Relocation Issues of Concern to the U.S. Department of Transportation

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The U.S. Department of Transportation (DOT)--in particular, the Federal Highway Administration (FHWA)--had been heavily involved in relocation matters well before enactment of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Controversies over relocation impacts seemed to reach their height in the late 1960s. Since passage of the act, considerable progress has been made in assuring fair and just compensation to owners of property taken for public purposes and in providing equal or improved housing for displaced households. Moreover, substantial uniformity has been achieved in the treatment of displacees.

It is true, however, that a number of problem areas remain and deserve further attention. This paper outlines some of the major issues of recent concern to DOT, as perceived by staff from the Office of the Secretary's policy unit and FHWA's Office of Right-of-Way. The discussion here focuses on business displacements, last-resort housing, increased interest payments, the one-for-one housing concept, energy-saving measures, and proposed legislation.

BUSINESS DISPLACEMENT POLICY

Many small businesses and some larger ones operate under marginal conditions; disruptions in clientele or cash flows may be critical. Displacement of such firms by transportation and other projects can substantially increase their fatality rate, underscoring the need for improved relocation planning and assistance.

At the same time, businesses forced to move elsewhere will all too frequently select outlying locations when displaced from a city or other developed areas. Sometimes the move outside the city or community is prompted by real economic advantages such as cheaper land or lower taxes. In other cases, however, inadequate information and planning for sites within the particular jurisdiction result in the loss of the business to it. Such losses undermine the viability of existing population centers across the country.

To address these problems, DOT instituted the following eight-point program in an attempt to mitigate some of the difficulties faced by businesses when DOT-assisted projects led to their displacement.

1. Establishment of the necessary relations at the local level. Departmental field and regional office units will seek to ensure careful coordination and planning among the applicant transportation agency, the affected local government(s), and businesses potentially subject to displacement by any of the major transportation alternatives under consideration.

2. Initiation of the consultation process. The coordination and consultation process is to be initiated at the earliest practical stage in project development, preferably at the time that environmental and feasibility studies commence for the various alternatives. As project planning and development proceed, regular communication among these parties is supposed to continue, though some businesses would cease to participate as alternatives are eliminated from further consideration.

3. Use of DOT grant funds to support the process. DOT planning and/or engineering monies are being made available to assist the transportation agency, local officials, and the affected businesses in addressing relocation concerns through feasibility studies and in developing reasonable plans, including special financial arrangements, where appropriate, to mitigate the potential adverse impacts on those businesses. These special efforts are considered part of the regular technical and funding assistance which is normally provided.

4. Assistance from local, state, and other federal agencies. In helping displaced businesses, cities are to be actively encouraged to explore possible sources of funding from local and state entities as well as from HUD, the Economic Development Administration, the Small Business Administration, and other federal agencies. Aid from these agencies may be extremely helpful in supporting successful business relocation, financially and otherwise.

5. Relocation advisory services. Special emphasis is being placed on relocation advisory services for businesses. DOT expects relocation offices to have staff who possess the requisite skills for handling business as well as residential displacement issues. In this regard, an aggressive outreach program is needed to ensure that the firms to be displaced are fully aware of their rights, the courses of action open to them, and any provisions designed to retain businesses within the same community. We are directing that every reasonable effort be made to involve the affected jurisdictions and to assist displaced firms who wish to find acceptable replacement facilities in a timely manner.

6. Documentation of steps to aid businesses. When relocation of businesses will be necessary, the results of early consultation, planning for incentive packaging (e.g., tax abatement, special financing, and flexible zoning and building requirements), and advisory assistance must be documented in conceptual relocation plans and, as appropriate, in final environmental impact statements.

7. Hardship acquisitions. Although DOT appears to be mostly prohibited, because of court decisions, from supporting advance acquisition of parcels, hardship acquisitions of business and residential properties are still permitted on a case-by-case basis. For some businesses, help of this sort can be vital to their survival or economic health. Therefore, each of the modal administrations is reviewing its procedures to ensure that all such businesses have maximum opportunity--to the extent permitted by the existing statutory and judicial

framework--to qualify under the hardship acquisition program.

8. Loss of patronage at the old site. During the acquisition stage, particular attention must be given to businesses that depend heavily on local patronage from residents who are also being displaced (or cut off) by the same or other nearby projects. As timing is crucial, such businesses should have the opportunity, if possible, to move at the same time or prior to the relocation of their patrons.

