

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 7 Real Property: Valuation, Negotiation, and Acquisition

520 FW 7

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PURPOSE AND AUTHORITIES

7.1 What is the purpose of this chapter? This chapter sets policies for the [acquisition](#) of real property in financially assisted projects administered by the Wildlife and Sport Fish Restoration Program (WSFR). It also applies to the acquisition of leaseholds that are determined to be personal property under state law. The chapter shows how these policies flow from and supplement the Governmentwide real property acquisition regulations in 49 CFR 24 and the [Cost Principles](#) and other administrative requirements for Federal financial assistance in 2 CFR 200 and 2 CFR 1402.

7.2 What is the scope of this chapter? U.S. Fish and Wildlife Service (Service) employees are the intended audience of this chapter, especially those employees who are responsible for managing real property acquisition projects in a WSFR-administered financial assistance program. However, we have written the chapter in a direct manner that shows [recipient](#) requirements. Service employees must ensure that these requirements are carried out as terms and conditions of the grant.

7.3 What are the authorities for real property acquisition, and what terms do you need to know to understand this chapter? Chapter 520 FW 6, *Real Property—Overview*, presents the authorities and the definitions of terms we use in that chapter and in this one. We direct the reader to those definitions using hyperlinks in places where they may be useful.

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LEGAL COMPLIANCE

7.4 Which laws and regulations most commonly apply to the acquisition of real property under a grant? The following laws and regulations are those that most commonly apply to the acquisition of real property under a grant:

- A. *Endangered Species Act of 1973*, as amended ([16 U.S.C. 1531–1534](#)).
- B. *Financial Assistance Interior Regulation, Supplementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, [2 CFR 1402](#).
- C. *National Environmental Policy Act of 1969*, as amended ([42 U.S.C. 4321 et seq.](#)), as implemented by 40 CFR 1500–1508.
- D. *National Historic Preservation Act of 1966* ([54 U.S.C. 300101 et seq.](#)), as implemented by 36 CFR 800.
- E. *Uniform Administrative Requirements, [Cost Principles](#), and Audit Requirements for Federal Awards*, [2 CFR 200](#), especially:
 - (1) 200.306, Cost sharing or matching;
 - (2) 200.402, Composition of costs;
 - (3) 200.403, Factors affecting allowability of costs;
 - (4) 200.404, Reasonable costs;
 - (5) 200.405, Allocable costs;
 - (6) 200.406, Applicable credits;
 - (7) 200.439, Cost of equipment and capital expenditures; and
 - (8) 200.459, Professional service costs.
- F. *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* ([42 U.S.C. 4601 et seq.](#)) (Uniform Act), as implemented by 49 CFR 24.
- G. Statutes, regulations, and policies specific to a financial assistance program subject to the following conditions:
 - (1) Program-specific statutes and regulations take precedence over 49 CFR 24, 2 CFR 200, 2 CFR 1402, and the policies in this chapter.
 - (2) The Assistant Director for Wildlife and Sport Fish Restoration shares responsibility with other Assistant Directors for administration and policy in specific financial assistance programs. Two such programs are the National Coastal Wetlands Conservation Grant program and the

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Cooperative Endangered Species Grant program. A policy stated in a Notice of Funding Opportunity or a Service Manual chapter specific to a shared program takes precedence over any corresponding policy in this chapter. A policy stated in another policy document specific to a shared program takes precedence over a corresponding policy in this chapter only if the Director, Deputy Director, or the Assistant Director who shares responsibility approves the program-specific policy document in writing after this chapter takes effect.

MATCH

7.5 Can the Service approve a real property acquisition project that includes a contribution of match by a non-Federal entity other than the recipient or subrecipient?

We may approve this, but the [recipient](#) is responsible for providing any match that the contributor does not deliver.

7.6 Can the Service approve an application that includes an in-kind contribution of real property as match? We may approve this under the following conditions:

A. The applicant must show that the in-kind contribution is necessary and reasonable to achieve the purpose of the grant.

B. Before submitting a financial assistance application that will include a matching in-kind contribution of real property, the applicant or a prospective subrecipient must have already:

(1) Acquired the real property that the applicant intends to propose as an in-kind contribution;

(2) Entered into a purchase agreement, option agreement, or other contractual obligation to acquire the real property that the applicant intends to propose as an in-kind contribution; or

(3) Received a commitment from a non-Federal third party that it will convey real property that it owns to the applicant or to a prospective subrecipient for use as a matching in-kind contribution.

C. The purchase agreement, option agreement, or commitment in subsections B(2) or B(3) may be contingent on:

(1) Receiving the award;

(2) The availability of Federal funds; or

(3) The opinion of market value in an appraisal, as recommended by an appraisal review, or an opinion of value in a waiver valuation (see section 7.14). However, the recipient is responsible for providing any shortfall between what was committed as match in the application and the opinion of (market) value (see [section 7.14E](#)).

D. The in-kind contribution must be consistent with 2 CFR 200.306.

E. The in-kind contribution must meet all other requirements for match and the acquisition of real property in the applicable grant program.

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F. If a non-Federal third party commits to make an in-kind contribution of real property to the applicant or to a prospective subrecipient, it must convey the real property in one of the following time frames:

- (1) Before the application is submitted, but in anticipation of it; or
- (2) After the application and in consultation with the WSFR grants manager to ensure that the grants manager has enough time to review and administratively approve the information and documentation required in section 7.34 so that the conveyance can be completed by the end of the period of performance. See [50 CFR 80.96](#) on the proportional use of Federal and matching funds for the WSFR programs and the Enhanced Hunter Education and Safety program.

G. The applicant must record a [Notice of Federal Participation](#) (see sections 7.37 and 7.38).

7.7 If the value of an in-kind contribution of real property is more than needed as match, can the Service approve the applicant's use of the excess match for a later grant?

A. We may approve this in the Wildlife Restoration program, the Sport Fish Restoration program, and the Enhanced Hunter Education and Safety Grant program if:

- (1) The purpose of the later grant is consistent with the purpose of the original grant,
- (2) The excess match share of the value of the in-kind contribution of real property qualifies as an allowable cost of the later grant,
- (3) The applicant gives us documentation of the exact amount of excess match available and confirms in writing that the excess match was not used in another grant, and
- (4) The recipient or subrecipient records a Notice of Federal Participation that references the deed or other conveyance document of the parcel acquired (see sections 7.37 and 7.38).

B. The entire in-kind contribution is subject to the regulations that apply to real property acquired under a grant after:

- (1) The applicant accepts an award in which part of the value of the real property is committed as match, and
- (2) The [title](#) or other rights to the real property pass to the recipient or subrecipient, if program regulations or policies allow a subrecipient to hold real property.

PREAWARD COSTS

7.8 Can the Service approve an application if the applicant has already incurred costs for the project?

A. We may approve this if:

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(1) The applicant obtained our concurrence in writing that buying the real property or incurring the associated costs before the beginning of the period of performance was necessary to take advantage of temporary circumstances favorable to the project or to meet legal deadlines.

(2) The applicant gave us or committed to give us the information we needed in time for us to complete the compliance processes that apply to real property acquisition, and we concurred in writing that we expected to be able to complete these compliance processes.

