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# 9 Acquisition & Relocation

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# 9 Acquisition & Relocation

## 9.1 Overview

This policy for acquisition and relocation will apply to housing and infrastructure programs that involve the voluntary participation of property owners that apply for assistance, and/or acquisition of real property using federal funds. If a property owner who applies to the program has tenants that must move due to a CDBG-DR program activity, the tenants are considered involuntarily displaced. The displacement may be temporary or permanent depending on the type of recovery activity. The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) will apply to both displaced residential and non-residential tenants.

In order to assist displaced households and businesses and achieve compliance with the URA of 1970, 49 CFR Part 24, as amended, and HUD's Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition,* OHCS has adopted a Residential Anti-Displacement and Relocation Assistance Plan (RARAP) that aligns with the URA policies. This chapter contains the policies regarding relocation assistance as required by federal regulations and HUD policies.

This policy will ensure, at a minimum, the following:

- To provide uniform, fair, and equitable treatment of persons whose real property is involuntarily acquired or who are involuntarily displaced in connection with federally funded projects
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement
- To ensure that no individual or family is displaced unless decent, safe, and sanitary housing is available within the displaced person's financial means
- To help improve the housing conditions of displaced persons living in substandard housing
- To encourage and expedite acquisition by agreement and without coercion

Several federal laws apply to projects assisted in whole or in part with CDBG-DR funds that include any of the following activities:

- Acquisition of real property
- Acquisition of permanent and temporary easements
- Displacement of businesses, nonprofit organizations, and persons residing in the project area

- Personal property owned by someone other than the owner may also qualify as displaced (even if no person is residing on the site)
- Demolition or conversion of occupied and/or vacant occupiable low to moderate income (LMI) dwelling units
- Any federally assisted demolition projects
- Housing rehabilitation

This chapter provides an overview of the different guidelines but does not include exhaustive information on these subjects. For additional information, reach out to your contract administrator.

## 9.2 Applicable Regulations

There are four major types of requirements that cover relocation (and acquisition) activities in CDBG-DR programs:

1. The URA regulations, effective February 2005, implementing the URA of 1970, as amended (49 CFR Part 24)
2. Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Part 570.496(a)
3. 24 CFR 570.606 of the CDBG regulations, which requires compliance with the regulations listed above
4. Consolidated Notice for CDBG-DR (87 FR 6364, February 3, 2022), which waives or modifies requirements listed above for CDBG-DR funded activities.

### 9.2.1 HUD Acquisition and Relocation Guidance

HUD *Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition*, change 13, issued March 14, 2014, and Part V of the U.S. Department of Transportation regulation located at 49 CFR Part 24 updated January 4, 2005 provides the information necessary to addresses any type of acquisition and contains detailed guidance on HUD's URA requirements. The Handbook and all sample guideforms are located at CPD Handbook 1378.0 | HUD.gov / U.S. Department of Housing and Urban Development (HUD)

## 9.3 Waivers, Modifications, and Alternative Requirements per the Consolidated Notice

### 9.3.1 Section 514 of the Stafford Act

This section typically requires persons displaced due to a disaster to be offered relocation assistance if federal funds are spent on their previous residence following a disaster. This requirement has been modified in the Consolidated Notice to apply only to activities funded with the CDBG-DR within the first year after the disaster declaration date. All CDBG-DR activities for the 2020 disasters will occur more than a year after the latest applicable disaster and the Section 414 requirement is waived.

### 9.3.2 Section 104(d)

HUD has provided the following alternative requirements for Section 104(d) compliance for the use of CDBG–DR funds allocated under the Consolidated Notice.

**Term for Rental Assistance Payments**: Section 104(d) typically extends housing replacement assistance from the standard 42 months under URA to 60 months for households determined to be LMI. This 60-month requirement for LMI households is waived in the Consolidated Notice and reduced to the standard 42-month URA requirement.

**Applicability of One-for-One Replacement**: The section 104(d) one-for-one replacement housing requirements apply to occupied and vacant occupiable lower-income dwelling units demolished or converted in connection with a CDBG-DR assisted activity. This waiver exempts all disaster-damaged owner-occupied lower-income dwelling units that meet the grantee's definition of "not suitable for rehabilitation," from the one-for-one replacement housing requirements of 24 CFR 42.375. Before carrying out activities that may be subject to the one-for-one replacement housing requirements, the subrecipient must define "not suitable for rehabilitation" in its policies/procedures governing these activities. More information can be found later in the chapter regarding rental units.

## 9.4 Definitions

The following words and terms used in this section have the following meanings, unless indicated otherwise. Additional applicable definitions may be found in 49 CFR Part 24 and HUD Handbook 1378 Chapter 5 (CH-5).

**30-Day Notice to Vacate**: A letter issued to a tenant that states the specific date, at least 30 days in advance, by which a beneficiary must vacate the property. The urgent need provisions described in 49 CFR 24.203(c)(4) permit an Agency (subrecipient) to require an occupant to vacate on less than 90 days' notice. However, an Agency may not artificially create an "urgent need" (e.g., by issuing a notice to proceed to a demolition contractor, then using the imminent demolition to substantiate a danger to the tenant's health and safety in order to cut short the notice period which is otherwise required).

**90-Day Notice to Vacate**: Required by 49 CFR § 24.203(c), this is a letter issued to a tenant, at least 90 days in advance, that informs the tenant of the date by which they will be required to relocate from the property.

**Alien not lawfully present in the United States**: The phrase "alien not lawfully present in the United States" means an alien who is not lawfully present in the United States as defined in 8 CFR 103.12 and includes:

- An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by the U.S. Attorney General.
- An alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

**Appeal**: A written request from a tenant, regardless of form, for a review and revision of a determination made by any OHCS program.

**Applicant**: Any individual who submits an application for assistance to CDBG-DR programs.

**Appraisal**: The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

**Base Monthly Rent**: The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. For a tenant who paid little or no rent for the displacement dwelling, the program will use the fair market rent as the base rent (unless its use would result in a hardship because of the person's income or other circumstances).

**Business**: Any lawful activity (except a farm operation) that is conducted:

- Primarily for the purchase, sale, lease, and or rental of personal and/or real property, and/or any other personal property
- Primarily for the sale of services to the public
- Primarily for outdoor advertising display purposes that have to be moved
- By a nonprofit organization that has established its nonprofit status under applicable state law

**Citizen**: The term "citizen" means both citizens of the United States and noncitizen nationals.

**Community Development Block Grant Disaster Recovery (CDBG-DR):** A federal program administered by HUD that provides grant funds to local and state governments to assist with eligible recovery efforts after a natural disaster, which may include such activities as homeowner and rental repairs and elevations, acquisition or buyout of damaged or at-risk properties, and infrastructure repairs.

