



Buyout Program Guidance and Best Practices

November 7, 2019

Welcome and Speakers

- Co-Presenters
 - Jen Carpenter, Assistant Director of Policy, DRSI
 - Brandy Bones, ICF
- Session Objectives
 - Explain how buyout programs can assist with long term recovery and mitigation efforts
 - Provide guidance on interpreting 2017 and CDBG-MIT FR Notice requirements related to buyouts
 - Provide best practices for successful buyout program implementation



Agenda

- Buyout Program Overview
- CDBG-DR/MIT rules and requirements
 - National objectives
 - CDBG-DR/MIT specific requirements
 - Applicable federal cross-cutting requirements
- Design and implementation
- Q&A



Buyout Program Overview



Basics of Buyout Program

- Acquisition/purchase of property including residential, commercial, agricultural or vacant
 - For buyouts, grantees can choose to pay current (post-disaster) fair market value or pre-disaster value, provided they consistently apply their valuation methodology
 - Can also provide housing incentives to encourage relocation

Reduce the impact of future disasters while encouraging targeted revitalization efforts and public spaces





Eligible Buyout Areas

- Purchase of property to reduce risk = Buyout
 - Different than acquisition programs where the primary purpose is redevelopment or resilient redevelopment where there may be a risk reduction co-benefit.
- Buyouts are:
 - Located in a floodway or the 100-year floodplain; or
 - Disaster Risk Reduction Areas
- Grantees must clearly delineate the “Disaster Risk Reduction Area” in their policies and procedures, so HUD and the public know what properties are located in a within the designated area

