

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).