

Chapter 8 - Uniform Relocation Assistance and Real Property Acquisition, Section 104(d), and Lead-Based Paint

NOTE:

Several federal laws apply to projects assisted in whole or in part with Community Development Block Grant funds that include any of the following activities:

- Acquisition of real property;
- Acquisition of permanent and temporary construction easements;
- Displacement of businesses, nonprofit organizations and persons residing in the project area;
- Personal property owned by someone other than the owner may also qualify as displaced (even if no person is residing on the site).
- Demolition or conversion of occupied and/or vacant occupiable low/moderate income dwelling units;
- Any federally assisted demolition projects; or
- Housing rehabilitation.

If your project has any of these activities, call your Oregon Business Development Department Regional Coordinator. This Grant Management Handbook gives an overview of the different guidelines, but does not include exhaustive information on these subjects. The Coordinator will provide technical assistance to help your jurisdiction comply with the regulations and will supply you with supplementary information as necessary for your situation.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION (URA)

Basic Federal Requirement

All real property, permanent easements, temporary construction easements, long term leases of 50 years or more, relocation of businesses and nonprofit organizations or persons are to be acquired and conducted in

accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended January 4, 2005 (Uniform Act or URA), which covers all HUD assisted program/projects as required by 49 CFR Part 24 and 24 CFR Part 570. The complete text can be found online at http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html.

HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition*, change 13, issued March 14, 2014 and Part V of

the Department of Transportation regulation located at 49 CFR Part 24 updated January 4, 2005 provides the information necessary to addresses any type of acquisition and contains detailed guidance on the URA requirements. Before proceeding with any acquisition, the recipient may request a copy of the Handbook and updated regulation from OBDD or download a copy from http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780 Since the handbook is in a continual state of being updated, it is recommended that the grant recipient obtain the most current version located on the HUD web site. The state can also provide information booklets, sample notices and other materials to assist recipients.

When do the URA requirements begin?

In accordance with 49 CFR 24.2(a)(22) URA requirements apply to any project where federal financial assistance is received or anticipated in any phase. The CDBG application procedure contained in the current Method of Distribution require the submission of a Project Notification and Intake (PNIF) form, and is considered a pre-application screening tool, to determine project eligibility under the program and constitutes evidence that the applicant intends to seek federal financial assistance.

The state generally defines “intent to use CDBG funds” as the date the department receives a Project Notification and Intake Form (PNIF). The PNIF does not need to be processed or approved by OBDD, only received. The PNIF does not have to identify the project proponent’s desire to use CDBG

funds for the project it need only describe the project itself. From this point forward all the federal and state CDBG program requirements apply to the project.

In accordance with HUD Handbook 1378, Chapter 1-4-I-2, please note that the following will also trigger the URA requirements and need for GIN notices. In these instances the URA requirements apply whether or not the department has received a Project Notification and Intake Form:

- Conducting a first public hearing identifying that it is the applicant’s intent to use CDBG funds; or
- Issuance of any other form of public notice (press release, newsletter, public notices or advertisements) that identifies intent to use CDBG funds for the proposed project; or
- Any action at public City Council meetings, County Commission meetings or other public meetings regarding the potential use of CDBG funds for a project; or
- Any other event or event documentation that can be considered convincing rebutted evidence documenting intent to use CDBG funds for the project.

What if a project proponent already started a project?

The acquisition activities of non-profit organizations are subject to the Uniform Act requirements, is such activities are for a Federal or federally assisted program or project. If the non-profit is going to complete the project without CDBG assistance they can proceed, however, if the non-profit is not going to be able to complete the project without CDBG assistance, the grant recipient needs to ensure the acquisition activities of

the non-profit are completed in conformance with the URA requirements.

Definitions

Easement – Permanent easement or temporary construction easement.

Income – Income is defined as total gross income for a 12 month period from all sources (earned and unearned) including but not limited to: wages and salaries; child support; alimony; unemployment benefits; workers compensation; social security; net income from businesses; and, welfare payments. Income does not include: income received/earned by dependent children and full time students under 18 years of age; food stamps and WIC.

