

# PUTTING A PRICE ON BEAUTY

Sometimes the challenges associated with determining benefits for barbershops, hair salons and beauty parlors can make a relocation agent want to pull out their hair. Oftentimes, these challenges center on whether the hair stylists and barbers are considered employees of the salon or independent contractors, and if they are deemed to be independent contractors, how many businesses are actually being relocated? We will provide some helpful hints on how to resolve these issues and how to apply fixed non-residential (in lieu of), searching and reestablishment benefits correctly under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (and as amended) (URA).



**Q:** So how do we determine whether the hair stylists are independent contractors or employees?

**A:** When a displacing entity needs to relocate a hair salon, it is important to determine whether the individual cosmetologists are independent contractors, who may be eligible for relocation benefits as a displaced business or employees who are obviously not considered individual displaced businesses. It is important to remember that while there may be only one sign on the outside of the building, there may still be multiple businesses inside.

For this example, let's say the State Department of Transportation (DOT) is using federal funding and displacing the Hair Today, Gone Tomorrow beauty salon. The salon has six stations and six stylists. Each of the stylists leases their station, pays "chair rent" to the manager of Hair Today and files separate tax returns. All furniture, large equipment (like hooded dryers), sinks, shampoos, etc. is provided by the owner of Hair Today. The stylists do not receive any vacation time, sick time or other benefits from Hair Today, nor does the manager directly supervise their activities. Under these facts, the stylists appear to be independent contractors.

**Q:** If the stylists are considered independent contractors, how many businesses are really being relocated?

**A:** Because Hair Today meets the definition of a small business and is operating legally at its current location, it may qualify for moving, searching and reestablishment payments. It may also choose to receive a fixed moving payment or in-lieu payment.

But what relocation benefits will its six independent stylists be eligible for? For this example, assume all six stylists share the same wash bowls and back bar of shampoos, colors, etc. The salon has one receptionist that books appointments for all stylists and collects payments. All checks are made payable to either Hair Today or to the individual stylist. They have identical or interrelated business functions, but their financial affairs are not commingled. The stylists are held out to the public as one salon, and the customers think it is one business. (See Figure 1)

In this example, the stylists all use the same premises and equipment; they have substantially identical or interrelated business functions, however their financial affairs are not commingled and the stylists are held out to the public as one business. Therefore, in this example, the weight of the factors point to the six stylists as constituting a single business.

**Q: If the stylists are not eligible for an in-lieu payment as independent contractors, could they be eligible for searching and/or reestablishment payments?**

**A:** The answer is “it depends.” If any one of the stylists relocates to a replacement site found and chosen by Hair Today, that stylist would not incur any searching expenses. As for reestablishment payments, these must be “reasonable and necessary.”

If the stylists relocate along with Hair Today, it seems unlikely they would incur expenses for any of the items listed in § 24.304. (See Figure 2)

If any of the stylists go to other salons after Hair Today relocates, an advertisement letting the public know he or she is now with another salon may be considered reasonable. An increase in booth or space rent at a new salon for 24 months may also be reasonable. A separate searching expense for time spent looking for a new salon to rent space from may also be eligible.

### FIGURE 1

Under these facts, the individual stylists would not be eligible for separate fixed nonresidential move payments under §24.305.

§ 24.305 Fixed payment for moving expenses—nonresidential moves.

“(b) Determining the number of businesses. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- (1) The same premises and equipment are shared;
- (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- (3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
- (4) The same person or closely related persons own, control or manage the affairs of the entities.”

### FIGURE 2

§ 24.304 Reestablishment expenses—nonresidential moves

(a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

- (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.
- (3) Construction and installation costs for exterior signing to advertise the business.

- (4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting.
- (5) Advertisement of replacement location.
- (6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:
  - (i) Lease or rental charges;
  - (ii) Personal or real property taxes;
  - (iii) Insurance premiums; and
  - (iv) Utility charges, excluding impact fees.
- (7) Other items that the Agency considers essential to the reestablishment of the business.