



# RIGHT-OF-WAY OPERATIONS MANUAL

## Chapter Five Relocation Assistance

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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. 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. Government and private housing programs may be considered as a comparable replacement dwelling option. However, a government housing program may not be considered comparable if the displacee is not currently occupying a government or private housing program. When these payments are not sufficient to provide comparable replacement housing, housing of last resort 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.

References for MDT forms can be located on the MDT Internet:

<https://www.mdt.mt.gov/publications/forms/row-forms.aspx>

## **5-1.2 Planning**

### **5-1.2.1 Conceptual Stage Planning**

Relocation Assistance 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 at 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 5 or more residential relocations), the Department conducts a Relocation Assistance Plan form MDT-ROW-385 Relocation Study. The Environmental Bureau will notify the Right-of-Way Acquisition Manager as soon as it determines that displacements are anticipated. The Right-of-Way Acquisition Manager along with the Relocation Specialist reviews the chosen alignment or alternative alignments and determines whether a Relocation Assistance Plan is necessary. The Acquisition Manager then requests the plan be completed by the Relocation Specialist or a consultant.

If a relocation assistance plan is required, provide the following information, properly supported, for each alignment:

1. A narrative description of the project area, including geographic location, principal industry, and general economic conditions.
2. A description of the proposed project and assumptions regarding right-of-way widths.
3. An estimate of households that would be displaced, including the family characteristics (e.g., minorities, income levels, tenure, elderly, large families).
4. Any divisive or disruptive effect on the community, including the separation of residences from community facilities or the separation of neighborhoods.
5. The impact on the neighborhood and on housing availability where relocation is likely to take place.
6. 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.

7. 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.
8. 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 advise them of the possibility of relocation. Currently, the Department.

- a) Determines the nature of the business and its particular needs, considering clientele, location, environment, transportation needs, zoning, availability of relocation sites, etc.
  - b) Assesses the impacts of its relocation to both the business and its clientele.
  - c) Discusses available relocation benefits so the owner is aware of the benefits to which the owner may be entitled.
9. 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.
10. The facts and results of consultations with the businesses and the advisory services provided must be documented in the Conceptual Study Report.
11. A description of special relocation advisory services that may be necessary for identified unusual conditions.
12. The results of consultation with local officials, social service agencies and community groups regarding the impact on the community affected.
13. A discussion on whether relocation can be reasonably accomplished without undue delay within the time allocated prior to construction.
14. If applicable, maps, sketches, and photos of the area.
15. Relocation assistance cost estimates for both moving expenses, including for moving personal property only and replacement housing payments; see Sections 5-4. The estimate should be on a parcel-by-parcel basis.

### **5-1.2.2     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 Assistance 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 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, and a General Relocation Notice form MDT-ROW-381.

If the Department expects the project (if the project is a corridor each segment will be considered separately) to cause 5 or more displacements, a Relocation Assistance Plan is necessary. Typically, a Relocation Assistance 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 Assistance Plan prior to the appraisal stage of a project, particularly if there are a substantial number of displaced persons or an Environmental Impact Statement is being prepared for the project. In these instances, the relocation specialist responsible prepares the Relocation Assistance 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 Assistance Plan. The Relocation Assistance Plan must be completed prior to authorization to proceed with acquisition of the right-of-way.

The Relocation Assistance 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.
5. Information concerning other sources of assistance, including social service agencies or other government and private housing programs.
6. If needed, a summary analysis and correlation of the inventory of available housing and housing need to develop a relocation assistance plan that will:
  - (a) Identify relocation problems and special needs.
  - (b) Provide an analysis of the problems and special needs identified.
  - (c) Including the methods to be used to resolve the problems so that displaced persons may receive appropriate assistance in relocating.
  - (d) State whether a local relocation office will or will not be required.
  - (e) 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.
  - (f) Estimate the amount of staff and lead time required and demonstrate its adequacy to carry out a timely, orderly, and humane relocation program.

