


R/W MANUAL CHANGE

RWMC- 197

PROCEDURAL HANDBOOK  
 (1984 Edition)

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 TRANSMITTAL#\_\_\_\_

TITLE:  
 RELOCATION ASSISTANCE

APPROVED BY:  
  
 DONALD E. GREBE

**FEB 10 2010**  
 DATE ISSUED:  
 2/10/10  
 Page 1 of 1

SUBJECT AREA:  
 CHAPTER 10 – RELOCATION ASSISTANCE

ISSUING UNIT:  
 OFFICE OF RIGHT OF WAY PROJECT DELIVERY

SUMMARY OF CHANGES: Revises Table 10.03-C, Time Frames When Order for Possession (OP), in Section 10.03.00.00, in Section 10.03.00.00. Corrects typographical error for service of 60-Day Notice to Vacate to residential tenants (rather than a 30-Day Notice to Vacate) in order to correctly reflect manual section 10.03.09.05.

**PURPOSE**

This manual change revises Table 10.03-C, Time Frames When Order for Possession (OP), in Section 10.03.00.00. Under “Day of Control,” under “Tenants,” residential tenants must receive a 60-Day Notice to Vacate. This is a State law. Nonresidential tenants still receive a 30-Day Notice to Vacate.

**EFFECTIVE DATE**

Immediately.

**MANUAL IMPACT**

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

**REVISION SUMMARY**

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
10 - Sections	10.03.00.00 (REV 11/2009)	10.03.00.00 (REV 2/2010)

## **10.03.00.00 - RELOCATION NOTICES and OCCUPANCY CERTIFICATIONS**

### **10.03.01.00      Notices**

The Uniform Act and 49 CFR 24 prescribe general requirements governing the provision of relocation payments and other relocation assistance. The requirements mandate that potential displacees receive appropriate and timely notices that explain the relocation program and their entitlements.

As such, the Region/District must provide all potential displacees with the appropriate notice described in this section, in writing and within the time frame prescribed.

If the person is unable to read and understand the notice, the RAP Agent must provide the person with appropriate translation and counseling.

Each notice will include the name and telephone number of the RAP Agent to be contacted for answers to questions or other needed help.

All notices should be personally served. If personal service is impossible (occupants are in the armed forces, impacted property is for storage only), the notice may be sent by certified or registered first-class mail (return receipt requested and received), with another copy of the notice sent simultaneously by regular first-class mail. The date of service shall be 5 days for California residents, 10 days for U.S. residents, and 20 days for all others.

### **10.03.02.00      General Information Notice [49 CFR 24.203(a)]**

The first notice provided to the potential displacees is the General Information Notice (GI Notice) (RW 10-7). The mandatory format should not be changed except to add the potential displacee's name and the project identification [Dist-Co-Rte-PM-Parcel] and the date the Notice is sent.

The GI Notice is mailed to the potential displacee within three (3) working days of the RAP Branch's receipt of the Parcel Occupancy Data Sheet provided by the Appraiser.

The GI Notice should be mailed with a copy of the appropriate Relocation Brochure and the assigned Agent's phone number.

Since Title VI information is provided to the owners by either the Appraiser or the Acquisition Agent, the RAP Branch need only send the Title VI information (see 2.04.01.02) to tenants or lessees.

The purpose of the GI Notice is to briefly describe the relocation program and to inform the potential displacees that they will be:

- (1) displaced by a public project,
- (2) given reasonable relocation advisory services, including referrals of replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate,
- (3) given 90 days' advance written notice before they are required to move,
- (4) given the address of at least one comparable replacement residential property before they are required to move,
- (5) and they have the right to appeal if they question the Department's determination of eligibility or benefits.

The RAP Agent must send the GI Notice to all owner and tenant/lessee occupied properties. The owner cannot prevent the District from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. The RAP Agent should advise the owner that it is necessary that the tenants receive a full explanation of the relocation program that includes advising them that there is no rush for them to relocate. If the owner is concerned the tenants will move and there will be a loss of rental income, the Region/District may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

**10.03.03.00**      **Legal Residency Requirement to Obtain Benefits**

All relocation notices must inform the persons that anyone not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

Notice to potential displaced persons of legal U.S. residency requirements to obtain benefits will be made at the earliest possible time, but no later than the provision of the GI Notice (RW 10-7). Information on residency requirements will be included in the RAP package made available to owners and tenants.

