

RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Introduction

Relocation is an activity that results from the displacement of individuals, families, or businesses as a direct result of the acquisition, demolition, or rehabilitation of property for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others. The Uniform Relocation Act (URA) protects all persons who are displaced by a federally assisted project regardless of their income.

Section 104(d) relocation requirements focus on the “loss” of low- or moderate-income housing (both rental and owner occupied) in a community through demolition or conversion. Section 104(d) has two distinct components:

- ◆ **People:** 104(d) specifies relocation assistance for displaced low or moderate income families. Section 104(d) does not provide protection or assistance for families with incomes above the Section 8 Low Income Limit.
- ◆ **Units:** 104(d) requires one-for-one replacement of low- or moderate-income dwelling units that are demolished or converted to other use.

One-for-one replacement of housing occurs when CDBG funding is used in a project that reduces the supply of low or moderate dwelling units. One-for-one replacement is triggered if:

- ◆ The unit meets the definition of a low or moderate dwelling unit, **AND**
- ◆ The unit is occupied or is a vacant occupiable dwelling unit, **AND**
- ◆ The unit is to be demolished or converted to a unit with market rents above the Fair Market Rent (FMR) or to a use that is no longer for permanent housing.

This chapter provides a detailed overview of relocation under both the URA and Section 104(d), and one-for-one housing replacement requirements. This chapter outlines the procedures that recipients should follow to ensure compliance with the Uniform Relocation Act (URA). In addition, information is provided regarding recordkeeping, total tenant payment, and other relocation requirements that may be applicable to CDBG-assisted projects.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Section 1 - Applicable Regulations

Relocation activity in the CDBG Program is governed by three sets of regulations. They are:

- ◆ The Final Rule implementing changes to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24). The Final Rule was published on January 4, 2005 and became effective on February 3, 2005.
- ◆ Section 104 (d) and 105 (a) (11) of Title I of the Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR Part 570.496(a) (the Barney Frank Amendment).
- ◆ 24 CFR Part 570.488 of the CDBG State Small Cities Regulations.

The URA Final Rule is the most complete guidance available for acquisition and relocation information.

You can download the Final Rule from HUD's relocation webpage at <http://www.hud.gov/relocation>

Consistent with the other goals and objectives of the CDBG Program, the recipient shall assure that it has taken all reasonable steps to minimize displacement as a result of activities assisted under the program. The recipient must contact Grants Administration's Relocation Specialist prior to taking any action that may result in the involuntary and permanent displacement of any family, business, or individual.

Section 2 – Definitions

Displaced Person

The URA and Section 104(d) each define "displaced persons." In addition, the CDBG regulations build upon these two definitions.

- ◆ For relocation activities under the URA [49 CFR 24.2(a)(9)]:
 - The term "displaced person" as any person that moves from the real property or moves his or her personal property from the real property, permanently, as a direct result of:
 - ◇ The acquisition or written notice of intent to acquire, or initiation of negotiations for such property, in whole or in part, for a project; or

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◇ The rehabilitation or demolition of such real property for a project; or
 - ◇ The acquisition, rehabilitation or demolition of (or written notice of intent to acquire, or initiation of negotiations for), in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for a person applies only for purposes of obtaining relocation assistance advisory services and a payment for moving and related expenses.
- ◆ If Section 104(d) is triggered:
 - The term "displaced person" means any lower income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of an occupied or vacant occupiable low/moderate income dwelling unit or the demolition of any dwelling unit, in connection with an assisted activity.
 - ◆ The CDBG regulations at 24 CFR 570.496(a)(2), state that the term "displaced person" includes (but may not be limited to):
 - A person that moves permanently from the real property after notice by the property owner requiring such move, if the move occurs on or after the date of the initial submission of an application to the recipient by the property owner (or person in control of the site) requesting assistance that is later approved for the project.
 - A person that moves permanently from the real property after notice by the recipient requiring such move, if the move occurs on or after the date of the initial submission of a CDBG application by the recipient requesting assistance under 24 CFR 570.490(a) that is later granted for the project.

Persons Not Considered Displaced

Notwithstanding the provision of Subsection 570.606(b)(2)(i), a person does not qualify as a "displaced person" (and is not entitled to relocation assistance at URA levels), if:

- ◆ The person has no legal right to occupy the property under state or local law (e.g. squatters); or
- ◆ The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, the recipient

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

- ◆ The person moves into the property after the date described in Subsection 570.606(b)(2)(i) and, before commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" as a result of the project.

Initiation of Negotiations

For purposes of providing the appropriate notice and determining whether a person displaced from a dwelling qualifies for a replacement housing payment, the term "initiation of negotiations" (ION) differs by type of activity. When the recipient is providing funding to a private entity for rehabilitation, acquisition or demolition, the ION is the execution of the grant or loan agreement between the state recipient and the person owning or controlling the property.

Low/Moderate Income Dwelling Unit

The term "low/moderate income dwelling unit" means a dwelling unit with a market rent (including average utility costs) that does not exceed the applicable Fair Market Rent (FMR) for Section 8 existing housing established under 24 CFR Part 888. However, the term does not include any unit that is owned and occupied by the same person before and after the assisted rehabilitation.

Optional Relocation Assistance

Under Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, Grants Administration may permit the recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to URA or Section 104(d) requirements.

Grants Administration may also permit recipients to provide relocation assistance to displaced persons at levels in excess of those required by the URA or Section 104(d). Unless such assistance is provided under State or local law, the recipient shall provide such assistance only upon the basis of a written policy adopted by Grants Administration.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

The "Project"

The definition of what is a "project" differs for URA and for Section 104(d).

- ◆ The term project is defined under URA as an activity or series of activities directly funded with HUD financial assistance received or anticipated in any phase. In addition, URA states that program rules will further define what is considered a project.
- ◆ Under Section 104(d), a project is an activity or series of activities undertaken with HUD financial assistance received or anticipated in any phase. 104(d) benefits are triggered if the activity is a CDBG or HOME funded activity and the HUD assisted activity is part of a single undertaking.

In order to determine whether a series of activities are a project, look at:

- ◆ Timeframe – Do activities take place within a reasonable timeframe of each other?
- ◆ Objective – Is the single activity essential to the overall undertaking? If one piece is unfinished will the objective be incomplete?
- ◆ Location – Do the activities take place on the same site?
- ◆ Ownership – Are the activities carried out by, or on behalf of, a single entity?