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

### **5-1.2.3 Planning for Housing of Last Resort**

When the Relocation Assistance Plan analysis identifies problems or special needs that the Department cannot meet using available advisory services and replacement housing payments, it is necessary to plan for the use of housing of last resort assistance. Some of the types of actions the Department may consider under housing of last resort assistance are listed in Section 5-5.1. 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.

#### **5-1.2.4     Working Parcel Files**

In addition to the project and parcel identification, the electronic 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 completely new addresses and telephone numbers. Make every reasonable effort to contact and secure this information from any persons who moves without assistance.
2.     History. Include the complete history of personnel and other contacts made with each displaced person. Prepare a written acquisition history immediately after each contact, using the Parcel Relocation History Form MDT-ROW-397. 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 MDT-ROW-352) was given to the occupant.
  - The date of the 30-day notices to vacate (Form MDT-ROW-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 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).
  - The type of tenure before and after relocation.

4. Dwellings. Include the relevant parcel information using the Parcel Information form MDT-ROW-360.
  - 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.
  - Parcel information form (Form MDT-ROW-360).
5. Businesses, Farms, Ranches and Nonprofit Organizations. Include the following information:
  - Type of business, farm, ranch, or nonprofit organization.
  - Whether continued or terminated.
  - If relocated, distance moved, estimate is acceptable.
6. Moving Expenses. Include the relevant moving information using the Moving Expenses for Individual or Family (MDT-ROW-360) or the Organization Moving Expense Business (MDT-ROW-366) forms.
  - The date of 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 supports the 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 the case of a fixed moving expense, records support this fixed expense.
  - In cases where personal property is not moved from a business, documentation of payments made for actual direct losses of tangible personal property.
  - A qualified Agency staff person may develop a move cost finding by estimating and determining the cost of a small uncomplicated non-residential personal property move of \$5,000 or less, with the written consent of the person. See 23 *CFR* 24.301(d)(2)(iii) for restrictions.
7. Re-establishment Expenses. In those cases where re-establishment payments, see Section 5-3.2.15, are made, the Department maintains a record of re-establishment items. An explanation of re-establishment payments is included in the file. (If Reestablishment Expenses are paid, the relocatee cannot claim Moving Costs in Lieu of Moving Expense)
8. Replacement Housing Payments. Include the relevant information related to replacement housing payments using the Comparable Replacement Housing Summary form (MDT-ROW-359).; see Section 5-4:
- 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 includes computations to support the increased interest payment.
  - If relocation benefits provide a replacement dwelling the preferred method for both the acquisition and relocation properties should be coordinated by the Relocation Agent.

- 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.
- 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.
- That the person determining the payments understands that these payments will be used in conjunction with a Federal-aid highway project.

### **5-1.3 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 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. A displacee may opt-in to receive notices digitally or electronically. The best practice to receive this request is in writing via email.

#### **5-1.3.1 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 earlier than Right of Way phase authorization. The notice includes a copy of the applicable Department relocation brochure (residential/nonresidential). The notice will:

1. Inform the person that they may be displaced because of project acquisition. (Form MDT-ROW-381)
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 one 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 to 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 a 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 5-2.8.

#### **5-1.3.2     Notice of Relocation Eligibility**

All the persons who the Department determines will be displaced are promptly notified of their eligibility for applicable relocation benefits.

Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. However, agencies may determine that a person occupying a shelter is a displaced person due to factors which could include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, agencies shall provide advisory assistance to all occupants at initiation of negotiations.

Temporary, daily, or emergency shelter (shelter) means any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not meet the definition of dwelling as used in this part. Eligibility begins on the date of the initiation of acquisition for the occupied parcel.

Best practices are for both the District ROW Agent and the Relocation Specialist to coordinate a single visit with the landowner to negotiate acquisition and relocation. The following information is provided to the displacee by the Relocation Specialist at the initiation of acquisition if it has not been furnished previously:

- The Department's applicable relocation brochure, which serves as a 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 5-4, 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.
- An explanation of the right to appeal.

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

### **5-1.3.3 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 MDT-ROW-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 MDT-ROW-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, form MDT-ROW-365.
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 vacancy date.
6. In unusual circumstances, for urgent need, an occupant may be required to vacate the property on less than 90 days advanced written notice. For example, the Department may determine that a 90-Day Notice is impracticable, as 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.

