

TITLE 410, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 5

NEBRASKA DEPARTMENT OF ROADS
RIGHT-OF-WAY DIVISION

RULES AND REGULATIONS CONCERNING
RELOCATION ASSISTANCE

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT-OF-WAY DIVISION

Chapter 5 - Relocation Assistance

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Chapter 5 - Relocation Assistance

001 GENERAL

001.01 PURPOSE. The purpose of this rule is to implement the Relocation Assistance Act of 1989 as amended, in accordance with the following objectives:

001.01A To ensure that persons displaced as a direct result of publicly financed projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

001.01B To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

001.02 DEFINITIONS.

001.02A AGENCY.

001.02A1 The term "Agency" shall mean any department, agency, or instrumentality of:

001.02A1a The State of Nebraska,

001.02A1b Any political subdivision of the State of Nebraska,

001.02A1c Any combination of states which includes the State of Nebraska,

001.02A1d Any combination of political subdivisions, either of the State of Nebraska alone or of the State of Nebraska and any other state or states acting in combination; and

001.02A2 Any person who has the authority to acquire property by eminent domain under state law.

001.02B APPRAISAL. The term "appraisal" shall mean a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date supported by the presentation and analysis of relevant market information.

001.02C BUSINESS. The term "business" means any lawful activity, except a farm operation, that is conducted:

001.02C1 Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

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001.02C2 Primarily for the sale of services to the public; or

001.02C3 Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

001.02C4 By a nonprofit organization that has established its nonprofit status under applicable federal and state law.

001.02D COMPARABLE REPLACEMENT DWELLING. The term “comparable replacement” means a dwelling which is:

001.02D1 Decent, safe and sanitary as described in section 001.02F;

001.02D2 Functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is “equal to or better than” the displacement dwelling. (See Appendix A, section 001.02D.);

001.02D3 Adequate in size to accommodate the occupants;

001.02D4 In an area not subject to unreasonable adverse environmental conditions;

001.02D5 In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

001.02D6 On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also section 004.03A2.);

001.02D7 Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A, section 001.02D7.); and

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001.02D8 Within the financial means of the displaced person:

001.02D8a A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in section 004.01C, all increased mortgage interest costs as described in section 004.01D and all incidental expenses as described in section 004.01E, plus any additional amount required to be paid under section 004.04, Replacement Housing of Last Resort.

001.02D8b A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this rule, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described in section 004.02B2.

001.02D8c For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under section 004.04, Replacement Housing of Last Resort.

001.02E CONTRIBUTE MATERIALLY. The term "contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

001.02E1 Had average annual gross receipts of at least \$5000; or

001.02E2 Had average annual net earnings of at least \$1000; or

001.02E3 Contributed at least 33 percent of the owner's or operator's average annual gross income from all sources.

001.02E4 If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

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001.02F DECENT, SAFE, AND SANITARY DWELLING. The term “decent, safe, and sanitary dwelling” means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply. The dwelling shall:

001.02F1 Be structurally sound, weathertight, and in good repair.

001.02F2 Contain a safe electrical wiring system adequate for lighting and other devices.

001.02F3 Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

001.02F4 Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and a refrigerator.

001.02F5 Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

001.02F6 For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

001.02G DISPLACED PERSON.

001.02G1 GENERAL. Displaced person means:

001.02G1a Any person who, on or after April 2, 1989, moves from or moves his or her personal property from real property as a result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a publicly financed project.

001.02G1b Any person who as a result of a publicly financed project moves from or moves his or her personal property from real property on which such person is a residential tenant, conducts a small business as defined by criteria established by the lead Agency which are

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consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq. as amended, conducts a farm operation, or conducts a business, as a direct result of rehabilitation, demolition, or other displacing activity, when the displacement is permanent; or

001.02G1c Solely for purposes of Neb.Rev.Stat. §§76-1228, 76-1229, and 76-1238 , any person who moves from or moves his or her personal property from real property as a direct result of a written notice of intent to acquire, or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, or the rehabilitation, demolition, or other displacing activity of other real property on which such person conducts a business or a farm operation, when such displacement is permanent.

001.02G2 DISPLACED PERSON does not include:

001.02G2a A person who is determined by the displacing Agency to be in unlawful occupancy of the real property prior to or after the initiation of negotiations for acquisition of the real property or a person who has been evicted for cause;

001.02G2b In any case in which the displacing Agency acquires property for a publicly financed project, any person who occupies such property on a rental basis after the property has been acquired by the displacing Agency or for a person subject to termination when the property is needed for the project;

001.02G2c A person who moves before the initiation of negotiations for acquisition of the real property unless the Agency determines that the person was displaced as a direct result of the program or project;

001.02G2d A person who initially enters into occupancy of the property after the date of its acquisition for the project;

001.02G2e A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended;

001.02G2f A person who is not required to relocate permanently as a direct result of a project;

001.02G2g An owner-occupant who moves as a result of the rehabilitation or demolition of the real property or an owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property meets all the following conditions:

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001.02G2g(1) No specific site or real property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area;

001.02G2g(2) The real property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the real property within the area is to be acquired within specific time limits;

001.02G2g(3) The Agency will not acquire the real property if negotiations fail to result in an amicable agreement and the owner is so informed in writing; and

001.02G2g(4) The Agency informs the owner in writing of what it believes to be the market value of the real property.

Subsection (g) of this section does not apply to any tenant who must move as a direct result of the acquisition, rehabilitation, or demolition of real property;

001.02G2h An owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property is for a program or project undertaken by an Agency or person that does not have authority to acquire real property by eminent domain, if such Agency or person:

001.02G2h(1) Prior to making an offer for the real property, clearly advises the owner that it is unable to acquire the real property if negotiations fail to result in an agreement; and

001.02G2h(2) Informs the owner in writing of what it believes to be the market value of the real property.

Subsection (h) of this section does not apply to any tenant who must move as a direct result of the acquisition of real property.

001.02G2i A person who the Agency determines is not displaced as a direct result of a partial acquisition.

001.02G2j A person, who, after receiving a notice of the intent to acquire, the initiation of negotiations, or the acquisition of the real property, is notified in writing that he or she will not be displaced for a project.