**Comparable Replacement Dwelling**: Must be an unsubsidized unit available on the private market and within the financial means of the displaced person.

**Decent, Safe, and Sanitary Dwelling (DSS):** A dwelling which meets local housing and occupancy codes. However, any of the following standards that are not met by the local code shall apply unless waived for good cause by the federal agency funding the project. Minimum property standards as established by HUD and defined by 25 CFR 700.55:

- Be structurally sound, weathertight, and in good repair.
- Contain a safe electrical wiring system adequate for lighting and other divides.
- Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person.
- Be adequate in size with respect to the numbers and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed local housing codes or in the absence of local codes the policies or such Agencies.
- There shall be a separate, well-lit, and ventilated bathroom that provides privacy to the user and contains a sink, bathtub, or shower stall and a toilet all in good working order and property connected to appropriate sources of water and to a sewage drainage system.
- Contain unobstructed egress to safe, open space at ground level; and

- For a disabled person with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use the dwelling by such displaced person.

**Department of Housing and Urban Development (HUD)**: The federal department through which the CDBG-DR Program funds are administered, monitored, and distributed to grantees.

**Displaced Person (49 CFR 24.2(a)(9)**: Any person (family, individual, business, or non-profit organization) who moves from real property or moves personal property from the real property as a direct result of an acquisition, rehabilitation, or demolition by a federally assisted program. This includes:

> (A) As a direct result of a written notice of intent to acquire (see § 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
>
> (B) As a direct result of rehabilitation or demolition for a project
>
> (C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c) and moving expenses under § 24.301, § 24.302 or § 24.303.

**Disability**: For the purposes of the CDBG-DR program, the term "disability" is consistent with federal law under the Social Security Act, as amended, 42 U.S.C. 423(d), The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12102(1)-(3), and in accordance with HUD regulations at 24 CFR 5.403 and 891.505.

**Dwelling**: The place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multi-family, or multipurpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a manufactured housing unit (or mobile home); or any other residential unit.

**Easement**: The right held by one property owner to make use of the land of another for a limited purpose (e.g., permanent easement or temporary construction easement).

**Economic Displacement**: If rents are increased after the CDBG-DR project is complete, and the new rent exceeds 30% of the tenant's gross monthly income, they would be considered "economically displaced." Generally, an increase in rent within the first year of

the project is seen as related to the federally funded project and may trigger "economic displacement" benefits.

**Fair Market Rent**: Fair market rents are used to determine payment standard amounts for HUD rental assistance programs and include the shelter rent plus all utilities and are used to determine comparable units for replacement housing payments in the URA.

**General Information Notice (GIN)**: Required under 49 CFR 24.203(a), this required notice informs potentially displaced individuals that they may be displaced, not to move, and covers general URA requirements and rights.

**Head of Household**: The adult member of the family who is the head of the household for the purposes of determining income eligibility, rent, or participation in CDBG-DR programs, and as outlined in 24 CFR 5.504.

**Household**: All persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements. Upon identification of a tenant that may be eligible for temporary or permanent relocation assistance, all persons who reside in the household must be identified so that appropriate relocation resources and assistance can be provided.

**HUD Housing Quality Standards (HQS)**: HUD's housing quality standard as defined by 24 CFR 982.401.

**Initiation of Negotiations Date (ION)**: The ION date is the trigger for issuance of the Notice of Eligibility for Relocation Assistance ("NORE") or Notice of Non-displacement ("NND").

**Landlord**: A person or organization that owns and leases apartments, building space, buildings, or land to others.

**Limited English Proficiency (LEP)**: A designation for persons who do not speak English as their primary language and who have a limited ability to speak, read, write, or understand English because it is not their primary language.

**Mobile Home or Manufactured Housing Unit (MHU)**: A dwelling unit is composed of one or more components substantially assembled in a manufacturing plant and designed to be transported to a building site on its own chassis for placement on a supporting structure. An MHU is constructed in accordance with the standards established in HUD's building code for manufactured housing. An MHU is not constructed in accordance with the standards established in the state and local building codes that are applicable to site-built homes. The term "mobile home" may be used interchangeably with an MHU; however, the manual generally uses the term MHU to refer to both types of housing.

**Modular Home**: A dwelling unit composed of two or more components substantially assembled in a manufacturing plant and transported to a building site by truck for final assemble on a permanent foundation. A modular home must be constructed in accordance with the standards established in the state and local building codes that are applicable to site-built homes. Modular homes do not include mobile homes.

**Person Not Displaced (49 CFR 24.2(a)(9)(ii)**: The URA regulations define very specific conditions under which a person is not considered a displaced person:

- Eviction for cause. In eviction cases, HUD expects the Agency files to substantiate that an eviction was not undertaken in order to avoid paying relocation costs. The Agency (or owner) is advised to obtain a court order for the eviction (even if the tenant has already moved). If the Agency believes the cost of obtaining a court order is prohibitively expensive, it should adequately document the cause of the eviction in its files.
- Persons temporarily relocated from their dwellings for less than 12 months during rehabilitation or demolition.
- Illegal aliens. The URA prohibits providing relocation assistance to persons not lawfully present in the United States.
- A person who moves before the initiation of negotiations (49 CFR 24.2(a)(9)(ii) unless OHCS determines that the person was displaced as a direct result of the program or project.
- A person who initially enters into occupancy of the property after the date of its acquisition for the project
- A person who has occupied the property for the purpose of obtaining assistance under the URA.

**Notice of Relocation Eligibility (NORE)(49 CFR 24.203(b)**: The NOE must be issued promptly after the ION (see Paragraph 1-4 T.) and must describe the available relocation assistance, the estimated amount of assistance based on the displaced person's individual circumstances and needs and the procedures for obtaining the assistance. This notice must be specific to the person and their situation so that they will have a clear understanding of the type and amount of payments and/or other assistance they may be entitled to claim.