Per 49 CFR Part 24.5, a displacee may elect to receive future notifications and forms electronically. The Relocation Agent will provide the displacee with the General Notification form (MDT\_ROW\_381) either in person or sent by certified/registered first-class mail. The General Notification form includes an option for the displacee to send the Relocation Agent an email requesting electronic communication. The Relocation Agent will then send an email template form (MDT-ROW-381A) to the displacee requesting their documented preference to receive future correspondence electronically.

Electronic communication may include DocuSign a secure cloud-based platform that enables users to electronically sign, send and manage documents. The email template includes the required information and safeguards as stated in federal regulations along with a certification that that use of electronic notices and signatures will be in compliance with existing state and federal laws.



In addition, the email template includes the displacee's signature indicating their preference to elect to receive required notices by electronic delivery in lieu of the use of certified or registered first-class mail. The email template (MDT-ROW-381A) also includes an option for the displacee to designate a representative for negotiations and offers. All electronic correspondence requires the state to demonstrate a means to document receipt of such electronic notices by the displacee.

The Relocation Agent must document the date of delivery and receipt by the displacee. The Relocation Agent will be responsible for saving all electronic communication and returning receipts in the project parcel folder.

#### **5-1.3.4 Protective Rents**

If tenants request advanced Relocation Assistance the Department may offer to pay the landowner protective rents to keep the property vacant prior to acquisition, form MDT-ROW-387.

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 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.

#### **5-1.4 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 has caused substantial economic injury because of the acquisition. Any person whose occupancy of property acquired by the Department began subsequently 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 all reasonable attempts to do so. Document these efforts to establish personal contact in the parcel file.

#### **5-1.4.1 Advisory Services Requirements**

Relocation assistance advisory services include measures necessary or appropriate to perform the following and apply to both permanent and temporary displacements:

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 one comparable replacement dwelling is made available. Where practical, three or more comparable replacement dwellings will be made available. These activities include the following:

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.

- a. 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 (Form MDT-ROW-355).
- b. 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.

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, 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 designated relocation specialist should be continually available to provide any of the above services.

#### **5-1.4.2 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 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.

## **5-2 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.

Several 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.

### **5-2.1 Time Limit for Filing Claims**

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.
- For owners, the later 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.

### **5-2.2 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.

### **5-2.3 Advance Payment**

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

### **5-2.4 Deductions on 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. The Department may not deduct from relocation payments any rent that the displaced person owes the Department. The Department will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor. (49 CFR 24.3)

### **5-2.5 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.

### **5-2.6 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.
- It is evicted for cause on or after the date of the initiation of the acquisition, unless the Department determines that eviction was undertaken to avoid the requirements of the ***Uniform Act***.

## **5-2.7 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.** The Department 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.

## **5-2.8 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 qualify. Similar requirements apply to businesses and business owners.

If a person who is a member of a family being displaced is not eligible for and does not receive Uniform Act benefits because he or she is not lawfully in the United States, that person's income shall not be excluded from the computation of family income. The person's income is counted unless the agency is certain that the ineligible person will not continue to reside with the family. Excluding the ineligible person's income would result in a windfall by providing a higher relocation payment.

### **5-2.8.1 Certification of Lawful Presence**

Each person seeking relocation services or benefits must certify that person's status, by signing a Form MDT-ROW-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 qualify. Certification may be made by the principal owner, manager, or operating officer.

### **5-2.8.2     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. Notify Acquisition Manager to request a SAVE verification search.
2. Perform a "SAVE" verification search of legal status when the agency has reason to believe that the certification provided is invalid. US Citizenship and Immigration Services(USCIS) provides a link to SAVE verification search tool. This is an electronic immigration status verification web application that requires a subscription.

### **5-2.8.3     Non-Discrimination**

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

### **5-2.8.4     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.

### **5-2.8.5     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.

### **5-2.9 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 (49 CFR 24.403(d), 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.

### **5-2.10 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 one 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.
- 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.

## **5-3 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 because of projects receiving Federal financial assistance.