The implementation of these eight points by the displacing agencies will be a step in the right direction; however, there is still a significant need for additional monetary benefits for business displacees--benefits that can only be provided by the passage of additional legislation.

LAST-RESORT HOUSING

During the past year, there has been a substantial increase in the number of last-resort housing projects initiated by the states. In the same period, the cumulative number of dollars programmed for last-resort housing since the passage of the Uniform Act has increased more than 50 percent.

The reasons for this increased use of the last-resort housing provision can be readily ascertained. The continuing inflationary spiral of housing costs has driven the need for purchase and rental-housing supplements above the statutory limits of $15 000 and $4000. Also, the increased interest differential, which is an integral part of the replacement housing payments, has skyrocketed. These factors are likely to continue pushing payments above the statutory limits for some time in the future.

FHWA is moving to meet the need for increased use of the last-resort provisions of the Uniform Act. FHWA proposes to take the steps necessary to promote a greater understanding of that aspect of the program and to encourage its use as a solution to problem relocation cases.

Any innovative method of providing needed housing will be considered for approval by FHWA. Some of those methods might include the following.

1. Purchase of an existing decent, safe, and sanitary house by a state highway agency and renting it to a displaced tenant, or selling the unit to a third party with the stipulation that the rental unit be made available to a displacee at a specific rate within the displacee's financial means for the four-year statutory period;
2. Purchase and rehabilitation of an existing housing unit that is not decent, safe, and sanitary where no such housing is available;
3. Purchase of a replacement house by a state highway agency and adding one or more bedrooms to meet the needs of a relocatee with a large family;
4. Construction of new housing; and
5. Movement of an existing suitable house from the right-of-way and renting and selling it to the relocatee.

INCREASED INTEREST PAYMENTS

Section 203(a)(1)(B) of the 1970 Uniform Act requires that relocation housing payments include the increased interest costs incurred by displacees. The current method of computing increased interest payments is resulting in unrealistically high payment amounts because of the current economic situation.

Section 203 of the Uniform Act specifies that the discount rate (applied to the unpaid balance of the mortgage on the acquired dwelling) "shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located." This is the source of our problem. FHWA has further interpreted this to mean the interest rate paid on passbook savings account deposits by commercial banks, i.e., about a 5-5.5 percent interest rate. Discounting differentials on this basis generates an unjustifiably high increased interest, given the high rate of inflation and alternatives that would yield greater returns. However, during past months, this and the spiraling mortgage interest rates have made our method of computing increased interest payments totally unrealistic.

During this inflationary period, it has become commonplace for interest differences between old and new mortgages to amount to 5-10 percent, and more. These differences reflect the fact that some mortgage interest rates being asked across the country have exceeded 16 percent in recent months. Increased interest computations are sometimes as high as $25 000 based on the current method of computing the payment. Some payments even exceed the remaining balance of the original mortgage.

FHWA is exploring a variety of ways to combat the problem created by this run-away program cost. New methods of computing or establishing interest differentials are being examined from both legal and equitable viewpoints. Preliminary indications are that equitable solutions to the problem can be devised. Among the possible solutions being considered are

1. Delete the requirement that the passbook savings rate be used and permit the use of interest rates currently paid for long-term certificates of deposit (this would provide partial relief);
2. Provide an up-front lump sum payment to reduce the new mortgage principal to a level that would require the same monthly principal and interest payment to amortize the new loan as is being paid on the old mortgage; and
3. Pay a discount fee or points to the lending institution in consideration for its issuing a new mortgage to the displacee at the same principal amount, term, and interest rate as the old mortgage, thus retaining the same monthly mortgage payment as before and eliminating any interest differential.

ONE-FOR-ONE HOUSING CONCEPT

In order to mitigate adverse impacts in areas where there is a shortage of low- and moderate-income housing, such as the Century Freeway Project in Los Angeles, a strong movement is emerging to institute one-for-one replacement of these types of housing units. Where environmental and housing studies clearly indicate a need for such housing, a new dwelling unit may be constructed or acquired dwellings moved and rehabilitated to replace the housing taken for highway purposes. Although there may be more areas where this may be necessary in order to proceed with the project, the application of this concept will be quite limited until there is an opportunity to properly evaluate such action.

