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CHAPTER 1

Scope, Definitions and General Policies

- 1-1 **PURPOSE OF HANDBOOK.** The purpose of this handbook is to consolidate basic statutory and regulatory requirements, and HUD policy guidance on acquisition and relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and certain relocation requirements in one place. These requirements and policies are to be followed when acquiring real property or displacing persons for a project or program with HUD financial assistance. In order to provide a one-stop resource for practitioners, key statutes and regulations are cited in this Handbook. The Appendices to this handbook contain practical guidance materials (model claim forms, notices, and other useful documents) which comply with the URA and HUD regulations and policy. Use of the guidance material in the appendices is not mandatory, but is recommended. This handbook does not contain internal HUD operating procedures (e.g., monitoring) which will be addressed in Chapter 25 of Handbook 6509.2. Key statutes and regulations are available for viewing or printing from HUD's acquisition/relocation website at: <http://www.hud.gov/relocation>. Contact information for HUD's Regional Relocation Specialists, training resources, and publications are also available on this website. Questions concerning acquisition or relocation requirements (including HUD policies and guidance) should be directed to the local HUD Regional Relocation Specialist.
- 1-2 **STATUTORY AND REGULATORY AUTHORITY.** Following is a list of applicable statutes and regulations:
- A. URA. The policies and procedures contained in this handbook are required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA, Uniform Act, or Uniform Relocation Act), (Pub. L. 91-646, 42 U.S.C. 4601 *et seq*), and the government wide implementing regulations found at 49 CFR part 24. This Handbook includes changes to the URA statute that became effective on October 1, 2014, which are also explained in Notice CPD-14-09, available at: <https://www.hud.gov/sites/documents/14-09CPDN.PDF>. Many HUD-assisted programs/projects are covered by the URA. Chapters 1 through 6 of this handbook outline the requirements of the URA, with the applicable regulatory citation noted where appropriate.
- B. Section 104(d). Under section 104(d) of the Housing and Community Development Act of 1974, as amended (HCD Act) (Pub. L. 93-383, 42 U.S. C. 5301 *et seq*) and the implementing regulations at 24 CFR part 42, a residential antidisplacement and relocation assistance plan is required and must provide for: 1) One-for-one replacement of occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted

to another use in connection with a development project assisted under Parts 570 and 92, and 2) provide relocation assistance for all low- and moderate-income persons who occupied housing that is demolished or converted to a use other than for low- or moderate-income housing. Development projects which are funded in whole or in part by: Community Development Block Grant (CDBG) (including State, Entitlement, HUD Administered Small Cities, *Insular Areas*, Section 108, Special Purpose Grants, Economic Development Initiative (EDI) (competitive), Brownfields Economic Development Initiative (BEDI)), Home Investment Partnership (HOME), or Urban Development Action Grant (UDAG) *Program(s)*, are subject to these requirements, in addition to the URA. Chapter 7 explains the requirements of section 104(d) with regard to both relocation assistance and one-for-one replacement.

C. Section 18. The Quality Housing Work Responsibility Act of 1998 (QHWRA) amended section 18 of the United States Housing Act of 1937 and provided new relocation requirements for some public housing demolition programs in lieu of the URA. Appendix 33 contains additional program guidance. The URA is not applicable to public housing demolition projects which fall under the section 18 relocation requirements. The use of other federal financial assistance in the project (e.g., CDBG funds), however, may trigger the URA and other relocation-related requirements.

D. Program Regulations. Most HUD program regulations contain additional requirements regarding the relocation of persons, often including displacements not covered by the URA (such as “economic displacement”). Reference to these regulations is made throughout this handbook, where applicable. Agencies must be sure to review HUD program regulations related to the funding source(s) of their project. See paragraph 1-3.

E. OMB Paperwork Clearance. All information collection and recordkeeping requirements contained in this handbook have been cleared through the Office of Management and Budget under OMB Approval Numbers 2506-0016 and 2506-0121.

1-3 HUD PROGRAMS COVERED BY THIS HANDBOOK. HUD programs covered by this handbook are listed below along with citations for their program-specific relocation regulations, where applicable. HUD Notices of Funding Availability (NOFAs) may also incorporate the URA and other relocation-related requirements by reference. HUD no longer funds new projects under programs marked with an asterisk (*). In some cases, HUD continues to provide project-based or other subsidies for existing projects in order to make the housing affordable to lower-income occupants. This list may not be all inclusive due to program cancellations and/or additions:

A. Community Development Block Grants (CDBG) Entitlement Program (24 CFR 570.606).

- B. Community Development Block Grant HUD-Administered Small Cities Program (24 CFR 570.420(b)(2)(iv)/570.606).
- C. Urban Development Action Grants (UDAG) (24 CFR 570.457/570.606) *
Terminated.
- D. Special Purpose Grants (24 CFR 570.400/570.606).
- E. Section 108 Loan Guarantees (24 CFR 570.707/570.606).
- F. CDBG Insular Area Grants (24 CFR 570.405/570.606).
- G. Brownfields Economic Development Initiative (BEDI) (NOFA incorporates by reference 24 CFR 570.606).
- H. Economic Development Initiative (EDI) (competitive: 24 CFR 570.606) (noncompetitive: 49 CFR 24).
- I. State Community Development Block Grant Program (24 CFR 570.488/570.606).
- J. Urban Empowerment Zones (EZ) Round II.
- K. Home Investment Partnerships Program (HOME) (24 CFR 92.353).
- L. Housing Opportunities for Persons with AIDS (24 CFR Part 574.630).
- M. Shelter Plus Care (S+C) (24 CFR 582.335).
- N. Supportive Housing Program (SHP) (24 CFR Part 583.310).
- O. Emergency Shelter Grants (ESG) (24 CFR 576.59).
- P. Youthbuild (24 CFR 585.308).
- Q. Self Help Homeownership Opportunities Program (SHOP).
- R. Historically Black Colleges and Universities Program (HBCU) (24 CFR 570.404)
- S. Public Housing Capital Fund Program.
- T. Demolition or Disposition of Public Housing Projects under Section 18 (24 CFR 970) (Section 18, see Appendix 13).
- U. Required and Voluntary Conversion of Developments (Public Housing) (24 CFR 972.130 and 24 CFR 972.230).
- V. HOPE VI/Choice Neighborhood Program (URA or Section 18, as applicable. See Appendix 13).
- W. Public Housing Homeownership (Section 32) (24 CFR 906.24).
- X. Project-Based Voucher Program and Project-Based Certificate Program (24 CFR 983.10).
- Y. Community Development Block Grants for Indian Tribes and Alaska Native Villages (24 CFR 1003.602).
- Z. Indian Housing Block Grant Program (IHCDBG) (24 CFR 1000.14). AA. Native Hawaiian Housing Block Grant Program (NHHBG) (24 CFR 1006.375).
- BB. Section 202 Supportive Housing for the Elderly (24 CFR 891.155).
- CC. Section 811 Supportive Housing for Persons with Disabilities (24 CFR 891.155).
- DD. Assisted Living Conversion Program (ALCP) (24 CFR 891.510).
- EE. Disposition of Multifamily Projects and Up Front Grants (24 CFR 290.17).
- FF. Prepayment of Low Income Housing Mortgages (Prepayment not subject to URA, see 24 CFR 248.165. Resale or rehabilitation projects

receiving HUD financial assistance may be covered by URA).

GG. Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) (24 CFR 882.810).

HH. Section 8 Loan Management Set-Aside for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR 886.338).

1-4 DEFINITIONS AND ACRONYMS. Key terms defined in the URA regulations can be found at 49 CFR 24.2. Terms and definitions, which have special applicability to HUD programs, are added or further clarified below.

A. Agency (49 CFR 24.2(a)(1)). The term "Agency" means the entity that causes a person (defined in 49 CFR 24.2(a)(21) (individual, family, partnership, corporation, or association)) to become a displaced person (defined in 49 CFR 24.2(a)(9)) or that acquires real property as described in 49 CFR 24 Subpart B. An Agency may be a State (defined in 49 CFR 24.2(a)(25)), a State agency (defined in 49 CFR 24.2(a)(1)(iv)), or a person who has the authority to acquire property by eminent domain under State law. This definition includes units of general local government.

B. Alien not lawfully present in the United States. (49 CFR 24.2(a)(2)) and (8 CFR 103.12).

C. Appraisal (49 CFR 24.2(a)(3)).

D. Business (49 CFR 24.2(a)(4)).

E. Citizen (49 CFR 24.2(a)(5)). The definition of citizen includes "non-citizen nationals" to avoid excluding persons from certain U.S. possessions (American Samoa, for example) whose status is U.S. national, rather than U.S. Citizen.

F. Comparable Replacement Dwelling (49 CFR 24.2(a)(6)). The term "comparable replacement dwelling" as defined in the URA regulations includes a special provision for persons receiving government housing assistance *before* displacement which is relevant to many HUD-funded projects (see 49 CFR 24.2(a)(6)(ix)). HUD's various subsidy programs can have differing requirements with regard to assignment of appropriate unit sizes based on statute, regulation, and/or local housing codes. A person being moved from a unit subsidized under one program to a unit subsidized under another program (e.g., a public housing unit to the Housing Choice Voucher program) as a result of displacement may be entitled to either a larger or smaller unit than previously occupied, based on the unit-size standards applicable to the family size and composition at the time of displacement. The subsidy program governing the replacement unit may not be able to accommodate a "grandfathered" unit size, which was larger than necessary to accommodate the household at the displacement site. Persons may never be moved into a HUD-subsidized unit, which is too small for the family size under the applicable HUD subsidy program or local housing codes.

1) If the person did not receive a government rental housing subsidy before displacement, the comparable replacement dwelling must be an unsubsidized unit available on the private market, unless the person is willing to accept a unit with either project-based or tenant-based assistance (if available). Acceptance of a government subsidized unit will require

that the household move into a unit which meets the unit-size requirements of the subsidy program, regardless of the size of the displacement unit.

- 2) A comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.
 - (a) A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.
 - (b) A privately owned dwelling with a project-based housing subsidy (i.e., subsidy tied to the unit) may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.
 - (c) A privately owned dwelling made affordable by a tenant-based housing subsidy (i.e., subsidy not tied to the building), such as a Housing Choice Voucher (formerly Section 8 voucher), may qualify as a comparable replacement dwelling for a person receiving a similar subsidy before displacement or displaced from a unit with a project-based subsidy or public housing.
 - (d) Section 8 housing choice vouchers should not be offered as a comparable unit or as a substitute for cash replacement housing payments in any case where the displacing agency cannot provide referrals to decent, safe, and sanitary dwelling units where the owner is willing to participate in the Section 8 program.
- 3) Within the financial means of the displaced person (49 CFR 24.2(a)(6)(viii)). Although there are statutory and regulatory limits placed on URA replacement housing payments for both owner-occupants (49 CFR 24.401(b)) and tenants (49 CFR 24.402(a)), Congress also provided a statutory exemption to these monetary limits (P.L. 91-646, Sec. 206) described in the regulations at 49 CFR 24.404 (Replacement housing of last resort.) Use of the last resort housing provision is required where an owner- occupant or tenant cannot otherwise be appropriately housed within the monetary limits. This is a common situation in high-cost housing areas or with very low income tenants who do not live in subsidized housing at the time of displacement.

G. Contribute materially (49 CFR 24.2(a)(7)).

H. Decent, safe, and sanitary dwelling (DS&S) (49 CFR 24.2(a)(8)). A dwelling occupied in connection with a rental assistance program that is subject to HUD Housing Quality Standards (HQS) (24 CFR 982.401), shall be deemed to be in compliance with the URA DS&S standards if it meets the applicable HQS.

I. Displaced Person (49 CFR 24.2(a)(9)). The URA definition includes both persons displaced and persons not displaced. HUD program regulations often include additional circumstances in programmatic definitions of a displaced person which must be considered, where applicable, including: 1) A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person,

or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after:

- (a) The date the applicant submits the request for assistance for the project that is later approved, if the applicant has site control; or
 - (b) The date the applicant obtains site control, if that occurs after the request for assistance.
- 2) Given the nature of the URA and HUD programs, it is not always possible to establish by regulation a specific action or event that always marks the date a project begins for purposes of determining eligibility as a "displaced person" (see also definition of "initiation of negotiations"). Most HUD program regulations identify an event that establishes a "rebuttable presumption" that a project begins (e.g., date of submission of the application). It is presumed that a displacement before this date did not occur "for the project" and 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. To exclude a person on this basis, HUD must concur in that determination.
 - 3) Where an owner either evicts a tenant or fails to renew a lease in order to sell a property as "vacant" to an Agency for a HUD-funded project, HUD will usually presume that the tenant was displaced "for the project." In such cases, the Agency would be responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the Agency can prove that the tenant's move was not attributable to the project (see e.g., paragraph 1-6 J.1, Eviction for Cause).
 - 4) A person who moves permanently from the real property after the initiation of negotiations (described in 49 CFR 24.2(a)(15) and applicable HUD program regulations), unless the person is a tenant who was issued a written notice of the expected displacement prior to occupying the property (otherwise known as a Move-In Notice, see paragraph 1-4 Y.) or was issued a Notice of Nondisplacement and is permitted to remain in the property in accordance with the reasonable terms and conditions of such notice. Even if there was no intent to displace the person, where a Notice of Nondisplacement was not provided, HUD has taken the position that the person's move was a permanent, involuntary move for the project since the person was not given timely information essential to making an informed judgment about moving from the project. See 24 CFR 570.606(b) and other applicable HUD regulations.
 - 5) Although the URA does not cover "economic displacement," some HUD program regulations do, e.g. 24 CFR 92.353(c)(2)(C) under the HOME Program and 24 CFR 570.606(b)(2)(D) which is applicable to other CPD programs. Economic displacement can occur when a tenant moves permanently because he/she cannot afford to pay the higher rent charged after completion of the project.

HOME Example: The property owner establishes a first-year rent for the tenant that is below the market rent. At the end of the 1-year

period, the rent is increased significantly, and the tenant moves out because he or she cannot afford the unit. Determination: The tenant may be treated as a "displaced person."

- 6) A tenant-occupant of a dwelling who receives a Notice of Nondisplacement but is required to move to another unit in the building/complex may be considered displaced, if the tenant moves from the building/complex permanently and either:
- i. The tenant was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the project; or
 - ii. Other conditions of the move within the project were not reasonable.

7) A tenant of a dwelling who moves from a residential structure, permanently, as a direct result of the leasing of units in the structure for a HUD-assisted project that changes the residential character/use of the structure to a public character/use (e.g., certain CPD homeless/supportive housing programs). Under the URA regulations, leases of 50 years or more are considered acquisitions. Under the CDBG program, leases of 15 years or more are considered acquisitions for the purposes of the URA. The URA regulations at 49 CFR 24.101 authorize HUD to apply the URA regulations to any less-than-full fee acquisitions that in its judgment should be covered. HUD believes leasing activities of this nature should be considered an acquisition for purposes of the URA. Other HUD program regulations may have similar provisions. A nonresidential tenant who receives a Notice of Nondisplacement, but moves permanently from the building/complex, if the terms and conditions under which the tenant may remain are not reasonable. (It is expected that the grantee or property owner will negotiate these terms and conditions. A tenant who believes the offer is unreasonable may relocate and file an appeal seeking assistance as a "displaced person.")

J. Persons Not Displaced (49 CFR 24.2(a)(9)(ii)). The URA regulations define very specific conditions under which a person is not considered a displaced person. In addition, HUD regulations and program policy discuss the following situations which often arise in HUD-funded projects:

- 1) In eviction cases, HUD expects the Agency files to substantiate that an eviction was not undertaken in order to avoid paying relocation costs. The Agency (or owner) is advised to obtain a court order for the eviction (even if the tenant has already moved). If the Agency believes the cost of obtaining a court order is prohibitively expensive, it should adequately document the cause of the eviction in its files.
 - (a) The actions (or inactions) which constitute a "serious or repeated violation of the material terms and conditions of the lease" and whether or not such violation(s) provide legal grounds for eviction under applicable State or local law.
 - (b) Where an Agency has tenant(s) in a planned project site who have not been in compliance with their lease or have repeated offenses prior to or after the ION date, even if they are under a workout agreement or on

- a formal probation, the Agency should consider issuing a modified General Information Notice and/or Notice of Eligibility for Relocation Assistance. This modification should document the existing condition/situation/violations and serve as notice to the tenant that eviction for cause might be necessary and may affect their eligibility for URA-level assistance if prior deficiencies are not corrected. If eviction for cause is later carried out, this will enable the Agency to document that the cause for the eviction was pre-existing, and that the tenant was provided with a reasonable opportunity to correct the situation. Such documentation will help the Agency to establish that the eviction was not for the purpose of avoiding payment of relocation assistance.
- (c) The URA regulations at 49 CFR 24.206 limit the power of a displacing Agency to cut off the presumptive right of a displaced person without sufficient legal cause. Once a tenant has received a Notice of Eligibility for Relocation Assistance, if the Notice did not identify pre-existing lease violations, the Agency needs to consider whether or not any eviction is for subsequent repeated and serious violations of material terms of the lease and is not undertaken for the purpose of evading relocation payments. In determining whether an eviction is for cause, the Agency should consider factors such as whether the nature of the violation is sufficient to warrant the entire loss of relocation assistance and whether the eviction is "for the project" (e.g., to meet deadlines).
 - (d) Where an eviction was caused by non-compliance with a requirement related to carrying out the federally-funded project (such as failure to move or relocate when instructed or failure to cooperate in the relocation process), such an eviction is considered to be "for the project" (see 49 CFR 42.206 Appendix A) and does not negate a person's entitlement to relocation payments and other assistance. The relocation assistance should be equal to that offered in the Notice of Eligibility for Relocation Assistance. A Replacement Housing Payment may also be appropriate, but at an amount no greater than that which the tenant would have received had he/she moved into the comparable unit identified by the agency and only if the unit the tenant actually occupied is found to be decent, safe, and sanitary.
- 2) The person is a tenant-occupant that moved into the property after application for assistance for the project but, before leasing and occupying the property, was provided written notice of: The application for assistance for the project, the project's possible impact on the person (e.g., the person may be displaced, or temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify for relocation assistance as a "displaced person" as a result of the project if he or she chose to occupy the property (see Move-In Notice paragraph 1-4 Y.).
 - 3) The URA is not automatically triggered by code enforcement activities. However, if the code enforcement action is undertaken to evict persons for a

federally-assisted project involving acquisition, rehabilitation, or demolition and an owner-occupant or tenant is required to move permanently as a direct result, the owner-occupant or tenant may qualify as a displaced person who is eligible for URA relocation assistance.

- 4) The Agency determines that the person was not displaced as a direct result of acquisition, rehabilitation or demolition for the project, and the HUD Field Office concurs in that determination.
- 5) The relocation is determined to be a "transfer" in accordance with applicable Public Housing program policies and the Public Housing Agency's (PHA's) occupancy policy.
- 6) When In Doubt. The grantee may, at any time, ask the Regional Relocation Specialist to determine whether a specific displacement is or would be covered by these rules.

K. Dwelling (49 CFR 24.2(a)(10)). The term "dwelling" as defined by the URA includes transitional housing units or non-housekeeping units (SRO) commonly found in HUD programs. An emergency shelter is generally not considered to be a "dwelling" because such a facility is usually not a place of permanent, transitional or customary and usual residence.

L. Dwelling Site (49 CFR 24.2(a)(11)).

M. Farm Operation (49 CFR 24.2(a)(12)).

N. Federal Financial Assistance (49 CFR 24.2(a)(13)).

O. Grantee. Except for State-administered programs, for HUD the term "grantee" means the entity that executes a contract or agreement under which HUD provides the financial assistance. It may be a local government (e.g., CDBG Entitlement, HUD-administered Small Cities and Section 108 Loan Guarantee Programs, and some HUD homeless program grants); Public Housing Agency (e.g., Housing Choice Voucher Program (formerly Section 8)), Capital Fund, HOPE VI/Choice Neighborhood Program; an Indian Tribe or Alaska Native Village; a Tribally Designated Housing Entity (TDHE); the applicant/sponsor under a program of Supportive Housing for the Elderly or Persons with Disabilities; private nonprofit organization or community mental health association that is a public nonprofit organization under the Supportive Housing Program; or the Participating Jurisdiction (PJ) under the HOME Program. When HUD invests HOME funds directly in a project carried out by a Community Housing Development Organization (CHDO), the CHDO is considered the "grantee." For State CDBG, State HOME, and State Rental Rehabilitation Programs, the State recipient is considered the "grantee."

P. Household Income (49 CFR 24.2(a)(14)). The URA definition of "household income" is not to be confused with HUD's program definitions of "annual income" or "adjusted annual income" applicable to section 104(d) and HUD subsidized housing programs. HUD's programmatic definitions of income should not be used for URA purposes.

Q. HUD. The Department of Housing and Urban Development.

R. HUD Financial Assistance. The term "HUD financial assistance" means a grant, loan, or contribution provided by HUD, including various HUD loan guarantee programs (such as CDBG, Section 108, etc., see applicable program regulations

and/or NOFA requirements). It does not include any other Federal guarantee or contracts of insurance (such as FHA mortgage insurance), a low-income housing tax credit, any interest reduction payment to a family or individual in connection with the purchase and occupancy of a residence by that family or individual, or downpayment assistance under the American Dream Downpayment Initiative (ADDI). (HUD discourages the use of interest subsidies as a mechanism to avoid providing relocation assistance to tenants displaced by an assisted homebuyer program.) A nonexclusive list of HUD-assisted programs is contained in Paragraph 1-3.

- S. Housing Quality Standards (HQS) 24 CFR 982.401. Public housing does not follow the Section 8 HQS under 24 CFR 982.401. Rather, public housing must only meet applicable local codes.
- T. Initiation of Negotiations (ION) (49 CFR 24.2(a)(15)). The ION date serves as a milestone in determining a person's eligibility for relocation assistance, including moving costs and a replacement housing payment. Many HUD regulations establish program-specific definitions of ION (see Exhibit A), where no program-specific definition is provided by HUD, the URA definition applies. The ION date is the trigger for issuance of the Notice of Eligibility for Relocation Assistance or Notice of Nondisplacement. After ION, any applicant who seeks to rent in the project must be issued a Move-in Notice before executing a lease, otherwise, the project will incur liability for relocation costs if the applicants are found to be eligible as displaced persons.
- U. Lead Agency (49 CFR 24.2(a)(16)).
- V. Low Income (49 CFR 402(b)(2)(ii)). The terms "low income" under the URA and "lower income person" or "low- and moderate-income person" or a "low income person" under HUD programs, all include person(s) having an income equal to or less than the Section 8 Low-income limit established by HUD. Generally, this means a family or individual whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families. Income limits applicable to the URA can be found at <https://www.huduser.gov/portal/datasets/il.html> or at www.HUD.gov/relocation. The definition of what constitutes "income" is not the same for the URA and HUD programs and must be determined based on the applicable statutory and/or regulatory requirements.
- W. Mobile Home (49 CFR 24.2(a)(17)).
- X. Mortgage (49 CFR 24.2(a)(18)). Depending on State law, the term "mortgage" also includes a land contract or "contract for deed."
- Y. **Move-In Notice.** A term used by HUD for written notice provided to a person who is interested in moving into a project after the date an application for assistance was submitted (often referred to by relocation agents and DOT as a "subsequent occupant"). If the person is provided with such a Notice before leasing and occupying the property and agrees to occupy the property under the terms of the notice, the person is not eligible for relocation assistance. The notice must contain the following information: That an application for federal assistance for the project has been submitted, the project's 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 for relocation assistance as a "displaced person" as a result of the project, if he or she chose to occupy the property. See guideform Move-In Notice, Appendix 29.