001.02G2k A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency.

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001.02G2l Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance authorized by section 102 of the American Dream Downpayment Act, 42 U.S.C. 12821, as amended; or

001.02G2m A person who is not lawfully present in the United States.

001.02H DISPLACING AGENCY. The term “displacing Agency” shall mean any Agency carrying out a publicly financed project which causes an individual to become a displaced person or any person lacking the power of eminent domain who carries out a publicly financed project when that project causes an individual to be a displaced person.

001.02I DWELLING. The term “dwelling” means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

001.02J FARM OPERATION. The term “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operators support.

001.02K INITIATION OF NEGOTIATIONS. Unless a different action is specified in applicable federal program regulations, the term “initiation of negotiations” means the following:

001.02K1 Whenever the displacement results from the acquisition of the real property by an Agency, the “initiation of negotiations” means the delivery of the initial written offer of just compensation by the Agency to the owner or the owners representative to purchase the real property for the project. However, if the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the “initiation of negotiations” means the actual move of the person from the property.

001.02K2 Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by an Agency), the “initiation of negotiations” means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

001.02K3 In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96-510, or “Superfund”), as amended, the “initiation of negotiations” means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

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001.02L LEAD AGENCY. The term “lead Agency” means the Nebraska Department of Roads.

001.02M MORTGAGE. The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of the state, together with the credit instruments, if any, secured thereby.

001.02N NONPROFIT ORGANIZATION. The term “nonprofit organization” means an organization that is incorporated under the applicable laws of a state as a nonprofit organization, and exempt from paying federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

001.02O NOTICE OF INTENT TO ACQUIRE OR NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE. Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of federal financial assistance.

001.02P OWNER OF A DWELLING. A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

001.02P1 Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

001.02P2 An interest in a cooperative housing project which includes the right to occupy a dwelling; or

001.02P3 A contract to purchase any of the interests or estates described in sections 001.02P1 and 001.02P2; or

001.02P4 Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

001.02Q PERSON. The term “person” means any individual, partnership, corporation, or association.

001.02R PUBLICLY FINANCED PROJECT. The term “publicly financed project” shall mean any project undertaken by an Agency in which any part of the cost is to be paid from funds derived from federal, state, or local taxes of any type, by revenue, or general obligation bonds issued by the Agency, or from funds derived by the Agency from the sale of products or services in a proprietary capacity. Publicly financed project shall not mean a project in which the federal funds involved are in the form of a federal guarantee or insurance.

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001.02S SMALL BUSINESS. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of section 003.04. (See Appendix A, section 001.02S.)

001.02T TENANT. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

001.02U UNLAWFUL OCCUPANCY. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A displacing Agency may, at its discretion, consider such a squatter to be in lawful occupancy.

001.02V UTILITY COSTS. The term "utility costs" means expenses for heat, lights, water and sewer.

001.03 NO DUPLICATION OF PAYMENTS. No person shall receive any payment under this rule if that person receives a payment under federal, state, or local law which is determined by the Agency to have the same purpose and effect as such payment under this rule. (See Appendix A, section 001.03.)

001.04 MANNER OF NOTICES. Each notice which the Agency is required to provide to a property owner or occupant, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

001.05 APPEALS.

001.05A GENERAL.

001.05A1 SCOPE AND APPLICATION. These rules shall govern practice and procedure in all hearings involving contested cases as that term is defined in 84-901(3) Neb.Rev.Stat. Practice and procedure for hearings involving any Agency shall also be governed by Chapter 84, Article 9 Neb.Rev.Stat. In the absence of a specific rule, practice pertaining to proceedings in the district courts of this state shall be applicable.

001.05A2 ACTIONS WHICH MAY BE APPEALED. Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the persons eligibility for, or the amount of a relocation payment required under these rules.

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001.05A3 FILINGS. All correspondence and filings shall be addressed or delivered to the head of the Agency.

001.05A4 TIME LIMIT FOR INITIATING APPEAL. Appeals must be filed with the Agency within 60 days of the displaced person's receipt of written notification of the Agency's determination on the displaced persons claim.

001.05A5 TIME COMPUTATION. In computing any period of time prescribed or allowed by these rules the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday. When the period of time prescribed or allowed is less than five days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. When the federal government and the Agency observe the same holiday on different days, and such prevents a party from acting within the prescribed time, both days observed shall be considered as holidays.

001.05A6 RIGHT TO REPRESENTATION. A person may be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

001.05A7 DEFINITIONS. As used in these rules of practice and procedure, the following definitions shall apply unless the context, to be intelligible or to prevent absurdity, otherwise requires:

001.05A7a PLEADINGS DEFINED: Pleadings shall mean any written application, petition, protest, complaint, answer or motion used in any proceedings pursuant to this rule.

001.05A7b AGENCY DEFINED: Agency shall mean the entity providing relocation assistance, or as provided in section 001.02A.

001.05A7c FILED WITH THE AGENCY DEFINED. The filing of pleadings with the Agency as required by these rules shall be made by filing them with the Agency head. If mailed to the Agency, the date of receipt at the Agency and not the date of deposit in the mail, is determinative.

001.05A7d HOLIDAY DEFINED: A holiday is a day or any portion of a day designated by statute or authorized by the Governor on which no business is transacted by the Agency.

001.05A7e OFFICE HOURS DEFINED: Office hours will be the normal business hours of the Agency involved with the appeal.

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001.05A7f HEARING DEFINED: All hearings shall be informal hearings conducted by a Hearing Examiner. The record of each hearing shall be transcribed or recorded, by the Agency at which either party may elect to be bound by the rules of evidence applicable in the district courts, if such election is in accordance with the requirements of 84-914 Neb.Rev.Stat.

001.05A7g PARTY DEFINED: Party shall mean the Agency (see section 001.05A7b) or the displaced person. (See section 001.02G.)

001.05B HEARING EXAMINER.

001.05B1 APPOINTMENT OF HEARING EXAMINER. Upon receipt of a request for a hearing by a party, the Agency head shall appoint a Hearing Examiner or Hearing Examiners to administer, conduct and preside over all hearings. The Hearing Examiner may be the Agency head, an individual or individuals who is/are employed by the Agency, or any other authorized designee, provided, the individual(s) so appointed can, in the opinion of the Agency head, serve as Hearing Examiner(s) in a competent and efficient manner. The Hearing Examiner(s) shall not have been directly involved in the action appealed.

