

Acquisition and Relocation Waivers

Guidance Outlined in CPD
Notice 08-02



General Waiver Process

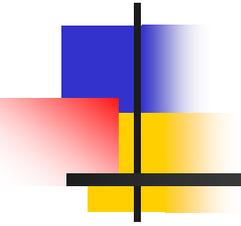
- Program participants should address waiver requests to the assigned HUD Field Office serving that jurisdiction.
- The waiver request must be in writing and include the following information:



General Waiver Process

- 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.

Overview of the Uniform Act





UNIFORM ACT, or URA

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, was enacted as Public Law 91-646

The law is codified in 42 U.S.C. 4601

The implementing regulations, revised in 2005, are found at 49 CFR Part 24



UNIFORM ACT STATUTE

- Applies to All Federally Funded Projects
- In general, the URA:
 - Protects the Rights of Property Owners
 - Provides Assistance to Displaced Persons



URA REGULATIONS

- Sets Forth the Minimum Requirements for:
 - Acquisition of Real Property
 - Assistance to Displaced Persons
 - Temporary Assistance – Non-Residential and Residential Relocation

NOTE: Temporary relocation is added by regulation, and the 2005 revisions now include temporary move assistance for Non-residential occupants





UNIFORM ACT OBJECTIVES

- Uniform, Fair, and Equitable Treatment of persons whose real property is acquired, or who are displaced in connection with a Federally funded project
- To ensure such persons do not suffer a disproportionate impact as a result of projects which benefit the public



UNIFORM ACT OBJECTIVES

- To encourage and expedite acquisition by agreement
- To minimize litigation and relieve congestion in the courts
- To promote public confidence in Federally funded land acquisition programs



UNIFORM ACT OBJECTIVES

- For displaced persons:
 - Treat individuals fairly, equitably, consistently
 - Do not cause disproportionate injury

- For agencies:
 - Act efficiently, and in a cost-effective manner



The Uniform Act is a Homeless Prevention Tool

- HUD projects that improve housing and community or economic development should also contribute to the continued well being and improved housing conditions for persons affected by such projects.
- When displacement is necessary, HUD must ensure that affected persons are offered comparable and affordable replacement housing.
- Compliance with the URA helps ensure that HUD-funded programs do not cause homelessness.



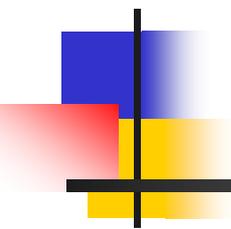
ON-LINE RESOURCES (FHWA)

- <http://www.fhwa.dot.gov/realestate/divroster.htm>
 - Q & As on URA-Related Topics
 - Policies for Issues such as Illegal Aliens
 - Current Fixed Move Schedule



URA ON-LINE RESOURCES (HUD)

- <http://www.hud.gov/relocation>
 - HUD Forms
 - HUD Publications
 - HUD Training
 - Laws, Regulations, Web Links
 - Regional Relocation Specialists
 - HUD Policies
 - HUD RAPs [Relocation & Acquisition Policies]



AGENDA ITEM

What Triggers the Uniform
Act?



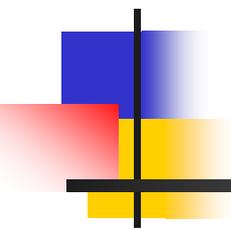
What Triggers The URA?

- HUD-funded programs or projects which have acquisition as an activity are subject to the acquisition regulations of the Uniform Act
- A person displaced as a result of acquisition, demolition, or rehabilitation is subject to the relocation requirements of the Uniform Act



What Triggers The URA?

- Displacement assistance is usually required if one of the three following actions:
 - (1) the initiation of negotiations for the project occurs
 - (2) the issuance of a notice of intent to acquire, or
 - (3) the actual acquisition, rehabilitation or demolition of a property, whichever comes first



AGENDA ITEM

Acquisition of Real Property



Two Acquisition Processes

- Involuntary Process – The URA Statute outlines only an involuntary process

- Voluntary Process – Added by Congress
 - Exception criteria must be met

 - Mandatory Notice requirement

 - Valuation process must be documented



Acquisitions Under Involuntary Process

- Acquiring Agency has power of Eminent Domain
- Parcels that can be "Site Specific"/necessary for a project
 - Water Treatment Facility
 - Sewer Treatment Facility
 - Water Tank
- Sites that are usually "Site Specific"/necessary for a project
 - Water Lines
 - Sewer Lines
 - Delineated Area



Public Agency Voluntary Acquisition

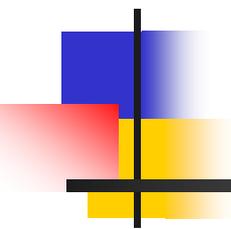
- Acquisition examples that might meet the voluntary acquisition criteria
 - Site is Not Site Specific
 - Public service facility (general area)
 - Community park (general area)
 - Vacant lots to build affordable housing
 - Existing homes to expand affordable housing



