

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Regional Directors
All Field Office Directors
All CPD Directors
All Housing Directors
All Public Housing Directors

Notice CPD 02-10

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Cross References:

Subject: Implementation of Uniform Relocation Act -- Coordination with CPD

I. PURPOSE

The purpose of this notice is to provide guidance to HUD field office staff with respect to the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and related program requirements in HUD-assisted housing programs. In particular, it addresses the importance of Housing and Public and Indian Housing staff coordination of program activities (both new projects and those in the pipeline) with Community Planning and Development (CPD) staff administering the URA.

II. BACKGROUND

Two significant pieces of legislation affect HUD implementation of the URA:

In 1987, the URA was amended to significantly expand coverage and substantially revise the levels of required relocation assistance. HUD subsequently concurred on the government-wide regulation appearing at 49 CFR Part 24, on April 2, 1989. Under the current rules (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition), all persons (families, individuals, businesses, nonprofit organizations and farms) displaced on or after April 2, 1989, as a direct result of rehabilitation, demolition or acquisition (publicly or privately undertaken) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA. This HUD Handbook is available from HUD's document distribution source at 1-800-767-7468 or at: http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi?hudclipse. The application of the URA to a displacement usually depends on the date when the HUD assistance was approved. However, the URA is triggered if a person moves on or after April 2, 1989, and the move is determined to be for the HUD-assisted project. Even a person forced to move before the approval of a project may be determined to have been displaced "for the HUD-assisted project." In addition, regulations implementing the 1987 URA amendments established certain requirements governing the acquisition of real property by a private developer or nonprofit organization for a HUD-assisted project. (URA requirements governing acquisition by a "State agency" were not changed substantially.)

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Effective November 21, 1997, the URA was amended to modify the definition of "displaced person" to exclude aliens not lawfully present in the United States.

A more complete discussion of the term "displaced person" which encompasses both legislative changes is included in Section VI below.

III. PROGRAMS COVERED

A list of covered programs administered by the Office of Housing and the Office of Public and Indian Housing is included as Attachment 1. This list may not be all inclusive due to the periodic elimination or close-out of programs and/or the addition of new programs. Individual program statutes and/or regulations should be consulted for any program which is not included on this list.

IV. COORDINATION WITH CPD RELOCATION STAFF

- A. Organizational Responsibility. As provided in Paragraph 5-6 of the HUD Organizational Handbook 1100.3 REV-5, CPD has been assigned Department-wide responsibility for implementing the URA and non-URA relocation policies. Therefore, timely coordination with the local CPD field office staff who have been assigned relocation responsibility is needed before approval of a project. Moreover, given the technical nature of such matters as the determination of eligibility as a "displaced person" and the computation of required relocation payments, such communication is essential. The Department is in the process of staffing Regional Relocation Specialist positions in each Regional Office (the staff position will still be located in CPD), however, most CPD offices currently have a staff person who has been assigned relocation responsibilities (often as a collateral duty). During this period of transition, local CPD staff can direct inquiries to the appropriate personnel within the field or regional office.
- B. When. Whenever real property is to be (or has been) acquired for a project or the project site is (or has recently been) occupied (whether or not relocation is involved), the CPD relocation staff must be given timely opportunity to review all pertinent information (e.g., the first application or the first document identifying a site) and, where applicable, notified of conditional and firm commitment, fund reservation and closing. (Many applicants are so unfamiliar with URA requirements that they should be advised to consult with CPD during the preparation of their application. CPD staff can provide advice and assistance during general workshops or to individual applicants within the limitations of the HUD Reform Act.).
- C. Basic CPD Information Needs. To evaluate the adequacy of a proposed project budget, provide timely training and technical assistance and schedule monitoring, CPD relocation staff needs certain information, including an estimate of the number of families, individuals, businesses and nonprofit organizations occupying the property, and the estimated cost and source of funding for relocation and real property acquisition activities. Generally, CPD relocation staff prefer to

obtain the information described in form HUD-40087, Project Data on Occupancy, Displacement and Real Property Acquisition (see Attachment 2). When needed information is not included in the application or other documents, relocation staff may need to request additional information. Program staff (*e.g.*, a Multifamily Housing Representative) shall either obtain the additional information from the applicant or provide the name and telephone number of the applicant to the assigned CPD relocation staff so that he/she will be able to contact the applicant directly.