001.05B2 DUTIES OF HEARING EXAMINER.

001.05B2a CONDUCT OF HEARING. The Hearing Examiner shall preside at the hearing, open the proceedings, acknowledge appearance of parties and counsel, receive evidence for the record, rule on all motions and objections, may interrogate witnesses, and shall close the proceedings. If a party or parties are not represented by legal counsel, the Hearing Examiner shall explain to them the rules of practice and procedure and shall conduct the hearing generally in a less formal manner.

001.05B3 CUSTODIAN OF ALL PLEADINGS. Upon appointment as Hearing Examiner, the Hearing Examiner shall become the custodian of all pleadings, exhibits, documents, and briefs entered, filed and introduced into evidence by the parties. Discovery documents, including depositions, need not be filed with the Hearing Examiner unless ordered by the Hearing Examiner or when introduced into evidence.

001.05B4 LIMITATION OF POWERS. A Hearing Examiner shall have no power to take any action involving a final determination of the proceedings.

001.05B5 RECORD OF PROCEEDINGS.

001.05B5a RECORD. The Hearing Examiner shall prepare an official record which shall include testimony and exhibits, however, it shall not be necessary to transcribe shorthand

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notes or recordings unless requested by either party, in which event the costs of such transcription shall be borne by whomever makes such request.

001.05B5b NOTICE OF HEARING. It shall be the duty of the Hearing Examiner to determine that notice of hearing has been given in accordance with these rules.

001.05B5c OATH. All testimony presented before the Hearing Examiner shall be given under oath which the Hearing Examiner will have the authority to administer.

001.05B5d CONDUCT OF PARTIES. The Hearing Examiner shall have the power to exclude or remove from the hearing any person who engages in improper conduct.

001.05B5e FINDINGS AND RECOMMENDATIONS. The Hearing Examiner shall, in writing, make complete findings of fact and conclusions of law together with a recommendation for disposition of the issue to the Agency head.

001.05C COMMENCEMENT OF PROCEEDING. A hearing shall be scheduled upon receipt of a written appeal.

001.05D SCHEDULING OF HEARING. A hearing shall be held no sooner than ten days after receipt of a written request, unless agreed upon in writing by the parties.

001.05E LOCATION OF HEARING. In setting the time and place for hearings in contested cases, appropriate consideration shall be made for the convenience and necessity of all of the parties, which includes the Agency or its representative.

001.05F NOTICE OF HEARING. The Agency head shall give reasonable notice of hearing stating the date, time, location and general subject matter of the hearing. Notice shall be given by certified mail no later than five days prior to a hearing. Failure of a party to appear at a scheduled hearing shall be grounds for dismissal of the proceeding.

001.05G MOTIONS.

001.05G1 Motions made prior to a hearing shall be in writing and a copy thereof shall be served on the parties. Such motions, except motions constituting final disposition of a proceeding, shall be ruled on by the Hearing Examiner. Motions constituting final disposition of a proceeding shall be ruled upon by the Agency head.

001.05G2 Motions may be ruled on ex parte, without argument. A copy of the motion with the ruling thereon shall be mailed to the parties.

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001.05G3 MOTION FOR CONTINUANCE. Motions for continuance shall be granted at the discretion of the Hearing Examiner, however, no continuance shall be requested and none allowed but for good cause shown and in no case shall a hearing be continued for a period of more than twenty days.

001.05H DISCOVERY.

001.05H1 The party shall have the right to request answers to questions, and to request the production of specified documents relevant to the proceedings. The Agency shall permit a party to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the persons right to inspect, consistent with applicable laws. Further, each may take depositions of any witness, upon ten working days notice to the other.

001.05H2 Discovery requests and/or notice shall be addressed to the party from whom the information or documents are sought.

001.05H3 Answers and documents must be provided within ten working days of receipt of request. Objections to such requests shall be made to the Hearing Examiner within five days of receipt of the request. The Hearing Examiner shall affirm or deny such objection within five days of receipt thereof and shall establish time limits for response when objections are denied.

001.05H4 Failure to respond to any discovery request, except where objections to such requests are sustained, may, at the discretion of the Hearing Examiner, result in the nonresponding party being denied the right to introduce any evidence on the subject of the request, or such other remedy as deemed appropriate.

001.05H5 The time limits of the discovery procedure may, if necessary and justified in the opinion of the Hearing Examiner, be adjusted to accommodate the time required by the circumstances.

001.05I SUBPOENA. A subpoena may be had upon request which shall indicate to the Hearing Examiner the names and the last known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced shall be adequately described. All requests for subpoena shall be directed to the attention of the Hearing Examiner no less than seven days prior to the published date of said hearing. The Hearing Examiner shall issue subpoena as requested and mail the same to the party so requesting within five days of receipt of request therefor. Service may be made either by mailing a copy thereof by registered or certified mail, return receipt requested, no less than three days before the hearing date of the cause which the witness is required to attend, or personally by any person not interested in the action. No costs for serving a subpoena will be allowed.

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001.05J CONDUCT OF HEARING. The Agency shall present its case first, setting forth the grounds and reasons for its actions, and then the other party shall be heard. In cases where the Agency feels that the other party should be heard first, that party shall be notified not less than five days in advance of the hearing.

001.05K DECISION OF THE AGENCY HEAD. The decision of the Agency head shall be in writing and a copy of the decision shall be mailed to the party by certified or registered mail no later than thirty days after the recommendation of the Hearing Examiner is received by the Agency head. The Agency head may, at his discretion, adopt the recommendation of the Hearing Examiner, or he may make an independent decision accompanied by his findings of fact and conclusions of law. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

001.06 RECORDS.

001.06A RECORDS. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least three years after each person displaced from the property receives the final payment to which he or she is entitled under this rule.

