ACQUISITION, RELOCATION AND ONE-FOR-ONE REPLACEMENT

NOTE: This Appendix is intended only as a brief summary of the relocation and acquisition requirements. It should not be relied upon for complete guidance. Refer to the regulations cited and other HUD guidance such as HUD Handbook 1378 for more complete and up-to-date information.

OVERVIEW

- HOME-funded projects are subject to relocation requirements contained in the Uniform Relocation Act (URA) and, in some projects, Section 104(d) of the Housing and Community Development Act (also known as the "Barney Frank Amendments").
- URA relocation requirements are triggered whenever displacement occurs as a direct result of rehabilitation, demolition or acquisition for a HOME-assisted project.
- Section 104(d) requirements may be triggered by "demolition" or "conversion" of units when HOME funds are used for the project. Acquisition only activities do not trigger Section 104(d).
- Not all units and tenants in HOME projects will be treated in the same manner.
  - Some low-income residents will be covered only by URA.
  - Other low-income residents in some projects may be covered by both URA and Section 104(d).
  - Residents with incomes above the Low Income limit are covered only by URA.
- More information is available in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; Handbook 1374, Tenant Assistance, Relocation and Real Property Acquisition -- HUD CPD Staff Responsibilities; and the HUD-sponsored *All the Right Moves* course book.

GENERAL REQUIREMENTS

Minimizing Displacement

- As a general philosophy (as well as a specific program requirement in some instances), HUD requires program administrators to take all reasonable steps to minimize displacement as a result of a HUD-assisted program.

- This may mean such activities as:
  - Considering whether or not displacement will occur as part of funding decisions and project feasibility determinations.
  - Assuring, whenever possible, that residential occupants of buildings to be rehabilitated are offered an opportunity to return.
  - Planning rehabilitation projects to include "staging" where this would minimize displacement.
  - Following notification and advisory services procedures carefully to assure that families do not leave because they are not informed about plans for the project or their rights. This can be a costly mistake.

Administrative Requirements

- Plan: Each grantee/recipient must adopt and make public its *Residential Antidisplacement and Relocation Assistance Plan* to implement Uniform Relocation Act and Section 104(d) requirements. A guideform plan was issued by HUD in September 1988 (CPD Notice 88-33). Plans based upon this guideform must be updated to comply with the final regulations. HUD intends to issue a revised guide form.
- Certifications: Grantees must certify that they will follow a Plan as part of their Consolidated Plan submission.

Who Is A Displaced Person?

- Displacement occurs when a "person" (or their property) is displaced as a DIRECT RESULT of federally assisted acquisition, demolition or rehabilitation.
- Section 104(d) protection covers displacement as a result of demolition or conversion of permanent housing units. The definition of conversion includes a unit which no longer rents at or below the FMR as a result of HOME assistance, as well as a unit that is turned into a non-housing use or permanent housing unit that is turned into a shelter.
- Under the URA requirements, a person is displaced if THEY MOVE because the person is:
  - required to move by the owner, developer or agency; or
  - not offered a decent, safe, sanitary and affordable unit in the project; or
  - treated "unreasonably" as part of a permanent or temporary move;
- A person may also be considered a displaced person if the necessary notices are not given or provided in a timely manner and the person moves for <u>any</u> reason.

Who Is Not Displaced?

Persons not displaced include those who:

- Were evicted for cause, BUT not if the eviction is taken to evade paying relocation assistance.
- Have no legal right to occupy the property (e.g. squatters), but a formal lease is not required to have a legal right.
- Occupied the property for the purpose of obtaining relocation benefits.
- Before leasing and occupying the property, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided.
- Retain the right of use and occupancy of the property after acquisition (life estates).
- After being fully informed of their rights, waive them.
- The grantee decides (and HUD agrees in writing) were not displaced as a direct result of the project. When in doubt, ask the HUD Field Office for a determination.