When it is applied, the emphasis will be on the provision of dwellings to assure affected areas of an adequate supply of affordable housing for occupancy by low- and moderate-income groups in target populations rather than for general community housing replenishment.

ENERGY-SAVING MEASURES

In response to the need to conserve energy, a number of local communities throughout the country have recently adopted, as a part of their local housing codes, various energy conservation requirements, e.g., specified amounts of wall and ceiling insulation, storm windows, and storm doors.

Existing DOT regulations require that for a dwelling to be considered decent, safe, and sanitary, it must meet the applicable state or local building, plumbing, electrical, housing, and occupancy codes or similar ordinances or regulations for existing structures.

In those areas where local housing codes have been enacted that require energy conservation measures, FHWA has agreed to participate in the additional costs incurred in providing the energy-saving feature, as a part of the replacement housing payment, in order that the replacement dwelling will comply with the local housing code.

Whether the displacee is an owner or a tenant, the state must assure itself that all comparable properties considered in computing the replacement housing supplement contain the required energy conservation items to meet local code requrements. This will then provide the displacee with a payment that is adequate to enable him or her to obtain a comparable dwelling unit that may be certified as decent, safe, and sanitary.

FHWA has and will continue to encourage state and local governments to incorporate energy conservation requirements into their local housing codes. However, FHWA does not favor any change in national decent, safe, and sanitary standards that would mandate these features for all displacees because we feel that requirements of this nature should be handled at the local level. Otherwise, much of the nation's housing resources could suddenly become substandard under federal criteria and, hence, unavailable for replacement housing on federally-funded projects.

PROPOSED LEGISLATION

Five bills that would amend the Uniform Act have been introduced in Congress. DOT's views on some of the more significant amendments are summarized below. The following are keyed to the sections of the existing Uniform Act that would be affected by the proposed revisions.

Section 101(6)

All of the bills propose to broaden the definition of displaced person to include those involuntarily displaced directly or indirectly as the result of a federal or federally-assisted program or project.

Though DOT favors some expansion of the current definition, these proposals eliminate the current requirement that eligibility be contingent on either an acquisition of real property or on a written order to vacate. Adoption of the new definition would make it difficult to determine when a person is indirectly affected by projects. Provisions broadening the terms program or project would similarly expand eligibility for Uniform Act entitlements.

Section 201

Amendments to Section 201 state that no federal or federally-assisted project shall be undertaken unless the project "includes all possible measures to minimize such displacement." This appears to be somewhat vague, tending to be overly restrictive because the language is susceptible to unreasonable interpretations. DOT has recommended the use of less restrictive language in this section.

Section 202

H.R. 6756 provides for payments to businesses to cover professional services required in moving. Although DOT agreed that displaced businesses should be reimbursed for reasonable costs incurred in their reestablishment at replacement locations, DOT would probably recommend the adoption of a lump sum dislocation allowance similar to that which is available to residential displacees.

Section 202(b)

All bills call for an increase in the maximum limits on payments for moves made under a schedule. DOT is convinced that such an increase will simplify administration of this phase of the relocation program. However, to obtain the maximum benefits from such an increase, the current limits of $300 and $200 should be increased to $1000 and $400 instead of $600 and $400 as proposed.

Section 202(c)

DOT agrees with proposed revisions increasing the maximum payment in lieu of actual moving expenses from $10 000 to $20 000 but disagrees with the proposed revision to increase the minimum payment from $2500 to $5000. No need seems apparent to raising the minimum of $2500 because it would entitle marginal or part-time businesses to a payment of $5000 even if their earnings were substantially less.

Because of the difficulties involved in making uniform eligibility determinations for in-lieu-of payments, this section should be revised to simply give a displaced business the option of receiving a payment for actual, reasonable moving expenses or the lump sum payment in lieu of actual expenses.

Section 202(d)

Revision of this section would provide for adjustments of benefits each year on the basis of the annual increase, if any, in the Consumer Price Index. Although DOT does not disagree with the intent of this revision, this measure could work a hardship on those states in which legislative changes would be required.

Section 203(a)(1)

The proposed changes in this section provide for the deletion of the maximum limit for replacement housing payments and the deletion of the existing 180-day occupancy requirement for eligibility. Prudence dictates that a statutory maximum payment be retained. However, the need to increase the current maximum to $25 000 is recognized.

