FEDERALLY ASSISTED TENANTS' RIGHTS AFTER A DISASTER

Repairs, Relocation, and Right to Remain or Return

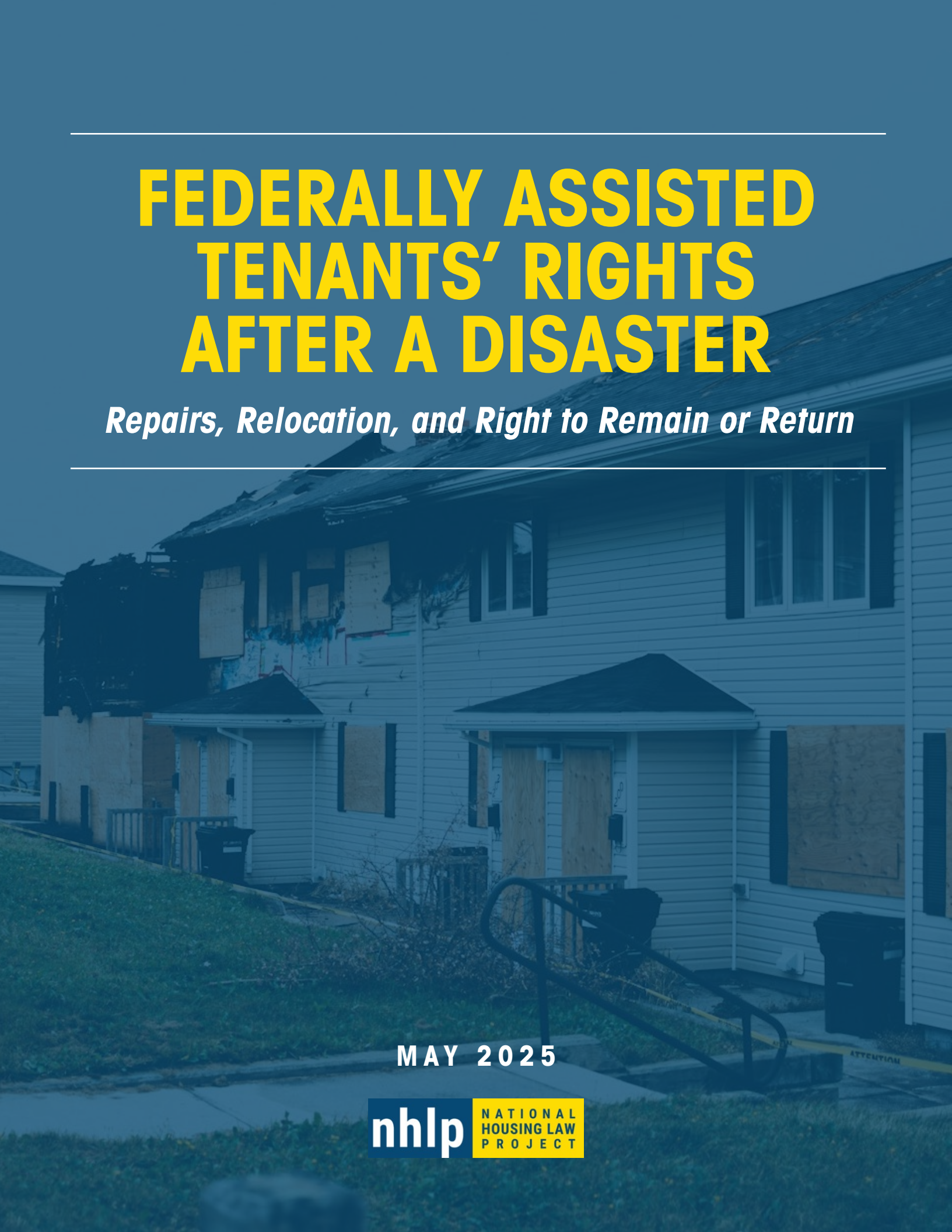

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TABLE OF CONTENTS

LEGAL NOTICES AND ACKNOWLEDGEMENTS

This advocacy guide was primarily authored by National Housing Law Project (NHLP) Senior Staff Attorneys Hannah Adams and Lauren Song. The following NHLP staff members also provided invaluable contributions to this publication: James Grow, Natalie Maxwell, Bridgett Simmons, Marcos Segura, Deborah Thrope, and Kate Walz. NHLP is also grateful for the extensive research assistance provided by NHLP's law clerk Robert Colton.

This publication is designed to supplement NHLP's HUD Housing Programs: Tenants' Rights (the "Green Book"), and support legal services attorneys and tenant advocates in understanding tenants' rights in federally assisted housing after a disaster. The publication focuses on relocation and re-occupancy rights and benefits available to displaced residents. It is updated as of April 1, 2025. It is intended to be used as background information only. It is not intended to provide legal advice or substitute for legal research.

This advocacy guide and other information about resources for housing advocates assisting communities impacted by disasters can be found on our website at www.nhlp.org. If you have specific questions regarding legal issues and compliance with federal and state laws, contact an attorney or other professional where you live.

I.
INTRODUCTION

This guide provides a comparative overview of tenants' rights in federally assisted housing after a disaster, with a focus on relocation and re-occupancy rights and benefits available to displaced residents under the Uniform Relocation and Real Property Acquisition Act ("URA"), Section 18 of the U.S. Housing Act of 1937 ("Section 18"), and Section 104(d) of the Housing and Community Development Act of 1974 ("Section 104(d)"), subject to the general prohibition against duplication of federal benefits and other program-specific federal, state, and/or local requirements. **Part I** of this guide contains program-by-program guidance for advocates assisting federally subsidized tenants after a disaster. **Part II** examines specific advocacy issues that arise in the context of a disaster. **Part III** is an appendix that outlines the specific details of the various statutes that govern relocation rights for disaster survivors. Rather than duplicate content, the intent is for advocates to cross reference between the three sections as needed.

The guide also includes cross-references to the NHLP's *HUD Housing Programs: Tenants' Rights* ("Green Book"), which is the trusted treatise on tenants' rights in the federally subsidized housing programs. NHLP has separately created resources on immigration status and eligibility for federal emergency relief programs and advocacy strategies for combating evictions after a disaster.

Post-disaster situations can be highly stressful and challenging, especially for low-income tenants faced with navigating complex federal, state, and local disaster recovery systems. Many decisions that can have profound, long-term impacts on the lives of federally subsidized tenants and the continued availability of deeply affordable housing for the community are left to the unchecked discretion of public housing authorities ("PHAs") and owners of multifamily properties. The guidance available from HUD is far from comprehensive, and other federal agencies have issued little to no guidance. Strong advocacy is therefore critical to protect low-income residents from permanent displacement, to facilitate equitable access to maximal benefits and services, and to ensure that rights and protections are enforced.

Moreover, due to the backlog of capital needs in federally-assisted housing, and the ongoing insufficient appropriations to adequately support the various housing programs, as well as the development and real estate industry pressure toward private market solutions, disasters commonly become catalytic opportunities to expedite the demolition, disposition, and removal of the nation's shrinking supply of deeply affordable, federally-assisted housing in lieu of preservation strategies with one-for-one replacement requirements and rights of tenants to remain or return without rescreening. Early and often after disaster, strong advocacy is crucial to center the protection of impacted residents against permanent, involuntary displacement and to prioritize long-term preservation strategies to safeguard against the permanent net loss of the affected communities' supply of federally assisted housing that is affordable to even the lowest income households.

II. PROGRAM-SPECIFIC GUIDANCE

The most foundational protections afforded federally assisted tenants – the right to a safe and habitable home, affordable rent based on family income, continued assistance absent good cause for termination, and pre-termination due process – remain in effect after a disaster. However, the enforcement and preservation of these important rights (albeit codified in federal law and in the lease agreement) will depend largely on coordinated advocacy working with the impacted residents and community.

Generally, federally assisted tenants displaced by a natural disaster itself are not eligible for assistance under the URA, Section 18, or Section 104(d), each of which conditions eligibility on the cause of the displacement being federally funded acquisition, demolition, and/or rehabilitation activities. However, the nexus between the displacement and eligible activities versus a non-qualifying disaster is not always clear. Where appropriate, advocates should argue that tenants are entitled to benefits if disaster-related displacement can be connected to one of these eligible activities. In addition to federal statutory protections, advocates should check tenant leases and any recorded covenants for additional protections. Some states and municipalities have passed additional laws protecting against displacement related impacts.

This section summarizes common displacement scenarios from different federally assisted housing and the applicable relocation rights and protections.

A. PUBLIC HOUSING

"Public housing" refers to low-income housing authorized under Section 9 of the U.S. Housing Act of 1937 ("1937 Act") and operated by PHAs pursuant to an Annual Contributions Contract ("ACC") with HUD. Increasingly, public housing is being demolished, disposed, converted and otherwise removed from PHAs' portfolios, including due to disasters. For information specific to public housing units converted via the Rental Assistance Demonstration ("RAD"), see Section B.

In recent years, HUD published a Guidebook[1] and a series of fact sheets[2] for PHAs on Disaster Readiness, Response, and Recovery ("D3R") which provide useful information about tenants' options in the short and long term after disaster. In addition, HUD issues annually or biannually a list of "Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster" available to PHAs in the Federal Register.[3] PHAs can also request waivers that are not listed. It is important to review these documents for options that may be helpful to tenants of PHAs facing disaster-related displacement.

1. Landlord obligation where property rendered uninhabitable

It is a central tenet of the 1937 Act that public housing must be maintained in a decent, safe, and sanitary condition in accordance with HUD's physical condition standards:[4] "To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards."[5] Likewise, public housing leases must obligate PHAs and other owners to maintain the property "in a decent, safe, and sanitary condition,"[6] and for HUD to inspect the physical conditions periodically.

In particular, if there are defects hazardous to life, health or safety in public housing that cannot be repaired in a reasonable time, the PHA or other owner must offer alternative accommodations.[7] If repairs are not made within a reasonable time and alternative accommodations are not provided, the public housing tenant can enforce the

right to a rent abatement under the lease "in proportion to the seriousness of the damage and loss in value as a dwelling."[8] These lease requirements under 24 C.F.R § 966.4(h) must be included in all public housing lease agreements.

A PHA may offer tenant-based vouchers as "alternative housing" when public housing units are damaged due to disaster (and typically when there are no suitable public housing or project-based housing alternatives to offer). Advocates should remind tenants that in the aftermath of a disaster, vouchers are often difficult if not impossible to use locally due to increased rents in excess of the applicable payment standard, source of income and other discrimination, and the limited rental housing stock. For tenants who have accepted a voucher but find that they cannot use their voucher locally (and do not wish to "port" the voucher to another jurisdiction) advocates may argue analogy to regulations under Section 18 of the 1937 Act that a voucher only qualifies as alternative housing if and when it is successfully used to lease a suitable unit for the displaced household,[9] and until such time, tenants remain entitled to rent abatement under their public housing lease.

2. Immediate shelter options

Below are several immediate shelter options for public housing tenants displaced by a disaster.

- **FEMA:** In the event of a Presidentially Declared Disaster, the PHA or owner will likely refer the tenant to FEMA for immediate shelter needs. However, a number of legal issues can arise when a federally assisted tenant receives assistance under FEMA. See section III(D), infra.
- **Waivers allow additional flexibility to provide emergency shelter:** The PHA D3R Guidebook specifies that the PHA may use community spaces for temporary shelter if there is no suitable alternative.[10]
- **Public Housing Capital Fund Program:** For non-Presidentially Declared Disasters, PHAs can use public housing capital funds to cover hotel costs, moving van rental, temporary storage and other temporary relocation costs. However, PHAs are not permitted to use capital funds in the event of Presidentially Declared Disaster.[11]
- **Vouchers:** Some PHAs that administer Housing Choice Voucher programs may use vouchers in the weeks or months after a disaster so that tenants can relocate from damaged units with continued assistance. Many tenants may welcome the opportunity to choose their own housing in the private market, and even to port to a different jurisdiction to move away from the disaster and/or to be near extended family. Because PHAs typically issue vouchers without mobility counseling services, many tenants are unfamiliar with the costs and challenges associated with using a voucher, including higher tenant contributions, direct responsibility for costly utilities, and the difficulty of securing housing in areas of opportunity with a voucher. Advocates should explain these significant challenges so tenants can make more informed choices with respect to accepting a voucher in lieu of a hard, affordable unit, and can request mobility counseling with the voucher. PHAs have three sources of vouchers:
    - » Existing HCV supply: A PHA with a voucher program may provide vouchers from its existing HCV supply. These HCVs will not be replaced by HUD unless the PHA applies for and is approved for the demolition, disposition, or other qualifying removal of the public housing units,[12] typically within 24 months of when the public housing unit was last occupied. Because these are regular HCVs and not Tenant Protection Vouchers, they do expire. The PHA has the discretion to, and should, grant unlimited extensions under the circumstances.[13] In addition, PHAs are required to grant extensions as a reasonable accommodation for disability, which may be applicable to many tenants.[14] If a PHA claims a displaced tenant's voucher has expired because the tenant was unable to find a unit during the voucher term, and therefore the tenant's option to retain a subsidy is extinguished, advocates may argue that the PHA is

contractually obligated to provide alternative housing, if available, under the tenant's lease agreement.[15] Since alternative housing can be made available through a voucher extension, the PHA should provide one. In addition, tenants have a property interest in their ongoing public housing benefits, which can only be terminated for good cause. See, generally, Section 11.2.2.2 of the NHLP Green Book.

» "Borrowed" vouchers: HUD may assist the PHA in "borrowing" unused HCVs from another jurisdiction. These HCVs are essentially ported from the issuing jurisdiction to the PHA relocating tenants, or to the tenants' final destination if moving out of the jurisdiction. This process may be facilitated by the local HUD field office. Under this complex arrangement, vouchers may be eventually "returned" to the issuing agency if they expire and are not extended. Advocates should be prepared to make similar arguments as outlined above.

» Emergency Tenant Protection Vouchers: Tenant Protection Vouchers ("TPVs") are provided to mitigate hardship for families resulting from a variety of actions that can occur in HUD's Public Housing, Multifamily Housing, and Moderate Rehabilitation properties. Families residing in a unit that is impacted by one of the events triggering the TPV, and who are eligible for such TPVs, are not required to apply for the voucher. Instead, the eligible family will be admitted as a special admission, without consideration of the family's position on the PHA's waiting list. The TPV functions like an HCV and generally covers the difference between 30 percent of family income and the PHA's payment standard or gross rent, whichever is lower. In some circumstances, HUD may issue "emergency" TPV's even before HUD approves of a qualifying public housing removal application. HUD's guidance suggests that TPVs can be issued on an emergency basis within 5-10 business days once all application materials have been submitted.[16] Replacement TPVs become part of the PHA's HCV program and may be reissued upon turnover to other families on the PHA's waiting list, whereas relocation TPVs may not be reissued by the PHA after the initial family that received the TPV no longer receives the rental assistance. Whether a TPV is a replacement or relocation TPV determines whether the HUD-assisted housing is permanently lost.[17] See Section 12.6 of the NHLP Green Book for more on Tenant Protection Vouchers.

It is unlikely that the URA, Section 18, or Section 104(d) would add protections in the context of immediate post-disaster relocation actions, because the types of activities that trigger these laws' protections are unlikely to have begun. Relocation assistance obligations are triggered only where the tenant is displaced *by a federally funded demolition or rehabilitation project.*[18] For example, if the tenant is told she needs to move because a contractor is scheduled to gut her house to remediate mold, and that work is being funded by certain pots of federal money, she may be entitled to relocation assistance. Similarly, if a tenant is forced to move with a voucher because of a planned rehabilitation project paid for by certain federal funds, the URA or other laws may be triggered. However, it is unlikely (though not impossible) that such funding would be received, and triggering activities would be underway in the weeks or months immediately following a disaster. See Appendix on URA, Section 18, and Section 104(d).

3. Longer-term housing options and related relocation assistance requirements where property intends to rebuild

In terms of long-term relocation rights, a public housing tenant's rights largely depend on what the PHA intends to do with the property and what funds will be used to repair it. What funds are available may also depend on whether the disaster is a Presidentially Declared Disaster ("PDD"). Sometimes a combination of funds is used for rehabilitation, such as operating funds, insurance and FEMA funds. Note that there is no automatic right to return codified in federal law for public housing tenants displaced by disaster, unless they are displaced by a RAD conversion. Therefore, it is beneficial to obtain an enforceable written agreement to ensure that tenants have a

right to return to the property, even if the PHA or owner states that they will voluntarily prioritize the return of former tenants.

- **Property repairs with Public Housing Operating Funds:** HUD's guidance states that PHAs may use Operating Funds for emergency work due to unforeseeable and unpreventable emergencies that include damage to the physical structure of the PHA's housing stock. If these expenses are eventually covered by insurance or FEMA, the PHA must reimburse the operating account to avoid a potential "duplication of benefits" problem.[19] Since operating funds can only be used for emergency work, it is likely that if a tenant is displaced it was because of the emergency conditions rather than the repair work itself. Therefore, relocation assistance obligations would not be triggered. It is worth noting that public housing operating funds are not included in the non-exclusive list of HUD "programs" that trigger URA benefits.[20]

- **Property repairs with insurance proceeds and/or reserves:** If the property repairs are funded exclusively with insurance proceeds or reserves, relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.

- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[21] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[22]

- **Property repairs with Public Housing Capital Funds:** Rebuilding and repair work associated with casualties, emergencies, or natural disasters are eligible expenses under the Public Housing Capital Fund Program.[23] PHAs can use Capital Funds for emergency work or repair work related to a non-Presidentially Declared Disaster ("PDD") even if that work was not identified in the PHA's Capital Fund 5-Year Action Plan.[24] Each year, Congress appropriates funds for the Capital Fund, and HUD allocates a portion of those funds as an Emergency and Non-Presidentially Declared Natural Disaster set-aside. PHAs with capital needs arising from a natural disaster in a particular fiscal year may apply for, and receive, funds from the set-aside for that year.[25] Repairs related to PDDs are not eligible activities with Capital Funds, because FEMA funds are available for repairs pursuant to the Stafford Act (which authorizes FEMA).[26] The URA applies if tenants are displaced because of rehabilitation done as part of Public Housing Capital Fund Program plan.[27] Relocation costs are an eligible expense under the program.[28] However, as discussed above, you will need to establish that the reason for the displacement is the rehabilitation project, not the disaster itself.[29]

- **Property repairs with Low-Income Housing Tax Credit ("LIHTC") funds, CDBG-DR funds, HOME funds, or a combination thereof:** The current regulation states that LIHTC funds alone do not trigger URA benefits,[30] to the extent that they are used to fund a redevelopment project that may displace a family.[31] However in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where tax credits or bonds are involved.[32] Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property.

4. Longer-term housing options and related relocation assistance requirements where property intends to reposition

PHAs may use a disaster and any resulting damage as justifications to demolish, dispose of or otherwise "reposition" a traditional public housing or mixed finance project. Depending on the repositioning tool chosen, certain relocation rights may be required by law, and other additional rights (e.g., right to remain and/or to return) may also be negotiated into an enforceable contract.

- **Section 18 demolition or disposition:** To qualify for a Section 18 demolition or disposition approval by HUD, a public housing property must be **"**obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and **. . .** no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life."[33] A PHA may use disaster damage and resulting vacancies to support its Section 18 application. If and when approved, Section 18 relocation benefits apply (instead of URA benefits). Replacement housing under Section 18 may include other HUD-assisted housing in the PHA's portfolio, as well as tenant-based vouchers in the form of TPVs. In limited circumstances, HUD may issue "emergency" TPVs before issuance of an approval of a pending Section 18 application, in which case other Section 18 relocation benefits (e.g., moving assistance and advisory services) may not be offered until after approval of the Section 18 application. Advocates should caution tenants against vacating "voluntarily" without first receiving proper written notice from the PHA of all the relocation benefits for which they are eligible and any associated effective eligibility and expiration dates. If your client is impacted by this situation, you will have to advocate for the PHA to offer these additional Section 18 benefits before the tenant vacates, so that they can be used for relocation. PHAs must consult with residents as part of the Section 18 application process,[34] and these consultations may provide another forum to raise concerns.

- **Section 22 Voluntary Conversion:** If the PHA chooses to reposition pursuant to the requirements under Section 22 of the 1937 Act, tenants facing displacement are entitled to protections and benefits under the URA upon approval of the Section 22 application by HUD.[35] As with Section 18, tenants displaced due to Section 22 conversions may be offered other housing in the PHA's HUD-assisted portfolio or TPVs.[36] PHAs may also use their own HCV supply for tenants who "volunteer" or consent to move prior to HUD's approval of the Section 22 application and/or issuance of TPVs. Premature vacancies at a public housing project can result in a net loss of HUD rental assistance for the PHA's service jurisdiction because HUD will issue TPVs only for units which were occupied within a certain period prior to approval of the Section 22 application, which is currently 24 months but can become shorter in the future.[37] Because the occupancy lookback period for TPV eligibility is statutory, advocates may encounter challenges requesting a longer lookback period to cover units vacated by early "voluntary" movers. TPV availability is also subject to appropriations.

