



SUBJECT: Understanding Section 104(d) of the Housing and Community Development Act (Barney Frank Amendment)

- Certifying to a Residential Anti-displacement and Relocation Assistance Plan
- Procedure for Determining Vacant Occupiable Low- and Moderate-Income Units
- Question and Answers on Section 104(d)

ISSUED: June 25, 2007

DISTRIBUTED TO: Office of Community Development Award Recipients and their Affiliates

POLICY

Effective on February 3, 2005, the Federal Highway Administration, lead rule making agency for Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs (including the U. S. Department of Housing and Urban Development (HUD), revised 49 CFR Part 24. These changes clarify previous requirements, meet modern needs, and improve the service to individuals and businesses affected by federal or federally-assisted projects.

As a result of the changes, HUD is progressively updating its Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition Handbook. A copy of the most current handbook can be located at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780.

Chapter 7 of the handbook describes the requirements for complying with Section 104(d) of the Housing and Community Development Act of 1974, as amended (HCD Act), also known as the Barney Frank Amendment. This policy memorandum updates procedures for the state of Ohio's local government grantees in determining and documenting whether a housing unit being demolished or converted to another use is reducing the supply of affordable housing.

The RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN remains the same and is provided herein. However, the variables in determining whether a unit is vacant and occupiable have changed. Previously any property that had a before-rehabilitation value of less than \$5,000, had been vacant for at least six months, and had been documented to be dilapidated was not considered suitable for rehabilitation. No further analysis of whether the unit need replaced needed be done. The before-rehabilitation value has been increased to \$10,000 and the length of time the unit needs to be vacant has been reduced to three months.

Additionally the form to calculate the procedure for determining vacant occupiable low-and-moderate income (LMI) units per Barney Frank has been expanded to provide a format for information required to be submitted but previously only referenced in the instructions.

Questions should be directed to the OCD Acquisition and Relocation Specialist at (614) 466-2285.

BACKGROUND

Section 104(d) of the HCD Act and HUD program regulations at 24 [CFR 570.457, 570.496a\(c\), 570.606\(c\) and 570.702\(f\)](#) provide that, as a condition for receiving funds from the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Programs, the grantee must certify that it is following a residential anti-displacement 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 24 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 person (defined in Paragraph 1-16) 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.

RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN

Following is the minimum format to be used as the plan. An executed plan is to be included in all applications to OCD for CDBG and HOME funds. Additionally, the information listed in the plan must be submitted in the application for funds or if program income funds are used to demolish or convert occupied or occupiable low- and moderate- income dwelling units information must be forwarded and approved by OCD prior to commencing the activity.

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

An Anti-Displacement and Relocation Assistance Plan is required by all grantees prior to funding, whether or not demolition activities are planned. If you have not previously adopted a plan, utilize this format at a minimum to adopt a plan. If you have previously adopted a plan, you may submit an executed copy of that plan in lieu of completing this form (if your activities include demolition or conversion, you will need to get clearance from OCD prior to proceeding with any demolition or conversion. ATTACH INFORMATION REQUESTED IN THE FORM TO THE PLAN.

Ordinance or Resolution Number and Date: _____

The _____ (*Community*) will replace all occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than low- and moderate-income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended, and as described in 24 CFR 570.488. HUD regulations have extended this requirement to the HOME program as well.

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in demolition or conversion, the _____ (*Community*) will make public and submit to the Office of Community Development (OCD) the following information in writing:

1. A description of the proposed assisted activity;
2. The location of each site on a map and the number of dwelling units by bedroom size that will be demolished or converted to a use other than as low- and moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by bedroom size that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a low- and moderate-income unit for at least 10 years for the date of initial occupancy;
7. An analysis determining whether a dwelling unit proposed to be demolished is occupiable or not; and
8. An analysis determining whether a dwelling unit proposed to be demolished or converted is considered a low- and moderate-income unit.

The _____ (*Community*) will provide relocation assistance, as described in 24 CFR 570.488, to each low- and moderate-income household displaced by the demolition of housing or conversion of a low- and moderate-income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives under the Act, the _____ (*Community*) agrees to provide substantial levels of assistance to persons displaced by HUD-assisted programs and will further seek to minimize displacement of persons as a result of assisted activities.

Signature of Chief Elected Official, CEO

Typed Name and Title of CEO

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PROCEDURE FOR DETERMINING VACANT OCCUPIABLE LOW- AND MODERATE-
INCOME UNITS
PER SECTION 104(D) – THE BARNEY FRANK AMENDMENT

The analysis procedure outlined on the attached pages established the minimal procedure that communities must follow to determine whether vacant units slated to be demolished or converted with CDBG or HOME funds are considered to be low- and moderate- income units and are “occupiable”. If either condition is true, the unit falls under the protection of the Barney Frank Amendments, and a replacement unit must be provided. This analysis procedure must be completed for CDBG or HOME assisted activities involving the demolition or conversion of residential units and submitted to the Office of Community Development (OCD) for approval prior to the implementation of the activities.

