



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

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Special Attention of:

**Notice** CPD-08-02

All Regional Directors  
All Field Office Directors  
All CPD Directors

Issued: 02/26/2008  
Expires: 02/26/2009

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All Public Housing Directors

Cross References:

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**Subject:** Relocation and Real Property Acquisition Requirements – Suspensions and Waivers Available for Community Planning and Development Programs To Assist with Recovery and Relief for Presidentially Declared Disaster Areas

**I. PURPOSE**

The purpose of this Notice is to provide preliminary guidance on relocation issues that may arise in presidentially declared disasters. This notice also lists statutory and regulatory requirements governing the HOME Investment Partnerships (HOME) and Community Development Block Grant (CDBG) programs that program participants may request HUD to waive or suspend in order to eliminate or reduce impediments to recovery efforts in presidentially declared disaster areas.

**II. BACKGROUND**

Uniform Act. Eligibility for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) is generally triggered by the displacement of a person by an Agency for a federally assisted program or project when one of the following actions is taken: (1) the initiation of negotiations for the project, (2) the issuance of a notice of intent to acquire, or (3) the actual acquisition, rehabilitation or demolition of a property, whichever comes first. Persons who move permanently from real property, or move personal property from real property, as a direct result of a federally funded project may be considered displaced persons covered by the Uniform Act. Persons who would have been displaced by a federally funded project (if they had not been displaced by an intervening disaster) may also be eligible for Uniform Act assistance, if the project begins or continues subsequent to the disaster.

Section 104(d). Programs and projects funded under the HOME and CDBG programs are also subject to section 104(d) of the Housing and Community Development Act of 1974

(HCD Act). When applicable, section 104(d)(2)(A)(iii) of the HCD Act provides relocation assistance to lower-income persons who are displaced as a direct result of the demolition of any dwelling unit or the conversion of a lower-income dwelling unit to a use other than a lower-income dwelling in connection with an assisted project. Section 104(d)(2)(A)(i) provides that certain lower-income dwelling units that are demolished or converted to a use other than as lower-income housing be replaced “one-for-one.”

Program Regulations. Most HUD program regulations contain additional requirements regarding displacement, including displacement not covered by the URA.

### **III. RESIDENTIAL DISPLACEMENT IN PRESIDENTIALLY DECLARED DISASTER AREAS**

Many persons may be forced to move as a result of a presidentially declared disaster before a HUD assisted program or project reaches initiation of negotiations or would otherwise displace the person. Because such persons may not meet the occupancy requirements for eligibility as a displaced person, questions have been raised about their entitlement to certain assistance provided for under the Uniform Act.

Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, 42 U.S.C., §5181 provides:

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act].<sup>1</sup>

By virtue of section 414 of the Stafford Act, replacement housing assistance should be provided to otherwise eligible displaced persons without regard to their inability to meet prescribed occupancy requirements due to a national disaster or a presidentially declared emergency. Contact your Regional Relocation Specialist for assistance in identifying HUD-funded projects that may be affected by Section 414. (A list of HUD Regional Relocation Specialists can be found at <http://www.hud.gov/offices/cpd/library/relocation/contacts>.)

### **IV. SUSPENSIONS AND WAIVERS**

While the acquisition and relocation provisions of the Uniform Act, section 104(d) and HUD program regulations are still applicable to federally assisted projects approved prior to a disaster that are carried out subsequent to the disaster, and for any new HUD-funded programs or projects approved in a disaster area, HUD may permit related waivers identified herein to help promote recovery through the acquisition of property, the relocation of displaced persons and the replacement of housing in a timely and efficient manner.

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<sup>1</sup> The Uniform Act regulation at 49 CFR § 24.403(d) implements Section 414 (“No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including: (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President. . .”).

Section 122 of the HCD Act and Section 282 of the Cranston-Gonzales National Affordable Housing Act (NAHA) are separate statutory suspension authorities applicable to the CDBG and HOME programs, respectively. Under these authorities, the Department may suspend many requirements of the CDBG and HOME programs to address damage in presidentially declared disaster areas. Supplemental appropriations have also authorized the Department to waive, or specify alternative requirements for, certain statutory or regulatory provisions in connection with the use of disaster recovery grants appropriated thereunder. The Uniform Act regulation at 49 CFR 24.7 authorizes HUD to waive any Uniform Act regulation not required by statute, if the waiver does not reduce any assistance or protection provided to an owner or displaced person. The general waiver authority applicable to HUD regulations is contained in 24 CFR 5.110. This provision provides that, upon determination of good cause, the Secretary of Housing and Urban Development may, subject to statutory limitations, waive any HUD regulation.