- **Rental Assistance Demonstration ("RAD"):** If the PHA chooses to reposition using RAD (or a RAD/Section 18 Blend), all existing tenants of the public housing project are entitled to the right to remain and/or right to return without rescreening as a matter of statutory right, and also protected under the provisions of the URA.[38] However, public housing units converted under RAD are not eligible for TPVs because RAD units after conversion continue to be funded through HUD.[39] RAD is a preservation tool that has a number of tenant protections absent from other repositioning programs, including maintenance of public housing tenants' rights,[40] guaranteed long-term affordability via automatic contract renewal,[41] and a statutory right to return without rescreening.[42]

5. Eviction and Right to Return

Mass involuntary displacement including through evictions is not uncommon after a disaster. A PHA or other owner may state as the reason for the eviction that the unit is unsafe, uninhabitable, and/or that repairs cannot be completed while the unit is occupied. Even so, the usual public housing procedural protections apply, specifically the grievance process outlined in 24 C.F.R. §§ 966.4(n), 966.54, and 966.56.

A PHA or other owner can only terminate a public housing tenancy for a serious or repeated violation of the material terms of the public housing lease, being over the program's income and asset caps, or other good cause.[43] Note that the examples listed under "other good cause" are all actions or inaction by the family, showing HUD's intent to limit the permissible circumstances warranting termination to those for which the family was at fault or otherwise responsible.[44] As such, the fact that a public housing unit is rendered inhabitable or unsafe through no fault of the tenant, and that a tenant is unwilling to move "voluntarily" from a unit the PHA believes is damaged should not be a permissible reason for termination of tenancy. By contrast, in the Housing Choice Voucher program, HUD includes "business or economic reason for termination of the tenancy (such as sale of the property, [or] renovation of the unit . . . .)" in the examples of good cause for eviction in the regulations.[45] In addition, HUD regulations (and required corresponding lease language) prescribe a specific remedy when a tenant's unit has health and safety concerns which does not include the option of lease termination.[46] Therefore, if the public housing lease contains a "force majeure" or similar clause that permits lease termination in the event of a disaster, this provision likely runs afoul of public housing regulations.[47] For more information about "good cause" in the public housing context, see Section 11.2.2.2 of the Green Book.

Another tactic a PHA or owner may use is to evict based on nonpayment of rent if tenants are unable to pay rent after the disaster. *See* NHLP's Advocacy Strategies for Combating Evictions Following Hurricane Helene. Abatement under 24 C.F.R. § 966.4(h) may present a defense to these evictions. Note that abatement under § 966.4(h) is not available if alternative accommodations are provided or are rejected. Advocates should be aware that in some cases, claiming abatement, and/or claiming that an entire class of tenants is entitled to an abatement due to health and safety defects, may be used by the PHA as justification for repositioning.

In addition, tenants who lose income due to the disaster may be entitled to an interim reexamination to reduce their rent portion. Note that HOTMA contains a new time-limited adjusted income deduction for families with a member who is elderly or has disabilities.[48] Under this provision, the family must show that they experienced financial hardship "as a result of a change in circumstance . . . that would not otherwise trigger an interim reexamination."[49] The family is eligible for a deduction of the sum of the eligible expenses that exceed five percent of their annual income for up to 90 days.[50] Where a family has unexpected out-of-pocket expenses due to evacuation, running a generator, or purchasing additional food because of power outages, they may qualify for this new deduction. Families that struggle to pay minimum rent after a disaster are entitled to a hardship exemption under 24 C.F.R. § 5.630. Entitlement to a hardship exemption can also provide a defensive argument in the context of an eviction.

Tenants displaced by a RAD conversion have a statutory right to return without rescreening.[51] However, if the PHA uses a different repositioning option than RAD, there is no automatic or enforceable right to return. HUD's latest sub-regulatory guidance on Section 18 demolition and disposition states that if the PHA intends to build or otherwise provide affordable replacement housing for the public housing units proposed for removal, HUD recommends that the PHA give relocated residents the first right to return to the new replacement units.[52] Though this provision is a welcome addition that clarifies HUD's position, it is a recommendation and not a requirement. Therefore, it is important that advocates work with tenants to codify an enforceable right to return where tenants have to temporarily relocate due to damage or repairs. This can be done in the form of a letter of assurance, memorandum of agreement, or recorded restrictive covenant.

B. PUBLIC HOUSING CONVERTED VIA RAD TO PROJECT-BASED VOUCHER OR PROJECT-BASED RENTAL ASSISTANCE UNDER SECTION 8 OF THE U.S. HOUSING ACT

Since 2012, public housing has been increasingly converted under the Rental Assistance Demonstration ("RAD") program to Section 8 Project Based Voucher ("PBV") or Project Based Rental Assistance ("PBRA") programs. Under either option, the RAD Authorizing Statute requires existing public housing rights and protections to be preserved through and after the RAD conversion.[53] Among the statutory RAD protections is the right to remain and/or to return without rescreening and the prohibition against termination of assistance and eviction of any existing public housing family due to the RAD conversion.[54] A RAD Use Agreement incorporating these statutory rights, which are enforceable by tenants and applicants, must be recorded against each RAD-converted property.[55] HUD has issued updated guidance on RAD PBV and RAD PBRA requirements.[56] This section looks at tenants' rights at properties *already converted via RAD* that experience a disaster. For tenants' rights under the RAD conversion process, where a public housing property repositions using RAD following a disaster, see section II(A), supra.

1. Landlord obligation where property rendered uninhabitable

All PBRA and PBV housing must be maintained in compliance with HUD's physical condition standards.[57] "To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards."[58] Tenants' lease agreements should also have enforceable provisions related to the landlord's maintenance obligations. For example, the HUD model lease used by RAD PBRA properties requires that the landlord "make necessary repairs with reasonable promptness."[59] *See* Green Book section 7.7.2.3. The HUD Model Lease also states that:

> If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.[60]

This protection is unique to the lease and does not appear in federal regulations. Advocates should also review state and local laws that relate to repairs and habitability.

Under 24 C.F.R. § 966.4(h), the PHA or owner must offer alternative accommodations, if available, when there are defects hazardous to life, health or safety that cannot be repaired in a reasonable time. If alternative accommodations (such as a vacant public housing unit) are not available, the PHA must provide an abatement of rent. Because RAD tenants are required by statute[61] to retain at minimum the same rights they had as public housing tenants, advocates should argue that the regulatory requirements under § 966.4(h) must continue to apply. Note however that HUD's notices implementing RAD do not specifically require that all regulatory public housing lease requirements under § 966.4(h) must carry over to the post-conversion RAD lease, at least for prior public housing tenants.[62] The required language may still be in the "new" leases for the RAD project.

As with displacement from public housing, if a PHA or owner attempts to provide tenant-based vouchers as "alternative housing" after a RAD-converted unit experiences damage due to disaster, advocates should argue that a voucher only qualifies as alternative housing when it is actually used to lease a suitable replacement unit. In the aftermath of a disaster, vouchers are often impossible to use locally due to dramatic rent increases that exceed the applicable payment standard, source of income discrimination, and damaged rental housing stock. Tenants who cannot, or do not wish to port to another jurisdiction with a voucher, and cannot find a place to use the voucher locally, have not "rejected" their alternative housing and should still be entitled to the abatement. By way of

analogy, in the Section 18 demolition/disposition context, tenant-based assistance is not considered "comparable housing" "until the family is actually relocated into such housing."[63]

2. Immediate shelter options

Immediate shelter options will depend on whether the RAD is a PBRA or PBV conversion. Refer to Section C(2) for PBRA, and Section E(2) for PBV. In general, in the event of a Presidentially Declared Disaster, the owner will likely refer the tenant to FEMA for immediate shelter needs.

If a tenant is displaced by a disaster, rather than by a federally funded demolition or rehabilitation project, she will not qualify for relocation funding or other assistance under the URA, Section 18, or Section 104(d). Unfortunately, the question of what, exactly, has displaced the tenant is not always black and white. A tenant may be displaced for a couple of weeks due to a power outage, but her unit is otherwise undamaged. During those two weeks she may use FEMA Transitional Sheltering (hotel) Assistance. Or she may stay in the unit and use a generator. If she is then told to move to temporary or permanent alternative accommodations, she is arguably being displaced by the relocation effort or rehabilitation plan rather than the disaster itself. However, this does not automatically entitle her to relocation funding or other assistance under the URA or other applicable law. In this context, the relocation assistance obligations are only triggered where the tenant is displaced *by a federally funded demolition or rehabilitation project.*[64] For example, if the tenant is told she needs to move because a contractor is scheduled to gut her house to remediate mold, and that work is being funded by certain pots of federal money, she may be entitled to relocation assistance. See Appendix on URA, Section 18, and Section 104(d).

3. Longer-term housing options and related relocation assistance requirements where property intends to rebuild

In terms of long-term relocation rights, a RAD tenant's rights largely depend on what the owner intends to do with the property and what funds will be used to repair it. Note that after a RAD conversion, the resulting PBRA or PBV property no longer has access to public housing capital funds for repair needs.

- **Property repairs with insurance and/or or reserves:** If the property repairs exclusively with insurance proceeds or reserves, relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.

- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[65] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[66]

- **Property repairs with Low-Income Housing Tax Credit ("LIHTC") funds, CDBG-DR funds, HOME funds, or a combination thereof:** The current regulation states that LIHTC funds alone do not trigger URA benefits,[67] to the extent that they are used to fund a redevelopment project that may displace a family.[68] However in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where

tax credits or bonds are involved.[69] Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property.

- **PBRA: Property makes repairs by taking out a HUD loan:** Under certain circumstances a PBRA owner may take out a HUD loan or refinance with a HUD loan product in order to complete necessary repairs. "Federal financial assistance" under the URA includes a loan.[70] Therefore, if a tenant is forced to relocate temporarily while repairs are made with loan funds, the property owner must follow the URA.

- **PBV: Property makes repairs by undertaking a "substantial improvement":** In the case of a RAD PBV conversion, where a PBV unit is damaged "by fire, natural disaster, or similar extraordinary circumstances," the owner may apply to the PHA to undertake a "substantial improvement."[71] The requirements for a substantial improvement application are outlined in 24 C.F.R. § 983.212 and include an obligation to relocate a tenant displaced by the "substantial improvement" work. The PHA cannot approve the work unless one of the following requirements is met:

    A. The substantial improvement can be completed with the family remaining in place if the work does not result in life-threatening deficiencies or HQS deficiencies that will last more than 30 days, and the family is agreeable;[72]

    B. The owner must temporarily relocate the family if the work can be completed within a single calendar month and the family is agreeable;[73] or

    C. If the previous two options are not possible, the tenant has the following rights:[74]

    (1) PHA must refer the tenant to another vacant unit at the property, if available. If the tenant rejects the unit, the PHA must offer a different unit or tenant-based assistance before the owner can terminate the family's lease. If there is no vacant unit in the same property, the PHA must issue a HCV to the tenant with no less than 90 days of search time (unless the tenant has accepted a PBV unit at a different property); (2) If the tenant moves to another unit at the same property, the owner must pay the family's reasonable moving expenses; (3) The PHA must offer the family the option to return to the original property with PBV assistance after the substantial improvement is complete.

4. Longer-term housing options and related relocation assistance requirements where property does not intend to rebuild as affordable housing

Sometimes a property owner does not rebuild after a disaster or takes another action that results in termination of its subsidy contract. This section explores several such scenarios and related tenants' rights. Note that a RAD PBRA owner has fewer options to escape its subsidy contract than a non-RAD PBRA owner, because the HAP contract is required to be renewed each time it expires during the term of the recorded RAD Use Agreement.[75] Therefore, opt-out is not an option.

- **PBRA: HUD approves a requested transfer of the budget authority to another property or set of properties via a Section 8(bb) transfer:** 42 U.S.C. § 1437f(bb), known as Section 8(bb),[76] provides a tool for preserving budget authority for PBRA properties where the HAP contract is terminated or expires and is not renewed. This tool allows an owner to apply to HUD to request to transfer the budget authority for the property to another new or existing PBRA contract.[77] Tenants must be advised by notice of the transfer, and must have at least 30 days to submit comments, each of which must be evaluated as part of the application to HUD. In addition, the owner must hold a tenant meeting to discuss the transfer.[78] This is an important advocacy opportunity for tenants and their representatives.

» Right to remain: Through the 8(bb) transfer process, tenants receive enhanced vouchers which (in theory), allow them to remain in their units at the original property if the units meet HQS.[79] Enhanced vouchers are a form of Tenant Protection Voucher ("TPV"). *See* Sections 4.2.6 and 12.6.3 of the Green Book for a detailed explanation of enhanced vouchers and some of the advocacy issues that arise with this tool. Tenants also have the ability to move with the HAP contract to the new property. If a tenant chooses this route or their existing unit is not habitable, her enhanced voucher converts to regular TPV that functions like a HCV. *See* section 12.6.2 of the Green Book for more information about TPVs.[80] Moving with the HAP contract may not be a good option for some tenant families because their new unit may not be equivalent. For example, it may have a different number of bedrooms or lack accessibility features available in the original unit.

» Entitlement to relocation cost reimbursement or funding: The HUD notice on 8(bb) transfers expressly states that the URA applies to tenants displaced by an 8(bb) transfer: "Under no circumstances shall the residents pay for any relocation costs incurred as a result of this transaction." It goes on to state that residents that move "as a direct result of acquisition, rehabilitation or demolition for an activity or series of activities that includes transfer of budget authority under Section 8(bb) may become eligible for relocation assistance under the [URA]."[81] However, at least one court has issued an adverse decision on this issue.[82]

- **PBRA: HUD contract termination due to conditions:** In certain circumstances, HUD can terminate its HAP contract with a property due to failing Real Estate Assessment Center ("REAC") scores. A property damaged by a disaster, or where poor conditions caused by deferred or neglected maintenance are aggravated by a disaster, may be vulnerable to contract termination. Termination of the HAP contract automatically terminates the tenants' leases.[83] Note that the HUD field office can request an 8(bb) transfer of budget authority in conjunction with a request to terminate a HAP contract due to conditions. The 8(bb) transfer process differs slightly where the reason is owner default due to conditions and is outlined in a 2018 memorandum written by then HUD Acting Deputy Assistant Secretary for Multifamily Housing, Robert Iber.[84] See prior section on 8(bb) transfers for tenant relocation rights.

  » Right to remain: In the case of HUD-initiated contract termination, tenants are eligible for enhanced vouchers.[85] These enhanced vouchers effectively convert to regular TPVs if the unit cannot pass inspection, and the tenant is therefore forced to move in order to keep their subsidy. *See* Green Book sections 12.6.2 and 12.6.3 for more information, relevant law, and advocacy challenges with enhanced vouchers and TPVs.[86]

  » Entitlement to relocation cost reimbursement or funding: There is no statutory entitlement to relocation assistance or funds based on the contract termination. However, as a practical matter, HUD contracts with a company to relocate tenants in this circumstance and provides relocation assistance and referrals to comparable dwellings. However, if HUD provides funding to a new owner to acquire the property, demolish any portion of it, and/or rehabilitate, and tenants are displaced as a result, the URA could also be triggered.[87] For more information about HAP contract termination, see Section 12.4.3 of the Green Book.

- **PBV: PHA contract termination due to conditions:** PBV owners must comply with Housing Quality Standards ("HQS") and are subject to an abatement of the HAP portion of rent if the unit repeatedly fails inspection. The PHA also has the option to terminate the HAP contract or remove the unit from the contract.[88] In this situation the tenant is issued a tenant–based Housing Choice Voucher to move.[89]

  » Entitlement to relocation cost reimbursement or funding: There is no statutory entitlement to relocation assistance or funds based on the PBV contract termination.

5. Eviction and Right to Return

Mass evictions are common after a disaster. A RAD owner may state the reason for eviction is that the unit is not habitable, and/or that repairs cannot be completed while the unit is occupied. Remember that the normal public housing procedural protections apply to evictions due to disaster damage, specifically the grievance process outlined in 24 C.F.R. §§ 966.4(n), 966.54, and 966.56. Grievance rights are required to transfer to the new RAD property and should appear in the RAD leases.[90]

The fact that the unit is not habitable through no fault of the tenant, or a tenant's unwillingness to "voluntarily" move from a unit the owner believes is damaged, should not be a permissible reason for termination of tenancy. A RAD owner can only terminate the tenancy of a public housing tenant for good cause– defined as family action or failure to act.[91] Both the HUD Model Lease (required for PBRA conversions), and the PBV Tenancy Addendum (required for PBV conversions) contain a good cause requirement.[92] In addition, HUD's public housing regulations (and required corresponding lease language) prescribe a specific remedy when a tenant's unit has health and safety concerns, and that remedy does not include the option of lease termination.[93] Therefore, if the RAD lease contains a "force majeure" or similar clause that permits lease termination in the event of a disaster, this provision likely runs afoul of rules applicable to RAD conversions.[94] For more information about "good cause" in the RAD context, see Section 11.2.2.8 of the Green Book.

Another tactic a PHA or owner may use is to evict based on nonpayment of rent if tenants are unable to pay rent after the disaster. *See* NHLP's Advocacy Strategies for Combating Evictions Following Hurricane Helene. Abatement under 24 C.F.R. § 966.4(h) may present a defense to these evictions.[95] Note that abatement under § 966.4(h) is not available if alternative accommodations are provided or are rejected. Advocates should be aware that in some cases, claiming abatement and/or claiming that an entire class of tenants is entitled to an abatement due to health and safety defects may be used by the PHA as justification for repositioning.

In addition, tenants who lose income due to the disaster may be entitled to an interim reexamination to reduce their rent portion. Note that HOTMA contains a new time-limited adjusted income deduction for families with a member who is elderly or has disabilities.[96] Under this provision, the family must show that they experienced financial hardship "as a result of a change in circumstance . . . that would not otherwise trigger an interim reexamination."[97] The family is eligible for a deduction of the sum of the eligible expenses that exceed five percent of their annual income for up to 90 days.[98] Where a family has unexpected out-of-pocket expenses due to evacuation, running a generator, or purchasing additional food because of power outages, they may qualify for this new deduction. Families that struggle to pay minimum rent after a disaster are entitled to a hardship exemption under 24 C.F.R. § 5.630. Entitlement to a hardship exemption can also provide a defensive argument in the context of an eviction.

C. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE AND OTHER HUD MULTIFAMILY PROPERTIES

Similar to public housing, many Section 8 PBRA and other HUD multifamily properties have decades of deferred maintenance that can be exacerbated by a natural disaster. A tenant's entitlement to relocation assistance after a disaster depends on what the owner does with the property, what funds are used for rehabilitation, and the reason for displacement. If a family is displaced because of the disaster itself, it is unlikely that substantial rights to relocation assistance will attach. Chapter 38 of HUD's Handbook 4350.1 provides guidance to PBRA building owners on disaster preparation and response.[99] Chapter 38 includes a provision allowing property owners to request waivers of handbooks and notices that do not reflect statutory or regulatory requirements. Such waivers must be requested by the owner.[100]

This section does not cover public housing converted to PBRA through RAD; see Section II(B), supra, if that is the situation you are dealing with.

1. Landlord obligation where property rendered uninhabitable

A property may be uninhabitable in the immediate aftermath of a disaster because of damage, temporary utility outages, or both. Utility outages can last days, weeks, or even months if there is major infrastructure damage. PBRA and other HUD multifamily properties are obligated to comply with physical conditions standards outlined in 24 C.F.R. part 5, subpart G. "To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards."[101] The HUD model lease used by many PBRA and other multifamily properties requires that the landlord "make necessary repairs with reasonable promptness."[102] *See* Green Book section 7.7.2.3. The Model Lease also states that:

> If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.[103]

This protection is unique to the lease and does not appear in federal regulations. Advocates should also review state and local laws that relate to repairs and habitability.

Thus, PBRA and HUD multifamily landlords have an obligation to ensure that a tenant's dwelling unit remains in livable condition. In the event that the unit is rendered unlivable temporarily or permanently, advocates should argue that the property owner is obligated to provide alternative housing that is compliant with HUD's habitability standards.

As a practical matter, habitability-related complaints to HUD field or regional offices may get directed to the property's Project-Based Contract Administrator ("PBCA"). Advocates have historically encountered a number of problems related to communication and enforcement with PBCAs. As a result, advocates are encouraged to keep communications in writing, and involve multiple stakeholders as necessary, including state or local government offices.

2. Immediate shelter options

HUD guidance provides a few options for alternative housing arrangements in the immediate aftermath of a disaster that renders PBRA or HUD multifamily housing uninhabitable.

