

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 nor 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))⁷. 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)).

⁷ 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 foundation⁸; (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.

⁸ 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).

Title VI of the Civil Rights Act of 1964 requires recipients of federal financial assistance to take reasonable steps that ensure meaningful access to their programs and activities by persons who, as a result of national origin, have limited English proficiency (LEP). Executive Order 13166 requires each federal agency to prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Executive Order 13166 further directs each federal agency to draft Title VI guidance that details how general compliance standards in model LEP Guidance issued by the Department of Justice (67 FR 41455) will be applied to recipients to ensure meaningful access to federally assisted programs and activities by LEP persons. On January 22, 2007, HUD published *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (72 FR 2732). HUD's guidance offers a framework for recipients to use in making an assessment of language needs in their service area, including the translation of notices and other vital documents. Additionally, this Handbook includes specific guidance on language assistance in the administration of relocation assistance. See also 49 CFR 24.8(b).

- 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).