Instructions:

The analysis procedure consists of three parts.

First a determination is made as to the total value of the property. This involves adding the current value of the property to 75 percent of the rehabilitation costs, along with any other fees or costs.

Note: Any property that has a before-rehab value of less than \$10,000, has been vacant for at least three months, and has been documented to be dilapidated will be considered not suitable for rehabilitation. No further analysis need be done in this case.

Second, a determination must be made as to whether the unit is suitable for the rehabilitation. To compute this, use the total cost, as figured earlier, and determine the monthly debt service based on a 30-year mortgage at the current market rate. For multiple unit buildings, divide this figure by the number of units. Add 20 percent to account for taxes, insurance, and other expenses and also add the appropriate utility allowance. This figure represents the Total Housing Payment (THP), which must be compared to area market rents for comparable units. If the rent (THP) exceeds the market rents, the project can be judged to be economically infeasible as a rental project.

Third, a determination must be made as to whether the unit is low- or moderate income or not. To do this, simply compare the THP computed above to the Fair Market Rent (FMR) <http://www.huduser.org/datasets/fmr.html>. If the THP exceeds the FMR, it can be assumed that the unit is not a low-moderate-income unit and, therefore, need not be replaced.

Please attach an explanation page to the analysis page, giving the address of comparable units and describing how the analysis was performed. While a certified appraiser need not be involved, the explanation should clearly establish that the comparable units were appropriate by obtaining a value from a third party who is familiar with property values in the area, such as a Realtor.(attach copy of the opinion)

A housing unit converted or demolished with CDBG or HOME funds, must be replaced if:

- Occupied, regardless of its condition and rents at or below FMR
- Currently vacant but occupied within the past 3 months regardless of its condition
- Vacant for more than three months and suitable for rehabilitation

Conversion includes changing the use of a unit (e.g., from permanent rent housing to a shelter or a non-residential use); and rehabilitating a LMI unit which ultimately causes the unit’s rent to exceed FMR.

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PROCEDURE FOR DETERMINING VACANT OCCUPIABLE LMI UNITS PER BARNEY FRANK

Grantee: _____ Contact Name and No.: _____

Program: _____ Project: _____

Unit Address: _____ Date Submitted: _____

Current Value	\$	No. of Bedrooms	
+ 75% Rehab Cost	\$	FMR=	
+ Other Cost	\$		
TOTAL	\$		
D/S at 30 years at		Rate= \$	D/S per month
Number of units in project=			
Divide D/S by No. Units =		Unit D/S per month	
+ 20% for Misc. Expense =	\$		
+ Utility Allowance =	\$	/month	
Total Housing Payment =	\$	/month	
#1 Comparable Gross Rent * =	\$	/month	
#2 Comparable Gross Rent * =	\$	/month	
Average Comparable Rent =	\$	/month	
Yes	No	Does the total housing payment exceed the average market rent?	
Yes	No	Does the total housing payment exceed the FMR?	
Answers to either of the above questioned is "Yes". This means that the unit is not considered "occupiable" and need not be replaced per Barney Frank requirements.			

* Includes Utilities

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PROCEDURE FOR DETERMINING VACANT OCCUPIABLE LMI UNITS PER BARNEY FRANK

EXPLANATION OF THE ANALYSIS

Addresses of comparable units:

1.	2.
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Describe how analysis was performed:

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While a certified appraiser need not be involved, explain how the establishment of the comparable units was appropriate.

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QUESTION AND ANSWERS ON SECTION 104(D)

Section 104(d) of the Housing and Community Development Act (HCD) provides minimum requirements for federally funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.

What are the Section 104(d) requirements?

- Replacement, on a one-for-one basis, of all occupied and vacant occupiable low- or moderate-income dwelling units that are demolished or converted to a use other than low- or moderate-income housing in connection with an activity assisted under the HCD Act, and
- Provision of certain relocation assistance to any lower income person displaced as a direct result of the following activities in connection with federal assistance:
 - Demolition of any dwelling unit, or
 - Conversion of a low- or moderate-income dwelling unit to a use other than a low- or moderate-income residence.

What triggers Section 104(d)?

Section 104(d) requirements are triggered by the use of HOME, CDBG, Section 108 Loan Guarantee, or UDAG funding in a project involving the demolition or conversion of low- or moderate-income housing.

What are the relocation requirements under Section 104(d)?

The 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) factors in 60 months vs. 42 months for the URA. Section 104(d)-eligible displaced persons may choose to receive relocation assistance under Section 104(d) or relocation assistance under the URA.

What are the guiding regulations for Section 104(d) relocation requirements?

Section 104(d) Regulations: 24 CFR Part 42 is the regulation that implements Section 104(d) of the Housing and Community Development Act.

Where can you go to find more information about Section 104(d) requirements?

You should consult 24 CFR Part 42 and Chapter 7 of HUD Handbook 1378 for more guidance.

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