

Notices and Offers by Electronic Methods: Process Streamlining



Final Report

Final Report
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Prepared for:
United States Department of Transportation
Office of Planning, Environment and Realty
Federal Highway Administration



U.S. Department
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**Federal Highway
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Introduction/Background

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Uniform Act) provides important protections and assistance for people affected by federally-funded projects. The Surface Transportation and Uniform Relocation Assistance Act of 1987, designated the U. S. Department of Transportation as the Federal Lead Agency for the Uniform Act, and this responsibility was delegated to the Federal Highway Administration (FHWA). The government-wide regulations implementing the Uniform Act is Title 49 Code of Federal Regulation (CFR) Part 24, which was most recently revised in 2005. Since publication of the 2005 rule, the FHWA has undertaken a comprehensive effort to identify potential opportunities for agencies to improve the implementation of the Uniform Act. The current regulation at 49 CFR 24.5 – *Manner of notices* requires that agencies personally deliver or send notices to property owners or occupants by certified or registered first-class mail, return receipt requested. 49 CFR 24.102(f) – *Basic negotiation procedures* requires an agency to make all reasonable efforts to contact the owner or owner’s representative to discuss the offer. An agency should also adequately present the offer to an owner and ensure the owner is properly informed.

In 2013, FHWA sponsored research to provide the technical information necessary to determine how internet-based systems can be used to streamline the acquisition process, specifically in the delivery of notices and offers, which are integral to the right of way (ROW) acquisition process. There were several objectives identified for this research:

- Identify when it is and is not appropriate to use electronic methods of transmittal for notices for making offers;
- Advise the FHWA on current state-of-the-art electronic delivery or signature verification methods that could be used to streamline current regulations; and
- Analyze any current statutory, regulatory and policy prohibitions for the use of electronic notices and offers.

Acting as the lead agency, the FHWA is evaluating the feasibility of using electronic methods to deliver notices and offers without jeopardizing an owner’s or a tenant’s rights under the Uniform Act. This research reviewed and evaluated the feasibility of using electronic methods to deliver notices and offers without jeopardizing the owner and tenant rights under the Uniform Act.

This research was conducted in several steps, which are described in this report. The research culminated in an analysis of various potential applications of electronic delivery and signature

verification systems within the right of way (ROW) acquisition process and the extent to which elements of electronic delivery and signature add value to the overall process.

Review of Research

Literature and Web Research

The study began with a web-based search for relevant articles, case studies, and other legal doctrine addressing the use of electronic delivery and signature verification technologies, specifically in government uses. A total of twenty (20) articles were researched, including publications from vendors, State DOTs, the Volpe National Transportation System Center, the Federal Trade Commission and the Uniform Law Commission.

The report from this literature research included information about the two (2) most significant laws that standardized electronic delivery and signature verification technologies: the Uniform Electronic Transaction Act (UETA) and the Electronic Signatures in Global and National Commerce Act (ESIGN). It also explained electronic signatures, as well as distinguishing between an electronic signature and a digital signature. The latter provides authentication of the identity of the person who “signed” the document and methods to indicate that a document has not been changed since the signature was added. This report briefly described five (5) existing and acknowledged service providers for electronic signatures.

The final report also contained a comprehensive bibliography of all reference materials, with a short summary, abstract and list of key terms for each article, links to websites (as applicable), along with an outline identifying section headings, major topics and discussion points. A glossary of terms was also assembled.

As noted in the Literature and Web Research report, the primary barrier to using electronic delivery systems for acquisition and relocation notices, and written offers to acquire are the current Uniform Act implementing regulations at 49 CFR Part 24 that do not allow for the use of an electronic delivery method. Although some individual state laws may also prohibit this type of delivery, this is not viewed as an obstacle to any Federal regulatory change that may occur, since the change would likely be in addition to personal or mail delivery, and not mandated.

Industry Working Group

In this stage of the research, information was collected directly from State DOTs and industry professionals (vendors) about the use of electronic delivery or signature verification systems that may be used to expedite or streamline right of way (ROW) acquisition. There were three essential components involved in this effort:

- 1) Conducting interviews with State DOT personnel regarding their experience with these electronic systems;

- 2) Conducting interviews with industry software providers that have developed and supported information technology systems, which are electronically secure and can be applied to government agencies; and
- 3) Convening a working group to identify the challenges that must be addressed when using an electronic delivery or signature verification system for federally-funded projects.

Interviews with State DOT Personnel

Prior to conducting interviews, an interview questionnaire was developed to gather information from the selected State DOTs regarding their experience with electronic delivery or signature verification systems. A copy of the interview questionnaire is attached as Exhibit "A" to this report.

In January of 2014, representatives from eight (8) State DOTs were interviewed by telephone:

Indiana Department of Transportation
Louisiana Department of Transportation and Development
Michigan Department of Transportation
Mississippi Department of Transportation
South Dakota Department of Transportation
Texas Department of Transportation
Utah Department of Transportation
Virginia Department of Transportation

Summary/Analysis of Information Collected During State DOT Interviews

Generally, the State DOTs do not use electronic delivery of documents to property owners or displaced persons. The only exception to this would be if a property owner specifically requested that type of delivery for an offer to acquire. In this case the DOT would typically follow-up on the delivery with a hard copy by mail and/or a personal telephone call to the owner. None of the DOTs used electronic delivery for relocation notices, since it is not permitted under the current Uniform Act regulations. Most of the DOTs use email for some type of follow-up contact, again if requested by the owner or displaced person.

Several of the DOTs use electronic methods to deliver documents internally, most commonly for appraisal and appraisal review. The appraisal reports are electronically signed by both the appraiser and the reviewer, and the acquisition agent is notified that an approved appraisal report is available for negotiation purposes upon agency approval of the just compensation amount.

Most of the interviewed representatives stated that electronic delivery and signature verification would be a useful tool that could be used in conjunction with other delivery methods for offers and notices.

Three (3) State DOTs interviewed have implemented an electronic delivery/signature system with the public in an office or area outside of ROW. All stated that it had resulted in a streamlining of work effort.

Interviews with Vendors

Prior to conducting interviews, an interview questionnaire was developed to gather information from selected vendors regarding their electronic delivery system. A copy of the interview questionnaire is attached as Exhibit "B" to this report.

Interviews with Adobe EchoSign and Silanis Technology, Inc. were conducted during January 2014. A representative from each vendor was contacted to secure an agreement to complete the interview, and then a copy of the interview questionnaire was emailed for completion.