- Z. Nonprofit Organization (49 CFR 24.2(a)(19)).
- AA. Notice of Nondisplacement. A HUD term for notice provided to persons who will not be permanently displaced for a HUD-assisted project. Such persons may, however, be required to move to another unit within the project or relocate temporarily while the property is rehabilitated (terms of the move must be reasonable and costs for the move must be covered by the project). While this notice is not required by the URA, HUD policy requires that such notice be provided to adequately inform those persons within the project who will not be permanently displaced but who may be impacted as a result of the project. A person who will not be displaced by the project may choose to leave the project site; however, they are presumed to be ineligible for relocation payments if an accurate and timely Notice of Nondisplacement was provided before they chose to move.
- BB. Owner of a Dwelling (49 CFR 24.2(a)(20)).
- CC. Person (49 CFR 24.2(a)(21)).
- DD. Program or Project (49 CFR 24.2(a)(22)). The term "project" means any activity or series of activities undertaken with federal financial assistance received or anticipated in any phase. When federal financial assistance is used for any activity or in any phase of a project, planned or intended, and the activities are determined to be interdependent, the statutory and regulatory requirements of the URA and the specific HUD funding source(s) are applicable. Interdependence is best determined by whether or not one activity would be carried out if not for another. As a result, any activity "in connection with" a federally funded project can be subject to all regulations of that funding source even though the activity may not be directly funded by that source. HUD "projects" are defined according to program rules.
- EE. Resident Return Policies, Return Criteria, or Re-occupancy Plan. The criteria which will be used to determine the priority for displaced residents to re-occupy completed units, normally found in public housing projects undergoing major rehabilitation or HOPE VI/Choice Neighborhood Program revitalization. A return policy is useful in any project where it is anticipated that all units will not be replaced (e.g., either through demolition or where smaller units are being combined into larger units of a lesser number), or where the nature of a project will change after rehabilitation (e.g., a rental project becoming housing for special needs clients). Individual HUD program regulations or guidance will specify when such a policy is required. Establishing a return policy will enable the Agency to determine how many and which of the current project residents will be either temporarily relocated and/or may be permanently displaced and whether some or all residents will be given priority for return to the project when it is completed (usually an issue where a project is so large in scope that residents may need to vacate for a year or more during rehabilitation or reconstruction). The policy can address whether or not new residents (who were permitted to move into the project after the initiation of negotiations (ION)) will be

considered for return to the project after completion. The return policy may be formally adopted as a written policy (in the case of a public housing projects, such policies are usually adopted and executed between the recognized resident body, the PHA, and if applicable, the entity that will own the public housing units after the project is completed, where required).

FF. Salvage Value (49 CFR 24.2(a)(23)).

GG. Small Business (49 CFR 24.2(a)(24)).

HH. State (49 CFR 24.2(a)(25)).

II. Temporary Relocation (49 CFR 24.2(a)(9)(ii)(D), Appendix A). The URA applies to permanent displacements and does not cover persons that are temporarily relocated in accordance with HUD regulations. While there are no statutory provisions for “temporary relocation” under the URA (the statute considers all eligible persons “displaced”), it is recognized in the URA regulations that there are some circumstances where a person does not need to be permanently displaced but may need to be moved from a project for a short period of time. The URA regulations require that any residential tenant who has been temporarily relocated for a period beyond one year must be contacted by the Agency and offered permanent relocation assistance. By regulation, HUD imposes additional conditions on temporary relocations. Generally, moving expenses to and from the temporary replacement location must be reimbursed, as must any increased housing costs incurred during the temporary residence; and the rent for the rehabilitated unit may not increase unreasonably after the tenant’s return. The Agency must also provide reasonable advance notice of the temporary relocation. If these protections are put in place, HUD considers the displacement to be temporary, and hence not subject to the URA. If any of the protections fail, the exception fails. The displacement is deemed permanent, and the URA applies. The applicable program regulations should be consulted for more specific temporary relocation requirements.

JJ. Tenant (49 CFR 24.2(a)(26)).

KK. Uneconomic Remnant (49 CFR 24.2(a)(27)).

LL. Uniform Act (URA) (49 CFR 24.2(a)(28)). The terms “Uniform Act”, “Uniform Relocation Act” or “URA” mean the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

MM. Unlawful Occupant (49 CFR 24.2(a)(29)).

NN. Utility Costs (49 CFR 24.2(a)(30)).

OO. Utility Facility (49 CFR 24.2(a)(31)).

PP. Utility Relocation (49 CFR 24.2(a)(32)).

QQ. Waiver Valuation (49 CFR 24.2(a)(33)).

RR. Acronyms (49 CFR 24.2(b)).

1-5 RESERVED

1-6 CERTIFICATION OF COMPLIANCE (ASSURANCES), MONITORING AND CORRECTIVE ACTION (49 CFR 24.4)

- A. Certification of Compliance. Before HUD approves any grant, contract or agreement under which HUD provides financial assistance (defined in paragraph 1-4 R.) for a program or project which might result in real property acquisition or displacement, the grantee (defined in Paragraph 1-4 O.) must provide a certification that it will comply with the URA, implementing regulations at 49 CFR part 24 and applicable program regulations. (This certification is called "assurances" under 49 CFR part 24.4.) If applicable, the certification must cite any provision of State law which precludes compliance with one or more of the acquisition requirements found at 49 CFR 24.102 thru 24.105.
- B. Grantee Employs Third Party. If the grantee provides program/project funds to a third party that acquires property or causes displacement that is subject to the URA, the grantee is responsible for ensuring compliance with the URA, its implementing regulations, and HUD policy, as described in this handbook, notwithstanding the third party's contractual obligation to the grantee to comply.
- C. Monitoring and Corrective Action (49 CFR 24.4(b)). HUD will monitor compliance with the URA, other HUD program-specific statutory and regulatory requirements related to acquisition and/or relocation, and the policies contained in this handbook. The grantee shall take whatever corrective action is necessary to comply with HUD findings and/or recommendations:
- 1) Failure to Provide Required Notices. Where a grantee fails to provide the Notices required under the URA (see 49 CFR 24.203) or fails to provide those Notices required by HUD program regulations, and occupants vacate the project before being appropriately advised of their eligibility or ineligibility for URA, or Section 104(d), the grantee must initiate all reasonable procedures to locate all former occupants who should have received notice. Efforts to locate former occupants may include: Appropriate notice in a local newspaper (for at least 30 days); posting notice in an appropriate project location; checking with the local post office for a forwarding address; checking project records for employment or other contact telephone numbers; checking with local utility companies, school districts, churches, or community organizations; hiring a "finding service" available in the local area or over the internet; and/or other appropriate methods. Each occupant's file must be documented with all attempts to make contact and the results. The grantee will need to determine the eligibility or ineligibility for relocation assistance for each former occupant who is located and assist the former occupant to access appropriate advisory services and applicable relocation payments.
 - 2) Underpayment. Whenever HUD determines that a person did not receive the full amount of a payment required, the grantee shall ensure that the correct payment, as specified by HUD, is made promptly.

- 3) Inadequate Replacement Housing. Whenever a displaced person has relocated to inadequate housing because required payments, housing referrals, property inspection, or other services were not offered in accordance with applicable regulations, the grantee shall promptly take whatever steps are appropriate and shall bear whatever reasonable costs are necessary to:
- (a) Enable the displaced person to relocate to a comparable replacement dwelling or a decent, safe, and sanitary dwelling; or
 - (b) Ensure the repair or rehabilitation of the replacement dwelling occupied by the displaced person to the extent necessary to correct deficiencies that would not be present if the grantee had met its obligations. The grantee is not required to remedy housing deficiencies that it can demonstrate were caused after the displaced person occupied the replacement dwelling. (A grantee may use its code enforcement powers or other programs to ensure that the owner of a tenant-occupied dwelling makes the repairs necessary to correct housing deficiencies.)
- 4) Relocation Opportunities for Minority Persons (49 CFR 24.205(c)(2)(ii)(D)). Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. CPD will report to HUD's Office of Fair Housing and Equal Opportunity (FHEO) any complaint or allegation raised in an appeal that it receives that this right has been violated. The FHEO Regional Director will determine whether compliance with this requirement was achieved and will inform the CPD Director or Deputy Director of its determination. In the event the FHEO Regional Director and the CPD Director are not able to agree on the status of the participation with respect to this civil rights related program requirement, the matter shall be forwarded to Headquarters and the decision shall be made jointly by the Assistant Secretary for FHEO and the Assistant Secretary for CPD.

D. Sanctions. If the grantee does not take and complete the required corrective action in a timely manner, HUD may apply sanctions in accordance with applicable program regulations and civil rights requirements. Examples of sanctions are the suspension or termination of funding for acquisition or displacement-causing activities, the suspension or termination of all HUD financial assistance for a project, and/or the recovery of funds expended for activities not carried out in accordance with applicable statutes or regulations.

E. Prevention of Fraud, Waste and Mismanagement (49 CFR 24.2(c)). The grantee shall take appropriate measures to carry out acquisition and relocation efforts in a manner that minimizes fraud, waste and mismanagement. Grantee officials

should report instances of fraud, waste, or mismanagement to the appropriate HUD Office of the Regional Inspector General (OIG). Information and contacts for the Regional OIG can be found at:

<http://www.hud.gov/offices/oig/locations/index.cfm>. HUD officials have a duty to report fraud and waste in HUD-assisted programs to the HUD OIG.

1-7 NO DUPLICATION OF PAYMENTS (49 CFR 24.3). No person shall receive any compensation under the URA, section 104(d) of the Housing and Community Development Act of 1974, as amended, implementing regulations, or the policies in this handbook that have the same purpose and effect as other compensation the person received under Federal, State, or local law. (The Agency need not conduct an exhaustive search for duplicative payments, but should take reasonable steps to avoid making a duplicative payment based on its current knowledge.) Care must be exercised with tenants or homeowners who receive HUD housing subsidies to assure that relocation payments do not duplicate assistance already provided under a subsidized housing program.

1-8 WAIVERS AND TIME EXTENSIONS

- A. Time Extension by Grantee. On a case-by-case basis, for good cause, the grantee should extend any time limit specified for: (1) The filing of a claim (49 CFR 24.207(d)) or (2) occupying a replacement dwelling in order to qualify for a replacement housing payment (49 CFR 24.403(d)). The grantee shall document the basis for denying a person's request for an extension of such time limits.
- B. Waiver by HUD (49 CFR 24.7). The HUD Assistant Secretary for Community Planning and Development may waive any requirement of the URA regulations at 49 CFR part 24, not required by law, if he/she determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person. A grantee request for a waiver shall be justified on a case-by-case basis. NOTE: The request for a waiver should be submitted to the program area in HUD funding the project (CPD, Housing, Public and Indian Housing), either at the local Field Office or in Headquarters (based on program requirements). The Program Office will forward the request, along with its comments and recommendations (including the comments and recommendations of the appropriate Regional Relocation Specialist), to CPD in HUD Headquarters for a final determination by the Assistant Secretary.
- C. Waiver by Displaced Person (49 CFR 24.207(f)). A grantee may not request or coerce a displaced person to waive his or her right to payments and/or services provided under the URA. However, a displaced person may choose not to accept some or all payments or services by refusing to file a claim for payment or by executing written documentation in a format acceptable to HUD. Such documentation must include a description of the specific assistance (services and payments) to which the displaced person would be entitled, including estimated

dollar amounts. The individual must identify which assistance and/or payments he/she is choosing not to accept. See also 49 CFR 24.108 with regard to “donation” of property (or some or all of the value of property) to an Agency by an owner.

1-9 COMPLIANCE WITH OTHER LAWS, REGULATIONS AND EXECUTIVE ORDERS. The implementation of the policies and procedures of this handbook must be in compliance with all other applicable Federal laws, regulations and executive orders, including, but not limited to, the following:

- A. Section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).
- B. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- C. The Fair Housing Act (42 U.S.C. 3601-19).
- D. The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).
- E. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).
- F. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).
- G. The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
- H. The environmental laws and authorities listed in 24 CFR 50.4 and 24 CFR 58.5, and the provisions (as applicable) of 24 CFR Part 50 and 58.
- I. The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)
- J. Executive Order 11063 -- Equal Opportunity in Housing, as amended by Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs.
- K. Executive Order 11246 -- Equal Opportunity in Federal Employment.
- L. Executive Order 11625 -- National Program for Minority Business Enterprise and 12432, Minority Business Enterprise Development.
- M. Executive Order 12250 -- Leadership and Coordination of Implementation and Enforcement of Non-Discrimination Laws.
- N. Executive Order 12630 -- Governmental Actions and Interference with Constitutionally Protected Property Rights.

- P. OMB Circular No. A-133 -- Audits of States, Local Governments, and Non-Profit Organizations.
- Q. Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235). This Act requires certain disclosures and certifications by consultants and lobbyists who assist in obtaining HUD financial assistance.

1-10 APPEALS (49 CFR 24.10).

- A. The Agency is required to consider a written appeal regardless of form.
- B. URA regulations at 49 CFR part 24 do not provide for a HUD review of the Agency’s appeal determination. Rather, if the Agency does not grant the full relief requested, 49 CFR 24.10(g) directs the Agency to inform the person of

C. his or her right to seek judicial review of the Agency's determination. Several HUD programs, however, provide for a HUD review of appeal. Often, though, income and other threshold eligibility criteria in program regulations limit who can exercise this option. For example, in the CDBG program (except State CDBG program), a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the Agency's determination to the HUD field office. The State CDBG program provides a similar review mechanism, though the reviewing authority is the State. After HUD or the State completes its review and renders a decision, the person may seek judicial review of that determination.

**Date of Initiation of Negotiations (ION) for HUD Programs
(with Regulatory Citation)**

- A. 24 CFR 570.606(b)(3): "...if the displacement is the result of privately undertaken rehabilitation, demolition, or acquisition...the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property." Is applicable to:
- a. Community Development Block Grant (CDBG) Entitlement
 - b. Community Development Block Grant HUD-Administered Small Cities Program
 - c. Urban Development Action Grants (UDAG)
 - d. Special Purpose Grants
 - e. Section 108 Loan Guarantees
 - f. CDBG Insular Area Grants
 - g. Brownfields Economic Development Initiative (BEDI)
 - h. Economic Development Initiative (EDI)
 - i. State Community Development Block Grant Program
 - j. Neighborhood Stabilization Program (Public Law 110-289)
- B. 24 CFR 92.353(c)(3): "...to a tenant displaced...as a result of private-owner rehabilitation, demolition, or acquisition...the execution of the agreement covering the acquisition, rehabilitation, or demolition."
- a. HOME Investment Partnerships Program (HOME)
- C. 24 CFR 574.630(g): "...to a residential tenant displaced...as a result of privately undertaken rehabilitation, demolition, or acquisition...the execution of the agreement between the grantee and the project sponsor."
- a. Housing Opportunities for Persons with AIDS
- D. 24 CFR 582.335(g): "...to a residential tenant displaced...as a result of privately undertaken rehabilitation, demolition, or acquisition...execution of the agreement between the recipient and HUD, or selection of the project site, if later."
- a. Shelter Plus Care (S+C)
 - b. Collaborative Initiative to Help End Chronic Homelessness (S+C and SHP)
- E. 24 CFR Part 583.310(g): "...to a residential tenant displaced...as a result of privately undertaken rehabilitation, demolition, or acquisition...execution of the agreement between the recipient and HUD."
- a. Supportive Housing Program (SHP)
 - b. Collaborative Initiative to Help End Chronic Homelessness (S+C and SHP)
- F. 24 CFR 576.59(f)(2): "...to a residential tenant displaced...as a result of privately undertaken rehabilitation, demolition, or acquisition...execution of the agreement between the grantee and HUD."

Exhibit A

- a. Emergency Shelter Grants (ESG)
- G. 24 CFR 972.130(b)(5)(iv): "...the date of HUD's approval of the conversion plan..."
 - a. Required Conversion of Developments from Public Housing Developments
- H. 24 CFR 972.230(g)(5)(iv): "...the date of HUD's approval of the conversion plan..."
 - a. Voluntary Conversion of Developments from Public Housing Developments
- I. 24 CFR 983.7(d): "...to a residential tenant displaced...as a result of privately undertaken rehabilitation or demolition...execution of the agreement between the owner and the Housing Authority..."
 - a. Section 8 Project-based Certificate Program
- J. 24 CFR 1003.602(h)(3)(i): "...execution of the agreement covering the rehabilitation or demolition..."
 - a. Community Development Block Grants for Indian Tribes and Alaska Native Villages
- K. 24 CFR 1000.14(h): "...execution of the agreement covering the rehabilitation or demolition..."
 - a. Indian Housing Block Grant Program (IHBG)
- L. 24 CFR 1006.375(c)(7): "...execution of the agreement covering the rehabilitation or demolition..."
 - a. Native Hawaiian Housing Block Grant Program (NHHBG)
- M. 24 CFR 290.17(d)(2): "...transfer of title to the purchaser..."
 - a. Disposition of Multifamily Projects
 - b. Up Front Grants
- N. 24 CFR 882.810(h): "...to a residential tenant displaced...as a result of private-owner rehabilitation or demolition...execution of the agreement between the owner and the Housing Authority..."
 - a. Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)
- O. 24 CFR 886.338(h): "...to a residential tenant displaced...as a result of privately undertaken rehabilitation, demolition, or acquisition...owner's execution of the Housing Assistance Payments Contract..."
 - a. Section 8 Loan Management Set-aside for Projects with HUD-insured and HUD-Held Mortgages
- P. HOPE VI/Choice Neighborhood Program: In the absence of program regulations, ION was established via Notice CPD-02-08, and amended by CPD Notice 04-02: The ION date is the date HUD approves the Revitalization Plan, which includes any supplemental submissions

required by the HOPE VI/Choice Neighborhood Program

Grant Agreement, following HUD's initial site visit to the development and as a result of HUD's review of the HOPE VI/Choice Neighborhood Program application. As of the date HUD approves the supplemental submissions and authorizes the PHA to proceed with implementation of the Revitalization Plan, all residents of the project are eligible for relocation payments or other relocation assistance in accordance with the URA. When PIH determines that there are circumstances under which a planned HOPE VI/CHOICE NEIGHBORHOOD PROGRAM project is either so large, or is located in a community with such limited housing resources to absorb large numbers of residents who will be displaced by the project, that a single ION would be impracticable and/or detrimental to the efficient relocation of residents, demolition of the existing units, and reconstruction of the project, PIH may approve multiple ION dates based on phased demolition as proposed by a PHA in its Revitalization Plan. Each demolition phase should propose an ION date that is at least 6 months prior to the planned start date for demolition in that phase (e.g., for a demolition phase that will begin July 1, the proposed ION date should be no later than the preceding January 1). These phased ION dates will enable the PHA to concentrate advisory services and resources on assisting affected residents to find replacement housing in a timely manner as each demolition date approaches. PHAs may always opt to send Notices of Eligibility sooner than required, but these Notices must be sent no later than the established ION date for each phase.

- Q. 24 CFR 941.207(i): "For conventional or acquisition projects: (i) Where the PHA purchases the real property through an arm's-length transaction, the seller's acceptance of the PHA's written offer to purchase the property, provided the PHA later purchases the property; or such other date, as may be determined by the PHA with the approval of the HUD or (ii) Where the PHA's purchase does not qualify as an arm's-length transaction, the delivery of the initial written purchase offer from the PHA to the Owner. However, if the PHA issues a notice of intent to acquire, and a person moves after that notice, but before the initial written purchase offer, the initiation of negotiations is the actual move of the person; (2) For turnkey projects, HUD approval of the PHA's proposal incorporating the developer's proposal, provided the contract of sale is later executed; or (3) For major reconstruction of obsolete projects, the PHA's issuance of the invitation for bids."

a. Public Housing Development

- R. 24 CFR 968.108(h): "the term initiation of negotiations means 45 calendar days before (1) the issuance of the invitation for bids for the project or (2) the start of force account work, whichever is applicable."

a. Public Housing Modernization

CHAPTER 2

General Relocation Requirements

2-1 INTRODUCTION.

- A. Purpose of Chapter. This chapter describes the general requirements covering the treatment of displaced persons (defined in Paragraph 1-4 I.) and persons that will not be displaced (defined in Paragraph 1-4 J.) for the proposed project (see 49 CFR 24 Subpart C). Policies that cover planning, notices, advisory services and filing claims for payment are contained in this Chapter. (Policies governing relocation payments are described in Chapters 3 and 4.)
- B. Flowchart of Relocation Process. Appendix 1 (Reserved).

2-2 PROJECT PLANNING (49 CFR 24.205(a) and (b)).

- A. Minimize Displacement. Consistent with the goals and objectives of the applicable HUD program, Agencies shall assure that they take all reasonable steps to minimize displacement as a result of a project. For example, if feasible, a residential occupant of a building to be rehabilitated shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the building/complex following completion of the project (see funding program regulations for specific requirements). If necessary, the Agency should also consider the feasibility of carrying out large projects in stages, if permissible under program regulations or Notices of Funding Availability (e.g., HOPE VI/Choice Neighborhood Program projects).
- B. Budgetary Implications. Early, common sense planning is necessary to ensure that sufficient funds will be budgeted to comply with applicable law and regulations. Relocation assistance is costly and can seriously affect the viability of a project. Errors in judgment or determinations on eligibility or payments can lead to costly litigation, project delays, and serious financial consequences to the Agency and its partners.
- 1) An Agency should carefully analyze all potential relocation and acquisition project costs prior to submission of an application for HUD funding (or before it commits HUD funds to a subgrantee or subrecipient) and may need to reanalyze the project budget as work progresses to factor in any unforeseen expenses.
 - 2) Consideration needs to be given to resource needs to address: (a) Replacement housing based on the number of households to be displaced; tenure (owner or tenant); resident income; purchase or rental cost and

utility costs; family characteristics; impact on minorities, the elderly, large families, and persons with a disability; (b) replacement business locations based on the number, type, and size of businesses, farms and/or non-profit organizations to be displaced (if any); (c) the need for providing on-going advisory services to displaced persons; and (d) the need, if any, for advisory services to other persons in the neighborhood that will be adversely impacted by the project and who may be eligible for such assistance at the Agency's discretion.

- C. Coordination. The Agency shall take the steps necessary to ensure cooperation and coordination among government agencies, neighborhood groups and affected persons so that the project can proceed efficiently with minimal duplication of effort.
- D. Consultation with Property Occupants. Where feasible, the Agency should consult with the occupants of the site to be acquired, rehabilitated or demolished at an early stage. Resident participation in the design of a project is often required in HUD programs (see applicable program regulations for any specific participation requirements). When public meetings are held, the meeting room and presentation must be accessible and understandable to all persons in the intended audience, regardless of disability. A sample of an invitation to residents to participate in discussions regarding a proposal to rehabilitate, demolish, and/or reconstruct a public housing complex is attached as Appendix 18. This notice can be modified for use in other HUD programs.
- E. Determining Resource Needs (see 49 CFR 24.205(a)(1) through (5)). To the extent necessary and feasible, the Agency should conduct an on-site survey of occupants before approving a project. Optional guideforms that can be used to obtain detailed occupant information are the Site Occupant Record-Residential, in Appendix 8 and the Site Occupant Record – Nonresidential in Appendix 9. To obtain basic information from current public housing occupants about their replacement housing preferences, the optional Resident Survey guideform in Appendix 18a may be used (this form may also be edited for use in other situations). An Agency should plan to collect detailed information about each person's income and replacement housing needs in advance of the event triggering the ION date (see paragraph 1-4 T.) at which time a specific Notice of Relocation Eligibility must be provided, as well as identify available comparable replacement housing resources in a sufficient number to meet the project needs. If a shortage of comparable replacement housing resources is anticipated, the agency should develop a plan to adequately address the shortage including housing of last resort measures.
- F. Review by HUD. Individual HUD program regulations or Notices of Funding Availability (NOFAs) may specify the level and timing of HUD review of Agency planning activities and budgets. Where a pre-award review is not

G. completed, these activities may be covered in a routine HUD monitoring review. Whether or not HUD reviews a proposed project budget or relocation strategy, HUD approval of financial assistance for the project is premised on the Agency's certification of compliance with the URA and applicable regulations. See Paragraph 1-6.

2-3 RELOCATION NOTICES (49 CFR 24.203).