Subject To (involuntary) – Acquisitions of real property, permanent easements, temporary construction easements, life estates and leases of 50 years or more are subject to subpart B of the URA requirements. Used to be known as “involuntary” acquisitions.

Not Subject To (voluntary) – Acquisitions of real property, permanent easements, temporary construction easements, and leases of 50 years or more, not subject to the requirements of subpart B of the URA requirements. Used to be known as “voluntary” acquisitions.

Any “not subject to” acquisition that is not handled properly, such as improper notices mailed etc. will no longer be considered “not subject to” and must be considered a “subject to” acquisition needing to follow all requirements of subpart B of URA.

Market Value – The terms Market Value and Fair Market Value are synonymous.

Mobile Home – Includes manufactured homes and recreational vehicles used as residences. Mobile homes are now considered the same as stick built homes.

Property Acquisition/ Permanent Easement/ Temporary Construction Easement

URA requirements apply to the acquisition of real property, permanent easements, temporary construction easements and long-term leases of 50 years or more for Community Development Block Grant assisted projects. The purpose is to ensure the fair, equitable and consistent treatment of owners of real property to be acquired for federally assisted projects.

Recipients should familiarize themselves with all applicable regulations and work with their OBDD Regional Coordinator to ensure that all requirements are met.

All Sources of Funds are covered

If Community Development Block Grant assistance is used for any part of the project, the Uniform Act must be followed, even if local or other non-Community Development Block Grant funds are used to pay the acquisition costs.

Types of Acquisition

URA applies to: acquisition of fee simple title; acquisition of fee title that is subject to retention of a life estate or a life use;

acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements and temporary construction easements.

Exhibit 8A contains an “Acquisition Checklist” and flow chart for grant recipients to use in adhering to these complicated requirements.

Prior to the commencement of each acquisition (notices mailed to property owners), considered by the recipient to be “not subject to” the recipient must receive concurrence from OBDD that the acquisition is “not subject to” the requirements of Subpart B of the Uniform Act. **Exhibit 8B** contains the required form to use for this concurrence from the state.

Appraisal Requirements

In most cases, URA will require the recipient to obtain an independent appraisal of the property, permanent easement or temporary construction easement prior to negotiating a sale with the property owner. Independent appraisals are necessary as documentation that acquisition costs are “reasonable and necessary” per federal regulations. An exception to this requirement may be allowed for small, uncomplicated acquisitions with low fair market values of \$10,000 or less.

When an appraisal is not required for “not subject to” transactions the recipient must have on file evidence of how the fair market value of the property was determined by a qualified person knowledgeable in land/property valuation.

When an appraisal is waived by a property owner for “subject to” transactions the recipient must have on file a waiver valuation. Refer to HUD Handbook 1378 for waiver valuation requirements.

All appraisals must meet the minimum appraisal requirements of the Uniform Act. Note that URA requires an appraisal to be current; this means no more than one year (12 months) old at the time the offer of just compensation is made. **Exhibit 8C** contains a Guide for Preparing An Appraisal Scope of Work that can be used in meeting these requirements. **Exhibit 8D** contains a draft Agreement for Appraisal Services that can be used as a guide for entering into agreements with companies providing appraisal services. **Exhibit 8E** contains a Certificate of Appraiser that can be used for “subject to” acquisitions or other acquisitions where an appraisal is obtained.

“Subject to” transaction property owners, where the value of the land is estimated at \$10,000 or more have the right to accompany the appraiser when the appraisal is conducted on their property. **Exhibit 8F** contains an example invitation to the property owner to accompany the appraiser.

Once the appraisal has been completed, a review of the appraisal is necessary to assure that it meets applicable appraisal requirements. The review appraiser needs to determine that the appraiser’s documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser’s opinion of value.

Donations

The Uniform Act applies to donations. Recipients must not accept or negotiate donations of real property or easements unless the specific provisions of URA are followed. Donated property does not have to be appraised if the requirements of URA are met.

