

PLANNING and BUDGETING RELOCATION COSTS for HUD-FUNDED PROJECTS

Introduction

This guide illustrates the process of planning for and budgeting project relocation costs in connection with a program or project funded by the U.S. Department of Housing and Urban Development (HUD). It also provides valuable information on how to estimate the potential costs of relocation assistance and payments for projects that displace persons from their homes, businesses or farms under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act or URA), and displacement of residential tenants covered under section 104(d) of the Housing and Community Development Act of 1974.

- The URA establishes minimum requirements for the acquisition of real property and the displacement of persons from their homes, businesses or farms as a result of acquisition, rehabilitation or demolition for a federally-funded project. The URA requires relocation assistance and payments to be provided to all eligible displaced persons.
- Section 104(d) establishes minimum requirements for the displacement of lower income persons who, in connection with a HOME or CDBG funded activity, are displaced as a result of demolition or conversion of a lower income dwelling. Section 104(d) requires relocation assistance and payments to be provided to all eligible displaced lower income persons. Although the relocation payments and assistance under section 104(d) are generally similar to the URA, there are some important differences. It is also important to note that section 104(d) requires the replacement on a one-for-one basis of lower income dwellings demolished or converted to another use other than lower income housing in connection with a HOME or CDBG funded activity.

Agencies¹ administering HUD-funded projects must understand their obligations under these laws and budget for them accordingly. Thorough planning and budgeting of relocation costs not only helps to ensure your project is financially feasible, it also helps to ensure affected persons are successfully relocated and receive all of the relocation assistance and payments for which they are eligible.

Analyzing a project's cost from only a development perspective, without adequately considering its related relocation costs, will give a false impression of the project's true cost. Pursuing projects without adequately budgeting for relocation costs will result in additional unanticipated expenditures, which may tap resources from other projects and could result in the development of projects that are financially infeasible and problematic.

This guide will be useful for agencies administering HUD-funded programs and projects and in particular for agencies administering Community Planning and Development (CPD) programs².

¹ The term "agency" as used in this guide, refers to the HUD grant recipient or its designated agent, such as the project developer, a private firm hired by the agency or the developer, an eligible organization, or another public agency.

² This includes the Community Development Block Grant program (CDBG), the HOME Investment Partnerships program (HOME), and other CPD programs.

This guide provides useful information and resources, however, it does not cover all applicable URA and 104(d) requirements or other HUD program-specific relocation requirements. Agencies must ensure compliance with all applicable statutory and regulatory requirements for HUD-funded programs and projects. The URA and section 104(d) statute, regulations and other helpful materials, including contact information for HUD's Regional Relocation Specialists, may be found on HUD's Real Estate Acquisition and Relocation Web Site at:
<http://www.hud.gov/relocation>

Chapter 1: Introduction to Relocation

This chapter:

- Provides an overview of the relocation and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA) and section 104(d) of the Housing and Community Development Act (known as “section 104(d”).
- Reviews the activities that “trigger” the applicability of the URA and section 104(d).
- Summarizes the activities that agencies must undertake when the URA or section 104(d) is triggered.
- Reviews the calculations for relocation costs that might be incurred.
- Describes the importance of early project planning.
- Outlines the administrative duties required of agencies.
- Concludes with a discussion of the relocation assistance required by the URA and the risks associated with the failure to comply.

Background on the Uniform Act and Section 104(d)

In 1937, the nation’s first federal “public housing” program was launched. The Housing Act of 1937 authorized a program to provide federal aid to municipal housing authorities for low-income housing development and slum clearance. The Urban Renewal Program was created roughly a decade later when Congress passed the Housing Act of 1949. While the early laws provided for clearing slums and blighted areas to support both public and private redevelopment, these initiatives failed to consider the impact on those who were forced to move as a result of “renewal” efforts.

In 1970, Congress passed the Uniform Relocation and Real Property Acquisition Policies Act (URA). This federal law establishes minimum standards for all federally-funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The Uniform Act’s protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federally-funded projects.

The URA’s objectives are:

- To provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally-funded projects.
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement.
- To ensure that no individual or family is displaced unless Decent, Safe and Sanitary (DSS) housing is available within the displaced person's financial means.

- To help improve the housing conditions of displaced persons living in substandard housing.
- To encourage and expedite real property acquisition by agreement and without coercion.

49 Code of Federal Regulations (CFR) Part 24 are the government-wide regulations that implement the URA.

Section 104(d)

In addition to the URA, another relocation related law directly affects HUD and some of its Community Planning and Development programs. Section 104(d) of the Housing and Community Development Act of 1974 is one such law and is related to the use of HOME or CDBG funds for a project. There are two distinct components to Section 104(d):

- People:** Section 104(d) requires relocation assistance and payments for lower-income persons who are displaced as a result of the demolition or conversion of a lower-income dwelling.¹ Eligible section 104(d) displaced persons may choose relocation assistance under section 104(d) or relocation assistance under the URA.
- Dwellings:** Section 104(d) requires one-for-one replacement of lower-income dwelling units that are lost due to demolition or conversion.

It is important to note that section 104(d) differs from the URA in relocation eligibility criteria. While the URA requires relocation assistance and payments for all eligible persons who are displaced by a federally-funded project, regardless of income, section 104(d) relocation assistance is only applicable to displaced lower-income residential tenants whose income is at or below 80 percent of the area median income (the Section 8 Income Limit).

24 Code of Federal Regulations (CFR) Part 42 are the HUD regulations that implement Section 104(d) requirements.

The following section provides an overview of the activities that trigger the URA and Section 104(d).

URA and Section 104(d) Applicability

As noted above, an agency's obligation to provide required relocation assistance and payments under the URA and section 104(d) is dependent on the program activities that result in the displacement of persons from their homes, businesses or farms. These activities are discussed below, and are followed by a discussion of the implications for agencies.

¹ Conversion is defined as:

- Changing the use of the unit to non-housing (e.g., from permanent rental housing to a hotel or to a non-residential use);
- Causing a former low-income dwelling unit to no longer qualify as a low-income dwelling unit (even if the use is still housing); or
- Changing a unit so that it is used as an emergency shelter.

Relocation Requirements Applicability

- ❑ Three activities may cause the URA requirements to apply – acquisition, rehabilitation and/or demolition. URA relocation requirements generally apply when displacement occurs as a direct result of any one of these activities for a federally-funded project. However, there are some exceptions to this general rule. One such exception is the American Dream Downpayment Act (ADDI). On December 12, 2003 ADDI was signed into law. By law, ADDI is exempt from URA applicability.
- ❑ Distinct from the URA, section 104(d) requirements may be triggered by the demolition or conversion of lower-income dwelling units. Activities that involve acquisition alone do not trigger 104(d) though they may trigger the URA. Rehabilitation activities that cause conversion or demolition may trigger 104(d) requirements. Generally, section 104(d) requirements may apply when HOME or CDBG assistance is used for a project involving demolition or conversion. Agencies should contact their local HUD Regional Relocation Specialist for assistance to determine if 104(d) is applicable to a proposed project.

URA Relocation Obligations

When a federally-funded project causes people to move from their homes, businesses, or farms, eligible displaced persons must be provided with relocation assistance and payments. “Displaced person” is a term used to refer to residential and nonresidential (businesses, farms, and nonprofit organizations) owners and tenants who must relocate due to a project.

For residential displacements, agencies must:

- Provide relocation advisory services
- Provide a minimum 90 days written notice to vacate prior to requiring possession
- Reimburse for moving expenses
- Provide payments for the added cost of renting or purchasing comparable replacement housing

For nonresidential displacements, agencies must:

- Provide relocation advisory services
- Provide a minimum 90 days written notice to vacate prior to requiring possession
- Reimburse for moving and reestablishment expenses

The following discussion provides basic information on URA relocation requirements.

Notices (49 CFR 24.203)

The URA regulations require three notices to be issued in connection with acquisition and displacing activities. These notices provide important information about the project, the affected persons’ resulting rights, their protections, and their eligibility for relocation assistance and payments under the URA. It is critical for agencies to issue appropriate notices to affected persons at the appropriate time.

One of the most important URA notices is the **90 Day Notice**. No person shall be required to move without a minimum of 90 days written notice of the required date of the move.

What notices are required under the URA?

- General Information Notice (GIN):** Informs affected persons of the project and that they may be displaced by the project.
- Notice of Relocation Eligibility:** Informs persons that they will be displaced by the project and establishes their eligibility for relocation assistance and payments.
- 90 Day Notice:** Informs displaced persons of the earliest date by which they will be required to move. For residential displaced persons, this notice may not be issued unless a comparable replacement dwelling is available and the displaced person is informed of its location and has sufficient time to lease or purchase the property.

HUD has specific requirements relating to the three URA notices and also requires additional notices to be issued when conducting acquisition and relocation activities for HUD-funded programs and projects. Agencies should also refer to HUD Handbook 1378 Chapter 2 for more information on this topic. HUD Handbook 1378 is available on HUD's Real Estate Acquisition and Relocation web site at:

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

Relocation Advisory Services (49 CFR 24.205)

Once the URA has been triggered, there are certain actions that agencies must take to comply with those URA requirements. To begin with, agencies must provide relocation advisory services to all eligible residential and nonresidential displaced persons.

In addition to being required by law, relocation advisory services are the single most important part of a successful relocation program. Relocation advisory services are required to be provided to all eligible displaced persons including nonresidential displaced persons.