Requirements for Certification Concerning Legal Residency in the United States will be included in the GI Notice, the Relocation Brochure, and all Notices of Eligibility and Conditional Entitlement Letters.

**10.03.04.00**      **Notice of Intent to Acquire (NIA)**

Normally, the first notice the owner of the property receives is a Notice of Intent to Appraise or a Notice of Intent to Inspect (\$10,000 and Under approach) from the Appraisal Branch. However, the owner could have contacted the Region/District earlier because of a need to relocate prior to the Appraiser's inspection. If the Region/District determines that there is a need to protect the owner's relocation benefits, then the Acquisition Branch (see 5.03.00.00) will send an NIA (RW 10-8) to the owner-occupants to:

- Protect the eligibility of prospective displacees who need to move prior to the first written offer on the parcel.
- Prevent dual eligibility.
- Assure that all persons are fully aware of relocation assistance benefits and requirements.

The Region/District DDC should use the following to determine if an NIA is appropriate:

- Tenants/lessees (residential/nonresidential) only qualify provided the owner agrees to rent the property to the Department (10.03.04.01).
- The owner-occupant must meet the same criteria for a hardship outlined in Section 5.03.04.01.
- The owner-occupant must agree to rent the property back to the Department for economic rent.
- The appraisal must be complete and a first written offer made within 60 days. In some instances, the appraiser may have already issued the Notice of Decision to Appraise and/or inspected the property, but the determination of fair market value (and the subsequent FWO) will be delayed beyond a reasonable period of time, and the owner-occupant must relocate immediately.
- If the owner-occupant does not accept the offer within the prescribed time (60-90 days), condemnation proceedings must be initiated, or the acquisition offer withdrawn (see 5.03.04.06).
- The NIA limitations have been met (see table below).

The Agent issuing the NIA to the owner must provide the RAP package. The Conditional Entitlement Letter with the specific amount of the RHP cannot be provided to a residential owner-occupant until the appraisal is complete and the first written offer made by the Acquisition Agent. It is strongly suggested that the RAP Agent accompany the Acquisition Agent on the FWO as eligibility for relocation benefits and initial information was already provided.

NIA LIMITATIONS	
Project Type	Issuance
Regularly funded	Do not issue the NIA until the initiation of negotiations for the project has been authorized.
Federally funded	In addition to the above, do not issue the NIA prior to FHWA authorizing acquisition on the project.
Not regularly funded	Appropriate formal approval of a Hardship Acquisition is required, along with the owner-occupant's statement that they must relocate prior to the FWO.

In some cases, the owner-occupant may not be available for a personal call to deliver the NIA, ION/FWO, or RAP Package because they have relocated out of the area. In that case, all documents must be mailed certified to the owner.

The NIA shall be dated the day that it is served. It shall contain the anticipated date of initiation of negotiations and specify how additional information pertaining to relocation benefits can be obtained.

Be aware that if a Notice of Intent to Acquire (RW 10-8) is furnished to an owner, all tenants become immediately eligible for relocation assistance benefits. Tenants must be furnished a notice (RW 10-10) as soon as possible in this event.

**10.03.04.01**      **Notice of Intent to Acquire - Tenants**

A Notice of Intent to Acquire - Tenant (RW 10-10) may also be furnished to a tenant or lessee provided the owner has agreed to rent the property to the Department. An Informational Letter to Nonoccupant Owner Re: Notice of Intent to Acquire (RW 10-9) shall be furnished to the owner along with a copy of the Rental Agreement (8-EX-4). In this instance, it is important that the owner of the displacement unit is not served a Notice of Intent to Acquire at this time. To do so will make all occupants of the displacement unit eligible for relocation assistance payments, which may not be the intent of the Region/District.

Providing RW 10-10 enables business tenants to be eligible for reimbursement of search costs, move coordinator fees and other move-related items that may be necessary early on to relocate their business in a timely fashion. In certain circumstances, renting vacant residential or nonresidential units may expedite project delivery and minimize relocation assistance costs. See 8.01.31.00, State Rental of Residential or Commercial Units Prior to Acquisition.

