

D. ACQUISITION/ANTI-DISPLACEMENT/RELOCATION/DEMOLITION

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D. ACQUISITION/ANTI-DISPLACEMENT/RELOCATION/DEMOLOTION

ACQUISITION

Introduction

This section presents the requirements that apply to property acquisition in connection with the Louisiana Community Development Block Grant (LCDBG) Program. The acquisition of “property”, as used in this section of the handbook, will include the acquisition of parcels of land, servitudes, leases and rights-of-way.

Local governments are required to own and provide documentation of property ownership for property involving an LCDBG project. Property will include property owned by the local government before a specific LCDBG project was considered, property obtained in anticipation of an LCDBG project and property obtained as part of an LCDBG project.

Proof of property ownership must be documented by an attorney’s opinion or a copy of the title to the property as recorded at the parish courthouse. For streets, there is an additional option which will prove ownership under Louisiana Revised Statute 48:491. LRS 48:491 allows maintenance logs or other substantial written proof of maintenance for at least three years to be considered as written documentation of ownership of the respective streets.

Property acquired for an LCDBG project must be legally recorded. Such recordation is to be filed at the parish courthouse.

Task D-1: Applicability of the Uniform Act

The Uniform Act There was a need for a standardized set of acquisition procedures on federally funded projects in order to avoid the myriad of variations occurring from state to state. In response to this need, Congress passed the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970. This law is commonly called the "Uniform Act".

Acquisition of Specific Parcels of Property by Purchase Much of the property that a state agency acquires for any activity funded in whole or in part with LCDBG funds is subject to the Uniform Act. A state agency is a village, town, city, parish, or any other entity that has “Eminent Domain”. Eminent Domain is the legal power to condemn land and acquire privately held property under Article I, Section 2, of the Louisiana Constitution. The term “local government”, as used in this section, will refer to the governing bodies of villages, towns, cities or parishes. The following examples illustrate common types of acquisition that are subject to the Uniform Act:

- A certain parcel of property owned by John Doe, a citizen of the community, is needed by the local government for a fire station. It has been determined by the local government that this specific parcel is the best location for the fire station. LCDBG funding has been awarded for the project. The acquisition of this parcel by the local government would be subject to the Uniform Act.
- A certain parcel of property owned by Private Enterprise, Incorporated, is needed for the installation of a water well involving an LCDBG funded project. The life expectancy of the water well is estimated to be as much as 40 years. It is a known fact that Private Enterprise, Incorporated, is willing to enter into a lease with the local government for the long term use of the parcel for a water well. Acquisition of a leasehold interest from Private Enterprise, Incorporated, by the local government would be subject to the Uniform Act.
- The local government needs to obtain permanent roadside rights of way for sewer lines that are part of the installation of a new sewer system which is funded, in part, with LCDBG funding. Some of the rights of way are expected to be donated while others are expected to be purchased. Acquisition of such rights of way, whether by donation or purchase, would be subject to the Uniform Act.

Acquisition By Private Entities Acquisitions by private entities, such as corporations, that do not have condemnation powers are covered by the Uniform Act, even though LCDBG funds are not used to fund the acquisitions. An economic development project that involves a private company acquiring land in most instances is a Uniform Act acquisition. The following is an example of acquisition by a private entity that would be subject to the Uniform Act:

- The local government, on behalf of Widget Incorporated, has been funded for an Economic Development project. A parcel, now privately owned and next to the widget plant, is to be acquired by Widget, Incorporated. The Office of Community Development will provide funds for infrastructure associated with the expansion but Widget Incorporated will be the entity that acquires the parcel of adjacent land. Such acquisition would be subject to the Uniform Act.

Purchases, Donations, Partial Donations Purchases, donations, and partial donations are subject to the Uniform Act when property is obtained for LCDBG projects from individuals or entities that do not have Eminent Domain.

Additional Rights of Way—Street Projects If a road or street is being widened or extended it will often be necessary to obtain additional rights-of-way. It may be that the local government owns the streets and a small right of way along the street but not the larger right of way needed. This additional right of way, when obtained from private individuals or entities which do not have Eminent Domain, would be subject to the Uniform Act.

Timing The timing of an acquisition can also make it subject to the Uniform Act. Regardless of the source of funds, any acquisition made by a local government which takes place on or after the date of submission of your LCDBG application to finance an activity on that property is subject

to the Uniform Act. Also, an acquisition that took place before the application submission may be subject to the Uniform Act if there is clear evidence that the acquisition was done in anticipation of obtaining LCDBG funds.

Leases Subject to the Uniform Act Leases which are for a duration of 15 years or longer are subject to the Uniform Act. Leases which are for a duration of less than 15 years but are automatically renewable are also subject to the Uniform Act.

Lease Approvals Should the local government decide to lease rather than purchase a piece of property, the Office of Community Development must be furnished the terms of the proposed lease and an estimate of the property value prior to the execution of the lease agreement.

The Office of Community Development will examine the lease for at least three factors: duration, cost, and compliance with the Uniform Act. The lease should be for a duration that is, at a minimum, as long as the anticipated life of the project improvements. The cost of the lease must be reasonable and will be compared to the cost of an outright purchase. If the duration of the lease is less than 15 years, this office must determine that the duration was not established for the intentional purpose of avoiding the requirements of the Uniform Act.

HUD Website HUD provides a Real Estate Acquisition and Relocation website at <http://www.hud.gov/relocation>. This site provides access to Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition, and to the HUD brochure, When a Public Agency Acquires Your Property.

Task D-2: Acquisition Procedures Under the Uniform Act

Steps For Meeting LCDBG and Uniform Act Acquisition Requirements Certain steps regarding acquisition of property are necessary to meet LCDBG and Uniform Act requirements. The steps for the purchase of property under the Uniform Act, and the order in which they should occur are as follows:

1. Determine ownership
2. Send the Preliminary Acquisition Notice
3. Determine if an appraisal and review appraisal will be required
4. Obtain a valuation of the property
5. Prepare the Statement of Just Compensation
6. Send the written offer to purchase
7. Conclude final negotiations
8. Prepare a sales contract and complete the sale
9. Provide a Statement of Settlement Costs

Notices, letters, and other documents regarding acquisition must be sent by certified or registered mail, return receipt requested, or hand delivered with receipt documented.

If the owner or occupant does not read or understand English, the local government must provide translations and assistance. Each notice must give the name and telephone number of a person who may be contacted for further information.

Step 1: Determine Ownership The local government is responsible for determining ownership of property which may be needed for an LCDBG project. A title search to determine ownership is often necessary.

Step 2: Send the Preliminary Acquisition Notice As soon as possible after the local government decides that you want to acquire property a Preliminary Acquisition Notice must be sent to the owner (**Exhibit D-1**). One important element of the Preliminary Acquisition Notice is that it explains that it is not a notice to vacate and does not establish eligibility for relocation payments or assistance. The Preliminary Acquisition Notice must be accompanied by the brochure, When a Public Agency Acquires Your Property, which is usually the local government's acquisition policy. If the local government chooses to adopt a different policy, it must at least be as stringent as the Uniform Act; it must be written and sent to the owner along with the Preliminary Acquisition Notice. This brochure is included as **Exhibit D-1**.

Step 3: Determine if an Appraisal and Review Appraisal will be Required Either of two conditions will trigger an appraisal: (1) the value of the property is estimated to be more than \$10,000, (2) the owner of the property wants an appraisal. If an appraisal is required the owner of the property must be invited to accompany the appraiser.

When an appraisal is required a review appraisal will automatically be required.

Step 4: Obtain a Valuation of the Property Regardless of whether an appraisal is required it will be necessary to obtain valuation of the property in order to prepare the Statement of Just Compensation as discussed in Step 5.

If an appraisal and review appraisal are required, then the valuation will be based on the appraisals. However, the review appraisal, if higher in monetary valuation than the first appraisal, is considered to be the controlling document.

