Chapter 10

RELOCATION AND REAL PROPERTY ACQUISITION REQUIREMENTS

OVERVIEW

Federal and HUD relocation requirements are triggered when HUD-assisted projects involve acquisition, rehabilitation, demolition, or conversion. Developers of HOME-assisted projects must adhere to the requirements described in the three following sources:

* Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA),
* Section 104(d) of the Housing and Community Development Act, and
* HUD policy as contained in Handbook 1378

MFA discourages projects that require relocation, and takes all reasonable steps to minimize the displacement of persons. If a developer submits a HOME application for a project that involves relocation, the cost of relocation must be a part of the project, and the developer must submit a relocation plan to MFA. A displaced, or temporarily relocated, person must be provided the required notices and relocation assistance at the levels described in, and in accordance with the requirements of the URA, Section 104(d), and HUD policy as contained in HUD Handbook 1378.

**Basic Relocation Law Objectives:**

* 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 improve housing conditions of displaced persons living in substandard housing

**Basic requirements for projects funded with an MFA HOME Loan:**

1. **Plan -** Prepare a relocation plan for MFA review describing in detail how the HOME Subrecipient will: a) minimize displacement, b) inform tenants with the required notices, c) provide relocation assistance where required, including the total amount of assistance anticipated, and e) if demolition or conversion is involved, replace lower-income units on a one-for-one basis.
2. **Implement -** Carry out relocation plan by:
   1. Informing all tenants (whether scheduled to be displaced or not) of their rights under federal relocation law, eligibility for relocation assistance, and date of required move-out, through a series of standardized notices. *The first notice must be provided to tenants upon application for HOME funding.*
   2. Establish and communicate relocation assistance amount to each tenant.
   3. Provide relocation assistance to tenants, including assistance for moving costs, increased housing costs, and increased utility costs as a result of the relocation.
3. **Document:** Maintain files for each tenant household, documenting compliance with all federal relocation requirements. These files must be maintained for 3 years and are subject to MFA monitoring review at any time.

###### RELOCATION REGULATIONS & HUD POLICY

#### Uniform Relocation Assistance and Real Property Acquisition Policies Act - The Uniform Act, passed by Congress in 1970, is a federal law that establishes minimum standards for 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 (e.g. HOME) projects. The implementing regulations, at 49 CFR Part 24, require developers and owners to take certain steps with regards to tenants of housing to be acquired, rehabbed or demolished; including tenants who will be relocated temporarily.

**URA Requirements for Residential Displacements**

1. Provide a General Information Notice to tenants informing them that an application for federal funds has been made, and their rights under the URA.
2. Provide a Notice of Relocation Eligibility to tenants informing them of the type and amount of assistance they are eligible for.
3. Provide relocation advisory services to displaced tenants and owner occupants
4. Provide a minimum 90 days written notice to vacate prior to requiring possession
5. Reimburse for moving expenses.
6. Provide payments for the added cost of renting or purchasing comparable replacement housing (for up to 42 months).

**Temporary relocation -** If a tenant will be relocated for less than 12 months, they are not considered displaced under the URA. However, at 49 CFR 24.2(a)(9)(ii)(D)), the URA gives the responsible federal agency (e.g. HUD) the authority to establish guidelines for temporary relocation. HUD has created such guidelines in the form of Handbook 1378.

**Section 104(d) of the Housing and Community Development Act:**

Section 104(d) of the Housing and Community Development Act (HCD) provides minimum requirements for certain HUD funded programs or projects. In the case of HOME, Section 104 (d) requires each HOME Subrecipient, as a condition of receiving HOME funding, to:

1. Certify that they are following a residential anti-displacement plan and relocation assistance plan.
2. Provide relocation assistance to low-income tenants displaced as a result of demolition or conversion of a lower-income dwelling unit in a HOME-assisted project (for up to 60 months).
3. One-for-one replacement of lower-income units that are demolished or converted in connection with a HOME assisted project.