**Notice of Non-Displacement (NND)**: A HUD term for notice provided to persons who will not be permanently displaced for a HUD-assisted project. Such persons may, however, be required to move to another unit within the project or relocate temporarily while the property is rehabilitated (terms of the move must be reasonable and costs for the move must be covered by the project). While this notice is not required by the URA, HUD policy requires that such notice be provided to adequately inform those persons within the

project who will not be permanently displaced but who may be impacted as a result of the project. A person who will not be displaced by the project may choose to leave the project site; however, they are presumed to be ineligible for relocation payments if an accurate and timely Notice of Non-displacement was provided before they chose to move.

**Not Suitable for Rehabilitation**: OHCS defines a residential property as "not suitable for rehabilitation" if any of these conditions apply:

- The property is declared a total loss.
- Repairs would exceed 50% of the cost of reconstruction.
- Repairs exceed $50,000.
- Homes cannot be rehabilitated or reconstructed in place under existing agency policies and award caps due to legal, engineering, or environmental constraints, such as permitting, extraordinary site conditions, or historic preservation.

**Power of Attorney (POA)**: An authorization to act on someone else's behalf in a legal or business matter.

**Program or Project (49 CFR 24.2(a)(22)**: The term "project" means any activity or series of activities undertaken with federal financial assistance received or anticipated in any phase. When federal financial assistance is used for any activity or in any phase of a project, planned or intended, and the activities are determined to be interdependent, the statutory and regulatory requirements of the URA and the specific HUD funding source(s) are applicable. Interdependence is best determined by whether or not one activity would be carried out if not for another. As a result, any activity "in connection with" a federally funded project can be subject to all regulations of that funding source even though the activity may not be directly funded by that source. HUD "projects" are defined according to program rules.

**Reconstruction**: Demolition and re-building of a housing unit on the same lot in substantially the same footprint and manner.

**Rehabilitation**: Repair or restoration of housing units in the disaster-impacted areas to applicable construction codes and standards.

**Reasonable Accommodation**: In certain circumstances, displaced households require reasonable accommodation to fully benefit from temporary or permanent relocation activities undertaken in conjunction with housing assistance programs. Displaced households who require reasonable accommodation should notify their housing program staff immediately. All forms, written materials, and verbal messages used to communicate with displaced households are made available in the household's primary language, should the household indicate that they have a Limited English Proficiency (LEP).

**Replacement Unit**: The replacement unit is the unit the person actually moves into and may or may not be one of the units provided as a comparable.

**Review Appraisal**: A qualified professional who meets the requirements of a review appraiser as determined by OHCS and required in 24 CFR 103(d)(1) and is responsible for reviewing and ensuring that all appraisals of property for the buyout programs meet professional standards.

**Section 104(d)**: Under section 104(d) of the Housing and Community Development Act of 1974, as amended (HCDA) (Pub. L. 93-383, 42 U.S. C. 5301 et seq.) and the implementing regulations at 24 CFR part 42, a residential anti-displacement and relocation assistance plan is required and must provide for: 1) One-for-one replacement of occupied and vacant occupiable LMI income dwelling units demolished or converted to another use in connection with a development project assisted under Parts 570 and 92, and 2) provide relocation assistance for all LMI persons who occupied housing that is demolished or converted to a use other than for LMI housing.

> ***Note:*** *Section 104(d) has been modified under the Consolidated Notice and those modifications are detailed in the Section 104(d) section of this document.*

**Temporary Relocation (49 CFR 24.2(a)(9)(ii)(D), Appendix A)**: The URA applies to permanent displacements and does not cover persons that are temporarily relocated in accordance with HUD regulations. While there are no statutory provisions for "temporary relocation" under the URA (the statute considers all eligible persons "displaced"), it is recognized in the URA regulations that there are some circumstances where a person does not need to be permanently displaced but may need to be moved from a project for a short period of time. The URA regulations require that any residential tenant who has been temporarily relocated for a period beyond 1 year must be contacted by the Agency and offered permanent relocation assistance. By regulation, HUD imposes additional conditions on temporary relocations.

**Tenant**: A person who has the temporary use and occupancy of property owned by another (24 CFR 24.2(a)(26)).

**Tenancy**: A situation that arises when one individual conveys real property to another individual by way of a lease. The relation of an individual to the land he or she holds that designates the extent of that person's estate in real property.

**The Uniform Relocation Act (URA)**: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA, Uniform Act, or Uniform Relocation Act), (Pub. L. 91-646, 42 U.S.C. 4601 et seq.), and the government wide implementing regulations found at 49 CFR part 24.

## 9.5 Acquisition

The CDBG-DR Consolidated 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 and redevelop them. 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. Requirements for implementing a buyout acquisition are included in Appendix A of this chapter.

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 chapter, "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. Subrecipients should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

Acquisition rules must be followed whenever:

- The subrecipient undertakes the purchase of property directly.
- The subrecipient hires an agent, private developer, or other URA representative to act on their behalf.
- The subrecipient provides a nonprofit or for-profit entity organization with funds to purchase a property.

Subrecipients must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts pending environmental clearance.

## 9.6 Voluntary vs. Involuntary Acquisition

The URA regulations at 49 CFR Subpart B sets forth the real property acquisition requirements for federal and federally assisted programs and projects under the URA. The URA regulations have different requirements for acquisitions of a voluntary nature and for acquisitions under threat or use of eminent domain (condemnation).

### 9.6.1 Voluntary

Voluntary acquisitions (transactions with no threat or use of eminent domain meeting the criteria set forth in 49 CFR 24.101(b)(1) through (5)).

An acquisition will be considered "voluntary" when all of the following conditions in paragraphs (b)(1)(i) through (iv) are met:

> (i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (*See* Appendix A, § 24.101(b)(1)(i).).
>
> (ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
>
> (iii) The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
>
> (iv) The Agency will inform the owner in writing of what it believes to be the market value of the property.

### 9.6.2 Involuntary

Involuntary acquisitions (acquisitions subject to threat or use of eminent domain). Under the URA, voluntary acquisitions that satisfy the requirements of 49 CFR 24.101(b)(1)-(5) are not subject to the acquisition requirements of 49 CFR Part 24 Subpart B. A common misconception is that a "willing seller" or "amicable agreement" means a transaction is "voluntary." This is not necessarily true under the URA and the applicable requirements of 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered a "voluntary acquisition" for purposes of the URA.

URA requirements for voluntary acquisitions and involuntary acquisitions differ significantly for property owners. While there are protections for property owners in both circumstances, only involuntary acquisitions trigger the full URA acquisition and housing replacement requirements for homeowners found in 49 CFR Part 24 Subpart B.

