

Chapter 8: Relocation under the URA and 104(d)

Introduction

This chapter provides detailed guidance regarding relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and Section 104(d), as well as one-for-one unit replacement requirements. It outlines the procedures that grantees should follow to ensure compliance with both the URA and 104(d). In addition, information is provided to calculate payments to displaced persons, to keep records, and comply with other relocation requirements that may be applicable to CDBG-assisted projects.

Section 8-A. Overview

Applicable Regulations

There are three major types of requirements that cover relocation (and acquisition) activities in CDBG programs:

- ✓ The URA regulations, effective February 2005 implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24);
- ✓ Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Part 570.496(a) and
- ✓ 24 CFR 570.606 of the CDBG Regulations, which requires compliance with the regulations, listed above.
- ✓ An over-riding principle in the CDBG program and the URA is that the grantee shall assure that it has taken all reasonable steps to minimize displacement in implementing activities.

49 CFR Part 24

Section 104(d) and 5305(a)(11) of Title 1, Housing and Community Development Act of 1974; 24 CFR 570.496(a)

24 CFR 570.606

Tip: HUD Handbook 1378 (recently updated) is a resource available for relocation information. It can be downloaded from HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780.

Grantees should also refer to the Department of Transportation's Federal Highway Administration's Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs. It may be downloaded from the Federal Highway Administration's website at <http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm>.

URA the HUD Way - the 8-part web-based modular training course provides basic information and resources to HUD grantees and funding recipients on URA requirements for HUD funded projects. <https://www.hudexchange.info/trainings/ura-the-hud-way/>

Overview of Requirements

Displacement results when people or a non-residential entity moves permanently as a direct result of the acquisition, demolition, or rehabilitation of property for CDBG-funded projects.

49 CFR Part 24

The Uniform Relocation Act (URA) protects all persons who are displaced by a federally-assisted project **regardless of their income**. However, Section 104(d) **only protects low/moderate income persons** (within 80% of the Area Median Income limit for their household size).

Section 104(d) requirements focus on the “loss” of low and moderate-income housing rental units) in a community through CDBG-funded demolition or conversion. Section 104(d) has two distinct components:

- ✓ **People:** 104(d) specifies relocation assistance for displaced low- and moderate-income renter households.
- ✓ **Units:** 104(d) requires one-for-one replacement of low and moderate-income dwelling units (as defined by the regulations) that are demolished or converted using CDBG or HOME funds to a use other than low-moderate income permanent housing. More information can be found later in the chapter.

24 CFR 570.496(a)

Section 8-B. Definitions

In order to understand applicable relocation requirements, it is necessary to understand some key terminology.

Who Is Displaced under the URA and CDBG?

The URA, the CDBG regulations and Section 104(d) each address specific circumstances that would qualify someone as a “displaced person.”

Under the URA, the term “displaced person” means:

- ✓ 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. An owner who refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance will also trigger URA coverage for the tenant.
- ✓ The effective move date of the displaced person is based on whether:
 - If the grantee has site control at the time the grantee submits an application for KCDBG funds for the project that is later approved, then the household is considered displaced on the submission date of the application; or
 - If the grantee does not have site control when the application for KCDBG funds, the effective date will be the date the grantee obtains site control.
- ✓ A person who moves permanently from the real property after the initiation of negotiations, 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”)
- ✓ A person who moves permanently and was not issued a Notice of Nondisplacement after the application for KCDBG funds is approved.

49 CFR 24.2(g); Handbook 1378,
Chapter 1, Paragraph 1-4
Handbook 1378,
Chapter 8, Paragraph 8-23

Even if there was no intent to displace the person, if 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.

Handbook 1378:
Chapter 1-4, Paragraph I- 4

Under CDBG, the regulations define a “displaced person” as someone who moves after a specific event occurs:

- ✓ This event establishes a presumption that a project may begin (e.g., date of submission of an application). It is presumed that 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 determines otherwise.

HUD must concur in a determination to deny a person relocation benefits on this basis:

- ✓ When an owner either evicts a tenant or fails to renew a lease in order to sell a property as “vacant” to a grantee for a HUD-funded project, HUD will generally presume that the tenant was displaced “for the project.” (Evictions for serious or repeated violations of the lease are permissible, but the owner must follow state tenant-landlord laws governing eviction.)
- ✓ In cases where the tenant was not notified of their eligibility for URA benefits, the grantee is responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the grantee can demonstrate that the move was not attributable to the project.
- ✓ CDBG regulations also define a “displaced person” as:
 - A tenant who moves permanently after the KCDBG-funded acquisition or rehabilitation, and the increased rent is not affordable (they are “economically displaced”).

The CDBG program regulations cover "economic displacement," while the URA is silent on this issue. If rents are increased after the KCDBG project is complete, and the new rent exceeds 30% of the tenant’s gross monthly income, they would be “economically displaced.” Generally an increase in rent within the first year or the project is seen as related to the federally funded project and may trigger “economic displacement” benefits.

Handbook 1378;
Chapter 1; Paragraph 4–5;
24 CFR 570.606(b)(2)(D)

- ✓ The URA also protects the following “displaced persons”:
- ✓ 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:
 - The tenant was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the project; or
 - Other conditions of the move within the project were not reasonable.
- ✓ A tenant who moves permanently after the building has a change from residential use to a public use as a direct result of a CDBG-assisted project (for example, the building now leases units to serve

persons who were homeless or require supportive housing). Under the CDBG program, leases of 15 years or more are considered acquisitions for the purposes of the URA.

- ✓ 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."

When Section 104(d) is triggered:

- ✓ The term "displaced person" means any lower-income household that moves from real property permanently as a direct result of the conversion of an occupied or low- and moderate-income dwelling unit or the demolition of any dwelling unit, in connection with a KCDBG-assisted activity.

Persons Not Considered Displaced

A person does not qualify as a "displaced person" (and is not entitled to relocation assistance at URA levels), if:

- ✓ The person has no legal right to occupy the property under state or local law; or
- ✓ The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement or other good cause, the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or
- ✓ The person moves into the property after the date of the application for KCDBG funds and, before moving in, was provided written notice of the project, its 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 assistance as a "displaced person" as a result of the project. See Attachment 8-1 for a sample notice to provide to prospective tenants.

24 CFR 570.606(b)(2)(i)

49 CFR 24.2(a)(9)(ii)(k)

Handbook 1378,
Chapter 1, Paragraph 1-4 J (1)

Handbook 1378,
Chapter 1, Paragraph 1-4 J (2)
Attachment 8-1:
Notice to Prospective Tenants

49 CFR 24.2(a)(9)(ii)(C);
Prospective Tenants

Attachment 8-1: Sample Notice to
Prospective Tenants

49 CFR 24.2(a)(9)(ii)(I)

Handbook 1378,
Chapter 1, Paragraph 1-4 J (4)

People are also not considered displaced if:

- ✓ The person occupied the property for the purpose of obtaining relocation benefits.
- ✓ The person retains the right of use and occupancy of the property for life following its acquisition (life estates).
- ✓ The person is determined not to be displaced as a direct result of the project. Grantees may not make this determination on their own. Contact DLG for determination assistance.

- ✓ The person is an owner-occupant of the property who moves as a result of a voluntary acquisition and received the voluntary acquisition notice. (Refer to Chapter 5 of HUD Handbook 1378 and Chapter 9: Acquisition of this Handbook for more information on voluntary acquisition.) (**NOTE:** Tenants living in properties that are acquired via a voluntary acquisition are covered by the URA regardless of their willingness to move.)
 - Handbook 1378, Chapter 1, Paragraph 1-4 J (3)
 - Handbook 1378, Chapter 5 Chapter 9: Acquisition 49 CFR 24.2(a)(9)(ii)(E)
- ✓ The person leaves due to code enforcement, unless the code enforcement results in rehabilitation or demolition for an assisted project. An owner-occupant or tenant who is required to move permanently as a direct result of this rehabilitation or demolition may be eligible for relocation assistance.
- ✓ The person, after receiving a notice of eligibility, is notified in writing that he or she will not be displaced.
 - 49 CFR 24.2(a)(9)(ii)(G)

Such a notice cannot be delivered unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of eligibility.

- ✓ The person is an owner-occupant who voluntarily applies for rehabilitation assistance on his or her property. When the rehabilitation work requires the property to be vacant for a period of time, this assistance is considered optional. Refer to Chapter 10: Housing for more information.
 - 49 CFR 24.2(a)(9)(ii)(H)
- ✓ The person is not lawfully present in the United States unless denial of benefits would result in “exceptional and extremely unusual hardship” to a lawfully-present spouse, child, or parent. This prohibition covers all forms of relocation assistance under the URA including both replacement housing payments (RHP) and moving assistance.
 - 49 CFR 24.2(a)(9)(ii)(L)
Public Law 105-117, passed on November 21, 1997; Final Rule published on February 12, 1999

The current URA regulations include a definition of the phrase "exceptional and extremely unusual hardship," which focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the grantee and does not lend itself to an absolute standard applicable in all situations. When considering whether such an exemption is appropriate, a displacing agency may examine only the impact on an alien's spouse, parent, or child who is a citizen or lawful resident alien.

