

### UNIFORM RELOCATION ACT AND SECTION 104(D)

#### Applicability

- All HOME assisted projects that involve acquisition, demolition, or rehabilitation of HUD-assisted projects or the acquisition of real property. The applicable federal requirements are: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(URA)
- Section 104(d) of the housing and community Development Act of 1974<sup>1</sup>
- Individual HUD program regulations
- Limited English Proficiency

DescriptionThe **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)** contains requirements that apply to any project which uses HOME funds to assist in the acquisition of real property, the rehabilitation of occupied units, or demolition of real property, including the reconfiguration of existing housing structures that result in the loss of units. The applicable URA regulations are found at 49 CFR Parts 42, 24 CFR Part 92 for Section 104(d) and the HUD Handbook 1378 and 1374.

HOME-assisted projects must adhere to the **Limited English Proficiency requirements**. Reasonable steps must be taken to ensure that persons with limited English proficiency have meaningful access to the required URA process, including written notices.

#### Displacement Triggers

Displacement occurs when a person (or their property) moves permanently as a **DIRECT RESULT OF** federally-assisted acquisition, demolition, or rehabilitation. Displacement occurs only if a person is required to leave the project.

Note: A permanent move within the project is not considered displacement.

Direct Results include:

- The person is required to move from the property after the property owner issues a notice to vacate or refuses to renew a lease in order to avoid relocation assistance (at application or site control if later).
- A person who leaves prior to the date described above who HUD or the grantee determines was displaced as a direct result of rehabilitation, demolition, or acquisition
- The person leaves for whatever reasons after initiation of negotiations AND the necessary notices to assure that the person was fully informed about relocation rights and assistance were not given or were not given in a timely fashion.
- The person leaves the property after initiation of negotiations because a decent, safe, and sanitary and affordable unit in the property was not offered.
- The person leaves the property because of unreasonable temporary relocation requirements or unreasonable terms for permanent moves within the property.
- A nonresidential (a business, non-profit, or farm leasing property) tenant who receives a “Notice of Non-displacement” but moves permanently if the terms and conditions of remaining are not reasonable.
- A tenant of a dwelling who moves from a residential structure permanently as a direct result of leasing the other units in the structure for a HUD-assisted project that changes the residential

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<sup>1</sup> For the purpose of 104(d) regulation at 24 CFR 42.305, “standard condition” and “substandard condition but suitable for rehabilitation” are defined in the State of Idaho 2010-2014 Five-Year Strategic Plan for Housing and Community Development.

character or use of the structure to a public character (e.g. certain homeless or supportive housing uses).

**Who is not “displaced” under URA**

The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, state, or local law, or other good cause, and IHFA or HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. Due process must be followed in compliance with State tenant-landlord laws. The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, the person received written notice of the project, its possible impact (e.g., a displacement or a rent increase), and the fact that the person would not qualify as a "displaced person" as a result of the project.

- The person has no legal right to occupy the property (e.g. squatters).
- The person occupied the property for the purpose of obtaining relocation benefits.
- The person retains the right of use and occupancy of the property following acquisition (life estates).
- The person, after being fully informed of their rights, waives them.
- The person was required to move out for a short period to facilitate emergency repairs, as long as certain conditions were met.
- The person is an owner-occupant of the property who moves as a result of an arm's length (voluntary) acquisition or as a result of voluntary rehabilitation or demolition.
- The person leaves due to code enforcement, unless the code enforcement results in rehabilitation or demolition for an assisted project.
- The person, after receiving a notice of eligibility, is notified in writing that they will not be displaced.
- The person is an owner-occupant who voluntarily applies for rehabilitation assistance on their property. When the rehabilitation work requires the property to be vacant for a period of time (such as during lead paint abatement or removal) agencies are encouraged to provide consistent temporary relocation assistance.

The person is an alien, not lawfully present in the United States as defined in 8 CFR 103.12, unless the agency concludes that denial would result in "exceptional and extremely unusual hardship" to such person's spouse, parent, or child who is a citizen or lawful alien.

Public Law 105-117 prohibits the use of Federal funds for payment of URA-level benefits to persons not lawfully present in the United States.

- All displaced persons must certify that they are lawful resident of the unit to qualify for URA benefits. The head of household may certify for the entire family.
- Benefits will be denied to someone who refuses to certify or if the certification is determined to be invalid.
- IHFA and HUD determine that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

**What is a Project**

The term “project” under URA is an “activity or series of activities funded with Federal financial assistance received or anticipated in any phase.”