(3) The project statement shows:

(a) The costs are necessary, reasonable, and otherwise allowable for achieving the grant objectives;

(b) The applicant incurred these costs in anticipation of receiving the award and in conformity with the negotiation of the award; and

(c) The preaward activities were consistent with all laws, regulations, and policies that apply to a grant-funded project, which include requirements in this chapter, 49 CFR 24, and 2 CFR 200.

(4) We would have approved the costs if the applicant, as a grant recipient, incurred them during the period of performance.

B. We must ensure that the applicant understands that:

(1) It incurs preaward costs at its own risk. We are under no obligation to reimburse these costs if for any reason the applicant does not receive the award or if the award is less than expected and not enough to cover the preaward costs.

(2) It cannot receive reimbursement until after the beginning of the period of performance of a grant that incorporates by reference a project statement or other documentation showing that the preaward costs conform to all conditions in section 7.8A.

7.9 When does a buyer incur the purchase price of real property?

A. A buyer incurs the purchase price of real property when the buyer becomes liable for paying the costs. This occurs as soon as one of the following actions occur:

(1) The buyer gives written notice to the [seller](#) that it intends to exercise an [option](#) to buy the real property, and the exercise of the option is not contingent on:

(a) Receiving the Federal funds, matching cash, or matching in-kind contributions needed for the project;

(b) The Service's approval of the property for purchase; or

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(c) The Service's acknowledgement that a prerequisite for purchase conforms to law, regulation, or policy.

(2) The buyer and seller sign a [purchase agreement](#) for the property and the agreement is not contingent on one or more of the conditions stated in subsection A(1).

(3) The buyer and seller entered into an option or purchase agreement that was contingent on one or more of the conditions stated in subsection A(1), but the conditions have been met.

(4) The seller conveys the real property to the buyer.

B. The accounting system used by the buyer (i.e., accrual-basis, cash-basis, or hybrid) affects when a cost is recorded in the buyer's account. The buyer's accounting system does not affect when the buyer becomes liable for paying a cost.

C. Entering into a purchase agreement and the exercise of an option typically allow a period of due diligence, in which a buyer has the opportunity to have experts inspect the property, examine the title, and review any leases. If an objectionable condition is found, the buyer has the right to withdraw from the purchase before the expiration of the due diligence period. The possibility of withdrawal does not alter the fact that, until an objectionable condition is found, the buyer becomes liable for payment, thus incurring the cost at the beginning of the period of due diligence.

7.10 Is a purchase agreement or option agreement required for all WSFR-funded acquisitions? No. Although buyers typically enter into a purchase agreement or an option agreement before buying real property, neither is required.

MULTIYEAR FINANCING

7.11 Can the Service approve an application that proposes to finance the acquisition of real property through more than one grant over an extended period or more than one annual apportionment?

A. We may approve such an application in the programs and subprograms funded by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act, but not other programs unless regulations or policies specific to those programs explicitly allow it. Even if we approve a proposal to finance the acquisition through a sequence of grants or annual apportionments, future awards are subject to the availability of funds and the applicable laws and regulations.

B. The applicant typically proposes this financing by either:

(1) Paying the costs of buying real property with the applicant's own funds and then receiving reimbursement of the costs through a sequence of future grants or annual apportionments under a plan we approve, or

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(2) Negotiating an installment plan in which it will pay periodic specified amounts to the seller, and funding the payments through a sequence of future grants or annual apportionments under a plan we approve.

PARCELS UNSPECIFIED

7.12 Can the Service approve an application that proposes to acquire real property in a defined project area, but does not specify the parcels?

A. We may approve this unless program regulations, program policies, or the Notice of Funding Opportunity on grants.gov requires the parcels to be identified in the application. The applicant must include in the application's project statement the criteria for selecting parcels for acquisition, which must be based on the purpose of the award, e.g., a certain type of habitat, inholdings in wildlife management areas, or attributes needed for boat access in a specific geographic area.

B. As specific parcels are identified for acquisition during the period of performance, the recipient must send us the supporting documents required by [section 7.34](#). Although a buyer may enter into an option or purchase agreement contingent on receiving the Service's approval to buy the specific parcel, the buyer must not exercise the option or enter into a final purchase agreement to buy the parcel for a specific price until it receives the Service's approval (see [section 7.15](#)).

ACQUISITION PROCEDURES

7.13 Who can own or hold real property acquired under a grant?

A. Generally, only a recipient or [subrecipient](#) can own or hold real property acquired under a financial assistance award. However, a program's authorizing legislation, regulations, or policies may prohibit a subrecipient from holding real property or limit it to holding only certain categories of real property (see section 7.13B). Subawards and sharing responsibilities with subrecipients do not diminish the recipient's responsibility to ensure that the real property is managed for its authorized purpose.

B. Program regulations of the Wildlife Restoration, Sport Fish Restoration, and Enhanced Hunter Education and Safety programs require the following:

(1) A state fish and wildlife agency must hold title to an [ownership interest](#) in real property acquired with Federal financial assistance unless state law requires the state itself or another state administrative unit to hold title on behalf of the state fish and wildlife agency.

(2) The only real property interests that a subrecipient may hold are easements or the right to enforce an [easement](#), or both. If a subrecipient holds these real property interests, they must be held concurrently with the state fish and wildlife agency. A subrecipient's right of enforcement must not supersede the agency's right of enforcement.

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7.14 What options are available for acquisition of real property in a financially assisted project? We describe the options for acquisition of real property in a financially assisted project in subsections A through E below.

A. OPTION 1 — Basic acquisition policies with no exemption or exception. A buyer must follow the procedures in 49 CFR 24.102–503, as implemented and supplemented by 2 CFR 1402.329, Service Manual chapter 520 FW 6, and this chapter. These procedures are introduced in 49 CFR 24.102. Valuation is addressed in sections 24.103 and 104, but all of 49 CFR 24 is potentially relevant to acquisition. The major features include:

(1) The buyer must obtain:

- (a)** An appraisal report recommended by an appraisal review report, or
- (b)** A waiver valuation if the valuation problem qualifies for its use.

The appraisal and the appraisal review report must conform to both the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or the Yellow Book).

(2) The buyer must offer to buy the real property for an amount not less than the [opinion of market value](#) included in the appraisal report, taking into account the allowable damages or benefits to any remaining property in the case of a partial acquisition. Alternatively, if the valuation problem qualifies for the use of a waiver valuation, the buyer must offer to buy the real property for an amount not less than the opinion of value in the waiver valuation. For a partial acquisition, the buyer must offer to buy any [uneconomic remnant](#) of the real property, regardless of whether an appraisal or waiver valuation is used.

(3) The buyer must:

- (a)** Offer to buy tenant-owned improvements according to 49 CFR 24.105;
- (b)** Provide relocation payments and other assistance to a qualifying landowner and tenant(s) according to 49 CFR 24, subparts C–F;
- (c)** Pay the landowner’s expenses incidental to transfer of title according to 49 CFR 24.106; and
- (d)** For any matching in-kind contribution of real property obtain:
 - (i)** An appraisal recommended by a qualified review appraiser, or
 - (ii)** A waiver valuation, if the valuation problem qualifies for its use, unless the owner releases the recipient from this obligation (see 49 CFR 24.108).

The buyer’s final commitments to a tenant must occur simultaneously with or after the seller’s transfer of the real property to the buyer or the seller’s contractual commitment to do so.