An “alien not lawfully present in the United States” is defined as an alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 United States C.1101 et seq) and whose stay in the United States has not been authorized by the United States Attorney General. It includes someone who is in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

When a household contains some members who are present lawfully but others are present unlawfully, there are two different computation methods, one for moving expenses and one for replacement housing payments (RHP). For moving expenses, the payment is to be based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be

displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

- ✓ For the RHP, the unlawful occupants are not counted as a part of the family and its size is reduced accordingly. Thus a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable for the family would reflect the makeup of the remaining four persons and the Replacement Housing Payment (RHP) would be computed accordingly.

Initiation of Negotiations (ION)

The date of the Initiation of Negotiations (“ION”) serves as a milestone in determining a person’s eligibility for relocation assistance, including moving costs and a replacement housing payment. CDBG regulations establish a program-specific definition of ION as the trigger for issuance of the Notice of Eligibility for Relocation Assistance or Notice of Nondisplacement.

For CDBG programs, the term "initiation of negotiations" is defined as the following:

- ✓ If the displacement results from privately undertaken rehabilitation, demolition or acquisition, the execution of the grant or loan agreement between the grantee and the person owning or controlling the real property.
- ✓ If the displacement results from grantee demolition or rehabilitation and there is no related grantee acquisition, the notice to the person that he or she will be displaced by the project (or the person's actual move, if there is no such notice).
- ✓ When there is voluntary acquisition of real property by a grantee, the term “initiation of negotiations” means the actions described above, except that the ION does not become effective, for purposes of establishing eligibility for relocation assistance, until there is a written purchase agreement between the grantee and the owner. (See Chapter 9: Acquisition)
- ✓ Whenever real property is acquired by a grantee that has the legal power under the Eminent Domain Act of Kentucky and the acquisition is an involuntary transaction, the initiation of negotiations means the delivery of the initial written offer of just compensation by the grantee to the owner to purchase the real property for the project.

Chapter 9:
Acquisition

24 CFR 570.606
49 CFR 24.2(a)(15)

After the ION, any person who seeks to rent a unit 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 persons are found to be eligible as displaced persons.

Project

The definition of what is a “project” differs for URA and for Section 104(d).

- ✓ The term project is defined under URA as an activity or series of activities funded with federal financial assistance received or anticipated in any phase. In addition, URA states that program rules will further define what is considered a project.

Handbook 1378,
Chapter 1, Paragraph 1-4 DD
49 CFR 24.2(a)(22)

- ✓ Under Section 104(d), a project is an activity or series of activities undertaken with HUD financial assistance received or anticipated in any phase. Section 104(d) benefits are triggered if the activity is a CDBG or HOME funded activity and the HUD assisted activity is part of a single undertaking.

Handbook 1378,
Chapter 7, Paragraph 7-10

- ✓ In order to determine whether a series of activities are a project, look at:
 - **Timeframe**—Do activities take place within a reasonable timeframe of each other?
 - **Objective**—Is the single activity essential to the overall undertaking? If one piece is unfinished, will the objective be incomplete?
 - **Location**—Do the activities take place on the same site?
 - **Ownership**—Are the activities carried out by, or on behalf of, a single entity?

Section 8-C. General Relocation Requirements under the URA

The URA covers all types of displaced persons, including both residents and businesses. It also covers the temporary relocation of existing occupants. The following sections of the handbook are sorted by: (1) URA requirements that apply to all persons; (2) URA requirements that apply to displaced residential occupants; (3) URA requirements that apply to temporary relocation; and (4) URA requirements that apply to commercial occupants.

Acquisition and/or relocation of mobile homes is also covered by the URA. Since there are many variables in the ownership and tenancy of mobile homes, grant administrators are asked to consult with DLG before proceeding with the acquisition or relocation of mobile homes.

Following the URA text, this chapter covers Section 104(d). A flow chart summarizing the relocation process can be found as Attachment 8-2 of this chapter.

The requirements in this section apply to all projects where the URA is triggered. The URA relocation process can differ greatly depending upon the funding used in a project and whether an involuntary sale will be involved in the process. Attachment 8-2 provides a typical relocation scenario in a flow chart indicating key dates in the process.

Attachment 8-2:
URA Relocation Flow Chart with
Trigger Dates

Planning for Relocation

If KCDBG funds will involve relocation, the grantee must develop written policies and procedures for managing the anticipated relocation caseload in the form of a “relocation plan.” The relocation plan must be submitted to DLG after the funding award as part of the evidentiaries needed for the release of funds.

Grantees are encouraged to contact DLG early in this process to consider the timing and project implications for projects potentially involving temporary or permanent relocation.

Attachment 8-3:
Guideform Residential
Antidisplacement
and Relocation Plan

These procedures must be in compliance with all elements of the Final Rule implementing changes to the URA and the Residential Antidisplacement and Relocation Plan, previously developed as part of the application for CDBG assistance.

The plan must contain two components:

- ✓ A commitment to replace all low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a direct result of the use of KCDBG funds, and
- ✓ A commitment to provide relocation assistance required under Section 104(d) of the Housing and Community Development Act.

The plan must be adopted by the local governing body.

A sample of this plan is included as Attachment 8-3 of this chapter.

Advisory Services, Including Relocation Notices

The next step in the process is to provide relocation advisory services. This process requires the grantee to first personally interview the person to be displaced. The purpose of the interview is to explain the:

- ✓ Various payments and types of assistance available,
- ✓ Conditions of eligibility,
- ✓ Filing procedures, and
- ✓ Basis for determining the maximum relocation assistance payment available.

Grantees should use Attachment 8-4: Household Case Record to collect the required information for residential occupants. It is very important that all significant contact with displacees be logged into Section 5 of the Household Case Record.

Attachment 8-4:
Household Case Record

As a part of advisory services, the URA requires that all occupants receive notices informing them of their various rights.

General Information Notice

The General Information Notice (GIN) is referred to in Chapter 9 as one of the required notices when there is involuntary acquisition. This is a **very important notice!**

As soon as feasible property owners should receive a GIN and copies of the GIN for each property included in the project should be included as a part of the grant application submission. The project administrator must provide the GIN to notify each household and/or business that the potential for displacement exists, including potential acquisition of the property. Samples of the GIN are provided in Handbook 1378 as Appendix 2 and 3. The GIN also informs the occupant prior to the initiation of negotiations not to move prematurely, because doing so will jeopardize any assistance that they may be due. By providing occupants with the GIN, the grantee protects themselves from claims for relocation benefits that could have been avoided if the person would not have been displaced.

Handbook 1378: Appendix 2 and 3,
General Information Notices for
Residential Tenants

Notice of Eligibility and Notice of Nondisplacement

After grant approval, the grantee should determine who must be displaced and who will be allowed to remain in (or return to) the project.

After making these determinations, the grantee should issue the appropriate relocation notices: either a Notice of Eligibility (for relocation assistance) or a Notice of Nondisplacement.

- ✓ The Notice of Eligibility informs occupants who will be displaced of their rights and levels of assistance under the URA.
- ✓ The Notice of Nondisplacement informs occupants who will remain in or return after completion of their rights under URA and of the terms and conditions of their remaining in the property. (See Handbook 1378 Appendix 4 and 6 for samples of these notices.)

Handbook 1378, Appendix 4:
Notice of Non-displacement
Handbook 1378, Appendix 6
Notice of Eligibility for Relocation Assistance

In addition to these notices, copies of the HUD brochures, “Relocation Assistance to Displaced Homeowner Occupants” and “Relocation Assistance to Tenants Displaced from Their Homes” should be provided to displaced persons; these brochures are available on the HUD website – see link listed in text box. Note that these two brochures are for residential relocation only. There are different requirements for relocation of businesses, farms, and nonprofit organizations. Contact DLG for guidance on non-residential relocation.

Relocation Assistance to Displaced Homeowners Brochure and Relocation Assistance to Displaced Tenants from Their Homes Brochures on HUD website at <https://www.hudexchange.info/programs/relocation/publications/>

Notice to Move

The grantee may issue a 90-Day Move Notice after a Notice of Eligibility has been sent and when the grantee wants to establish the move-out date (see Attachment 8-12). The 90-Day Notice may **not** be issued until at least one comparable unit has been identified and presented to the residential displaced person.

Attachment 8-12: 90-Day Move Notice
Handbook 1378, Chapter 2, Paragraph 2-3(c)
Attachment 8-13: Tenant Assistance/Relocation Process Flow Chart

The 90-day notice must either state a specific date as the earliest date by which an occupant will be required to move, or state that the occupant will receive a further notice, at least 30 days in advance, indicating the specific date by which to move. A flow chart summarizing the relocation process can be found as Attachment 8-13 of this chapter.

