

Chapter 9: Acquisition

Introduction

This chapter describes the two forms of acquisition of real property eligible with CDBG-DR funding. The first form of acquisition is referred to in the Federal Register Notice as “acquisition for redevelopment” and the second form of acquisition is referred to as “buyout for risk reduction and open space”. (“Real property” includes land with or without structures on it.) Acquisition assisted with CDBG-DR funds must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended. This chapter also includes the appeals and record keeping processes for the acquisition of real property.

The following requirements apply to CDBG-DR-funded projects. There may be situations in which other federal agencies participate with CDBG-DR funds in a project (e.g., FEMA HMGP). In this case, a lead agency must be designated and if it is an agency working with funds other than CDBG-DR, that federal agency’s policies and requirements must be followed. The investment of CDBG-DR funds triggering the URA requirements must be complied with as outlined within this chapter no matter who is the designated lead agency.

Section 9-A. CDBG-DR Acquisition for Redevelopment and Acquisition for Buyout

The CDBG-DR allocation notice allows for two types of acquisition with CDBG-DR funds. Acquisition for redevelopment allows subrecipients to purchase real property for CDBG-DR eligible activities. A buyout acquisition is the purchase of real property for the purpose of reducing future risk of property damage by demolishing all structures on the property and leaving the property as open space or to be used for flood mitigation purposes. **Note:** A buyout property cannot be redeveloped and must remain in compliance with property use restrictions stated in the federal register notice into perpetuity.

Acquisition for Redevelopment

Acquisition for redevelopment follows all of the same requirements for voluntary and involuntary real property purchase as described in Sections 9-C and 9-D respectively. The property must be purchased at the current fair market value. Property purchased with CDBG-DR funds cannot be “land-banked” and the national objective will be based on the end use of the acquired property.

Section 9-C Voluntary Acquisitions and Donations & Section 9-D involuntary Acquisitions provide step by step directions on

Optional Relocation

Per the CDBG-DR allocation notice, the regulations at 24 CFR 570.606(d) are waived to the extent that they require optional relocation policies to be established at the Grantee level. This waiver makes clear that grantees receiving CDBG-DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies.

The optional relocation policy must be in writing and:

- Be available to the public;
- Describe the relocation assistance that the state recipient (i.e., a local government receiving a subgrant from the state through a method of distribution) or subrecipient (as applicable) has determined to provide; and
- Provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d).

Optional Relocation Plans must be reviewed and approved by DLG prior to implementation.

Buyout

The term “buyouts” means the acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future Hazards. An Open Space Management Plan (or equivalent) must be established before implementation that is fully transparent about the planned use of the acquired properties post-buyout.

Chapter 8 Relocation and Section 9-C and 9-D Voluntary and involuntary Acquisitions

Buyout activities are subject to all requirements that apply to a regular acquisition including but not limited to Uniform Relocation Assistance (Chapter 8 of this manual) and Voluntary or Involuntary Acquisitions (Sections 9-C and 9-D of this chapter).

Buyout properties must be purchased voluntarily from the property owner(s) unless being purchased for a public benefit (i.e., public facility or public infrastructure). Targeted property being purchased for a specific public use cannot be considered a voluntary purchase if the purchasing party has power of eminent domain. If purchase is involuntary, any displaced persons or business (including both owners and tenants) is eligible for full URA benefits.

Disaster Risk Reduction Area (DRRA)

HUD has authorized the use of CDBG-DR funds to purchase high risk “buyout” properties through its Consolidated Notice. HUD initially only allowed an acquisition of a property to be termed a “buyout” if the properties were in a floodplain or floodway. In 2015, HUD expanded the eligible properties that could be purchased as a buyout by introducing the concept of a Disaster Risk Reduction Area (DRRA) which did not require the buyout properties to be only in floodplains or floodways.

The buyout activity must specifically be included in the CDBG-DR Action Plan to be an eligible activity. A Subrecipient that will buyout properties in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

- (1) The area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the Grantee received its CDBG–DR allocation;
- (2) the hazard identified must be a predictable environmental threat to the safety and wellbeing of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (*e.g.*, FEMA Repetitive Loss Data, EPA’s Environmental Justice Screening and Mapping Tool, HHS’s climate change related guidance and data, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other federal agencies, etc.); and

(3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

Safe Housing Incentives

A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community's comprehensive recovery plan. Displaced persons must receive any relocation assistance to which they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, or those described in the Consolidated Notice. The Subrecipient may offer safe housing incentives in addition to the relocation assistance that is legally required.

A Subrecipient may require the safe housing incentive to be used for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Subrecipients are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in section II.B.12 of the Consolidated Notice.

Property Valuation

Per the Consolidated Notice the CDBG-DR funds can be used to purchase eligible buyout properties at either the *pre*-disaster fair market value or the *post*-disaster fair market value. However, only one method of valuation must be used for all properties in the buyout program.

National Objectives

Buyout properties must meet all requirements of the HCDA and demonstrate that a buyout meets the low-and moderate-income housing (LMH) national objective. A buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential structure. Therefore, acquisition-only buyout programs have been determined by HUD not to satisfy the LMH national objective criteria.

To meet a national objective that benefits a LMI person, buyout programs can be structured in one of the following ways:

- (1) The buyout activity combines the acquisition of properties with another direct benefit—LMI housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;
- (2) The activity meets the low- and moderate-income area (LMA) benefit criteria and documents that the acquired properties will have a use that benefits all the residents in a particular area that is primarily residential, where at least 51 percent of the residents are LMI persons. Subrecipients covered by the “exception criteria” as described in section IV.C. of the Consolidated Notice may apply it to these activities. To satisfy LMA criteria, Subrecipients must define the service area based on the end use of the buyout properties; or
- (3) The program meets the criteria for the low- and moderate-income limited clientele (LMC) national objective by restricting buyout program eligibility to exclusively LMI persons and benefiting LMI sellers

by acquiring their properties for more than current fair market value (in accordance with the valuation requirements in section II.B.7.a.(vi)).