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(4) Sellers that are governments or governmental agencies are not eligible for either relocation-assistance advisory services or relocation-assistance payments under subparts C–F.

B. OPTION 2 — Basic acquisition policies with limited exemption.

(1) A buyer may qualify a proposed acquisition for exemption from specific requirements of 49 CFR 24, subparts B-F, as authorized in section 24.101(b)(1-3), by following the procedures in subsections B(2) and (3). These procedures effectively require the buyer to affirm that it will not (or legally cannot) use eminent-domain authority to acquire the property if the buyer and seller don't agree on a purchase price. This affirmation assures the seller that the sale will be completely voluntary. The buyer must also share its estimate of the property's market value with the seller, and this estimate must be based on an appraisal recommended by a qualified review appraiser. Appraisal and appraisal review must conform to both the USPAP and the UASFLA (Yellow Book). For properties anticipated to have a low value and uncomplicated valuation problem, the estimated value may be based on a waiver valuation. The purpose of this exemption is to allow the buyer of a qualifying property to negotiate freely with the seller to reach agreement on a purchase price and to avoid imposing costs on buyers that should be determined by mutual agreement or by state regulations or policies.

(a) An acquisition that follows the procedures in subsections B(2) and (3) is exempt from ONLY the following subparts, sections, and parts of sections in 49 CFR 24:

(i) Section 24.102(a) *Expeditious acquisition*.

(ii) Section 24.102(d) *Establishment of the offer of just compensation*. The exemption applies only to what is underlined below:

“...Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.”

The effect of this exemption and the exemption described in subsection (iii) is that the buyer may negotiate a mutually acceptable price with the seller, but the negotiated purchase price must not exceed the value opinions in the appraisal or waiver valuations except in the extraordinary situations described in [section 7.16](#).

(iii) Section 24.102(g) *Updating offer of just compensation*. The exemption applies only to what is underlined below:

“...If the latest appraisal information indicates that a change in the purchase offer is warranted, the agency shall promptly re-establish just compensation and offer that amount to the owner in writing.”

(iv) Section 24.106 *Expenses incidental to transfer of title to the agency* and the reference in the first sentence of section 24.102(f) to “the payment of incidental expenses in accordance with section 24.106.”

(v) Section 24.107 *Certain litigation expenses*.

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(vi) Section 24.108 *Donations*.

(vii) Subparts C-F, Relocation assistance advisory services and payments to landowners.

(b) This exemption does not reduce any assistance or protection provided to a tenant by 49 CFR 24 and the appraisal standards.

(c) The exemption does not affect or take precedence over the requirements of any regulations except those specified in subsection B(1)(a).

(2) Those buyers who do NOT have eminent-domain authority and want to qualify for the exemption must take the following actions:

(a) Buyer gives the seller a written notice that the buyer will not acquire the property if negotiations fail to result in an amicable agreement. The buyer must give this written notice to the seller at least 3 full [business days](#) before the date that the seller transfers or contractually commits to transfer ownership for a specific and final price, whichever comes first. When a buyer does not have eminent-domain authority, a written notice is not required if the seller is a Federal agency, a state, or a state agency.

(b) Buyer obtains an appraisal report that includes an opinion of the market value for the real property. The buyer must also obtain an appraisal review report that recommends the appraisal report. Alternatively, if the valuation problem qualifies for its use, the buyer may obtain a waiver valuation that includes an opinion of value for the real property.

(c) Buyer gives the seller a written statement of the amount the buyer believes is the value of the real property, which must equal the opinion of market value in the recommended appraisal report or the opinion of value in a waiver valuation.

(3) Those buyers who have eminent-domain authority and want to qualify their proposed acquisition for the exemption must meet the following conditions in addition to the actions required in subsection B(2).

(a) No specific site or property needs to be acquired, although the buyer may limit its search for alternative sites to a general geographic area. Where a buyer wishes to acquire more than one site in a general geographic area on this basis, all owners must 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 will be acquired within specific time limits.

C. OPTION 3 — Basic acquisition policies with an exception based on a state law. A state agency may apply for financial assistance to acquire real property following the requirements of a state law that the agency believes would provide an exception to 42 U.S.C. sections 4651 or

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4652. This corresponds to sections 301 and 302 of the Uniform Act (Public Law 91–646), as referenced in 49 CFR 24.4(a).

(1) An applicant may include in its application for financial assistance a specific reference to any state law that it believes provides an exception to 42 U.S.C. 4651 or 4652. The applicant must show that the state law would be consistent with the purpose stated in 42 U.S.C. 4651, which reads:

“[T]o encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to ensure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices...”

(2) The Regional Director whose Region includes the state with the law in question must be able to concur with the justification for use of the exception before approving the application. If the state law will affect valuation of the real property, the Regional Director must also request the concurrence of the Chief Appraiser of the Appraisal Services and Valuation Services Office (AVSO) of the Department of the Interior before approving the application. Unless the Chief Appraiser approves otherwise, the appraisal and appraisal review must conform to the requirements of both the USPAP and the UASFLA (Yellow Book).

(3) Despite any exception to the Uniform Act based on a state law, a financially assisted acquisition of real property must still conform to any of the following that are applicable to the acquisition of the subject property:

- (a)** Other requirements of 49 CFR 24 unaffected by the exception,
- (b)** Policies in this Service Manual chapter unaffected by the exception, and
- (c)** Requirements of 2 CFR 200 and 2 CFR 1402.329.

(4) The Regional Director, or his/her designee, must notify the WSFR Assistant Director when he/she approves an application for financial assistance that qualifies for an exception to the Uniform Act based on a state law. The purpose of this notification is to determine the need for future policy changes to ensure national consistency.

D. OPTION 4 — Acquisition under state laws and regulations. The U.S. Department of Transportation, acting through the Federal Highway Administration (FHWA), is the lead agency for implementation of regulations governing real property acquisition with Federal funding. A state agency may submit an application to the FHWA certifying that it will operate under state laws and regulations that will accomplish the purpose and effect of the Uniform Act (see 49 CFR 24.602 on how to request an application). The Governor of the state or the Governor’s designee must approve the application. The state agency must coordinate the application with the Service’s Regional WSFR Division. As soon as the Regional WSFR Division becomes aware that a state has submitted this application, the Regional Director must notify the Assistant Director of WSFR and the Chief Appraiser of AVSO so that the Service and the Chief Appraiser have an opportunity to advise the FHWA as to whether it should approve the application.

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E. OPTION 5 — In-kind contribution of real property.

(1) The recipient or subrecipient may commit its own real property as an in-kind matching contribution for the purposes of a financially assisted project. The value is determined by the opinion of market value in an appraisal report recommended by an appraisal review report, or the opinion of value in a waiver valuation. The opinion of (market) value must be valid for:

(a) The date of the application (i.e., the date the applicant commits the real property as match),

(b) The date that the recipient requests WSFR's administrative approval of the information and documentation required in [section 7.34](#), or

(c) Any date between (a) and (b) (see [section 7.6](#), 2 CFR 200.69, and 2 CFR 200.306(d)).