What relocation advisory services are required?

- Determine the needs and preferences of displaced persons
- Explain available relocation assistance
- Explain a person's right to appeal if they are not satisfied with agency decisions
- Offer and provide transportation to locate replacement housing
- Offer other assistance (e.g. social services or financial referrals, housing inspection, etc.)
- Provide current and ongoing listings of comparable dwellings for residential displacements and replacement sites for businesses
- Supply information on other federal and state programs offering assistance
- Provide counseling and other assistance to minimize hardship in adjusting to relocation
- And other required and appropriate assistance

Replacement Housing Payments – Residential (49 CFR 24.401 - .404)

Agencies are responsible for providing replacement housing payments to eligible residential displaced persons. A replacement housing payment (RHP) is a supplemental payment used to offset the increased housing expenses resulting from displacement. The URA provides for different replacement housing payments based on a displaced person's occupancy status and length of occupancy. Tenant occupants may be eligible for a rental assistance payment to supplement the costs of leasing a comparable replacement dwelling or downpayment assistance payment to purchase a replacement dwelling. Owner-occupants may be eligible for a price differential payment, mortgage interest differential payment, and incidental payments to supplement the costs of purchasing a comparable replacement dwelling.

Although the URA generally limits RHP amounts to \$5,250* (see below) for 90-day or greater tenants and short-term owner-occupants; and \$22,500* (see below) for 180-day or greater owner-occupants, these payment amounts oftentimes must be exceeded as required under "housing of last resort" to ensure that displaced persons can relocate to comparable, decent, safe and sanitary (DSS) housing within their financial means. RHP costs can amount to a significant part of a project's total relocation costs.

***Housing of Last Resort (49 CFR 24.404)**

The URA requires that comparable, DSS replacement housing, within a person's financial means be made available before that person may be displaced. When such housing cannot be provided, agencies must provide additional or alternative assistance under "housing of last resort." **Housing of last resort may involve the use of replacement housing payments that exceed the URA maximum amounts.** Housing of last resort may also involve the use of other methods of providing comparable, DSS housing within a person's financial means.

Agencies have a considerable amount of flexibility in the use of housing of last resort. It is intended to enable agencies to respond to difficult or special displacements, but it should not be used as a substitute for lack of time or lack of relocation advisory services.

Remember that it is crucial to identify potential housing of last resort situations early so they may be adequately represented in budget estimates and addressed in a proper manner.

Rental Assistance Payments for Displaced Tenants / 90-day occupants (49 CFR 24.402)

Displaced tenants may be eligible for a rental assistance payment or downpayment assistance.

This payment is generally based on the difference, if any, between the monthly rent and utilities for a comparable replacement dwelling, and the monthly rent and utilities for the displacement dwelling. It may also be based on income for low-income persons. The URA established a 42-month period for supplementing this payment difference. *(Note: replacement housing payments under section 104(d) are calculated on a 60 month period)*

If a displaced person chooses to rent a replacement dwelling and the cost of rent and utilities is higher than they have been paying, they may be eligible for a rental assistance payment up to \$5,250* (*see housing of last resort above).

For tenants who have occupied the dwelling for 90 days or more, the RHP is generally the difference between:

- ❑ The lesser of rent and estimated utility costs for the comparable replacement dwelling the agency has selected as most comparable *or* the rent and estimated utility costs for the actual DSS replacement dwelling rented and occupied, and
- ❑ The lesser of:
 - Thirty percent of the tenant's average monthly gross household income if the amount is classified as "low-income" by HUD's Annual Survey of Income Limits for Public Housing and Section 8 Programs (<http://www.fhwa.dot.gov/realestate/ua/ualic.htm>)
or
 - The monthly rent and average utility costs of the displacement dwelling.

To calculate the total RHP for which the displaced person may be eligible, the difference in the amounts is then multiplied by 42 months.

Let's do a simple calculation to show how it works:

$$\begin{aligned} \text{Comparable Dwelling – Rent and Utilities} &= \$600 \text{ month} \\ \text{Displacement Dwelling – Rent and Utilities} &= \$400 \text{ month} \\ \text{Difference} &= \$200 \text{ month} \\ \text{Multiply by 42 months} &= \$200 \times 42 \text{ months} = \mathbf{\$8,400} \end{aligned}$$

\$8,400 is the amount of rental assistance that the displaced person is eligible to receive based on a rent-to-rent calculation. **In this example, the replacement housing payment has exceeded the URA maximum of \$5,250 and is now considered to be in "housing of last resort."**

Now, let's do another calculation to see how the displaced person's income can impact the RHP calculation:

$$\begin{aligned} \text{Comparable Dwelling – Rent and Utilities} &= \$600 \text{ month} \\ 30\% \text{ of a qualified "low-income" tenant's average gross monthly household income} &= \$300 \text{ month} \\ \text{Difference} &= \$300 \text{ month} \\ \text{Multiply by 42 months} &= \$300 \times 42 \text{ months} = \mathbf{\$12,600} \end{aligned}$$

In this case, the displaced person's income is less than the monthly rent and average utility costs of the displacement dwelling and as such, should be used to calculate their RHP. **This replacement housing payment has also exceeded the URA maximum of \$5,250 and is also considered to be in "housing of last resort."**

You can see how important it is to accurately estimate relocation expenses, and in particular RHPs. In this example, the applicable income-based method used to determine the RHP amount is considerably more costly than using only a rent-to-rent estimate. Just imagine the overall impact of incorrectly projecting relocation costs for multiple displacements of lower income persons.

(refer to: HUD Form 40058 - Claim for Rental Assistance or Downpayment Assistance / <http://www.hud.gov/offices/adm/hudclips/forms/files/40058.pdf>)

Downpayments for Displaced Tenants - 90-day occupants (49 CFR 24.402(c))

Displaced tenants may be eligible for downpayment assistance instead of a rental assistance payment.

This payment is based on a rental assistance payment determination as shown above and may be used as a downpayment for the purchase of a DSS replacement dwelling.

Using the calculation example above, the displaced person is eligible for downpayment assistance of up to \$12,600 based on their low-income status.

(refer to: HUD Form 40058 - Claim for Rental Assistance or Downpayment Assistance / <http://www.hud.gov/offices/adm/hudclips/forms/files/40058.pdf>)

Replacement Housing Payments - 180-day owner-occupants (49 CFR 24.401)

A displaced owner-occupant who has occupied their home for 180 days or more may be eligible for a replacement housing payment up to \$22,500* (*see housing of last resort above) to assist in the purchase of a comparable DSS replacement dwelling. This payment consists of the following:

- Price Differential Payment** – the amount by which the cost of a comparable replacement dwelling exceeds the acquisition price of the displacement dwelling.
- Increased Mortgage Interest Costs** – costs where the interest rate on the new mortgage exceeds that of the owner's present mortgage.
- Incidental expenses** – expenses related to the purchase of the replacement dwelling. Incidental expenses may include title search, recording fees, and certain other closing costs. However, prepaid expenses such as real estate taxes and property insurance are not included.

Let's do a simple price differential calculation to show how it works.

Price Differential Payment:

Comparable Replacement Dwelling = \$160,000

Acquisition Price of Dwelling = \$140,000

Eligible Price Differential Payment = **\$20,000**

The price differential payment shown above would be in addition to eligible increased mortgage interest costs and incidental expenses associated with the purchase of the displaced person's comparable replacement dwelling. Together, these three payments comprise the replacement housing payment for a 180-day or greater owner-occupant. In the example above, housing of last resort may be required if the additional costs for incidental expenses and increased mortgage interest costs together with the price differential payment of \$20,00 exceed the URA statutory maximum of \$22,500.

(refer to: HUD Form 40057 - Claim for Replacement Housing Payment for 180-Day Homeowner-Occupant / <http://www.hud.gov/offices/adm/hudclips/forms/files/40057.pdf>)

Replacement Housing Payments (90 to 180-day owner-occupants-)

An owner who has occupied their home for more than 90 days but less than 180 days may be eligible for a replacement housing payment similar to that of a displaced tenant of 90 days or more. This payment, of up to \$5,250* (*see housing of last resort) is used to assist in the purchase or lease of a comparable DSS replacement dwelling.

Replacement Housing Payments (Less than 90 day occupants)

In addition to providing relocation advisory services and moving expense payments to displaced persons of less than 90 days, such persons may also be eligible to receive a replacement housing payment under housing of last resort when comparable rental housing is not available at rental rates within the displaced persons' financial means. (see 49 CFR 24.404(c)(3) and 24.2(a)(6)(viii)(C) for additional information)

Comparable Replacement Housing

Comparable replacement dwellings should not only meet the needs of the displaced person, but should also meet the criteria defined in the URA regulations at 49 CFR Part 24.2(a)(6). Such dwellings must be DSS and functionally equivalent to the acquired dwelling. Generally a DSS dwelling meets applicable local housing, occupancy, and building codes. These codes set minimum standards for housing in areas such as structural soundness, fire safety, electrical wiring, water and plumbing, and room sizes, etc. Functionally equivalent generally means similar to the displacement dwelling, especially with regard to major features such as the number of rooms and area of living space.

