



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **INFORMATION:** Alternate Methodology for  
Calculating a Replacement Housing Payment Eligibility  
From: Nicholas R. Thornton *Nicholas Thornton*  
Director, Office of Real Estate Services

Date: June 1, 2022

Reply to: HEPR-1

To: Directors of Field Services  
Division Administrators  
Deputy Division Administrators  
Division Realty Specialists

## **PURPOSE:**

The FHWA is implementing a 24-month nationwide temporary waiver of the procedure for calculating a Replacement Housing Payment (RHP) eligibility for displaced homeowner-occupants for the Federal-aid program, effective June 1, 2022. The alternate RHP eligibility calculation procedure allows an upward adjustment to the asking price of the selected comparable replacement dwelling, to an amount which has been determined and documented to be the probable price for which the comparable dwelling will sell. For Federal-aid projects, State Departments of Transportation (SDOT) may request approval to use this alternate calculation procedure on a project-by-project basis. The FHWA Division Office will review and may approve such requests.

## **BACKGROUND:**

A homeowner-occupant required to move as a result of a project or program which receives Federal-aid may be eligible to receive an RHP under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The RHP eligibility limit calculation under 49 CFR 24.403(a) establishes the maximum reimbursement that a displaced homeowner-occupant is eligible to receive when they purchase a replacement dwelling. The upper limit of the eligibility is based on the cost of a comparable replacement dwelling. The 2005 Final Rule preamble for 49 CFR Part 24 states, in part, that a comparable replacement dwelling's asking price is to be used for calculating an RHP eligibility limit under 49 CFR 24.403(a).

Several SDOTs have noted in recent months that the method for calculating an RHP eligibility limit may not provide a displaced homeowner-occupant with an amount necessary to ensure that comparable housing is financially available to them. These SDOTs have reported that residential dwellings for sale are highly competed for, and the available housing inventory is low, resulting in dwellings consistently selling for more than the asking price.

The FHWA believes a temporary alternate RHP eligibility limit calculation procedure, when documented to be necessary, can ensure that a selected comparable replacement dwelling is available within each displaced homeowner-occupant's financial means (49 CFR 24.2(a)(6)(vii) and (viii)). This alternate RHP eligibility limit calculation procedure will reduce the burdens on displaced homeowner-occupants during this period of sale price escalation and increase the probability of a successful purchase of a replacement dwelling. The waiver would not reduce any assistance or protections provided to a homeowner-occupant under 49 CFR Part 24.

### **NEXT STEPS:**

The use of this alternate procedure by an SDOT will be approved by the respective FHWA Division Office for use on a project-by-project basis when the FHWA Division Office determines that the residential real estate market in the project area is experiencing a continuing trend of low housing inventories and high buyer demand, which results in homes selling for amounts in excess of their asking price. The alternate RHP eligibility limit calculation procedure may be approved when the SDOT documents that sale prices for comparable dwellings have exceeded asking prices over a minimum of a 3-month period prior to the project's Notice to Proceed (NTP).

The search for and selection of comparable dwellings would continue to be subject to requirements for selecting a comparable replacement dwelling, including that the dwelling must meet the definition of comparable replacement dwelling in 49 CFR 24.2(a)(6), and in accordance with 49 CFR 24.403(a)(1), be the most representative of, and equal to or better than, the displacement dwelling. The sale price data may not include any dwellings previously purchased by the SDOT for a Federal-aid project.

If the amount needed to purchase a comparable replacement dwelling based on the alternate RHP eligibility limit calculation exceeds the \$31,000 RHP statutory maximum, SDOTs must apply the last resort housing provisions in 49 CFR 24.404 to establish the last resort RHP eligibility limit.

The waiver will be in effect for 24 months unless extended or terminated by FHWA Headquarters. When a Division Office approves the use of the alternate RHP eligibility limit calculation procedure for a project, use of the waiver will remain in effect for that project until the acquisition and relocation processes are complete. Should the 24-month national waiver period expire or be terminated before a project approved for usage of the alternate RHP eligibility limit calculation procedure has completed its acquisition and relocation process, the use of the alternate RHP eligibility limit calculation procedure for that ongoing project will be allowed until the project's acquisition and relocation processes are completed. See Attachment A for discussion of the procedure and examples of the standard calculation and the alternate calculation procedures.