A. HUD Information Brochures. An Agency may meet most of the general information requirements required by the URA by providing the displaced person with a copy of the appropriate HUD information brochure along with the required Notice (see list below). Printed copies of the HUD information brochures are available from HUD's Regional Relocation Specialists and local field offices, and from HUD's Direct Distribution Center at 1-800-767-7468. Copies can also be downloaded or printed from HUD's website at: www.HUD.GOV/Relocation. There are five (5) brochures available:

- 1) When a Public Agency Acquires Your Property (HUD-1041-CPD)
- 2) Relocation Assistance to Tenants Displaced From Their Homes (HUD-1042-CPD);
- 3) Relocation Assistance to Displaced Homeowner Occupants (HUD-1044-CPD);
- 4) Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms (HUD-1043-CPD);
- 5) Relocation Assistance to Persons Displaced from their Homes (Section 104(d)) (HUD-1365-CPD).

B. General Information Notice (GIN) (49 CFR 24.203(a)). The URA regulations require that persons who are scheduled to be displaced must be provided with a GIN as soon as feasible. Many HUD projects can involve both persons who are actually displaced and persons who are not displaced. In most programs, if the tenant-occupant of a dwelling moves permanently from the property

after submission of an application for HUD financial assistance, the tenant will be presumed to qualify as a “displaced person.” To minimize such unintended displacements, HUD policy considers all occupants within a proposed HUD-assisted project involving acquisition, rehabilitation or demolition as scheduled to be displaced for purposes of issuing a GIN. All occupants, therefore, must be provided with a GIN. For those persons the Agency does not plan to displace, this GIN should be modified to explain that the project has been proposed, explain that they will not be displaced, and caution the person not to move (complete with an explanation of the ramifications of moving on his/her own). Suggested guide forms for these GINs can be found in Appendices 2, 2a, 3, and 3a.

C. Notice of Relocation Eligibility (NOE) (49 CFR 24.203(b)). The NOE must be issued promptly after the ION (see Paragraph 1-4 T.), and must describe the available relocation assistance, the estimated amount of assistance based on the displaced person’s individual circumstances and needs, and the procedures for obtaining the assistance. This Notice must be specific to the person and their situation so that they will have a clear understanding of the type and amount of payments and/or other assistance they may be entitled to claim. Guide form notices of relocation eligibility are contained in Appendices 5, 6, and 7.

D. Notice of Nondisplacement. If a person does not qualify as a displaced person (see Paragraph 1-4 J.), HUD policy requires that such persons be provided with a Notice of Nondisplacement (see Paragraph 1-4 AA.) to advise them of the Agency’s determination and their right to appeal. If continued occupancy is possible upon completion of the project, the notice must explain the reasonable terms and conditions under which the person may continue to lease and/or occupy the property upon completion of the project. If a person moves permanently from the property after ION, and the person has not been provided with a Notice of Nondisplacement, HUD’s view is that the person will usually qualify as a “displaced person.” Even if there was no intention to displace the person, if they were not given timely information essential to making an informed judgment about a move, it is assumed that the person’s move was an involuntary move caused by the project. See the guideform notice in Appendix 4.

- 1) A Notice of Nondisplacement may advise a person that they may be or will be temporarily relocated (see 49 CFR 24.2(a)(9)(ii)(D), including Appendix A, and Paragraph 1-4 II). If a residential occupant will be temporarily relocated, the Agency must provide reasonable advance written notice of:
 - (a) the date and approximate duration of the temporary relocation (not to exceed 1 year);
 - (b) the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
 - (c) 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; (d) the costs which will be reimbursed (see paragraph 2-7 A.); and (e) the advisory services which will be available to them.

- 2) If a person is ineligible for relocation assistance [see Paragraph 1-4 B. (Alien not lawfully present in the U.S.) or Paragraph 1-4 MM. (Unlawful occupant)] HUD policy requires that such persons be provided with a written notice of their ineligibility for relocation assistance, the reason they are ineligible, and their right to appeal the Agency's determination.

E. Ninety-Day Notice (49 CFR 24.203(c)). The 90-day notice shall not be given before the displaced person is issued a notice of relocation eligibility (or notice of ineligibility) for relocation assistance. The date provided in this notice may be different for each person or group of persons in a project area based on whether or not the project will be phased, the location of the occupied building(s), or the project schedule. The 90-day notice need not be issued if: (a) there is no structure, growing stock, or personal property on the real property, or (b) the occupant made an informed decision to relocate and vacated the property without prior notice to the property owner, (c) in the case of an owner-occupant who moves as a result of a voluntary acquisition described in 49 CFR 24.101(b)(1) or (2), the delivery of possession is specified in the purchase contract, or (d) the person is an unlawful occupant (see Paragraph 1-4 MM.).

- 1) The urgent need provisions described in 49 CFR 24.203(c)(4) permit an Agency to require an occupant to vacate on less than 90 days notice. However, an Agency may not artificially create an "urgent need" (e.g. by issuing a notice to proceed to a demolition contractor, then using the imminent demolition to substantiate a danger to the resident's health and safety in order to cut short the notice period which is otherwise required).
- 2) State or local law may dictate the form and timing of a moving notice to be issued to an unlawful occupant, if any.
- 3) HUD also recommends that Agencies provide a minimum of 30 days notice to move to persons who will not be displaced but who need to be temporarily relocated. Longer notice may be appropriate for persons who will be relocated for an extended period of time (over 6 months) or if the move will include all personal property on site. Shorter notice periods may be appropriate based on an urgent need due to danger, health or safety issues or if the person will be temporarily relocated for only a short period of time.
- 4) The URA regulation prohibits Federal participation in relocation payments or relocation advisory services to aliens not lawfully in the U.S., but does not prohibit notices (see 49 CFR 208). Often illegal aliens and legal residents reside together. Giving every lawful occupant these notices (see

definition of an unlawful occupant at 49 CFR 24.2(a)(29)) will assure compliance with the Uniform Act.

- F. Combined Notice (NOE and 90-Day Notice). Where time to begin work on the project is critical, HUD policy permits an NOE and a 90-Day Notice to be combined into one Notice and issued on or before ION (e.g., where moving tenants before snowfall will enable the project to move forward with roof replacements). All persons must still be provided with a minimum of 90 days notice prior to requiring that they move, unless the urgent need provisions in 49 CFR 24.203(c)(4) are met.
- G. Notice of Intent to Acquire (49 CFR 24.203(d)).
- H. Notice to Owner (of real property) (49 CFR 24.102(b)). As soon as an Agency has identified properties that it might be interested in acquiring for a HUD-funded project, the Agency needs to notify the owner(s) in writing of its interest in acquiring the property and the basic protections applicable under the URA. This may include acquisitions made before an application for HUD financial assistance, if the Agency anticipates receiving such assistance for the project. If the Agency does not wish to trigger a person's eligibility for relocation assistance at the time of this notice, it should ensure that the notice is not confused with a Notice of Intent to Acquire (which is specifically used to establish relocation eligibility prior to ION). While the Notice to Owner merely informs the property owner of the Agency's interest in acquiring the property, the Notice of Intent to Acquire is a commitment. A Notice to Owner is required for all acquisitions where there is HUD financial assistance in any part of the project costs, except acquisitions meeting the requirements of 49 CFR 24.101(b)(1) or (2). See Chapter 5 for additional information on the acquisition process and guideforms.
- I. Move In Notice. See paragraph 1-4 Y.
- J. Manner of Notices (49 CFR 24.5). Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice (e.g., due to lack of literacy, or disability) must be provided with appropriate services, alternative formats, and/or counseling. Each notice shall indicate the name and telephone number (including the telecommunication device for the deaf (TDD) number, if applicable) of a person who may be contacted for answers to questions or other needed help. If a project will not result in a rent increase, or require permanent or temporary relocation, a GIN or Notice of Nondisplacement may be served by posting it in accessible locations and providing a copy to the tenants' representative.

2-4 RELOCATION ADVISORY SERVICES (49 CFR 24.205(c)). Providing a written Notice or series of Notices, along with the HUD brochure, is not sufficient to assure that the person who is affected by the project understands his/her rights and responsibilities. As soon as feasible, the Agency shall contact each person who is affected by the project to discuss his/her needs, preferences and concerns. Whenever feasible, contact shall be face-to-face. A list of minimum relocation advisory services may be found in 49 CFR 24.205(c).

2-5 GENERAL REQUIREMENTS – CLAIMS FOR RELOCATION PAYMENTS (49 CFR 24.207). HUD has developed a series of optional claim forms that can be used to compute payments and obtain certification of a person’s status as a citizen, national, or alien who is lawfully present in the U.S. Copies of these forms can be found at Appendices 11, 12, 13, 14, 16, and 17; are available from HUD’s Direct Distribution Center at 1-800-767-7468; and can be downloaded or printed from HUD’s website at: www.HUD.GOV/Relocation.

A. Expeditious Payment (49 CFR 24.207(b)).

B. Advanced Payments (49 CFR 24.207(c)).

C. Time for Filing (49 CFR 24.207(d)).

D. Notice of Denial of Claim (49 CFR 24.207(e)).

E. No Waiver of Relocation Assistance (49 CFR 24.207(f)).

F. Expenditure of Payments (49 CFR 24.207(g)).

G. Occupants of Displacement Dwelling Move Separately (49 CFR 24.403(a)(5)).

2-6 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME (49 CFR 24.209).

A. “Gap” Payments. The URA statute and regulations require that relocation payments received by a displaced person be excluded from income under Federal law, except Federal low-income housing assistance programs. Many HUD housing programs, therefore, consider relocation payments as income for purposes of establishing eligibility and/or rent. In certain programs, HUD makes an exception where an RHP “gap” payment is being made: 1) To a displaced subsidized tenant to defray the additional cost for rent/utilities associated with his/her move into another type of subsidized unit (e.g., moving from a public housing unit to a Housing Choice Voucher unit) or 2) in the case of a low-income person, whose government housing subsidy cannot reduce their rental and utility payments to 30% of their average monthly gross income and the difference is made up by a URA “gap” payment (e.g., in the Housing Choice Voucher Program where the local payment standard is too

low to enable the displaced person to lease and occupy decent, safe, and sanitary replacement housing in the local marketplace at 30 percent of their income for rent and utilities). These “gap” payments should be excluded from income as “temporary, nonrecurring, or sporadic income” whenever these payments represent compensation for additional costs incurred as a result of the displacement, provided these “gap” payments do not duplicate any housing subsidy the family would otherwise be entitled to under HUD programs.

B. Moving to Subsidized Housing After Displacement. In the situation where a displaced person is vested with an RHP based on an unassisted private market unit and the person later applies for a HUD housing subsidy, the RHP should be considered as income for purposes of establishing eligibility and rent. Therefore, unless the person voluntarily refuses to accept continued RHP payments and the payments are discontinued by the displacing Agency, the RHP would be added to other income received by the person (or be considered as imputed income for the person, as in the case of a TANF recipient who has lost welfare benefits). If the person is still eligible for the HUD housing subsidy, continued payment of the RHP and the additional HUD subsidy may also constitute a duplication of assistance payments prohibited under 49 CFR 24.3.

2-7 TEMPORARY RELOCATION (49 CFR 24.2(a)(9)(ii)(D), Appendix A). “In 1987, the Uniform Act was amended to cover displacement from Federal and federally-assisted programs or projects as a direct result of rehabilitation. To counter the disincentive this might create for a tenant temporarily displaced from a residence while that residence is being rehabilitated, we considered such a person not to be displaced, if, and only if certain stringent protections are applied. These included covering moving expenses to and from the temporary location, payment of increased housing costs during the period of relocation, the guarantee of a return to the same unit, or to another unit in the same building or complex, and a limitation on a rental increase at the rehabilitated replacement unit.”¹ Appendix A to the URA regulations provides guidance for temporarily relocating residential tenants and businesses in the many instances in which federally- assisted projects involve the acquisition, rehabilitation, or demolition of apartments, homes, commercial buildings, etc., which could allow for a quick return for the original occupants.

A. While Appendix A to the URA regulations has historically included provisions for temporary relocation, in 2005 a new one-year limitation was imposed on temporary relocations. An Agency which fails to meet its obligation to return a temporarily relocated person to the project within one year, may be liable for all costs connected with a subsequent permanent displacement of the person beginning at the end of the one year period

¹ Preamble, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs: Final Rule, 49 CFR Part 24, 70 FR 589, 592 (January 4, 2005).

(including a Replacement Housing Payment (RHP) for a residential occupant). The 2005 rule also made provision for the temporary relocation of a business which might have to be shut down due to rehabilitation of a site.

- 1) An Agency must reimburse a temporarily relocated person for reasonable out of pocket expenses incurred in connection with a temporary move. Such costs include moving expenses and increased housing costs.
 - a) An Agency may develop a schedule of moving estimates by unit size based on estimates from local movers to enable it to determine the reasonableness of moving costs. However, the Agency cannot use this schedule to place a fixed-payment maximum on the cost of any resident's move, if a higher amount is warranted and reasonable based on the actual amount of household goods to be moved or other extenuating circumstances that can be documented or explained. The URA Fixed Residential Moving Cost Schedule may be a useful resource in some circumstances (see 49 CFR 24.302).
 - b) Persons who will be temporarily relocated should be required to submit their moving cost estimates for Agency approval prior to the move and be warned that failure to submit an estimate ahead of time may result in the resident not being fully reimbursed. An Agency needs to determine that the possessions to be moved and the moving costs are reasonable and necessary (especially where only a partial move is required, see c. below).
 - c) A temporarily relocated person may not need to move all of his/her possessions (e.g., in the case of rehabilitation to only one room of a residence, the Agency may determine that only the possessions in that one room and some basic necessities may need to be moved based on the duration or location of the rehabilitation work).
- 2) An Agency must provide direct payment or reimbursement for all disconnection and reconnection of necessary utilities, i.e., water, sewer, gas, and electricity either by: 1) Paying the expenses directly to the applicable utility company on behalf of the resident, or 2) reimbursing the resident for the cost of transferring utility services to the replacement or temporary unit (documentation of the cost must be provided to the Agency by the resident).
- 3) Under the URA, the Agency is not required to reimburse a person for new or increased security or utility deposits that are refundable. Under the URA, refundable deposits are not considered a cost. However, to ease the burden such expenses might cause at the time of a temporary move, the Agency may elect to advance funds for such deposits under a repayment agreement, or may pay such deposits on behalf of the temporarily

relocated person (provided any refund will be made to the Agency and not the person)² or, if payment is allowed under HUD program regulations or funding guidelines (e.g. under an optional relocation assistance policy permitted under HOME or CDBG grants), an Agency may choose to pay for new or increased utility deposits. An Agency should have a formal written policy on such payments as part of a written relocation plan or optional relocation assistance policy.

- 4) If the person has telephone, cable service, or Internet access at the displacement unit, the Agency must reimburse the person for costs involved in transferring existing service, if any (not the monthly service cost).
- 5) In an emergency, if a person must be temporarily relocated for the duration of the emergency situation from a unit that had cooking facilities to a temporary unit that lacks basic cooking facilities (e.g., a hotel), it is appropriate to reimburse the increased out of pocket costs for meals. Reimbursement may be based on paid receipts or on a "per diem" basis, as established by the Agency. Reimbursement for such expenses should be addressed in Agency policy. A person who has been moved to such a location in an emergency situation must be returned to their original unit or relocated to other decent, safe, and sanitary housing within a reasonable amount of time after the emergency has abated.
- 6) If after relocating to a temporary unit under reasonable conditions, a person chooses to move to another temporary unit of his/her own volition, the Agency must continue to pay any reasonable increased housing expenses, as long as the selected unit is decent, safe, and sanitary and the Agency was informed prior to the move so that the Agency can determine that the increased costs are reasonable. The increased housing cost of the temporary unit initially occupied by the person, or of any unit later occupied by the person, should not exceed the cost of the decent, safe, and sanitary temporary unit offered by the Agency. (The person is responsible for the moving costs.)
- 7) If the person is required to move from the temporary unit by the Agency (or the Agency agrees to the move from the temporary unit for good cause, e.g. health issues), the Agency must assist the person to locate other decent, safe, and sanitary housing and may pay all costs associated with the move and increased housing expenses.
- 8) Where a person is evicted for cause from a temporary unit, the person may not be entitled to continued temporary housing costs, the person may lose

² In this case, lawful deductions from security deposits made by a landlord or utility company may be charged to the resident by the Agency. Any agreement with the resident to pay a deposit on their behalf should stipulate how and when repayment of non-refunded security deposit(s) must be made.

his/her right of return to the displacement site, and the person may not be entitled to relocation payments as a displaced person (see paragraph 1-4 J.1).

- 9) Where a person will be temporarily relocated from a public housing unit to a non-public housing unit, if there is an increased rental and/or utility cost for the unit, residents will be entitled to reimbursement for the additional out-of-pocket costs³ for the period of time they occupy the temporary unit. All reasonable increases in utility costs must be covered by the PHA, even if the PHA utility allowance is lower than the actual costs to the resident. The temporary unit must be decent, safe, and sanitary. Prior to selection of any unit, public housing residents should be sure to notify the PHA and have the unit inspected.
- B. "After the one-year period, the final rule requires that a residential tenant be offered permanent relocation assistance. Such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with Uniform Act assistance. It is expected that temporary relocations will be rare, and, for HUD funded projects, clearly planned for in the development of the project, and used only where a tenant is guaranteed a replacement unit in the project or unit from which they were displaced."⁴
- C. Whenever there is any possibility that a person may not be able to return to a project, particularly where a reduced number of units will be available after completion of the project, Agencies are advised to provide displacement assistance applicable to a permanent move. In large and/or phased projects where completion will occur years in the future, there is no reasonable way an Agency can guarantee an occupant the right to return at the time of issuing a GIN or a NOE. Therefore, persons occupying such projects should be notified of their eligibility for the full amount of permanent relocation assistance available under the URA.
- 1) No person who has been displaced from a project should be precluded from applying to and being considered for occupancy in the project after completion (see Paragraph 1-4 EE, Resident Return Policies, Return Criteria, or Re-occupancy Plan).
 - 2) The URA does not require that an agency pay for a return move to the project once a person has been permanently displaced (an agency is obligated to pay for the return move of any person that is temporarily

³ See paragraph 2-6 A.

⁴ Preamble, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs: Final Rule, 49 CFR Pat 24, January 4, 2005, 70 FR 589.

relocated). If allowed under HUD program regulations or funding guidelines (e.g. optional relocation assistance permitted under HOME or CDBG grants), an Agency may choose to pay for return moves for persons who had been permanently displaced. An Agency should have a formal written policy on payment for return moves, which may be part of a written relocation plan or optional relocation assistance policy.

- D. Where a business is to be temporarily relocated, the Agency should be careful to plan the temporary relocation assistance with input from the business in order to identify what costs will be reasonable and necessary. At the discretion of the Agency, if temporary relocation appears to be too complex or costly, permanent displacement may be justified as more cost-effective (e.g. where a business is subject to special environmental emission or processing requirements; has large and/or specialized production equipment that must be disconnected, moved, and reconnected; has extensive production inventory that must be moved to the temporary site; or that requires rail or shipping access not available for temporary use).

CHAPTER 3

Relocation Payments – Families and Individuals

3-1 PURPOSE OF CHAPTER. This Chapter describes the relocation payments to be provided to a family or individual who is being displaced from a dwelling. Required advisory assistance is described in Chapter 2.

3-2 PAYMENT FOR MOVING AND RELATED EXPENSES.

A. Any displaced residential owner-occupant or tenant-occupant who qualifies as a displaced person (defined at 49 CFR 24.2(a)(9)); see also Paragraph 1-4I of this Handbook) is entitled to a payment for his or her moving and related expenses, as the Agency determines to be reasonable and necessary. Generally, the displaced person may choose a payment for actual reasonable moving and related expenses, or a fixed payment for moving expenses.

- 1) Actual Reasonable Moving and Related Expenses (49 CFR 24.301(g)(1)-(7)). A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the methods described at 49 CFR 24.301(b). For moves from a mobile home, also see 49 CFR 24.301(g)(8)-(10) and Paragraph 3-8 of this Handbook. (NOTE: Reasonable moving expenses for a person with disabilities might cover the cost of moving assistive equipment that is the personal property of the tenant, the furnishings and personal belongings of a live-in aide, and/or other reasonable accommodations.)
- 2) Fixed Payment for Moving Expenses (49 CFR 24.302). This payment shall be determined according to the applicable Fixed Residential Moving Cost Schedule published by the Federal Highway Administration (FHWA). The allowance reflects the number of rooms in the displacement dwelling (which may include outbuildings), all moving and related expenses, and takes into consideration whether the displaced person owns and must move the furniture. If a room contains an unusually large amount of personal property (e.g., a crowded basement), the Agency may increase the payment accordingly (e.g., count it as two rooms). Copies of the schedule are available from the FHWA website at: <http://www.fhwa.dot.gov/realstate/fixsch96.htm>, or from HUD Offices.
 - a) Occupant of Dwelling with Congregate Sleeping Space. The moving expense and dislocation allowance for a person who is displaced from a dwelling (defined at 49 CFR 24.2(a)(10) and Paragraph 1-4K.) with congregate sleeping space ordinarily utilized by three or more

unrelated persons shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule (see FHWA website at: <http://www.fhwa.dot.gov/realestate/fixsch96.htm>).

- b) Homeless Persons. A displaced "homeless" person (e.g., the occupant of an emergency shelter) is not considered to have been displaced from a dwelling (defined at 49 CFR 24.2(a)(10) and Paragraph 1-4K.) and, therefore, is not entitled to a fixed payment for moving expenses. (Such a person may, however, be eligible for a payment for actual costs for moving their possessions. See 49 CFR 24.301 and Paragraph 3-2A.1 above.)

B. Displaced Public Housing Tenants. Whenever a tenant is displaced from a public housing unit but is offered the opportunity to relocate to a comparable replacement public housing unit, the Public Housing Authority (PHA) has the option to choose the type of moving assistance to be provided to the displaced tenant. The PHA may elect to perform the move itself, using force account labor or a moving company, at no cost to the individual or family being displaced. In such cases, the individual or family is also entitled to a moving expense and dislocation allowance which shall be limited to the amount in the most recent edition of the Fixed Residential Moving Cost Schedule (see FHWA website at: <http://www.fhwa.dot.gov/realestate/fixsch96.htm>). If the PHA does not elect to perform the move itself, the tenant may have the option to choose either a payment for actual moving and related expenses (49 CFR 24.301) or the PHA will pay directly to the tenant the applicable and current fixed payment for moving expenses required under 49 CFR 24.302.

(NOTE: This policy covers displacement under the URA and not "general transfers." It does not apply to moves by displaced public housing tenants to other subsidized or private housing. (Moving expenses for such displaced public housing tenants are described in Paragraphs 3-2A.1 and 3-2A.2 above.)

- 1) A displaced public housing tenant who elects to be reimbursed for actual moving expenses (49 CFR 24.301) will receive assistance for all necessary moving services, including packing and unpacking of personal belongings. For displaced public housing tenants who prefer to pack their own personal possessions and items of value, the PHA may provide packing instructions, boxes, markers, and tape to assist the displaced public housing tenant.
- 2) Reasonable moving costs include not just the cost of packing, moving, and unloading, but also disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. This would include costs for deinstallation, moving, and reinstallation services for tenant-provided equipment or amenities such as fans, air conditioners, personal computers, etc. When force account is used for a move and does not include these services, a PHA may determine whether or not it will hire an independent contractor to do this

work, or reimburse a displaced public housing tenant on an actual cost basis (all costs for these methods must be documented). A PHA cannot require that a displaced public housing tenant pay for these services on his/her own. A PHA must adequately inform a displaced public housing tenant accordingly.

- 3) The PHA must also provide direct payment or reimbursement for all disconnection and reconnection of necessary utilities (i.e., water, sewer, gas, and electricity) either by: 1) paying the expenses directly to the applicable utility company on behalf of the tenant, or 2) reimbursing the displaced public housing tenant for the cost of transferring utility services to the replacement unit. (Documentation of the cost must be provided to the PHA by the displaced public housing tenant.) This payment does not include any reimbursement for new or increased utility deposits since deposits are refundable and not considered a cost. However, the PHA may elect to advance funds for such deposits to a displaced public housing tenant under a repayment agreement. If the displaced public housing tenant had cable service at the displacement unit, the PHA should reimburse the displaced public housing tenant for the cost of transferring service, if any.

