



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

Headquarters CPD, PIH and MF Housing Directors;
Regional Office Administrators and Field Office Directors;
Field Office CPD Directors and Deputy Directors;
MF HUB Directors;
MF Program Center Directors;
Regional and Field Office Public Housing Directors;
ONAP Directors;
FHEO Regional and Field Office Directors

Notice: CPD-14-05
Issued: February 25, 2014

This notice remains effective until amended, superseded, or rescinded.
Cross References: 49 CFR 24.10;
24 CFR 42.390;
HUD Handbook 1378, Chapters 1 and 7.
This notice supersedes Notice CPD 06-03.

SUBJECT: Internal Administrative Process for HUD Review of Appeals Filed Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) (42 U.S.C. §§ 4601 *et seq.*) and Section 104(d) of the Housing and Community Development Act of 1974, as amended, (HCD Act) (42 U.S.C. § 5304(d)).

PURPOSE

The purpose of this notice is to explain the internal administrative process to be followed when HUD is requested to review an agency's determination of an appeal filed under the URA and/or section 104(d). This notice supersedes Notice CPD 06-03 and modifies the procedures explained in that prior directive.

BACKGROUND

On March 31, 2006, the Office of Community Planning and Development (CPD) issued Notice CPD 06-03, which explained CPD policy for the handling of requests for HUD review of appeals filed under the URA and/or section 104(d). That notice prescribed that the local field office would review the appeal documents and draft a proposed determination for the CPD Director. Whenever the proposed determination was to agree with the agency's denial of the appeal, the field office was directed to forward its proposed determination to CPD's Relocation and Real Estate Division (RRED) in Headquarters for review. Through this notice, CPD is modifying the process explained in Notice CPD 06-03 by, among other things, eliminating Headquarters review of proposed field office determinations. (For purposes of this notice, the term "agency" is defined at 49 CFR 24.2(a)(1) and generally refers to a direct recipient of HUD funds, such as a grantee or participating jurisdiction.)

The Secretary of HUD has delegated authority to carry out overall departmental responsibility for compliance with the URA and to carry out the CDBG program, other programs under Title I of the HCD Act, and the HOME Investment Partnerships Program (including section 104(d) requirements) to the Assistant Secretary for CPD, the General Deputy Assistant Secretary for CPD and the Deputy Assistant Secretary for Special Needs. 77 Fed. Reg. 31972 (May 30, 2012). The Assistant Secretary for CPD has re-delegated such authority to the CPD Directors and CPD Deputy Directors in HUD field offices as well as the Deputy Assistant Secretary for Grant Programs. 77 Fed. Reg. 38851 and 38853 (June 29, 2012). Because CPD Directors and CPD Deputy Directors in HUD field offices have concurrent re-delegated authority for URA and section 104(d) matters, and consistent with CPD policy that favors processing of complaints in field offices, this Notice confirms the primary role of the field offices in evaluating and responding to requests for HUD review of appeal under the URA and section 104(d).

This Notice also provides guidance on assessing a person's threshold eligibility to obtain a HUD review of appeal under applicable HUD program regulations. Other federal statutes or regulations that may establish a separate appeals process for displaced persons are not covered by this Notice.

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501-3520) and assigned OMB control number 2506-0121. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Appeal Authorities

1. URA Appeals

The URA regulation at 49 CFR 24.10, which implements section 213(b)(3) of the URA statute (42 U.S.C. § 4633(b)(3)), provides that a person may file an appeal with an agency when the person believes that the agency has failed to properly consider the person's application for URA assistance. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, an acquisition payment required under 49 CFR 24.106 or 24.107, or a relocation payment provided under 49 CFR part 24. Some HUD program regulations specify who the agency is for purposes of making an appeal (e.g., 24 CFR 576.408(e)).

The URA regulations at 49 CFR part 24 do not provide for a HUD review of the agency's appeal determination. Rather, if the agency does not grant the person the full relief requested, 49 CFR 24.10(g) directs the agency to inform the person of his or her right to seek judicial review of the agency's determination. Several HUD programs, however, provide for a HUD review of appeal. Often, though, income and other threshold eligibility criteria in program regulations limit who can exercise this option. For example, in the CDBG program (except State CDBG program), a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the agency's determination to the HUD field

office. The State CDBG program provides a similar review mechanism, though the reviewing authority is the State. After HUD or the State completes its review and renders a decision, the person may seek judicial review of that determination.