### **10.03.05.00      Certificates of Occupancy**

To be eligible for relocation benefits, status of the occupants must be obtained via a certification of occupancy.

The Appraiser provides the Parcel Occupancy Data Sheet to the RAP Senior stating the type of occupants on the property (residential or business, owner or tenant/lessee) and the approximate time period they have occupied the property.

The Acquisition Agent obtains a signed Certificate of Occupancy and Receipt of Relocation Benefits at the time of the FWO (and first RAP Call) for all owner occupied properties. This will determine the number of occupants that are eligible for DS&S housing and their tenure.

The Acquisition Agent obtains a signed Owner's Certificate of Tenants from the owner at the time of the FWO. The RAP Agent will make the first RAP Call on the tenants and verify the information on the Certificate.

All occupants must certify their residency status at the time of the first RAP Call.

### **10.03.06.00      U.S. Residency Certification**

Certification should be done by completing RW 10-44 at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

For residential occupants, the head of household will certify himself/herself and may also certify other family members.

A sole proprietor will certify himself/herself.

For partnerships and corporations, the certification may be signed by a person authorized to sign on the entity's behalf.

The Department must receive certification before any claim can be paid.

### **10.03.06.01      Securing the U.S. Residency Certification Prior to Issuing a Notice of Eligibility**

It is necessary that each person in the household or the nonresidential unit certify as to their residency status in the United States prior to receiving a Notice of Eligibility, which states "you are entitled to certain benefits under the Department's Relocation Assistance Program (RAP)." This will ensure that persons ineligible for relocation benefits are not led to believe they will receive advisory assistance, moving expenses, and for residential persons, a possible replacement housing payment. (See 10.01.03.08.)

All owners (180-day, 90-day, Nonresidential) must receive the appropriate Notice of Eligibility immediately after the First Written Offer (FWO) is made. Depending on the Region/District functional assignments, this notice may be delivered by the Acquisition Agent, the Acquisition/Relocation Agent (Caseworker), or the Relocation Agent who accompanied the Acquisition Agent at the time the FWO was made. All tenants must receive the appropriate Notice of Eligibility within 14 days of the FWO from the Relocation Agent.

Before providing the Notice of Eligibility, the agent will first request that the person(s) complete and sign the Certification Concerning Legal Residency in the United States (RW 10-44). If the person(s) do not want to complete the Certification at the first RAP Call, then the agent must state that an explanation of relocation benefits cannot be provided at that time. The agent should further explain that until the Certification is complete and verified as to its accuracy, the person(s) are not considered eligible for relocation benefits.

The agent may leave the form with the person(s) and follow up with personal and telephone calls as to the status. After 30 days have passed, and a Certification has not been received, the RAP Senior must advise the person(s) that if the completed Certification is not returned within 15 days, they (including all other persons in the household or nonresidential unit) will be considered permanently ineligible for relocation benefits. Again, if no form is received as a result of the letter and follow-up calls, the person(s) are to be treated as nondisplacees even if a Certification is provided later on in the process. A letter denying benefits to the persons not certified as U.S. residents must be sent by Certified Mail to each occupant.

These persons will have the right to appeal the decision of ineligibility, but only on the basis that they did not understand that completion of the Certification was mandatory in order to receive relocation benefits; and had they understood that aspect, they would have completed the form. They will not be able to appeal the issue of their U.S. Residency status. It is critical the agent maintain explicit diary entries regarding their explanation of the need for a Certification and all attempts to obtain it from the displacee.

#### **10.03.07.00      Notices of Eligibility [49 CFR 24.203(b)]**

Eligibility for relocation assistance shall begin on the date of initiation of negotiations (generally the FWO, but possibly the date of the NIA) for the occupied property. When this occurs, the Region/District must provide the occupants with a notice, in writing, of their eligibility for applicable relocation assistance via a Notice of Eligibility.

This makes the Notice of Eligibility the most important RAP document that is provided to the displacee because it informs them that they have been determined to be eligible for relocation benefits. There is a different Notice of Eligibility for each type of occupancy, so care must be exercised to ensure that the appropriate Notice of Eligibility is provided in a timely manner.

