

dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available in accordance with § 42.375.

(e) *Replacement housing assistance.* Persons are eligible to receive one of the following two forms of replacement housing assistance:

(1) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the "Total Tenant Payment," as determined under part 813 of this title. All or a portion of this assistance may be offered through a certificate or voucher for rental assistance (if available) provided under Section 8. If a Section 8 certificate or voucher is provided to a person, the recipient must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Tenant-Based Assistance Existing Housing Program (see part 982 of this title). When provided, cash assistance will generally be in installments, in accordance with 42 U.S.C. 3537c; or

(2) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a payment equal to the capitalized value of 60 times the amount that is obtained by subtracting the "Total Tenant Payment," as determined under part 813 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured financial institution conducting business within the recipient's jurisdiction. To the extent necessary to minimize hardship to the household, the recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

**§ 42.375 One-for-one replacement of lower-income dwelling units.**

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

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

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

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

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

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

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

(4) The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under paragraph (d) of this section and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.

**§ 42.390**

(5) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.

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

(1) A description of the proposed assisted activity;

(2) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;

(3) A time schedule for the commencement and completion of the demolition or conversion;

(4) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(5) The source of funding and a time schedule for the provision of replacement dwelling units;

(6) The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and

(7) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs as-

**24 CFR Subtitle A (4-1-10 Edition)**

essment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

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

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

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

**§ 42.390 Appeals.**

A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A person who is dissatisfied with the recipient's determination on