HOME requirements cover all persons displaced as a direct result of rental rehab, regardless of their incomes, even though not every unit in the property was treated with Federal funds.

**Initiation of Negotiations**

The “initiation of negotiations” is defined as the delivery of the initial written offer of just compensation by the project sponsor to the owner or the owner’s representative to purchase the real property for the Project. When displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the “initiation of negotiations” is defined as the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

IHFA may request that HUD determine whether a displacement is or would be covered by this rule.

**Appeals**

A person who disagrees with the determination concerning whether the person qualifies as a “displaced person”, or the amount of relocation assistance for which the person may be eligible, may file an appeal of that determination with IHFA. The following criteria apply:

- Request must be in writing
- Must be received by IHFA within 90 days after the person receives written notification of the Agency’s determination.
- A person has a right to be represented by legal counsel or other representative in connection with the appeal, but solely at the person’s own expense.
- IHFA will promptly review all information submitted in support of an appeal,
- IHFA shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy.
- IHFA shall review the complaint and provide a direct response to the complainant within 15 calendar days of receipt.

A low-income person who is dissatisfied with IHFA's determination on his or her appeal may submit a written request for review of that determination to the HUD Oregon State Office. HUD may request additional information from IHFA or the complainant to adequately prepare a response within 15 days of receipt.

**Acquisition Requirements**

- Voluntary Transaction
- No Power of Eminent Domain
- Fair Value – Appraisal
- Limited English Proficiency Requirements- Notices

In almost all cases, displacement and relocation can be avoided with careful planning. Displacement is defined not only as the physical displacement of persons, but it also includes "rent burdened", defined as the inability of an existing tenant to afford the new higher rent for their unit after completion of the HOME assisted acquisition or rehabilitation. Any HOME project involving occupied units must address the issue of displacement.

To avoid displacement and minimize the costs of relocation it is important to adequately plan a project. Prior to Initiating an Offer on the property

### **Perform a tenant survey**

This is a preliminary survey to determine the eligibility of pre-existing tenants to occupy HOME-assisted units, to identify any potential economic displacement issues and to determine if there are any commercial tenants. (Sample Survey Exhibit “O”).

### **Develop a Relocation Plan**

In the event of displacement and possible Relocation issues , a project sponsor is advised to contact the HOME Technical Assistance Coordinator immediately. The following information is necessary to help determine a course of action or if a relocation plan is needed:

- For what purpose was the subject property purchased
- Describe and all persons who have occupied the project site in the past three months

Identify any proposed temporary or permanent relocation plans. The Plan should include the following:

- Are tenants required to move permanently?
- Are the tenants required to move temporarily during the course of rehabilitation/construction?
- How will the move be accomplished and each tenant compensated for moving or related expenses?
- Does overcrowding exist in any of the units?
- Can displacement be minimized?
- Will your staff help tenants move and/or comply with the rules and eliminate unnecessary expenditures for relocation?
- Have actions already been taken as outlined in the Relocation Plan?
- Are any tenants disabled?
- Will the rehabilitated units be affordable to the current tenants?
- What is the source of funds to accomplish the payment of relocation/temporary relocation benefits?
- Who is responsible for completing all of the actions regarding relocation, temporary relocation, and the provision of notices to avoid displacement?
- Does the individual or agency designated to carry out the relocation activities have the expertise?

### **Important! Permission to Send Notices**

**If the property is not currently owned by the HOME sponsor** the current owner should be advised that URA notices must be sent to all the tenants prior to the submission of the HOME application (Note: Required documentation to IHFA will include copies of notices delivered (e.g. personally delivered, certified mail, return receipt requested). This includes all notices to new tenants, vacating tenants and existing tenants are required.

Obtain an agreement from the property owner that he/she will not require tenants to move except for cause, that all new tenants will be given the New Tenant Notice, and that documentation will be maintained and provided showing all tenants who moved and reasons for moving, whether done so voluntarily or evicted for cause.

**Upon Execution of a Purchase Agreement for the property to be acquired or rehabilitated:****Deliver a General Information Notice (GIN)**

IHFA requires that a general information notice (GIN) be sent to all tenants immediately upon the execution of a Purchase Agreement. A sample notice is included in Exhibit "O." The notice must be sent certified mail or personally hand-delivered and a written record kept of the delivery of each notice. A copy of this notice and the documentation to support delivery must accompany the HOME application for all projects involving acquisition.