Timing for Relocation Assistance Eligibility

- In general, it is impossible to establish a hard and fast cut-off date for eligibility. However, most HUD program regulations establish an assumed cut-off date that is considered to be the beginning point for eligibility. This date is identified as the "initiation of negotiations" (ION).
- Even though the ION generally marks the date when families become eligible for relocation assistance, relocation concerns must be addressed much earlier.
  - Under the HOME Program, the ION for privately undertaken rehabilitation, demolition or acquisition is the execution of the funding agreement. Thus, a project that does not proceed to execution of the agreement does not trigger eligibility for relocation assistance.
  - But, once a project reaches this point, residents may be eligible for relocation assistance because the owner or grantee failed to take appropriate steps before execution of the agreement.

For example, the "initiation of negotiations" for a rehabilitation project is the execution of the funding agreement between the grantee and the owner. Up until that moment eligibility for relocation assistance has not been triggered.

How Displacement Is Triggered in Rehabilitation Projects

- **Before application**: Generally, before application, eligibility for relocation assistance is triggered by a tenant's permanent move **ONLY IF** the grantee or HUD determines that the displacement was a direct result of the project activity.

  For example, the grantee could determine that an owner displaced tenants in order to propose a vacant building for HUD assistance.

- **After application**: Displacement is triggered when a tenant moves permanently from the property because:

  - The tenant is required by the owner to move permanently. (This includes the owner's refusal to renew a lease.); or

  - The grantee or owner *fails to provide timely required notices* to the tenant; or

  - The *owner fails to pay* the actual, reasonable out-of-pocket expenses for a temporary move or because the *conditions of the temporary move are unreasonable.*

- **After execution of agreement**: Displacement is triggered if a tenant moves permanently from the project because the tenant is not provided the opportunity to lease a suitable, affordable unit in the project.

Who Needs a Notice?

- Virtually EVERYONE needs a notice of some kind. All occupants are entitled to timely notice explaining whether or not they will be displaced.

  - Occupants to be displaced must be informed of their eligibility for relocation assistance and the nature of the assistance.

  - Occupants not to be displaced must be informed of the terms and conditions under which they may occupy the property upon completion of the project.

- Different notices serve different purposes and must be tailored both to the specific project circumstances, and the individual circumstances of the residents.

- Failure to provide correct and timely notices can be one of the most expensive mistakes that a relocation specialist can make.

What Notices Are Required?

- There are several different types of notices that may be required by the relocation process.

  - General Information Notice (GIN): Informs occupants of a possible project and of their rights under URA and/or Section 104(d). It stresses that the household should not move at this time. (Always needed.)

- Move-in Notice: Informs households moving into potential projects after the application that they may be displaced and that they will not be entitled to assistance. (Grantees can also elect not to give this notice; move ins are then eligible for assistance if displaced.)

- Notice of Non-Displacement: Informs households who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property. (Given to tenants who will stay in same unit or another suitable unit in the building or complex.)

- Temporary Relocation Notice: Informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.

- Notice of Eligibility: Informs households to be displaced of their rights and levels of assistance provided by the URA and/or Section 104(d).

- 30-Day Notices: Informs displaced households of the day by which they must vacate the property. Displaced households may not normally be given less than 90 days to vacate their residence. If a specific date is not given with the 90-day notice, a 30-day notice can provide the specific day.

Notices for Involuntary Acquisitions and Displaced Businesses

- Tenants: Similar notices and comparable assistance must be given to displaced tenant businesses.

- Owners: When residential or commercial properties are acquired involuntarily, notices must discuss the specific benefits available to the owners.

- HUD Handbook 1378 provides detailed guidance on these requirements.

Notices to Sellers and Tenants

- **Notice to Sellers**. Before a binding sales contract is executed, owners who are voluntarily selling a property must receive notice:

  - that the property will not be taken by eminent domain;

  - of the estimated fair market value of the property.

  Note: This notice is required even if the property was already listed for sale. If the notice is not given, the PJ may be vulnerable to a claim that the acquisition was "involuntary" and therefore covered by relocation requirements.

- **Notice to Tenants**. Even though the sale by the owner is considered a voluntary acquisition, a tenant who is displaced as a result of the property's purchase by an assisted homebuyer is eligible for benefits as a displaced person.

