Office of the Secretary, HUD

24 CFR 40.6; the circumstances under which the building of facility was designed, constructed or altered; and other factors relevant to a determination as to whether there has been noncompliance with this part.

(e) Resolution of matters. (1) If any examination, inspection, periodic compliance review, complaint, or investigation pursuant to this section indicates a failure to comply with the applicable standards or requirements, the Secretary shall attempt to gain voluntary compliance whenever possible.

(2) If it has been determined that voluntary compliance cannot be achieved, the Secretary shall refer the matter to the appropriate Assistant Secretary for action pursuant to his or her program authority regarding the residential structure or other building or facility under investigation, to achieve compliance with the requirements subject to this part. The Assistant Secretary shall report to the Secretary within 30 days of the date of such referral regarding the action taken and the schedule and means of achieving compliance, except that the Secretary may specify a shorter or longer reporting period, as deemed appropriate.

(f) Disposition of unresolved complaints. Unresolved complaints shall be referred to the Architectural and Transportation Barriers Compliance Board to be processed in accordance with 36 CFR part 1150. A complaint shall be deemed unresolved if it is not resolved within 90 days of the date of filing of the complaint with the Department.

(g) Compliance action by other individuals. Individuals other than the Secretary may receive complaints and undertake other appropriate actions to achieve compliance with requirements subject to this part, so long as initial notification of such complaints or proposed actions is given both to the Secretary and the appropriate Assistant Secretary.

§ 42.1 Applicable rules.

Subpart A—General

Sec. 42.1 Applicable rules.

Subpart B [Reserved]

Subpart C—Requirements Under Section 104(d) of Housing and Community Development Act of 1974

42.301 Applicability.
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42.325 Residential displacement and relocation assistance plan.
42.350 Relocation assistance for displaced persons.
42.375 One-for-one replacement of lower-income dwelling units.
42.390 Appeals.

Authority: 42 U.S.C. 3535(d), 4601, 5304, and 12705(b).

Source: 61 FR 51757, Oct. 3, 1996, unless otherwise noted.

Subpart A—General

§ 42.1 Applicable rules.

(a) URA. HUD-assisted programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42
§ 42.301


(b) Section 104(d). In addition to the URA, the Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), and HOME Investment Partnerships (HOME) programs are also subject to section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)). The provisions applicable to these programs are set out in subpart C of this part.

(c) Additional requirements. Applicable program regulations may contain additional relocation provisions.

Subpart B [Reserved]

Subpart C—Requirements Under Section 104(d) of Housing and Community Development Act of 1974

§ 42.301 Applicability.

This subpart applies only to CDBG grants under 24 CFR part 570, subparts D, F, and I (Entitlement grants, HUD-Administered Small Cities, and State programs); grants under 24 CFR part 570, subpart G (Urban Development Action Grants), and Loan Guarantees under 24 CFR part 570, subpart M; and assistance to State and local governments under 24 CFR part 92 (HOME program).

§ 42.305 Definitions.

The terms Fair Market Rent (FMR), HUD, Section 8, and Uniform Relocation Act (URA) are defined in part 5 of this title. Otherwise, as used in this subpart:

Comparable replacement dwelling unit means a dwelling unit that:

(1) Meets the criteria of 49 CFR 24.2(d)(1) through (6); and

(2) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the “Total Tenant Payment” determined under §813.107 of this title, after taking into account any rental assistance the household would receive.

Conversion. (1) This term means altering a housing unit so that it is:

(i) Used for nonhousing purposes;

(ii) Used for housing purposes, but no longer meets the definition of lower-income dwelling unit; or

(iii) Used as an emergency shelter.

(2) A housing unit that continues to be used for housing after completion of the project is not considered a “conversion” if, upon completion of the project, the unit is owned and occupied by a person who owned and occupied the unit before the project.

Displaced person means a lower-income person who, in connection with an activity assisted under any program subject to this subpart, permanently moves from real property or permanently moves personal property from real property as a direct result of the demolition or conversion of a lower-income dwelling. For purposes of this definition, a permanent move includes a move made permanently and:

(1) After notice by the grantee to move from the property following initial submission to HUD of the consolidated plan required of entitlement grantees pursuant to §570.302; of an application for financial assistance pursuant to §§570.426, 570.430, or 570.465 that is thereafter approved; or an application for loan assistance under §570.701 that is thereafter approved;

(2) After notice by the property owner to move from the property, following the submission of a request for financial assistance by the property owner (or other person in control of the site) that is thereafter approved; or

(3) Before the dates described in this definition, if HUD or the grantee determine that the displacement was a direct result of conversion or demolition in connection with an activity subject to this subpart for which financial assistance has been requested and is thereafter approved.