**Relocation requirements under Section 104(d) -** Relocation assistance and payments for eligible persons under Section 104(d) are similar to those required for the URA but there are a number of differences. One significant difference between the laws is the period of time used to calculate a rental assistance payment; Section 104(d) uses 60 months vs. 42 months for the URA. Section 104(d)-eligible displaced persons may also choose to receive relocation assistance under Section 104(d) or relocation assistance under the URA.

24 CFR Part 42 is the regulation that implements Section 104(d) of the Housing and Community Development Act; Consult 24 CFR Part 42 and Chapter 7 of HUD Handbook 1378 for more guidance.

**HUD Policy & Procedures – HUD Handbook 1378 -** This handbook is the primary source for HUD real estate acquisition and relocation policy and procedures when implementing HUD-funded programs. It consolidates the basic statutory and regulatory requirements of the URA, Section 104(d), and related implementing regulations, and adds additional requirements derived from HUD policy. An example of a HUD policy requirement, beyond those described in the URA or 104(d), is that all tenants are considered displaced for the purposes of issuing a General Information Notice (Section 2-3(B)).

Below is a link to HUD's webpage which contains individual chapters of the Handbook.

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

**URA & 104(d) RELOCATION PROCESS – MULTI-FAMILY DEVELOPMENTS**

1. Send applicable “**General Informational Notice**” (GIN) to all occupants at such time when there is an identified site and a submitted application for HUD program funds (Handbook 1378 [Appendices 2, 2a, 3 or 3a](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)). ***Failure to issue GINs as soon as feasible may result in unintended displacements & URA relocation payments.***
2. Conduct tenant interviews & gather documentation to identify which occupants will be displaced persons and those that will meet all eligibility requirements to remain ([Appendices 8 or 9](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)). Prepare cost estimate for temp/perm relocation compliance (“[Planning and Budgeting Relocation Costs for HUD-Funded Projects](http://www.hud.gov/offices/cpd/library/relocation/publications/)”) and submit a Relocation Plan to MFA upon, or soon after, application.
3. Issue “**Move-In Notice**” to all prospective tenants ([Appendix 29](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)), seeking occupancy after submission of an application for HUD funds prior to their lease & occupancy of a unit located in the proposed project to limit obligations for URA or section 104(d) relocation assistance.
4. Send either **a) “Notice of Eligibility”** or **b)** “**Notice of Nondisplacement**” to all occupants on the applicable “Initiation of Negotiations” date (typically the date of execution of the grant agreement, check with HUD) & document receipt by each project occupant.

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| **4a. DISPLACED PERSONS** |  | **4b. PERSONS NOT DISPLACED** |
| * Displacement is permanent or will exceed 12 months. * Rent burdened, i.e. “Economic Displacement”. * Under-housed, i.e. need larger unit size to be DS&S. * Failure to meet new occupancy criteria of development for any reason (except lawful eviction – must be documented). |  | * Not required to move, or move less than 12 months. * Not rent burdened, i.e. no “Economic Displacement”. * Not “under-housed”, i.e. suitable number of occupants per unit. * Meets all occupancy criteria of development upon completion. * Timely & accurate written notices, payment of increased costs. |
| **Notice of Eligibility** ([Appendices 5, 6, 7, 25, 26](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm))   * Describes specific types of available relocation assistance. * Sets the maximum amount of eligibility for some payments. * Describe procedures for obtaining assistance. * Include applicable [HUD relocation brochure](http://www.hud.gov/offices/cpd/library/relocation/publications/). * Offer residential tenants their choice of URA or 104(d) assistance to low-income persons only if demolition or conversion is an activity in CDBG/HOME funded projects. * Issue a 90-Day Notice to Vacate no earlier than the NOE. * Document all advisory services provided ([Appendix 10](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)). |  | **Notice of Non-Displacement** ([Appendix 4](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm))   * Guarantees a unit will be available under reasonable terms. * The unit will meet all Decent, Safe, and Sanitary criteria & rent will not be increased unreasonably per applicable regs. * Identify the location(s) of available, DS&S temporary units. * Project sponsor will pay all actual &reasonable moving & increased monthly housing costs if tenant must move temporarily - fixed moving payments are not allowed. * If necessary, issue a minimum 30-Day Notice to Vacate. |
| If tenants permanently displaced:   * Displaced persons must take qualifying actions for payment of actual, reasonable & necessary relocation expenses. * Sponsor must document all determinations, claims & advisory services ([Appendices 8, 9, 10, 11, 12, 13, 14, 14A, 16, 17, 27](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)) including receipts & evidence of payment to displaced person. |  | If tenants must move temporarily:   * Sponsor pays for all moving expenses & tenant is reimbursed for all reasonable increased monthly housing costs ([Appendix 15](http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm)). * Temporary relocation must not exceed 12 months. * Retain rent rolls for dates of the submission of the application, date of site control, date of Initiation of Negotiations, & date of project completion in project records to evidence compliance. |

