

Guidance on Monitoring for Compliance with the "One-for-one Replacement of Housing" Requirements - Section 104(d) of the Act

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY PLANNING AND DEVELOPMENT

Special Attention of: Notice: CPD-91-25

All Regional Administrators Issued: 08-15-91

All Regional CPD Directors Expires: 08-15-92

All Category A Field Office Managers

All Field Office CPD Directors Cross References: 24 CFR 570.606

SUBJECT: Guidance on monitoring for compliance with the "one-for-one replacement of housing" requirements - Section 104(d) of the Act.

Background:

On July 18, 1990, HUD published a final rule implementing the revision to section 104(d) of the Housing and Community Development Act of 1974, as amended (the Act). This rule specifies the replacement requirements that are triggered when Community Development Block Grant (CDBG) funds are used either for the demolition of a low/moderate-income (L/M) dwelling unit, or for the conversion of a L/M dwelling unit to another use. Conversion to another use occurs when an activity, typically rehabilitation of a L/M dwelling unit, results in that unit no longer being a L/M unit because either (1) the rent after the activity exceeds the Section 8 FMR (fair market rent), or (2) the unit has been converted to a use other than housing.

Under the one-for-one replacement rule, the grantee must provide replacement dwelling units whenever L/M dwelling units are demolished or converted to another use. The intent of this rule is to ensure the maintenance of the L/M housing stock. A L/M dwelling unit, as defined in this rule, is one that has a market rent, including utilities, that does not exceed the FMR for the Section 8 Existing Housing Program. (Usually, housing costs at or below that level would not consume more than 30 percent of the income of a family earning 65 percent or more of the median income in the area.)

Purpose:

The purpose of this notice is to provide guidance to HUD field staff on monitoring CDBG entitlement grantees for compliance with the one-for-one replacement requirements imposed under 24 CFR 570.606(c)(1) of the regulations. Although HUD has provided prior

guidance on this rule through several Notices (CPD Notices 90-40, 88-33 and 88-27), it has become apparent that many grantees are not making the periodic submissions required under 24 CFR 570.606(c)(1)(iii), e.g., notifying HUD in writing when activities are to be implemented which are expected to trigger one-for-one replacement.

This notice contains a checklist for use by HUD staff in monitoring entitlement grantees for compliance with the one-for-one replacement rule on-site. Since the one-for-one replacement requirements are relatively new, HUD field staff should make every effort to monitor their grantees for compliance with these requirements in order to ensure early identification of misunderstanding or misapplication of the rules. A copy of this checklist should also be provided to all entitlement grantees so that they might have an understanding of what HUD will be considering in its review.

CPD Directors must consider how to assign this monitoring responsibility within their office. They need to identify who receives the periodic submissions referenced above. The relocation requirements and one-for-one housing replacement requirements imposed by section 104(d) of the Act may or may not stem from the same CDBG-assisted activity. CPD Representatives might be expected to cover the entire one-for-one replacement monitoring. Alternatively, responsibility could be shared with Rehab Specialists being given responsibility to check for this with respect to CDBG-assisted rehab, and then notify the CPD Representative of any cases found to trigger the replacement requirements. Relocation Specialists might be asked to be on the alert for this requirement during the conduct of monitoring for relocation compliance. The Specialist could then notify the applicable CPD Representative (or Rehab Specialist, where applicable) of any cases encountered in reviewing relocation concerns that might also involve the one-for-one replacement requirements. If more than one functional staff component is to be involved, however, it is important to establish one with overall responsibility for following up with the grantee to ensure that any replacement requirements are met within the time allotted in the regulations. Each office is to notify the CPD Field Coordination Unit in Headquarters of its decisions as to how this monitoring responsibility will be assigned within its jurisdiction within 60 days of the issuance of this notice.

As noted above, under 24 CFR 570.606(c)(1)(iii), grantees are required to notify HUD in writing whenever they plan to undertake an activity that they expect will trigger the one-for-one replacement requirement. Field staff should follow up on any such activities to ensure that the replacement actions are proceeding in a timely way. HUD is considering a revision of the Grantee Performance Report (GPR) to require entitlement grantees to flag activities that involve the use of CDBG funds for the acquisition, rehabilitation or demolition of property as necessary to indicate the grantee's determination that the activity does, or does not, create a replacement of housing responsibility. However, until such a tool is in place, field staff will have to rely on their own efforts to detect cases where the replacement requirement was not properly recognized or declared by the grantee. This will necessarily involve on-site monitoring to a great degree.

It is also expected that the Department will establish special reporting requirements wherein grantees will have to report periodically on the progress they are making in meeting their responsibilities for the replacement of housing. Whether this will take the form of a separate report or be a part of the GPR (or even of the Comprehensive Housing Affordability Strategy (CHAS) report that will be required in the future) has not yet been determined. Until such a requirement is established, however, grantees should be advised to provide HUD with a description of any housing it claims fulfills some or all of its replacement responsibilities during the Federal fiscal year as part of the housing performance report it is required to submit under 24 CFR 570.507(a)(2)(i)(B) for that year.

Inquiries:

Any inquiries about this monitoring guidance should be addressed to the Entitlement Communities Division on FTS 458-1577.