(refer to: HUD Form 40061 - Selection of Most Representative Comparable Replacement Dwelling / <http://www.hud.gov/offices/adm/hudclips/forms/files/40061.pdf>)

Moving and Related Expenses – Residential (49 CFR 24.301)

The URA provides for the reimbursement of moving and related expenses associated with a displaced person's move. Eligible displaced persons may choose to be paid on the basis of:

- Actual, reasonable moving costs and related expenses, or
- A fixed moving cost schedule
- Or a combination of both based on circumstances

Actual, reasonable moving costs and related expenses include:

- Transportation of the displaced person and personal property
- Packing, crating, unpacking and uncrating personal property

- Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property
- Temporary storage of personal property up to 12 months
- Insurance for the replacement value of the personal property in connection with the move and storage
- Transfer of telephone service and other similar utility reconnections
- Other expenses considered eligible by the agency

(refer to: HUD Form 40054 – Residential Claim for Moving and Related Expenses / <http://www.hud.gov/offices/adm/hudclips/forms/files/40054.pdf>)

Fixed Residential Moving Cost Schedule (49 CFR 24.302)

The amount of this payment is based on the number of rooms of furniture in the displaced person's dwelling. The schedule is established on a state-by-state basis and includes all of the expenses incurred in moving and the displaced person is then responsible for their own move. The fixed moving cost schedule may not be used for nonresidential moves.

The U.S. Department of Transportation – Federal Highway Administration, as Lead Agency for the URA, maintains this schedule. It is published in the Federal Register and is available on HUD's Real Estate Acquisition and Relocation web site.

It is important to note that the fixed moving cost schedule is an easy and particularly useful method to estimate and budget for residential relocation moving costs. When using the fixed schedule for estimating budget costs or when conducting actual relocation activities, be sure to use the most current copy available on HUD's Real Estate Acquisition and Relocation Web Site shown above.

Here is a quick example of how the fixed schedule works using the schedule effective on August 22, 2008:

Let's say the displacement dwelling is located in the State of California and has four rooms of furniture. Using the fixed schedule, you determine the displaced person is eligible to receive a fixed moving cost payment in the amount of \$1,175. Similarly, a displacement dwelling with three rooms of furniture located in California would be \$1000. It's that easy.

It should be noted however, that the payment to a displaced person who occupies a dormitory style room or to a person who's move is performed by the agency at no cost is \$100.

(refer to current Fixed Residential Moving Cost Schedule at: <http://www.fhwa.dot.gov/realestate/fixsch96.htm>)

Moving and Related Expenses - Nonresidential (49 CFR 24.301, .303, .304 & .305)

Businesses, farms, and nonprofit organizations are to be paid for their actual moving costs and related expenses. Although farms and nonprofit organizations are handled in a similar manner, we will discuss businesses since they are the most common.

A business may choose to obtain the services of a professional mover or conduct the move on their own. Depending on how the business conducts the move, moving costs may be paid by either of the two methods below:

- Actual moving cost, or
- Fixed payment

Actual Moving Costs - Nonresidential (49 CFR 24.301)

Agencies must pay for the actual, reasonable, and necessary costs of the move whether performed by professional mover or the owner. All moving costs must be supported by paid receipts or other evidence of expenses incurred.

In addition to the transportation costs of personal property, certain other expenses may also be reimbursable:

- Transportation of the displaced person and personal property
- Packing, crating, unpacking and uncrating personal property
- Disconnecting, dismantling, removing, reassembling and reinstalling relocated personal property including machinery, substitute personal property, connections to utilities in the building, modifications to personal property to adapt to replacement location and modifications to adapt utilities to personal property
- Temporary storage of personal property up to 12 months
- Insurance for the replacement value of the personal property in connection with the move and storage
- Other expenses considered eligible by the agency

The Uniform Act also provides for the payment of other expenses, such as professional services necessary for planning and carrying out the move, the costs for licenses, permits and certifications, actual direct loss of tangible personal property, purchase of substitute property, and searching expenses. Refer to 49 CFR 24.301 for additional information on these and other eligible nonresidential moving expenses.

(refer to: HUD Form 40055 - Claim for Actual Reasonable Moving and Related Expenses-Nonresidential / <http://www.hud.gov/offices/adm/hudclips/forms/files/40055.pdf>)

Actual Moving Costs / Related Nonresidential Eligible Expenses (49 CFR 24.303)

In addition to those actual reasonable and necessary costs for moving personal property specified in 49 CFR 24.301, nonresidential displaced persons may be eligible for the following expenses if the agency determines they are actual, reasonable, and necessary: connection to available nearby utilities, professional services for business operation suitability determinations, and impact fees for heavy utility usage.

Actual Moving Costs / Reestablishment Expenses – Nonresidential (49 CFR 24.304)

In addition to the cost of the move, a small business (less than 500 employees) may be paid an amount not to exceed \$10,000 for expenses actually incurred in relocating and reestablishing the business at a replacement site.

Here is a partial listing of eligible reestablishment expenses:

- Repairs or improvements to the replacement real property required by federal, state, and local laws, codes or ordinances;
- Modifications to the replacement real property to make the structure(s) suitable for the business operation;
- Redecoration or replacement of soiled or worn surfaces, such as painting, wallpapering, paneling and carpeting when required by the condition of the replacement site;
- Advertising the new business location;
- Installation of exterior advertising signs; and
- The estimated increased costs of operation at the replacement site during the first two years for items such as rent, taxes, insurance, utilities.
- Other items the agency considers essential to the reestablishment of the business.

Fixed Moving Payment – Nonresidential (49 CFR 24.305)

Displaced businesses may be eligible for a fixed payment "in lieu of" (in place of) actual moving expenses and reestablishment expenses. The fixed payment may not be less than \$1,000 nor more than \$20,000.

This moving option may be beneficial to the business in some situations and also to the agency as a streamlining measure to reduce paperwork and administrative time.

For a business to be eligible for a fixed payment, the agency must determine the following:

- The business owns or rents personal property that must be moved due to the displacement.
- The business cannot be relocated without a substantial loss of its existing patronage. (A business is assumed to meet this test unless the agency determines otherwise)

- ❑ The business is not part of a commercial enterprise having more than three other businesses engaged in the same or similar activity under the same ownership and not being displaced by the agency.
- ❑ The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. (The term “contributed materially” is defined in the URA regulations.)

Any business operation that is engaged solely in the rental of space to others is not eligible for a fixed payment. This includes the rental of space for residential or business purposes.

Computation of Fixed Moving Payments – Nonresidential

A fixed payment for a displaced business or farm is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced. The computation for a nonprofit organization differs slightly in that the payment is computed on the basis of average annual gross revenues minus administrative expenses for the two-year period.

The displaced business must provide the agency with proof of net earnings to support their claim. Proof of net earnings can be documented by income tax returns, certified financial statements, or other reasonable evidence acceptable to the agency.

Let's do a simple calculation to show how it works:

2004 Annual Net Earnings – \$20,000

2005 Annual Net Earnings – \$25,000

Average Annual Net Earnings - \$22,500 (Year of Displacement – 2006)

Total Eligible Fixed Payment: \$20,000

(refer to: HUD Form 40056 - Claim for Fixed Payment in Lieu of Payment for Actual Moving and Related Expenses / <http://www.hud.gov/offices/adm/hudclips/forms/files/40056.pdf>)

Section 104(d) Relocation Assistance and Payments

As previously discussed eligible lower income displaced persons may choose assistance based on either section 104(d) or the URA. 104(d) relocation assistance and payments are similar to URA relocation assistance and payments, in fact, relocation advisory services, moving expense payments and a number of other requirements are identical to the URA. Although there are a number of differences between 104(d) and URA relocation assistance and payments, including payment of security deposits under 104(d), the most significant difference is in the area replacement housing assistance.

Replacement Housing Payments

Under Section 104(d), the RHP for low-income households is calculated for a 60-month period and is the difference between:

- ❑ The lesser of rent and estimated utility costs for the comparable replacement dwelling the agency has selected as most comparable *or* the rent and estimated utility costs for the actual DSS replacement dwelling rented and occupied, and
- ❑ The Total Tenant Payment (TTP) is defined at 24 CFR 5.628 and is generally calculated as the greater of:
 - Thirty percent of adjusted income, and
 - Ten percent of gross income.

Let's do a simple calculation to show how it works:

Comparable Dwelling – Rent and Utilities = \$600 month

Total Tenant Payment (TTP) = \$300 month

Difference - \$300 month

Multiply by 60 months - \$300 x 60 months = **\$18,000**

\$18,000 is the amount of rental assistance that the displaced person is eligible to receive under section 104(d).

In lieu of cash based rental assistance, the section 104(d) regulations also provide that an agency may offer all or a portion of the 104(d) replacement housing assistance through a Section 8 certificate or voucher for rental assistance. However, displaced persons must be eligible for and also be able to use such assistance.

As you can see, section 104(d) replacement housing assistance can be substantially more costly than replacement housing assistance under the URA. Agencies should ensure whether or not 104(d) is applicable to a proposed project when preparing a budget estimate.

For additional information on section 104(d) requirements refer to 24 CFR Part 42

(refer to: HUD Form 40072 - Claim for Rental or Purchase Assistance (section 104(d) / <http://www.hud.gov/offices/adm/hudclips/forms/files/40072.pdf>)

Agency Administrative Responsibilities

Agencies are responsible for the administration of HUD program funds. As a result, when using program funds for activities that trigger the URA or Section 104(d), the agency must follow all applicable relocation and real property acquisition requirements. In addition to the project-related relocation tasks outlined in the preceding section, the following administrative and planning activities are the responsibility of the displacing agency and must be budgeted for accordingly:

- ❑ **Residential Antidisplacement and Relocation Assistance Plan.** When using HOME or CDBG funding, the Consolidated Plan must contain a certification that the recipient has in effect and is following a Residential Antidisplacement and Relocation Assistance Plan. Agencies should refer to HUD regulations 24 CFR Part 42 for additional information.