Purchase Options, Sales Agreements and Other Agreements

Federal acquisition rules must be followed prior to negotiating permanent easements, purchase options, sales agreements or donation agreements. In cases where there is an existing, true, option to purchase property for a project, all disclosures must be made to the property owner prior to exercising the option. When an option is exercised, a contract of sale is entered. An “earnest money agreement” is not an option to purchase. Detailed federal acquisition requirements are at http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/non_regulatory_supplement/index.cfm.

To assist recipients in complying with tenant access notification requirements, use of tenant access clauses in purchase options is recommended. Such a clause requires the property owner to allow tenant access for purpose of obtaining information and issuing notices.

The recipient cannot enter into any legal binding commitment to a particular site before the environmental review is complete. Refer to Chapter 3 for more information on the Environmental Review Process.

However, an option agreement on a particular proposed site or property is allowable prior to completion of the environmental review IF the option agreement is subject to a determination by the recipient of the desirability of the property for the project as a result of the completion of the environmental review, issuance of the Release of Funds (ROF) by the state and the cost of the option is a nominal portion of the purchase price. Refer to Chapter 3 for more details.

Initiation of Negotiations

To assist recipients in complying with URA requirements, some sample initial notices and agreements with property owners regarding proposed acquisition are attached. These include:

Exhibit 8G - Notice for Acquisition of a Permanent Easement or Real Property - Initial Notice to “subject to”

Exhibit 8H - “Subject to” Donation Agreement

Exhibit 8I - Letter for Acquisition of a Permanent Easement or Real Property - Initial Notice to “not subject to”

Exhibit 8J - “Not subject to” Donation Agreement

Exhibit 8K - U.S. Housing and Urban Development Brochure “When a Public Agency Acquires Your Property”. HUD has published this brochure designed to answer property owners’ questions when dealing with a public agency. This publication must be given to all property owners.

Exhibit 8L - Notice of Just Compensation.

Recipient's file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail return receipt requested) and the date of delivery. If the letter was personally served obtain a written receipt of delivery from the property owner at the time of delivery.

Fair Market Value

The fair market value for properties "subject to" the requirements cannot be exceeded, unless there is clear evidence the acquisition will:

- Go to eminent domain proceedings; and
- The additional cost above fair market value plus the cost of completing eminent domain proceedings is more than the negotiated price.

This **MUST** be clearly documented and should be a rarity. Contact the department's Regional Coordinator for your area for advice.

Eminent Domain

The U.S. Department of Housing and Urban Development has a statutory prohibition on the use of HUD funds for eminent domain related activities. This prohibition clarifies the statutory prohibition against using HUD programs to support eminent domain for non-public purposes. If eminent domain will be a part of any CDBG project assisted in whole or in part with FY 2006 of 2008 CDBG funds for non-public purposes the project will no longer be eligible for assistance from the CDBG program and all expended grant funds must be repaid to the State. Please contact the department's Regional Coordinator for

assistance in determining if your project has been allocated FY 2006 or FY 2008 funds.

Note: If an agency does not have the authority to acquire property from the federal government through condemnation the acquisition will meet the requirements of 49 CFR Part 24.101(b)(3). In accordance with this regulation, if the agency desiring to acquire the property from the Federal Agency does not have authority to acquire through condemnation, such acquisition is not subject to URA basic acquisition policies. Unlike voluntary acquisitions from a private party under 24.101(b)(2), there are also no seller notification requirements.

Uniform Act Reference Document

HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition*, change 13, issued March 14, 2014 and Part V of the Department of Transportation regulation located at 49 CFR Part 24 updated January 4, 2005 provides the information necessary to addresses any type of acquisition and contains detailed guidance on the URA requirements. Before proceeding with any acquisition, the recipient may request a copy of the Handbook and updated regulation from OBDD or download a copy from http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780. The state can also provide information booklets, sample notices and other materials to assist recipients.

