What flexibilities are available to coordinate ROW with project development?

This initiative supports the development of processes and agreements that minimize duplication of effort and reduce delays in project implementation. Areas in which streamlined approaches can be employed include preliminary design, land acquisition, utilities accommodation, and relocation project activities.