C. Optional Claim Form. A copy of Form HUD-40054, "Residential Claim for Moving and Related Expenses," is contained in Appendix 11. The form is optional; however, if the form is not used, documentation must be included in the Agency's files to support the amounts claimed and paid (see Chapter 6).

3-3 ESTABLISHING UPPER LIMIT OF REPLACEMENT HOUSING PAYMENTS.

A. Determining Cost of Comparable Replacement Dwelling (49 CFR 24.403(a)).

The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (49 CFR 24.2(a)(6)). If available, at least three comparable replacement dwellings shall be examined (including internal and external inspection) to ensure that the replacement dwelling is decent, safe and sanitary as defined at 49 CFR 24.2(a)(8). The upper limit of the replacement housing payment shall be established on the basis of the cost for the comparable replacement dwelling that is most representative of, and equal to, or better than, the displacement dwelling.

- 1) For purposes of establishing the payment limit, comparable replacement dwellings shall, to the extent feasible, be selected from the neighborhood in which the displacement dwelling is located or in nearby similar neighborhoods where housing costs are generally the same or higher. An obviously overpriced dwelling (e.g., luxury housing, if the displacement dwelling is non-luxury housing) may be ignored.

- 2) A copy of Form HUD-40061, Selection of Most Representative Comparable Replacement Dwelling for Purposes of Computing a Replacement Housing Payment, is included as Appendix 12. The form is optional; however, if the form is not used, other reasonable documentation must be maintained.

NOTE: When selecting the most representative comparable replacement dwelling for a person with disabilities, reasonable accommodation is to be determined on a case-by-case basis. The range of accessible unit features in Appendix A, 49 CFR 24.2(a)(8)(vii) is offered as an illustrative list only.

- 3) The Agency may limit the amount of replacement housing payment to the amount required to obtain a comparable replacement dwelling only if it gives a timely written notice (referral) of such comparable replacement dwelling. If the Agency fails to offer a comparable replacement dwelling before the person enters into a lease or purchase agreement for, and occupies, a decent, safe and sanitary replacement dwelling, HUD may require the replacement housing payment be based on the cost of such decent, safe and sanitary replacement dwelling, or take such other corrective action as may be deemed necessary to mitigate (to the extent possible) the adverse consequences of the deficiency.

3-4 REPLACEMENT HOUSING PAYMENT FOR 90-DAY HOMEOWNER-OCCUPANTS (49 CFR 24.401).¹

A. Eligibility (49 CFR 24.401(a)). A displaced person is eligible for a replacement housing payment for a 90-day homeowner-occupant if the person:

- 1) Actually owned and occupied the displacement dwelling for not less than -90 days immediately prior to the initiation of negotiations. A person is considered to have met the requirement to own the displacement dwelling if the person meets the definition of "Owner of a dwelling" at 49 CFR 24.2(a)(20); and
- 2) Purchases and occupies a decent, safe and sanitary replacement dwelling within one year after the later of:
 - a) the date the person receives final payment for the displacement dwelling; or
 - b) in the case of condemnation, the date the court award of just compensation is deposited with the court; or
 - c) a comparable replacement dwelling has been made available to the person.

¹ See CPD-14-09 Moving Ahead for Progress in the 21st Century Act (MAP-21).

The Agency shall extend this period for good cause. A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person meets the requirements at 49 CFR 24.403(c), Purchase of Replacement Dwelling.

B. Amount of Payment (49 CFR 24.401(b) and 49 CFR 24.404. See also Paragraph 3-3A3).

C. Computation of Replacement Housing Payment. The calculation for a replacement housing payment under 49 CFR 24.401(b) shall be the sum of:

- 1) The purchase price differential (49 CFR 24.401(c)). This is the amount by which the cost of a comparable replacement dwelling exceeds the acquisition cost of the displacement dwelling, and
- 2) Increased Mortgage Interest Costs (49 CFR 24.401(d)), and
- 3) Incidental Expenses (49 CFR 24.401(e)).

D. Issues Affecting Acquisition Cost. For purposes of calculating the replacement housing payment under 49 CFR 24.401(b), consideration must be given to the following when determining the acquisition cost:

- 1) Comparable Replacement Dwelling Lacks Major Exterior Attribute (49 CFR 24.403(a)(2)). If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the purchase price differential payment.
- 2) Mixed-use and Multifamily Properties (49 CFR 24.403(a)(7)). If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the purchase price differential. The Agency should ask its appraiser to make this determination at the time of the appraisal of the displacement property.
- 3) Insurance Proceeds (49 CFR 24.403(g)). To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with any real property damages or other loss to the displacement dwelling due to a catastrophic occurrence (e.g., fire, flood,

etc.) shall be included in the acquisition cost of the displacement dwelling when computing the purchase price differential.

4) Owner Retention of Displacement Dwelling (49 CFR 24.401(c)(2)). If the homeowner retains ownership of his or her dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be deemed to be the sum of:

- (a) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
- (b) The cost of making the unit a decent, safe and sanitary replacement dwelling (defined at 49 CFR 24.2(a)(8) and Paragraph 1-4H); and
- (c) The estimated current fair market value for residential use of the replacement site (appraisal not required), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (d) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

5) Partial Acquisition Leaves Buildable Remainder (49 CFR 24.403(a)(3)). If the acquisition of a portion of a residential property causes the displacement of the owner from the dwelling and the remainder is a suitable, buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

E. Optional Claim Form. A copy of Form HUD-40057, "Claim for Replacement Housing Payment for 90-Day Homeowner," is contained in Appendix 13. The form is optional; however, if the form is not used, documentation must be included in the Agency's files to support the amounts claimed and paid (see Chapter 6).

F. Maintaining Tenure of -90-day Homeowner.

1) Owner of Entire Fee Interest. A 90-day homeowner-occupant who owns fee simple title to the displacement dwelling and thus will receive all net acquisition proceeds must have the opportunity to purchase a comparable replacement dwelling without incurring an increase in the total outstanding mortgage debt, or an increase in the number of, or amount of, mortgage principal/interest payments.

2) Owner of Fractional Interest (49 CFR 24.404(b)). The Agency is not required to provide to a person who owned only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide if the person owned the entire interest in the displacement dwelling. If such assistance is not sufficient to enable the person to buy a replacement dwelling, the Agency may provide additional purchase assistance or it may elect to offer rental assistance. Generally, the amount offered as rental assistance should not be less than the amount available for purchase assistance under 49 CFR 24.401(b).

G. Rental Assistance for 90-day Homeowner (49 CFR 24.401(f)). A displaced 90-day homeowner who elects to rent, rather than buy, a replacement dwelling is eligible for rental assistance as described in 49 CFR 24.401(a). If, within one year after receiving final payment for the displacement dwelling, such displaced homeowner-occupant subsequently elects to again purchase and occupy a decent, safe and sanitary replacement dwelling, the replacement housing payment may be converted to purchase assistance. (See also Paragraph 3-7C.)

3-5 REPLACEMENT HOUSING PAYMENT FOR 90-DAY OCCUPANT (49 CFR 24.402).

A. Eligibility (49 CFR 24.402(a)).

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B. Rental Assistance Payment (49 CFR 24.402(b)).

- 1) Amount of Payment (49 CFR 24.402(b)(1) and 24.404). See also Paragraph 3-3A3).
- 2) Base Monthly Rent (49 CFR 24.402(b)(2)).
- 3) Government Housing Assistance. If the displaced person did not receive government housing assistance before displacement, he/she cannot be required to accept government assisted housing in lieu of a cash

replacement housing payment under Paragraph 3-4B. Agencies may help eligible low-income displaced tenants obtain a housing voucher for rental assistance provided by a local Public Housing Agency (PHA) and offer referrals to suitable replacement dwellings with landlords who are willing to participate in the housing voucher program, or can provide referrals to other government assisted housing programs. If the displaced person accepts the government housing assistance, the rental assistance payment should be based on the person's actual out-of-pocket costs. For example, where the replacement dwelling rent/utility cost is more than the payment standard under the voucher program, or the initial rent/utilities burden exceeds 30 percent of the tenant's average monthly gross household income, the tenant may be eligible for a 42-month cash supplement to cover the gap. (See also Paragraph 2-6A.) The Agency, however, remains obligated to inform the displaced person of his/her options under 49 CFR Part 24 (e.g., referrals to comparable replacement dwellings available on the private market).

4) Determination of Utility Costs (49 CFR 24.2(a)(30)¹

- a) Displacement Dwelling. For purposes of computing rental assistance, the average monthly utility costs (defined at 49 CFR 24.2(a)(30)) at the displacement dwelling are 1/12 of the utility costs over a 12-month period. The determination may be based on the 12-month period immediately prior to the date of displacement, using statements/bills of actual cost.
- b) Replacement Dwelling. The estimated average monthly utility costs at the replacement dwelling should be based on actual 12-month utility data for that unit to the extent possible, or some shorter period of time, if necessary. Agencies may establish their own procedures to be used for determining the estimated cost of utilities if the procedures are used uniformly and reflect current reasonable costs.

5) Determination of Average Monthly Gross Household Income (to be used in calculating Rental Assistance Payments for low-income displaced person(s) only). The average monthly gross household income for a low-income displaced person is 1/12 of the gross household income (see 49 CFR 24.2(a)(14)).

NOTE: The provisions in Paragraphs 3-5B(4) and 3-5B(5) are applicable to the calculation of a displaced tenant's replacement housing payment under the URA only and are not intended to cover the calculation of the government housing assistance payment (e.g., public housing or Section 8 Housing Choice

¹ See also HUD Relocation Assistance Policy newsletter at https://www.hud.gov/sites/documents/DOC_12062.PDF

Voucher) itself. Government housing assistance payments are subject to applicable program requirements.

- C. Downpayment Assistance Payment (49 CFR 24.402(c)). An eligible displaced person who was a renter may elect to receive a lump sum amount for a downpayment to purchase a replacement dwelling.
- 1) Amount of Payment (49 CFR 24.402(c)(1)).
 - 2) Application of Payment (49 CFR 24.402(c)(2) and Appendix A, 49 CFR 24.402(c)).
- D. Optional Claim Form. A copy of form HUD-40058, "Claim for Rental or Downpayment Assistance," is contained in Appendix 14. The form is optional; however, if the form is not used, documentation must be included in the Agency's files to support the amounts claimed and paid (see Chapter 6).

3-6 REPLACEMENT HOUSING PAYMENT FOR PERSON WHO IS NOT A 90-DAY OCCUPANT.

A. Background. A person who is displaced from a dwelling that he/she did not occupy for at least 90 days before the initiation of negotiations is not entitled to a replacement housing payment under 49 CFR 24.401 or 24.402. (This includes tenants who moved into the displacement dwelling after the initiation of negotiations as well as those moving into a unit less than 90 days before the initiation of negotiations.) However, to comply with section 205(c)(3) of the URA, the Agency must provide the assistance necessary to enable such person to relocate to comparable rental housing within his/her financial means. (See 49 CFR 24.404(c)(3)). Section 206 of the URA (Last Resort Housing) authorizes the use of project funds for this purpose.

B. Eligibility (49 CFR 24.404(c)). A displaced person who fails to meet the length of occupancy requirements under 49 CFR 24.401(a) or 24.402(a) qualifies for assistance under 49 CFR 24.404(c)(3) and this Paragraph 3-6.

C. Amount of payment²

- 1) Person Rents Replacement Dwelling. A person who meets the eligibility requirements in Paragraph 3-6B and rents a replacement dwelling is entitled to assistance based on 49 CFR 24.402(b)(2)(i) or (ii) if the person is low-income. If the person is not low-income, the calculation is based on 49 CFR 24.402(b)(2)(i) only.
- 2) Person Buys Replacement Dwelling (49 CFR 24.402(c)). A person who meets the eligibility requirements in Paragraph 3-6B may convert the

² See <https://www.fhwa.dot.gov/map21/qandas/qauniformact.cfm> .

rental assistance payment in the above paragraph to a down payment to purchase at the discretion of the Agency on a case-by-case basis. This payment cannot exceed the amount an owner would receive under 49 CFR 24.401(b) if he or she met the 90-day occupancy requirement.

3-7 ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS (49 CFR 24.403).

A. Inspection of Replacement Dwelling (49 CFR 24.403(b)). Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall make a thorough internal and external inspection of the replacement dwelling to determine whether it is decent, safe and sanitary (as defined at 49 CFR 24.2(a)(8)). A copy of the inspection report should be included with the pertinent claim form in the Agency's files. (See also Chapter 6, Paragraph 6-2C.1(h).)

NOTE: The definition of “decent, safe and sanitary” provides that replacement units must contain the accessibility features needed by displaced persons with disabilities. (See 49 CFR 24.2(a)(8)(vii); Appendix A, 24.2(a)(8)(vii); Chapter 1, Paragraph 1-9 of this Handbook; Exhibit 3-1, and HUD guidance on accessibility features needed by displaced person with disabilities.)

- 1) If the displaced person relocates to another community, the Agency may arrange for officials of that community to perform the inspection.
- 2) If the Agency determines that a replacement housing payment may have to be denied because the replacement dwelling selected by a displaced person is not decent, safe and sanitary (e.g., does not meet the local code), it must so notify the displaced person, determine if the property can be made decent, safe and sanitary, and/or assist the person to locate another replacement unit.

B. Occupancy Requirements for Displacement or Replacement Dwelling (49 CFR 24.403(d)). 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 this Handbook for a reason beyond his or her control, including: (i) 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 Agency; or (ii) another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, illness, or hospital stay, as determined by the Agency.

NOTE: Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, 42 U.S.C. §5181 (“Stafford Act”) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall

be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act]." By virtue of section 414 of the Stafford Act, replacement housing assistance should be provided to otherwise eligible residential displaced persons without regard to their inability to meet prescribed occupancy requirements due to a national disaster or a presidentially declared emergency. Contact your Regional Relocation Specialist for assistance in identifying HUD projects that may be affected by Section 414.

- C. Conversion of Payment (49 CFR 24.403(e)). A displaced person, who initially rents a replacement dwelling, receives rental assistance pursuant to 49 CFR 24.402(b) and later purchases a replacement dwelling, is eligible to receive a payment under 49 CFR 24.401 and 24.402(c) if he or she meets the eligibility criteria for such payment, including purchase and occupancy within the prescribed 1-year period. The amount of the purchase assistance payment shall be the amount calculated under 49 CFR 24.401(f) or 24.402(b)(1), minus any portion of the rental assistance that has already been disbursed. The entire purchase assistance payment must be applied, at closing, to the purchase of a decent, safe and sanitary replacement dwelling. (**NOTE:** In the event the displaced person purchases a decent, safe and sanitary replacement prior to converting his/her rental assistance payment to purchase assistance, the entire amount must be used to reduce the outstanding mortgage balance.)
- D. Manner of Disbursing Rental Assistance. Relocation assistance payments for residential tenants who are displaced for HUD projects are subject to 42 USC Sec. 3537c and must be disbursed in installments, except that lump sum payments may be made to cover (1) moving expenses, (2) a downpayment on the purchase of replacement housing, or incidental expenses related to (1) or (2). Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

The frequency of these disbursements may be determined by the Agency. However, if not paid monthly, HUD recommends that there be no less than three installment payments, except when the rental assistance payment is \$500 or less. Where the rental assistance payment is \$500 or less, it is recommended that payment may be made in two installments with no less than a four-month interval between payments.

E. Payment After Death (49 CFR 24.403(f)).

3-8 LAST RESORT HOUSING MEASURES (49 CFR 24.404). Whenever comparable replacement dwellings are not available within the monetary limits for displaced owner-occupants and tenants, the Agency must provide additional alternative assistance under the provisions of this section. (Also see Exhibit 3-1 of this Handbook.)

A. Cash Assistance to Exceed Statutory Payment Caps. The Uniform Act requires that comparable replacement housing within a person's financial means be made available before the person may be displaced. Whenever the payment ceiling under section 203 or 204 of the URA (\$ 31,000 for displaced owner- occupants ; \$ 7,200 for displaced renters is insufficient to provide comparable replacement housing, additional or alternative assistance must be provided. Generally, this is accomplished by providing additional cash assistance which exceeds the above ceiling limits. Section 206 of the URA authorizes the use of project funds to provide such additional cash assistance.
NOTE: Exceeding the payment ceilings at 49 CFR 24.401(b) and 24.402(b) is commonplace. To ensure that a displaced person is not unduly burdened financially, the Agency is required to provide additional cash or alternative assistance (see 49 CFR 24.404(c)(1)(i)-(iv).

B. Other Last Resort Housing Measures. Section 206 also authorizes Agencies to use project funds to undertake special measures, such as the construction, rehabilitation, or relocation of housing; the purchase of land and/or housing and later sale or lease to, or exchange with, the person; the provision of a direct loan; and the removal of barriers for persons with disabilities.

C. Option of Displaced Person. The displaced person may enter into an agreement with the Agency to accept a decent, safe and sanitary replacement dwelling to be provided as a last resort housing measure. Absent such agreement, the Agency shall not require the displaced person to accept a dwelling provided by the Agency under the last resort housing provisions as an alternative to an acquisition payment or any relocation payment for which the person may otherwise be eligible.

3-9 SPECIAL REQUIREMENTS COVERING MOBILE HOMES (49 CFR 24, SUBPART F). This Paragraph 3-9 provides additional guidance to be followed when providing relocation payments to persons displaced from a mobile home and/or mobile home site. Generally, such persons are entitled to receive a moving expense payment in accordance with 49 CFR 24, Subpart D, and a replacement housing payment in accordance with 49 CFR 24, Subpart E to the same extent and

subject to the same requirements as persons displaced from conventional dwellings.

track

A. Payment for Moving and Related Expenses.

- 1) Eligibility. A displaced mobile home owner-occupant or tenant-occupant is eligible to receive a moving expense payment to the same extent and subject to the same requirements as persons displaced from conventional dwellings, except:
 - a) A displaced non-occupant owner of a mobile home that meets the definition of a business (see 49 CFR 24.2(a)(4)) is eligible for reimbursement of actual and reasonable moving and related expenses under 49 CFR 24.301(d), including the reasonable cost of moving the mobile home, only.
 - b) An owner-occupant who obtains a replacement housing payment under one of the circumstances described in 49 CFR 24.502(a)(3)(i)-(iv) is eligible for a payment for moving personal property from the mobile home, but is not eligible for payment for moving the mobile home.
 - c) A displaced owner-occupant or tenant-occupant of a mobile home that is determined to be personal property and that is not relocated and reoccupied on a replacement site (e.g., mobile home cannot be moved due to age or condition), is eligible for the cost of one or a combination of the following: (1) actual moving and related expenses incurred for moving their personal property under 49 CFR 24.301(g)(1)-(7), (2) a fixed payment for moving expense under 49 CFR 24.302, or (3) a commercial move of their personal property performed by a professional mover.

NOTE: Neither the URA nor the implementing regulations provide payment for moving real property. The URA places the determination of real property under State law when the acquiring Agency is a State agency receiving Federal financial assistance. Federal and State laws require that those items considered to be real property under State law must be appraised and acquired as part of the real estate being acquired, while items considered to be personal property under state law must be moved in accordance with the URA. The determination of real property versus personal property is required during the appraisal stage (see 49 CFR 24.103(a)(2)(i)).

- 2) Moving and Related Expenses. Moving cost payments to persons occupying mobile homes are covered in 49 CFR 24.301(g)(1) through (g)(10). Additional eligible expenses include payment for:

- a) Moving the mobile home (including packing, securing and unpacking any items of personal property); and
- b) Modifications to the replacement site, such as construction of a pad, drilling of a well, or installation of a septic tank, if the Agency determines that it is practical to do so.

3) Partial Acquisition of Mobile Home Park (49 CFR 24.501(b)).

B. Replacement Housing Payments (49 CFR 24.502 and 24.503).

1) Replacement Housing Payment is Based on Dwelling and Site. Both the mobile home and mobile home site must be considered when computing a replacement housing payment. (A displaced mobile home occupant may have owned the displacement mobile home and rented the site, or rented the displacement mobile home and owned the site, or owned both the mobile home and the site, or rented both the mobile home and the site.)

Also, a displaced mobile home occupant may elect to purchase a replacement mobile home and rent a replacement site, rent a replacement mobile home and purchase a replacement site, purchase both a replacement mobile home and replacement site, or rent both a replacement mobile home and site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable requirements in 49 CFR 24.401 and 49 CFR 24.402.

a) Example No. 1. A **displaced 90-day owner-occupant** of a mobile home who rented the displacement site may be eligible for a replacement housing payment for a dwelling computed under 49 CFR 24.401 and a replacement housing payment for a site computed under 49 CFR 24.402.

b) Example No. 2. A **displaced 90-day owner-occupant** of both the mobile home and site who relocates the mobile home may be eligible for a replacement housing payment under 49 CFR 24.401 if the person purchases a replacement site. If such person elects to rent a replacement site, rather than buy, the person may qualify for a payment under 49 CFR 24.402(b) to help rent a site.

2) Replacement Housing Payment **for 90-Day Mobile Homeowner** Displaced from a Mobile Home and/or from the Acquired Mobile Home Site (49 CFR 24.502).

3) Replacement Housing Payment for 90-Day Mobile Home Occupants (49 CFR 24.503). A displaced 90-day mobile home occupant is eligible for a

replacement housing payment computed in accordance with 49 CFR 24.402.

3-10 TEMPORARY RELOCATION (See Paragraph 2-6). An owner-occupant or tenant-occupant who must move temporarily should be reimbursed for moving expenses to and from the temporary location, and payment of increased housing costs during the period of relocation.

A. Optional Claim Form. A copy of the form "Claim for Temporary Relocation Expenses (Residential Moves)," is contained in Appendix 15. (**NOTE:** This form is a draft, pending OMB approval.) The form is optional; however, if the form is not used, documentation must be included in the Agency's files to support the amounts claimed and paid (see Chapter 6).

Compliance with Section 504 of the Rehabilitation Act

To comply with Section 504 of the Rehabilitation Act, as implemented by 49 CFR part 24 and HUD's regulations at 24 CFR part 8, the Agency must take steps to ensure that no displaced person with disabilities is excluded from participating in, denied the benefits of, or subjected to discrimination in the provision of relocation assistance because of the person's disability. Such steps include:

- a) Determining the accessible features of housing from which persons with disabilities will be displaced, as well as any other accessible housing needs (49 CFR 24.205(a)(1) and section 2-2.B.2 of this Handbook). For public housing and Housing Choice Vouchers this could entail updating section 5 of form HUD-50058, Family Report.
- b) Ensuring that communications are effective (24 CFR 8.6) and that facilities for meetings, counseling, and other informational activities are accessible (24 CFR 8.21).
- c) Providing reasonable accommodations (e.g., providing transportation assistance to locate comparable housing) at the request of a displaced person who is disabled (24 CFR 8.4) See also Departmental program notices - for example: Notice CPD-05-10 (CDBG), CPD-05-09 (HOME), PIH 2006-13 (public housing and Housing Choice Voucher programs), PIH 2006-38 (NAHASDA), and H 04-19 (Section 202, Section 811, and insured multifamily housing). (Also see 49 CFR 24.205(c) and Paragraph 2-4 of this Handbook.)
- e) If comparable replacement housing is not available on a timely basis, using replacement housing of last resort (See 49 CFR 24.404 and Paragraph 3-8 of this Handbook).
- f) Inspecting replacement housing to ensure that it is decent, safe, and sanitary - e.g., free of barriers to the person's ingress, egress, adequate in size to accommodate the occupants, and includes other features to meet the accessibility needs of the displaced person with disabilities (49 CFR 24.2(a)(8)(vii) and Paragraph 3-7(A) of this Handbook).
- g) Maintaining records of the above steps and making them available for inspection by HUD (24 CFR 8.55).

CHAPTER 4

Relocation Payments - Businesses, Farms & Nonprofit Organizations

4-1 PURPOSE OF THIS CHAPTER. This Chapter describes the relocation payments to be provided to a displaced business, farm or nonprofit organization. Required advisory assistance is described in Chapter 2. (Note: The URA regulations require a personal interview with each displaced business. See 49 CFR 24.205(c)(2)(i) for additional information and a list of minimum interview requirements.)