Additionally, HUD has established a new LMI national objective criterion that apply to safe housing incentive (LMHI) activities that benefit LMI households. HUD has determined that providing CDBG–DR Subrecipients with an additional method to demonstrate how safe housing incentive activities benefit LMI households will ensure that Subrecipients and HUD can account for and assess the benefit that CDBG–DR assistance for these activities has on LMI households.

The LMHI national objective may be used when a Subrecipient uses CDBG–DR funds to carry out a safe housing incentive activity that benefits one or more LMI persons. See National Objectives table below to better understand how to apply the requirements for each national objective.

National Objective Tables for Buyout and Incentive Activities

Activity	National Objective	Implementation Requirement
Purchase buyout property (either pre-disaster or post-disaster FMV)	LMH	<ul style="list-style-type: none"> Any assisted activity that involves acquisition of properties with another direct benefit (LMH activity) that results in occupancy and meets LMH national objective criteria. Subrecipient must verify that the household secures new housing and provides additional assistance to secure it (must be permanent housing). Example of a direct benefit might be providing down payment assistance.
	LMA	<ul style="list-style-type: none"> If the buyout area and subsequent greenspace benefit all residents of an area that is primarily residential and 51 percent or more LMI persons. Subrecipient must define service area based on end use of property.
	LMC	The activity is restricted to only LMI persons and benefits LMI sellers by acquiring the property for more than post-disaster value . Not eligible if property purchased at post-disaster FMV.

Activity	National Objective	Implementation Requirement
	UN	Buyout to households that are not at or below 80% AMI
Safe Housing Incentive	LMHI	<ul style="list-style-type: none"> • The activity is tied to the voluntary acquisition of housing including buyouts) owned by a qualifying LMI household for which the incentive is made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or • The activity is for the purpose of providing or improving residential structures that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area. • While recommended, the new housing is not required to be permanent housing.
	UN	Incentive to households that are not at or below 80% AMI

Buyout Property Requirements

Real property purchased as a buyout acquisition is restricted in the type of uses that can happen on the property once purchased and all structures removed. The following are the requirements contained in the Consolidated Notice.

- (i) Property to be acquired or accepted must be located within a floodway, floodplain, or Disaster Risk Reduction Area.
- (ii) Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.
- (iii) No new structure will be erected on property acquired or accepted under the buyout program other than:
 - (a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area);
 - (b) a restroom; or (c) a flood control structure, provided that:
 - (1) The structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and
 - (2) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.
- (iv) After the purchase of a buyout property with CDBG–DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any

Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG–DR funded buyout, unless the assistance is for an allowed use as described in paragraph (ii) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.

(v) A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.

(vi) Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The Subrecipient must apply its valuation method for all buyouts carried out under the program. If the Subrecipient determines the post-disaster value of a property is higher than the pre-disaster value, a grantee may provide exceptions to its established valuation method on a case-by-case basis. The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each Subrecipient must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

(vii) All buyout activities must be classified using the “buyout” activity type in the Disaster Recovery and Grant Reporting (DRGR) system.

(viii) Any state Subrecipient implementing a buyout program or activity must consult with local or tribal governments within the areas in which buyouts will occur.

Section 9-B. General Acquisition Requirements

The following general requirements apply to both forms of acquisition under CDBG-DR. Additionally, URA requirements apply equally to both forms of acquisition. For the purposes of this handbook, “property to be acquired” refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are also subject to all of the same rules as other forms of acquisition unless the temporary easement exclusively benefits the property owner (refer to Section 9-C). Subrecipients should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

49 CFR 24.106

Acquisition rules must be followed whenever:

- ✓ The Subrecipient undertakes the purchase of property directly;
- ✓ The Subrecipient hires an agent, private developer, etc. to act on their behalf; and
- ✓ The Subrecipient provides a nonprofit, or for-profit entity organization with funds to purchase a property; or

Tip: HUD Handbook 1378, Chapter 5, is a resource available for acquisition information and is available at HUD’s web site:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780.

The URA regulations can also be downloaded from the Federal Highway Administration’s website at <http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm>.

Note: The first step Subrecipients should consider before undertaking any acquisition is a title search to determine the legal owner of the property.

Subrecipients must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 2: Environmental Review for detailed guidance.

Chapter 2: Environmental Review

Section 9-C. Voluntary Acquisitions and Donations

Subrecipients must understand the critical difference between voluntary and involuntary sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, **there can be no threat of eminent domain.**

Regardless of the form of acquisition used, it is strongly recommended that the Subrecipient maintain a log of contacts with the owner in the acquisition file (see the sample in Attachment 9-1).

Attachment 9-1:
Sample Acquisition Log of Contacts

Note: The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, Subrecipients should proceed with caution if federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a federal or federally-assisted project at any point during the course of a project.

49 CFR 24.101

The URA recognizes three general types of purchases as potentially voluntary. Generally they are:

1. Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the community states in writing it will not use this power.
 - *Example:* The City or County Subrecipient has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing and – if the offer is not accepted – be prepared to look for another property. The property will not be taken using the condemnation process.
2. Purchases where the agency or person does not have the power of eminent domain.
 - *Example:* A nonprofit organization without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.
3. Purchases of property from government agencies (federal, state, or local) where the Subrecipient does not have the power of eminent domain over the other entity.