Questions concerning this memorandum may be directed to Melissa Corder at (202) 366-5853 or [melissa.corder@dot.gov](mailto:melissa.corder@dot.gov).

## **ATTACHMENT A**

**DOT Order 2100.6A disclaimer** - Except for any statutes or regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

### **Procedures:**

The use and approval of this temporary waiver of the Procedure for Calculating a RHP eligibility limit requires:

- FHWA Division Office approval on a project basis.
- Development and maintenance of adequate documentation, in accordance with 49 CFR 24.9, of -
  1. the number and types of dwellings to be acquired for the project;
  2. housing stock asking and sale price data beginning 3 months prior to the date of NTP, documenting the difference between the asking and sale prices of all transactions for the types of dwellings being acquired in the neighborhoods where displacement activities will occur, and the surrounding areas that may be used for selecting comparable replacement housing. The sale price data may not include any dwellings previously purchased by the SDOT for a Federal-aid project.
- Update and review of new asking and sale price data on a biweekly or monthly basis to ensure that the most recent sales price data available is used. If the number of sales in the 3-month period is less than 3 units for any of the dwelling types, the time period will be expanded in 3-month increments, as needed to obtain data for a total of 3 units (6 months, then 9 months up to 12 months). However, the SDOT may use less than 3 units, but no less than 1 unit where sales data does not allow for the use of 3 units.

### **Alternate RHP Eligibility Limit Calculation Procedure:**

1. Complete a review of the most current asking and sale price data for recently sold dwellings that are in the neighborhoods where displacement activities will occur, and also of the surrounding areas that may be used for selecting comparable replacement dwellings.
2. Use the data of comparable replacement dwellings sold from the 3 months prior to the projects' NTP date to establish, document, and determine the average difference between asking price and sales price amounts. The average difference is represented by calculating the average percentage of increase between asking and sale price amounts.
3. The average percentage increase is multiplied by the asking price of the selected comparable replacement dwelling to determine the adjusted asking price. (See examples B and C)
4. The acquisition cost of the displacement dwelling is subtracted from the adjusted asking price of the selected comparable replacement dwelling, to develop the displaced persons' RHP eligibility limit (See examples B and C)
  - a) The calculation for using last resort housing procedures to increase the RHP eligibility limit (49 CFR 24.404 and Appendix A) is made using the same procedure and would apply when exceeding the \$31,000.00 RHP eligibility limit statutory maximum.
5. Once the SDOT determines the RHP eligibility limit, in accordance with 49 CFR 24.205(c)(2)(ii)(B), a written notice of the amount must be provided to the displaced person to include an explanation stating that:
  - a) The RHP eligibility limit is based on an adjustment to the asking price of the selected comparable to accurately reflect the calculated sales price of the selected comparable replacement dwelling or similar comparable replacement dwellings.
  - b) The adjustment to the asking price of the selected comparable replacement dwelling is based on asking and sale price data for dwellings which have recently sold in and around the project area.
  - c) The RHP eligibility limit represents the maximum reimbursement a displaced person is eligible to receive when they purchase a replacement dwelling.

6. Prior to issuing a 90-day notice, the SDOT must ensure that the selected comparable is available and within the displaced persons' financial means (49 CFR 24.204(a)).
7. All other 49 CFR Part 24 regulatory relocation program requirements continue to apply.
8. The SDOT will maintain documentation of each displaced person's purchase experience to include asking as well as sale price of their replacement dwelling to document appropriate use of funds (49 CFR 24.9).