These payments are divided into two broad categories; payments for persons displaced from dwellings (i.e., residential displacements) and payment for displaced businesses, farms, ranches, and nonprofit organizations (i.e., non-residential displacements). Each of these broad categories is made up of two types of relocation payments; moving expense payments and replacement housing/supplemental payments.



### **5-3.1 Residential Moving and Related Expenses**

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

#### **5-3.1.1 Actual Reasonable Moving 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.

#### **5-3.1.2 Eligible Moving Expenses**

When a person who has been displaced by 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 50 miles, either interstate or intrastate, except when it is determined by the Department that relocation cannot be accomplished within the 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 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, 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 time period, 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 on 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 that the Department determines to be reasonable and necessary.

### **5-3.1.3 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.
- 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 and form MDT-ROW-353 or by obtaining a contractor's estimate.

### **5-3.1.4 Fixed Moving Cost 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 number of possessions in a single room or other space constitutes more than the normal contents of 1 room, the Acquisition 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 in the basement. In addition, the Acquisition Manager may elect to pay for items stored outside the dwelling unit by adding an appropriate number of rooms.

**Figure 5-4A - FHWA Moving Payment Schedule**

Dwelling (Occupant Owns Furniture)							
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms
\$550	\$750	\$950	\$1,150	\$1,350	\$1,550	\$1,750	\$1,950
Each additional room - \$200.00							
One Room (No Furniture)							
Furnished dwelling and sleeping rooms are computed on the following basis:							
(1) \$350.00 for first room.							
(2) \$100.00 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 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.

#### **5-3.1.5 Multiple Occupants of a Single Dwelling**

Two or more families or two 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 families or individuals. Payments may be either on an actual reasonable moving cost, fixed moving cost schedule, or a combination of both methods. A scheduled move payment is based on the number of rooms that are occupied by each family plus common rooms used by each family.

#### **5-3.1.6 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. An appropriate W9 and Direct Deposit DOA form 204 may be required.

#### **5-3.1.7 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 scheduled basis.

### **5-3.2 Moving & Related Expenses - Non-Residential Moves**

There are two ways to compute a non-residential moving expense payment (Form MDT-ROW-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.

#### **5-3.2.1 Actual Reasonable Moving Costs 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.

### **5-3.2.2     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 of up to 50 miles unless the Department determines that relocation beyond 50 miles is justified.
2.     Packing  
This includes packing, crating, unpacking, and uncrating of 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  
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 personal property.
- Moving personal property.
- 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 because of the move.

11. Direct Loss

This includes actual direct loss of tangible personal property incurred because of moving or discontinuing the business or farm operation. For computation, see Section 5-3.2.7.

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 5-3.2.8.

14. Replacement Site

This includes searching for a replacement site; see Section 5-3.2.10.

15. Other Media

This includes changes to websites, DVD's, CD's, or other types of media.

16. Other Expenses

This includes other moving-related expenses that are not listed as ineligible.

### **5-3.2.3 Ineligible Moving Expenses**

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

- Additional expenses are incurred because of living or operating a business, farm, or ranch operation in a new location. However, see discussion on re-establishment expenses payment in Section 5-3.2.15.
- 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 Section 5-3.2.8 and 5-3.2.16.
- Interest in 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.
- 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 Department.
- Refundable security and utility deposits.

#### **5-3.2.4      Methods to Compute Actual Cost Non-Residential and Residential Moving Expense Payments**

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 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 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 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 are warranted, 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. If an uncomplicated move is \$500.00 or less the authorized Relocation Agent may authorize and pay for the move without bids or documentation.

If an uncomplicated move is greater than \$500.00 and less than \$1,000, MDT may pay for the move without bids or documentation at the discretion of the Relocation Agent. 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 move, based on hours worked, but not to exceed actual rates paid by the business.
  - 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 the items listed were moved. If the items listed on the owner's certified inventory deviate significantly from the items relocated, the amount previously agreed to is revised accordingly.

#### **5-3.2.5     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 5-1.3.1.
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.

