

# Displacement and Public Policy

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## INTRODUCTION

In a letter which became a part of the record in hearings before the House Committee on Public Works on March 12, 1970<sup>1</sup>, Executive Director of the American Association of State Highway Officials<sup>2</sup>, A.E. Johnson, reported that on 84,425 parcels of land remaining to be acquired for the interstate highway system, some 140,459 individuals would be displaced "...and presumably relocated" prior to the completion of the Interstate program.<sup>3</sup> As a part of that number, in excess of 50,000 dwelling units and nearly 7,000 businesses were targeted for displacement.<sup>4</sup> A developing displacement program of that magnitude, carried out with federal financial assistance, engaged the attention of Congress and the administration in 1970 and prompted legislative action to promulgate a uniform relocation assistance act. Rep. Grover's opening statement to the House Public Works Committee on February 18, 1970, emphasized the importance of such legislation:

In times past, when we were a rural nation, private lands for public purposes could be acquired with little difficulty, displacement, or hardship

among the people removed.

America in the 1970's, however, is a far different proposition. In high density, urban areas, the demand for expanded public services and improvements has the effect of dislocating as many as 200,000 persons and businesses each year. The great numbers of people involved, coupled with the social problems inevitably created, are further compounded by the fact that adequate replacement housing is frequently unavailable. This raises the question whether the public good served in such cases is more important than the individual hardships created.<sup>5</sup>

The continuing progress of federal and federally-assisted land acquisition and other displacing activities, despite major legislation and a host of regulatory efforts, has not diminished the impact of displacement nor its socio-economic consequences. Quantitatively, federally-caused displacement has gradually decreased from pre-1970 and early '70s levels. "Combined displacement under Housing and Urban Development (HUD) and Department of Transportation (DOT) programs declined from a pre-Uniform Act total of 69,045 displaced households, businesses, farms and non-profit organizations, at a relocation cost of \$115 million in fiscal year 1970, to 24,682 displacements, at a cost of \$137 million in fiscal year 1980."<sup>6</sup> Yet, a still substantial number of individuals each year have been, and are being, relocated.<sup>7</sup>

Displacement is often traumatic, seldom simple, yet—as the statistics previously cited indicate—unavoidably a consequence of many federal and federally-assisted highway,

rehabilitation, code enforcement, and similar projects. Viewed by one agency, relocation "...is not a 'glamorous' process or one likely to be greeted with shouts of enthusiasm."<sup>8</sup> A familiar photograph in one relocation office depicts a "little old lady" sitting, with a scowl and a shotgun, on the front porch of her condemned home; the caption beneath reads: "Some folks just don't take lightly to moving!"

While scenes like this are no longer the norm—especially since Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act) was signed into law on January 2, 1971, displacement does have serious social and economic effects which cannot be sidestepped simply because there are federal, state and local laws and regulations presumed to encompass the activities of displacing agencies. The promulgation and implementation of such agency regulations have not been without their weaknesses; nor has the relocation program been consistent with regard to fundamental national housing goals.

In answer to the question undertaken in this study—i.e., whether our housing needs are being adequately addressed through such legislation as the Uniform Act—two proposals are offered. First, early relocation planning, or "displacement impact analysis", is a necessary component of major project planning and the mitigation of adverse socio-economic impacts associated with displacement. Consideration will be given to the role of the Uniform Act in the displacement process; and, "displacement impact analysis" will be defined as the major link between the Uniform Act and the Environmental Assessment process. The responsibility

ties of the displacing agency in pre-project planning are focused on:

1. Fostering community involvement through public hearings and public information distribution.
2. Door-to-door, household surveys of project residents.

The first part of this study will conclude with a presentation of relocation planning strategies and a look at the effectiveness of displacement impact analysis in project planning.

A second premise, suggested by the magnitude of federally-assisted residential displacement since the inception of the Uniform Act, is that there exists a real and pressing need for a consistent and effective national housing policy—a policy sufficient in

If Hartman's indictment of government-caused displacement in this country prior to the 1970's is valid, it is necessary to question whether the Uniform Act has re-oriented the public view of displacement toward, as Hartman calls them, "the basic questions of social welfare and public policy."

Among the most important issues are: how relocation affects the family's ability to meet the society's minimum standards for quality and quantity of living space; the extent to which the family can fulfill its needs and desires in terms of housing and neighborhood characteristics and convenience to employment; com-

explicitly directed toward uniformity in program implementation and further minimizing of personal (especially, financial) hardships associated with displacement, beneath lies a half-century of a developing public attitude that government does have certain housing responsibilities. What that attitude is may be obscured by the panoply of successes and failures of various public housing programs; nonetheless, it is at heart a view that every citizen is entitled to decent and affordable housing, as expressed in the 1949 Housing Act.