- **FEMA:** In the immediate aftermath of a Presidentially Declared Disaster, PHA or owner will likely refer the tenant to FEMA for immediate shelter needs (see overview of available FEMA assistance above). See section III for an overview of legal issues that can arise when a tenant is receiving FEMA and HUD assistance.
- **Waivers allow additional flexibility to provide emergency shelter:** Chapter 38 of the HUD Handbook 4350.1 provides certain waivers that can be used to temporarily rehouse families. For example, families are permitted to temporarily move in with other HUD-assisted family or friends for up to 90 days.[104] Owners can also use community space as temporary shelter.[105]
- **Disaster preferences:** In the case of Presidentially Declared Disasters, displaced residents must be given a preference on the waiting list of Section 221(d)[106] and Section 236[107] projects for temporary or permanent rental housing as long as the residents are displaced and are FEMA certified as disaster victims.[108] A local PHA may adopt a preference for disaster victims for either its public housing or voucher programs that can

be used to rehouse displaced tenants.[109] Such a preference can be adopted by amending its ACOP and/or Administrative Plan.

- **Section 8 Pass Through Lease:** Another alternative shelter option that requires HUD authorization but that can be implemented fairly quickly is a "pass through" lease. A property-owner can execute a Housing Assistance Payment (HAP) contract "pass through" to temporarily apply the HAP contract's funds to another property, hotel, or set of properties or hotels.[110] Though owners are not required to use the pass-through lease mechanism, advocates should argue that they *are* obligated to provide tenants decent, safe, sanitary housing in accordance with the terms of the lease. In some cases, a pass-through lease may be the best available way to comply with these requirements. However, in a major disaster that impacts a large portion of the housing stock, locating a suitable hotel or other property with sufficient vacancies may be challenging. NHLP has assembled a tip sheet entitled Project-Based Section 8 Pass Through Leases: Tips and Best Practices for Advocates, as a number of issues commonly arise. Some additional notes about pass-through leases:

  - » Entitlement to relocation cost reimbursement or funding: Advocates should seek a copy of the letter from HUD authorizing the pass-through via a FOIA or public records law request. The letter may explicitly require that the owner cover tenants' relocation costs, including any utility setup fees. HUD's draft guidance on pass-through leasing states that owners "must pay all moving and relocation expenses including utility connections for both moves."[111] The guidance also states that if the relocation exceeds 12 months, the owner must provide permanent relocation assistance pursuant to the URA.[112]

  - » Rent obligation: Tenants are obligated to pay their tenant portion of rent in a pass-through lease arrangement.

In general, if a tenant is displaced by a disaster, rather than by a federally funded demolition or rehabilitation project, she will not qualify for relocation funding or other assistance under the URA, Section 18, or Section 104(d). Unfortunately, the question of what, exactly, has displaced the tenant is not always black and white. If a tenant is told to move to temporary accommodations or another property via a disaster preference or pass-through lease so that her unit can be prepared, she is arguably being displaced by the relocation effort or rehabilitation plan rather than the disaster itself. However, this does not automatically entitle her to relocation funding or other assistance under the URA or other applicable law. In this context, the relocation assistance obligations are only triggered where the tenant is displaced *by a federally funded demolition or rehabilitation project.*[113] For example, if the tenant is told she needs to move because a contractor is scheduled to gut her unit to remediate mold, and that work is being funded by certain federal funds, she may be entitled to relocation assistance. See Appendix on URA, Section 18, and Section 104(d).

3. Longer-term housing options and related relocation assistance requirements where property intends to rebuild

A tenant's specific relocation rights and entitlement to relocation assistance largely depend on what the owner and HUD decide to do with the property and what funds will be used to repair it. In addition, URA and 104(d) requirements are only triggered if the tenant is displaced by the federally funded project itself. If they are displaced by the disaster, and then later federal funding is used to conduct repairs, the benefits of those two laws likely do not apply. Assuming for the purposes of this analysis that the tenant is displaced by the rehabilitation or repair work, the following generally applies.

- **Property repairs with insurance and/or reserves:** If the property repairs exclusively with insurance proceeds or reserves, relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.

- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[114] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[115]

- **Property intends to repair with Low-Income Housing Tax Credit ("LIHTC") funds, CDBG-DR funds, HOME funds, or a combination thereof:** LIHTC funds alone do not trigger URA benefits, to the extent that they are used to fund a redevelopment project that may displace a family.[116] However in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where tax credits or bonds are involved. Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property.

- **Property intends to repair by taking out a HUD loan:** Under certain circumstances a property owner may take out a HUD loan or refinance with a HUD loan product in order to complete necessary repairs. "Federal financial assistance" under the URA includes a loan.[117] Therefore if a tenant is forced to relocate temporarily while repairs are made with loan funds, the property owner must follow the URA.

4. Longer-term housing options and related relocation assistance requirements where property does not intend to rebuild as affordable housing

Sometimes a property owner does not rebuild after a disaster or takes other action that results in termination of its subsidy contract. This section explores several such scenarios and related tenants' rights.

- **HUD approves a requested transfer of the budget authority to another property or set of properties via a Section 8(bb) transfer:** 42 U.S.C. § 1437f(bb), known as Section 8(bb),[118] provides a tool for preserving budget authority for PBRA properties where the HAP contract is terminated or expires and is not renewed. This tool allows an owner to apply to HUD to request to transfer the budget authority for the property to another new or existing PBRA contract.[119] Tenants must be advised by notice of the transfer, and must have at least 30 days to submit comments, each of which must be evaluated as part of the application to HUD. In addition, the owner must hold a tenant meeting to discuss the transfer.[120] This is an important advocacy opportunity for tenants and their representative.

  - » Right to remain: Through the 8(bb) transfer process, tenants receive enhanced vouchers which (in theory), allow them to remain in their units at the original property. *See* Sections 4.2.6 and 12.6.3 of the Green Book for a detailed explanation of enhanced vouchers and some of the advocacy issues that arise with this tool. Tenants also have the ability to move with the HAP contract to the new property; if a tenant chooses this route, her enhanced voucher converts to a Tenant Protection Voucher ("TPV"). *See* section 12.6.2 of the Green Book for more information about TPVs.[121] Moving with the HAP contract may not be a good option for some tenant families because their new unit may not be equivalent. For example, it may have a different number of bedrooms or lack accessibility features available in the original unit.

  - » Entitlement to relocation cost reimbursement or funding: The 2015 HUD notice on 8(bb) transfers expressly states that the URA applies to tenants displaced by an 8(bb) transfer: "Under no circumstances

shall the residents pay for any relocation costs incurred as a result of this transaction." It goes on to state that residents that move "as a direct result of acquisition, rehabilitation or demolition for an activity or series of activities that includes transfer of budget authority under Section 8(bb) may become eligible for relocation assistance under the [URA]."[122] However, at least one court has issued an adverse decision on this.[123]

- **Owner converts the property to market-rate by opting out of HAP contract renewal:** After a disaster, especially if a property has sustained major damage, a PBRA owner might decide to opt out of the HAP contract renewal to avoid ongoing HUD oversight and program restrictions. As a practical matter, opt-out would only be an option in direct response to a disaster if the disaster occurred in the years immediately before contract expiration (i.e. the owner cannot accelerate or change the expiration date). The Multifamily Assisted Housing Reform and Affordability Act of 1997 ("MAHRA") contains certain protections for tenants where a HAP contract is not renewed by the owner when it expires.[124] For more information and resources on Section 8 opt-out (and how to challenge it) see Section 12.4.2 of the Green Book. Also see NHLP's 2003 guide to Challenging Conversions of Federally Assisted Housing. If your clients are threatened with an opt-out, be sure to check to make sure there are not other use restrictions on the property that might extend the affordability requirements.

  - » Notice: Under MAHRA, the owner must give a 12-month advance notice of nonrenewal to tenants.[125] This notice requirement is not abrogated in the event of a disaster. Additional notice requirements may exist under state law. In the event that the owner does not give the required notice, the owner must permit tenants to stay in their units for the required notice period with no increase in tenant portion of rent and may not evict for failure to pay an increased amount of rent.[126]

  - » Right to remain: An opt-out should result in eligibility for enhanced vouchers[127] that allow tenants to remain in their units (and that the owner is obligated to accept), assuming the unit is restored to habitable condition in compliance with HUD standards.[128] If the tenant opts to move or the unit cannot be restored to HUD-compliant condition, the enhanced voucher becomes a Tenant Protection Voucher, which operates like a regular Housing Choice Voucher. *See* Green Book sections 12.6.2 and 12.6.3 for more information, relevant law, and advocacy challenges with enhanced vouchers and tenant protections vouchers.

  - » Entitlement to relocation cost reimbursement or funding: Tenants are not eligible for monetary relocation assistance based solely on the opt-out and likely do not qualify as "displaced persons" under the URA.

- **HUD contract termination due to conditions:** In certain circumstances, HUD can terminate its HAP contract with a property due to failing REAC scores.[129] A property damaged by a disaster, or where poor conditions caused by deferred or neglected maintenance are aggravated by a disaster, may be vulnerable to contract termination. Termination of the HAP contract automatically terminates the tenants' leases.[130] Note that the HUD field office can request an 8(bb) transfer of budget authority in conjunction with a request to terminate a HAP contract due to conditions. The 8(bb) transfer process differs slightly where the reason is owner default due to conditions and is outlined in a 2018 memorandum written by then HUD Acting Deputy Assistant Secretary for Multifamily Housing, Robert Iber.[131]

  - » Right to remain: In the case of HUD-initiated contract termination, tenants are eligible for enhanced vouchers.[132] These enhanced vouchers effectively convert to Tenant Protection Vouchers if the unit cannot pass inspection, and the tenant is therefore forced to move in order to keep their subsidy. *See* Green Book sections 12.6.2 and 12.6.3 for more information, relevant law, and advocacy challenges with enhanced vouchers and tenant protection vouchers.[133]

» Entitlement to relocation cost reimbursement or funding: There is no statutory entitlement to relocation assistance or funds based on the contract termination. However, as a practical matter, HUD contracts with a company to relocate tenants in this circumstance and provides relocation assistance and referrals to comparable dwellings. However, if HUD provides funding to a new owner to acquire the property, demolish any portion of it, and/or rehabilitate, and tenants are displaced as a result, the URA could also be triggered.[134] For more information about HAP contract termination, see Section 12.4.3 of the Green Book.

- **Owner converts the property to market-rate by prepaying HUD mortgage:** Prepayment of a HUD-subsidized mortgage terminates the rent and occupancy restrictions contained in the regulatory agreement prior to the expiration of the full mortgage term. Prepayment of HUD mortgages is largely a historical problem, because there are few remaining outstanding HUD-subsidized mortgages as of this writing. The remaining HUD-subsidized inventory that might be subject to prepayment restrictions consists of Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") properties, Section 202 and 811 developments, and a few older properties with HUD-held loans. However, in the unlikely event that prepayment arises as an issue, tenants facing displacement due to prepayment have certain protections. For comprehensive analysis and background on HUD mortgage prepayment (and how to challenge it), and related tenant protections, see Section 12.3.2 of the Green Book.

- **HUD forecloses on the property:** Although foreclosures on HUD-subsidized mortgage properties that provided housing for lower-income tenants have diminished due to refinancing and maturities of those subsidized loans, many properties still have HUD-*insured* (unsubsidized) mortgages. If those loans go into default they may become HUD-held mortgages and HUD may foreclose if the default is not remedied. Certain tenant protections apply in the HUD foreclosure and disposition[135] process, but the protections are limited where there is no PBRA subsidy contract attached to the property. For a detailed discussion of the applicable statutory and regulatory requirements in a HUD foreclosure situation, see Section 12.3.5 of the Green Book.

  » Notice: In the case of foreclosure on a HUD-held mortgage, HUD must provide at least 60 days' notice to tenants and local government. In the case of HUD-owned property dispositions, notice must be provided before HUD acquisition of the property or not more than 30 days thereafter.[136]

  » Right to remain: Where there is a PBRA contract attached to the property, the Section 8 subsidy should generally be continued after the foreclosure or disposition, depending on whether the property can be restored to a condition that meets HUD requirements.[137] *See generally* Section 12.3.5.4 of the Green Book.

  » Entitlement to relocation cost reimbursement or assistance: Where tenants will be required to relocate temporarily or permanently due to disposition of a HUD-owned multifamily property or a multifamily property subject to a HUD-held mortgage, relocation assistance is required at URA levels where federal financial assistance is provided in connection with the purchase, demolition, or rehabilitation of the property.[138] Where financial assistance is not provided, relocation assistance is still required but at non-URA levels.[139]

5. Eviction and right to return

If the PBRA contract has not been terminated, the tenants' leases remain in effect. The lease can only be terminated for good cause, defined as something the tenant did or did not do.[140] "Force majeure" and damage not caused by the household should not be permissible reasons for eviction under applicable regulations. See Section 11.2 of the Green Book on "good cause." In addition, the normal Section 8 PBRA procedural protections apply to evictions due to disaster damage, specifically the right to a meeting before termination as stated in the HUD model lease and HUD multifamily occupancy handbook 4350.3. *See* Section 11.3.3 of the Green Book.

Unfortunately, seemingly contrary to applicable regulations, Chapter 38 of the HUD Handbook 4350.1 expressly advises owners to evict tenants who refuse to "voluntarily" move from an uninhabitable unit, explaining that "Section 8 payments cannot be made if a unit has been declared uninhabitable or condemned."[141] Courts have held that the HUD Handbook "has no binding force on us, but is entitled to notice so far as it is an official interpretation of statutes or regulations with which it is not in conflict."[142] Here, advocates can argue there is a clear conflict between the Handbook and applicable regulations, which do not permit eviction for this reason. Deference to HUD directives like the Handbook is discussed in full in the Green Book chapter 14.9.2.4.

Chapter 38 also advises that tenants have a right to return to their rehabilitated unit:

> Owners also have a responsibility to ensure that the property is secured, and that residents' possessions and valuables are secured and protected to the greatest extent possible. Residents have a right to return to the unit from which they were displaced once their residence is repaired so owners must make a concerted effort to track displaced residents by phone, mail, family, friends, by contacting FEMA, or some other method. An owner may offer, and a resident may accept, an alternate unit acceptable to all parties if that will facilitate a displaced resident's returning to a permanent residence. However, once a resident accepts any permanent housing, they no longer have a right to return to the unit from which they were displaced.
>
> …
>
> Residents who have been displaced from their unit have a right of first refusal for a reasonable time after their unit is repaired and ready for re-occupancy. Owners must inform residents in writing when their unit is habitable and can be re-occupied. Residents should be given a reasonable time to return to their unit, usually, within 60 days after notification of availability. Owners are encouraged not to evict residents who have not returned to their unit for good cause or who have reduced income due to a job loss as a result of the declared disaster. Payment plans for delinquent rents are encouraged. However, if a displaced resident moves to other permanent housing, the owner may rent the unit. Owners must provide this information to residents in accessible formats for persons with disabilities and in appropriate languages for persons with LEP.[143]

In addition, HUD's sample pass-through lease states:

> In the event of a temporary disaster or rehabilitation of the property, owners have a responsibility to ensure that the property is secured and that tenants' possessions and valuables are secured and protected to the greatest extent possible. Tenants have a right to return to the unit from which they were displaced once their residence is repaired so owners must make a concerted effort to track displaced tenants by phone, mail, family, friends, or some other method.[144]

However, tenants must be sure to meet deadlines and keep lines of communication open with management in order to take advantage of this right of return. Enforcing useful provisions of HUD's handbooks and subregulatory guidance will require diligent and persistent advocacy. State law may provide additional protections.

D. HOUSING CHOICE VOUCHER PROGRAM

Because HCVs are mobile subsidies, a participant has a right to move with continued assistance after a disaster. A tenant can also choose to move to temporary accommodations and return to the unit once HQS violations caused by the disaster have been resolved; however, the participant must not remain absent from the unit for longer than permissible under HUD regulations. HUD's 2022 Readiness, Response, and Recovery Guidebook[145] and fact sheets[146] outline the agency's recommendations for PHAs that administer vouchers post-disaster. HUD also advertises available "Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster" for PHAs via Federal Register notice on an annual or biannual basis.[147] These waivers must be requested by a PHA and apply to the voucher and or public housing programs. For example, the current waivers allow a PHA to extend voucher search terms without amending its Administrative Plan immediately. PHAs may also allow individuals to be absent from their units for up to 240 days, instead of the usual 180 days. PHAs can also request additional waivers not listed. This is an important place where advocacy can be conducted to support disaster-impacted HCV participants.

If there is no housing available locally, a participant may port out of the jurisdiction. A major post-disaster advocacy issue is the erroneous assumption that tenants with vouchers have no attachment to place like homeowners and renters on the private market and should be willing to port across the region or state. Advocates must remind PHAs and policymakers that HCVP participants, like renters on the private market and homeowners, may not be able to easily port out of the jurisdiction because of the need for local family supports, and proximity to jobs, schools, and healthcare. The need to remain local may be heightened for some tenants with disabilities. HCVP participants who are unwilling or unable to port far away with their voucher after a disaster should not be punished for their need to remain local despite limited or damaged local housing stock.

1. Landlord obligation where property rendered uninhabitable

HCV landlords must maintain their properties in compliance with Housing Quality Standards.[148] Under applicable regulations, the landlord has an obligation to make timely repairs whether the damage was caused by deferred maintenance or by a disaster. The landlord typically has 30 calendar days to make a repair identified in an inspection, unless the deficiency is life threatening. In the case of a life-threatening deficiency, the landlord has 24 hours to make the repair.[149] The PHA must inspect the unit at least biennially (subject to an alternative inspection option).[150] In addition, the tenant can request an interim inspection (sometimes called a "special inspection" or "complaint inspection") any time there is a deficiency.[151] The HCVP Tenancy Addendum is a mandatory part of the tenant lease agreement and also requires HQS compliance.[152]

Where an owner fails to make repairs in the required time period, the PHA will abate its Housing Assistance Payments and the family can elect to move with continued assistance.[153] The family is only responsible for their tenant portion and cannot be evicted due to the unpaid abated HAP.[154] Advocates should also check the PHA's Administrative Plan for the voucher program for applicable local policies.

Section 101 of HOTMA adds additional flexibilities for the PHA inspection and HQS enforcement process as applied to HAP contracts executed or renewed after June 6, 2024. A PHA can now withhold rent when a unit fails inspection, and then issue the HAP retroactively when repairs are made (in advance of any abatement).[155] Once the unit goes into abatement, the family can elect to move with continued assistance.[156] The PHA will terminate the HAP contract if the unit does not meet HQS within 60 days "or a reasonable longer period" of the abatement start date.[157] If a family is forced to relocate due to a failed HQS inspection, the family must be given at least 90 days to lease a new unit.[158] If they are unable to lease up in that time, the PHA must offer the next available appropriately sized public housing unit in its inventory.[159] The PHA may also use up to two months of abatement

or withheld HAP payments to assist with the moving tenant's security deposit, temporary housing costs, or other moving costs. In order to implement this policy, the PHA must add it to its Administrative Plan.[160] These new policies, including the optional third policy, will help ensure that tenants displaced due to post-disaster failed HQS inspections do not lose their subsidies.

2. Immediate shelter options

In the event of a Presidentially Declared Disaster, PHA or owner will likely refer the tenant to FEMA for immediate shelter needs. Applicable program regulations and HUD's guidance do not offer any special relocation rights or options for short-term or temporary relocation other than community/congregate shelters, FEMA assistance, and sheltering with friends or family.[161]

As a practical matter, tenants sometimes need to relocate prior to when an HQS inspection process can be completed. This might be the case where there is serious damage to the unit which renders it unsafe or unlivable, or a disaster-related utility outage. The client might qualify for TSA or other assistance from FEMA or may reside temporarily with family or friends during the time prior to the issuance of a moving voucher. Advocates should encourage their clients to take steps to communicate their temporary contact information to the PHA, preferably in writing. Email is optimal since most tenants can email from their phones, and the PHA's physical office may be temporarily inaccessible due to interruption in phone service or damaged administrative buildings. In the chaotic aftermath of a disaster, tenants should not trust that information provided over the phone or in person gets recorded and memorialized. In addition, some tenants erroneously assume that if they are temporarily residing in FEMA-assisted housing, that information is communicated to the PHA. It is important that clients stay in written contact with the PHA so that they do not miss key communication, or face termination for failure to respond or provide requested information.

HCVP participants are not entitled to relocation funding or assistance if displaced by disaster damage, other than the optional PHA policy of providing up to two months of withheld or abated rent to assist with moving costs, described above.

3. Longer-term housing options and related relocation assistance requirements

A tenant's specific relocation rights and entitlement to relocation assistance largely depend on when and why the tenant is displaced. Below are some common scenarios.

- **Tenant moves with continued assistance:** If the assisted unit is damaged by the disaster or has no utility service, it will likely fail HQS inspection. As discussed above, when the unit goes into abatement the tenant can elect to move with continued assistance.[162] The PHA will then issue the family a voucher to move. A family is also permitted to move with continued assistance after the first year, with proper notice.[163] If there is insufficient housing stock after a disaster in the local housing market, the tenant may port her voucher to another jurisdiction.[164] As a practical matter, porting may not be a good option for families who cannot afford to move far away from jobs, schools, healthcare, or support systems.
    - » Right to remain: A tenant may choose to wait for repairs at her existing assisted unit post-disaster. However, it is unlikely that major repairs can be made within the 90-day window required by HQS regulations (30 days to repair non-life-threatening defects, then 60-day minimum abatement before contract termination), because of insurance disputes and other delays. A participant must avoid being absent from the unit longer than the permissible period, taking into account any applicable waivers.
    - » Entitlement to relocation cost reimbursement or assistance: Where a HCV tenant is displaced by a failed HQS inspection, relocation assistance would only be available if the PHA has elected to adopt

the optional policy under HOTMA to use up to two months of withheld or abated rent for moving expenses.[165] In order to apply this policy, the PHA must have added it to their Administrative Plan.