001.06B CONFIDENTIALITY OF RECORDS. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

ANNOTATION

**Title 410
Chapter 5
Section 001**

**Enabling Legislation
4-108 through 4-111, and
76-1214 through 76-1242
Neb. Rev. Stat.**

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002 GENERAL RELOCATION REQUIREMENTS

002.01 PURPOSE. This section prescribes general requirements governing the provision of relocation payments and other relocation assistance in this rule.

002.02 APPLICABILITY. These requirements apply to the relocation of any displaced person as defined in Section 001.02G.

002.03 RELOCATION NOTICES.

002.03A GENERAL INFORMATION NOTICE. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

002.03A1 Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

002.03A2 Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

002.03A3 Informs the person that he or she will not be required to move without at least 90 days advance written notice (see Section 002.03C), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

002.03A4 Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this rule.

002.03B NOTICE OF RELOCATION ELIGIBILITY. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Section 001.02K) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

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002.03C NINETY-DAY NOTICE.

002.03C1 GENERAL. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

002.03C2 TIMING OF NOTICE. The displacing Agency may issue the notice 90 days before it expects the person to be displaced or earlier.

002.03C3 CONTENT OF NOTICE. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. A 90-day notice will not be issued to a residential occupant until a comparable replacement dwelling is available. (See Section 002.04A.)

002.03C4 URGENT NEED. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the persons continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

002.04 AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT.

002.04A GENERAL. No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined in Section 001.02D) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

002.04A1 The person is informed of its location; and

002.04A2 The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

002.04A3 Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

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Chapter 5 - Relocation Assistance (Continued)

002.04B CIRCUMSTANCES PERMITTING WAIVER. The Agency head may grant a waiver of the policy in Section 002.04A in any case where it is demonstrated that a person must move because of:

002.04B1 A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

002.04B2 A presidentially declared national emergency; or

002.04B3 Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

002.04C BASIC CONDITIONS OF EMERGENCY MOVE. Whenever a person is required to relocate for a temporary period because of an emergency as described in Section 002.04B, the Agency shall:

002.04C1 Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and

002.04C2 Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

002.04C3 Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

002.05 RELOCATION PLANNING, ADVISORY SERVICES, AND COORDINATION.

002.05A RELOCATION PLANNING. During the early stages of development, programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

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002.05A1 An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

002.05A2 An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

002.05A3 An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

002.05A4 Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating agencies.

002.05B RELOCATION ASSISTANCE ADVISORY SERVICES.

002.05B1 GENERAL. The Agency shall carry out a relocation assistance advisory program for all persons displaced by the Agency. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

002.05B2 SERVICES TO BE PROVIDED. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

002.05B2a Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

002.05B2b Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Section 002.04A.

002.05B2b(1) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Sections 004.03A and 004.03B) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

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002.05B2b(2) Where feasible, housing shall be inspected by the Agency prior to being made available to assure that it meets applicable standards. (See Sections 001.02D and 001.02F.) If such an inspection has not been made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

002.05B2b(3) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

002.05B2b(4) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

002.05B2c Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

002.05B2d Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

002.05B2e Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

002.05B2f Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

002.05C COORDINATION OF RELOCATION ACTIVITIES. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

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002.06 EVICTION FOR CAUSE. Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this rule unless the Agency determines that:

002.06A The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

002.06B The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

002.06C In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this rule.

002.06D For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

002.07 GENERAL REQUIREMENTS - CLAIMS FOR RELOCATION PAYMENTS.

002.07A DOCUMENTATION. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

002.07B EXPEDITIOUS PAYMENTS. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentations to support the claim.

002.07C ADVANCE PAYMENTS. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

002.07D TIME FOR FILING.

002.07D1 All claims for a relocation payment shall be filed with the Agency within 18 months after:

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002.07D1a For tenants, the date of displacement;

002.07D1b For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

002.07D2 This time period shall be waived by the Agency for good cause.

002.07E MULTIPLE OCCUPANTS OF ONE DISPLACEMENT DWELLING. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

002.07F DEDUCTIONS FROM RELOCATION PAYMENTS. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, an Agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Section 002.04. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

002.07G NOTICE OF DENIAL OF CLAIM. If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

002.08 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME. No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the states tax law or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under any other state law, except for any law providing low-income housing assistance.

ANNOTATION

**Title 410
Chapter 5
Section 002**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**

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003 PAYMENTS FOR MOVING AND RELATED EXPENSES.

003.01 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES - RESIDENTIAL MOVES. Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined in section 001.02G) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

003.01A Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

003.01B Packing, crating, unpacking, and uncrating of the personal property.

003.01C Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

003.01D Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

003.01E Insurance for the replacement value of the property in connection with the move and necessary storage.

003.01F The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

003.01G Other moving-related expenses that are not listed as ineligible under section 003.05, as the Agency determines to be reasonable and necessary.

003.02 FIXED PAYMENT FOR MOVING EXPENSES - RESIDENTIAL MOVES.

003.02A Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under section 003.01.

003.02B Section 76-1229 of the Relocation Assistance Act provides that the Director of the lead Agency (Nebraska Department of Roads) shall take into consideration the reasonable expenses associated with relocation and the regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended.

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003.02C This allowance will be determined according to the applicable schedule developed by the Director of the lead agency (Nebraska Department of Roads) and approved by the Federal Highway Administration.

003.02D The following exceptions and limitations apply to this schedule:

003.02D1 The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an Agency at no cost to the person shall be limited to \$50.

003.02D2 An occupant will be paid on an actual cost basis for moving a mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the Agency's discretion.

003.02D3 An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

003.02E The schedule is based on the number of rooms of furniture owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (and thereby simplify the computation and payment of moving expenses), an Agency should increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if the equivalent of two rooms worth of possessions is located in the basement. In addition, an Agency may elect to pay for items stored outside the dwelling unit by adding the appropriate number of rooms.

003.02F The actual Fixed Residential Moving Cost Schedule will be printed in the Federal Register. For further information on the actual room amounts contact the Nebraska Department of Roads, Relocation Office, PO Box 94759, Lincoln NE 68509-4759 or call at (402)479-4761 or (800)764-0422.

003.03 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES - NONRESIDENTIAL MOVES.

003.03A ELIGIBLE COSTS. Any business or farm operation which qualifies as a displaced person (defined in section 001.02G) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

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003.03A1 Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

003.03A2 Packing, crating, unpacking, and uncrating of the personal property.