DISPLACEMENT AND RELOCATION

URA covers displacement and relocation. A displaced person under URA is an individual,

family, partnership, association, corporation, non-profit or organization, which moves from their home, business, or farm, or moves their personal property, as a direct result of acquisition, demolition or rehabilitation for a Community Development Block Grant project. Displaced persons are eligible for relocation assistance under the URA. Section 104(d) of the Housing and Community Development Act also governs the replacement of housing and relocation of individuals due to Community Development Block Grant funded activities. Section 104(d) may be found at

https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780. The Act is implemented by regulations at 24 CFR Part 42 (http://www.access.gpo.gov/nara/cfr/waisidx_03/24cfr42_03.html). Regulations for relocation benefits are in 24 CFR Part 42.350.

HUD has developed several brochures for persons in need of relocation assistance. All are available from a regional coordinator or online at the Housing and Urban Development website. They are:

- *Relocation Assistance to Persons Displaced From Their Homes (Section 104(d))*
- *Relocation Assistance to Tenants Displaced From Their Homes*
- *Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms*
- *Relocation Assistance to Displaced Homeowner Occupants*

Basic Project Development Concepts

When developing your project, here are some basic concepts to keep in mind:

- 1) “Buy vacant” for CDBG funded projects because relocation requirements are complicated and expensive.
- 2) If there is going to be a relocation during the project, the grant recipient is required to have a “relocation plan” in place.
- 3) Relocation/Replacement does not necessarily have a time limit; replacement depends on whether the property is vacant/occupiable (i.e. suitable for rehab).

URA TRIGGERS

NOT SUBJECT TO – (Voluntary) – Causing Displacement

- Owner occupied – URA Triggered – NO
- Tenant occupied – URA Triggered – YES
- Business/other occupied – URA Triggered – YES (some exceptions could apply if the property owner is also the business owner).

SUBJECT TO – (Involuntary) – Causing Displacement

- Owner occupied – URA Triggered – YES
- Tenant occupied – URA Triggered – YES
- Business/other occupied – URA Triggered – YES

DISPLACEMENT

Unfound Displaced Tenants

If the tenants who were issued a GIN vacated, for personal reasons, before the initiation of negotiations (i.e. the date the CDBG grant agreement is fully executed between the recipient and the State) they do not qualify as displaced. GIN's should be issued as soon as feasible after the department receives a

Project Intake Form, as the intake constitutes intent to use federal funds. Anyone who vacates a property after the Intake is submitted to the department but before receiving a GIN could claim to have been displaced by the project.

If there are unfound displaced tenants that qualify for benefits (relocation assistance) under URA there are two potential paths:

- 1) Grant recipient properly provided the GIN, that advised the tenant not to move, and used all reasonable procedures to locate said tenant(s), the regulations allow the tenant(s) 18 months to file a claim for URA benefits, when there are no extenuating circumstances.
- 2) Grant recipient did not properly provide GIN, the tenant(s) now have extenuating circumstances and they can file a claim to extend the 18 month window to file a claim for URA benefits, indefinitely.

If the tenant(s) are found or file a valid claim for benefits they must be paid. The exact URA benefit amount cannot be determined until you know where they are residing, to calculate the replacement housing payment.

Tenant Notices

All occupants of buildings that will be acquired, rehabilitated or demolished as a result of a Community Development Block Grant project must receive timely notices about their rights under federal law. The notices include:

General Information Notices (GIN)

Informs the occupant(s) of a possible project and includes the appropriate HUD booklet, in

this case it would be HUD booklet 1042-CPD Relocation Assistance to Tenants Displaced from their Homes. This notice must be issued as soon as possible after it has been determined that HUD CDBG funds are intended to be used for the project (i.e. Department's receipt of a Project Intake Form.)

Notice of Eligibility

Informs occupants that will be displaced of their rights and levels of assistance under URA.

30 and 90 day Notices

Informs occupants of the day by which they must vacate the property. Displaced persons may not formally be given LESS than 90 days to vacate their residence. However, 90-day notices may not be issued until residential tenants are referred to available, comparable replacement housing.