Discrimination in Relocation

Obviously, grantees must ensure that there is no discrimination in the relocation process. Individual displacees who have been discriminated against may not know how to take action on their own. Legal action is often too expensive to be a practical solution for them. The grantee must provide assistance in cases of discrimination. There are also different equal opportunity protections for businesses and additional protections for Fair Housing for displaced persons. See Chapter 7: Fair Housing of this handbook for additional information.

If a displacee has been discriminated against, there are two alternatives:

- ✓ The displacee can send a complaint to DLG within 180 days of the incident, simply telling DLG what happened. The relocation officer and grant administrator should advise the displacee of this option and assist in preparing the complaint if the displacee desires to make one. Upon receipt of the complaint, DLG may take one or more of the following steps:
- ✓ Investigate to see if the law has been broken;
- ✓ Contact the person accused of the violation and try to resolve the discrimination complaint;
- ✓ Refer the complaint to a local human rights commission for investigation and possible resolution and/or the Kentucky Commission on Human Rights (phone number 1-800-292-5566).
- ✓ Recommend that the displacee go to court.
- ✓ A suit may be filed in federal court, in which case the displacee should consult either an attorney or the local Legal Aid Society for assistance. The relocation officer should advise the displacee regarding both sources of help. If the court finds in favor of the displacee, it can stop the sale of the house or the rental of the apartment to someone else, and award the displacee damages and court costs.

Section 8-D. Residential Displacement under the URA

Residential occupants who will be displaced are entitled to receive a range of benefits under the URA. These include: (1) advisory services; (2) offer of a comparable replacement unit; (3) replacement housing payments; and (4) moving expenses. The following sections highlight each of these requirements.

Advisory Services for Displaced Households

The grantee should work with the household that will be displaced throughout the process to ensure the household is provided appropriate and required advisory services.

- ✓ Grantees must provide counseling and appropriate referrals to social service agencies, when appropriate.
- ✓ Grantees must offer or pay for transportation (e.g., taxi, rental car) to inspect comparable units or the actual unit selected by the displaced person.
- ✓ When a displacee is a minority, every effort should be made to ensure that referrals are made to comparables located outside of areas of minority concentration, if feasible.
- ✓ The grantee must provide current and continuing information on the availability, purchase price or rental cost and location of "comparable replacement dwellings." (See the section below for more information on comparable replacement dwellings.)

Comparable Replacement Dwelling Units

The grantee must make referrals to the replacement housing units (comparables) for displaced residential households. It is also recommended that the grantee inspect the comparables to determine if

they are in decent, safe and sanitary condition (including ensuring they are lead safe) prior to making referrals.

- ✓ The regulations stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. However, DLG requires the grantee to document the case file if three comparable dwellings are not identified. 49 CFR 24.204
- ✓ A comparable replacement dwelling means a dwelling which it meets local relevant housing codes and standards for occupancy;
- ✓ The replacement unit must be functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. In determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the grantee may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;
- ✓ Adequate in size to accommodate the occupants;
- ✓ If the displaced household were over-crowded, the comparable must be large enough to accommodate them.
- ✓ In an area not subject to unreasonable adverse environmental conditions;
- ✓ In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- ✓ On a site that is typical in size for residential development with normal site improvements, including customary landscaping;
- ✓ Currently available to the displaced person on the private market (unless they are displaced from subsidized housing as described below); and
- ✓ Within the financial means of the displaced person. A replacement dwelling is considered to be within the person's financial means if a grantee pays the appropriate replacement housing payment.
- ✓ For a person receiving government housing assistance before displacement, a comparable dwelling unit that has similar government housing assistance must be offered. (For example, a comparable unit for a tenant who had a Housing Choice Voucher prior to displacement must be offered another unit where the Voucher could be used or is accepted.) When the government housing assistance program has requirements relating to the size of the replacement dwelling, the rules for that program apply.

Grantees may use Attachment 8-6: HUD Form 52580 Section 8 Existing Housing Program Inspection Checklist to determine whether a comparable unit is decent, safe and sanitary. Since replacement housing units must meet all local codes and housing standards, an inspector must be familiar with these requirements to ensure that displaced persons move to standard housing.

Attachment 8-6:
Section 8 Existing Housing
Program Inspection Checklist HUD
Form
Attachment 8-7:
Selection of Most Representative
Comparable Replacement Dwelling
for Computing an RHP

Attachment 8-7: HUD Form 40061 may be used to identify the most representative comparable replacement dwelling units for purposes of computing a replacement housing payment.

The grantee should then provide the potentially displaced household with a Notice of Eligibility for Relocation Assistance, Handbook 1378, Appendix 6. The notice must identify the cost and location of the comparable replacement dwelling(s).

Handbook 1378, Appendix 6
Notice of Eligibility for Relocation
Assistance

Replacement Housing Payments

In some instances, a comparable replacement dwelling may not be available within the monetary limits for owners or tenants. This is the purpose of the Replacement Housing Payment (RHP).

49 CFR 24.401 and 24.402
49 CFR 24.404(a)

Relocation payments are not considered “income” for purposes of the IRS or the Social Security Administration.

The revised regulations do not allow a grantee to encourage or ask a displaced person to waive their relocation assistance; however, a fully informed person may choose not to apply for financial benefits and must acknowledge that decision in writing by clearly describing the assistance for which he/she will not apply. Grantees are encouraged to contact DLG if this situation is likely to occur.

49 CFR 24.209 and 24.207(f)

Replacement Housing Assistance for 90-Day Homeowners

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home (“ION”) **USING INVOLUNTARY ACQUISITION** are eligible for a replacement housing payment as “displaced persons”. If homeowners were in occupancy for less than 90 days prior to the ION, they are protected by the URA as “displaced persons” but the calculation is made using the same method used for tenants.

Note: If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for relocation benefits.

For involuntary acquisitions, the ION is defined as the delivery of the written offer of just compensation by the grantee to the owner.

The RHP made to a 90-day homeowner is the sum of:

- ✓ The lesser of: the cost of the comparable or the cost of the actual replacement unit.
- ✓ Additional mortgage financing cost; and
- ✓ Reasonable expenses incidental to purchase the replacement dwelling.

42 U.S.C. 4623(a)(1) and 42 U.S.C.
4624(b)

To calculate the replacement housing payment for a 90-day homeowner, grantees should use the HUD claim form in 40057. If an owner elects to become a renter, the RHP can be no more than the amount would otherwise have received as an owner. The maximum payment is \$31,000.

The displaced homeowner must purchase and occupy the replacement unit in order to qualify for a RHP as a displaced owner-occupant of 90 days.

HUD Claim Form 40057
<https://www.hud.gov/sites/documents/40057.PDF>
Claim Form for 90-day Homeowner

Replacement Housing Payments for Displaced Tenants

The amount of the replacement housing payment paid to a displaced tenant does not vary depending upon whether the household was in occupancy more or less than 90 days prior to the date of execution of the agreement.

The replacement housing payment is intended to provide affordable housing for a 42-month period. Although the URA regulations establish a \$7,200 limitation on rental assistance payments, it also requires that persons receive the calculated payment under replacement “Housing of Last Resort.” Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed \$7,200. See Section 8-G Relocation Requirements under Section 104(d) to determine if applicable to your project.

42 U.S.C. 4624(a)

For all tenants, the replacement housing payment makes up (for a 42-month period) the difference between:

- ✓ The lesser of rent and estimated utility costs at the replacement dwelling or comparable unit; and
- ✓ The lesser of:
 - Thirty percent of the tenant’s average monthly gross household income (if the household is classified as low income—within 80% Area Median Income—using HUD’s income limits), or
 - The monthly rent and estimated average utility costs of the displacement dwelling.

URA cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a single lump sum so that the funds can be used for a down payment, including incidental expenses.

The amount of cash rental assistance to be provided is based on a one-time calculation. The URA RHP payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or household size. See HUD Claim form 40058 for the claim form to use for rental assistance or down payment assistance.

HUD Claim Form 40058:
Claim for Rental Assistance or
Down Payment Assistance
<https://www.hudexchange.info/news/revised-hud-ura-relocation-claim-forms-and-brochures/>

Housing of Last Resort

When undertaking relocation activities, grantees must be sure to provide a comparable replacement dwelling in a timely manner. If the grantee cannot identify comparable replacement housing, they must seek other means of assisting displacees under the “Last Resort Replacement Housing” provisions of the regulations. This situation can occur in communities where there is a limited supply of available comparable units or when the replacement housing payment for a comparable unit exceeds the \$7,200 limit. Grantees should contact DLG to confer on how to proceed.