**IMPLEMENTATION OF RELOCATION REQUIREMENTS:**

1. **Required Notices**

The following describes each required notice and its purpose. Template of these notice, and other forms, can be found on the MFA Relocation webpage: <http://www.housingnm.org/uniform-relocation-act>

1. **General Information Notice (GIN)**: Informs all tenants of an application for federal funding for a proposed project, and their rights under the URA. The notice encourages each household not to move, and provides information about what assistance and protections are available under the law. Per Section 2-3(B) of HUD Handbook 1378, the GIN is required to be given to all tenants whether or not they will be temporarily relocated or permanently displaced. This notice must be given to occupants as soon as is feasible to avoid having occupants move prematurely due to not being properly informed, thereby possibly increasing relocation costs. This means that the GIN must be provided to tenants at or before the time of the HOME Application.

**NOTE:** HUD has recommended, and MFA will require, that copies of GINs for each tenant or for prior tenants, who were residing in the subject property on or near the date of the HOME Application, to be sent to MFA prior to any release of funds. These GINs must be signed and dated by each tenant before being submitted. A proposed “RENT ROLL” will be required at the same time, based on the proposed rent for each unit when the acquisition /rehab is completed. MFA will determine whether the developer is in compliance with rent levels and to ensure that the unit rents remain at the same level before the agreement was executed and for at least one year subsequent (after) project completion.

1. **Notice of Eligibility**: The Eligibility Notice informs households to be displaced of their rights, projected benefit amounts, and levels of relocation assistance under URA. A tenant survey must be done to determine the needs of each household before issuing the Eligibility Notice. Households who move permanently from the real property after receiving the Notice of Eligibility, but do not wait for the 90-day or 30-day notice, **may still be** **eligible for relocation assistance**. This notice should contain a commitment for relocation assistance, including:
2. Addresses of comparable replacement units. Provide comparables that have similar square footage, same number of bedrooms and baths, and other functionally equivalent amenities.
3. A specified amount for replacement housing payments (based on similar comparables obtained) and moving expense. (Note: Because comparable units set an upper limit for assistance, failure to provide information about available, comparable units may result in a requirement to pay excessive relocation costs).
4. If the tenant has indicated that they wish to purchase a home, provide a “lump sum” payment amount that they would receive should they decide to purchase a home.
5. (4) Information regarding rental assistance for those tenants desiring to remain in the project, but who cannot afford the new rents.

**NOTE:** MFA will require copies of the Notices of Eligibility for each tenant as well as a copy of the Claim for Rental Assistance or Down payment Assistance (HUD claim form 40058) filled out with an attached copy of the Comparable Replacement Dwelling HUD form 40061) showing the three (3) comparable units provided for each tenant and an explanation for the determination of the “most” comparable unit used in calculating the relocation benefits. The above forms have been included as samples in the back of this chapter

1. **Notice of Non-Displacement**: Informs households who will remain in the project after completion of their rights and the terms and conditions of their remaining at the property.
2. **Temporary** **Relocation Notice**: Informs households who will be temporarily relocated of their relocation rights and the conditions of their temporary move. Those tenants who will be temporarily relocated must receive “reasonable” advance written notice of the location, terms, and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses. Temporary relocations must not be more than 12 months or the household is considered “permanently displaced” and must be then be allowed permanent relocation benefits.
3. **Move-In Notice**: Informs households moving into potential projects after the application for HOME funds that they may be displaced and that they will not be entitled to assistance.
4. **90 and 30 Day Notices**: Informs displaced households of the day by which they must vacate the property. Displaced households may be given at least 90 days to vacate their residence. No person may be required to vacate their dwelling or issued a 90-day Notice before the person has been given a written notice of an available, comparable replacement dwelling. If the 90-day notice does not specify a date to vacate, the tenant must be informed that they will receive at least 30 days advance written notice of the specific date.

