Classifying Expenses

The importance of taking a step-by-step approach

BY DARRYL ROOT, R/W-RAC, JD, MBA

How do you distinguish between a moving expense, where there are modifications to the personal property, and a reestablishment expense, where there are modifications to the replacement property to accommodate the business operation, when the expense involves some of both? Relocation professionals often ask these questions when confronted with a complicated business move for a federally-funded project. As with many relocation issues, there are no clear lines. However, following some practical steps can help.

Review the Regulations

First, you start with a careful review of the regulations. Eligible moving and reestablishment expenses are defined in the regulations under 49 CFR Part 24: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs, Subpart D: Payments for Moving and Related Expenses.

24.301 - Payment for actual reasonable moving and related expenses

> 3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

24.303 - Related nonresidential eligible expenses The following expenses, in addition to those provided by 24.301 for moving personal property, shall be provided if the Agency determines that they are actual, reasonable and necessary:

> (a) Connection to available nearby utilities from the right of way to improvements at the replacement site.

24.304 - Reestablishment expenses-nonresidential moves In addition to the payments available under 24.301 and 24.303 of this subpart, a small business, as defined in 24.2(a) (24), farm or nonprofit organization is entitled to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

> (a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:
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> (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
>
> (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

Interpret the Law

A cursory review of the regulations shows that the moving expense category emphasizes installations, connections and adaptations necessary for *personal property* at the replacement site. FHWA guidance bears out this premise. It states, "The modifications authorized by this subsection must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. Finally, the expenditures for authorized modifications must be reasonable and necessary." (Source: www.fhwa.dot.gov/real_estate/practitioners/archives/eframe.cfm)

In contrast, the reestablishment category emphasizes modifications to the replacement real property to accommodate the business operation. These basic concepts should be kept in mind when distinguishing between moving and reestablishment expenses.

Assess the Appraisal

The next step is to carefully review the real estate appraisal. If the item involved with the expense is considered and paid for as part of the real estate, then it is neither a moving nor a reestablishment expense. If a Furniture, Fixture and Equipment (FF&E) appraisal was done, review it carefully to make sure it does not list the item as a fixture and/or duplicate payment for the item. (If possible, accompany the real estate and FF&E appraisers while they are inspecting the site to avoid these problems.) If the item was listed as a fixture, sold by the owner to the agency, and then salvaged back, the item is also ineligible for moving or reestablishment benefits. If none of the exceptions above apply, the item may be an eligible moving or reestablishment expense.

Understand the Use

The relocation professional should always understand the function and purpose of the item in question and how it will be used at the replacement site.

Assume you are relocating a restaurant and the owner wishes to move their grease trap. The grease trap is small, not purchased as part of the real estate and is considered personal property. Grease traps hold wastewater so fat, oil and grease can float to the top and heavier solids can sink to the bottom. In this situation, assume the existing plumbing will support the grease trap, which is usually installed under the sink. The expense for connecting it to the existing plumbing would fall under moving expenses, whether installed above or below the concrete floor.

However, what if the same grease trap is installed in the same replacement site but local codes require improvements to the existing plumbing before installing it? Would the expense fall under the reestablishment category or still fall within the moving category? Or should the plumber break out the invoice to show the amount required to bring the existing plumbing up to code (reestablishment) and the amount required to connect the grease trap to the sink (moving)? Having a thorough knowledge of the equipment you are considering will help ensure the expense is classified correctly.

Document Thoroughly

Next, the relocation professional should be able to clearly document the claim for reimbursement, assuming it is eligible. Using what they know about the item's purpose at the replacement site, the relocation practitioner can explain why the expense is eligible and under what category. The nature and type of expense must be accurately presented to ensure the project sponsor understands the eligibility rationale.

The classification of an expense becomes important, as reestablishment expenses are capped at $10,000 and moving expenses are generally uncapped but must be actual, reasonable and necessary. In these situations, the relocation professional will be providing advisory services to the displacee to help maximize their benefits. For example, if the proposed expense is considered to fall under reestablishment, and the displacee has already reached the cap of $10,000, it may be best that the displacee opt for a substitute personal property payment if the item can be replaced by comparable personal property at the replacement site. Such advisory assistance requires close and frequent communication with the displacee, and should center on maximizing available and approved benefits for their financial benefit.

While there are multiple interpretations of the moving and reestablishment regulations, the relocation professional must be able to demonstrate that they have conducted the analytical steps necessary to lessen the hardship to the business displacee and accurately categorize the proposed expense. ✪