If, during project development stage, any potential tenant displacement is identified, the recipient must have documentation that the GIN were received by the tenant when the grant application is submitted to the state, by means of certified mail return receipt or the tenant signed for the notice.

Tenants who did not receive their notices at the project application stage may be entitled to relocation benefits under federal law. There are many notices, depending upon the details of the situation, rather than include all types of notification in this Grant Management Handbook, the recipient is encouraged to use the numerous examples of notices ("guide form notices") in *HUD Handbook 1378*. These may be accessed for

download at

<http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>.

A wide range of samples for different situations are found in the appendices.

Examples of the three most commonly used notices are contained in the Exhibits:

If an owner or tenant did not receive their notice, a complaint can be filed either by contacting the HUD Region X office or by filing a complaint online at the following link. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

Exhibit 8M-- Sample Notice to Tenants

Exhibit 8N-- GIN – Non-Displaced Residential Tenant

Exhibit 8O-- GIN – Displaced Residential Tenant

Current tenants are the primary concern with URA, but it's possible that the previous owner could have evicted a tenant or failed to renew a lease in order to sell the property as "vacant" for the project. **Since such tenants are also entitled to relocation benefits, the circumstances surrounding any move from the property dating back to the time of the purchase offer must be considered.**

Replacement Housing Assistance

Assistance can be provided as rental assistance or down payment assistance. Rental assistance can be replacement-housing payment (RHP). The amount of RHP varies depending upon whether the family is a lower income or non-lower income family, using HUD's family size and income limits.

URA establishes a cap on payments. This cap can be exceeded on last resort housing situations, where the current relocation limit is not sufficient to relocate the household. Information relating to last resort housing situations can be found in 24 CFR 24.404 and Chapter 3 of HUD Handbook 1378. Cash rental assistance must be provided in payments, unless it is to be used to purchase a home.

Displaced Persons

Displaced persons must rent or purchase decent safe and sanitary (DSS) units within one year after being displaced in order to qualify for a replacement housing payment. The displaced person must file the claim forms within 18 months after being displaced. If the displaced person selects a unit that fails inspections for codes and standards and necessary corrections cannot be made, RHP cannot be made. But the displaced person can get moving expenses.

Comparable Unit

Each recipient must offer one or more units to the displaced person, in which the size and function, contain the same principle features and location (reasonable access to person's employment, schools, medical facilities etc. general neighborhood characteristics, proper environmental conditions) are as similar as possible to the unit the person is leaving and is DSS. The comparable unit must also be available for use/occupancy.

Public housing is a comparable unit for displaced public housing tenants, but NOT for other tenants.

Replacement Unit

The replacement unit is the unit the person actually moves into.

Moving Expenses

Moving expenses must be reasonable and necessary. The displaced person may choose to receive payment for moving expenses by commercial mover; reimbursement of actual expenses incurred by the displaced person; Federal Highway Administration (FHWA) fixed payment; or any combination of the aforementioned. At the date of this publication, the most current residential moving cost schedule was effective August 24, 2015 and can be found at:

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

Recipients should check the above-referenced website to obtain the most current moving cost schedule.

Relocation Assistance and Payments

The URA provides for relocation assistance and payments to eligible persons displaced from their homes, businesses and farms as a direct result of a federally funded program or project. Residential tenants and owner-occupants of 90 days or more that are displaced from their dwellings may be eligible for a replacement housing payment, for rental assistance, or down payment assistance. Information regarding eligibility for this assistance is available at

http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/low_income_calculations/index.cfm. Consult your Regional Coordinator for details of this program.

Cash rental assistance payments must be made in at least two installments. Relocation assistance payments for residential tenants must be disbursed in installments. Lump sum payments may be made to cover (1) moving expenses, (2) a down-payment on the purchase of replacement housing, or incidental expenses related to (1) or (2). Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

The frequency of these disbursements may be determined by the Recipient. However, if not paid monthly, it is recommended that there be no less than three installment payments, except when the rental assistance payment is \$500 or less. Where the rental assistance payment is \$500 or less, it is recommended that payment may be made in two installments with no less than a four-month interval between payments.