49 CFR 24.404

The Last Resort sections of the URA require grantees to take alternate measures to assist displaced persons to be able to afford to move to a decent, safe and sanitary comparable unit. Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of regulatory limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the disabled in a replacement dwelling.

Handbook 1378,
Chapter 3, Paragraph 3-6

The Replacement housing payment for 90-day occupants is limited for rental housing assistance not to exceed \$7,200. During the development of the relocation plan, whenever it has been determined that comparable replacement housing is not available within the monetary means for displaced households or occupants, the program must provide additional alternative assistance under the housing of last resort provisions. Use of last resort housing is required where an owner-occupant or tenant cannot otherwise be appropriately housed within the monetary limits. Specifically housing of last resort can be provided in several methods:

1. Replacement Housing Assistance – assistance exceeds the maximum assistance found at 49 CFR Part 401(b) or 402(a) for replacement housing payment
2. Other Last Resort Housing – construction of new housing or rehabilitation of existing housing to provide comparable, replacement dwelling units
3. Option of Displaced Person – displaced household accepts alternative housing assistance, such as housing voucher or a project-based rental subsidy (if available)

If the program makes the determination that, based on comparable, available dwelling units, relocation assistance will be provided under replacement housing of last resort, the files will need to provide a detailed discussion of the available options existing within the market and make the case for why Housing of Last Resort is required. This determination may be on a case by case basis or determined on a project-wide basis. A determination of Last Resort assistance will need to be reviewed and approved by DLG.

Early Movers: Relocation Prior to Notice of Eligibility

Some displaced persons will not wait for the grantee to locate comparable units and offer replacement housing assistance. These households may search for their own units and relocate themselves.

The implication of the early move will depend on when it occurs. If the move occurs after a General Information Notice (GIN) was sent to the household but before the Initiation of Negotiations, the household may have jeopardized their eligibility for relocation assistance.

However, after the Initiation of Negotiations, (the date that triggers eligibility for relocation assistance) relocation eligibility can be triggered for all occupants. So, it is vital that the grantee immediately send the Notice of Eligibility or Nondisplacement. If these notices are not sent in a timely or complete manner and the household moves out, HUD may require that the replacement housing be based on the actual unit they have chosen (if that exceeds a possible comparable), if that unit qualifies as decent, safe and sanitary. The budgetary consequences can be substantial.

Relocation into a Substandard Unit

If an individual locates or moves into a replacement unit that is not decent, safe and sanitary and that move occurred because the grantee was not timely in the delivery of the required URA notices, the grantee may try to upgrade the unit to the decent, safe and sanitary standard. Alternately, the grantee can offer the household the opportunity to move to a decent, safe and sanitary unit and the grantee must pay for that move.

In the event the grantee was timely in the delivery of the Notice of Eligibility but the household moved anyway to a substandard unit, the grantee must inform the displacee that if they remain in a substandard unit, they will be eligible only for moving expenses and not for replacement housing payments. The grantee must also inform the displacee that if he or she moves into standard housing within a year from the date he or she moved from the displacement dwelling and files a claim within 18 months of the date of displacement, he or she will be eligible for a replacement housing payment. A sample letter is provided as Attachment 8-8 of this chapter.

Attachment 8-8:
Sample Letter to Relocatee in a
Substandard Unit

Payment for Residential Moving and Incidental Expenses

Displaced homeowners and tenants may choose to receive payment for moving and related expenses either by:

- ✓ Commercial mover selected through competitive bids obtained by the grantee paid directly to the mover or reimbursed to the household; OR
- ✓ Reimbursement of actual expenses for a self-move, OR
- ✓ Receipt of a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), for the current payment level established for Kentucky, which is available on their website.

Fixed Residential Moving Cost
Schedule (2015):
http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

The updated regulations at 49 CFR 24.301(b) clarified that grantees cannot allow residential self-moves based on the lower of two bids.

If reimbursement of actual expenses for a self-move is chosen, the grantee must determine that the expenses are reasonable and necessary and include only eligible expenses, which are:

49 CFR 24.301(b) and (g)(1-7)

- ✓ Transportation of the displaced person and personal property. (This may include reimbursement at the current mileage rate for personally owned vehicles that need to be moved.) Transportation costs

for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

- ✓ Packing, crating, uncrating and unpacking of the personal property.
- ✓ Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- ✓ Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- ✓ Insurance for the replacement value of the property in connection with the move and necessary storage.
- ✓ The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available.
- ✓ Credit checks.
- ✓ Utility hook-ups, including reinstallation of telephone and cable service.
- ✓ Other costs as determined by the agency to be reasonable and necessary.

49 CFR 24.301(h)

The following are ineligible expenses:

- ✓ Refundable security and utility deposits; or
- ✓ Interest on a loan to cover moving expenses; or
- ✓ Personal injury; or
- ✓ Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or
- ✓ The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; or
- ✓ Costs for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

If the displaced homeowner/tenant chooses a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), the following apply:

- ✓ A person displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a fixed moving expense payment as an alternative to a payment for actual reasonable moving and related expenses.
- ✓ This payment is determined according to the applicable schedule published by FHWA. The most current schedule was published in 2015.
- ✓ The payment reflects the number of rooms in the displacement dwelling and whether the displaced person owns and must move the furniture. If a room or an outbuilding contains an unusually large amount of personal property (e.g., a crowded basement), the Agency may increase

www.hud.gov/relocation

Fixed Residential Moving Cost
Schedule (2015):

http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

the payment accordingly (i.e., count it as two rooms). A current schedule is accessible on HUD's website.

- ✓ *Occupant of Dwelling with Congregate Sleeping Space (Dormitory)*. The moving expense for a person displaced from a permanent residence with congregate sleeping space ordinarily occupied by three or more unrelated persons is \$100.
- ✓ *Homeless Persons*. A displaced "homeless" person (e.g., the occupant of an emergency shelter) is not considered to have been displaced from a permanent residence and, therefore, is not entitled to a fixed moving expense payment. (Such a person may, however, be eligible for a payment for actual moving expenses.)
- ✓ In addition to the moving expenses, the updated regulations at 49 CFR 24.401(e)(4) added professional home inspection to the list of eligible incidental expenses for displaced owner-occupants only. This will only apply when a property is involuntarily acquired and owner occupied for a period of at least 90 days. 49 CFR 24.401(e)(4)
- ✓ The URA also allows grantees to pay for non-refundable security deposits but clarifies that refundable security and utility deposits are ineligible. 49 CFR 24.301(h)(12)

Section 8-E. Temporary Relocation

Agencies administering housing rehabilitation programs should establish written policies for temporary relocation of both owner-occupants and tenants.

Any temporary relocation may not exceed 12 months or the household is considered displaced. Agencies must administer their temporary relocation activities consistently and treat all people in similar circumstances the same. All terms must be "reasonable" or the temporarily-relocated household may become eligible as a "displaced person".

Lead-Based Paint Hazards Requirements and Relocation

The Lead Safe Housing Rule, 24 CFR Part 35, contain rules concerning the temporary relocation of occupants (renters and owners) before and during hazard reduction activities. 24 CFR Part 35
24 CFR 570.608

Under the lead regulations, circumstances when temporary occupant relocation is **not required** include:

- ✓ Treatment will not disturb lead-based paint or create lead-contaminated dust; or
- ✓ Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards; or
- ✓ Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided; or
- ✓ Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day,

occupants have safe access to sleeping areas, bathrooms, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

If these above conditions are not met, then the temporary relocation of the household is required. However, because the rehabilitation of owner-occupied units is considered voluntary, the relocation requirements of the URA do not apply regardless of whether the unit is being treated for lead-based paint. Any payments made on an owner-occupants' behalf would be addressed in an Optional Relocation Policy.

Again, note that the rehabilitation of tenant-occupied units is not considered voluntary and the URA requirements detailed earlier in this section apply.

Tip: Elderly residents living in units undergoing lead hazard reduction activities may waive the requirement to relocate but only if the grantee obtains a written and signed waiver. (See Attachment 8-5.)

The lead rule further requires that temporary dwellings not have lead-based paint hazards. Therefore, grantees are required to ensure that units used for temporary relocation are lead safe. This means that temporary housing units that were built after 1978 or have undergone a visual assessment and dust wipe sampling to ensure no lead hazards are present.

Attachment 8-5:
Elderly Waiver for Relocation

Temporary Relocation of Owner-Occupants in Rehabilitation Projects

An owner-occupant who participates in a CDBG grantee's housing rehabilitation program is considered a voluntary action under the URA, provided that code enforcement was not used to induce an owner-occupant to participate.

If a grantee chooses to provide temporary relocation assistance to owner-occupants, the grantee must adopt an Optional Temporary Relocation Assistance Policy.