003.03A3 Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described in section 003.03A12. This includes connection to utilities available nearby. It also includes modifications to the personal property 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. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

003.03A4 Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

003.03A5 Insurance for the replacement value of the personal property in connection with the move and necessary storage.

003.03A6 Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

003.03A7 The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

003.03A8 Professional services necessary for:

003.03A8a Planning the move of the personal property,

003.03A8b Moving the personal property, and

003.03A8c Installing the relocated personal property at the replacement location.

003.03A9 Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

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003.03A10 Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

003.03A10a The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

003.03A10b The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

003.03A11 The reasonable cost incurred in attempting to sell an item that is not to be relocated.

003.03A12 Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

003.03A12a The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

003.03A12b The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

003.03A13 Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual reasonable expenses, not to exceed \$2,500, which are incurred in searching for a replacement location, including:

003.03A13a Transportation.

003.03A13b Meals and lodging away from home.

003.03A13c Time spent searching, based on reasonable salary or earnings.

003.03A13d Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

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003.03A14 Other moving-related expenses that are not listed as ineligible under section 003.05, as the Agency determines to be reasonable and necessary.

003.03B NOTIFICATION AND INSPECTION. The following requirements apply to payments under section 003.03:

003.03B1 The Agency shall inform the displaced person, in writing, of the requirements of sections 003.03B2 and 003.03B3 as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in Section 002.03.

003.03B2 The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

003.03B3 The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

003.03C SELF MOVES. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less.

003.03D TRANSFER OF OWNERSHIP. Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

003.03E ADVERTISING SIGNS. The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

003.03E1 The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

003.03E2 The estimated cost of moving the sign, but with no allowance for storage.

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003.04 REESTABLISHMENT EXPENSES - NONRESIDENTIAL MOVES. In addition to the payments available under section 003.03, a small business, as defined in section 001.02S, farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for eligible expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

003.04A ELIGIBLE EXPENSES. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

003.04A1 Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.

003.04A2 Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

003.04A3 Construction and installation costs for exterior signing to advertise the business.

003.04A4 Provision of utilities from right-of-way to improvements on the replacement site.

003.04A5 Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

003.04A6 Licenses, fees and permits when not paid as part of moving expenses.

003.04A7 Feasibility surveys, soil testing and marketing studies.

003.04A8 Advertisement of replacement location.

003.04A9 Professional services in connection with the purchase or lease of a replacement site.

003.04A10 Estimated increased costs of operation during the first two years at the replacement site for such items as:

003.04A10a Lease or rental charges,

003.04A10b Personal or real property taxes,

003.04A10c Insurance premiums, and

003.04A10d Utility charges, excluding impact fees.

003.04A11 Impact fees or one-time assessments for anticipated heavy utility usage.

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003.04A12 Other items that the Agency considers essential to the reestablishment of the business.

003.04B INELIGIBLE EXPENSES. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible.

003.04B1 Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

003.04B2 Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

003.04B3 Interest on money borrowed to make the move or purchase the replacement property.

003.04B4 Payment to a part-time business in the home which does not contribute materially to the household income.

003.05 INELIGIBLE MOVING AND RELATED EXPENSES. A displaced person is not entitled to payment for:

003.05A The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the computation under section 004.01C4c; or

003.05B Interest on a loan to cover moving expenses; or

003.05C Loss of goodwill; or

003.05D Loss of profits; or

003.05E Loss of trained employees; or

003.05F Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in section 003.04A10; or

003.05G Personal injury; or

003.05H Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

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003.05I Expenses for searching for a replacement dwelling; or

003.05J Physical changes to the real property at the replacement location of a business or farm operation except as provided in sections 003.03A3 and 003.04A; or

003.05K Costs for storage of personal property on real property already owned or leased by the displaced person.

003.06 FIXED PAYMENT FOR MOVING EXPENSES - NONRESIDENTIAL MOVES.

003.06A BUSINESS. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by sections 003.03 and 003.04. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with section 003.06E, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

003.06A1 The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site.

003.06A2 The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

003.06A3 The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

003.06A4 The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

003.06A5 The business is not operated at the displacement site solely for the purpose of renting the site to others.

003.06A6 The business contributed materially to the income of the displaced person during the two taxable years prior to displacement (see section 001.02E).

003.06B 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:

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003.06B1 The same premises and equipment are shared;

003.06B2 Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

003.06B3 The entities are held out to the public, and to those customarily dealing with them, as one business; and

003.06B4 The same person or closely related persons own, control, or manage the affairs of the entities.

003.06C FARM OPERATION. A displaced farm operation (defined in section 001.02J) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with section 003.06E, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

003.06C1 The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

003.06C2 The partial acquisition caused a substantial change in the nature of the farm operation.

003.06D NONPROFIT ORGANIZATION. A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses. (See Appendix A, section 003.06D.)

003.06E AVERAGE ANNUAL NET EARNINGS OF A BUSINESS OR FARM OPERATION. The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net

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earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owners spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

ANNOTATION

**Title 410
Chapter 5
Section 003**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**

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Chapter 5 - Relocation Assistance (Continued)

004 REPLACEMENT HOUSING PAYMENTS

004.01 REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER-OCCUPANTS.

004.01A ELIGIBILITY. A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

004.01A1 Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

004.01A2 Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one-year period for good cause):

004.01A2a The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

004.01A2b The date the displacing agency's obligation under Section 002.04 is met.

004.01B AMOUNT OF PAYMENT. The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also Section 004.04.) The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

004.01B1 The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with Section 004.01C; and

004.01B2 The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Section 004.01D; and

004.01B3 The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with Section 004.01E; and

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004.01B4 The amount, if any, by which the taxes on the replacement dwelling exceed the taxes on the displacement dwelling, as determined in accordance with Section 004.01F.

004.01C PRICE DIFFERENTIAL.

004.01C1 BASIC COMPUTATION. The price differential to be paid under Section 004.01B1 is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

004.01C1a The reasonable cost of a comparable replacement dwelling as determined in accordance with Section 004.03A; or

004.01C1b The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

004.01C2 MIXED-USE AND MULTI-FAMILY PROPERTIES. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

004.01C3 INSURANCE PROCEEDS. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also, see Section 001.03.)