- D. Adequate funding. The consequences of failing to recognize and budget for relocation "costs before project approval are substantial. When preparing cost estimates, the applicant should be encouraged to consult with CPD relocation staff. Relocation staff can advise the applicant on how to prepare reasonable relocation cost estimates. To the extent that funding for relocation is provided by a third party, evidence of a commitment for the funding may be required.
- E. When relocation or acquisition activities are completed before the application for funds, CPD relocation staff will need the information described in Attachment 2 so that timely monitoring can be scheduled.
- F. Prevention of Homelessness. The Department has a responsibility to ensure that its programs do not lead to temporary or chronic homelessness due to lax application or enforcement of the provisions of the URA. All program areas must play a role in assuring that HUD programs designed to improve the condition of housing and community or economic development contribute to the continued well being and improved housing conditions for all persons affected by our programs. When displacement is necessary, HUD must ensure that affected persons are provided with comparable and affordable replacement housing.

V. COMPLIANCE RESPONSIBILITY OF APPLICANT

As a condition for receiving HUD financial assistance, an applicant (*e.g.*, a PHA, Owner or Project Sponsor) must certify to HUD that it will comply with the URA, 49 CFR Part 24, and the relevant section of the program regulation. The applicant is responsible for ensuring compliance with such requirements, as described in HUD Handbook 1378, notwithstanding any third party's contractual obligation to the applicant to comply with these requirements. HUD housing programs normally include the required certification in the NOFA, application package and contract documents. HUD programs areas must insure that applicants and grantees are familiar with the requirements of the URA and may request the assistance of CPD relocation staff to include additional specific guidance on the URA in programmatic NOFAS, application kits, and/or program regulations.

VI. DEFINITION OF DISPLACED PERSON

- A. Basic URA Definition (49 CFR 24.2). The term "displaced person" includes any person (family, individual, business, nonprofit organization or farm), that moves from the real property, or moves his or her personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federal or federally assisted project.

- B. Aliens. Section 104 of PL 105-117 amended the URA to provide that "...a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States..." except, "...If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person ... would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States ... the displacing agency shall provide relocation payments and other assistance to the displaced person under this Act if the displaced person would be eligible ... but for..." the restriction on aliens not lawfully present in the United States. Although a proposed rule was published on June 12, 1998 by the Department of Transportation (lead agency for the URA), the URA regulations have not yet been amended to incorporate this statutory change. Based on the language of the proposed rule, HUD is in the process of revising certain relocation claim forms to incorporate a certification by displaced person(s) regarding their status.
- C. Additional Guidance. Applicable program regulations and/or HUD Handbook 1378 contain additional guidance that will assist the reader in determining whether a person qualifies as a "displaced person" who is eligible for relocation assistance. That guidance includes the following:
- (1) Involuntary Moves. Any permanent, involuntary move of a person that occurs as a direct result of acquisition, rehabilitation, or demolition for a HUD-assisted project is a displacement that is subject to the URA and the provisions of Handbook 1378. Involuntary moves include a move following a notice to vacate the premises and may include a move resulting from the owner's refusal to renew an expiring lease. (Depending on the circumstances, a landlord may be free to select another tenant for a number of reasons unrelated to the project. Refusal to renew a lease must receive careful scrutiny in order to determine whether the URA should apply.)
 - (2) Displacement Before Approval of Assistance. Because of the nature of the URA, it is not possible to establish by regulation a specific action that always provides a cut-off date for determining eligibility or non-eligibility as a "displaced person" (*i.e.*, a date that would always establish whether a displacement occurred for the project). Most HUD program regulations, however, establish an assumed cut-off date that may be rebutted by evidence to the contrary. A move before the assumed cut-off date disqualifies the person, unless HUD or the Agency (e.g., PHA, Owner or Sponsor) determines that the person was displaced for the project. (Any person denied eligibility for relocation assistance may appeal that determination.) Any permanent, involuntary move on or after the assumed cut-off date is considered a displacement for the project, unless the Agency determines otherwise and HUD concurs in that determination.