**NOTE:** Failure to provide the required correct and timely notices can be a very expensive mistake. Notices may be issued by either the HOME Subrecipient or the project owner. However, the HOME Subrecipient is ultimately responsible and must assure that timely and correct notices are given. Notices may be personally served or sent by certified or registered first class mail with return receipt requested. Consistent with the goals and objectives of the HUD program, HOME Subrecipients must ensure that they take all reasonable steps to minimize displacement as a result of a project. Copies of all required notices must be readily available for inspection and will be reviewed and verified during a MFA monitoring visit. Complete and accurate records are vital.

1. **What is Displacement?**
2. Prior to application for HOME funds, eligibility for relocation assistance is triggered by a tenant’s permanent move ONLY IF the HOME Subrecipient or HUD determines that the tenant was displaced as a direct result of the property activity. For example, if an owner evicted tenants in order to propose a vacant building for HUD assistance, those tenants would be eligible for relocation assistance.
3. After application for HOME funds, a person is displaced when:
   1. A tenant moves permanently from the property because he/she is required to move permanently by the owner;
   2. The subrecipient or owner fails to provide the required notices (see Notices required in the next section) in a timely manner to the tenant;
   3. The owner refuses to pay actual, reasonable expenses for a temporary move; or
   4. The conditions of the temporary move are unreasonable.
4. After the execution of the Standard Agreement with the HOME Program, a person is considered displaced if he or she moves permanently from the project and is not provided the opportunity to lease a suitable, affordable, comparable unit in the project.
5. A person is displaced if he/she permanently moves from a residential structure as a direct result of the leasing or renting of other units in the structure, for a HUD or HOME assisted project, that “changes the residential character/use of the structure to a public character/use (e.g., certain homeless or supportive housing programs).” See Handbook 1378 1-8, #8.
6. In Homebuyer Programs, tenants in tenant-occupied homes are also generally considered displaced.
7. **Minimize Displacement of Occupants**
8. When displacement is unavoidable, provide reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable replacement dwelling, and
9. Ensure that sufficient funds are budgeted to comply with relocation

**URA RELOCATION ASSISTANCE REQUIREMENTS**

1. **Who is Eligible for Assistance?**
2. Everyone who meets the URA definition of a “displaced person” is eligible to receive relocation assistance. There is no income limit for relocation assistance eligibility.
3. Level and type of assistance is based upon several factors, including whether the person is a tenant, an owner, a business, his or her income and length of residency.
4. Those who are temporarily relocated (<12months) are eligible to receive moving cost assistance, and assistance for any increase in housing or utility costs.
5. HOME Subrecipient Responsibilities
6. Keep all residents informed of project activities and scheduling and ensure that all the previously mentioned Notices are provided in a timely manner.
7. Provide information about comparable housing opportunities and the household’s relocation rights.
8. Provide information about federal, State, and local housing programs and how to apply for them.
9. Provide referrals to other available assistance including human services, health services, public assistance, childcare, etc.

##### Timing for Relocation Assistance Eligibility - The “Initiation of Negotiations” establishes the date when tenants become eligible for relocation assistance:

