



## Chapter Five

# **RELOCATION ASSISTANCE**

MONTANA RIGHT-OF-WAY  
OPERATIONS MANUAL

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## Chapter Five

# RELOCATION ASSISTANCE

### 5-1 GENERAL INFORMATION

#### 5-1.1 Purpose and Objectives of the Program

Highway projects often result in the displacement of individuals, families, businesses and others. In order to ensure the timely and successful relocation of affected persons, the Montana Department of Transportation (the Department) provides a program of relocation assistance. This Relocation Assistance Program is intended to assist displaced persons to move into comparable replacement housing within their financial means and/or to find suitable replacement locations on which to reestablish their businesses. It includes both advisory services (e.g., information about the program, referrals, counseling and assistance in computing payments) and relocation payments for owner-occupants and tenants. When these payments are not sufficient to provide comparable replacement housing, last resort housing assistance may be used.

The Department's Relocation Assistance Program implements the applicable provisions of the ***Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970***, as amended (***Uniform Act***), and the associated regulations in the ***Code of Federal Regulations*** (49 ***CFR*** 24). Related Federal regulations concerning the acquisition, management and disposal of real property are found at 23 ***CFR*** Part 710. Sections 70-31-101 through 106 and 70-31-301 through 311 of the ***Montana Code Annotated*** authorize the Department to comply fully with the relocation provisions of the ***Uniform Act***.

The purpose of this Chapter is to establish uniform relocation assistance procedures that ensure the fair and consistent treatment of persons who are displaced by projects administered by the Department and prevent these people from bearing a disproportionate part of the burden of projects designed to benefit the general public.

#### 5-1.2 Authority

The authority for the Department's Relocation Assistance Program is found in Section 213 of the ***Uniform Act*** of 1970 [Public Law 91-646, 84 Stat. 1894 (42 ***USC*** 4601 et. seq.)], as amended.

In addition, implementation of this Chapter must comply with other applicable Federal laws and implementing regulations, including but not limited to, the following:

- Section I of the ***Civil Rights Act of 1866*** (42 **USC** 1982 et seq.);
- Title VI of the ***Civil Rights Act of 1964*** (42 **USC** 2000d et seq.);
- Title VIII of the ***Civil Rights Act of 1968*** (42 **USC** 3601 et seq.), as amended;
- The ***National Environmental Policy Act of 1969*** (42 **USC** 4321 et seq.);
- Section 504 of the ***Rehabilitation Act of 1973*** (29 **USC** 790 et seq.);
- The ***Flood Disaster Protection Act of 1973*** (Pub. L. 93-234);
- The ***Age Discrimination Act of 1975*** (42 **USC** 6101 et seq.);
- Executive Order 11063, “Equal Employment Opportunity and Housing,” as amended by Executive Order 12259;
- Executive Order 11246, “Equal Employment Opportunity”;
- Executive Order 11625, “Minority Business Enterprise”;
- Executive Orders 1198, “Floodplain Management” and 11990, “Protection of Wetlands”;
- Executive Order 12250, “Leadership and Coordination of Non-Discrimination Laws”;
- Executive Order 12259, “Leadership and Coordination of Fair Housing in Federal Programs”; and
- Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights.”
- Direct Federal Program or Project 49 CFR 24.101(a)

### **5-1.3 Records Maintenance Requirements**

The Right-of-Way Bureau must maintain a filing system, suitable for audit, showing all relocation records on all Federal-aid projects. These files should contain at least 1 copy of all correspondence and information in regard to the project. These records will be

retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this Section or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

### **5-1.3.1 Confidentiality of Records**

Records that are maintained by an agency in accordance with this Section are confidential regarding their use as public information, unless applicable law provides otherwise.

### **5-1.3.2 General**

A general file is kept by the Right-of-Way Bureau for each project involving relocation assistance. The following information may be included in the file:

- an inventory of replacement dwellings drawn from various sources suitable in price, size and condition for displaced persons without regard to race, creed, color, religion or national origin, to the extent they are available;
- when applicable, current lists of comparable commercial properties and locations for displaced businesses;
- current data for costs like security deposits for utilities, leases, closing costs, typical down payments and interest rates and terms;
- maps showing the location of schools, parks, playgrounds, shopping and public transportation routes in the project areas;
- schedules and costs of public transportation in the project areas, where applicable;
- copies of the Department's brochure explaining its relocation program;
- local ordinances pertaining to housing, building codes and open housing;
- Federal Highway Administration (FHWA) and Department of Veterans Affairs (VA) booklets of information on inspecting and evaluating replacement housing and family budgeting;
- a list of commercial moving companies;

- rates of commercial moving companies for moving costs and contingent expenses; and
- a list of insurance companies that will insure personal property being moved by an individual.

### **5-1.3.3 Parcel Files**

In addition to the project and parcel identification, the records maintained by the Right-of-Way Bureau will contain the following information and material:

1. Personnel Information. Include names and addresses of displaced persons and their complete new addresses and telephone numbers. Make every reasonable effort to contact and secure this information from any persons who move without assistance.
2. History. Include complete history of personal and other contacts made with each displaced person. Prepare a written acquisition history immediately after each contact, using the Parcel Acquisition History Form 208. Fill out the form completely and incorporate all the information discussed with the displaced person. Each history must be signed and dated by the designated Relocation specialist.
3. Documentation. Documentation for each displaced person includes:
  - the date of notification of availability of relocation payments and services;
  - whether the offer of assistance was declined or accepted and the name of the individual accepting or declining the offer;
  - the name of the Relocation specialist offering or providing relocation assistance;
  - the date the 90-day letter (Form 352) was given to the occupant;
  - the date the 30-day notice to vacate (Form 365) was given to the occupant;
  - the date on which the displaced person was required to move from the property acquired for the project; if this date is extended, it must be by written notice;

- the date and substance of subsequent follow-up contacts;
  - the date on which the actual relocation occurred and whether relocation was accomplished with the assistance of the acquiring agency or referrals to other agencies or without assistance (If the latter, an approximate date for actual relocation is acceptable.); and
  - the type of tenure before and after relocation.
4. Dwellings. Include the following information:
- number in the household (list sex and approximate age);
  - family income;
  - type of property (e.g., single-family, multi-family);
  - length of occupancy;
  - value or monthly rent (specify utilities, if any, included in rent);
  - number and size of rooms occupied;
  - state of repair, type of neighborhood and if adequate to accommodate the displaced person;
  - accessibility to employment and public services;
  - any exterior attributes; and
  - parcel information form (Form 360).
5. Businesses, Farms, Ranches and Nonprofit Organizations. Include the following information:
- type of business, farm, ranch or nonprofit organization;
  - whether continued or terminated; and
  - if relocated, distance moved, estimate is acceptable.
6. Moving Expenses. Include the following information:
- the date the removal of personal property was accomplished;

- the location from which and to which the personal property was moved;
  - if the personal property was stored temporarily, the location where the property was stored, the duration of the storage and justification for the storage and charges;
  - an itemized statement of the costs incurred supported by receipted bills or other evidence of expense;
  - the amount of reimbursement claimed, the amount allowed and an explanation of any difference;
  - data supporting a determination that a business cannot be relocated without a substantial loss of its existing patronage and that it is not a part of a commercial enterprise having more than 3 other entities not being acquired by the State of Montana;
  - when the payment to a business or farm operation is based on its average annual net earnings, data showing how the payment was computed;
  - in case of a fixed moving expense, records supporting this fixed expense; and
  - in cases where personal property is not moved from a business, documentation of payments made for actual direct losses of tangible personal property.
7. Reestablishment Expenses. In those cases where reestablishment payments, see Section 5-4.2.7, are made, the Department maintains a record of reestablishment items. An explanation of reestablishment payments is included in the file.
8. Replacement Housing Payments. Include the following information; see Section 5-5:
- the date of receipt by the Department of each application for the payment;
  - the date on which each payment was made or the application was rejected;

- a copy of the closing statement, receipted bills or other evidence to support the cost or down payment and incidental expenses when replacement housing is purchased or constructed;
- a copy of the closing statement including computations to support the increased interest payment;
- supporting data explaining how the amount of the supplemental payment to which the applicant was entitled was calculated (Support also should clearly establish that replacement housing was fair housing, comparable, and, at a minimum, decent, safe and sanitary.);
- a copy of the rental receipt or lease showing the rental rate; and
- a signed and dated statement setting forth:
  - + the determination of the amount of the supplemental payment;
  - + that no official of the Department or a consultant determining or authorizing payments has a direct or indirect present or contemplated, personal interest in this transaction or will derive any personal benefit from the supplemental payment. Where an individual employed by the Department or a consultant is displaced by a project, the Chief of the Right-of-Way Bureau may authorize payment under this memorandum;
  - + that the displaced person has been relocated into adequate replacement housing; and
  - + that the person determining the payments understands that these payments will be used in conjunction with a Federal-aid highway project.

#### **5-1.4 Public Hearings**

##### **5-1.4.1 General**

An explanation of the Department's Relocation Assistance Program is provided by the Acquisition Section Manager, or designee, at both the Corridor and Design Public Hearings or at public meetings held in lieu of public hearings.

When a project has no relocation of individuals, families, farms, ranches, businesses or nonprofit organizations, this fact and the availability of the relocation brochure can be simply stated. The following statement may be used:

“This project will not cause any displacement. The Montana Department of Transportation does have a Relocation Assistance Program that provides supplemental housing payments, moving costs, advisory assistance and other services to individuals who are displaced by highway construction. These payments are in addition to the compensation paid for the acquired right-of-way.”

When the project will cause the displacement of individuals, families, farms, ranches, businesses or nonprofit organizations, the Department discusses the benefits pertinent to the type or types of relocation involved.

#### **5-1.4.2 Corridor Public Hearings**

When there is a probability that any of the alternatives under consideration on the project will cause displacement, the discussion includes, but is not necessarily limited to, the following:

- a broad general discussion of the complete Relocation Assistance Program and payments for which individuals, families, businesses, farms, ranches and nonprofit organizations may be eligible;
- the approximate number of individuals, families, businesses, farms, ranches and nonprofit organizations estimated to be relocated by each of the alternatives under consideration at the hearing;
- an estimate of the amount of available decent, safe and sanitary replacement housing within the financial means of the individuals and families affected;
- a projection of the availability of replacement housing in the year when the right-of-way acquisition is anticipated and any alternative plans considered for re-housing the displaced persons; and
- studies that have been or will be made and methods that will be followed to ensure that the housing needs of the displaced persons will be met.

### **5-1.4.3 Design or Combined Public Hearings**

The discussion includes, but is not necessarily limited to, the following:

- the eligibility requirements and payment limits for moving costs, replacement housing, increased mortgage interest and closing costs incidental to the purchase of a replacement dwelling;
- appeal procedures;
- the address and telephone number of the relocation supervisor and the project relocation office, if established;
- the estimated number of individuals or families to be relocated;
- the number of dwelling units presently available that meet decent, safe and sanitary requirements; and
- the estimated time necessary for relocation and the number of dwelling units meeting requirements that will become available during that period.

### **5-1.4.4 Relocation Assistance Brochure**

The Department presents a copy of the relocation assistance brochure to each interested person attending the public hearing and informs them where they may obtain additional relocation assistance information, which is from the relocation specialist, Helena R/W Bureau. If the relocation brochure covers the items sufficiently, it will be satisfactory to highlight these points without significant detail.

### **5-1.4.5 Suggested Statement for Public Hearings**

Figure 5-1A provides the suggested statement for public hearings. With the appropriate figures inserted, this will suffice as a minimum statement for both the Corridor and the Design Public Hearings. The statement should be given at both the Corridor and the Design Public Hearings with the necessary information added as required in this Chapter.

The Montana Department of Transportation has a Relocation Assistance Program available to all eligible displaced persons, regardless of color, religion, sex or national origin. The payments made under this program are in addition to the just compensation paid for the real property the Department acquires from you or your landlord. Relocation assistance comes in many forms, including moving costs for personal property, reestablishment expenses (for certain nonresidential displaced persons only), purchase supplement and rental assistance payments required to obtain a replacement dwelling, finance information, house and rental listings and help to find replacement housing.

The Department has prepared a relocation brochure that explains the program in considerable detail and provides answers to many of the questions you may have concerning the assistance, services and payments that will normally be available to those persons who are displaced. It also includes a discussion of payment eligibility requirements and payment procedures that will be of particular interest to you.

Copies of the relocation brochure are available for distribution to all persons present at this hearing; if you have not already done so, we urge you to pick up a copy before you leave.

If, for some reason, you feel that the relocation assistance offered you is not adequate, you have a right to an appeal to the Director of the Department of Transportation.

This proposed project would involve the displacement of *(give approximate number of individuals, families, etc., that will be displaced on each alternative route, if applicable)*.

Investigation in the area indicates that there are *(number)* decent, safe and sanitary dwellings available on the market within the financial means of the people that may be displaced. The Department will not authorize the construction of any highway project until it is satisfied that no person will be displaced unless and until adequate housing has been provided.

This project is scheduled for letting in *(month and year)*. At that time, the Department estimates that *(number)* housing units should be available.

The Department should be able to complete the relocation assistance at least *(30 days or your own estimate)* before the project is let to contract. *(If a local office is to be established and you should know this by the design hearing, make a statement to this effect)*.

The Acquisition Section Manager in Helena will handle relocation assistance. If anyone has specific questions concerning possible relocation, we will be happy to discuss them with you at the end of the hearing.

## **SUGGESTED STATEMENT FOR PUBLIC HEARINGS**

**Figure 5-1A**

## 5-2 PLANNING, NOTICES AND ADVISORY SERVICES

One of the primary goals of the Relocation Assistance Program is to ensure the timely, orderly and humane relocation of persons who have been displaced by the project. Meeting this goal requires the Department to obtain detailed information about the needs and intentions of the persons to be displaced and the resources that are or will be available. Relocation planning is a process of matching needs with resources (i.e., matching the needs of displaced persons for advisory services, replacement housing or replacement business locations with services, dwellings or sites expected to be available when needed). Relocation planning is a continuing process, beginning at the earliest stages of the project development process and continuing into the acquisition stage.

It is essential that relocation planning begin early in the project development process. Early attention allows the Department to allocate sufficient resources to deal with the relocation workload the project is expected to generate and to prepare for potential problems or unusual situations requiring special solutions. Projects displacing large families or low-income households, for example, may encounter difficulties in providing replacement housing, and the displacement of persons who are elderly may necessitate intensified or unusual advisory services.

Sometimes the assistance typically available under the *Uniform Act* is not sufficient to provide comparable replacement housing and it becomes necessary to use the law's "last resort housing" provisions; see Section 5-6. Using this option becomes much easier when the need for this type of assistance is identified and planned for well in advance.

### 5-2.1 Planning

#### 5-2.1.1 Conceptual Stage Planning

Relocation planning should begin as soon as the Department identifies the potential for displacing occupants from an area where it is contemplating a project. This early stage of project development is known as the "conceptual stage." At this stage, the Department still may be evaluating several different possible alignments.