Summary/Analysis of Information Collected During Vendor Interviews

Data security and system uptime/availability are very important in this arena, and both organizations maintain that they have never experienced a system breach of their data. Further, they both report a system uptime of 99%. All data is stored on servers, and is secured using the latest encrypted algorithms. Silanis and Adobe offer different levels of identity options for signers. The most common authentication method is the use of the signer's email address, where the signer is invited via email to e-sign a document. An agency may also use email plus challenge questions, where the vendor presents to the user a list of challenge questions that only the user should be able to answer (i.e., last 4 digits of social security number, year of birth, telephone number). The user must correctly respond to the challenge question(s) before accessing the e-signature transaction. Another option is to use email plus SMS (text-message), where the system sends the signer a one-time password via SMS. The signer is then prompted for this password upon accessing the e-signature transaction. Since the signer's phone is used, which is something the user has in addition to something the user now knows, this is often referred to as a two-factor authentication.

As part of the e-sign process, the comprehensive Silanis consent to the e-sign page is the first page the signer must review and accept. This action then becomes part of the audit history. Opting in is typically on a transaction-by-transaction basis, however, an agency may elect to use a "blanket" consent, or have it set for a specific period. If the user then elects to "opt out," the agency would reset the mandatory e-sign consent on each future transaction. An example of the typical Silanis consent page is attached as Exhibit "C" to this report.

Adobe's response to this question indicated that the agency (sender) can provide an option for the signer to decline a signature, which would be tracked in the transaction audit trail. An example of Adobe's option for a signer to decline a signature is attached as Exhibit "D" to this report.

It is important to note that the forms provided here are for informational purposes. An organization or agency can customize a consent page to meet its individual needs. An agency

may consult with legal counsel to determine the specific legal consents required for electronic signatures, and work with a vendor to incorporate language into the signer's consent.

Both vendors can set data retention policies at the direction of the client. In addition, both services create an audit trail of the electronic signature process (i.e., who initiated the request and date of request, when the document was downloaded, date of electronic signature, chronological order in cases of multiple signers, etc.). The vendor maintains a copy of this audit trail and an original key to authenticate the signed document so the authenticity of the copies can be verified. Both vendors report a high level of security for all data stored/retained on their servers. This data is encrypted, and access is limited to authorized individuals only. Silanis and Adobe indicated that they support two-factor authentication for system administrator access.

Finally, both Silanis and Adobe allow for branding options on the product, such as including an agency or company logo on the product's web page and/or documents produced.

The Working Group

In the next step of the research study, a stakeholder working group was convened comprised of State DOT representatives who participated in the interviews. The purpose of the working groups was to identify challenges that must be addressed when using an electronic delivery or signature verification system for federally-funded projects.

The working group included representatives from the following State DOTs:

Indiana Department of Transportation
Mississippi Department of Transportation
South Dakota Department of Transportation
Texas Department of Transportation
Virginia Department of Transportation

In addition, two (2) representatives from the FHWA Office of Real Estate Services Headquarters participated in the working group, as well as one FHWA Division Realty Officer.

The working group met through webinars a total of four (4) times over a period of approximately six (6) weeks (02/20/14, 03/07/14, 03/21/14, and 04/04/14). These meetings progressed from a general discussion of how the participating DOTs were using electronic signatures in any of its current processes or systems, to a more specific examination of the advantages and disadvantages associated with using electronic delivery of offers to acquire and relocation notices. These discussions also included the practicality of implementing an electronic delivery and signature system for a State DOT. Both Silanis Technologies, Inc. and Adobe EchoSign provided demonstrations as to how its products would work in any particular State DOT setting.

Costs to Develop, Deploy, Use and Support Electronic Delivery or Signature Methods

During the research phase of this task, and in interviews with the vendors, it became clear that it is difficult to quantify the general costs associated with development, deployment, use and support of an electronic delivery/signature verification system. For example, both Silanis and Adobe both have cost/pricing information on their websites. However, for enterprise or global users for larger organizations like a DOT, no cost information is actually provided, and the potential user is instructed to call for information. The vendors indicated during the interviews that clients such as government agencies get special pricing based on their specific needs. Both Silanis and Adobe have a special government sales department that negotiates pricing for these types of clients. In order to actually begin that negotiation and pricing conversation, the agency would identify its needs, i.e., how many internal users would be generating documents for delivery and signature, how many documents, the period of the contract, etc.

In order to at least get some semblance of pricing/costs, the following hypothetical model for a State DOT was presented to both Silanis and Adobe:

Number of internal DOT users	Number of external property owners and displaced persons per year	Number of documents electronically delivered and e-signed per year	Period of contract
25	250	2,500	5 years

The number of external users (property owners and displaced persons) does not affect the cost, nor does the number of documents electronically delivered or e-signed. The cost for this hypothetical model for Silanis was around \$22 per user, per month, or roughly \$6,600 per year. Adobe's cost was about \$26 per user per month, or \$7,800 per year. These are general costs, and longer contracts and further negotiation may reflect better pricing or at least provide price matching between vendors.

These costs are for named system administrators/senders for the agency. Both of these systems are user based, so the costs depend on the actual number of organization users. It is possible the costs could vary for a smaller organization, such as an LPA. The numbers of public and external signers, as well as the number of forms do not represent additional cost according to the vendors.

Obtaining an electronic delivery/signature verification system that serves potential users within the overall project development process, i.e., the entire agency, or one that is a stand-alone system that specifically facilitates the ROW acquisition process would not affect the costs.

Based on the monthly subscription information provided by the vendors, an agency can multiply the number of users by the cost per user. Again, these costs may change based on actual negotiations that occur at the time an agency chooses to implement an electronic delivery/signature verification system.

Presenting Written Offers to Acquire to Property Owners

Federal regulations at 49 CFR 24.102(f) *Basic negotiation procedures* state, “An agency is required to make all reasonable efforts to contact the owner or the owner’s representative and discuss its offer to purchase the property, including the basis for the offer of just compensation . . .” Section 24.102(f), Appendix A also states, “An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.” This language indicates the intention that an agency representative should personally deliver the offer to purchase. During the Working Group phase of this study, the Team agreed that personal contact facilitates an explanation of the valuation of the property, as well as the effect of the acquisition on any remainder property.

Some agencies make the offer to acquire at a personal meeting with the owner. During this meeting the agent may discuss documents pertinent to the acquisition, i.e., the ROW/construction plans, valuation report, title information, and either address or note any questions/concerns the owner has. Other agencies mail the initial offer to acquire, with supporting documents, and then set up a personal meeting to discuss the information with the owner. The advantage of both approaches is that they provide the basis for the acquisition agent to establish a rapport with the property owner that would more likely result in a negotiated settlement. Both of these techniques are considered best practices, and may be adopted as a result of state law or agency procedures.