1. When a developer acquires a property, the delivery of the “initial written offer” by the developer to the owner to “purchase” the property is the “initiation of negotiations”.
2. In a rehabilitation project, where the developer already owns the property, the “execution” of the Standard Agreement between the HOME Subrecipient and the HOME Program is the “initiation of negotiations”. However, if the HOME Subrecipient purchased the property with the “intent” to use HOME funds in the future for development or rehabilitation, relocation rules apply and will be retroactive back to the time of purchase.
3. If the HOME Subrecipient issues a notice or makes an offer (without a notice) of its “intent” to acquire the property and a tenant moves after that, but before the delivery of the “initial written offer”, the “initiation of negotiations” is the actual date that the tenant moved from the property.
4. If a developer is planning to acquire a property and/or rehabilitate a project and the plan becomes public knowledge before the transaction actually takes place, this could also trigger relocation.
5. Eligible Relocation Expenses - Displaced households may choose to receive payment for moving and related expenses by either reimbursement of actual expenses or receipt of a fixed payment, based upon a schedule established by the Department of Transportation. Actual expenses are based upon the HOME Subrecipient’s determination that the expenses are reasonable and necessary. Such expenses include the following:
6. Transportation of the displaced person and personal property at the current mileage rate for personal vehicles that need to be moved. Transportation costs for a distance beyond 50 miles is not eligible unless the HOME Subrecipient determines that relocation beyond 50 miles is justified.
7. Packing, crating, uncrating, and unpacking of personal property.
8. Storage of the personal property for a period not to exceed 12 months, unless the subrecipient determines that a longer period is necessary.
9. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
10. Insurance for the replacement value of the property in connection with the move and necessary storage.
11. Replacement value of the property lost, stolen, or damaged in the process of moving where insurance covering such loss, theft, or damage is not reasonably available.
12. Security deposits, credit checks and other reasonable expenses.
13. Ineligible Relocation Expenses - The following expenses are ineligible for reimbursement or payment to displaced households:
14. Personal injury.
15. Interest on a loan to cover moving expenses.
16. Any legal fee or other costs for preparing a claim for relocation payment or for representing the claimant before the HOME Subrecipient.
17. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership.
18. Costs for storage of personal property on real property owned or leased by the displaced person “before” the initiation of negotiations.
19. Replacement Housing Payment - The assistance a displaced tenant receives varies depending upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the HOME Program Standard Agreement.

The Replacement Housing Payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a $5,250 limitation on payments, it also requires that persons receive the calculated payment. Therefore, families are entitled to the full 42 months of assistance even though the total amount may exceed $5,250. Please consult the HOME program for further guidance on the maximum payment amount if the family is not considered low income.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment, including incidental expenses. All of the payment must be used for the home purchase. Claim for Rental Assistance or Down Payment Assistance (Form HUD-40058 in Appendix 14 of Handbook 1378) is used to compute the rental or down payment assistance. The HUD claim form must be filled out and a copy submitted to MFA for review and approval.

**PLEASE NOTE: THE PROJECT RELOCATION SPECIALIST SHOULD ALWAYS ASSIST THE DISPLACED HOUSEHOLD WITH FILLING OUT ANY REQUIRED FORMS THAT THEY MAY NEED TO COMPLETE**.

1. Calculating the Replacement Housing Payment - If a tenant has occupied a displacement unit for **more than** 90 days, the replacement housing payment makes up the difference between the rent and estimated utility costs for the replacement dwelling or for a comparable unit, whichever is less, and the lesser of:
2. 30% of the tenant's average monthly gross income, or
3. The monthly rent and estimated average utility costs of the dwelling the tenant was displaced from.

**EXAMPLE: URA REPLACEMENT HOUSING PAYMENT**

$ 600 Rent and utilities at actual replacement dwelling

$ 500 Rent and utilities at comparable dwelling

**Choose the lesser: $500**

$ 400 Rent and utilities at the dwelling tenant was displaced from

$ 300 30% of gross monthly income

**Choose the lesser: $300**

REPLACEMENT HOUSING PAYMENT IS:

**$500 - $300 = $200 x 42 months = $8,400**

If a tenant has occupied a displacement unit for **less than** 90 days, the replacement housing payment makes up the difference between the rent and estimated utility costs for the replacement dwelling or for a comparable unit, whichever is less; and 30% of the tenant's average monthly gross income.

1. **Optional Relocation Assistance** - Subrecipients may use HOME funds (in a HOME project only) to provide relocation assistance beyond what is required to persons covered by the regulations. If the additional assistance is not required by State or local law, the HOME Subrecipient must adopt a written policy describing the optional relocation assistance and provide for equal relocation assistance within each class of displaced persons.