A project is considered to be in this stage until the final alignment is approved. During this period, occupants of dwelling units are not to be contacted or disturbed. The required information usually may be obtained by visual inspection of the area and from available secondary or community sources.

Where the chosen alignment or alternative alignments will result in a significant number of displacements (i.e., generally 10 or more residential relocations), the Department conducts a Relocation Conceptual Study. In all other instances, only the Relocation Assistance Cost Estimate (Form 363) is necessary. The Preconstruction Bureau will notify the Right-of-Way Acquisition Section Manager as soon as it determines that displacements are anticipated. The Right-of-Way Acquisition Section Manager reviews the chosen alignment or alternative alignments and determines whether a Relocation Conceptual Study or Relocation Assistance Cost Estimate is necessary. The Manager then requests the study or estimate, as appropriate, from the appropriate District Right-of-Way Supervisor, with a copy to the Right-of-Way Bureau Chief.

If a conceptual study is required, provide the following information, properly supported, for each alignment:

- a narrative description of the project area, including geographic location, principal industry and general economic conditions;
- a description of the proposed project and assumptions regarding right-of-way widths;
- an estimate of households that would be displaced, including the family characteristics (e.g., minorities, income levels, tenure, elderly, large families);
- any divisive or disruptive effect on the community, including the separation of residences from community facilities or the separation of neighborhoods;
- the impact on the neighborhood and on housing availability where relocation is likely to take place;
- a description of available relocation housing in the area and an evaluation of its adequacy to provide relocation housing for the types of families to be displaced;
- a discussion of the alternatives for providing replacement housing and the actions proposed to remedy insufficient relocation housing, including, if necessary, housing of last resort;
- an estimate of the number of businesses, nonprofit organizations and farms to be displaced and the anticipated general effect on the economy of the community. The Department will contact all potentially affected businesses on the preferred or alternative alignments under consideration and advises them of the possibility of relocation. At this time, the Department:

- + determines the nature of the business and its particular needs, considering clientele, location, environment, transportation needs, zoning, availability of relocation sites, etc.;
- + assesses the impacts of its relocation, as to both the business and its clientele;
- + discusses available relocation benefits so the owner is aware of the benefits to which the owner may be entitled; and
- + explores and advises all businesses of other possible sources of funding or assistance (e.g., tax abatements, tax incentives) that may be available. These include the Department of Housing and Urban Development, Economic Development Administration, Farmers Home Administration, Small Business Administration, as well as other State and Federal entities.

The facts and results of consultations with the businesses and the advisory services provided must be documented in the Conceptual Study Report;

- a description of special relocation advisory services that may be necessary for identified unusual conditions;
- the results of consultation with local officials, social service agencies and community groups regarding the impact on the community affected;
- a discussion on whether relocation can be reasonably accomplished without undue delay within the time allocated prior to construction;
- if applicable, maps, sketches and photos of the area; and
- relocation assistance cost estimates for both moving expenses, including for moving personal property only and replacement housing payments; see Sections 5-4 and 5-5. The estimate should be on a parcel-by-parcel basis.

### **5-2.1.2 Right-of-Way Stage Planning**

The Right-of-Way stage begins when the final alignment for the project is approved. With a specific location selected, relocation planning moves from the general information gathering of the conceptual stage to the identification of specific displacements and the resources and measures that they require. The focus is on particular households, businesses, farms and others whom the Department now knows will have to move.

At this stage, the relocation specialist conducts a personal interview with persons expected to be displaced, to both provide and obtain necessary information. During this meeting, the relocation specialist provides the displaced person with a copy of the Department's relocation brochure.

If the Department expects the project to cause 10 or more displacements, a Relocation Plan is necessary. Typically, a Relocation Plan is not prepared until after appraisals have been authorized for the project. However, there may be occasions when it is necessary or advisable to prepare a Relocation Plan prior to the appraisal stage of a project, particularly if there will be a substantial number of displaced persons or an Environmental Impact Statement is being prepared for the project. In these instances, the responsible relocation specialist prepares the Relocation Plan as soon as preliminary plans showing right-of-way limits are available.

Once authorization to appraise has been given and the appraiser has made initial contact with the property owner, the relocation specialist personally contacts the persons expected to be displaced, determines their needs and desires for replacement housing and advisory services and prepares the Relocation Plan. The Relocation Plan must be completed prior to authorization to proceed with acquisition of the right-of-way.

The Relocation Plan should be scoped to the amount and complexity of the anticipated relocation workload. At a minimum, the plan should contain the following information:

1. a narrative account of the project area, including the type and location of the project, the economic class of dwellings and neighborhoods, and family characteristics (e.g., minorities, large families, elderly, low income);
2. an inventory of housing needs of each individual and family to be displaced, correlating these needs with available comparable and decent, safe and sanitary housing within their respective financial means;
3. information on any business, farm, ranch or nonprofit organization that will be displaced, noting any problems that may be caused by this displacement;
4. an inventory of currently available comparable replacement housing, correlating the adequacy of this housing to the needs of displaced persons. Form 358 is prepared for each listing, providing all information requested therein, or another suitable listing showing the required information is prepared;
5. information concerning other sources of assistance, including social service agencies or other government and private housing programs; and

6. if needed, a summary analysis and correlation of the inventory of available housing and housing needs so as to develop a relocation plan that will:
  - a. Identify relocation problems and special needs.
  - b. Provide an analysis of the problems and special needs identified, including the methods to be used to resolve the problems so that displaced persons may receive appropriate assistance in relocating.
  - c. State if a local relocation office will or will not be required.
  - d. Provide a summary analysis, if need be, of the effects of current or future State or Federal projects in the area that may affect the supply and demand for housing, including detailed information on concurrent displacement by other government or private agencies. State if there are no other projects.
  - e. Estimate the amount of staff and lead time required and demonstrate its adequacy to carry out a timely, orderly and humane relocation program.

Form 385 contains a sample Relocation Plan. The sample illustrates the elements of a Relocation Plan and is a guide for the format of a Relocation Plan.

### **5-2.1.3 Planning for Housing of Last Resort**

When the Relocation Plan analysis identifies problems or special needs that the Department cannot meet through the use of available advisory services and replacement housing payments, it is necessary to plan for the use of last resort housing assistance. Some of the types of actions the Department may consider under last resort housing assistance are listed in Section 5-6.3. However, the Department may consider all cost-effective methods. A number of these potential approaches involve considerable lead time and should be addressed as soon as the Department identifies the need.

### **5-2.2 Required Relocation Notices**

In addition to obtaining information from persons who may be displaced, it is essential to provide certain information to them in an effective and timely manner. It is important to provide general project and relocation program information early and more targeted

information when the focus shifts to particular persons whom the Department knows it will have to move. The notices described below provide much of this information.

The Department provides each notice discussed below either in person or, if sent by mail, by certified or registered first-class mail, return receipt requested. Notices are written in plain, understandable language, as appropriate to the language of the recipient. Notices must contain the name and telephone number of a person to be contacted for assistance.

### **5-2.2.1 General Information Notice**

The Department furnishes persons who may be displaced with a general description of the Department's relocation program. The Department delivers written notice in person or by certified mail, return receipt requested, as soon as feasible but not later than appraisal authorization. The notice includes a copy of the applicable the Department relocation brochure (residential/nonresidential). The notice will:

1. Inform the person that they may be displaced as a result of project acquisition.
2. Explain eligibility requirements for relocation services and payments and generally describe the various program benefits for which the displaced person may be eligible.
3. Assure the potential displaced person that reasonable relocation advisory services will be given, including referrals to replacement properties, help in filing claim(s) for payments and other necessary assistance in relocating successfully.
4. Inform any person to be displaced from a residential dwelling unit that they cannot be required to move permanently unless at least 1 comparable replacement dwelling unit has been made available.
5. Inform any person to be displaced that they will not be required to move without at least 90 days advance written notice.
6. Explain the right to appeal the Department's determination regarding eligibility for, or the amount of, any relocation payment for which the displaced person may be eligible.
7. Inform any person who may be displaced from a business that the displaced person must provide the Department with reasonable advance notice of the

approximate date of the start of moving or disposition of personal property and a list of the items to be moved.

8. Inform any person to be displaced that the displaced person must permit the Department to make reasonable and timely inspection of personal property to be moved at both the displacement and the replacement sites and to monitor the move.
9. Inform the person that an alien who is not lawfully present in the United States is ineligible for relocation advisory services and payments, unless ineligibility would result in "exceptional and extremely unusual hardship to a qualifying spouse, parent or child," see Section 5-3.8.

The suggested form and content for the General Information Notice appears in Form 381

#### **5-2.2.2 Notice of Relocation Eligibility**

All persons who the Department determines will be displaced are promptly notified of their eligibility for applicable relocation benefits. Eligibility begins on the date of the initiation of acquisition for the occupied parcel. The following information is furnished at the initiation of acquisition if it has not been furnished previously:

- the Department's applicable relocation brochure, which serves as the written explanation of the eligibility requirements for the displaced person to receive payments for moving expenses and replacement housing payments (e.g., purchase supplement, rental assistance or down payment assistance, as applicable), see Section 5-5, and of the displaced person's options for purchasing or renting replacement housing;
- an explanation of the relocation services that are available and where they may be obtained; and
- an explanation of the right to appeal.

Tenants are personally contacted and furnished with the information above. Tenants are informed, in writing (Form 374), of the date of the initiation of acquisition, within 7 days of that date.

**5-2.2.3 90-Day/30-Day Notices**

No person who is lawfully occupying real property will be required to move from the displaced person's dwelling, business, farm, ranch or nonprofit organization without at least 90 days written notice of the intended vacation date. To meet this requirement, the following will apply:

1. The 90-Day Notice (Form 352) may be given on or after the initiation of acquisition for the parcel and will include a statement that the displaced person will not be required to move from the displacement dwelling, business, farm or nonprofit organization earlier than 90 days from the date of the notice. In the case of a residential displacement, the statement informs the occupant that they will not be required to move earlier than 90 days after either (1) the date of the notice or (2) the date comparable replacement housing was made available, whichever is later. The notice informs the displaced person that they will be given a subsequent 30-Day Notice (Form 365) specifying the date by which the displaced person must vacate the property.
2. The 30-Day Notice is not given until the State has legal possession of the property.
3. When an occupant moves on their own volition before these notices are given, the notices need not be given.
4. When possession of a parcel is granted by court order or is obtained by attorney's stipulation and no 30-day notice to vacate is contained in the court order or the stipulation, the 30-day written notice to the displaced person is presented in person or by certified mail.
5. The date by which the property must be vacated may be extended when conditions warrant. Any extension should be in writing and should contain another specific vacation date.
6. In unusual circumstances, for urgent need, an occupant may be required to vacate the property on less than 90 days advance written notice. For example, the Department may determine that a 90-Day Notice is impracticable, as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. Include a copy of the Department's determination in the applicable case file.

#### **5-2.2.4 Notice of Intent to Acquire**

When the Department elects to establish eligibility for relocation benefits prior to the initiation of acquisition for a parcel, a Notice of Intent to Acquire (Form 382) is furnished to both owners and tenants. The Relocation Assistance Brochure is furnished along with this Notice.

The Notice is not issued until the FHWA has authorized the initiation of acquisition on a project basis or on an individual parcel basis, solely for protective buying or hardship purposes.

The following applies to Notice of Intent to Acquire:

1. The Notice of Intent to Acquire contains:
  - a statement of eligibility,
  - the anticipated date of the initiation of acquisition of the property,
  - any restrictions, and
  - how and where additional information pertaining to relocation assistance payments and services may be obtained.
2. If the Department furnishes a Notice of Intent to Acquire to an owner, it must also furnish the notice to any tenant(s) within 15 days.
3. If the Department furnishes a Notice of Intent to Acquire to a tenant, it must notify the owner of its action simultaneously.
4. Do not use the Notice of Intent to Acquire unless the initiation of acquisition for the parcel is imminent. When the notice is given, every effort must be made to begin acquisition as soon as practicable to prevent possible subsequent occupancy or to minimize rental problems for the owner.

There will be parcels that do not fall into the regular acquisition procedures, including parcels in an estate, parcels owned by State, city or county governments, etc. Where this type of parcel is to be acquired, the offer is usually made to some type of an administrator or governing board. Whenever the offer to acquire any of these parcels is made, the relocation assistance written offer must be given to the displaced person within the regular time limit as required by the above procedures.

### **5-2.3 Relocation Assistance Advisory Services**

Relocation assistance advisory services are intended to assist displaced persons in moving to replacement housing or other locations, as appropriate. These services are offered to all displaced persons on the project, including individuals, families, businesses, farms, ranches and nonprofit organizations. In addition, these services are offered to any person occupying property that is immediately adjacent to the acquired real property when the Department determines that this person is caused substantial economic injury because of the acquisition. Any person whose occupancy of property acquired by the Department began subsequent to the acquisition of the property and whose occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project is eligible for advisory services as determined by the Department.

The Department will provide these services through the Acquisition Section by personal contact, except when this contact cannot be made after reasonable effort to do so. Document these efforts to establish personal contact in the parcel file.

#### **5-2.3.1 Advisory Services Requirements**

Relocation assistance advisory services include measures necessary or appropriate to perform the following:

1. Personally interview each person to be displaced, determine the person's relocation needs and preferences and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements and the procedures for obtaining assistance.
2. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings and explain that the person cannot be required to move unless at least 1 comparable replacement dwelling is made available. Where practical, 3 or more comparable replacement dwellings will be made available. These activities include the following:
  - a. As soon as feasible, inform the displaced person in writing of the specific replacement dwelling, the price or rent used as the basis for establishing the upper limit of the replacement housing payment and the basis for the determination. This is done to make the displaced person aware of the replacement housing payment to which the displaced person may be entitled. The Department uses the following forms with the necessary information added:

- 180-Day Owner (Form 370),
  - 90-Day Owner (Form 371), and
  - Tenant (Form 372).
- b. Where feasible, ensure the housing is inspected prior to being made available to certify that it meets decent, safe and sanitary standards. If an inspection is not made, notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe and sanitary.
- c. Whenever practical, provide minority persons a reasonable opportunity to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. The Department will not, however, make a larger payment than would otherwise be necessary to enable a person to relocate to a comparable replacement dwelling.
- d. Offer transportation to all persons who have been displaced from dwellings to inspect replacement housing to which they are referred, especially the elderly and disabled.
3. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial and farm properties and locations. Assist any person who has been displaced from a business or farm operation to obtain and become established in a suitable replacement location. At a minimum, interviews with displaced business owners and operators should include the following:
- a. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
  - b. Determination of the need for outside specialists that will be required to assist in planning the move, assistance in the actual move, and the reinstallation of machinery and/or other personal property.
  - c. For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.
  - d. An estimate of the time required for the business to vacate the site.
  - e. An estimate of the anticipated difficulty in locating a replacement property.
  - f. An identification of any advanced relocation payments required for the move, and the Department's legal capacity to provide them.