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The historical framework of the Uniform Act begins with the Fifth Amendment, which declares that "property shall not be taken for public use without just compensation." Both the Fifth and the 14th Amendments also restrict the federal government and the States from depriving any person of property "without due process of law". The significant difference between the "due process" and "just compensation" clauses is that the latter is not personal, that is, "compensation is for the property and not to the owner."<sup>11</sup>

This interpretation has contributed to the extended passage of time in achieving a federally-legislated relocation assistance program.

An 1893 decision by the U.S. Supreme Court<sup>12</sup> affirmed that just compensation is for the property taken and not to the owner; this position was supplemented by a number of subsequent court decisions.<sup>13</sup> These cases limited just compensation to payment for the property taken and denied reimbursement for incidental losses or expenses, such as:

1. The cost of moving personal property.

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## *Are the housing provisions of the Uniform Act reflective of national housing priorities?*

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scope to respond to a multiplicity of housing problems, such as low and very low income households, sub-standard existing housing, displacement, code enforcement, and adverse housing market conditions. A specific concern of this study is the question: Are the housing provisions of the Uniform Act reflective of national housing priorities? In his cogent statement, "The Housing of Relocated Families", before the House Public Works Committee in February, 1970, Chester Hartman spoke of previous public displacement efforts:

Relocation in this country has not been a rehousing operation (in the British sense of the word), a program whose primary goal is the resettlement of slum families into decent homes. Rather, it is a hurdle that must be overcome in order to effectuate certain land-use changes deemed desirable by the community.<sup>9</sup>

munity facilities, family, and friends; the costs—financial, social, and emotional—involved in experiencing forced change and the unintended consequences of such changes; the differential incidence of benefits and costs on various subgroups within the relocation population; the effect of population redistribution on the city's ecological patterns, particularly with respect to racial segregation, and how these more general effects influence the individual family's housing experience.<sup>10</sup>

### **I. THE UNIFORM RELOCATION ASSISTANCE ACT**

The significance of the Uniform Act may have been presaged in its introduction as Senate Bill S-1 before the 91st Congress in early 1970. If the emphases of the Uniform Act are

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2. Transportation costs for moving families to replacement sites.
3. Incidental expenses in transferring title to the acquiring agency.
4. Loss of goodwill or going concern value, when a business cannot relocate without incurring a substantial loss of patronage.
5. Replacement housing costs and loss of favorable financing in purchasing a replacement dwelling.<sup>14</sup>

Though the courts, interpreting the Fifth Amendment on just compensation, have historically restricted its coverage, they have not abridged the rights of the states nor the Congress to enact legislation to pay supplemental expenses (such as relocation costs) where property is taken for public use. For example, *Joslin Mfg. Co. v. Providence*, supra, upheld the constitutionality of legislation in Rhode Island which permitted the recovery of consequential damages. In this case, the city of Providence was required to reimburse certain business damages incurred as a result of their acquisition of lands for a pure water source.<sup>15</sup>

The single most important piece of legislation extending this concept of just compensation, prior to the Uniform Act, was the Federal-Aid Highway Act of 1968. That Act authorized federal sharing in relocation costs paid by the various states to displaced individuals, families, businesses, and farms.<sup>16</sup> The 1968 Act acknowledged, by contributing to the states' expanded benefit allowances, that "just compensation" extends to the person.

However, by supplementing, through federal-aid, the relocation benefits established by the states, the 1968 act was largely dependent upon each state's particular legislation. Criticism of the 1968 Highway Act was thus directed toward its lack of uniform coverage and the fact that some states had inadequate, or no, relocation assistance programs. Additional legislation was needed

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The Declaration of Policy which prefaces Title II of the Uniform Act affirms the purpose of its relocation assistance provisions:

... to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

The Uniform Act was adopted both as a consolidating measure (to make uniform the manifold and diverse federal and state relocation regulations) and to establish certain basic payment benefits and regulatory provisions supplemental to federally-assisted land acquisition and other displacement activities.

As explained in the report of the Committee on Governmental Affairs, U.S. Senate, accompanying Senate Bill S.1, the act had a twofold purpose:

conditions of persons to "comparable" or other replacement housing which meets federal housing standards. Here, the intent is to implement national housing policy.