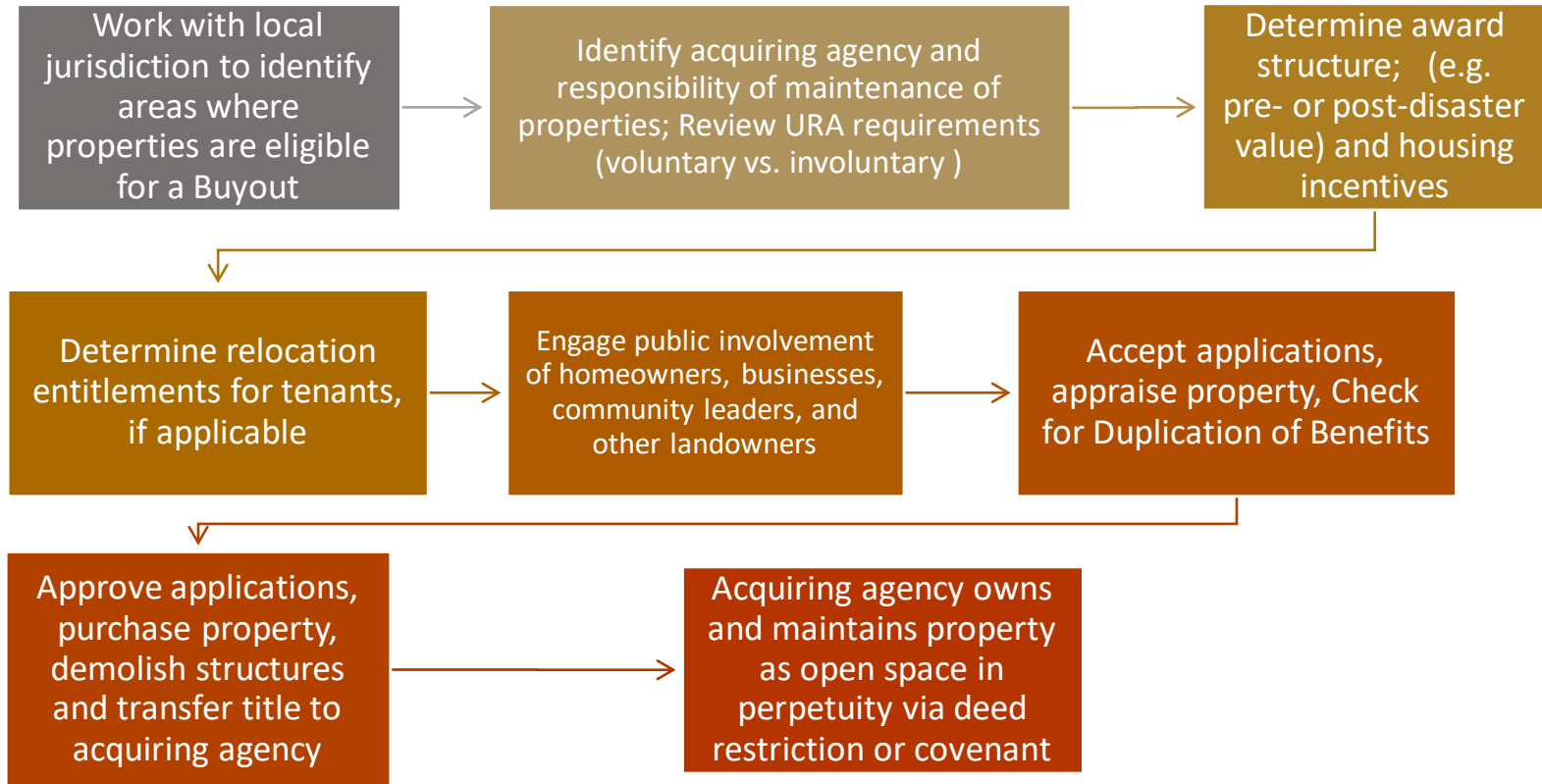


Basics of Buyout Program continued

- Must be "real property"
- Grantees can permanently move people out of known high-risk areas, demolish structures and create:
 - park amenities
 - open space
 - flood storage/overflow areas
 - structure approved by local floodplain administrator
- Especially effective in communities that have:
 - endured multiple disasters
 - sustained severe damage, and are at high risk of additional disasters



Typical Buyout Program Process Flow



Benefits of a Buyout Program

- Move people out of harm's way, including low- and moderate-income households that otherwise cannot afford to relocate
- Restore natural function of floodplain
- Protect surrounding built environment
- Increase Community Rating System score – lowering National Flood Insurance Program (NFIP) premiums
- Provide additional green space



Challenges of a Buyout Program

- Lack of political will
- Lack of community and resident buy-in that can result in “checkerboard” neighborhoods
- Lack of available affordable housing stock in the community
- Rental properties and relocation requirements
- Ensuring compliance with federal requirements
- Ownership and title issues (cloudy title, outstanding liens, bankruptcy, foreclosure, etc.)
- Municipalities’ tax revenue may be reduced by removing properties from the tax rolls
- Finding long-term steward for property that can pay for long term operations and maintenance including insurance taxes and fees



CDBG-DR/MIT Rules and Requirements



Buyout Program Requirements

- CDBG-DR: Tie to the Disaster
 - Programs must support recovery activities with a tie to the disaster in the most impacted and distressed areas
- CDBG-MIT: Mitigate against Future Risks
 - Programs must increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters in the most impacted and distressed areas



Buyout Program Requirements continued

- Eligible Applicants
 - Owners of eligible properties (e.g. residential, commercial, vacant, etc.)
- Eligible Activity
 - Allowable as an acquisition activity, but final disposition and end use must be in compliance with the Federal Register notice that applies to the funds.
 - The key factor in determining whether an acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction Area.
 - Permanent open space covenant, no public assistance for property in future disasters



Buyouts & National Objectives

National Objective	Buyout Implication
LMI Housing	<ul style="list-style-type: none">• Any assisted activity that involves acquisition &/or rehab of property to provide housing• Grantee must verify that the household secures new housing and provides additional assistance to secure it (e.g. down payment asst.)
LMI Area Benefit	<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% or more LMI persons (must define service area based on end use of property)
LMI Limited Clientele	<ul style="list-style-type: none">• Buyout only available to LMI households and benefit provided by using pre-disaster valuation
Urgent Need	<ul style="list-style-type: none">• Buyout or Housing Incentive to households that are not at or below 80% AMI - check Federal Register notice for requirements

Buyouts & National Objectives

National Objective	Implication
LMI Buyout (LMB)	<ul style="list-style-type: none">• CDBG-DR funds used to buy property owned by LMI household where award amount (including optional relocation) is greater than the post-disaster value• Grantee not required to follow the LMI household after the buyout
LMI Housing Incentives (LMHI)	<ul style="list-style-type: none">• Incentive tied to the voluntary buyout of housing owned by LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area (confirm move to lower risk area; incentive over FMV is benefit)• Incentive tied to voluntary acquisition of housing owned by LMI household, for which the housing incentive is for the purpose of moving outside the floodplain or to a lower-risk area (acquisition for redevelopment – some tracking to confirm move to lower risk area)• Incentive for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household (e.g. use to purchase replacement mobiles homes to move to lower risk area)