- ❑ **Relocation Planning/Relocation Plan.** The URA requires early project planning that recognizes any actions that cause displacement, the problems associated with the displacements, and provides for resolution of those problems to minimize adverse impacts on displaced persons before any activities associated with displacement commence. Although planning is a requirement under the URA, a written relocation plan is not required. However, a written relocation plan is considered to be a useful tool to guide agencies in successfully completing relocation activities.
- ❑ **Education of project owners/developers.** Project owners and developers need to be informed about their applicable acquisition and relocation responsibilities under the URA and Section 104(d).
- ❑ **Providing proper notice.** The URA and HUD policy requires a variety of notices to be issued to affected persons when conducting acquisition and relocation activities. Agencies must ensure affected persons receive all applicable notices in a timely manner. Failure to provide appropriate notices or issue notices on a timely basis can severely impact the project schedule and also increase project costs.
- ❑ **Administering relocation assistance and payments.** Administering relocation assistance and payments is not only complex, but is also very time consuming. It is crucial that project budgets not only include accurate estimates of related relocation payments, but also budget for the administration of those activities and requirements, including providing advisory services; developing and issuing notices; determining relocation eligibility; identifying comparable replacement housing; calculating relocation payments; paying relocation claims; and inspecting replacement housing, etc.
- ❑ **Monitoring and record keeping.** Agencies must ensure projects are in compliance with applicable rules. This includes recordkeeping to document compliance.

Initial Project Planning

Planning can “make” or “break” your project. A well-planned project may be completed on time and on schedule, whereas, a poorly planned project can result in delays, funding shortfalls, bad publicity, and even legal action.

Planning for acquisition and relocation activities should begin early in the project planning process.

Section 205 of the URA requires that, “Programs or projects undertaken by a federal agency or with federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.”

Agencies should plan their projects to ensure adequate **time, funding and staffing** are available to carry out their responsibilities under the URA.

Early planning is essential in any project, but it is particularly important in one that will involve relocation. Agencies may either undertake the relocation planning process themselves, review

any planning conducted by the developer or owner (for-profit or nonprofit) that is receiving HUD funds, or outsource to a third party like a consultant or other public agency that undertakes relocation activities more frequently. Agencies are held accountable for compliance with relocation requirements, even if these requirements have been carried out by the agency's housing partner(s).

Agencies must understand relocation requirements in order to assess the financial obligations they will incur when they undertake projects that result in displacement. These relocation costs can be significant, and can impact the overall financial feasibility of an affordable housing development. These costs are also likely to affect the total amount of public subsidy needed to ensure the project's success. Relocation is an eligible project soft cost in the HOME and CDBG programs, as well as most other HUD programs. Proper planning will help ensure that the project budget includes the funds necessary to meet the needs of affected families. In order to undertake projects that require relocation, agencies need to commit sufficient funding, time, and organizational resources to meet their obligations. Lack of planning for relocation costs can result in unnecessary disruption to displaced persons, unexpected project subsidies, or even worse, a failed project.

To assist in the planning process, agencies should undertake the following steps:

1. *Estimate Project Costs*, including those associated with providing required relocation assistance and payments.
2. *Determine Eligibility for Relocation Assistance*. Agencies should determine if displaced persons are eligible for relocation assistance and payments under the URA or Section 104(d). (Persons eligible under 104(d) may choose assistance under 104(d) or the URA.)
3. *Anticipate Future Project Costs*. Agencies should be familiar with the project timeline to ensure proper funding for each stage in the relocation process.
4. *Determine Resource Needs*. Agencies should determine if they have adequate and knowledgeable staffing to conduct relocation activities in an efficient and effective manner. Agencies should consider assistance from skilled professionals if insufficient staffing is anticipated.
5. *Re-evaluate the Budget, as needed*. This should be done periodically, particularly when circumstances alter the project scope or timeline.
6. *Review the Proposed Relocation Plan*, to determine how to move forward with the project and ensure compliance with all applicable rules and regulations.

HUD Responsibilities

Due to its legal oversight role, HUD is responsible for ensuring that funding recipients have followed all applicable laws and regulations. HUD monitors and assesses funding recipients to determine if they are in compliance with all applicable requirements.

Benefits of the URA and Risks of Noncompliance

Conducting acquisition and relocation activities under the URA is not only required by law, but it is also the right thing to do.

Here are some benefits of compliance:

- Fair and equitable treatment for those affected by your project;
- Assistance to displaced persons in maintaining or attaining decent, safe and sanitary housing;
- Assistance to displaced businesses in maintaining viable operations;
- Avoidance of costly delays;
- Efficient project management; and
- Public support for your project.

Here is what can happen if you fail to comply:

- Project delays;
- Increased project costs;
- Negative publicity;
- Adverse legal action; and
- Corrective action as determined by HUD

The remainder of this guidebook provides agencies with additional tools for understanding the relocation process, and how to budget for relocation projects to ensure success with minimal difficulties.

Chapter 2: Overview of the Relocation Budgeting Process

This chapter:

- Provides a general overview of the key steps in the relocation budgeting process.
- Identifies methods for estimating typical relocation costs and special problems that may arise.
- Helps agencies understand how to approach relocation budgeting.

Important Steps in Developing a Relocation Budget Estimate

Each relocation project is different. Nonetheless, there are some common elements to relocation projects that agencies can anticipate, and properly plan and budget for, including:

- Establishing roles and determining the staffing and other resources needed to undertake relocation activities;
- Determining who will be displaced, who will not be displaced, and who will be temporarily relocated;
- Identifying and surveying affected persons;
- Conducting personal interviews;
- Preparing and issuing required notices;
- Providing required advisory services, including identifying comparable replacement housing; and
- Determining and providing relocation payments and other relocation assistance to eligible displaced persons.

Establishing Roles and Determining Resource Needs

During the agency's review of the project's scope and timeline, it should assess its own staffs' experience and capacity to oversee and/or manage the relocation process. The URA requirements make no distinction regarding who needs to conduct acquisition and relocation activities, only that all applicable acquisition and relocation requirements are satisfied. Therefore, agencies can either take on these responsibilities with their own staff or hire professional acquisition and relocation consultants who have the experience to get the job done correctly. HUD holds the displacing agency responsible for meeting all relocation and/or acquisition requirements, regardless of who undertakes the various tasks. -

Discussions and decisions regarding who will accept and fulfill these requirements should be determined during the planning stage, prior to moving forward with the project. Any adopted relocation plan should identify who will undertake each step in the relocation process, whether it is the public agency providing the federal financial resources, the development entity, or a third party. Specific roles should be incorporated into any written agreement for the project, including but not limited to the following tasks:

- Issuance of required notices;
- Contacting and interviewing affected persons;
- Identifying comparable replacement dwellings;
- Providing advisory services and other relocation assistance; and
- Calculating and providing relocation payments.

Agencies should determine their staffing, training, and capacity building needs and budget accordingly based on the project's anticipated relocation activities. There are several staffing options available to cover relocation activities, including the following three scenarios:

- Building and maintaining in-house capacity for relocation activities;
- Contracting for assistance as needed for relocation activities; or
- Delegating relocation responsibilities to the developer or owner who receives HUD funds.

During this assessment of its own resource needs, agencies should remember that they remain ultimately responsible for compliance with the URA and Section 104(d) requirements, even if they contract or delegate these responsibilities to outside parties. At the very least, agencies need to plan and budget for sufficient in-house staff to monitor the performance of outside parties during the relocation process.

Determining Who Will Be Displaced

Who is a displaced person? Generally, a displaced person under the URA is an individual, family, partnership, association, corporation, or organization, which moves permanently from their home, business, or farm, or moves their personal property as a direct result of acquisition, demolition or rehabilitation for a federally-funded project. Displaced persons are eligible for relocation assistance under the URA.

The URA contains specific definitions of a "displaced person" and "persons not displaced." In some cases, a person may be entitled to temporary relocation payments (e.g. a tenant whose unit is being rehabilitated and who can return within 12 months). These definitions in addition to applicable HUD program regulations should be used when making any determinations of relocation eligibility. (see 49 CFR 24.2(a)(9) and Appendix A - 24.2(a)(9)(ii)(D) for additional information)

URA Eligibility for Relocation Assistance

An essential step in the planning and budgeting process is to identify the affected property or properties, estimate the number of displaced persons (households, businesses, nonprofit organizations, farms) and develop a budget for any relocation assistance and payments for which they may be eligible. Generally, the URA establishes eligibility for relocation assistance and payments as of the date of "Initiations of negotiations" (ION). The URA and HUD program regulations provide several definitions for ION, some of which are determined by specific program requirements which should be referred to when planning for projects requiring

relocation activities. For example, the “initiation of negotiations” for a rental rehabilitation project may be the execution date of the funding agreement between the agency and the owner. Based on that definition of ION, all persons residing in the project may be eligible for relocation assistance and payments as of that date.