- **Property repairs with insurance and/or or reserves:** If the property repairs exclusively with insurance proceeds or reserves, statutory relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.
- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[166] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[167] As a practical matter, the PHA would likely require that the tenant move prior to any rehabilitation using FEMA funds, assuming the property goes into abatement for failed HQS inspection.
- **Property repairs with Low-Income Housing Tax Credit ("LIHTC") funds, CDBG-DR funds, HOME funds, or a combination thereof:** LIHTC funds alone do not trigger URA benefits, to the extent that they are used to fund a redevelopment project that may displace a family.[168] However, in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where tax credits or bonds are involved.[169] Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property. As a practical matter, the PHA would likely require that the tenant move prior to any rehabilitation using any of these funding sources, assuming the property goes into abatement for failed HQS inspection. Obtaining financing through LIHTC or CDBG-DR funds through a state rebuilding program can take years.

4. Eviction and right to return

If the unit goes into abatement due to a failed HQS inspection, the family is only responsible for their tenant portion and cannot be evicted due to the unpaid HAP.[170] However, if the PHA terminates the HAP contract after the maximum abatement period (60 days or a longer period as determined in the PHA's Administrative Plan), the tenant becomes responsible for full rent and can be evicted for nonpayment.

HCVP regulations allow the landlord to evict for a "business or economic reason," or the owner's desire to use the unit for personal or family use, after the initial lease term.[171] Therefore, HCVP participants are more vulnerable to eviction after a disaster than other federally subsidized tenants. State law may also determine the landlord's ability to evict after a "force majeure" event or disaster.

E. PROJECT-BASED VOUCHER PROGRAM

The Project-Based Voucher ("PBV") program generally follows the same regulations and program rules as the HCV program.[172] Though PBV assistance is not a mobile subsidy like an HCV, tenants have a right to switch to the HCV program after a year,[173] or if their unit fails inspection and the owner fails to make repairs.[174] Therefore, in a situation where a PBV property is rendered unlivable by a disaster the tenant may move with continued assistance to another available PBV unit (usually via referral from the PHA), or may switch to the HCV program and move to a new unit or port to a new jurisdiction (assuming there are available HCVs).

For specific rules applicable to RAD PBV conversions, see Section II(B), supra.

1. Landlord obligation where property rendered uninhabitable

PBV landlords must maintain their properties in compliance with Housing Quality Standards.[175] Under applicable regulations, the landlord has an obligation to make timely repairs whether the damage was caused by deferred maintenance or by a disaster. The landlord typically has 30 calendar days to make a repair identified in an inspection, unless the deficiency is life threatening. In the case of a life-threatening deficiency the landlord has 24 hours to make the repair.[176] The PHA must inspect the unit before a new tenant moves in, and at least biennially (subject to an alternative inspection option).[177] In addition, the tenant can request an interim inspection (sometimes called a "special inspection" or "complaint inspection") any time there is a deficiency.[178] The PBV Tenancy Addendum is a mandatory part of the tenant lease agreement and also requires HQS compliance.[179]

Where an owner fails to make repairs in the required time period, the PHA will abate its Housing Assistance Payments. If the owner fails to make repairs in 60 days from the notice of abatement, the unit must be removed from the HAP contract and the family must be issued a tenant-based voucher to move.[180] The tenant can also elect to move during the period of abatement, at which point the PHA must issue the family an HCV.[181] The family is only responsible for their tenant portion and cannot be evicted due to the unpaid abated HAP.[182] Advocates should also check the PHA's Administrative Plan for the voucher program for applicable local policies.

Section 101 of HOTMA adds additional flexibilities for the PHA inspection and HQS enforcement process as applied to HAP contracts executed or renewed after June 6, 2024. A PHA can now withhold rent when a unit fails inspection, and then issue the HAP retroactively when repairs are made (in advance of any abatement).[183] If a family is forced to relocate due to a failed HQS inspection, the family must be given at least 90 days to lease a new unit.[184] If they are unable to lease up in that time, the PHA must offer the next available appropriately sized public housing unit in its inventory.[185] The PHA may also use up to two months of abatement or withheld HAP payments to assist with the moving tenant's security deposit, temporary housing costs, or other moving costs. In order to implement this policy, the PHA must add it to its Administrative Plan.[186] These new policies, including the optional third policy, will help ensure that tenants displaced due to post-disaster failed HQS inspections do not lose their subsidies.

2. Immediate shelter options

Neither federal regulations, nor HUD's Public Housing Agency Disaster Readiness, Response, and Recovery Guidebook, contain any specific guidance on short-term relocation options for PBV tenants. Nonetheless, there are a few immediate shelter options:

- In the event of a Presidentially Declared Disaster, the PHA or owner will likely refer the tenant to FEMA for immediate shelter needs.

- For short-term or long-term relocation needs, tenants in the PBV program have the right to transfer their assistance to the HCV program after a year,[187] or if their unit fails inspection and the owner fails to make repairs.[188] PHAs with available HCVs may be able to quickly issue mobile vouchers to displaced PBV tenants, who can then use those vouchers to locate housing in the private market or port to another jurisdiction. Please see HCVP section of this guide and note that most jurisdictions experience substantial housing shortages following a significant disaster.

3. Longer-term housing options and related relocation assistance requirements where property intends to rebuild

In terms of long-term relocation rights, a PBV tenant's rights largely depend on what the PHA intends to do with the property and what funds will be used to repair it.

- **Property repairs with insurance and/or or reserves:** If the property repairs exclusively with insurance proceeds or reserves, relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.

- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[189] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[190]

- **Property repairs with Low-Income Housing Tax Credit ("LIHTC") funds, CDBG-DR funds, HOME funds, or a combination thereof:** The current regulation states that LIHTC funds alone do not trigger URA benefits,[191] to the extent that they are used to fund a redevelopment project that may displace a family.[192] However, in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where tax credits or bonds are involved.[193] Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property.

- **Property repairs by undertaking a "substantial improvement":** Where a PBV unit is damaged "by fire, natural disaster, or similar extraordinary circumstances," the owner may apply to the PHA to undertake a "substantial improvement."[194] The requirements for a substantial improvement application are outlined in 24 C.F.R. § 983.212 and include an obligation to relocate a tenant displaced by the "substantial improvement" work. The PHA cannot approve the work unless one of the following requirements is met:

  A. The substantial improvement can be completed with the family remaining in place if the work does not result in life-threatening deficiencies or HQS deficiencies that will last more than 30 days, and the family is agreeable;[195]

  B. The owner must temporarily relocate the family if the work can be completed within a single calendar month and the family is agreeable;[196] or

  C. If the previous two options are not possible, the tenant has the following rights: (1) PHA must refer the tenant to another vacant unit at the property, if available. If the tenant rejects the unit, the PHA must

offer a different unit or tenant-based assistance before the owner can terminate the family's lease. If there is no vacant unit in the same property, the PHA must issue a HCV to the tenant with no less than 90 days of search time (unless the tenant has accepted a PBV unit at a different property); (2) If the tenant moves to another unit at the same property, the owner must pay the family's reasonable moving expenses; and (3) The PHA must offer the family the option to return to the original property with PBV assistance after the substantial improvement is complete.[197]

4. Longer-term housing options and related relocation assistance requirements where property does not intend to rebuild as affordable housing

Sometimes a property owner does not rebuild after a disaster or takes other action that results in termination of its subsidy contract. This section explores several such scenarios and related tenants' rights. Though there is no automatic entitlement to relocation assistance where a tenant is displaced because the property's HAP contract terminates, if the HAP contract termination is accompanied by an acquisition, demolition, or rehabilitation effort completed with qualifying federal funds, the URA or Section 104(d) may apply.

- **HAP contract nonrenewal:** PBV HAP contracts can be for a term of one to twenty years.[198] The contract can be extended by agreement of the PHA and owner for periods of up to twenty years.[199] If the owner chooses not to renew the contract at the end of its term, the tenant is issued a tenant–based Housing Choice Voucher to move.[200]

  A. Notice: The owner must provide notice not less than one year before termination of a PBV HAP contract. In the event that the owner misses this deadline, they must allow the tenants to remain in their units with no increase in rent for the remainder of the notice period.[201]

  B. Right to Remain: The PBV HAP contract must provide that, if the units continue to be used for rental housing upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use its tenant-based assistance to remain in the same project.[202] The landlord cannot refuse to lease the unit to a family simply on the basis of the fact that the family will use a tenant-based voucher to remain on site. However, in order for the family to do this, the unit must pass HQS, and the rent must fall within the payment standard and be deemed reasonable.[203] Therefore, as a practical matter, if the owner raises the rent substantially, the tenant will be barred from using their HCV to remain on site.

  C. Entitlement to Relocation Costs or Funding: There is no statutory or regulatory entitlement to relocation assistance based solely on the PBV contract nonrenewal. Absent displacement caused by a federally funded acquisition, demolition, or rehabilitation effort, statutory obligations do not attach under the URA or Section 104(d).

- **PHA contract termination due to conditions:** PBV owners must comply with Housing Quality Standards ("HQS") and are subject to an abatement of the HAP portion of rent if the unit repeatedly fails inspection. The PHA also has the option to terminate the HAP contract or remove the unit from the contract.[204] In this situation the tenant is issued a tenant–based Housing Choice Voucher to move.[205] There is no statutory or regulatory right to remain at the property, and as a practical matter the unit has failed HQS so it will not qualify for use with a HCV. Absent displacement caused by a federally funded acquisition, demolition, or rehabilitation effort, statutory obligations do not attach under the URA or Section 104(d).

5. Eviction and right to return

A PBV owner may not evict a tenant based on the fact that a HAP payment is withheld or abated by the PHA due to failed inspection.[206]

Under the regulations governing substantial improvements, a PBV owner has a right to terminate a tenant's lease when improvements to correct HQS violations caused by a disaster will take more than a month.[207] The tenant has a right to return to the property after the substantial improvement is completed, subject to the owner's tenant selection criteria.[208]

If a family elects to remain and use their HCV at the property after PBV HAP contract nonrenewal, the owner may, under some circumstances, terminate assistance so that the owner can renovate. However, the owner must consider alternatives to lease termination including temporarily relocating the family, must make every reasonable effort to lease the family another unit at the property, or if none exists, must make every reasonable effort to make available a unit within the property once renovations are complete.[209]

F. HOME INVESTMENT PARTNERSHIPS PROGRAM

The HOME Investment Partnerships Program ("HOME") is a federal block grant program that provides grants to states and localities which they can use to build or rehabilitate affordable housing, or provide Tenant Based Rental Assistance ("TBRA"). Where rental properties are financed with HOME funds, they typically are bound by affordability restrictions for 5 to 20 years.[210] Where a HOME-funded project displaces tenants (e.g., the renovation of a property with HOME funds), the individual is entitled to benefits under Section 104(d) of the Housing and Community Development Act of 1974, and possibly the URA. This section will not examine that scenario, but rather a scenario where a family is displaced from a property subsidized with HOME funds by a disaster.

HOME funded units may have a secondary subsidy, so be sure to check program rules and the section of this guide for that program as well. In addition, state and local agencies that administer HOME funds have significant leeway to set rules and standards for the HOME funds they administer. Advocates should review any contract or recorded use restriction attached to the HOME funds, as well as their state or local entity's HOME policies and compliance manual.

For more general information on the HOME program, see Green Book section 1.7.3.

1. Landlord obligation where property rendered uninhabitable

Jurisdictions that receive HOME funds must establish property standards that apply throughout the affordability period. The standards must require that owners maintain the housing as "decent, safe, sanitary, and in good repair," and must be free of health and safety defects.[211] Properties must meet state or local code requirements, or at minimum, comply with HUD's NSPIRE standard.[212] The jurisdiction administering the HOME funds must establish inspection standards and inspect the property at least once every three years (in addition to within 12 months after project completion).[213] Units rented by tenants with HOME TBRA assistance must be inspected annually.[214] Life threatening deficiencies must be corrected immediately within a time frame established by the jurisdiction.[215]

On January 6, 2025, HUD published a final rule establishing additional protections for tenants in HOME-funded units. Specifically, the updated regulation requires a Tenancy Addendum which, among other things, requires that:

> If the owner is required to repair a life-threatening deficiency impacting the tenant, and the repairs cannot be completed on the day the life-threatening deficiency is identified, the tenant shall promptly be relocated into housing that is decent, safe, sanitary, and in good repair and that provides the same or a greater level of accessibility, or other physically suitable lodging, at no additional cost to the tenant, until the repairs are completed and where it may be necessary, reasonable accommodations must continue to be provided during the relocation . . ..[216]

This provision applies to applies to tenants in HOME-funded properties but not tenants assisted with TBRA.[217] The new regulation also requires owners and participating jurisdictions to notify tenants in writing of any known environmental, health, or safety hazard discovered after the environmental inspection.[218] As of this writing, the new rule is subject to a delayed effective date.[219]

2. Immediate shelter options

In the event of a Presidentially Declared Disaster, the owner will likely refer the tenant to FEMA for immediate shelter needs (see overview of available FEMA assistance, below). There are no additional HOME-specific short-term protections. However, there may be additional protections or options if there is a secondary subsidy attached to the property. In addition, check the rules of your state and local agencies that administer HOME funds to see if their policies contain additional protections.

3. Longer-term housing options and related relocation assistance requirements

In the absence of additional protections under a secondary subsidy program, a HOME tenant's right to relocation and related assistance largely depends on what the owner decides to do with the property and what funds will be used to repair it (as well as applicable rules under any secondary subsidy program). If the displacement is caused by a federally funded acquisition, demolition, or rehabilitation, federal statutory protections may apply. In addition, check the rules of your state and local agencies that administer HOME funds to see if their policies contain additional protections.

- **Property repairs with insurance and/or or reserves:** If the property repairs exclusively with insurance proceeds or reserves, relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.

- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[220] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[221]

- **Property intends to repair with additional Low-Income Housing Tax Credit ("LIHTC") funds, CDBG-DR funds, additional HOME funds, or a combination thereof:** LIHTC funds alone do not trigger URA benefits, to the extent that they are used to fund a redevelopment project that may displace a family.[222] However in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where HOME funds are involved. Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property.

4. Eviction and right to return

An owner of a HOME-funded unit can only terminate a tenancy or refuse to renew a lease for good cause, meaning a "serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any

required transitional housing supportive services plan; or for other good cause . . . ."[223] Advocates should argue that disaster damage where the tenant was not at fault should not constitute good cause sufficient to terminate the lease. Currently there is no statutory or regulatory right to return in the HOME program. However, as a practical matter if a tenant is temporarily displaced but not terminated for good cause, an advocate can argue that the tenant should have a right to return to their unit.

Under the new HOME rule that has a delayed effective date, HOME properties will be required to implement a tenancy addendum that implies that tenants relocated due to life-threatening deficiencies have a right to return after repairs are completed.[224]

G. LOW-INCOME HOUSING TAX CREDIT ("LIHTC")

The Low-Income Housing Tax Credit ("LIHTC") program has become the primary vehicle to fund the development and rehabilitation of affordable housing in the United States. LIHTC is administered by state Housing Finance Agencies ("HFA"). For general information about the LIHTC program and tenants' rights under the program, see Green Book section 1.11, and NHLP's Advocate's Guide to Tenants' Rights in the Low-Income Housing Tax Credit Program. Note that LIHTC units frequently have a secondary subsidy to render them deeply affordable, such as a public housing subsidy, Section 8 Project Based Rental Assistance, or a Section 8 Housing Choice Voucher. Be sure to cross reference the section of this Guide applicable to any other subsidy at issue.

1. Landlord obligation where property rendered uninhabitable

LIHTC owners are required to maintain their properties in good physical condition. LIHTC properties must be inspected at least once every three years.[225] A property may satisfy the inspection requirement by conducting inspections under HUD's Real Estate Assessment Center ("REAC") protocol if certain requirements are met.[226] During inspection, the HFA must review any local health, safety or building code violations received by the owner, and determine whether the buildings are suitable for occupancy, taking into account local codes, or whether the buildings satisfy HUD's uniform conditions standards (NSPIRE).[227] A tenant's rights when their unit is rendered uninhabitable are determined by state law, and the rules of any other program that has a dual subsidy on the unit.

2. Immediate shelter options

In the event of a Presidentially Declared Disaster, the owner will likely refer the tenant to FEMA for immediate shelter needs. There are no additional LIHTC-specific short-term protections. However, there may be additional protections or options if there is a secondary subsidy attached to the property.

3. Longer-term housing options and related relocation assistance requirements

In the absence of additional protections under a secondary subsidy program, a LIHTC tenant's right to relocation and related assistance largely depend on what the owner decides to do with the property and what funds will be used to repair it. Under the LIHTC statute, 26 U.S.C. § 42, tenants have no special relocation rights because they reside in a LIHTC property when a disaster hits. However, if the displacement is caused by a federally funded acquisition, demolition, or rehabilitation, statutory protections may apply. In addition, check your state Housing Finance Agency's Qualified Allocation Plan ("QAP"), recorded deed restriction, and LIHTC compliance manual for special rules in your jurisdiction.

- **Property repairs with insurance and/or or reserves:** If the property repairs exclusively with insurance proceeds or reserves, relocation assistance requirements would not be triggered because the rehabilitation work (to the extent that it displaces a tenant) is not being conducted pursuant to a federally funded program or project.

- **Property repairs with FEMA funds:** Although there is little available guidance on the applicability of the URA to FEMA-funded projects, FEMA is not excluded from the definition of "federal financial assistance."[228] Therefore, if a tenant is displaced by a FEMA-funded rehabilitation or demolition, advocates should argue the URA applies. If the displacement is temporary (i.e., less than a year), tenants are still entitled to certain assistance, as outlined in the URA section of this manual. FEMA does expressly state in its guidance documents that the URA applies to tenants displaced by the acquisition or demolition of property through the FEMA Hazard Mitigation Grant Program.[229]

- **Property intends to repair with additional Low-Income Housing Tax Credit ("LIHTC"), CDBG-DR funds, HOME funds, or a combination thereof:** LIHTC alone does not trigger URA benefits, to the extent that it is used to fund a redevelopment project that may displace a family.[230] However in many LIHTC deals there is gap financing provided by HOME funds or CDBG/CDBG-DR funds. CDBG-DR funds are typically issued after a Presidentially Declared Disaster to assist with rebuilding efforts. If displacement occurs as a result of this type of rehabilitation or demolition project, both the URA and 104(d) could be triggered. There also may be state laws or rules that add additional relocation rights where tax credits or bonds are involved. Check your state Housing Finance Agency's rules and any restrictive covenant recorded against the property.

4. Eviction and right to return

LIHTC tenants have statutory good cause protection under 26 U.S.C. § 42(h)(6)(E)(ii)(I). However, the statute and limited IRS guidance do not define what "good cause" means, except to say it is dependent on federal and state law.[231] Therefore, you may need to review your state law to determine whether disaster damage or "force majeure" provides good cause to evict a LIHTC tenant in your state. Advocates can also draw analogy to good cause protections in the HUD subsidy programs, which generally require a tenant action or failure to act. The good cause protection is generally enforceable via the tenant's ability to enforce that provision of the property's restrictive covenant, in the absence of an enforceable lease addendum. Note that if the tenant lives in a dual subsidy LIHTC and Section 8 PBRA unit, HUD has issued guidance stating that a tenant may only be terminated for reasons permissible under applicable HUD regulations, and may not be terminated solely for alleged LIHTC compliance issues.[232] Although this memorandum was issued specifically for HUD multifamily programs, advocates should argue it represents HUD's policy with regard to all dual subsidy units (including public housing and voucher dual subsidies).

If a LIHTC property is damaged by a natural disaster within the first fifteen year compliance period (when the property is subject to credit recapture), the owner can continue to claim credits as long as the damaged building or portion thereof is restored or rebuilt within a reasonable period of time.[233] A reasonable period of time is determined by the state housing finance agency but pursuant to IRS guidance, it should not exceed 25 months from the end of the month during which the building was damaged/destroyed.[234] For a tenant displaced by disaster damage (and not terminated for good cause), an advocate can argue that the tenancy was not terminated and therefore the tenant has a right to return to the unit after it is repaired.