2. Section 104(d) Appeals

The regulation at 24 CFR 42.390, implementing section 104(d)(2)(C) of the HCD Act (42 U.S.C. § 5304(d)(2)(C)), provides that a person who disagrees with the recipient's (CDBG grantee, UDAG grantee, or HOME participating jurisdiction) determination on the person's eligibility as a displaced person or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A person dissatisfied with the recipient's determination may submit a written request for review of the recipient's determination to the HUD Field Office (or State, as applicable). If full relief is not granted, the regulation directs the recipient (or HUD, or the State) to advise the person of his or her right to seek judicial review of the determination.

HUD Officials and Staff Responsible for Review Process

Requests for HUD review of an appeal filed under the URA or section 104(d) should be addressed to the HUD field office responsible for the location in which the activities (e.g., acquisition, displacement) involved in the appeal occurred unless program regulations specify differently. Upon receipt, the request should be forwarded to CPD in the field office and the CPD Director or CPD Deputy Director of the field office should request the assistance of the HUD Regional Relocation Specialist assigned to cover that field office. The CPD Director or CPD Deputy Director should also request that a representative of the HUD program office affected (CPD, Housing or Public and Indian Housing) be assigned to participate in the review. The Regional Relocation Specialist will lead the review process. The first steps for the Regional Relocation Specialist, working with the program staff, will be to verify the threshold eligibility of the person seeking HUD review, if any such criteria are specified in program regulations, and to refer the request for review to the agency for a response.

Initial Procedural Steps

1. Threshold Eligibility

Many HUD programs that provide a person with a right to seek HUD review of appeal qualify that right with certain threshold eligibility criteria, such as income level. Prior to examining the merits of a person's request for HUD review of appeal, the staff assigned to handle the request for HUD review must assess whether the person is eligible to obtain a HUD review of appeal. HUD review of appeal should not be provided to persons that do not meet threshold eligibility criteria set by the program regulations. . If the Regional Relocation Specialist and the assigned program staff disagree as to whether a person meets a program-specific threshold eligibility requirement, a determination from a program office person with delegated authority over the program will prevail. If a person is found ineligible to obtain HUD review of appeal, the field office must notify the person of that determination.

Income eligibility determinations, when undertaken to determine threshold eligibility, will be carried out consistent with applicable program regulations. The relevant time period to consider in determining whether a person is income-eligible to obtain HUD review of appeal is the point at which the person became eligible or was notified by the agency that the person was not eligible to receive relocation assistance. If the agency made an income determination in considering a person's eligibility for URA or section 104(d) assistance, the field office should rely upon that determination. If no prior income determination was made, such information is unavailable, or documentation from the agency indicates that the person is not income-eligible to obtain HUD review of appeal (if program regulations prescribe income eligibility criteria), the person may provide HUD with information necessary to show that the person is eligible to obtain HUD review of appeal based on the person's income at the time when the person became eligible or was notified that the person was ineligible to receive relocation assistance.

When a violation of civil rights or other nondiscrimination requirements is alleged in an appeal submitted for HUD review, the CPD Director or CPD Deputy Director of the field office is required to refer such allegation to HUD's Office of Fair Housing and Equal Opportunity (FHEO) irrespective of whether the person meets any threshold eligibility criteria set by program regulations for HUD review of the URA or section 104(d) issues. Such reporting must be made in accordance with Chapter 5 of HUD Handbook 5552.0 ("Community Planning and Development Complaints").

2. Referral and Response from Agency

After ensuring that threshold eligibility requirements, if any, have been satisfied, the Regional Relocation Specialist leading the review must forward a copy of the request for HUD review to the agency whose prior determination is the subject of review. A copy of the referral should also be provided to the person that has requested HUD review. Absent exceptional circumstances, referral should occur no later than fifteen (15) calendar days after the field office receives the request for HUD review. The agency should be instructed to respond to the issues raised in the request for HUD review within thirty (30) calendar days of receipt and provide copies of its response to HUD and the person requesting HUD review. The field office may, at its discretion, extend the agency's response period.

Substantive Review and Determination

The Regional Relocation Specialist must consider all available information necessary to ensure a fair and complete review of appeal. The Regional Relocation Specialist should request that the agency submit its complete case file and may request any additional needed information from the agency or the person seeking HUD review of appeal at any stage during the review.