4-2 PAYMENTS FOR MOVING AND RELATED EXPENSES. ¹

A. Two general moving options are available to an eligible displaced business, farm or nonprofit organization under the URA:

- 1) Payment of actual, reasonable and necessary moving and related expenses.
In addition to the payment of actual, reasonable and necessary moving costs, a small business (defined in 49 CFR 24.2(a)(24)) may also be eligible for the actual, reasonable and necessary costs of reestablishment **up to \$25,000**; or
- 2) A fixed payment, in lieu of payment of actual, reasonable and necessary moving costs and reestablishment expenses. An eligible business, farm or nonprofit organization may be eligible for a fixed payment of no less than \$1,000 and no more **than \$40,000** (see 49 CFR 24.305).

4-3 PAYMENT FOR ACTUAL REASONABLE MOVING & RELATED EXPENSES (49 CFR 24.301(d)).

A. Any business, farm or nonprofit organization that qualifies as a displaced person (defined in 49 CFR 24.2(a)(9); see also Chapter 1, Paragraph 1-4, I. of this handbook) is entitled to payment of actual moving and related expenses, as the agency determines to be reasonable and necessary.

- 1) Moves From a Business, Farm or Nonprofit Organization. Personal property, as determined by an inventory, from a business, farm or nonprofit organization may be moved by one or a combination of the methods described at 49 CFR 24.301(d)(1) & (d)(2).
- 2) Eligible Actual Moving Expenses. Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in 49 CFR 24.301(g)(1) through (g)(7), (g)(11) through (g)(18) and 24.303.

¹ See CPD-14-09 Moving Ahead for Progress in the 21st Century Act (MAP-21)

3) Actual Direct Loss of Tangible Personal Property (49 CFR 24.301(g)(14) and Appendix A, Section 24.301(g)(14)(i) & (ii)).

- a) Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for the actual direct loss of tangible personal property which is incurred as a result of the move or discontinuance of the operation. This payment provides a displaced business with the option to receive an alternate payment for certain items of personal property it may not want or need to move to the replacement location. This payment is also a useful option for businesses which decide to go out of business as a result of displacement. Generally, this payment option is used in connection with outdated equipment, old merchandise or other items a displaced business no longer wants or needs for its business operation.
- b) This payment is generally based on the lesser of the value of the item for continued use "as is" at the displacement site minus the proceeds from its sale, *or*, the estimated cost of moving the item, but with no allowance for storage nor any costs to reconnect equipment not in use or in storage. It is also important to note the cost of reinstallation for equipment in use does not include code modifications that would be required at the replacement location.

4) Purchase of Substitute Personal Property (49 CFR 24.301(g)(16)).

- a) Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for substitute personal property in connection with a move to the replacement location. This payment generally provides a displaced business with the ability to modernize or replace equipment rather than move outdated or obsolete items.
- b) This payment is generally based on the lesser of the cost of the substitute item, including installation cost, minus the proceeds from the sale or trade of the replaced item, *or*, the estimated cost of moving and reinstalling the replaced item, but with no allowance for storage. The cost of moving and reinstalling the replaced item includes code modifications that would be required at the replacement location.

5) Low Value/High Bulk (49 CFR 24.301(g)(18)). If an agency considers an item of personal property to be of low value and high bulk, and the moving costs exceed its value (such as stockpiled sand, gravel, minerals, metals, etc.), the agency may consider offering this payment option. The allowable moving cost payment shall not exceed the lesser of the amount

which would be received if the property were sold at the site, or, the replacement cost of a comparable quantity delivered to the new business location. If the agency considers using this payment option, it is important for the agency to distinguish between items which may have been acquired as real estate and, therefore, are not considered personal property eligible for moving. Additionally, since the displaced business is not actually receiving a payment to move the personal property, the displaced business is not obligated to move the personal property. An agency should therefore consider the consequences of leaving the personal property at the displacement site.

- 6) Ineligible Moving and Related Expenses (49 CFR 24.301(h)).
- 7) Notification and Inspection (49 CFR 24.301(i)). In order to be eligible for a payment under 49 CFR 24.301, a displaced business, farm or nonprofit organization must provide the agency with reasonable advance notice of the approximate date of the move or disposition of the personal property, an inventory of items to be moved; and permit the agency to make inspections of the personal property at both the displacement and replacement location and monitor the move. Agencies must inform the displaced business, farm or nonprofit organization in writing of these requirements as soon as possible after the initiations of negotiations (ION) (as defined in 49 CFR 24.2(a)(15); see also Chapter 1, Paragraph 14, T. of this handbook).
- 8) Personal Property Inventory (49 CFR 24.301(i)(1), 24.301(d), 24.103(a)(2)(i) & Appendix A, Section 24.103(a)(1)). An inventory of personal property to be moved is required for all businesses, farms and nonprofit organizations. An inventory provides the basis of all nonresidential moves. In connection with acquisition-related displacement, an inventory helps to differentiate between items considered real property in the appraisal which will be acquired and the personal property which will need to be moved. An inventory is especially important in situations where a businesses' inventory fluctuates in order to establish what is on hand to be moved. Substantial changes from the original or pre-move inventory should be addressed or reflected in an adjusted cost for the move. The inventory stage of the moving process is critical and early involvement by relocation staff is essential.
- 9) Transfer of Ownership of Personal Property (49 CFR 24.301(j)).

4-4 PERSONAL PROPERTY ONLY MOVES (49 CFR 24.301(e) and Appendix A, Section 24.301(e)). In some cases a displaced person is required to move personal property from real property but is not required to move from a business, farm, or nonprofit organization. In such a situation, eligible expenses include those described in 49 CFR 24.301(g)(1) through (g)(7) and (g)(18). One example

of a personal property only move could be moving storage containers located on a portion of real property being acquired. The business is not impacted and can still operate on the remainder of the site after the acquisition. The agency may pay to move the containers to the remainder site or another site.

4-5 RELATED NONRESIDENTIAL ELIGIBLE EXPENSES (49 CFR 24.303 and Appendix A, Section 24.303(b))

A. In addition to eligible expenses for moving personal property provided in 49 CFR 24.301, the following expenses shall be paid if the agency determines that they are actual, reasonable and necessary.

- 1) Connection to Available Nearby Utilities from the Right-of-Way to Improvements at the Replacement Site. This payment covers extending utilities (electricity, water, gas, sewer, etc.) from the access point (right-of-way) to the new business site (improvements), provided such costs are actual, reasonable and necessary.
- 2) Professional Services to Determine a Sites' Suitability for the Displaced Person's Business Operation. This payment covers professional services performed prior to the purchase or lease of the replacement site to determine its suitability for the displaced business' operation. These services may include soil testing, feasibility and marketing studies, but do not include fees or commissions related to the purchase or lease of the site. Agencies should consider establishing a reasonable pre-approved hourly rate for these services in advance of their use. If there are questions pertaining to what a reasonable rate for these services may be, the agency should research rates other providers are charging for comparable services. It should be noted, however, that if the displaced business has these services provided by regular employees or contractors of the business, such as a staff engineer or an attorney on retainer, then these services would be considered the ordinary costs of the business and would not be eligible for reimbursement.
- 3) Impact Fees or One Time Assessments for Heavy Utility Usage as Determined Necessary by the Agency. This payment covers reimbursement of impact fees for anticipated heavy utility usage when the move requires the business to move to a new location where impact fees for anticipated heavy utility usage are being charged. If suitable replacement sites or properties are available where impact fees for anticipated heavy utility usage are not required, reimbursement is at the agency's discretion, based on what is reasonable and necessary. The regulation limits impact fees or one time assessments to anticipated heavy utility usage, (i.e., water, sewer, gas, and electric). Impact fees or one time assessments in connection with roads, schools, fire stations, regional drainage improvements, parks, etc. for example, are not eligible for

reimbursement. Relocation advisory services are crucial when considering potential eligibility of expenses under this section of the regulations.

- 4-6 REESTABLISHMENT EXPENSES (49 CFR 24.304). In addition to eligible expenses for moving personal property provided in 49 CFR 24.301 and related nonresidential eligible expenses provided in 49 CFR 24.303, a small business (as defined in 49 CFR 24.2(a)(24)), farm, or nonprofit organization may be eligible for a payment, not to exceed \$-25,000, for expenses actually incurred in relocating and reestablishing at a replacement site.

A. Eligible Reestablishment Expenses (49 CFR 24.304(a)).

B. Ineligible Reestablishment Expenses (49 CFR 24.304(b)).

- 4-7 FIXED PAYMENT FOR MOVING EXPENSES (49 CFR 24.305 and Appendix A, Section 24.305).

A. In lieu of payment for all actual reasonable moving expenses under 49 CFR 24.301, all related nonresidential eligible expenses under 49 CFR 24.303 and all reestablishment expenses under 49 CFR 24.304, an eligible displaced business, farm or nonprofit organization may choose a fixed payment for moving expenses. Such fixed payment shall be not less than \$1,000 and no **more than \$40,000**. Although not a requirement, this payment is a useful option for businesses which may choose to go out of business as a result of relocation. It also helps reduce the administrative burden for both the displaced business and the agency, since no documentation of actual moving or reestablishment expenses is required.

B. A fixed payment is generally based on a business' average annual net earnings. However, a fixed payment for a nonprofit organization is determined differently and is based on its average gross revenues minus administrative expenses. The regulations and appendix provide detailed information on eligibility requirements as well as computation methods for this payment. It is important to remember that if a displaced business, farm or nonprofit organization chooses this payment, it is then precluded from receiving reimbursement for all other moving and reestablishment expenses.

- 4-8 TEMPORARY RELOCATION (49 CFR 24.2(a)(9)(ii)(D) and Appendix A, Section 24.2(a)(9)(ii)(D)). Agencies must exercise caution and plan accordingly, if a proposed project requires a business to temporarily cease operations due to rehabilitation. In the event a business will be shut down for any length of time due to rehabilitation of a site or building, it may be either: 1) temporarily relocated and reimbursed for all reasonable out of pocket expenses or 2) be determined to be permanently displaced at the agency's option.

CHAPTER 5

Real Property Acquisition

5-1 INTRODUCTION

- A. Purpose of Chapter. This chapter provides policies and guidance relating to the acquisition of real property (real estate) for HUD funded programs and projects under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and other HUD requirements. The policies and guidance found in this handbook supplement the statutory and regulatory requirements of the URA. Recipients must ensure compliance with the URA statute and implementing regulations at 49 CFR Part 24.
- B. General URA Acquisition Process (Appendix 23).

5-2 APPLICABILITY OF URA ACQUISITION REQUIREMENTS

- A. Voluntary vs. Involuntary Acquisition. 49 CFR Subpart B sets forth the real property acquisition requirements for Federal and federally-assisted programs and projects under the URA. Generally, the URA regulations have different requirements for acquisitions of a voluntary nature and for acquisitions under threat or use of eminent domain (condemnation). For ease of understanding, this chapter refers to the different types of acquisitions as: 1) Voluntary acquisitions (transactions with no threat or use of eminent domain meeting the criteria set forth in 49 CFR 24.101(b)(1) through (5)); and 2) Involuntary acquisitions (acquisitions subject to threat or use of eminent domain). Under the URA, voluntary acquisitions which satisfy the requirements of 49 CFR 24.101(b)(1)-(5) are not subject to the acquisition requirements of 49 CFR Part 24 Subpart B. A common misconception is that a “willing seller” or “amicable agreement” means a transaction is “voluntary.” This is not necessarily true under the URA and the applicable requirements of 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered a “voluntary acquisition” for purposes of the URA.
- B. Understanding the difference. Recipients must understand the critical differences between “voluntary” acquisitions and “involuntary” acquisitions prior to acquiring real property for a HUD funded project. See the aforementioned regulations and Appendix 23 to determine how your proposed acquisition should be handled. If you are uncertain or have questions how your proposed acquisition should be treated under the URA regulations, contact your local HUD Regional Relocation Specialist for assistance. A list of HUD contacts is accessible on HUD’s Real Estate Acquisition and Relocation web site at: <http://www.hud.gov/relocation>.

- C. Temporary Easements. 49 CFR 24.101(c)(1) provides that the subpart B requirements apply to the acquisition of permanent and/or temporary easements necessary for the project. However, 49 CFR 24.101(c)(2) provides an exception for the acquisition of temporary easements which exclusively benefit the property owner. 49 CFR 24.101(c)(2) states that, *“The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.”* The acquisition of temporary easements which do not satisfy the exception provided in 49 CFR 24.101(c)(2) above remain subject to the regulatory requirements of 49 CFR part 24 subpart B. It is also important to note that “voluntary acquisitions” of temporary easements which satisfy the applicable requirements of 49 CFR 24.101(b)(1)-(5) are not subject to the full URA regulatory requirements of 49 CFR part 24 subpart B.
- D. Greatest Extent Practicable Under State Law (49 CFR 24.4(a)).¹ The phrase “greatest extent practicable under state law” means: if the State is not specifically precluded by its law, compliance with the URA and regulatory provisions of sections 24.102, 24.103, 24.104 and 24.105 is required.

5-3 VOLUNTARY ACQUISITIONS (49 CFR 24.101(b)(1)-(5))

- A. Persons Acting on Behalf of Agency. In cases where persons (e.g., private developer, agent, non-profit organization, etc.) pursue the acquisition of real property “officially or unofficially” on behalf of an agency for a federally-funded project, such persons must satisfy the applicable voluntary acquisition requirements of 24.101(b)(1)-(5). In the event the person is acting on behalf of an agency with eminent domain authority, all applicable requirements of 24.101(b)(1) must be satisfied. In no case is it permissible for an agency to subsequently undertake the acquisition under threat or use of its eminent domain authority in the event initial negotiations for a voluntary acquisition fail. If the agency cannot ensure the applicable requirements of 24.101(b)(1)(5) will be satisfied, then such acquisitions must not be pursued as a “voluntary acquisition” and must instead be pursued as an involuntary acquisition under the full requirements of 49 CFR 24 Subpart B.
- B. Non-Profit Organizations (NPOs). The acquisition activities of NPOs are subject to Uniform Act coverage if such activities are for a Federal or federally-assisted program or project. Pertinent considerations in determining whether an acquisition is “for” a program or project include (but are not limited to) (1) when HUD assistance was requested and (2) whether the acquisition is integrally related to the program or project.

¹ U.S. Department of Transportation-Federal Highway Administration **Federal-Aid Policy Guide**; February 16, 2006, Transmittal 35

- 1) An NPO usually does not have recourse to the power of eminent domain. Under such circumstances, the obligation imposed by the Uniform Act would be limited. The NPO would ordinarily comply with 49 CFR 24.101(b)(2) in the acquisition of property and 49 CFR 24.2(a)(9)(ii)(H) in providing relocation assistance. See also paragraph 5-3A.
- 2) The requirements for acquisition under Section 24.101(b)(2) are: (1) The owner must be advised that the property will not be acquired in the event negotiations fail to result in an amicable agreement, and (2) the owner must be advised, in writing, of what is believed to be the market value of the property. The regulations do not require that relocation assistance be offered to an owner-occupant. However, any resulting displacement of a tenant is subject to the regulations in 49 CFR Part 24.

C. Property Owner Notification. Based on requests from recipients, sample letters which may serve to provide required information to property owners in voluntary acquisitions under 24.101(b)(1) & (b)(2) are included as Appendices 31 & 32. These sample letters are not required to be used, however, they are useful guides to help recipients satisfy the regulatory requirements of this section. See also paragraph 5-4A.

D. Tenant Notification. If a voluntary acquisition of tenant-occupied property will result in the displacement of the tenant-occupants, they will generally be eligible for relocation assistance. Upon issuance of a voluntary acquisition informational notice (see Appendix 31 & 32) and entering into negotiations for the property, tenant-occupants must be fully informed in writing of their potential eligibility for relocation assistance.

- 1) The preliminary tenant notification may be accomplished through a General Information Notice (GIN) (see Appendices 3 & 3a). Such tenant-occupants must also be promptly informed in writing of their eligibility for relocation assistance, if negotiations are successful and result in a written agreement binding the acquiring agency to purchase the property from which the tenant will be displaced. In order to trigger a tenant-occupant's eligibility for relocation assistance, the written agreement must subject the acquiring agency and owner to legally enforceable commitments to proceed with the purchase. In the event negotiations are unsuccessful, tenant-occupants must also be promptly informed in writing of their ineligibility for relocation assistance. See 49 CFR 24.2(a)(15)(iv) Initiations of Negotiations and Appendix A.
- 2) Prior to entering into any agreement to purchase property in connection with a voluntary acquisition, agencies should ensure they are allowed access to tenant-occupants who may be displaced as a result of the acquisition. Agency access to tenant-occupants should be made part of any offer or option contract for voluntary acquisitions. Tenant access is

necessary to not only ensure required notifications are provided, but also so that interviews with tenant-occupants may be conducted. Interviews are necessary for early identification of potential relocation challenges and to accurately estimate relocation costs associated with tenant displacement. Information obtained as a result of tenant access and interviews provides agencies with useful information to determine whether to proceed with a proposed acquisition or to pursue alternate properties.

- 3) Where a property owner will not allow an agency to have tenant access, the agency should pursue alternate properties where such access will be granted.

E. Estimates of Market Value. In cases of voluntary acquisitions under 49 CFR 24.101(b)(1)(iv) & (b)(2)(ii) agencies must inform the property owner in writing of what it believes to be the market value of the property (See 49 CFR 24 Appendix A). Although an appraisal is not required by regulation in these circumstances, HUD encourages the use of an appraisal in order to establish the agency's estimate of market value, especially for high value and/or complex property acquisitions. In some cases it would be both prudent and appropriate to conduct a technical appraisal review of such appraisals in accordance with section 24.104 as part of the recipient's market value determination process. If an appraisal is not prepared, the estimate of market value must be prepared by a person familiar with real estate values. The agency's files must include an explanation, with reasonable evidence, of the basis for the agency's estimate of market value.

F. Negotiations. In the case of voluntary acquisitions under the URA, there is nothing in the regulations to preclude negotiations resulting in agreements at, above, or even below the agency's estimate of market value after the property owner has been so informed and all applicable requirements have been satisfied. See 49 CFR part 24 - Appendix A 24.101(b)(1)(iv) & (2)(ii) & HUD RAP Vol. 1 No. 2 - dated 11/2005.

- 1) Recipients should consider alternative properties available for purchase prior to entering into any agreement for property which exceeds the original estimate of market value. Subject to applicable program requirements, alternative properties must be pursued when proposed agreements which exceed the recipient's original estimate cannot be legitimately supported and justified.
- 2) Documentation and support for all agreements (at, below, or above the original estimate) must be at an appropriate level to satisfy a HUD technical review. All such agreements are subject to HUD review and corrective action when deemed necessary (see also paragraph 5-4 H).

G. Title Issues. In voluntary acquisitions, agencies should not pay costs required to perfect the owner's title to the real property to be acquired. Agencies should require owners to transfer the property with clear title; without heirship, title dispute, or other title problems such as liens.

H. Noncompliance with Voluntary Acquisition Requirements. In those cases where an agency has entered into a purchase option or contract for an acquisition but has not satisfied all applicable requirements of a voluntary acquisition under 24.101(b)(1)-(5), the agency must, in writing, provide the seller the opportunity to withdraw from the existing agreement. After the applicable requirements have been satisfied by the agency and the seller has been so informed in writing, the seller may elect to void or affirm the original agreement in writing. If the seller voids the original agreement, the agency can negotiate a new agreement with the seller. Additional corrective action may be required based on the circumstances as determined by the local HUD Regional Relocation Specialist.

5-4 INVOLUNTARY ACQUISITION BASIC REQUIREMENTS

A. Notice to Owner (49 CFR 24.102(b)). This acquisition notice usually serves as an agency's initial written communication to an owner whose property may be acquired for a federally-funded project under threat or use of eminent domain. This notice is required to be issued in writing and provides information on the basic protections for property owners under the Uniform Act and regulations. Agencies may satisfy this requirement by providing, as appropriate, the HUD information brochure, "When a Public Agency Acquires Your Property" (HUD-1041-CPD) available through HUD Field Office locations or from HUD's web site at <http://www.hud.gov/relocation>. Records of when this written notice was issued must be maintained for HUD monitoring purposes. Sample language for a "notice to owner" is included as Appendix 30.

- 1) Agencies must understand the difference between a "notice to owner" and a "notice of intent to acquire" (49 CFR 24.203(d)). Whereas a "notice to owner" sets forth minimum rights and protections for property owners under the URA, a "notice of intent to acquire" is specifically intended to establish eligibility for relocation assistance and payments in advance of the usual URA triggering actions.
- 2) If the agency does not know whether or not the property is tenant-occupied, the notice to owner should ask for this information. Tenant-occupants would be considered displaced persons and could impact the agency's decision to go forward with the purchase because of the financial implication of relocation costs.

- 3) If the property is tenant-occupied, a General Information Notice should be issued to each tenant as soon as feasible (which may be at the time of the Notice to the Owner or, if the agency was unaware that the property was tenant-occupied, as soon as the agency becomes aware of the tenant(s)).

B. Notification Requirements for Time Share Condominium Owners.[□]

Acquisition notification of property owners in a time-share condominium may be accomplished by advising the homeowners' association, which in turn may notify the condominium owners via a homeowners' association meeting. The appraiser may participate in the meeting to satisfy the requirement that the homeowners be given the opportunity to accompany the appraiser during the property inspection.

C. Establishment of Just Compensation Cannot be Delegated (49 CFR

24.102(d)).* The establishment of an amount believed to be just compensation for federally-funded projects cannot be delegated to a private consultant. It would be an improper delegation of a public function to a private entity. Establishment of the amount believed to be just compensation to be offered the property owner must be by an appropriate official of the acquiring agency.

D. Property Owner with Conflict of Interest. A conflict of interest exists whenever the owner of an interest in real property that is to be acquired for a HUD-assisted project serves as an officer, employee, or agent of the recipient or its designated acquiring agent or exercises any other responsible function in connection with that project. See, e.g., 24 CFR 570.611. A recipient must establish safeguards to prohibit employees, officers, and agents from using their position for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. The recipient must document its files to enable HUD to review the adequacy of actions taken. Recipients should refer to applicable HUD program regulations for applicable conflict of interest requirements.

- 1) Examples of Safeguards: Among the various measures which a recipient could adopt to prevent the possibility of undue personal enrichment by real property owners who may be in a conflict of interest position are:²

- a) Disclosure. The recipient may require disclosure of any potential conflict of interest to the governing body of the locality, to the recipient's legal counsel, and as otherwise may be appropriate.

□ "See footnote 1 on p. 5-2"

² The following safeguards are intended to supplement (not replace) any applicable program requirements for addressing conflicts of interest (see, e.g. 24 CFR 570.611(d)).

- b) HUD Price Concurrence. The recipient may request that HUD review the appraisals and the determination of just compensation and concur in the proposed and final acquisition prices.
- c) Condemnation. The recipient may acquire the property through condemnation and let the court determine just compensation for the property. This is especially appropriate if the owner is unwilling to sell his or her property for its appraised fair market value.

E. Waiver Valuations. An appraisal is not required for cases involving acquisition by sale or donation of real property with a low fair market value (Section 301(2)). This provision of the law is further defined and implemented by the URA regulations at 49 CFR 24.102(c), which in part sets forth that an appraisal is not required when the "...Agency determines the appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data." If these criteria are met, the Agency may prepare a waiver valuation, provided the person performing the waiver valuation has sufficient understanding of appraisal principles and the local real estate market to be qualified to prepare it. The term "Waiver Valuation" is defined at 49 CFR 24.2(a)(33).

1) A waiver valuation is not appropriate when:

- a) The anticipated value of the proposed acquisition is expected to exceed \$10,000 (unless granted prior approval by HUD and the acquiring agency offered the owner the option of an appraisal);
- b) Possible damages to the remainder property exist;
- c) Questions on highest and best use exist;
- d) The valuation problem is complex;
- e) The use of eminent domain is anticipated;
- f) Hazardous material/waste may be present; or
- g) For other reasons, the agency determines an appraisal is required.

2) Written procedures for use of a waiver valuation should be established by an Agency prior to its use. When a waiver valuation is determined to be appropriate, adequate documentation of the valuation data used must be maintained in the acquisition file for HUD monitoring purposes.