HCD Act of 1974 means the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

Lower-income dwelling unit means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR part 888.

Lower-income person means, as appropriate, a “low and moderate income person” as that term is defined in
§ 42.325 Residential antidisplacement and relocation assistance plan.

(a) Certification. (1) As part of its consolidated plan under 24 CFR part 91, the recipient must certify that it has in effect and is following a residential antidisplacement and relocation assistance plan.

(2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential antidisplacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) Plan contents. (1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.

(2) The plan shall provide for relocation assistance in accordance with § 42.350.

(3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

§ 42.350 Relocation assistance for displaced persons.

A displaced person may choose to receive either assistance under the URA and implementing regulations at 49 CFR part 24 or assistance under section 104(d) of the HCD Act of 1974, including:

(a) Advisory services. Advisory services at the levels described in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19). If the comparable replacement dwelling to be provided to a minority person is located in an area of minority concentration, as defined in the recipient's consolidated plan, if applicable, the minority person must also be given, if possible, referrals to comparable and suitable decent, safe, and sanitary replacement dwellings not located in such areas.

(b) Moving expenses. Payment for moving expenses at the levels described in 49 CFR part 24.

(c) Security deposits and credit checks. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.

(d) Interim living costs. The recipient shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with a displacement, including moving expenses and increased housing costs, if:

(1) The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or

(2) The person is displaced from a "lower-income dwelling unit," none of the comparable replacement dwelling units to which the person has been referred qualifies as a lower-income dwelling unit.
§ 42.375 One-for-one replacement of lower-income dwelling units.

(a) Units that must be replaced. All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income dwelling units.

(b) Acceptable replacement units. Replacement lower-income dwelling units may be provided by any government agency or private developer and must meet the following requirements:

(1) The units must be located within the recipient’s jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(2) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient has provided the information required under paragraph (c)(7) of this section.

(3) The units must be provided in standard condition. Replacement lower-income dwelling units may include units that have been raised to standard from substandard condition if:

(i) No person was displaced from the unit (see definition of “displaced person” in §42.305); and

(ii) The unit was vacant for at least 3 months before execution of the agreement between the recipient and the property owner.

(4) The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under paragraph (d) of this section and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
(5) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.

(c) Preliminary information to be made public. Before the recipient enters into a contract committing it to provide funds under programs covered by this subpart for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the recipient must make public, and submit in writing to the HUD field office (or State, in the case of a unit of general local government funded by the State), the following information:

(1) A description of the proposed assisted activity;
(2) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-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 location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;
(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 lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
(7) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs assessment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

(d) Replacement not required. (1) In accordance with 42 U.S.C. 5304(d)(3), the one-for-one replacement requirement of this section does not apply to the extent the HUD field office determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a nondiscriminatory basis within the area.

(2) The recipient must submit directly to the HUD field office the request for determination that the one-for-one replacement requirement does not apply. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.

(3) A unit of general local government funded by the State must submit the request for determination under this paragraph to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the field office.

§ 42.390 Appeals.

A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A person who is dissatisfied with the recipient's determination on
his or her appeal may submit a written request for review of that determination to the HUD field office (or to the State in the case of a unit of general local government funded by the State). If the full relief is not granted, the recipient shall advise the person of his or her right to seek judicial review.

PARTS 43–45 [RESERVED]

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

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Subpart F—Environmental Impact Statements

50.41 EIS policy.
50.42 Cases when an EIS is required.
50.43 Emergencies.

AUTHORITY: 42 U.S.C. 3509(d) and 4322; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

SOURCE: 61 FR 50916, Sept. 27, 1996, unless otherwise noted.

Subpart A—General: Federal Laws and Authorities

§ 50.1 Purpose, authority, and applicability.

(a) This part implements the policies of the National Environmental Policy Act (NEPA) and other environmental requirements (as specified in § 50.4).


(c) The regulations issued by CEQ at 40 CFR parts 1500–1508 establish the basic procedural requirements for compliance with NEPA. These procedures are to be followed by all Federal agencies and are incorporated by reference into this part. This part, therefore, provides supplemental instructions to reflect the particular nature of HUD programs, and is to be used in tandem with 40 CFR parts 1500–1508 and regulations that implement authorities cited at § 50.4.

(d) These regulations apply to all HUD policy actions (as defined in § 50.16), and to all HUD project actions (see § 50.2(a)(2)). Also, they apply to projects and activities carried out by recipients subject to environmental policy and procedures of 24 CFR part 58, when the recipient that is regulated under 24 CFR part 58 claims the lack of legal capacity to assume the Secretary’s environmental review responsibilities and the claim is approved by