When an appeal alleges that minority persons were not provided reasonable opportunities to relocate to decent, safe and sanitary dwellings, not located in an area of minority concentration, that are within their financial means, as required by 49 CFR 24.205(c)(2)(ii)(D), the Regional Relocation Specialist must inform the CPD Director or CPD Deputy Director, who will report this allegation to FHEO in accordance with HUD Handbook 1378, paragraph 1-6(C)(4). The FHEO Regional Director will determine whether compliance with this requirement was achieved and will inform the CPD Director or CPD Deputy Director

of its determination. In the event the FHEO Regional Director and the CPD Director or CPD Deputy Director are not able to agree on the status of the participation with respect to this civil rights related program requirement, the matter shall be forwarded to Headquarters and the decision shall be made jointly by the Assistant Secretary for FHEO and the Assistant Secretary for CPD.

After reviewing and analyzing information relating to the appeal, the Regional Relocation Specialist will prepare a determination. The determination must include the following content:

- (1) Factual synopsis and procedural background;
- (2) Statement that the person satisfied threshold eligibility criteria for a HUD review of appeal, if any;
- (3) HUD's determination(s) on the issues submitted for review of appeal;
- (4) Basis for HUD's determination(s), including relevant facts and legal bases;
- (5) Explanation of any payment or other relief that the agency must provide to the person, including an explanation of the amount and manner of any payment, and a statement that the person should inform HUD if the agency fails to provide such relief; and
- (6) Statement that the response is HUD's final decision on the matter and that the person may seek judicial review of the determination.

If the funding program that authorized HUD review of appeals is a CPD program, the Regional Relocation Specialist must submit the determination to the CPD Director or CPD Deputy Director of the field office along with draft response letters for the CPD Director or CPD Deputy Director to sign and provide to: (1) the person that requested HUD review of appeal (with a copy of the response to be sent to the agency) and (2) the agency (with a copy of the response to be sent to the requesting party). If the CPD Director or CPD Deputy Director concurs in the Regional Relocation Specialist's determination, the CPD Director or CPD Deputy Director will sign and send the letters along with a copy of the determination. If the CPD Director or CPD Deputy Director does not concur in the determination, the Regional Relocation Specialist will work with the CPD Director or CPD Deputy Director to remedy any concerns causing the non-concurrence.

If the funding program that authorized HUD review of appeals is not a CPD program, the Regional Relocation Specialist must submit the determination to the CPD Director or CPD Deputy Director along with a draft memorandum from the CPD Director or CPD Deputy Director addressed to a field/regional/Headquarters program office person with delegated authority over the program. The draft memorandum shall include as attachments the determination and draft response letters for the authorized program office person's signature that will be provided to: (1) the person that requested HUD review of appeal (with a copy of the

response to be sent to the agency) and (2) the agency (with a copy of the response to be sent to the requesting party). If the CPD Director or CPD Deputy Director concurs in the Regional Relocation Specialist's determination, the CPD Director or CPD Deputy Director will sign the memorandum and send it, along with the accompanying attachments, to the authorized program office person for official concurrence and signature of the draft letters. The program office will mail the signed letters (with copies as indicated above) to the person that requested the HUD review of appeal and to the agency. If the CPD Director or CPD Deputy Director does not concur in the determination, the Regional Relocation Specialist will work with the CPD Director or CPD Deputy Director to remedy any issues causing the non-concurrence before sending the memorandum to the program office. If the program office does not concur with the determination, the Regional Relocation Specialist and CPD Director or CPD Deputy Director will work with the program office to remedy any concerns causing the nonconcurrency.

Each program office may prescribe corrective actions for instances of non-compliance in programs over which it has delegated authority. If HUD prescribes corrective action, including any relief that the agency must provide to the person, the letter to the agency must inform the agency of any such requirement.

Field offices may request technical assistance from CPD's RRED in Headquarters on matters related to the review. When necessary, RRED may seek the assistance of the Office of General Counsel.

For More Information:

Additional URA and section 104(d) resources and guidance are available on HUD's Real Estate Acquisition and Relocation website at <http://www.hud.gov/relocation>, including links to applicable laws and regulations, policy and guidance, training resources, and contact information for HUD's Regional Relocation Specialists.

Questions pertaining to this Notice and the process that it explains should be directed to a CPD Relocation Specialist in RRED at (202) 708-2684.