(2) A non-Federal third party may convey the real property to a recipient or subrecipient as a matching in-kind contribution for the purposes of a financially assisted project. Its value is determined by the usual accounting policies of the recipient or subrecipient with the following qualification. The value of the donated real property must not exceed the opinion of market value in an appraisal report, as recommended by an appraisal review report, or the opinion of value in a waiver valuation. The opinion of (market) value must be valid for:

(a) The date of a commitment to convey the real property to the applicant or a prospective subrecipient,

(b) The date of the actual conveyance of the real property to the applicant/recipient or (prospective) subrecipient, or

(c) Any date between (a) and (b) (see [section 7.6](#), 2 CFR 200.69, 200.96, and 200.306(i)(1)).

(3) The appraisal and the appraisal review report for an in-kind contribution of real property must conform to the USPAP and the UASFLA.

7.15 How does a buyer acquire land by using a contingent purchase agreement? A buyer takes the following actions to acquire land using a contingent purchase agreement:

A. The [buyer](#) and the seller enter into a purchase agreement in which the seller contractually commits to transfer ownership to the buyer if specified conditions are met. For Federal accounting purposes, following is an example of language that would make a purchase agreement contingent on the stated conditions.

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The prospective buyer (buyer) and the prospective seller (seller) of real property proposed for acquisition agree.

(a) The buyer has the right, but not the obligation, to end this contract if (i) the buyer does not receive the full amount of funds requested from the U.S. Fish and Wildlife Service for this acquisition project, or (ii) the U.S. Fish and Wildlife Service does not approve the purchase of the property.

(b) The buyer's final decision to buy the property and the owner's final decision to sell the property depend on the opinion of market value in an appraisal report recommended by an appraisal review report, or the opinion of value in a waiver valuation. The buyer is responsible for obtaining the appraisal and appraisal review or waiver valuation. Appraisal and appraisal review reports of the real property must conform to the most recent editions of both the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition. The buyer has the right, but not the obligation, to decline to buy at the tentative purchase price if it exceeds the opinion of market value in the appraisal report or the opinion of value in the waiver valuation. The seller has the right, but not the obligation, to decline to sell at the tentative purchase price if it is less than the opinion of market value included in the appraisal report or the opinion of value in the waiver valuation.

B. If the conditions in the contingent purchase agreement are met, the buyer and seller complete the actions required by the specific acquisition alternative or combination of alternatives in [section 7.14](#) that the buyer is using to acquire the property.

7.16 When can the price paid for real property exceed the appraised value? The price paid for real property under [sections 7.14A and B](#) may exceed an opinion of market value in an appraisal recommended by an appraisal review, or an opinion of value in a waiver valuation, if either of the following occurs:

A. The buyer uses funds that are neither Federal nor match to pay an amount above the offer of just compensation.

B. The Service approves the use of an administrative settlement (see 49 CFR 24.102(i)).

(1) An administrative settlement is a Service-authorized purchase of real property for more than the value determined in an appraisal recommended by an appraisal review or a waiver valuation.

(2) The Regional Director, the appropriate Assistant Director for a Headquarters-administered program, or a designee of either official must approve an administrative settlement before the buyer can use Federal or matching funds under a financial assistance award. Approval of an administrative settlement must be an extraordinary event. An approving official may approve it only if:

(a) Reasonable efforts to negotiate an agreement have failed;

(b) It is reasonable, prudent, and in the public interest; and

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(c) The buyer prepares a written justification with information supporting an administrative settlement. The buyer must support the justification with data or a systematic analysis, including an analysis of trial risks, if applicable.

(3) Following are examples of when it may be reasonable, prudent, and in the public interest to pay a parcel's owner more than the value determined by an appraisal, as recommended by an appraisal review, or by a waiver valuation:

(a) It would avoid unnecessary litigation when the owner is seeking judicial resolution of a difference of opinion on the value of the real property.

(b) Comparable properties in the local [real estate](#) market are rapidly appreciating in value.

(c) Irreversible damage is imminent to the resources that the financially assisted project is designed to protect.

(d) The cost of potentially delaying the project because of not acquiring the property offsets the extra cost.

(e) The subject parcel is essential to achieve the purpose of the project.

(f) The savings of managing a consolidated ownership outweighs the extra cost.

APPRAISERS AND REVIEW APPRAISERS

7.17 What qualifications must both appraisers and review appraisers have?

A. The Appraiser Qualifications Board (AQB) of The Appraisal Foundation is authorized by Federal law to establish qualification criteria for minimum education, experience, and examination requirements for real property appraisers. The AQB publishes these criteria under the title, *The Real Property Appraiser Qualification Criteria*. States have implemented these criteria in ways that may vary in details, but must be at least as stringent as the AQB criteria.

(1) The appraiser and review appraiser must confirm in their respective reports that they hold one of the state-issued credentials listed below that qualifies them for their respective assignments.

(a) *Licensed Residential Real Property [or Real Estate] Appraiser* qualifies the holder for a valuation assignment on property that is currently residential or has a residential highest and best use. The residential use must consist of (i) non-complex one-to-four units having a transaction value of less than \$1 million or (ii) complex one-to-four units having a transaction value of less than \$250,000. A complex one-to-four unit residential property appraisal is one in which the property to be appraised, the form of ownership, or the market conditions are atypical.

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(b) *Certified Residential Real Property [or Real Estate] Appraiser* qualifies the holder for a valuation assignment on property that is either currently residential or has a residential highest and best use without regard to transaction value or complexity. The residential use must be no more than one-to-four units and must not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

(c) *Certified General Real Property [or Real Estate] Appraiser* qualifies the holder for a valuation assignment on all types of residential or nonresidential property without regard to transaction value or complexity.

(d) A credential with a different name than those in (1)(a-c) but with an equivalent scope of practice and equivalent requirements for education, experience, and examination (see *the most recent version of [The Real Property Appraiser Qualification Criteria](#)*).

(2) The appraiser and review appraiser must confirm in their respective reports that the credential that qualifies them for the scope of work in their assignments was issued by:

(a) The state where the [subject property](#) is located, or

(b) Another state if the state where the property is located recognizes the professional license or certification or allows them to carry out the [assignment](#) based on:

(i) A reciprocity agreement,

(ii) The state's temporary-practice requirements, or

(iii) A provision of state law or regulation [review appraiser only].

B. The Service and the Department's Appraisal and Valuation Services Office are jointly developing online training that will address problems that commonly occur in appraisals developed for the Department and its financial assistance programs. Grant managers in the WSFR Program must make recipients aware of this training when it becomes available. We recommend that all review appraisers and appraisers take the training before starting work on an appraisal review or appraisal.

C. The Chief Appraiser of the Department's Appraisal and Valuation Services Office is responsible for developing qualification standards for appraisers and review appraisers in conformance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (103 Stat. 183; 12 U.S.C. 1331 *et seq.*).

APPRAISAL STANDARDS

7.18 What are the standards for appraisals?

A. A buyer must obtain appraisal and appraisal review reports that conform to the UASFLA unless the valuation problem qualifies for a waiver valuation. The Interagency Land Acquisition Conference publishes these standards, which are based on Federal statutes, regulations, and

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court decisions involving the payment of just compensation, in cooperation with the U.S. Department of Justice.

B. Appraisal and appraisal review reports must also conform to the USPAP. [The USPAP has procedures that allow the appraiser and review appraiser to accommodate 49 CFR 24 and the UASFLA, which are required by 2 CFR 1402.329.](#) Exhibits 1a and 1b list conditions for appraisals and appraisal reviews. Buyers must ensure that all assignments to appraisers and review appraisers include these conditions.