There are situations, however, when personal delivery is not possible, or feasible. Some owners are not readily available in a location reasonably accessible to the agency’s representative for personal contact. Other owners may be unresponsive to an agency’s request for a personal meeting, or refuse the request altogether. In these cases, an agency would currently make delivery through certified mail, return receipt requested. Obviously, the disadvantage in this approach is that it does not provide the opportunity for the agent to immediately explain the basis of the offer, effect of the acquisition, and/or address questions or concerns the owner may have. This situation may be remedied with a follow-up telephone contact, where the agent can cover any missed information, and answer questions. This approach could be adapted to electronic delivery/signature verification. If a property owner consented to electronic communications, the agency could electronically deliver the offer and obtain an electronic signature to confirm receipt.

Experience has shown that acquisitions can sometimes be handled efficiently with a minimum of personal contact. The FHWA Project Development Guide outlines the use of accelerated

negotiations by mail (available at the following website:

http://www.fhwa.dot.gov/real_estate/practitioners/right-of-way/corridor_management/pdg/pdg09.cfm).

This is an optional approach intended to provide a benefit to the owner if they request a mailed offer, reduce agency staffing and travel cost, and accelerate the acquisition process. This approach may involve completing negotiations by mail without personal contact, or a limited use of this approach such as the first offer by mail with follow-up personal contacts. If the acquiring agency does not receive a timely response, there should be a follow-up telephone call. Any questions can be answered or, at the property owner's election, an appointment for a personal contact can be made. Having the written offer beforehand allows the discussions to focus on substantial issues when personal contact is necessary. The agency can also determine that future personal contact is in everyone's best interest, if the issues associated with the proposed acquisition have become sufficiently complicated or involved. Experience with this approach has proven to be very successful and shown significant savings for the agency and the owner on claims where there is no substantial question concerning the acquisition. This method cannot typically be used on acquisitions which involve relocation.

This approach could be easily adapted to use with electronic delivery, rather than mail. If the owner requests or consents to receipt of the offer electronically, it would follow the same process outlined above. This method becomes even more applicable when these minor acquisitions impact individuals who have limited time availability, and indicate that they would prefer to review and consider the proposed acquisition in accordance with their own particular schedules. As time goes on, more and more individuals are comfortable with, and may even prefer, electronic communications as opposed to personal contact.

Recommended Best Practices for Use of Electronic Methods for Offer to Acquire

- After obtaining the owner's consent, an agency may send the offer and associated documents, i.e., summary statement, ROW plan sheets, title information, valuation information, by electronic mail, with signature verification.
- The agency should follow-up this delivery with telephone contact to see if the owner has questions or inquire if the owner would like to schedule a personal meeting to discuss the documents.
- As an alternative to a personal meeting, especially in circumstances where the owner is not readily accessible for personal contact, the agency may consider scheduling a video conference call with the property after the owner has received the offer and associated documents. This virtual meeting would be similar to a personal meeting, and may encourage the discussion and communication necessary to facilitate negotiations and settlements.
- An agency may also consider having an acquisition agent use a tablet or portable word processor during the personal delivery of the offer to acquire. The owner would receive a hard copy of the offer, but the agent could obtain the owner's electronic signature indicating receipt of the offer using a stylus to sign the electronic copy.

It is important to note that some state laws require the personal delivery or mail delivery of the offer to acquire. These states laws would have to be amended to implement any electronic delivery of offers.

Techniques Involving Use of Electronic Methods as an Aid to Acquiring ROW

Although the current regulations do not provide for electronic delivery and signature of notices and offers under 49 CFR Part 24, the interviews with the State DOT personnel indicated that several agencies are using electronic delivery/signatures successfully in other areas of right of way, or throughout the organization. For instance, both the Mississippi and Virginia DOTs use electronic delivery and signatures for their appraisal and appraisal review processes.

Appraisers electronically sign and transmit reports to the review appraiser. The reviewer can electronically make revisions, sign the report, and then approve and establish the amount of just compensation. This final action provides an email notification to the user (acquisition agent) that the report is ready for download, and the agent can review it prior to making an offer. A logical next step in this process would be the transmittal of the electronic offer (to a property owner who was fully informed and had previously consented to this method of delivery).

Other State DOTs, such as Michigan and South Dakota, are using electronic systems to provide notices to contractors, while the Louisiana DOTD electronically transmits plans and documents. The Texas DOT also provides electronic access to plans, and allows the public to electronically apply for utility permits.

Throughout the study, the Team discussed various methods for using electronic delivery and signature verification systems during the ROW process. These discussions included ways to incorporate these systems into the delivery of offers and notices, how these methods would develop into operating procedures, and when they could be implemented into an agency's business practices. In the various interviews with State DOT personnel, as well as in the working group meetings, the general consensus was that the availability of these electronic systems for delivery/signature of offers and notices was a viable option; however, it would not replace the preferred personal contract. One State DOT representative characterized it as "an excellent tool to have in the toolbox."

There are several key elements, or steps, in the ROW acquisition process where electronic methods may be integrated more reasonably than others and result in a streamlining of the process. The following techniques involving the use of electronic methods can be an aid to acquiring ROW.

Public involvement activities may present opportunity for an agency to discuss electronic delivery of documents and obtain property owner/displaced person's written consent to accept such delivery.

Prior to the beginning of the ROW acquisition phase, an agency will typically conduct a public involvement process, which will consist of advisory public meetings and workshops, along with individual contacts with property owners. A public meeting would allow an agency to outline how the electronic communication process would function and demonstrate the various options an agency may use with owners and displaced persons. An agency may also use this venue to offer a sign-up for the public to receive electronic mailings related to project information to facilitate communications.

The delivery of the Notice to Owner under 49 CFR 24.102(b) provides an agency the opportunity to determine if a property owner is interested in electronic communications.

Most acquiring agencies do not have personal contact with an owner before it sends the *Notice to Owner*, so it would not have the opportunity to obtain the necessary written consent to deliver the notice electronically. However, it is at this point in the process that the agency could determine if the property owner would be interested in further communications by electronic methods.

If the property owner indicates that he/she is interested in electronic communications, the agency could provide an email address to assist in the future communications, which is outlined in the second option below.