Voluntary Acquisition

[Exception to Subpart B]

- Public Agency 49 CFR 24.101(b)(1)(i-iv)
[How to document voluntary process]
 - Site is subject to exemption criteria at 49 CFR 24.101 (b) (1) (i) and (ii)
 - Agency follows process at 24.101(b)(1)(iii) & (iv)
 - The Agency informs the owner in writing that it will not acquire the property if negotiations fail to result in an amicable agreement (clarify that Eminent domain will not be used)
 - The Agency informs the owner in writing of what it believes to be the market value of the property



AGENDA ITEM

URA Voluntary Acquisition – A
Waiver an Agency Might Consider



(Waiver?) Voluntary Acquisition [Exceptions to Subpart B]

- Private Entity/Nonprofit 49 CFR 24.101(b)(2)(i-ii)
[How to document voluntary process]
 - Agency follows process at 24.101(b)(2)(i) & (ii)
 - The Agency informs the owner in writing that it will not acquire the property if negotiations fail to result in an amicable agreement
(Clarify that the buyer does not have the power of eminent domain)
 - The Agency will inform the owner in writing of what it believes to be the market value of the property



WAIVER – Voluntary purchase

- **Disclosures to Seller**

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



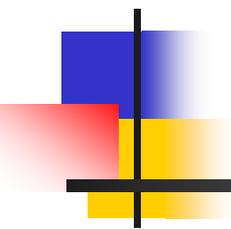
WAIVER – Voluntary purchase

- 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.



WAIVER – Voluntary purchase

- 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.



AGENDA ITEM

Residential Tenant Displacement
Waivers an Agency Might Consider



Tenant Related Waivers?

- **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)



Tenant Related Waivers?

- 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.



Tenant Related Waivers?

- 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."



Tenant Related Waivers?

- **Comparable Replacement Dwelling**

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



Tenant Related Waivers?

- 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.



Tenant Related Waivers?

- 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.



Tenant Related Waivers?

- 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.



Tenant Related Waivers?

- **Fixed Payment for Moving Expenses**

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



Tenant Related Waivers?

- 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.



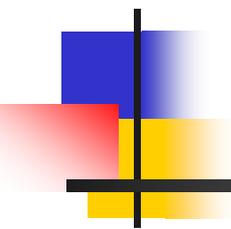
Tenant Related Waivers?

- 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.



Tenant Related Waivers?

- 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.



AGENDA ITEM

Waiver Useful With Homeowner
Replacement Housing Program



Homeowner Related Waiver

- **Optional Policy**

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



Homeowner Related Waiver

- 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.



Homeowner Related Waiver

- 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.

AGENDA ITEM

Section 104(d) of the HCD Act of 1974





Importance of Funding Sources

- Applicability of Section 104(d)
 - HUD's HOME Program
 - HUD's CDBG Program
- Requires Development of a Residential Anti-Displacement and Relocation Assistance Plan
- Major Components of Section 104(d)
 - Replace low-Income Housing
 - Provide Assistance to Low-Income Residents

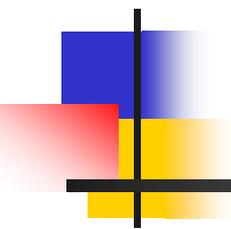
NOTE: IRS letter 8/29/91 affirmed housing assistance under section 104(d) is not to be considered income



Brief Comparison of Section 104(d) to the URA

- The URA applies to most all HUD *projects* that receive HUD Financial Assistance, and that have a URA triggering activity
 - Section 104(d) applies only to certain HUD-funded *projects*:
 - Projects that use CDBG funds
 - HOME Assisted Projects

- Section 104(d) is only subject to *projects* that have:
 - Demolition of low-income housing
 - Conversion of low-income housing to another use
 - Demolition that causes low-income persons to be displaced



AGENDA ITEM

Section 104(d) Waivers an
Agency Might Consider



Section 104(d) Waivers

- **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(Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- **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)



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- **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)Section 104(d) Waivers



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- **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)



Section 104(d) Waivers

- 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.



Section 104(d) Waivers

- 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.

Summary of Waivers Discussed So Far

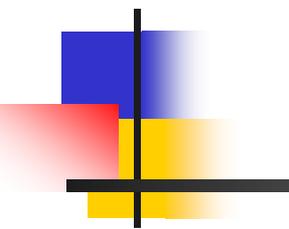


- Voluntary Acquisition Process
- Rent to Rent – No 30 %
- Suitable instead of Comparable
- Fixed Payment Schedule
- Optional Relocation Policy [Useful w/Homeowners]

Summary of Waivers Discussed So Far



- Not Discussed in CPD Notice 08-02
 - Offer TBRA in Lieu of Cash [Cash is limited]
 - Tenant is Income Eligible
 - Vouchers are available
- Section 104(d) Waivers
 - RARAP
 - One-for-One
 - 60-Month Assistance Option [URA 42-Month Only]



AGENDA ITEM

Section 414 of the Stafford Act



Section 414 Waiver

- 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 Waiver

- 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].[\[1\]](#)”



Section 414 Waiver

[1] 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 414 Waiver

- 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



Section 414 Waiver

- 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.



