Processes for Greater Uniformity

(Cochairmen, Bruce D. McDowell and Robert R. Poinsett)

The topic of "process" deals with the means and coordinating mechanisms for achieving greater uniformity, professionalism, and control over relocation and real property acquisition activities. Therefore, this series of workshops dealt with such things as coordinating committees, single agencies for rulemaking, standard regulations, and central relocation offices. It did not focus on the substance of what should be made uniform.

Nevertheless, substance could not be ignored totally. Initially, some participants questioned the need for greater uniformity. It was pointed out, and almost everyone agreed, that great progress has been made over the past decade in raising benefits and achieving fair and equitable compensation and benefits under the 1970 relocation act. However, each of the five groups recognized the need for at least some further progress toward greater uniformity. At that point, consensus ended.

Feelings about the degree of additional progress needed ranged from minor needs for fine tuning the 1970 act to serious inequities needing urgent attention. Some of the most troublesome differences discussed included the following.

1. Certain federally-funded programs are not subject to the existing law.
2. "Housing of last resort" is not always allowed, either because of federal agency interpretations or because of state laws.
3. Donated lands are being accepted by some federal agencies prior to appraisals, though this is technically illegal under the 1970 law. There are significant advantages to this in some cases, but proposals to change the law have been unsuccessful so far.
4. Some federal agencies require the preparation of relocation plans before displacement may take place, while others simply require assurances that relocation will be accomplished. This ignores the 1973 interagency agreement calling for preplanning as standard practice.
5. Administrative appeals under the act are easy and quick in some federal agencies, but difficult and long delayed in others. Some are worse than formal court cases, despite the intent that fairness and equity demand expeditious handling.
6. There are great differences among federal agencies in the treatment of business relocations.
7. There is no specific authorization in the 1970 act for one federal agency to take responsibility for all acquisition and/or relocation involved in a jointly funded project. Although some federal agencies cooperate with each other in this fashion, others feel that they cannot do so.

Relocation offices that provide central services under several different federally funded programs notice these differences most. Examples were cited from Maryland, Ohio, West Virginia, and the District of Columbia.

Although substantial progress has been made toward uniformity among those programs involving federal funds, relatively little progress has been made in most states among programs funded strictly by state and local revenues. Of course, such projects are beyond the direct reach of the 1970 act, but the same concepts of fairness and equity still apply in principle, and the federal act does call for parallel state legislation. Thus, eventually all federal, state, and local acquisition and relocation programs would become comparable.

This simply has not happened yet.

Lack of uniformity comes from several different sources. These include the following:

1. Supplemental federal laws affecting only one program or one agency--The U.S. Department of Interior and HUD were cited as examples;
2. Differing federal agency interpretations of the 1970 Uniform Act--This causes differences not only between one department and another but among
the various agencies within a single department. The Department of the Interior and DOT were cited; these differences are reflected in divergent regulations and legal opinions.

3. Differing state laws—These actually are more controlling than the federal law in a legal sense; some state laws are more limiting than the federal ones while others are more liberal (examples were New York and North Carolina, which do not allow housing of last resort, and New Jersey, which has expanded eligibility provisions; the District of Columbia was also cited as an example where local law provides greater benefits than the federal law); and hence

4. Field interpretations of whatever regulations apply—All groups agreed that, regardless of whether the regulations are uniform or not, field personnel will make different interpretations of them.

The fact that uniformity may be breached at so many different points was used as an argument both for and against redoubling the effort to achieve greater uniformity. It was argued that the chances for uniformity would be increased with a reduction of differences at any one or more of the four points cited above. In other words, the irreducible divergence of field interpretations very likely would be less serious if there were a simple act that cleared up some of the controversies and a single set of regulations backed up by more thorough training of field personnel. It was also stated that ever getting complete uniformity through a single set of regulations might also be impossible. However, there was a general recognition that 100 percent uniformity is unattainable—perhaps unnecessary—and may be undesirable because of divergent program objectives. Differences between the HUD approach and the approach of other agencies were cited frequently.