Options for Consent

- An agency may follow-up on this correspondence with a personal contact to explain how the electronic delivery and signature would work, and obtain a written consent from the property owner.
- Another option is to enclose a written description of the electronic delivery/signature process along with the Notice to Owner, and have the property owner sign the written consent to opt-in. The property owner would return the consent form, along with necessary email address(es), to the agency.

Electronic communications are a useful tool for negotiations after making the offer to acquire and communicating with displaced persons after delivery of the Notice of Relocation Eligibility.

Implementation of electronic methods during negotiations with property owners offers excellent opportunities of streamlining for both the owner and the agency. With the owner's consent to communicate electronically, information can be transmitted easily and immediately. Any required documents can be attached to an email or sent through a large file transfer

system. Similarly, the relocation agent could conduct follow-up contacts using email, provide requested information, and the displaced person may be able to provide necessary documentation electronically.

Electronic communications are a practical method to conduct closings for negotiated parcels.

The research and information obtained indicate that this step in the ROW acquisition process may also be conducted electronically. The validity of the electronic notarization of the signatures is a major concern in the closing process when using electronic communications. In the review of state laws, it became evident that electronic notarization has become an available and accepted practice in the states that participated in the interviews.

Of somewhat more concern is whether electronic signatures are acceptable in the filing or recording of property transfer documents. The representatives of both Silanis and Adobe EchoSign advised that the requirements for the official filing of property documents was typically left up to the various County representatives within each State. Although many Counties are now permitting electronic transmittal of property transfer documents with electronic signatures and notarization of these documents, this is one aspect of electronic signatures that is used less than any other. It was the opinion of the company representatives, however, that even this aspect of electronic signature usage was becoming more accepted, and that it was inevitable that the trend towards electronic filing of property documents would progress.

If conveyance documents can be electronically signed and notarized, this step in the ROW acquisition process could also be streamlined. This would represent a savings in resources and time, since an agent would not need to attend a closing, and the delivery and return of documents would occur more quickly than it would with a regular or overnight mail delivery.

Proposed Model of Utilizing Electronic Delivery/Signature Verification Techniques

To identify a proposed model for using electronic delivery/signature verification techniques, it appears the easiest method is to “walk through” the typical steps or key elements of the ROW acquisition process, and discuss whether electronic methods is an appropriate technique at that step.

Each of these steps or points in the process described below is illustrated in a flow chart on page 16 of this report. Each section below is followed by a label that corresponds to the appropriate step in the flow chart.

Public Involvement Process (Step P-1 on Flow Chart)

The public involvement process offers an agency the opportunity to discuss the electronic delivery of documents and obtain the written consent of an owner or potential displaced person to accept such delivery. A public meeting would allow an agency to outline how the electronic communication process would work, and increase the public's awareness and acceptance of this method of communication. An agency may also use this venue to offer a sign-up for the public to receive electronic mailings related to project information to facilitate communications.

Notice to Owner

(Step A-1 on Flow Chart)

Most acquiring agencies do not have personal contact with an owner before it sends the *Notice to Owner*, so it would not have the opportunity to obtain the necessary written consent to deliver the notice electronically. However, it is at this point in the process that the agency could determine if the property owner would be interested in further communications by electronic methods. This may be an appropriate point to incorporate electronic communications.

Note: This technique has been discussed in detail in the section titled "Techniques Involving Use of Electronic Methods as an Aid to Acquiring ROW."

Invitation to Owner

(Step A-2 on Flow Chart)

Federal Regulations at 49 CFR 24.102(c)(1) require that the owner, or the owner's designated representative, be given the opportunity to accompany the appraiser during the appraiser's inspection of the property. The agency's appraiser typically sends the owner a letter, which provides this opportunity to be present during the property inspection, and documents the invitation in the appraisal report. An agency can meet with property owner during the appraisal inspect to obtain consent to communicate using electronic methods. If the agency has previously secured the owner's written consent to receive electronic delivery, during the public involvement process, it could relay this information to the appraiser who could send the required invitation electronically. Due to the coordination required between the staff or fee appraiser and the property owner, it is best if the appraiser makes this appointment directly with the owner either by electronic delivery or other method. Since many agencies use fee appraisers, the appraiser would have to insure that he/she could document the delivery of the electronic communication. This does not appear to be an efficient implementation of electronic delivery; however, it could be integrated into an agency's process.

Offer to Acquire

(Step A-3 on Flow Chart)

Personal delivery is the preferred method for making an offer to acquire. Techniques for using electronic delivery are discussed in detail in the section titled "Techniques Involving Use of Electronic Methods as an Aid to Acquiring ROW."

Negotiations After Making the Offer to Acquire

(Steps A-4, A-5, and A-6 on Flow Chart)

Implementation of electronic methods in this phase of the ROW acquisition phase offers excellent opportunities for both the owner and the agency. More detailed information is provided in the section titled “Techniques Involving Use of Electronic Methods as an Aid to Acquiring ROW.”

Closing and Possession

(Step A-7 on Flow Chart)

If conveyance documents can be electronically signed and notarized, this step in the ROW acquisition process could also be streamlined. The decision to elect to use electronic methods or documents during the closing process should be based on state law. This would represent a savings in resources and time, since an agent would not have to attend a closing and the delivery and return of documents would occur more quickly than it would with a regular or overnight mail delivery.

More detailed information is provided in the section titled “Techniques Involving Use of Electronic Methods as an Aid to Acquiring ROW.”

Relocation Notices

The federal regulations at 49 CFR 24.5 require that agencies provide relocation notices either by personal delivery or by certified or registered mail, return receipt requested. The consensus of the Team was that personal delivery of relocation notices was preferred, since the relocation assistance program often requires a more hands-on approach. When an individual or a business is being displaced, the various issues are likely to be complicated, and it would be difficult to provide an adequate alternative to face-to-face communications. Although there may be situations where electronic communication and delivery of relocation assistance notices might be applicable, the agency officials agreed that this should be the exception, rather than standard practice. The use of electronic methods is not a substitute for providing advisory services. The signed return receipt card, or notice that the mailing was undeliverable, would serve as documentation of a good faith effort to comply with the requirement to deliver the notice. If the displaced person had previously provided a written consent to receive electronic delivery, the agency may choose to deliver notices using this method, although it may be a good business practice to also use certified mail to demonstrate due diligence.

An agency is required to deliver several written notices in conjunction with the relocation assistance program under 49 CFR 24.203 and these notices occur at different points in the acquisition process.

