

Approved: \_\_\_\_\_  
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## Guidance Document 11

# Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity

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## Guidance Document 11

# Temporary Waiver of Methodology for Calculating Replacement Housing Payment for Negative Equity

### PURPOSE

The purpose of this guidance is for use of the temporary waiver of Title 49 of the Code of Federal Regulations (CFR) Section 24.401(b)(1) Methodology for Calculating Replacement Housing Payments (RHP) for displaced homeowner occupant(s). Adherence of all other requirements of CFR 49 Part 24 remain applicable.

### AUTHORITY

49 Code of Federal Regulations, Part 24  
FHWA Memorandum dated October 9, 2012, Subject: Information; Temporary Waiver of Methodology for Calculating Replacement Housing Payments for Negative Equity  
Section 334.044(2), Florida Statutes  
Administrative Rule Chapter 14-66, Florida Administrative Code

### REFERENCES

49 Code of Federal Regulations, Part 24  
Administrative Rule Chapter 14-66, Florida Administrative Code  
Right of Way Manual, Section 9.1, Relocation Assistance Program  
Right of Way Manual, Section 9.2, General Relocation Requirements  
Right of Way Manual, Section 9.4, Replacement Housing Payments

### FORMS

Form Number 575-040-05, Replacement Housing Payment Determination  
Three Comparables Method  
Form Number 575-040-14, Application and Claim for Replacement Housing Payment  
Form Number 575-040-45, Request for Negative Equity Waiver  
Form Number 575-040-46, Negative Equity Agreement

## DEFINITIONS

**Negative Equity (upside-down):** For purposes of this guideline, negative equity is where the fair market value of the property (or just compensation) is less than the outstanding debt (the mortgage/lien).

**Qualified Lien:** Will be interpreted to be loans made to the homeowner occupant(s) in which the subject property was the collateral securing the loan(s) by a recorded instrument or instruments, and that was issued prior to the initiation of negotiations, and the total of any such loans exceeds the appraised value of the property.

### 11.1 Relocation Assistance Waiver for Replacement Housing Payments with Negative Equity

In a normal (not “negative equity”) situation a displaced person’s Replacement Housing Payment (RHP) is paid based on the final acquisition cost, including any administrative settlement amounts. In a negative equity situation, this Waiver allows the displacing agency to calculate an RHP, pursuant to Section 14.66.007(8), FAC, by using the initial written offer of just compensation, prepared in accordance with R/W Manual Section 7.2 and 9.4, as the “acquisition cost” when calculating the amount by which the cost of the replacement dwelling exceeds the acquisition cost. This allows the agency to enter into an Administrative Settlement, when appropriately justified, for the acquisition of a property with negative equity that would not impact the calculation and reimbursement of RHP.

### 11.2 Effective Date

The effective beginning date of this waiver is April 22, 2014. This waiver may be used on any eligible relocation parcel on any project where the initial offer was made subsequent to the effective date. The effective ending date of this temporary waiver is through December 31, 2014, unless otherwise extended or rescinded in writing by FHWA Office of Real Estate Services. This guidance document is appropriate for the acquisition of residential properties occupied by the owner. Non-owner occupied residential properties and non-residential properties are not eligible for the waiver.

## **11.3 Determining Usage of the Waiver for Replacement Housing Payments with Negative Equity**

**11.3.1** The District Right of Way Manager (DRWM) is to notify the Director, Office of Right of Way and the Manager, Relocation Assistance, on projects selected to use this waiver. The District will implement the waiver on those purchases in which mortgages or other qualified liens were issued prior to the initiation of negotiations, and the total amount of the liens exceeds the appraised value of the property. Qualified liens will be interpreted to be loans made to the homeowner occupant(s) in which the subject property was the collateral securing the loan by a recorded instrument. Usage of this waiver shall be approved by the District Right of Way Manager by their signature on Form 575-040-45, Request for Negative Equity Waiver along with supporting documentation.