### 9.6.3 Fair Market Value

The current fair market value should be paid for the property to be acquired. The fair market value for properties that are involuntarily acquired and are subject to Subpart B cannot exceed the fair market value that was determined through professional appraisal process unless there is clear evidence the acquisition will:

- Go to eminent domain proceedings.
- The additional cost above fair market value plus the cost of completing eminent domain proceedings is more than the negotiated price.

This MUST be clearly documented and should be a rarity.

### 9.6.4 Eminent Domain

HUD prohibits the use of HUD funds for eminent domain related activities that do not result in a public purpose. Therefore, CDBG-DR funds cannot be used for an eminent domain acquisition unless the final use of the property will serve the public interest.

#### 9.6.4.1 Eminent Domain Purchases from the Federal Government

Note: If an agency does not have the authority to acquire property from the federal government through condemnation, the acquisition will meet the requirements of 49 CFR Part 24.101(b)(3). In accordance with this regulation, if the agency desiring to acquire the property from the Federal Agency does not have authority to acquire through condemnation, such acquisition is not subject to URA basic acquisition policies. Unlike voluntary acquisitions from a private party under 24.101(b)(2), there are also no seller notification requirements.

### 9.6.5 Basic Project Development Concepts

When developing your project, here are some basic concepts to keep in mind:

1. “Buy vacant” for CDBG-DR funded projects because relocation requirements are complicated and expensive.
2. If there is going to be a relocation during the project, the subrecipient is required to have a “relocation plan” in place.
3. One-for-one replacement does not necessarily have a time limit; replacement depends on whether the property meets the alternative 104(d) requirements and is vacant/occupiable (i.e., suitable for rehabilitation).

## 9.7 Acquisition Requirements

URA applies to acquisition of fee simple title; acquisition of fee title that is subject to retention of a life estate or a life use; acquisition by leasing where the lease term, including option(s) for extension, is 15 years or more; and to the acquisition of easements.

Handbook 1378 contains an Acquisition Check List (hud.gov) and General Acquisition Process (hud.gov) for grant recipients to use in adhering to these complicated requirements.

Prior to commencement (notices mailed to property owners), considered by the subrecipient to be "voluntary," each acquisition must receive concurrence from OHCS that the acquisition is voluntary and "not subject to" the requirements of Subpart B of the Uniform Act.

### 9.7.1 Initiation of Negotiations

To assist subrecipients in complying with URA acquisition requirements, some sample initial notices and agreements with property owners regarding proposed acquisition are attached. These include:

1. Voluntary Acquisition-Informational Notice-Agency with Eminent Domain Authority (hud.gov)
2. Involuntary Acquisition with Threat/Use of Eminent Doman (hud.gov)
3. When A Public Agency Acquires Your Property Brochure.DOC (live.com)

Recipient's file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail return receipt requested) and the date of delivery. If the letter was personally served, it is necessary to obtain a written receipt of delivery from the property owner at the time of delivery.

The state can also provide information booklets, sample notices, and other materials to assist subrecipients.

### 9.7.2 Appraisal Requirements

In most cases, the URA requires the subrecipient to obtain an independent appraisal of the property, permanent easement, or temporary construction easement prior to negotiating a sale with the property owner. Independent appraisals are necessary as documentation that acquisition costs are "reasonable and necessary" per federal regulations. An exception to

this requirement may be allowed for small, uncomplicated acquisitions with low fair market values of $10,000 or less.

An appraisal is not required for voluntary transactions; however, the subrecipient must have on file evidence of how the fair market value of the property was determined by a qualified person knowledgeable in land/property valuation.

An appraisal is required for involuntary purchases. It is also required that the homeowner have an opportunity to be present during the appraisal process. When an appraisal is waived by a property owner for an involuntary transaction that is subject to Subpart B, the subrecipient must have on file a waiver valuation. Refer to HUD Handbook 1378 for waiver valuation requirements.

All appraisals must meet the minimum appraisal requirements of the Uniform Act. Note that the URA requires an appraisal to be current; this means no more than 1 year (12 months) old at the time the offer of just compensation is made. Exhibit 7C contains a Guide for Preparing an Appraisal Scope of Work that can be used in meeting these requirements. Exhibit 7D contains a draft Agreement for Appraisal Services that can be used as a guide for entering into agreements with companies providing appraisal services. Exhibit 7E contains a Certificate of Appraiser that can be used for "subject to" acquisitions or other acquisitions where an appraisal is obtained.

Involuntary property owners that are subject to Subpart B, where the value of the land is estimated at $10,000 or more, have the right to accompany the appraiser when the appraisal is conducted on their property. Exhibit 7F contains an example invitation to the property owner to accompany the appraiser.

Once the appraisal has been completed, a review of the appraisal is necessary to ensure that it meets applicable appraisal requirements. The review appraiser needs to determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value.

### 9.7.3 Donations

The URA Act applies to donations. Subrecipients must not accept or negotiate donations of real property or easements unless the specific provisions of the URA are followed. Donated property does not have to be appraised if the requirements of the URA are met.

### 9.7.4 Purchase Options, Sales, Agreements and Other Agreements

Federal acquisition rules must be followed prior to negotiating permanent easements, purchase options, sales agreements, or donation agreements. In cases where there is an existing, true, option to purchase property for a project, all disclosures must be made to the property owner prior to exercising the option. When an option is exercised, a contract of sale is entered. An "earnest money agreement" is not an option to purchase. Grantees should also refer to the U.S. Department of Transportation's Federal Highway Administration's Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. It may be downloaded from the Federal Highway Administration's website at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm

To assist subrecipients in complying with tenant access notification requirements, use of tenant access clauses in purchase options is recommended. Such a clause requires the property owner to allow the tenant access for the purpose of obtaining information and issuing notices.

### 9.7.5 Environmental Review Requirements

The subrecipient cannot enter into any legal binding commitment to a particular site before the environmental review is complete and an issuance of the Release of Funds (ROF) has been received from OHCS. Refer to Chapter 3 for more information on the Environmental Review Process. However, an option agreement on a particular proposed site or property is allowable prior to completion of the environmental review IF the option agreement is subject to a determination by the subrecipient of the desirability of the property for the project as a result of the completion of the environmental review, issuance of the ROF by the state, and the cost of the option is a nominal portion of the purchase price. Refer to Chapter 3 for more details.

### 9.7.6 Insurance Requirements

Recipients and subrecipients must at a minimum provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the recipient or subrecipient, respectively. Federally owned property need not be insured unless required by the terms and conditions of the federal award consistent with 2 CFR 200.310.