F. Exclusion of Cost-to-Cure From Waiver Valuation Limits.^{*} Generally, the cost-to-cure cannot be excluded from the \$10,000 waiver valuation limit. However, under certain circumstances, specified items may be excluded from the waiver valuation limits. Some common costs-to-cure related to repetitive contracting for the restoration of items, such as well and septic systems, may be considered for exclusion from waiver valuation limits. The acquiring

* "See footnote 1 on p. 5-2."

agency's procedures should include a definitive policy for handling such items to ensure that there is no duplication of payment in the valuation process.

- G. Waiver Valuations – Exceeding \$10,000 Limit. If the anticipated amount of a waiver valuation is expected to exceed \$10,000 but is less than \$25,000, the agency may request HUD prior approval to exceed the \$10,000 regulatory limit. However, in cases where an increased threshold is granted, the agency must still offer the property owner the option of having the agency appraise the property (see 49 CFR 24.102(c)(2)(ii)(C)).
- 1) All requests for approval of a threshold above \$10,000 (not to exceed \$25,000) for a HUD-funded project should be submitted to the appropriate HUD Regional Relocation Specialist who has responsibility for the State in which the project is located. A list of the HUD Regional Relocation Specialists located in the Office of Community Planning and Development (CPD) can be found on HUD's relocation website at: www.HUD.gov/relocation under "Contacts."
 - 2) The agency request must include its written waiver valuation operating procedures and documentation to support the waiver request including: identification of the project or projects for which a higher threshold is requested, the threshold amount requested, identification of the person or persons who will be authorized by the agency to perform the waiver valuation in lieu of an appraisal, a description of the qualifications of each named person to perform such a valuation based on sufficient understanding of the local real estate market, and proof that the agency offered the property owner the option of having the agency appraise the property.
 - 3) The Regional Relocation Specialist will review the request and consult with appropriate staff from the HUD program area(s) funding the project (CPD, Public and Indian Housing, and/or Housing). The Regional Relocation Specialist will prepare a memorandum addressed to the Field Office CPD Director in whose jurisdiction the project is located, recommending approval or disapproval of the request with appropriate justification. Copies will be provided to the appropriate HUD program areas.
 - 4) The Field Office CPD Director in whose jurisdiction the project is located will approve or disapprove of the request.
 - 5) If an increase in the waiver valuation threshold is granted by HUD, it is strongly recommended that the agency secure the property owner's agreement to accept a waiver valuation (in lieu of an appraisal) in writing, prior to preparation of the waiver valuation. In any event, the property owner's signature acknowledging the agency's offer of an appraisal and

the property owner's acceptance of a waiver valuation must be included in the agency's acquisition file whenever the waiver valuation amount exceeds \$10,000.

H. Administrative Settlements. Two acquisition related objectives of the URA are "...to encourage and expedite acquisition by agreement..." and "...to minimize litigation and relieve congestion in courts...". The administrative settlement provisions of 49 CFR 24.102(i) are intended to help acquiring agencies achieve these objectives when warranted. Administrative settlements may be considered when reasonable efforts to negotiate an agreement at the amount offered have failed and a settlement would be deemed reasonable, prudent, and in the public interest. Although not a requirement, agencies should consider preparing another appraisal and appraisal review to help determine if a proposed administrative settlement is warranted. Preparation of an additional appraisal and appraisal review can be a cost effective tool used in the administrative settlement process, especially in cases where a substantial increase over the amount of the original offer is under consideration.

- 1) Under the URA administrative settlement provisions, when federal funds pay for or participate in acquisition costs, agencies must document and maintain written justification for the higher amount. The justification must state what available information, including trial risks, supports exceeding the original estimate of market value. The level of documentation should fit the situation. A minor increase in the purchase price will typically require less support than larger increases. Documentation and support for administrative settlements must also be at an appropriate level to demonstrate compliance with applicable program requirements in the case of such reviews or audits as may be necessary and appropriate. All such agreements are subject to HUD review, and failure to provide such documentation may lead to corrective action when determined necessary.
- 2) Acquiring agencies must also comply with applicable HUD program regulations and/or policies in negotiating agreements for a property which exceeds the agency's market value determination. If there is a conflict, HUD program regulations and/or policies prevail.
- 3) If HUD grant funds are used to acquire properties, acquiring agencies must also be guided by the applicable OMB Circulars when considering the original estimate of market value and any agreement which exceeds that amount. A fundamental requirement in the OMB Circulars is that costs charged to a federal grant must be reasonable. OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments," in particular, provides that costs must "[b]e necessary and reasonable for proper and efficient performance and administration of Federal awards."

Each OMB Circular provides additional guidance on determining whether a cost is reasonable.

- a) For states, local, and Indian tribal governments, OMB Circular A-87 provides as follows:
 - (1) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:
 - (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award,
 - (b) The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award,
 - (c) Market prices for comparable goods or services,
 - (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government,
 - (e) Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.
- 4) Use of Administrative Settlements in Acquisitions.* Negotiation implies an honest effort to resolve differences with property owners. Negotiators should recognize the inexact nature of the process by which just compensation is determined. Administrative settlements may expedite agreements with owners. The administrative settlement process should be maintained separate from the appraisal/appraisal review function. If the support for a settlement is to be based on appraisal-related issues, then a revised fair market value/just-compensation determination should be made. Administrative settlements are simply that; i.e., settlements made for administrative reasons considered to be in the public interest and properly documented. The law requires acquiring agencies to attempt to expedite acquisitions by agreements with owners so as to avoid litigation and relieve congestion in the courts. There are also significant cost savings in the use of administrative settlements as shown by cost data from the Department of Justice.

* "See footnote 1 on p. 5-2."

- 5) Justification for Administrative and Legal Settlements.* Any administrative settlement is a management decision with advantages and disadvantages. Trial costs can be substantial and must be weighed against the impact that a settlement may have on subsequent negotiations with other owners. Agencies are given considerable discretion in how to deal with such circumstances. The requirements of 49 CFR 24.102(i) are intended to ensure that an acquiring agency explains the reasoning behind its decision, which then serves as documentation for participation in the cost above the initial offer. Such documentation is also required for legal settlements.

- 6) Prohibition of Inclusion of Relocation Payments as Support for Administrative Settlements.* Section 203 of the Uniform Act defines a replacement housing payment as "the amount, if any, when added to the acquisition cost of the dwelling acquired by the Federal agency equals the reasonable cost of a comparable dwelling...." 49 CFR 24.401(b) contains similar language. The acquisition cost of a dwelling includes the amount of just compensation determined through the appraisal process, and those additional amounts paid by the acquiring agency as an administrative settlement, legal settlement, or condemnation award. Relocation payments are not an acquisition cost and cannot be used to support an administrative settlement in whole or in part. Administrative settlements must be justified on acquisition issues only.

- 7) Administrative Settlements on Parcels Where Waiver Valuations are Used (49 CFR 24.102(i)). Section 24.102(c)(2)(ii) provides for the acquisition of parcels without an appraisal when the estimated just compensation for the parcel is \$10,000 or less. Section 24.102(i) provides for administrative settlements when negotiations at the initial offer have failed. An administrative settlement can be made for an amount greater than \$10,000, with proper justification and documentation. When the estimated just compensation for the parcel is \$10,000 or less, the regulations do not require that an appraisal be prepared for a reasonable administrative settlement figure in excess of \$10,000. If the acquiring agency and the owner cannot reach agreement on an amount that the agency deems reasonable, an appraisal and a review would then seem advisable. The URA regulations do not place a monetary limit on administrative settlements that would automatically trigger the requirement for an appraisal. The agency may elect to impose such a limit (see also subparagraph 3). Title III of the Uniform Act and 49 CFR Part 24 clearly allow some administrative discretion when the amount in question is relatively minor. An administrative settlement may be the most prudent course of action available.

* "See footnote 1 on p. 5-2."

I. Condemnation.

- 1) Waiver of Rights relative to Withdrawal of Court Deposit.* In some jurisdictions, if a property owner withdraws any portion of a court deposit in a condemnation action, the withdrawal of deposit causes the property owner to automatically waive the right to challenge the taking. An automatic waiver of the right to challenge the taking is inconsistent with the requirements of the Uniform Act. The withdrawal of funds should not prejudice the property owner's right to request a judicial review of the necessity of the acquisition. Deposited funds may be the only resources available to the property owner, since the property has been encumbered by a condemnation filing.
- 2) Withholding of Payment in Lieu of Security.* The procedure of withholding a portion of the salvage value of owner-retained improvements in lieu of a security deposit or bond to guarantee clean-up of the acquired site is permissible. Every property owner is to be offered the full amount of just compensation, but may elect to retain improvements. When improvements are retained in this manner, it is considered good business practice to hold sufficient funds to ensure proper clean-up of the premises. Additional benefits are also provided through reduced administrative costs.
- 3) Compensation Funds Deposited with Court at Time of Filing for Condemnation. Filing condemnation actions without concurrent deposit of just compensation funds has a clear potential for coercion of affected property owners. The conclusion of condemnation proceedings and physical possession normally take place sometime later. In the intervening period, the landowner must pay the property taxes, is precluded from selling or refinancing the property, or benefiting from any appreciation in value of the property. This practice, particularly where long delays are experienced between the initial filing of condemnation action and the deposit of just compensation funds, is contrary to the intent of the Uniform Act.
- 4) Escrow of Acquisition Payment.* An agency may retain a reasonable portion of the purchase price to ensure that the acquired property, including fixtures, is surrendered to the agency. Such funds must be made

* "See footnote 1 on p. 5-2."

available to the property owner simultaneously, with the agency's taking physical possession of the property.

- 5) Owner has Right to Withdraw Full Amount Deposited with Court Prior to Surrendering Possession.* When condemnation is used, owners must be allowed to withdraw the full amount of the court deposit before being required to surrender possession of the property. This is based on the phrase "for the benefit of the owner," which is found in 49 CFR 24.102(j) and means the owner has the right to withdraw the full amount of the court deposit for the owner's use, in the same sense that the owner has the use of the full amount of the agreed purchase price in instances where condemnation is not involved.

- 6) Condemnation of Uneconomic Remnants.* If the acquisition of a portion of a parcel leaves the owner with an uneconomic remnant, the acquiring agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. While it would be acceptable to condemn an uneconomic remnant to resolve title issues where the property owner consented to the acquisition, condemnation of uneconomic remnants over valuation issues should not be used on federal-aid projects. The condemnation of uneconomic remnants without the owner's consent is inconsistent with both the letter and the intent of the Uniform Act. The law states that the "head of the Federal agency concerned shall offer to acquire that remnant." The law intentionally limits the acquiring agency to "offering" to acquire an uneconomic remnant. To permit the condemnation of uneconomic remnants would effectively allow the taking of private property not required for a defined public purpose. Many, if not most, States would consider the condemnation of real property, in excess of that actually required for a public facility, to be improper as it would not meet the necessity (for taking) test.

J. Appraisal. (see Appendix 19 for a URA Guide for Preparing an Appraisal Scope of Work and Appendix 20 for a sample Agreement for Appraisal Services.)

- 1) The agency must provide the owner with an opportunity to accompany the appraiser during his/her inspection of the property to be acquired. All reasonable requests to meet with the appraiser must be honored. Agencies should include this requirement as part of any appraisal scope of work and all appropriate documentation, including the property owner's release of this obligation (if applicable) must be maintained in the acquisition files for HUD monitoring purposes. NOTE: Owners of tenant-owned improvements proposed for acquisition must also be offered the opportunity to accompany the appraiser during their property inspection.

* "See footnote 1 on p. 5-2."

- 2) When conducting a waiver valuation, the agency is not obligated to invite the property owner to accompany the waiver valuation preparer during the property inspection. Waiver valuations do not meet the definition of an appraisal under the URA and are not subject to URA appraisal requirements.
- 3) Release of Appraisal(s) to Property Owner. State laws govern the release of appraisal documents. There is no specific requirement under the URA for agencies to provide a property owner with a copy of an appraisal document. The URA regulations require that the agency give the property owner a written statement of the basis for the offer of just compensation often called a summary statement.
- 4) Appraisal Data.* Appraisals should rely on factual information or assumptions supported in the market. Cost or income methods not derived from the market data are unacceptable.
- 5) Appraisal of Hazardous Waste Contaminated Property.* Increasingly, agencies are faced with the necessity of acquiring properties that contain or have been exposed to hazardous waste. Any necessary cleanup of waste disposal costs is normally reflected in a property's market value. If the property has been cleared of hazardous waste material by the property owner in accordance with applicable government requirements prior to the acquisition of the property by the public agency, the property is to be appraised and valued as if exposed for sale on the open market without regard to costs incurred clearing the waste material. FHWA lead agency policy on the appraisal of contaminated properties reflects Uniform Standards of Professional Appraisal Practice (USPAP) Advisory Opinion AO-9. (See: <http://commerce.appraisalfoundation.org/html/2006%20USPAP/ao9.htm>.)
- 6) Comparable Sales and Tax Assessor Records.* A comparable sale verified by tax assessor records could be used as a last resort provided that (1) all reasonable efforts to verify the sale with a party to the transaction such as a grantor, grantee, or broker were first exhausted, and (2) it would be used in conjunction with other properly verified sales, and only if its inclusion leads to a better documented estimate of value.
- 7) Appraiser's Certification Statement.* The appraisal certification contains the limiting conditions, i.e. the conclusions and the appraiser's signed statement certifying that to the best of his/her knowledge and belief his/her

* "See footnote 1 on p. 5-2."

conclusions are correct. In the preparation of detailed appraisals where the acquiring agency uses contract (fee) appraisers to perform the appraisals, such appraisers will be state licensed or certified in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

- 8) **Contribution of Specialists in Appraisal Reports.** While the Uniform Act and 49 CFR Part 24 are silent on the issue, general appraisal practice, including practice under the Uniform Act, embraces and even requires specialists' input to the appraisal in situations where the appraiser is not competent to consider or value a certain aspect of the appraisal problem. The appraiser must be competent and qualified to perform the appraisal. See Appendix A, 24.103(d)(1). In this regard, the USPAP Competency Rule provides, in part, that an appraiser must "take all steps necessary or appropriate to complete the assignment competently;" and that this may be accomplished in several ways, including "... association with an appraiser reasonably believed to have the necessary knowledge or experience, or retention of others who possess the required knowledge or experience."
- 9) **Use of Certified Appraisers.** Federal law and regulations do not require that a review appraiser be either licensed or certified to do work on federally-funded projects. If a contract (fee) appraiser is hired to perform an appraisal, then that person must be a State-licensed or certified real estate appraiser. State licensing or certification, and professional designations, however, can help provide an indication of an appraiser's abilities. Therefore, certifications, licenses, and designations must be considered by an Agency in determining the qualifications of an appraiser (or review appraiser).
- 10) **Quality and Validity of Appraisal Products.*** Agencies are encouraged to avail themselves of the services of major professional appraisal organizations' professional practices and ethics panels when confronted about the quality and/or validity of the appraisal products they receive. Such organizations would appreciate submission to them for official review of suspect appraisals made by their members and for appropriate disciplinary action, if warranted.
- 11) **Qualifications of Appraisers and Review Appraisers.** To help identify the best qualified appraisers for particular assignments, the Agency should make appropriate inquiries to users of appraisal services, particularly other public agencies and/or condemnation trial attorneys for the Agency and other public agencies. State highway agencies can be an excellent resource to help identify qualified appraisers and review appraisers since most State highway agencies maintain a qualified list of appraisers and reviewers for their projects.

* "See footnote 1 on p. 5-2."

K. Appraisal Review.*

- 1) Documentation Standards for appraisal/appraisal review should be commensurate with the complexity of the appraisal problem. Review appraisers are expected to prepare an appropriate written explanation supporting the reviewer's estimate of fair market value (see 49 CFR 24, Appendix A)
 - a) When reconciling divergent appraisal reports or establishing an independent estimate of value, the review appraiser must provide a written explanation sufficient to convey the basis for the approved amount.
 - b) Where possible, it is highly recommended for agency staff review appraisers to participate in the planning and scheduling of acquisition activities, evaluation of fee appraisal proposals, and the evaluation of performance of staff and contract appraisers.

- 2) Use of Contract (Fee) Review Appraisers. While Section 24.104 requires the agency to have an appraisal review process and a qualified review appraiser, it does not specifically address the status of the review appraiser, e.g., staff, contract, or fee review appraiser. Because the review appraiser's activity is closely connected with the offer to be made to the property owner on behalf of the acquiring agency (essentially amounting to a commitment of public funds), it is recommended and encouraged that the review appraiser should be a member of the staff of the acquiring agency with all the requisite authority and responsibilities of such public employment. Each funding agency decides whether to use fee review appraisers. If contract or fee review appraisers are permitted, an official of the acquiring agency must approve the estimate of just compensation before any offer to acquire is made.

- 3) Appraisal Review Requirements. The review appraiser must examine all agency appraisal requirements and address any items that fail to meet the requirements of the agency.

- 4) Low Value Appraisal Reviews. All appraisals must be reviewed, including those being handled by a single appraiser/negotiator.

- 5) Review Appraiser Qualifications. The Federal requirements for review appraiser qualifications are found in 49 CFR 24.104 and 103(d)(1), where the acquiring agency is required to have an appraisal review process and, "A qualified review appraiser shall examine the presentation and analysis of market information in all appraisals...". The agency determines what

*"See footnote 1 on p. 5-2."

constitutes being a qualified review appraiser considering 24.103(d)(1) and 24.104 requirements.

L. Acquisition of Tenant-Owned Improvements.* It is clearly the intent of the URA that tenant-owners of buildings, structures, or other improvements be given status equal to owners of real property and are thus entitled to an offer of just compensation. A written offer should be made directly to the tenant-owner for his or her property if the landowner's disclaimer of all interest in the tenant-owned improvements is obtained. Where separate offer letters are tendered to the fee owner and tenant-owner, each would specify only the offer of just compensation for the respective ownership interests. If a disclaimer pursuant to Section 302(b)(2) of the Act cannot be obtained, separate offers to the parties for their respective interests need not be made if the agency attempted but failed to obtain a disclaimer from the landowner regarding the tenant's ownership interest. Payments may be made to tenant-owners only after the landowner has provided a disclaimer of all interest in the improvements of the tenant and, in consideration for any such payment, the tenant assigns, transfers, and releases to the acquiring agency all rights, title, and interest in the improvements.

- 1) Landowner Notice to Vacate to Owner(s) of Tenant-Owned Improvements. When the owner(s) of land know that it is to be acquired under Title III of the Uniform Act, notice should not be issued requiring the owner(s) of tenant-owned improvements to vacate the premises prior to the acquisition of the property by the acquiring agency. Such action is considered to be an attempt to circumvent the rights and entitlement of the tenant-owners under Title III of the Uniform Act.
- 2) Tenant-Owned Improvements with no Right of Removal. To be covered by Section 302(b) of the Uniform Act, a tenant must have an ownership interest in property to be acquired. The interest of a tenant who constructs an improvement on leased land, but does not have the right to remove it, will not be covered by this section of the Uniform Act. A tenant must have an ownership interest and ownership interests must be determined in accordance with state law. In the absence of proof of ownership and a disclaimer by the landowner, a tenant-owner's recourse is with the property owner, assuming there is no subsequent agreement on ownership and a disclaimer by the property owner after negotiations have started.
- 3) Refusal to Make Offer for Tenant-Owned Improvements is Coercive. Refusal by the acquiring agency to make an offer to acquire buildings, structures, or other improvements of a tenant-owner when the fee to the land is being acquired constitutes a coercive action under Section 301(7) of the Uniform Act. Presuming that the buildings, structures, or improvements meet the tests prescribed in Section 302(a) of the Uniform

* "See footnote 1 on p. 5-2."

Act, i.e., that they must be removed from the real property, or that they will be adversely affected by the use to which the real property will be put and the owner is willing to disclaim all interest in the improvements of the tenant, failure to offer to acquire them would be: (1) a violation of the law; (1) a coercive act on the part of the acquiring agency; and (3) a potential cause for the filing of an inverse condemnation action. The provisions of Section 302(a) of the Uniform Act apply to all buildings, structures, and improvements, regardless of their ownership.

- 4) **Written Offer of Just Compensation to Landowner and Owner of Tenant-Owned Improvements.** Tenant-owners are entitled to a written offer and summary statement. However, the content of the offer will vary depending upon the landowner signing a disclaimer, or recognizing the existence of a leasehold interest. If a disclaimer has been signed because there is agreement as to ownership interests, the tenant-owner's offer would cover only his/her interest with the same principle applying to the landowner. The offer of just compensation and summary statement should reference the requirements of Section 302(b)(2) of the Uniform Act, i.e., the landowner's disclaimer and the tenant-owner's assignment of ownership rights. In the case of a leasehold interest where the tenant does not own any buildings, structures, or improvements, State law would govern whether the tenant would be entitled to a written offer and summary statement.

- 5) **Valuation Premise for Tenant-Owned Improvements.** When estimating the value of tenant-owned improvements, value in place and contributory value are essentially the same. The following procedure is used to estimate the value of tenant-owned improvements:
 - a) Determine highest and best use of the property and then allocate value of tenant-owned improvements from the value of the whole.

 - b) Consider full value or interim use value of tenant-owned improvements as follows:
 - (1) Full contributory value in place of building, structure, or other improvements for their remaining economic life when such building, structure, or other improvements are consistent with the highest and best use of the land, or
 - (2) Interim use value of the buildings, structure, or other improvements which is not the highest and best use of the land for a specific time period longer than the lease term (include present worth of salvage value), or
 - (3) Value in place of the building, structure or other improvement, plus the present worth of the salvage value at the end of the lease term.

- c) Specialty reports should be obtained for the valuation of items not readily measured in the marketplace.
 - d) In instances where a situation may not fit accepted appraisal guidelines/ techniques, an administrative settlement may be used with a written justification and explanation.
 - e) In some cases where the contributory value and the salvage value of a tenant-owned improvement is of minimal value or equal to zero, the agency may at its discretion elect to determine and offer the depreciated value in place of the improvement as installed, however, the agency is under no obligation to do so under the regulations at 49 CFR 24.105(c).
- 6) Tenant-Owner Retention Value of Improvements. When the contributory value of a tenant-owned improvement exceeds its salvage value, a tenant-owner may elect owner retention and be paid the difference in the two values.
- 7) Allocation of Value to Tenant-Owned Property. The appraiser or review appraiser must allocate separately owned property rights in his/her evaluation. Agency procedures should make both appraisers and review appraisers responsible for determining the existence of, and estimating the value of, any tenant-owned buildings, structures, and other improvements. The reviewer has the ultimate responsibility to see that the recommended or approved estimate of just compensation contains the appropriate allocation. The review and approval process should be the same, regardless of whether tenant-owned interests are involved.
- 8) Tenant-Owner Accompaniment During Appraisal Inspections. The purpose of the Uniform Act is, in part, "To insure consistent treatment for owners." Therefore, all owners, whether part-owner, full-fee owner, or tenant-owner, are covered by the provisions of Section 301(2) of the Act. For tenant-owners where buildings, structures, and improvements are not involved, such as a tenant-owned leasehold in realty, then the obligations to the tenant are a matter of State law.
- 9) Salvage Value vs. Value for Removal. The fourth edition of "The Dictionary of Real Estate Appraisal", dated 2002, defines salvage value as "The price expected for whole property, e.g., a house, or a part of a property, e.g., a plumbing fixture, that is removed from the premises, usually for use elsewhere." Thus, salvage value and value for removal are considered to be synonymous.
- 10) Landowner Disclaimer of Tenant-Owned Improvements Required Prior to Payment to Owner of Tenant-Owned Improvements. In acquiring

properties with tenant-owned improvements, a payment may be made to a tenant-owner only after the landowner has provided a disclaimer of all interest in the improvements of the tenant and in consideration for any such payment, the tenant assigns, transfers, and releases to the acquiring agency all right, title, and interest in and to such improvements in accordance with Section 302(b)(2) of the Uniform Act. While the provisions of Section 302 of the Uniform Act do not necessarily apply to life estates or leaseholds when the value is created by a favorable rental rate, releases by the owner of the real property should be obtained prior to making payment directly to the tenant-owner in these instances. State law may govern how to proceed with such acquisitions.