Handbook 1378,
Chapter 5, Paragraph 5-3 A

Handbook 1378,
Chapter 5, Paragraph 5-3 B

- *Example:* A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.

Sometimes there is confusion about what is actually considered “voluntary.” A common misconception is that “willing seller” or “amicable agreement” means a transaction is “voluntary.” This is not true under URA. The applicable requirements of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary.

49 CFR 24.101(b)(1)-(5)

Each type of voluntary acquisition, and the URA requirements pertaining to each, is described as follows:

- ✓ The public notice, advertisements and literature should include a description of what the Subrecipient intends to purchase, its reasons, and any conditions of which a seller should be aware.
- ✓ The voluntary acquisition policy must state that if a mutually satisfactory agreement cannot be reached, the Subrecipient will not buy or condemn the property for the same purpose.
- ✓ The Subrecipient should indicate that owner-occupants are not eligible for relocation benefits in the public notice and the acknowledgement form should be attached to the purchase offer.

While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, all tenants in legal occupancy (including non-residential occupants are protected by the URA and are eligible for relocation benefits under the URA. (See Chapter 8 for more information.)

Chapter 8:
Relocation under the URA and
104(d)

(1) Voluntary Acquisition by a Subrecipient or Persons Acting on Behalf of a Subrecipient with the Power of Eminent Domain

To be considered a voluntary acquisition by a purchaser with the power of eminent domain, the property may not be part of a planned or designated project area where substantially all the property in the area will be purchased within a specified time frame.

The search for alternative sites for the project or activity may be limited to one geographic area, but if none of the owners are willing to sell voluntarily, the Subrecipient must be prepared to look in another area for a suitable site. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated in an equivalent or like manner.

If a Subrecipient determines that a specific site is necessary for a program or activity it is planning to undertake, then the sale cannot be considered voluntary. It is assumed that, if negotiations fail, the Subrecipient could ultimately acquire the property through condemnation. Thus, the acquisition is **not** considered voluntary.

Handbook 1378,
Chapter 5, Paragraph 5-3 A

Note: Temporary or permanent easements are only very rarely not part of a planned, designated project as defined above; therefore, easements are discussed under Section 9-C: Involuntary Easements.

If someone else, such as a private developer or realtor, is authorized to act on the Subrecipient's behalf in negotiating the purchase, and the Subrecipient is prepared to intervene and use condemnation if the negotiations are unsuccessful, the acquisition is not considered voluntary.

In order to be voluntary, the Subrecipient must meet all the requirements listed below and inform the property owner in writing that:

- ✓ Federal funds are involved in the transaction; however, the Subrecipient will not use its power of eminent domain if negotiations fail to result in an amicable agreement; and
- ✓ The Subrecipient's estimate of the market value for the property to be acquired as outlined below.
 - To estimate market value in a voluntary acquisition, Subrecipients must follow specific procedures:
 - A formal appraisal is *not* required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal.
 - While an appraisal for voluntary transactions is **not required**, Subrecipients may still decide that an appraisal is necessary to support their determination of market value, Subrecipients must have some reasonable basis for their determination of market value.
 - If an appraisal is not obtained, someone with knowledge of the local real estate market must make this property specific determination and document the file.

After a Subrecipient has established a market value for the property and has notified the owner of this amount in writing, a Subrecipient may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount.

Although not required by the regulations, it could be appropriate for Subrecipients to apply the URA administrative settlement concept and procedures in the URA regulations to negotiate amounts that exceed the original estimate of market value (if they can demonstrate that the offer was reasonable and necessary to accomplish the project). If Subrecipients anticipate they will offer an amount greater than market value, they must submit a request in writing and provide supporting documentation to DLG for a basis to pay an amount that is more than market value. DLG must provide approval prior to payment (cautionary note: this may establish a dangerous precedent).

Subrecipients cannot take any coercive action in order to reach agreement on the price to be paid for the property.

49 CFR 24.102(i)

Attachment 9-2:
Voluntary Acquisition – Agencies
with Eminent Domain Authority
Purchase Real Estate

(2) Voluntary Acquisition by Organizations without the Power of Eminent Domain (Including Nonprofits and Individuals)

Nonprofit organizations and individual buyers generally do not have the power of eminent domain. Under such circumstances, the requirements for URA are limited. In these types of purchases, the buyer, who could be a private citizen, a developer, or an organization, must inform the seller of three things in writing:

Handbook 1378,
Chapter 5, Paragraph 5-3 B

- ✓ The buyer does not have the power of eminent domain,
- ✓ Federal funds are involved in the acquisition of their real estate, and the owner will not be eligible for relocation benefits, and
- ✓ An estimate of the fair market value of the property.

After the buyer/Subrecipient has determined the property's market value and has notified the owner of this amount in writing, the buyer may negotiate freely with the owner in order to establish the purchase price.

If the seller refuses to accept the offer, the buyer/individual must look for another property to purchase.

The seller must be notified of the preceding information using Exhibit 5-1 from HUD Handbook 1378—Disclosures to Seller with Voluntary, Arm's Length Purchase Offer (see Attachment 9-3 of this chapter).

Attachment 9-3: Disclosures to
Sellers with Voluntary, Arm's
Length Purchase Offer

If, for any reason, the seller is not informed of these facts prior to closing, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty.

These notice requirements may appear to only protect the seller in a voluntary transaction; however, they also help to protect the Subrecipient from after-the-fact claims by sellers. The notice assists the Subrecipient/ buyer to document that the owner-occupant was fully advised that their purchase price was voluntarily negotiated and they will **not** be eligible for relocation assistance. All organizations and individuals with CDBG-DR funds must comply with this requirement.