7.19 Aren't some of the assignment conditions in Exhibits 1a and 1b also USPAP or UASFLA requirements or typically in the scope of work that the appraiser or review appraiser develops?

A. Exhibits 1a and 1b include assignment conditions that are USPAP or UASFLA requirements because some appraisers and review appraisers have overlooked them in WSFR-funded appraisals. Other assignment conditions in Exhibits 1a and 1b ask for additional information, clarify a requirement, or state an expectation of the Service as the awarding agency responsible for conducting an administrative review of the appraisal.

B. The scope of work is the responsibility of the appraiser or review appraiser, who must decide if assignment conditions allow the development of credible results. If the appraiser or review appraiser believes that a buyer-specified scope of work would not result in credible results, then he or she cannot accept the assignment.

APPRAISAL – GENERAL

7.20 Can a buyer obtain an appraisal that includes consultant services?

A. A buyer can obtain an appraisal that includes the services of one or more consultants if:

(1) The appraiser finds that he or she lacks the specialized knowledge needed to complete the assignment competently,

(2) A consultant has the specialized knowledge that the appraiser lacks, and

(3) The costs of the consultant's services and the appraisal report are allowable under the Cost Principles, with special reference to 2 CFR 200.403 - *Factors affecting allowability of costs*, 200.404 - *Reasonable costs*, 200.405 - *Allocable costs*, and 200.459 - *Professional service costs*.

B. Both the USPAP and the UASFLA require competency and allow the appraiser to use experts to obtain it. The appraiser remains responsible for the results of a consultant's work.

C. Appraisers often need the following specialists to help determine the effect of a specific resource or fixture on the market value of the real property:

(1) A timber cruiser, forester, or forestry engineer if the subject property has marketable timber;

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(2) A geologist, mining engineer, or [mineral](#) specialist if the subject property has minerals that can be extracted through a commercially feasible method;

(3) A wetlands biologist, wetlands ecologist, or environmental engineer to delineate wetland boundaries; or

(4) A fixture appraiser if the subject property includes a high value item that was once [personal property](#), but is now firmly and physically attached to the land or a [structure](#).

7.21 Can the Service accept an appraisal report that includes the opinions of market value for more than one parcel? It depends on what type it is. There are two types of appraisal reports that include the opinions of market value for more than one parcel (see Table 6–2 of 520 FW 6 for definitions):

A. Mass appraisal – The USPAP describes this type of appraisal under Standards 5 and 6. We do not accept mass appraisals.

B. Project appraisal – The UASFLA describes a project appraisal report in detail, including its format. A project appraisal report may create efficiencies in the reporting of assignment results, but is not a shortcut in the development of the appraisal. Also, a project appraisal report may be used even if a Federal project does not exist under the scope of the project rule in the UASFLA.

(1) A [project appraisal](#) report is acceptable unless litigation is likely, but it must conform to the UASFLA and satisfy the following conditions:

(a) All parcels are total acquisitions, OR all are partial acquisitions of a nominal or consistent nature, or both.

(b) All parcels are vacant OR all have similar improvements.

(c) All parcels are within a geographical area with a relatively similar land-use pattern.

(d) All parcels have the same or a similar highest and best use.

(e) The most relevant approach to value is the same for all parcels, i.e., sales comparison, cost, or income capitalization.

(f) The appraiser can rely on the same array of market data in the valuation of each parcel.

(2) The [project appraisal](#) report should consist of three major parts:

(a) Introduction, general factual data, and analysis that apply to all properties in the report;

(b) Individual parcel reports; and

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(c) General exhibits and addenda relating to all or most properties in the report.

7.22 When does an appraisal report become outdated? An appraisal report becomes outdated and should be replaced when its value estimate no longer reflects the conditions in the local real estate market. This may be the result of:

A. Widely publicized or easily monitored changes in:

- (1) National economic indicators or the local economic outlook;
- (2) The number of comparable sales in the local market;
- (3) The market for marketable commodities from the parcel, such as timber; or
- (4) Laws, regulations, or ordinances affecting land use.

B. Extraordinary market conditions caused by unforeseen developments such as:

- (1) Catastrophic events;
- (2) Announcements of plans for construction of a new highway or interchange adjacent to the parcel or a major commercial or governmental facility near the parcel;
- (3) Discovery of oil, gas, or other [minerals](#) on or near the parcel; or
- (4) Discovery of contaminants on the parcel or in a location that affects it.

7.23 Does an appraisal report become outdated if there are no obvious events causing changes in the local real estate market?

A. If an appraisal report does not become outdated due to an unforeseen event or a widely publicized or easily monitored change affecting the local real estate market, a buyer has up to 1 year from its effective date of value to use an appraisal report to:

- (1) Complete the conveyance (or transfer) of the real property, or
- (2) Agree on a purchase price by entering into an option or [purchase agreement](#), either of which may be contingent on one or more of the following:
 - (a) The Service approves the acquisition of the subject property for a specific price during the period of performance of an existing award.
 - (b) The buyer receives sufficient funds to acquire the subject property during the period of performance of an existing award.
 - (c) The buyer receives sufficient funds to be reimbursed for preaward costs that it incurred to acquire the subject property, with the Service's prior approval, in anticipation of an award and directly pursuant to its negotiation.

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B. The Service may approve a recipient's request for one short extension of the appraisal's life span only if:

(1) The recipient requests the extension in advance of the expiration of the appraisal's life span so that the Service has enough time to review the request and decide whether to approve it;

(2) The recipient shows that the conveyance of the real property or a contractual commitment to buy the property for a specific price, which may be contingent on subsection A(2)(a-c), is imminent after expiration of the 1-year period and will occur by a specific date; and

(3) The recipient supports the request for an extension with the appraiser's written analysis of the current conditions in the local real estate market. The analysis must show that any changes have not been significant enough to affect the opinion of market value and that market trends do not indicate such a change before the projected date of the closing or contractual agreement on the purchase price.

C. The Service must not approve a second extension of the appraisal's life span.

7.24 Can a buyer delegate to the appraiser the decision on the amount to offer the landowner? No. The appraiser develops an opinion of the market value of the real property in an appraisal report, which must be recommended in an appraisal review report. The buyer must then use that opinion of market value to decide on the amount to offer the landowner consistent with the applicable acquisition option in section 7.14 (see [sections 7.16](#) and [7.36](#) and UASFLA, section 4.2.6).

7.25 Does the Service have to do an administrative review of each appraisal? Yes, a Service staff person must complete an administrative review of each appraisal.

A. We do not expect an administrative reviewer to be a professional appraiser, but he or she should be able to recognize the critical components of a real property appraisal and have a general understanding of appraisal methods and techniques.

B. The administrative reviewer:

(1) Confirms the accuracy of the factual data and mathematics used in an appraisal report, and

(2) Determines whether the appraisal complies with applicable requirements of 49 CFR 24 and the appraisal standards.

C. The Service must inform the recipient of any errors or omissions that the administrative reviewer identifies. The recipient or subrecipient must work with the review appraiser to resolve them before the Service approves the acquisition of the subject property.

D. An administrative reviewer must not form an opinion on the quality of the analysis, judgment, or opinion of market value in the appraisal report. An administrative reviewer also must not approve or disapprove the appraisal. Only a review appraiser may do so.