**Notice to New Tenants**

New prospective tenants must be provided with a written notice informing them of the HOME-assisted project under consideration or construction, and advising them that they may be asked to move or pay, increased rent and they will not be eligible for relocation benefits. The tenant must sign a form acknowledging receipt of this notice. Failure to provide the notice and obtain verification of delivery can be very costly. (Sample notice in Exhibit "O")

**Verification Notice of Tenant Vacating**

Notice must be completed by Tenant and Owner (sample notice in Exhibit "O") verifying reason for voluntarily vacating the unit, and that they have been advised of their rights, and they understand they are not eligible for relocation benefits. Documentation must be kept that each tenant moving after the HOME application submission date has done so voluntarily. However, a tenant may be evicted for cause, if properly documented. An eviction for no cause cannot be undertaken to avoid paying relocation benefits. A copy of the court order in a "for cause" eviction must be retained in the relocation file.

**Notice of No HOME Funds Reserved**

In the event that the Application for HOME Funds does not result in a reservation of funds, a Notice to Tenants advising that the acquisition will not take place. This should be provided as soon as possible. **Adhere to the Limited English Proficiency requirements.**

**Upon Execution of the Conditional Commitment Letter:****a. Updated Tenant Survey**

Update the tenant survey to reflect all tenants who have moved out, any new tenants, and other new information.

**b. Notice of Nondisplacement**

As soon as possible after execution of the HOME agreement, a notice must be issued to each tenant who was in occupancy on the date the General Information Notice was distributed to the tenants. The notice is either a Notice of Nondisplacement or a Notice of Eligibility for Relocation Assistance. (Samples in Exhibit "O")

The Notice of Eligibility is triggered by the "*initiation of negotiations*". The *initiation of negotiations* is reached when the intent to purchase the site is established, i.e. option or purchase and sales agreement. For purposes of the IHFA HOME Program, written commitment is a signed Regulatory Agreement, NOT the conditional reservation letter. Accordingly, from the point of *initiation of negotiations* all occupants who will have to move from the project are eligible for relocation benefits.

Note: Those tenants who may be moved permanently to another unit in the project should be given a Notice of Nondisplacement. The terms and conditions under which they may remain are to be specified, and the need for temporary relocation and details about it are to be included. **Adhere to the Limited English Proficiency requirements.**

c. **Temporary Moves**

The following policies cover residential tenants who will be required to relocate temporarily from their unit. Such tenants must be provided **Adhere to the Limited English Proficiency requirements:**

- (1) 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.
- (2) Appropriate advisory services, including reasonable advance written notice of the following:
  - (a) The date and approximate duration of the temporary relocation;
  - (b) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
  - (c) 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.

**Upon Completion of Construction**

Account for all tenants and ensure that all records or relocation actions are complete. Information required for the completion of the HUD Household Characteristics and Completion Report may be obtained at the same time that the tenant survey is updated. A separate file should be maintained for each displaced tenant, including copies of notices, correspondences, and documentation of comparable unit rents. Only one file must be maintained for all tenants where only temporary relocation occurred or where no displacement occurred. An acquisition file is required for each individual property acquisition, and if both acquisition and relocation are involved, there must be separate files for the acquisition and each *displaced person*.

**Real Property Acquisition Requirements**

All sponsors proposing property acquisition in conjunction with a HOME project must adhere to the requirements of the URA for acquisition of real property with federal assistance (49 CFR Part 24, Subpart B, and the HUD Handbook 1378). There is a critical difference between acquisition of property when the sale is VOLUNTARY or INVOLUNTARY. Only involuntary sales trigger the URA requirements for the acquisition process. Voluntary transaction is defined below.

The URA acquisition rules apply to sales with federal assistance when: Title to the property is purchased;

- Acquisition of properties subject to a life estate;
- Leasing, where options allow for extensions of 50 years or more; and
- Purchase of permanent easements.

A voluntary transaction is a sale negotiated between a buyer and seller where there is no threat of condemnation or eminent domain. An “involuntary” transaction threatens or actually exercises the power of eminent domain. A transaction is considered voluntary if:

- The sponsor has the power of eminent domain but chooses not to exercise it.
- The sponsor does not have the power of eminent domain.
- Property is purchased from government agencies (Federal, State or local) where the sponsor does not have the power of eminent domain.

The buyer **must put in writing** that the buyer either does not have the power of eminent domain or is not exercising it, that federal funds are involved in the purchase, the fair market value of the property, and the fact that the seller would not be eligible for URA relocation benefits. All transactions for acquiring property assisted with State of Idaho HOME funds must be voluntary.