004.01C4 OWNER RETENTION OF DISPLACEMENT DWELLING. If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

004.01C4a The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

004.01C4b The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined in Section 001.02F); and

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Chapter 5 - Relocation Assistance (Continued)

004.01C4c The current fair market value for residential use of the replacement site (see Appendix A, Section 004.01C4c), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

004.01C4d The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

004.01D INCREASED MORTGAGE INTEREST COSTS. The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under Section 004.01B2. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Sections 004.01D1 through 004.01D5 shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

004.01D1 The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced accordingly. (See Appendix A, Section 004.01D.) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

004.01D2 The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter. If the term on the new mortgage is shorter and, therefore, used in the determination of the payment, it will be necessary to recalculate a new monthly principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance(s) on the displacement dwelling and the term of the new mortgage. (See Appendix A, Section 004.01D.)

004.01D3 The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

004.01D4 Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

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004.01D4a They are not paid as incidental expenses;

004.01D4b They do not exceed rates normal to similar real estate transactions in the area;

004.01D4c The Agency determines them to be necessary; and

004.01D4d The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

004.01D5 The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the persons current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

004.01E INCIDENTAL EXPENSES. The incidental expenses to be paid under Sections 004.01B3 or 004.02C1 are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

004.01E1 Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

004.01E2 Lender, FHA, or VA application and appraisal fees.

004.01E3 Loan origination or assumption fees that do not represent prepaid interest.

004.01E4 Certification of structural soundness and termite inspection when required.

004.01E5 Credit report.

004.01E6 Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

004.01E7 Escrow agent's fee.

004.01E8 State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

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004.01E9 Such other costs as the Agency determines to be incidental to the purchase.

004.01F TAX DIFFERENTIAL.

004.01F1 GENERAL. Tax differential payments are provided to compensate eligible displaced owner-occupants for the increase in property taxes resulting from relocation for a three-year period. The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person. Tax statements from the county of displacement will provide the information necessary to compute the amount of eligibility. Homestead exemptions on the comparable dwelling or on the replacement dwelling may adversely affect the payment eligibility and, in such cases, the amount of the exemption should be disregarded in the computation.

004.01F2 BASIC COMPUTATION. The annual tax differential to be paid under Section 004.01B4 is the amount which must be added to the amount of taxes on the displacement dwelling to provide a total amount equal to the lesser of:

004.01F2a The amount of the taxes on the comparable replacement dwelling; or

004.01F2b The amount of the taxes on the replacement dwelling actually purchased and occupied by the displaced person.

004.01F3 MANNER OF DISBURSEMENT. Tax differential payments shall be made in either yearly disbursements or in lump sum payment, at the displacees option. The lump sum amount is the annual amount times three. Displacees who are 62 years of age or older are not eligible for the lump sum payment. Such persons may be eligible for consideration for homestead exemption benefits within the three-year period of eligibility. Elderly displacees will be paid on an annual basis for a three-year period, thus assuring that they will be reimbursed for taxes actually incurred at the replacement dwelling.

004.01F4 TWO OR MORE DWELLINGS. If the displacement property contains two or more dwellings, a carve-out must be made to determine the residential taxes attributable to the owner-occupied dwelling. All other dwellings shall not contribute to the displacement property taxes.

004.01F5 OWNER RETENTION OF DISPLACEMENT DWELLING AND NEW CONSTRUCTION. In most cases, there will not be a first-year tax differential payment. This is due to the relatively low amount of taxes at the previously unimproved replacement site. Second and third-year payments should reflect a reassessment on the newly improved replacement property.

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004.01F6 ACREAGES. The Agency must carefully consider the amount of land for an acreage at either the subject, comparable, or replacement sites. The amount of land contributing to the total taxes of any dwelling used in a tax differential computation must reflect the typical residential lot size for the area of the dwelling in question. The taxes attributable to any amount of land in excess of a typical lot size for the area must be carved out of the total residential tax value.

004.01G RENTAL ASSISTANCE PAYMENT FOR 180-DAY HOMEOWNER. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under Section 004.01A but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with Section 004.02B.

004.02 REPLACEMENT HOUSING PAYMENT FOR 90-DAY OCCUPANTS.

004.02A ELIGIBILITY. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with Section 004.02B, or downpayment assistance, as computed in accordance with Section 004.02C, if such displaced person:

004.02A1 Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

004.02A2 Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year (unless the Agency extends this period for good cause) after:

004.02A2a For a tenant, the date he or she moves from the displacement dwelling, or

004.02A2b For an owner-occupant, the later of:

004.02A2b(1) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

004.02A2b(2) The date he or she moves from the displacement dwelling.

004.02B RENTAL ASSISTANCE PAYMENT.

004.02B1 AMOUNT OF PAYMENT. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also Section 004.04.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

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004.02B1a The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

004.02B1b The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

004.02B2 BASE MONTHLY RENTAL FOR DISPLACEMENT DWELLING. The base monthly rental for the displacement dwelling is the lesser of:

004.02B2a The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the persons income or other circumstances); or

004.02B2b Thirty percent of the persons average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in Section 004.02B2a. A full-time student or resident of an institution may be assumed to be a dependent unless the person demonstrates otherwise.); or

004.02B2c The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

004.02B3 MANNER OF DISBURSEMENT. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by Section 004.03F, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the persons housing.

004.02C DOWNPAYMENT ASSISTANCE PAYMENT.

004.02C1 AMOUNT OF PAYMENT. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under Section 004.02B if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under Section 004.01B if he or she met the 180-day occupancy requirement. An

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Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under Section 004.01A is not eligible for this payment. (See also Appendix A, Section 004.02C.)

004.02C2 APPLICATION OF PAYMENT. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

004.03 ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS.

004.03A DETERMINING COST OF COMPARABLE REPLACEMENT DWELLING. The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined in Section 001.02D).

004.03A1 If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Section 002.05A2 and Appendix A, Section 004.03A). An obviously overpriced dwelling may be ignored.