While ION generally marks the date when persons become eligible for relocation assistance, agencies should have accomplished comprehensive relocation planning prior to that date in order to carry out successful relocation activities. HUD policies also require agencies to address relocation issues much earlier in the process. For instance, if some of these issues are not addressed, it could result in additional persons becoming eligible for relocation assistance, who otherwise would have been ineligible. For example:

- ❑ Once a HUD-funded project reaches the point where the agency has executed a funding agreement with the owner, residents may be eligible for relocation assistance if the owner or agency failed to take appropriate steps before execution of the agreement, such as providing persons with proper notice regarding the project and their possible displacement or nondisplacement.
- ❑ A property owner displaces tenants without informing them of their rights and potential eligibility for relocation assistance under the URA in order to propose a vacant building for a HUD-funded project and to avoid providing relocation assistance and payments.

It is crucial for agencies to follow notification and advisory services procedures carefully to ensure that persons are not improperly displaced by a project. Procedural errors or omissions can have a significant impact on the overall project budget.

Section 104(d) Eligibility for Relocation Benefits

Agencies also need to be familiar with the eligibility requirements for Section 104(d) in order to properly budget for any additional relocation assistance and payments for which displaced persons may be eligible. (See Chapter 1 for more details.)

Furthermore, Section 104(d) also requires one-for-one replacement of lower income dwelling units (as defined in 24 CFR 42.305) that are demolished or converted to another use other than as lower income dwelling units. While not a project-specific relocation-related cost, the agency must have a plan for replacing each dwelling unit that is lost due to demolition or conversion (see 24 CFR 42.375 for additional information).

Identifying and Surveying Affected Persons

Relocation management and budgeting begins during the planning stage, and there are a number of decisions that must be made at this point, including how to coordinate relocation activities and how to obtain helpful information about persons who may be displaced by the project. This requires the agency or agency’s designated representative to identify persons who may be displaced and acquire information concerning their current circumstances, needs and preferences to begin relocation planning and develop an adequate budget estimate.

Given the differences in the level of relocation assistance and payments available for eligible displaced persons and their varying needs and circumstances, it would be extremely difficult to estimate possible relocation costs with property addresses only. Agencies must obtain as much detailed information as possible about potential displaced persons in order to adequately

establish even a preliminary budget. This information is typically secured through a survey or interview with occupants and owners, when possible. In addition to identifying potential financial obligations, surveys can be a valuable aid to agencies in conducting successful relocation activities.

In some projects, a survey may be the only way to identify persons who will need to be displaced. In other cases, surveys may help to identify unknown or illegal occupants of a property. A survey is a planning tool to assist in developing a relocation plan and is typically conducted prior to interviews and individual meetings with affected persons. Before conducting the survey, however, it is important for the agency to determine if persons will need to be provided translation services and information in languages other than English, and whether or not additional accommodations will be required for persons with disabilities.

The following information should be collected in a residential survey:

- Type of occupant (owner-occupant or tenant);
- If required to move, their location preference;
- Length of time in the unit;
- Number and ages of persons in the household;
- Number of bedrooms in dwelling;
- Employment status of household members;
- Household income;
- Means of transportation typically used by household members; and
- If household members are tenants, their rent and their interest in homeownership.

Property Owners

When an agency is interested in acquiring or rehabilitating a particular property, the agency should speak with the property owner to obtain as much information about the property's residential and nonresidential occupants as possible, such as who lives in each unit, their move-in dates, household characteristics, incomes, and rents. This information, in addition to the information gained through the survey, will help the agency begin to develop a relocation budget for the project.

Residential Displaced Persons

When surveying residential displaced persons, methods can include going door-to-door to talk with affected persons, scheduling appointments to speak with affected persons individually or in groups, or working with the tenant association to conduct the survey. In addition to the types of information listed above, questions to ask may include the following:

- Would the household prefer to remain in the neighborhood/area or leave the neighborhood/area?

- Is the household interested in homeownership opportunities?
- Will there be difficulties in relocating the displaced person which may require last resort housing methods and costs?
- Are there any special needs or services the displaced person will require during relocation and/or at the new location?

Nonresidential Displaced Persons (Businesses, Nonprofit organizations and Farms)

When surveying nonresidential displaced persons, survey methods can include visits to their place of business, scheduling appointments to speak with affected persons, or working with the displaced person's designated representative or intermediary. Some information the agency may wish to obtain from nonresidential persons includes:

- Individual circumstances of the nonresidential displacement, including type of business and number of employees; and
- Relocation needs and preferences.

Alternative Survey Methods

Although surveys are the preferred means of collecting useful relocation information, sometimes surveys cannot be accomplished successfully. This can happen due to uncooperative property owners, uncooperative potentially displaced persons or the inability to contact or locate these persons. If agencies are not able to collect information through traditional surveys, there are alternative methods that can be used to collect this information. One such method is to use the most recent information the property manager has on each tenant and extrapolate to get more current information. For example, income information that is a year or more old could be adjusted upward for inflation. Also, moving costs can be estimated based on square footage if information on the number of rooms in a unit is not available.

Conducting Personal Interviews

When the project has been approved, the agency or its designated relocation agent (the person chosen to carry out relocation activities on behalf of the agency) must conduct personal interviews of displaced persons to determine their needs and preferences. These interviews also help the agency develop a profile for each displaced person to aid in their successful relocation. The information obtained from these interviews will also enable the agency to better estimate total relocation costs for the project.

Residential Displaced Persons

When interviewing residential households that will be displaced, the agency or agent must identify the following significant characteristics:

- Number of people in family;
- Dwelling size and number of bedrooms;
- Income range; and

- Special needs.

Additional needs to be covered during this interview should include:

- Identification and location of children's schools;
- Places of worship;
- Child care needs;
- Transportation needs;
- Community linkages;
- Family needs;
- Any pets;
- Physical needs;
- Place of Employment; and
- Personal desires and preferences relative to relocation.

The agency or relocation agent must also inspect the replacement dwelling in order to locate and identify replacement housing which is comparable to the displacement dwelling.

Nonresidential Displaced Persons (Businesses, Nonprofit organizations and Farms)

Nonresidential displacements can be complex and costly. The agency or its designated relocation agent must conduct personal interviews with the owner/operator of the business, farm or nonprofit entity being displaced. Personal interviews are the best method for obtaining accurate information concerning the existing business and any special needs required during relocation and reestablishment; they are also a URA regulatory requirement.

During the personal interview, the agency or agent should seek to identify the business's significant characteristics, equipment and other business inventory, special needs for the displaced business, and personal desires and preferences relative to relocation.

At a minimum, personal interviews with displaced business owners/operators should include:

- The business's replacement site requirements, current lease terms and other contractual obligations, and the financial capacity of the business to accomplish the move.
- Determination of the need for assistance in planning the move, assistance in the actual move and in the reinstallation of machinery and/or other personal property.
- An identification and resolution of personal/realty issues. These issues should be resolved prior to, or at the time of the appraisal of the property.
- An estimate of the time required for the business to vacate the site.

- An estimate of the anticipated difficulty in locating a replacement site.
- An identification of any advance relocation payments required for the move, and the agency's legal capacity to provide them.

The facts obtained from interviewing nonresidential displaced persons will provide a foundation for future advisory services and financial assistance from the agency or other sources. Should the circumstances of these nonresidential displaced persons change during the relocation phase of the project, these changes should be reflected in the agency's actions and records.

Providing Relocation Advisory Services

In addition to being required by law, relocation advisory services are the single most important part of a successful relocation program. Relocation advisory services are required to be provided to all eligible displaced persons including nonresidential displaced persons. Relocation advisory services are intended to provide assistance to displaced persons to facilitate relocation and ease the burdens of moving.

The following is a list of some required relocation advisory services:

- Determine the needs and preferences of displaced persons
- Explain available relocation assistance
- Explain a person's right to appeal if they are not satisfied with agency decisions
- Offer and provide transportation to locate replacement housing
- Offer other assistance (e.g. social services or financial referrals, housing inspection, etc.)
- Provide current and ongoing listings of comparable dwellings for residential displacements and replacement sites for businesses
- Supply information on other federal and state programs offering assistance
- Provide counseling and other assistance to minimize hardship in adjusting to relocation
- And other required and appropriate assistance

The agency should consider whether the relocation advisory services will be handled by in-house staff or outside contractors, and the relative cost of each, in terms of labor hours and wages.

Advisory services are often carried out by staff and like other relocation costs, can be paid for as an administrative cost by the agency or as a project cost. With limited administrative budgets, agencies may want the project to pay for these costs, especially considering the labor intensive nature and associated costs of administering advisory services throughout the relocation process.

It is extremely important for agencies to adequately estimate costs for advisory services when preparing project budgets.

Determining Potential Relocation Assistance and Payments for Displaced Persons

Factors Affecting How to Calculate Amount of Assistance

Everyone who meets the URA definition of a displaced person is eligible to receive applicable relocation assistance. The income of a residential displaced person is not a factor in determining basic eligibility, but it is a factor in calculating the amount of any replacement housing payment assistance they may be eligible to receive. The level and type of relocation assistance received by displaced persons is dependent on a variety of factors, including:

- Whether they are a residential or nonresidential displacement
- Whether they are an owner-occupant or tenant
- For residential displacements - length of occupancy
- For residential displacements - household income

See Chapter 1 for more detailed information on factors affecting how to calculate the amount of assistance.

Special Project Costs

In addition to identifying typical relocation expenses, agencies should identify any special relocation circumstances in addition to any anticipated need for housing of last resort and its associated costs early in the project planning stage. These might include lack of available comparable replacement housing, displacing persons from non DSS housing, complex nonresidential displacements, etc.