A disaster may also trigger certain LIHTC preservation issues. Generally, a LIHTC property is required to maintain restricted rents for a minimum of thirty years. The owner can escape its affordability commitments in two ways. First, if the owner goes through foreclosure, it can exit the program early. Second, after the first fifteen years, an owner can apply to the state for a "Qualified Contract," or preservation buyer. If a preservation buyer

cannot be identified, the owner can exit the program early. However, some states have created rules that bar early exit through the Qualified Contract process. If either of these circumstances arise after a disaster, a tenant could face permanent displacement from her affordable unit. However, the LIHTC statute contains a protection that allows tenants to remain in their units for three years paying LIHTC reduced rents after the early termination of the property's covenants.[235]

H. DEPT. OF AGRICULTURE'S SECTION 515 MULTIFAMILY HOUSING PROGRAM

Tenants living in Section 515 Multifamily Housing, which is operated under USDA's Rural Development ("RD") arm,[236] are required to have written leases that contain a provision explaining the disposition of the lease if the property becomes uninhabitable due to a disaster, including the owner's right to repair the building or terminate the lease.[237] However, RD does not dictate under what circumstances an owner must repair a unit or terminate a lease. If the Section 515 property was also receiving HUD Section 8 project-based assistance, the program requirements that are most favorable to the tenant apply if there is a conflict between the programs.[238]

RD may implement special actions and waivers to house tenants who are temporarily displaced by a disaster.[239] For example, RD may permit owners to waive the annual lease requirement and provide leases on a month-to-month basis or may permit owners of elderly designated properties to rent to age ineligible applicants for 6 months from the date of the waiver.

Current Section 515 tenants whose occupancy is terminated as the result of a disaster are entitled to benefits under the URA prior to expiration of the disaster declaration.[240] They are also eligible for occupancy nationwide as "displaced tenants" at any RD-financed multi-family housing property, with or without a Letter of Priority Entitlement (LOPE).[241] When these displaced tenants apply to another RD-financed property, the owner must give them priority for occupancy over other applicants in their same income category.[242]

Following a disaster, the owner must notify RD regarding the property condition and any damage sustained.[243] If the property or any units are rendered uninhabitable such that tenants are displaced, the owner must notify the Agency so that RD can issue the displaced tenants a LOPE.[244] Obtaining a LOPE allows current tenants to receive priority placement in vacant RD-financed multifamily properties[245] and allows them to move to the top of the waitlist for RD-financed multifamily properties.[246] A LOPE may also be used at HUD properties.[247] A LOPE issued to tenants displaced by a disaster expires 120 days after it is issued.[248] However, a tenant can request an extension of the LOPE entitlement period from RD if they need additional time to secure replacement housing.[249]

For Section 515 tenants who were receiving rental assistance and are displaced due to a disaster, they can transfer their rental assistance to another eligible Section 515 property.[250] However, they only have 4 months to transfer the rental assistance and begin using it.[251] As with other federal subsidy programs, in the event of a Presidentially Declared Disaster, the owner will likely refer the tenant to FEMA for immediate shelter needs.

III.
SPECIFIC ADVOCACY CHALLENGES

A. MASS EVICTIONS

Mass evictions are common after disasters, even when particular tenants' units are not severely damaged. In addition to the specific rules of your client's subsidy program, it is important to review state law on "force majeure" and casualty loss to determine under what circumstances a landlord has the right to terminate a lease following a disaster. It is also important to review your client's lease agreement, which may have its own force majeure clause. Advocates can also argue that if a subsidized housing program only permits termination in the case of tenant action or failure to act (i.e., good cause), disaster damage or force majeure does not provide a sufficient basis for eviction if the tenant has nowhere to go. (See earlier discussion of "force majeure" clauses in public housing leases.)

Where eviction is permissible due to disaster damage or "force majeure," landlords should be required to provide admissible evidence that a unit is unlivable in order to justify eviction. For example, an owner may argue that a multifamily property sustained structural damage that renders all units unsafe, or that mold in one unit threatens an adjoining unit that appears undamaged. Testimony from a qualified professional or expert witness should be required to prove these facts at trial.[252]

Advocates should remember that the usual procedural protections and pre-eviction administrative processes apply in the case of disaster-related evictions. To review these protections, see the Green Book.

B. THE "CATCH 22" OF DISASTER DAMAGE

One issue advocates may encounter is that in order to qualify for certain types of FEMA Individual Assistance, a tenant must certify that her primary residence sustained disaster damage.[253] It then becomes difficult to simultaneously argue that the unit is not sufficiently damaged to justify displacement. This "catch-22" could arise if the tenant tries to argue that she was forced to move because of a post-disaster demolition or rehabilitation project, not because of damage caused by the disaster itself. Such an argument would be necessary to justify eligibility as a "displaced person" under the URA. However, the fact that the tenant previously certified to FEMA that she needed alternative accommodations because her unit was damaged could work against this argument.[254] A counterargument is that it is plausible, and even common, for a tenant to remain in, or return to, a disaster-damaged unit because she has nowhere else to go. In such a situation, her displacement could realistically be caused by a rehabilitation or demolition project rather than the disaster itself.

A second example in the public housing context is that it would appear contradictory to argue on the one hand that a tenant's unit sustained health and safety defects for the purpose of 24 C.F.R. § 966.4(h)'s requirement that the PHA provide alternative housing or rent abatement, and on the other hand that the tenant was displaced, not because of that health and safety defect, but because of a federally-funded demolition or rehabilitation project.

A final example arises when the PHA uses the tenant's argument that her unit has health and safety defects sufficient to justify abatement as evidence that the property meets the obsolescence requirement for a Section 18 demolition or disposition.[255]

In all three examples the tenant's immediate needs can complicate or foreclose long-term goals. While it is important for advocates to consider these potential issues when advising clients, tenants are typically (and understandably) focused on their family's immediate emergency needs after a disaster. Though the immediate decisions made after a disaster could frustrate later advocacy efforts, the most important thing is ensuring a tenant has safe, habitable shelter as quickly as possible.

C. CONDEMNATION

An unfortunate trend advocates have seen in recent years is condemnation of federally subsidized housing by local governments due to code enforcement violations. If there is code enforcement action at a federally subsidized property, you should get involved as early as possible to ensure that the local government is aware of the ramifications of condemning the property, such as the potential loss of the federal housing subsidy. Where possible, the local government should be discouraged from pursuing condemnation, which generally terminates the HUD subsidy (i.e., PBRA) and results in an emergency vacate order for the tenants, when housing options are already quite constrained if there has been a disaster. Where the housing is not so hazardous or where tenants could move temporarily, advocates should encourage the locality to instead cooperate with HUD and the owner/PHA on repairs, and if those repairs are not being made in a timely and safe manner by the owner/PHA, pursue a court appointed receiver to make those repairs and protect the tenants. In some cases, advocates have represented the tenant associations or a collective of tenants in the court receivership process to make sure their needs are considered and honored. HUD generally has cooperated with receiverships and will, in the case of a PBRA project, assign the HAP contract to the receiver to make necessary repairs.

D. DUPLICATION OF BENEFITS ISSUES

FEMA prohibits collection of benefits for something for which a recipient has another source of assistance.[256] "Duplication of benefits" occurs "when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance."[257] This issue can arise when a federally subsidized tenant uses FEMA and HUD or Department of Agriculture assistance at the same time. For example, a tenant who maintains occupancy of a public housing unit (even to store their possessions) while also maintaining a FEMA trailer, may trigger duplication of benefits concerns. One reason this might occur is because FEMA accommodations may come furnished, or not be large enough to accommodate a tenant's furniture and other personal property, and she may not be able to afford the up-front costs of moving and storage.[258] Another reason is that FEMA conducts inspections with more expediency than the PHA, meaning that FEMA may make a benefits determination weeks or months before the PHA completes its inspection process and determines that a unit is unlivable. During those interim months, the tenant may receive duplicate housing benefits. Advocates should advise tenants in this situation about the prohibition on duplication of benefits and the associated risks. Advocates should also advise tenants to flag for FEMA that they have a housing subsidy and what it is. Many tenants understandably assume that FEMA and HUD, or their PHA, are sharing information since they are all government agencies. However, this is rarely the case, and it is up to the tenants to protect themselves from potential duplication issues.

FEMA can attempt to collect funds overpaid due to duplication of benefits.[259] However, FEMA has statutory authority to waive debts incurred by individuals who have received assistance through its Individuals and Households Program.[260] In some cases, tenants could face criminal liability for duplication of benefits issues. In January 2025, HUD released a new Duplication of Benefits Collection Policy that states that HUD does not believe it is in the best interest of the government to pursue collections from a low- and moderate-income (LMI) CDBG-DR recipient who receives subsequent federal financial assistance for the same purpose.[261]

PHAs and owners can also attempt to terminate assistance or attempt to collect a debt when assistance is paid on behalf of a tenant who is not residing in the assisted unit. In some cases, a tenant might be accused of fraud by the PHA or owner for using a housing subsidy while also receiving FEMA housing assistance. Generally, the consequence of losing one's home and subsidy is worse than dealing with civil liability to FEMA. If the tenant was, in fact, residing in the assisted unit during the time she had FEMA housing assistance, consider arguing that

the tenant's representations to the PHA were true and accurate (i.e., any misrepresentation was made to FEMA, not the PHA).

E. UNREPORTED ABSENCES FROM THE ASSISTED UNIT AND/OR LACK OF COMMUNICATION BETWEEN TENANT AND SUBSIDY-PROVIDER

In the chaotic and often traumatic aftermath of a disaster, it is perfectly reasonable for a subsidized tenant to erroneously assume that the different federal agencies that are assisting her- namely FEMA and HUD or the Department of Agriculture- are communicating with each other. However, this is rarely the case. As a result, the tenant may assume that the PHA or subsidized housing owner knows that her unit is damaged and she is temporarily living in FEMA-assisted housing or with family. Power, internet, and phone network outages can further exacerbate post-disaster communication issues. While certain program waivers may be applicable,[262] most federally subsidized housing programs permit termination when a tenant is absent from the subsidized unit for a certain period of time. It is critical that tenants notify the PHA or property owner, ideally in writing, (1) that their unit is damaged, (2) that they are temporarily displaced due to damage or evacuation, and (3) how to reach them by mail and phone. Advocates can explain this to tenants and assist with communication where feasible.

Advocates may also have to defend tenants against subsidy termination due to alleged unreported absence from the unit. For example, in Louisiana a local PHA sought to terminate a HCVP participant's subsidy because she temporarily moved out of her storm-damaged unit after Hurricane Ida, and the PHA claimed to be unable to reach her. However, discovery revealed that the PHA had been attempting to call her at an incorrect phone number rather than the one she included on her regular recertifications that the PHA had on file. The tenant ultimately prevailed. For more options on enforcement tools to prevent subsidy termination, see the Green Book, Section 11.4.4.7.3.

F. PERMANENT VS. TEMPORARY DISPLACEMENT AND THE URA/SECTION 18

A person is not considered a "displaced person" under the URA unless they are permanently displaced, meaning displaced for more than 12 months.[263] Some benefits are available to temporarily displaced individuals, as outlined in as outlined in Section B of the Appendix, infra. However, full URA benefits are only available when a tenant is considered permanently displaced. Advocates should be aware that advocating for full URA benefits requires arguing that a tenant is permanently displaced, and this could impact the tenant's right to return to the property once rehabilitated.

Similarly, a tenant only qualifies for relocation benefits under Section 18 if the PHA is pursuing demolition or disposition of the property. Unless the PHA is pursuing a RAD blend, there is no automatic right to return to the property after it is rehabilitated. A straight Section 18 application does not even require that the property be rebuilt, or rebuilt as affordable housing. Even if housing is rebuilt, it does not have to be for the displaced residents.

Thus, benefits under both of these programs come with a downside: potential forfeiture of the right to return, and potential loss of affordable housing units.

G. ENFORCEMENT CHALLENGES WITH SECTION 18 AND THE URA

Depending on the jurisdiction, advocates may encounter problems enforcing the relocation rights in the URA[264] and Section 18[265] due to the increasingly narrow path to a private right of action in federal court under an implied private right of action or § 1983 theory.[266] However, courts that have analyzed whether there is a § 1983 right of action for violation of Section 104(d) ruled in the affirmative.[267] For more information about § 1983 litigation see Sections 14.9.3.3 and 14.9.3.4 of the Green Book.

Depending on the circumstances, it may be possible to raise the claims via an Administrative Procedure Act action against HUD.[268] In some jurisdictions, advocates may be able to raise a state APA or judicial review claim against a PHA for failure to provide required benefits. Where a relocation plan threatens to perpetuate segregation or negatively disparately impact protected groups, you may be able to bring claims under the federal Fair Housing Act or other civil rights laws.[269]

There may also be available claims related to relocation that arise from the tenant's lease agreement outside of the federal statutes. For example, public housing leases are required to include the language in 24 C.F.R. § 966.4(h) that entitles tenants to alternative housing in some cases where there is a health or safety defect. This language should (but may not) appear in the leases for public housing units converted via RAD.

APPENDIX

Statutes that Govern Relocation Rights for Disaster Survivors

A. STAFFORD ACT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), as amended, provides the statutory authority for most federal disaster assistance and recovery programs that operate after a Federally Declared Disaster. The Federal Emergency Management Agency ("FEMA") may authorize immediate, low-barrier Serious Needs Assistance[270] in the amount of $750 to cover emergency needs like food, fuel, and infant care supplies in the first 30 days after a disaster. Later, FEMA will activate its Individuals and Households Program[271] which can provide a variety of types of temporary housing assistance including rental assistance, lodging reimbursement, transitional sheltering assistance (direct payment to participating hotels), or direct temporary housing ("FEMA trailers"). Moving and storage expense reimbursement may also be available through FEMA Other Needs Assistance.[272] A subsidized tenant's most immediate relocation options and resources may be through FEMA. It is common that in the immediate aftermath of a disaster, tenants will be directed to apply to FEMA for assistance if their housing unit is uninhabitable because of damage or utility outages. Federally subsidized tenants are eligible for FEMA assistance, assuming they meet other FEMA qualifications.

Note that the American Red Cross may provide some immediate post-disaster resources, such as hotel assistance, pursuant to a 2020 Memorandum of Agreement with FEMA and the Department of Homeland Security.[273] Survivors may be confused and need clarification that they are still entitled to FEMA assistance after receiving Red Cross help.

B. UNIFORM RELOCATION ACT ("URA")

Generally, any person displaced from their home (including mobile homes) is eligible for assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA")[274] if the displacement is the direct result of the acquisition, demolition, and/or rehabilitation of the real property by a program or project receiving financial assistance from one of 18 federal agencies, including HUD. Residents displaced from federally assisted housing due to disaster damage, fire, or other emergencies may not be eligible for URA assistance unless otherwise made subject to URA requirements.[275] In all cases, implementation of the URA must be in compliance with all applicable federal, state and local fair housing and other civil rights laws.[276]

1. Applicability and Definitions:

a. **Eligible "Displaced Persons:"** The statutory definition of a "displaced person" (i.e, a person who is eligible for URA assistance) is anyone who moves as a direct result of "(I)... a written notice of intent to acquire or the acquisition of such real property … or (II) … as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent," 42 U.S.C. § 4601(6)(A), and is not otherwise excluded under the statutory definition of "persons not displaced." 42 U.S.C. § 4605. Some courts have construed narrowly who is a "displaced person" based on "such other displacing activity as the lead agency may prescribe." 42 U.S.C. § 4601(6)(A)(i) (II).[277]

b. **"Persons not displaced:"** expressly includes persons engaged in unlawful occupancy and individuals who are not lawfully present in the United States. However, the "unlawful alien" exclusion can be overcome as necessary to comply with other federal or state laws, or if such exclusion would result in an "exceptional and extremely unusual hardship" to the eligible family members of the ineligible noncitizens. 42 U.S.C. § 4601(6)(B).[278]

c. **Covered Federal Programs and Projects:** Most HUD programs are subject to the URA under the statutory definition of "federal financial assistance": "a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia."[279] Namely, federal mortgage insurance programs are excluded. Also, the regulations implementing the URA reflect the position (contested by advocates)[280] that the Low Income Housing Tax Credit ("LIHTC") program is not subject to the URA because it is not considered to be federal financial assistance.[281] Projects utilizing LIHTC also often use CDBG or HOME funds and therefore trigger the URA despite the LIHTC exclusion.

With the exception of demolition and disposition projects assisted one hundred percent under Section 18 of the 1937 Act (covered below) which is statutorily excluded from URA applicability, public housing repositioning involving the acquisition, demolition, and/or rehabilitation of real property will generally involve one or more HUD programs that require URA compliance, including: (a) Voluntary Conversion under Section 22 of the 1937 Act, codified at 42 U.S.C. § 1437t and 24 C.F.R. part 972 subpart B; (b) Choice Neighborhoods Initiative ("CNI") grant under Section 24 of the 1937 Act, codified at 42 U.S.C. § 1437v, as implemented through annual appropriations acts and under Notices of Funding Opportunity ("NOFO");[282] (c) other mixed finance developments under Section 35 of the 1937 Act, codified at 42 U.S.C. § 1437z-7 and 24 C.F.R. part 905, subpart F; and (d) the Rental Assistance Demonstration ("RAD") program, including RAD/Section 18 Blends and "Restore-Rebuild" projects (aka "Faircloth-to-RAD") authorized under annual appropriations acts and implemented through HUD PIH Notices.

2. Required Relocation Notices

Before any person can be required to move, whether temporarily (for 12 months or less) or permanently (defined as beyond 12 months), they must be provided with advance written notices in plain language which include the name and telephone number of a contact person for questions or needs with appropriate translation and counseling opportunities. Each relocation notice must be hand delivered or sent by certified or registered mail with return receipt requested (or a comparable system) to provide proof of delivery and receipt which must be kept in the files of the displacing agency.[283] The URA notices include:

a. The **General Information Notice** ("GIN") which must be given "as soon as feasible" and describes the rights for persons who *may* be displaced due to a federally-assisted project, and include the project's planned activities, the conditions for eligibility for the relocation advisory services, assistance, and payments that may become available, and that a minimum 90-days' advance written notice must be provided to all "displaced persons" (or a person required to move temporarily when required by the federal funding agency) that states they cannot be required to move unless at least one "comparable replacement dwelling" has been made available to the impacted household;[284]

b. A **Notice of Eligibility** ("NOE") for Relocation Assistance, **Initiation of Negotiation** ("ION"),[285] and/or **Intent to Acquire**, which signifies that the household is eligible for applicable URA assistance and prior to which no household should undertake any relocation activities or risk ineligibility for URA assistance;[286]

c. A **Notice of Non-Displacement** issued concurrently with the NOE and at least 30 days prior to any temporary relocation, informing households who will not become permanently displaced that they may be temporarily displaced or not be displaced (at all or for any applicable phase, if the displacement is in phases);[287] and

d. The so-called "**90-Day Notice**" required for all displacement in excess of 12 months (or for shorter duration as required by the displacing agency) which must be delivered at least 90 days before a specific date of displacement stated in the notice after at least one comparable replacement dwelling is made available for relocation, or if no specific date is stated in the 90-Day Notice after which displacement may be required, information that a future additional "**30-Day Notice**" must be provided including a specific date of displacement that is at least 30 days after the notice, provided at least one offer of a comparable replacement has been made at least 90 days before a required move.[288]

3. Categories of URA Assistance

For eligible "displaced persons" who are lease compliant and have not been evicted, URA assistance can include an offer of comparable replacement housing, relocation advisory services, reimbursement of actual and reasonable moving expenses, and rental assistance payment.[289] The type of URA assistance for which a displaced person is eligible depends on the displacing agency's definition of "persons who are required to move temporarily" and persons who are "permanently displaced for a period of 12 months or longer."

For both temporary and permanent residential displacement,[290] the following are required:

a. Availability of at least one "**comparable replacement dwelling**" (but three or more whenever possible) at least 90 days before a resident can be required to move,[291] where "comparable replacement dwelling" is defined as a unit that is "(A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment."[292] Note that under this definition, a tenant-based voucher cannot qualify as a "comparable replacement dwelling" until the voucher is used successfully to secure such suitable housing in an appropriate location with respect to the displaced person's employment as well as access to public resources.