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E. The Service is currently developing online training for administrative reviewers. When it becomes available, Service employees must complete this online training before doing administrative reviews.

7.26 Can a buyer authorize a review appraiser to present and analyze market information to support a value different from the opinion of market value in the appraisal report?

A. Yes, but only if necessary to move a project forward in a cost-effective way. We expect the buyer to avoid this outcome, if possible, by:

(1) Ensuring that the review appraiser discusses expectations with the appraiser in a pre-work consultation, and

(2) Requiring the appraiser to work with the review appraiser to develop an approvable appraisal report.

B. The consultation and collaboration between the appraiser and review appraiser we describe in subsection A are not required if the contracting or procedural requirements of a state agency preclude it from occurring.

C. If a buyer authorizes a review appraiser to present and analyze market information to support a value different from the appraiser, the buyer must obtain an appraisal review of the work of this new appraiser of record.

7.27 Can the Service accept appraisal and appraisal review reports from a seller or in-kind match contributor? We can accept appraisal and appraisal review reports from a seller or in-kind match contributor as the basis of a credible opinion of market value, but only if the appraisal and appraisal review meet all the requirements in this chapter. This includes the requirements for licensing or certification of the appraiser and review appraiser, the required designation of the Service's grant manager and his or her designees as intended users, and our administrative acceptance of the appraisal report that is recommended by an appraisal review report.

7.28 Can a recipient reimburse a seller or an in-kind match contributor for costs incurred for an appraisal or appraisal review? A recipient may reimburse a seller or an in-kind match contributor for costs incurred for an appraisal, an appraisal review, or both, under the following conditions:

A. The recipient must have designated the entity that incurred the costs as a subrecipient under the award (see 2 CFR 200.207, 200.208, 200.330, and 200.331).

B. The recipient must have included the costs in the project budget.

C. The appraisal and appraisal review must meet all the requirements of this chapter, including compliance with the Cost Principles in 2 CFR 200, Subpart E.

7.29 How does a buyer handle two appraisal reports with different opinions of market value for the same real property?

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A. If a buyer has two appraisal reports with different opinions of market value for the same real property, and both appraisals are recommended by appraisal review reports, the buyer approves and selects only one as the most credible.

B. The buyer must not select one appraisal over another based on the opinions of market value in the appraisals. Instead, the buyer must rely on the recommendation of a review appraiser who analyzes both the appraisal reports and the appraisal review reports that recommended them.

WAIVER VALUATION

7.30 Under what conditions can a buyer use a waiver valuation to develop an opinion of value for the real property? A buyer can use a [waiver valuation](#) to develop an opinion of value for the real property if it determines that:

A. The valuation problem is uncomplicated and not likely to be controversial.

B. The anticipated value of the real property is at or below \$10,000 based on a review of available data. We may approve exceeding the \$10,000 threshold up to a maximum of \$25,000 if the buyer offers the owner the option of the buyer obtaining an appraisal and appraisal review.

C. Although a buyer may start developing a waiver valuation after informally estimating value and informally assessing the complexity of the valuation, these informal determinations are only an indication of whether an appraisal or [waiver valuation](#) is appropriate. If the buyer concludes, while developing a waiver-valuation report, that the opinion of value will exceed the threshold in subsection B, then the buyer must obtain an appraisal and appraisal review report.

7.31 What information must be in a waiver valuation? The following information must be in all waiver valuations:

A. A description of the qualifications of the person who prepared the waiver valuation and the person who decided to use a waiver valuation. This description must show that these individuals meet the requirements in [section 7.32](#).

B. A description of the process used to estimate the value.

C. An opinion of value for the real property and the data that support it, e.g., recent sales history of the subject property, the date and amount of the most recent sale, and comparable sales.

7.32 What qualifications are necessary to prepare a waiver valuation or decide when it's appropriate to use one? We describe these qualifications below. In some situations the person who decides to use a waiver valuation may supervise the preparer. In other situations, one person may have both roles.

A. Although the person who decides to use a waiver valuation does NOT have to be an appraiser, he or she must understand appraisal principles well enough to decide that:

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(1) The estimated value of the proposed acquisition does not exceed the maximum amount allowed for use of a waiver valuation, and

(2) The valuation problem is uncomplicated and non-controversial.

B. The person who prepares the waiver valuation cannot be an appraiser, but he/she must understand the local real estate market and have enough understanding of appraisal principles to review the available data, develop a credible opinion of value, and show the basis for that opinion.

7.33 What are examples of situations complicated or controversial enough to need an appraisal despite an informal estimate of low value?

A. Following are examples of conditions that may show a need for an appraisal even if the estimated value is low enough to qualify the real property for a waiver valuation:

(1) The need to obtain a permit or a change in zoning creates uncertainty about the feasibility of the highest and best use of the parcel.

(2) Values in the local real estate market are changing rapidly.

(3) The property may have potentially valuable minerals or timber.

(4) Only part of a larger parcel will be acquired from the seller.

(5) There are no or very few sales comparable to the property.

(6) The property has characteristics, encumbrances, or exceptions to title that raise questions about marketability or market value.

(7) The owner is unwilling to sell, and the buyer intends to start condemnation proceedings to acquire the property.

(8) The property contains tenant-owned improvements.

(9) Elected officials or significant elements of the public have a strong interest in the outcome of the acquisition, either for or against, which may bring additional scrutiny to the opinion of value.

B. The conditions described in the examples above do not necessarily require the use of an appraisal, but the burden is on the recipient to show that a waiver valuation is appropriate. If any of these examples or another condition of the real property or local market would cast doubt on the credibility of a waiver valuation, the buyer should obtain an appraisal. Our primary responsibility is to ensure that the landowner has a credible estimate of the value of the property.

SERVICE APPROVAL

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7.34 What must the Service approve before the recipient commits to the acquisition of real property?

A. We must approve the purchase of a specific interest in real property for a specific price before the recipient incurs its cost regardless of whether Federal or matching funds will be used for the purchase. We must also approve any in-kind contribution of real property and the market value attributed to that real property. We must receive the following information before giving this approval:

(1) Real Property Status Report, Attachment B (Standard Form 429-B). You must complete all applicable blocks on the form for each parcel of real property that you are requesting approval to acquire, improve, or offer as an in-kind contribution of match.

(2) Proposed purchase price of the real property or the value of any matching in-kind contribution of real property as stated in the application.

(3) An appraisal report on the real property to be purchased or committed as an in-kind contribution, and an appraisal review report that recommends the appraisal. For waiver valuations, documentation supporting the opinion of value, including the information described in [section 7.31](#).

(4) Justifications of the following, if applicable:

(a) Extension of the life span of the appraisal.

(b) Administrative settlement and, if applicable, an explanation that the buyer will use non-Federal and nonmatching funds to pay the amount of the proposed purchase price above the amount to be offered the seller (see [section 7.16](#)).

(c) State law as an exception to the Uniform Act OR state laws and regulations that achieve the purpose and effect of the Uniform Act (see [sections 7.14C](#) and D for the required approvals and concurrences).

(d) Increasing the threshold of value for a waiver valuation from \$10,000 up to a maximum of \$25,000 if the buyer offers the owner the option of the buyer obtaining an appraisal recommended by an appraisal review (see [section 7.30B](#)).