General Information Notice - §24.203(a)

(Step R-1 on Flow Chart)

An agency is required under §24.205(c)(2)(i) and (ii) to conduct a personal interview with business owner/operators and residential occupants to be displaced. In practice, an agency will usually deliver the *General Information Notice*, which may be in the form of a brochure, during this personal interview.

Notice of relocation eligibility - §24.203(b)

(Step R-2 on Flow Chart)

The *Notice of Relocation Eligibility* informs persons that they will be displaced by the project and may be eligible for relocation assistance, provided they meet the eligibility requirements. Without personal delivery and a face-to-face meeting, the agent does not have the opportunity to explain the person's eligibility for relocation payments and services, the eligibility requirements the person must meet to claim certain payments, and answer questions the person may have about the program. This explanation is considered a key element of the agency's responsibility for providing advisory services.

If the agency cannot accomplish personal delivery of this notice, it could deliver it electronically, provided the displaced has given a written consent for this method of delivery. The agency should follow this delivery with a telephone call to explain the notice and answer any questions, which is the typical process for certified mail delivery. An agency may also consider scheduling a video conference or Skype call with the displaced person if he/she has that capability.

Ninety-day notice - §24.203(c)

(Step R-2 on Flow Chart)

The *Ninety-Day Notice* is one of the most important protections that the Uniform Act and the implementing regulations provide. When people to be displaced receive a *Ninety-Day Notice*, they must understand they will have at least that much time to find a replacement dwelling or business site. There are two different approaches an agency can use for the content of the *Ninety-Day Notice*. Under the first approach, the Agency states in the notice a specific date at least 90 days from the date of delivery of the notice by which the occupant may have to move. Under the second approach, the *Ninety-day Notice* does not state a specific date, but informs the displaced person that the agency will provide a second notice which states a specific date by which a move will be required, and that this latter notice will provide no less than 30 days advance notice. Most State DOTs use the second approach, and will deliver what is sometimes referred to as a *Ninety-Day Letter of Assurance* concurrently with the delivery of the *Notice of Relocation Eligibility*. Since the assurance that the displaced person has a minimum of 90 days to move from the displacement dwelling or site is an essential protection afforded displaced persons, the ability to have a personal meeting to explain the purpose of the notice is an important component of advisory services.

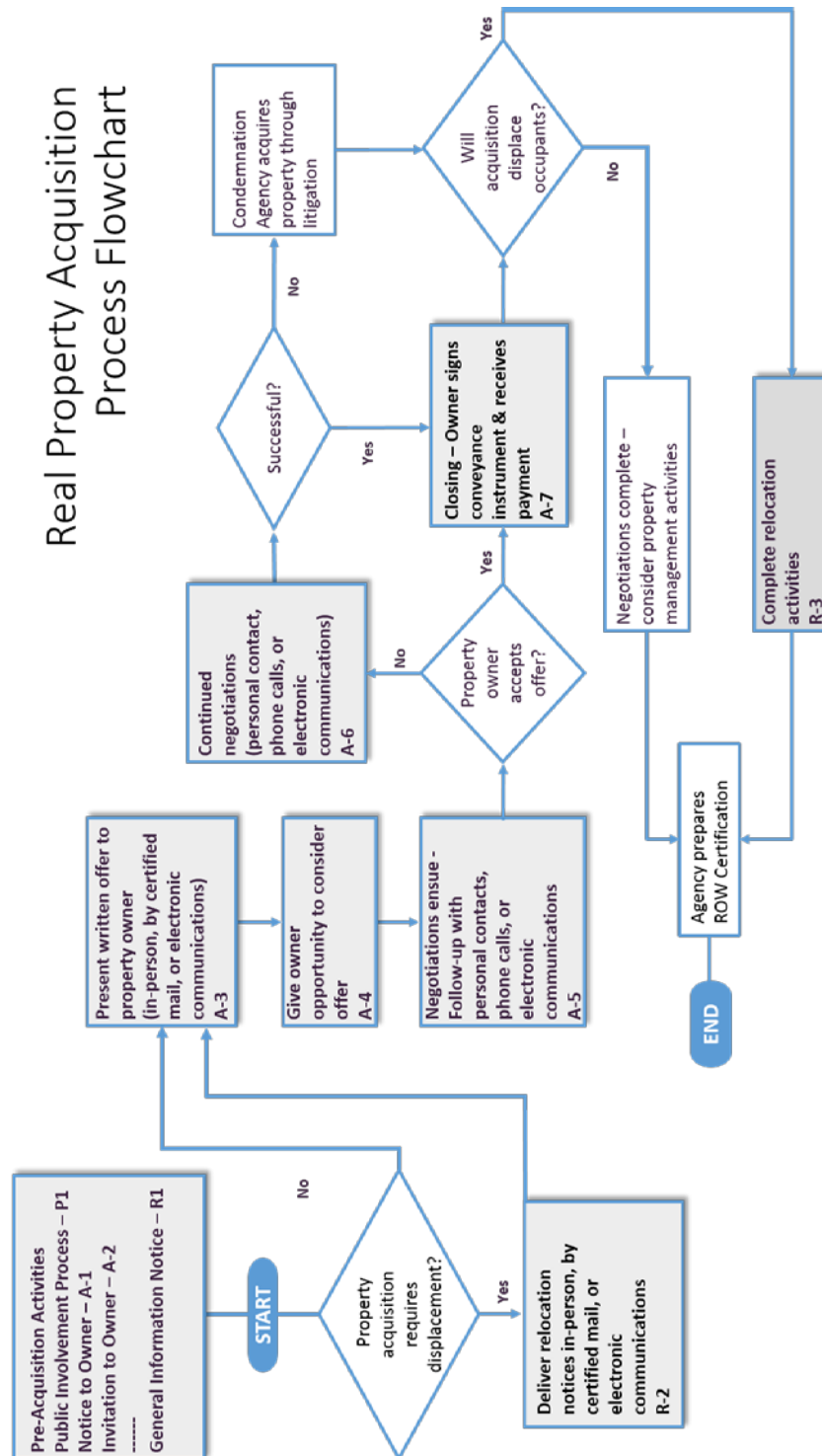
Note that if an agency uses the combination of a *Ninety-Day/Thirty-Day Notice*, the *Thirty-Day Notice to Vacate* would be issued when the agency obtains possession of the property. This is represented in Step R-3 of the Flow Chart – Complete Relocation Activities. If a displaced

person had previously given consent to electronic delivery/communications, an agency may consider it appropriate to deliver this notice electronically, since there would likely have been numerous contacts between the agency and the displaced person by that time, and the displaced person would have some expectation that he/she would receive communication through email.