If an appraisal and review appraisal are not required, then a knowledgeable person may provide a written opinion as to the value of the property. It should be signed and dated and made a part of acquisition records. It does not have to be notarized. A knowledgeable person may be a real estate broker, salesperson, banker, or some other type of locally recognized authority on the value of local property. Often this valuation service could be provided for less than \$100.00 and will sometimes be provided free of charge. In all cases the scope of the service and cost of the service should be substantially lower than the cost of an appraisal and review appraisal.

The written valuation does not need to be complicated or detailed. The written opinion is not required to be based on a selection of chosen "comparables" as is often the case with a formal appraisal. The knowledgeable person should state at least three things in the written opinion: (1)

His or her qualifications in one short paragraph, (2) Brief description (but not an official legal description) of the property and (3) Estimate of the value of the property.

Step 5: Prepare the Statement of Just Compensation After valuation of the property, the Statement of the Basis for the Determination of Just Compensation (**Exhibit D-2**) must be prepared. The amount determined to be just compensation must be based on the fair market value as determined in the valuation. It must contain the following elements:

- Legal description and location of the property,
- Description of the interest to be acquired (e.g., full ownership, servitude, etc.),
- Inventory identifying the building, structures, fixtures, etc., which are considered to be a part of the real property,
- The amount of the offer,
- A statement to the effect that the amount offered is the full amount believed by the local government to be just compensation, is not less than the fair market of the property, disregards any increase or decrease in the fair market value attributable to project for which the property was acquired, and does not include any consideration or allowance for relocation costs,
- Definition of fair market value,
- Explanation of the method used to value the property,
- In the case of tenant-owned improvements, the amount determined to be just compensation for the improvement and the basis as set forth in Handbook 1378,
- In the case of the owner retention of improvements, the amount determined to be just compensation for these improvements and the basis as set forth in Handbook 1378,
- Any purchase option agreement should be attached,
- If only a part of the parcel is to be acquired, a statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages and benefits to be remaining portion.

Step 6: Send the Written Offer to Purchase Send the owner a written Offer to Purchase (**Exhibit D-3**), along with the written Statement of the Basis of the Determination of Just Compensation. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin. This date must be the same date as the written offer. As with all notices, it should be sent certified or registered mail, return receipt requested.

If the property is tenant or owner-occupied, a written Notice of Displacement must be issued within 30 days of the date specified for the initiation of negotiation. For more details on Relocation Procedures and Antidisplacement under Section 104(d) of the Act, refer to the section on Relocation, Antidisplacement or Handbook 1378.

Step 7: Conclude Final Negotiations The sale is then negotiated. The owner may accept the fair market value and the local government can enter into an agreement with no further action

necessary by the Office of Community Development. The owner must be provided an opportunity to discuss the offer, propose a higher value and document that higher value. The local government may consider an offer exceeding fair market value and submit documentation supporting acceptance to the Office of Community Development, obtain a new valuation, initiate condemnation proceedings, or decide not to acquire the property. Documentation of negotiation proceedings should be placed in the project acquisition file.

There may be occasions when an owner proposes or insists on more than the fair market value. Any amount which exceeds fair market value must be examined and approved by the Office of Community Development if acquisition is to be paid with LCDBG funds. Send the Office of Community Development documentation for prior approval before signing the contract of sale. Approval or disapproval by this office is to be evidenced either by memo transmitted by e-mail communication or faxed copy of the documentation dated and initialed by the acquisition specialist of the LCDBG staff. The use of LCDBG funds which are in excess of fair market value and are not approved prior to disbursement by the Office of Community Development will be disallowed.

Step 8 Prepare a Sales Contract and Complete the Sale Following successful negotiations, an act of sale must be prepared and executed and transfer of documents secured. The local government must also reimburse the owner to the extent deemed fair and reasonable for incidental costs associated with transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages, etc.).

Step 9 Provide a Statement of Settlement Costs The local government must give the owner a Statement of Settlement costs which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner (**Exhibit D-4**). If a title or escrow company is used, their standard form is acceptable. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction.

The local government must also be able to prove the payment of the purchase price by retaining a copy of the canceled check and the Act of Sale.

Deciding Not to Acquire: If the local government decides not to buy or expropriate a property at any time after the Preliminary Acquisition Notice has been sent to the property owner, written notification must be sent to the owner and any tenants occupying the property that the local government does not intend to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payment and assistance. This notice must be sent within 10 days of your decision not to acquire (**Exhibit D-5**).

Donations: The procedure to be followed for donations is somewhat different. If a property is to be fully donated, the local government should inform the owner of his rights under the Uniform Act and obtain a signed waiver. A sample waiver form is included as **Exhibit D-6**. The owner must be given a copy of the HUD brochure, "When a Public Agency Acquires Your Property". If

property is to be partially donated, the local government must follow the procedures of the Uniform Act as detailed in the steps herein and the property owner must sign a waiver of his/her rights for the donated portion of the property. If donations are being made by elderly, very poor, functionally illiterate or non-English speaking persons, the local government should carefully document the efforts made to insure the owner-occupant understands their rights in order to demonstrate the owner is not persuaded or coerced into donating their property.

Task D-3: Appraisals Under the Uniform Act

Selecting Appraisers The local government must select an independent appraiser. The appraiser should have no interest in the property or be related to, or in business with, anyone having any interest in the property to be acquired. The appraiser should be qualified, reputable and professional. Generally, only people who obtain at least 50 percent of their income from doing appraisals and who belong to a professional association that has a code of ethics should be considered. Look for appraisers who have had experience doing the types of appraisals you need. An appraiser who usually establishes values for vacant, unimproved land may not be appropriate to establish accurate values of houses. State-certified or licensed real estate appraisers eligible to perform appraisals for federally related transactions are now listed on the Internet. The National Registry of State-Certified or Licensed Appraisers' Website is: <http://www.asc.gov>.

The local government should request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values exceed \$100,000, it is recommended that two independent appraisals be conducted. A review appraisal must be prepared for each appraisal conducted.

The Contract for Appraisal Services The local government must execute a professional services contract with the independent appraiser. **Exhibit D-7** is an appraisal contract that has the required elements for use in the LCDBG program. This contract may be used or another that is prepared which contains the elements found in **Exhibit D-7**. The local government should go over the contents of this contract with your appraiser. The contract must require the appraiser to invite the property owner to accompany the appraiser during the property inspection and not to consider race, color, religion or the ethnic characteristics of a neighborhood in estimating the value of residential real property. Compensation for an appraisal shall not be based on the amount of the valuation.

Exhibit D-8, which states the "Uniform Appraisal Standards for Federal Land Acquisition" sets forth standard requirements for appraisals involving federally funded acquisitions. Standard FHA appraisal forms may be used if they cover all the requirements of the appraisal contract covered in **Exhibit D-7**.

Property Valued at \$250,000 or More A contract (fee) appraiser making a "detailed appraisal" on property valued at \$250,000 or more must be certified and licensed in accordance with State law implementing Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), P.L. 101-73 and must be currently active on the Louisiana State Certified Appraisers General Appraisal list. The review appraiser must also be on the State's General Appraisal list.

Property Valued at Less Than \$250,000 As of September 6, 2001, for property valued below \$250,000, the sub-grantee may use a General Appraiser or a Residential Appraiser. This is also applicable to the review appraisal.

Owner Invitation Before the first appraisal is undertaken, the local government or the appraiser on behalf of the local government must formally invite the property owner to accompany the appraiser during inspection of the property (**Exhibit D-9**). This notice should be in writing and a copy placed in your property acquisition file along with evidence of receipt of the owner. The requirement to invite the property owner to accompany the appraiser is optional for the review appraisal.

Servitude Appraisal Forms **Exhibit D-10** is an example of a short form that can be accepted for an appraisal establishing the value of servitude. This form summarizes complete documentation which the appraiser must have on file.