    - **Circumstances permitting waiver** of the comparable replacement dwelling requirement are emergency moves due to major disaster under the Stafford Act, presidentially declared national emergency, or other emergency which poses substantial danger to health or safety of the occupant and where a comparable replacement dwelling cannot be secured on a timely basis. Under these circumstances, the displacing agency must "take whatever steps are necessary" to assure an emergency move,[293] which includes payment of actual reasonable out-of-pocket moving expenses and replacement housing payments for any reasonable increase in rent and utility costs incurred in connection with the emergency move.[294] Additionally, the displacing agency must still "make available to the displaced person *as soon as feasible*, at least one comparable replacement dwelling."[295]

b. **Relocation advisory services** to support relocation planning and to minimize hardships to displaced persons by providing counseling as to their rights and entitlements under the URA and other sources of assistance that may be available and appropriate, which must include personal interviews with each displaced person to determine individual needs and preferences and to provide personalized needs assessment, explanation and calculation of the maximum assistance and notices for which a household may be eligible, information regarding available comparable replacement dwellings which must be inspected prior to being made available whenever possible,[296] and for minority persons, including those temporarily displaced, must not be located in an area of minority concentration whenever feasible,[297] and offer of transportation to inspect referred replacement dwellings.[298]

c. **Moving and related expense payment** for the reasonable and necessary out-of-pocket expenses incurred in connection with any emergency, temporary and/or permanent relocation and other expenses incidental to selecting and securing a comparable replacement dwelling, which may be calculated based on the Department of Transportation's Fixed Residential Moving Cost Schedule[299] or actual moving costs, and include costs of moving personal property to and from temporary dwelling and storage of personal property.[300]

d. For permanent residential displacement only (i.e., lasting more than 12 months), URA assistance also includes **replacement housing payments** totaling up to $9,570 for displaced renters if the displaced person has been in occupancy for at least 90 days before the "initiation of negotiation" and either rented or purchased a replacement housing within one year after the displacement.[301] The payment amount for displaced renters is calculated as 42 times the difference between the monthly housing cost for the replacement dwelling (rent and utilities) and thirty percent of the displaced household's average gross monthly income *if* said income falls at or below HUD's "low income" limits.[302] In other words, if the displaced household qualifies as low-income, the replacement housing payment is the amount necessary to ensure that the replacement housing is affordable to them for 42 months (subject to the cap). For households whose income is above HUD's low-income limits, the replacement housing payment is 42 times the difference between the average monthly cost of the displacement dwelling and that of the replacement dwelling.[303]

Additional resources and information about the URA are available in the Green Book, Section 12.8.2, and the HUD Tenant Assistance, Relocation, and Real Property Acquisition Handbook.[304]

C. PUBLIC HOUSING: SECTION 18 OF THE UNITED STATES HOUSING ACT

The URA does not apply to displacement from public housing due to demolition or disposition under Section 18 of the United States Housing Act of 1937 because Section 18, as amended by the Quality Housing Work Responsibility Act of 1998 ("QHWRA)", expressly makes the URA inapplicable to displacement due to Section 18 activities.[305] "Demolition" under Section 18 is defined as "the removal by razing or other means, in whole or in part, of one or more permanent buildings of a public housing development" and must involve four or more of the following: (1) Envelope removal (roof, windows, exterior walls); (2) Kitchen removal; (3) Bathroom removal; (4) Electrical system removal (unit service panels and distribution circuits); or (5) Plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both).[306] Note that displacement due to Section 18 demolition and/or disposition activities is not exempt from the relocation and re-occupancy (and one-for-one unit replacement) requirements of Section 104(d) of the Housing and Community Development Act of 1974 (see below).[307]

Section 18 has its own notice and relocation requirements which are distinct from the URA as follows:

1. **Notice:** Section 18 requires a single minimum "90-day notice" to move (shorter in cases of imminent threat to health or safety) which must inform public housing residents that their development will be demolished and/or disposed, that demolition may not commence until each resident has been relocated, and that each family will be provided "comparable housing."[308]

2. **Resident Consultation:** PHAs must consult with residents who will be affected by a proposed Section 18 demolition or disposition application.[309] HUD's latest sub-regulatory guidance on Section 18 demolition/disposition "encourages" PHAs to use the heightened resident consultation requirements in the RAD program as a best practice.[310] The PHA should conduct two meetings with residents before submitting the

application, two meetings after HUD accepts the repositioning action, and one meeting before the final removal action.[311] The new guidance also clarifies that if a PHA proposes a demolition only application, and later applies for disposition post-demolition, the PHA must conduct a new consultation process with residents (who are presumably displaced at this point). This is important guidance because it clarifies that residents displaced by a demolition are still "residents" for the purpose of consultation requirements.[312]

3. **Replacement Housing:** Section 18 requires displaced public housing residents to be provided "**comparable housing"** which means housing located in an area "generally not less desirable than the location of the displaced person's housing" which meets housing quality standards;[313] is offered on a nondiscriminatory basis and contains necessary accommodations for people with disabilities; and may be (a) other public housing units, (b) project-based assistance, or (c) tenant-based assistance (vouchers). Vouchers which "will not be considered 'comparable housing' until the family is actually relocated into such housing."[314] Note that HUD can issue Tenant Protection Vouchers (TPV) on an emergency basis for relocation even before it approves the Section 18 application.[315] More information about TPVs can be found in HUD's 2020 General Guidance.[316] Similarly, the URA requires displaced public housing residents to be offered at least one available "comparable replacement dwelling" as defined above, which may be tenant based assistance, project-based assistance, or another public housing unit.

4. **Moving and related expense payment:** Section 18 requires the payment of actual and reasonable relocation expenses.[317] HUD has clarified that "actual and reasonable relocation expenses" include utility and security deposits.[318]

5. **Advisory Services:** Section 18 generically requires "[n]ecessary counseling" which may include mobility counseling.[319]

Note that If the PHA is pursuing a Section 18 demolition and/or disposition, displaced public housing tenants do not have a statutory right to return even if the site is redeveloped into affordable housing. HUD's latest subregulatory guidance on Section 18 demolition and disposition states that if the PHA intends to build or otherwise provide affordable replacement housing for the public housing units proposed for removal, HUD recommends that the PHA give relocated residents the first right to return to the new replacement units.[320] Though this provision is a welcome addition that clarifies HUD's position, it is a recommendation and not a requirement. If the PHA also pursues RAD repositioning of part of the project (e.g., RAD-Section 18 blend or Rebuild-Restore, formerly Faircloth-to-RAD) in conjunction or in sequence with the Section 18 or other public housing removal, all displaced public housing tenants must be afforded a right to return without rescreening and other protections required under the RAD authorizing appropriation acts and implementing HUD notices.

Additional resources and information about Section 18 are available in the Green Book, Section 12.2.2, and the HUD Tenant Assistance, Relocation, and Real Property Acquisition Handbook.[321]

D. SECTION 104(D) OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 AND RELATED CDBG REQUIREMENTS

Section 104(d) of the Housing and Community Development Act of 1974 (Section 104(d)) applies to projects using CDBG, CDBG-DR, or HOME funds.[322] CDBG-DR funds are appropriated to states after disasters to fund rebuilding efforts. Note that often Low-Income Housing Tax Credit ("LIHTC") deals use CDBG or HOME funds to fill financing gaps, thus triggering 104(d) despite the presence of LIHTC.

Section 104(d) includes additional requirements beyond what is required under the URA. It requires that the recipient have a Residential Anti-displacement and Relocation Assistance Plan ("RARAP"). This plan must include the following benefits for displaced low to moderate income families:

1. **One-for-one replacement:** Guarantee that redevelopment will provide the same number of low to moderate income units that existed in the original development designed to remain affordable for at least 10 years (one-for-one replacement).[323] Note that there are certain exceptions to the one-for-one replacement requirement.

2. **Moving expenses:** Low and moderate income tenants who are displaced are entitled to "reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs."[324] Interim living costs may include costs of temporary relocation when the dwelling presents a danger to health and safety, or shelter costs incurred while waiting for a lower-income dwelling unit to become available.[325]

3. **Compensation to ensure housing is affordable:** Compensation sufficient to ensure that the displaced family does not bear housing costs in excess of 30 percent of their income for 60 months.[326] This can be in the form of a HCV, but the displaced person must then be provided with referrals to units that will accept the voucher.

4. **Comparable replacement housing:** People displaced must be relocated to comparable replacement housing that is "functionally equivalent" to their former housing.[327]

5. **Advisory services:** Advisory services at levels required by the URA.[328]

6. **Choice of benefits:** Displaced people can choose to receive URA benefits instead of Section 104(d) benefits.[329]

Since a project eligible for relocation assistance under 104(d) is also eligible for assistance under the URA, the same notices must be provided to the tenant as required by the URA.[330] The notices must explain the assistance available under the URA and Section 104(d), "so that the lower-income tenant who is entitled to choose which form of assistance to receive is adequately informed to do so."[331]

CDBG and CDBG-DR funding is also subject to regulatory requirements of 24 C.F.R. § 570.606, which requires relocation assistance in accordance with URA requirements for displaced persons, as defined under 24 C.F.R. § 570.606(b)(2). Grantees must take reasonable steps to minimize displacement.[332] CDBG-DR grantees are also subject to certain waivers and alternative requirements listed in the CDBG-DR Consolidated Notice and the "Allocation Announcement Notice" published in the Federal Register when CDBG-DR funds are awarded following a disaster.[333]

Additional resources and information about Section 104(d) are available in the Green Book, Section 12.8.3.

E. STATE AND LOCAL LAW

In addition to federal laws, state and local laws relating to relocation and condemnation may also apply.[334] Where LIHTC, HOME, or other federal funds are being used to redevelop or rehabilitate a property, be sure to also check any deed restriction for additional relocation benefits, as well as your state Housing Finance Agency's compliance manual or other rules. For example, the California Tax Credit Allocation Committee, which manages the allocation of Low Income Housing Tax Credits for the state, has regulations that require LIHTC-financed projects

that displace tenants from occupied properties to have a Tenant Relocation Plan, which in some cases must provide equivalent protections to the URA.[335] The Maryland Department of Housing and Urban Development's Multifamily Rental Financing Program Guide, attached to its Qualified Allocation Plan, seeks to limit displacement caused by LIHTC projects, and to require compliance with the URA where displacement occurs.[336]

ENDNOTES

1. HUD, Public Housing Agency Disaster Readiness, Response, and Recovery Guidebook (Sept. 2022) (https://www.hud.gov/sites/dfiles/PIH/documents/PHA-D3R_Guidebook.pdf) [hereinafter "HUD PHA D3R Guidebook"].

2. HUD, *PHA Disaster Readiness, Response and Recovery Fact Sheets*, HUD Exchange, (June 2024) https://www.hudexchange.info/resource/6765/pha-disaster-readiness-response-and-recovery-fact-sheets/.

3. HUD's authority to issue waivers appears at 24 C.F.R. § 5.110. The 2024 and 2025 waivers are published in the Federal Register. Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster, for Public Housing Agencies During CY 2024 and CY 2025, 89 Fed. Reg. 7612 (Feb. 5, 2024). Some of the available waivers could adversely impact public housing tenants. For example, the current waivers, if requested and adopted, allow disaster impacted PHAs to delay annual review of utility allowances, posting of policy changes, and energy audits.

4. 42 U.S.C. § 1437(a); 24 C.F.R. § 902.21; 24 C.F.R. pt. 5(G). The National Standards for the Physical Inspection of Real Estate ("NSPIRE") now in use across HUD programs are outlined at 24 C.F.R. § 5.703, and at HUD, *NSPIRE Standards* (last visited May 23, 2025), https://www.hud.gov/reac/nspire-standards.

5. 24 C.F.R. § 5.703(a).

6. 42 U.S.C. § 1437d(l)(3).

7. 24 C.F.R. § 966.4(h).

8. 24 C.F.R. § 966.5(h)(4). Note that a tenant who rejects suitable alternative housing is not entitled to the rent abatement. There is no useful case law interpreting this provision. 24 C.F.R. § 966.5(h)(4) can be read to mean that if there is no alternative housing available, abatement is required. However, a recent district court opinion creates additional confusion. Shephard v. Houma Terrebonne Hous. Auth., 2023 WL 50864, at *3 (E.D. La. Jan. 4, 2024) (denying summary judgment on tenants' abatement claim where there was no dispute that alternative housing was not available; ruling that alternative housing is only required to be provided where it is available, but not explicitly ruling whether abatement obligations are triggered when alternative housing is unavailable).

9. By way of analogy, in the Section 18 demolition/disposition context, tenant-based assistance is not considered "comparable housing" "until the family is actually relocated into such housing." 24 C.F.R. § 970.21(a)(1).

10. HUD PHA D3R Guidebook, *supra note* 1, at 30.

11. *Id.*; Guidance on Property and Casualty Insurance Issues, PIH 2016-13, at 3 (Sept. 20, 2016) (https://www.hud.gov/sites/documents/pih-2016-13.pdf); HUD, Capital Fund Guidebook, at 17 (Apr. 1, 2016) (https://www.hud.gov/sites/dfiles/OCHCO/documents/PIH-GUIDE-CF.PDF).

12. Under recent appropriations acts, TPVs can only be issued for units occupied during the previous 24 months. The 24-month lookback period could be changed or shortened in future appropriations acts. See Implementation of the Federal Fiscal Year (FFY) 2019 Funding Provisions for the Housing Choice Voucher Program, PIH-2019-08, at 4-5 (Apr. 18, 2019) (https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-08.pdf); Consolidated Appropriations Act, 2019, Pub. L. 116-6; 133 STAT 13, 435 (Feb. 15, 2019); Consolidated Appropriations Act, 2024, Pub. L. 118-42; 138 STAT 25, 348 (March 9, 2024).

13. 24 C.F.R. § 982.303(b)(1).

14. 24 C.F.R. § 982.303(b)(2).

15. 24 C.F.R. § 966.4(h)(3).

16. HUD PHA D3R Guidebook, *supra note* 1, at 32.

17. *Tenant Protection Vouchers (TPV) for Public Housing Actions*, HUD.gov (June 2020), https://www.hud.gov/sites/dfiles/PIH/documents/TPV_Repositioning_FAQs_June_2020.pdf [hereinafter HUD TPV Guidance, June 2020].

18. Shephard v. Houma Terrebonne Hous. Auth., WL 5529712 (E.D. La. Aug. 28, 2023) (public housing tenants not entitled to preliminary injunction to provide URA benefits where there was insufficient proof that they were displaced by a federally funded rehabilitation project and not damage from Hurricane Ida itself); Jackson v. United States Dep't of Hous. & Urb. Dev., 38 F.4th 463, 469–70 (5th Cir. 2022) (Project-Based Section 8 tenants not entitled to URA benefits where they were forced to move to another property as a result of Hurricane Harvey damage).

19. HUD PHA D3R Guidebook, *supra note* 1, at 40; HUD Notice PIH 2016-13 *supra note* 11, at 4.

20. HUD, Handbook 1378.0: Tenant Assistance, Relocation and Real Property Acquisition, Chapter 1 ¶¶ 1-2 to 1-4 (https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780) [hereinafter "HUD Handbook 1378.0"].

21. 49 C.F.R. § 24.2.

22. FEMA, Hazard Mitigation Assistance Program and Policy Guide, 87 (July 30, 2024) (https://www.fema.gov/sites/default/files/documents/fema_rsl_hma-guide-version-2-052225.pdf) [hereinafter "FEMA Hazard Mitigation Guide"].

23. HUD Notice PIH 2016-13 *supra note* 11, at 3.

24. HUD Capital Fund Guidebook, *supra note* 11, at 20. In some cases, disaster-related repairs may overlap with work already planned pursuant to a 5-Year Action Plan, for example roof repairs.

25. *Id.* at 96. *See also* HUD Funding for Non-Presidentially Declared Natural Disasters, PIH 2012-48 (Nov. 28, 2012) (https://www.hud.gov/sites/documents/pih2012-48.pdf).

26. 24 C.F.R. § 905.200; HUD Notice PIH 2012-48, *supra note* 25, at 8 ("The repeal of Section 9(k) of the United States Housing Act of 1937 clarifies that 'public housing capital funds [previously provided for under Section 9(k)] cannot be used to pay for the repair of public housing damaged in Presidentially declared disasters.'"); HUD Capital Fund Guidebook, *supra note* 11, at 7, 96 ("Capital Funds may only be used for eligible activities in 24 C.F.R. § 905.200 and are either specified in an approved 5-Year Action Plan . . . or approved by HUD for emergency work or work needed because of a Non-Presidentially Declared Natural Disaster" and explaining that permanent reconstruction assistance is available from FEMA for PDDs); HUD PHA D3R Guidebook, *supra note* 1, at 30. Note that HUD Notice PIH 2016-13 clarifies that "*emergency and natural disaster grants* can only be used to pay costs associated with Emergency Work or the repair or replacement of a public housing project damaged as a result of a non-Presidentially declared disaster or emergencies . . . ." (emphasis added). HUD Notice PIH 2016-13 *supra note* 11, at 3. This seems to leave open the possibility that regular (non-disaster) capital funds can be used for repair work after a PDD that was already planned before the disaster and identified in a 5-Year Action Plan (for example

roofing or electrical repairs). *Id.*

27. 24 C.F.R. § 905.308(b)(9); HUD Capital Fund Guidebook, *supra note* 11, at 20. PHAs normally cannot spend capital funds outside of 5-year action plan, but emergency work or non-presidentially declared natural disaster assistance is an eligible cost. *Id.*

28. 24 C.F.R. § 905.200(b)(10).

29. *See* Shephard v. Houma Terrebonne Hous. Auth., 2023 WL 5529712 (E.D. La. Aug. 28, 2023).

30. As described in more detail in the Appendix, many advocates believe that the URA statute covers LIHTC and that the DOT's rulemaking is contrary to the plain language of the statute.

31. 49 C.F.R. § 24.2 ("federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.").

32. For example, the Connecticut Housing Finance Authority has included as a threshold requirement in its Qualified Allocation Plan for LIHTC that "[t]he Proposed Development shall be affordable to current residents (if any) so that no permanent displacement is required for reasons of affordability . . . ." Connecticut Housing Finance Authority, *Low-Income Housing Tax Credit 2024 and 2025 Qualified Allocation Plan 9* (July 27, 2023), https://www.chfa.org/assets/1/6/2024_and_2025_LIHTC_Qualified_Allocation_Plan_(QAP).pdf. For more examples of ways to protect tenants in LIHTC properties see Alliance for Housing Justice and Poverty & Race Research Action Council, *Moving LIHTC Towards Social Housing: A Toolkit*, https://www.allianceforhousingjustice.org/social-housing/qap-lihtc.

33. 42 U.S.C. § 1437p(1)(A); see also 24 C.F.R. § 970.15; Demolition and/or Disposition of Public Housing Property, Eligibility for Tenant-Protection Vouchers and Associated Requirements, PIH 2018-04 (Dec. 14, 2018) (https://www.hud.gov/sites/dfiles/PIH/documents/pih2018-04.pdf).

34. 24 C.F.R. § 970.9. HUD's latest sub-regulatory guidance on Section 18 demolition/disposition "encourages" PHAs to use the heightened resident consultation requirements in the RAD program as a best practice. Demolition and/or Disposition of Public Housing Property, Eligibility for Tenant-Protection Vouchers and Associated Requirements, PIH 2024-40, at 3 (Dec. 26, 2024) (https://www.hud.gov/sites/dfiles/OCHCO/documents/2024-40pihn.pdf). The PHA should conduct two meetings with residents before submitting the application, two meetings after HUD accepts the repositioning action, and one meeting before the final removal action. *Id.* The new guidance also clarifies that if a PHA proposes a demolition only application, and later applies for disposition post-demolition, the PHA must conduct a new consultation process with residents (who are presumably displaced at this point). This is important guidance because it clarifies that residents displaced by a demolition are still "residents" for the purpose of consultation requirements. *Id.* at 2.

35. 24 C.F.R. § 972.215.

36. HUD TPV Guidance, June 2020, *supra note* 17.

37. *See* Consolidated Appropriations Act, 2019, Pub. L. 116-6, 133 Stat. 13, 435 (Feb. 15, 2019); Consolidated Appropriations Act, 2019, Pub. L. 116-6; 133 STAT 13, 435 (Feb. 15, 2019); Consolidated Appropriations Act, 2024, Pub. L. 118-42; 138 STAT 25, 348 (March 9, 2024); Implementation of the Federal Fiscal Year (FFY) 2019 Funding Provisions for the Housing Choice Voucher Program, PIH 2019-08 (Apr. 18, 2019) (https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-08.pdf).

38. Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component—Public Housing Conversions, H 2016-17 PIH 2016-17, at 69 (Nov. 10, 2016) (https://www.hud.gov/sites/documents/16-17hsgn_16-17pihn.pdf).

39. HUD TPV Guidance, June 2020, *supra note* 17.

40. Consolidated and Further Continuing Appropriations Act of 2012, Pub. L. 112-55, 125 Stat. 552, 674 (Nov. 18, 2011).

41. Rental Assistance Demonstration—Final Implementation, Revision 4, H 2019-09 PIH 2019-23, at 19–20 (Sept. 5, 2019) (https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf).

42. HUD Notice H 2016-17 PIH 2016-17, *supra note* 38, at 41 (explaining PBV and PBRA right to return).

43. 42 U.S.C. § 1437d(l)(5); 24 C.F.R. § 966.4(l)(2).

44. 24 C.F.R. § 966.4(l)(2)(iv).

45. 24 C.F.R. § 982.310(d)(iv).

46. 24 C.F.R. § 966.4(h).

47. Public housing tenants have a statutory right to reasonable lease terms under 42 U.S.C. § 1437d(l)(2). At least one court has ruled that this right is enforceable via 42 U.S.C. § 1983. Davis v. City of New York, 902 F. Supp. 2d 405, 442 (S.D.N.Y. 2012).

48. 24 C.F.R. § 5.611(c)(2).

49. *Id.* § 5.611(c)(2)(i)(A).

50. *Id.* § 5.611(c)(2)(ii).

51. Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112-55, 125 Stat. 552, 673 (Nov. 18, 2011); HUD Notice 2016-17, *supra note* 38, at 41; HUD Notice H 2019-09 PIH 2019-23, *supra note* 41, at 28.

52. HUD Notice PIH 2024-40, *supra note* 34, at 18.

53. Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112-55, 125 Stat. 552, 673 (Nov. 18, 2011).