Guidance for Owner-Occupant Temporary Relocation in Rehabilitation Projects

- ✓ The grantee should develop written policies as early as possible in the application stage so occupants can make suitable arrangements to move from of their homes with the least amount of disruption. Because the URA does not cover owner-occupants who voluntarily participate in housing rehabilitation programs, the grantee has broad discretion regarding payments to owners during the period of temporary relocation. If a grantee chooses to provide temporary relocation assistance to owner-occupants through a "voluntary" CDBG Program, the grantee must adopt an optional relocation assistance policy.
- ✓ The owner-occupant may be encouraged to stay with family or friends (noting the requirement to inspect these units to ensure the units are decent, safe and sanitary and lead-safe), but if there are circumstances in which there is no suitable alternative, and the owner would be faced with a hardship, the agency may set a policy that describes what constitutes a "hardship" and provide a certain level of financial assistance.
- ✓ An agency may negotiate with various hotels to establish an attractive rate and pay the negotiated rate on the owner's behalf. The hotel units must be decent, safe and sanitary, and cannot present a

24 CFR 570.488 and 570.606(d)(2)

lead-paint hazard to occupants. Agencies should inspect the hotel units prior to signing an agreement to use them as a resource. In addition, agencies may provide a stipend for meals if the temporary unit does not have cooking facilities.

Temporary Relocation of Tenants in Rehabilitation Projects

Tenants are protected by the URA during temporary relocation. HUD's Handbook 1378 suggests that at least 30 days advance notice be given to tenants prior to the temporary move. In addition, the tenant must be provided:

Handbook 1378,
Chapter 2, Paragraph 2-7

- ✓ Reimbursement 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 increase in monthly rent/utility costs at such housing. (They are still responsible for paying their share of the rent for the unit undergoing renovation.)
- ✓ Appropriate advisory services, including reasonable advance written notice of:
 - ✓ The date and approximate duration of the temporary relocation;
 - ✓ The address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
 - ✓ The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex upon completion of the project; and
- ✓ The provisions of reimbursement for all reasonable out-of-pocket expenses.

Handbook 1378,
Chapter 2, Paragraph 2-7

The tenant must receive a Notice of Nondisplacement (Handbook 1378, Appendix 4) which advises a person that they may be or will be temporarily relocated.

Once it becomes evident that the tenant will need to be temporarily relocated, the grantee should send a Temporary Relocation Notice to inform households who will be temporarily relocated of their rights and of the conditions of their temporary move. (See Attachment 8-15 for a sample Temporary Relocation Notice.)

Handbook 1378 , Appendix 4:
Notice of Nondisplacement
Attachment 8-15: Sample
Temporary Relocation Notice

Tip: The Notice of Non-displacement is very important when dealing with temporary relocation because it helps prevent temporary moves from becoming permanent.

Guidance on Tenant Temporary Relocation

To assist with the temporary relocation of tenants, the grantee could encourage tenants to identify their own temporary housing (within the established guidelines), but ultimately the agency is responsible for finding suitable shelter until rehabilitation is complete. In addition, the agency could use hotel rooms and provide a meal stipend if there are no cooking facilities. The stipend could vary depending on the age of the children in the household (if any).

The terms and conditions of the temporary move must be reasonable or the tenant may become “displaced.” The grantee should be aware that the temporary unit need not be comparable, but it must be suitable for the tenant’s needs. It must be inspected, found to be decent, safe, sanitary, and lead safe. Attachment 8-6: Section 8 Existing Housing Program Inspection Checklist may be used to document the inspection. If the tenant claims to be paying rent to a friend or family member, the grantee should document that rent was paid and the housing was suitable. The tenant must be provided adequate advance notice to move out of their unit and back when rehabilitation work is complete. A good rule of thumb suggested by DLG is that temporary relocation is reasonable for six months or less. Anything in excess of one year is considered permanent displacement.

Attachment 8-6:
Section 8 Existing Housing
Program Inspection Checklist

If the owner of the property is planning to raise the rent or offer a different unit in the property (that exceeds the greater of their former rent or 30% of gross monthly income), the tenant must be notified of these changes before moving back. If the cost of rehabilitation including lead hazard control work causes the rent to be increased and creates a rent burden (“economic displacement”), the tenant is protected by the URA and could be eligible for relocation assistance.

The term “economic displacement” is used to cover households who lived in the project prior to the federally-funded activity (acquisition or rehabilitation) and whose rent is raised resulting in a move because they can no longer afford to remain.

If the rent will be increased and the household can no longer afford to stay, the grantee should treat the household as a displaced person and provide them with all of the assistance outlined under Section 8-D including: Advisory Services, Moving Expenses, and a Replacement Housing Payment as needed.

Section 8-F. Non-Residential Relocation under the URA

Displaced businesses (including non-profit organizations and farm owners) are entitled to advisory services and relocation assistance under the URA. A business is defined for this purpose as:

49 CR 24.2(a)(4)

- ✓ A for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved;
- ✓ To qualify for assistance, the business must meet the definition of a “displaced person” discussed earlier in this chapter. It must move permanently as a direct result of an assisted project involving acquisition, rehabilitation, or demolition.

Handbook 1378,
Chapter 1, Paragraphs 1-4

The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

Business versus Residential Assistance

URA coverage for moving expenses is similar for residential and non-residential displacees. Qualified businesses may choose

Handbook 1378,
Chapter 4, Paragraphs 4-2 and 4-5

between a fixed payment or actual moving expense. The fixed payment is based on a formula, rather than a schedule.

A displaced business is eligible to choose a fixed payment if the grantee determines that:

- ✓ The business either (a) discontinues operations, or (b) it relocates but is likely to incur a substantial loss of its existing patronage (The URA presumes this unless there is a preponderance of evidence to the contrary.); and
- ✓ The business is not part of a commercial enterprise having more than three other entities which are not being displaced by the grantee, and which are under the same ownership and engaged in the same or similar business activities; and
- ✓ The business contributed materially to the income of the displaced person; and
- ✓ The business operation at the displacement property is not solely for the rental of that real property to another property management company.
- ✓ Actual moving expenses provide for reimbursement of limited reestablishment expenses.
- ✓ There are differences between coverage for residential and non-residential displaces.
- ✓ A 90-day Notice to Move may be issued without a referral to a comparable site.
- ✓ Businesses are entitled to temporary moving expenses; however, displaced businesses are not eligible for 104(d) assistance.

Handbook 1378,
Chapter 4, Paragraph 4-3

HUD 1043 Booklet: Relocation
Assistance to Displaced
Businesses, Nonprofit
Organizations and Farms

Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

Advisory Services

Non-residential moves are often complex. Grantees must interview business owners to determine their relocation needs and preferences. Displaced businesses are entitled to the following:

- ✓ Information about the upcoming project and the earliest date they will have to vacate the property;
- ✓ A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives;
- ✓ Assistance in following the required procedures to receive payments;
- ✓ Current information on the availability and cost to purchase or rent suitable replacement locations;
- ✓ Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished;
- ✓ Referrals for assistance from state or federal programs, such as those provided by the Small Business Administration, that may help the business reestablish, and help in applying for funds; and
- ✓ Assistance in completing relocation claim forms.

Notices and Inspections

The grantee must provide a business to be displaced with written information about their rights, and provide them with a General Information Notice (GIN) tailored to the situation when a Notice of Interest is issued to the property owner. See Attachment 16(a) for a sample GIN to use for businesses (non-residential tenants). The General Information Notice should include:

- ✓ An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance. (See Attachment 8-16(b) for a sample of this notice.)
- ✓ A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD Information Booklet, Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms (HUD 1043-CPD) includes this general information and should be given to the business.
- ✓ Information that they will receive reasonable relocation advisory services to help locate a replacement site, including help to complete claim forms;
- ✓ Information that they will not be required to move without at least 90 days' advance written notice; and
- ✓ A description of the appeal process available to businesses.

Handbook 1378,
Chapter 2, Paragraph 2-3 B
Attachment 8-16(a):
Guideform GIN Non-Residential
Tenant to be displaced

Attachment 8-16(b): Guideform
Notice of Eligibility for Relocation
Assistance—Business
Handbook 1378,
Chapter 7, Paragraph 7-7

Handbook 1378, Chapters 2 and 4,
Paragraphs 2-3 B and 4-2b

Handbook 1378,
Chapter 2, Paragraph 2-3 C

If a business must be displaced, a tailored Notice of Relocation Eligibility (NOE) must be provided as soon as possible after the ION (see Attachment 8-16(a) for a sample notice). This Notice should:

- ✓ Inform the business of the effective date of their eligibility.
- ✓ Describe the assistance available and procedures.
- ✓ If necessary, a 90-day Notice to Move may be sent after the initiation of negotiations.
- ✓ The business must be told as soon as possible that they are required to:
- ✓ Allow inspections of both the current and replacement sites by the grantee's representatives, under reasonable terms and conditions;
- ✓ Keep the grantee informed of their plans and schedules;
- ✓ Notify the grantee of the date and time they plan to move (unless this requirement is waived); and
- ✓ Provide the grantee with a list of the property to be moved or sold.