The Review Appraisal Once the appraiser has prepared and submitted the appraisal a review appraisal must be obtained. The review must be done by a qualified staff appraiser or an independent fee appraiser. The review appraiser should be required to visit the property. The review must be written, signed and dated. It should assess the adequacy of the appraiser's supporting data, the appraisal procedures used, and the soundness of the appraiser's opinion of fair market value.

Authority of the Review Appraisal It must also include the reviewer's recommendation of the fair market value of the property. **Exhibit D-11**, the "Review Appraisal Report", contains the required elements needed in a review appraisal. If the review appraiser disagrees with the fair market value of the original appraisal, the locality can request that the original appraiser modify and document any changes in the original report. When judging between differences in the first appraisal and the review appraisal and if differences are not resolved by the modification of the first appraisal then the review appraisal is to be considered authoritative. The local government will also have the option of obtaining another "first appraisal" and review appraisal.

Acquiring Property Without an Appraisal (42 USC 4651 (2); 49 CFR 24.102 (c) (2)): If the local government can determine that the valuation of a parcel of land or servitude is uncomplicated and that fair market value of the property does not exceed \$10,000, and if the owner does not desire an appraisal, then an offer can be made to the owner(s) of the property without a formal appraisal but a written valuation of the property by a knowledgeable person will be required. If an appraisal is not required then a review appraisal will not be required.

An option to increase the \$10,000 valuation amount to \$25,000 may be requested in writing from the Office of Community Development.

Task D-4: Expropriation

Expropriation Proceedings: If the local government cannot negotiate the sale, expropriation proceedings may be instituted. Inexperienced localities sometimes think expropriation is cheaper than negotiated sales. When the owner is an individual, especially elderly or infirm, courts may

be very generous and expropriation can be substantially more expensive than negotiation. The local government is required to pay the amount established by the court.

Initiation of Expropriation Proceedings Expropriation is a legal action and must be carried out by the local government's attorney. The local governing body should authorize the proceedings by resolution. Copies of surveys and maps relating to the subject property in the Parish are recorded. Expropriation proceedings can then be initiated in the district court of the Parish in which the property is located. The local government will have to deposit the amount determined to be "just compensation" in escrow with the court.

The court will establish the compensation to be paid for the property. The judgment of the court will vest full ownership title to the property expropriated in the local government. When title is vested, the local government may enter upon the property taken and takeover and dispose of existing improvements.

Quick Take The 2003 Louisiana Legislature authorized the expropriation of property by "quick-take". Contact the Office of Community Development for instructions, forms and approval prior to undertaking this action.

Task D-5: Acquisition Not Subject to the Uniform Act

Types of Acquisition that are Not Subject to the Uniform Act Five types of acquisition are not subject to the requirements of the Uniform Act; however, these types of acquisition are still subject to Louisiana law and specific LCDBG requirements. These five types are:

1. Acquisition from another public agency
2. Temporary construction servitudes/easements
3. Short term leases
4. Voluntary acquisition
5. Acquisition of streets under LRS 48:491

1. Acquisition from Another Public Agency When a local government acquires property from another public agency which also has the power of Eminent Domain such acquisition is not subject to the Uniform Act.

- Example: A municipality acquires a water well site from a parish for an LCDBG funded project. This acquisition is not subject to the Uniform Act.

2. Temporary Construction Servitudes/Easements When a local government acquires a temporary servitude or easement from a private citizen or corporation such acquisition is not subject to the Uniform Act. When connecting service lines from a privately owned dwelling to a utility line, such as a sewer main, the local government must obtain a construction easement with the private owner(s). (**Exhibit B-25**) A construction easement should also be obtained for any temporary construction to be undertaken on private property.

- Example: A local government is constructing a new sewer system with LCDBG funds that will serve 100 homes. It is determined that these homes qualify for service line connections under the LCDBG program. The local government must obtain a temporary construction servitude from each homeowner before beginning work on each respective parcel of property. Acquisition of the 100 temporary construction servitudes would not be subject to the Uniform Act.

3. Short Term Leases Leases which are for a duration of less than 15 years and are not automatically renewable are considered short term leases not subject to the Uniform Act.

- Example: A sewer lift station must be installed on an emergency basis due to an unexpected chain of events. The lift station is needed for only five more years at which time a new force main system will be installed which will render the lift station obsolete. The local government chooses to obtain a ten year lease, not automatically renewable, from an appropriate property owner. Acquisition of the ten year lease would not be subject to the Uniform Act.

4. Voluntary Acquisition Voluntary acquisition occurs when the local government acquires real property at fair market value from an owner who has submitted a proposal to the community for purchase of their property in response to a public advertisement. The local government may undertake a voluntary acquisition when a site needed for an LCDBG project can be satisfied by more than one property. Property owners can then voluntarily, in response to the advertisement, let the local government of the availability of their property and enter into negotiations for the sale of the property. Voluntary acquisition is not subject to the Uniform Act.

Voluntary Acquisition Property Valuation Valuation of parcels of property will need to be established and may be done by the appraisal process or by a knowledgeable person. If the appraisal process is used a review appraisal is not mandatory because voluntary acquisition is not subject to the Uniform Act. If a knowledgeable person does a valuation of the property it must be in writing. The valuation does not need to be complicated or detailed. The written opinion is

not required to be based on a selection of chosen “comparables” as is often the case with a formal appraisal. The knowledgeable person should state at least three things in the written opinion: (1) His or her qualifications in one short paragraph (2) Brief description (but not an official legal description) of the location of the property and (3) Estimate of the value of the property.

Voluntary Acquisition Example

- Example: A parcel is needed for an LCDBG funded fire station. The fire station could be placed on many different parcels located in the northern part of the municipality. The local government adopts a Voluntary Acquisition Policy. The local government chooses to advertise in the local newspaper for a parcel of property for the fire station. Acquisition of the parcel for the fire station is not subject to the Uniform Act.

Voluntary Acquisition Policy The local government must have or prepare a formal, written policy that authorizes voluntary acquisition. **The policy in Exhibit D-12 must be used.** The public invitation or solicitation should include a description of what the local government wants to buy and all of the rest of the conditions of which a seller should be aware, as stated in **Exhibit D-12**. The solicitation must also indicate that if a mutually satisfactory agreement cannot be reached, the local government will not condemn the property for the same purpose.

Relocation eligibility only becomes effective when a written agreement has been negotiated between the grantee and the owner of the property. If the local government intends to require owner-occupants to waive relocation assistance as a condition of voluntary acquisition, this condition and other pertinent information should be included in the public solicitation and the waiver form should be attached to the purchase offer.

Caution A word of caution—voluntary acquisition is a useful technique in certain situations. It is not a way to “get around” the Uniform Act. Your Local Government Representative can provide advice, early in the process, which can assist in structuring the local government’s policy and any public solicitations to avoid the very unpleasant “clean up” that is necessary if voluntary acquisition goes wrong.

5. Acquisition of Streets under LRS 48:491 Acquisition of streets under LRS 48:491 is not subject to the Uniform Act. LRS 48:491 provides ownership status to local governments that provide evidence of local government or State maintenance of respective streets for a period of three years. In order to document street ownership on an LCDBG project, the three year period should have been completed by the date the LCDBG application was submitted to the Office of Community Development.

Procedures Required for Acquisition not Subject to the Uniform Act Requirements for acquisition of property which are not subject to the Uniform Act include the following steps: (1) determination of ownership, (2) valuation of the property, (3) offer and acceptance, (4) act of sale, donation or transfer (5) a statement of settlement costs (6) recordation and (7) in general, any documentation of acquisition activity from start to finish.

If property is obtained via voluntary acquisition an additional requirement is the proof of at least one public advertisement.