The Notice of Eligibility for owners (residential and nonresidential) MUST be given by either the Acquisition Agent or the RAP Agent on the day of the FWO. The Notice of Eligibility for tenants or lessees (residential and nonresidential) MUST be given by the RAP Agent within 14 days of the FWO.

Notices of Eligibility are delivered with the RAP Package:

- a) to the owners by the Acquisition or RAP Agent during the FWO.
- b) to tenants by the RAP Agent within 14 days of the FWO (exception: 10-EX-46 and 10-EX-50).

If an updated RHV indicates a change in entitlement amount, the RAP Agent must provide a revised entitlement letter to displacee.

The timing and format for each type of Notice of Eligibility is described in Table 10.03-A. Refer back to Table 10.01-A if there is a question about type of occupancy. See 10.04.00.00 (residential) and 10.05.00.00 (nonresidential) for specific details about the type of relocation benefits.

Table 10.03-A

DELIVERY OF NOTICES OF ELIGIBILITY and CONDITIONAL ENTITLEMENT LETTERS		
Notice	Timing	Exhibit
180-Day Homeowner Occupants	Notice of Eligibility: As part of the RAP Package, at the time of the FWO by the Acquisition or RAP Agent.	10-EX-49
	Conditional Entitlement Letter with specific amounts for the Fixed Move Schedule and the PD, within 30 days of FWO.	10-EX-45
90-Day Occupants and Non-Tenured Occupants	Notice of Eligibility: As part of the RAP Package, at FWO of a 90-day owner. For a 90-day tenant, or a non-tenured tenant (less than 90 days), within 14 days of FWO by the RAP Agent.	10-EX-39
	Conditional Entitlement Letter: When displacees indicate they are actively looking for a replacement dwelling, or when the Department has control of the property (e.g., COE, Effective OP, Executed R/E or APU, FOC) - whichever occurs first.	10-EX-40
Subsequent Occupants	Notice of Eligibility: For occupants who move in after the FWO, within 14 days of notification that they are in occupancy.	10-EX-41
	Conditional Entitlement Letter: When displacees indicate they are actively looking for a replacement dwelling, but not before the Department has control of the property (e.g., COE, Effective OP, Executed R/E or APU, FOC).	10-EX-42
Business, Farm, or Nonprofit Organization	Notice of Eligibility: Owner-Occupants - at the time of the FWO by Acquisition or RAP Agent. Lessee/Tenant Occupants - within 14 days of FWO.	10-EX-43
Personal Property Only	Notice of Eligibility: Owner - at FWO. Tenant - 14 days.	10-EX-46
Nonoccupant Owner Leasing Space to Others	Notice of Eligibility: Owner - at FWO.	10-EX-50

**10.03.08.00      Reminder Notice**

The RAP Agent shall send timely written notification of the possible loss of rights and expiration dates to persons who:

- Are eligible for monetary benefits, and
- Have moved from the acquired property, but
- Have not filed a claim.

Notification shall be sent periodically throughout the qualification period. If no response to the written notification is received, the RAP Agent should make telephone contact within the appropriate time limit and document the contact in the parcel diary.

### **10.03.09.00**      **90-Day Notices [49 CFR 24.203(c)]**

No eligible displacee 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. The preferred method is to provide a 90-Day Information Notice (RW 10-18, RW 10-19) followed by an appropriate Notice to Vacate (RW 10-22, RW 10-23, RW 10-24) with date certain. Where project needs dictate, a 90-Day Notice to Vacate may be issued indicating a date certain (RW 10-20, RW 10-21).

### **10.03.09.01**      **Timing**

Timing for service of notices is based on project certification dates. Notices should be delivered with adequate lead time to carry out a timely, orderly, and humane relocation program. Displacees may be given a 90-Day Information Notice as early as the date the Department provides the Conditional Entitlement Letter (residential) or 30 days after the Notice of Eligibility is provided (nonresidential). When at least 60 days have passed, the appropriate Notice to Vacate must be delivered IF the effective date is after the state obtains control of the property.