Possible uses for electronic delivery of relocation notices

Each of these relocation notices communicate and imply a variety of differing types of information to the displaced person, and personal face-to-face delivery would be in everyone's best interests. However, there could be situations where the electronic delivery of relocation notices might be a reasonable course of action, such as a displaced person who has only personal property to move from the displacement site, or is unable or unwilling to meet with an agency representative. Since there is not a substantial difference between certified mail and electronic delivery of documents, this method would provide agencies needed flexibility. It should be an available "tool in the toolbox."

Similar to the period of negotiations with a property owner, after the offer is made, subsequent contacts with a displaced person after the agency delivers the *Notice of Relocation Eligibility* could be carried out to some extent using electronic communications. The relocation agent could document follow-up contacts using email, provide requested information, and the displaced person may be able to provide necessary documentation electronically. This use of electronic methods also offers the opportunity to streamline the ROW acquisition process.



Key Findings

There are several elements of electronic delivery and signature verification systems that can add value to the acquisition process and provide streamlining opportunities.

1. Electronic methods provide for more efficient delivery of notices, offers, and other documents than certified mail.

Electronic communications offer streamlining opportunities during negotiations between the agency and property owner, since follow-up contacts, documents and other information can be exchanged immediately between the parties. These same methods can also apply during the relocation process while the agent is working with the displaced person to accomplish a successful transition to the replacement location. Electronic communications represent a potential savings for both the agency and the owner from the standpoint of time expended, travel, and mailing costs.

2. These electronic tools provide comprehensive evidence of the electronic delivery and signature process.

The authenticated audit trail gives an agency the ability to easily document compliance with the Uniform Act and 49 CFR, Part 24 regulatory requirements.

3. Electronic communications and methods allow the agency to consider and respond to the property owner's needs and preferences during the acquisition process.

For example, if an agency is working with a railroad or an attorney representative, it is likely they would prefer electronic delivery of documents. Many owners face time constraints and would appreciate the opportunity to communicate in this manner.

4. Electronic communications may provide the ability to build trust and gather information from property owners and displaced persons during the public involvement process.

Public involvement activities may present the opportunity for an agency to discuss the electronic delivery of documents and obtain the written consent of an owner or potential displaced person to accept such delivery. A public meeting would allow an agency to outline how the electronic communication process would function and demonstrate the various options an agency may use with owners and displaced persons. An agency may also use this venue to offer a sign-up for the public to receive electronic mailings related to project information to facilitate communications. These activities may streamline relocation planning and the overall ROW acquisition process.

5. The ability to offer a combination of electronic, mail and personal contact options will provide more effective communications with property owners and others impacted by public projects.

In recent years electronic communication has become more accepted and utilized by business entities, government, and the public. The increasing prevalence and reliance of electronic communications for many individuals further supports the use of this technology in the eminent domain process.

Recommendations

1. Update the URA regulations to permit agencies the flexibility to implement electronic delivery/signature verification systems for notices and offers.

Electronic communications can be designed to be secure, and have become recognized in many instances as a far more efficient information delivery system than the postal service, or other mail delivery services. Providing agencies with the ability to use this alternative method will add value and efficiency to the ROW acquisition process.

Minimum safeguards that should be in place for use of electronic delivery of notices and offers must include:

- A process that informs owners and displaced persons of their rights to choose not to receive electronic notices and offers.
- A process that documents information delivered in a legal digital format, including a date and time stamp of delivery and receipt with an electronic record capable of retention.
- A method to verify and link the electronic document and signature in a way that can determine whether the document was changed after the electronic signature was applied.
- A certification process that the use of electronic notices or signatures is consistent with existing state and federal laws.

2. Update the URA regulations to permit other methods of mail delivery, such as FedEx and UPS

The current regulations at 49 CFR 24.5 provides for two (2) methods of notice delivery: 1) personally served; or 2) sent by certified or registered mail, return receipt requested. These alternative mail delivery services can provide the same type of delivery confirmation as a return receipt, and would give agencies the flexibility to decide what type of delivery works best in a particular situation. In addition, certified mail with a return receipt may not be a viable alternative for offers or notices that must be sent internationally to some foreign countries.

Note: A chart containing an evaluation of the benefits of using electronic methods compared to the use of personal delivery or certified mail delivery only is included as Exhibit “E” to this report.

Summary

This research study was performed so that FHWA would have the technical information necessary to determine if electronic delivery/signature verification systems can be used to streamline the ROW acquisition process, specifically in the delivery of notices and offers. Although this report outlines key elements or steps in the ROW process when personal delivery is still the preferred approach when working with property owners and displaced persons, the use of electronic methods is clearly a viable alternative that offers many benefits to acquiring agencies, property owners and displaced persons.

The current technology available for sending electronic communications and obtaining an electronic signature is secure, convenient, and provides an audit trail that easily demonstrates compliance with regulatory requirements. It is comparable to certified or registered, first class mail delivery, and is more efficient in those situations when the affected party consents to receive electronic delivery and communications from the agency. In most cases, if an acquiring agency elected to use electronic communications it would do so in combination with personal contact from a representative of the agency to assist the owner’s understanding of the ROW acquisition process or a displaced person’s comprehension of the relocation program.

As an agency continues to evolve towards maximum efficiency and productivity, it should be able to fully utilize all of the various existing communication tools to its best advantage. It is reasonable to provide flexibility in the URA implementing regulations to afford the use of electronic delivery of notices and offers related to ROW acquisition and relocation assistance programs. Such a change will add value and efficiency to the property acquisition process and program delivery for direct federal and federally-assisted programs nationally. As one State DOT representative who participated in the working group characterized it, this alternative delivery method is “an excellent tool to have in the toolbox.”

Exhibit A – State DOT Interview Questionnaire

Notices and Offers by Electronic Methods: Process Streamlining Interview Questionnaire

Background: This information is being solicited from a knowledgeable party of a governmental agency that is using an electronic delivery and/or signature verification process.

Organization Information		
Name:	Organization:	
E-mail:	Phone:	
Questions:		
1. Briefly describe your electronic delivery and/or signature verification system. System name:		
Who designed the system?		
What software is the system running?		
Are you satisfied with the current system & software?	Yes:	No:
If not, what aspects need improvement?		
2. What specific tasks do you use the system for? Is your system being used to make offers and deliver notices?		
3. What types of recipients does this system engage with? What areas does your system service; appraisal, acquisition, relocation sections?		
4. If that system were not available, how would you carry out the necessary function?		

