ACTUAL DIRECT LOSS AND SUBSTITUTE PERSONAL PROPERTY PAYMENTS - WHAT'S THE DIFFERENCE?

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Imagine that you are sitting in a relocation course and the instructor asks who can explain the difference between the actual direct loss of tangible personal property payment and substitute personal property payment. Would you be the first person to raise a hand? Or would you think, you may have heard about these payments, but didn't really understand how they are supposed to work? Maybe they always sounded too complicated to explain to the displaced business.

The idea behind both of these payments is to allow a business owner to claim a moving payment for an item of personal property without actually moving it to a replacement location. A business, farm or nonprofit may use either of these payments when it elects to not move personal property. (Note that this article will only refer to businesses for ease of reading.) There may be various reasons for not moving personal property - the owner is going out of business, the item doesn't work, the business no longer needs it, or the item is outdated and the owner wants to modernize the operation.

These payments can provide an advantage to a business owner, as well as the displacing agency. The business is permitted to claim a payment for items it does not want to move, and the Uniform Act regulations are structured so the payments cannot exceed what the agency would have spent to move the personal property. In some situations, the amount may even be less than what the moving expense would have been.

So how does the business owner decide whether to use one of these alternate payments, and which one may be more appropriate? The relocation agent should discuss these options during the personal interview to assess whether the owner should consider them, and continue to provide information as part of advisory services.

Here are some things that differentiate the payments, and issues to consider.

Will the business replace the item not relocated with a similar item at the replacement location?
This is the key difference between the two payments. The **direct loss payment** is intended for items of personal property the business does not want to move and will not replace at the new site. It is for those items no longer needed or wanted by the business. An owner can use this payment for almost any type of personal property: unwanted machinery and equipment (including equipment that is in storage or not being used), furniture, inventory that the business simply does not want to move, or other damaged inventory. An owner planning to discontinue the business could also take a direct loss payment for all the personal property at the displacement site.

On the other hand, the **substitute personal property payment** is intended for items the owner will not move, but will promptly replace with a similar item at the replacement site. The substitute property payment can offset the cost of the newer item, which provides a real benefit to the business. This payment can also be used for all types of personal property the owner does not want to move. Unlike the direct loss payment, the item must be used as part of the business operation, so the owner could not elect this payment for equipment that is in storage or not being used.

Estimating move costs for a direct loss payment

While both of these payments are limited to what the moving expense would have been for the item, the regulations have different provisions for estimating those expenses. In the case of a direct loss payment, the Uniform Act regulations refer to "the estimated cost of moving the item as is," which requires some important distinctions about what can be included in the move cost estimate.

First, for a piece of equipment that is in storage, or not being used by the business, the estimate cannot include the cost of reconnecting it. This is a logical exclusion since the item is not currently connected to any utilities, and the estimate should reflect the "as is" condition and installation at the displacement site. Second, if the equipment is being used in the business operation, the estimated move cost should reflect the cost to install the equipment as it currently exists. It cannot include the cost of upgrades or improvements to the equipment that are required by codes that apply at a replacement location. Again, the "as is" condition cannot consider code modifications that are not in effect at the displacement site.

Let's say the owner has a drill press that is in storage. The estimated cost to move would only include the cost to haul it to the replacement site. If the drill press is in use, the estimate would include disconnect, hauling and reconnect expenses. However, if new codes required a safety cut-off switch installed at the replacement site, this expense would not be included.

Estimating move costs for a substitute personal property payment

The substitute personal property payment is used for items that are currently used as part of the business operation, so the move cost would include reinstallation at the replacement site. The difference between reinstallation costs for a substitute personal property payment and the direct loss payment is that code modifications that would have been required to the substituted item can be included in the move estimate.

As an example, if the owner was substituting a drill press currently in use, the estimated move costs would include the cost to disconnect, haul it, reconnect, and install the code-required safety cut-off switch.

This article is only intended to provide an overview of the differences between the direct loss and substitute personal property payments. It is certainly not a full explanation of either payment or how to calculate them. For the full Uniform Act regulations see 49 CFR 24.301 (g)(I4), (g)(I 5), (g)(I 6) and Appendix A, 24.301 (g)(I4). ■ ■ ■