

# Top Eleven Facts about Relocating a Business



Some agencies avoid projects that may require relocation of a business. Understanding the key issues and steps will help an agency take on such a project and be successful.

**1. There are Federal regulations governing the relocation of a business, nonprofit organization or farm operation.**

The regulations governing relocation of a business, nonprofit organization or farm operation can be found in 49 CFR Part 24, and those issues specifically related to moving and related expenses can be found at 49 CFR 24.301-306.

**2. Timing is everything!**

Early coordination and communication with businesses, nonprofit organizations or farms which will be displaced is essential. The URA regulations also require a personal interview with each business, farm or nonprofit organization to be displaced. The minimum interview requirements are described in 49 CFR 24.205(c)(2)(i). While there are statutory and regulatory requirements for officially notifying owners and occupants, the more time, information and notice provided to the occupants the more successful the relocation will be. Remember, in some states with sunshine laws<sup>1</sup>, discussion of the project may find its way into the newspaper quickly, even before the agency is prepared to issue formal notices. The business operator should hear about it from the agency first, if possible, through informal meetings or other contact. The formal noticing requirements are:

**a. General Information Notice (GIN)**

This advisory notice should be provided as early as possible in the process; if an agency has applied for HUD project funding, the GIN should be issued at the time of application. A GIN informs the person that they may be displaced by the project and also cautions them not to move prior to receiving a notice of relocation eligibility or they may risk potential eligibility for relocation assistance and payments. The GIN should generally describe the types of relocation payments the person may be eligible for, the availability of relocation advisory services and rights of appeal. The GIN should also state that a 90-day notice must be provided in advance of the move. The HUD Booklet "Relocation Assistance to Displaced Businesses, Nonprofit Organization and Farms" should be provided with the GIN.

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<sup>1</sup> Sunshine laws are U.S. federal and state laws requiring regulatory authorities' meetings, decisions and records to be made available to the public. The requirements under sunshine laws vary from state to state.

b. Notice of Eligibility for Relocation Assistance

This notice is provided at the time of the "Initiation of Negotiations" (ION) and informs the person that they will be displaced and are eligible for relocation assistance and payments. Relocation eligibility is effective on the date of ION. ION is generally the date the written offer to purchase the property is presented, to the owner, but it can be defined differently depending on the displacing activity (acquisition, rehabilitation, demolition) and project specifics. A variety of ION definitions may be found in the URA regulations, but agencies must also check applicable program regulations in order to determine the appropriate definition of ION to be used for the project. Procedures for obtaining assistance and the person's estimated relocation payment amounts should be stated in this notice.

c. Ninety-Day Notice

This notice provides at least 90 days in advance of the earliest date by which the person is required to move. The notice must either state the specific date by which the property must be vacated, or specify the earliest date by which the occupant will be required to move and state that the occupant will receive a vacate notice at least 30 days in advance of the move.

**3. Specific Procedures for Delivering Notices (49 CFR 24.5)**

To ensure that the business, nonprofit or farm receives each notice, the agency is required to personally serve or send each notice by certified or registered first-class mail, with return receipt requested. Each notice should be written in plain English and persons unable to read and/or understand the notice must be provided with appropriate translation/communication, such as sign language, interpreter or reader.

**4. Eligible moving costs for displaced businesses, nonprofit organizations or farms [49 CFR 24.301(g)(1)-(7), (g) (11)-(18), and 24.303]. Some of these costs include, but are not limited to the following:**

- a. Transportation of personal property
- b. Packing, crating, uncrating and unpacking of personal property
- c. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property and installing substitute personal property, including connection to utilities
- d. Storage of personal property for up to one year (or longer if necessary)
- e. Insurance for the replacement value of personal property
- f. Replacement value of property lost, stolen or damaged in the process of moving, where insurance covering the loss is not reasonably available
- g. Licenses, permits or certifications for the replacement location

- h. Professional services, to include planning, moving and reinstalling the personal property
- i. Re-lettering signs and replacing stationery
- j. Actual direct loss of tangible personal property as a result of moving or discontinuing the business, nonprofit organization or farm
- k. Reasonable costs for selling items not being relocated
- l. Purchase of substitute personal property
- m. Searching for a replacement location not to exceed \$2,500, including:
  - 1. Transportation
  - 2. Meals and lodging away from home
  - 3. Time spent searching
  - 4. Fees paid to a real estate agent or broker
  - 5. Time spent obtaining permits
  - 6. Time spent negotiating the purchase of a replacement site

**5. Some costs for moving and reestablishing a business, nonprofit organization or farm are not eligible for reimbursement (49 CFR 24.301(h)). Some of these costs include, but are not limited to the following:**