Task D-6: Record Keeping

List of Parcels. For each project, the grantee's files shall include a list identifying all parcels to be acquired for the project. Such a list may be maintained in a suitable computer generated format that also indicates, for project management purposes, progress made in carrying out the acquisition program.

Acquisition Case File Acquisition notices, letters and other documents which are mailed are required to be sent by registered or certified mail, return receipt requested. If hand delivered the delivery should be evidenced by signature and date. An Acquisition Composite List (**Exhibit D-13**) must be completed on LCDBG projects having any acquisition. A Real Property Acquisition Checklist (**Exhibit D-14**) must be completed for each parcel acquired.

For each parcel acquired the grantee files shall include:

1. Identification of property and property owner(s),
2. Determination of ownership,
3. If applicable, evidence that owner received a Preliminary Acquisition Notice accompanied by the notice entitled "When a Public Agency Acquires Your Property",
4. A copy of valuation for each parcel obtained by purchase whether by appraisal or opinion of a knowledgeable person,
5. If applicable, a Statement of the Basis For the Determination of Just Compensation
6. If applicable, a copy of the written purchase offer and documentation of the date of delivery,
7. If applicable, as in the case of a donation, a Property of Servitude Acquisition Waiver,
8. Copy of a Contract of Sale or Act of Donation,
9. Copy of a Statement of Settlement Costs and evidence (via a copy of a cancelled check) that the owner received net proceeds (if applicable) due from sale,
10. Copy of recordation at the appropriate parish courthouse,
11. If applicable, a copy of an appeal or complaint filed and Agency response.

Persons Not Displaced Documentation on persons not displaced shall include:

1. Evidence that the person received timely written notice that he/she would not be displaced by the project;
2. Evidence that tenants occupying a dwelling received a timely offer of: (a) a reasonable opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling on the real property and (b) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or a move to another unit on the real property;

3. For each occupant that is not displaced but elects to move permanently from the real property, indicate the reason for the move and any personal contact to explain that the person will not qualify for relocation payments as a "displaced person".

Displaced Persons. For persons displaced, there shall be separate case files that include:

1. Identification of the person's name, address, racial/ethnic group classification and date of initial occupancy. For residential tenant-occupants, include age, sex, and income of all members of the household and monthly rent and utility costs. For homeowners, include Agency "acquisition cost" of unit. For nonresidential occupants, include type of enterprise;
2. Evidence that person received timely written notice of possible displacement and a general description of the relocation payments and advisory services for which he/she may be eligible, basic eligibility conditions and the procedures for obtaining payments;
3. Evidence that person received timely written notice of eligibility for relocation assistance and, for those displaced from a dwelling, the specific comparable replacement dwelling and the related cost to be used to establish the upper limit of the replacement housing payment;
4. Identification of relocation needs and preferences, dates of personal contacts and services provided;
5. Identification of referrals to replacement properties, date of referral, rent/utility costs or sale price (if dwelling), date of availability, reason(s) person declined referral;
6. Copy of 90-day notice and vacate notice, if issued;
7. Identification of actual replacement property, rent/utility costs or sale price (if dwelling) and date of relocation;
8. Copy of replacement dwelling inspection report showing condition of unit and date of inspection;
9. Copy of each approved claim form and related documentation, evidence that person received payment, and if applicable, Section 8 Certificate or Housing Voucher;
10. Copy of any appeal or complaint filed and grantee response.

ANTIDISPLACEMENT

Introduction

On August 17, 1988, HUD published an interim rule (53FR31234) setting forth policies and requirements governing displacement, relocation, real property acquisition, and replacement of low/moderate income housing under the CDBG programs. One of the major purposes of the rule was to implement revisions to Section 104 (d) of the Housing and Community Development Act of 1974 (the "Act") made by Section 509 of the Housing and Community Development Act of 1987, approved February 5, 1988. The revised section provides that grants under Sections 106 and 119 of the Act may be made only if the grantee certifies that it has adopted and is complying by following a Antidisplacement and Residential Relocation Plan.

Task D-7: Residential Antidisplacement and Relocation Assistance Plan

Every grantee is required to adopt a Residential Antidisplacement and Relocation Plan and Certification before any funds may be dispersed to that grantee. This plan must be adopted by resolution through your governing body and you must designate in the plan who the contact person is for Antidisplacement Activities. (See **Exhibit D-15** and **D-16**)

The plan must certify that the grantee is following a residential antidisplacement and relocation assistance plan which contains two major components:

- a. A requirement to replace all occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than low/moderate-income housing in connection with an activity assisted under the HCD Act (see CFR 570.496a(c)(1) and 24 CFR 570.606(c)(1); and
- b. A requirement to provide certain relocation assistance to any lower income persons displaced as a direct result of (1) the demolition of any dwelling unit or (2) the conversion of a low/moderate-income dwelling unit to a use other than a low/moderate-income dwelling in connection with an assisted activity.

Task D-8: Displaced Person

The term "displaced person" means any lower income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of an occupied or vacant occupiable low/moderate-income dwelling unit or the demolition of any dwelling unit, in connection with an assisted activity.

In administering your LCDBG Program it will be helpful to understand when a person is considered displaced under Section 104(d). The following example should be noted:

- (1) A person who moves permanently from the real property, after the person receives a notice from the Agency to move permanently, is considered a displaced person if the move occurs after the Agency initially submits a request for financial assistance that is later provided for the requested activity.
 - (a) Whenever the Agency is a private property owner, e.g., a private developer or nonprofit organization, the request for financial assistance is the initial application by the property owner (or person in control of the site) that is submitted to the grantee (includes State recipient).
 - (b) Whenever the Agency is the grantee (includes State recipient), the request for financial assistance is:

- (i) For the State CDBG Program, the initial submission of an application to the State by the State recipient requesting assistance under 24 CFR Subpart G;
- (2) A person who moves permanently from the real property before notification is considered a displaced person if HUD or the grantee (includes State recipient) determines that the displacement resulted directly from the conversion of an occupied or vacant occupiable low/moderate-income dwelling unit to another use or the demolition of any unit in connection with the assisted activity.
- (3) Each tenant-occupant of a dwelling unit who will not be displaced must be provided timely notice and reimbursed for any out-of-pocket expenses. Any such tenant who moves permanently from the real property will qualify as a displaced person if any one of the following three situations ((a), (b), or (c)) has occurred:
 - (a) The tenant moves permanently after the execution of the Agreement without prior written notice offering the tenant the opportunity to occupy a suitable decent, safe, and sanitary dwelling unit in the same building/complex following the completion of the project under reasonable terms and conditions. Reasonable terms and conditions include:
 - (i) No unreasonable change in the character or use of the property;
 - (ii) A monthly cost for rent and utilities that does not exceed the greater of:
 - (A) The tenant's monthly rent and estimated average monthly utility costs before the execution of such agreement; or
 - (B) The "Total Tenant Payment" for that person.
 - (b) The tenant was required to relocate temporarily for the project but (i) the tenant was not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses to and from the temporary unit and any increased housing costs, or (ii) other conditions of the temporary relocation were not reasonable. (If the tenant returns to the building/ complex, he or she is not a displaced person, but this does not relieve the Agency of its obligation to reimburse the person for such out-of-pocket expenses); or
 - (c) The tenant is required to move to another unit in the same building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

- (d) Persons Not Considered a "Displaced Person." If a comparable dwelling unit is available to the displaced person at a monthly cost (rent plus estimated average monthly utility cost) that does not exceed the "total tenant payment per month or a Section 8 certificate or voucher is made available to that person."
- (e) When In Doubt. The Agency should, at any time, ask the State or the HUD field office administering these relocation assistance requirements to determine whether a specific displacement is or would be covered by these rules.

Task D-9: Relocation Assistance Under Section 104(d)

The basic relocation assistance payments under Section 104(d) that an individual can receive are either at the Uniform Relocation Assistance (URA) levels or at greater levels under Section 104(d).