54. *Id.*

55. HUD Form 52625, Rental Assistance Demonstration Use Agreement (July 2025) (https://www.hud.gov/sites/dfiles/Housing/documents/52625-RAD_PH_Use_Agreement_Final.docx). Note that RAD owners and their management are often not in full compliance with all RAD statutory requirements, and HUD's own sub-regulatory guidance materials may not be helpful as the demonstration program is continually evolving. For further assistance, reach out to NHLP or see Section 12.2.4 of the Green Book. The required language may still be in the "new" leases for the RAD project.

56. HUD, *Rental Assistance Demonstration (RAD): Reference Guide for Public Housing Projects Converting to Project Based Voucher (PBV) Assistance* (Feb. 2022), https://www.radresource.net/sources/public/RAD%20PBV%20QUICK%20REFERENCE%20GUIDE%20Feb%202022.pdf; HUD, *Rental Assistance Demonstration (RAD): Policy Quick Reference Guide to Multi-*

family Housing (PBRA) Requirements (Nov. 2023), https://www.hud.gov/sites/dfiles/Housing/documents/HUD_Multifamily_Housing_Policy_Quick_Reference_Guide_November_2023.pdf.

57. 24 C.F.R. § 5.703 (PBRA); 24 C.F.R. § 983.101 (PBV; referring to 24 C.F.R. § 5.703); Rental Assistance Demonstration—Supplemental Notice 4B, H 2023-08 PIH 2023-19, at 24-25 (July 27, 2023) (https://www.hud.gov/sites/dfiles/Housing/documents/RADSupplementalNotice4B%20_FINAL.pdf) (as modified slightly by Rental Assistance Demonstration—Supplemental Notice 4C, H 2025-01 PIH 2025-03, at 29 (Jan. 16, 2025) (https://www.hud.gov/sites/default/files/Housing/documents/RAD_Supplemental_Notice_4C.pdf) (to receive assistance payments, units converted to PBV must meet Housing Quality Standards); HUD Notice H 2019-09 PIH 2019-23, *supra note* 41, at 79-80 (to receive assistance payments, units converted to PBRA must meet physical conditions standards). The National Standards for the Physical Inspection of Real Estate ("NSPIRE") now in use across HUD programs are outlined at HUD, *NSPIRE Standards* (last visited May 23, 2025), https://www.hud.gov/reac/nspire-standards.

58. 24 C.F.R. § 5.703(a).

59. HUD Form 90105a, Model Lease for Subsidized Programs, at 6 ¶ 10(a) (Dec. 2007) (https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.doc).

60. *Id.* at 14 ¶ 24.

61. Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112-55, 125 Stat. 552, 674 (Nov. 18, 2011)

62. Note that RAD owners and their management are often not in full compliance with all RAD statutory requirements, and HUD's own sub-regulatory guidance materials may not be helpful as the demonstration program is continually evolving. Many leases for RAD projects are not in compliance with RAD legal requirements.

63. 24 C.F.R. § 970.21(a)(1).

64. Shephard v. Houma Terrebonne Hous. Auth., 2023 WL 5529712 (E.D. La. Aug. 28, 2023) (public housing tenants not entitled to preliminary injunction to provide URA benefits where there was insufficient proof that they were displaced by a federally funded rehabilitation project and not damage from Hurricane Ida itself); Jackson v. United States Dep't of Hous. & Urb. Dev., 38 F.4th 463 (5th Cir. 2022) (Project-Based Section 8 tenants not entitled to URA benefits where they were forced to move to another property because of Hurricane Harvey damage).

65. 49 C.F.R. § 24.2.

66. FEMA Hazard Mitigation Guide *supra note* 22.

67. As described in more detail in the Appendix, many advocates believe that the URA statute covers LIHTC and that the DOT's rulemaking is contrary to the plain language of the statute.

68. 49 C.F.R. § 24.2 ("federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.")

69. *Supra note* 32 and accompanying text.

70. 49 C.F.R. § 24.2.

71. 24 C.F.R. § 983.208(b)(4).

72. *Id.* § 983.212(a)(3)(i).

73. *Id.* § 983.212(a)(3)(ii).

74. *Id.* § 983.212(a)(3)(iii).

75. HUD Notice H 2019-09 PIH-2019-23, *supra note* 41, at 53-54 (PBV); 74-75 (PBRA) (as modified by at HUD Notice H 2025-01 PIH 2025-03, *supra note* 57, at 16).

76. *See generally* Transferring Budget Authority of a Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937, H 2015-03 (Apr. 3, 2015) (https://www.hud.gov/sites/documents/15-03hsgn.pdf).

77. *Id.* at 2.

78. *Id.* at 10, 19–20.

79. *Id.* at 21.

80. Because TPVs are administered by the PHA or other entity that administers the HCV program, tenants may be subject to rescreening. In addition, enhanced vouchers and TPVs are subject to appropriations.

81. HUD Notice H 2015-03, *supra note* 76, at 21.

82. After Hurricane Harvey in Houston, tenants argued they were "displaced persons" under the URA because they were required to move from their damaged property via a Section 8(bb) transfer, but the Fifth Circuit Court of Appeals found that their move was not caused by a federally funded program or project and therefore they were not entitled to URA benefits. Jackson v. United States Dep't of Hous. & Urb. Dev., 38 F.4th 463 (5th Cir. 2022). Other circuits have not examined this specific issue.

83. *See* HUD Form 90105a, Model Lease for Subsidized Programs, ¶ 30 (Dec. 2007) (https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.doc).

84. Memorandum from Robert Iber, Acting Deputy Assistant Secretary for Multifamily Housing Programs to All Multifamily Directors and Officers (Mar. 22, 2018) (https://www.hud.gov/sites/dfiles/Housing/documents/8bb_Enforcement_Actions_3-22-2018_memo.pdf) [hereinafter "Robert Iber Memorandum"].

85. 24 C.F.R. § 402.8(c)

86. Because TPVs are administered by the PHA or other entity that administers the HCV program, tenants may be subject to rescreening. In addition, enhanced vouchers and TPVs are subject to appropriations.

87. *See* Massie v. U.S. Dep't of Hous. & Urb. Dev., 620 F.3d 340, 358 (3d Cir. 2010) (tenants qualified for URA assistance when they were displaced from HUD multifamily property by a foreclosure and ownership transfer orchestrated by HUD due to substandard conditions, based on a finding that HUD provided money to the new owner for demolition and development, and had participated in a preexisting plan to redevelop the property that was contingent on the foreclosure).

88. *See, generally* 24 C.F.R. § 983.208.

89. *Id.* § 983.208(d)(5).

90. Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112-55, 125 Stat. 552, 674 (Nov. 18, 2011); HUD Notice H 2019-09 PIH 2019-23, *supra note* 41, at 64 (PBV), 84 (PBRA).

91. 24 C.F.R. §§ 880.607 (PBRA), 983.257 (PBV).

92. HUD Form 90105a, Model Lease for Subsidized Programs (Dec. 2007) (https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.doc); HUD Form 52530.c, Tenancy Addendum Section 9 Project-Based Voucher Program (Apr. 2023) (https://www.hud.gov/sites/dfiles/OCHCO/documents/52530CENG.pdf).

93. 24 C.F.R. § 966.4(h). Although none of the RAD notices have expressly cited this provision, advocates should argue that the protection transfers during a RAD conversion because of the statutory preservation of public housing tenants' rights.

94. Public housing tenants have a statutory right to reasonable lease terms under 42 U.S.C. § 1437d(l)(2). At least one court has ruled that this right is enforceable via 42 U.S.C. § 1983. Davis v. City of New York, 902 F. Supp. 2d 405, 442 (S.D.N.Y. 2012).

95. Although none of the RAD notices have expressly cited this provision, advocates should argue that the protection transfers during a RAD conversion because of the statutory preservation of public housing tenants' rights.

96. 24 C.F.R. § 5.611(c)(2).

97. 24 C.F.R. § 5.611(c)(2)(i)(A).

98. 24 C.F.R. § 5.611(c)(2)(ii).

99. HUD, Handbook 4350.1: Multifamily Asset Management and Project Servicing, Chapter 38: Multifamily Emergency/Disaster Guidance, REV-1, CHG-2 (Dec. 2009) (https://www.hud.gov/sites/documents/doc_24956.doc) [hereinafter "HUD Handbook 4350.1"].

100. *Id.* ¶ 38-26.

101. The National Standards for the Physical Inspection of Real Estate ("NSPIRE") now in use across HUD programs our outlined at 24 C.F.R. 5.703, and HUD, *NSPIRE Standards* (last visited May 23, 2025), https://www.hud.gov/reac/nspire-standards.

102. HUD Form 90105a, Model Lease for Subsidized Programs (Dec. 2007) at 6 ¶ 10(a) (https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.doc).

103. *Id.* at 14 ¶ 24.

104. HUD Handbook 4350.1 *supra note* 99, ¶ 38-28, Appendix A-8: Disaster Guest Lease Addendum.

105. *Id.* ¶ 38-30.

106. 12 U.S.C.§ 1715l (d). The only remaining properties with Section 221(d) mortgage insurance are single-room occupancy (SRO) apartments insured through the Section 221(d)(4) program. There are no longer any remaining properties with mortgage insurance through Section 221(d)(3).

107. There are no remaining Section 236 insured projects and no remaining Section 236 Rental Assistance Payment contracts; therefore, HUD removed most of the regulations governing the program effective June 2024. *See* 89 Fed. Reg. 47849 (available at https://www.federalregister.gov/documents/2024/06/04/2024-12199/removal-of-obsolete-regulations-for-section-236-of-the-national-housing-act).

108. HUD Handbook 4350.1, *supra note* 99, at ¶ 38-27.

109. *Disaster Preference*, HUD.gov, https://files.hudexchange.info/resources/documents/PHA-Disaster-Readiness-Response-and-Recovery-Disaster-Preference-Fact-Sheet.pdf.

110. HUD Handbook 4350.1, *supra note* 99, at ¶ 38-32(C).

111. FHA Multifamily Housing Policy, Unit 7, Chapter 7.2 p. 3 (Oct. 24, 2016) (https://www.nahma.org/wp-content/uploads/2014/04/Chapter-7.02-Section-8-Pass-Through-Leases.pdf). Note that this chapter is a draft that was never published as part of Handbook 4350.1. However, advocates have seen the document used in pass through arrangements.

112. *Id.* at p. 11 (Draft Pass-Through Temporary Lease Addendum states that tenant can deduct moving costs from rent).

113. Shephard v. Houma Terrebonne Hous. Auth., 2023 WL 5529712 (E.D. La. Aug. 28, 2023) (public housing tenants not entitled to preliminary injunction to provide URA benefits where there was insufficient proof that they were displaced by a federally funded rehabilitation project and not damage from Hurricane Ida itself); Jackson v. United States Dep't of Hous. & Urb. Dev., 38 F.4th 463 (5th Cir. 2022) (Project-Based Section 8 tenants not entitled to URA benefits where they were forced to move to another property as a result of Hurricane Harvey damage).

114. 49 C.F.R. § 24.2.

115. FEMA Hazard Mitigation Guide *supra note* 22.

116. 49 C.F.R.§ 24.2 ("federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.").

117. 49 C.F.R. § 24.2.

118. *See generally* HUD Notice H-2015-03, *supra note* 76.

119. *Id.* at 2.

120. *Id.* at 10, 19–20.

121. Because TPVs are administered by the PHA or other entity that administers the HCV program, tenants may be subject to rescreening. In addition, enhanced vouchers and TPVs are subject to appropriations.

122. HUD Notice H-2015-03, *supra note* 76, at 21.

123. After Hurricane Harvey in Houston, tenants argued they were "displaced persons" under the URA because they were required to move from their damaged property via a Section 8(bb) transfer, but the Fifth Circuit Court of Appeals found that their move was not caused by a federally funded program or project and therefore they were not entitled to URA benefits. Jackson v. United States Dep't of Hous. & Urb. Dev., 38 F.4th 463 (5th Cir. 2022). Other circuits have not examined this specific issue.

124. 42 U.S.C. § 1437f; 24 C.F.R. §§ 401.602 (properties with a mortgage insured or held by HUD seeking to restructure their debt via the Mark-to-Market program), 402.8(c) (properties with a Section 8 PBRA HAP contract).

125. 24 C.F.R. §§ 401.602(a)(1), 402.8(a).

126. *Id.* §§ 401.602(b), 402.8(c).

127. HUD, *Section 8 Contract Renewal Options - Option 6: Opt-Out* (last visited April 1, 2025), https://www.hud.gov/hud-partners/multifamily-section8-renewal.

128. 24 C.F.R. §§ 401.602, 402.8(c).

129. The National Standards for the Physical Inspection of Real

Estate ("NSPIRE") now in use across HUD programs are outlined at 24 C.F.R. § 5.703, and at HUD, *NSPIRE Standards* (last visited May 23, 2025), https://www.hud.gov/reac/nspire-standards.

130. HUD Form 90105a, Model Lease for Subsidized Programs (Dec. 2007) ¶ 30 (https://www.hud.gov/sites/dfiles/OCHCO/documents/90105a.doc).

131. Robert Iber Memorandum *supra note* 84.

132. 24 C.F.R. § 402.8(c).

133. Because TPVs are administered by the PHA or other entity that administers the HCV program, tenants may be subject to rescreening. In addition, enhanced vouchers and TPVs are subject to appropriations.

134. *See* Massie v. U.S. Dep't of Hous. & Urb. Dev., 620 F.3d 340, 358 (3d Cir. 2010) (tenants qualified for URA assistance when they were displaced from HUD multifamily property by a foreclosure and ownership transfer orchestrated by HUD due to substandard conditions, based on a finding that HUD provided money to the new owner for demolition and development, and had participated in a preexisting plan to redevelop the property that was contingent on the foreclosure.).

135. Disposition refers to HUD's acquisition of a property at foreclosure sale or via a deed in lieu of foreclosure.

136. 24 C.F.R. § 290.11.

137. *See* Massie v. U.S. Dep't of Hous. & Urb. Dev., 620 F.3d 340, 356 (3d Cir. 2010).

138. 24 C.F.R. § 290.17(d). See also Massie v. U.S. Dep't of Hous. & Urb. Dev., 620 F.3d 340, 358 (3d Cir. 2010) (tenants qualified for URA assistance when they were displaced from HUD multifamily property by a foreclosure and ownership transfer orchestrated by HUD due to substandard conditions, based on a finding that HUD provided money to the new owner for demolition and development, and had participated in a preexisting plan to redevelop the property that was contingent on the foreclosure).

139. 24 C.F.R. § 290.17(c).

140. *See generally*, 24 C.F.R. § 247.3.

141. HUD Handbook 4350.1 *supra note* 99, ¶ 38-32(B). Condemnation of the property or similar code enforcement action by local government creates a unique problem for federally subsidized tenants. Often such municipal action triggers a rapid displacement and relocation timeline which can cause tenants to fall through the cracks and complicate preservation efforts. Advocates should talk to their municipal governments early and encourage them to pursue other strategies in lieu of condemnation. Advocates may need to explain to local government that such condemnation may result in HAP contract termination, and the potential impact on tenants. In some cases, and jurisdictions, court action to appoint a receiver may be a better alternative.

142. Burroughs v. Hills, 741 F.2d 1525, 1529 (7th Cir. 1984) (internal quotations omitted).

143. HUD Handbook 4350.1 *supra note* 99, at ¶ 38-31(E), (J).

144. FHA Multifamily Housing Policy, Unit 7, Chapter 7.2 p. 3 (Oct. 24, 2016) (https://www.nahma.org/wp-content/uploads/2014/04/Chapter-7.02-Section-8-Pass-Through-Leases.pdf). Note that this chapter is a draft that was never published as part of Handbook 4350.1. However, advocates have seen the document used in pass through arrangements.

145. HUD PHA D3R Guidebook *supra note* 1.

146. HUD, *PHA Disaster Readiness, Response and Recovery Fact Sheets*, HUD Exchange, (June, 2024) https://www.hudexchange.info/resource/6765/pha-disaster-readiness-response-and-recovery-fact-sheets/.

147. HUD's waiver authority appears at 24 C.F.R. § 5.110. 2024 and 2025 waivers are published in the Federal Register. Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster, for Public Housing Agencies During CY 2024 and CY 2025, 89 Fed. Reg. 7612 (Feb. 5, 2024) (to be codified at 24 C.F.R. pt. 5).

148. 24 C.F.R. § 982.404(a). The National Standards for the Physical Inspection of Real Estate ("NSPIRE") now in use across HUD programs are outlined at 24 C.F.R. § 5.703, and at HUD, *NSPIRE Standards* (last visited May 23, 2025), https://www.hud.gov/reac/nspire-standards.

149. 24 C.F.R. § 982.404(a)(3).

150. 24 C.F.R. § 982.405(b)

151. 24 C.F.R. § 982.405(d).

152. 24 C.F.R. § 982.308(f); HUD Form 52641-A, Tenancy Addendum Section 8 Project-Based Voucher Program (Apr. 2023) (https://www.hud.gov/sites/dfiles/OCHCO/documents/52641A.pdf).

153. 24 C.F.R. § 982.404(d)(2).

154. 24 C.F.R. §§ 982.310(b), 982.404(d)(3).

155. 24 C.F.R. § 982.404(d)(1).

156. 24 C.F.R. § 982.404(d)(3).

157. 24 C.F.R. § 982.404(d)(5).

158. 24 C.F.R. § 982.404(e)(1).

159. 24 C.F.R. § 982.404(e)(2).

160. 24 C.F.R. § 982.404(e)(3).

161. HUD PHA D3R Guidebook *supra note* 1, at 28.

162. 24 C.F.R. § 982.404(d).

163. 24 C.F.R. § 983.261.

164. 24 C.F.R. § 982.355.

165. 24 C.F.R. § 982.404(e)(3).

166. 49 C.F.R. § 24.2.

167. FEMA Hazard Mitigation Guide *supra note* 22.

168. 49 C.F.R. § 24.2 ("federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.") As described in more detail in the Appendix, many advocates believe that the URA statute covers LIHTC and that the DOT's rulemaking is contrary to the plain language of the statute.

169. *Supra note* 32 and accompanying text.

170. 24 C.F.R. § 982.310(b); 24 C.F.R. § 982.404(d)(3).

171. 24 C.F.R. § 982.310(d)(1)(iv).

172. 24 C.F.R. § 983.2.

173. 24 C.F.R. § 983.261(c).

174. 24 C.F.R. §§ 983.208(d)(5), 983.208(d)(3).

175. 24 C.F.R. §§ 983.101(a), 983.208(a). The National Standards for the Physical Inspection of Real Estate ("NSPIRE") now in use across HUD programs are outlined at 24 C.F.R. § 5.703, and at HUD, *NSPIRE Standards* (last visited May 23, 2025), https://www.hud.gov/reac/nspire-standards.

176. 24 C.F.R. § 983.208(b)(2)(iii).

177. 24 C.F.R. § 983.103(d); (e).

178. 24 C.F.R. § 983.103(f).

179. 24 C.F.R. § 983.256(b)(3); HUD Form 52530.c *supra note* 92.

180. 24 C.F.R. § 983.208(d)(5).

181. 24 C.F.R. § 983.208(d)(3).

182. 24 C.F.R. § 983.208(d)(3).

183. 24 C.F.R. § 983.208(d)(1).

184. 24 C.F.R. § 983.208(d)(6)(i).

185. 24 C.F.R. § 983.208(d)(6)(ii).

186. 24 C.F.R. § 983.208(d)(6)(iii).

187. 24 C.F.R. § 983.261(c).

188. 24 C.F.R. §§ 983.208(d)(5), 983.208(d)(3).

189. 49 C.F.R. § 24.2.

190. FEMA Hazard Mitigation Guide *supra note* 22.

191. As described in more detail in the Appendix, many advocates believe that the URA statute covers LIHTC and that the DOT's rulemaking is contrary to the plain language of the statute.

192. 49 C.F.R. § 24.2 (federal financial assistance "means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.")

193. *Supra note* 32 and accompanying text.

194. 24 C.F.R. § 983.208(b)(4).

195. 24 C.F.R. § 983.212(a)(3)(i).

196. 24 C.F.R. § 983.212(a)(3)(ii).

197. 24 C.F.R. § 983.212(a)(3)(iii).

198. 24 C.F.R. § 983.205(a).

199. 24 C.F.R. § 983.205(b).

200. 24 C.F.R. § 983.206(b).

201. 24 C.F.R. § 983.206(a).

202. 24 C.F.R. § 983.206(b).

203. 24 C.F.R. § 983.206(b)(1)-(4).

204. *See generally* 24 C.F.R. § 983.208.

205. 24 C.F.R. § 983.208(d)(5).

206. 24 C.F.R. § 983.208(d)(3).

207. 24 C.F.R. § 983.212(a)(3)(iii)(A)-(B).

208. 24 C.F.R. § 983.212(a)(3)(iii)(C).

209. 24 C.F.R. § 983.206(b)(4)(iii).

210. 24 C.F.R. § 92.252(e)

211. 24 C.F.R. § 92.251(f)(1).

