

## When Can an Agency Deviate From the Requirements of the Uniform Act and 49 CFR Part 24 Through the Use of Waivers

Since the Uniform Act (UA) is a law, it is not possible for an Agency to not follow, or deviate from, its provisions.

### **Example**

Under Title III, Section 301(2) of the UA, the owner, or owner's designated representative must be given the opportunity to accompany the appraiser during the inspection of the property. This requirement cannot be waived. **Note:** If the Agency is using a waiver valuation, owner accompaniment is not a requirement, since a waiver valuation is not an appraisal. Unlike the UA provisions, which cannot be waived, the Federal Regulations do contain a waiver provision at 49 CFR §24.7.

### **§24.7 Federal Agency Waiver of Regulations**

The Federal Agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

### **Example**

For example, an elderly couple and their adult son living in a five-bedroom house. They are being displaced by a city transit project, which has federal funding. There are no five-bedroom comparable dwellings available, but there are four-bedroom houses with similar square footage. The UA's definition of comparable replacement dwelling indicates that it must be adequate in size to accommodate the occupants, so a four-bedroom dwelling would be adequate and the four-bedroom comparable does not represent a reduction in assistance. The displacing Agency should ask the FTA for a waiver, using a written justification for not offering a five-bedroom comparable replacement dwelling.

Some Agencies may not seek a waiver in the above-described situation, since it may view the similar amount of square footage and larger rooms as a trade-off for the fifth bedroom. [49 CFR 24.2(a)(6)(i)] Other Agencies, however, may not consider a four-bedroom dwelling comparable to a five bedroom and would seek the waiver as a precautionary action to preserve federal funding.

### **Example**

For example, a veterinary clinic with boarding kennels displaced by a highway widening in a rural area by a State DOT. There are no available existing replacement buildings that are suitable for the business. Usually, reestablishment expenses cannot be used for the construction of a replacement site or building since it represents a capital improvement, however, under 49 CFR §24.7 the DOT could request a waiver from FHWA. This situation is addressed in the [Uniform Act Frequently Asked Questions, Number 76](#).