Handbook 1378,
Chapter 4, Paragraph 4-2b

Grantees need to be aware of when a property will be vacated. In many situations, the grantee must be on-site during a business move to provide technical assistance and represent the grantee's interests. In accordance with state law, any property not sold, traded or moved by the business becomes the property of the grantee.

Handbook 1378, Chapter 4,
Paragraphs 4-2b (2) and 4-2d

To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be prepared and provided to the grantee. The grantee should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

Handbook 1378,
Chapter 4, Paragraphs 4-2b (2)

Reimbursement of Actual Moving Expenses

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses.

Handbook 1378,
Chapter 4, Paragraph 4-2a

- ✓ Only businesses that choose actual moving expenses—versus a fixed payment—are eligible for a reestablishment expense payment.
- ✓ Grantees should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.
- ✓ Businesses may choose to use the services of a professional mover or perform a self-move. Eligible expenses include:
 - Transportation of personal property;
 - Packing, crating, uncrating, unpacking of personal property;
 - Disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, and personal property;
 - Storage of personal property;
 - Insurance for replacement value of personal property in connection with the move and/or storage;
 - Any license, permit or certification required at the new location;
 - Professional services to plan the move, move the personal property or install the personal property at the new location;
 - Provision of utility service from the Right of Way to the business;
 - Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).
 - Impact fees or one-time heavy utility use assessments;
 - Re-lettering signs and replacing existing stationery that are obsolete due to the displacement; and
 - Reasonable costs incurred while attempting to sell items that will not be relocated.

A business is eligible for either a “Direct Loss” or “Substitute Equipment” payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

A “Direct Loss” payment can be made for personal property that will not be moved. Payments can also be made as a result of discontinuing the business of the nonprofit or farm. The business must make a good faith effort to sell the personal property (unless the grantee determines it is unnecessary) in order to be eligible for a Direct Loss payment. A Direct Loss payment is based on the lesser of:

49 CFR 24.301(g)(14)

- ✓ The fair market value of the item for continued use at the displacement site, minus the proceeds from the sale, or
- ✓ The estimated cost to move the item, with no allowance for the following: storage, or reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
- ✓ A “Substitute Equipment” payment can be made when an item used by the business, nonprofit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site. A Substitute Equipment payment is based on the lesser of:
 - ✓ The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
 - ✓ The estimated cost to move and reinstall the item, but with no allowance for storage.

Certain costs incurred while searching for a replacement location are also eligible. Businesses are entitled to reimbursement up to \$2,500. Grantees can pay more than this if they believe it is justified.

Costs may include reasonable levels of such items as:

- ✓ Transportation;
- ✓ Meals and lodging away from home;
- ✓ Time spent while searching, based on a reasonable pay salary or earnings; and
- ✓ Fees paid to a real estate agent or broker while searching for the site. (Note that commissions related to the purchase are not eligible costs.)

Handbook 1378,
Chapter 4, Paragraph 4-4a

49 CFR 24.301 (e)

The grantee may pay other moving and related expenses that the grantee determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses may be limited by the grantee to the amount determined to be least costly without causing the business undue hardship.

There may be instances where a person is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization. Eligible expenses for moving the personal property are listed above.

Businesses may have personal property that is considered low value, high bulk such as stock piled sand, gravel, minerals, metals or other similar items in stock. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the grantee, 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 businesses location.

See HUD Form 4055 for a sample claim form for moving and related expenses for businesses.

HUD Form 4055
Claim for Actual Reasonable
Moving and Related Expenses—
Businesses
<https://www.hud.gov/sites/documents/40055.PDF>

Reestablishment Expenses

Only certain small businesses are eligible for reestablishment expenses, up to \$25,000. “Small businesses” for this purpose are defined as those with at least one, and no more than 500 people, working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a reestablishment expense payment.

- ✓ Eligible items included in the \$25,000 maximum figure are:
 - ✓ Repairs or improvements to the replacement site, as required by codes, or ordinances;
 - ✓ Modifications to the replacement property to accommodate the business;
 - ✓ Modifications to structures on the replacement property to make it suitable for conducting the business;
 - ✓ Construction and installation of exterior advertising signs;
 - ✓ Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting;
 - ✓ Other licenses, fees, and permits not otherwise allowed as actual moving expenses;
 - ✓ Feasibility surveys, soil testing, market studies;
 - ✓ Advertisement of the replacement location;
 - ✓ Estimated increased costs of operation for the first two years at the replacement site for such items as:
 - Lease or rental charges,
 - Utility charges,
 - Personal or property taxes, and
 - Insurance premiums.
- ✓ Other reestablishment expenses as determined by the grantee to be essential to reestablishment.

Handbook 1378,
Chapter 4, Paragraph 4-3
49 CFR 24.304 and 42 U.S.C.
4622(a)(4)

Ineligible Expenses

The following are ineligible for payment as an actual moving expense, as a reestablishment expense, or as an “other reasonable and necessary expense”:

- ✓ Loss of goodwill;
- ✓ Loss of profits;

Handbook 1378,
Chapter 4, Paragraph 4-4b

-
- ✓ Personal injury;
 - ✓ Interest on a loan to cover any costs of moving or reestablishment expense;
 - ✓ Any legal fees or other costs for preparing a claim for a relocation payment, or for representing the claimant before the grantee;
 - ✓ The cost of moving any structure or other real property improvement in which the business reserved ownership;
 - ✓ Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations;
 - ✓ Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business;
 - ✓ The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under “moving and related costs;” or
 - ✓ Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in “reestablishment expenses.”

Handbook 1378,
Chapter 4, Paragraph 4-4c

Fixed Payments

A displaced business may select a fixed payment instead of actual moving expenses (which include reestablishment expenses) if the grantee determines that the displacee meets the following eligibility criteria:

Handbook 1378,
Chapter 4, Paragraph 4-5
49 CFR 24.305

- ✓ The nature of the business cannot solely be the rental of property to others.
- ✓ The business discontinues operations or it will lose a substantial portion of its business due to the move. (The latest regulations state that a business is presumed to meet this test unless the grantee can demonstrate it is not “location sensitive”.)
- ✓ The business is not part of an operation with more than three other entities where:
 - ✓ No displacement will occur, and
 - ✓ The ownership is the same as the displaced business, and
 - ✓ The other locations are engaged in similar business activities.
- ✓ The business contributed materially to the income of the displaced business.
- ✓ The term “contributed materially” means that during the two taxable years prior to the taxable year in which the displacement occurred (or the grantee may select a more equitable period) the business or farm operation:
 - ✓ Had average gross earnings of at least \$5,000; or
 - ✓ Had average net earnings of at least \$1,000;
 - ✓ Contributed at least 33 1/3 percent (one-third) of the owner’s or operator’s average annual gross income from all sources;

Handbook 1378,
Chapter 4, Paragraph 4-5c

- ✓ If the grantee determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation.

Net earnings include any compensation obtained from the business that is paid to the owner, the owner's spouse, and dependents. Calculate net earnings before federal, state, and local income taxes for a two-year period. Divide this figure in half. The minimum payment is \$1,000; the maximum payment is \$40,000.

Handbook 1378,
Chapter 4, Paragraph 4-5d (1) and
42 U.S.C. 4622(c)

The two-year period should be the two tax-years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used:

- ✓ If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.
- ✓ If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period.

- ✓ When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.

Handbook 1378, Chapter 4,
Paragraph 4-5d (2)

- ✓ When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:

Handbook 1378, Chapter 4,
Paragraph 4-5d

- Shared equipment and premises, and
- Substantially identical or inter-related business functions and financial affairs that are co-mingled, and
- Entities that are identified to the public and their customers as one entity, and
- The same person or related persons own, control, or manage the entities.

Businesses must furnish grantees with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:

- ✓ Income tax returns,
- ✓ Certified or audited financial statements,
- ✓ W-2 forms, and

- ✓ Other financial information accepted by the grantee.

Optional form HUD-40056 "Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses" (Appendix 17 of HUD Handbook 1378) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail.

HUD Form 40056

Claim for Fixed Payment in Lieu of Payment for Actual Moving and Related Expenses—Businesses

<https://www.hudexchange.info/news/revised-hud-ura-relocation-claim-forms-and-brochures/>

Section 8-G. Relocation Requirements under Section 104(d)

The relocation requirements of Section 104(d) differ from URA requirements. The grantee is required to provide certain relocation assistance to any lower-income person displaced as a direct result of (1) the demolition of any dwelling unit, or (2) the conversion of a low- and moderate-income dwelling unit to a use other than a low- and moderate-income dwelling in connection with an assisted activity. The rules implementing the Section 104(d) relocation requirements for the State CDBG program are found at 24 CFR 570.488.

24 CFR 570.496a(c)(2) and (3)

104(d) replacement housing payments are available only to low- or moderate-income households. In addition, Section 104(d) relocation assistance is not triggered for a project, but rather for a household within a specific unit.