Factors for calculating Assistance

The income of the displaced person is not a factor in determining basic eligibility, but for lower-income residential tenants it is a factor in calculating the amount of assistance they will receive. There is no income cut-off for eligibility for relocation assistance. Anyone who is displaced may be entitled to URA assistance.

Residential Anti-displacement and Relocation Assistance Plan

All recipients are required to follow the *State of Oregon Anti-displacement and Relocation Assistance Plan (Exhibit 2A)*.

URA Reference Document

Specific instructions for meeting the federal relocation requirements are beyond the scope of this Grant Management Handbook.

Recipients with projects that may result in any person or business moving, temporarily or permanently, must use HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition*, change 13, issued March 14, 2014

(http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780) and Part V of the

Department of Transportation regulation located at 49 CFR Part 24 updated January 4, 2005 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl) and discuss the requirements with the

regional coordinator for their project at the beginning of the project. Many of the U.S.

Department of Housing and Urban Development brochures for displaced homeowners, businesses, tenants, and persons are available upon request from OBDD or at

(http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/publications).

Relocation Benefits for Aliens

Aliens not lawfully present in the United States are not eligible for URA relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent or child. A person seeking URA relocation assistance must certify that the person is a United States citizen or national, or an alien lawfully present in the United States.

SECTION 104(D) OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT

Basic Federal Requirement

Section 104(d) of the Housing and Community Development Act requires replacement of low and moderate-income housing units that are demolished or converted to another use in connection with a CDBG assisted activity.

“Low and moderate income dwelling unit” means a dwelling unit or home with a market rent (including utility costs) that does not exceed the applicable fair market rent (FMR) for Section 108 housing program. The unit can be occupied or vacant. The term does not include a unit that is owned and occupied by the same person(s) before and after the rehabilitation. The overview is found at <http://nhl.gov/offices/cpd/affordablehousing/training/web/relocation/section104d.cfm>

Example

This rule applies to units being demolished or converted from permanent housing to temporary housing or another use. One example of a project that can trigger the one-for-one replacement rules is the rehabilitation of a single-family home for use as a homeless shelter.

Note: A millionaire could own and live in a low and moderate-income dwelling unit or vice versa a low-income household could live in a mansion.

Section 104(d) vs. The Uniform Act (URA)

The relocation assistance and payments for eligible persons under Section 104(d) are similar to those required for the URA, but there are a number of differences. One significant difference is the period of time used to calculate a rental assistance payment; Section 104(d) factors in 60 months vs. 42 months for the URA. Displaced persons eligible for assistance from both Section 104(d) and URA must choose to receive relocation assistance from only one program.

Section 104(d) Requirements

Section 104(d) requirements include:

- One for One replacement of all occupied and vacant occupiable low- or moderate-income dwelling units that are demolished or converted to a use other than low- or moderate-income permanent housing in connection with an activity assisted under the Housing and Community Development Act (HCDA), and
- Provision of certain relocation assistance to any lower income person displaced as a direct result of the demolition of any dwelling unit or conversion of a low- or moderate-income dwelling unit to a use other than a low- or moderate-income permanent residence.

Section 104(d) Resources

Contact an Oregon Business Development (OBDD) regional coordinator for the applicable federal regulations and assistance if your project involves demolition or conversion of housing units. There have been many recent changes in definitions of different types of dwellings and eligibility requirements. More

information is found in HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition*, change 13, issued March 14, 2014

(http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780) and Part V of the Department of Transportation regulation located at 49 CFR Part 24 updated January 4, 2005 http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl.

104(d) Checklist

Relocation Assistance:

Section 104(d) Tenant Assistance applies to owners and renters. To determine if the household is subject to 104(d) tenant relocation assistance use the following checklist.

- 1) Are CDBG funds used in the project?
- 2) Is the household low income?
Low Income Household (not family) means – Households whose income is below 80% of median. (Low and moderate income for the CDBG program.)
- 3) Will the unit be demolished or converted to another use?
- 4) Provide 104(d) tenant assistance if the answers to all of 1-3 above are “yes”.