The 90-Day Information Notice may not be delivered prior to initiation of negotiations for acquisition for the property. Notices to Vacate cannot be given if control of the property has not been initiated via a Right of Way Contract, an Agreement for Possession and Use (APU), or initiation of condemnation, and the Region/District is sure that the Department will have control of the property prior to the "date certain" provided in the notice. Right of Entries (R/Es) should not be used when there are relocation issues on a parcel.

Residential displacees must be informed of the maximum relocation housing payment (RHP) amount prior to receiving a 90-day notice (with the appropriate Conditional Entitlement Letter), along with at least one address of a comparable replacement property that is available and within the range of the RHP.

Absentee owners of personal property are considered to be occupants of real property to be acquired and ARE entitled to 90-day information notices and notices to vacate. Any person who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and is entitled to 90-day information notices and notices to vacate.

See Table 10.03-A for timing of the delivery of Notices of Eligibility. See Tables 10.03-B and 10.03-C for time frames related to service of notices for acquisition by right of way contract and by eminent domain (order for possession).

### **10.03.09.02**      **Content**

The 90-day information notices state that the displacement property will be acquired for a highway project. The Information Notice states a Notice to Vacate will follow; providing at least 30 days' notice before they will be required to move (60 days for some residential situations). For residential occupants, it provides the addresses of comparable replacement properties.

### **10.03.09.03**      **90-Day Information Notice**

The 90-Day Information Notice is not a notice to vacate. The RAP Agent serves the 90-Day Information Notice in person on eligible and ineligible lawful occupants who:

- Are required to vacate because of the proposed construction or other State use, and
- Have personal property located on the acquired property.



Since replacement housing must be available and offered to eligible displacees before a Notice to Vacate can be issued, Region/District Right of Way must coordinate acquisition, property management, and RAP functions to ensure appropriate notices are issued in a timely manner to vacate the property and certify the project.

**10.03.09.04**      **Notice to Vacate with R/W Contract**

For residential owner-occupants, a 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. If control of the property is by either close of escrow or a right of way contract with a possession date clause in it, then the 30-Day Notice to Vacate shall be served 30 days prior to that date. Owner-occupants do not become state tenants. They are provided a 15-day grace period in the right of way contract. Property Management will move forward with eviction after the grace period has ended. Revisions can be issued if the anticipated date of control is delayed. Extending the 30-Day Notice to Vacate may affect the validity of any notices issued by property management preceding an unlawful detainer action. Close coordination with Property Management is essential.

For residential tenants, the possession date clause in the right of way contract or the close of escrow date governs service of a 60-Day Notice to Vacate. The 60-Day Notice to Vacate is provided instead of a 30-Day Notice to Vacate to provide adequate time as addressed in both federal and state statutes.

For residential Personal Property Only situations, issue the 30-Day Notice to Vacate and state “Not applicable – Personal Property Only move” where the residential replacement comparables would be inserted.

Since no eligible residential displacee shall be served a 90-day information notice unless appropriate housing is available, the address of at least one available comparable property replacement, but preferably three, must be offered to displacee simultaneously with each notice. The property must be available and must not exceed the “probable replacement value or rent” provided to the displacee in the latest Conditional Entitlement Letter.

For nonresidential owner-occupants, a 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. If control of the property is by either close of escrow or a right of way contract with a possession date clause in it, then the 30-Day Notice to Vacate shall be served 30 days prior to that date. Owner-occupants do not become state tenants. Grace periods for business displacees to remain in state-acquired property are a delegated authority. See 10.05.26.00 for more information. Coordinate closely with both the acquisition agent and the property manager.

Nonresidential tenants usually sign a quitclaim deed giving the Department possession of the property. Once the Department has possession (either by quitclaim deed, possession date clause in Right of Way contract or close of escrow), the RAP Agent shall serve the 30-Day Notice to Vacate. In these instances, Property Management will write a lease with the tenant. Coordinate closely with the acquisition agent and the property manager.

Control of the property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, the date of possession in the Right of Way Contract (RWC), or Agreement for Possession and Use (APU), or the effective date of the Order for Possession (OP) - usually 30 days after the court has executed the document before the Department can have physical possession. The owner of the property must have the acquisition funds available to purchase replacement property before the effective date of the Notice to Vacate. While an approved Right of Entry (R/E) is considered as giving the Department control of the property, it is not appropriate to use R/Es when there are displacements associated with the property.