Voluntary vs Involuntary Buyout Programs

- For agencies with eminent domain authority, (49 CFR 24.101(b)(1))
 - there is a 4-part test for voluntary acquisitions - IF:
 - No specific site is needed and any of several properties could be acquired for project purposes (49 CFR 24.101(b)(1)(i)); and
 - The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits (49 CFR 24.101(b)(1)(ii)); and
 - The agency informs the owner in writing of the property's market value (49 CFR 24.101(b)(1)(iii)); and
 - The agency also informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement (49 CFR 24.101(b)(1)(iv))
 - Tenants are displaced, the tenants are provided relocation assistance



Voluntary vs Involuntary Buyout Programs cont'd

- For agencies without eminent domain authority (49 CFR 24.101(b)(2)), if:
 - The agency notifies the owner in writing of the property's market value; and
 - The agency notifies the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached
 - Tenants are displaced, the tenants are provided relocation assistance



Voluntary vs Involuntary Clarification

- CDBG-MIT notice clarifies how the 4-part test applies to entities with eminent domain authority under 49 CFR 24.101(b)(1)(ii), clarifying “an intended, planned or designated project area:”
 - An area for which a clearly defined end use has been determined at the time that the property is acquired, in which all or substantially all of the properties within the area must be acquired within an established time period as determined by the grantee or acquiring entity for the project to move forward.
 - Where moving forward with a project does not depend upon acquiring specific sites within established timeframes for a clearly defined end use, there is not an “intended, planned or designated project area.”



Voluntary vs Involuntary Clarification cont'd

- This criterion is satisfied if:
 - (1) A broad buyout eligibility area is identified by the need to reduce risk, but no specific property must be acquired or
 - (2) a clearly defined end use (i.e., more specific than the categories of open space, recreational, or floodplain and wetlands management practices) has not been determined at the time of acquisition.



CDBG-DR Buyout Programs: Applicable Laws & Regulations

- ✓ Community Development Block Grant Program 24 CFR Part 570
- ✓ Public Law appropriating CDBG-DR funds
- ✓ HUD regulations specified in the Federal Register (FR) Notices applicable to the disaster
- ✓ Environmental Review 24 CFR Part 58
- ✓ Uniform Relocation Act (49 CFR Part 24 & 24 CFR 570.606 & Section 414 of the Stafford Act)
- ✓ Section 104(d) one-for-one replacement requirement
- ✓ Stafford Act - Duplication of Benefits (DOB) (42 U.S.C. 5121-5207, 84 FR 28836 and 84 FR 28848 dated June 20, 2019)



Uniform Relocation Act (URA)

- Permanent and involuntary relocation can be triggered if tenants were/are living in the housing unit
- If tenant living in housing unit at time of disaster event:
 - If implementing program is within one year of the disaster event, tenant may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.
 - If grantees have been offered and chose to follow the 414 waiver (check the notice) and implementing program is outside of one year from the disaster event, the tenant would not be eligible for this payment.
- If tenant living in housing unit at time of buyout application:
 - Tenant eligible for permanent relocation benefits as outlined under URA

Implementation Tip: Ensure Buyout Application includes question about whether there were tenants at time of disaster event or at time of application and request contact information for those tenants.



Section 104(d) – One-for-one replacement

- When purchasing lower income housing units, typically have to replace with affordable unit lost to the demolition
- FR Notice modifies one-for-one replacement requirement when the housing unit to be demolished meets grantee's definition of "not suitable for rehabilitation"
 - Must define "not suitable for rehabilitation" in Action Plan
- Must separately track all units acquired and whether or not they meet definition
- If do not meet definition, must replace with affordable unit

Implementation Tip: Ensure appraisal includes both pre- or post-disaster acquisition value of unit as well as 'market rent' for unit.