Tip: Homebuyers assisted with CDBG-DR funds to purchase a home fall under this type of acquisition. Homebuyers must provide the requisite information to the sellers of homes to be purchased.

(3) Purchases—Voluntary Acquisition of Government Property

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the power of eminent domain. Subrecipients and individual buyers do not possess the legal authority to condemn government-owned property.

49 CFR 24.101 (b)(3)

Handbook 1378,
Chapter 5, Paragraph 5-5

Donations of Property

Voluntary acquisition includes donations of real property; however, the owner must be fully informed of his or her rights under the URA, including the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the Subrecipient, in writing, from its obligation to appraise the property. The Subrecipient must keep this acknowledgement in the project file. Attachment 9-4 provides a sample form entitled "Sample Acknowledgement of Acquisition and Relocation Rights and Benefits under the Uniform Relocation Act."

Attachment 9-4:
Sample Acknowledgement of
Acquisition and Relocation Rights
and Benefits under the Uniform
Relocation Act

Section 9-D. Involuntary Acquisitions

Note: A state agency is defined as a city, county, redevelopment agency or any other entity that has the legal power to condemn land and acquire privately-held property under the Eminent Domain Act of Kentucky.

Use of CDBG-DR Funds and Eminent Domain

No CDBG-DR funds may be used to support any federal, state or local projects that seek to use the power of eminent domain *unless* eminent domain is employed for a public use.

The types of projects that meet the definition of public use include: mass transit, railroads, airports, seaports or highway projects, as well as utility projects which benefit or serve the general public or other structures designated for use by the general public or which have other common carrier or public utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfield Revitalization Act. Public use cannot include economic development projects that primarily benefit private entities.

Subrecipients contemplating the use of eminent domain for any use or project should contact DLG for further guidance prior to proceeding.

Easements

Temporary easements are subject to all of the same rules as other forms of acquisition with one exception. The exception is a situation where the easement is for the exclusive benefit of the property owner. For example, if a Subrecipient obtained an easement running a sewer connection to run a line from the sewer line in the public right of way to a home being rehabilitated with CDBG-DR funds, the easement would exclusively benefit the owner and would not be subject to the URA.

Otherwise, the URA applies. For example, if a Subrecipient is installing a new water or sewer line and requires permanent easements from property owners along the path of the line to install the line and ensure access for maintenance and repairs over time, permanent easements will be required and subject to the URA. If a project involved building a water tower that would benefit a low- and moderate-income (LMI) area and a temporary right of way would be required for construction vehicles while it is being built, the purchase of the needed temporary easement would be covered by the URA.

Guidance on valuation/appraisals for easements may be found later in this section.

Involuntary Transaction Requirements

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. In accordance with the requirements of the URA, for involuntary transactions, the Subrecipient must:

Handbook 1378,
Chapter 5, Paragraph 5-4
49 CFR 24.108

- ✓ Notify the seller of the agency's interest to acquire their property;
- ✓ Obtain an appraisal in compliance with the URA and invite the seller to accompany the appraiser;
- ✓ Notify the owner and, if applicable, any tenants of their URA protections;
- ✓ Determine the fair market value of the property based on the appraised value (reviewed by a Review Appraiser)
- ✓ Offer the fair market value for the property being acquired; and
- ✓ Complete the sale as expeditiously as possible.

Tip: Voluntary transactions that fail to complete the required documentation will be held to the more stringent involuntary transaction requirements.

Section 9-E.

Notification Requirements

There are two key notices that Subrecipients must issue when undertaking an involuntary acquisition:

- ✓ Notify the seller of the agency's interest to acquire their property by sending a Notice to Owner or a Notice of Intent to Acquire. Subrecipients should exercise caution if they choose to send a Notice of Intent to Acquire rather than a Notice to Owner as discussed in this section. (The Notice of Intent triggers relocation eligibility for owner-occupants and tenants.)
- ✓ After an appraisal is complete (and reviewed by a review appraiser), the Subrecipient must determine the amount of the offer and send the owner a Notice of Just Compensation (the full amount of the determined value). This Notice establishes the definite date for relocation benefits eligibility for all persons with legal residency, including non-residential occupants.