(5) Other information that the WSFR grants manager may need to ensure compliance with laws, regulations, and policies applicable to the financially assisted acquisition of real property, most notably those listed in [section 7.4](#).

B. The recipient may request that the WSFR grants manager administratively approve the information and documents in subsection A at any time before making an irreversible contractual commitment to buy real property for a specific price. However, the recipient must not draw down or use any Federal or matching funds for the purchase of the property until the grants manager gives this administrative approval. If the buyer makes an irreversible contractual commitment to buy real property without our approval, it does so at its own risk.

BOUNDARY SURVEY AND TITLE

7.35 When is a boundary survey necessary?

A. A state may follow its own regulations, policies, and procedures to determine the need for a boundary (cadastral) survey. Subsection 7.35B offers information and guidance if needed.

(1) WSFR grant specialists do not have to review a buyer's decision to obtain a boundary survey with its own funds if those funds are not part of the match.

(2) If any survey costs are included in the budget of the financial assistance award, they must meet all the criteria for allowability in 2 CFR 200, Subpart E, *Cost Principles*, with special reference to 2 CFR 200.402–200.406 and 200.459, *Professional Service Costs*.

B. If an entity other than a state agency is the buyer, or if state procedures don't specify whether or not a survey is required, any of the following circumstances may indicate that a survey is necessary:

(1) The local jurisdiction requires a survey.

(2) The buyer plots out a recorded metes-and-bounds description and finds that it does not close, i.e., return to the point of beginning.

(3) The buyer cannot locate:

(a) Corner posts, or

(b) Benchmarks in the case of air rights and some subsurface rights.

(4) Corner posts or benchmarks are obviously not in their original positions because they've been disturbed by humans, animals, frost heave, soil movement, or the oxidation or combustion of organic soil.

(5) The boundaries' standard of accuracy is unacceptable based on the technology or methods used in the previous survey.

(6) A neighboring landowner has encroached on the property.

(7) A right-of-way easement to a public road is attached to the acquisition parcel, and the route across the other parcel(s) is unmarked.

(8) The size of a waterfront parcel has changed significantly due to erosion, accretion, subsidence, geologic uplift, or other changes in the water level of an adjacent water body.

(9) The buyer must ensure that it acquires the entire footprint of a structure near the boundary of the property for purposes of management and maintenance, e.g., levees and earthen dams.

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(10) A parcel is being divided, and the dividing line follows a nominal or artificial feature.

(11) A parcel is being divided and either subsurface features or buffer zones for manmade [structures](#) must be considered as a result of law, regulation, or professional standards, e.g., well fields, septic fields, treated-wastewater outfalls, or required distances of manmade features from property lines.

C. A boundary survey may not be necessary if the buyer already owns the land surrounding the parcel, the parcel has natural boundaries that are unlikely to have changed significantly since the last survey, or the improved accuracy of the boundary would not be worth the cost.

7.36 How does the buyer protect against defects in title and unrecorded and undisclosed encumbrances?

A. The overwhelming majority of real property in the United States is transferred from one owner to another by a deed or other conveyance document that is then recorded in a system of public records. When a buyer acquires title by a deed, which is then recorded, the recipient must protect the title against defects. The buyer may do this in one of the following ways:

(1) The buyer obtains title insurance.

(a) Title insurance is a contract in which the title insurance company agrees to defend the policy holder's title in court against any lawsuits that may arise from defects in title covered in the policy (e.g., forged deeds, undisclosed heirs, incorrect marital status, misinterpretation of wills).

(b) Title insurance does not generally cover such defects as: any rights of parties in possession that are not shown in the public records, including active unrecorded easements; any facts that an accurate survey would reveal, e.g., encroachments; taxes or assessments not yet due or payable; zoning or governmental restrictions; unpatented mining claims; and certain water rights.

(2) The buyer obtains a [certificate of title](#) from the state Attorney General's Office, a title company, a licensed abstractor, or a real estate attorney.

(a) A certificate of title certifies the condition of title on a specific date based on an examination of the public records of the recorder of deeds; county or city clerk, treasurer, or collector; and the clerks of various courts of record. The certificate may include records of taxes, special assessments, ordinances, zoning, and building codes.

(b) A certificate of title does NOT guarantee title, and it does NOT offer protection against "off-the-record" matters such as undisclosed liens, rights of parties in possession, encroachments, and matters of survey. It also does not protect against hidden defects in the records, such as fraud, forgery, lack of competency, or lack of delivery of the deed. The attorney or abstractor who prepares the certificate of title is

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liable only for negligence in preparing the report, and the liability may be limited to his or her personal assets or the assets of the attorney's or abstractor's employer.

(3) The buyer, the seller, or both, join with any other claimants to initiate a judicial action to remove one or more clouds on the title.

(a) Examples of the formal and informal terms used for such proceedings are *quiet-title action*, *consensual order of taking*, *friendly condemnation*, and *friendly taking*.

(b) If a buyer participates in a judicial action to remove a cloud on title, it does not disqualify the acquisition from eligibility for the exemption in 49 CFR 24.101(b) (see subsection 7.14B).

B. If title to real property is transferred by registration under the [Torrens system](#) in one of the 10 states that authorize its use, the design of Torrens generally protects a title against the claim of another party. However, the certainty of this protection depends on the rules of the jurisdiction. Challenges, although rare, may still occur. A recipient may use Federal or matching funds to insure a title registered under Torrens if it can justify the cost of insurance relative to the risk of loss of title.

AFTER LEGAL CLOSING

7.37 What are the recipient's responsibilities after acquiring real property or transferring real property to a new owner with Service approval? The recipient must ensure that the following actions occur after real property is acquired under a financial assistance award and after any subsequent Service-approved transfer of the real property to a new owner:

A. Record the deed or other conveyance document in the local office of public record unless subsection B applies.

B. Register the title for an acquisition under the Torrens system in one of the 10 states that authorize its use.

C. Record a [Notice of Federal Participation](#) in the local office of public record for any real property acquired with Federal financial assistance funds, matching funds, or as a matching in-kind contribution. If we approve the transfer of the real property to another entity after the original buyer records a Notice of Federal Participation, the recipient must ensure that the new owner records a new Notice of Federal Participation that identifies the new owner or holder of the real property. The recipient must send the Service a copy of the new Notice of Federal Participation and a copy of the deed transferring the real property to the new owner.

D. Ensure the legal sufficiency of any agreements with and between subrecipients.

E. Monitor the real property to ensure that it is managed for the purposes of the award:

(1) In perpetuity,

(2) Until the end of the term for a [lease](#) or term easement, or

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(3) Until disposition of the property occurs consistent with 2 CFR 200, any program regulations, and any agreements with or between subrecipients.

F. Ensure access to documents and records pertinent to the award by the Service, the Inspector General of the Department of the Interior, and the Comptroller General of the United States.

7.38 What information does the Notice of Federal Participation include? The recipient must consult its legal counsel on the wording and [recording](#) of the Notice of Federal Participation, but it must include the following information, assurances, and signature:

A. The location of the real property with a reference to the deed or other recorded document that legally describes it, and the name of the owner or interest holder. The recipient or subrecipient may reference the specific deeds of multiple parcels on the same Notice of Federal Participation as long as all parcels were acquired under the same award and for the same purpose whether acquired with Federal funds, matching cash, or as a matching in-kind contribution.