004.03A2 If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

004.03A3 If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

004.03A4 To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

004.03B INSPECTION OF REPLACEMENT DWELLING. Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined in Section 001.02F.

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004.03C PURCHASE OF REPLACEMENT DWELLING. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

004.03C1 Purchases a dwelling; or

004.03C2 Purchases and rehabilitates a substandard dwelling; or

004.03C3 Relocates a dwelling which he or she owns or purchases; or

004.03C4 Constructs a dwelling on a site he or she owns or purchases; or

004.03C5 Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

004.03C6 Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

004.03 OCCUPANCY REQUIREMENTS FOR DISPLACEMENT OR REPLACEMENT DWELLING. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

004.03D1 A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or the displacing Agency; or

004.03D2 Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

004.03E CONVERSION OF PAYMENT. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Section 004.02B is eligible to receive a payment under Sections 004.01 or 004.02C if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Sections 004.01 or 004.02C.

004.03F PAYMENT AFTER DEATH. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

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004.03F1 The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

004.03F2 The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

004.03F3 Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

004.04 REPLACEMENT HOUSING OF LAST RESORT.

004.04A DETERMINATION TO PROVIDE REPLACEMENT HOUSING OF LAST RESORT. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in Sections 004.01 or 004.02, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified either:

004.04A1 On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

004.04A1a The availability of comparable replacement housing in the program or project area; and

004.04A1b The resources available to provide comparable replacement housing; and

004.04A1c The individual circumstances of the displaced person; or

004.04A2 By a determination that:

004.04A2a There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

004.04A2b A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

004.04A2c The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

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004.04B BASIC RIGHTS OF PERSONS TO BE DISPLACED. Notwithstanding any provisions of this section, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Relocation Assistance Act or this rule. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

004.04C METHODS OF PROVIDING COMPARABLE REPLACEMENT HOUSING. Agencies shall have broad latitude in implementing this section, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

004.04C1 The methods of providing replacement housing of last resort include, but are not limited to:

004.04C1a A replacement housing payment in excess of the limits set forth in Sections 004.01 or 004.02. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

004.04C1b Rehabilitation of and/or addition as to an existing replacement dwelling.

004.04C1c The construction of a new replacement dwelling.

004.04C1d The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

004.04C1e The relocation and, if necessary, rehabilitation of a dwelling.

004.04C1f The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

004.04C1g The removal of barriers to the handicapped.

004.04C1h The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

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Chapter 5 - Relocation Assistance (Continued)

004.04C2 Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, Section 004.04), including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with Section 001.02D2.

004.04C3 The Agency shall provide assistance under this section to a displaced person who is not eligible to receive a replacement housing payment under Sections 004.01 and 004.02 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the persons financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

ANNOTATION

**Title 410
Chapter 5
Section 004**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**

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Chapter 5 - Relocation Assistance (Continued)

005 MOBILE HOMES

005.01 APPLICABILITY. This section describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this rule. Except as modified by this section, such a displaced person is entitled to a moving expense payment in accordance with Section 003 and a replacement housing payment in accordance with Section 004 to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

005.02 MOVING AND RELATED EXPENSES - MOBILE HOMES.

005.02A A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with Section 003.01. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under Section 003.03. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described in Section 005.03A3, the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

005.02B The following rules apply to payments for actual moving expenses under Section 003.01;

005.02B1 A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

005.02B2 If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

005.02B3 A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

005.03 REPLACEMENT HOUSING PAYMENT FOR 180-DAY MOBILE HOMEOWNER-OCCUPANTS.

005.03A A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under Section 004.01 if:

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005.03A1 The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

005.03A2 The person meets the other basic eligibility requirements in Section 004.01A; and

005.03A3 The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

005.03A3a Is not and cannot economically be made decent, safe, and sanitary; or

005.03A3b Cannot be relocated without substantial damage or unreasonable cost; or

005.03A3c Cannot be relocated because there is no available comparable replacement site;
or

005.03A3d Cannot be relocated because it does not meet mobile home park entrance requirements.

005.03A4 If the mobile home is not acquired and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described in Section 004.01C, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

005.03B A displaced owner-occupant of a mobile home is also entitled to a rent supplement described in 004.02 for renting a replacement mobile home lot.

005.03C In determining the amount of the combined payment to a displaced owner-occupant of a mobile home so they may purchase a conventional home for replacement housing, the cost of the comparable conventional dwelling will be the sum of the cost of the comparable mobile home (004.01C1a) and the amount of the lot rent supplement (004.02).

005.04 REPLACEMENT HOUSING PAYMENT FOR 90-DAY MOBILE HOME OCCUPANTS. A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under Section 004.02 if:

005.04A The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

005.04B The person meets the other basic eligibility requirements in Section 004.02A; and

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005.04C The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described in Section 005.03A3.

005.05 ADDITIONAL RULES GOVERNING RELOCATION PAYMENTS TO MOBILE HOME OCCUPANTS.

005.05A REPLACEMENT HOUSING PAYMENT BASED ON DWELLING AND SITE. Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under Section 004. However, the total replacement housing payment under Section 004 shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also Section 004.03B.)

005.05B COST OF COMPARABLE REPLACEMENT DWELLING.

005.05B1 If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

005.05B2 If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under Section 004.01C, the cost of a comparable replacement dwelling is the sum of:

005.05B2a The value of the mobile home,

005.05B2b The cost of any necessary repairs or modifications, and

005.05B2c The estimated cost of moving the mobile home to a replacement site.

005.05C INITIATION OF NEGOTIATIONS. If the mobile home is not actually acquired, but the occupant is considered displaced under this rule, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this rule.

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Chapter 5 - Relocation Assistance (Continued)

005.05D PERSON MOVES MOBILE HOME. If the owner is reimbursed for the cost of moving the mobile home under this rule, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

005.05E PARTIAL ACQUISITION MOBILE HOME PARK. The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this rule.

ANNOTATION

**Title 410
Chapter 5
Section 005**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION

This appendix provides additional information to explain the intent of certain provisions.

GENERAL (001)

DEFINITIONS. (001.02)

DEFINITION OF COMPARABLE REPLACEMENT DWELLING. (001.02D)

The requirement in Section 001.02D2 that a comparable replacement dwelling be “functionally equivalent” to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is “adequate to accommodate” the displaced person) may be found to be “functionally equivalent” to a larger but very run-down substandard displacement dwelling.