Attachment

Monitoring Checklist:
One-for-One Replacement Housing Requirements (Section 104(d))
CDBG Entitlement Program

I. Grantee Management Systems

A negative response to any of the following three questions indicates a weakness in the grantee's management of the CDBG program for ensuring compliance with the one-for-one replacement requirements.

1. Has the grantee established procedures in its rehabilitation program to determine the applicability of the one-for-one replacement requirements whenever rehabilitation is carried out in connection with a CDBG-assisted activity?
2. Have such procedures been established for demolition or other conversion carried out in connection with a CDBG-assisted activity?
3. Does the grantee maintain a tracking system that:
(a) identifies L/M dwelling units that have been removed, and (b) reconciles this information with the replacement units?

II. Availability of One-for-One Replacement Rule [24 CFR 570.606(c)(1)]

Use the following three questions to determine whether a given activity complied with applicable requirements. If the responses to the following questions are all positive, the one-for-one replacement of housing rule applies to that activity.

If the grantee has not maintained adequate records to enable a response to these questions, make a finding of failure to keep adequate records and proceed, as necessary, to determine whether replacement units are required.

4. Prior to the CDBG-assisted activity, was the market rent (including utilities) for the dwelling unit at or below the FMR?
5. Prior to the CDBG-assisted activity, was the dwelling unit either "occupied* " or "vacant occupiable" ** ?
6. As a result of the CDBG-assisted activity, was the dwelling unit either:
 - i. Demolished OR
 - ii. Converted to another use such that it either no longer serves as permanent housing, or its market rent including utilities exceeds the FMR (except for owner-occupied units that are rehabilitated since they are exempt from this rule)?

III. Criteria for Replacement Units [24 CFR 570.606(c)(1)(ii)]

Check for this only where one-for-one replacement requirement has been determined. If "NO" to any of the questions in this section, the grantee has failed to comply with a requirement for units claimed to be for "one-for-one" replacement.

7. Which units are they claimed to replace?
8. Are the replacement units located within the grantee's jurisdiction and, to the extent feasible, located within the same neighborhood?
9. (a) Are the replacement units comparable (or will they be), in terms of the total number of bedrooms as those units that were demolished or converted?OR

(b) If the replacement units are smaller than those converted or demolished, did the grantee, before committing funds, provide information to the citizens and to HLJD demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction?
10. Were the replacement L/M units made available for occupancy (or will they be) one year before the date of submission of the required information (see question 14 below) or within three years from the date of the agreement for demolition or conversion?
11. Are the replacement units in standard condition (or will they be) as defined by the locality?
12. Does the grantee have adequate documentation showing that based on the market conditions of the neighborhood, or the nature of the assistance provided, it is likely that the market rent of the replacement units will not exceed the FMR for at least ten years from the date of the initial occupancy? Such documentation should include a description of current market rents in the

neighborhood supported by statements from property managers and/or realtors, whether the units are receiving project-based assistance, and an indication of whether any gentrification is expected.

13. If the one-for-one replacement is accomplished through rehabilitation of existing units, is it limited to those units: (a) that have been vacant for at least three months before the execution of the agreement between the grantee and the property owner, (b) that have been raised from substandard to standard, and (c) from which no one has been displaced as a result of the activity?

IV. Grantee Submission Requirements [24 CFR 570.606(c)(1)(iii)]

14. Before obligating any funds for the demolition or conversion activity, did the grantee make public and submit to HUD the following information:
 - a. A description of the proposed assisted activity?
 - b. The number of housing units by size (number of bedrooms) to be demolished or converted to another use as a result of the assisted activity?
 - c. To the extent possible, the exact location on a map and the number of replacement units by size (number of bedrooms)?
 - d. A schedule for the start and completion of the demolition or conversion?
 - e. A schedule for providing replacement units?
 - f. The source(s) of funding for the activity?
 - g. The basis for concluding that each replacement unit will remain L/M for 10 years from the date of initial occupancy?
 - h. Where applicable, information showing that a proposed replacement unit smaller than that to be demolished or converted is consistent with the community's housing needs contained in the HUD-approved Housing Assistance Plan (HAP) or Comprehensive Housing Affordability Strategy (CHAS)?

If "YES" to all of the above, proceed to question 15.
If "NO" to any of the above, a finding should be made that the grantee has failed to meet its responsibilities.

15. How was the above information made public?

V. Exception to One-for-One Replacement [24 CFR 570.606(c)(1)(iv)]

Check for this only if the activity is one for which the one-for-one replacement rules apply.

16. Has HUD made a determination at the grantee's request that based on objective data the one-for-one replacement requirements are not triggered due to the adequate supply of vacant L/M housing units in standard condition available for occupancy on a non-discriminatory basis in the grantee's jurisdiction?

If "YES", proceed to question 17 to determine if the grantee followed the applicable citizen participation rules.

If "NO", the one-for-one rules apply to the activity; refer to Sections III and IV.

17. Has the grantee simultaneously made this request public and informed interested persons that they have 30 days from the date of submission to provide HUD with additional information supporting or opposing the request?

If "NO", a finding should be made that the grantee failed to meet its responsibilities.