EXAMPLE: The subrecipient is not required to pay “temporary” relocation benefits to owners for owner-occupied rehabilitation projects. However, the HOME Subrecipient can elect to pay temporary relocation benefits to these owners if feel that they may experience economic hardship and it adopts a written optional relocation policy and provides the benefits equally to all owners in the program.

## **Rights of Residents Who Remain in the Project** - Tenants who are intended to remain in the project must receive the offer of a "suitable" unit, which can be rented at an "affordable" price. If there is no increase in rent, the unit is considered affordable and the tenant is not considered “rent burdened,” even if the percentage of income that the family is paying is quite high.

If rents are increased after rehabilitation and rents are above the HUD Fair Market Rents, tenant-based assistance can be provided if the family’s income does not exceed Section 8 lower-income limits, and if the tenants qualify as “rent burdened.”

To determine whether a family is rent burdened, the HOME program uses a threshold of 30% of gross income for tenants whose incomes are above the Section 8 Lower-Income Limit, and uses a threshold of the Section 8 Total Tenant Payment (TTP) for tenants at or below the Section 8 lower- income limit.

TTP is the greater of:

* 30% of adjusted income, or
* 10% of gross monthly income, or
* For persons receiving welfare assistance, the designated welfare allowance for housing and utility costs in “as-paid” states and communities only. See HUD Handbook 1378, Paragraph 7-20.

#### How Long Must Units Remain Affordable? HUD expects HOME Subrecipients to follow the “intent” of the URA and HOME requirements. In general, HUD expects the following:

1. In-place tenants should be offered a new lease, presumably for one year, when the rehabilitation is completed. Any increase in rent caused by the rehabilitation would be reflected at that time but must be within the required guidelines.
2. An owner and tenant could agree to continue an existing lease, but the HOME Subrecipient would have to determine on an individual basis whether the terms of this lease meet the test of avoiding rent increases to the family as a result of the rehabilitation.
3. Any rent increases that occur subsequent to the initial rent increase are presumably based upon market conditions and not based upon rehabilitation costs. An owner may not keep rents artificially low at the time of rehabilitation completion and then subsequently raise rents dramatically. This would provide a tenant who moved out due to the increased rent with a basis for a claim that he/she was a “displaced person”.
4. Comparable Units Requirements - A comparable unit is one or more specific unit(s) offered by the owner to a displaced person where the size, function, and location are as similar as possible to the unit the household is leaving. Comparable units should be:
5. **Similar in size**: Generally, comparable units will have the same amount of space and amenities as the original unit and should be typical in size for the residential development. If the original unit was dilapidated, a smaller, decent, safe and sanitary unit that can accommodate the household may be considered. However any substitution of smaller units must be approved by MFA and must be fully documented and verifiable as to the reason for the request to use a smaller unit.
6. **Similar in function**: To be considered similar in function, the comparable unit should provide the same function, service, or purpose as the displaced unit. For example: If the original unit had a separate dining room and living room, but the replacement unit has a combined living and dining area to accommodate the same activities, the replacement unit is “functionally equivalent”.
7. **Reasonably accessible** to the person’s employment.
8. **Located in an equal to or better area** as the displacement unit in terms of public services and commercial and public facilities. For example: a displaced family has two school age children. If they want to keep their children in the same school, the comparable unit should be within the same school district.
9. **Decent, safe and sanitary** (must meet Section 8 Housing Quality Standards).
10. **Within the financial means of the displaced person**. Because URA requires that financial assistance be provided to assist the household to afford the replacement unit, the unit selected as comparable is not required to be affordable without assistance.
11. In an area **free from unreasonable adverse environmental conditions**.
12. **Available to the displaced person:** Units are "available" if the person has been informed of the location(s); if the person has sufficient time to negotiate a rental or lease agreement or a purchase agreement; and if the person receives relocation payments (as necessary) in sufficient time to complete the move or purchase.

SECTION 104(D) REQUIREMENTS - Demolition or the conversion of units triggers Section 104 (d) requirements when HOME funds are used for a project. However, acquisition-only activities do not trigger Section 104 (d).