#### **5-3.2.6 Oversight**

To ensure that all actual moving costs reflect actual, reasonable, and necessary expenses, the Relocation Specialist or other designated right-of-way agent provides or arranges to provide oversight on all moves that are of a complicated nature or substantial size.

#### **5-3.2.7 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 is less than the proceeds from its sale. 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 50 miles. The cost of removing the personal property is not considered as an off-setting charge against other payments due to 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.

#### **5-3.2.8 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.

#### **5-3.2.9 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.

#### **5-3.2.10 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 \$5,000.

These expenses may include transportation expenses, meals, lodging away from home and the reasonable value of the time spent in the search, including the fees of real estate agents, real estate brokers, or attorneys. All expenses claimed (Form MDT-ROW-350), except value of time spent searching, must be supported by receipted bills. A single minimum payment of \$1,000 with minimal or no documentation may be paid to the relocatee, should the displaced person select this option. Payment for time spent in search will be based on reasonable salary or earnings.

#### **5-3.2.11 Payment in Lieu – Actual Reasonable Moving Costs**

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 5-3.2.13 below, except that this payment will not be less than \$1,000 or more than \$53,200. Application for payment may be filed using Form MDT-ROW-364.

### **5-3.2.12 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 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 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.

### **5-3.2.13 In-Lieu Payment Computation Factors**

The term “average annual net earnings” in *Section 5-3.2.11* 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 at an annual rate. Average annual net earnings may be based on a different time period 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" include 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 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.

#### **5-3.2.14 Determining the Number of Businesses**

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one 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.
- The same person or closely related persons own, control, or manages the affairs of the entities.

#### **5-3.2.15 Re-establishment 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 \$33,200, 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 re-establishment expenses payments. **A nonresidential displaced person who elects to receive an in-lieu payment is not eligible to receive this payment.**

#### **5-3.2.16 Eligible Expenses**

Re-establishment 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.
  - Utility charges, excluding impact fees.
  - Construction costs for new building or costs to construct, reconstruct, or rehab existing building(s). A waiver may be used to determine these costs up to a maximum amount of \$33,200. The waiver amount used for these costs must be pre-approved by the Montana FHWA Division and Headquarters offices.
- Other items that the Department considers essential to the re-establishment of the business.

#### **5-3.2.17 Ineligible Expenses**

The following is a non-exclusive listing of re-establishment 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 business operation.
- Interest in money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home does not contribute materially to the household income.

#### **5-3.2.18 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 MDT-ROW-366, MDT-ROW-369 and MDT-ROW-373), as outlined in Sections 5-3.2.1, 5-3.2.9 and 5-3.2.10 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 \$53,200. Application may be filed using Form MDT-ROW-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 to the present location.
2. In the 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.
  - The taking caused a substantial change in the principal operation or the nature of the existing farm operation to constitute a displacement.

The term average annual net earnings have the same meaning for displaced farms or ranches as under the computation of the in-lieu payment for displaced businesses in Section 5-3.2.13. 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.

#### **5-3.2.19 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 MDT-ROW-366, MDT-ROW-369, and MDT-ROW-364.

A nonprofit organization may be paid not less than \$1,000 or more than \$53,200 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 of more than \$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, and less administrative expenses.

### **5-3.3 Uncomplicated Personal Property Relocation**

Right of Way agents can negotiate uncomplicated personal property relocations for residential and non-residential landowners up to a cumulative total amount of \$5,000.

Process:

1. The ROW Agent has authority to negotiate an uncomplicated personal property relocation move (residential and/or non-residential) with the landowner for up to \$5,000.
2. Modifications to personal property or to utilities: Construction costs for a new building at the business replacement site, costs to substantially reconstruct a building, or rehabilitate a building are generally ineligible for reimbursement as are expenses for disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property.
3. The ROW Agent completes form MDT-ROW-358 and saves the form to the project’s working folder. The Agent presents it to the relocatee for signature as (Step 1). Once the relocatee signs, the Agent will complete step 1 by signing and emailing the hyperlink to the form to the District Supervisor for signature and copies the Relocation Specialist.
4. Once the landowner moves the property, they notify the ROW Agent. ROW Agent confirms the property has been moved. (physical inspection or documented photos from the landowner).
5. The ROW Agent obtains the final signature MDT-ROW-358 from the landowner certifying the property has been moved as agreed upon (Step 2).
6. The ROW Agent signs form MDT-ROW-358 verifying the move took place and funds may be dispersed (Step 2).
7. The ROW Agent saves the form MDT-ROW-358 into the project working folder and sends a hyperlink to Relocation Specialist via email for signature.
8. The Relocation Specialist will enter the relocation transaction into ROWA.
9. The Relocation Specialist will prepare form MDT-ROW-363 and save it into the project Relocation Z folder then forwards the hyperlink to the Acquisition Manager and the Compliance Specialist.