B. A statement that the recipient or subrecipient acquired the real property or received it as a donation or a matching in-kind contribution under:

(1) A specific award by name, number, effective date, and the name of the recipient (and subrecipient, if applicable), and

(2) A specific program by name and number in the Catalog of Federal Domestic Assistance.

C. A statement that the U.S. Department of the Interior, U.S. Fish and Wildlife Service, acting through its WSFR Program (or other program, if applicable) is the awarding agency.

D. The authorized purpose of the award and the authorized purpose of the real property acquisition if different or more specific than the award's purpose.

E. An assurance that the recipient (and any subrecipient) will use the real property for its originally authorized purpose as long as needed for that purpose or any future purpose that is mutually agreed upon by the U.S. Fish and Wildlife Service and the recipient.

F. A statement that the recipient (and any subrecipient) must not authorize or tolerate any activities on the real property that interfere with its originally authorized purpose. If such activities do occur, the recipient (and any subrecipient) must ensure that they stop immediately.

G. A statement that the recipient (and any subrecipient) must not [dispose](#) of, transfer, or encumber the title without Service approval.

H. A statement that there must be no discrimination on any real property acquired or constructed under the award as long as it continues to serve its originally authorized purpose. This statement is not required for real property that does not confer any right of use

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by either the general public or any subset of the general public, e.g., most [conservation easements](#).

I. The signature of the director or chief executive of the recipient's agency or organization and the signature of the director or chief executive of any subrecipient agency or organization that will hold the real property, except in the following circumstances:

(1) A state law, regulation, or published policy designates another official of the recipient's or subrecipient's agency or organization as the signer; or

(2) The recipient's or subrecipient's agency or organization designates another official to act in the place of any of the above.

7.39 What information and documents must be in a performance report for a real property acquisition grant?

A. The recipient must confirm in one of the performance reports that the transfer of the real property or any lease classified as personal property under state law is complete and legally valid. If not included in the application, the recipient must include information in the performance report or attach documents that enable Service staff to locate the property to ensure that it is managed for the purposes of the grant.

B. The recipient must also incorporate by reference and attach copies of the following documents if they apply to the acquisition of the real property or any lease classified as personal property under state law:

(1) A [closing statement](#) that includes an itemized list of all charges, credits, cash paid or received, and all assets exchanged for the acquisition of a specific interest or specific interests in a parcel of [real estate](#). The closing statement should identify the purchase price of the real property, the cost of any relocation assistance or benefits paid by the buyer, the cost of any contractual services provided by the buyer as part of the negotiation, and any expenses incidental to transfer (closing costs) paid by the buyer. If a closing statement is not generated or if it does not itemize the items listed above, the recipient must give us this information in a separate statement.

(2) An itemized list of the costs of any relocation assistance or benefits that the buyer provides to a tenant and, if applicable, the seller.

(3) Acreage of the parcel(s) that was (were) acquired or associated with the real property acquired (e.g., for mineral rights or air rights). For some real property interests, such as an access easement, other measures may be more appropriate.

(4) Deed, [patent](#), or other conveyance document, including any exhibits.

(5) [Certificate of title](#) for transactions registered under the Torrens system.

(6) [Declaration of taking](#) and final judgment or decree of the court in an acquisition that involves use of [eminent domain](#).

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(7) [Lease](#), [assignment of lease](#), or [sublease](#).

(8) Water stock certificate, certificate of water shares, or any other legal instrument confirming a recipient's or subrecipient's acquisition of water rights.

(9) Baseline documentation report and final management plan for a [conservation easement](#), whether or not these documents were recorded.

(10) Notice of Federal Participation.

(11) Documentary evidence of any of the following actions to protect or settle the title to a full-fee interest or a [less-than-full-fee interest](#) (see [section 7.36](#)):

(a) Certificate of title from the state Attorney General's Office, or a title company, licensed abstractor, or [real estate](#) attorney;

(b) Title insurance policy;

(c) A declaration, decree, or final judgment of the court in a judicial proceeding to remove [clouds on the title](#); or

(d) Registration under the Torrens system in a jurisdiction where the rules provide a low risk of loss of title.

C. Performance reports must also include references to the locations in the public records of all recorded or registered documents sent in with the report, including the number of the book (also called the *liber* or volume) and the page(s) (also called *folio(s)*).

D. We must receive only copies of documents that:

(1) Have satisfied the requirements for validity (see definitions of *date of conveyance (or transfer) of real property* and [deed](#) in 520 FW 6), and

(2) Have been recorded, registered, or entered in a book of public records, unless this is not a customary practice, e.g., title insurance policies and some short-term leases.

WAIVER

7.40 Can the Service waive a requirement of this chapter?

A. Only the Regional Director for a Regionally administered program, the Assistant Director for a Headquarters-administered program, or the designee of either, may waive a requirement of 49 CFR 24 or this chapter. The waiver must meet the following conditions:

(1) No statute, regulation specific to a financial assistance program, or policy prevents the waiver.

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(2) The waiver would not modify a requirement of a statute or a regulation unless the statute or regulation authorizes a waiver process consistent with the procedures and conditions described in this section.

(3) The waiver must not reduce any assistance or protection for a displaced person as defined in 49 CFR 24.2(a)(9) with further clarification in the definition of *person* in paragraph 24.2(a)(21). Such assistance or protection includes payments, services, information, rights, privileges, and other benefits available from the implementation of 49 CFR 24 and this chapter.

(4) To obtain a waiver when there is a displaced person involved, the recipient or subrecipient must obtain a signed statement by the displaced person that he or she:

(a) Understands the specific assistance or protection that would be available in the absence of a waiver,

(b) Supports the waiver, and

(c) Is not under any pressure to support the waiver by the recipient, the buyer if different from the recipient, or the owner in the case of a tenant.

(5) Approving a waiver must be an extraordinary event. Inadequate project planning or poor management does not justify one. If approved, the WSFR grants manager must document the following information in the grant file:

(a) A description of the requirement of the regulation or policy that was waived;

(b) A justification for the waiver; and

(c) A description of procedures put in place by the Regional Director for a Region-administered program, the Assistant Director of a Headquarters-administered program, or the designee of either, to prevent any future need for a waiver.

(6) If a waiver is approved, the WSFR Office responsible for administering the award must maintain the waiver documentation so that it can be easily retrieved in the future. This may include storing it in a centralized electronic filing system.

B. We must not waive any requirement that would diminish the credibility of an appraisal, appraisal review, or waiver valuation for real property. The requirements that cannot be waived include:

(1) Any requirement of 49 CFR 24, 2 CFR 1402.329, or 520 FW 6–7 that applies to the development of an appraisal or appraisal review or the appraisal's life span,

(2) The qualification standards for an appraiser and review appraiser in this chapter,

(3) The conditions applicable to the development of a waiver valuation as described in sections [7.30](#) and [7.33](#),

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(4) The qualification standards of the person who prepares a waiver valuation or the person who decides when it is appropriate to use one as described in [section 7.32](#), and

(5) The information that must be in a waiver valuation as described in [section 7.31](#).

EFFECTIVE DATE

7.41 When are the requirements of this chapter effective? This chapter is effective for awards made or revised on or after October 29, 2019.

/sgd/ Margaret Everson
PRINCIPAL DEPUTY DIRECTOR

Date: December 4, 2019