For specific guidance on this subject you should refer to HUD Handbook 1378, available from the Office of Community Development. The level of assistance under Section 104(d) should be looked at very closely before any individual is displaced under the LCDBG Program.

Task D-10: Rental Assistance and Purchase Assistance

Under Section 104(d) there are very specific and detailed requirements associated with Rental Assistance and Purchase Assistance that must be followed when anyone is displaced. In lieu of repeating these detailed requirements in this subpart, please refer to HUD Handbook 1378.

The Antidisplacement regulations are somewhat new to the CDBG Program. There has been much discussion in Washington, D.C. and regionally as to their impact on the CDBG Program.

There are still major issues surrounding Section 104(d) that need to be clarified. We have attempted to cite only a portion of the requirements of Section 104(d) above as the specific procedures and record keeping requirements set forth by law can be found in HUD's Handbook 1378.

Prior to any demolition or displacement or any individuals because of the ramifications of Section 104(d) you must contact the Office of Community Development for instructions on how to proceed.

RELOCATION/DEMOLITION

Introduction

"Displacement" means the involuntary movement of persons (individuals, families, businesses, organizations, or farms) from their properties as a result of: (1) an activity assisted in whole or in part with CDBG funds; or (2) a non-CDBG assisted activity, where such activity is a prerequisite

for an activity carried out with CDBG funds (e.g. acquisition of land with local funds for a neighborhood facility to be constructed with CDBG funds).

Title I of the Housing and Community Development Act of 1974 as amended through 1983 requires States to have their local government recipients certify that they will minimize displacement of persons as a result of activities assisted with Title I funds.

Task D-11: Developing a Local Relocation/Demolition Policy

Section 570.606 of the federal regulations governing the LCDBG program states that where one or more CDBG activities could result in displacement, as defined in 570.606, the grantee shall develop, adopt, and make public a statement of local policy indicating the steps that will be taken, consistent with other goals and objectives of the CDBG program, to minimize displacement of persons from their homes and neighborhoods and to mitigate the adverse effects of any such displacement on low and moderate income persons. **Exhibit D-17** contains a recommended local Relocation policy/Grievance procedure.

The State cannot provide CDBG funds to any local government or agency to pay all or part of the cost of any project or property or in the displacement of any person, unless the State receives satisfactory assurance from the local government or agency that certain requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act 1970 (Uniform Act) and Title I will be met. The State requires all applicants for CDBG funds to evaluate their proposed activities to assess their potential to cause temporary or permanent displacement or other hardships to low and moderate-income persons. Applicants proposing CDBG activities that will result in temporary or permanent displacement of low and moderate income persons are required to develop a written plan for assisting such persons. They are also required to describe in their application for funding, actions that will be taken to mitigate any adverse effects resulting from CDBG funded activities that cause displacement.

When the CDBG funded project or activity results in the acquisition of real property or the displacement of persons as a result of CDBG funded acquisition activities, the Uniform Act and its implementing regulations set forth in 24 CFR 42 shall apply. If there is no real property acquisition involved in the displacement of persons resulting from CDBG funded activities the displacement is not subject to the Uniform Act. Such payments and assistance may be higher than the levels established in the Uniform Act; however, the recipient can make such payments and assistance only upon a written determination that the payments are appropriate. The recipient must adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacee. The policy must insure fair, consistent, and equitable treatment of persons displaced as a result of CDBG funded activities regardless of race, color, religion, national origin, sex, age, handicap, status or source of income.

The State requires, at a minimum, that the local relocation policy provide for:

1. The payment of reasonable moving expenses;
2. The provision of advisory services as needed to help the displacee in moving, including: 1) Replacement site requirements, 2) Need for outside specialists required for move, 3) Early identification and resolution of realty/personal property issues, 4) Estimated time needed to vacate, 5) Anticipated difficulty in locating replacement site, 6) Identification of advanced relocation payments required for the move;
3. For residential tenants and owners, financial and advisory assistance sufficient to enable the tenant displaced to obtain decent, safe, and sanitary housing at an affordable rental cost to the tenant. In providing advisory assistance to displaced persons to obtain such housing, recipients shall advise them of their rights under the Federal Fair Housing Law (Title VIII), and of replacement housing opportunities in such manner that, wherever feasible, the displacees have a choice between relocating within their own neighborhoods consistent with the recipient's responsibility to affirmatively further fair housing;
4. Under the local policy, rental cost shall be considered to be affordable, if the rent plus the high cost of utilities when not included in the rental rate, does not exceed the greater of the rent plus utilities paid by the tenant prior to the displacement activity or does not exceed 30 percent of the gross monthly income of all adult members of the tenant's household, including supplemental income from other public agencies, whichever is higher. Purchase cost shall be considered affordable if the monthly housing cost, including the cost of all mortgage payments, real property taxes, and reasonable utility charges, does not exceed the greater of the monthly housing cost paid by the displacee prior to the displacement activity or does not exceed 30 percent of the displacee's household, including supplemental income from other public agencies, whichever is higher;
5. The basis for determining the amount of relocation payments;
6. A relocation plan to provide decent, safe, and sanitary housing at affordable costs;
7. Transportation to inspect replacement housing;
8. The grantee cannot propose or request a displaced person to waive his/her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

Elements that must be included in the local policy are:

1. The conditions under which displacement may occur.
 - A statement that identifies the community development program that will cause displacement to occur and the area in which the displacement will take place; and basis for displacement (both temporary and permanent), e.g. acquisition, code enforcement, specifying codes involved, relocation/demolition, or rehabilitation.
2. Eligibility requirements for benefits and assistance.
 - Conditions for eligibility;
 - Conditions for providing temporary relocation payments;
 - Occupancy requirements for benefits and assistance (including types of occupancy, e.g. owner/renter, and term of occupancy of at least 180 days for homeowner occupants and 90-days for tenants).
3. Benefits and assistance.
 - Types and amounts of payments for owner/renters;
 - Conditions of each type of payment;
 - Moving expenses, including the amount and conditions under which such expenses will be paid or not paid;
 - Under which benefits and assistance will be denied, e.g. early move and relocation into substandard housing;
 - Availability of other social services, if applicable.
4. Replacement housing.
 - Procedures for selecting safe, sanitary, and decent, including inspections, approval process, and use of realtors and Civil Rights statement; counseling and advisory service to be provided by the recipient to the displacee in locating replacement housing;
 - Under the local policy, replacement housing need not be functionally equivalent to and substantially the same as the housing from which the displacee is required to move. However, the replacement housing must be safe, sanitary and decent and meet local housing and occupancy codes. See HUD Handbook 1378 for the definition of safe, decent, and sanitary.

5. Claims for payments and assistance.
 - Explanation of how, when, and where claims are to be filed;
 - Claim forms with an explanation of where assistance in completing claims can be obtained.

6. Project location maps.
 - A copy of detailed maps showing project location in the jurisdiction and specific location of each activity (houses, streets, etc.).

7. Replacement housing inventory.
 - The recipient should maintain a list of all know available housing and realtors who manage and typically list low-cost housing.

8. Guidelines for displacees.
 - Explanation of displacee rights, responsibilities, and privileges;
 - Outline of specific steps they should follow in order to file an appeal;
 - Explanation of how the appeal will be reviewed;
 - Time limits for processing and reviewing appeals;
 - Statement of the displacee’s rights to appeal to the State if they are not satisfied with the local agency's decision. This should included identification of the address and telephone number of the Department of Community Affairs;
 - Statement of the displacee’s rights to appeal to the courts if not satisfied with the local agency's decision;
 - Statement of displacee’s rights under the Civil Rights Act (Title VI and Title VII).

When developing the local policy, the recipients should use the recommended Local Relocation Policy included in this manual. If the locality decides to develop a relocation policy that is substantially different from the recommended local policy, State approval of the policy should be obtained before adoption.