The agency should identify persons who may be difficult to relocate early in the process and pursue all solutions to achieve their successful and timely relocation. For example, displacing a tenant with several pets may be difficult because of the limited number of rental properties that will accept multiple pets. Relocating persons with physical disabilities may also be difficult in housing markets where there is a shortage of accessible units.

Special advisory services may also be required when relocating persons with other special needs. For instance, for persons unable to read and understand relocation notices and other related material, appropriate translation and counseling services is required. For some displaced persons, the agency may need to involve social services as a means to achieving a successful relocation (e.g., persons with substance abuse problems).

Agencies should ensure sufficient funds are budgeted for and set aside to address these special project costs.

Additional Steps in the Relocation Budgeting Process

Anticipate Future Project Costs

The URA and section 104(d) requirements highlight the need to begin the budgeting process in the early stages of a HUD-funded project. The budgeting process should reflect the complexity

and size of the project. In order to plan for and conduct relocation activities, agencies need to be familiar with the project's scope and its proposed timeline.

Effective relocation assistance takes considerable time, and the project timeline should incorporate all required steps, such as providing advisory services, notices, interviewing all displaced persons, identifying comparable dwellings suitable for replacement housing, calculating and providing relocation payments and other required and appropriate relocation assistance. The most significant requirement, from a timing perspective, is the need to provide each displaced person no less than 90 days written notice before they are required to move. Additionally, residential displaced persons may not be provided such notice until a comparable replacement dwelling has been made available to them. The availability of a comparable replacement dwelling may be problematic depending on the displaced person's circumstances and the local housing market, so plan accordingly.

Based on the complexity and nature of the property to be acquired, the scope of the proposed project, and the underlying local housing market, significant time can pass until acquisition and/or relocation is complete and when the proposed project may commence. To the extent possible, the time necessary to carry out the relocation activities should be scheduled and aligned with the need to start rehabilitation, demolition or construction for the proposed project. However, the need to protect the rights of all affected persons and ensure fair and equitable treatment, outweighs the needs of the agency to move the project forward. Any anticipated delays related to relocation activities need to be reflected in the overall project budget.

Follow-up Budgeting

Budgeting for relocation costs is not a one-time event. Many development projects change as the project evolves, and the needs of the project might very well change before the relocation process actually begins.

Agencies should be prepared for the financial impacts of unexpected relocation costs. In preparation, agencies should set aside a healthy contingency in their relocation budget for these unanticipated costs.

Chapter 3: Real Property Acquisition – Relocation Budget Issues

This chapter outlines key relocation budget issues that agencies should consider in the acquisition of real property.

Acquisition of Real Property

Oftentimes, HUD-funded projects require the acquisition of real property. Agencies may acquire the needed property from owners by voluntary or involuntary means. Under the URA, an acquisition is generally considered to be involuntary when a agency acquires property under threat or use of eminent domain. Eminent domain is the power of the government to take private property for public purposes with payment of just compensation.

The 5th Amendment of the U.S. Constitution states that "private property shall not be taken without payment of just compensation" and that "no person shall be deprived of life, liberty, or property without due process of the law." These constitutional rights form the basis of the URA's protections for property owners.

The URA requirements for voluntary acquisitions and involuntary acquisitions differ significantly. While there are protections for property owners in both circumstances, involuntary acquisitions trigger the full acquisition requirements of the URA found in 49 CFR Part 24 Subpart B.

Furthermore, in a voluntary acquisition under the URA, an owner-occupant is not eligible for relocation assistance and payments; however, a tenant occupant is eligible. It is important to remember this difference in relocation eligibility when budgeting for and conducting voluntary acquisitions.

Agencies must understand the critical differences between voluntary acquisitions and involuntary acquisitions under the URA before acquiring property for a HUD-funded project. (see 49 CFR 24.101(b)(1)-(5))

What makes a transaction “voluntary”?

For agencies with eminent domain authority (see 49 CFR 24.101(b)(1)) **if:**

- No specific site is needed and any of several properties could be acquired for project purposes.
- The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits.
- The agency informs the owner in writing of the property's market value.
- The agency also informs the owner in writing that the property will not be acquired through condemnation if negotiations do not reach an amicable agreement.
- If tenants are displaced, they are eligible for relocation assistance.**

For agencies without eminent domain authority (see 49 CFR 24.101(b)(2)) if:

- The agency notifies the owner in writing of the property's market value and
- The agency notifies the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached.
- If tenants are displaced, they are eligible for relocation assistance.**

To determine if your proposed acquisition may be considered a "voluntary acquisition" under the URA, agencies should refer to the URA regulations to ensure all applicable criteria and requirements for a voluntary acquisition found in 49 CFR Part 24.101(b)(1)-(5) are satisfied.

If you still have questions or are uncertain if your proposed acquisition should be considered a voluntary acquisition or an involuntary acquisition, contact your local HUD Regional Relocation Specialist for assistance. A list of HUD contacts is accessible on HUD's Real Estate Acquisition and Relocation web site at <http://www.hud.gov/relocation>.

Key Acquisition Steps – Involuntary Acquisition Process

The following steps represent the general process an agency must follow and budget for when acquiring property as an involuntary acquisition under the URA:

- Notify owner of the agency's intentions to acquire the property and their protections under the URA
- Appraise the property and invite the owner to accompany the appraiser
- Review the appraisal
- Establish just compensation for the property
- Provide owner with written offer and summary statement for property to be acquired
- Negotiate with owner for the purchase of property
- If negotiations are successful, complete the sale and reimburse property owner for related incidental expenses
- If negotiations are unsuccessful, consider an administrative settlement to complete the sale
- If negotiations are still unsuccessful, the agency should acquire the property through use of eminent domain

For more information on the URA involuntary acquisition process and related requirements you should refer to 49 CFR 24.102 - .108.

What is “just compensation?”

Just compensation is derived from the appraisal process. Typically, the approved appraisal's estimate of fair market value is the basis for the amount of just compensation offered for the property to be acquired. Just compensation cannot be less than the approved appraisal's estimate of fair market value of the property being acquired.

What is an administrative settlement?

When negotiations result in a purchase price exceeding the agency's estimate of just compensation, it is called an administrative settlement. Administrative settlements are made for administrative reasons that are considered to be in the best interest of the public. Authorized agency officials may approve administrative settlements if they are:

- Reasonable ,
- Prudent, and
- In the public interest.

Agency files should include proper documentation to justify and support the decision for administrative settlements. Agencies should refer to applicable HUD program regulations for additional requirements related to the use of administrative settlements.

Donations

Some property owners may choose to donate their property to a project. When property owners donate their property to a project, agencies must ensure that donors are fully informed of their rights under the URA, including their right to receive just compensation. There should be no coercion from the agency or others to force the owner to donate the property.

In the case of a donation for an otherwise voluntary acquisition under the URA, agencies must first satisfy the applicable requirements under 49 CFR 24.101(b)(1)-(5). After the voluntary acquisition requirements have been satisfied, an agency may seek a donation from the property owner. When accepting donations, agencies should obtain and also maintain written acknowledgment from the donor to document their decision.

Additional Information

For more information relating to the real property acquisition for HUD-funded programs and projects refer to HUD Handbook 1378 – Chapter 5. HUD Handbook 1378 is available on HUD's Real Estate Acquisition and Relocation web site at:

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

See also: General URA Acquisition Process

(<http://www.hud.gov/offices/adm/hudclips/handbooks/cpdh/1378.0/1378x23CPDH.doc>)

Chapter 4: Detailed Project Budgeting

This chapter describes the information needed to develop a budget for temporary or permanent relocation of site occupants in a HUD-funded project and how to collect it.

Review of the General Relocation Process in a Project

A relocation budget should be developed for any project that has the potential for displacing site occupants. This chapter is organized according to the actions necessary in developing a relocation budget, which are:

- Obtaining information about site occupants;
- Understanding displacement in a project;
- Calculating tenants' ability to pay (economic displacement);
- Determining who will be temporarily relocated and who will be displaced; and
- Estimating potential assistance.

Obtaining Site Occupant Information

As discussed in Chapter 2, agencies should have as much information as possible about occupants of a proposed project site at the time an application is submitted for assistance. When the project is initiated by the agency, it should obtain such information as a part of its earliest feasibility-determining process and prior to a formal approval decision. A project application from a property owner, developer, or organization should contain substantial site occupant information that is sufficient to allow the agency to evaluate project feasibility as a part of the approval process, not after approval. Planning an approved project will assist in its successful completion, but feasibility, including the probable specific costs related to relocation and tenant assistance, should be determined before approval in the same manner as are other cost components such as labor, materials, and design. Site occupant information will be especially helpful in rental housing rehabilitation projects because the agency can make an early determination of each tenant's ability to pay the projected after-rehabilitation rent and utilities, and of the probable displacement of existing tenants.

Project categories suggest the information needed for budget and planning purposes. A project consisting of the involuntary acquisition of real property, clearance of the property, and construction of a road or other public facilities, clearly will require the permanent relocation of all site occupants. Similarly, a project entailing the demolition of an occupied multifamily housing property will involve the relocation of all site occupants. In both of these examples, information about the site occupants and their needs obviously is essential in order to estimate costs.