Notes:

Residents that are not considered to be low income are still protected by URA and must be evaluated for relocation benefits under URA.

Residents eligible to receive 104(d) tenant assistance are still protected by URA and must also be evaluated for relocation benefits under URA. If both URA and 104(d) applies

tenant/resident must get both sets of notices required by each regulation. Persons eligible for relocation benefits from both URA and 104(d) must choose one program to receive benefits from. They cannot receive benefits from both programs.

One for One Replacement:

To determine if the unit is subject to one for one replacement use the following checklist:

- 1) Are CDBG funds in the project?
- 2) Is the unit low income?
Low/Moderate Income dwelling unit means – The rent and utilities is below the affordable rent for FMR (Fair Market Rents) – applies to rental and owner occupied units. For owner occupied units it would be the rent the unit would command if it were made available on the rental market.
- 3) Will the unit be demolished or converted to another use?
- 4) Is the unit occupied or vacant-occupiable?
Vacant Occupiable - The unit is standard, vacant and suitable for rehab, or dilapidated but has been occupied within the last three months.
- 5) If the answers to 1-4 above were all “yes” than the unit needs to be replaced.

24 CFR 42.375(b)(2) requires 1:1 replacement. Meaning a duplex containing 2 - 1 bedroom, 1 bathroom units cannot be replaced by a single family dwelling containing 3 bedrooms and 2 bathrooms. The duplex must be replaced by a like duplex of 2 units containing 1 bedroom, 1 bathroom each or two similar sized units within a larger complex.

LEAD BASED PAINT

Basic Federal Requirement

The Lead Based Paint Poisoning Prevention Act and HUD implementing regulations at 24 CFR 570.487(c) (found online at http://www.access.gpo.gov/nara/cfr/waisidx_03/24cfr570_03.html) affect recipients using Community Development Block Grant funds to rehabilitate residential housing. Effective September 15, 2000 revisions to the Lead-Based Paint (LBP) Regulations 24 CFR Part 35 were implemented. These may be viewed at <http://www.hud.gov/offices/lead/enforcement/lshr.cfm>

Lead Safe Housing Rule

HUD has implemented regulations to protect young children from lead-based paint hazards in housing that is financially assisted by the federal government or being sold by the government. The "Lead Safe Housing Rule" that contains requirements for notification, evaluation and reduction of lead-based paint hazards in federally owned residential property and housing receiving federal assistance, was published in the Federal Register on September 15, 1999. The requirements apply to housing built before 1978; the year lead-based paint was banned nationwide for consumer use. It is found at <http://www.hud.gov/offices/lead/enforcement/lshr.cfm>

A technical amendment to this regulation was published in the Federal Register on June 21, 2004.

The new regulation puts all of the department's lead-based paint regulations in one part of the Code of Federal Regulations,

making it much easier to find HUD policy on the subject.

Requirements

The regulation sets hazard reduction requirements that give much greater emphasis than previous regulations to reducing lead in house dust. It requires dust testing after paint is disturbed to make sure the home is lead-safe. Specific requirements depend on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied. These regulations affect all Community Development Block Grant awards made by the state for housing rehabilitation after September 15, 2000.

Certification

The grant award contract includes a certification that no lead based paint will be used in residential units.

Lead Based Paint Notice

All purchasers and tenants of Community Development Block Grant assisted housing constructed prior to 1978 must receive a notice about the hazards of lead based paint. Applicants for housing rehabilitation loans or grants also should receive notification. The notification form to be used is the current Environmental Protection Agency (EPA) pamphlet, *Protect Your Family from Lead in Your Home*. A copy is included as **Exhibit 8P**.

Grant recipients must keep documentation of the notifications in their local project file. This can be done by using an evidence of notification form. An alternative way to

document the notice to buyers and tenants is by obtaining a copy of the signed disclosure statement that all sellers and landlords are now required to retain by federal law (unrelated to the Community Development Block Grant program).