Vacant Occupiable Dwelling Unit

The term "vacant occupiable dwelling unit" means:

- ◆ A vacant dwelling unit that is in a standard condition;
- ◆ A vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or
- ◆ A dwelling unit in any condition that has been occupied (by a person with the legal right to occupy the property) at any time within the period beginning three months before the date of the execution of the agreement between the recipient and the property owner or person controlling the property for privately owned projects. In the case of publicly owned projects the agreement is the contract between the recipient and the demolition or rehabilitation contractor.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Section 3 - Relocation Requirements under the URA

Step 1: Develop Written Policies and Procedures

The first step a recipient must take if CDBG assistance will cause relocation and/or displacement is to develop written policies and procedures for managing the anticipated relocation caseload. These procedures must be in compliance with all elements of the Final Rule implementing changes to the URA (49 CFR Part 24) and included in the recipient's Residential Anti-Displacement and Relocation Plan, which was previously developed and submitted as part of the application for CDBG assistance. The written policies and procedures, including any revisions made to the plan since application for CDBG assistance, must be submitted to Grants Administration for review and approval. Any requests for revisions/clarifications will be sent to the recipient's chief executive officer and project administrator.

Step 2: Provide Relocation Notification and Advisory Services

Immediately after receipt of the grant approval, the project administrator must notify each household and/or business that the potential for displacement exists and provide them with a *General Information Notice*. Formats for notification of eligibility can be found in the attachments to this chapter.

The next step in the process is to provide relocation advisory services. This process requires the recipient to first personally interview the family to be displaced. The purpose of the interview is to explain the:

- ◆ Various payments and types of assistance available,
- ◆ Conditions of eligibility,
- ◆ Filing procedures, and
- ◆ Basis for determining the maximum housing assistance payment available.

The URA final rule clarifies that recipients **may not** propose or request that persons waive their relocation rights. Residents may, on their own, offer to relinquish any payments due under the URA but only if the recipient obtains a written and signed waiver from the resident. Recipients are cautioned to only use waivers in instances when households are unwilling to accept relocation assistance.

The potential displacee must also be informed not to move prematurely, because doing so will jeopardize any assistance, which may be due.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

After the initial interview, the recipient should work with the family that will be displaced throughout the process to ensure the family is provided appropriate and required advisory services.

- ◆ The recipient must make referrals to the replacement housing units (comparables), inspect the comparables to determine if they are in standard condition (including ensuring they are lead safe if required by local law) prior to making referrals, provide counseling, technical assistance, and provide appropriate referrals to social service agencies. The Final Rule clarifies that recipients must also offer transportation to all displaced households to enable them to inspect replacement units.
- ◆ When a displacee is either minority and/or low and moderate income, every effort should be made to ensure that referrals are made to comparables located outside of areas of minority concentration and/or low and moderate income concentration, if feasible.
- ◆ The recipient must provide current and continuing information on the availability, purchase price or rental cost and location of "comparable replacement dwellings" (see the section below for more information on comparable replacement dwellings).

Step 3: Identify Comparable Replacement Dwelling Units

The next step in the process is to identify comparable replacement dwellings for the displacee. The regulations at 49 CFR Part 24.204 stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. A comparable replacement dwelling is:

- ◆ A unit that is decent, safe, and sanitary according to local housing and occupancy codes (including being lead safe if required by local law). The dwelling shall be structurally sound, contain a safe wiring system, contain a heating system that can maintain a healthful temperature, be adequate in size, separate well lighted bathroom, unobstructed egress, and for persons with disability be free of barriers.
- ◆ Functionally equivalent to the displacement dwelling.
- ◆ Adequate in size to accommodate the occupants.
- ◆ In a location generally not subject to unreasonable adverse environmental conditions.
- ◆ In a location not less desirable than the location of the person's displacement dwelling with respect to public utilities, and commercial and

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- public facilities, and reasonably accessible to the person's place of employment.
- ◆ On a site that is typical in size for residential development with normal site improvements.
 - ◆ Currently available to the displaced person on the private market. However, for a displacee receiving government housing assistance prior to displacement, the comparable dwelling may reflect similar assistance.
 - ◆ Within the financial means of the displaced person.

Note that for a person who received government housing assistance before displacement, the comparable may reflect similar government housing assistance. In these cases the requirements of the government program related to the household's unit size shall apply.

The recipient will then provide the potentially displaced family and/or business with a *Notice of Eligibility for Relocation Assistance*. Sample notices are found in the attachments to this chapter. The notice must identify the cost and location of the comparable replacement dwelling(s). This notice must be sent immediately after initiation of negotiations.

Step 4: Issue Notice to Vacate

Finally, the recipient issues the *Ninety-Day Notice to Vacate* at the proper time. At a minimum, the Ninety Day Notice must either state a specific date as the earliest date by which an occupant will be required to move, or state that the occupant will receive a further notice, at least thirty days in advance, indicating the specific date by which to move. The URA regulations prohibit recipients from issuing the Ninety-Day Notice prior to identifying the necessary comparables.

Step 5: Pay Necessary Replacement Housing and Moving Expenses

Displaced persons are entitled to assistance to help them move into new dwelling units. This assistance may include both replacement housing payments and moving expenses.

Replacement Housing Payments

In some instances, a comparable replacement dwelling may not be available within the monetary limits for owners or tenants, as specified in 49 CFR Part 24.401 and 24.402. As appropriate, the recipient must provide additional or alternative financial assistance as required by 49 CFR Part 24.404(a).

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ The amount of the replacement housing payment a displaced tenant or homeowner-occupants receives varies depending upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the agreement.
- ◆ The replacement housing payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a \$7,200 limitation on payments to displaced tenants, it also requires that persons receive the full amount needed to enable them to afford their new unit. Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed \$7,200. (The URA regulations also mention a \$31,000 limitation to displaced homeowner-occupants.)
- ◆ The payment to which the family is entitled is based on making up the difference between the household's current housing expense (known as the base monthly rent) and the cost of a new unit. The price of the new unit is calculated using the lower of the cost of the family's actual new unit (including estimated utilities) or a comparable replacement dwelling (see the discussion of comparable units).
- ◆ If the recipient fails to make a timely offer of a comparable replacement unit and a displaced household moves to a standard replacement dwelling, the replacement housing payment is based on the cost of that actual unit and cannot be capped by the comparable rent.

The updated regulations at 49 CFR 24.402(b)(2) changed the method of calculating base monthly rent for the replacement housing payment. Under the new rule, income is only taken into account in the replacement housing payment formula for low-income persons (as defined by the HUD income limits). For non low-income persons, recipients should use rent-to-rent to calculate the replacement housing payment.

If available, the recipient may offer tenant-based rental assistance instead of the cash RHP payment. It is up to the tenant to determine whether he or she wishes to take the TBRA instead of the cash. If the tenant is provided a housing voucher that the rent/utility cost for a replacement dwelling (actual or comparable replacement dwelling, whichever is less costly) exceeds the payment standard, the tenant will qualify for cash rental assistance in addition to the Section 8 assistance to cover the gap.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

down payment, including incidental expenses. The amount of cash rental assistance to be provided is based on a one-time calculation. The payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or family size.

Moving Expenses

Displaced households may choose to receive payment for moving and related expenses by:

- ◆ Getting bids and hiring a professional commercial mover OR
- ◆ Reimbursement of actual expenses OR
- ◆ Receipt of a fixed payment based upon a schedule established by the Federal Highway Administration (FHA)

Actual Expenses: Based upon the grantee's determination that the expenses are reasonable and necessary, moving and related expense payments may include:

- ◆ Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless GA determines that relocation beyond 50 miles is justified.
- ◆ Packing, crating, uncrating and unpacking of the personal property.
- ◆ Storage of the personal property for a period not to exceed 12 months, unless GA determines that a longer period is necessary.
- ◆ Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- ◆ Insurance for the replacement value of the property in connection with the move and necessary storage.
- ◆ 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.
- ◆ Credit checks.
- ◆ Utility hook-ups, including reinstallation of telephone and cable service.
- ◆ Other costs as determined by the agency to be reasonable and necessary.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Ineligible expenses include:

- ◆ Interest on a loan to cover moving expenses,
- ◆ Personal injury,
- ◆ Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency,
- ◆ The cost of moving any structure or other real property improvement in which the displaced person reserved ownership,
- ◆ Refundable security or utility deposits, and
- ◆ Costs for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

Fixed Moving Expense and Dislocation Allowance: A person displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a moving expense and dislocation allowance as an alternative to a payment for actual reasonable moving and related expenses. This allowance is determined according to the applicable schedule of allowances published by the Federal Highway Administration.

Section 4 – Relocation Requirements under Section 104(d)

The relocation requirements of Section 104(d) differ from URA requirements. The recipient is required to provide certain relocation assistance to any lower-income person displaced as a direct result of (1) the demolition of any dwelling unit, or (2) the conversion of a low and moderate income dwelling unit to a use other than a low and moderate income dwelling in connection with an assisted activity. The rules implementing the Section 104(d) relocation requirements for the State CDBG program are found at 24 CFR 570.496a(c)(2) and (3).

Eligibility

To be eligible for Section 104(d) relocation assistance, a person must meet certain criteria. Under Section 104(d), a displaced person is a lower income person who moves permanently, in connection with an assisted activity, as a direct result of conversion of a low and moderate income dwelling unit or demolition of any dwelling unit.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Amount of Assistance Provided

Under Section 104(d), each displaced person is entitled to choose either assistance at URA levels (detailed earlier in the chapter) or the following relocation assistance:

- ◆ Advisory services (same as under URA) - Includes notices, information booklets, explanation of assistance, referrals to comparable housing and counseling.
- ◆ Payment for moving and related expenses (same as under URA) - Payment for actual reasonable moving and related expenses or a moving expense and dislocation allowance based on a schedule that is available from Grants Administration.
- ◆ Security Deposits - The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit.
- ◆ Credit checks – Required to rent or purchase the replacement dwelling unit (also eligible under URA).
- ◆ Interim living costs - The person shall be reimbursed for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs if the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public.

If Section 104(d) is triggered, notices and replacement housing payments may also differ. In general, both 104(d) and the URA require that a *General Information Notice*, and a *Notice of Non-displacement* or a *Notice of Eligibility for Relocation Assistance* be provided. However, the 104(d) replacement housing payment is available only to low- or moderate-income households.

- ◆ The 104(d) replacement housing payment is intended to provide affordable housing for a 60-month period. There is no cap on the 104(d) replacement housing payment.
- ◆ As with URA, the 104(d) payment is calculated using the cost of the tenant's replacement dwelling (including utilities) or a comparable replacement dwelling.
- ◆ The 104(d) replacement housing payment makes up (for a 60-month period) the difference between:
 - The rent and utility costs for the replacement dwelling (or comparable), and

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- The tenant's Total Tenant Payment, calculated as the greater of:
 - ◇ 30 percent of adjusted income,
 - ◇ 10 percent of gross income, and
 - ◇ Welfare Rent (in as-paid states).

Under 104(d), the recipient has the option to offer all or a portion of this rental assistance through a Section 8 certificate or housing voucher, if it is available under Section 8 preference requirements and the recipient provides referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program.

If a person then refuses Section 8 assistance, the recipient has satisfied the Section 104(d) replacement housing assistance requirements. In such case, the displaced person may seek URA replacement housing assistance.

Purchase assistance - If the displaced person under 104(d) purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of sixty monthly installments of the amount that is obtained by subtracting the Total Tenant Payment from the monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling unit.

- ◆ To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business in the jurisdiction.
- ◆ To the extent necessary to minimize hardship to the person, the recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

Sample eligibility notices for Section 104(d) relocation assistance are included in the attachments to this chapter. (They are also available in HUD Handbook 1378, available at www.hudclips.org.)

Section 5 – Total Tenant Payment

Under Section 104(d), the Total Tenant Payment (TTP) is used to establish the amount of replacement housing assistance. TTP is also used as a component in some programs to determine whether households can afford to stay in a project, or whether they will permanently leave the property due to increased rent.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Under the URA, a displaced person's gross monthly income and old rent are used. Persons eligible for assistance under Section 104(d) are also eligible for URA assistance. In order for such persons to make an informed decision, recipients must determine and inform the person of the amount of replacement housing assistance available under Section 104(d) and the amount of replacement housing assistance available under the URA.

Under Section 104(d), a displaced person is eligible for financial assistance sufficient to reduce the monthly rent and estimated average monthly utility costs for a replacement dwelling to the Total Tenant Payment (TTP). The Total Tenant Payment is the highest of:

- ◆ 30 percent of the person's monthly adjusted income,
- ◆ 10 percent of the person's monthly gross income, or
- ◆ The designated allowance for rent/utility costs, if the person is receiving welfare assistance from a public agency and a part of such assistance is specifically designated for the person's rent and utility costs.

Annual Gross Income is generally the total income of the person from all sources including net income derived from assets, anticipated to be received in the twelve-month period following the effective date of the income certification. Refer to HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition for the definition of income.

To receive assistance, a person must sign a release authorizing any depository or source of income to furnish the recipient information necessary to verify income. In order of acceptability, the three methods of verifying a person's income are:

- ◆ Third party written or oral verification. Written verification should not be hand-carried by the person.
- ◆ Review of documents, when third party verification is unavailable.
- ◆ Notarized self-certification, unless the recipient determines notarization is unnecessary.

Section 6 – Lead-Based Paint Hazards Requirements and Relocation

The lead based paint regulations (Title X of the 1992 Housing and Community Development Act) that went into effect September 15, 2000 contain rules concerning the temporary relocation of occupants (renters and owners) before and during hazard reduction activities.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Under the lead regulations, circumstances when temporary relocation is not required include:

- ◆ Treatment will not disturb lead-based paint, lead-contaminated dust, or soil lead hazards.
- ◆ Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards.
- ◆ Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided.
- ◆ Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

Elderly residents living in units undergoing lead reduction activities may waive their rights to temporary relocation assistance but only if the recipient obtains a written and signed "Elderly Waiver for Temporary Relocation." This form is included in the attachments to this chapter.

Under the State CDBG program, rehabilitation of owner-occupied units is considered voluntary and the URA requirements do not apply, regardless of whether the unit is being treated for lead-based paint. To implement this policy, the recipient must adopt the *Optional Temporary Relocation Assistance Policy* which is included in the attachments to this Chapter. The rehabilitation of tenant-occupied units is not considered voluntary and the requirements in Section 7 apply.

The lead rule further requires that temporary dwellings not have lead-based paint hazards. Therefore, recipients are required to ensure that units used for temporary relocation are lead safe. This means ensuring that units that households move to were built after 1978 or are visually inspected to ensure no lead hazards are present. If an owner-occupant chooses to move to a unit that does not pass a visual inspection or cannot otherwise be determined to be lead-safe, it should be required to sign a Release of Liability. See Chapter 7 for more detailed information on the new lead based paint requirements.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Section 7 - Voluntary and Involuntary Temporary Relocation

Section 6 outlines the requirements pertaining to relocation and lead-based paint treatment conditions. This section addresses conditions requiring the temporary relocation of owner-occupants of single-family housing and tenants.

Temporary Relocation Plan Requirements

At a minimum, each CDBG recipient will submit to Grants Administration for review and approval a temporary relocation plan containing the following elements:

- ◆ Number of households expected to need temporary relocation services.
- ◆ Description of how much advance notice will be given for the move and return and the estimated length of time the relocation will require per unit.
- ◆ Description of the types of anticipated temporary relocation costs to be incurred and reimbursed utilizing grant funds and the documentation that will be required for reimbursement.
- ◆ Description of how temporary relocation payments will be made.
- ◆ Description of how temporary units will be determined to be lead-free.

Temporary Relocation of Owner-Occupants

An owner-occupant's agreement to participate in a CDBG recipient's housing rehabilitation program is considered a voluntary action under the state's program guidelines and URA guidelines, provided that code enforcement is not utilized to induce program participation of an owner-occupant. Title I of the Housing and Community Development Act of 1974, as amended allows, but does not require, a CDBG recipient to provide optional temporary relocation assistance when URA requirements are **not** triggered.

If a recipient chooses to provide temporary relocation assistance to owner-occupants, the recipient must adopt the *Optional Temporary Relocation Assistance Policy* provided in the attachments to this chapter. The determination of the amount of assistance to be provided must be reasonable.

Grants Administration requires that CDBG recipients take each of the following actions when temporarily relocating owner occupants:

1. Develop an Optional Temporary Relocation Assistance Policy.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

2. Provide a Notification of Non-Displacement and a summary or copy of the Optional Relocation Policy to each affected household. Documentation of receipt must be retained in the grantee's files.
3. Require the owner-occupant to complete the *Optional Temporary Relocation Assistance Application* located at the end of this chapter.

Temporary Relocation of Tenants

Because the agreement to provide rehabilitation assistance and lead-based paint treatment is between the CDBG recipient and the owner of the unit being assisted, the relocation of a tenant-occupant is not considered a voluntary action, therefore, this activity is subject to URA and the following is required:

- ◆ Provide timely written notice that the tenant will not be displaced by the project, and
- ◆ Provide the tenant a timely offer of both:
 - 1) An opportunity to return to a suitable, affordable, decent, safe and sanitary dwelling on the real property, and
 - 2) Reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property.

The updated regulations at 49 CFR 24.2(a)(9)(ii)(D) has explicitly stated that temporary relocation cannot exceed 12 months or the tenant must be offered permanent displacement assistance.

Documentation of the method of delivery and receipt must be maintained in the respective case file. Failure to provide the required notification and/or temporary relocation assistance triggers URA benefits if for any reason the tenant elects not to return to the dwelling unit from which displaced.

Section 8 - Business Relocation

Basic Eligibility

Displaced businesses are entitled to advisory services and financial benefits under the URA. A business is defined for this purpose as one of the following:

- ◆ A for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved.
- ◆ A non-profit organization, such as a church or social service agency.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ A farm operation.

To qualify for benefits, the business must meet the definition of a “displaced person” discussed earlier in this chapter. It must move permanently as a direct result of a HUD-assisted project involving acquisition, rehabilitation, or demolition. The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

Business versus Residential Benefits

URA coverage for moving expenses is similar for residential and non-residential displacees:

- ◆ Qualified businesses may choose between a fixed payment or actual moving expense. Only certain businesses qualify for a Fixed Payment. The fixed payment is based on a formula, rather than a schedule.
- ◆ Actual moving expenses provide for a limited reestablishment payment, similar to a Replacement Housing Payment.

There are differences between coverage for residential and non-residential displacees:

- ◆ A 90-day Notice to Move may be issued without a referral to a comparable site.
- ◆ Businesses are not entitled to temporary moving expenses, although a recipient using CDBG or HOME funds for the project may provide these benefits through an Optional Relocation Policy if it is appropriate.
- ◆ Displaced businesses do not trigger 104(d) requirements.

Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

Advisory Services

Non-residential moves are often complex. Recipients are encouraged to begin early to work closely with business owners to determine their relocation needs and preferences. Displaced businesses are entitled to all of the following:

- ◆ Information about the upcoming project and the earliest date they will have to vacate the property.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives. This shall include a personal interview with each business, which at a minimum, should include the following items:
 - The business's replacement site requirements, current lease terms and other contractual obligations, and the financial capacity of the business to accomplish the move.
 - Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
 - An identification and resolution of personality/realty issues prior to or at the time of the appraisal of the property.
 - An estimate of the time required for the business to vacate the site.
 - An estimate of the anticipated difficulty in locating a replacement property.
 - An identification of any advance relocation payments required for the move, and the recipient's legal capacity to provide them.
- ◆ Assistance in following the required procedures to receive payments.
- ◆ Current information on the availability and cost to purchase or rent suitable replacement locations.
- ◆ Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished.
- ◆ Referrals for assistance from State or Federal programs, such as those provided by the Small Business Administration, that may help the business reestablish, and help in applying for funds.
- ◆ Assistance in completing relocation claim forms.

Notices and Inspections

The recipient must provide a business to be displaced with written information about their rights, and provide them with a General Information Notice tailored to the situation when a Notice of Interest is issued to the property owner (when an acquisition). The General Information Notice should include:

- ◆ An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD Information Booklet, Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms (HUD 1043-CPD) includes this general information and should be given to the business.
- ◆ Information that they will receive reasonable relocation advisory services to locate a replacement site, and with other needs, including help to complete claim forms.
- ◆ Information that they will not be required to move without at least 90 days' advance written notice.
- ◆ A description of the appeal process available to businesses.

At the time of the Initiation of Negotiations, a Notice of Eligibility for Relocation Assistance must be provided. This will be tailored to the nature of the business.

- ◆ Inform the business of the effective date of their eligibility.
- ◆ Describe the assistance available and procedures.
- ◆ If necessary, a 90-day Notice to Move may be sent after the Initiation of Negotiations.

The business must be told as soon as possible that they are required to:

- ◆ Allow inspections of both the current and replacement sites by the recipient's representatives, under reasonable terms and conditions.
- ◆ Keep the recipient informed of their plans and schedules.
- ◆ Notify the recipient of the date and time they plan to move (unless this requirement is waived).
- ◆ Provide the recipient with a list of the property to be moved or sold.

Recipients need to be aware of when a property will be vacated. In many situations, the recipient must be on-site during a business move to provide technical assistance and represent the agency's interests. Any property not sold, traded, or moved by the business becomes the property of the agency in accordance with State law.

To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

prepared. The recipient should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

Reimbursement of Actual Moving Expenses

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses.

- ◆ Only businesses that choose actual moving expenses - versus a fixed payment - are eligible for a reestablishment expense payment.
- ◆ Recipients should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.

The revised regulations at 49 CFR 24.301(e) provides that a business's personal property may be moved by one or a combination of the following methods:

- ◆ Commercial move - Based on the lower of two bids or estimates prepared by a commercial mover. At the recipient's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.
- ◆ Self move - A self-move payment may be based on one or a combination of the following:
 - The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person - At the recipient's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.
 - Supported by receipted bills for labor and equipment - Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity, and equipment rental fees should be based on the actual rental cost of the equipment, not to exceed the cost paid by a commercial mover.

Businesses may choose to use the services of a professional mover or perform a self-move. Eligible expenses include:

- ◆ Transportation of personal property.
- ◆ Packing, crating, uncrating, and unpacking of personal property.
- ◆ Disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, and personal property.
- ◆ Storage of personal property.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ Insurance for replacement value of personal property in connection with the move and/or storage.
- ◆ The replacement value of property lost, stolen or damaged in the process of moving where insurance is not reasonably available.
- ◆ Any license, permit, fees or certification required at the new location.
- ◆ Professional services to plan the move, move the personal property or install the personal property at the new location.
- ◆ Re-lettering signs and replacing existing stationery that is obsolete due to the displacement.
- ◆ Reasonable costs incurred while attempting to sell items that will not be relocated.

A business is eligible for either a "Direct Loss" or "Substitute Equipment" payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

- ◆ A "Direct Loss" payment can be made for the loss of personal property due to moving or discontinuing the business or nonprofit or farm. The business must make a good faith effort to sell the personal property (unless the recipient determines it is unnecessary) in order to be eligible for a Direct Loss payment. A Direct Loss payment is based on the lesser of:
 - The market value of the item for continued use at the displacement site, minus its sales price, or
 - The estimated cost to move the item, with no allowance for storage. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
- ◆ A "Substitute Equipment" payment can be made when an item used by the business, nonprofit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site. A Substitute Equipment payment is based on the lesser of:
 - 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
 - The estimated cost to move and reinstall the item, but with no allowance for storage.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Certain costs incurred while searching for a replacement location are also eligible. Businesses are entitled to reimbursement up to \$2,500. Recipients can pay more than this if they believe it is justified.

- ◆ Costs may include reasonable levels of such items as:
 - Transportation,
 - Meals and lodging away from home,
 - Time spent while searching, based on a reasonable pay salary or earnings,
 - Fees paid to a real estate agent or broker while searching for the site (Note that commissions related to the purchase are not eligible costs), and
 - Advertising signs.

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: (1) the amount which would be received if the property were sold at the site or (2) the replacement cost of a comparable quantity delivered to the new business location. Examples include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

The recipient may pay other moving and related expenses that the recipient determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses' may be limited by the recipient to the amount determined to be least costly without causing the business undue hardship.

In addition to the eligible expenses for moving personal property listed above, the following items are also eligible moving expenses if the recipient determines they are actual, reasonable and necessary:

- ◆ Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- ◆ Professional services (based on a reasonable Agency pre-approved hourly rate) performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

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

Reestablishment Expenses

Only certain small businesses are eligible for reestablishment expenses. "Small businesses" for this purpose are defined as those with at least one, and no more than 500 people working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a reestablishment expense payment.

- ◆ \$25,000 is the maximum reestablishment expense payment allowed by the URA regulations. Eligible items included in this maximum figure are:
 - Repairs or improvements to the replacement site, as required by codes, or ordinances.
 - Modifications to the replacement property to accommodate the business.
 - Modifications to structures on the replacement property to make it suitable for conducting the business.
 - Construction and installation of exterior advertising signs.
 - Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting.
 - Advertisement of the replacement location.
 - Estimated increased costs of operation for the first two years at the replacement site for such items as lease or rental charges, utility charges, personal or property taxes and insurance premiums.
 - Other reestablishment expenses as determined by the recipient to be essential to reestablishment.

Ineligible Expenses

The following are ineligible for payment as an actual moving expense, as a reestablishment expense, or as an "other reasonable and necessary expense":

- ◆ Loss of goodwill,
- ◆ Loss of profits,
- ◆ Loss of trained employees,
- ◆ Personal injury,
- ◆ Interest on a loan to cover any costs of moving or reestablishment expense,

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ Any legal fees or other costs for preparing a claim for a relocation payment or for representing the claimant before the recipient,
- ◆ The cost of moving any structure or other real property improvement in which the business reserved ownership,
- ◆ Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations,
- ◆ Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business,
- ◆ Expenses for searching for a replacement dwelling,
- ◆ The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under “moving and related costs”,
- ◆ Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in “reestablishment expenses”, and
- ◆ Refundable security and utility deposits.

Fixed Payments

A displaced business may select a fixed payment instead of actual moving expenses (which include reestablishment expenses) if the recipient determines that the displacee meets the following eligibility criteria:

- ◆ The business discontinues operations or it will lose a substantial portion of its business due to the move.
- ◆ The business is not part of an operation with more than three other entities where:
 - No displacement will occur, and
 - The ownership is the same as the displaced business, and
 - The other locations are engaged in similar business activities.
- ◆ The business contributed materially to the income of the displaced business. The term “contributed materially” means that during the two taxable years prior to the taxable year in which the displacement occurred (or the recipient may select a more equitable period) the business or farm operation:
 - Had average gross earnings of at least \$5,000; or

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- Had average net earnings of at least \$1,000
 - Contributed at least 33 1/3 percent (one-third) of the owner's or operator's average annual gross income from all sources;
 - If the recipient determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.
- ◆ The nature of the business cannot be solely the rental of property to others.

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation.

Calculate net earnings before Federal, state, and local income taxes for a two-year period. Divide this figure in half. The minimum payment is \$1,000; the maximum payment is \$40,000.

The two-year period should be the two tax years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used.

- ◆ If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.
- ◆ If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period.
- ◆ When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.

Net earnings include any compensation obtained from the businesses that are paid to the owner, the owner's spouse, and dependents. When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:

- ◆ Shared equipment and premises,
- ◆ Substantially identical or inter-related business functions and financial affairs that are co-mingled,
- ◆ Identification of the entities as one entity to the public and customers, and

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ Ownership, control or management of the entities by the same person or related persons.

Businesses must furnish recipients with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:

- ◆ Income tax returns,
- ◆ Certified or audited financial statements,
- ◆ W-2 forms,
- ◆ Other financial information accepted by the recipient.

Optional form HUD-40056 "Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses" (Appendix 17 of HUD Handbook 1378) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail.

Section 9 – Other Relocation Requirements

Appeals

If a person disagrees with the determination of the recipient concerning the relocation payment(s) or other relocation assistance for which the person is eligible, the person may file a written appeal with the recipient. See the Grievance Procedure outlined in Chapter 10: Acquisition. A person who is dissatisfied with the determination on the appeal may ask Grants Administration to review that determination.

Responsibility of Recipient for Compliance

The recipient is responsible for ensuring compliance with these requirements, regardless of any third party's contractual obligation to the recipient to comply with applicable requirements.

Section 10 – One-for-One Replacement of Housing Requirements

Overview

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing. The CDBG regulations [24 CFR 570.606(c)(1)(i)] state that: "All occupied and vacant occupiable low and moderate income dwelling units that are demolished or

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

converted to a use other than as low and moderate income dwelling units in connection with an activity assisted under this part must be replaced with low and moderate income dwellings units." The rules implementing the Section 104(d) requirement for the replacement of housing in the State CDBG program are found at 24 CFR 570.496a(c).

Key Points: There are four key issues in understanding the one-for-one replacement requirement.

- ◆ Which dwelling units must be replaced (and which need not be replaced)?
- ◆ What counts as a replacement dwelling unit?
- ◆ What must be made public and submitted to the State before execution of contracts?
- ◆ What is the exception to one-for-one replacement rules?

Dwelling Units That Must Be Replaced

Recipients **must replace** a housing unit if the unit meets **all three conditions listed below**:

- ◆ **Condition 1: It meets the definition of low/moderate dwelling unit.** A low/mod dwelling unit is defined as a dwelling unit with a market rent less than the FMR (Fair Market Rent). A reduced rent charged to a relative or on-site manager is not considered market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

AND

- ◆ **Condition 2: It is occupied or is a vacant occupiable dwelling unit.** A vacant occupiable dwelling unit is defined as:
 - A dwelling unit in standard condition (regardless of how long it has been vacant), or
 - A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant), or
 - A dilapidated unit, not suitable for rehabilitation, which has been occupied (except by squatters) within three months from before the date of agreement.
 - ◇ Under the State's program, for a recipient to determine that unit is not suitable for rehabilitation, it must determine that the unit's after rehab value is less than cost of rehabilitation plus rehabilitation personnel. If the after-rehabilitation value is more than the public

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

body estimate for the rehabilitation plus rehab personnel costs, then the unit is considered suitable for rehabilitation and may not be demolished without replacement. (Refer to the chart on the next page for information on the process that must be followed to make and document this determination.)

AND

- ◆ **Condition 3: It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing** (including conversion to a homeless shelter).

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Unsuitable for Rehabilitation Determination

Prior to making a determination to demolish any housing unit, the recipient must make a determination as to whether the unit is "unsuitable for rehabilitation." The recipient must document in writing that the following actions have taken place.

- ◆ Step 1: Take photographs of the exterior and interior of each unit to be demolished.
- ◆ Step 2: Prepare an itemized work write-up listing each item necessary to bring the particular unit up to code standards.
- ◆ Step 3: Establish a public body estimate for the proposed work.
- ◆ Step 4: Determine the estimated after-rehabilitation value of the structure. This information may be obtained from a qualified appraiser or tax assessor or licensed realtor.
- ◆ Step 5: Determine if the estimated after-rehabilitation value is less than public body estimate for the rehabilitation plus rehabilitation personnel. If so, the unit may be demolished and it will not trigger the replacement requirements. (If the after-rehabilitation value is more than the public body estimate for the rehabilitation plus rehabilitation personnel costs, then the unit is considered suitable for rehabilitation and cannot be demolished without replacement.) Any demolition is subject to environmental review requirements, particularly historical clearance by the S. C. Department of Archives and History.
- ◆ Step 6: Document the above information using the *H-1 Form* in the attachment to this Chapter.

Individual case files on each unit targeted for demolition must be maintained in the recipient recordkeeping system for Grants Administration review. Failure to comply with the procedures as outlined above may result in the recipient being required to replace the demolished unit at the recipient's expense. Demolition activity is authorized only for those units that were identified in an approved CDBG application.

The process outlined above has been designed to address vacant dilapidated housing units only and should not be confused with the voluntary demolition and replacement housing policy discussed in Chapter 7: Housing.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

It is important to note that the income of the particular owner-occupant or renter is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activity, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

Criteria for Replacement Units

Replacement low and moderate-income dwelling units may be provided by any public agency or private department. Replacement units must meet all of the following criteria:

- ◆ **Within Recipient's Jurisdiction - Within Same Neighborhood.** Replacement units must be located within the recipient's jurisdiction and, to the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced. Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.
- ◆ **Number of replacement bedrooms must at least equal the number removed.** Replacement units must be sufficient in number and size to house no less than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient, before committing funds, has provided information to citizens and to Grants Administration demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.
- ◆ **Provided in standard condition; rehabilitation of occupied units toward replacement does not count.** Replacement low and moderate income dwelling units may include units that have been raised to standard from substandard condition if no person was displaced from the unit as a direct result of an assisted activity and the unit was vacant for at least three months before execution of the agreement between the recipient and the property owner.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ To count as a replacement unit under the rule, two criteria must be met:
 - The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the recipient and the property owner).
 - No person may have been displaced from the unit as a direct result of the assisted activity.
- ◆ **Provided within a four-year timeframe.** Replacement units must be initially made available for occupancy at any time during the period beginning one year before the recipient's submission of the information required under 24 CFR 570.606(c)(1)(iii) and ending three years after the commencement of the demolition or rehabilitation related to the conversion. This period will slightly exceed four years. A recipient that fails to make the required submission, such as where it projects an after rehabilitation rent at or below the FMR and, after rehabilitation, discovers that the after rehabilitation rent is above the FMR, will lose the year before submission for counting replacement units.
- ◆ **Affordable for ten years.** Replacement units must be designed to remain LMI dwelling units for at least ten years from the date of initial occupancy. A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhood where current market rents are moderate and projected future rents are expected to remain with future FMRs). Replacement low and moderate income dwelling units may include, but not be limited to, public housing, existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937, or HOME or CDBG-funded units that have a ten-year affordability period.

Recipient Submission Requirements

Before a recipient executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low and moderate income dwellings units or the conversion of low and moderate income dwelling units to another use, the recipient must notify the public (e.g., by publication in a newspaper of general circulation) and submit the following information in writing to Grants Administration for monitoring purposes:

- ◆ Description - A description of the proposed assisted activity.
- ◆ Location and number of units to be removed - The location on a map, and the number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a LMI dwelling units, as a direct result of the assisted activity.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ Schedule - A time schedule for the commencement and completion of the demolition or conversion.
- ◆ Location and number of replacement units - The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.

If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available.

- ◆ The source of funding and a time schedule for the provision of replacement dwelling units.
- ◆ Ten year affordability - The basis for concluding that each replacement dwelling unit will remain a LMI dwelling unit for at least ten years from the date of initial occupancy.
- ◆ Reducing unit size (if proposed) is consistent with the State's Consolidated Plan - Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the Consolidated Plan or that the proposed replacement is consistent with the housing needs of LMI income households in the jurisdiction.

Exception to One-for-One Replacement

Replacement is not required if Grants Administration determines that enough standard, vacant, affordable housing serving the jurisdiction is available. A recipient may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by Grants Administration.

The one-for-one replacement requirement does not apply to the extent Grants Administration determines, based upon objective data, that there is an adequate supply of vacant lower income dwelling units in standard condition available on a non-discriminatory basis within the recipient's jurisdiction.

In determining the adequacy of supply, Grants Administration will consider whether the demolition or conversion of the low and moderate income dwelling units will have a material impact on the ability of lower income households to find suitable housing. Grants Administration will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ Vacancy rate - The housing vacancy rate in the jurisdiction.
- ◆ Number of vacancies - The number of vacant LMI income dwelling units in the jurisdiction (excluding units that will be demolished or converted).
- ◆ Waiting list for assisted housing - The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction. However, Grants Administration recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.
- ◆ Consolidated Plan - The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- ◆ Housing outside the jurisdiction - Grants Administration may consider the supply of vacant low and moderate income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the recipient's jurisdiction.

Such additional dwelling units shall be considered if Grants Administration determines that the units would be suitable to serve the needs of lower-income households that could be served by the low and moderate income dwelling units that are to be demolished or converted to another use. Grants Administration will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

Procedure for Seeking an Exception

The recipient must submit a request for determination for an exception directly to Grants Administration. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have thirty days from the date of submission to provide to Grants Administration additional information supporting or opposing the request. If Grants Administration, after considering the submission and the additional data, agrees with the request, Grants Administration must provide its recommendation with supporting information to HUD.

Section 11 - Recordkeeping Requirements

Each recipient is responsible for maintaining readily available and retrievable records in sufficient detail to demonstrate compliance with the URA and applicable relocation program regulations, irrespective of any tasks assigned to the real property owner. These records must be maintained for a period of five

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

years after final program close-out, or the date a person has received all of the financial assistance due, whichever is the latest date.

Each notice that the recipient is required to provide to a property owner or occupant must be mailed certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand delivered, a written acknowledgment of receipt must be obtained from the addressee.

Records on Displaced Persons

The recipient must maintain a separate case file on each displaced person. The case file must contain the following:

- ◆ Identification of person, address, racial/ethnic group classification, age and sex of all members of the household, household income, monthly rent and utility costs (if the unit is a dwelling), type of enterprise (if non-residential), and person's relocation needs and preferences.
- ◆ Evidence that the person received a timely *General Information Notice* and a general description of the relocation payments and advisory services for which he may be eligible, basic eligibility conditions and procedures for obtaining payments.
- ◆ Evidence that the person received a timely written *Notice of Eligibility for Relocation Assistance* and, for those displaced from a dwelling, the specific comparable replacement and the related cost to be used to establish the upper limit of the replacement housing payment.
- ◆ Evidence of dates of personal contacts and a description of the services offered and provided.
- ◆ Identification of referrals to replacement properties, date of referrals, rents/utility costs (if rental dwelling), date of availability and reason(s) person declined referral.
- ◆ Identification of actual replacement property, rent/utility cost (if rental dwelling) and date of relocation.
- ◆ Replacement dwelling inspection report and date of inspection.
- ◆ A copy of each approved claim form and related documentation, evidence that the person received payment and if applicable, the Section 8 Certificate or Housing Voucher.
- ◆ A copy of any appeal or complaint filed and the recipient response.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Records of Persons Not Displaced

The recipient must also maintain information on persons not displaced:

- ◆ For each occupant of the real property who has not been displaced, the recipient must maintain evidence that the person received a timely *General Information Notice* indicating that he would not be displaced by the project. If by staying in the project there is a possibility the occupant may become "rent burdened," there are three options available to the recipient:
 - The recipient can provide additional subsidies to make the unit affordable (e.g. tenant-based rental assistance);
 - The owner can elect to limit rent increases for some units where the increase would result in a rent burden; or
 - If neither of the above options are feasible, the recipient must consider the occupant a displaced person and issue a *Notice of Eligibility for Relocation Assistance*. If the occupant moves, the occupant is considered to be displaced by virtue of the activity that caused the rent to rise.
- NOTE: Some rent-burdened tenants may elect to remain in the project and pay the higher rent. The tenant must be fully informed (via *Notice of Eligibility for Relocation Assistance*) of their rights to relocation assistance and sign an acknowledgement that they voluntarily relinquish any payments due under the URA.
- ◆ For tenants occupying a dwelling, there must be evidence that the tenant received a timely offer of: (1) a reasonable opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling on the real property, and (2) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property.
- ◆ For each occupant that is not displaced, but elects to move permanently from the real property, this documentation is especially important to ensure that the person does not have a basis for filing a claim for relocation payments as a "displaced person."

Identification of Occupants in Private Owner Rehabilitation Project

For each private owner, multi-family rehabilitation project, the recipient must develop and maintain records identifying the name and address of:

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

- ◆ All occupants of the real property at the time of submission of the application by the owner to the recipient.
- ◆ All occupants moving into the property after the submission of the application but before completion of the project.
- ◆ All occupants immediately following completion of the project.

The recipient must be able to reconcile the available information on the persons in categories 1 and 2 above with the information on persons in category 3 so that a person reviewing the files can account for occupants (i.e. remained in occupancy, were displaced and received relocation assistance, or elected to relocate permanently even though not displaced).

Records on Voluntarily Relocated Households

The recipient must establish individual case files for each household temporarily relocated under the recipient's Voluntary Relocation Plan. At a minimum, each case file must contain the following:

- ◆ Name of homeowner or tenant being temporarily displaced,
- ◆ Address of unit being rehabilitated,
- ◆ Address of replacement dwelling unit,
- ◆ Copies of all financial records attributable to the relocatee during the temporary displacement,
- ◆ Date relocatee(s) occupied the temporary unit and returned to the rehabilitated dwelling,
- ◆ Inspections of the condition of the relocation dwelling upon evacuation and prior to occupying the temporary unit, and
- ◆ All invoices for temporary relocation costs including all utility charges during the relocation and any other charges directly attributable to the temporary displacement.

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Summary of the Major Differences between Section 104(d) and URA Relocation Assistance Eligibility Requirements

<i>Topic/Issue</i>	<i>Section 104(d)</i>	<i>URA</i>
Income requirements	Only lower income persons are assisted	Displaced persons of all incomes are eligible
Persons displaced by rehabilitation activities (including economic displacement)	Displaced persons are eligible only if market rent (including utilities) of the unit before rehab did not exceed Section 8 Existing Housing Fair Market Rent (FMR) and the market rent after rehab was above FMR	Displaced persons are eligible for assistance regardless of pre and post rehabilitation rents. (URA does not cover economic displacement, but HUD program regulations require assistance equivalent to URA)
Economic Displacement Criteria	Displaced persons are eligible if not offered a suitable unit at or below the greater of: <ul style="list-style-type: none"> • Total Tenant Payment; or • Old rent/Utility costs 	Displaced persons are eligible if not offered an appropriate unit at or <ul style="list-style-type: none"> • 30% of gross income, or • old rent/utility costs <p>Note: 30% of gross income is the general policy; rules vary by program</p>
Persons displaced by conversion of unit to a nonresidential use	Displaced persons are eligible only if market rent (including utilities) of the displacement unit did not exceed FMR before conversion	Displaced persons are eligible for assistance by any conversion to a nonresidential use
Persons displaced by demolition	Displaced persons are eligible regardless of the pre-demolition market rent	Displaced persons are eligible regardless of the pre-demolition market rent
Persons displaced by acquisition only (no conversion)	Displaced persons are not eligible	Displaced persons are eligible

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Summary of the Major Differences between Section 104(d) and URA Relocation Assistance regarding the Amount of Assistance Provided

<i>Topic/Issue</i>	<i>Section 104(d)</i>	<i>URA</i>
Rental Assistance Term	60 months	42 months
Monthly Rental Assistance Payment	<p>For lower-income tenants, amount needed to reduce new rent/utility costs to Total Tenant Payment, which is usually the greater of:</p> <ul style="list-style-type: none"> • 30% of adjusted monthly income • 10% of gross monthly income <p>Non lower-income tenants: Not applicable</p>	<p>For lower-income tenants, amount needed to reduce new rent/utility costs to lower of:</p> <ul style="list-style-type: none"> • old rent and utility costs or • 30% of the person's monthly income <p>For non lower-income tenants, amount needed to reduce new rent/utility costs or the costs of a comparable unit with utilities to old rent/utility costs.</p>
Use of Section 8 Rental Assistance	If Section 8 assistance and suitable referrals are offered, displaced person cannot insist on cash replacement housing payment (But tenant may request cash replacement housing payment under URA)	Displaced person has right to cash replacement housing payment but may accept Section 8 assistance if it is offered
Other Housing Assistance	Assistance includes security deposit at replacement	Assistance does not include dwelling security deposit

CH 11: RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Summary of the Major Differences between Section 104(d) and URA Relocation Assistance regarding the Amount of Assistance Provided

<i>Topic/Issue</i>	<i>Section 104(d)</i>	<i>URA</i>
Home-ownership Assistance	Limited to purchase of a cooperative or mutual housing and based on present (discounted) value of 60 monthly payments	Not limited to cooperative or mutual housing. Payment rental equals 42 x monthly rental payment (i.e., not discounted)
Moving and Related Expenses	Same as URA	Person may choose either: <ul style="list-style-type: none"> • Commercial mover with bid • Payment for actual moving • Alternative Allowance based on Dept. of Trans. schedule
Advisory Services	Same as URA	Comprehensive services Provided
Home-ownership Assistance	Limited to purchase of a cooperative or mutual housing and based on present (discounted) value of 60 monthly payments	Not limited to cooperative or mutual housing. Payment rental equals 42 x monthly rental payment (i.e., not discounted)

Chapter 11: Relocation and One-for-One Replacement of Housing Attachments

Actions that Trigger Section 104(d) One-for-One Unit Replacement Requirements
– Flow Chart

Guideform Residential Anti-Displacement and Relocation Plan

Elderly Waiver for Temporary Relocation

Optional Temporary Relocation Assistance Policy

Optional Temporary Relocation Assistance Application

Determination to Demolish (H-1 form)

HUD CPD Notice 14-09 (New/issued 6/10/14)

NOTE: Recipients are advised to get a copy of HUD Handbook 1378, available through HUDClips at <http://www.hud.gov/offices/adm/hudclips/> or Grants Administration staff, for forms and letters that are used for CDBG-funded relocation activities.