Recipients should familiarize themselves with all applicable regulations and work with their contract administrator to ensure that all requirements are met.

# 9.8 Section 104(d)

## 9.8.1 Alignment with the URA for CDBG-DR

Activities and projects undertaken with CDBG–DR funds may be subject to the URA, section 104(d) of the Housing and Community Development Act (HCDA) (42 U.S.C. 5304(d)), and CDBG-DR program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in the Consolidated Notice. HUD is waiving or providing alternative requirements in this section for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG–DR funds allocated under the Consolidated Notice.

## 9.8.2 Section 104(d) One-For-One Replacement Requirements for CDBG-DR

Section 104(d) requirements of the HCDA generally include:

- One-for-one replacement of all occupied and vacant occupiable LMI dwelling units that are demolished or converted to a use other than LMI permanent housing in connection with an activity assisted under the HCDA.

Per the Consolidated Notice, some components of the Section 104(d) requirements have been waived:

- This waiver exempts all disaster-damaged owner-occupied or occupiable lower-income dwelling units that meet the grantee's definition of "not suitable for rehabilitation," from the one-for-one replacement housing requirements of 24 CFR 42.375.

## 9.8.3 Not Suitable for Rehabilitation

OHCS defines a residential property as "not suitable for rehabilitation" if any of these conditions apply:

- The property is declared a total loss.
- Repairs would exceed 50% of the cost of reconstruction.
- Repairs exceed $50,000.

- Homes cannot be rehabilitated or reconstructed in place under existing agency policies and award caps due to legal, engineering, or environmental constraints, such as permitting, extraordinary site conditions, or historic preservation.

### 9.8.4 Section 104(d) Resources

Contact an OHCS contract administrator for the applicable federal regulations and assistance if your project involves demolition or conversion of housing units.

### 9.8.5 Section 104(d) Checklist

**Relocation Assistance**: The requirements for Section 104(d) Tenant Assistance are waived per the Consolidated Notice. Under the Notice, LMI persons and households will receive the same 42 months of benefits as persons and households under the URA. To determine if the Section 104(d) waiver applies, use the following checklist:

1. Are CDBG-DR funds used in the project?
2. If yes, the Consolidated Notice waiver will apply.

**One-for-One Replacement**: To determine if the unit is subject to one-for-one replacement use the following checklists:

1. Are CDBG-DR funds in the project?
2. Was the residential property substantially damaged by the disaster and meets the definition of "not suitable for rehabilitation"?
3. Will the unit be demolished or converted to another use?
4. If the answers to 1–3 above were all "yes" than the unit <u>does not</u> need to be replaced per the Consolidated Notice waiver.

If the residential dwelling does not meet the three criteria above, then the following checklist will need to be applied to determine if one-for-one replacement is needed.

1. Are CDBG-DR funds in the project?
2. Is the unit occupied or vacant-occupiable lower-income dwelling? *Note: Vacant Occupiable: The unit is standard, vacant, and suitable for rehab or dilapidated but has been occupied within the last 3 months.*
3. Will the unit be demolished or converted to another use?
4. If answers to 1–3 above were all yes, then the unit must be replaced.

24 CFR 42.375(b)(2) requires one-for-one replacement. Meaning a duplex containing two to one bedroom/one bathroom units cannot be replaced by a single-family dwelling containing three bedrooms and two bathrooms. The duplex must be replaced by a like duplex of two units containing one bedroom/one bathroom each or two similar sized one-bedroom units within a larger complex.

## 9.9 URA Requirements

The URA covers involuntary displacement and relocation assistance. A displaced person under URA is an individual, family, partnership, association, corporation, non-profit or organization that moves from their home, business, or farm, or moves their personal property, as a direct result of an involuntary acquisition, demolition, or rehabilitation for a CDBG-DR project. Displaced persons are eligible for relocation assistance under the URA.

HUD has developed several brochures for persons in need of relocation assistance. All are available online at the Housing and Urban Development website. They are:

- Relocation Assistance to Tenants Displaced From Their Homes
- Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms
- Relocation Assistance to Displaced Homeowner Occupants

The URA relocation requirements are triggered when persons are involuntarily displaced by a federally funded action. For example, anytime eminent domain is used to acquire a property that is owner-occupied, that is always considered “involuntary” displacement. Similarly, anytime a tenant is displaced by an activity (even if the activity is to repair the tenant’s unit) it is always considered involuntarily displacement.

A Voluntary displacement happens when the property owner agrees or applies for the federally funded action (e.g., acquisition, rehabilitation, or reconstruction) that requires them to move permanently or temporarily from their property. This does not trigger the URA relocation requirements because the property owner has the ability to agree to the action or not agree to the action, unlike a tenant who does not have authority over the property. For the purposes of this chapter, the term “displaced” means the owner or tenant was involuntarily displaced and eligible for URA assistance.

### 9.9.1 What if a project proponent already started a project?

URA acquisition rules apply any time an acquiring entity:

- Undertakes the purchase of property directly
- Provides a nonprofit or for-profit entity with funds to purchase the property

- Hires an agent or consultant to act on its behalf in acquisition
- Undertakes acquisition on or after a CDBG-DR application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity
- Undertakes an acquisition before the application submission date and the acquisition was intended to support a subsequent CDBG-DR activity

If a project proponent already started a project, the URA is not triggered as long as they are not receiving CDBG-DR or other federal assistance. However, if they are going to need CDBG-DR assistance, the grant recipient (OHCS) needs to ensure that the acquisition activities of the subrecipient are completed in conformance with the URA requirements.

If CDBG-DR assistance is used for any part of the project, the URA must be followed, even if local or other non-Community Development Block Grant funds are used to pay the acquisition costs.

## 9.10 Displacement

### 9.10.1 Residential Anti-displacement and Relocation Assistance Plan

All subrecipients are required to follow the State of Oregon Anti-displacement and Relocation Assistance Plan. If needed, reach out to OHCS for a copy of the plan.

### 9.10.2 Permanent vs. Temporary Relocation

Tenants and homeowners can be permanently or temporarily displaced depending on the type of activity that is displacing the tenant or homeowner and the length of time they will be out of the property.

A displaced person will be determined to be permanently displaced if the property the tenant or homeowner has been occupying becomes no longer available through an action that is funded in whole or in part with federal funds. If the tenant or homeowner must leave the property for a temporary amount of time (i.e., less than a year) and the tenant will be able to return to the property after the federal activity has ended, then the tenant would be determined to be temporarily displaced.