4. Minimize hardships in adjusting to relocation by providing advice to displaced persons as to other sources of assistance that may be available and other help as may be appropriate.
5. Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration and other Federal and State programs offering assistance to persons to be displaced.

The Acquisition Section Manager or a designated relocation specialist should be continually available to provide any of the above services.

### **5-2.3.2 Local Relocation Office**

When the Department determines that the volume of work or the needs of displaced persons justifies a relocation office, the Department will establish a local relocation office for a project in a location that is reasonably convenient to public transportation or within walking distance of the project. The office will be open during hours convenient to persons to be relocated, including evening hours when necessary.

The minimum information that is maintained and made available in the local relocation office is listed in Section 5-1.3.

The Acquisition Section Manager acts as the coordinator and oversees the selection of the local office site. The Acquisition Section Manager also is responsible for staffing the office at appropriate times that will be convenient to the majority of displaced persons on the project. In those cases where local office hours do not meet the needs of displaced persons, the Acquisition Section Manager or relocation specialist will personally meet with the displaced persons at their convenience or designate a qualified right-of-way agent to do so.

### **5-2.3.3 Coordination of Relocation Activities**

The Department will maintain contact with other Federal, State and local government agencies in order to be aware of any current or proposed activities that may affect the supply of replacement housing, the availability of replacement business sites, the demand for social services or other relocation-related resources in the project area. When other agencies have or are planning programs involving relocation, the Department will make the maximum effort to ensure coordination of relocation efforts.

Examples of local agencies that may be relevant to this effort include social welfare agencies, community development departments, redevelopment authorities, economic development agencies and public housing authorities. Federal agencies typically would include the Department of Housing and Urban Development, the Department of Veterans Affairs, USDA Rural Development (formerly the Farmers Home Administration) and the Small Business Administration. It also is useful to maintain contact with private market sources of information on replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators and home building contractors.

### **5-3 RELOCATION PAYMENTS AND REQUIREMENTS**

Relocation payments constitute one of the most important elements of the Department's Relocation Assistance Program. By providing reimbursement for many, if not all, of the costs that the project imposes on displaced persons, relocation payments assist the Department in conducting its program and projects in a humane fashion and, in particular, prevent displaced persons from bearing a disproportionate burden of projects designed to benefit the public as a whole.

A number of administrative requirements and procedures apply to the relocation program on a general basis. The following sections discuss the general concepts affecting the conduct of the relocation program, especially eligibility for and computation of relocation payments and the provision of replacement locations for displaced persons.

#### **5-3.1 Time Limit for Filing Claims**

In order to receive a relocation payment, a displaced person must request payment on the proper forms. All payments must be requested no later than 18 months after:

- for tenants, the date of the move; or
- for owners, the later of the date of the move or the date of final payment for acquisition of the real property.

However, the Department may extend this limit for good cause.

#### **5-3.2 Relocation Payments Not Considered as Income**

No relocation payment received by a displaced person under this part is considered as income for the purpose of the *Internal Revenue Code of 1954*, which has been redesignated as the *Internal Revenue Code of 1986*. Nor do relocation payments count as income for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the *Social Security Act* or any other Federal law, except for any Federal law providing low-income housing assistance. Payments shall not be considered to constitute Federal financial assistance.

### 5-3.3 Advance Payment

If a displaced person demonstrates the need for an advance payment to avoid or reduce a hardship, the Department may make arrangements for advance payment of moving expenses or for purchasing or renting a replacement dwelling.

### 5-3.4 Deductions from Relocation Payments

The Department deducts the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, the Department may deduct from relocation payments any rent that the displaced person owes the Department, provided that no deduction is made if it would prevent the displaced person from obtaining a comparable replacement dwelling. The Department will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

### 5-3.5 No Duplication of Payments

No person is allowed to receive any payment under the *Uniform Act* if that person receives a payment under any other Federal, State or local law or insurance proceeds [49 CFR 24.403(g)] that are determined by the Department to have the same purpose and effect.

### 5-3.6 Evictions

Any person in lawful occupancy on the date of initiation of acquisition retains the right to relocation payments and other assistance unless that person:

- previously received an eviction notice and subsequently is evicted as a result, or
- is evicted for cause on or after the date of the initiation of acquisition, unless the Department determines that eviction was undertaken to avoid the requirements of the *Uniform Act*.

### 5-3.7 Federal Agency Waiver of Regulations

Under certain circumstances, the application of a Federal regulatory requirement may result in an outcome that is contrary to its intent or to the intent of the relocation

program. In these circumstances, it may be appropriate to request a waiver of the regulatory requirement. This waiver can be granted only by the FHWA and may be requested only for requirements not mandated by the **Uniform Act**. A waiver may not reduce any assistance or protection provided to an owner or displaced person under the **Uniform Act's** implementing regulations and must be justified on a case-by-case basis.

**No waiver of relocation assistance.** A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act.

### **5-3.8 Aliens Not Lawfully in the United States**

A basic eligibility requirement for any person seeking relocation advisory services or payments is that the displaced person qualifies as either a citizen or a national of the United States or as an alien who is lawfully present. For families, all family members must so qualify. Similar requirements apply to businesses and business owners.

#### **5-3.8.1 Certification of Lawful Presence**

Each person seeking relocation services or benefits must certify that person's status, by signing a Form 350, indicating whether they are a citizen, a national or an alien lawfully present. For families, certification may be made by the head of the household.

An incorporated business, farm or nonprofit organization must certify that it is authorized to conduct business within the United States. For an unincorporated business, farm or nonprofit organization, each owner must so qualify. Certification may be made by the principal owner, manager or operating officer.

#### **5-3.8.2 Review of Certifications**

The Department considers these certifications valid unless a review of the person's documentation or other reliable and appropriate information indicates otherwise. For example, if a document does not appear, on its face, to be genuine, then the Department may inquire further. If the Department has reason to believe that a certification may not be valid, it will take the following actions before making a final determination of ineligibility:

1. For a person certifying that he or she is an alien lawfully present, obtain verification from the Immigration and Naturalization Service.

2. For a person certifying that he or she is a citizen or national, request evidence of U.S. citizenship or nationality from the person and, if deemed necessary, verify the accuracy of the evidence with the issuer.

### **5-3.8.3 Non-Discrimination**

The Department conducts all reviews of certifications in a non-discriminatory manner. The same standard of review applies to all certifications.

### **5-3.8.4 Denial of Benefits**

No relocation payments or advisory assistance may be provided to any person who the Department determines is not lawfully present in the United States or who refuses to provide a certification as required above, except as provided in Section 5-3.8.5.

### **5-3.8.5 Exceptions**

When the Department determines that denial of payments or services will result in an exceptional and extremely unusual hardship to the ineligible person's spouse, parent or child who is a citizen of the United States or is an alien lawfully admitted for permanent residence, relocation payments and advisory services may be provided. Exceptional and extremely unusual hardship means that the denial of relocation payments and advisory services will directly result in a significant and demonstrable adverse impact on the health or safety of the spouse, parent or child, or the continued existence of the spouse, parent or child's family unit, or any other adverse impact as determined by the Department.

### **5-3.9 Relocation Program on Projects Affected by a Major Disaster**

The provisions and procedures outlined in this Chapter are applicable on projects in areas that are designated by the President of the United States as major disaster areas, subject to the following conditions:

1. If location approval has been given by the FHWA, individuals and families whose homes have been damaged or destroyed by a major disaster, who have not been able to reoccupy their homes by the beginning of acquisition, may be considered to be in constructive occupancy and the relocation procedures and payments in this Chapter will apply.

2. If the FHWA has not given location approval prior to the major disaster, the individuals or families are not eligible for relocation assistance under this Section.

### **5-3.10 Availability-Comparable Replacement Housing before Displacement**

No person may be required to move from a dwelling before the Department has made available to the displaced person at least 1 comparable replacement dwelling. Made available means that the person:

- has been informed of its location;
- has had sufficient time to negotiate and enter into a lease or purchase agreement, as appropriate; and
- will receive the relocation and acquisition, if applicable, payments to which the displaced person is entitled in time to complete the lease or purchase of the property.

## 5-4 MOVING AND RELATED EXPENSES

The *Uniform Act* provides relocation payments to assist displaced persons, as defined in this Chapter, to move from real property that was acquired as a result of projects receiving Federal financial assistance. These payments are divided into 2 broad categories — payments for persons displaced from dwellings (i.e., residential displacements) and payment for displaced businesses, farms, ranches and nonprofit organizations (i.e., nonresidential displacements). Each of these broad categories is made up of 2 types of relocation payments — moving expense payments and replacement housing/supplemental payments. Section 5-4 discusses moving and related expenses payments in detail.

### 5-4.1 Residential Moving and Related Expenses

There are 2 ways to compute a residential moving expense payment — the actual cost method and the schedule method.

#### 5-4.1.1 Actual Cost Method

Actual moving expenses are those costs that are actually incurred and necessary to move the displaced person and the displaced person's personal property from the dwelling acquired for the project to the replacement dwelling. These costs must be reasonable (i.e., typical for moving the items in question in the area) as well as necessary to accomplish the move.

##### 5-4.1.1.1 Eligible Moving Expenses

When a person who has been displaced from a dwelling elects to move on an actual cost basis, the following expenses are eligible for payment:

1. Transportation to Replacement Site. Expense for the transportation of the displaced person and personal property may be eligible. There is no limitation on the distance a displaced person may move, but moving expenses will be paid for a distance limited to 80 km (50 miles), either interstate or intrastate, except when it is determined by the Department that relocation cannot be accomplished within the 80-km (50-mile) area. Transportation may include moving personal property onto remaining or other lands owned by the displaced person or the displaced person's landlord. These costs may include special services, including ambulances for the disabled. The costs of meals and lodging are reimbursable

when the Department determines that these costs are required, actual and reasonable.

2. Packing. Eligible expenses include packing, crating, unpacking and uncrating of the personal property, when determined by the Department to be reasonable and necessary.
3. Disconnect/Reconnect. Eligible expenses include disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.
4. Storage. Eligible expenses include storage of a displaced person's personal property, except on the acquired property or other property owned by the displaced person. To qualify for storage costs, the personal property must be stored in a qualified commercial storage facility. When it is determined that the storage of personal property is necessary, it will be for a reasonable period of time, not to exceed 12 months, unless the Department determines that a longer period is necessary.
5. Insurance. Eligible expenses include reimbursement for insurance premiums covering the reasonable replacement value of personal property against loss and damage while in storage or transit. Insurance coverage cannot exceed the reasonable replacement value of the personal property.
6. Losses in Moving. Eligible expenses include reimbursement for reasonable replacement value of property that is lost, stolen or damaged, when not caused by negligence of the displaced person in the process of moving and when insurance to cover this loss or damage is not available.
7. Other. Eligible expenses include other moving-related expenses that are not listed as ineligible under Section 5-4.2.1.2 and as the Department determines to be reasonable and necessary.

#### 5-4.1.1.2 Methods for Carrying Out Actual Cost Residential Moves

Displaced persons may receive payment for moving themselves and their personal property using one of the following methods:

- employing a commercial mover and presenting paid receipts, or

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- making a self-move and presenting paid receipts and other evidence of expenses incurred. This type of payment may not exceed the estimated cost of moving commercially. The relocation specialist determines the estimated cost of moving commercially by using the schedule in Figure 5-4A or by obtaining a contractor's estimate.
- In the event of an uncomplicated, simple personal property move, the Relocation Agent may negotiate a payment with a landowner or tenant, if the total cost of the property move will be less than \$500.00. This payment must be supported by reasonable hourly labor and equipment rates.

#### **5-4.1.2 Schedule Method**

A person who has been displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses. The Department determines this allowance according to the applicable schedule approved by the FHWA.

The schedule payment is based on the "number of rooms of furniture" owned by the displaced person at the displacement dwelling site and the amount established on the "schedule" for that number of rooms. When the amount of possessions in a single room or other space constitutes more than the normal contents of 1 room, the Acquisition Section Manager may increase the room count. For example, a basement may count as 2 rooms if the equivalent of 2 rooms worth of possessions is located in the basement. In addition, the Acquisition Section Manager may elect to pay for items stored outside the dwelling unit by adding an appropriate number of rooms.

The current version of the schedule for the State of Montana appears in Figure 5-4A.

## 5-4.1.2.1 Moving Payment Schedule

Unfurnished Dwelling (Occupant Owns Furniture)							
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms
\$500	\$700	\$800	\$900	\$1,100	\$1,300	\$1,500	\$1,700
Each additional room - \$200							
Furnished Dwelling and Sleeping Room							
Furnished dwelling and sleeping rooms are computed on the following basis:							
(1) \$350.00 for first room.							
(2) \$50.00 for each additional room.							

The following exceptions and limitations apply to the schedule payments above:

1. The expense and dislocation allowance for a person whose residential move is performed by the Department at no cost to the person is limited to \$50.00.
2. An occupant who moves a mobile home from the displacement site is paid on an actual cost basis. The Department, at its discretion, may make an additional reasonable payment to the displaced person for packing and securing personal property.
3. The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by 2 or more other unrelated persons is limited to \$50.00.
4. An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

**Figure 5-4A**

### **5-4.1.3 Multiple Occupants of a Single Dwelling**

Two or more families or 2 or more individuals (not a family) who occupy the same displacement dwelling unit and who move to separate replacement dwellings are entitled to the same total relocation payment amount they would have received if they had moved together to a single replacement dwelling. The Department determines the reasonable proration of the payment amount among the families or individuals. Payments may be either on an actual cost or on a schedule move basis. A schedule move payment is based on the number of rooms that are actually occupied by each family plus common rooms used by each family.

### **5-4.1.4 Assignment of Payment to Mover**

The Department may make a moving expenses payment directly to a qualified mover only if the displaced person makes an assignment of the moving costs to that mover.

### **5-4.1.5 Owner Retention**

When an owner retains a dwelling, the cost of moving it onto the remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property. However, if the owner chooses to use the dwelling as a means of moving personal property, the cost of moving personal property may be considered eligible for Federal participation. Payment in these cases is on a fixed schedule basis.

## **5-4.2 Payment for Moving & Related Expenses — Non-Residential Moves**

There are 2 ways to compute a non-residential moving expense payment (Form 366) — the actual cost method and the fixed (in-lieu) payment method. A displaced person may receive a payment computed under either, but not both, of these payment methods. Eligibility for the in-lieu method has additional requirements as discussed below.

### **5-4.2.1 Actual Cost Method**

Actual moving expenses are those costs that are actually incurred and necessary to move the displaced person and personal property from the business, farm or nonprofit organization acquired for the project to the replacement location. These costs must be

reasonable (i.e., typical for moving the items in question in the area) as well as necessary to accomplish the move.