Handbook 1378,
Chapter 5 Paragraph 5-5(A)(1)
Sample Notice to Owner

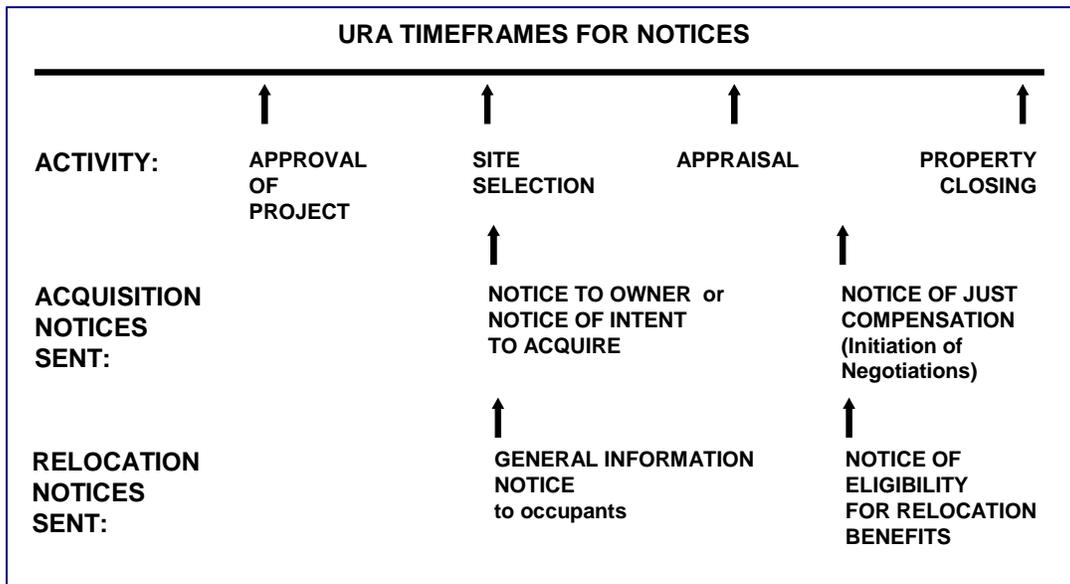
Timing of URA Coverage

It is important for Subrecipients to know that the timing of an acquisition can trigger URA requirements. Regardless of the source of funds, any acquisition of property made by a state agency, on or after the date of submission of the CDBG-DR application for financing of an activity using that property, is subject to the URA.

49 CFR 24.6

- ✓ If an acquisition took place prior to application submission, it can be subject to the URA if DLG finds clear evidence that the purchase was done in anticipation of obtaining CDBG-DR funds for an activity.
- ✓ The URA also applies if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the project’s end result is a federally-assisted project.

The chart below highlights the timing of required notices. Further information on these notices follows:



Notice to Owner

The Notice to Owner should be sent as soon as feasible after a site is selected. See Attachment 9-5 for a Sample Notice to Owner, This Notice:

- ✓ Expresses the agency’s initial interest in acquiring the property.
- ✓ Informs the owner that the agency must conduct an appraisal of the property to establish fair market value, and that the owner has the right to accompany the appraiser.
- ✓ States that the owner will be offered fair market value (just compensation) and what costs will also be covered.
- ✓ Informs the owner about the protections provided by the URA.

Handbook 1378,
Chapter 5, Paragraph 5-4 A
Attachment 9-5:
Sample Notice to Owner
49 CFR 24.102(b)

Handbook 1378,
Chapter 5, Paragraph 5-4 A

The Subrecipient should also send HUD’s brochure (HUD Form 1041-CPD) entitled, “When a Public Agency Acquires Your Property.” Refer to Attachment 9-6 of this chapter or download it from the DLG web site. The booklet explains the basic protections afforded the property owner by law.

Attachment 9-6:
“When a Public Agency Acquires
Your Property” brochure

To avoid triggering eligibility for relocation benefits at this time, the Notice to Owner should advise all occupants not to move. The Notice only informs the property owner of the Subrecipient’s initial interest in acquiring their property, but it is not a commitment to provide relocation benefits at this point. The following chapter deals with relocation and covers this Notice in detail.

Handbook 1378,
Chapters 2 and 5,
Paragraph 2-3 H and 5-4 A

Notice of Intent to Acquire

Some Subrecipients choose to send a Notice of Intent to Acquire instead of a Notice to Owner. A Notice of Intent to Acquire (Attachment 9-7) must contain all the information included in a Notice to Owner, but would also state that the agency does intend to acquire the property, rather than expressing a preliminary statement of interest. The Notice should advise all occupants not to move.

Attachment 9-7:
Sample Notice of Intent of Acquire

Subrecipients should be aware that this Notice triggers eligibility for relocation benefits by occupants and there is the risk that occupants might move prior to the establishment and written offer of just compensation. Therefore, Subrecipients should exercise caution if they choose to send a Notice of Intent to Acquire.

Handbook 1378,
Chapter 2 Paragraph 2-3 G
49 CFR 24.203 (2)(d)

Basis for the Determination of Just Compensation

The written offer to the owner contains the just compensation and summary statement and is sent after an appraisal is complete and the agency has determined just compensation.

Attachment 9-8:
Sample Statement of the Basis for
the Determination of Just
Compensation

Once this amount has been determined, this written offer should be delivered promptly. A sample is provided as Attachment 9-8.

Handbook 1378,
Chapter 5, Paragraph 5-4 L(4)
49 CFR 24.102 (d)

- ✓ The delivery date of this written offer constitutes the date that triggers relocation eligibility related to the acquisition.
- ✓ This written offer must include an offer for the full amount of the just compensation.
- ✓ A statement must be included that summarizes the basis for the offer. This summary statement should provide:

- A statement of the amount offered as just compensation,
- A description and location of the property to be acquired, and
- Identification of the buildings, structures, equipment, and fixtures that are included in the offer.

49 CFR 24.102 (e)

NOTICE OF INTENT NOT TO ACQUIRE

If the Subrecipient decides not to buy or condemn a property at any time after the Notice of Intent to Acquire or Notice to Owner has been sent to the property owner, the Subrecipient must send written notification, “The Notice of Intent Not to Acquire” to the owner and

49 CFR 24.5
Attachment 9-9:
Sample Notice of Intent
Not to Acquire

any tenants occupying the property. This written notice must be sent within 10 days of the decision not to acquire. Sending this notice will assist in keeping all affected persons informed of the Subrecipient's actions. DLG provides a sample Notice of Intent Not to Acquire (See Attachment 9-9). The Subrecipient should document the reason(s) for deciding against acquiring the property.

Administering Notices

Notices should be sent by certified or registered mail, return receipt requested, or hand delivered by agency staff. Subrecipients must document receipt of the notices by the owner or occupant. If the owner or occupant does not read or understand English, the Subrecipient must provide translations and assistance. Each notice must give the name and telephone number of agency staff that may be contacted for further information.

After confirming the receipt of the appropriate notices by the owner or occupant, the Subrecipient should enter the proposed acquisition in the Site Acquisition Chart (see Attachment 9-10).

