



## HUD

Office of Community Planning and Development  
Los Angeles Field Office

## Information Bulletin

Issue No. CPD-2010-02  
November 30, 2009

**MEMORANDUM FOR:** Community Development Block Grant (CDBG) Grantees, HOME Participating Jurisdictions (PJ), Neighborhood Stabilization Program (NSP) Grantees

**FROM:** Robert G. Ilumin, Deputy Director, Office of Community Planning and Development

**SUBJECT:** Compliance with Section 104(d) of the Housing Community Development Act of 1974 (Section 104(d)-Regulations at 24 CFR Part 42

CDBG grantees and HOME PJ's often overlook their contractual requirement to comply with Section 104(d). As part of the Consolidated Plan, grantees and PJ's certify that they will comply with Section 104(d) and that they are following a Residential Anti-Displacement and Relocation Assistance Plan.

### **Overview of Compliance**

Compliance with Section 104(d) is triggered when CDBG, Section 108 Loan, NSP or HOME funds are used in a **project** that demolishes or converts lower income dwelling units to another use. Lower income dwelling units are defined as units renting at or below the Fair Market Value. Converting one lower income dwelling unit to a non housing use or market rate housing triggers compliance with Section 104(d) for the entire project. Non housing uses include: business use (office, commercial or industrial), public facilities and services and the conversion of a housing unit to a recreation room or computer room.

Section 104(d) regulations require the following: 1) the one for one replacement of any low income units demolished or converted because of the HOME or CDBG project, 2) the publication of one for one replacement plans for each project that demolished or converted lower income units and 3) the provision of relocation assistance to displaced low income tenants. It also requires that the grantee or PJ to have a Residential Anti-Displacement and Relocation Assistance Plan (RARAP).

24 CFR 42.325 describes the RARAP in more detail. The regulation requires the PJ to describe what steps it will take to minimize displacement and replace lower income housing units demolished/converted because of CDBG or HOME projects. The RARAP must also describe the relocation assistance to be provided. The development of the RARAP is required even if the jurisdiction never intends to displace anyone. In 1994 HUD issued a CPD Notice that contained a sample plan. During HUD monitoring, the RARAP often cannot be located. HUD recently revised the sample RARAP. If you have not looked at your plan lately or do not know where it is, we recommend that you do another one. See attached sample.

## **Questions and Answers**

### **How can a “project” be defined to ensure compliance with Section 104(d)?**

The Section 104(d) regulations do not define “project”; therefore, the project is either defined by program regulations or the URA if there is not program definition. The HOME regulations define “project” at 24 CFR 92.2 Definitions. CDBG regulations do not define “project” so the URA definition at 49 CFR 24.2(a) (22) applies. The URA defines project as “any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking”. Grantees and PJ’s should ensure that the geographic boundaries, parcels numbers, property owners and activities are clearly documented in the file using maps, deeds, and regulatory agreements. These documents should be consistent with environmental documents.

### **What if redevelopment or other non-federal funds are used to pay for the demolition?**

If HOME or CDBG funds are spent on acquisition, rehabilitation, or new construction which are connected with the demolition project, those activities must also comply with Section 104(d).

### **What if the project contains several buildings and CDBG/HOME funds are used on one?**

Section 104(d) applies to all the buildings that are part of the same project.

### **What should a grantee or PJ do when Section 104(d) is triggered?**

When Section 104(d) is triggered the grantee or PJ should carefully consider how the Section 104(d) will affect the project and plan accordingly. The Section 104(d) requirements should be added to the relocation plan. The additional costs for relocation should be calculated into the relocation estimate. Consideration should be given as to how the demolished/converted units will be replaced within the required time limits and meet the affordability requirements.

### **What units have to be replaced?**

All occupied and vacant occupiable lower-income dwelling units subject to Section 104(d) that are demolished or converted to a use other than lower income dwelling units must be replaced. A vacant occupiable lower income dwelling unit refers to a unit that is in standard condition or is in substandard condition but is suitable for rehabilitation. A lower income dwelling unit is defined as a dwelling unit whose market rent and utilities did not exceed the Fair Market Rent. It does not refer to the income of the person living in the unit.

### **Who is eligible for relocation benefits?**

Low income residential tenants, who meet the Section 8 definition of low income and are displaced from a project that is subject to Section 104(d), are eligible for relocation benefits. Homeowners, over-income residential tenants as well as business owners and tenants are not eligible for relocation.

### **Are persons who are eligible for Section 104(d) benefits also eligible for URA benefits?**

Yes, an eligible Section 104(d) displaced person is also eligible for URA benefits. The displaced person has the choice of which benefits to accept. The level of benefit and types of benefit are slightly different so a comparison must be made to see which benefits are more advantageous.

### **How does relocation under Section 104(d) differ from relocation under the Uniform Relocation and Real Property Acquisition Act of 1970 (URA)?**

- Only displaced persons who meet the Section 8 low income criteria are eligible for Section 104(d) assistance.
- Homeowners and businesses **are not eligible** for Section 104(d) relocation assistance.
- Assistance under Section 104(d) **does not require** legal residence in the U.S.
- Security deposits **are allowed** under Section 104(d).
- Down payment assistance under Section 104(d) **is limited** to cooperatives and mutual housing associations
- Replacement Housing Payments (RHP) are provided for **60 rather than 42 months. The formula is the same as the URA except that:**
  - Section 104(d) uses “adjusted income” per the Section 8 Total Tenant Payment (TTP) formula which estimates household income for the next 12 months and excludes, among others, excessive medical and child care expenses. It also adjusts income based on the number of children, seniors or disabled persons in the household.
  - The base rent used in the Section 104(d) RHP calculation is always 30 percent of adjusted income.

### **Is compliance with Section 104(d) required under the NSP program?**

The NSP program, like the CDBG program, is subject to Section 104(d). The relocation requirements of Section 104(d) apply in their entirety; however, there is an alternative requirement with respect to the One for One Replacement Plan. A One for One Replacement Plan must be published that provides statistical data on the number of units demolished or converted but the units do not actually have to be replaced.

### **What notices and claim forms should be used to ensure Section 104(d) compliance?**

Whenever possible, use the sample notices and claim forms for Section 104(d) that are provided in HUD Handbook 1378. Use either Appendix 25 or Appendix 26 as the Notice of Eligibility and use Appendix 27 as the claim form.

If you have questions or need other assistance, please contact Jana Bickel, HUD Los Angeles Field Office Relocation Specialist at (213)-534-2581 or [Jana.Bickel@hud.gov](mailto:Jana.Bickel@hud.gov). For more on Section 104(d) requirements please review 24 CFR Part 42 or go to HUD website: <http://www.hud.gov/offices/cpd/affordablehousing/training/web/relocation/section104d.cfm>  
**Jana Bickel, Relocation Specialist**