The URA includes certain notification requirements for all voluntary purchases assisted with federal funds. The following basic principles must be followed:

1. Acquisition must be voluntary and negotiated between the seller and the HOME project sponsor without the threat of Eminent Domain.
2. An appraisal of the property must be conducted in order to determine the fair market value.
3. A Notice of Interest must be issued to the property owner, stating the HOME project sponsor's interest in the property.
4. A Notice of Just Compensation must be provided to the owner by the HOME project sponsor. Before the initiation of negotiations, the sponsor shall establish an amount that it believes is just compensation for the real property. The amount shall not be less than the appraised fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. This is the written purchase offer and initiates negotiation.
5. The purchase offer must include: a statement of the just value of compensation, a description of the property to be acquired, and an identification of any buildings that are considered a part of the property.

All acquisitions under the HOME Program are subject to an appraisal except when the owner is donating the property and releases the project sponsor from this obligation after being informed of the right to an appraisal. The purchase price for the property may exceed the amount offered as just compensation when reasonable negotiations for that amount have failed. A written justification explaining the basis for the settlement shall be included in the purchaser's files. The purchase amount may also be less than the amount offered as just compensation provided the seller acknowledges that he or she has received notice of the appraised fair market value and chooses to donate a portion of the value to the project by selling the property for a lower price.

### **Description**

#### **Section 104(d) of the Housing and Community Development Act of 1974**

An additional type of relocation assistance is available to low-income residents pursuant to Section 104(d) of the Housing and Community Development Act of 1974 (Section 104(d)). Section 104(d) requirements

focus on the “loss” of low income housing, both rental and owner occupied as a result of the demolition or conversion. It has two distinct components:

- ✓ People: 104(d) specifies relocation assistance for displaced low-income families, but does not provide protection or assistance for families with incomes above the Section 8 Low Income limit.
- ✓ Units: 104(d) requires one for one replacement of low-income dwelling units that are demolished or converted to other use.

Because of the difficulty and additional expense involved in relocating persons or businesses as a result of a HOME assisted project, and the inconvenience to displaced persons or businesses, IHFA will prioritize projects which do not include relocation. IHFA may reject a project that requires permanent displacement.

**One for One Replacement – Section 104(d)**

HOME dollars may not be used to reduce the supply of “low-income” dwelling units. Section 104(d) requires that each affordable unit that is “lost” be replaced by another affordable unit.

**Triggers for Replacement**

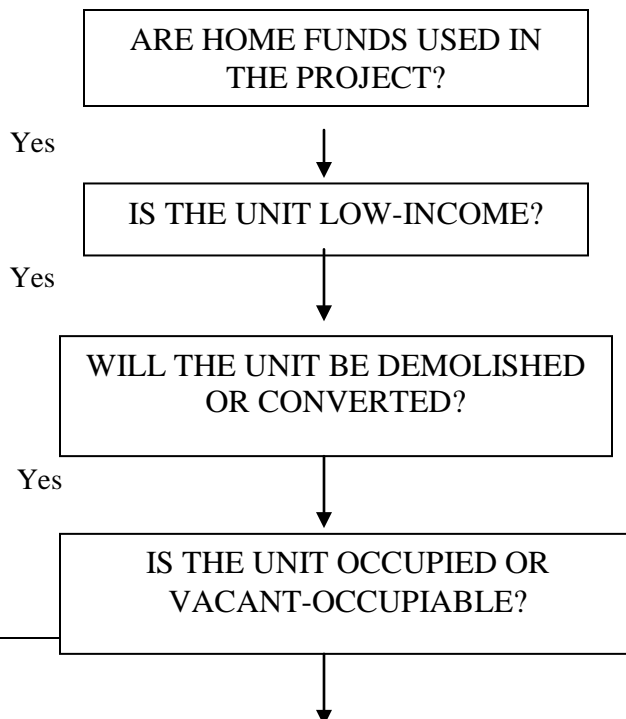
Grantees **MUST** replace a unit if:

- It meets the definition of low-income dwelling unit; AND
- It is occupied or is a vacant occupiable dwelling unit; AND
- It is to be demolished or converted to a unit with market rents above the FMR, or to a use that is no longer for permanent housing.

A Unit **DOES NOT** need to be replaced if:

- It does not meet all of the triggering criteria  
**and**
- It is a substandard unit not suitable for rehabilitation that has been vacant for over three (3) months.

**SECTION 104(d) ONE FOR ONE UNIT  
REPLACEMENT TRIGGERS: FLOWCHART**



Yes

REPLACE THE UNIT

DRAFT

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