Attachment 9-10:
Sample Site Acquisition Chart

This chart provides information on:

- ✓ Number of parcels;
- ✓ Property dimensions;
- ✓ Source of title;
- ✓ Owners;
- ✓ Number of houses, businesses, vacant lots, owners and tenants; and
- ✓ The amount paid.

Use of this chart reduces time, duplication of effort, and facilitates state and local review.

Appraisals

For acquisitions requiring the estimation of fair market value, the URA requires only one appraisal and a review of this appraisal by a qualified person. The following sections describe the contents of an appraisal and appraiser qualifications.

If an acquisition is complex, potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or likely has a high value, DLG recommends that two appraisals, at a minimum, be obtained. These appraisals will be invaluable during negotiations and in court.

Waiver Valuation

An appraisal is not required under two circumstances: (1) when a property is being donated and owner has waived his/her rights; or (2) when a property has a value estimated at \$10,000 or less.

Handbook 1378, Chapter 5,
Paragraph 5-4 E

If an agency determines that a formal appraisal is not required, then the valuation process used is called a waiver valuation.

49 CFR 24.102(c)(2)

- ✓ The determination that a property has a value less than \$10,000 must be based on a review of available data by someone who has sufficient understanding of the local real estate market. This decision must be documented in the project file.

49 CFR 24.102(2)(ii)(B)
49 CFR 24.2(a)(33)

A waiver valuation is not appropriate when the following situations arise:

- ✓ The use of eminent domain is anticipated;
- ✓ The anticipated value of the proposed acquisition is expected to exceed \$10,000;
- ✓ Possible damages to the remainder property exist;
- ✓ Questions on highest and best use exist;
- ✓ The valuation problem is complex; or
- ✓ Hazardous material/waste may be present.

Handbook 1378, Chapter 5,
Paragraph 5-4 E (1)

If the agency acquiring a property offers the property owner the option of having the property appraised, and the owner chooses to have an appraisal, the agency shall obtain an appraisal and not use the waiver valuation method described above.

Easements

As outlined above, a Subrecipient must obtain an appraisal for any property, including easements, estimated to be worth more than \$10,000. For easements worth less than \$10,000, the Subrecipient can use the Short Form Appraisal Report for Easement Takings. This form, which is Attachment 9-11, summarizes the information that the appraiser Subrecipient must have on file to document the estimated value of the property.

Attachment 9-11:
Short Form for Easement
Valuation (Sample)

If an owner chooses to donate the property for the easement, the Subrecipient must document that the owner has acknowledged he/she has a right to the involuntary acquisition process, including appraisal, and that he/she is choosing to waive his/her rights under this process. Use Attachment 9-3 for this purpose.

Appraiser Qualifications

For properties estimated to be worth more than \$10,000, an appraisal must be conducted. There are several minimum requirements for appraisers, including:

- ✓ An appraiser must hold a Kentucky appraiser's license. A copy of the license must be included in the acquisition or procurement file.
- ✓ A fee appraiser must be state licensed or certified in accordance with title XI of the Financial Institutions Reform Recover and Enforcement Act (FIRREA) of 1989.

49 CFR 24.103(d)(2)

- ✓ Appraisers, or persons performing the waiver valuation, must not have any interest—either direct or indirect—with the owner or property they are to review. This would be a conflict of interest. 49 CFR 24.102(n)(1)
- ✓ Subrecipients must select Kentucky licensed appraisers using proper procurement procedures. A list of Certified Real Estate Appraisers in the State of Kentucky can be found on the following Web site: <http://oop.ky.gov/>.
- ✓ No person shall attempt to unduly influence or coerce an appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal.
- ✓ Persons functioning as negotiators may not supervise nor formally evaluate the performance of any appraiser or waiver valuator. (49 CFR 24.102(n)(2)) 49 CFR 24.102(n)(2)
- ✓ No appraiser may negotiate on the agency’s behalf if he or she performed the appraisal, review or waiver valuation, on the property. There is an exception for properties valued at \$10,000 or less 49 CFR 24.102 (n)(3)

Contracting for an Appraisal

In order to procure an appraiser, the Subrecipient should request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. (See Chapter 4: Procurement for more information on procurement of professional services.) Chapter 4: Procurement

The Subrecipient must execute a professional services contract with an independent appraiser. **The contract must include a detailed scope of services that the appraiser will perform.** See Attachment 9-12 Guide for Preparing Appraisal Scope of Work. Payment for the appraiser’s services, or waiver valuation, must not be based on the amount of the resulting property value. Attachment 9-12:
Guide for Preparing Appraisal
Scope of Work

Appraisal Process & Criteria

Appraisals must meet nationally/state-recognized industry standards. The appraiser may not use race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential property. The contract must also specify the content requirements of the appraisal report. (See Attachment 9-13 for a sample, while not updated, still is valid.) 49 CFR 24.103

The Subrecipient or the appraiser must invite the property owner in writing to accompany the appraiser during inspection of the property. This notice should be given before the appraisal is undertaken. A copy of the notice should be placed in the property acquisition file along with evidence of receipt by the owner. (See Attachment 9-14 for sample notice.) Attachment 9-13:
Sample Agreement
for Appraisal Services

At a minimum, all appraisals must contain the following: Attachment 9-14:
Sample Invitation to Accompany
an Appraiser

- ✓ The purpose and function of the appraisal.

