CDBG-MIT Webinar Series: Buyout Program Guidance & Best Practices, 11/7/19

Jen Carpenter: All right, thanks everyone for joining us today. We are excited to bring you this webinar on buyouts and including both CDBG-DR and CDGB-MIT for this webinar since the requirements are relatively similar for those two programs this time.

So we'll be covering both. I'm Jen Carpenter. I'm the assistant director of policy for the disaster recovery and special issues division and I will turn it over to my colleague at ICF to introduce herself.

Brandy Bones: Thank you, Jen. Hello, everyone. My name is Brandy Bones and I am with ICF and I'll be co-presenting the buyout webinar with Jen.

So the objectives of our webinar for the next 90 minutes are to explain and provide an overview of exactly what a buyout program is and how it can assist your communities with long time recovery and mitigation efforts.

We're also going to provide some very specific guidance on how to interpret and apply the Federal Register notes requirements as they relate to buyouts from both the 2017 and CDBG-MIT Federal Register notice including some interpretation related to other crosscutting federal requirements such as URA.

We also want to walk through how to operationalize some of those requirements and provide some best practices for implementing a successful buyout program based on experiences with past CDBG-DR funded buyout programs from across the country.

So our agenda will follow this schema will provide a quick overview of what a buyout program is so everyone – for those of you where this concept may be new can understand what exactly is involved with the buyout program and how it works within CDBG-DR and mitigation funding.

Then we'll do a deep dive into the rules and requirements covering national objectives of which there are some particular ones that apply to the buyout program specifically. We'll talk through the specific requirements from the notices and then cover federal cost-cutting requirements.

Then we'll wrap up with a detailed conversation of some of the design and implementation practices that you can bring to bear in your communities and then we'll wrap up with question and answers.

As we said in the beginning, if you have questions during the webinar, please go ahead and enter them in the Q&A box and we will then review them at the end of the presentation. We do have a lot of content to cover today, so for any reason we don't get through all the questions, we will certainly be able to follow up with you to get you answers.

So let's start with an overview of what exactly a buyout program is. Buyout programs essentially target areas for acquisition to reduce future disaster impacts and ultimately create public spaces that can also not only act as public parks and green spaces for community enjoyment, but also act as natural barriers for future disasters.

The features that really distinguish a buyout program from what you would think of a traditional acquisition program, particularly in the context of HUD CDBG-DR is, number one, the valuation methodology and then two, the end use of the property.

So for a buyout program, you can actually choose to pay the current post-disaster fair market value or use the post-storm value of the properties that you are acquiring. Main requirement there is that you just have to consistently apply that throughout your program.

So you can't use one methodology for one area and another methodology for another. In addition, with the buyout program, you can also provide housing incentives to encourage participation and really make it feasible for those that may not otherwise be receiving enough proceeds to actually participate in the program.

And then the second piece that we said that really differentiates a buyout program from an acquisition program is the end use of the property. So again, the primary purpose is to reduce risk and with acquisitions, the primary purpose is often resilient redevelopment where you may have a co-benefit related to risk reduction, but that's not the primary purpose.

Grantees in particular really need to be careful in understanding when they're implementing a buyout program versus an acquisition and be careful about how they talk about acquisition in their program documents, because, for example, if a grantee indicates that the purpose of the acquisition is to reduce disaster risk, then the buyout restrictions on redevelopment will kick in.

So you need to be very clear about that for the purpose of non-buyout acquisition is something other than risk reduction. Again, with the end use of the property, you really are not allowed to redevelop it at all and you're maintaining it as greenspace in perpetude.

Buyouts can be located in two different areas and this is a new development with the 2017 [inaudible] Federal Register notice and the mitigation notice, so I also located in either a floodway or the 100-year flood plain or what is defined as a disaster risk reduction area.

That disaster risk reduction area has to meet a couple of criteria in order to be defined and used for buyout programs. Number one, the hazard must have been caused or exacerbated by the presidentially declared disaster for which the grantee is receiving it's CDBG-DR or MIT allocation.

Two, the hazard must be a civil environmental threat to the safety and wellbeing of program beneficiaries using the latest data and science such as FEMA repetitive flood loss data and then the third criteria is that the disaster risk reduction area must be clearly delineated so that HUD and the public know exactly where the properties are located within the designated area.

The way that you ultimately get to that and show that you're meeting all three of those criteria is to define your disaster risk reduction area is defining it in your action plan and then in your policies and procedures for your buyout program.

So with this new concept of disaster risk reduction areas, previously we really were doing buyout programs primarily to deal with flooding and storm events and deal with repetitive flood loss – repetitive loss properties.

Now, with disaster risk reduction areas, we can actually use buyouts to deal with other hazard risks, not just flooding. So you can now use it for things like fires and for mitigating against future volcano events and so this is different.