**Additional Considerations for Use of the Alternate Procedures:**

1. If the selected comparable is not available prior to the notice of the RHP eligibility limit being provided to the displaced person, redetermination of the RHP eligibility limit using available comparable replacement dwellings is necessary.
2. If the selected comparable replacement dwelling sells after the displaced person has been issued a 90-day notice, the SDOT must ensure that other comparable replacement dwellings are available at the asking price of the selected comparable to allow for continued application of the previously calculated adjusted RHP eligibility limit. The SDOT must provide continuing information on available housing (49 CFR 24.205(c)(2)(ii)(A)).
3. Housing of last resort (49 CFR 24.404(a)) may be used whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the \$31,000 statutory maximum RHP eligibility limit for displaced homeowner-occupants, as specified in 49 CFR 24.401. Any decision to provide last resort housing assistance must be adequately justified by the SDOT (49 CFR 24.404(a)(1), (2)). When the use of housing of last resort is determined to be required, the SDOT has broad latitude when considering the methods of providing comparable replacement housing, as provided in 49 CFR 24.404(c)(1) and (2). These methods include but are not limited to:
  - a) Increasing the RHP to an amount over the statutory limit of \$31,000.
  - b) Relocating, rehabbing or modifying an existing dwelling.
  - c) Constructing a new replacement dwelling.
  - d) Purchase of a replacement dwelling by the Agency and subsequent sale or lease to, or exchange with, the displaced person.
  - e) Consistent with the definition of comparable replacement dwelling in 49 CFR 24.2(a)(6), consideration of space and physical characteristics different from those in the displacement dwelling may be made so long as functional equivalence is met as discussed in Appendix A 24.404(c).
4. SDOTs may expand the search area for comparable replacement housing so long as doing so is not in conflict with the requirements for comparable replacement housing as defined in 49 CFR 24.2(a)(6).
5. The SDOT should use multiple resources in their search for comparable replacement housing such as For Sale by Owner, and other similar advertising methods for replacement housing properties, bank inventories of homes for sale, internet searches, government websites and Multiple Listing Services.
6. If a limited number of comparable replacement dwellings are available, the SDOT should develop the cost of new construction for the various types of dwellings it will be acquiring for use as comparable replacement dwellings.

**Example Calculations:**

**(A) Standard Calculation:**

Selected comparable replacement dwelling asking price:	\$175,000
Acquisition price of the displacement or acquired dwelling:	<u>-\$165,000</u>
RHP price differential eligibility limit:	\$ 10,000

**(B) Alternate Calculation:**

Averaging asking and sales differential for similar types of replacement dwellings:

- Sale 1 - Asking price \$175,000, Sale price \$192,500 = Difference 10.0%
- Sale 2 - Asking price \$170,000, Sale price \$191,250 = Difference 12.5%
- Sale 3 - Asking price \$180,000, Sale price \$207,000 = Difference 15.0%
- Sale 4 - Asking Price \$210,000, Sale price \$226,800 = Difference 8.0%

Total percentage	45.5%
Divide by the number of sales	<u>/4</u>
Average percentage difference	11.375%

Selected comparable replacement dwelling asking price:	\$175,000
Average percentage difference adjustment (\$175,000 X 11.375%)	<u>+\$ 19,906(R)</u>
Total adjusted asking price of the selected comparable:	\$194,906
Acquisition price of the displacement or acquired dwelling:	<u>-\$165,000</u>
Adjusted RHP price differential eligibility limit:	\$ 29,906

**(C) Alternate Calculation for Housing of Last Resort<sup>1</sup>:**

Averaging asking and sales differential for similar types of replacement dwellings:

Sale 1 - Asking price \$175,000, Sale price \$210,000 = Difference 20.0%

Sale 2 - Asking price \$170,000, Sale price \$208,250 = Difference 22.5%

Sale 3 - Asking price \$180,000, Sale price \$214,200 = Difference 19.0%

Sale 4 - Asking Price \$210,000, Sale price \$241,500 = Difference 15.0%

Total percentage	76.5%
------------------	-------

Divide by the number of sales	<u>/4</u>
-------------------------------	-----------

Average percentage difference	19.125%
-------------------------------	---------

Selected comparable replacement dwelling asking price:	\$175,000
Average percentage difference adjustment (\$175,000 X 19.25%)	<u>+\$ 33,688(R)</u>
Total adjusted asking price of the selected comparable:	\$208,688
Acquisition price of the displacement or acquired dwelling:	<u>-\$165,000</u>
Adjusted RHP price differential eligibility limit:	\$ 43,688 <sup>1</sup>

---

<sup>1</sup> When the maximum replacement housing payment eligibility limit of \$31,000.00 for an owner occupant is exceeded through cumulative cost of the price differential payment, mortgage interest differential payment, and incidental expenses, the provisions of housing of last resort apply. 24.404(a)(2) and (c)(1)(i),