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5. Has the system resulted in streamlining of work effort? _____		
Description:	Yes:	No:
How much did it cost to implement your system?		
Have you prepared a cost/benefit analysis of the system?	Yes:	No:
If yes, what were the results?		
6. Have there been any significant breaches of the system security or other technical failures of the system?	Yes:	No:
Description:		
7. How many transactions per month is the system used for? Describe dollar amount:		
8. What are the safe-guards or security features of the system?		
9. What are the applicable State Laws that govern the use of your system?		
10. Would electronic documents be acceptable in eminent domain proceedings?		
11. Does the State us a pre- or post-follow-up process with personal contact?		
12. Does your system have planning, environmental and utility relocation linkages?		
Other Comments		

Exhibit B – Vendor Interview Questionnaire

Notices and Offers by Electronic Methods: Process Streamlining

Interview Questionnaire for Vendors

Background: This information is being solicited from a knowledgeable party of a vendor that provides electronic/digital signature services.

Vendor/Organization Information	
Name:	Organization:
E-mail:	Phone:
Questions:	
Has your company and electronic signature platform had government agencies as clients?	
Can you provide a client list of list of real estate related clients?	
How many years has your company been in business processing electronic signatures?	
Has your company ever been involved in litigation, either directly or indirectly, regarding the use of electronic document signatures?	
Are electronic signatures created with your system valid and enforceable in the U.S.? Do they fully comply with the requirements of both Electronic Signatures in Global and National Commerce Act (ESIGN) and Uniform Electronic Transactions Act (UETA)?	

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<p>Has your company ever experienced any security breaches in its electronic signature services?</p> <p>If so, where can the disclosures be reviewed regarding the events?</p> <p>What are your policies for reporting breaches to customers?</p>	
<p>How much system downtime (in minutes) has occurred in the last 36 months? What are your policies for debriefing and reporting system downtime to customers?</p>	
<p>What is the system uptime guarantee in your Service Level Agreement (SLA)?</p>	
<p>Is your system PCI Data Security Standards (PCI DSS) compliant?</p>	
<p>Has your system had a Statement for Standards for Attestation Engagements (SSAE) No 16 ("SOC 1") audit performed?</p> <p>Are the related results available to view?</p>	
<p>Does your system support two-factor authentication for system administrators?</p> <p>What method is used to store/retain data? Explain in detail.</p> <p>Are there any security redundancies occurring in your system to ensure security goals are being reached?</p>	
<p>Is all data encrypted when stored on disk?</p> <p>Is data encrypted (if/when) stored on a "cloud" system?</p> <p>Is data accessible by third parties or internal staff?</p>	





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What is your privacy policy related to stored and transmitted information of system administrators or signers?	
<p>Is your pricing model based on the number of signers, administrators, number of forms, etc.?</p> <p>What costs (if any) are built into that model to be passed on to licensed signers for use of the program?</p>	
<p>Are there any license limitations (maximum number of users, maximum file storage, maximum bandwidth transfer, etc.)?</p> <p>Can licenses be segmented in order to gain access to separate data fields or are all licenses accessing the same data fields?</p> <p>Are there any security risks in this type of segmentation?</p> <p>If so what are you doing to overcome those risks?</p>	
<p>What are your contract term lengths?</p> <p>What are the related penalties for early termination?</p>	
<p>What are the data retention policies for forms and signer data?</p> <p>How long is data kept on disk (or otherwise kept) after an account is closed?</p> <p>How can files be easily and securely transferred to system administrators for historical records once accounts are closed?</p> <p>Are there any security risks in transferring these files?</p> <p>If so what can be done to overcome those risks?</p>	

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What are your branding options?	
Are custom URLs and related custom SSL certificates supported?	
Is there a method/process for gaining consent ("opt-in") for electronic documents from signer?	
Is there a method/process for a signer to revoke their consent for electronic documents ("opt-out")?	
What are the identity verification options for signers?	
Other Comments	

Exhibit C – Silanis Consent Page Sample

 Opt Out  Decline  Confirm  Language

Electronic Disclosures and Signatures Consent

Must be accepted and agreed to before starting the signing process.

Consent

Not accepted

This is a consent Document. You must read it and click the **Accept** button at the end of the Document.

ESIGN DISCLOSURES AND CONSENT

It is required by law to provide you with certain disclosures and information about the products, services or accounts you may receive or access in connection with your relationship with us ('Required Information'). With your consent, we can deliver Required Information to you by a) displaying or delivering the Required Information electronically; and b) requesting that you print or download the Required Information and retain it for your records.

This notice contains important information that you are entitled to receive before you consent to electronic delivery of Required Information. Your consent also permits the general use of electronic records and electronic signatures in connection with the Required Information.

After you have read this information, if you agree to receive Required Information from us electronically, and if you agree to the general use of electronic records and electronic signatures in connection with our relationship, please click the 'I ACCEPT' button below.

Statement of electronic disclosures:

You may request to receive Required Information on paper, but if you do not consent to

This is a consent Document. You must read it and click the **Accept** button at the end of the Document.

processing to create a relationship with you in connection to the products, services or accounts

If you consent to electronic delivery of Required Information, you may withdraw that consent at any time. However, if you withdraw your consent we will not be able to continue processing to create a relationship with you in connection to the products, services or account.

If you consent to electronic disclosures, that consent applies to all Required Information we give you or receive from you in connection with our relationship and the associated notices, disclosures, and other documents.

You agree to print out or download Required Information when we advise you to do so and keep it for your records. If you are unable to print or download any Required Information, you may call us and request paper copies. If you need to update your e-mail address or other contact information with us, you may do so by calling us and requesting the necessary updates.

If you wish to withdraw your consent to electronic disclosures, you may do so by calling us and requesting withdrawal of consent. After consenting to receive and deliver Required Information electronically, you may request a paper copy of the Required Information by calling us.

If you do not have the required software and/or hardware, or if you do not wish to use electronic records and signatures for any other reason, you can request paper copies of the Required Information to be sent to you by calling us.

Exhibit C – Silanis Consent Page Sample (con't)

Your consent does not mean that we must provide the Required Information electronically. We may to, at our option, deliver Required Information on paper. We may also require that certain communications from you be delivered to us on paper at a specified address.

I have read the information about the use of electronic records, disclosures, notices, and e-mail, and consent to the use of electronic records for the delivery of Required Information in connection with our relationship. I have been able to view this information using my computer and software. I have an account with an internet service provider, and I am able to send e-mail and receive e-mail with hyperlinks to websites and attached files. I also consent to the use of electronic records and electronic signatures in place of written documents and handwritten signatures.