Either a RAP Agent or Acquisition Agent must serve the 90-Day Information Notice and the Notice to Vacate in person. If the Agent makes repeated attempts to deliver the notice in person and is unable to meet with the displacee, they must post the notice at the displacement property and mail a copy to the displacee. The diary must show their good faith effort to comply with this section.

If the address of the most comparable residential replacement property is no longer available, the Region/District must ensure some comparable replacement property is available, within the displacee's financial means, but it is NOT necessary to reissue a 90-Day Information Notice. The original 90-day period can continue to run.

#### **10.03.09.05      Notice to Vacate with OP**

For residential owner-occupants, the RAP Unit issues a 90-Day Information Notice as early as the date the Conditional Entitlement Letter is provided and before the court issues the OP and then issues a 30-Day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the effective date. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the notice to vacate. The effective date of the 30-Day Notice to Vacate cannot be earlier than the date the last occupant was served the OP.

For residential tenants, the RAP Unit issues a 90-Day Information Notice as early as the date the Conditional Entitlement Letter is provided and before the court issues the OP. After the court issues the OP, a 60-Day Notice to Vacate with a date certain is served. A courtesy copy of the OP is served with the notice to vacate. The person making service must calculate the effective date. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the notice to vacate. The effective date of the 60-Day Notice to Vacate cannot be earlier than the date the last occupant was served the OP.

For nonresidential owner-occupants, the RAP Unit issues a 90-Day Information Notice as early as 30 days after the Notice of Eligibility is provided and before the court issues the OP. The RAP Unit then issues a 30-day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the effective date, which cannot be earlier than the date the last occupant was served the OP.

For nonresidential tenants, the RAP Unit issues a 90-Day Information Notice as early as 30 days after the Notice of Eligibility is provided and before the court issues the OP. The RAP Unit then issues a 30-day Notice to Vacate with date certain after the court issues the OP. For nonresidential tenants NOT named in the suit, the RAP Unit provides a courtesy copy of the Summons and Complaint and the Notice to Motion.

#### **10.03.10.00      90-Day Notice to Vacate**

Under rare circumstances, such as when condemnation proceedings have begun and the displacee then decides to settle by R/W contract, it may be appropriate to issue a 90-Day Notice to Vacate. This should only occur when a 90-Day Information Notice has not been issued, the date certain has been determined, and at least 90 days are available before the Department obtains control of the property. Use Form RW 10-23 for residential displacees and Form RW 10-24 for nonresidential displacees.

#### **10.03.11.00      Notices to State-inherited Tenants**

Eligible displacees who are either delinquent in their rental payments to the Department, or in violation of their rental agreement with the Department, are considered unlawful occupants for property management purposes. They are still entitled to their RAP benefits as stated in their Notice of Eligibility and Conditional Entitlement Letter. Property Management will serve either a 3-Day Notice to Pay Rent or Quit or a 30-Day or 60-Day Notice of Termination of Tenancy and Notice to Quit. Property Management is responsible for advising the Region/District RAP Agent that Property Management will begin eviction proceedings.

The RAP Agent must ensure service of the 90-Day Information Notice and appropriate Notice to Vacate prior to the Department's control of the property. Property Management and RAP need to coordinate appropriate action in the event a displacee does not vacate the property in a timely fashion. Copies of the RAP notices should be sent to Property Management to be retained in their file.

Once Property Management decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion.

Eligible tenants who are evicted by the Department because of unlawful occupancy must be advised that they retain eligibility for relocation advisory assistance and payments.

Property Management will proceed with unlawful detainer (UD) action when displaced tenants do not move from the property after control has been obtained from the owner. The RAP Unit must work closely with Legal, Property Management, and Acquisition to ensure this process proceeds smoothly. At a minimum, the RAP Unit will oversee the move of personal property into storage. The RAP Agent is therefore usually present when the UD is served by the Sheriff.

Ineligible displacees (e.g., non-U.S. residents, occupants after Department's control, unlawful occupants as determined by 10.01.03.05) will not receive relocation benefits. Generally, these occupants are State tenants who rent the property after acquisition by the State. There are no requirements to provide ineligible displacees with the RAP 90-Day or 30-Day Notices.