1. **How Does Section 104(d) Differ from URA Requirements?**
2. Section 104(d) only provides for replacement housing payments for lower-income tenants. Tenants who are not lower-income are covered under URA.
3. Section 104(d) requires replacement housing payments to be made for a 60 month period, rather than the 42 months under URA.
4. There is NO cap on the 104(d) replacement housing payment.
5. A displaced person may wish to receive his or her replacement housing payment in a lump sum to purchase a home. A single-family residence, a cooperative or mutual housing are the only permitted forms of homeownership under 104(d). If a displaced tenant wishes to purchase something other than a single family residence, cooperative unit or a mutual housing unit, his or her replacement housing benefits can be calculated using the URA formula (42 months, rather than 60).
6. The HOME Subrecipient, not the tenant, decides whether tenant-based assistance or a replacement housing payment will be made. However, if the 104(d) family wants a cash payment and therefore rejects an offer of tenant-based assistance, the family retains its right to a cash payment (42 months) under URA.
7. The major difference between URA and Section 104(d) is the focus in 104(d) on the “loss” of low-income housing through demolition or conversion.
8. **One-for-One Replacement Requirements -** Section 104(d) requires a one-for-one replacement of low- and moderate-income dwelling units that are demolished or converted to other use. Low- and moderate- income dwelling units are those with a market rent that is no higher than the Section 8 Fair Market Rent.

Subrecipients **MUST** replace a unit if:

1. It is occupied or is a vacant occupiable dwelling unit, in standard or substandard condition (regardless of how long it has been vacant), or
2. It is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing.

A unit **DOES NOT** need to be replaced if that unit is dilapidated, substandard, and not suitable for rehabilitation **and** has been vacant for over a year.

1. **Units Meeting One-for-One Replacement Requirements -** Replacement units must be within the Subrecipient's jurisdiction, and If possible and consistent with other statutory priorities, in the same neighborhood as the unit that was replaced. Replacement units must also comply with the following:
2. Be in standard condition;
3. Be designed to remain affordable to low-income families for at least 10 years;
4. The number of bedrooms replaced must equal the number of bedrooms removed (but not necessarily in the same unit configurations);
5. Replacement units must be provided within four years;
   1. Units made available up to one year before the submission of the subrecipient's Anti-Displacement Plan may be counted as replacement units.
   2. Units made available within three years of the beginning of the demolition or rehabilitation can be counted as replacement units.
6. Substandard units that are rehabilitated can count toward the replacement units if:
   1. No person was displaced by the assisted activity;
   2. The unit was vacant for at least three months before the agreement authorizing the rehabilitation was executed; and
   3. The unit is in standard condition following rehabilitation.
7. **Exceptions to One- For-One Replacement Requirements**
8. HOME Subrecipients may request an exception to the one-for-one replacement requirements if adequate, vacant, affordable housing is available.
9. Subrecipients must make the submission public and give interested persons 30 days from the date of submission to provide the HOME Program with information supporting or opposing the request. If HOME supports the request, then the HOME Program must provide its recommendation to HUD.
10. Exceptions to the one-for-one replacement requirements must be sought BEFORE executing a contract for beginning demolition or conversion of low/moderate income dwelling units.

The HUD Field Office will make this determination based on the following:

1. The jurisdiction's vacancy rate and number of vacancies;
2. The length of waiting lists for assisted housing in the jurisdiction;
3. The needs analysis contained in the Consolidated Plan; and
4. Housing that may be available nearby, but outside, the jurisdiction.
5. **Disclosure and Reporting Requirements** - Before a HOME Subrecipient executes a contract for any activity that would create the need for one-for-one replacement, the subrecipient must:
6. Make the plan public, by publication in a newspaper of general circulation, and
7. Submit to MFA the following information:
8. Description of the proposed activity;
9. Location and number of units to be removed;
10. Schedule for the beginning and completion of the demolition or conversion;
11. Location and number of replacement units;
12. Source of funding and timing for providing the replacement units;
13. The subrecipient's basis for determining that the replacement units will remain affordable for at least 10 years from the initial date of occupancy; and
14. The subrecipient's justification (if applicable) for replacing larger units with smaller units.
15. **Economic Displacement Under 104(d)-Handbook 1378, Paragraph 7-7b (3)**
16. Lower Income Tenants
17. Lower income tenants who are intended to remain in the project must receive the offer of a “suitable” unit which can be rented at an “affordable” price [7-7b (3) (a)].
18. Tenants who move permanently after execution of the agreement because they did not receive such an offer are “economically displaced”.
19. If there is no increase in rent, the unit is considered affordable and the tenant is not considered rent burdened, even if the percentage of income that the tenant is paying quite high price [7-7b (3) (a) (ii)].
20. If the rent is increased, it may not exceed the tenant’s Total Tenant Payment as calculated for the Section 8 program. [7-7b(3)(a)(ii)].
21. As under the URA, the Subrecipient may offer Section 8 or HOME tenant based assistance, if either is available, to prevent economic displacement.

##### Tenants With Incomes Above the Lower Income Limit - A family whose income is above the Section 8 Income Limit is not covered by 104(d). However, such a family who is economically displaced is covered by the URA.

**MFA MONITORING POLICY:**

**Statute: 42 USC 4601Z Relocation Planning, Assistance Coordination and Advisory Services, Sec. 205(c) “**Each relocation assistance advisory program shall…..(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of….major disaster, national emergency, or other emergency that constitutes a substantial danger to the health or safety of such person.”

**Regulations: 49 CFR Part 24.4(b) “**Monitoring and corrective action. The Federal Agency will monitor compliance with this part, and the State agency shall take whatever corrective action necessary to comply with the Uniform Relocation Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations.”

**HUD Handbook 1378, 1-29.c. (2) Inadequate Replacement Housing** - “Whenever a displaced person has relocated to an inadequate housing because required payments, housing referrals, property inspection, or other services were not offered in accordance with this handbook, the grantee shall promptly take whatever steps are appropriate and shall bear whatever reasonable costs are necessary to:

1. Enable the displaced person to relocate to a comparable replacement dwelling or a decent, safe, and sanitary dwelling of his/her choice; or
2. Ensure the repair or rehabilitation of the replacement dwelling occupied by the Displaced person to the extent necessary or correct deficiencies which would not be present if the grantee had met his obligations under this handbook. The grantee is not required to remedy deficiencies which can be demonstrate were caused after the displaced person occupied the replacement dwelling. (A grantee may use its code enforcement powers or other programs to ensure that the owner of a tenant occupied dwelling makes repairs necessary to correct housing deficiencies.)”

**FAILURE TO NOTICE PROPERLY**

1. If required notices are not sent in a timely manner, corrective actions must be reviewed and approved by MFA.
2. If a person moves and there is not adequate verification of the notices being sent in a timely and correct manner or the information presented to the person was not complete, the person must be located using all available means necessary to locate them. The search methods must be verified with acceptable documentation.
3. If a person cannot be located, the estimated relocation assistance money must be set aside for one (1) year. If the person was not located during that time, a written “finding” will be completed with a copy sent to HUD for their records.

**FAILURE TO COMPLY**

1. If HOME Subrecipients fail to comply with URA and/or Section 104(d) relocation requirements and fail to take the necessary steps to correct the outstanding relocation deficiencies, MFA and/or HUD may temporarily suspend funding for the project or program until the issues are resolved.
2. If the HOME Subrecipient does not follow the recommended procedures to correct the relocation deficiencies, MFA and /or HUD may make a determination that the HOME Subrecipient will be ineligible to apply for future NOFAs or HUD funds.

**Additional Resources**

**Web Sites:**

New Mexico MFA relocation webpage:

<http://www.housingnm.org/uniform-relocation-act>

HUD 1378 Handbook:   
<http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378>

49 CFR Part 24 (URA Implementing Regulations):

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl>

24 CFR Part 42 (104(d) Implementing Regulations):

<http://www.access.gpo.gov/nara/cfr/waisidx_03/24cfr42_03.html>