Property Valuation Method & DOB

- If post-disaster valuation used, DOB not triggered (if offering relocation assistance – should revisit DOB analysis)
- If award exceeds the post-disaster FMV, the excess funds are considered assistance to the seller – making them a recipient of CDBG-DR assistance;
 - Grantees must document all assistance received through the DOB analysis and should be able to document other assistance received was used for intended use (through inspection or receipts/documentation)
- Grantees must identify which valuation method they will use in their Action Plan and must apply that valuation method consistently



Design and Implementation



Local Engagement Strategy

- County or municipality in which the properties fall:
 - Local, long-term property tax implications
 - Costs of demolition and conversion of property to open space
 - Long-term maintenance and monitoring requirements
 - Lowered recovery costs from removing property from high-risk areas
- Buyout property owners:
 - Do they want to leave their high-risk areas?
 - What assistance and support services do they currently depend on (consider elderly residents, transportation, schools and other services/support systems in their current community)?
- Resettlement and Relocation:
 - Where will the buyout property owners go?
 - Is there adequate affordable housing stock in lower-risk areas near their current homes?
 - What impacts will resettlement have on the remaining and receiving communities?



Determining Buyout Areas



- Determination made by grantee in coordination with local governments
- May be based on:
 - History of flooding and/or damage by extreme weather events
 - Concentration of repetitive loss and severe-repetitive loss properties
 - Multiple homeowners have expressed interest in buyout
 - Homeowners that have applied to current CDBG-DR recovery programs and/or HMGP buyout funding



Housing Counseling and Legal Aid

- Buyout programs are unique
- Providing housing counseling and/or referrals to legal aid services in conjunction with a Buyout program can help some of the following common barriers to participation:
 - Challenges with finding affordable housing in lower-risk areas
 - The logistics and costs of physically moving from one property to another
 - Uncertainty and/or increased costs in new housing situation
 - Identifying needed support services and transportation needs in new location
 - Title issues on damaged property



Workforce Development Opportunities



Identify housing in an area that does not disrupt current employment situation



Demolition and clearance activities can provide local workforce development opportunities



Identify partners who can connect residents with additional workforce opportunities in relocating, lower-risk areas



Disposition Strategies

- Local municipality or county/parish take title and maintain long term
- Convey property to conservation land trust
- Provide as side yards to homeowners that remain with agreement not to redevelop land (through lease or purchase)



FEMA HMGP Voluntary Acquisition Programs

- FEMA HMGP provides federal funding for buyouts
- HMGP requires a 25% local match for each disaster (CDBG-DR funds can be used as non-federal cost share, but cannot duplicate HMGP assistance)
- CDBG assistance can be used for housing incentives

must meet both FEMA and HUD requirements if using CDBG-DR/CDBG-MIT for match



Timeline

Program Components	Typical Timeline
These programs require in-depth planning, data-collection, engagement, outreach and community education at the government, community and property owner levels.	Good planning, data collection and community engagement can take months.
It is a complicated decision for property owners to decide if they are going to sell their homes or businesses.	Property owners will take varying amounts of time to make this decision.
Most property owners have existing mortgages, liens and/or some complexity related to their ownership title, which can add to the timeline for deciding whether to participate in a buyout.	Clearing cloudy titles or succession issues can take months.
An environmental review must be completed on the property before it can be acquired with CDBG funds.	This can take weeks to months.
The acquisition process is just like any other real property sale.	It can take weeks to months to close on a property.



Overcoming Challenges

- Local governments:
 - Lost tax base
 - Increase maintenance and monitoring costs
 - Less than 100% participation in a designated area
- Residents:
 - Leaving community and existing support systems
 - Certain additional costs of living in lower-risk areas (e.g. higher property taxes)



CDBG-MIT Webinar Series



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Past Webinars:

- CDBG-MIT Federal Register Notice (September 3, 2019)
<https://www.hudexchange.info/trainings/courses/cdbg-mit-federal-register-notice-webinar/>
- Conducting a Mitigation Needs Assessment for CDBG-MIT (October 10, 2019)
<https://www.hudexchange.info/trainings/courses/conducting-a-mitigation-needs-assessment-for-cdbg-mit-webinar/>
- Public Participation & Citizen Action Group - Requirements & Best Practices (October 30, 2019) Materials being posted shortly



CDBG-MIT Webinar Series

Upcoming Webinars:

- Thursday, November 14 at 3:00 PM: FEMA BCA Toolkit Demo w/FEMA
- Wednesday, November 20 at 3:00 PM: Best Practices for Transformative Mitigation Projects



Questions?



Contact Information

- Questions and information requests can be sent to: CDBGMIT@hud.gov