**11.3.2** This decision can be made at the initiation of negotiations or when additional information becomes available resulting in a change of the displacee's benefit. Waiver usage must be done in accordance with this Guidance Document and the following requirements:

- (A)** Ensure use of the waiver will not reduce any assistance or protection to the displacee;
- (B)** Their home and/or mortgages(s) were acquired during times of rapidly increasing home values;
- (C)** The homeowner occupant(s) are not in default and continue to meet their monthly payment obligations;
- (D)** Ensure that the homeowner occupant(s) with negative equity has not applied and has not received any mortgage debt relief or mortgage reduction to ensure that a windfall is not realized as a result of a negative equity waiver negotiated settlement. Any debt relief or mortgage reduction that has been received or will be received does not make the homeowner occupant(s) ineligible. However, FDOT must ensure FDOT receives reimbursement of any amount paid to the homeowner occupant(s) as part of the negative equity waiver negotiated settlement that is no longer owed by the homeowner occupant(s) for the mortgage(s) on the acquired property. The displacee's execution of Form 575-040-46, Negative Equity Agreement (with supporting documentation) will ensure the displacee understands this requirement.

**11.3.3** The District shall include in the Relocation Assistance file written justification and copies of all supporting documentation for each determination of displacement made under this guideline. The applicable guidelines, any additional pertinent considerations and the reasoning used in arriving at the determination must be clearly set forth in this justification.

Please see the following.

***Example:***

*The homeowner occupant(s) property is currently encumbered with a \$265,000 mortgage originated 3 years ago. The real estate market has declined over the last year. The agency needs the property for a transportation project and establishes Fair Market Value Estimate at \$225,000 and presents the owner with a written offer for that amount. The agency finds a comparable replacement dwelling on the market for \$250,000. The price differential calculated for payment eligibility is \$25,000. In order to assure clear title, the agency agreed to an administrative settlement of \$265,000 for the purchase of the displacement property. Without the Waiver, the \$25,000 price differential eligibility is eliminated because the \$40,000 administrative settlement exceeds the price differential eligibility. However, the Waiver allows the agency to pay \$265,000 to acquire the property **and** allows the owner to retain the \$25,000 RHP which they may use as a down payment on their replacement dwelling, provided the remaining requirements of the FAC, sections 14.66.007(8) are met. Please see example calculation below.*

**Example Computation:**

**Without Waiver**

\$250,000 (Comparable Replacement Dwelling)  
-\$225,000 (Just compensation offer)  
\$25,000 (RHP eligibility)  
40,000 increase-Administrative Settlement

***Normal RHP Determination***

\$40,000 increase by Administrative Settlement is greater than the \$25,000 (RHP eligibility) resulting in a \$0 RHP payment.

**With Waiver**

\$250,000 (Comparable Replacement Dwelling)  
-\$225,000 (Just compensation offer)  
\$25,000 (RHP eligibility)  
40,000 increase-Administrative Settlement

***Waiver RHP Determination***

\$40,000 increase by Administrative Settlement is greater than the \$25,000 (RHP eligibility) but the waiver allows a \$25,000 RHP payment (if the family purchases a dwelling for at least \$250,000) which the displaced family can use as a down payment on their replacement home.

## **11.4 Administrative Settlement**

The use of this waiver does not change, alter or affect any regulation, law, or procedure concerning Administrative Settlements.

## **11.5 Relocation Advisory Services To Be Provided**

The homeowner occupant(s) is/are eligible for all advisory services and assistance as set forth in the ***Right of Way Manual, Section 9.2, General Relocation Requirements*** whether or not they choose to relocate.

## **11.6 Record-Keeping and Assurances**

The waiver must be implemented fairly and consistently. Implementation shall be subject to FDOT Central Office and FHWA oversight. All requests for individual waivers must be approved by the DRWM. The Request for Negative Equity Waiver, Form (575-040-45) and the Negative Equity Agreement (Form 575-040-46) with supporting documentation must be submitted to the DRWM when seeking approval. Other supporting documentation shall include the Appraiser's approved "Certificate of Value", the approved Replacement Housing Payment Determination Three Comparables Method Form (575-040-05), the approved Application and Claim for Replacement Housing Payment (Form 575-040-14) and correspondence from the mortgage/lien holders stating the amount of the lien(s) and a statement as to the amount and reason for the Administrative Settlement.

## **HISTORY**