11) Leaseholds and Life Estates. Section 301 of the Uniform Act provides for payment of just compensation to any owner of real property. A leasehold interest (leasehold estate) and a life estate are legally recognized real property interests. If the leasehold interest has value because of a favorable rental rate, the lessee may be entitled to a written offer, along with the real property owner, depending on the requirements of State law. Such a leasehold interest in itself would not invoke the provisions of Section 302(b) of the Uniform Act itself. To be covered by Section 302(b), the tenant must have an ownership interest in physical property improvements.

M. Payment of Incidental Expenses by the Acquiring Agency for the Transfer of Real Property.* An agency may pay for the incidental expenses incurred for the transfer of real property to the acquiring agency in one lump sum directly to the property owner or to an escrow service, which then allocates the funds. The purpose of the direct payment is to ensure that (to the extent feasible) the owner does not have to settle such claims with personal funds and then later seek reimbursement from the agency. Property owners should be informed of this provision early in the acquisition process.

5-5 DONATIONS*

A. Appraisal Waiver – Donations. In the case of a property donation covered under 49 CFR 24.108, an appraisal is not required if the property owner releases the Agency from its obligation to appraise the property and is informed of his/her right to receive just compensation. All releases must be signed by the property owner and must be maintained in the Agency’s file for monitoring purposes.

B. Date of Value of a Donation. The fair market value of a donation shall be established as of the date that the donation becomes effective, or when equitable title vests in the acquiring agency, whichever is earlier.

* “See footnote 1 on p. 5-2.”

CHAPTER 6

Recordkeeping and Reports

6-1 BASIC RECORDKEEPING REQUIREMENTS.

- A. Agency Responsibility. Good recordkeeping, including a record of contacts with affected persons, is necessary to carry out the policies in this handbook in an effective manner that maintains continuity, regardless of staff turnover. The Agency (defined in Paragraph 1-4 O.) must keep records in detail sufficient to demonstrate compliance with applicable laws, regulations, local housing and occupancy codes, and this handbook. See OMB Paperwork statement at Paragraph 1-2 E.
- 1) Under HUD-assisted programs administered by a State (e.g., the State CDBG Program) the State may establish recordkeeping requirements for recipients beyond those set forth in this Chapter.
 - 2) Records Held by Third Parties. It is the displacing agencies' responsibility to ensure that all records regarding acquisition/relocation actions are properly maintained and available, if requested for HUD monitoring purposes. This includes any files that may be kept by third parties (e.g., consultants and/or subrecipients). See also the uniform administrative requirements for grants and agreements under 24 CFR 84.53 and/or 24 CFR 85.36(i)(10), as applicable.
- B. Retention Period. All pertinent records shall be retained for the period specified in the applicable program regulations, but no less than three years after the latest of:
- 1) The date by which all payments have been received by persons displaced for the project and all payments for the acquisition of the real property have been received;
 - 2) The date the project has been completed;
 - 3) The date by which all issues resulting from litigation, negotiation, audit, or other action (e.g., civil rights compliance) have been resolved and final action taken; or
 - 4) For real property acquired with HUD funds, the date of final disposition (see 24 CFR 84.53 and 85.42).

- C. HUD Monitoring of Records. CPD's Monitoring Handbook 6509.2, Chapter 25, outlines HUD's monitoring process for relocation and real property acquisition projects. This chapter and the review exhibits (25-1 through 25-8) will provide Agencies with insight into the documentation and information HUD will request for review during a monitoring visit. Monitoring may occur as a result of HUD's routine risk assessment process or due to the severity or number of complaints received from the public about a particular project or Agency procedure. The failure to document compliance with applicable laws or regulations may lead HUD to issue findings and recommendations based on apparent noncompliance and recommend corrective action or sanctions (see Paragraph 1-6).
- D. Confidentiality of Records. Records maintained by the Agency to demonstrate compliance with the policies in this handbook are confidential. They shall not be made available as public information, unless required by applicable law. Only authorized staff of the Agency or HUD shall have access to them, subject to applicable law. However, upon the written request of an affected person, the Agency shall give the person or the person's designated representative the opportunity to inspect and copy, during normal business hours, all records pertinent to his/her case, except materials which are classified as confidential by the Agency. The Agency may impose reasonable conditions on the person's right to inspect these records, consistent with applicable laws.
- E. Compliance with URA when funded by more than one federal agency. Under section 24.6 of the URA regulations, when two or more federal agencies provide financial assistance to carry out functionally or geographically related activities that result in the acquisition of property or the displacement of person(s), by agreement, these federal agencies may designate one such agency as the cognizant federal agency. Agencies that accept funding from more than one federal agency for a project, must assure that all federal agencies involved are aware of any joint funding situation. If one federal agency has assumed cognizant responsibility for the project and will assure compliance with the URA, a copy of the notification should be maintained in the project records.

6-2 RELOCATION/ADVISORY ASSISTANCE RECORDKEEPING REQUIREMENTS

- A. List of Occupants (residential and non-residential). For each project, the Agency's files shall include a list or lists identifying the name, address, and occupant characteristics for all persons residing in the project (including persons residing in or on property within the federally funded project which is to be acquired, rehabilitated, or demolished with non-federal funding sources). The list(s) may be maintained manually or in computer-generated format and may be used to track progress made in carrying out the relocation

process. Sample manual guideforms are included in Appendices 21 and 22. The lists should identify:

- 1) All persons occupying the real property on:
 - a) The date of the initial submission of the application for assistance by the applicant to the Agency or HUD, if the applicant has site control; or
 - b) The date the applicant obtains site control, if site control is not obtained until after submission of the application; or
 - c) Where there is no application for funds, the date of Initiation of Negotiations (ION) applicable to the project (see 49 CFR 24.2(a)(15), applicable HUD program regulations, and Chapter 1, Exhibit A).
- 2) All persons moving into the property on or after the date described in Paragraph 6-2 A.1 but before completion of the project.
- 3) All persons occupying the property upon completion of the project.

B. Persons Not Displaced. Documentation on persons not displaced shall include:

- 1) Evidence that the person received timely written notice that they would not be displaced by the project or that they might be temporarily relocated (copy of the Notice of Nondisplacement and receipt for the delivery of the Notice).
- 2) For a tenant-occupant of a dwelling, evidence that the tenant received: (a) a timely offer of a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary affordable dwelling in the building/complex upon completion of the project (see funding program regulations for specific requirements), and (b) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or a move to another unit in the building/complex.
- 3) For each person who is not displaced but elects to relocate permanently, a reason for the move and records of any personal contact to explain that they will not qualify for relocation payments as a displaced person. This information must be available for all persons who occupied the property before project completion (i.e., those identified in Paragraphs 6-2 A.1 and 2) but who did not occupy the property after project completion and did not receive relocation assistance as a displaced person.)
- 4) Documentation to support eviction for cause (see Paragraph 1-6 J.1).
- 5) Documentation to support a determination that a person was not a legal occupant of the property.

6) A copy of any appeal or complaint filed and Agency response.

C. Displaced Persons. For persons displaced, there should be separate case files that include documentation that is sufficient to demonstrate that the Agency verified the person's relocation needs, current situation, and their eligibility for URA and/or section 104(d) assistance and/or payments. The following list is not all-inclusive. It is provided for illustrative purposes. Individual cases may require more or less documentation to support Agency determinations:

1) Residential Occupants (tenants or owners). The documentation described below is applicable to both tenants and owners, except where noted (items a. thru c. are included in Appendix 8 (Site Occupant Form) which may be used to record this information):

a) Information on each individual occupant: Name, sex, age, race/ethnicity, disability (if any), relationship to head of household (identify head of household), estimated income, certification of legal residence/citizenship (form HUD-40054, 40057, or 40058 may be used for this certification);

b) Description of current unit: Number of bedrooms, amenities, square footage of unit, amount of rent and utilities, date of initial occupancy;

c) Documentation of income (for tenants only):

(1) Agencies should have policies that describe the nature of documentation they will require to support income determinations for relocation assistance (particularly where a person claims to be of low-income and/or where the Agency also operates a HUD subsidized housing program for which the displaced person may be eligible);

(2) Acceptable documentation can include: Wage statement from employer(s), W-2s, copy of current tax return; if employment is sporadic (e.g., from irregular day-labor) obtain a self certification; Government and/or private pensions, disability payments, benefit income (such as welfare, SSI, etc.) can be documented with a copy of an eligibility letter or statement, check or record of regular bank deposits; and other reasonable evidence of income accepted under HUD subsidized housing programs;

d) Rent and utility costs for the displacement, comparable, and replacement units (also applicable to owner-occupants who decide to rent replacement housing rather than purchase replacement housing):

- (1) Agencies should have policies that describe the nature of documentation they will obtain to support rent and utility calculations. Acceptable documentation includes copies of a lease, rent receipts, utility receipts, statement from utility company(ies); or other similar evidence. Utilities included in the rent and those that must be paid separately by the household need to be identified and calculated. Form HUD-40061 (Appendix 12) may be used to summarize and record the rent and utilities information obtained on the displacement and comparable units (but is not a substitute for required documentation).
 - (2) If a utility allowance schedule from a local Public Housing Authority was used as that basis to calculate estimated utilities at a comparable or replacement unit, provide a copy of the schedule and any adjustments the Agency made to the scheduled amount based on the circumstances of displacement (see HUD Relocation and Acquisition Policies newsletter dated August 2006, Vol. 2, No. 2 (available at: www.HUD.gov/relocation under HUD RAP Newsletter).
 - (3) For owner-occupants who elect to rent replacement housing, a determination must be made of the rent that would be charged for their displacement property on the open market (see 49 CFR 24.401(f)).
- e) Copy of the following notices (as applicable) displaying the person's name and mailing address, and date mailed: General Information Notice, Notice of Eligibility, 90 Day Notice and/or 30 Day notice (if issued), etc.; and evidence of delivery by certified or registered first class mail, return receipt requested, or a certification of hand delivery;
 - f) Identification of relocation needs and preferences (Appendix 8, Site Occupant Record - Residential, may be used for this purpose);
 - g) Dates of personal contacts and advisory services provided (Appendix 10, Record of Advisory Assistance and other Contacts, may be used for this purpose);
 - h) Records of referrals to comparable replacement dwellings, date of referral, date of availability, reason(s) person declined referral, inspection(s) of the chosen replacement dwelling for decent, safe, and sanitary conditions;
 - i) Moving cost estimates, bids, or amount determined based on current Fixed Residential Moving Cost Schedule (see 24 CFR 24.302);

- j) Copies of all relocation claim forms and related documentation, evidence that person received payment and, if applicable, evidence of housing subsidy paid from other sources (e.g., Housing Choice Voucher);
 - k) Documentation to support why a claim was not made or was not paid: e.g., displaced person who moved on his/her own, moved prior to Notice, failed to provide requested information/ documentation to support a claim, or a signed statement indicating the person's decision not to claim part or all of the assistance offered, etc.;
 - l) Documentation supporting a hardship claim and the Agency's determination (for persons not lawfully present in the US);
 - m) Tenants who receive down payment assistance: Purchase agreement, final executed closing statement/escrow documents (HUD-1), copy of recorded deed indicating book and page; and
 - n) Copy of any appeal or complaint filed and Agency response.
- 2) Owner-occupied properties: The following additional documentation may need to be maintained on file to support the owner's relocation under an acquisition subject to Subpart B of the URA regulations (e.g., acquisitions under the threat of eminent domain). See Paragraph 6-3 for documentation related to the actual acquisition of property:
- a) Mortgage amount(s) on current property, monthly payment, remaining number of payments, interest rate, deed or title evidence;
 - b) Copy of the following notices (as applicable) displaying the person's name, mailing address and date mailed: General Information Notice, Notice of Intent to Acquire (if issued), Notice to Owner, 90 Day Notice and/or 30 Day Notice (if issued), other applicable notices if condemnation is pursued; evidence of delivery of notices by certified or registered first-class mail, return receipt requested, or a certification of hand delivery;
 - c) Information on advisory services provided (Appendix 10, Record of Advisory Assistance and Other Contacts, may be used for this purpose);
 - d) Written offer to purchase, purchase agreement, mortgage documents, closing/escrow documents (HUD-1) for replacement property, copy of recorded deed indicating book and page.
- 3) Non-residential occupants (businesses, farms, non-profit organizations - - owners or tenants).

- a) Name and type of business being relocated, name of business owner(s), certification of legal residence/citizenship;
- b) Identify owner of the property being vacated (is it the displaced business or some other entity), copy of the property lease;
- c) Survey of relocation needs (Appendix 9, Site Occupant Record, may be used for this purpose);
- d) Information on advisory services provided (Appendix 10, Record of Advisory Assistance and Other Contacts, may be used for this purpose);
- e) Moving cost estimates, bills and/or receipts for actual moving and related expenses; or documentation supporting the alternative fixed moving expense calculation (49 CFR 24.305);
- f) Documentation to support all related nonresidential eligible expenses (49 CFR 24.303);
- g) Documentation supporting reestablishment expenses and searching costs (49 CFR 24.304) including receipts, bills, lease, etc.; and
- h) Copies of any inspection(s) of personal property at the displacement and replacement sites (see 49 CFR 24.301(i)(2)).

6-3 RECORDKEEPING REQUIREMENTS FOR REAL PROPERTY ACQUISITIONS.

- A. Identification of Project Area. Street map showing all parcels to be acquired for the project or the proposed area in which parcels will be identified for acquisition at a later date (if not yet identified). See program regulations for a definition of project. In larger, multi-funded projects, the project area often includes properties that are acquired with HUD funds and those that may be acquired with other funding sources.
- B. List of Parcels. For each project, the Agency's files shall include a list identifying all parcels to be acquired for the project (including those acquired with HUD funds or other funds). The list may be maintained manually or in computer-generated format and may be used to track progress made in carrying out the acquisition process.
- C. Acquisition Case File. For each property acquired and each property for which acquisition was initiated but not completed (e.g., a voluntary acquisition which was not completed), a separate case file should be created to include the documentation necessary to substantiate the agency's actions and compliance

with the URA. A sample guideform called the Acquisition Checklist can be found at Appendix 24. This guideform can be used by the acquiring Agency to document the dates of key steps in the acquisition process and identify key documents which need to be included in the acquisition case file including:

- 1) Notices required under the URA which are applicable to the acquisition, including: General Information Notice, Notice to Owner, Notice of Relocation Eligibility (if applicable), Notice of Intent to Acquire (if issued), and evidence of delivery by signature on a receipt (Post Office or other), or a certification of hand delivery;
- 2) Appraisal(s) and review appraisal(s) (if the review appraiser is unable to recommend or approve the appraiser's market value of the property, include documentation in accordance with 49 CFR 24.104(b)), Agency Waiver Valuation (if applicable), evidence that owner was offered opportunity to accompany appraiser during property inspection;
- 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 and support (if applicable), see also HUD RAP Newsletter Vol. 1, No. 2, November 2005;
- 7) Eminent domain filings, court decisions; and
- 8) Closing statements (HUD-1), title documents (preliminary opinion and final opinion), copy of recorded deed indicating book and page, and claim forms.

6-4 REPORTING REQUIREMENTS (49 CFR 24.9 (c) and Appendix B). The Agency shall submit reports of its displacing and real property acquisition activities as required by HUD.

CHAPTER 7
SECTION 104(d) RELOCATION AND
ONE-FOR-ONE REPLACEMENT REQUIREMENTS

- 7-1 BACKGROUND. Section 104(d) of the Housing and Community Development Act of 1974, as amended (HCD Act) establishes requirements governing conversion, demolition, and one-for-one replacement of lower-income housing under the CDBG and UDAG¹ programs. Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act, as amended (NAHA) extended these requirements to the HOME program.² Part 42 of title 24 of the Code of Federal Regulations describes section 104(d)'s requirements.
- 7-2 RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN (RARAP). As a condition for receiving assistance under one of the programs described in Paragraph 7-3, the grantee (defined in Paragraph 1-4 O. to include a State recipient and a HOME participating jurisdiction, hereafter "grantee/participating jurisdiction") must certify that it is following a Residential Antidisplacement and Relocation Assistance Plan (RARAP) (see Appendix 34 for a guideform RARAP). Such a plan must indicate:
- A. Intent to Minimize Displacement. Describe the steps the grantee/participating jurisdiction will take to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activity or development project³. (See also HUD regulations at 24 CFR 42.325, 91.225(a), 91.325(a), 91.425(a), 92.353(e), 570.457, 570.488, 570.606(c) and 570.704(e));
 - B. One-for-One Replacement. A requirement to replace all occupied and vacant occupiable lower-income dwelling units (defined in 24 CFR 42.305) that are demolished or converted to a use other than lower-income housing in connection with an assisted activity; and
 - C. Relocation Assistance. A requirement to provide certain relocation assistance to any lower-income person (defined in 24 CFR 42.305) displaced as a direct result of: (1) the demolition of any dwelling unit or (2) the conversion of a lower-income dwelling unit to a use other than a lower-income dwelling in connection with an assisted activity. By regulation, additional section 104(d)

¹ The Urban Development Action Grant (UDAG) Program is no longer funded or active.

² Section 104(d) itself does not mention HOME. Rather, the NAHA incorporates by reference section 104(d) for HOME-assisted activities at section 105(b)(16).

³ The scope of a particular "assisted activity" or "development project" will depend on the program requirements of the applicable funding source(s) which have been authorized for the project. For example, HUD has construed "development project" to cover activities receiving financial assistance under CDBG and UDAG. See paragraph 7-4 and Exhibit 7-2 for examples.

replacement housing assistance available under 24 CFR 42.350 is limited to lower-income tenants displaced from housing. Other displaced persons may be covered by the provisions of the URA. Follow the steps in Exhibit 3-1 of this Handbook in order to plan for the accessibility needs of tenants with disabilities. See also Section 7-7, Required Notices.

7-3 PROGRAMS COVERED BY SECTION 104(d) RELOCATION REQUIREMENTS:

- A. Entitlement Community Development Block Grant (CDBG) Program (24 CFR 570, Subpart D);
- B. State CDBG Program (24 CFR 570, Subpart I);
- C. CDBG Small Cities Program (24 CFR 570, Subpart F);
- D. Section 108 Loan Guarantee Program (24 CFR 570, Subpart M). (Coverage for this program is mandated by regulation.);
- E. CDBG Special Purpose Grants Program (24 CFR 570, Subpart E). (Coverage for this program is mandated by regulation.);
- F. HOME Investment Partnerships Program (HOME) (24 CFR Part 92); and
- G. Urban Development Action Grant (UDAG) Program (24 CFR 570, Subpart G) (inactive); and
- H. Neighborhood Stabilization Program (Public Law 110-289) (see alternative requirements as published in the Federal Register at 73 FR 58330 on October 6, 2008 and any amendments).

7-4 CDBG-FUNDED ACTIVITIES ARE NOT ALWAYS SUBJECT TO SECTION 104(d). Section 104(d) relocation assistance payments must be made available only when a CDBG-assisted activity has direct impact on a property, causing the displacement of lower-income residents as a direct result of demolition of housing or conversion⁴ of a lower-income dwelling. Additionally, all occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than lower-income housing as a direct result of a CDBG-assisted activity are subject to a one-for-one replacement requirement.⁵

- A. The use of CDBG funds for certain infrastructure (i.e., public improvements), administrative costs, or planning activities which have no physical impact on property causing displacement of persons or demolition or conversion of housing is not subject to the section 104(d) requirements. This almost always refers to funding isolated activities that merely stimulate renovation, such as: street widening, paving, installing street lights, installing or upgrading water and sewer lines, general planning and administrative activities (e.g., salaries

⁴ “Conversion” for section 104(d) purposes is defined in the regulations at 24 CFR 42.305.

⁵ HOME funds may only be used in HOME-assisted projects. Unlike CDBG, there is no comparable separation to assist solely planning, relocation, administration or infrastructure costs in the HOME program. HOME funds must assist the “project.” Any use of HOME funds in a project that involves demolition or conversion of lower-income housing will trigger the section 104(d) relocation and one-for-one replacement requirements.

and related expenses). Payment of the salaries of code enforcement inspectors who condemn buildings does not usually trigger section 104(d) requirements. This does not mean, however, that every CDBG-funded infrastructure or planning or administrative activity (including the aforementioned) is exempt. Any CDBG-funded activity which has a sufficient physical impact on a property to *directly cause* displacement due to demolition of housing or conversion of lower-income housing will be subject to section 104(d).

- 1) For example, a CDBG assisted activity limited to widening an existing street which does not involve demolition of an existing lower-income apartment building for the road is not subject to section 104(d), even if the public improvement merely encourages independent renovation or demolition of a building for a purpose separate and apart from the road project. If other federal financial assistance were included in the renovation or demolition of the building itself, such a project would be subject to the relocation provisions of the URA (but not necessarily section 104(d)).
- 2) However, demolition of a lower-income apartment building with non-federal funds for a planned CDBG-funded activity (to pave a newly created street through the former building's footprint), is subject to section 104(d) since the road could not have been built in that location unless the building was demolished. Use of the CDBG funds, in this case, contributed to a direct physical impact on the building (demolition to build the road).
- 3) The use of CDBG assistance to fund the costs of code enforcement (including the payment of salaries of code enforcement inspectors and associated legal proceedings) does not, usually by itself, trigger the requirements of Section 104(d). If, however, the circumstances suggest that CDBG-assisted code enforcement is part of a single undertaking with planned or intended demolition or conversion, whether federally- or privately-funded, HUD may determine that the code enforcement is being conducted "in connection with" the anticipated development project and that any persons who move from property are displaced as a direct result of the development project. For further assistance, please contact your local HUD Field Office.
- 4) The use of CDBG funds solely for relocation assistance is not subject to section 104(d) relocation assistance or one-for-one replacement requirements (nor URA). Optional relocation assistance is an eligible activity for the use of CDBG funds under 24 CFR 570.201(i). Such assistance is not limited to persons who are displaced as a result of a federally-assisted project and who are otherwise entitled to assistance under the URA and/or section 104(d). CDBG grantees may offer relocation assistance when it is determined that such assistance is

appropriate under 24 CFR 570.606(d) and may adopt a written optional relocation assistance policy to address local needs⁶.

- a) For example, a CDBG grantee could adopt an optional policy to provide \$500 in moving cost assistance to low-income homeowners displaced as a result of a foreclosure. No federal funds are involved in the displacing activity (foreclosure), however, the community has determined that this assistance is appropriate to alleviate the impact on low-income persons in their community.

7-5 DEFINITIONS FOUND IN SECTION 104(d) REGULATIONS (24 CFR 42.305). NOTE: The definitions for the terms listed below can be found in the regulations and are not reprinted here. Additional policy guidance is included below:

A. Comparable Replacement Dwelling Unit.

B. Conversion. Changing lower-income housing to an emergency shelter, even if it will serve lower-income persons, is considered a conversion of the lower-income housing stock and will trigger a replacement requirement.

C. Displaced Person.

D. Lower-Income Dwelling. The market rent of a vacant or owner-occupied dwelling unit may be determined by appraisal or other appropriate rental market analysis.

E. Lower-Income Person. The term “lower-income person” at 24 CFR 42.305 is defined according to the program-specific definitions of “low and moderate income person” at 24 CFR 570.3 (for CDBG) or “low-income family” at 24 CFR 92.2 (for HOME). These definitions should be used in determining a tenant’s status as a lower-income person. NOTE: The definition of Total Tenant Payment (which is now at 24 CFR 5.628) is required for calculating replacement housing assistance under section 104(d) (see 7-10):

- 1) The definition of “low- and moderate-income person” at 24 CFR 570.3 requires reference to the CDBG-specific definition of “income,” which can be computed by any of three given methods: (i) “annual income” as defined under the Section 8 HAP program at 24 CFR 813.106, which is now at 24 CFR 5.609; (ii) “annual income” as reported under the Census long-form; or (iii) Adjusted Gross Income as defined for purposes of reporting individual Federal annual income for tax purposes under IRS Form 1040.