Although the Department is under no obligation to the ineligible displacee, Region/District staff are encouraged to provide advisory services to help them find replacement property. There is no requirement to provide advisory assistance to state tenants.

**10.03.12.00**      **Urgent Need**

In extremely rare circumstances, an eligible displacee may be required to vacate the property on less than 90 days' advance written notice. The Department must determine that delivery of the 90-day notice is impracticable in order for this to occur (i.e., the person's continued occupancy of the property would constitute a substantial danger to health or safety to those occupants or others). The RAP diary should fully document the circumstances that required someone to move prior to issuing 90-day notices.

Table 10.03-B

<b>TIME FRAMES WHEN R/W CONTRACT WITH POSSESSION DATE CLAUSE</b>							
<b>Day 1</b>	<b>→</b>	<b>Day 30</b>	<b>→</b>	<b>Day XX</b>	<b>←</b>	<b>Day of Control</b>	<b>Day of Control + 1</b>
First Written Offer (FWO)		<b>RESIDENTIAL</b> Conditional Entitlement Letter (RHP and Room Count Costs)		R/W Contract signed  Open escrow		<b>NOTICE TO VACATE</b>	Property Management = Rental Agreement @ Economic Rent for tenants
First RAP Call						<b>OWNERS</b> Residential & Nonresidential Serve 30-Day Notice to Vacate	If not, notice to increase rent within 60 days
Owner = Same Day		<b>NONRESIDENTIAL</b> Completed Inventories, Estimates and Bids, Advisory Assistance				30 days prior to date of possession in R/W contract or COE (if earlier)	Unlawful Detainer for breach – Coordinate with P. M.
Tenant = Within 14 days							
<b>NOTICE OF ELIGIBILITY</b>		First opportunity to serve 90-Day Information Notice				<b>TENANTS</b> Residential Serve 60-Day Notice to Vacate 60 days prior to date of possession in R/W contract or COE (if earlier)	<b>STATE HAS CONTROL</b> COE/APU Possession date clause in R/W contract
						Nonresidential Serve 30-Day Notice to Vacate with Quitclaim Deed 30 days prior to date of possession in R/W contract or COE (if earlier)	RAP has served all its notices  Property Management now in charge  RAP will continue to find replacement property

Table 10.03-B

Table 10.03-C

<b>TIME FRAMES WHEN ORDER FOR POSSESSION (OP)</b>							
<b>Day 1</b>	→	<b>Day 30</b>	→		←	<b>Day of Control</b>	<b>Day of Control + 1</b>
First Written Offer (FWO)		<b>RESIDENTIAL</b> Conditional Entitlement Letter (RHP and Room Count Costs)		<b>Day XX</b> Commence to Eminent Domain		<b>NOTICE TO VACATE</b>	Property Management = Rental Agreement @ Economic Rent for tenants
First RAP Call				Obtain RON		<b>OWNERS</b> Named in suit Residential & Nonresidential	If not, notice to increase rent within 60 days
Owner = Same Day		<b>NONRESIDENTIAL</b> Completed Inventories, Estimates and Bids, Advisory Assistance		Suit filed		Serve 30-Day Notice to Vacate concurrent with completion of service of OP on all occupants	Unlawful Detainer for breach – Coordinate with P. M.
Tenant = Within 14 days		First opportunity to serve 90-Day Information Notice				<b>TENANTS</b> Residential & Nonresidential	<b>STATE HAS CONTROL</b> FOC Effective OP and Possession
<b>NOTICE OF ELIGIBILITY</b>						Serve 60-Day Notice to Vacate & Nonresidential Serve 30-Day Notice to Vacate concurrent with completion of service of OP on all occupants	RAP has served all its notices
							Property Management now in charge
							RAP will continue to find replacement property

Table 10.03-C

### **10.03.13.00      Notice to Withdraw or Modify Relocation Benefits**

There are situations when it is appropriate to withdraw or modify the relocation benefits that have been provided in a Notice of Eligibility or a Conditional Entitlement Letter. Any time there is a change in the benefits that will be provided to a displacee, the Agent must immediately provide a Notice to Withdraw or Modify Relocation Benefits. The Notice must be personally delivered if possible, but at the very least sent by certified registered mail. However, if the displacee has relied on the promise of relocation benefits and has committed themselves financially or via a contract, the Department may be obligated to pay those relocation benefits in question. Refer to 10.01.04.00 for discussion of Promissory Estoppel and 10.09.07.00 for discussion on appeals due to Promissory Estoppel.