Example: Under most HUD program regulations, if the Agency has control of the site of the project at the time of its initial submission of an application for financial assistance that is later approved, the assumed eligibility cut-off is the initial submission of such application. A person who moves from the project site before that date does not qualify as a displaced person, unless (because of special circumstances) HUD or the Agency determines that the person was displaced as a direct result of acquisition, rehabilitation or demolition for the project.

- (3) Failure to Inform Tenant in Timely Manner. Each tenant is entitled to timely notice(s) explaining the impact of the project on him/her. Most important, a tenant that will be displaced must be informed of his/her eligibility for relocation assistance and the nature of that assistance. A tenant that will not be displaced (but may be relocated temporarily during rehabilitation) must be provided a specific written notice informing him/her of the terms and conditions under which the he/she may occupy the property upon completion of the project. This information should be provided as soon as feasible, to delay providing this notice may place an unacceptable burden on the tenant. While it is sometimes possible to convey all this information in one timely notice, most project circumstances dictate the issuance of two notices:
- (a) A general information notice (see Paragraph 2-3a of HUD Handbook 1378) to be issued as soon as feasible (e.g., at the time of the submission of the application); and
 - (b) Either a notice of eligibility for relocation assistance or a notice of non-displacement (see Paragraph 2-3b of HUD Handbook 1378). In most programs, if the tenant-occupant of a dwelling moves permanently from the property after the regulatory deadline for this notice and he or she has not been provided a notice of non-displacement, the tenant will automatically qualify as a "displaced person." In other words, even if there was no intention to displace the tenant, it is assumed that the tenant's move was an involuntary move caused by the project because the tenant was not given timely information essential to making an informed judgment.

NOTE: If a project will have little or no negative impact on the tenants (e.g., rehabilitation that will result in no disruption and no increase in rent), these notices may be served by posting them in accessible location(s) and supplying a copy, if applicable, to the tenant's representative.

- (4) Economic Displacement, Temporary Relocation and Permanent Move Within Complex. The URA and the regulations at 49 CFR Part 24 do not establish eligibility for relocation assistance for a tenant who moves from the property because he or she cannot afford to pay the rent charged upon completion of a project (economic displacement), or who is required to relocate temporarily (but not permanently) while the project is underway or who moves permanently to other space within the same building/complex. Most HUD

program regulations which permit the rehabilitation and/or acquisition of tenant-occupied dwelling units provide that a tenant-occupant of a dwelling that moves permanently will qualify as a displaced person if any of the following three situations, a, b, or c, occurs:

- (a) Economic Displacement. The tenant moves permanently after (a date specified in the program regulations) and the move occurs before the tenant is provided written notice offering him or her the opportunity to occupy a suitable, decent, safe, and sanitary dwelling unit in the same building/complex under reasonable terms and conditions, upon the completion of the project. Reasonable terms and conditions include:
 - (i) No unreasonable change in the character or use of the property;
 - (ii) A monthly rent and estimated average monthly utility cost that does not exceed the greater of: (a) the tenant's old rent and the current average monthly utility costs; or (b) a specified portion of income (e.g., 30 percent of the tenant's gross household income or the Total Tenant Payment under 24 CFR 5.628).
- (b) Unreasonable Temporary Moves. The tenant was required to relocate temporarily but:
 - (i) The tenant was not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increased housing costs, or;
 - (ii) Other conditions of the temporary relocation were not reasonable. (If the tenant moves back into the building/complex, he or she is not a displaced person. But this does not relieve the Agency of the obligation to reimburse the tenant for out-of-pocket expenses.)
- (c) Unreasonable Permanent Moves. The tenant is required to move to another unit in the same building/complex but:
 - (i) He or she is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or
 - (ii) Other conditions of move are not reasonable.