#### 5-4.2.1.1 Eligible Moving Expenses

When a non-residential displaced person elects to move on an actual cost basis, the displaced person may be eligible to receive a payment for actual, reasonable moving and related expenses, which include the following:

1. Transportation of Personal Property. This includes transportation costs for a distance up to 80 km (50 miles), unless the Department determines that relocation beyond 80 km (50 miles) is justified.
2. Packing. This includes packing, crating, unpacking and uncrating of the personal property.
3. Disconnect/Reconnect. This includes disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property and substitute personal property. This includes connection to utilities that are available nearby. It also includes modification to the personal property necessary to adapt it to the replacement structure and modification necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing utilities from the right-of-way to the building or improvement are included.
4. Impact fees or one-time assessments for anticipated heavy utility usage.
5. Storage. This includes storage of the personal property not to exceed 12 months, unless the Department determines that a longer period is necessary.
6. Insurance. This includes insurance for the replacement value of the personal property in connection with the move and storage.
7. License. This includes any license, permit or certification required of the displaced person at the replacement site. However, payment may be limited based on the remaining useful life of the existing license, permit or certification.
8. Replacement Value. This includes the replacement value of property that is lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent or employees) where insurance covering the loss, theft or damage is not reasonably available.
9. Professional Services. This includes professional services necessary for:
  - planning the move of the personal property,

- moving the personal property, and
  - installing the relocated personal property at the replacement site.
  - The purchase or lease of a replacement site.
10. Signs/Stationery. This includes re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
  11. Direct Loss. This includes actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. For computation, see Section 5-4.2.2.
  12. Cost. This includes the reasonable cost incurred in attempting to sell an item that is not to be relocated.
  13. Substitute Property. This includes purchase of substitute personal property; see Section 5-4.2.3.
  14. Replacement Site. This includes searching for a replacement site; see Section 5-4.2.5.
  15. Other Expenses. This includes other moving-related expenses that are not listed as ineligible in Section 5-4.2.1.2.

#### 5-4.2.1.2 Ineligible Moving Expenses

The following expenses are considered ineligible for participation as “actual moving expenses”:

- additional expenses incurred because of living or operating a business, farm or ranch operation in a new location. However, see discussion on reestablishment expenses payment in Section 5-4.2.7;
- cost of moving structures, improvements or other real property in which the displaced person reserved ownership;
- improvements to the replacement site or modification of the personal property to adapt it to the replacement site, except as provided in Item #3 in Section 5-4.2.1.1;
- interest on loans to cover moving expenses;

- loss of goodwill;
- loss of business and/or profit;
- loss of trained employees;
- personal injury;
- cost of preparing the application for moving and related expenses;
- payment of costs in searching for a replacement dwelling; and
- costs for storage of personal property on real property that is already owned or leased by the displaced person.
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency.
- Refundable security and utility deposits

#### 5-4.2.1.3 Methods for Computing Actual Cost Non-residential Moving Expense Payments

Non-residential displaced persons may receive payment for moving their personal property using one of the following methods:

1. Commercial Mover. The following apply:
  - a. The owner of a displaced business prepares a certified inventory of items to be actually moved.
  - b. The owner may receive actual reasonable moving expenses charged by a commercial mover by presenting paid receipts and an inventory of the items actually moved. If the items listed as actually moved deviate appreciably from the original certified inventory, reimbursement is adjusted accordingly.
2. Self-Move. The following apply:
  - a. If the displaced person elects to take full responsibility for the move, the Department may make a payment for the person's moving expenses in an amount not to exceed the lower of 2 acceptable bids or estimates obtained

by the Department or prepared by qualified staff. When circumstances warrant, the Department may negotiate a lower amount. At the Department's discretion, a payment for a low-cost or uncomplicated move may be based on a single bid or estimate. The business may still claim removal and reinstallation expenses.

- b. If bids or estimates cannot be obtained, or if the inventory is large and fluctuating, preventing reasonable bidding, the owner may be paid the actual, reasonable and necessary moving costs when supported by receipted bills and other evidence of expenditures. These expenditures may include:
- amounts paid for any truck and/or equipment hired;
  - if business-owned vehicles or equipment are used, a reasonable amount of gas, oil, insurance, depreciation, etc., in proportion to the hours or days used in the move;
  - wages paid to persons who do the actual moving, based on hours actually worked, but not to exceed actual rates paid by the business; and
  - if the relocated business used regularly employed foremen or group leaders to supervise the move, the amount of their wages for time spent in supervision of the move.
- c. On completion of a self-move, the owner certifies in the claim for payment that items listed were actually moved. If the items listed on the owner's certified inventory deviate significantly from the items actually relocated, the amount previously agreed to is revised accordingly.

#### 5-4.2.1.4 Notification and Inspection

The following requirements apply to nonresidential move payments under this Section:

1. The Department will inform the displaced person, in writing, of the requirements of Items #2 and #3 below as soon as possible after the initiation of acquisition. This information may be included in the relocation information provided to the displaced person in the General Information Notice discussed in Section 5-2.2.1.
2. The displaced person must provide the Department with reasonable advance written notice of the approximate date of the start of the move or disposition of

the personal property and with a list of the items to be moved. However, the Department may waive this notice requirement after documenting its file accordingly.

3. The displaced person must permit the Department to make reasonable and timely inspections of the personal property at both the displacement and the replacement sites and to monitor the move.

#### 5-4.2.1.5 Surveillance

In order to ensure that all actual moving costs reflect actual, reasonable and necessary expenses, the Acquisition Section Manager or other designated right-of-way agent provides or arranges to provide surveillance on all moves that are of a complicated nature or substantial size.

#### 5-4.2.2 Actual Direct Loss of Tangible Personal Property

When the owner of a displaced business chooses not to move personal property that is used in connection with the business, or the estimated moving cost would be disproportionate in relation to the value, as in items of low value and high bulk, the Department may compute the payment for a move or a distinct portion of a move using an approach known as “actual direct loss of personal property.”

Under this approach, the property is not moved. Instead, it is appraised and put up for sale. The payment is the lesser of the following:

1. The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. In order to be eligible for payment, the displaced person must make a good faith effort to sell the personal property, unless the Department determines that this effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value is based on the cost of goods to the business, not the potential selling price.
2. The estimated cost of moving the item but with no allowance for storage. If the business or farm operation is discontinued, the estimated cost is based on a moving distance of 80 km (50 miles). The cost of removing the personal property is not considered as an off-setting charge against other payments due the displaced person.
3. The amount of a payment for direct loss of an advertising sign(s) that is personal property will be the lesser of:
  - the depreciated reproduction cost of the sign(s) as determined by the Department, less the proceeds from its sale; or
  - the estimated cost of moving the sign(s), but with no allowance for storage.

### **5-4.2.3 Purchase of Substitute Personal Property**

If an item of personal property that is used as part of a business or farm operation is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

- the cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
- the estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Department's discretion, the estimated cost for a low-cost or uncomplicated move may be based on a single bid or estimate.

### **5-4.2.4 Transfer of Ownership**

Upon request and in accordance with applicable law, the claimant must transfer to the Department the ownership of any personal property that has not been moved, sold or traded in.

### **5-4.2.5 Actual Reasonable Searching Expenses**

The owner of a displaced business or farm operation may be reimbursed for actual expenses incurred in searching for a replacement location, not to exceed \$2,500. These expenses may include transportation expenses, meals, lodging away from home and the reasonable value of the time actually spent in the search, including the fees of real estate agents or real estate brokers. All expenses claimed (Form 373), except value of time actually spent searching, must be supported by receipted bills. Payment for time actually spent in search will be based on reasonable salary or earnings.

### **5-4.2.6 Payment in Lieu of Actual Moving Expenses**

In lieu of the payment for actual moving and related expenses, an owner of a discontinued or relocated business may be eligible for a payment equal to the average annual net earnings of the business, see Section 5-4.2.6.2, except that this payment will not be less than \$1,000 or more than \$20,000. Application for payment may be filed using Form 364.

#### 5-4.2.6.1 Eligibility

For the owner of a business to receive this payment, the Department must determine the following:

1. The business cannot be relocated without a substantial loss of its existing patronage (e.g., clientele or net earnings). A business is assumed to meet this test unless the Department determines that it will not suffer this type of loss. This might occur with a business that is not dependent on location for its clientele or revenue (e.g., a mail order business).
2. The business is not part of a commercial enterprise having more than 3 establishments that are not being acquired by the Department and that are engaged in the same or similar business.
3. The business is not operated at the displacement dwelling or site solely for the purpose of renting the dwelling or site to others.
4. The business contributed materially (see Section 5-9.2) to the income of the displaced person during the 2 taxable years prior to displacement. A part-time occupation in the home that does not contribute materially to the income of the displaced person is not eligible for this payment.

#### 5-4.2.6.2 In-Lieu Payment Computation Factors

The term "average annual net earnings" in Section 5-4.2.6 means one-half of net earnings before Federal, State and local income taxes during the 2 taxable years immediately preceding the taxable year in which the business is relocated. If the business was not in operation for the full 2 taxable years prior to displacement, net earnings are based on the actual period of operation, projected to an annual rate. Average annual net earnings may be based on a different period of time when the Department determines it to be more equitable. A taxable year is defined as any 12-month period used by the business in filing income tax returns.

"Average annual net earnings" includes any compensation paid by the business to the owner, the owner's spouse and dependents during the period. In the case of a corporate owner of a business, earnings include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, wife and dependent children is treated as 1 unit.

The owner of the business must supply the State or Federal income tax returns for the period in question. Where tax returns are not available, a certified financial statement or an affidavit from the owner stating their net earnings will be accepted, provided the owner grants the Department the right to audit the business accounts.

#### 5-4.2.6.3 Determining the Number of Businesses

In determining whether 2 or more displaced legal entities constitute a single business that is entitled to only 1 in-lieu payment, all pertinent factors are considered, including the extent to which:

- the same premises and equipment are shared,
- substantially identical or interrelated business functions are carried out and business and financial affairs are commingled,
- the entities are held out to the public and to those customarily dealing with them, as a single business, and
- the same person or closely related persons own, control or manage the affairs of the entities.

#### 5-4.2.7 Reestablishment Expenses

A nonresidential displaced person who elects to receive an actual cost relocation payment and who qualifies as a small business, farm or nonprofit organization is eligible to receive an additional payment, not to exceed \$10,000, for expenses that are actually incurred in relocating and reestablishing the small business, farm or nonprofit organization at a replacement site. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of reestablishment expenses payments. A nonresidential displaced person who elects to receive an in-lieu payment is not eligible to receive this payment.

##### 5-4.2.7.1 Eligible Expenses

Reestablishment expenses must be reasonable and necessary, as determined by the Department. They include, but are not limited to, the following:

- repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance;
- modifications to the replacement property to accommodate the business operation or to make replacement structures suitable for conducting the business;
- construction and installation costs for exterior signing to advertise the business;
- redecoration or replacement of soiled or worn surfaces at the replacement site, including paint, paneling or carpeting;
- licenses, fees and permits when not paid as part of moving expenses;
- feasibility surveys, soil testing and marketing studies;
- advertisement of a replacement location;
- estimated increased costs of operation during the first 2 years at the replacement site for items including:
  - + lease or rental charges,
  - + personal or real property taxes,
  - + insurance premiums, and
  - + utility charges, excluding impact fees;
- other items that the Department considers essential to the reestablishment of the business.

#### 5-4.2.7.2 Ineligible Expenses

The following is a non-exclusive listing of reestablishment expenditures that are not considered to be reasonable, necessary or otherwise eligible:

- purchase of capital assets, including office furniture, filing cabinets, machinery or trade fixtures;
- purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation;
- interest on money borrowed to make the move or purchase the replacement property; and/or
- payment to a part-time business in the home that does not contribute materially to the household income.

#### 5-4.2.8 Farm and Ranch Moves

The owner of a displaced farm or ranch may be eligible to receive payments for actual reasonable moving expenses, actual direct losses of tangible personal property and reasonable expenses searching for a replacement farm or ranch (Forms 366, 369 and 373, respectively), as outlined in Sections 5-4.2.1, 5-4.2.2 and 5-4.2.5 for business moves.

An owner of a discontinued or relocated farm or ranch may be eligible for payment equal to the average annual net earnings of the farm or ranch, provided that payment will not be less than \$1,000 or more than \$20,000. Application may be filed using Form 364.

For the owner of a farm or ranch to receive this payment, the following must be determined by the Department:

1. The farm or ranch operator has discontinued or relocated the entire operation at the present location.
2. In case of a partial taking, the operator is considered to have been displaced from a farm operation if:
  - the property remaining after the acquisition is no longer an economic unit for the same farm operation, as determined in the appraisal process;

- the taking caused the operator to be displaced from the farm operation on the remaining land; or
- the taking caused a substantial change in the principal operation or the nature of the existing farm operation as to constitute a displacement.

The term average annual net earnings has the same meaning for displaced farms or ranches as under the computation of the in-lieu payment for displaced businesses in Section 5-4.2.6.2. It includes the same compensation (e.g., owner, spouse, dependents) as under that provision. Options for computing the payment using other more appropriate periods of operation, as determined by the Department, also are the same. Finally, documentation, and related conditions, required in support of a claim for an in-lieu payment from a ranch or farm also is the same.

#### **5-4.2.9 Non-Profit Organization Moves**

A displaced nonprofit organization that has established its nonprofit status under applicable State law is eligible to receive payment for actual reasonable moving expenses, including actual reestablishment expenses, actual direct losses of tangible personal property, actual reasonable expenses in searching for a replacement site or payment in lieu of actual moving expenses as outlined in previous sections of this Chapter. Application for these payments may be filed using Forms 366, 369, 373 and 364, respectively.

A nonprofit organization may be paid not less than \$1,000 or more than \$20,000 if the following conditions apply:

1. The nonprofit organization cannot be relocated without a substantial loss of its existing patronage. In this case, "existing patronage" includes the persons, community or clientele who are served or affected by the activities of the nonprofit organization. A nonprofit organization is assumed to meet this test unless the Department demonstrates otherwise.
2. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount used for the payment is the average of 2 years of annual gross revenues, less administrative expenses.

## 5-5 REPLACEMENT HOUSING PAYMENTS

### 5-5.1 General

In addition to the moving and related expense payments discussed in Section 5-4.1, the ***Uniform Act*** provides “supplemental housing” payments to certain persons who have been displaced from dwellings. There are 3 basic types of supplemental payments — purchase supplement, rental assistance and down payment assistance. Collectively, they are known as replacement housing payments.

The Department is responsible for relocating the displaced person to their original status (owner or tenant) if so desired. If the displaced person prefers a different tenancy status, the Department is expected to make a reasonable effort to accomplish the request. Thus, the displaced person has a number of options as discussed in detail below.

One of the fundamental requirements of the relocation program is that, before anyone may be required to move from a dwelling, the Department must make available to the displaced person at least 1 comparable replacement dwelling and preferably 3 comparable dwellings.