In general, two very different definitions of uniformity emerged from the workshops. The first was framed in terms of achieving substantially the same assistance results in equivalent situations (recognizing a certain plus or minus leeway for human judgment exercised by field personnel). Essentially, this is a performance standard approach. It allows some differences in procedures among programs so that they can follow different paths to the same goal. This would mean that several sets of roughly equivalent, though not identical, regulations could exist side by side. The second definition simply calls for a uniform set of regulations applicable to all programs, though it recognizes that there may be some options within those regulations that would apply to different situations.

The prescriptions for attaining greater uniformity, which emerged from these workshops, differed widely. Some felt that uniformity should be attained by clarifying basic eligibility criteria and benefit levels in the law. Others felt that this would not go far enough and that procedures were also in need of standardization through the development of more uniform regulations. Others recommended additional efforts to effect actual procedures in the field through greater training and development of guidance like the recently prepared by Floyd Wise and distributed by the International Right-of-Way Association. These are not either/or propositions. They all could be done at once, and a number of participants felt that they should be.

There was substantial discussion about who should write uniform regulations and guidance manuals. Opinion was divided about the appropriate role of the federal government versus that of the states.

Although many felt that uniform regulations were primarily a federal responsibility, others pointed out that supremacy of state law sometimes found from state to state. Therefore, it was proposed that each of the 50 states should prepare a uniform set of regulations and should consider all provisions of state and federal law that would apply within the borders of that state. A single set of federal regulations was not possible to achieve this degree of uniformity. Yet, a number of participants still felt that this procedure would establish an extra level of regulation writing that might interfere with the application of the federal act. Admittedly, the state-by-state approach would work best if the federal regulations were written in fairly general terms, probably following the performance standard approach.

There was some discussion of the consultation process that would be followed in writing the federal regulations. This process has expanded greatly in the past few years and would now include extensive involvement of state and local governments as well as relocatees and their representatives. It was suggested also that field staffs should play a significant part in writing the regulations under which they must operate.

The question of whether a single federal agency should be designated to write and enforce a uniform set of federal regulations was referred to a special panel of attention. An informal tabulation maintained throughout the day showed that 33 percent of the participants favored such an agency and 40 percent opposed it. The remaining 27 percent felt that there should be some single source within the federal government from which to get quick and definitive answers about the application of the 1970 Uniform Act, although they objected to a large new bureaucracy. In practical terms, these alternatives reduce to (a) the creation of a new bureaucracy in the Executive Office of the President, (b) the issuance of a new management circular by OMB with minimal enforcement staff, or (c) retaining the current practice of having individual federal agencies responsible for their own regulations and programs. This would reactivating the interagency committee and its regional counterparts in the Federal Regional Councils (FRCs), thus improving communication among the agencies and working toward greater consistency on a voluntary basis through shared experiences.

If the middle alternative is combined, alternatively, with the two polar positions, it is found that 60 percent of the participants want some form of central authority in the relocation and land acquisition field, while 70 percent oppose the current provisions of the Senate bills that, in the eyes of these participants, would establish a large new bureaucracy duplicating and interfering with current agency operations.

With respect to striving for greater uniformity below the federal level, three examples were cited. In Maryland, the legislature passed a uniform relocation and property acquisition act in 1972 in response to the Uniform Act of 1970. The governor then issued an executive order creating an interagency committee of affected state departments and agencies. In response to the Uniform Act of 1970, the Maryland Department of Transportation was designated as the central relocation authority for the state. The state transportation department then developed a standard set of regulations applying to all state agencies and to local governments within the state. A manual was developed that is used for training courses attended by state employees, local public employees, and personnel from other states. Currently, 80 percent of all relocations in Maryland are carried
out in conformance with the standard regulations and manual. Exceptions arise only in cases of variations between the regulations of different federal departments and agencies. Some of these exceptions, including those for HUD, have been incorporated more recently into Maryland’s manual.

The City of Baltimore developed a uniform relocation and property acquisition manual for the city in cooperation with state officials and the federal departments and agencies represented on the FRC for Region 3 (Philadelphia). This manual provides completely uniform procedures for everything within the city and was agreed to by everyone through the FRC level. The mayor pledged to make all purely local projects, as well as those with federal or state aid, subject to these standard procedures. However, upon submission of these procedures to Washington headquarters, the project was abandoned after failing to receive DOT or HUD approval.

