



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

June 26, 2012

MEMORANDUM FOR: Virginia Sardone, Acting Director, Office of Affordable Housing Programs, Office of Community Planning and Development, DGH

FROM: *Althea M. Forrester*
Althea M. Forrester, Associate General Counsel for Assisted Housing and Community Development, Office of General Counsel, CAHB

SUBJECT: [REDACTED] Relocation

This memorandum responds to your request for legal advice concerning the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), Pub. L. No. 91-646, as amended, *codified at* 42 U.S.C. §§ 4601-4655, to a multifamily rental property that will be partially designated for persons with disabilities upon completion of a rehabilitation project. Specifically, you have asked whether existing residential tenants that permanently move from the property solely because vacant units are designated for occupancy by persons with disabilities are "displaced persons" entitled to URA relocation assistance. Based upon our review of the facts and law, we conclude that they are not.

The City of Los Angeles (the "City") received HUD funding pursuant to Neighborhood Stabilization Program 2 ("NSP2"), as authorized by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. The City has sought to use its NSP2 funding to rehabilitate existing multifamily dwellings in a scattered-site project, known as the [REDACTED] (the "property"). The property consists of 43 dwelling units, of which 26 are presently occupied. The project financing will also include funds that cause the California Mental Health Services Act ("MHSA"), California Proposition 63 (Nov. 2, 2004), to apply. The MHSA requires that upon project completion some or all of the 17 vacant units will be designated for occupancy by persons with disabilities. Some existing tenants will be ineligible to return upon project completion and will be permanently displaced. This opinion does not address their eligibility for relocation assistance. Rather, this opinion concerns the remaining tenants of the property that the City proposes to temporarily relocate for four to six months during rehabilitation work. Eligible tenants will be offered a decent, safe and sanitary dwelling unit in the property upon project completion. In accordance with the City's Tenant Habitability Ordinance, any temporarily relocated tenant that elects not to return to the property is entitled to voluntarily terminate the tenancy and receive relocation assistance and payments pursuant to a local policy. The local CPD field office has inquired whether the City must also offer these tenants permanent relocation assistance under the URA.

The URA and its implementing regulations establish standards for providing relocation assistance “[t]o ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably.” 49 C.F.R. § 24.1(b). In relevant part, the URA defines a “displaced person” to include:

“any person who moves from real property, or moves his personal property from real property ... on which such person is a residential tenant ... as a direct result of rehabilitation ... under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent.”

42 U.S.C. § 4601(6)(A)(i). URA regulations at 49 C.F.R. part 24 and NSP2 program requirements provide that a temporarily relocated tenant is not considered a “displaced person” if certain requirements are satisfied, including reimbursement for all reasonable out-of-pocket expenses that the tenant incurs in connection with the temporary relocation and providing the tenant with a reasonable opportunity to lease and occupy a decent, safe and sanitary dwelling unit in the same building or complex upon project completion *under reasonable terms and conditions*. “Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009,” Docket No. FR-5321-N-01, *announced at* 74 Fed. Reg. 21377 (May 7, 2009)(incorporating, among other things, 24 C.F.R. § 570.606); 49 C.F.R. part 24, App. A, § 24.2(a)(9)(ii)(D); and 24 C.F.R. § 570.606(b)(2)(i)(D). Based on available information, the City will reimburse the tenants at issue for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation. The primary concern is whether reserving vacant units for persons with disabilities upon project completion constitutes an unreasonable term or condition and, therefore, makes temporary relocation of existing tenants inappropriate.

HUD policy recognizes that it is unreasonable to offer a residential tenant an opportunity to lease and occupy a unit in the same building or complex if the residential character or use of the building changes upon project completion. HUD Handbook 1378, CHG-5, ¶ 1-4(I)(7)(“displaced person” includes a tenant that “moves from a residential structure, permanently, as a direct result of the leasing of units in the structure for a HUD-assisted project that changes the residential character/use of the structure to a public character/use (e.g., certain CPD homeless/supportive housing programs)”). We cannot envision any situation in which the leasing of units in a structure for a HUD-assisted project would amount to an unreasonable term or condition for an existing tenant. In this case, the designation of vacant units for occupancy by persons with disabilities does not constitute a change in the residential character or use of the property. The property will remain permanent residential housing, all terms and conditions of occupancy by existing tenants will remain unchanged, and no existing tenant’s resumed occupancy in the property upon project completion would be contrary to any applicable federal requirement.

A change in the residential character or use entails a substantial alteration in the terms and conditions of an existing tenant’s occupancy upon project completion. As an example, if an existing tenant of legal drinking age returns to permanent housing that adopts a zero tolerance policy on alcohol consumption after project completion, such restriction may amount to a change

in the residential character or use of the property and, because of the impact on his tenancy, could constitute an unreasonable term or condition of occupancy. As another example, consider if the property is converted to a homeless shelter upon project completion. An existing tenant would not be considered "homeless" and, therefore, would be ineligible to return to the property after project completion. None of these considerations apply to the instant matter.

You have also asked us to consider whether there is a duty to disclose (or, conversely, a prohibition against disclosing) to current tenants available information regarding the project, including that upon project completion, the property will contain housing for a special needs population. This question is not governed by NSP2 program requirements or the URA. Based on our consultation with counsel for the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, this issue does not appear to involve that legal authority either. We encourage the City to consult relevant state and local authorities. Additionally, any concerns regarding compliance with applicable civil rights and nondiscrimination laws, including the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, should be brought promptly to the attention of the Office of Fair Housing and Equal Opportunity.

In raising the relocation question that has motivated this opinion, the local CPD field office staff referenced past legal advice that had been rendered by staff attorneys. Please note that legal opinions signed by the Associate General Counsel for Assisted Housing and Community Development or, as appropriate, the Assistant General Counsels for Assisted Housing or Community Development, convey the official position of this office or the respective division. If there is a concern about this office's position on a matter, please request the staff attorney handling the matter to prepare an opinion for signature.

If you have any further questions or comments, please contact Brian Stecker or Keisha Brooks at (202) 708-2027, both of my office. Thank you.