When and How are Notices Served?

- Notices may be issued by either the grantee or the owner. However, the grantee is ultimately responsible and must assure that timely and correct notices are given. HUD recommends that grantees issue the notices.
- Notices must be personally served or sent by certified or registered first-class mail, return receipt requested. (Certified mail is less costly.)
- Notices should be issued as soon as feasible. Although HUD Handbook 1378 defines the point of "initiation of negotiations" for HUD programs, the date of "application" is less clear. To avoid relocation problems grantees should establish policies defining when an application is received.

RELOCATION ASSISTANCE FOR RESIDENTS WHO ARE DISPLACED

When URA Rules Apply

- Everyone who meets the URA definition of a "displaced person" is eligible to receive relocation assistance.

When Section 104(d) Tenant Assistance Rules Apply

- A lower income person is eligible for Section 104(d) assistance if:
  - The unit it occupies is demolished with HOME funds.
  - The person is displaced as a result of a HOME-funded conversion. Conversion means:
    - ✓ The unit previously rented (rent and utilities) below the Section 8 Fair Market Rent (FMR) and after the HOME-funded activity it rents above the FMR.
    - ✓ Because of the HOME-funded activity the unit is no longer a permanent housing unit, including changing a unit to a homeless shelter.
- A **lower income person** remains in a project converted with HOME funds, Section 104(d) economic displacement rules apply.

Tenants Can Be Covered By Both Programs

- Any displaced low-income person who qualifies for Section 104(d) assistance is also covered by URA.
- Non-low income residents of a HOME-funded project who are displaced (physically or economically) are not eligible for Section 104(d) assistance but are eligible for URA assistance.

- Assistance may need to be calculated using both URA and Section 104(d) rules to determine which is more beneficial to the tenant.

Not All Tenants in a Project Are Treated the Same

Example: A four-unit apartment complex with two and three bedroom units is being rehabilitated. Two of the four completed units will be HOME-assisted.

UNITS	BEFORE REHABILITATION	AFTER REHABILITATION
Unit 101 Two bedroom unit; Low Income Tenant	Rented below the FMR	HOME-assisted; Rents below the FMR
Unit 102 Three bedroom unit; Tenant Above Low Income	Rented below the FMR	HOME-assisted; rents below the FMR
Unit 103 Two bedroom unit; Low income tenant	Rented below the FMR	NOT HOME-assisted; rents above the FMR
Unit 104 Three bedroom unit; Tenant Above Low Income	Rented below the FMR	NOT HOME-assisted; rents above the FMR

- Tenant in Units 101 and 102 are not eligible for Section 104(d) assistance because neither unit was demolished or converted.

- The tenant in Unit 103 is eligible for Section 104(d) assistance because (1) the unit was converted and (2) the tenant is low income.

- The tenant in Unit 104 is not eligible for Section 104(d) assistance because, although the unit was converted, this is not a low income household. This household would be eligible for URA protection.

Assistance for Displaced Households

- **Advisory services**: Advisory services include timely notices, information booklets and explanation of assistance. Information and counseling should also include:

  - Referrals to other available assistance and human services (e.g., health services, public assistance, child care)

  - Information about federal, state and local housing programs and how to apply for them.

  - Information about the households rights under the Fair Housing Act.

  - For those who are displaced: information, to the extent possible, about replacement housing opportunities that may promote fair housing and moves to neighborhoods outside areas of racial concentration.

- **Replacement housing assistance**: Replacement Housing Assistance is available to both renters and homeowners.
  - Assistance is provided in the form of either rental assistance or purchase assistance.
  - Rental assistance may be in the form of a Replacement Housing Payment (discussed below) or, for eligible households, tenant-based rental assistance under Section 8 or HOME if it is available (under URA) if the tenant elects to receive this instead of cash.
- **Moving and related expenses**: The displaced person has the option of:
  - A payment for actual reasonable moving and related expenses; or
  - A moving expense and dislocation allowance based on a Department of Transportation (DOT) schedule that is published periodically.