Each waiver authority noted above has its own standards and may be limited to a particular source of funding. For example, section 122 only applies to funding received under Title I of the HCD Act (i.e., CDBG formula funds). In the past, waivers and/or alternative requirements granted pursuant to supplemental appropriations applied only to supplemental disaster recovery grants provided therein, not to funds provided under the traditional CDBG program.

Program participants should address waiver requests to the assigned HUD Field Office serving that jurisdiction. The waiver request must be in writing and include the following information:

- The applicable disaster and FEMA declaration number (if available);
- The statutory and/or regulatory citation(s) for which the waiver/suspension is requested; and
- The need for the waiver.

Requests must also be supported by documentation of the pertinent facts and grounds justifying the waiver.

The following HUD and other federal requirements governing Community Planning and Development programs have been waived or temporarily suspended to address damage in previous presidentially declared disaster areas:

**A. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as Amended**

**30% of Income**

Citation: 49 CFR 24.2(a)(6)(viii), 24.402(b)(2) and 24.404 and Sections 204 and 206 of the Uniform Act; and 42 USC 5304(d)(2), 24 CFR 42.305, 42.350, 24 CFR 92.353(c)(2)(i)(C)(1)(ii), 24 CFR 570.606(b)(i)(2)(D)(1)

Explanation: These provisions require program participants (e.g., grantees, Participating Jurisdictions, subrecipients) to provide Uniform Act financial assistance sufficient to reduce a low-income displaced tenant's post-displacement rent/utility cost to 30 percent of household income.

Justification: A waiver may be granted when the failure to suspend these requirements would impede disaster recovery. To the extent that a low-income tenant had been paying rents in excess of 30 percent of income without demonstrable hardship prior to the project, rental assistance payments to reduce tenant costs to 30 percent would not be required. In requesting this waiver, the program participant must establish a uniform definition of "demonstrable hardship."

### **Comparable Replacement Dwelling**

Citation: 49 CFR 24.2(a)(6)(vii) and Sec. 204 and Sec. 205 of the Uniform Act

Explanation: These provisions require program participants (e.g., grantees, Participating Jurisdictions) to provide a comparable replacement dwelling that is currently available on the private market without any government housing subsidy to a displaced tenant who had not been receiving assistance under any government housing program before displacement.

Justification: A waiver may be granted when failure to suspend these provisions would impede disaster recovery whenever decent, safe and sanitary units assisted with tenant-based subsidies (e.g., Housing Choice Vouchers) or project-based rental assistance program subsidies are available to income-eligible displaced tenant, but funds for cash replacement housing payments are limited. A waiver of this provision would be limited to situations in which an eligible low-income displaced renter is provided referrals to suitable, available rental replacement dwellings where the owner of the dwelling is willing to participate in the tenant-based or project-based rental assistance program, and the period of authorized assistance is at least 42 months. The change conforms Uniform Act policy with section 104(d) replacement housing assistance provisions.

### **Disclosures to Seller**

Citation: 49 CFR 24.101(b)(2)(i)-(ii)

Explanation: This provision of the Uniform Act is applicable to a voluntary arm's length acquisition carried out by a person who uses federal financial assistance, even if he/she does not have the power of eminent domain. A waiver of this provision would be limited to individuals and families who use federal financial assistance to purchase a dwelling rather than to rehabilitate or reconstruct their damaged dwellings.

Justification: A waiver may be granted when failure to suspend this provision would impede disaster recovery by delaying or preventing homebuyer acquisitions by persons who receive federal assistance under disaster recovery programs. The waiver assures uniform and equitable treatment of all individuals and families who elect to purchase a dwelling rather than to rehabilitate or reconstruct their damaged dwellings.