In addition, the Department must give the displaced person sufficient time to enter into a purchase or lease agreement for replacement housing, not less than 90 days. Subject to reasonable safeguards, the Department ensures that the displaced person will receive the relocation assistance and acquisition compensation to which the displaced person is entitled in sufficient time to complete the purchase or lease of the replacement property.

Before making payment to the displaced person, the Department inspects the replacement dwelling to determine if it meets the standards for decent, safe and sanitary housing. This will consist of the following:

1. If it is not practical for the Department to make the necessary inspection or to secure one through a competent third party, a certification from the displaced person that the displaced person has occupied decent, safe and sanitary housing is acceptable. This will occur only when a displaced person moves outside of the State.
2. When a displaced person qualifies for a replacement housing payment, except that the displaced person has not yet purchased or occupied a replacement dwelling, the relocation specialist may supply to a landlord, financial or lending institution or other interested party the amount the displaced person will be

eligible for under the provisions of this program. Prior to any disclosure, the Department must inspect the proposed replacement housing and find that it meets decent, safe and sanitary requirements. Any request for this disclosure must be authorized by the displaced person signing the appropriate portion of Form 362.

### **5-5.2 Replacement Housing Payment for 180-Day Owner Who Purchases**

A displaced owner-occupant of a dwelling may receive a payment, not to exceed \$22,500, for the additional cost necessary to purchase comparable replacement housing. This payment, also known as the Purchase Supplement, is the sum of the following 3 elements:

1. Price Differential. The amount by which the cost of a comparable replacement dwelling or the purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person, whichever is less, exceeds the acquisition cost of the displacement dwelling.
2. Increased Mortgage Interest Costs. The amount necessary to compensate the displaced person for increased interest and other debt service costs incurred in connection with the mortgage(s) on the replacement dwelling.
3. Incidental Expenses. The amount of the reasonable and necessary expenses that are incidental to the purchase of the replacement dwelling.

Application for this payment may be filed using Form 388.

#### **5-5.2.1 Eligibility**

A displaced person is eligible for the replacement housing payment for a 180-day homeowner if the person:

- has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of acquisition for the parcel; and
- purchases and occupies a decent, safe and sanitary replacement dwelling within 1 year after the later of the following dates, except that the Department may extend this period for good cause:

- + the date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court; or
- + the date the Department makes comparable replacement housing available to the displaced person.

When an eligible owner-occupant moves from a dwelling due to the Department's notice to vacate and the Department subsequently does not acquire the property, the owner-occupant still is eligible for relocation assistance payments if the move occurred prior to the Department's notification that the property would not be acquired.

#### 5-5.2.1.1 Purchases Replacement Dwelling

The displaced person "purchases" a replacement dwelling when any of the following occurs:

1. The displaced person purchases an existing dwelling. When the replacement dwelling selected by the displaced person is not decent, safe and sanitary, the cost to correct deficiencies is eligible to the extent the cost of correcting the deficiencies does not exceed the replacement housing payment computed for comparable replacement housing. However, costs for additional features, added simply to bring the computation to the payment maximum, are not eligible for reimbursement.
2. The displaced person purchases a life estate in a retirement home. The actual cost is the entrance fee plus any other monetary commitments to the home. Periodic service charges may not be considered.
3. The displaced person purchases and rehabilitates a substandard dwelling.
4. The displaced person relocates to a dwelling that the person owns or purchases; see Owner Retention in Section 5-5.2.2.8.
5. The displaced person constructs or contracts for the construction of a new decent, safe and sanitary dwelling on a site that the person owns or acquires. Payment is limited to the lesser of the actual cost or the cost of a comparable replacement dwelling.
6. The displaced person moves to a previously purchased dwelling and site. Valuation is based on current fair market value.

#### 5-5.2.1.2 Occupies Replacement Dwelling

A displaced tenant or owner “occupies” a replacement dwelling when the dwelling becomes a permanent place of residence. When a displaced person, for reasons beyond their control, cannot occupy the replacement dwelling within the required 1-year time period, but has entered into a contract for the construction or rehabilitation of the dwelling, then the displaced person is considered to have purchased and occupied a replacement dwelling as of the date of the contract. In most cases, housing payments under this condition are deferred until the dwelling is actually occupied. If an individual must have an advance payment for the contractor or materials, this is done on assignment basis only and only after full disclosure and concurrence by the Acquisition Section Manager.

#### 5-5.2.2 Computation Factors: Price Differential

As noted in Section 5-5.2, Item #1, the computation of the price differential uses the lesser of the cost of a comparable replacement dwelling or the cost of the decent, safe and sanitary dwelling actually purchased and occupied by the displaced person. The following will apply:

1. The upper limit of the price differential is based on the cost of a “representative” comparable replacement dwelling and site. This consists of the following:
  - a. If available, at least 3 comparable replacement dwellings are examined and the payment is computed based on the dwelling that is most nearly representative of and equal to or better than the displacement dwelling. If only 1 comparable replacement dwelling is available, the Department may use this dwelling. The Department may make an adjustment to the asking price of any dwelling, if it considers the adjustment justified. An obviously overpriced dwelling may be ignored.
  - b. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of the attribute is subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If a buildable residential lot or an uneconomic remnant remains after a partial taking and the owner of the remaining property refuses to sell the remainder to the State, the fair market value of the remainder may be added to the acquisition costs of the displacement dwelling for purposes of computing the payment.

- c. To the extent feasible, comparable replacement dwellings are selected from the neighborhood in which the displacement dwelling is located. If that is not practical, then comparables are found in nearby or similar neighborhoods where housing costs generally are the same or higher.
- d. If the Department refers the displaced person to a comparable and that housing becomes unavailable, the Department will determine a new replacement housing payment maximum based on available housing that is equal to or better than the displacement dwelling and that meets the other comparability requirements.

#### 5-5.2.2.1 Partial Acquisition (Carveout)

Where the acquired dwelling is located on a tract that is larger than normal for residential use in the area, the Department determines the maximum replacement housing payment by establishing the value of the dwelling at the present location on a home site typical in size for the area and deducting this amount from the selling price of a comparable dwelling on a site typical for the area.

#### 5-5.2.2.2 Dwelling on Land with Higher and Better Use

Where a dwelling is located on a tract where the fair market value is established on a higher-and-better-than-residential use, the Department determines the maximum replacement housing payment by subtracting the sum of the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land that represents a tract typical for residential use in the area, from the probable selling price of a comparable replacement dwelling on a tract that is typical in size for residential use in the area.

#### 5-5.2.2.3 Multiple Occupancy of Same Dwelling Unit

If 2 or more occupants (families or individuals) of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of any relocation payment that would have been made if the occupants moved together to a comparable replacement dwelling. This share is housing that is comparable to the quarters that are privately occupied by each occupant, plus the common rooms that were shared with other occupants. The acquisition price used as the basis for replacement housing payment computations is the amount each owner received from the total payment for the property to be acquired.

However, if the Department determines that 2 or more occupants maintained separate households within the same dwelling, these occupants have separate entitlements to relocation payments. Payment may not be made to an occupant who does not relocate into decent, safe and sanitary housing.

#### 5-5.2.2.4 Owner-Occupied Multi-Family Dwellings

The procedure for computing replacement housing payment amounts for owners of multi-family dwellings who occupy a single unit is as follows:

1. Comparability. The comparable dwelling must meet the requirements set forth in Section 5-9.2.
2. Payment Determination. The value of the owner's unit is used in the price differential computation, not the entire fair market value of the subject property. The payment is the difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property. If the comparable is a duplex, the replacement housing payment is based on 1 of the 2 units. If a single-family dwelling, the payment is based on the entire value of the dwelling. The other living units in a multi-family dwelling are not included in the computation.

#### 5-5.2.2.5 Type of Dwelling Used as Comparable

The comparable dwelling should be the same type of dwelling as the one acquired. If the acquired property is a triplex, then the comparable should be a triplex. If a comparable is not available, then a structure of the next lowest density, that is, a duplex, must be used. If no available comparable multi-family structures can be found, then the comparison of the owner's living unit is to a single-family residence. Do not use a higher density structure as a comparable.

#### 5-5.2.2.6 Joint Residential and Business Use

Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm, ranch or nonprofit organization, these individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

#### 5-5.2.2.7 Payment to Occupant with a Partial Ownership

When some of the owners of a single-family dwelling do not occupy that dwelling, the replacement housing payment is the lesser of:

- the difference between the owner-occupant's (or occupants') share of the acquired dwelling and the actual cost of the replacement dwelling they purchase;
- the difference between the total acquisition cost of the acquired dwelling and the amount determined by the Department as necessary to purchase a comparable dwelling;
- a rent supplement payment in accordance with the provisions of Section 5-5.3, if the displaced owner-occupants rent and occupy a decent, safe and sanitary dwelling instead of purchasing; or
- last resort housing, at the Department's discretion, if the application of this procedure, because of unusual circumstances, creates an undue hardship on the occupant(s) with a partial ownership.

#### 5-5.2.2.8 Owner Retention

An owner has the option of retaining the dwelling and moving it to a new replacement site. Under this option, the payment, if any, is the amount by which the cost to relocate the retained dwelling exceeds the acquisition price of the dwelling and site. Application for payment using this option may be filed using Form 389. Eligible costs to relocate the retained dwelling will be incurred for the following activities:

1. Acquire the new site, the cost of which should not exceed the cost of an available suitable replacement site. If the displaced person is relocating the dwelling onto the remainder or to a residential lot previously owned, the applicable land cost is current fair market value.
2. Pay the salvage price to the State for retaining the dwelling.
3. Move the dwelling.
4. Restore the dwelling to a condition comparable to that before the move.
5. Landscape the new site.
6. Correct any decent, safe and sanitary deficiencies.

Payment under this method may not exceed the amount necessary to obtain a comparable replacement dwelling.

#### 5-5.2.2.9 Ownership of Replacement Dwelling Prior to Displacement

Any person who has legal ownership of a replacement dwelling or of land on which his or her replacement dwelling is constructed, either before or after displacement, and who occupies the replacement dwelling after being displaced and within the 1-year established eligibility date, is eligible for replacement housing payments if the replacement dwelling is decent, safe and sanitary. The current fair market value of the land and dwelling constitutes the “actual cost” in determining the replacement housing payment.

#### 5-5.2.2.10 Alternate Method for Computing Replacement Housing Payments

In some rural areas, it may not be possible to establish the price of comparable housing by the use of existing comparable houses that are decent, safe and sanitary. When this situation occurs, the amount of the replacement housing payment may be determined by estimating the price of a new comparable decent, safe and sanitary dwelling on a comparable rural home site. This may include mobile homes or pre-built or modular homes. Other methods of determining the probable selling price of comparable dwellings may also be developed.

#### 5-5.2.2.11 Previous Payment

If the displaced person has previously received a rental assistance payment and subsequently decides to purchase a dwelling, the amount received as the rental payment must be deducted from the amount necessary for the purchase of the replacement dwelling.

#### 5-5.2.2.12 Advance Payment Documentation

Requests for advance payments for purchasing a replacement dwelling are not approved unless they are accompanied by a contract for purchase. Assignment of a portion or all of the supplemental housing payment also must be made to the grantor, realtor, contractor or other parties eligible to receive the payments. If the payee wishes to have any monies paid to other individuals, this must be done by assignment on the

regular department claim form. The Department will not make an advance supplemental housing payment directly to the displaced person.

#### 5-5.2.2.13 Replacement Housing Payments in Condemnation Cases

An eligible displaced person whose property is in condemnation proceedings may receive a replacement housing payment before the final adjudication of those proceedings. An application may be filed using Form 356. The Department bases the payment on the State's offer for the property. The eligible owner-occupant may receive this payment if they agree to the following:

1. On final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court, as compared to the actual price paid or the amount determined by the Department as necessary to acquire a comparable decent, safe and sanitary dwelling.
2. If the amount awarded by the court as fair market value of the property plus the amount of the provisional replacement housing payment exceeds the lesser of the price paid for or the Department's determined cost of a comparable dwelling, the displaced person will refund to the Department an amount equal to that of the excess. However, the displaced person will not be required to refund more than the amount of the advanced replacement housing payment.
3. If the court does not or will not separate the value of the dwelling from other damages in condemnation proceedings, the payment will be determined by relating the market value of the dwelling established in the appraisal for the property to the maximum amount of the offer to acquire the property. The comparison will establish the percentage of value the dwelling contributes to the value of the whole property being acquired. This same percentage factor will be used to establish the value of the acquired dwelling when this value is not determined by the court and the court award exceeds the amount of the fair market value offered at the time of acquisition. Each parcel must be considered on an individual basis.
4. After notice is received of the final award or the amount of a stipulated legal settlement of a parcel, the Department will re-compute the supplemental housing payment and inform the displaced person of the new amount, if there is any change from the original computations.

When the displaced person refuses to communicate, the Acquisition Section Manager will confer with the Department's attorney handling the condemnation case to obtain approval to explain the available relocation assistance to the displaced person's representative. It is stressed that supplemental housing payments are based on the final acquisition price of the parcel. Moving and storage costs are not affected by the acquisition price and are available to the displaced person prior to final judgment or settlement.

### **5-5.2.3 Increased Mortgage Interest Costs**

This payment includes increased interest and other debt service costs and is subject to the following rules. See Figure 5-5A for a sample computation.

#### **5-5.2.3.1 Increased Interest**

In determining the increased interest amount, the following will apply:

1. The payment is the amount that will reduce the mortgage balance on a new mortgage, on the replacement property, to an amount that can be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.
2. The mortgage on the displacement dwelling must have been a valid lien against the dwelling for at least 180 days prior to the initiation of acquisition.
3. The payment is based on the unpaid balance of the mortgage on the displacement dwelling. However, if the new mortgage has a smaller balance, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance that existed 180 days prior to the initiation of acquisition is used or the balance on the date of acquisition, whichever is less.
4. The payment is based on the lesser of the term remaining on the displacement dwelling mortgage or the new mortgage.
5. The interest rate used in computing the payment is the lesser of the rate on the new mortgage or the prevailing interest rate.
6. The displaced person must be notified of the amount of payment as soon as the information needed to compute the increased interest payment is available.

Ensure every effort is made to make the payment available at the time of closing in order to reduce the new mortgage as intended.

Old Mortgage:

Remaining Principal Balance (payoff amount)	\$50,000
Term	174 months
Interest rate (percent)	7%
Monthly Payment (principal and interest)	458.22

New Mortgage:

Principal Balance	\$55,000
Term	20 years
Interest rate (percent)	10%
Points	3%

Computation:

Lesser of balance on mortgages at displacement or replacement dwellings	\$50,000
Lesser term of mortgages at displacement or replacement dwellings	174 months
Amount to be financed to maintain monthly payments of \$458.22 for 174 months at 10%	\$42,010.18
Old mortgage balance	\$50,000.00
Minus maintenance mortgage amount	-\$42,010.18
Buydown necessary to maintain monthly payment	\$ 7,989.82
Plus 3% (points) on \$42,010.50	\$ <u>1,260.31</u>
	\$ 9,250.13
Total payment necessary to maintain mortgage payments at \$482.22/month	\$ 9,250.13

If the balance and/or term of the new mortgage are shorter than for the old mortgage, use the balance and/or term for the new mortgage and compute the needed monthly payment.