Section 414 Waiver

- HUD surveyed other federal agencies' administration of section 414
- HUD found varying interpretations for long-term, post-disaster projects involving acquisition, rehabilitation, or demolition of disaster-damaged housing



Section 414 Waiver

- The five Gulf States were launching programs, such as rental rehabilitation, that could be affected by this statute
- HUD urgently needed a conclusion and clear direction in order to restore affordable rental housing to the devastated areas



Section 414 Waiver

- Therefore, to avoid possible risk to the recovery effort by further delay in providing the States with a definitive answer, the Department is issued the August 24, 2007 FR Notice
- This Notice includes [ONLY] a partial statutory waiver and specifies alternative requirements



Section 414 *PARTIAL* Waiver

- For programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, the State must select one of the two alternative requirements specified in this Notice.



Section 414 *PARTIAL* Waiver

- a. Sec. 414 is waived to the extent that it would apply to CDBG disaster recovery-funded programs **or projects initiated at least one year after** Hurricanes Katrina, Rita, or Wilma (as applicable) by the States of AL, FL, LA, MS, and TX under an approved Action Plan for Disaster Recovery for its grants under Public Law 109–148 or Public Law 109–234;
provided that such program or project was not planned, approved, or otherwise underway prior to the disaster



Section 414 *PARTIAL* Waiver

- b. For all programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, the States of AL, FL, LA, MS, and TX must comply with one of the following two alternative requirements:



Section 414 *PARTIAL* Waiver

- 1. *Relocation Assistance.* The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster.



Section 414 *PARTIAL* Waiver

- To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and its implementing regulations, except as modified by prior waivers and alternative requirements granted to the States.



Section 414 *PARTIAL* Waiver

- 2. *Re-housing Plan.* If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the grantee may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster.



Section 414 *PARTIAL* Waiver

- Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:



Section 414 *PARTIAL* Waiver

- i. A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;



Section 414 *PARTIAL* Waiver

- ii. A description of the types and amount of financial assistance to be provided, if any;
- iii. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling that provide information about available housing resources;



Section 414 *PARTIAL* Waiver

- iv. Contact information for additional program information;
- v. A description of any applicable application process, including any deadlines; and



Section 414 *PARTIAL* Waiver

- vi. If the program or project covered by this waiver involves rental housing the grantee shall establish procedures for the following:



Section 414 *PARTIAL* Waiver

- A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit upon completion to those tenants meeting the program's eligibility requirements;



Section 414 *PARTIAL* Waiver

- B. Placement services for former and prospective tenants; and
- C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.



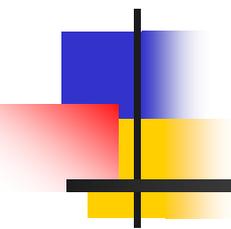
Section 414 *PARTIAL* Waiver

- c. Eligible Project Costs. The cost of relocation assistance and the re-occupancy plan are eligible project costs in the same manner and to the same extent as other projects costs authorized under the supplemental Acts.



Section 414 *PARTIAL* Waiver

- For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under Public Law 109-234.



AGENDA ITEM

MIXING FUNDING SOURCES

CAUTION – The FR Notice Dated 08-24-2007
Covers Only HUD Disaster Funds



Waivers vs. Funding Sources

- 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.



Waivers vs. Funding Sources

- 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.



Waivers vs. Funding Sources

- The general waiver authority applicable to HUD regulations is contained in 24 CFR 5.110
- This authority is limited to HUD programs only
- Mixing HUD disaster funds (with waivers) with other Funds can reduce the intent of the HUD-issued waivers
 - Entitlement allocation funds where the waiver authority is not requested or granted
 - Other Federal Agency funding

Resource for HUD's Acquisition and Relocation Waivers



- HUD's Regional Relocation Specialists are available to provide technical assistance related to compliance with the regulations and HUD-issued waivers related to the URA, Section 104(d), and the applicability of the Section 414 partial waiver that HUD has issued for programs and projects carried out with HUD's disaster funds

Resource for HUD's Acquisition and Relocation Waivers



- HUD's Regional Relocation Specialist can assist in:
 - Identifying HUD-funded projects affected by Section 414
 - Complying with the URA or Section 104(d)
 - Understanding the URA/Sec. 104(d) waivers issued in your area