212. 24 C.F.R. § 92.251(f)(1)(i).

213. 24 C.F.R. § 92.504(d)(ii).

214. 24 C.F.R. § 92.504(d)(iii).

215. 24 C.F.R. § 92.251(f)(ii).

216. 24 C.F.R. § 92.253(b)(iii) (effective April 20, 2025); HOME Investment Partnerships Program: Program Updates and Streamlining, 90 Fed. Reg. 746-01, 876 (Jan. 6, 2025).

217. *Id.* at 762 (explaining the choice not to apply the requirement to TBRA tenancies).

218. 24 C.F.R. § 92.253(f) (effective April 20, 2025); HOME Investment Partnerships Program: Program Updates and Streamlining, 90 Fed. Reg. 746-01, 876 (Jan. 6, 2025).

219. HOME Investment Partnerships Program: Program Updates and Streamlining—Delay of Effective Date, 90 Fed. Reg. 8780-01 (Feb. 3, 2025); *see also* HOME Investment Partnerships Program: Program Updates and Streamlining—Delay of Effective Date, Withdrawal, and Correction, 90 Fed. Reg. 16085 (Apr. 17, 2025).

220. 49 C.F.R. § 24.2.

221. FEMA Hazard Mitigation Guide *supra note* 22.

222. 49 C.F.R. § 24.2 ("federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.")

223. 24 C.F.R. § 92.253(c).

224. 24 C.F.R. § 92.253(b)(iii) (effective Oct. 30, 2025); HOME Investment Partnerships Program: Program Updates and Streamlining, 90 Fed. Reg. 746-01, 876 (Jan. 6, 2025).

225. 26 C.F.R. § 1.42-5(c)(2)(iii)(A)(2).

226. 26 C.F.R. § 1.42-5(c)(4).

227. 26 C.F.R. § 1.42-5(d)(2).

228. 49 C.F.R. § 24.2.

229. FEMA Hazard Mitigation Guide *supra note* 22.

230. 49 C.F.R. § 24.2 ("federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.").

231. *See An Advocate's Guide to Tenants' Rights in the Low-Income Housing Tax Credit Program*, National Housing Law Project, 17, https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf.

232. Memorandum from Benjamin T. Metcalf, Assistant Secretary for Multifamily Housing Programs to All Multifamily Directors

and Officers (Jan. 12, 2015) (on file at https://www.hud.gov/sites/documents/occupprotectionshudassthsg.pdf) [hereinafter "Benjamin Metcalf Memorandum"].

233. 26 U.S.C. § 42(j)(4)(E).

234. Rev. Proc. 2014-49 [on file at https://www.ncsha.org/wp-content/uploads/2018/02/rp-14-49-1.pdf].

235. 26 U.S.C. § 42(h)(6)(E)(ii).

236. Rural Development is the division that administers USDA's housing programs.

237. 7 C.F.R. § 3560.156(c)(18)(xviii).

238. 7 C.F.R. § 3560.156(e).

239. USDA Handbook HB-2-3560: MFH Asset Management Handbook, Chapter 9 § 6 ¶ 9-36 (https://www.rd.usda.gov/sites/default/files/3560-2chapter09.pdf) [hereinafter "USDA Handbook"].

240. 7 C.F.R. § 3560.159(c). Since this regulation is somewhat at odds with the statutory definition of "displaced person" under the URA, it is unclear whether a court would enforce the obligation.

241. 7 C.F.R. § 3560.154 (g)(2)(iii) (applicants displaced in a federally declared disaster area must be given an admission priority over other applicants in their same income category).

242. 7 C.F.R. § 3560.154(g)(2)(iii).

243. Letter from RD to All Owners and Management Agents of RD Multifamily Properties (on file at https://www.rd.usda.gov/media/file/download/usda-rd-mfh-owner-management-agent-letter-508-compliant-09262024.pdf).

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. USDA Rural Development, *Priority Housing Access for Displaced Households*, https://www.rd.usda.gov/sites/default/files/MFH%20Priority%20Housing%20Displaced%20FactSheet%20-%20508%20Compliant.pdf (also available in Spanish at https://www.rd.usda.gov/sites/default/files/fact-sheet/mfh_priority-housingdisplacedfactsheet_sp.pdf).

249. 7 C.F.R. § 3560.159(c).

250. 7 C.F.R. § 3560.259(c).

251. 7 C.F.R. § 3560.259(c).

252. *See generally* Fed. R. Evi*d.* 701–702 (limiting scope of opinion testimony by lay witnesses and establishing requirements for expert witness opinion testimony); Karas v. Floyd, 2 Ohio App. 3d 4, 7, 440 N.E.2d 563, 567 (1981) (landlord's "vague and general" assertions that necessary repairs were economically unfeasible and therefore he needed to evict the tenant, absent any actual cost estimate or evidence of the landlord's economic resources, were insufficient to rebut a presumption of retaliation).

253. *Assistance for Housing and Other Needs*, FEMA, https://www.fema.gov/assistance/individual/housing (last visited April 1, 2025).

254. *See* Shephard v. Houma Terrebonne Hous. Auth., 2023 WL 5529712, at *3 (E.D. La. Aug. 28, 2023) (where public housing tenants displaced after Hurricane Ida argued they were entitled to URA benefits because the housing authority used public housing capital funds allocated pursuant to a Capital Fund Program Five-Year Action Plan to repair storm damage, the Court held that "[w]ithout some indication that it was the Five-Year Plan that caused Plaintiffs to move, not damage from Hurricane Ida, the Court cannot find Plaintiffs are displaced persons entitled to benefits under the URA.").

255. 42 U.S.C. § 1437p(a)(1)(A)(i).

256. 44 C.F.R. § 206.191.

257. *Id.* § 206.191(d)(1)(i).

258. Though FEMA may reimburse for moving and storage, tenants generally must front the cost.

259. 44 C.F.R. § 206.191(f).

260. *Id.*

261. HUD, CDBG-DR Pol'y Bull. 2025-01, HUD's Duplication of Benefits Collection Policy (2025) (on file at https://www.hud.gov/sites/default/files/CPD/documents/CDBG-DR-Policy-Bulletin-2025-01-HUD-DOB-Collection-Policy-English.pdf).

262. HUD advertises available "Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster" for PHAs via Federal Register notice on an annual or biannual basis. These waivers must be requested by a PHA and apply to the voucher and or public housing programs. For example, the current waivers allow a PHA to extend voucher search terms without amending its Administrative Plan immediately. PHAs may also allow individuals to be absent from their units for up to 240 days, instead of the usual 180 days.

263. 49 C.F.R. § 24.202(a)(5).

264. The following courts have found no private right of action under the URA: Clear Sky Car Wash LLC v. City of Chesapeake, Va., 743 F.3d 438, 444 (4th Cir. 2014); Delancey v. City of Austin, 570 F.3d 590, 594 (5th Cir. 2009); Ackerley Commc'ns of Fla., Inc. v. Henderson, 881 F.2d 990, 993 (11th Cir. 1989) ("We find that Congress intended that the Administrative Procedure Act would be the exclusive remedy for alleged violations of the URA.") Osher v. Land Clearance for Redevelopment Auth. of the City of St. Louis, 2016 WL 7474990, at *3 (E.D. Mo. Dec. 29, 2016), aff'd sub nom. Osher v. City of St. Louis, Missouri, 903 F.3d 698 (8th Cir. 2018); Munoz v. City of Philadelphia, 346 F. App'x 766, 769 (3d Cir. 2009) (in dicta); NIMCO Real Est. Assocs., LLC v. Nadeau, 2017 WL 1113341, at *8 (D.N.H. Mar. 23, 2017); DeCoster v. Waushara Cnty. Highway Dep't, 2018 WL 2447805, at *3 (E.D. Wis. May 31, 2018), aff'd, 908 F.3d 1093 (7th Cir. 2018); Serna v. Bd. of Cnty. Commissioners of the Cnty. of El Paso, 2024 WL 1715014, at *7 (D. Colo. Feb. 28, 2024), report and recommendation adopted sub nom. Serna v. Bd. of Cnty. Commissioners of Cnty. of El Paso, 2024 WL 1715003 (D. Colo. Mar. 29, 2024), appeal dismissed, No. 24-1150, 2024 WL 4542964 (10th Cir. May 8, 2024); Wallace v. Chicago Hous. Auth., 298 F. Supp. 2d 710, 723 (N.D. Ill. 2003), on reconsideration in part, 321 F. Supp. 2d 968 (N.D. Ill. 2004).

265. The following courts have found no private right of action under Section 18: Anderson v. Jackson, 556 F.3d 351, 358 (5th Cir. 2009) (collecting cases); Barry Farm Tenants v. D.C. Hous. Auth., 311 F. Supp. 3d 57, 72 (D.D.C. 2018); Aponte-Rosario v. Acevedo-Vila, 617 F.3d 1, 6 (1st Cir. 2010) (expressing doubts in dicta but not deciding the issue); but see Arroyo Vista Tenants Ass'n v. City of Dublin, 2008 WL 2338231, at *14 (N.D. Cal. May

23, 2008) (finding that the right to notice and relocation assistance under Section 18 were privately enforceable via 1983 after extensive legislative history analysis); Eng. Woods Civic Ass'n/ Resident Cmty. Council v. Cincinnati Metro. Hous. Auth., 2004 WL 3019505, at *7 (S.D. Ohio Dec. 17, 2004) (with flawed analysis ignoring statutory change as described in *Anderson*, 556 F.3d at 357); Givens v. Butler Metro. Hous. Auth., 2006 WL 3759702, at *4 (S.D. Ohio Dec. 19, 2006) (same).

266. Gonzaga Univ. v. Doe, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002). The 1983 cause of action and implied private right of action analyses are nearly identical and sometimes used interchangeably by courts. "A court's role in discerning whether personal rights exist in the § 1983 context should [ ] not differ from its role in discerning whether personal rights exist in the implied right of action context. Both inquiries simply require a determination as to whether or not Congress intended to confer individual rights upon a class of beneficiaries." *Id.* at 285. Citing this language, the Court in *Delancey* applied *Gonzaga* to determine whether there was an implied private right of action. *Delancey*, 570 F.3d at 591

267. The following courts have found a private right of action under Section 104(d): Price v. City of Stockton, 390 F.3d 1105, 1114 (9th Cir. 2004) (finding 1983 cause of action for right to relocation assistance and comparable housing under 104(d)(2)(A)(iii) and (iv) but not other provisions); see also Reese v. Miami-Dade Cnty., 210 F. Supp. 2d 1324, 1330 (S.D. Fla. 2002) (denying motion to dismiss 104(d) claim without analysis, but dismissing URA claim based on lack of 1983 right of action).

268. *Anderson*, 556 F.3d at 359 (leaving open the possibility of challenging a Section 18 demolition through an APA action under 5 U.S.C. § 702 against HUD).

269. Wallace v. Chicago Hous. Auth., 298 F. Supp. 2d 710, 717, 722 (N.D. Ill. 2003), on reconsideration in part, 321 F. Supp. 2d 968 (N.D. Ill. 2004) (granting motion to dismiss on URA claims because the URA is not enforceable via § 1983, but denying motion to dismiss on FHA claims that the relocation plan would perpetuate segregation, adversely impact a protected group, and violate the PHA's obligation to affirmatively further fair housing).

270. *FEMA Quick Reference Guide: Serious Needs Assistance*, FEMA.gov (July 2024), https://www.fema.gov/sites/default/files/documents/fema_ia-quick-reference_serious-needs.pdf.

271. *Individuals and Household Program*, FEMA.gov (last visited April 1, 2025), https://www.fema.gov/assistance/individual/housing.

272. *FEMA Assistance for Other Needs*, FEMA.gov (Sept. 27, 2021), https://www.fema.gov/fact-sheet/fema-assistance-other-needs.

273. Memorandum of Agreement Between the American Red Cross and the Department of Homeland Security/Federal Emergency Management Agency (July 2020), https://nationalmasscarestrategy.org/wp-content/uploads/2021/01/FEMA_MOA-2020.pdf.

274. 42 U.S.C. §§ 4601–4655.

275. *See* Shephard v. Houma Terrebonne Hous. Auth., 2023 WL 5529712, at *3 (E.D. La. Aug. 28, 2023) ("[w]ithout some indication that it was the Five-Year Plan that caused Plaintiffs to move, not damage from Hurricane Ida, the Court cannot find Plaintiffs are displaced persons entitled to benefits under the URA" based on housing authority's use of funds from the Public Housing Capital Fund Program to repair some storm damage pursuant to a Five Year Action Plan).

276. For a noncomprehensive list of such laws, see 49 C.F.R. § 24.8.

277. *Compare* Jackson v. United States Dep't of Hous. & Urb. Dev., 38 F.4th 463, 465 (5th Cir. 2022) (finding tenants of HUD multifamily property did not qualify as "displaced persons" under the URA where their move to another property was facilitated via a HUD "8(bb) transfer" of assistance which the DOT as lead agency did not prescribe as a qualifying program), with Massie v. U.S. Dep't of Hous. & Urb. Dev., 620 F.3d 340, 358 (3d Cir. 2010) (finding tenants of HUD multifamily property qualified for URA assistance when they were displaced by a foreclosure and ownership transfer where HUD participated in a preexisting plan to redevelop the property that was contingent on the foreclosure and provided money to the new owner for demolition and development).

278. For a comprehensive list of "persons not displaced" who are ineligible for URA assistance, see 49 C.F.R. § 24.2(a)(iv)(A) through (L).

279. 42 U.S.C. § 4601(6). See list at HUD Handbook 1378.0 *supra note* 20, Chapter 1 ¶ 1-3. Current Section 515 tenants whose occupancy is terminated as the result of a disaster are entitled to benefits under the URA prior to expiration of the disaster declaration. But see *supra note* 240.

280. Advocates argue that the Department of Transportation ("DOT") acting as the lead URA agency through the Federal Highway Administration ("FHA") has impermissibly amended, without Congressional authorization, the list of programs which are statutorily exempt from URA applicability to include "tax credits (Low Income Housing Tax Credit)." 49 C.F.R. § 24.2 Although Congress expressly authorized the DOT to expand URA applicability to "such other displacing activity as the lead agency may prescribe," 42 U.S.C. § 4601(6)(A)(ii)(II), Congress did not authorize the DOT to limit further the federal programs it has expressly identified as exempt. In fact, when deemed necessary, Congress has taken direct action itself – such as by amending the U.S. Housing Act of 1937 ("1937 Act") to exempt public housing demolition and disposition activities under Section 18 from the URA. *Id.* § 1437p(g).

281. 49 C.F.R. § 24.2.

282. *See e.g., Choice Neighborhoods*, HUD (last visited April 1, 2025), https://www.hudexchange.info/programs/choice-neighborhoods/.

283. 49 C.F.R. § 24.5.

284. 49 C.F.R. § 24.203(a).

285. "Initiation of negotiation" is defined at 49 C.F.R. § 24.2(a)(15).

286. Eligibility begins at the earliest of the issuance of a notice of intent to acquire, the initiation of negotiations, or the actual acquisition of the property.

287. 49 C.F.R. § 24.203(b).

288. 49 C.F.R. § 24.203(c).

289. *See generally*, 24 C.F.R. part 24. Note that the government-wide regulations implementing the URA were revised effective June 3, 2024 to increase the maximum statutory rental

assistance payment (up to $9,570, previously up to $7,200). 49 C.F.R. § 24.402.

290. 42 U.S.C. § 4625(c)(3). Note that if an anticipated temporary move lasts more than 12 months, the person must be considered permanently displaced and provided all assistance for permanent displacement without deducting any temporary relocation assistance benefits already provided.

291. 49 C.F.R. § 24.204(a).

292. 42 U.S.C. § 4601(10); 49 C.F.R. § 24.2(a).

293. 49 C.F.R. §§ 24.204(b)(1)–(3).

294. 49 C.F.R. § 24.204(c)(1), (2).

295. 49 C.F.R. § 24.204(c)(3) (emphasis added).

296. 49 C.F.R. § 24.205(c)(2)(ii)(C).

297. 49 C.F.R. § 24.205(c)(2)(ii)(D).

298. 42 U.S.C. § 4625(b); 49 C.F.R. § 24.204(c)(2)(ii)(E).

299. *Fixed Residential Moving Cost Schedule*, DOT.gov (Aug. 26, 2021) https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.

300. 42 U.S.C. § 4622(a); 49 C.F.R. §§ 24.301(g)(1)-(19) (listing eligible expenses); *Id.* §§ 24.301(h)(1)-(13) (listing ineligible expenses); *Id.* § 24.302 (fixed payment).

301. 42 U.S.C. § 4624(a); 49 C.F.R. §§ 24.401 (homeowners), 24.402 (tenants). "Initiation of negotiation" is defined at 49 C.F.R. § 24.2(a)(15). Note that displaced persons who do not meet the length of occupancy requirement must also be provided with rental assistance if comparable replacement housing is not otherwise available within the person's financial means (i.e. affordable). See 49 C.F.R. §§ 24.2(a)(6)(viii)(C), 24.404(c)(3).

302. 49 C.F.R. § 24.402(b)(2)(ii).

303. 49 C.F.R. § 24.402(b)(2)(i).

304. HUD Handbook 1378.0 *supra note* 20.

305. 42 U.S.C. § 1437p; 24 C.F.R. part 970.

306. 24 C.F.R. § 970.5.

307. 42 U.S.C. § 5304(d).

308. 24 C.F.R. § 970.21(e)(1).

309. 24 C.F.R. § 970.9(a).

310. HUD Notice PIH 2024-40, *supra note* 33, at 3.

311. *Id.*

312. *Id.* at 2.

313. 42 U.S.C. § 1437p(a)(4)(A)(ii); 24 C.F.R. 970.21(a).

314. 24 C.F.R. § 970.21(a)(1).

315. HUD PHA D3R Guidebook, *supra note* 1, at 32.

316. HUD TPV Guidance, June 2020, *supra note* 17.

317. 42 U.S.C. § 1437p(a)(4)(B); 24 C.F.R. § 970.21(e)(2).

318. Demolition/disposition of public housing and associated requirements for PHA Plans, resident consultation, Section 3 and application processing, Notice PIH 2012-7, at 4 (Feb. 2, 2012) (https://www.hud.gov/sites/documents/pih2012-7.pdf).

319. 42 U.S.C. § 1437p(a)(4)(D); 24 C.F.R. § 970.21(e)(4).

320. HUD Notice PIH 2024-40, *supra note* 33, at 18.

321. HUD Handbook 1378.0, *supra note* 20.

322. 42 U.S.C. § 5304(d); 24 C.F.R. § 42.1(b) (implementing regulations).

323. 42 U.S.C. §§ 5304(d)(2)(A)(i)-(ii); 24 C.F.R.§ 42.375.

324. 42 U.S.C. § 5304(d)(2)(A)(iii); 24 C.F.R. § 42.350(b).

325. 24 C.F.R. § 42.350(d).

326. 42 U.S.C. § 5304(d)(2)(A)(iii)(I); 24 C.F.R. § 42.350(e).

327. 42 U.S.C. § 5304(d)(2)(A)(iv).

328. 24 C.F.R. § 42.350(a).

329. 42 U.S.C. § 5304(d)(2)(B). HUD has provided a useful comparison chart of the major differences between the URA and 104(d). HUD, Handbook 1378: Summary of Major Differences Between URA & 104(d) Relocation Assistance For Displaced Residential Tenants, CHG-11, Exhibit 7-1 (https://www.hud.gov/sites/dfiles/OCHCO/documents/1378Exhibit7-1CPDH.pdf).

330. See 49 C.F.R. § 24.203, and previous section on the URA.

331. HUD Handbook 1378.0, *supra note* 20, Chapter 7 at ¶ 7-7.

332. 24 C.F.R. 570.606(a).

333. HUD, *Consolidated Notice Grantees*, HUD Exchange (last visited April 1, 2025) https://www.hudexchange.info/programs/cdbg-dr/consolidated-notice-grantees/#cdbg-dr-notices.

334. See N.J. Admin. Code § 5:11-1.1 et seq. (New Jersey); Minn. Stat. Ann. § 117.52 (Minnesota); Cal. Gov't Code § 7260 et seq. (California); Mass. Gen. Laws Ann. Pt. I, tit. XIII, Ch. 79A (Massachusetts); Wis. Stat. Ann. § 32.19; Wis. Admin. Code Adm. § 92 (Wisconsin); Wash. Rev. Code Ann. § 8.26.010 et seq. (Washington); Mich. Comp. Laws Ann. § 213.352 (Michigan); Tex. Prop. Code Ann. § 21.046 (Texas).

335. Cal. Code Regs. Title 4, Division 17, Chapter 1 § 10322(h)(1) (Oct. 28, 2019) (https://www.treasurer.ca.gov/ctcac/programreg/adopted-regulations-20191028.pdf).

336. Maryland Department of Housing and Community Development, *Multifamily Rental Financing Program Guide* 16 (Jan. 23, 2025), https://dhcd.maryland.gov/HousingDevelopment/Documents/rhf/2025-MRFP-Guide.pdf. *See also supra note* 32.

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