



# Reducing the Risks

How to handle advanced payment requests from business displacees

BY DARRYL ROOT, R/W-RAC

Imagine a displaced business owner tells you that he will lose his business if you don't advance him \$250,000 in the next month to complete his relocation. The improvements at the replacement site must be done before he moves in. If the business defaults on any of its existing contracts, competitors will quickly step in and take its customers. The business owner has sent you one bid detailing what he says are eligible relocation expenses.

Unfortunately, the Agency's construction project manager needs the business owner to vacate in the next six weeks. So how do you proceed to help the business owner, get the parcel vacated on time and reduce the displacing Agency's risk of losing a quarter of a million dollars?

## Requirements from the Agency

The largest requests for advances will come from business displacees. According to the Uniform Relocation Assistance and Real Property Acquisition Act (1970), the displacing agency has a duty to provide advanced relocation payments if a person demonstrates the need for it in order to avoid or reduce a hardship. The Agency is also responsible for reviewing claims in an expeditious manner, notifying the displacee promptly as to any additional documentation that is required to support the claim.

Prior to implementing any relocation project, the Agency should study and plan for the possibility of advanced payments in its Relocation Planning Document. Sufficient funds should be in place prior to beginning the relocation

process to cover requests for advanced payments, as well as all eligible relocation expenses based upon accurate cost estimating.

## Requirements from the Displacee

In order to receive an advanced payment, the displacee must demonstrate why it's needed. This demonstration must show that the displacee will incur actual relocation expenses that are reasonable, necessary and eligible under the Agency's Relocation Assistance Program (RAP). A list of expenses should be described in detail with pricing obtained from two independent bids. Once the bids are supplied to the Agency, they should be reviewed carefully. Bids received from contractors whom the displacee may hire to do the work should be heavily scrutinized, as they obviously have

a vested interest and can potentially inflate their estimates for financial gain.

The regulations place the burden of proof for documentation on the displacee, and the advanced payment cannot be processed until the Agency has received sufficient backup to support the claim. The Agency is not under an obligation to repeatedly request this information. Neither is the advance a guaranteed "pre-approval." All funds advanced should be documented by proof of payment when the expense is incurred.

**Mitigating the Risks**

Although the displacing Agency has an obligation to provide advanced payments when sufficient documentation has been provided, every advanced payment is a funding risk. The RAP is a reimbursement program—not an entitlement program. Anytime funds are provided prior to expenditure on eligible expenses by the displacee, there is the risk that funds could be misused. If this occurs, the Agency may be forced to try to recover the funds through the legal system. The potential for misuse increases if the displacee assigns the advanced payments directly to a vendor or general contractor to perform the relocation tasks.

The Agency can reduce its risks by monitoring the displacee's progress on relocation, advising the displacee of the risks of assigning funds to a third party and thoroughly explaining that the displacee will be liable for any portion of an advance not spent on eligible, documented relocation expenses.

A signed Advanced Funding Agreement between the displacee and the Agency can also be used to reduce risks and to ensure the displacee thoroughly understands the advanced payment process. Once those funds have been expended on necessary expenses, further claims shall be applied against the advance along with bills, certified prices, appraisals or other evidence of such expenses. The file should reflect that the total amount of the advanced payment has been spent on actual, reasonable, necessary and eligible expenses.

The use of advanced payments in business relocations can facilitate and expedite moves and ultimately the possession of the affected parcels. They can also present a risk to the displacing Agency. Careful monitoring and documentation of the advanced funds can help reduce that risk. ☘



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