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.50), the buydown is prorated accordingly. If the actual mortgage obtained in the example was \$35,000, the buydown would be \$7,677.35 (\$35,000 divided by \$42,010.50 = .83; \$9,249.82 x .83 = \$7,677.35). Note that points also would be based on the actual new mortgage amount of \$35,000.

**INCREASED MORTGAGE INTEREST COST  
(Sample Computation)**

**Figure 5-5A**

#### 5-5.2.3.2 Debt Service

In addition to the payment for increased interest, this payment includes reimbursement for loan fees and purchase points to the following extent:

1. They are not paid as incidental expenses.
2. They do not exceed rates typical of similar real estate transactions in the area.
3. They are necessary.
4. The computation of the fees and points is based on the unpaid balance of the mortgage on the displacement dwelling or the mortgage on the replacement dwelling, whichever is less, minus the amount determined for the reduction of the mortgage balance.

#### 5-5.2.4 Incidental Expenses

Incidental expense payments reimburse the owner for actual, reasonable and necessary costs incurred incidental to the purchase of the replacement dwelling. Prepaid expenses are excluded. These costs may include the following items, if normally paid for by the purchaser:

- legal, closing and related costs, including title search, preparation of conveyance contracts, notary fees, surveys, preparation of surveys or plats and charges paid incidental to recording;
- the lender's, Federal Housing Administration (FHA) or Department of Veterans Affairs (VA) appraisal fee;
- the FHA or VA application fee;
- Professional home inspection, certification of structural soundness, and termite inspection.
- a credit report;
- the owner's title policy or abstract of title, but not to exceed the costs for a comparable replacement dwelling;
- escrow fees;

- loan origination fees that do not represent prepaid interest; and
- other items as determined to be reasonable by the Department.

### **5-5.3 Replacement Housing Payment for 180-Day Owner Who Rents**

A displaced 180-day owner-occupant who elects to rent a replacement dwelling is eligible for a rental assistance payment. The amount of rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. Under no circumstances would the rental assistance payment exceed the amount that could have been received had the 180-day homeowner elected to purchase and occupy a comparable replacement dwelling.

### **5-5.4 Replacement Housing Payment for 90-Day Owner Who Purchases**

A displaced 90-day owner-occupant may receive an amount to enable the owner-occupant to make a down payment on the purchase of a replacement dwelling, including reimbursement for actual expenses incidental to the purchase. This amount may not exceed \$5,250. Application for this payment may be filed using Form 386. Additional conditions governing the payment include the following:

1. The amount of the down payment is the amount the person would receive under Section 5-5.6 if the displaced person rented a comparable replacement dwelling. If the calculated payment is equal to or less than \$5,250, the payment will be \$5,250. The full amount of the payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.
2. The payment must be applied to the down payment on the replacement dwelling, including eligible incidental expenses.
3. The down payment and incidental expenses claimed must be shown in the closing statement.

### **5-5.5 Replacement Housing Payment for 90-Day Owner Who Rents**

A displaced 90-day owner who elects to rent a replacement dwelling may be eligible for a rental assistance payment not to exceed \$5,250. This payment is computed and disbursed in accordance with the provisions of Section 5-5.6, except that the base

monthly rental is the economic rent of the acquired dwelling. The economic rent is obtained from the Appraisal Section or the Acquisition Section Manager. Application for this payment may be filed using Form 386.

#### **5-5.6 Replacement Housing Payment for 90-Day Tenant Who Rents**

A displaced tenant is eligible for a rental assistance payment not to exceed \$5,250 when the following conditions are met:

1. The displaced tenant is in occupancy for at least 90 consecutive days immediately prior to the initiation of acquisition for the real property.
2. The displaced tenant rents and occupies a decent, safe and sanitary dwelling within the established 1-year eligibility period.
3. If otherwise eligible, the displaced tenant may receive payment if the Department issues an order to vacate, even though the property eventually is not acquired.

The amount of rent for a comparable replacement dwelling is based on at least 1 comparable rental listing within the project area. If comparable rental listings cannot be found, the Department may use the next highest type of listing (e.g., a 3-bedroom unit when a 2-bedroom unit cannot be found). The payment, not to exceed \$5,250, is computed by:

- subtracting the base monthly rental (see Section 5-5.6.1) from the lesser of:
  - + the rental amount the displaced person actually pays for a replacement dwelling, including utilities; or
  - + the amount determined by the Department as necessary to rent a comparable dwelling, including utilities; and
- multiplying the difference by 42.

If the cost of utilities is included in the monthly rent for the displacement dwelling, it must be included in the rent for the comparable replacement dwelling and vice versa in order to ensure that the computation compares like circumstances.

Application for this payment may be filed using Form 384.

### **5-5.6.1 Base Monthly Rental**

Base monthly rental means the lesser of the following:

1. The average monthly rental and utilities paid by the displaced individual or family for a reasonable period of time prior to displacement. This amount includes any rent supplements supplied by others except when, by law, this supplement is to be discontinued upon vacation of the property.
2. If the displaced person is an owner-occupant or a tenant who pays little or no rent, the average monthly rent is the fair market rent, unless, in the latter case, its use would cause a hardship.
3. Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents.
4. If the displaced person is receiving a welfare assistance payment from a program that designates an amount(s) for shelter and utilities, that designated amount(s).

### **5-5.6.2 Disbursement of Payments**

The Department disburses rental assistance payments in a lump sum unless the Department determines on a case-by-case basis, for good cause, that the payment should be made in installments.

### **5-5.7 Replacement Housing Payment for 90-Day Tenant of Sleeping Room**

A person who is displaced from a sleeping room is eligible for the same payments as a person who is displaced from a conventional dwelling unit. A rental assistance payment for a sleeping room is based on a comparable sleeping room. Payments are filed (Form 384), calculated and processed in the same manner as for a tenant of a conventional replacement dwelling.

### **5-5.8 Replacement Housing Payment for 90-Day Tenant Who Purchases**

A tenant who has occupied a dwelling for not less than 90 days may be eligible for down payment assistance on the purchase of a replacement dwelling. The payment is based on the amount the person would have received if the tenant had rented a comparable dwelling; see Section 5-5.6. If the calculated payment is equal to or less than \$5,250, the payment is \$5,250. The full amount of the payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Application for this payment may be filed using Form 384.

### **5-5.9 Application for Replacement Housing Payments**

The application for replacement housing payments must meet the following:

1. A displaced person may request a replacement housing payment on Form 350. All payment claims must be filed with the Department within 18 months after the date of displacement or the date of final payment for the displacement dwelling, whichever is later. The Department may waive this time period for good cause.
2. In the application, the displaced person must indicate that, to the best of the displaced person's knowledge and belief, the replacement dwelling is decent, safe and sanitary, and, thereby, meets the requirement for a replacement housing payment.
3. All requests for replacement housing payments must include proof of the purchase or rental of a replacement dwelling. If the displaced person purchases a replacement dwelling, this will include a closing statement and a copy of the purchase agreement. For rentals, it may be a rental receipt, a copy of the lease agreement or an assignment of all or a portion of the supplemental rent payment.
4. Payment for replacement housing may be made directly to the displaced person. However, if the displaced person requests, the payment may be made directly to the lessor for rent, to the seller toward purchase of a replacement dwelling or into an escrow account prior to the displaced person's moving.
5. In all cases where the replacement housing payment is made to someone other than the displaced person, the displaced person must make an assignment to that effect on the application form (Form 350).

6. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:
  - a. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
  - b. Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.
  - c. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.
7. If the Department disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant in writing of its determination, the basis for its determination and the procedures for appealing that determination.
8. The Department must review claims in an expeditious manner. The Department promptly notifies the claimant of any additional documentation that it requires to support the claim. The Department makes payment as soon as feasible following receipt of sufficient documentation to support the claim.
9. If a displaced tenant, after moving to a decent, safe and sanitary dwelling, relocates to a higher cost rental unit within the established 1-year eligibility period, the displaced person may present another claim for the amount in excess of what was originally claimed, but not to exceed the total rent supplement computed by the State.

#### **5-5.10 Need for Last Resort Housing**

The Department must provide comparable replacement housing to all displaced persons. When displaced persons do not qualify for replacement housing payments because they do not meet the time-in-occupancy requirements at the displacement dwelling, or because they began occupancy after the start of acquisition (subsequent occupants), last resort housing may be necessary. Section 5-6 discusses last resort housing.

## **5-6 HOUSING OF LAST RESORT**

When the Department is unable to make comparable replacement housing available to a person who is displaced from a dwelling, either through the private market or by using the replacement housing payments and advisory services in this Chapter, the Department must use housing of last resort.

For purposes of last resort housing, the financial means test is whether the replacement dwelling is available for 30% of the displaced person's gross monthly household income, regardless of what was being paid prior to being displaced.

### **5-6.1 Determination to Provide Replacement Housing of Last Resort**

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary payment limits for owners or tenants, the Department will provide additional funds or alternative assistance under the provisions of this Section. Any decision to provide last resort housing assistance must be adequately justified either:

1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
  - the availability of comparable replacement housing in the program or project area,
  - the resources available to provide comparable replacement housing, and
  - the individual circumstances of the displaced person; or
2. By a determination that:
  - there is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;
  - a program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
  - the method selected for providing last resort housing assistance is cost effective, considering all elements that contribute to total program or project costs (e.g., will project delay justify waiting for less expensive comparable replacement housing to become available).

### **5-6.2 Basic Rights of Persons to be Displaced**

Notwithstanding any other provision of this Chapter, no person will be required to move from a displacement dwelling unless comparable replacement housing is available to that person. No person may be deprived of any rights the person may have under the ***Uniform Act***. The Department will not require any displaced person to accept a dwelling it provides under these procedures, unless the Department and the displaced person have entered into a contract to do so, in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

### **5-6.3 Methods of Providing Comparable Replacement Housing**

The Department has broad latitude in implementing last resort housing provisions, but implementation must be for reasonable cost, on a case-by-case basis, unless an exception to case-by-case analysis is justified for an entire project.

The methods of providing replacement housing of last resort include, but are not limited to the following:

- a replacement housing payment in excess of the limits set forth in Section 5-5.6. A rental assistance payment under this section may be provided in a lump sum or installments, at the Department's discretion;
- rehabilitation of and/or additions to an existing replacement dwelling;
- the construction of a new replacement dwelling;
- the provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free;
- the relocation and, if necessary, rehabilitation of a dwelling;
- the purchase of land and/or a replacement dwelling by the Department and subsequent sale or lease to or exchange with a displaced person;
- the removal of barriers to the disabled; and
- the change in status of the displaced person, with their concurrence, from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

Under special circumstances, consistent with the definition of a comparable replacement dwelling, the Department may use modified methods of providing replacement housing based on space and physical characteristics that are different from those in the displacement dwelling. These may include upgraded but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families who were displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, will a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with Section 5-9.

In any case where the Department determines that there is a hardship to the displaced person, the Department may incorporate any reasonable and necessary remedy to effect a humane relocation.

#### **5-6.4 Increased Interest Payments — Last Resort Housing**

Under last resort housing, the Department may use the buy-down method for determining the amount of the interest differential; see Section 5-5.2.3.1.

## 5-7 MOBILE HOMES

### 5-7.1 General

The term *mobile home* includes manufactured homes and recreational vehicles used as residences.

A displaced person who owns and/or occupies a mobile home within the project may be eligible for a payment for moving and related costs and a replacement housing payment, as discussed below. When the Department determines that a partial taking of a mobile home park causes the operator to move the business or go out of business, the owners and/or occupants of the mobile home dwellings not within the actual taking, but forced to move, are displaced persons.

The following apply to mobile homes:

1. Special Characteristics of Mobile Homes. Mobile homes differ from conventional dwellings in several ways that impact the relocation program:
  - a. First, mobile homes may be either realty or personalty. Thus, unlike a conventional dwelling, the Department must decide whether to move the dwelling (i.e., the mobile home itself) or to acquire it. Typically, if the mobile home is realty, it will be acquired; conversely, if it is personalty, it will be moved. Of course, the site always is acquired. It usually is advisable to acquire the mobile home, if practical.
  - b. Second, in a mobile home situation, there is a separation between the dwelling and the site on which it is located. That is, one may own a mobile home but rent the site or vice versa. Therefore, it is useful to think of a mobile home move (and resulting payments) as having 2 parts:
    - 1 for the dwelling, and
    - 1 for the site.
2. Montana Practice. The status of a mobile home as realty or personalty is determined by State law. In Montana, a mobile home may have either status, depending on how permanently it is attached to the ground. The determination of whether a particular mobile home is realty or personalty must be made on a case-by-case basis.
3. Eligible Displaced Persons. As with a conventional dwelling, a tenant, an owner-occupant and a non-occupant owner of the dwelling may be eligible for moving expenses. Only occupants may be eligible for replacement housing payments.

The eligibility requirements and availability of payments are the same for mobile homes as for conventional dwellings, except as provided otherwise in Section 5-7.

## **5-7.2 Displaced Persons Eligible for Moving Expenses**

### **5-7.2.1 Owner-Occupant of Mobile Home**

The displaced owner-occupant of a mobile home that is moved is eligible for actual, reasonable and necessary costs of moving the mobile home and/or other personal property. The Department, at its discretion, may add a reasonable amount for the cost of packing and securing personal property. An owner-occupant who receives a payment for moving the mobile home may not receive a replacement housing payment for the mobile home, but may be eligible for a replacement housing payment for the site.

### **5-7.2.2 Non-Occupant Owner**

A non-occupant owner of a displaced mobile home that is moved is eligible for actual cost reimbursement based on moving cost findings or estimates, a documented self-move or commercial move procedures, because the mobile home is personally used for a business. The owner, a non-occupant, is not eligible for a replacement housing payment.

### **5-7.2.3 Tenants of Mobile Homes**

Tenants who are displaced from a mobile home may elect to be reimbursed for moving their personal property on an actual cost or schedule basis, as with tenants of a conventional dwelling; see Section 5-4.1.

## **5-7.3 Eligible Moving Expenses**

The following is a list of eligible moving and related expenses for mobile homes:

1. These include moving the mobile home and other personal property. Moving expenses are generally limited to an 80-km (50-mile) radius unless the Department determines that a move in excess of 80 km (50 miles) is justified.
2. These include packing, crating, moving, unpacking and uncrating personal property. If the mobile home owner-occupant performs these services, the

Department may, at its discretion, pre-establish a reasonable amount for reimbursement of these expenses instead of requiring documentation. Before approving these costs, the relocation specialist must verify that the Department has a policy in place that includes the necessary and applicable justification to support reimbursement.