Section 001.02D7 requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

However, nothing in this rule prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this rule. (If a person accepts assistance under a government housing program, the rental assistance payment under Section 004.02 would be computed on the basis of the persons actual out-of-pocket cost for the replacement housing.)

PERSONS NOT DISPLACED. (001.02G2)

Section 001.2G2d recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this rule, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this rule may file an appeal in accordance with Section 001.05.

Section 001.02G2e refers to voluntary acquisitions. These transactions must meet the following conditions:

- (i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.
- (ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- (iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- (iv) The Agency will inform the owner of what it believes to be the fair market value of the property;
or

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

Acquisitions for programs or projects undertaken by an Agency or person that does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

- (i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and
- (ii) Inform the owner of what it believes to be fair market value of the property.

INITIATION OF NEGOTIATIONS. (001.02K)

This section of the rule provides a special definition for acquisitions and displacements under Public Law 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

SMALL BUSINESS. (001.02S)

Section 001.02S is intended to emphasize "a location of economic activity." In doing this, it is clear that such businesses as a coin-operated facility or storage building visited by employees on a regular basis, daily or at least weekly, would qualify for reestablishment expenses. This would also include an occupied rental property at which the owner maintains personal property and for which rental property the owner is responsible for maintenance.

NO DUPLICATION OF PAYMENTS. (001.03)

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under federal, state, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

GENERAL RELOCATION REQUIREMENTS (002)

AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT. (002.04)

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

GENERAL. (002.04A)

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Section 002.04A requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

RELOCATION ASSISTANCE ADVISORY SERVICES. (002.05)

Section 002.05B2b(3) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

GENERAL REQUIREMENTS - CLAIMS FOR RELOCATION PAYMENTS. (002.07)

Section 002.07A allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in Section 003.03C.

PAYMENT FOR MOVING AND RELATED EXPENSES (003)

FIXED PAYMENT FOR MOVING EXPENSES - NONRESIDENTIAL MOVES. (003.06)

NONPROFIT ORGANIZATIONS. (003.06D)

Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

REPLACEMENT HOUSING PAYMENTS (004)

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER OCCUPANTS. (004.01)

The provision for extending eligibility for a replacement housing payment beyond the one-year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling. (004.01A2)

The provision in Section 004.01C4c to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used. (004.01C)

INCREASE MORTGAGE INTEREST COSTS. (004.01D)

The provision in Section 004.01D set forth the factors to be used in computing the payment that will be required to reduce a persons replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. If the term on the new mortgage is shorter and, therefore, used in the determination of the payment, it will be necessary to recalculate a new monthly principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance(s) on the displacement dwelling and the term of the new mortgage. This payment is commonly known as the "buydown".

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	\$50,000.00
Monthly Payment (principal and interest)	458.22
Interest Rate (percent)	7
New Mortgage:	
Interest rate (percent).....	10
Points	3
Term (years).....	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee.) However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

The amount to be financed to maintain a monthly payment of \$458.22 at 10% is \$42,010.18.

Remaining principal balance on old mortgage	\$50,000.00
Less amount of reduced loan.....	<u>-42,010.18</u>
Increased mortgage interest costs	\$ 7,989.82
3 points on \$42,010.18.....	<u>1,260.31</u>
Total buydown necessary to maintain	
payments at \$458.22/month	\$ 9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage (\$42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were \$35,000, the buydown payment would be \$7,706.57 (\$35,000 divided by \$42,010.18 = .8331 \$9,250.13 x .8331 = \$7,706.57).

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

The following sample is for computations involving a shorter term at the replacement property.

Old Mortgage:	
Remaining Principal Balance	\$50,000.00
Monthly Payment (principal and interest)	458.22
Interest Rate (percent)	7
Remaining Term (months).....	174
New Mortgage:	
Interest Rate (percent)	10
Term (months).....	120
Points	3

Because the new term is less than the remaining term at the displacement dwelling, it is necessary to recalculate a new monthly principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance on the old mortgage and the term of the new mortgage. The monthly payment for \$50,000.00 at 7% for 120 months is \$580.54.

The amount to be financed to maintain a monthly payment of \$580.54 at 10% is \$43,930.14.

Remaining principal balance on old mortgage	\$50,000.00
Less amount of reduced loan.....	<u>43,930.14</u>
Increased mortgage interest costs	\$ 6,069.86
3 points on \$43,930.14.....	<u>1,317.90</u>
Total buydown necessary to maintain payment at \$580.54/month.....	\$ 7,387.76

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the computed buydown mortgage amount and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

REPLACEMENT HOUSING PAYMENT FOR 90-DAY OCCUPANTS. (004.02)

DOWNPAYMENT ASSISTANCE PAYMENT. (004.02C)

The downpayment assistance provisions in Section 004.02C are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing Agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing Agencies coordinate with each other to reach a consensus on a uniform procedure for the state and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS. (004.03)

DETERMINING COST OF COMPARABLE REPLACEMENT DWELLING. (004.03A)

The procedure for adjusting the asking price of comparable replacement dwellings requires that the Agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount. (004.03A1)

REPLACEMENT HOUSING OF LAST RESORT. (004.04)

BASIC RIGHTS OF PERSONS TO BE DISPLACED. (004.04B)

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under Section 004.01, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" in Section 001.02P.

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Chapter 5 - Relocation Assistance (Continued)

APPENDIX A - ADDITIONAL INFORMATION (Continued)

The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

METHODS OF PROVIDING COMPARABLE REPLACEMENT HOUSING. (004.04C)

The use of cost effective means of providing comparable replacement housing is implied throughout the section. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 004.04C2 permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

MOBILE HOMES (005)

REPLACEMENT HOUSING PAYMENT FOR 180-DAY MOBILE HOMEOWNER-OCCUPANTS. (005.03)

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under Section 004.01 and a replacement housing payment for site computed under Section 004.02. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under Section 004.01 to assist in the purchase of a replacement site or, under Section 004.02, to assist in renting a replacement site.