A greater range of possibilities will exist in rental housing rehabilitation projects, which may require the displacement of all tenants, may allow some tenants to remain after the rehabilitation is completed, or may require no displacement at all. In such projects, some tenants may be temporarily relocated and returned after the completion of the rehabilitation, while others may be able to continue living in their units during the rehabilitation.

It is crucial, therefore, for the agency to understand all actions to be carried out in the project, to enumerate a project site's occupants and their household characteristics and needs, and to estimate which site occupants will be displaced, not displaced, or temporarily relocated and returned to the property. Each of these actions entails specific costs, the estimation of which requires substantial information.

In a rental housing rehabilitation project, tenant information is necessary in order to know the number and basic characteristics of existing tenants. In addition to determining each tenant's household characteristics and general housing needs, the agency needs specific information about the tenant's rent and income in order to determine the tenant's affordable rent level and the potential for displacement if rents are increased.

Agencies should request a rent roll and other relevant information from the current property owner or manager to accompany the application for assistance because:

- The characteristics of the existing tenant households will determine who may be offered the opportunity to remain in the project or who will be required to move;
- Rent and household composition information is essential for budgeting and planning the resources needed and estimating relocation costs;
- The information provided with the application will indicate the project's cost, feasibility, and potential success.

The agency should identify the specific tenant information it needs and should communicate the requirement to funding applicants. Tenant relocation will have a substantial impact on project feasibility, an agency should review its requirements for application submission to ensure that sufficient information is provided in the submission to allow the agency to determine probable costs of all project actions.

Accurate rent information at the application stage is essential because increased rents after rehabilitation may trigger HUD program-specific economic displacement and the associated relocation costs (see next section). If after-rehabilitation rents increase above a tenant's affordability level, the tenant may move and receive assistance as a displaced person. The tenant rent, household, and income information thus is important as an indicator of the number of tenants who could be displaced because they will not be able to afford the after-rehabilitation housing cost.

Another reason for an agency to obtain rent and tenant characteristics information at the application stage is to determine if the configuration of units and unit sizes after rehabilitation will serve the needs of existing tenants, especially those who may be overcrowding units. If a tenant is overcrowding a unit, an appropriate, larger unit in the same project must be offered to the tenant that will be affordable after rehabilitation. If none of the units in the project will be large enough to accommodate tenants who are overcrowding units, such tenants must be displaced and relocated to comparable replacement dwellings (as defined in 49 CFR 24.2(a)(6)). Anticipating the possible displacement of large households is essential because units of an appropriate size may be costly and hard to find, thereby jeopardizing the feasibility of the project.

Finally, information about the number of existing tenants, length of time in occupancy, and reasons for vacancies is important in the relocation budget process. Agencies must determine if

tenants were evicted or leases not renewed to avoid providing relocation assistance, and to reduce unanticipated future claims for relocation assistance when eviction was carried out without due process.

Understanding Displacement in a Project

Agencies must understand who will be displaced and who will not be displaced in any proposed project. The following charts outline this distinction with a focus on rental rehabilitation projects:

WHO IS A “DISPLACED PERSON” IN RENTAL REHABILITATION PROJECTS?	
<i>Someone Who:</i>	<i>Reason:</i>
✓ Moved after the application for HUD funds was submitted, but before receiving the General Information Notice, and the project was approved	<ul style="list-style-type: none"> • URA protects tenants who move without being informed of their rights
✓ Was required to move, lease is terminated, or was not renewed, without due process	<ul style="list-style-type: none"> • Evictions must comply with state law and may not be undertaken to avoid relocation
✓ Cannot be offered a decent, safe, sanitary, suitable unit in the project after rehabilitation	<ul style="list-style-type: none"> • Rehabilitated units will not be suitable because of household size or other household needs • Project will serve only “special needs” population and current tenant household does not meet such “client” criteria • Household is over-income for HOME or other project units and there is no available market-rate unit in the project
✓ Is not provided reasonable temporary relocation assistance	<ul style="list-style-type: none"> • Tenant not given reasonable notice to move (when there is no emergency involved) and not provided accurate, timely information about moving back to the project • Out-of-pocket costs not paid • Temporary move extends beyond one year
✓ Moved because the increased after-rehabilitation rent is not affordable	<ul style="list-style-type: none"> • The increased rent will exceed the tenant’s ability to pay. <u>Check applicable program regulations for specific requirements.</u>

WHO IS NOT A “DISPLACED PERSON” IN RENTAL REHABILITATION PROJECTS?	
<i>Someone Who:</i>	<i>Reason:</i>
✓ Moved after the application for HUD funds was submitted, received the General Information Notice, but before Initiation of Negotiations or date relocation assistance eligibility was conferred	<ul style="list-style-type: none"> • Tenants who <u>choose</u> to move without cause or eligibility after receiving general information notice are not eligible for assistance
✓ Is required to move—evicted—(lease is terminated) with due process	<ul style="list-style-type: none"> • Evictions that comply with state law and are not undertaken to avoid relocation are valid
✓ Is offered decent, safe, sanitary, suitable, affordable unit in the project after rehabilitation	<ul style="list-style-type: none"> • Tenant is not displaced if a decent, safe, sanitary, suitable, affordable unit is offered and the tenant chooses to move
✓ Has no legal right to occupy the unit	<ul style="list-style-type: none"> • Was living in the project without the consent or knowledge of the owner (State law will address who has a “legal right to occupy” the unit)
✓ Moves into the unit with the intention of receiving relocation assistance	<ul style="list-style-type: none"> • Persons who occupy the property for the sole purpose of obtaining relocation assistance are not eligible for assistance
✓ Moves into a unit after funding application date, but prior to signing a lease, was provided with a written “move-in notice” that he/she might be displaced and would not be eligible for relocation assistance if required to move (see Handbook 1378, Appendix 29)	<ul style="list-style-type: none"> • Tenant was provided full information prior to occupancy and made an informed decision
✓ Was required to move for a short time for emergency repairs	<ul style="list-style-type: none"> • The rent was not raised; the unit was not affected; tenant was treated reasonably during the short-term move; out-of-pocket expenses paid
✓ Is provided a Notice of Relocation Eligibility, but before moving, informed in writing that the notice has been cancelled and that the tenant is not displaced	<ul style="list-style-type: none"> • Tenant was not harmed, although any financial commitments the tenant made for alternate housing must be reimbursed
✓ Moved because of code enforcement without subsequent federally-funded rehabilitation or demolition of the project	<ul style="list-style-type: none"> • Relocation assistance is not required if tenant moves solely because of code enforcement, even if the salaries of code officials are paid with HUD funds. If the project is demolished or rehabilitated subsequently with federal funds, relocation assistance may be required.
✓ Does not have a legal right to be in the United States	<ul style="list-style-type: none"> • The URA generally prohibits relocation payments to persons who are not lawfully present in the United States. (refer to: Illegal Aliens & the URA FAQs http://www.fhwa.dot.gov/realestate/illegaqa.htm)

Calculating Ability to Pay (Economic Displacement)

If rents are to be increased after a rehabilitation project, under some HUD programs agencies must consider the economic impact on existing tenants. If there is no increase in rent, the unit is considered affordable – even if the percentage of income the tenant has been paying exceeds 30 percent of gross household income. If after-rehabilitation rents increase, however, the agency must determine whether each tenant household can afford the new rent.

It should be noted that HUD programs (HOME, CDBG, HOPWA, ESG, SHP, etc.) can have different requirements pertaining to economic displacement. Therefore, agencies must refer to the governing program regulations on this topic early in project planning to ensure the appropriate formula is being used for budgeting purposes, for instance:

- The HOME program generally requires that the tenant's monthly rent and estimated average monthly utility costs after rehabilitation do not exceed the greater of: The tenant's previous monthly rent and utilities, *or*, the total tenant payment as determined under 24 CFR 5.628 if the tenant is low income, *or*, 30 percent of gross household income if the tenant is not low-income.
- The HOPWA program, on the other hand, generally requires that the tenant's monthly rent and estimated average monthly utility costs after rehabilitation do not exceed the greater of: The tenant's previous monthly rent and utilities, *or*, 30 percent of the household's gross household income.

For example: In connection with a HOME-funded rehabilitation project, existing tenants who are not displaced should be offered a new lease at the time rehabilitation is completed, generally for a one year period. Any rent increases that occur subsequent to the initial after-project lease should be reasonable and affordable, or a "rent-burdened" tenant may move and request relocation assistance as a displaced person. Example: The property owner establishes a first-year rent for the tenant that is significantly below the market rent in order to avoid economic displacement payments. At the end of the 1-year period, the rent is increased to the market rent (or higher), and the tenant moves out because he or she cannot afford the unit. Determination: The tenant may be treated a "displaced person."*

The chart below includes two simple examples for determining tenant rent burden for the HOME program.

Example #1: Pre-Rehabilitation Rent	Household's Ability to Pay
Mr. Smith - Unit #1: \$325 + \$75 utilities = \$400	Mr. Smith is a low income person TTP = \$350
After-Rehabilitation Rent	Rent Burdened?
Unit #101: no increase	No, because the rent (although higher than TTP) was not increased in excess of the greater of TTP <u>or</u> the previous rent and utilities

Example #2: Pre-Rehabilitation Rent	Household's Ability to Pay
Mrs. Jones - Unit #2: \$375 + \$90 utilities = \$465	Mrs. Jones <u>is not</u> a low income person 30% gross monthly income = \$500
After-Rehabilitation Rent	Rent Burdened?
Unit #202: \$450 + \$80 utilities = \$530	Yes, because the rent was increased to a level in excess of the greater of 30 percent of the tenant's gross monthly income or the previous monthly rent and utilities.

