



Memorandum

Subject: **INFORMATION**: Policy and Guidance
for Acquisition and/or Relocation
Incentive Programs-Voluntary

Date: April 26, 2006

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From: Susan B. Lauffer
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Reply to
Attn. of: HEPR

To: Division Administrators
ATTN: Division Realty Professionals

The purpose of this memorandum is to provide guidance for evaluating, approving and implementing right-of-way acquisition and relocation incentive programs for transportation projects using Federal-aid funding in any portion of the project. Use of an incentive payment program is voluntary on the part of the State DOT and the Federal Highway Administration (FHWA).

Policy

The FHWA, Office of Real Estate Services has determined that the FHWA **may** participate in right-of-way acquisition and/or relocation incentive payments made under a FHWA approved plan or program. Incentive payments are payments that are over and above the just compensation offer or computed relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Recent studies on the use of incentive payments on transportation projects demonstrate that they can be effective in decreasing the time needed to acquire and clear needed rights-of-way. The use of incentive payments may be project or program specific. The use of acquisition and/or relocation incentive payments is voluntary on the part of the State and the FHWA.

The authority for the FHWA to participate in incentive payments is found in 23 CFR 710.203(b)(2)(ii) which allows Federal participation in relocation assistance and payments provided under the law of the State that may exceed the requirements of 49 CFR Part 24. The FHWA has the general authority to participate in the costs of construction that includes both costs of right-of-way acquisition and relocation assistance. (See 23 U.S.C. §101(a)(3)). An incentive payment could be included as a cost of construction when such payments are used on critical projects, or phases of projects; expedite the completion of a project; and result in



significant cost savings. The use of incentive payments for right-of-way acquisition and relocation is analogous to the use of incentive/disincentive provisions for early completion in contracts for construction of Federal-aid projects (See 23 CFR 635.127(d)).

This policy is consistent with the intent of the Uniform Act in that it encourages the expeditious acquisition of real property. Language in the implementing regulation focuses on the assurance that property owners and displaced persons receive at least the level of benefits to which they are entitled.

General Guidance

The use of acquisition and/or relocation incentive payments is voluntary on the part of the States and FHWA. Should a State elect to utilize incentive payments, it must do so in accordance with the following.

Prior to implementing a right-of-way incentive payment program the State shall:

1. Assure that use of incentive payments is permissible under State law.
2. Assure availability of decent, safe, and sanitary comparable replacement dwelling units.
3. Identify market trends such as escalating property values and increasing right-of-way costs.
4. Determine the propriety of using acquisition and/or relocation incentive payments.
5. Make a public interest finding that clearly demonstrates that the use of incentive payments is cost effective (for example: a comparison of the anticipated cost of the incentive payments to project expenses that would be saved or avoided through the utilization of incentive payments). This can include consideration of such factors as enhanced safety and other benefits to the traveling public created by having a transportation facility in place and operational at an early date.

Implementation

The State's incentive payment program shall be submitted in writing to the FHWA Division Administrator as a proposed change to the State's Right-of-Way manual. **The Division Administrator will evaluate the merits of the proposal and determine whether the submission represents an appropriate, cost effective use of Federal funds and otherwise meets the documentation requirements of this guidance.** The Division may notify the State that its proposed incentive payment program is approved either on a trial basis or as a permanent addition to the State's Right-of-Way Manual. Alternatively, where warranted, the Division may temporarily withhold approval and recommend revisions to the State's proposal in keeping with this guidance.

The State's determination that the use of incentive payments on a particular project is warranted must address those factors included in the General Guidance section of this memorandum and include the following:

1. An identification and discussion of factors to be considered in justification of the use of incentive payments on a particular project.
2. Description of how payment amounts will be determined, including formula(s) for their computation, payment maximums (caps) and incentive offer expiration limits (for example: Accept the offer within 2 weeks and the incentive is X, accept the offer within 4 weeks and the incentive is X times ½).
3. Description of safeguards in place to eliminate attempts to coerce property owners/occupants.
4. Description of actions to monitor implementation.
5. Identification of those specific performance measures to be used upon project completion to evaluate the effectiveness of incentive payments.