### **Fixed Payment for Moving Expenses**

Citation: 49 CFR 24.302 and Section 202(b) of the Uniform Act

Explanation: These provisions require program participants (e.g., grantees, Participating Jurisdictions) to offer a person displaced from a dwelling unit the option to receive a moving expense and dislocation allowance based on the current schedule of allowances prepared by the Federal Highway Administration. A waiver of this provision will enable the program participant to establish and offer a moving expense and dislocation allowance under a locally established schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, the accessibility needs of persons with disabilities, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

Justification: A waiver may be granted when failure to suspend these provisions would impede disaster recovery by requiring program participants to offer allowances that may not reflect local labor and transportation costs post-disaster. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses, if they find that approach preferable to the locally established moving expense and dislocation allowance.

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

### **Residential Antidisplacement and Relocation Assistance Plan**

Citations: 24 CFR 42.325, 24 CFR 92.353(e), 24 CFR 570.488, and 24 CFR 570.606(c)

Explanation: These provisions require program participants (e.g., grantees, Participating Jurisdictions, subrecipients) that use HUD's CDBG and HOME funds to prepare a

Residential Antidisplacement and Relocation Assistance Plan. The plan indicates the steps that will be taken to minimize the displacement of individuals and families as a result of any assisted activities, provides for relocation assistance, and provides for the one-for-one replacement of lower-income housing that are demolished or converted to a use other than as lower-income dwelling units. A waiver of this provision would be limited to activities and projects for presidentially declared disaster areas. The waiver may be granted to permit the State or unit of general local government to develop alternative anti-displacement criteria for activities in presidentially declared disaster areas.

Justification: A waiver may be granted when failure to suspend these provisions would discourage program participants from demolishing and clearing damaged or destroyed dwelling units that might otherwise be appropriate for CDBG or HOME assistance. Such inaction would inhibit recovery efforts and add to health and safety problems.

### **One-for-One Replacement for Structures Damaged by the Disaster**

Citations: 42 U.S.C. 5304(d)(2)(A)(i)-(ii), 42 U.S.C. 12705(b)(16) and 24 CFR 42.375, 24 CFR 92.353(e), 24 CFR 570.488 and 24 CFR 570.606(c)

Explanation: These provisions require program participants (e.g., grantees, Participating Jurisdictions, subrecipients) to replace occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted project.

Justification: These provisions may be waived to relieve program participants of replacement requirements that would impede disaster recovery, discourage acquisition, demolition or rehabilitation of disaster-damaged housing and thereby inhibit recovery efforts designed to address health and safety problems.

### **Replacement Housing Assistance/30% of Income**

Citations: 42 U.S.C. 12705(b)(16), 42 U.S.C. 5304(d)(2)(A)(iii)-(iv), 24 CFR 42.305, 24 CFR 42.350(e)(1), 24 CFR 92.353(e), 24 CFR 570.488 and 24 CFR 570.606(c)

Explanation: These provisions require program participants (e.g., grantees, Participating Jurisdictions, subrecipients) to provide a rental assistance payment to a lower-income tenant calculated based on 60 months, rather than 42 months as required by the Uniform Act. These provisions also require program participants to provide financial assistance sufficient to reduce a lower-income displaced tenant's post-displacement rent/utility cost to 30 percent of income.

Justification: This requirement to calculate rental assistance payments based on 60 months, rather than 42 months as required under the Uniform Act, creates a disparity between the assistance available to displaced tenants. The waiver assures uniform and equitable treatment for all such tenants.

A waiver may be granted when the failure to suspend these requirements would impede disaster recovery and to the extent that a tenant has been paying rents in excess of 30 percent of income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. In requesting this waiver, the program participant must establish a uniform definition of “demonstrable hardship.”

## **C. Other HUD Program Regulations**

### **Optional Relocation Assistance**

Citation: 24 CFR 92.353(d), 24 CFR 570.488 and 24 CFR 570.606(d)

Explanation: These provisions require a publicly available, written policy when a program participant chooses to provide relocation payments and other relocation assistance to persons displaced by activities not covered by the Uniform Act or assistance to persons covered by the Uniform Act or section 104(d) at higher levels than required by such provisions. Equal levels of assistance must be provided for each class of displaced persons.

Justification: These provisions may be waived when, because of the large numbers of displaced persons, requiring program participants (e.g., grantees, Participating Jurisdictions, subrecipients) to provide equal levels of assistance to each class of displaced persons may reduce assistance to such low levels that it would have little meaningful benefit.