10. The Acquisition Manager will review form MDT-ROW-358 and stamp to authorize payment.
11. The Compliance Specialist will send an email with a hyperlink to the form MDT-ROW-363 requesting review/approval by the Acquisition Manager.
12. The Acquisition Manager will review and approve the payment by adding an approved stamp to the top of the form MDT-ROW-363.
13. The Acquisition Manager will send an email to the Compliance Specialist indicating payment is approved.
14. The Compliance Specialist will place an electronic copy of the payment request in the Engineering Fiscal Ops payment folder.
15. The Compliance Specialist will enter payment transaction into ROWA.

In the event personal property to be moved is in a temporary construction permit area and could potentially require the personal property to be moved back into the original area following construction, the agent should advise the landowner to contact the agent when they are ready to relocate the property back to its original location. This second move will require a second MDT-FORM-358 to complete the reimbursement.

## **5-4 REPLACEMENT HOUSING PAYMENTS - RESIDENTIAL**

### **5-4.1 General**

In addition to the moving and related expense payments discussed in Section 5-3.1, 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 several 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 one comparable replacement dwelling and preferably three 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 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 or qualified third party inspects the replacement dwelling to determine if it meets the standards for decent, safe, and sanitary housing. This will consist of the following:

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 ensure sufficient funding exists to the landlord based on the amount the displaced person will be eligible for under the provisions of this program. Prior to any disclosure, the Department or qualified third party must inspect the proposed replacement housing and find that it meets decent, safe, and sanitary requirements.

#### **5-4.2 Replacement Housing Payment -90-Day Owner Who Purchases**

A displaced owner-occupant of a dwelling may receive a payment, not to exceed \$41,200, 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 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. If a displacee claims Increased Mortgage Interest Costs, they must have occupied and owned the dwelling for at least 180 days.
3. Incidental Expenses. The amount of reasonable and necessary expenses that are incidental to the purchase of the replacement dwelling.

##### **5-4.2.1 Eligibility**

A displaced person is eligible for the replacement housing payment for a 90-day homeowner if the person:

- Has owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of acquisition for the parcel.
- 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.
  - The date for the Department is to make 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.

#### **5-4.2.2 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 5-4.2.12.
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 the current fair market value.

#### **5-4.2.3 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 occupied. If an individual must have an advance payment for the contractor or materials, this is done on an assignment basis only and only after full disclosure and concurrence by the Acquisition Manager.

#### **5-4.2.4 Computation Factors: Price Differential**

As noted in Section 5-4.2 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 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 not be considered.
  - 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.

#### **5-4.2.5 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.

#### **5-4.2.6 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.

#### **5-4.2.7 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 with 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 two or more occupants maintain 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 to decent, safe, and sanitary housing.

#### **5-4.2.8 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 5-2.10*.
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.

#### **5-4.2.9 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.

#### **5-4.2.10 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.

#### **5-4.2.11 Payment to Occupant with 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 5-4.4.1*, if the displaced owner-occupants rent and occupy a decent, safe, and sanitary dwelling instead of purchasing.
- Housing of last resort, at the Department's discretion, if the application of this procedure, because of unusual circumstances, creates an undue hardship on the occupant(s) with partial ownership.

#### **5-4.2.12 Owner Retention**

The 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 described using Form MDT-ROW-353. Eligible costs to relocate the retained dwelling will be incurred for the following activities:

1. Acquiring the new site, the cost of which should not exceed the cost of a 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.