SANDBOX

Opt out

Accept

Exhibit D – Adobe Consent Page Sample

How to decline a electronic Signature

Alternative actions ▾

Someone else should sign

I will not e-sign

Start

testfrom acrobat123

Next required field 1

REQUEST FOR LEAVE FORM

Name: Steve Saman Division: West Date: 12/12/12/2002

Total Number of Days/Hours Requested: From: (Date & Time) To: (Date & Time)

Check applicable box/s:

☐ **VACATION:** I am requesting the use of accrued vacation leave time. (Policy Section 4.10).
When applicable, this leave may be requested/will be designated to run concurrently with Family Medical Leave.

☐ **SICK:** I am requesting the use of accrued sick leave. (Policy Section 4.11).
(Details regarding this illness must be included in the additional information section.)
When applicable, this leave may be requested/will be designated to run concurrently with Family Medical Leave.

☒ **HOLIDAY:** I am requesting the use of accrued holiday leave. (Policy Section 4.09).
When applicable, this leave may be requested/will be designated to run concurrently with Family Medical Leave.

☐ **COMPENSATORY:** I am requesting the use of accrued compensatory leave. (Policy Section 4.04).
When applicable, this leave may be requested to run concurrently with Family Medical Leave.

☐ **BEREAVEMENT LEAVE:** I am requesting the use of bereavement leave. (Policy Section 4.15).

FMLA Requested Designated PROBABLE DURATION:

Family & Medical Leave is being requested for 1/12/2012 to 1/12/2012 (Date & Time)

Above is the signing page, on the upper left there is a section labeled "Alternative actions" this allows you to Decline "I will not e-sign"

The initiator or sender of the transaction gets automatically notified via email, with the exact details and reason the signer declined.

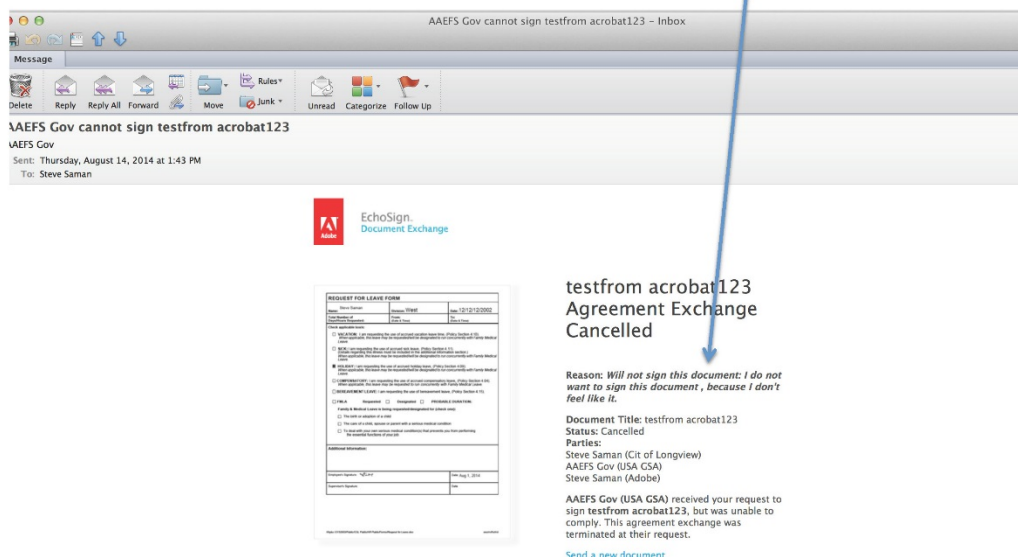


Exhibit E - Benefits of Using Electronic Methods Compared to Use of Personal Delivery or Certified Mail Only

Electronic Methods	Personal Delivery	Certified Mail
Provide for efficient delivery of notices, offers and other documents worldwide if internet service is available.	Requires coordination between agency and owner or displaced person to schedule appointment and both parties expend time during meeting, and related travel, and is limited to local areas only.	Person must be physically present to accept receipt of document. If not present, must retrieve personally from the U.S. Post Office or reschedule delivery and be present to accept delivery. Some international delivery locations are not available for this type of delivery.
Offer streamlining opportunities during negotiations with property owner and relocation process with displaced person since documents can be exchanged immediately.	May require scheduling between parties to deliver documents; time expended by agency to deliver.	Time for delivery and confirmation of receipt may be several days to a few weeks, depending on availability of person.
Represent a potential savings for both the agency and owner in terms of time expended, travel and mailing costs.	Personal meetings require one or both of the parties to travel to a meeting location. Also require an expenditure of time for both parties.	Certified, first-class mail, with return receipt requested, represents a cost to the agency, as well as time expended in preparing the certified mail slip and return receipt card for U.S. Post Service
Provide comprehensive evidence of electronic delivery and signature process. Authenticated audit trail easily demonstrates statutory and	Personal meetings are documented through logs, diaries, contact records and delivery of notices/offers are documented with signatures	Evidence of delivery is the recipient's signature on the return receipt card. Eventually there will be a cost associated with

regulatory compliance.	of recipients, usually accompanied with attestation of agency representative. Requires physical storage and maintenance of these documents. Eventually there will be a cost associated with converting to electronic storage.	converting to electronic storage of these documents.
Allow agencies to consider and respond to owner's needs and preferences during acquisition process, especially owners faced with time constraints.	Owners who cannot personally meet with agency representative must accept delivery by certified mail of notices and offers.	Certified mailing of notices and offers, and regular mailing of other documents will take longer to accomplish.
Provide ability to build trust with property owners and displaced persons during public involvement process, which may streamline relocation planning and overall ROW acquisition process.	Personal contact during the public involvement process provides the ability to build trust with owners and displaced person, however, one-on-one meetings with affected persons would require scheduling and more time expended on the part of the agency and the owner or displaced person.	Certified mail is not likely to be a factor during the public involvement process.
Ability to offer a combination of electronic, mail and personal contact will provide more effective communications with all affected parties.	Personal delivery does not afford as many options to communicate based on the needs of the affected parties.	
Permitting agencies the flexibility to implement electronic methods will add	Limiting agencies to personal delivery or certified mail does not permit agencies to examine the best practices available using electronic methods.	

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value and efficiency to the ROW acquisition process.	
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Note: The comparisons in this chart are not intended to advocate the use of electronic methods as a substitution for personal delivery.