The accomplishments of the Uniform Act, as envisaged in its adoption and borne out in its implementation, are significant. First, it has been successful despite some regulatory diversification in establishing uniform relocation policies. While it is true there were, at one point, no less than thirteen different federal agencies with their own sets of regulations (as noted in a 1978 General Accounting Office report<sup>17</sup>), the basic benefit package provided by each agency was similar to, and consistent with, the Uniform Act.

Second, the Uniform Act has provided for a humanitarian program of relocation benefits and services. The payments are designed, as suggested in the preface to Title II, to prevent displaced persons from suffering "disproportionate injuries

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First, it embodies the principle that no person should be made to bear an unfair share of the cost of federal or federally-assisted programs or projects. The intent, rooted in the Fifth Amendment of the Constitution, is that whenever government intrudes upon the property rights of American citizens, it assumes a collateral responsibility to take reasonable steps to restore such persons to their former levels of well being. In a second respect, however, the act brings about an improvement of the housing

as a result of programs designed for the benefit of the public as a whole." Such injuries are primarily though not exclusively financial. The various housing payments, for example, are intended to put a displaced owner or tenant back into a comparable housing situation (as was enjoyed prior to displacement), without that person having to encounter out-of-pocket expenses. As a part of this provision, the residential displacee is assured of the availability of comparable decent, safe and sanitary housing prior to displacement. Since decent, safe and sanitary criteria are considered minimal requirements for

replacement housing, and housing payments are limited to those displacees who relocate to decent, safe, and sanitary housing, persons displaced from substandard housing units have the opportunity to improve their living conditions with federal assistance.

Finally the act, unlike court decisions on just compensation, is people oriented, not property oriented.

Congress is saying that the man on the street is now the primary concern in an 'in rem' taking where federal money is involved, and 'just compensation' means something more than payment for property taken. Congress has supplied the addition and has reached out to remedy a social injustice.<sup>18</sup>

As concluded in the American Bar Association proceedings just quoted, the provisions of the Uniform Relocation Act are "...part of the social costs of our times, a trend which is becoming evident across the spectrum of federal and state development. It is a reflection of a political attitude—that people count."

The basic housing assistance payment benefits and services mandated by the Uniform Act are contained in Sections 203 (Replacement Housing for Homeowner) and 204 (Replacement Housing for Tenants and Certain Others). Section 206 has taken on equal stature, as it provides for replacement housing under "last resort" measures—that is, when comparable sale or rental housing is not available or cannot otherwise be made available within the payment limits established in Sections 203 and 204. Housing trends through the late '70s and '80s have pushed the cost of replacement housing beyond those limits and into "last resort" on many occasions.

The provisions of Sections 203 and 204, and agency regulations subse-

quently promulgated, have placed certain responsibilities on both the displacing agency and the displacee. First, a displacee may not claim his or her replacement housing payment (purchase or rental supplement) unless the displacing agency has certified that the replacement dwelling occupied (or to be occupied) by the displacee meets minimum decent, safe and sanitary standards. While specific criteria may vary somewhat between agencies, the basic features looked for in housing inspections are:

1. Safe and adequate electrical wiring.
2. Safe and sanitary plumbing, including an adequate supply of potable water, adequate sewage, and private bathroom facilities.
3. Structurally sound dwelling, weather-tight and in good condition; includes exterior and interior walls, ceilings, windows, roof, and foundation.
4. Adequate heating system.
5. Sufficient ingress and egress (multi-story buildings).
6. Sufficient floor space for number of inhabitants.

Second, the responsibilities of the displacing agency extend not only to providing decent, safe and sanitary housing resources to the displacee with payments necessary to obtain such housing. The agency is also required to offer the displacee comparable replacement housing, that is, housing at least equal to — if not better than — the housing from which he or she was displaced.

These two requirements — that the agency offer comparable replacement housing and that the displacee obtain decent, safe and sanitary housing — reflect two major goals of the housing provisions of the Uniform Act. The first of these is unequivocally stated in the Senate Governmental Affairs Committee's report on S. 2363 (97th Congress):

The Committee reaffirms the policy that displacing agencies

have an affirmative obligation to provide suitable replacement housing that is decent, safe and sanitary to those persons whom they displace.

The second purpose of these requirements is to provide for the equitable treatment of displaced persons (as declared in the preface to Title II) by enabling them to relocate into substantially similar circumstances as they experienced prior to displacement. The primary means of accomplishing this latter objective is through the payment allowances.