D. Persons Not Eligible for Assistance. Notwithstanding the requirements in paragraphs 6a and 6(b) above, certain persons do not qualify as a "displaced person" and are not eligible for relocation assistance because they fall within certain excluded categories described in applicable regulations or the statute. These exclusions usually include circumstances where:

- (1) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD (or in certain programs, the PHA) determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. (The Agency must document its files. To preclude unwarranted claims, the Agency should obtain a court order for the eviction. If the Agency believes the cost of obtaining a court order is prohibitively expensive, it should document its files.)
- (2) The Agency determines that the person occupied the property for the purpose of obtaining relocation assistance and CPD in the HUD field office concurs in that determination.
- (3) The person is a tenant-occupant that moved into the property after the date of Initiation of Negotiations (a date specified in the applicable program regulation) but, before leasing and occupying the property, was provided written notice of the application for HUD assistance for the project, 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 as a "displaced person" as a result of the project.
- (4) The person is the owner-occupant of the property who moves as a result of an arm's length acquisition as described in Paragraph 5-1a of HUD Handbook 1378, or as a result of the voluntary rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any such acquisition, rehabilitation, or demolition for the project is subject to the URA).
- (5) The Agency determines that the person was not displaced as a direct result of acquisition, rehabilitation or demolition for the project, and CPD in the field Office concurs in that determination.

E. HUD Relocation Brochures. HUD has prepared a set of relocation brochures which should be provided to persons or businesses who may be subject to relocation under the URA or section 104(d) of the Housing and Community Development Act of 1974. These brochures are available from HUD's document distribution source at 1-800-767-7468 or at: http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi?hudclipse. The brochures are:

- When a Public Agency Acquires Your Property HUD-1041-CPD
- Relocation Assistance to Tenants Displaced from their Homes HUD-1042-CPD
- Relocation Assistance to Persons Displaced from their Homes (Section 104(d)) HUD-1365-CPD
- Relocation Assistance to Displaced Businesses, Non-Profit Organizations and Farms HUD-1043-CPD
- Relocation Assistance to Displaced Homeowners HUD-1044-CPD

- F. When in Doubt. HUD Housing staff and Agencies may, at any time, ask CPD relocation staff to determine whether a specific displacement is or would be covered by the URA and/or HUD Handbook 1378.

VII. RECORDKEEPING

Agencies must maintain records in detail sufficient to demonstrate compliance with applicable statutory and regulatory provisions. The basic relocation and acquisition recordkeeping requirements are described in Chapter 6 of HUD Handbook 1378.

Attachments:

Attachment 1 (List of covered HUD Programs)

Attachment 2 (HUD-40087)

Covered Programs

HUD-assisted programs administered by the Office of Housing or the Office of Public and Indian Housing that are subject to the URA, but may not be limited to:

- a. Section 8 Housing Assistance Payment Program - Special Allocations (24 CFR 886.338) (For disposition of HUD-owned projects).
- b. Supportive Housing for the Elderly (Section 202) and Persons with Disabilities (Section 811) (24 CFR 891.155(e)).
- c. Section 8 Housing Vouchers (24 CFR 887).
- d. Section 8 Housing Assistance Payments Program -- Moderate Rehabilitation (24 CFR 882). * *Terminated*
- e. Section 8 Single Room Occupancy Moderate Rehabilitation for Homeless (24 CFR 882, Subpart H). * *Terminated*
- f. Nehemiah Housing Opportunity Grants (24 CFR 280.207(b)). * *Terminated*
- g. Housing Development Grants (HODAG) (24 CFR Part 850). * *Terminated*
- h. Section 8 Loan Management Set-Aside for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR 886).
- i. Prepayment of Low Income Housing Mortgages (24 CFR 248).
- j. Public Housing Development and Major Reconstruction of Obsolete Projects (MROP) (24 CFR 941.207).
- k. Comprehensive Improvement Assistance Program (CIAP) -- Public Housing Modernization (24 CFR 968.108). * *Terminated*
- l. Comprehensive Grant Program (CGP) -- Public Housing Modernization (large PHAs only) (24 CFR 968.108). * *Terminated*
- m. HOPE for Homeownership of Multifamily Units (HOPE 2) (formerly 24 CFR Subtitle A, Appendix B, Section 735). * *Terminated*
- n. Section 8 Project Based Certificate Program (24 CFR 983).
- o. Section 5(h) Homeownership Program for Public Housing (24 CFR 906).

- p. Section 21 Homeownership (Public Housing Conversion).
- q. HOPE VI - Rehabilitation, Acquisition, and/or Demolition under an approved Revitalization Plan.
- r. Public Housing Capital Fund Program (24 CFR 905)
- s. Section 8 Housing Choice Voucher Program (24 CFR 982)
- t. Indian Housing Grant Program (24 CFR I 000)
- u. Loan Guarantees for Indian Housing (24 CFR 1005).
- v. Comprehensive improvement Assistance Program (CIAP) -- Indian Housing Modernization (formerly 24 CFR 950). * *Terminated*
- w. Comprehensive Grant Program (CGP) -- Indian Housing Modernization (formerly 24 CFR Part 950). * *Terminated*
- x. Indian Home Program (24 CFR 954.4(e)). * *Terminated*
- y. HOPE for Public and Indian -Housing Homeownership (HOPE 1) (formerly 24 CFR Subtitle A, Appendix A, Section 735). * *Terminated*
- z. Community Development Block Grant for Indian Tribes and Alaska Native Villages (24 CFR 1003.602)
- aa. Flexible Subsidy (24 CFR 219.135). * *Terminated*
- bb. Disposition of HUD-Acquired Single Family Property (24 CFR 291).
- cc. HUD-Owned and HUD-Managed Multifamily Housing Properties (24 CFR 290.17).
- dd. Multifamily Rental for Moderate-Income Families (Section 22 1 (d)(3)) (24 CFR 221.795).* *Terminated*
- ee. Rent Supplement Payments (24 CFR 215.80).* *Terminated*
- ff. Mortgage Insurance and Interest Reduction Payments for Rental Projects (24 CFR 236.1001).* *Terminated*
- gg. Section 8 Housing Assistance Payments Program for New Construction.* *Terminated*
- hh. Section 8 Housing Assistance Payments Program for Substantial Rehabilitation.* *Terminated*

- ii. Section 8 Housing Assistance Payments Program -- State Housing Agencies (24 CFR 883).*
Terminated
- jj. Section 8 Housing Assistance Payments Program New Construction Set-Aside for Section 515 Rural Rental Housing Projects (24 CFR 884). * *Terminated*
- kk. Section 23 Housing Assistance Payments Program -- New Construction and Substantial Rehabilitation (24 CFR 880 and 881).* *Terminated*
- ll. Assisted Living Conversion Grant Program (ALCT).

* HUD no longer funds new projects under this program, but may continue to provide project-based subsidies for existing projects in order to make the housing affordable to lower-income occupants. These project-based subsidies constitute "HUD financial assistance" (defined in Paragraph 1-14 of Handbook 1378), and persons displaced as a direct result of rehabilitation, demolition or acquisition, as described in Paragraph 8-222, must be provided relocation assistance at URA levels as described in Chapters 1 through 6 of this handbook.

Attachment 2

Printed copies of this Notice will include the HUD-40087 form here as Attachment 2. Web users will have to link to the PDF file in HUDclips at:
http://www.hudclips.org/sub_nonhud/html/pdfforms/40087.pdf