URA Advisory services and moving expenses are the same whether permanently or temporarily displaced.

| Permanent Relocation | Temporary Relocation |
|---|---|
| • Relocation advisory services<br>• Rental assistance differential for 42 months or down payment assistance to purchase home if residential tenant<br>• Re-establishment cost if non-residential<br>• Moving expenses | • Relocation advisory services<br>• Rental assistance differential for up to 12 months<br>• Moving expenses from residence to new temporary residence<br>• Storage while temporarily displaced<br>• Moving expenses to move back to original unit |

**Note**: If the tenant or homeowner is not able to return to their unit or another appropriate, affordable unit at the site within 12 months, they are considered permanently displaced and eligible for those benefits as defined by the URA. In this circumstance, the tenant or homeowner will be contacted by the relocation specialist and a revised notice of relocation eligibility will be issued, including the additional amount of 42 months of assistance that will be received.

### 9.10.3 Optional Relocation

OHCS may permit subrecipients to provide optional relocation services in accordance with 24 CFR 570.606(d) for persons displaced by CDBG-DR activities that do not trigger assistance under the RA. Specifically, homeowners who have voluntarily agreed to participate in a program that will displace them either on a temporary or permanent basis cannot receive relocation assistance under the URA but may be provided moving or relocation assistance under an optional relocation plan.

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 state 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 subrecipient has determined to provide.
- 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 OHCS prior to implementation.

## 9.10.4 Relocation Steps

The following steps are required when relocating persons and/or entities displaced by disaster-recovery related activities.

### 9.10.4.1 Tenant Notices

All tenant occupants of property that will be acquired, rehabilitated, or demolished as a result of a CDBG-DR project must receive timely notices about their rights under the URA. The notices include:

**General Information Notices (GIN)**: Informs the occupant(s) of a possible project and includes the appropriate HUD booklet. In this case, it would be HUD booklet 1042-CPD Relocation Assistance to Tenants Displaced from their Homes. This notice must be issued as soon as possible after it has been determined that CDBG-DR funds are intended to be used for the project.

> *Note: Unfound Displaced Tenants***:** If the tenants who were issued a GIN vacated for personal reasons before the initiation of negotiations (i.e., the date the CDBG-DR grant agreement is fully executed between the recipient and the state) they do not qualify as displaced. GINs should be issued as soon as feasible. Anyone who vacates a property after the subrecipient applies for funds but before receiving a GIN could claim to have been displaced by the project and may be due full URA benefits.
>
> If there are unfound displaced tenants that qualify for benefits (relocation assistance) under the URA, there are two potential paths:
>
> 1. Grant recipient properly provided the GIN that advised the tenant not to move and used all reasonable procedures to locate said tenant(s): the regulations allow the tenant(s) 18 months to file a claim for URA benefits (the deadline may need to be waived if there are extenuating circumstances).
> 2. Grant recipient did not properly provide GIN: the tenant(s) now have extenuating circumstances and they can file a request to extend the 18 month window to file a claim for URA benefits, indefinitely.
>
> If the tenant(s) files a valid claim for benefits they must be paid.

**Notice of Eligibility**: Informs occupants that they will be displaced and are eligible for URA benefits and includes levels of assistance to be provided under URA rules.

**90-Day Notice to Vacate**: This is a letter issued to a tenant, at least 90 days in advance, that informs the tenant of the date by which they will be required to relocate from the property.

## 9.11 Intake and Eligibility

An intake meeting should be scheduled with all affected displaced owner-occupants or tenants to discuss relocation benefits and eligibility. This meeting provides an opportunity for the owner-occupant or tenant to learn about the process, ask questions, and submit necessary income verification information. Owner-occupants or tenants should receive a written notification of their eligibility for benefits after it is confirmed they will be involuntarily displaced and after other eligibility items have been confirmed (e.g., living in property before NOI, citizenship/legal residency, or other eligibility criteria). The subrecipient must determine current occupancy and conduct owner-occupant or tenant interviews.

### 9.11.1 Certify Income and Determine National Objective

In addition to completing eligibility-related documentation, the owner-occupant or tenant household must complete an income certification so that national objective can be determined LMI benefit or urgent need).

For displaced tenant-occupants that are LMI, their monthly rent cannot exceed 30% of the monthly household income. These households can receive replacement housing costs that pay rent amount above the 30% household income level.

### 9.11.2 Intake Negotiations

Once eligibility and national objective are determined, the owner-occupant or tenant file remains “on hold” pending the ION. In an acquisition program, this is generally immediately after the contract of sale date (when the buyer and seller have entered into an agreement for the property to be purchased).

### 9.11.3 Identify Comparable Dwellings

Once an occupant is found eligible for URA relocation assistance, the subrecipient must offer one or more comparable units to the displaced person. The comparable dwellings must be as similar to the home from which they are displaced as is feasible, which includes matching the size and function, containing the same principle features, and having a similar location (e.g., reasonable access to person's employment, schools, medical facilities, general neighborhood characteristics). The comparable dwellings must also offer proper environmental conditions and meet DSS and HQS. The comparable unit must be available for use/occupancy.

The comparable dwellings are presented on HUD Form 40061 and a "most comparable dwelling" is chosen based on objective criteria. Benefits are calculated based on the rent of the "most comparable dwelling" and estimated utilities of the displacement dwelling and "most comparable dwelling." Subrecipients must develop a methodology for determining estimated monthly utility costs, considering both utility costs at the displacement dwelling and at the replacement dwelling. The simplest way of doing this is looking at the utility allowance worksheets for local housing authorities or Section 8 agencies.

Note: If looking for comparable units for persons residing in public housing, using a comparable public housing unit is an eligible comparable. However, if the displacee is not a public housing recipient, they cannot be provided a public housing replacement unit as a comparable.

### 9.11.4 Send Notice of Eligibility and 90-Day Notice

Notices of eligibility and 90-day notice inform the occupants of the day by which they must vacate the property. Displaced persons may not be given LESS than 90 days to vacate their residence. However, 90-day notices may not be issued until residential tenants are referred to available, comparable replacement housing.

If, during project development stage, any potential tenant displacement is identified, the subrecipient must have documentation that the GIN was sent to the tenant when the grant application is submitted to the state by means of certified mail/return receipt-required or having the tenant sign to acknowledge receipt of the notice.

Tenants who did not receive their notices by the time required may be entitled to additional relocation benefits under federal law.