Although DOT would not object to reducing the minimum occupancy to 90 days in conformity with the occupancy requirements for tenants under Section 204, DOT is convinced that, for payments under this section to be administered equitably, the minimum occupancy requirement should not be eliminated entirely.

Section 203(a)

A new paragraph here would provide for the payment of increased real property taxes. DOT does not object to this in principle. However, computation

of the payment should not be related to the life of the mortgage on the replacement dwelling. This would penalize a person who paid cash. Payment of increased taxes for a specific term, such as five or ten years, would be preferable.

Section 204(1)

Some proposed amendments are objectionable because they eliminate the statutory limitations on both the number of years for which the displaced tenant is eligible to receive rent supplements and the maximum dollar amounts of supplemental housing payments. Given the geographic and economic mobility of our population, DOT questions the necessity for extending Uniform Act entitlements to displaced tenants for an undefined period of time. DOT also feels that the guarantees of last-resort housing provided by the government are preferable to making unlimited payments available to displacees.

DOT favors increasing the maximum time frame of tenant responsibility to six years and the dollar limitation to $8000. DOT has also recommended that the matching downpayment be dropped.

Section 205(a)

Various proposals to amend section 205(a) would provide eligibility for benefits under the act to persons outside project limits who might sustain substantive economic injury because of project-related activities. These proposals effectively expand the definition of displaced person given in Section 101(6) and suffer from the same deficiencies noted in comments on that section.

Section 213(a)(b)

Most proposals amending Sections 213(a) and (b) provide for a single set of regulations for use in implementing the Uniform Act in connection with all federal and federally-assisted programs and projects. An agency would be designated by the president to assure uniform application and interpretation of the single set of procedures. (H.R. 6736 would create a Federal Relocation Assistance Compliance Office.) Development of a single set of regulations by such an agency would be a positive step toward greater uniformity among federal agencies in this area. We believe that the agency assigned to this activity--i.e., developing the single set of regulations and resolving differences among agencies--should not be an operating agency.

What's Wrong With the Uniform Act?

H. J. Huecker

Many proposals for changing the Uniform Act of 1970 are being talked about today. Rapid inflation may have outpaced payment ceilings. Some interpretations of the law are not shared by all federal agencies. In 1979, Congress held hearings on S. 1108, a bill that would make changes in the Uniform Act. Several bills have been introduced in the House of Representatives.

Some changes in the law are needed to minimize differing federal agency rules and to simplify administration. But these are not major obstacles to the kind of consensus that can produce new legislation. Some changes are needed to address the increased cost of buying or renting housing in the past nine years. These may have to be negotiated with one eye on personal need and one eye on the budget.

But there are two issues that I believe raise the most concern. And in some respects they are related. Why doesn't the law cover all persons involuntarily displaced as a direct result of a federal or federally-assisted program? And how can the rental assistance payment under Section 204(1) of the law be improved to meet the needs of low- and moderate-income persons?

DIRECT FEDERAL DISPLACEMENT

The Uniform Act covers all displacement as a result of acquisition by a public agency for a federal or federally-assisted program. With few exceptions, it does not cover the involuntary displacement of tenants as a direct result of rehabilitation, code enforcement, demolition, or privately undertaken acquisition carried out for a federally-assisted program.

Surely, a tenant given a notice to permanently vacate a dwelling unit because the owner wishes to carry out federally-financed rehabilitation faces the same problems as a tenant displaced by public acquisition. It is not fair to ask that tenant to pay such a disproportionate share of the cost of carrying out that project. And yet the Uniform Act does not generally cover such displacements.

The Uniform Act does govern displacement caused by rehabilitation, code enforcement, and demolition under several programs administered by HUD that were in effect when the law was enacted. But these programs, which include the Urban Renewal and Model Cities Programs, are now being phased out. There have been no amendments to the law since its enactment.

Undoubtedly, the cost of providing relocation assistance has weighed heavily against a decision to expand coverage either by law or federal regulation. To some extent, liberal interpretations of the existing law and proposals to legislate substantially increased payment levels have probably fostered opposition to expanding the class of eligible persons. Then, too, under many loan and subsidy programs, it is more difficult (than under public acquisition programs) to find a way to provide the cash payments required by the Uniform Act.

I believe, however, that sensible ways can be found to overcome the cost objections. Placing the burden for the funding of relocation costs on the project causing the displacement provides a strong