In addition to the disclosure requirements, housing rehabilitation with federal assistance must meet the requirements of lead-based paint poison prevention in the regulations at 24 CFR 35 Subpart J, Rehabilitation. Subpart J includes different and accumulatively more stringent requirements as the per unit federal assistance or rehabilitation funding increases. The requirements are:

- All rehabilitation: Paint testing of surfaces to be disturbed or presume that painted surfaces are lead-based paint, notice to occupants of the evaluation of paint testing or presumption of lead-based paint, lead safe work practices during rehabilitation and lead hazard reduction, and ongoing lead-based paint maintenance in projects.
- \$5,000 or less per unit: Repair of disturbed paint and clearance of work site.
- Over \$5,000 to \$25,000 per unit: Risk assessment, interim controls, and notice to occupants of lead hazard reduction.
- Over \$25,000 per unit: Risk assessment, abatement of lead-based paint hazards, and notice to occupants of lead hazard reduction.

State Regulations

All state Community Development Block Grant programs are required to develop procedures to eliminate the hazards of lead poisoning due to the presence of lead based paint in housing assisted with Community

Development Block Grant funds. In addition, the Lead Based Paint Hazard Reduction Act of 1992 (Title X) requires states to establish certification programs for inspectors and contractors and accrediting programs for trainers.

Lead-Based Paint References

HUD's Office of Healthy Homes and Lead Hazard Control's Community Information and Outreach website has a wide assortment of materials, from lead information brochures to large, full-color posters, including those printed in several languages at

<http://www.hud.gov/offices/lead/>

Another source of information is the National Lead Information Center accessed at

<http://www.epa.gov/lead/pubs/nlic.htm> or by

calling (800) 424 LEAD.

The State of Oregon's Lead-Based Paint Program has a toll-free LeadLine at (800) 368-5060. Its website is at:

<https://public.health.oregon.gov/HealthyEnvironments/HealthyNeighborhoods/LeadPoisoning/Pages/rrp.aspx>

Quick Checklist for Uniform Relocation Assistance and Real Property Acquisition, Section 104(d), and Lead-Based Paint

NOTE: The recipient cannot enter into any legal binding commitment on a particular site before the environmental review is complete. Refer to Chapter 3 for more information on the Environmental Review Process. However, an option agreement on a particular proposed site or property is allowable prior to completion of the environmental review IF the option agreement is subject to a determination by the recipient of the desirability of the property for the project as a result of the completion of the environmental review and the cost of the option is a nominal portion of the purchase price. Refer to Chapter 3 for more details.

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| | <p>1. Project involves the acquisition or donation of real property, permanent and temporary construction easements, and leases in excess of 15 years? If yes, the acquisition checklist, Exhibit 8A, was followed.</p> |
| | <p>2. Project involves conversion of occupied and/or vacant occupiable low/moderate income dwelling units? If yes, the 104(d) checklist starting on page 8-11 was followed.</p> |
| | <p>3. The project involves tenant displacement and relocation. Current tenants are the primary concern with URA, but it's possible that the previous owner could have evicted a tenant or failed to renew a lease in order to sell the property as "vacant" for the project. Since such tenants are also entitled to relocation benefits, the circumstances surrounding any move from the property during a 12-month period prior to sale dating back to the purchase offer of the current owner must be considered.</p> <p>a. ____ General Information Notice (GIN) provided to tenant b. ____ Notice of Eligibility provided to tenant c. ____ 30 day Notice provided to tenant d. ____ 90 day Notice provided to tenant e. ____ Decent, Safe and Sanitary (DSS) comparable unit was found f. ____ Tenant was reimbursed for moving expenses, totaling \$_____ g. ____ Replacement (Rental assistance) Housing Payment was provided: Yes___ No___; amount of payment \$_____ h. ____ Relocation Moving Assistance Payments (rental assistance) was made to the tenant in the amount of \$_____, in ___ payments (must be more than one).</p> |
| | <p>4. Tenants of purchasers of pre-1978 housing received notice about lead based paint hazards. Delivery of this notice, if applicable, is contained in the project file.</p> |