There are many notices, depending upon the details of the situation. The subrecipient must review the various notices required per HUD Handbook 1378.

Examples of the four most used notices are:

1. General Information Notice for Residential Tenant Not Displaced (hud.gov)
2. General Information Notice for Residential Tenant to be Displaced (hud.gov)
3. Notice of Non-Displacement to Residential Tenant (hud.gov)
4. Notice of Eligibility for URA Relocation Assistance-Residential Tenant (hud.gov)

If an owner or tenant did not receive the required notices, a complaint can be filed either by contacting the HUD Region X office or by filing a complaint online at the following link: https://www.hud.gov/fairhousing/fileacomplaint

### 9.11.5 Determine Eligibility and Amount of Assistance for Displacee

Specific instructions for meeting all federal relocation requirements are beyond the scope of this chapter. Subrecipients with projects that may result in any person or business moving, temporarily or permanently, must use HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, change 13, issued March 14, 2014, and Part V of the U.S. Department of Transportation regulation located at 49 CFR Part 24, updated January 4, 2005, and discuss the requirements with the contract administrator for their project at the beginning of the project.

If the displacee is found to be eligible for benefits, HUD Forms 40054 and 40058 are completed. These forms calculate the amount of assistance the tenant will receive. HUD Form 40054 calculates payments for the tenant's moving expenses. HUD Form 40058 establishes required relocation expenses equivalent to 42 months of the tenant's rent increase or 42 months of any monthly rent amount over 30% of the tenant's monthly income. The tenant and an authorized representative of the subrecipient both sign HUD Forms 40054 and 40058.

The income of the displaced person is not a factor in determining basic eligibility, but income of the displaced person is a factor in calculating the amount of assistance they are required to receive. There is no income cut-off for eligibility for relocation assistance. Anyone who is displaced may be entitled to URA assistance.

## 9.12 Relocation Advisory Services

In accordance with 49 CFR 24.205(c)(2)(ii), programs will provide relocation advisory services to displaced persons. In addition to providing the required notices, the relocation advisor will contact the impacted displaced household(s) to schedule an interview, to obtain tenant supporting documentation, and to ensure that tenants understand their

rights and responsibilities. During this interview, the program will inform the displaced household of advisory services.

These services include:

- Determining the needs and preferences of displaced persons
- An explanation of available relocation assistance (such as moving costs and replacement housing), eligibility requirements, and the process for obtaining such assistance
- An explanation of a tenant's right to appeal if they are not satisfied with program decisions, including written appeal procedures
- An offer to provide transportation to inspect the housing to which they are referred
- Information about other assistance (e.g., legal services, financial services, housing counseling)
- Information on current and ongoing listings of available comparable dwellings for residential displacements
- Informing the displaced person in writing of the comparable dwelling unit
- Informing the tenant that they cannot be required to move unless at least one comparable replacement dwelling is made available
- Inspection of the dwelling to determine if it meets DSS requirements
- Providing counseling and other assistance to minimize hardship in adjusting to relocation
- Other required and appropriate assistance

URA advisory services and moving expenses are the same whether permanently or temporarily displaced.

## 9.13 Moving Expenses

Moving expenses must be reasonable and necessary. The displaced person may choose to receive payment for moving expenses by commercial mover, reimbursement of actual expenses incurred by the displaced person, Federal Highway Administration fixed payment, or any combination of the aforementioned. At the date of this publication, the most current residential moving cost schedule can be found at: https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm. Recipients should check the above referenced website to obtain the most current moving cost schedule.

## 9.14 Relocation Assistance and Payments

The URA provides for relocation assistance and payments to eligible persons displaced from their homes, businesses, and farms as a direct result of a federally funded program or project. Residential tenants and owner occupants of 90 days or more that are displaced from their dwellings may be eligible for a replacement housing payment, for rental assistance, or down payment assistance. Information regarding eligibility for this assistance is available at https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations

If the subrecipient has any questions about the calculation methods or other elements of relocation assistance requirements, they should request technical assistance through their contract administrator.

Cash rental assistance payments must be made in at least two installments. Relocation assistance payments for residential tenants must be disbursed in installments. Lump sum payments may be made to cover (1) moving expenses and (2) a down-payment on the purchase of replacement housing, or incidental expenses related to (1) or (2). Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

The frequency of these disbursements may be determined by the subrecipient. However, if not paid monthly, it is recommended that there be no less than three installment payments, except when the rental assistance payment is $500 or less. Where the rental assistance payment is $500 or less, it is recommended that payment may be made in two installments with no less than a 4-month interval between payments.

## 9.15 Rental Assistance Payment

Assistance can be provided as rental assistance or down payment assistance. Rental assistance is a replacement housing payment (RHP). The amount of RHP varies depending upon family income. The URA establishes a cap on payments at $7,200. This cap can be exceeded in last resort housing situations if the current relocation limit is not sufficient to relocate the household. Information relating to last resort housing situations can be found in 24 CFR 24.404 and Chapter 3 of HUD Handbook 1378. Rental assistance must be provided in payments made to the displacee.

### 9.15.1 Housing of Last Resort

In accordance with the requirements found at 49 CFR 24.404(a)(2), this determination to exceed the monetary limits established under the provisions found at 49 CFR 24.401 or 24.402 and provide, as appropriate, additional assistance, is based on the following: In the counties that have been identified as disaster-eligible impacted areas, there is little, if any, comparable replacement housing available for households who will be deemed "displaced" from units receiving assistance.

Due to the damage and immediate impact relating to the loss of DSS, affordable rental housing, an assisted property cannot advance to completion and satisfy the timeliness requirements imposed by HUD in the CDBG-DR grant award without last resort housing assistance.

### 9.15.2 Conversion of Rental Payment to Down Payment for Home Purchase

A displaced tenant can choose to have the full amount of the 42-month rental assistance payment applied as a down payment for a home purchase in place of rent assistance. The entire purchase assistance payment must be applied, at closing, to the purchase of a DSS replacement dwelling.

## 9.16 Replacement Housing Payment

Homeowners that are involuntarily displaced are eligible for assistance with replacement housing. Replacement housing assistance to purchase a replacement home must be a lump sum payment made to the mortgage lender or seller.

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home triggering an involuntary acquisition are eligible for a replacement housing payment as "displaced persons" (90-day homeowner). The maximum payment is $31,000. 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 is made using the same method used for tenants.

Note: If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for URA relocation benefits.