There is no standard form for a Notice to Withdraw or Modify Relocation Benefits. The Agent should prepare a letter that addresses the particular benefit(s) that is impacted (previous amounts, new amounts, reason for the change, etc.) and the right for the person to appeal the determination. A copy of the Appeal Form (RW 10-6) should be provided upon request.

A person who receives a Notice of Withdrawal or Modification of Benefits that decreases a monetary benefit is entitled to appeal the determination.

### **10.03.13.01      Withdrawal of Benefits**

If the Department determines that a person or persons who has received a Notice of Eligibility is no longer eligible for any of the relocation benefits discussed in the letter, then withdrawal of all relocation benefits must be provided. Note: "All relocation benefits" include Advisory Assistance.

The following situations require an immediate notification to the displacee that their benefits are being withdrawn:

1. A long-term postponement of the project creates a situation wherein only irrevocable commitments are allowed under Departmental policy. (See Section 10.17.00.00.)
2. A design modification reduces the requirement for some or all of the property, and the person is no longer required to relocate.
3. The occupant's status as a tenured resident or a valid business is in question, and the Agent has determined they no longer qualify for relocation benefits.
  - A resident purporting to be in occupancy for 90 days is only a seasonal resident and has a primary residence elsewhere.
  - A business claims to operate on the property, but in fact only stores personal property at the site and the business license (and other documentation) shows the primary place of business is at another site.
4. The Department and the occupant are no longer pursuing advanced acquisition, and tenants who have already made efforts to relocate but continue to occupy the property.

A person who receives a Notice of Withdrawal or Modification of Benefits is entitled to appeal the determination. If the person claims Promissory Estoppel, the Statewide Appeals Board must hear the appeal. (See 10.09.07.00.)

There may be other situations that require an immediate withdrawal of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

### **10.03.13.02**      **Modification of Benefits**

A modification of benefits includes increases and decreases of a monetary benefit, but the person is still entitled to some of the relocation benefits discussed in the Notice of Eligibility.

1. A change in the real estate market indicates the cost of a comparable replacement property is lower than the previous entitlement.
  - A 180-day owner-occupant's price differential is rarely reduced, and only when the Department can document that the person has made no effort to find replacement property based on the amount in the Conditional Entitlement Letter.
2. The 180-day owner-occupant wants to rent.
3. The residential occupant has requested, and received, approval to occupy non-DS&S housing as to size and number of bedrooms.
4. The residential occupant has vacated the displacement property, but has not found replacement property within the one-year time period. (See 10.08.02.00.)
5. A change in the acquisition offer (revised appraisal, administrative settlement) requires a change in Replacement Housing Valuation adjustment (major exterior attribute) or carve-out value (typical residential lot), which modifies the RHP.
6. A further review of the nonresidential operation's documents indicates a change in the previously discussed in-lieu payment, reestablishment payment, or other moving payment.
7. A member of a residential household dies prior to relocation, and the need for a larger replacement property, or a property that is barrier free, no longer exists.
  - The Modification of Benefits can only be mailed after a new RHV is prepared, and only if the occupants have not made a commitment to rent or purchase replacement property.

There may be other situations that require an immediate modification of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

### **10.03.13.03**      **Waiver of Relocation Benefits**

49 CFR 24.207(f) specifically prohibits agencies from proposing or requesting a displacee waive relocation benefits. Since the Uniform Act imposes requirements on displacing agencies to provide relocation benefits, the displacee cannot relieve an agency from the Uniform Act's requirements by agreeing to waive relocation benefits. 49 CFR 24.207(f), Appendix A, states that a displacee may, after having been fully advised of all relocation benefits to which they are entitled, provide a written statement stating they choose not to accept some or all of such benefits. In the unlikely event that a displacee refuses to accept some or all of the benefits, and refuses to provide a written statement to that effect, the Department will document such refusal in writing.