3. These include disconnecting and reconnecting household appliances.
4. These include the reasonable cost of disassembling, moving and reassembling any attached appurtenances, including porches, decks, skirting and awnings that were not acquired, plus the cost of leveling the mobile home, anchoring the mobile home and normal utility hook-up charges.
5. These include the cost of repairs or modifications to enable a mobile home, that is considered personalty under State law, to be moved and/or the costs necessary to make the mobile home decent, safe and sanitary, provided that the Department determines the cost to be reasonable and economically feasible.
6. These include the cost of insurance for the replacement value of the mobile home and other personal property during the move.
7. These include the replacement value of the mobile home and other personal property that is lost, stolen or damaged during the moving process, which is not the fault of or due to the negligence of the displaced person, his or her agent or employee(s), when insurance covering loss, theft or damage is not reasonably available.
8. These include a non-returnable mobile home park entrance fee, as part of the moving cost benefit, provided that the fee does not exceed the fee charged at a comparable mobile home park. The Department must also make the determination that payment of the entrance fee is necessary in order to relocate the mobile home.
9. These include transportation costs of mobile home occupants to the replacement site.
10. These include temporary lodging (including meals) for displaced mobile home occupants while a mobile home is being relocated and reestablished at a replacement site. Temporary lodging is to be used only for a short period of time and payment should be based on a determination that the costs involved are reasonable and necessary.

11. These include other related moving expenses that the Department determines to be reasonable and necessary that are not listed as ineligible under the ***Uniform Act***.

#### **5-7.4 Replacement Housing Payments**

##### **5-7.4.1 General Rules**

The following rules apply to mobile homes:

1. The same replacement housing payments (e.g., purchase supplement, rental assistance, down payment assistance) are available to persons who are displaced from mobile homes as for conventional dwellings, depending on their status as owner-occupants or tenants at the displacement location.
2. The occupant's status as an owner or tenant is determined by the displaced person's status in the mobile home, not on the land on which it is located. Thus, an owner-occupant of a mobile home who rents the site is an owner for purposes of replacement housing payment eligibility. A displaced person who owns the site but rents the mobile home is a tenant.
3. The length of ownership and occupancy of the mobile home on the mobile home site will determine the occupant's status as a 180-day owner, a 90-day owner or a tenant.
4. The mobile home must be occupied on the same site, or in the same mobile home park for the required 90 or 180 days prior to acquisition to make the occupant eligible for the appropriate payment limitations — \$5,250 or \$22,500.
5. If the displaced person receives a moving expense payment for moving the mobile home, the displaced person is not eligible for a replacement housing payment for the dwelling part of the move.
6. If the displaced person desires to use the option for changing from owner to tenant or vice versa, the same process used for conventional dwelling units applies to the mobile home and/or mobile home sites.
7. A mobile home may be considered a replacement dwelling provided it substantially meets applicable requirements for decent, safe and sanitary dwellings.

### **5-7.4.2 Replacement Housing Payment: Comparability**

Persons who have been displaced from a mobile home are entitled to the same standards of comparability, see Section 5-9.2, and must meet the same requirements (e.g., decent, safe and sanitary) in the housing to which they move as persons who have been displaced from conventional housing.

When a comparable mobile home is not available, it will be necessary to calculate the replacement housing payment on the basis of the next highest type of dwelling that is available and meets the applicable requirements and standards (i.e., a higher type mobile home or a conventional dwelling).

### **5-7.4.3 Replacement Housing Payment: Basic Approach**

Although the computation for a specific move may become complex, the basic approach is simple. A replacement housing payment for a mobile home move should be thought of as consisting of the following elements:

1. The difference between the price or rental, as appropriate, for the displacement and replacement mobile homes (without the site) is computed in accordance with the same procedures for any other comparable dwelling unit.
2. The difference between the price or rental, as appropriate, for the displacement and replacement mobile home sites (without the dwelling) is computed in accordance with the requirements of comparability.
3. The payment is the sum of the 2 parts computed in Items #1. and 2. above, but cannot exceed the applicable payment maximum of \$5,250 or \$22,500. If the replacement dwelling actually purchased or rented, as appropriate, costs less than the comparable, the actual cost is used in the computation.

As noted above, mobile homes add several factors to those usually involved in computing a payment. These are (1) whether the dwelling will be moved or acquired and (2) the need to compute a separate payment for both the dwelling and the site. These factors are in addition to those present in conventional dwellings (e.g., differing eligibilities for 180-day owner-occupants, 90-day owner-occupants, tenants) and the option to change status from the displacement to the replacement dwelling. The Department must examine these factors and make the associated determinations before it computes a particular replacement housing payment.

#### 5-7.4.4 Payment Computation Examples

Eligible displaced persons, as discussed above, have options. For example, an owner-occupant or tenant may wish to remain in the same status at the replacement location or to change that status. The displaced person may wish to do so at both the dwelling and the site or for only one or the other. The examples that follow attempt to illustrate these possibilities. Using these examples or parts thereof (i.e., for the dwelling or site), it should be possible to construct a computation for most mobile home move situations.

The examples assume that comparability, timing and other requirements are met. Because whether the mobile home is acquired or moved generally determines whether there is a replacement housing payment for the mobile home, the examples have been developed considering these factors. Examples 1–7 deal with situations in which the displacement dwelling is acquired. Examples 8–10 deal with situations in which the dwelling is moved. Finally, there are some situations in which the mobile home cannot be acquired under State law but, for a variety of reasons, also cannot be moved. These situations are discussed and an example is provided (Example 11) in Section 5-7.4.4.5. Of course, the site always will be acquired.

##### 5-7.4.4.1 Basic Computations

The simplest situation is when the displaced occupant either owns or rents both the displacement mobile home and the site and wants to continue the same status at the replacement site. If the displacement mobile home is acquired, the Department computes a purchase supplement or rental assistance payment, as appropriate, for the mobile home and the site. The following examples illustrate a simple replacement of a mobile home:

1. Example 1. 180-day owner-occupant of a dwelling and site retains the same status at the replacement dwelling and site:

Cost of Comparable Mobile Home	\$ 25,000
Acquisition Price of Displacement Mobile Home	\$ <u>20,000</u>
Price Differential	\$ 5,000
Cost of Comparable Mobile Home Site	\$ 5,000
Acquisition Price of Displacement Mobile Home Site	\$ <u>3,000</u>
Price Differential	\$ 2,000
Sum of Price Differentials for Dwelling and Site	\$ 7,000
Interest Differential (assumed)	\$ 1,500

Incidental Expenses	\$ 1,500
Maximum Replacement Housing Payment	\$ 10,000

Note: If the cost of the dwelling or site actually purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly.

2. Example 2. 90-day tenant of a dwelling and site retains the same status at the replacement dwelling and site:

Rent for Comparable Mobile Home	\$ 575/mo.
Rent for Displacement Mobile Home	<u>\$ 500/mo.</u>
Difference	\$ 75/mo.

Rent for Comparable Mobile Home Site	\$ 200/mo.
Rent for Displacement Mobile Home Site	<u>\$ 160/mo.</u>
Difference	\$ 40/mo.

Sum of Differences for Dwelling and Site	\$ 115
Sum of Differences Times 42 Months	\$ 4,830

Maximum Replacement Housing Payment	\$ 4,830
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Note: If the cost of the dwelling or site actually rented and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly. Note also that the owner of the dwelling receives an acquisition price based on the fair market value of the dwelling and site – compare with Example 9.

3. Example 3. In Examples 1 and 2, if the replacement mobile home and site are available as a unit (a mobile home on a site), with a combined price or rental, the computation also may be done as a unit instead of as separate computations. This is similar to the computations for conventional dwellings found at Sections 5-5.2 and 5-5.6.

#### 5-7.4.4.2 Change in Owner/Tenant Status

If the displacement mobile home is acquired, but the displaced person wants to change status (owner to tenant or vice versa) at either or both the dwelling or site, the payment is computed based on the status at the displacement location, the payments to which

that status entitles the displaced person and the status the person chooses at the replacement location. See following examples for computations of status changes:

1. Example 4. 180-day owner-occupant of a dwelling and site rents a replacement mobile home and site. Because there was no rent actually paid at the displacement dwelling and site, an economic rent is used.

Rent for Comparable Mobile Home	\$ 575/mo.
Economic Rent for Displacement Mobile Home	<u>\$ 525/mo.</u>
Difference	\$ 50/mo.
Rent for Comparable Mobile Home Site	\$ 200/mo.
Economic Rent for Displacement Mobile Home Site	<u>\$ 180/mo.</u>
Difference	\$ 20/mo.
Sum of Differences for Dwelling and Site	\$ 70
Sum of Differences Times 42 Months	\$ 2,940
Maximum Replacement Housing Payment	\$ 2,940

Note: If the cost of the dwelling or site actually rented and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly. Also note that the economic rent is determined by the Appraisal Section or the Acquisition Section Manager.

2. Example 5. 90-day tenant of a dwelling and site purchases a replacement mobile home and site:

Rent for Comparable Mobile Home	\$ 575/mo.
Rent for Displacement Mobile Home	<u>\$ 525/mo.</u>
Difference	\$ 50/mo.
Rent for Comparable Mobile Home Site	\$ 200/mo.
Rent for Displacement Mobile Home Site	<u>\$ 180/mo.</u>
Difference	\$ 20/mo.
Sum of Differences for Dwelling and Site	\$ 70
Sum of Differences Times 42 Months	\$ 2,940
Maximum Available for Down Payment Assistance	\$ 2,940

Note: The entire amount available must be applied to the mortgage and related incidental expenses.

#### 5-7.4.4.3 No Site Available

Sometimes, a mobile home physically can be moved, but there is no comparable mobile home site available. In these cases, if the mobile home can be acquired under State law, the Department will do so and will compute the payment using a conventional dwelling; see Example 11 for the acquisition price of the displacement dwelling when a mobile home cannot be acquired under State law. The following examples illustrate where no site is available:

1. Example 6. For a 180-day owner-occupant of a dwelling and site who retains the same status at the replacement dwelling and site, the computation using a conventional dwelling is as follows:

Cost of Comparable: Conventional Dwelling	\$ 35,000
Acquisition Price of Displacement Mobile Home and Site	<u>\$ 20,000</u>
Price Differential	\$ 15,000
Interest Differential (assumed)	\$ 1,500
Incidental Expenses	\$ 1,500
Maximum Replacement Housing Payment	\$ 18,000

Note: If the cost of the conventional dwelling actually purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly.

2. Example 7. Same as Example 6, but for a 90-day tenant of a dwelling and site who retains the same status at the replacement dwelling and site. No comparable mobile home and site are available, so a conventional dwelling is used.

Rent for Comparable: Conventional Dwelling	\$ 500/mo.
Rent for Displacement Mobile Home	\$ 350/mo.
Rent for Displacement Mobile Home Site	<u>\$ 100/mo.</u>
Total Rent for Displacement Mobile Home and Site	\$ 450/mo.
Difference	\$ 50/mo.

Difference times 42 months	\$	2,100
Maximum Replacement Housing Payment	\$	2,100

Note: If the cost of the conventional dwelling actually rented and occupied is less than the comparable, the difference and, hence, the payment are reduced accordingly.

#### 5-7.4.4.4 Mobile Homes that Are Moved

Examples 8, 9 and 10 deal with situations in which the mobile home is moved rather than acquired. For owner-occupants, this means that there will be no replacement housing payment for the dwelling only one for the site. However, a moving expense payment will be made; see Section 5-7.2.1. Tenants will also still be eligible for replacement housing payments for both the dwelling and the site. The following examples apply to mobile homes that are moved:

1. Example 8. 180-day owner-occupant of a dwelling and site retains the same status by moving the displacement mobile home to a replacement site:

Cost of Comparable Mobile Home Site	\$	5,000
Acquisition Price of Displacement Site	\$	<u>4,000</u>
Price Differential	\$	1,000
Interest Differential (assumed)	\$	1,000
Incidental Expenses	\$	1,500
Sum of Price Differential, Interest Differential and Incidental Expenses	\$	3,500
Maximum Replacement Housing Payment	\$	3,500

Note: If the cost of the site actually purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly. Also note that there is no replacement housing payment for the dwelling portion of the move because the dwelling is moved and the owner receives a moving expenses payment for the cost of the move.

2. Example 9. 90-day tenant of a dwelling and site retains the same status at the replacement dwelling and site. The computation is the same as in Example 2, but the owner receives an acquisition price for the site only and a moving expense payment for moving the mobile home.

3. Example 10. 180-day owner-occupant of a dwelling and site retains the same status by moving the displacement mobile home to a replacement site. However, the mobile home needs repairs or modifications to be decent, safe and sanitary at the replacement site.

Cost of Comparable Mobile Home Site	\$	5,000
Acquisition Price of Displacement Site	\$	<u>4,000</u>
Price Differential	\$	1,000
Cost of Repairs Necessary to Make the Mobile Home Decent, Safe and Sanitary	\$	2,500
Interest Differential (assumed)	\$	1,000
Incidental Expenses	\$	1,500
Sum of Price Differential, Cost of Repairs, Interest Differential and Incidental Expenses	\$	6,000
Maximum Replacement Housing Payment	\$	6,000

Note: If the cost of the site actually purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly. Also note that there is no replacement housing payment for the dwelling portion of the move because the dwelling is moved and the owner receives a moving expenses payment for the cost of the move.

#### 5-7.4.4.5 Mobile Home Neither Acquired nor Moved

As noted above, there are some situations in which the mobile home cannot be acquired under State law but, for a variety of reasons, also cannot be moved. These situations include those in which the mobile home:

- cannot economically be made decent, safe and sanitary;
- cannot be moved without substantial damage or unreasonable cost;
- cannot be moved because there is no available comparable replacement mobile home site;

- could be moved to a mobile home park but the park requires extensive and uneconomical modifications; or
- does not meet mobile home park entrance requirements.

In these situations, the trade-in value or salvage value of the mobile home, whichever is higher, is used as the acquisition cost of the mobile home in computing the replacement housing payment. However, in these instances, title to the mobile home does not pass to the Department and the owner is responsible for moving it off the project site.

Example 11. 180-day owner-occupant of a dwelling and site retains the same status at the replacement dwelling and site. The mobile home physically cannot be moved without substantial damage or unreasonable cost, but cannot be acquired under State law. The acquisition cost of the displacement dwelling used for computing a replacement housing payment is the trade-in value or salvage value of the mobile home, whichever is greater, as determined by the Department.