- ✓ A statement of the assumptions and limiting conditions affecting the appraisal.
- ✓ An adequate legal description of the property, any remnants not being acquired, and its physical characteristics.
 - This should also include key information such as title information, location, zoning, present use, highest and best use, and at least a five-year sales history of the property.
- ✓ An explanation of all relevant approaches to value.
 - If sales data are sufficient, the appraiser should rely solely on the market approach.
 - If more than one method is used, the text should reconcile the various approaches to value and support the conclusions.
- ✓ A description of comparable sales.
- ✓ A final statement of the value of the real property.
 - For partial acquisitions, the appraisal should also give a statement of the value of damages and benefits to the remaining property.
- ✓ The effective date of the valuation appraisal.
- ✓ A signature and certification of the appraiser.

Handbook 1378,
Chapter 5, Paragraph 5-4 J(11)

Review of Appraisal

After the initial appraisal is conducted, a review must be made by a Kentucky licensed appraiser under written contract. The review must be written, signed and dated. (See Attachment 9-15 for a sample Review of Appraisal document.)

Attachment 9-15:
Sample Review of Appraisal

The review appraiser must examine all appraisals to check that the appraisal meets all applicable requirements, and to evaluate the initial appraiser’s documentation, analysis, and soundness of opinion.

49 CFR 24.104

If the review appraiser does not approve or accept an appraisal, it may be necessary to seek a second full appraisal. If the review appraiser does not agree with the original appraisal and it is not practical to do a second appraisal, the review appraiser may re-evaluate the original appraisal amount.

49 CFR 24.102(d)

Establishing Just Compensation

After a review of the appraisal, the Subrecipient must establish just compensation and present this in a written offer to the owner.

Just compensation cannot be less than the appraised market value. In determining this amount, the Subrecipient (not the appraiser) may take into account the benefit or detriment that the upcoming project will have on any remaining property at the site.

If the owner retains or removes any property improvements, (for example, permanent fencing) the salvage value of the improvement should be deducted from the offer of just compensation.

If an entire parcel is not being acquired, and the agency determines that the owner would be left with an uneconomic remnant, the agency must offer to purchase this remnant. An uneconomic remnant is defined as a parcel of real property with little or no value to the owner. An example of this might be a remnant not large enough for future use or without access to a street.

49 CFR 24.102(k)

The Subrecipient must prepare a written Statement of the Basis for the Determination of Just Compensation to be provided to the property owner (see Attachment 9-8). In addition to the initial written purchase offer, this Statement must also include:

- ✓ A legal description and location identification of the property;
- ✓ Interest to be acquired (e.g., fee simple, easement, etc.);
- ✓ An inventory of the buildings, structures, fixtures, etc., that are considered to be a part of the real property;
- ✓ A statement of the amount offered as just compensation;
- ✓ If there are tenant-owned improvements, the amount determined to be just compensation for the improvements and the basis for the amount;
- ✓ If the owner keeps some of the property improvements, the amount determined to be just compensation for these improvements and the basis for the amount;
- ✓ Any purchase option agreement should be attached; and
- ✓ If only a part of the parcel is to be acquired, a statement apportioning just compensation between the actual piece to be acquired and an amount representing damages and benefits to the remaining portion.

Attachment 9-8:
Sample Statement of the Basis
for the Determination
of Just Compensation

A copy of this Statement should be placed in the property acquisition file.

Negotiating the Purchase

As soon as feasible after establishing just compensation, the Subrecipient must send the owner a Written Offer to Purchase which includes the Statement of the Basis for the Determination of Just Compensation (see the sample provided as Attachment 9-16). As with all notices, receipt must be documented. If the property is occupied by a tenant, owner or business, the Subrecipient must issue a written Notice of Eligibility for Relocation Benefits as soon as possible after the written offer to purchase (also called the “Initiation of Negotiations”) is made.

Attachment 9-16:
Sample Written Offer to Purchase

The most recent URA regulations emphasize that the agency should make reasonable efforts to conduct face-to-face negotiations with the owner or the owner’s representative. The owner may present relevant information that bears on the determination of value and may suggest modifications to the proposed terms and conditions of the purchase. The agency must give these suggestions full consideration.

49 CFR 24.102(f)

If the owner's information or suggestions would warrant it, the agency may ask the appraiser to update the current appraisal or order another appraisal. If this results in a change in just compensation, the agency must adjust the offer.

Handbook 1378,
Chapter 5, Paragraph 5-4 M
49 CFR 24.106

The owner must be paid for costs to transfer title to the agency. These costs may be advanced instead of reimbursed, and they include recording fees, legal fees, prepayment penalties, and incidental costs.

Documentation of negotiation proceedings should be placed in the project acquisition file. Subrecipients should be sure to thoroughly document the justification for payment if it is more than the original offer of fair market value.

The Subrecipient must get written pre-approval from DLG if the offer will exceed the amount determined to be fair market value.

Closing the Sale or Condemnation

Before the agency takes possession of the property, the owner must be paid the agreed-upon purchase price. If the agency is taking the property through condemnation, the agency must deposit the full amount of just compensation with the court.

Handbook 1378,
Chapter 5, Paragraph 5-4 I

Willing Seller—No Condemnation Action Taken:

If negotiations are successful in an involuntary acquisition, a contract for sale must be prepared and executed, and transfer documents secured. If payment exceeds the market value, and the Subrecipient failed to obtain pre-approval of the amount from DLG the acquisition file must include a written justification of the amount paid. DLG will review these justifications carefully to ensure they are reasonable, and if the payment is determined to be unjustified, the payment will be disallowed.