URA Replacement Housing Payments

- Under the URA the amount of the Replacement Housing Payment a displaced tenant 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. (See the chart on the following page for the two formulas.)
- The URA Replacement Housing Payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a $5,250 limitation on payments, it also requires that persons receive the calculated payment. Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed $5,250.
- The payment to which the family is entitled is calculated using the lower of the cost of the family's actual new unit (including estimated utilities) or a **comparable replacement dwelling**.

URA Replacement Housing Payment Calculation

ASSISTANCE FOR TENANTS IN OCCUPANCY MORE THAN 90 DAYS	ASSISTANCE FOR TENANTS IN OCCUPANCY LESS THAN 90 DAYS
Replacement Housing Payment makes up (for a 42 month period) the **difference between**: ◆ the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and ◆ the **lesser** of: ➢ of the tenant's average monthly gross income, or ➢ the monthly rent and estimated average utility costs of the displacement dwelling, or ➢ the welfare rent (in as-paid welfare localities only).	Replacement Housing Payment makes up (for a 42 month period) the **difference between**: ◆ the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and ◆ 30% of the tenant's average monthly gross income

EXAMPLE: URA Replacement Housing Payment - Tenant
(Tenant in occupancy more than 90 days)

$600	Rent and utilities at actual replacement dwelling
$500	Rent and utilities at comparable replacement dwelling
	Choose the lesser: $500
$400	Rent and utilities at the displacement dwelling
$300	30% of gross monthly income
	Choose the lesser: $300

Replacement Housing Payment is $500 - $300 = $200 x 42 months = $8,400

Section 104(d) Replacement Housing Payments

- The Section 104(d) Replacement Housing Payment is available only to lower income households who are displaced because their unit has been demolished or converted (as described previously). Displaced tenants with incomes above the Section 8 Lower Income limit receive assistance under the URA.
- The Section 104(d) Replacement Housing Payment is intended to provide affordable housing for a 60-month period. There is no cap on the Section 104(d) Replacement Housing Payment.
- As with URA the payment is calculated using the lower of the cost of the tenant's replacement dwelling (including utilities) or a comparable replacement dwelling.

ASSISTANCE FOR LOW INCOME TENANTS UNDER SECTION 104(d)

Replacement Housing Payment makes up the (for a 60-month period) **difference between**:

- the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and
- the TTP, calculated as the greater of:
  - 30% of adjusted income,
  - 10% of gross income, or
  - Welfare rent (in as-paid states).

EXAMPLE: SECTION 104(d) REPLACEMENT CALCULATION

$500	Replacement Unit Rent	$20,000	Annual Income
$ 50	Estimated Average Utilities	$ 1,440	Adjustments (480 x 3)
$550	Replacement Unit Gross Rent	$18,560	Adjusted Income

$490	Comparable Unit Rent	$20,000 ÷ 12 months x 0.10 = $167
$ 50	Estimated Average Utilities	$18,560 ÷ 12 months x 0.30 = **$464**
$540	Comparable Unit Gross Rent	Welfare Rent NA
		TTP = $464

Replacement Housing Payment:

$ 540	Comparable Unit Gross Rent
-$ 464	Total Tenant Payment (TTP)
$ 76	Monthly Difference
x 60	Months
$4,560	Replacement Housing Payment

Payments

- Cash rental assistance must be provided in installments, unless the tenants 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 downpayment, including incidental expenses.
  - ➢ All of the payment must be used for the home purchase.
  - ➢ Under Section 104(d), lump sum cash assistance can only be used for the purchase of a cooperative unit or for mutual housing. If the displaced tenant wishes to purchase other than a cooperative unit or mutual housing unit, replacement housing benefits may calculated using URA formula and paid in one lump sum.

Section 8 Assistance

While not a requirement, grantees may work with the local housing authorities to offer eligible displaced tenants a Section 8 Certificate or Housing Voucher assistance as an alternative to cash rental assistance.