The use of incentive payments must not be allowed as a substitute for appropriate project planning and development (including the scheduling of adequate right-of-way lead time).

Guidance on Acquisition Incentive Programs

The State's determination that the use of acquisition incentive payments on a particular project is warranted must result from a **rigorous examination** of the relevant factors involved, including a discussion explaining why traditional methods will not meet project needs.

Upon the FHWA Division Office's approval of a State's Acquisition Incentive program (including a finding that it is in the public interest), a State may voluntarily choose to make acquisition incentive offers on a project. The State must present such offers to all property owners on the project in conjunction with just compensation offers. Property owners must be given reasonable time to consider and act on the just compensation offers. A minimum of 30 days is suggested, in line with the provisions concerning basic negotiation procedures set out in 49 CFR Part 24.102(f) and Appendix A.

The proposed acquisition incentive payment plan must ensure that the agency will not take any action, coercive in nature, in order to compel an agreement on the price to be paid for the property.

Application of acquisition incentive payments on a project does not preclude the use of administrative settlements. Administrative settlements may be made and should be documented separately on merit. Administrative settlements based on merit are not incentive payments. If a property owner is to receive payment for both an administrative settlement and an acquisition incentive, each should be independently supported and documented.

Receipt of an acquisition incentive payment does not affect an owner's entitlement to relocation payments and benefits.

Guidance on Relocation Incentive Programs

Upon the FHWA Division Office's approval of a State's Relocation Incentive program (including a finding that it is in the public interest), a State may voluntarily choose to make relocation incentive offers on a project. A relocation incentive payment may be provided in addition to all traditional relocation payments to which the displacee is entitled. Any acquisition incentive payment made to the displacee shall not be considered when calculating the traditional relocation payment.

The use of a relocation incentive program is voluntary. If a State chooses to use residential relocation incentive offers in order to accelerate relocations and promote early project clearance, the program must be made available to all residential displacees on the project. Each displacee must be given similar amounts of time to act on relocation incentive offers. A displacee may elect to accept the State's relocation incentive offer and voluntarily vacate his/her dwelling. Alternatively, he/she retains the right to decline the incentive payment and continue in occupancy in accordance with the 90 day notice and provisions of 49 CFR Part 24.203 and 204.

Because successful business relocations take substantial planning it may be difficult to assure consistent treatment, however, if a project has many similar business properties, a relocation incentive program may be considered.

Oversight

The FHWA Division Office should review the State's approved Incentive Payments program, at least annually for the first two years following authorization (and as warranted thereafter) to insure that it is being implemented in a manner consistent with this guidance.

Background

The Office of Real Estate Services and several Division Offices worked with State DOTs to design, approve and implement pilot programs utilizing acquisition and relocation incentive payments. The Office of Real Estate Services and the Divisions have found these payments to be very effective in decreasing the time needed to acquire and clear the rights-of-way needed for Federal-aid transportation projects. For example, FHWA approved a successful pilot program on the Woodrow Wilson Bridge that utilized relocation incentive payments to encourage tenants to relocate quickly. Pilot summaries can be found on the Office of Real Estate Services website, <http://www.fhwa.dot.gov/realestate/pilotsum04.htm>.

The pilots demonstrated that benefits from the use of incentive payments include:

- Significant reduction in time required to acquire and clear right-of-way.
- Reduction in right-of-way administration, acquisition, legal and court costs.
- Significant savings in project construction costs by keeping the project on, or ahead of, schedule.
- Personnel hours that can be re-directed to other projects or efforts.
- Significant savings and benefits to the traveling public, including safety, when facilities are in place, on or ahead of schedule, providing higher levels of service, reduced travel time for delivery of goods and services, and reduced commute time.

Questions on this guidance may be directed to the Office of Real Estate Services point of contact serving your Division, or Joe Edwards, Field Services Team Leader, at (202) 366-2042 (e-mail joseph.e.edwards@fhwa.dot.gov).