Eligibility

To be eligible for Section 104(d) relocation assistance, a person must meet certain criteria. Under Section 104(d), a displaced person is a lower-income tenant who moves permanently, in connection with an assisted activity, as a direct result of conversion of a low- and moderate-income dwelling unit or demolition of any dwelling unit.

24 CFR 42.305

Amount of Assistance

Under Section 104(d), each displaced household is entitled to choose either assistance at URA levels (detailed earlier in the chapter) or the following relocation assistance:

- ✓ Advisory services (same as under URA) - Includes notices, information booklets, explanation of assistance, referrals to comparable housing and counseling.
 - In general, both 104(d) and the URA require that a General Information Notice, and a Notice of Nondisplacement or a Notice of Eligibility for Relocation Assistance be provided.
 - The Notice of Nondisplacement informs residential occupants who will remain in the project area after completion of the assisted activity of their rights and of the terms and conditions of their remaining in the property.
 - The Notice of Eligibility for Relocation Assistance informs residential occupants who will be displaced of their rights and levels of assistance under 104(d). (Handbook 1378 Appendix 6 and 4, Attachments 8-9 and 8-11).

Handbook 1378 Appendix 6 and 4, Attachments 8-9 and 8-11:

- ✓ Payment for moving and related expenses (the same as under URA) - Payment for actual reasonable moving and related expenses or a moving expense and dislocation allowance based on a schedule that is available from DLG (see Attachment 8-14: Residential Moving Expense and Dislocation Allowance Schedule). Also, see Handbook 1378, Appendix 11 for the claim form to use for moving costs and related expenses.
- ✓ Security Deposits (not required under URA) - The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit.
- ✓ Credit checks (not required under URA) - Required to rent or purchase the replacement dwelling unit (also eligible under URA).
- ✓ Interim living costs (same as for URA) - The person shall be reimbursed for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs if the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public.
- ✓ Replacement Housing Assistance: The 104(d) replacement housing payment is intended to provide affordable housing for a 60-month period. There is no cap on the 104(d) replacement housing payment. As with URA, the 104(d) payment is calculated using the cost of the tenant's actual, decent, safe and sanitary replacement dwelling (including utilities) or a comparable replacement dwelling.
- ✓ The replacement housing payment makes up (for a 60-month period, not 42 months as in URA) the difference between:
 - The rent and utility costs for the actual replacement dwelling (or comparable), and
 - The tenant's Total Tenant Payment, calculated as the greater of:
 - Thirty percent of adjusted income,
 - Ten percent of gross income,
 - The welfare rent (see 24 CFR 5.628(a)(3)), and
 - Minimum rent in accordance with 24 CFR 5.630.

Attachment 8-14:
Residential Moving Expense and
Dislocation Allowance Payment
Schedule
(https://www.fhwa.dot.gov/real_e state/legislation_regulations/fr_si de-by-side/frsubd.cfm)
Handbook 1378, Appendix 11
Claim Form for Moving Costs
and Related Expenses

Note: The amount of the rent at the displacement unit is NOT used in calculating the RHP under 104(d).

Persons eligible for assistance under Section 104(d) are also eligible for URA assistance. In order for such persons to make an informed decision, grantees must determine and inform the person of the amount of replacement housing assistance available under Section 104(d) and the amount of replacement housing assistance available under the URA.

Attachment 8-11 to this Chapter summarizes the major differences between URA and Section 104(d) relocation assistance.

The grantee has the option to offer all or a portion of this 104(d) rental assistance through a Section 8 Housing Choice Voucher, if the grantee has access to a Voucher and provides referrals to

Attachment 8-11:
Summary of Major Differences
between 104(d) and URA
Relocation Assistance

comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program.

If a person then refuses Section 8 assistance, the grantee has satisfied the Section 104(d) replacement housing assistance requirements. In such case, the displaced person may seek URA replacement housing assistance.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment, including incidental expenses. The amount of cash rental assistance to be provided is based on a one-time calculation. The payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or household size. (Note: This guidance is also applicable under the URA.) Under 104(d), only a housing cooperative or mutual housing are eligible forms of ownership for down payment assistance.

Sample eligibility notices for Section 104(d) relocation assistance are included as Attachments 8-9 and 8-10 of this chapter. Also, the claim form for rental or purchase assistance under Section 104(d) can be found as HUD Form 40072.

Attachments 8-9 and 8-10:
Guideform Notices of Eligibility for
Section 104(d) Relocation
Assistance

HUD Form 40072:
Claim for Rental or Purchase
Assistance under Section 104(d)
<https://www.hud.gov/sites/documents/40072.PDF>

Total Tenant Payment (TTP)

Under the URA, a displaced person's gross monthly income and old rent are used to calculate the replacement housing payment. However, under Section 104(d), the Total Tenant Payment (TTP) is used to establish the amount of replacement housing assistance.

Handbook 1378,
Chapter 7, Paragraph 7-20

- ✓ Under Section 104(d), a displaced person is eligible for financial assistance sufficient to reduce the monthly rent and estimated average monthly utility costs for a replacement dwelling to the Total Tenant Payment (TTP).
- ✓ To receive assistance, a person must sign a release authorizing any depository or source of income to furnish the grantee information necessary to verify income. In order of acceptability, the three methods of verifying a person's income are:
 - ✓ Third party written or oral verification. Written verification should not be hand-carried by the person.
 - ✓ Review of documents, when third party verification is unavailable. Documents may include items such as pay stubs, government benefits statements like social security, and income tax returns provided they are updated to project income.
 - ✓ Notarized self-certification, unless the grantee determines notarization is unnecessary.

Handbook 1378,
Chapter 7, Paragraph 7-21(c)

Caution: The method of verifying income for the purposes of determining eligibility for housing assistance varies from what is described above. (See Chapter 10 for further guidance.)

Section 8-H. Section 104(d) One-for-One Unit Replacement

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing.

The 104(d) regulations state that: "All occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units in connection with an assisted activity must be replaced with comparable low income dwelling units."

Before obligating or expending funds that will directly result in demolition or conversion, the grantee must make public and submit to DLG the information required in the grantee's Residential Anti-displacement and Relocation Assistance Plan.

24 CFR 42.375(a)

There are four key issues in understanding the one-for-one replacement requirement.

- ✓ Which dwelling units must be replaced (and which need not be replaced)?
- ✓ What counts as a replacement dwelling unit?
- ✓ What information must be made public and submitted to the state before execution of contracts?
- ✓ What is the exception to one-for-one replacement rules?

All replacement housing must initially be made available for occupancy at any time during the period beginning one year before the grantee makes public the information required under the Residential Anti-displacement and Relocation Assistance Plan and ending three years after the commencement of the demolition or rehabilitation related to the conversion. Also, a One-for-One Replacement Summary Grantee Performance Report must be submitted before relocation activities can begin and kept updated (informing DLG of updates) for the low- and moderate-income units demolished or converted in the project. See Attachment 8-18(b) for a sample of the One-for-One Replacement Summary Grantee Performance Report.

Attachment 8-18(b):
One-for-One Replacement
Summary Grantee
Performance Report

Dwelling Units That Must Be Replaced

Grantees must replace a housing unit if the unit **meets all three conditions** listed below:

- ✓ **Condition 1:** It meets the definition of low/moderate dwelling unit. A low/mod dwelling unit is defined as a dwelling unit with a market rent (including an allowance for utilities) that is equal to or less than the Fair Market Rent (FMR) for its size. A reduced rent charged to a relative or on-site manager is not considered market rent. Fair Market rents may be found on the HUD website at <http://www.huduser.org/portal/datasets/fmr.html>.

Fair Market Rents:
<http://www.huduser.org/portal/datasets/fmr.html>

AND

- ✓ **Condition 2:** It is occupied or is a vacant occupiable dwelling unit. A vacant occupiable dwelling unit is defined as:

-
- A dwelling unit in standard condition (regardless of how long it has been vacant); or
 - A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); or
 - A dilapidated unit, not suitable for rehabilitation, which has been legally occupied within three months from before the date of agreement.

AND

- ✓ **Condition 3:** It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing (including conversion to a homeless shelter).

It is important to note that the income of the particular occupant is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activity, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

Criteria for Replacement Units

Replacement low- and moderate-income dwelling units may be provided by any public agency or private developer. Replacement units must meet all of the following criteria:

- ✓ Replacement units must be located within the grantee's jurisdiction and, to the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units lost.

Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.

Replacement units must be sufficient in number and size to house no less than the number of occupants who could have been housed in the units that are demolished or converted.

- ✓ The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units) unless the grantee, before committing funds, must provide information to citizens and to DLG demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

Provided in standard condition and vacant; rehabilitation of occupied units toward replacement does not count. Replacement low- and moderate-income dwelling units may include units that have been raised to standard from substandard condition if:

- ✓ The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the grantee and the property owner); and
- ✓ No one was displaced from the unit as a direct result of the assisted activity.