#### **5-4.2.13 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.

#### **5-4.2.14 Alternate Method for Computing Replacement Housing Payments**

In some rural areas, it may not be possible to establish the price of comparable housing using 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.

#### **5-4.2.15 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.

#### **5-4.2.16 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 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.

#### **5-4.2.17 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 MDT-ROW-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 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 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.

#### **5-4.2.18 Increased Mortgage Interest Costs**

This payment includes increased interest and other debt service costs and is subject to the following rules. See Figure 5-4A for a sample computation.

Note: MDT has never experienced a Home Equity Conversion Mortgage or Reverse Mortgage relocation scenario. CFR requirements will be followed should this ever occur.



#### **5-4.2.19    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 lesser than 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 to reduce the new mortgage as intended.

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

**Figure 5-4A**

Old Mortgage:

Remaining Principal Balance (payoff amount)	\$125,000
Term	174 months
Interest rate (percent)	4%
Monthly Payment (principal and interest)	947.91

New Mortgage:

Principal Balance	\$135,000
Term	20 years
Interest rate (percent)	8%

Computation:

Lesser of balance on mortgages at displacement or replacement dwellings	\$125,000
Lesser term of mortgages at displacement or replacement dwellings	174 months
Amount to be financed to maintain monthly payments of \$947.91 for 174 months at 8%	\$97,441
Old mortgage balance	\$125,000
Minus maintenance mortgage amount	-\$97,441
Buydown necessary to maintain monthly payment	<u>\$ 27,589</u>
Total payment necessary to maintain mortgage payments at \$947.91/month	\$ 27,589

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 obtained is less than the computed amount for a new mortgage (\$97,441), the buydown is prorated accordingly. If the actual mortgage obtained in the example was \$75,000, the buydown would be \$21,243 (\$75,000 divided by \$97,411 = .77; \$27,589 x .77 = \$21,243).

#### **5-4.2.20 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.

#### **5-4.2.21 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 do not represent prepaid interest.
- Other items as determined to be reasonable by the Department.

### **5-4.3 Housing Payment for 90-Day Owner Who Rents**

A displaced 90-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 90-day homeowner elected to purchase and occupy a comparable replacement dwelling.

### **5-4.4 Replacement Housing Payment -90-Day Tenant Who Rents**

A displaced tenant is eligible for a rental assistance payment not to exceed \$9,570 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 of 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 \$9,570, is computed by:

- Subtracting the base monthly rental (*Section 5-4.4.1*) from the lesser of:
  - The rental amount the displaced person pays for a replacement dwelling, including utilities.
  - Or the amount determined by the Department as necessary to rent a comparable dwelling, including utilities.
  - 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 to ensure that the computation compares like circumstances.

Application for this payment, use Form MDT-ROW-359.

#### **5-4.4.1 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 time period 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).

#### **5-4.4.2 Tenant Incidental Expenses**

Incidental expense payments reimburse the tenant for actual, reasonable, and necessary costs incurred incidental to the renting of the replacement dwelling. These costs may include the following items and have a maximum reimbursement amount of \$1,000;

- Replacement of dwelling application fees
- Credit reports

#### **5-4.4.3 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.

#### **5-4.5 Replacement Housing Payment -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. Use form MDT-ROW-359, to calculate and process as in the same manner for a tenant of a conventional replacement dwelling.

#### **5-4.6 Replacement Housing Payment -90-Day Tenant Who Purchases**

A tenant who has occupied a dwelling for 90 or more days may be eligible for down payment assistance on the purchase of a replacement dwelling. The maximum down payment assistance amount is \$9,570. The entire amount of the payment must be applied to the purchase price of the replacement dwelling and related incidental expenses.

Application for this payment, use Form MDT-ROW-359.

#### **5-4.7 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 MDT-ROW-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 MDT-ROW-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 of 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 will make 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.

#### **5-4.8 Need for Housing of Last Resort**

The Department must provide comparable replacement housing for 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), housing of last resort may be necessary. *Section 5-5* discusses housing as a last resort.

