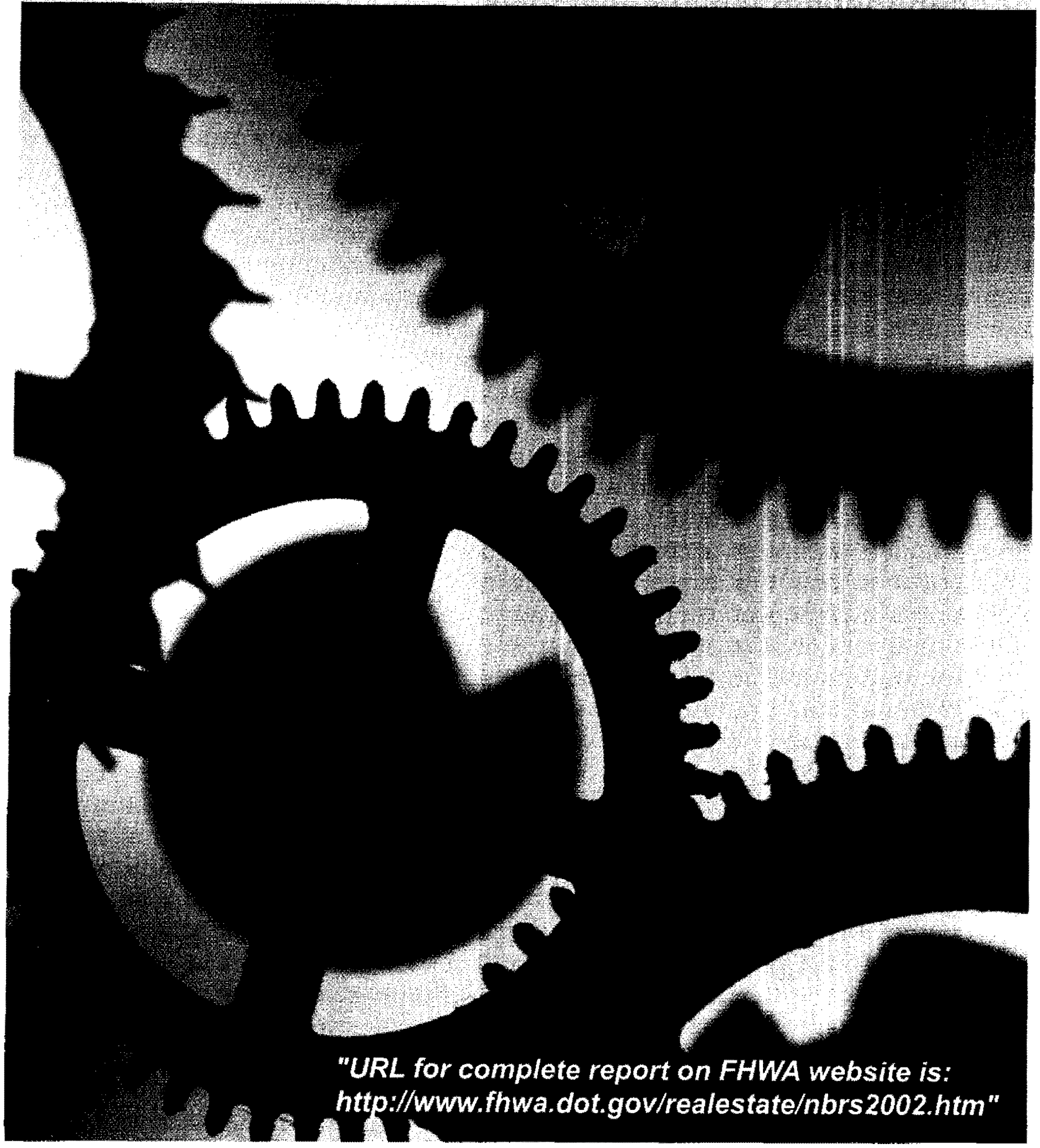
U.S. Department
of Transportation
**Federal Highway
Administration**
Office of Real Estate Services

Relocation Study



April • 2002 *A Report on Business Displacement Caused by Public Projects*

Introduction

In 1999, the various 50 state highway departments estimated that they caused the displacement of over 600 businesses. Add to this number those displaced for airport growth, park expansion, various urban programs, etc., the total is easily over one thousand.

Those charged with the location decisions for public improvements are pressured not to acquire residential property. However, if the improvement is to serve an urban area, then the improvement must affect someone. Often it affects commercial property and the businesses on it. Many of these affected businesses are the smallest of the category we call small business. The typical business displacement has less than 25 employees and is often a one or two person entity.

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This study looked at businesses that had been displaced in the recent past; i.e., they had been through the moving process and were relocated to a new location within the last several years. The study consisted of a non-statistical sampling of these businesses. The information gathering technique was interviews with the business operator.

In addition to the information obtained by sampling displaced businesses, the study sought the input from federal agencies, state DOT's, and various right-of-way professionals engaged in this work. These are the agencies and personnel most familiar with the displacement of businesses and the effect of the displacements.

- ***Each year over a thousand businesses are displaced as a consequence of various public projects.***

- ***The Uniform Act[1] provides financial and other services to these displaced businesses.***

- ***The Federal Highway Administration is the "lead agency" for these activities, and it needs to know how well the law is functioning.***

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1 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, often referred to as "The Uniform Act."

Some Terminology:

- Moving Cost — Payments to transport, pack, insure and reinstall items of personal property. The category also provides for searching for a replacement site and options to abandon or substitute items of personal property.

- Reestablishment Cost — Additional payments to reimburse for certain costs incurred at a replacement business location. These include code modifications to the replacement, advertising, and other benefits for the displaced business.

- Fixed Payment — A lump-sum option for moving cost available to many displaced businesses. It bases the moving cost on the net profit of the business.

- Searching Payment — A moving cost presently limited to $1,000 to reimburse expenses of locating a replacement business location.

- Uniform Act — Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

- Regulations — The Code of Federal Regulations, Title 49 Part 24 (49CFR Part 24).

Background

It is useful to understand the legislative and legal background for the payments and services provided to displaced businesses under the Uniform Act.

For almost forty years, Congress has been aware of the impact of public projects on businesses. In a 1964 report, Congress was informed that approximately 31% of businesses failed after displacement. Reasons for this high failure rate include:

- ***Inadequate financial resources***
- ***Absence of counseling services***
- ***The high cost of reestablishing a business***

The moving provisions only provided for payment for the move of personal property.

The first real improvement was legislated in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (and earlier various agency-specific requirements). This law provided a mandated moving payment for all businesses displaced in public projects.

However, the moving cost provisions of the Uniform Act did not assist in the substantial cost of reestablishing the business. The moving provisions only provided for payment for the move of personal property. Such significant costs as higher lease payments, location studies, and the cost of code-related modifications were not covered by these early moving cost provisions.

The first true relief for the related costs of reestablishing a business came in an amendment to the Uniform Act. The Surface Transportation and

Uniform Relocation Assistance Act of 1987 provided for payment of business costs beyond just moving. The provision was termed "Reestablishment Payments."

However, beginning shortly after the provisions of the 1987 Act were implemented, comments regarding the inadequacy of the payment were expressed. While the payment is certainly beneficial, its ability to meet all of the needs of a business is lacking. The statute limits payments to a maximum of $10,000. In many cases, this amount is inadequate to meet the needs of a displaced business.

Adequacy of the Payment

Any discussion of the adequacy or inadequacy of the reestablishment payment to businesses is complex. The payment actually works well for some very small businesses; however, it significantly fails to meet the needs of a business that is larger or has complex reestablishment issues.

The larger businesses simply have larger requirements and, thus, incur more cost. If rent increases one dollar per square foot for a business renting one thousand square feet, that represents a $1000 increase. However, if the business is leasing large quantities of space, the increased cost is much larger. Another example, if an employee restroom must be modified to meet "Americans with Disabilities Act (ADA)" standards, this cost can consume the entire $10,000 benefit. However, if a business must renovate two or three restroom facilities, its costs increase by that factor.

The issue of businesses with more complex requirements is also varied. Based on discussions with state DOTs and businesses that had actually been relocated, the most difficult situation revolves around those required to meet various health or occupancy codes. For example, a delicatessen might be a tenant in a small shopping plaza. When the retail shopping area is acquired, the tenant will likely receive little or no portion of the proceeds derived from the sale of the real estate. However, the tenant may have made substantial improvements to the property (health code related modifications to flooring and walls, etc.) in order to operate the business. These will have to be duplicated in the next facility and will easily exceed the $10,000 limit.

Defining a Successful Relocation

If we want to know what comprises a successful relocation, then we must define what the expectations for this effort will be. In general, the legislative history would lead one to believe that the expectation was to afford every business the opportunity to continue in their endeavor. The opportunity may or may not be actually realized by a specific business due to the economics of displacement and other internal reasons.

From the perspective of the business, a successful relocation first depends on finding a replacement location that can adequately accommodate the business. This site must be reasonably accessible to the clientele of the business and provide the business an opportunity to retain its employees. When no adequate replacement site is available, the business must then choose between terminating the business or accepting a less than ideal location. This replacement site must also be economically practical. The rents or purchase amounts must be within the ability of the business to pay.

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Finally, the business must successfully move to the new site and do so without undue loss of income. The business must understand the agency's move process, the types of services available, and the types of payments that can be expected. This is an important aspect of the services that should be provided by the displacing entity.

Some businesses may choose to voluntarily terminate. This occurs when a business is marginal or its owner is desirous of ceasing operation. In these instances, a successful relocation entails paying the business to move its personal property and shut down operations.

Other Similar Studies

The State of Virginia undertook a study of business displacements in 1999. The study used a mailed questionnaire and some follow up interviews to determine the satisfaction rate of business owners who had been displaced. The Virginia Study looked at two main issues: reestablishment payments and the fixed payment option.

The Virginia Study found that about half of the contacted businesses had negative comments regarding their relocation experience. Many commented on the inadequacy of payments and poor quality of services offered by the State.

As a part of the Study, the State asked its own employees their opinion of the payment amounts. With rare exceptions, the employees felt the payment amounts were not adequate to afford the businesses a reasonable opportunity to move and reestablish.

The Study recommended an increase in the fixed payment and the reestablishment payment. The Virginia General Assembly ultimately approved a new maximum for a fixed payment at $50,000, and a maximum reestablishment payment of $25,000.

The State DOT feels that these payment enhancements have been beneficial to their program and have resulted in only a small net increase in cost.

Input From Federal Agencies, States, and Right-of-Way Professionals

A questionnaire was provided to solicit comments from various federal agencies engaged in displacement activities. These agencies cause displacement either through their direct work (e.g., General Services Administration) or through grants in aid (e.g., Federal Aviation Administration and Federal Transit Administration.)

The general consensus of the Federal agencies was that the moving cost provisions of the Regulations did an adequate job of compensating for the costs incurred by a displaced business. However, the majority also felt that the Reestablishment provisions needed to increase to better meet the true costs being incurred.

The respondents suggested figures ranging from $15,000 to $100,000 when asked to suggest an adequate payment for these costs.

A survey response was obtained from all fifty state DOTs and the Commonwealth of Puerto Rico. The responses were nearly unanimous in support of the adequacy of moving cost and the categories of eligible moving costs; however, 80% of the states felt the reestablishment payment missed its mark. The respondents suggested figures ranging from $15,000 to $100,000 when asked to suggest an adequate payment for these costs.

The responses obtained from the right-of-way professionals also supported an increase in the reestablishment payment. They suggested that, at a minimum, the payment should be $25,000; and the range included suggestions of a $75,000 payment maximum. This group also suggested an increase for replacement property searching payments, an increase in the fixed ("in-lieu") payment, longer possession periods (more than 90 days), and various other modifications to regulations.

FHWA Rhode Island Pilot Program

The FHWA wanted to try an alternative approach to business relocation payments. The Rhode Island Route I-195 Project lent itself to such a test. It was limited in scope, predominantly commercial displacements, and the State did not have another similar project. Rhode Island and the FHWA agreed on a set of Pilot Program guidelines that in their broadest interpretation resulted in an effective reestablishment payment of $85,000. The Pilot Program also provided for an enhanced replacement property search payment and expanded advisory services.

By most measures, the Pilot Program would be regarded as a success. The displaced business owners acknowledged the benefit, the State felt the program aided their goals, and with minor exceptions, all businesses were successfully relocated.

Interestingly, many business owners still felt advisory services were inadequate, but did acknowledge an attempt was made to provide them assistance. Many businesses commented that their costs still exceeded the program amounts, and they incurred various expenses which were ineligible (e.g., loss of clientele, downtime, loss of trained employees, etc.).

Business Interviews

The FHWA arranged with seven state DOTs to provide a sample list of their business displacements. Additionally, two grant-in-aid recipients also agreed to participate. From these lists, 178 interviews were conducted to obtain information as to the effectiveness of the relocation efforts. The samples and the responses do not represent a scientifically random sample. However, it is reasonable to conclude that with the large number of interviews, the anecdotal information paints a valid picture of the business relocation program.

As would be anticipated, responses obtained from the state samples varied greatly. However, by way of a summary, the responses have been grouped into three major themes:

Advisory Services – These consist of the efforts of the agency to mitigate losses and harm through counseling services. When the displaced business owners were asked about the quality of these services, the overall grade range was poor to excellent. The average grade would likely be fair. Suggestions obtained from the businesses included better training for agency personnel or the hiring of experts to assist the businesses with various provisions of the move.

Reestablishment Expenses – These consist of a series of payments to assist the business in successfully returning to operation. Once again, the sampled responses varied widely; however, it should be kept in mind that some of the sampled states provide for payments greater than those authorized in the federal law. In general, many businesses cited examples of costs which were not paid either because they were ineligible (e.g., downtime) or because the cost exceeded the maximum payment of $10,000. Interviews with terminated businesses indicate high costs continue to be a significant obstacle to remaining in business.

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Search Expenses - These are payments, currently capped at $1000, and are intended to reimburse the business for the cost incurred attempting to obtain a replacement location. The responses obtained from the sampled businesses varied greatly by region and type of business. This would be an expected response since availability of replacement locations is variable and some types of businesses presented more difficult relocation issues. Several businesses indicated more funds were needed to do an adequate job of locating another business location. Also, the overall study supports an adjustment in the amount of this payment and some expansion of the definition of the payment to acknowledge a broader concept of "search" to include activities such as obtaining variances and proper zoning.

Other Report Items

This study also looked at what the states had done independent of the federal government. Certainly, if a state believed various payments were inadequate, the passage of state legislation to cure that inequity would be indicative of the priority they place on the matter. Seven states were examined with various other provisions that augment the federal minimums. For example, Wisconsin and Delaware provided enhanced reestablishment payments that pay greater benefits than the federal provisions. The States of Florida and California pay additional benefits through other mechanisms (i.e., business damages and goodwill). Other states are considering various other expanded benefits. Thus, it seems safe to assume that state governments see shortcomings in the current provisions.

As indicated previously, Virginia has increased both the fixed payment and reestablishment limits.

Recommendations

With any report such as this one, the logical concluding question is "What can be done to address some of the issues raised?" The report offers the following suggestions:

1. Prepare a written business displacement analysis

The variety of businesses displaced—size, activity, locations, etc.—calls for a more flexible answer for relocation issues. If each business were individually examined prior to displacement, these issues could be addressed. Topics might include: 1) how much time after acquisition of the real estate should the business be given to relocate; 2) is outside assistance needed to assist this business in relocating; and 3) does the business need financial assistance to relocate, etc.

2. Increase the amount of the reestablishment payment; add a cost sharing provision

By adjusting the 1987 statutory figure of $10,000 for inflation, the resulting current dollar amount of reestablishment payment would be near $25,000. The report suggests setting this figure as the base amount of reestablishment. The report also suggests a greater figure should be offered subject to a dollar-for-dollar matching between the business and the displacing agency. As suggested in the report, the maximum dollar obligation of the agency would be $100,000 including the base amount of $25,000. This would mean if a business spent $175,000 for reestablishment, they would be reimbursed a base payment of $25,000 plus fifty percent of their remaining cost (50% of $150,000) for a total payment of $100,000. The cost share provision would encourage prudent spending of the benefit by businesses since many of the benefits are controlled entirely by the business.

3. Increase the flexibility of the reestablishment payment

The present regulations, for example, prohibit new construction or payment of financing interest; however, these may be necessary and reasonable costs in a given situation. Therefore, the study suggests added flexibility in these areas by permitting the displacing agency to determine the extent of the reestablishment program.

4. Increase the amount of flexibility of the search payment

In the case of the Rhode Island Pilot Program, an uncapped search payment did not work well. Therefore, the report suggests a modest expansion of the payment but with flexibility to further adjust the amount upward for special situations. The suggested new standard payment would be $2,500.

The use of the payment could also be expanded. This is likely a guidance issue easily addressed by the FHWA in its regulatory supplement. The report suggests including the work to obtain zoning, variances, environmental investigation, and similar activities in the category of searching costs. Any extensive use of this expanded definition of search would require a search payment greater than $2,500.

5. Fixed Payment

The fixed payment was intended to offer small businesses an administratively easy option for claiming moving costs. Adjusting this payment for inflation would indicate approximately a $30,000 maximum payment.

Summary

Are we doing a good job when we displace businesses? Given the current limitations, the states and other agencies are doing the best job that could reasonably be expected. However, like most things, there is room for improvement. Some of this improvement is internal within the displacing organizations (e.g., better staff training) and other is dependent on changes in legislation or regulation (e.g., expanded search services and payments).

These statutory and regulatory improvements will go a long way towards affording every business a reasonable opportunity to relocate. They also will represent a significant step towards the other goals cited in various studies—fairness and mitigation of economic harm.

BUCKLE UP

There's Just Too Much to Lose

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