We now recognize in both the Federal Highway Act (1968) and the Housing and Urban Development Act of 1968 that it is not enough simply to compensate property owners for the market value of their property. The bill (URA) seeks to insure that persons whose property is acquired by the United States shall not be worse off economically than they were before the onset of a federal project.<sup>19</sup>

The policies embodied in the Uniform Act have gone a long way toward promoting equity and fairness in the subsequent treatment of persons displaced by a variety of federally-assisted programs. Addressing the displacement concerns occasioned by the 1978 Housing and Community Development Act, HUD's 1979 "Displacement Report" noted:

The Uniform Relocation and Real Property Acquisition Policies Act, passed in 1970 as the urban renewal program was shifting away from large-scale clearance, now assures compensation for homeowners, tenants and commercial enterprises forced to move because of public acquisition. So highway construction and urban renewal (and its successor, Community Development Block Grants)

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Sec. 2. The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of a "decent home and a suitable living environment for every American family."

The Congress finds that this goal has not been fully realized for many of the Nation's lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.<sup>25</sup>

Having earlier considered the housing provisions of the Uniform Act, and some of the planning techniques of displacing agencies charged with implementing those provisions, the question remains whether the Uniform Act reflects the goals mandated in Section 2 of the 1949 Housing Act. If so, how are those goals achieved at the project level?

The answer to the first question is evident in the text of Title II of the Uniform Act. Both Sections 203 (Replacement Housing for Homeowner) and 204 (Replacement Housing for Tenants and Certain Others) require displacing agencies to provide displaced persons with comparable replacement housing which is "...a decent, safe and sanitary dwelling of standards adequate to accommodate such persons." Further, both sections limit compensation to qualifying displacees who actually occupy decent, safe and sanitary replacement housing. The latter provision is a legislative inducement with dollars to improve housing standards. A more definitive statement of the act's position on housing standards is provided in paragraph (3) of section 210 which requires each relocation assistance program to assure that "within a reasonable period of time prior to displacement,

comparable replacement dwellings will be available to displaced persons."

A second housing goal is introduced in section 204: that housing offered to a low-income displacee will take into account such person's income. A "percent of income" rule is applied by subsequent federal regulations as a financial means test—for example, if a displaced tenant is paying more than 30 percent of income for housing at the acquired dwelling, the computation of a rental supplement (difference between the present rent and the cost of a replacement rental, computed for a 42-month period) will be based on 30 percent of gross monthly income, rather than the actual monthly rent.

In summary, the Uniform Act is consistent with previous housing legislation. Moreover, the Uniform Act espouses two basic concepts which are representative of the "public attitude" on housing, as expressed by the Congress:

1. That every American is entitled to decent, safe and sanitary housing.
2. That such housing should be within his or her financial means.

The Senate Committee on Governmental Affairs, 97th Congress, stated in its Report on S. 2363:

The Committee reaffirms the policy that displacing agencies have an affirmative obligation to provide suitable replacement housing that is decent, safe, and sanitary to those persons whom they displace. Of particular concern to the committee are those "economically disadvantaged" who are least able to afford suitable replacement housing and who are involuntarily displaced.<sup>26</sup>

The accomplishment of these goals (the provision of decent, safe and sanitary housing, and affordability) is left to displacing agencies and the regulatory agencies to whom they report.

The provision of relocation assistance payments and services is subject to the relatively intense scrutiny of the General Accounting Office and other federal agencies, and is therefore a monitored program. However, the "aftershock" of relocation on displacees and impacted communities is not so easily discerned. It is precisely here that the long-term effects of adequate pre-project planning and displacement impact assessment will be felt.

What is suggested is that displacement impact analysis is a critical factor both in assuring successful relocation and in the accomplishment of certain national housing goals. The provision of decent, safe and sanitary housing within the financial means of displaced persons depends on the displacing agency's ability to discern individual and community housing needs prior to the start of the project and to determine the availability of resources sufficient to address those needs.

Hartman properly cautioned against too much reliance of relocation payments as displacement impact mitigators:


It has happened that relocation cash payments in the thousands of dollars have been offered, in effect, as bribes to get households to move. Hard-pressed low-income families particularly may find this sort of blandishment difficult to resist. But the seemingly enormous cash grant usually erodes within a year or two, leaving them, and others, faced with inadequate incomes to cope with a growing housing shortage and rising rents.<sup>27</sup>

If displacement is necessitated as a result of a project for "the good of the public as a whole", those who are forced out of their homes and living environments have a right to long-term assurances of decent and

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affordable housing and not just to short-term palliatives. Such assurances will continue to depend on legislated compensation levels, displacement impact assessment, and community involvement. 

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