## **5-5 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 housing of last resort, 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.

### **5-5.1 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 housing of last resort assistance must be adequately justified either:

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 are to provide comparable replacement housing.
- The individual circumstances of the displaced person.

By a determination that:

- If there is, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, housing of last resort assistance is necessary for the area as a whole.
- A program or project cannot be advanced to completion in a timely manner without housing of last resort assistance.
- The method selected for providing housing of last resort 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).



## **5-5.2 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.

## **5-5.3 Methods of Providing Comparable Replacement Housing**

The Department has broad latitude in implementing housing of last resort 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 is more than the limits set forth in *Section 5-4.2*. A replacement housing 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 of 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.
- 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 5-4*.

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

#### **5-5.4 Increased Interest Payments — Housing of Last Resort**

Under housing of last resort, the Department may use the buy-down method for determining the amount of the interest differential; see *Section 5-4.2.19*.

### **5-6 MOBILE HOMES**

#### **5-6.1 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 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 applies 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 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 5-6*.

## **5-6.2 Displaced Persons Eligible for Moving Expenses**

### **5-6.2.1 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.

### **5-6.2.2 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 personalty used for a business. The owner, a non-occupant, is not eligible for a replacement housing payment.

### **5-6.2.3 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 5-3.1*.

### **5-6.3 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 a 50-mile radius unless the Department determines that a move in excess of 50 miles is justified.
2. These include packing, crating, moving, unpacking, and uncrating personal property.

If the mobile homeowner-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 they are in compliance with the Department policy.

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-refundable 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 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 occupants while a mobile home or comparable dwelling is being relocated and reestablished at a replacement site. Temporary lodging is to be used only for a short period of time (maximum of 12 months) 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***.

## **5-6.4 Replacement Housing Payments**

### **5-6.4.1 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 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 days prior to acquisition to make the occupant eligible for the appropriate payment limitations of \$9,570 or \$41,200.
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.

#### **5-6.4.2 Replacement Housing Payment: Comparability**

Persons who have been displaced from a mobile home are entitled to the same standards of comparability, see *Section 5-4*, 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 of mobile home or a conventional dwelling).

#### **5-6.4.3 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 \$9,570 or \$41,200. If the replacement dwelling 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, 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 replacement housing payment.

#### **5-6.4.4     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, examples have been developed considering these factors.

#### **5-6.4.5     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:

**Example 1.** 90-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 for 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 purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly.

**Example 2.** In the Example above, 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 like the computations for conventional dwellings found in *Section 5-4.2.2*.

#### **5-6.4.6     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:

**Example 3.** The 90-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 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 Manager.

#### **5-6.4.7     No Site Available**

Sometimes, a mobile home physically can be moved, but there is no comparable mobile home site available. In these cases, the Department will compute the payment using a conventional dwelling; see Example 7 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:



**Example 4.** For a 90-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 purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly.

#### **5-6.4.8 Mobile Homes that Are Moved**

Examples 5 and 6 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 5-6.2*. 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:

**Example 5.** 90-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 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.

**Example 6.** 90-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 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.

#### **5-6.4.9     Mobile Home Acquired not Moved**

As noted above, there are some situations in which the mobile home is acquired 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. In these instances, the title to the mobile home will be passed to the Department and the Department is responsible for moving or demolishing it off the project site.

**Example 7.** 90-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. 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 purchased and occupied is less than the comparable, the differential and, hence, the payment are reduced accordingly.

## 5-7 RELOCATION ADMINISTRATIVE PROCEDURES

Several 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.

### 5-7.1 Appeals

The following activities apply to appeals:

1. A displaced individual, family, business, farm, ranch, or nonprofit organization has the right to 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 of 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. The Department will consider the location of the appeal hearing. To alleviate undue financial hardship for 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.

### 5-7.2 Contract Procedures

The Department normally maintains 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 Right-of-Way Acquisition Manager, Relocation Specialist and District Right-of-Way Supervisor 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 Right-of-Way Acquisition Manager, Relocation Specialist and the District Right-of-Way Supervisor 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.

## 5-8 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.*