 Virtually the same thing is now being tested in Louisiana. Several drafts have been prepared and reviewed, but statewide agreement has not yet been obtained. When such an agreement is reached, it is planned to take the standard procedures to the state's congressional delegation for support at the national level. While standard procedures for the state are desperately desired, there is not a great deal of optimism about the chances for their ultimate success.

The conclusion from these cases is that it is quite difficult to work toward uniformity at the state or local levels when such uniformity has not been achieved at the federal level. All such efforts require a substantial amount of flexibility in the federal regulations and that is not available yet. The differences between the regulations of one federal department and another are especially troublesome in this effort.

A final topic discussed was the concept of certification acceptance. Under this concept, state and local governments subject to state or local regulations for relocation and property acquisition that are substantially equivalent to the federal requirements would be certified as meeting the federal requirements without having to make specific showings of compliance on each project. Opinions among participants split on the advantages. It would be most difficult to obtain such certifications now, given the diversity among federal requirements. A separate certification would probably be required for each federal department and agency, and the existing specificity of federal requirements would allow little if any leeway for incorporating state and local factors. Nevertheless, if federal regulations are unified, others felt that certification acceptance might have significant potential for streamlining the process by using a performance standard approach with some built-in flexibility.

In brief, greater uniformity is needed. To briefly, greater uniformity is needed. However, the seriousness of this need is debatable, and workshop participants differed significantly on their prescriptions for achieving greater uniformity. At this moment, there appears to be no solution in sight.

Property Acquisition
(Cochairmen, Walter A. McFarlane and Peter Levine)

The topic in this workshop was the legislation that is pending before Congress and would overhaul the existing Uniform Relocation and Real Property Acquisition Policies Act. While Congress is looking at five separate bills, the one that appears to have taken the forefront is S. 1108.

SECOND APPRAISALS

S. 1108 provides that the landowner may ask for and receive a second appraisal if he or she disagrees with the condemnor’s first appraisal. The majority of the conference was against allowing the second appraisal. For the most part, most agencies use two appraisers on large parcels. They then use a review appraiser to balance the two and decide what the actual offer for the property will be. Consequently, in many instances, providing the second appraisal will result in four appraisals for the property. Participants in this workshop expressed a variety of opinions on the requirement for the second appraisal:

1. Several felt that it was necessary to provide the second appraisal as a benefit to the landowner.
2. Because more than 50 percent of takes are under $5000, the cost of an appraisal could outweigh the cost of the parcel taken.
3. Quality control should be placed on the second appraisal. That is, a limitation on costs and time for completion, along with a standard of ability of the second appraiser should be established.
4. Agencies should not require that the second appraiser be a member of an appraisal association such as the Appraisal Institute. There are independent appraisers who are excellent.
5. Second appraisals will cause problems. For example, (a) they will be used as a tool against the acquiring agency in trial; (b) they will cause negotiation problems inasmuch as they will give the landowner another tool to use in the negotiations; (c) they will cause delays in the projects; (d) there is no assurance that appraisers chosen by the landowners will be competent (as to this question, it was suggested that a certified list of appraisers be established so that the landowner could choose from that list or, in the alternative, that the agency itself provide the second appraisal); and (e) the landowner should not be allowed to advise the jury or the commission as to who paid for the appraisal. If it is known that the agency paid for the appraisal, then it could give an improper inference.
6. One person argued that every appraisal should be reviewed by the federal government to be certain that the agency is giving the landowner fair market value or just compensation. The majority opposed this approach and felt that the acquiring agencies were just as competent and trustworthy as the federal government.
7. In order to cut down on delays, second appraisals should be done simultaneously with agency appraisals.

BUSINESS RELOCATION

The next major concern of the conference was business relocations, and the most prominent question was whether government could make a business "whole" in the same manner as it can a residential displacee. The great majority felt that businesses cannot be made whole and that to try to do so would be very costly. The majority did feel, however, that additional help should be given to businesses because, under existing law, you can take a person's home and pay for it, but, if you take that person's livelihood (i.e., business), he or she receives little payment. Several suggestions were made: