



2017 CDBG-DR Problem Solving Clinic



The Uniform Act & Section 104(d) in Disaster Recovery



Welcome & Speakers

- Session Objectives
 - Identify Uniform Act Requirements
 - Understand how CDBG-DR is different than CDBG
 - Identify Common CDBG-DR URA/104d Waivers & Alternative Requirements
 - Identify Common Monitoring Findings
 - Identify URA Issues in Planning Disaster Recovery Activities
- Speaker
 - Sara Neira



Agenda

- Uniform Act Requirements
- How is CDBG-DR different than CDBG?
- Common CDBG-DR URA/104d Waivers & Alternative Requirements
- Common Monitoring Findings
- URA Issues in Planning Disaster Recovery Activities



Uniform Act – 49 CFR 24

- Establishes minimum standards for federally funded programs/projects requiring the acquisition of real property or displacement of persons from their homes, businesses, or farms permanently as a direct result of:
 - Acquisition
 - Rehabilitation
 - Demolition



Uniform Act Requirements

- Applicable to all planned or intended Federal projects (in part or in whole) with acq/rehab/demo in any phase – even if the acq/rehab/demo is not directly funded by HUD programs (interdependence)
- Direct funding recipient liable for (in)actions of 3rd parties
- Certain URA actions **MUST** be undertaken by the acquiring/displacing agency staff, URA doesn't specify who pays for costs of compliance
- Notice requirements at specified milestones in the activity/project lifecycle – synchronization
- Uniform standards & practices



What “Triggers” the URA?

- Site identification + planned or intended use of federal funds
- What does this look like?
 - “As soon as feasible” = General Info Notice (GIN) to all occupants
 - At such time there exists 1) documented legal intent of project (Project pre-application/applications, Con/Action Plan or Amendments, City Council resolutions) AND 2) site identification
 - Specific Notice of Relocation Eligibility within 7-10 days of...
 - “Initiation of Negotiations” for the project (based on several possible dates per regulations)



Governing Guidance

- URA & Section 104(d) statutes
- Regulations
 - 49 CFR 24 – URA
 - 24 CFR 42 – 104(d)
 - 24 CFR 570 – CDBG
 - Section 414 of the Stafford Act
- Federal Register Notices covering supplemental appropriations (waivers & alternative requirements)
- HUD Handbook 1378 & other policies



How is CDBG-DR different than CDBG?



CDBG vs. CDBG-DR

- CDBG-DR is the same as CDBG except as expressly waived or the alternative requirements provided by the Secretary where good cause exists and the waiver or alternative requirements are not inconsistent with Title I of the HCD Act
- Grantees may request additional waivers & alternative requirements from HUD as needed
- Waivers & alternative requirements ARE NOT RETROACTIVE



CDBG vs. CDBG-DR

- Waivers & alternative requirements issued for CDBG-DR funds are specific to each disaster/grantee
- The types & language of a waiver and alternative requirements vary from disaster to disaster, based on the grantee's request & demonstration of need for same
- Provisions of a Federal Register Notice do not apply to funds provided under the regular CDBG or other HUD or federally funded programs



CDBG vs. CDBG-DR

- “Applicable Rules, Statutes, Waivers & Alternative Requirements”
- Except where noted, waivers & alternative requirements described in a Notice apply to all grantees under the Notice
- They are mandatory unless explicitly stated as optional – failure to comply can lead to a monitoring Finding or Concern



Common CDBG-DR URA/104d Waivers & Alternative Requirements



Voluntary Acquisition Disclosures

- 49 CFR 24.101(b)(2)(i)–(ii) regs can be waived to the extent:
 - An arm's length voluntary purchase carried out by a person who does not have the power of eminent domain to purchase & occupy a principal residence by that person
 - All other activities must satisfy 2- or 4-part criteria to be considered a voluntary acquisition exempt from Subpart B
 - Not necessarily CDBG-DR funding the acquisition but interdependence in the overall activity



30% of Household Income

- URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30% of household income are waived, provided tenants have been paying rents in excess of 30% of household income without hardship
- The grantee **MUST** establish a definition of “demonstrable hardship” in its Action Plan or in the project policies & procedures
- This alternative requirement applies when issued – meaning all projects involving permanent displacement should not consider income as a factor in calculating a maximum rental assistance payment



“Comparable” Dwelling

- “Comparability” requirements can be waived to allow all or a portion of a replacement housing payments to a displaced tenant by offering a tenant-based rental assistance (TBRA) housing subsidy provided the tenant is also given referrals to suitable, available rentals where the owner will participate in the TBRA program & the period of authorized assistance is at least 42 months
- This waiver grants an additional relocation resource option and is generally the only requirement that is not mandatory



Residential Moving Payments

- 49 CFR 24.302 & other requirements can be waived. The grantee must generally establish & offer a person a “moving expense & dislocation allowance” under a schedule that is reasonable for the jurisdiction & takes into account the number of rooms in the displacement dwelling
- This mandatory alternative requirement applies when issued – meaning use of the FHWA Fixed Residential Moving Cost Schedule could result in a Finding



104(d) One-For-One Replacement

- One-for-one replacement requirements may be waived for low- and moderate-income dwelling units:
 - damaged by the disaster, and
 - “not suitable for rehabilitation” as defined by the grantee in its Action Plan or program P&P
- This is a limited waiver that may not exempt all occupied & vacant occupiable lower-income dwelling units, depending on the grantee’s definition of “not suitable for rehabilitation”



104(d) Relocation

- Section 104(d) relocation requirements may be waived to the extent they differ from the URA
- Eliminates disparity between persons displaced by projects funded by other federal agencies not subject to 104(d)
- Simplifies project administration since only one income & maximum rental assistance payment calculation is required



Disaster CDBG & Other Federal Funds

- All other federal sources of funding used in projects where acquisition, rehabilitation or demolition will occur are subject to standard URA regulations
- Use of regular CDBG & HOME funds in a mixed finance project will mitigate any waivers or alternative requirements attributed to supplemental CDBG-DR



Common Monitoring Findings



Common URA Findings

Failure to document all basic acquisition policies (involuntary), in chronological order, in a timely manner.

- Notice to Owner as soon as site identified for a federal activity
- Offer to attend appraisal inspection
- Appraisal & appraisal review (or waiver valuation in lieu of)
- Agency Official establishes Just Compensation
- Written offer of just compensation with Summary Statement & “When A Public Agency Acquires Your Property” brochure
- Documented negotiations contacts & terms of agreement
 - Cost Reasonableness
- Payment of incidental costs to seller & proceeds
- Deed & settlement statement or petition & award



Common URA Findings

Taking a choice-limiting action prior to receiving environmental clearance.

- Recipients must not commit HUD Funds or non-HUD funds if activity would:
 - Have an adverse environmental impact, or
 - Limit the choice of reasonable alternatives:
 - Real property acquisition
 - Leasing
 - Disposition
 - Demolition
 - Rehabilitation
 - Repair
 - Construction
 - Site improvements





Exceptions to §58.22

Use of these tools, or advanced relocation, may require URA compliance at atypical dates relative to the “normal” project lifecycle.

- Options Agreements allowed if:
 - They are subject to final outcome of the environmental review;
 - The cost of the option is nominal
 - By definition, an option does not obligate purchase
 - Can be renewed but not exercised until completion of environmental review
- Conditional Contracts allowed if:
 - Obligate purchase if environmental review successful
 - For some activity types, with specific required language included in purchase agreement
- Relocation funds:
 - Provided that 24 CFR Part 42 requires the relocation assistance



Common URA Findings

Recordkeeping HUD Handbook 1378, Chapter 6-3

1. Notices required under the URA with evidence of delivery by signature on a USPS receipt or a certification of hand delivery;
2. Evidence the owner was offered opportunity to accompany appraiser during property inspection, Appraisal(s) and review appraisal(s);
3. Written establishment of just compensation signed by authorized Agency official;
4. Offer letter(s) and summary statements that outline the basis for the offer of just compensation;
5. Record of negotiations with property owner;
6. Administrative settlement documentation & support;
7. Closing statements, title documents, recorded deed indicating book and page, claim forms;
8. Eminent domain filings, court decisions



Common URA Findings

Failure to issue a General Information Notice to all occupants “as soon as feasible.”

- HUD programs have a rebuttable presumption that a displacement before submission of an application did not occur "for the project" & is not covered by the URA, unless rebutted by convincing evidence to the contrary
- It is also presumed that a permanent, involuntary move on or after that date is a displacement "for the project," unless the grantee (or State or State recipient, as applicable) determines otherwise & HUD concurs with this determination
- Issuing a GIN at the submission of the CDBG/CDBG-DR/HOME application protects the displacing/acquiring agency and the occupant!
- Action plans, ordinances, City Council resolutions, etc.



Common URA Findings

- GIN does not contain all required contents to be valid:
 - Informs person he/she may be displaced, describes relocation payments, conditions of eligibility & procedures for obtaining payments;
 - States advisory services are available including referrals to replacement units & help filing claims;
 - Informs person they will receive 90-days Notice to Vacate in advance after being provided at least 1 comparable unit;
 - States persons must be lawfully present to receive relocation assistance
 - Describes the person's right to appeal & process for same
 - USE CAUTION WHEN DELETING TEXT FROM A HUD GUIDEFORM



Common URA Findings

Failure to issue a Notice of Relocation Eligibility (Notice of Nondisplacement) PROMPTLY at the Initiation of Negotiations.

- Eligibility for permanent or temporary relocation payments & advisory services begins at ION – notices are person-specific
- NLT 7-10 days after the ION event occurs
- Even if there was no intent to displace the person, where a Notice of Nondisplacement was not provided at ION, HUD's position is the person's move was permanent, involuntary for the project since the person was not given timely information essential to making an informed judgment about moving from the project
- **Failure to issue TIMELY & ACCURATE Notices at ION = Corrective Action (\$\$, \$\$\$)**



Initiation of Negotiations (ION)

- Unless a different action is applicable as specified in CDBG/HOME regs, ION is the following:
 - When displacement results from the acquisition of the real property by a State Agency, the ION...delivery of the initial written offer of just compensation by the Agency to the owner to purchase the real property for the project
 - Whenever the displacement is caused by rehab/demo or privately undertaken acquisition of the real property (there is no related acquisition by a State Agency), ION means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property
 - In the case of permanent relocation of a tenant as a result of an acquisition of real property described in Sec. 24.101(b)(1) through (5), the initiation of negotiations means the actions described in Sec. 24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under this part, until there is a written agreement between the Agency and the owner to purchase the real property (voluntary acquisitions)



Common URA Findings

- For projects involving privately carried out acq/rehab/demo, ION is the date of execution of the agreement for HUD funds (CDBG/CDBG-DR/HOME)
- Where ION is the execution of the CDBG/CDBG-DR/HOME agreement, the project sponsor must be prepared to issue all Notices of Relocation Eligibility/Nondisplacement as of the effective date of the contract (usually execution)
 - Retroactive agreements **MAY CAUSE NON-COMPLIANCE**
 - All entities must be aware of HUD written agreements with the State & project actions by partner agencies
- Consult applicable HUD program for the definition of ION



Common URA Findings

Failure to conduct cost reasonability analysis on a project or case by case basis for replacement housing payments in “Housing of Last Resort”. RHP claims miscalculations.

- No actual monetary cap under Housing of Last Resort (cost-feasibility analysis of alternative options per regs)
- 2 phased process – determine eligibility calculation & then document claim based on new lease amount on a DSS replacement
- Overpayments – was the total RHP claimed more than the maximum eligibility amount? Were the initial eligibility and final claim calculations correct? Were there multiple levels of review to review, approve, & process a check or voucher?



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Common URA Findings

Displacing agency MUST retain supporting evidence that units met the URA definition of “comparable” and all its elements.

This Appendix 12 alone is not sufficient documentation.

May be made available to a Federal agency for review.

Factors (see back of page)	Displacement Dwelling	Comparable No.1	Comparable No.2	Comparable No.3
Address				
Type of Unit				
Stories / Style				
Lot Size				
Type of Construction				
Age (in years)				
Condition				
Area of Living Space (sq. ft.)				
No. Rooms/Bedrooms /Baths	/ /	/ /	/ /	/ /
Basement				
Parking/No. of Cars				
Type of Heating /Fuel	/	/	/	/
Type of Air Conditioning				
Neighborhood				
Transportation (distance)				
Current Work (distance)				
High School/Grade School (distance)	/	/	/	/
Neighborhood Shopping (distance)				
Religious Facility (distance)				
Sale Price or Rent/Utility Costs	\$	\$	\$	\$
Other				
Date of Inspection				
Date Available				
Most Representative Comparable Replacement Dwelling (Check "Comparable no.1, 2, or 3" and complete Comments)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Common URA Findings

Failure to document provision of advisory services.

- Written referrals to comparable, functionally equivalent, DSS units currently available to the displaced household as of ION & as listed in a Notice of Eligibility
 - Specific address/unit – NOT “Glen Oaks Apartments”
- Assess relocation needs, preferences, obstacles, resources (ongoing)
- Explain rights to assistance (ongoing)
- Transportation and referrals
- Other assistance as appropriate

RECORD OF ADVISORY ASSISTANCE AND OTHER CONTACTS		HUD FORM 1376 APRIL 2010
NAME OF OCCUPANT _____		Page ____ of ____
NAME OF AGENCY REP AND DATE OF CONTACT	COMMENTS	



Common URA Findings

Failure to include all required components of a Notice of Nondisplacement.

- The date and approximate duration of the temporary relocation (not to exceed 1 year);
- The address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
- The terms and conditions under which the person may lease and occupy a decent, safe and sanitary dwelling in the building/complex upon completion of the project;
- The costs which will be reimbursed; and
- The advisory services which will be available to them



Common URA Findings

Failure to evidence compliance with the conditions of temporary displacement.

- Offer to lease and reoccupy a suitable, DSS affordable dwelling in the building/complex upon completion of the project within 12 months of displacement (see funding program regulations for specific requirements), and
- Reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or a move to another unit in the building/complex
- Timely & accurate written notices & advisory services



Common 104d Findings

Failure to define “not suitable for rehabilitation”.

- 1-for-1 replacement requirements of 104(d) are only waived:
 - If disaster-damaged, and
 - The unit(s) meet the grantee’s definition of “not suitable for rehabilitation”
- Before carrying out a program or activity which may be subject to 1-for-1 replacement requirements, the Grantee must define this term in its Action Plan or in policies & procedures governing programs & activities
- The grantee cannot demonstrate to HUD units are exempt from replacement without this term defined



URA Issues in Planning Disaster Recovery Activities



Buyout Programs

- Reduce future injury/damages but persons cannot be required to relocate to any specific new specific location
- Must determine acquisition path early in project (voluntary or subject to Subpart B of the URA)
- Owner-occupants ARE entitled to relocation payments under involuntary acquisition programs
- Owner-occupants NOT entitled to relocation payments under the voluntary acquisition programs
 - Tenants are always eligible regardless of acquisition type
 - Optional relocation policies can be utilized under §570.606 designed to incentivize participation in an optional buyout or to a preferred location(s)



Easements/Retention Basins/Infrastructure

- Typically are site specific due to design & engineering requirements – consider all potential areas that could complete project to minimize acquisition & relocation costs
- Usually considered involuntary acquisition projects
- Notice to owner & occupants is required as soon as feasible once a site is identified & proposed for a federally-assisted project
- May require one-for-one replacement if units in habitable condition are acquired and demolished using CDBG-DR, in addition to relocation payments



Mobile Homes

- Mobile home communities often contain a mix of owner & tenant-occupied units. Units sometimes valued & acquired separately from the underlying real estate where they cannot be moved or are considered realty
- Obtain rent roll during appraisal process for valuation & URA notice purposes
- Mobile homes – Are they realty or personal property? Can it be physically moved? Does it meet HUD Handbook 1378 requirements at Chapter 7 to be considered a “dwelling” for 104(d) purposes?
- Often involve acquisition payments to owners for units in addition to rental assistance payments for pad rent



Rehab of Owner-occupied Units

- Owner-occupants who apply for rehab of their home DO NOT meet the URA definition of “Displaced Person”
- Some grantees use the Optional Relocation Policy at §570.606 to create specialized policies for providing minimum levels of assistance, i.e., short-term storage, housing costs during repairs
- Expenditures made to owner-occupants for relocation are INELIGIBLE unless otherwise covered under an acceptable Optional Relocation Policy
- Not covered by any time-lengths of displacement due to federally-assisted rehab, i.e., 12-months for temporary relocation
- HUD monitors for compliance with the grantee’s established policies



Acq/Rehab/Demo of Tenant-occupied Units

- Section 414 of the Stafford Act in the URA: No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:
 - A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency;
 - If a tenant is not readily accessible, as the result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.



Economic Development

- Acquisition of retail, hospitals, etc. can require specialized appraisers experienced in valuing disaster-impacted properties for justification of CDBG-DR expenditures – even where appraisals are not required by the URA (voluntary acquisitions)
- Infrastructure improvements for access/utilities can require URA acquisition compliance when land is acquired in connection with the project regardless if the purchase is privately funded
 - Interconnectedness - one would not occur but for another
 - Can also cause 104(d) relocation applicability in certain projects, unless waived



Joint Federally-Assisted Projects

- Where a project may be carried out with multiple federal sources, i.e., FEMA and HUD, VA and HUD, etc. contact HUD for a cognizant agency agreement to resolve differences in URA interpretations & policies
- FEMA's Hazard Grant Mitigation Program has different compensation rules for owner-occupants than are calculated under the URA
- Consultants may be more familiar with FEMA rules than HUD, different program regulations with inconsistent milestones for action
- **Where waivers are granted to CDBG-DR programs, and other HUD funds are also used, the most restrictive regulations apply**



URA & 104(d) Resources

- www.hud.gov/relocation
 - HUD Handbook 1378 – policies, guideforms, & compliance tools
 - Acquisition & Relocation brochures & publications
 - URA vs. 104(d) overviews & comparison chart
 - Planning & Budgeting Guide for HUD-Funded Projects
 - Locate your HUD Regional Relocation Specialist
- https://www.fhwa.dot.gov/real_estate/right-of-way/training/
 - Low-cost, online 6-hour URA training course & interactive tutorial
 - Uniform Act Frequently Asked Questions
 - Current Fixed Move Schedule & Mortgage Interest Differential Calculator



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Questions?