Task D-12: Understanding Basic Relocation Requirements

Relocation is a critical element of implementing your CDBG project. If you do not have relocation experience, it is essential that you understand the requirements, develop procedures to handle them and educate yourself both by reading the available written materials and contacting localities near you that have relocation experience.

Most relocation in connection with your CDBG project may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This law is commonly called the Uniform Act. If your project entails relocation, you need to refer to www.hud.gov and download Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition, and copies of the HUD brochures, Relocation Assistance to Displaced Homeowners and Relocation Assistance to Displaced Tenants (Exhibit D-18). TAKE TIME TO READ THESE CAREFULLY. These brochures are for residential relocation only. There are different requirements for the relocation of farms, commercial and industrial uses. If your program involves non-residential relocation, DOA will give you additional materials and guidance since non-residential relocation is a more complicated process. Your Local Government Representative is a major resource you should use if you are uncertain how to proceed.

Persons displaced may be eligible for two types of relocation payments: moving costs and replacement housing payments. For a summary of relocation eligibility and benefit guidelines, see **Exhibit D-19**.

Moving Costs: All displaced persons are eligible for moving costs if the move occurs after initiation of acquisition negotiations or after acquisition. The displaced person can choose to receive either actual moving and related expenses, supported by bills and other documentation or receive a fixed payment. Actual moving and related expenses include:

- Transportation up to 50 miles for moving him/herself, his/her family, and personal property;
- Packing and unpacking personal property;
- Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property;
- Storage;
- Replacement value of property lost, stolen or damaged during the move;
- Insurance in connection with move and storage;
- Other costs related to move if approved by recipient as reasonable.

Alternatively, an eligible displaced person may also elect to take a fixed payment for moving expenses that is based on the Federal Highway Administration allowances.

Replacement Housing Payments: These payments are available to 180-day owner-occupants and 90-day owner-occupants and tenants. The 180-day owner-occupants must meet the following criteria:

- Owned and occupied the acquired dwellings for 180-days prior to initiation of acquisition negotiations;
- Purchases and occupied decent, safe and sanitary units within one year after the date of receipt of final acquisition payment or the date of the move from the acquired unit, whichever is later;

- Filed a claim within 18 months of the time the move is completed.

An 180-day owner-occupant who relocates to an ownership unit is eligible for a maximum replacement housing payment of up to \$22,500, unless otherwise stipulated in the grantee's locally adopted Relocation Policy. The payment represents the combined costs of:

- The cost difference between the acquisition price of the acquired unit and the purchase price of comparable replacement housing or the price of the actual unit purchased, whichever is less;
- Increased interest costs;
- Eligible incidental settlement costs.

However, section 205(c)(3) of the URA precludes displacement from a dwelling unless a comparable replacement dwelling is available. Therefore, if the payment exceeds \$22,500, the additional assistance will be provided, according to the grantee's locally adopted Relocation Policy.

The 90-day tenants and owner-occupants must meet the following criteria:

- Occupied the acquired units 90-days prior to initiation of acquisition negotiations;
- Relocated into decent, safe and sanitary unit within one year after --
 1. In the case of a tenant, the date he/she moves from the acquired unit;
 2. In the case of an owner-occupant, the date of receipt of final acquisition payment or the date of the move filed a claim within 18 months of the time the move is completed.

A tenant or owner-occupant that relocates into a rental unit is eligible for a maximum \$5,250 Rental Assistance Payment. This payment represents 42 times the monthly difference between his/her housing cost at the original dwelling and the monthly housing cost of comparable replacement housing, or the actual unit rented, whichever is less. This payment must be made in a lump sum unless the displaced person specifically requests that the payment be made in installments.

A tenant who relocates to an ownership unit is eligible for a maximum \$5,250 Down Payment Assistance Payment. This payment may be increased according to eligible circumstances described in HUD Handbook 1378.

The Down payment Assistance Payment must be applied to the purchase price of the replacement dwelling and related incidental expenses. The payment is determined on the basis of the amount required to obtain conventional financing for the decent, safe and sanitary dwelling actually purchased and occupied.

Certain benefits may be prorated for unrelated individuals living together. For guidance, check Handbook 1378.

You should clearly understand and indicate that the benefits under the Uniform Act are rights to which the individual is entitled and that your job is to ensure that all displacees receive the maximum amount of benefit to which they are entitled. There are no income or need criteria for benefits. The wealthy as well as the poor are eligible if they are relocated.

Task D-13: Defining Relocation Procedures

The basic benefits described in **Task D-11** must be provided by your program. You may choose to provide payments higher than these. You do this by formal action of your governing body. If higher benefits are adopted, your local relocation policy must define those higher benefits.

The community must determine how the Uniform Act will be implemented. Among other things, procedures should be developed covering responsibility for the following: notification of eligibility and available assistance, processing claims, making payments, handling grievances, and providing documentation.

Grievance Procedure

Your procedures should cover grievances. The Grievance Procedure must outline the appeals process, including the grounds for filing an appeal, to which appeals should be filed in your locality, appropriate time limits, and the right of appeal to the State. Requirements concerning appeals are contained in the Handbook. For our program, simply substitute the word State each time the word HUD is used. Also, the Commissioner of Administration will function in place of the HUD Area Director.

Task D-14: Providing Information and Counseling

It is your responsibility to inform occupants of their rights, send them the required notices and assist them to find replacement housing. Therefore, you should identify the people to be relocated as soon as possible. A Notice of Eligibility for Relocation Assistance (**Exhibit D-20**) must be sent to all owner-occupants or tenants in occupancy within 30 days of the written offer to purchase the property if the occupant is going to be relocated. This Notice must be accompanied by a copy of your relocation procedures or the appropriate brochure. A copy of your Grievance Procedure taken from your local policy should be sent with these materials.

All notices must be written in plain, understandable language. **THEY MUST BE EITHER HAND DELIVERED WITH RECEIPT DOCUMENTED, OR SENT CERTIFIED MAIL,**

RETURN RECEIPT REQUESTED. The Notices must also contain the name and phone number of a person who may be contacted for answers to questions or other needed help. The Grievance Procedure should be mailed or hand delivered with the Notice of Displacement and receipt documented. The mailed Notice is appropriate for recipients able to read and understand. If there is any reason to believe the recipient may have difficulty understanding the printed materials, hand delivery is preferable. Receipt must be documented.

If relocatees do not speak or read English, you must make all notices available in appropriate translations. Some large cities have already translated these notices in various foreign languages and your Local Government Rep will help you obtain copies. If you use another City's translation, make sure you request a copy of the English version so you can make sure that its notices/procedures are the same as yours.

As soon as these initial notices are sent out, you must interview each recipient, in person, to determine his/her need for assistance. A sample interview format, the first section of a Sample Household Case Record, is provided to show the type of information that is required (**Exhibit D-21**). This includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The staff conducting these surveys and having personal contact with the individuals to be relocated should be very patient, sensitive people capable of understanding the distress of displacement and of dealing with the relocatee in a non-threatening, helpful manner. In general, women are less threatening than men; black interviewers in black areas are less threatening than whites and vice versa. Non-Spanish speaking interviewers in Hispanic areas are less effective than fluent, bilingual interviewers.

You should also remember that some of the persons you are going to relocate may be elderly, with a substantial emotional investment in their present home. In your view, it may be a substandard dwelling unit; to the owner, it is a home that contains a lifetime's memories and mementos. Many will not want to relocate. Some may be frightened of government; others may be suspicious of your intentions. Some may be functionally illiterate or senile. The counseling and assistance required to help these people adequately is significant; and it is the area in which many programs experience greatest difficulty.

In many cases, especially with regard to the elderly, it may be useful to ask if there are any relatives living in the surrounding area. If permission to contact these relatives can be obtained, these contacts can assist in developing a responsible relocation plan for the displacee. Some relatives may

contribute money to the purchase of a dwelling; others will have special skills (e.g., lawyer, realtor) that can facilitate re-housing transactions. Sometimes relatives can also encourage cooperation in the disclosure of information necessary to complete claim forms.