- Under URA a displaced person must be informed of his or her option to choose cash or, if offered, Section 8 assistance.
- Unlike URA, under the Section 104(d) requirements, the grantee, not the tenant, decides whether tenant-based rental assistance or a replacement housing payment will be made.

- However, if the family wants a cash payment and therefore rejects an offer of tenant based assistance under Section 104(d), the family retains its right to a cash payment (42 months) under URA.

- Since Section 8 assistance is adjusted periodically for increased market rents and because it is unlikely to cease at the end of 42 months under URA and 60 months under Section 104(d), this will be a more valuable option than cash for a substantial number of lower-income tenants.

- Granters also benefit when Section 8 assistance is used in place of a replacement housing payment.

- In the unusual case where the displacement dwelling rent/utility cost is less than the TTP, the tenant is eligible for cash to cover the gap. In the case of a Section 8 Voucher, if the rent/utility cost of the replacement dwelling (actual or comparable, whichever is less) exceeds the payment standard, the tenant will qualify for cash to cover the gap.

Replacement Housing Assistance for Displaced Homeowners

- **Homeowners in occupancy 90-179 days**: Same as displaced tenant described above, except cannot get more than a 180-day homeowner. Seldom encountered.

- **180-day homeowner**: The payment is the difference between cost of a replacement dwelling (lesser of the comparable and actual) and the acquisition price of the displacement unit. The payment also includes any additional mortgage financing costs plus reasonable expenses incidental to the purchase.

EXAMPLE: Relocation Payment - 180-Day Homeowner		
Price of actual replacement dwelling	=	$60,000
Price of comparable replacement dwelling	=	$55,000
Lesser	**=**	**$55,000**
Acquisition price of displacement dwelling	=	$25,000
Difference: $55,000 - $25,000	=	$30,000
Plus increased financing costs and expenses	=	$ 2,000
Replacement Housing Payment	**=**	**$32,000**

RIGHTS OF RESIDENTS WHO REMAIN IN THE PROJECT

Displacement by Rehabilitation

- Tenants who are intended to remain in the project must receive a notice of non-displacement and the offer of a "suitable" unit which can be rented at an "affordable" price.
- Tenants who moves permanently after execution of the agreement because they did not receive such an offer are considered displaced.

Rent Increases

- If there is no increase in rent, the unit is considered affordable and the tenant is not considered "rent burdened" -- even if the percentage of income that the family is paying is quite high.
- Under HOME, if the rent is increased for a low-income tenant, as a result of federal assistance, it may not exceed the Total Tenant Payment.
- For tenants who are not low-income, 30 percent of gross monthly income is used as the affordability test. A family whose increased rent exceeds this threshold is "rent burdened."
- If any family moves permanently from the project as a result of being rent burdened, it is considered displaced.
- "Rent" for this purpose means gross rent -- the rent paid to the owner plus an estimate for utilities paid by the tenant. [$550 (Rent Paid to Owner) plus 65 (Estimated cost of tenant-paid utilities) equals $615 (Gross rent).]

To Avoid Economic Displacement

- To avoid displacement, eligible lower income tenants may be offered tenant-based rental assistance to make units affordable.
- Tenant-based rental assistance includes Section 8 Rental Certificates or Rental Vouchers. HOME TBRA may also be used if there is an expectation that assistance will be renewed after the initial two-year period.
- Rent burdened families offered such assistance before they move may use the assistance in the project or move, BUT they are not considered displaced.
- Tenant-based rental assistance can be provided only if the affected family is eligible under program rules. In general, to be eligible the family's income must not exceed the Section 8 Lower Income limit.

TENANT IS DISPLACED BY REHABILITATION

$400	Pre-Rehabilitation Unit Rent	$20,000	Gross Income
$ 50	Estimated Average Utilities	$ 1,440	Adjustments ($480 x 3)[1]
$450	Pre-Rehabilitation Gross Rent	$18,560	Adjusted Income

$500	Post Rehabilitation Rent	$20,000 / 12 months x 0.10 = $167
$ 50	Estimated Average Utilities	$18,560 / 12 months x 0.30 = **$464**
$550	Post-Rehabilitation Gross Rent	Welfare Rent: NA
		TTP = $464

Family is rent burdened. The rent increases and new rent plus utilities ($550) exceeds the Total Tenant Payment ($464).