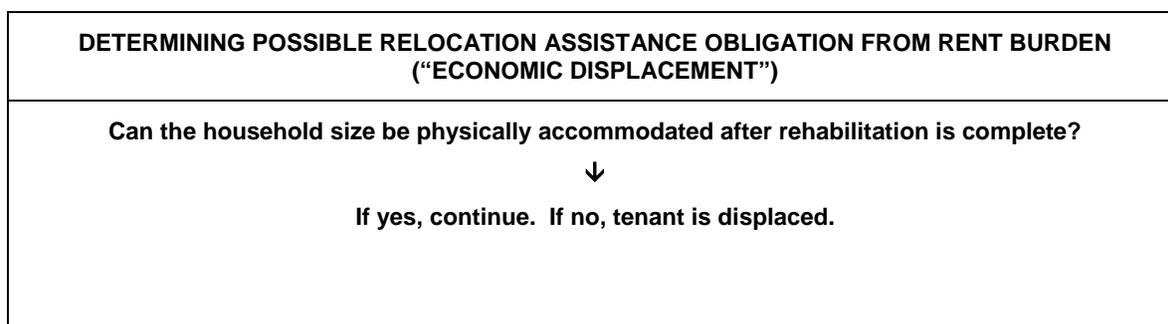
These possibilities emphasize the need for agencies to consider potential displacement and related costs in project feasibility determinations. Remember to check the applicable HUD program regulations funding the project for specific requirements pertaining to economic displacement, if any.

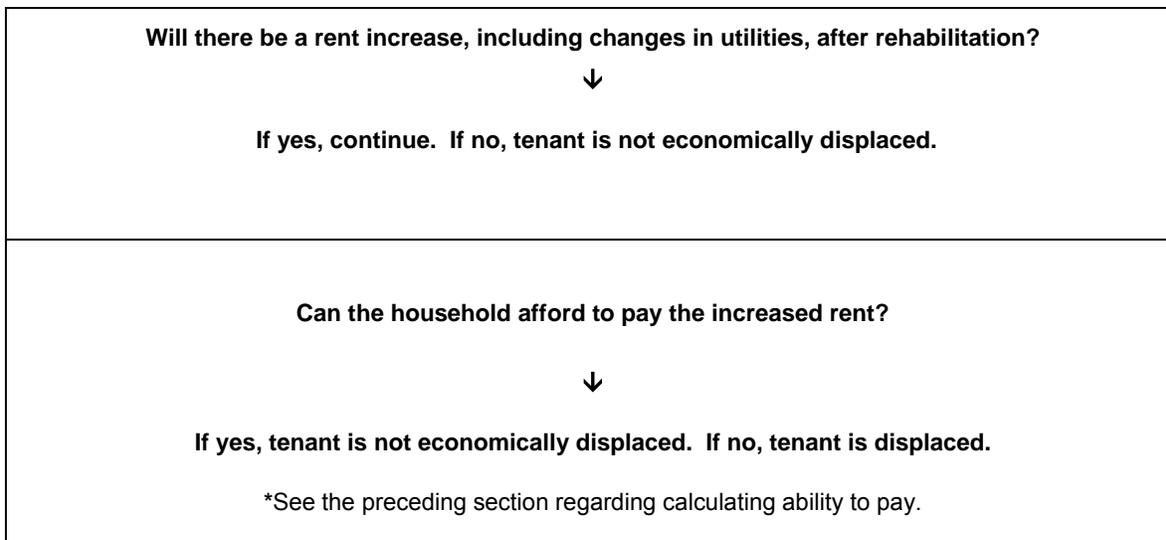
Preventing Rent Burden and Economic Displacement

To prevent economic displacement of existing tenants agencies have several options. The easiest option is not to raise the rent for those units occupied by tenants who could be displaced by a rent increase. Another option may be to offer eligible households tenant based rental assistance such as HOME Tenant-Based Rental Assistance (TBRA) or Section 8 / Housing Choice Vouchers to make the rent affordable. If none of the above options are feasible, the agency must consider the family a displaced person and issue a notice of eligibility for relocation assistance.

After-project rents established for existing tenants at affordable levels may not be subsequently raised beyond normal increases due to increased operating costs. There must be an expectation that tenants who are not offered relocation assistance will be able to continue in occupancy of the property for an indefinite period of time. Therefore, agencies must consider the impact on project feasibility if rents are kept low for such tenants.

The chart below provides a summary on determining who is economically displaced as result of rent burden in a rental housing rehabilitation project.





Determining Who Will be Temporarily Relocated and Who Will be Displaced

Tenants may be temporarily relocated from a project only if such tenants will return to a project after its completion and if only if the agency reimburses the tenant for all reasonable out of pocket expenses in connection with the temporary relocation. These expenses include but are not limited to moving expenses and increased housing costs during the temporary relocation. Temporary relocation should not extend beyond one year before the tenant is returned to his or her previous unit or location. After one year, the agency must contact the tenant and offer permanent relocation assistance as an eligible displaced person. This assistance would be in addition to any assistance the person has already received for temporary relocation, and may not be reduced by the amount of any temporary relocation assistance. Although the URA regulations require that a residential tenant be offered a permanent relocation assistance after the one year period, such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with URA assistance.

It is important to note that owner-occupants are not eligible for relocation assistance under the URA and program regulations if their property has been voluntarily acquired, or if the owner-occupant voluntarily requested the action that could cause the need for a temporary move, such as rehabilitation. [Tenants occupying any such properties must be provided temporary relocation assistance if they are required to move during the construction.] Agencies may choose to provide temporary relocation assistance to a person who is not eligible for such assistance, but only in accordance with an optional relocation assistance policy under the HOME or CDBG programs.

Similarly, if a business will be shut-down for any length of time due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the Agency's option.

It is the agency's responsibility to ensure that tenants are relocated to suitable, decent, safe, sanitary (DSS) dwellings for their temporary relocation. Some experienced agencies keep an appropriate number of suitable, DSS units under lease for staging temporary moves during construction. Tenants may participate in identifying their own temporary housing, however, the agency must inspect it to ensure it is DSS before the tenant enters into a lease and/or occupies the unit. The tenant must also continue to pay rent and utilities at the pre-rehabilitation level for his/her unit being rehabilitated during occupancy in temporary housing. If the cost of temporary housing exceeds the tenant's current rent and utility payments, the agency, developer or owner must pay the difference.

All reasonable out-of-pocket costs incurred by the tenant in a temporary move must be paid. These costs may include but are not limited to:

- Rent and utilities (in excess of the tenant's current payments) for the temporary housing;
- A security deposit or other charges for the temporary unit;
- Packing and unpacking costs;
- Moving costs to and from the temporary unit;
- Storage of personal property, as determined necessary by the agency;
- Utility hook-ups and required transfer fees for the temporary unit and for the unit being offered once rehabilitation is complete; and
- Other costs that the agency determines are reasonable and necessary.

Agencies should refer to applicable HUD program regulations for additional information and requirements pertaining to temporary relocation.

Estimating Potential Relocation Assistance

Agencies should recognize and estimate costs related to relocation that can have a significant effect on project feasibility. These costs include:

Relocation payments and assistance for displaced persons; Detailed information on these costs and their calculation may be found in Chapter 1. Additionally, relocation claim forms which may be used to estimate these costs may be found on HUD's Real Estate Acquisition and Relocation Web Site.

Temporary relocation payments and assistance for persons not displaced; Detailed information on these costs and their calculation as discussed in this chapter. Additionally, a claim form which may be used to estimate these costs is currently under development and will be available in the future as Appendix 15 of HUD Handbook 1378. Check the following link for availability:
<http://www.hud.gov/offices/adm/hudclips/forms/files/40030.doc>

Follow-Up Actions

After the project is approved, agencies must continue to review and monitor circumstances that could affect existing tenants, as well as incoming tenants who could become eligible for relocation assistance if not provided “move in notices” (see Handbook 1378, Appendix 29). The agency also must ensure that project residents who are, or become, eligible for relocation assistance are provided the required assistance, and that any actions impacting tenants and their relocation assistance eligibility are identified and cost estimates developed. Changes in circumstances could alter an initial determination that a household could return to the project after temporary relocation. For example, units in a completed project might be unable to accommodate changes in household size; households could become over-income for an assisted unit; households could become unable to afford the completed units; or serious personal or health issues could result in a change in household needs.

Any changes in circumstances that result in an existing tenant becoming “displaced” and eligible for relocation assistance, whether the tenant remains in occupancy or has moved temporarily will have an impact on the relocation budget and must be considered.

CONCLUSION

It is essential that agencies commit the necessary resources to adequately plan and budget for costs related to relocation in HUD-funded projects.

The budgeting process will provide an opportunity for agencies to assess each project proposal and determine its feasibility whenever site occupants may be displaced or temporarily relocated.

This guidebook has provided guidance on issues that agencies must consider when evaluating feasibility and budgeting relocation costs for HUD-funded projects. If additional guidance is needed for specific projects, agencies should contact their local HUD Regional Relocation Specialist. Contact information and other helpful resources are available on HUD’s Real Estate Acquisition and Relocation Web Site at: <http://www.hud.gov/relocation>