49 CFR 24.102(j)

At the conclusion of settlement, the Subrecipient must give the owner a Statement of Settlement Costs (see Attachment 9-17), which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or person handling the transaction. DLG requires that Subrecipients must also obtain a copy of the cancelled check to document receipt for the purchase price,

Attachment 9-17:
Sample Statement
of Settlement Costs

Condemnation Procedures

If negotiations are unsuccessful, condemnation proceedings may be initiated. Condemnation is a legal action and must be carried out by a city/county attorney and the city/county governing body should authorize the proceeding by resolution.

Copies of surveys and maps of the subject property must be filed and recorded in the applicable county office. Condemnation proceedings can then be initiated in the Circuit Court of the county in which the property is located. The Subrecipient must deposit the amount determined to be just compensation in escrow with the court.

The petition filed in Circuit Court must include:

- ✓ Detailed project narrative sufficient to support the use of eminent domain.
- ✓ A legal description of the property being sought and its current and proposed use.
- ✓ An application to the court to appoint commissioners to award the amount of compensation the owner of the property is entitled to receive.

The court will appoint three qualified commissioners to visit the property and establish its fair market value. Within 15 days of their appointment, the commissioners will return a written report to the court establishing fair market value. At this time, the court will issue a summons to the owner, which states the amount the commissioners establish as the fair market value.

The owner has 20 days from the date he or she receives the summons to respond. If the owner does not respond during this period, the court will enter an interlocutory judgment that sets the amount of compensation and conveys title. The owner can file an exception to the interlocutory judgment within 30 days from the date the judgment was entered.

All exceptions relating to compensation will be determined by jury trial in the Circuit Court. The jury will set the amount of compensation. The owner can appeal the Circuit Court judgment to the Court of Appeals.

The city/county must pay the owner's court costs as well as its own court costs. If the process moves into appeal, the amount of compensation will be the amount established by the highest court.

Appeals

Subrecipients must promptly review all appeals in accordance with the requirements of applicable laws and the URA. Subrecipients must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations. (Refer to Chapter 1: Project Administration for information on grievance procedures.)

49 CFR 24.10

Chapter 1: Project Administration

Who May Appeal

Any person, family, or business directly affected by the acquisition and/or relocation activities undertaken by a Subrecipient may appeal. All appeals must be in writing and must be directed to the chief executive officer of the Subrecipient and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the Subrecipient's written procedures prior to pursuing judicial review.

Basis for Appeals

Any person, family, or business that feels that the Subrecipient failed to properly consider his or her written request for financial or other assistance must file a written appeal with the agency personnel identified within 60 days of the date of receipt of the administering agency's written determination denying assistance.

Review of Appeals

The Subrecipient shall designate a Review Officer to hear the appeal. The Review Officer shall be the chief administrative officer of the unit of local government or his/her designee, provided neither was directly involved in the activity for which the appeal was filed. The Subrecipient shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair and full review of the appeal.

49 CFR 24.10 (e)(f)(g)(h)

Promptly after receipt of all information submitted by a person in support of an appeal, the Subrecipient shall make a written determination on the appeal, including an explanation of the basis on which the decision was made and notify the person appealing a Subrecipient's decision.

If the appeal is denied, the Subrecipient must advise the person of his or her right to seek judicial review of the Subrecipient's decision.

Section 9-F. Record Keeping

The Subrecipient must establish an acquisition program file, which contains:

- ✓ Urban Renewal/Development Plan,
- ✓ Statement of qualifications of appraisers,
- ✓ Appraisal contracts, and
- ✓ Copies of public solicitations for voluntary acquisitions.

The Subrecipient must establish a file for each property to be acquired, and include copies of all notices and proof of receipt, along with other acquisition documents. A checklist should be kept in each acquisition file to help track the process (see Attachment 9-18).

Attachment 9-18:
Real Property Acquisition Checklist

Some suggested items to include in acquisition files are:

- ✓ Property impacts tied back to the disaster
- ✓ Duplication of Benefits review
- ✓ Subrogation Agreement for any future assistance for same purpose
- ✓ Applicant eligibility documentation (e.g., documentation of ownership and occupancy for residential property owners; household income; consent forms; power of attorney forms; personal identification documentation; and any other documentation required to verify eligibility for the program.)
- ✓ Signed Waiver Donation Form (if voluntary donation)
- ✓ All appropriate notices and copy of "When a Public Agency Acquires Your Property"
- ✓ Evidence that a competitive process was utilized in selecting appraisers
- ✓ Appraisal contracts
- ✓ Appraisal and Review Appraisal Report

- ✓ Map and photos for all improved properties
- ✓ Evidence and date of personal contacts with property owner
- ✓ Evidence that the property owner was invited to accompany the appraiser
- ✓ Evidence that the appraisal was reviewed by council and just compensation established
- ✓ Written Offer to Purchase and Summary Statement of the Basis for the Offer of Just Compensation
- ✓ Evidence that the items sent to property owners were mailed certified or registered mail, return receipt requested
- ✓ Written acceptance or rejection of offer to purchase
- ✓ Written evidence of negotiation (if applicable)
- ✓ Copy of cancelled checks
- ✓ Summary Statement of Settlement Costs
- ✓ Copy of the executed and recorded deed

At the close of the acquisition, the Subrecipient should review the project acquisition file to ensure that it contains all required documentation. Files must be kept for at least five years after full project close-out.

Replacement Housing Assistance for 90-Day Homeowners

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home (“ION”) USING INVOLUNTARY ACQUISITION are eligible for a replacement housing payment as “displaced persons.” If homeowners were in occupancy for less than 90 days prior to the ION, they are protected by the URA as “displaced persons” but the calculation method is different.

49 CFR 24.401

Note: If an owner occupies a property acquired using voluntary acquisition requirements, they are **NOT** eligible for relocation benefits. See Chapter 8 for details on calculating the RHP for displaced homeowners.