When calculating TTP, $480 is subtracted for each dependent.

[1] The adjustment is for three dependents.

OTHER RIGHTS OF TENANTS WHO WILL REMAIN IN THE PROJECT

Temporary Relocation

- Residents who will remain in the project after rehabilitation may be required to move temporarily during rehabilitation.
- The temporary dwelling must be suitable and decent, safe and sanitary -- but not necessarily comparable. All other conditions of the move must be "reasonable".
- In addition to the Notice of Non-displacement discussed earlier, the resident must, as a minimum, receive:
  - Reasonable advance written notice of the date and approximate duration of the planned temporary move.
  - Information about the terms and conditions under which the tenant will be returning to the unit when the project is completed.
  - Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move including any increase in monthly rent/utility costs. (No claim form has been developed by HUD, but adequate documentation for reimbursements should be retained in grantee files.).

Permanent Moves Within the Project

- Tenants may be allowed to remain in a project after rehabilitation, but not necessarily in the same unit.
- Permanent moves within the same project must be to suitable, decent, safe and sanitary -- but not necessarily comparable -- units.
- In addition to the Notice of Non-displacement discussed above, the resident must, as a minimum receive:
  - Reasonable advance written notice of the date of the planned move to an alternate unit.
  - Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.
- The rent plus utilities of the permanent new unit within the project must not exceed the greater of the tenants old rent plus utilities or a specified portion of income depending upon the HUD-assisted program (usually TTP or 30% of gross income).

OPTIONAL RELOCATION ASSISTANCE

- Grantees may use HOME funds to provide relocation assistance to persons displaced by a project assisted with HOME funds where the displacement is not subject to relocation requirements.
- The Grantee may also provide relocation assistance to persons covered by the regulations beyond that required. If the additional assistance is not required by state or local law, the Grantee must adopt a written policy describing the optional relocation assistance and provide for equal relocation assistance within each class of displaced persons.

SECTION 104(d) ONE-FOR-ONE REPLACEMENT REQUIREMENTS

Overview

- Grantees may not use HOME dollars to reduce the supply of "low/moderate dwelling units." Grantees may use HOME dollars if they are replacing the lost unit.
- Section 104(d) requires that each applicable unit that is "lost" be replaced by another affordable unit.
- This is a bricks and mortar requirement. It is not related to the circumstances of the family who lives in the unit, or whether the unit is currently owned or rented.

Terms Used in Section 104(d)

- **Low/moderate dwelling unit**: Unit where the market rent, including utilities, does not exceed the Fair Market Rent (FMR) for the Section 8 Rental Certificate Program.

- **Market rent**: Rent charged for an unsubsidized comparable unit. Generally, this is what a tenant pays. A reduced rent charged to a relative or on-site manager is not market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

- **Vacant occupiable dwelling unit**:

  - 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.

Triggers for Replacement

- Grantees MUST replace a unit if:

  - It meets the definition of low/moderate dwelling unit; **and**

  - It is occupied or is a vacant occupiable dwelling unit; **and**

  - It is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing

- A unit DOES NOT need to be replaced if:

  - It does not meet **all** of the triggering criteria.

  - It is a substandard unit not suitable for rehabilitation (as defined by Consolidated Plan or HAP) that has been vacant for three months.

- Income of the current resident is not relevant when evaluating triggers for replacement.

Replacement Units

- Replacement units must be:

  - **within the grantee's jurisdiction** and, if possible and consistent with other statutory priorities, in the **same neighborhood**;

  - in standard condition; and

  - **designed to remain affordable** to low income families for 10 years.

- The number of **bedrooms replaced must equal the number of bedrooms removed** (but not necessarily in the same unit configurations).

  Example: Two one-bedroom units could be replaced with one two-bedroom unit.

  Larger units may not be replaced with smaller units unless the grantee demonstrates that the market has an ample larger unit.