Cost of Comparable Mobile Home	\$ 22,000
Salvage or Trade-in Value of Displacement Mobile Home (whichever is greater)	<u>\$ 5,000</u>
Price Differential (mobile home)	\$ 17,000
Cost of Comparable Mobile Home Site	\$ 5,000
Acquisition Price of Displacement Site	<u>\$ 4,000</u>
Price Differential (site)	\$ 1,000
Interest Differential (assumed)	\$ - 0 -
Incidental Expenses	\$ 1,500
Maximum Replacement Housing Payment (sum of price differential for mobile home and site plus increased interest and incidental expenses)	\$ 19,500

Note: If the cost of the mobile home actually purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly.

## **5-8 RELOCATION ADMINISTRATIVE PROCEDURES**

A number of administrative requirements and procedures not discussed in previous Sections apply to the relocation program on a general basis. This Section discusses those requirements or procedures, including appeals and contract procedures. Also see the definitions in Section 5-9 for terms that are important to the conduct of the relocation program.

### **5-8.1 Appeals**

The following activities apply to appeals:

1. A displaced individual, family, business, farm, ranch or nonprofit organization has the right of appeal on any matter regarding relocation assistance payments, eligibility and other services for which the displaced person is eligible.
2. The time limit for filing an appeal is 60 days after the person receives written notification of the Department's determination on the person's claim.
3. A person has the right to be represented by legal counsel or other representative in connection with their appeal, but solely at the person's own expense.
4. The Department permits a person to inspect and copy all materials pertinent to their appeal, except materials that are classified as confidential by the Department and are consistent with applicable laws.
5. The Department official conducting the appeal hearing will be either the Director, Montana Department of Transportation or an authorized designee.
6. Give consideration to the location of the appeal hearing. In order to alleviate undue financial hardship on the person requesting an appeal, schedule the formal hearing at a location that is convenient to the appellant.
7. The Department determination is made promptly after receipt of all the information submitted by the appellant. The determination must be in writing, including the basis on which the decision was made. The Department furnishes a copy of the decision to the appellant.
8. If the full relief requested by the appellant is not granted, the Department advises the person of their right to seek judicial review of the Agency decision.

### **5-8.2 Contract Procedures**

The Department normally maintains an established organization that is adequately staffed and equipped with qualified personnel to administer the relocation assistance services and payments required by this Chapter. From time to time, the Department may contract with consultants to perform relocation assistance services and payments as required by the ***Right-of-Way Operations Manual***. When this occurs, the Department is the lead agency and the Department Acquisition Section Manager monitors the activities conducted by the consultant. The consultant is required to perform the following activities:

1. Submit any necessary plan prior to initiation of acquisition.
2. Submit all completed original forms as required in the ***Right-of-Way Operations Manual***. The Acquisition Section Manager audits and approves all documents for accuracy and appropriateness.
3. Complete histories of all contacts with displaced persons and others relevant to the displacement.
4. Provide any supporting documentation as requested by the Department in a timely manner.

## 5-9 DEFINITIONS

### 5-9.1 Sources

The primary sources for definitions of the terms used in this Chapter are Section 213 of the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** [Public Law 91-646, 84 Stat. 1894 (42 ***USC*** 4601 et. seq.)], as amended and the implementing Federal regulations found at 49 ***CFR*** Part 24. ***Uniform Act*** definitions are found at 49 ***CFR*** 24.2, except for the discussion concerning “Appeals,” which is found at 24.10. In addition, several terms incorporate concepts specific to the Department’s relocation program and derive from the ***Montana Code Annotated*** 70-31-102 and the ***Administrative Rules of Montana***. The definitions are arranged alphabetically.

### 5-9.2 Definitions

When used in this ***Manual***, words and terms have the following meanings:

1. Acquired. The time the State obtains legal possession of the real property.
2. Acquiring Agency. The Montana Department of Transportation (the Department).
3. Alien Not Lawfully Present in the United States. (1) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the ***Immigration and Nationality Act*** and whose stay in the United States has not been authorized by the U.S. Attorney General and (2) an alien present in the United States after the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.
4. Business. Any lawful activity, except a ranch or farm operation, conducted:
  - primarily for the purchase, sale, lease and/or rental of personal and/or real property and/or for the manufacture, processing and/or marketing of products, commodities and/or any other personal property;
  - primarily for the sale of services to the public;
  - primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

- by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.
5. Citizen. Includes both citizens of the United States and non-citizen nationals.
  6. Comparable Replacement Dwelling. A dwelling that meets the following criteria:
    - a. Decent, safe and sanitary, as described in Item #9 and documented using Form 355.
    - b. Functionally equivalent to the displacement dwelling with particular attention given to function, utility and capability of contributing to a comparable style of living. Although a comparable replacement need not possess every feature of the displacement dwelling, the principal features must be present. The Department may consider reasonable tradeoffs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.
    - c. Located in an area that is not subject to unreasonable adverse environmental conditions and generally not less desirable than the location of the displacement dwelling with regard to public utilities and commercial and public facilities. The replacement dwelling also must be located in an area that is reasonably accessible to the displaced person’s place of employment.
    - d. Located on a site that is of typical size for residential development, containing normal site improvements, including customary landscaping. The replacement site need not include special improvements (e.g., outbuildings, swimming pools, greenhouses) also referred to as “major exterior attributes/appurtenances.”
    - e. Currently available to the displaced person on the private market. However, a comparable dwelling for a person receiving government housing assistance before displacement may reflect similar assistance.
      - 1) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

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- f. Within the financial means of the displaced person. Financial means is defined as follows:
- 1) Owner-occupant of 180 days or more — a replacement dwelling is considered to be within the owner-occupant's financial means if the full amount of the purchase supplement, plus any amount required to be paid under replacement housing of last resort, is paid to the displaced owner-occupant.
  - 2) Tenant-occupant or owner-occupant of 90 days or more — a replacement rental dwelling is considered to be within the tenant-occupant or owner-occupant financial means if the monthly rent including utilities at the replacement dwelling does not exceed the person's base monthly rental, see Section 5-5.6.1, plus the amount of the rental assistance payment that the displaced person is eligible to receive.
  - 3) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling that exceeds 30% of the person's gross monthly household income (but only for displaced persons who qualify as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits) or if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Rental assistance must be paid under Section 5-6.
- g. Adequate in size to accommodate the occupants.
- 1) The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies.
7. Consultant. Any individual, firm, association or corporation contracting with the Montana Department of Transportation to perform relocation activities.

8. Contributes Materially. A business or farm operation contributes materially to its operator's income if, during the 2 taxable years prior to the taxable year in which displacement occurs or during another period determined to be more equitable, it:
- had annual gross receipts of at least \$5,000;
  - had annual net earning of at least \$1,000; or
  - contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.

9. Decent, Safe and Sanitary Housing. A dwelling that meets all of the following minimum requirements:
- a. Conforms to State and local housing codes and ordinances and conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.
  - b. Where there are no local housing and occupancy codes, as in rural areas or small towns or where local occupancy codes are less stringent than **Uniform Act** requirements, then the **Uniform Act** requirements will apply. Following is a summary of the minimum requirements of the Department of Social Services.
    - 1) Water. The unit must have an adequate supply of potable water.
    - 2) Kitchen. The unit must have an area set aside for kitchen use containing a fully usable sink connected to potable hot and cold water and to a sewage drainage system. Adequate space and utility service connections for a stove and refrigerator also must be provided.
    - 3) Heating System. The unit must contain a heating system capable of sustaining a healthful temperature of approximately 20°C (70°F), except in those areas where local climatic conditions do not require this type of system.

- 4) Bathroom. The unit must have a separate, well-lighted and ventilated bathroom affording privacy to the user, containing a sink, bathtub or shower stall and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- 5) Electric System. The unit must have an adequate and safe electrical wiring system for lighting and other electrical services.
- 6) Structurally Sound. The unit must be structurally sound, weather-tight and in good repair.
- 7) Egress. The replacement dwelling will have a safe, unobstructed means of egress to safe, open space at ground level. If the replacement dwelling unit is located on the second story of a building or above, it must have access directly from or through a common corridor and the common corridor must have at least 2 means of egress. The dwelling unit also must be free of any barriers that may prevent reasonable ingress, egress or use by a displaced person who is disabled.
- 8) Adequate in Size. The replacement dwelling unit must be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person(s).
- 9) Exceptions. In case of extreme hardship or other similar extenuating circumstances beyond the reasonable control of the displaced person, an exception to the decent, safe and sanitary characteristics of replacement housing may be permitted in a particular case with the written concurrence of the Federal Highway Administration. Approved exceptions shall not affect the computation of the replacement housing payment.

10. Displaced Person.

- a. General. Any person who moves from real property or moves personal property from real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements for replacement housing payments; see Section 5-5:

- as a direct result of a written Notice of Intent to Acquire, the initiation of acquisition of, or the acquisition of, such real property, in whole or in part for a project;
  - as a direct result of rehabilitation or demolition for a project; or
  - as a direct result of a written Notice of Intent to Acquire or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operations for a project. However, eligibility for a person under this paragraph applies only for purposes of obtaining relocation assistance advisory service under Section 5-2.3 and moving expenses under Section 5-4.
- b. **Subsequent Occupant.** A person who is not in occupancy at the time of initiation of acquisition or, if applicable, the time the person is given a Notice of Intent to Acquire the real property, but who is in occupancy when the property is acquired and who subsequently moves from the real property. A subsequent occupant is considered to be a displaced person only if the move occurs after the Department gives a written notice to vacate the property.
11. **Dwelling.** The place of permanent or customary and usual residence of a person, according to local customs or laws, including a single-family house; a single-family unit in a two-family, multi-family or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
12. **Dwelling Site.** A land area that is typical in size for similar dwellings located in the same neighborhood or rural area.
13. **Family.** Two or more individuals living together in a single-family dwelling unit who:
- are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or
  - are not related by blood or legal ties but live together by mutual consent.
14. **Farm Operation.** Any activity that is conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for

- sale or home use and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's income.
15. Household income. Total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age.
  16. Initiation of Acquisition. The date of the actual delivery of the Department's written offer, in person or by mail, to the owner of the real property or their designated representative.
    - a. Mail delivery will be by certified mail with return receipt requested for verification of date.
    - b. If the Department issues a written notice of its intent to acquire the real property and a person moves after that notice but before delivery of the initial written purchase offer, the "initiation of acquisition" means the date the person moved from the property.
    - c. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition.
    - d. If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.
  17. Mortgage. Those classes of liens that are commonly given to secure advances on or the unpaid purchase price of real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.
  18. Nonprofit Organization. A corporation, partnership, individual or other public or private entity engaged in a business, professional or instructional activity on a nonprofit basis that is exempt from paying Federal income taxes under Section 501 of the *Internal Revenue Code* (26 USC 501).
  19. Owner of Dwelling. A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

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- a. fee title, a life estate, a 99-year lease, including any options for extension, with at least 50 years to run from the date of acquisition;
  - b. an interest in a cooperative housing project that includes the right to occupy a dwelling;
  - c. a contract to purchase any of the interests or estates described in Items a. or b.; or
  - d. any other interest, including a partial interest, that in the judgment of the acquiring agency warrants consideration as ownership.
20. 180-Day Owner. An occupant who has owned and occupied the dwelling from which they are being displaced for at least 180 consecutive days immediately prior to the initiation of acquisition for the parcel.
21. 90-Day Owner. An occupant who has owned and occupied the dwelling from which they are being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of acquisition for the parcel.
22. Person. An individual, family, partnership, corporation or association.
23. Persons Not Displaced.
- a. General. The following conditions apply:
    - 1) A person who moves before the initiation of acquisition unless the Department determines that the person was displaced as a direct result of the project or program.
    - 2) A person who initially enters into occupancy of the property after the date of its acquisition.
    - 3) A person who has occupied the property for the purpose of obtaining assistance under the **Uniform Act**.
    - 4) A person who is not required to relocate permanently as a direct result of a project. This determination will be made by the Department in accordance with the **Uniform Act**.
  - b. Voluntary Move. An owner-occupant who moves as a result of a voluntary transaction that meets the following conditions:

- 1) No specific site or property needs to be acquired.
  - 2) 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 is to be acquired within a specific time limit.
  - 3) The Department will not acquire the property in the event there fails to be an amicable agreement and the owner is so informed in writing.
  - 4) The Department will inform the owner of what it believes to be the fair market value of the property.
- c. Involuntary Move. An owner-occupant who moves as a result of an acquisition undertaken by the Department or person that receives Federal financial assistance but does not have authority to acquire the property by eminent domain, provided that the Department or person does the following prior to making an offer for property:
- 1) Clearly advise the owner that it is unable to acquire the property in the event there fails to be an amicable agreement.
  - 2) Inform the owner of what it believes to be fair market value of the property.
  - 3) However, the displacement of the tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally assisted project is subject to this part.
- d. Rehabilitation or Demolition. An owner-occupant who moves as a result of the rehabilitation or demolition of the real property,
- e. Partial Acquisition. A person who the Department determines is not displaced as a direct result of a partial acquisition.
- f. Change in Relocation Eligibility. A person who, after receiving a notice of relocation eligibility, is notified in writing that they will not be displaced for a project. This notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.

- g. **Retaining Use for Life.** A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department.
  - h. **Retaining Use for Fixed Time.** A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303.
  - i. **Unlawful Occupancy.** A person who is determined to be in unlawful occupancy (see Item #26) prior to the initiation of acquisition or a person who has been evicted for cause as provided for under State and local laws; see Section 5-3.6.
  - j. **Illegal Alien.** A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Section 5-3.8.
24. **Salvage Value.** The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.
25. **Small Business.** A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of nonresidential reestablishment expenses.
26. **Tenant.** A person who has temporary use and occupancy of property owned by another.
27. **Uniform Act.** The ***Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970*** (84 Stat. 1894; 42 **USC** 4601 et seq.; Public Law 91-646) and amendments thereto.
28. **Unlawful Occupancy.** A person who occupies without property right, title or payment of rent or a person legally convicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

29. Utility Costs. Expenses for electricity, gas, other heating and cooking fuels, water and sewer.

**5-10 REFERENCES**

1. ***Administrative Rules of Montana.***
2. ***Code of Federal Regulations, 23 CFR Part 710, Right-of-Way and Real Estate.***
3. ***Federal Register, 64 FR 7127 – 7133 (February 12, 1999), Rules and Regulations: Aliens Not Lawfully Present in the United States.***
4. ***Illegal Aliens and the Uniform Act: Questions and Answers***, Federal Highway Administration, Office of Real Estate Services (August 5, 1999).
5. ***Montana Code Annotated, 70-31-101 through 106, Relocation Assistance Fair Treatment of Condemnees, General Provisions.***
6. ***Montana Code Annotated, 70-31-301 through 311, Rights and Duties Relating to Condemnation.***
7. ***“Your Rights and Benefits as a Displaced Person,” Montana Department of Transportation, July 1997.***
8. ***Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*** [Public Law 91-646, 84 Stat. 1894], 42 ***United States Code*** 4601 et. seq., as amended.
9. ***Code of Federal Regulations, 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.***