At the same time the interviewers are conducting the family survey, they should review the relocation process with the relocatee. Special attention must be given to: (1) the assistance to be provided by you; (2) the benefits available; (3) the fact that replacement housing payments cannot be made unless the household relocates into a standard unit; (4) the importance of keeping in touch with you; and (5) the need to notify you before they move. It is very important that all significant contacts with displacees be logged into Section 5 of **Exhibit D-21**, Household Case Record.

Task D-15: Identifying Replacement Housing Needs

REPLACEMENT HOUSING CANNOT BE PROVIDED UNLESS YOU ARE ACTING UNDER A CODE ENFORCEMENT POLICY OR PLAN IN CONJUNCTION WITH STATE LAW AND LOCAL ORDINANCE.

A primary purpose of the household survey is to provide the information needed to determine replacement-housing needs. All replacement housing must be "decent, safe and sanitary". This means that the replacement unit must meet local housing or occupancy codes.

The only times that local housing or occupancy codes do not define "decent, safe and sanitary" are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define "decent, safe and sanitary". The unit must also be free of lead-based paint hazards and or architectural barriers, if serving a handicapped person. A Sample Inspection Report format is shown as **Exhibit D-22**.

Comparability/Functionally Similar

In addition to being "decent, safe and sanitary", the replacement unit must also be "functionally similar" to the acquired unit with respect to the number of rooms and living space. The term "functionally" similar means that the comparable replacement unit must perform the same function, provide the same utility and be capable of contributing to the same lifestyle as the acquired dwelling. While it need not contain every feature of the acquired dwelling, the principal features must be present.

This applies unless additional or larger rooms are needed to meet "decent, safe and sanitary" criteria (especially overcrowding). This means that a family of six living in a two-bedroom unit may require a four-bedroom replacement unit to meet local codes or Section 8 standards, if applicable. On the other hand, an elderly widow living alone in a three-bedroom unit is entitled to a three-bedroom unit. They may choose a smaller unit, but you must provide three (3) reasonable choices of comparable replacement units before issuing a 90-day notice to vacate.

Affordability

Further, the referral units must be affordable; that is, the monthly housing costs shall not exceed 30 percent of the household's income with the replacement housing payments. Since the acquisition price for a substandard house may be low, the purchase price coupled with even the maximum replacement housing payment (\$22,500) may be insufficient to purchase (free and clear) a comparable unit with monthly mortgage, taxes and utility costs that do not exceed 30 percent of monthly income or established fair market rents.

If you cannot identify comparable, affordable replacement housing using these standards, the inability to relocate site occupants will jeopardize the project. You may seek other means of assisting displacees under the "Last Resort Replacement Housing" provisions of the regulations.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the handicapped in a replacement dwelling.

Task D-16: Locating Replacement Housing

Having identified the replacement housing needs, you must begin to inventory available housing resources. In doing this, you must be aware of affirmative action criteria that must be met when relocating low-income and minority persons. The regulations require that the community make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available. This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of your community, low-income or minority relocatees must be given at least one replacement housing choice in those areas before you can give such relocatees a 90-day notice to vacate.

Furthermore, you are required to make available to low-income and minority families special counseling and related services, (e.g., transportation and escort services). You may secure these services through fair housing or civil rights groups. Many cities have focused their search for replacement units in low-income or minority areas because those areas were where the less expensive housing was concentrated. Now, every community must broaden its search to include middle income and predominantly white areas. We will closely monitor this requirement.

In inventorying available resources, you should contact landlords, realtors, and movers; read the classified ads; and tour neighborhoods looking for "For Rent" and "For Sale" signs. Often affordable units are not advertised. When a landlord puts a vacancy sign on his/her building, those most likely to learn about the vacancy sign are neighborhood residents interested in moving out of their current quarters. Depending on the timing of displacement, these listings can be inspected; and, if found to be decent, safe and sanitary, placed on a list to be used for referrals.

Public housing resources may prove less helpful than anticipated. Displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular). Also, there have been cases in which the public housing authority has failed to cooperate by refusing to disclose the number and size of vacancies it has, or by refusing to grant preference to displacees.

The process of finding comparable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to re-housing resources, and accompany displacees to inspect possible dwellings. Up-to-date information on the availability and prices of comparable sales and rental housing must be provided. All units must be inspected and certified as meeting local housing and occupancy codes before being placed on a referral list.

Self-Relocations

Some relocatees will not wait for you to locate comparable units. They will search for their own units and relocate themselves. Self-relocations can prove to be a problem. Occupants who relocate themselves risk not receiving the compensation to which they are entitled. This can happen because: (1) the occupants do not know they are entitled to money and fail to apply; (2) the locality is unable to trace them to their new quarters; or (3) the new quarters are substandard (in which the relocatees still receive moving expenses). Self-relocatees who do not inform you of their plans forego a pre-move inspection of their new quarters.

An inspection after a move is often ineffective in securing needed repairs. You have little leverage with the landlord at this point. Neither does the occupant unless they initiate code enforcement proceedings. However, actions of this kind can result in a tenant's eviction, either as a result of retaliation by the landlord or because the required repairs are so extensive that they cannot be made until the building is vacated.

Self-Relocation Into a Substandard Unit

If an individual locates or moves into a replacement unit that is not decent, safe and sanitary, you must really try to upgrade the unit to minimum code in order to entitle the relocatee to benefits. This can include providing any assistance for which the unit is eligible with CDBG funds or securing comparable assistance from other sources. In the event that you cannot get the unit brought up to code, you must inform such relocatees that if they remain in or move to another substandard unit, they will not be eligible for replacement housing payments although they will be eligible for moving expenses. You must also inform them that if they move into a standard dwelling within one year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment. A sample of such a letter is **Exhibit D-23**.

Housing Discrimination in Relocation

There is often a special problem in moving non-white displacees to privately owned replacement units. Many times a white city/county employee will be told by the landlord or owner that a unit is vacant and available. Yet when a non-white person goes to look at the unit as possible replacement housing, they will be told it is not available. Private landlords may be discriminatory in their renting practices. Individual displacees who have been discriminated against may not know how to take action on their own; and legal action is often too expensive to be a practical solution for them. You must provide assistance in cases of housing discrimination; you need not become a prosecutor, but you must press displacees' claims of discrimination. Please review your local Fair Housing Ordinance for guidance.

If a displacee has been discriminated against, there are two (2) alternatives. Suit may be filed in a federal court, in which case he/she should either consult an attorney or the local Legal Aid Society for assistance. The relocation officer should advise him/her regarding both sources of help. If the court finds in favor of the displacee, it can stop the sale of the house or the rental of the apartment to someone else, and award the displacee damages and court costs. Instead of taking his/her complaint directly to court, the second alternative is for the displacee to send the complaint to DOA within 180-days of the incident, simply telling them of this option and explain their rights to them. Upon receipt of the complaint, the State's Human Rights Commission may take one or more of the following steps: (1) investigate to see if the law has been broken; (2) contact the person accused of the violation and try to get him/her to end the discrimination; (3) refer the complaint to the Human Rights Commission -- if there is one where the incident occurred -- for investigation and possible resolution; and/or (4) recommend that he/she go to court.

Common Deficiencies

Failure to provide assistance in locating suitable housing. Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration.

Failure to provide assistance in identifying and remedying instances of discrimination in sales and rentals of housing units.