For involuntary acquisitions, the ION is defined as the delivery of the written offer of just compensation by the subrecipient to the owner. The RHP made to a 90-day homeowner is the sum of:

- The lesser of the cost of the comparable identified by the program or the cost of the actual replacement unit that the homeowner chooses if not a comparable.
- Additional mortgage financing cost
- Reasonable expenses incidental to purchase the replacement dwelling

To calculate the RHP for a 90-day homeowner, subrecipients should use the HUD claim form 40057. If an owner elects to become a renter, the RHP can be no more than the amount they would otherwise have received as an owner.

The displaced homeowner must purchase and occupy the replacement unit in order to qualify for a RHP as a displaced owner-occupant.

## 9.17 Lawful Presence

Any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

The definition of an "alien not lawfully present in the United States" includes an alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101) and whose stay in the United States has not been authorized by the U.S. Attorney General; and an alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1. In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
2. In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

3. In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
4. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

Relocation payments or relocation advisory assistance cannot be provided to a person who has not provided this certification or who has been determined to be not lawfully present in the United States, unless ineligibility would result in exception and extremely unusual hardship to a qualifying spouse, parent, or child. An alien not lawfully present in the United States may claim an exceptional and extremely unusual hardship if the denial of relocation payments and advisory assistance to such a person will directly result in:

1. A significant and demonstrable adverse impact on the health or safety of a spouse, parent, or child
2. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member
3. Any other impact that OHCS determines will have a significant and demonstrable adverse impact on such spouse, parent, or child

## 9.18 Relocate Tenant or Owner-Occupant

Displaced persons have no less than 90 days to relocate to a new dwelling. The displacee must coordinate closely with the subrecipient's acquisition staff to ensure that the unit is vacant at time of purchase. The tenants or owner-occupants can choose any dwelling they want; they are not required to select the most comparable dwelling or any of the comparable dwellings noted on the HUD Form 40061. However, the unit they choose to occupy must be DSS and meet HQS in order for the displaced person to receive housing assistance. If the displaced person selects a unit that fails inspections for codes and standards and necessary corrections cannot be made, RHP cannot be made on that unit. The displacee may choose to move to one of the suggested comparable dwelling units or find another unit that can pass the DSS/HQS standards. If displacees want to move into the unqualified unit, they will not receive the housing assistance but can still get moving expenses reimbursed.

### 9.18.1 Inspect New Unit

In cases of residential relocation when the displacee selects a new unit, the unit is inspected to ensure that it meets DSS/HQS standards. The subrecipient must also verify that the unit is not located in a special flood hazard area (SFHA). The unit must not be in a SFHA, and it must meet DSS/HQS standards for the tenant or owner occupant to receive benefits.

### 9.18.2 Disburse Assistance Payment

Once an amount is determined, the moving expense payment to the tenant is disbursed. The rental assistance payment is made in no less than two parts over a 42-month period once a new unit is chosen.

## 9.19 Appeals

All tenants will have an opportunity to file an appeal in accordance with the URA regulations at 49 CFR 24.1. Written complaints and appeals must be submitted in writing. The time limit to file an appeal is thirty (30) days after written notification of a program determination.

### 9.19.1 Actions That May Be Appealed

Persons being displaced may file an appeal if they believe the program has:

- Made a mistake in determining eligibility for payment
- Made an error in figuring the amount of payment
- Been unfair in refusing to waive the time limit for filing a claim or the purchase and occupancy requirements
- Not provided a reasonable choice of comparable replacement housing
- Not properly inspected the replacement housing
- Failed to comply with the provisions concerning the notice of right to continue in occupancy

Appeals are limited to actions or decisions that the individual making the appeal (petitioner) believes to be in conflict with stated program policies or to be based on contestable facts. Program policies established by OHCS are not appealable.

### 9.19.2 Appeals Process

An appeal may be filed in any case in which the person believes that the subrecipient has failed to properly determine the person's URA award. Initial review of the appeal will be conducted by an established appeals team. This team is independent from the group that originally made the decision being appealed. Each appeal will be reviewed against program policies and URA requirements. The panel will make a recommendation to the ReOregon Program Staff who will make the final determination.

An appeal must be filed within 60 days after the person receives written notification of the subrecipient's determination of the person's claim. Appeals must be submitted by tenants in writing to the subrecipient's appeals team. The request must contain the following information:

- Tenant's name
- Tenant's mailing address
- Tenant's telephone number
- Tenant's email address (if available)
- The reason(s) the decision or action is being appealed
- Documentation that supports the request to overturn the decision or action.

# 9.20 Appendix A: Buyout Acquisition

## 9.20.1 Overview

Buyout acquisitions can only be undertaken if a buyout program is established in the action plan and funds are allocated for that purpose. Buyout acquisition activities are not interchangeable with standard acquisition activities.

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.

Buyout activities are subject to all requirements that apply to a regular acquisition including but not limited to the URA and voluntary or involuntary acquisitions.

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.

## 9.20.2 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 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. Subrecipients who will buy out properties in a DRRA must establish criteria in their policies and procedures to designate an area as a DRRA 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) and science (e.g., engineering and structural solutions propounded by FEMA, USACE, other federal agencies).
3. The area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

### 9.20.3 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.

### 9.20.4 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.

### 9.20.5 National Objectives

Buyout properties must meet all requirements of the HCDA and demonstrate that a buyout meets the 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% 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.
3. The program meets the criteria for the LMI and 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 applies to safe housing incentive 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 the following National Objectives table to better understand how to apply the requirements for each national objective.

| Activity | National Objective | Implementation Requirement |
|---|---|---|
| **Purchase buyout property (may be pre-disaster FMV or post-disaster FMV)** | **LMH** | • Any assisted activity that involves acquisition of properties with another direct housing benefit that results in occupancy and meets LMH national objective criteria.<br>**Grantee must verify that the household secures new housing and provides additional assistance to secure it (must be permanent housing)**.<br>Example of a direct benefit might be providing down payment assistance. |
| | **LMA** | • If the buyout area and subsequent greenspace benefit all residents of an area that is primarily residential and 51% or more residents are LMI persons. Grantee 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**. |
| | **UN** | Buyout to households that are not at or below 80% AMI. |
| **Safe Housing Incentive** | **LMHI** | • 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<br>• 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.<br>• While recommended, the new housing is **not required to be permanent housing.** |
| | **UN** | Incentive to households that are not at or below 80% AMI |

### 9.20.6 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 DRRA.

(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 the structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and 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 a 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 he/she 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 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.