⁶ HOME optional relocation assistance under 24 CFR 92.353(d) is only available for persons displaced by a HOME-assisted project and may not be used in the same manner as CDBG optional relocation assistance.

- 2) The definition of “low-income family” at 24 CFR 92.2 requires reference to the HOME-specific definition of “annual income” at 24 CFR 92.203, which can be computed by using: (i) the definition of “annual income” at 24 CFR 5.609; (ii) “annual income” as reported under the Census long-form; or (iii) Adjusted Gross Income as defined for purposes of reporting individual Federal annual income for tax purposes under IRS Form 1040.

F. Recipient.

G. Standard Condition and Substandard Condition Suitable for Rehabilitation.

The grantee/participating jurisdiction must define in its consolidated plan the terms “standard condition” and “substandard condition but suitable for rehabilitation.” (24 CFR 91.205(b)(2) and 24 CFR 91.305(b)(2)). These definitions apply in determining vacant occupiable status as described in 24 CFR 42.305.

H. Vacant Occupiable Dwelling Unit.

- 7-6 UNITS THAT MUST BE REPLACED (24 CFR 42.375(a))¹. This is referred to as the “one-for-one” replacement requirement and considers the replacement of both rental and owner-occupied dwelling units which would rent at or below the applicable HUD Fair Market Rent (FMR). The grantee/participating jurisdiction must ensure that the replacement requirement is met, though the requirement may be met through the activities of government agencies or private developers (including, but not limited to, the grantee/participating jurisdiction or other entities authorized to undertake eligible activities pursuant to program regulations).

- A. Acceptable Replacement Units (24 CFR 42.375(b)). To be considered a lower-income dwelling unit, the replacement unit must have a market rent which is at or below the applicable FMR or be otherwise subsidized under a project-based rental assistance program designed to assist lower-income persons. HUD will consider a homeownership unit as an acceptable replacement unit for a homeownership unit that is demolished or converted, only if the unit would rent at or below the FMR (based on an appraisal or other appropriate rental market analysis of the rent that could be charged for the unit on the private market). However, a homeownership unit is not an acceptable replacement unit for a rental unit that is demolished or converted. Similarly, a unit in an Independent Living or Assisted Living residence can be considered an acceptable replacement unit if the base rent (excluding service fees such as personal care or assistance, meals, laundry, housecleaning, etc.) is at or below the applicable FMR. A unit in an Independent Living or Assisted Living residence subsidized on a project basis (e.g., HUD 202/811 project) may also be considered an acceptable replacement unit. All replacement units must be designed to remain lower-income units for at least 10 years from the date of initial occupancy (see 24 CFR 42.375(b)(5)).

¹ For NSP, in lieu of the One-for-one replacement requirement of section 104(d), alternative requirements are specified in the Federal Register Notices. See, for example, 75 FR 64322, Section K (Oct. 19, 2010).

- B. Preliminary Information to be made Public (24 CFR 42.375(c)). The grantee/participating jurisdiction may determine how it intends to make public all the information required to demonstrate the replacement requirement, the need, and ability to meet this requirement per 24 CFR 42.375(c). For example, information on all “lower-income dwelling units” affected by the project may be separately identified along with a determination of which of these units would or would not require replacement under the “occupied and vacant occupiable” definition and the grantee/participating jurisdiction may provide data on vacant lower-income units which are already available in the area (subject to a HUD determination under 24 CFR 42.375(d)). The grantee/participating jurisdiction should be clear and consistent in its public notification methodology for all affected projects.
- C. Replacement Not Required (24 CFR 42.375(d)). If an adequate supply of vacant lower-income dwelling units in standard condition is available on a nondiscriminatory basis within the area, the grantee/participating jurisdiction must make this information public and request a determination from HUD that the one-for-one replacement requirement does not apply.
- D. Demolition. The term “demolition” in the context of section 104(d)’s one-for-one replacement requirement means the tearing down or razing of a building or structure, in whole or in part. The reconfiguration of the interior space of buildings by moving or removing interior walls (e.g., altering two 1-bedroom units to create one 2-bedroom unit, or a 3-bedroom unit altered to create a 2-bedroom unit) within the exterior walls of a building or structure is not generally considered “demolition.” NOTE: A reconfiguration may lead to a “conversion” of the lower-income dwelling unit, if the reconfigured unit will rent above the FMR, in which case the one-for-one replacement requirement will be triggered. Please consult your local HUD office, if you require a case-specific determination.
- E. Manufactured Housing. For the purposes of 24 CFR 42.375, a mobile home may be considered a dwelling unit if: (1) the mobile home is classified as real property under state law; OR (2) (i) the tongue, axles, and wheels of the mobile home have been removed, (ii) the mobile home is placed on a foundation¹; (iii) the mobile home is connected to utilities (i.e., electric, water, and sewage lines); AND (iv) the mobile home is intended to be used as a permanent place of residence.

¹ In determining whether the mobile home is placed on a permanent or temporary foundation, the displacing agency should refer to State and local law. The type of foundation upon which the mobile home unit is to be placed must conform to State and local standards for this type of unit. For example, where State and local standards require that a mobile home is to be placed on a permanent foundation, a mobile home within that jurisdiction, which is not placed on a permanent foundation will not be deemed to have satisfied factor (2)(ii) of this guidance. As such it will not qualify as a dwelling for the purposes of 24 CFR 42.375.

7-7 REQUIRED NOTICES (49 CFR 24.203 and 24 CFR 42.350). When a lower-income tenant displaced by a project becomes eligible for relocation assistance under Section 104(d) and the URA, HUD requires that the same notices required to be made under the URA be provided to the displaced lower-income tenant. Such notices must explain the assistance available under both the URA and section 104(d), so that the lower-income tenant who is entitled to choose which form of assistance to receive is adequately informed to do so. See Appendices 25 and 26 for guideform notices of eligibility with and without the availability of assistance of a Housing Choice Voucher. Similarly, when a project is undertaken pursuant to Section 18 of the United States Housing Act of 1937 and the use of certain HUD funds in the project would also make section 104(d) applicable, the notice requirements at 24 CFR 970.21(e) apply. Such notice must also explain to the tenant the assistance available under section 104(d) (which includes offering the choice of assistance calculated at section 104(d) or URA levels).

7-8 RELOCATION ASSISTANCE UNDER SECTION 104(d). Under section 104(d), a displaced lower-income tenant may choose either assistance at URA levels (see Chapter 3) or the assistance available under section 104(d). If the displaced person chooses to receive assistance based on the URA and not 104(d), all assistance must be calculated in accordance with the definitions in the URA, not the section 104(d) definitions outlined below. In either case, disbursement of relocation assistance payments for HUD-funded projects is subject to 42 USC Sec. 3537c (see Chapter 3, 3-7 D) which limits lump-sum disbursements.

A. Advisory Services (24 CFR 42.350(a), 49 CFR 24.205(c)) these are the same as URA;

B. Payment for Moving and Related Expenses (24 CFR 42.350(b), 49 CFR 24.301(b)) these are the same as URA;

- C. Security Deposits and Credit Checks (24 CFR 42.350(c));
- D. Interim Living Costs (24 CFR 42.350(d));
- E. Replacement Housing Assistance (24 CFR 42.350(e)), either rental assistance or purchase assistance:

1) Rental Assistance (24 CFR 42.350(e)(1)).

- a) All or a portion of this rental assistance may be offered (if it is available) through a housing voucher for rental assistance provided through the Public Housing Agency (PHA) under Section 8 of the United States Housing Act of 1937, as amended.
- b) Whenever a voucher is offered, the Agency must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the voucher program. If a person is offered a voucher and appropriate housing referrals but refuses such assistance or rents and moves to a unit where he or she is unable to receive the voucher assistance, the Agency shall have satisfied the section 104(d) replacement housing requirements. In such case, the displaced person may be eligible for replacement housing assistance calculated at URA levels.
- c) If the tenant is provided a voucher and the rent/utility cost for a replacement dwelling (actual or comparable replacement dwelling, whichever is less costly) exceeds the voucher payment standard, the tenant may qualify for cash rental assistance in addition to the voucher assistance to cover the gap.

2) Purchase Assistance (24 CFR 42.350(e)(2)). Purchase assistance under section 104(d) is limited by statute to securing participation in a housing cooperative or mutual housing association. See Exhibit 7-3 for some basic definitions of housing cooperatives and mutual housing associations. In many cases, it will be to a potential homebuyer's advantage to use purchase assistance available under the URA (rather than section 104(d)) in order to have more housing options available.

- F. Civil Rights Related Requirements. The policies and procedures of this Chapter will be administered in a manner that is consistent with fair housing and other civil rights requirements under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Fair Housing Act (42 U.S.C. § 3601, *et seq.*), Section 504 of the Rehabilitation Act of 1973 (42 U.S.C. § 794, and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]. This may include providing reasonable accommodations to persons with disabilities in the provision of comparable replacement housing, non-housing facilities, relocation and moving expenses, and other policies. See 24 CFR §§ 8.4, 8.6, 8.20, 8.21, and 8.24.

7-9 APPEALS (24 CFR 42.390).

7-10 TOTAL TENANT PAYMENT (24 CFR 42.350(e)). Section 104(d) uses the methodology at 24 CFR 42.350(e) to calculate monthly tenant payments for replacement housing assistance. That section references the definition of “total tenant payment” at 24 CFR part 813, which is now at 24 CFR 5.628, and is based on:

A. Annual Income (24 CFR 5.609), and

B. Adjusted Income (24 CFR 5.611).

In verifying income, the grantee/participating jurisdiction is responsible for determining if documentation of income is adequate and credible.

7-11 OPTIONAL CLAIM FORM. Form HUD-40072, “Claim for Rental or Purchase Assistance under Section 104(d) of the Housing and Community Development Act of 1974, as amended” may be used to document payments claimed and paid. A copy of the form is contained in Appendix 27. The form is optional, if the form is not used, equivalent documentation must be included in the grantee’s/participating jurisdiction’s files to support payments made to displaced lower-income tenant households under section 104(d).

SUMMARY OF MAJOR DIFFERENCES BETWEEN URA & 104(d) RELOCATION ASSISTANCE FOR DISPLACED RESIDENTIAL TENANTS

PART I. ELIGIBILITY

Subject	URA Regulations	Section 104(d)
Displaced Person	<ul style="list-style-type: none"> • Residential tenants and homeowner occupants • Nonresidential owners and tenants (businesses, non-profits & farms) 	<p>Only residential tenants are covered</p> <p>Other displaced persons (e.g., homeowners) may be eligible under URA provisions.</p>
Income Requirements	No income requirements, covers persons of all income levels.	Only lower-income (LI) residential tenants
Persons displaced by acquisition	Eligible for assistance.	NA (unless housing units are demolished or LI units are converted ¹)
Persons displaced by rehabilitation	Eligible for assistance.	NA (unless LI units are converted as a result of rehabilitation)
Persons displaced by demolition	Eligible for assistance.	Displaced LI residential tenants are eligible.
Persons displaced by conversion¹	NA (provided no acquisition, rehabilitation, or demolition involved)	Displaced LI tenants eligible only if market rent (including utilities) of the displacement dwelling did not exceed the FMR before conversion.
of lower income dwelling		

¹ Conversion (1) This term means altering a housing unit so that it is: (i) Used for non-housing purposes; (ii) Used for housing purposes, but no longer meets the definition of lower-income dwelling unit; or (iii) Used as an emergency shelter. See 24 CFR 42.305.

SUMMARY OF MAJOR DIFFERENCES BETWEEN URA & 104(d) RELOCATION ASSISTANCE FOR DISPLACED RESIDENTIAL TENANTS

PART II. RELOCATION ASSISTANCE FOR DISPLACED RESIDENTIAL TENANTS

Subject	URA Regulations	Section 104(d)
Advisory Services	Comprehensive services provided.	Same as URA.
Rental Assistance	Payment equals 42 x monthly rental assistance payment	Payment equals 60 x monthly rental assistance payment
Monthly Rental Assistance Payment	<p>Monthly difference between the lesser of:</p> <ul style="list-style-type: none"> • Old rent/utility costs; • 30% of gross monthly income (if low income); • Welfare rent (as paid) <p>And</p> <p>Monthly rent/utility costs for the lesser of:</p> <ul style="list-style-type: none"> ➤ comparable or ➤ DSS replacement dwelling occupied 	<p>Monthly difference between Total Tenant Payment² (TTP), the greater of:</p> <ul style="list-style-type: none"> • 30% of adjusted monthly income; • 10% of gross monthly income; • Welfare rent (as paid); • Minimum Rent (PHAs) <p>And</p> <p>Monthly rent/utility costs for the lesser of:</p> <ul style="list-style-type: none"> ➤ comparable or ➤ DSS replacement dwelling occupied
Use of Government Housing Assistance (Vouchers, etc.)	<p>If displaced residential tenant is not currently receiving government housing assistance, cash replacement housing payment is required (person may accept government housing assistance, if available).</p> <p>If displaced person currently in government assisted housing, must be offered a government assisted rental, unless one is not available</p>	<p>Agency may offer Housing Choice Voucher (Section 8) assistance in lieu of cash replacement housing payment under 104(d).</p> <p>However, LI tenants may request assistance calculated under URA instead.</p>
Pay Security Deposit	Only if non-refundable.	Payment required

² See 24 CFR 5.628 for the definition of Total Tenant Payment (TTP)

Subject	URA Regulations	Section 104(d)
Downpayment Assistance	Payment equals 42 x monthly rental assistance payment. Agency may increase up to \$7,200 (if calculation is less). ¹	Limited to purchase of cooperative or mutual housing and based on present (discounted) value of 60 x monthly rental assistance payment.
Moving and Related Expenses	Displaced person may choose: <ul style="list-style-type: none"> • Payment for actual moving and related expenses; • Fixed Residential Moving Cost Schedule; • or in some cases, a combination of both. 	Same as URA.

¹ See CPD-14-09 Moving Ahead for Progress in the 21st Century Act (MAP-21).

The following examples illustrate the meaning of the term “project” or “development project” in differing circumstances and the applicability of the URA and section 104(d):

Example 1. To assemble a site for construction of a new shopping mall, the grantee acquires 14 contiguous parcels. All structures on the 14 parcels will be demolished. CDBG funds are used to pay part of the cost of one parcel. Non-Federal funds are used to purchase the other 13 parcels. Determination: The acquisition of the 14 parcels, demolition of any improvements on the parcels and construction of a shopping mall are considered a single undertaking. They are “connected” to each other in a single “project.”

- The acquisition of each parcel included in the project is subject to the acquisition requirements of the URA, 49 CFR part 24, subpart B.

All occupied or vacant occupiable lower-income dwelling units which were demolished on any of the 14 parcels must be replaced one-for-one under section 104(d) in accordance with 24 CFR 42.375.

All persons required to move (or move personal property) from any of the 14 parcels as a direct result of the acquisition and/or demolition are eligible for URA relocation assistance.

- Any lower-income tenant who is displaced from housing on any of the 14 parcels due to the demolition or conversion to a non-housing purpose is also eligible to choose relocation assistance under section 104(d) as described under 24 CFR 42.350, in lieu of URA relocation assistance.

Example 2. The grantee purchases and clears a site for a neighborhood center. There are six (6) lower-income dwelling units on the site. Four (4) are occupied by lower-income tenant families. Local funds are used to acquire the site and demolish the improvements. CDBG funds are used to partially finance the construction of a neighborhood center. Determination: The acquisition of the site, demolition of the improvements, and construction of the neighborhood center comprise a single “project.”

- The acquisition of each parcel included in the project is subject to the acquisition requirements of the URA, 49 CFR part 24, subpart B.
- All occupied or vacant occupiable lower-income dwelling units which were demolished must be replaced under section 104(d) in accordance with 24 CFR 42.375. In this example, four (4) must be replaced because we are told they are occupied. The grantee must determine whether the other two (2) are vacant occupiable units as defined in 24 CFR 42.305. The market rent of a vacant unit may be determined by appraisal.
- All persons required to move (or move personal property) from the site are eligible for URA relocation assistance.
- The four (4) lower-income tenant families who occupy units to be demolished for this project are also be eligible to choose section 104(d) relocation assistance as described under 24 CFR 42.350 in lieu of URA assistance.

Example 3: Using local funds, the Participating Jurisdiction (PJ) acquires and clears a site for a planned lower-income housing project where **HOME** funds will be used to pay part of the cost of construction of the new building. Determination: The acquisition of the site, demolition of the improvements, and construction of the building comprise a single “project.”

- The acquisition of the site is subject to the acquisition requirements of the URA, 49 CFR part 24, subpart B.
- All occupied or vacant occupiable lower-income dwelling units on the project site which are demolished for the project must be replaced one-for-one under section 104(d) in accordance with 24 CFR 42.375.
- All persons required to move (or move personal property) from the project site as a direct result of the acquisition and/or demolition are eligible for URA relocation assistance.
- Due to the demolition/clearance, any lower-income tenant who was required to move from housing as a direct result of the project is eligible to choose relocation assistance under section 104(d) as described in 24 CFR 42.350, in lieu of URA assistance.

Example 4: The PJ acquires eight single-family owner-occupied dwellings on contiguous lots to provide a site for a multi-family housing project. **HOME** funds are used to purchase one lot. Non-Federal funds are used to acquire the other seven lots, clear all eight lots and construct the housing. Determination: The “development project” includes the acquisition and clearance of the entire site and the construction of the new multi-family housing. Therefore, each of the eight acquisitions and each of the eight displacements is part of a single “project.”

- The acquisition of each parcel included in the project is subject to the acquisition requirements of the URA, 49 CFR part 24, subpart B.
- Any occupied or vacant occupiable lower-income units demolished for the project must be replaced one-for-one under the section 104(d) in accordance with 24 CFR 42.375. The market rent for each owner-occupied unit must be determined before a decision can be made whether or not the unit is subject to one-for-one replacement under section 104(d). Similar to vacant units, the market rent of an owner-occupied unit may be determined by appraisal.
- All persons required to move (or move personal property) from any of the parcels as a direct result of the acquisition and/or demolition are eligible for URA relocation assistance.
 - Due to the demolition/clearance, any lower-income tenant who was required to move from housing as a direct result of the project is eligible to choose relocation assistance under section 104(d) as described in 24 CFR 42.350, in lieu of URA relocation assistance. Replacement housing assistance under 24 CFR 42.375 is not available to owner-occupants. (Eligible owner- occupants would be assisted under the URA.)
 - A determination must be made regarding the actual number and status of the occupants of each dwelling (including shared housing arrangements where a

tenant may occupy a room or the basement rented in a single-family residence).

Example 5: A contract is executed covering the rehabilitation of one 12-unit multi-family building. All 12 units are occupied by lower-income persons and qualify as lower-income dwellings (market rents do not exceed the FMR). The Participating Jurisdiction (PJ) uses HOME funds to finance the rehabilitation of five (5) units to be occupied by lower-income families. Non-Federal funds are used to finance the rehabilitation of the other seven (7) units. Determination: The “development project” is the rehabilitation of the entire building (all 12 units).

- All persons required to move (or move personal property) from the building as a direct result of rehabilitation are eligible for URA relocation assistance.
- Any tenant who is not required to move, but moves permanently due to a rent increase after the rehabilitation (i.e., economic displacement) may be eligible for URA relocation assistance if he/she is a “displaced person” based on HOME program regulations at 24 CFR 92.353(c)(2)(C).
- If any of the units after rehabilitation will not meet the definition of lower-income dwelling unit under section 104(d), these units would be considered converted. The PJ is responsible for ensuring one-for-one replacement in accordance with 24 CFR 42.375.
- Any lower-income tenant who is displaced by conversion of these units (if the after-rehabilitation market rents exceed the FMR) is eligible to choose relocation assistance under section 104(d) as described under 24 CFR 42.350, in lieu of URA relocation assistance.
 - NOTE: The five (5) HOME units would meet the definition of lower-income units and would not need to be replaced. The PJ would need to determine if the other seven (7) units in this example qualify as lower-income dwellings, since no information is provided on the after-rehabilitation rents of these units.

Example 6: Six (6) months ago, as part of its regular housing code enforcement program, the City inspected an eight-unit apartment building for code violations. The salaries of the housing inspectors were paid for, in full or in part, with CDBG funds. Based on his inspection of the property, the housing inspector determined the property was uninhabitable. Furthermore, following the inspection, the owner did not take any action to correct or alleviate the property’s deteriorating condition. Following its usual condemnation procedures, the City informed the tenants of the property that they must vacate their leased units. The owner retained fee simple title to the condemned property and decided to demolish the building rather than correct the code violations. The owner received no federal financial assistance. There is no evidence of any joint undertaking between the City and the owner for a development project.

- Neither the URA nor section 104(d) relocation assistance is applicable to the former tenants who had to move as a result of the condemnation. The City, however, may consider assisting tenants displaced by code enforcement under an optional relocation policy in accordance with 24 CFR 570.606(d).

- Using CDBG funds solely to pay the costs of code enforcement under 24 CFR 570.202 or to pay for relocation assistance does not trigger section 104(d) requirements.

Example 7: A Public Housing Authority (PHA) obtains approval to demolish a 20 unit public housing project from the HUD Special Applications Center (SAC) under Section 18 of the United States Housing Act of 1937. The PHA plans to construct lower-income housing on the site using various assistance programs including HOME. Section 18 approval exempts the public housing demolition projects from the URA. The PHA obtains CDBG funds from the City to assist in the demolition. The City also provides HOME funds to construct some lower-income housing on the site. While the demolition and reconstruction as planned may constitute one “project,” the use of federal funds for demolition in this project would not cause the URA to apply because of the statutory exemption from the URA provided under Section 18.

- The URA is not triggered by the use of CDBG or HOME funds in this project because of the Section 18 exemption.
- The PHA must provide relocation assistance to the tenants who are required to move for the demolition under the relocation provisions of Section 18.
- In addition, because of the use of CDBG and HOME funds in this project, section 104(d) requires that lower-income tenants who are required to move for this demolition project must also be offered the choice of relocation assistance payments calculated under either section 104(d) or the URA.
 - Tenants must be offered relocation payments as calculated under the URA (because of the section 104(d) requirement to do so).
 - Since the displaced tenants occupied subsidized housing under the public housing program, comparable replacement housing offered under both the URA and section 104(d) may be other public or assisted housing (including Housing Choice Vouchers), which may result in no cash payments to the affected tenants, if their rent/utility burden remains the same.
- The CDBG/HOME recipient (the City) is responsible for assuring compliance with the one-for-one replacement requirements of section 104(d) as described in 24 CFR 42.375.

Housing Cooperatives and Mutual Housing Associations

These two forms of housing are not common to all areas of the United States. To determine whether or not a housing development qualifies for section 104(d) downpayment assistance under 24 CFR 42.350(e)(2), a displacing agency would need to review the "Subscription Agreement" which is the document used to sell a membership in a cooperative, or the "Membership Application" for the Mutual Housing Association, and determine whether the interest which is purchased qualifies as an interest in a housing cooperative or mutual housing association under state or local law. The definitions¹ below are only intended to provide a general description of these forms of housing and are not intended to supersede definitions provided under State or local law.

A "**Cooperative**" is a form of ownership in which each owner of stock in a cooperative apartment building or housing corporation receives a proprietary lease on a specific apartment and is obligated to pay a monthly maintenance charge that represents the proportionate share of operating expenses and debt service on the underlying mortgage, which is paid by the corporation. This proportionate share is based on the proportion of the total stock owned. A share loan is a loan obtained to purchase a share in a housing co-op secured by the shares and occupancy rights (cooperative interest). A member can get an individual loan for that amount from a bank or other lending institution (just as when an individual is buying a house).

"**Mutual Housing**" property is owned by a Mutual Housing Association (MHA) and residents are members of the Association that owns the housing. The MHA is a nonprofit corporation that develops, owns and/or manages, or assists cooperatives and other forms of nonprofit resident-controlled housing. The MHA is governed by a Board of Directors composed of residents, and representatives from the private, public and community sectors. The MHA owns all of the housing developments. Residents cannot buy or sell their units directly, however, they have a significant voice in decision-making, and have a lifetime right to live in the housing.

¹ Definitions developed in consultation with HUD's Office of Single Family Housing and the National Association of Housing Cooperatives (NAHC).