Task D-17: Completion of Relocation

When you have made a reasonable choice of comparable replacement housing opportunities available to the relocatee, you may issue the 90-day Notice to Vacate (**Exhibit D-24**). This notice cannot be issued before the Notice of Displacement has been issued or before a reasonable choice of comparable replacement housing has been made available that meet the criteria described in **Task D-20**. The notice must state the date by which the property must be vacated, and indicate that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 30

days after you have obtained title to the property or legal right of possession, whichever comes earlier. This means that if negotiations for acquisition drag on for six months, the occupant cannot be required to move until at least 30 days after you have obtained the title. Thus, timing of the notices is very important.

Prior to, and following, the 90-day notice, you continue to work with the relocatees -- inspecting units, certifying they meet code; assisting or preparing mortgage applications, sales agreements, or leases as appropriate; assisting or preparing claim forms which are available from your State Program Rep.; processing and verifying claims; documenting claims and making payments. You should make every effort to expedite relocation since claims may be filed up to 18 months following the completion of the move. This means that claims can be filed months, perhaps years, after the conclusion of your program.

Therefore, if you have unsettled relocation cases at the time you want to close out your grant, you should show maximum payments for each potential claimant as unpaid costs on your Closeout Form.

Otherwise, we may cancel the funds remaining in your Letter of Credit and you would be financially liable for relocation costs. For more detail on closeout procedures, refer to the program closeout section of the material you have received.

Claim forms for relocation payments are included in the Exhibits. They include: Claim for Moving Costs, **Exhibit D-25**; Claim for Replacement Housing Payment for Homeowners, **Exhibit D-26**; and Claim for Rental Assistance or Down payment Assistance, **Exhibit D-27**. Instructions for completing each claim form are provided.

Timely Payment

You are responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within 30 days following the submission of sufficient documentation to support the claim. The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, you must document that the payment was used for the purpose intended. You should have the recipient sign a letter acknowledging receipt of relocation payments (**Exhibit D-28**).

Use of Relocation Payments

Payments for down payment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters need not be applied to housing costs. The rental assistance payment must be made in a lump sum unless the recipient specifically requests otherwise. You have no right to question the uses to which that payment is put; it need not be accounted for beyond receipt by the claimant.

Denying a Claim

If you intend to deny a claim because the replacement unit is not free of lead-based paint, you must notify us 15 days in advance of the denial and indicate the efforts you made to secure compliance with the lead-based paint poisoning prevention requirement. You should make every effort to satisfy this requirement. Denial of a claim on this basis is unwise unless extraordinary efforts were made and failed. In **Task D-16**, we discussed your responsibilities if a person makes a claim for payment which must be denied because the unit is substandard. Briefly, you must inform the claimant why the claim is being denied; indicate the assistance available for bringing the current unit up to code, and the ongoing opportunity to qualify for assistance by moving to a standard unit.

You must further inform the claimant that the move to a standard unit must be completed within 12 months of the date of removal from the acquired dwelling or receipt of final payment (if owner-occupant), whichever is later; and that the claim must be submitted within 18 months of the completion of the move. As noted, **Exhibit D-23** is a sample letter containing this information.

In any instance in which payments are not made, you must be able to fully document your efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible.

The regulations mandate that any claim for payment be submitted to you within a period of 18 months after displacement. You should strictly adhere to this limitation and fully document when you initially notified the recipient of this requirement and all subsequent reminders.

Waiver of Relocation Benefits

The only circumstance in which relocation benefits will be waived involves a voluntary acquisition in which a owner-occupant was required to waive relocation benefits as a condition of sale. A tenant's relocation benefits cannot be waived by the owner, nor can such a waiver be required as a condition of voluntary acquisition.

Relocation benefits are rarely waived because they are tax-free and there is not a tax benefit associated with waiving these payments. Should a relocatee choose to waive relocation benefits, be absolutely certain a Waiver of Relocation Benefits and Other Services is completed (**Exhibit D-29**). Also be certain the individual's relocation file documents the individual's decision to waive benefits. Any case involving a waiver of relocation benefits will be carefully examined to insure no coercion was involved.

Task D-18: Record Keeping

Record keeping is a very important part of your relocation responsibilities. You must maintain a separate case file on each displaced household for four years after final project closeout or after

the relocation payments, whichever is later. The relocation file checklist (**Exhibit D-31**) identifies all the information required for each file. You should keep a copy of the checklist in front of each relocation file for tracking purposes and to facilitate state and local review. You must also complete **Exhibit D-31** and maintain in your files.

Confidentiality of Records. Records maintained by the grantee/Agency to demonstrate compliance with the policies in this handbook are confidential. They shall not be made available as public information, unless required by applicable law. Only authorized staff of the grantee/Agency or the State or HUD shall have access to them. However, upon the written request of an affected person, the grantee/Agency shall give the person or his designated representative the opportunity to inspect and copy all pertinent records during normal business hours, except material which the grantee/Agency determines should not be disclosed to the person for reasons of confidentiality.

In addition, the following information at a minimum shall be maintained for at least three years after each owner of the property and each person displaced from the property have received the final payment to which they are entitled.

1. List of Occupants. For each project, the grantee's files shall include a list or lists identifying the name and address of:
 - a. All persons occupying the real property at the beginning of the project. Generally, this is the date of the initial submission of the application for assistance by the property owner to the grantee or by the grantee to HUD; however, if site control is not obtained until after submission of the application, the date of site control is usually considered the beginning of the project;
 - b. All persons moving into the property on or after the date on which the project begins but before completion of the project; and
 - c. All persons occupying the property upon completion of the project.

The list(s) may be maintained in a suitable computer generated format that also indicates, for project management purposes, progress made in carrying out the program.

2. Tenants Not Displaced. Documentation on tenants not displaced shall include:
 - a. Evidence that the tenant received timely written notice that the tenant would not be displaced by the project.
 - b. For a tenant-occupant of a dwelling, evidence that the tenant received (a) a timely offer of an opportunity to lease and occupy a suitable, affordable,

decent, safe and sanitary dwelling in the building/complex upon completion of the project under reasonable terms and conditions, and (b) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or a move to another unit in the building/complex.

- c. For each tenant that is not displaced but elects to relocate permanently, an indication of the reason for the move and any personal contact to explain available alternatives and that the tenant will not qualify for relocation payments as a "displaced person." This information must be available for all tenants who occupied the property before project completion but did not occupy the property after project completion and did not receive relocation assistance as a displaced person.
 - d. Racial/ethnic/gender identification as required by program rule (implementing section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act).
 - e. A copy of any appeal or complaint filed and Agency response.
3. Displaced Persons: For persons displaced, there shall be separate case files that include:
- a. Identification of the person's name, address, racial/ethnic group classification and date of initial occupancy. For residential tenant-occupants, include age, sex, and income of all members of the household and monthly rent and average monthly utility costs for the displacement dwelling. For homeowners, include Agency "acquisition cost" of unit. For nonresidential occupants, include type of enterprise.
 - b. Evidence that the person received early written notice of the possible displacement and a general description of the relocation payments and advisory services for which the person may be eligible, basic eligibility conditions and the procedures for obtaining payments.
 - c. Evidence that person received timely written notice of eligibility for relocation assistance and, for those displaced from a dwelling, the specific comparable replacement dwelling and the related cost to be used to establish the upper limit of the replacement housing payment.
 - d. Identification of relocation needs and preferences, dates of personal contacts and services provided.
 - e. Identification of referrals to replacement properties, date of referral,

rent/utility costs or sale price (if dwelling), date of availability, and reason(s) person declined referral.

- f. Copy of 90-day notice and vacate notice, if issued.
- g. Identification (address) of actual replacement property, rent/utility costs or sale price (if dwelling) and date of relocation.
- h. Copy of replacement dwelling inspection report showing condition of unit and date of inspection.
- i. Copy of each approved claim form and related documentation, evidence that person received payment and, if applicable, Section 8 Certificate or Housing Voucher.
- j. Copy of any appeal or complaint filed and grantee response.

For additional record-keeping requirements, refer to Part A, Program Administration, **Task A-17: Record Keeping and Reporting**.