- a. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership
- b. Interest on a loan to cover any costs of moving or reestablishment expenses
- c. Loss of goodwill
- d. Loss of profits
- e. Loss of trained employees
- f. Additional operating expenses incurred because of operating in a new location (except as described in 7. below)
- g. Personal injury
- h. Legal or other fees for preparing a relocation claim
- i. Expenses associated with finding a replacement dwelling
- j. Physical changes to the replacement property (except as described in 7. below)
- k. Costs for storage of personal property on real property owned or leased by the displaced person
- l. Refundable security and utility deposits

**6. Other related moving expenses may be available to a business, farm, or nonprofit organization that has to relocate (49 CFR 24.303):**

- a. Connection to nearby utilities from the right-of-way to improvements at the new site
- b. Professional services performed prior to the lease or purchase of the replacement property to determine its suitability for the business (including soil tests and marketing studies)
- c. Impact fees or other one time assessments for anticipated heavy utility usage

**7. There are relocation payments for reestablishing a small business, farm, or nonprofit (49 CFR 24.304):**

Although a business is eligible for reimbursement of actual eligible costs of relocating the business, there is a maximum payment of up to \$10,000 for reestablishing a small business, non-profit organization or farm at another location. Eligible expenses include, but are not limited to:

- Repairs or improvements to the replacement property as required by code or ordinance;
- Modifications to the property to accommodate the business operation or to make replacement structures suitable for conducting the business;
- Construction and installation costs for exterior signs;
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting;
- Advertisement of the replacement location;
- Estimated increased costs of operation during the first 2 years at the replacement site for items such as:
  - i. Lease or rental charges;
  - ii. Personal or real property taxes;
  - iii. Insurance premiums; and
  - iv. Utility charges, excluding impact fees.
- Other items that the agency determines are essential to the reestablishment of the business.

The following is a nonexclusive list of ineligible reestablishment expenses: [49 CFR 24.304(b)]

- i. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

- ii. Purchase of manufacturing materials, production supplies, product inventory or other items used in course of normal business operations;
- iii. Interest on money borrowed to make the move or purchase the replacement property;
- iv. Payment to a part-time business in the home, which does not contribute materially to the household income.

**8. Fixed Payment Option Available for a Business or Farm (49 CFR 24.305)**

In limited circumstances, a displaced business or a displaced farm operation can opt for a fixed payment, in lieu of, receiving actual moving and reestablishment payments. The displaced business is eligible for the payment if the agency determines that:

- The business owns or rents personal property which must be moved in connection with the displacement and for which an expense would be incurred if the business vacates or relocates from its original site;
- The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings);
- The business is not part of a commercial enterprise having more than 3 other entities which are not being acquired and which are under the same ownership and engage in the same or similar business activities;
- The business is not operated at the displacement site or dwelling solely for the purpose of renting the site or dwelling to others; and
- The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement.

The criteria for fixed payments for a farm being relocated can be found at 49 CFR 305(c).

The fixed payment will be equal to the average annual net earnings (described in 10. below) of the business or the average annual net earnings of the farm operation not to exceed \$20,000 and not less than \$1,000.

**9. Fixed Payment Option Available for a Nonprofit Organization: (49 CFR 25.305(d))**

A displaced nonprofit organization is eligible to choose a fixed payment as an alternative to a payment for actual moving and related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing membership or clientele. To calculate the fixed payment, subtract the administrative costs from the average gross revenue over the last two years. The payment shall not exceed \$20,000 nor be less than \$1,000.

**10. Determining the Average Annual Net Earnings of a Business or Farm: (49 CFR 24.305(e))**

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, state and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. (If the business or farm operation was not in operation for the two full taxable years, project the annual net earnings based on the actual period of operation.) Adjustments are made to account for prior year losses or receipts not earned during the base period.

**11. Temporary Relocation for a Business [49 CFR 24.2(a)(9)(ii)(D) and appendix A]**

Sometimes CDBG projects may require a business to shut down temporarily. For example, some infrastructure projects may require that a street be torn up and businesses may shut down for the duration of the project. Agencies may have to temporarily relocate the business for the period of time that it is unable to operate due to the project. During the project planning process, agencies must attempt to minimize displacement. For example, the agency may choose to redesign the project so that only half of the street is closed at one time so that access to the businesses is not denied and there is no need for the business to shut down. While this approach may extend the length time for the project and increase the direct project costs, it may be less disruptive to the public and the impacted businesses. It may also actually cost less, since there would be no need to reimburse the businesses for temporary or permanent relocation costs.