Provided within a four-year timeframe:

- ✓ Replacement units must be initially made available for occupancy at any time during the period beginning one year before the grantee's submission of the information required under 24 CFR 570.606(c) and ending three years after the commencement of the demolition or rehabilitation related to the conversion. 24 CFR 570.606(c)(1)(iii)
- ✓ This period may slightly exceed four years. However, DLG requires all replacement units to be available before the project is closed.
 - A grantee that fails to make the required submission, will lose the year before submission for counting replacement units
- ✓ Affordable for 10 years.
 - Replacement units must be designed to remain LMI dwelling units for at least 10 years from the date of initial occupancy.
 - A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhood where current market rents are moderate and projected future rents are expected to remain within future FMRs).
 - Replacement low- and moderate-income dwelling units may include, but are not limited to, public housing, existing housing receiving Section 8 project-based assistance, HOME or CDBG-funded units that have at least a 10-year affordability period.

Grantee Submission Requirements

Before a grantee executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low- and moderate-income dwellings units or the conversion of low- and moderate-income dwelling units to another use, the grantee must make public by posting in the Chief Elected Official's (CEO) office and submit the following information in writing to DLG for monitoring purposes:

- ✓ **Description**—A description of the proposed assisted activity.
- ✓ **Location and number of units to be removed**—The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a LMI dwelling units as a direct result of the assisted activity.
- ✓ **A time schedule** for the commitment and completion of the demolition or conversion.
- ✓ **Location and number of replacement units**—The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.
- ✓ If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available.

Exception to One-for-One Replacement

Replacement is not required if DLG determines that enough standard, vacant, affordable housing serving the jurisdiction is available. A grantee may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by DLG.

The one-for-one replacement requirement does not apply to the extent DLG determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within the grantee's jurisdiction.

In determining the adequacy of supply, DLG will consider whether the demolition or conversion of the low- and moderate-income dwelling units will have a material impact on the ability of lower-income households to find suitable housing. DLG will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:

- ✓ **Vacancy rate**—The housing vacancy rate in the jurisdiction.
- ✓ **Number of vacancies**—The number of vacant LMI dwelling units in the jurisdiction (excluding units that will be demolished or converted).
- ✓ **Waiting list for assisted housing**—The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction. However, DLG recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.
- ✓ **Consolidated Plan**—The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- ✓ **Housing outside the jurisdiction**—DLG may consider the supply of vacant low- and moderate-income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if DLG determines that the units would be suitable to serve the needs of lower-income households that could be served by the low- and moderate-income dwelling units that are to be demolished or converted to another use. DLG will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

Procedure for Seeking an Exception

The grantee must submit a request for determination for an exception directly to DLG. Simultaneously with the submission of the request, the grantee must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to DLG additional information supporting or opposing the request. If DLG, after considering the submission and the additional data, agrees with the request, DLG must provide its recommendation with supporting information to HUD.

Section 8-I. Record Keeping

Each grantee is responsible for maintaining readily available and retrievable records in sufficient detail to demonstrate compliance with the URA, 104(d) and applicable relocation program regulations, irrespective of any tasks assigned to the real property owner. These records must be maintained for a

period of five years after final project close-out, or the date a person has received all of the financial assistance due, whichever is the latest date.

Each notice that the grantee is required to provide to a property owner or occupant must be mailed certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand delivered, a written acknowledgment of receipt must be obtained from the addressee.

Attachment 8-19: Relocation File Checklist identifies all the information required for each file. Grantees should keep a copy of the checklist in front of each relocation file for tracking purposes and to facilitate state and local review.

Attachment 8-19:
Relocation File Checklist

Records on Displaced Persons

The grantee must maintain a separate case file on each residential and non-residential displaced person. The case file must contain the following:

- ✓ Identification of person, address, racial/ethnic group classification, age and sex of all members of the household, household income, monthly rent and utility costs (if the unit is a dwelling), type of enterprise (if non-residential), and person's relocation needs and preferences'

The list may be maintained manually or electronically and may be used to track progress in implementing the relocation process.

- ✓ A list of all persons occupying the real property on:
 - The date of the application for KCDBG assistance;
 - The date the applicant obtained site control, if this is not obtained until after the date the KCDBG application was made;
 - The date of Initiation of Negotiations applicable to the project. (Refer to Chapter 8, Handbook 1378 to identify the applicable date for KCDBG projects.)
- ✓ A list of all persons moving into the project after the application for KCDBG funds has been made but before the project was completed.
- ✓ Evidence that the person received a timely General Information Notice and a general description of the relocation payments and advisory services for which he/she may be eligible, basic eligibility conditions and procedures for obtaining payments.
- ✓ Evidence that the person received a timely written Notice of Eligibility for Relocation Assistance and, for those displaced from a dwelling, the specific comparable replacement and the related cost to be used to establish the upper limit of the replacement housing payment.
- ✓ Evidence of dates of personal contacts and a description of the advisory services offered and provided.
- ✓ Identification of referrals to replacement properties, date of referrals, rents/utility costs (if rental dwelling), date of availability and reason(s) person declined referral.
- ✓ Identification of actual replacement property, rent/utility cost (if rental dwelling) and date of relocation.
- ✓ Replacement dwelling inspection report and date of inspection.

-
- ✓ A copy of each approved claim form and related documentation, evidence that the person received payment and if applicable, the Section 8 Certificate or Housing Voucher.
 - ✓ A copy of any appeal or complaint filed and the grantee response. DLG also requires a separate complaint file be maintained for all general complaints.

Records of Persons Not Displaced

The grantee must also maintain information on persons not displaced:

- ✓ For each occupant who has not been displaced, the grantee must maintain evidence that the person received a timely General Information Notice indicating that he/she would not be displaced by the project.
- ✓ For each residential or non-residential occupant who was not displaced, evidence of the provision and receipt of a Notice of Nondisplacement.
- ✓ If by staying in the project there is a possibility the occupant may become “rent burdened,” there are three options available to the grantee:
- ✓ The grantee can provide additional subsidies to make the unit affordable (e.g., tenant-based rental assistance),
- ✓ The owner can elect to limit rent increases for some units where the increase would result in a rent burden, or
- ✓ If neither of the above options is feasible, the grantee must consider the occupant a displaced person and issue a Notice of Eligibility for Relocation Assistance. If the occupant moves, the occupant is considered to be displaced by virtue of the activity that caused the rent to increase.

Note: Some rent-burdened tenants may elect to remain in the project and pay the higher rent. The tenant must be fully informed (via Notice of Eligibility for Relocation Assistance) of their rights to relocation assistance and waive those rights.

For tenants occupying a dwelling, there must be evidence that the tenant received a timely offer of:

- ✓ A reasonable opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling on the real property, and
- ✓ Reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property.
- ✓ For each occupant that is not displaced, but elects to move permanently from the real property, this documentation is especially important to ensure that the person does not have a basis for filing a claim for relocation payments as a “displaced person.”

Records of Occupants in Private Owner Rehabilitation Projects

For each private owner, multi-family rehabilitation project, the grantee must develop and maintain records identifying the name and address of:

- ✓ **Category 1:** All occupants of the real property at the time of submission of the application by the owner to the grantee;

- ✓ **Category 2:** All occupants moving into the property after the submission of the application but before completion of the project; and
- ✓ **Category 3:** All occupants immediately following completion of the project.

The grantee must be able to reconcile the available information on the persons in categories 1 and 2 above with the information on persons in category 3 so that a person reviewing the files can account for occupants (i.e., remained in occupancy, were displaced and received relocation assistance, or elected to relocate permanently even though not displaced).

Records on Voluntarily Relocated Households

The grantee must establish individual case files for each household that was temporarily relocated on a voluntary basis. At a minimum, each case file must contain the following:

- ✓ Name of homeowner or tenant being temporarily displaced;
- ✓ Address of unit being rehabilitated;
- ✓ Address of replacement dwelling unit;
- ✓ Copies of all financial records attributable to the relocatee during the temporary displacement;
- ✓ Date relocatee(s) occupied the temporary unit and returned to the rehabilitated dwelling;
- ✓ Inspections of the condition of the relocation dwelling upon evacuation and prior to occupying the temporary unit; and
- ✓ All invoices for temporary relocation costs including all utility charges during the relocation and any other charges directly attributable to the temporary displacement.

Section 8-J. Appeals

The grantee must develop an appeals procedure. It must outline the appeals process, including the grounds for filing an appeal, which appeals would be filed in the locality, appropriate time limits, and the right of appeal to DLG. These are outlined in Chapter 9: Acquisition and apply to appeals concerning relocation

Attachment 8-17:
Grievance Procedures

See Attachment 8-17 for sample grievance procedures.