You'll actually see throughout the presentation, we'll use the term pre-storm value, but if in your situation you're doing a buyout program that isn't dealing with flooding, it actually may be dealing with another hazard risk and that's what the disaster risk reduction area allows.

So for a buyout program, you must be acquiring real property and that is usually typically defined by how your state laws are mandated. So, you know, one of the things that often comes up with buyout programs, for example, are mobile homes.

And if the state that you're residing in doesn't, for example, consider mobile homes real property, which is often the case, they're not eligible for a buyout in this context. There's often – there's other ways using CDBG-DR and mitigation dollars to use these types of properties out of harm's way.

There's just going to be through a buyout mechanism. Like I said, basically, with the buyout program, what you're trying to do is get an entire area out of harm's way into lower risk areas. So once the properties are acquired, the structures that are there are demolished and the resultant property and buyout area is created as a park or open space and may also serve as a flood storage or overflow area.

Any structure that you may put on has to be approved by the local flood plain administrator. This is a very effective mitigation strategy when you have communities that have endured multiple disasters.

They're likely to experience future disasters and they're going to continue to be in harm's way and other mitigation efforts aren't going to really help protect them from future hazard risks.

So here we outline a typical buyout program process flow. Of course your community, there's going to be a lot more different details depending on how you ultimately administer it. The first step is working with your local jurisdiction to identify properties in repetitive flood loss areas or in your disaster risk reduction area that you've defined.

So whether you're a state or a local jurisdiction that's implementing the program, because you have flexibility to decide how you administer it in that way, the state or the locality is going to have to work with the municipality in which the high risk areas are falling in to, to begin to understand their priority buyout areas and properties.

There could have been many conversations that have already happened to date about where buyout areas occur and since they're ultimately going to be the entity that is going to be removing these properties from productive use, it's important to involve them very early on in the conversation and often cases they're also the entity that's going to be responsible for monitoring and maintaining the properties as open space.

You also want to engage them early on to get buy-in on that front. After you've kind of started that local engagement strategy, you want to identify the acquiring agency and who is going to ultimately be responsible for those maintenance.

In some areas you may have a land trust that's very well positioned to take ownership of the property and at that point you also want to see whether – what URA requirements are going to be triggered, which we'll get into a lot more detail with what Jen's going to cover when we go over the specific URA requirements depending on whether you're administering a voluntary or involuntary buyout program.

Then the next step is going to be determining your award structures. So we talked about this. One of the differentiating aspects of what makes something a buyout program is evaluation methodology.

So you need to decide as a community administering a buyout program whether it would be the pre or post-storm value and then also, and this can also be highly dependent on the demographics of the communities you're going to be working in whether you're going to offer additional incentive to help people relocate, because you realize that the proceeds they're going to get may not be enough to incentivize their involvement in a buyout program.

Then if there are tenants that are actually located in the buyout areas and you're requiring residential properties in particular, you're going to have to determine the relocation of benefits. In this case, because the property is being permanently taken out of use and there's going to be no redevelopment.

It can trigger permanent relocation under uniform relocation act requirements. Then really, after all of that has been set up and kind of the framework for your overall program design, you start to get the public involved and give them an understanding of how the program is going to work, what they can expect as next steps.

If there is interest in the program, if so, how much interest and figure out working with community leaders what are going to be the benefits for the community? What are some of the risks?

What level of engagement is needed to really make this buyout program worthwhile for the community and how are they going to deal with the resultant impacts of the loss of those properties in their community?

Then [inaudible] program launches and we begin to accept applications, appraise the properties based on evaluation methodology you've decided for your buyout programs. We do have a duplication of benefits check that does apply, as it does with all CDBG-DR programs, which Jen will get into more detail.

Then ultimately you approve the applications and purchase the property and whoever that is holding – the ultimate owner will be, demolishes the structures and then transfer the title to the government or if you have a land trust to hold in perpetuity as open space.

The way that you make sure that the space is maintained as green space in perpetuity is you often record a deed restriction or covenant that [inaudible].

That's typical buyout program process flow at a very high level and toward the end of the webinar, we'll get into some of the details and best practices around working through each of these steps.

So with that overview, some of the really great benefits of a buyout program is that ultimately you, really long term, are saving money for your community in a lot of cases. You're moving people out of harm's way.

Buyout programs are incredibly effective vehicles, particularly for more vulnerable populations that otherwise cannot afford to relocate. Because, with the buyout program, you can pay higher than what the post-storm fair market value is, you can provide financially feasible solutions for lower income households to move to lower risk areas when otherwise they may not have any other alternatives.

From a [inaudible] infrastructure perspective, you're often restoring the natural function of the flood plain, which can have co-benefits of reducing risk and depending on the project, some – it can actually help reduce flooding risks or associate other hazard risks to surrounding built environment by creating those natural barriers.

Since buyout programs actually are in the community, point in the community rating system under FEMA, it also potentially can benefit the rest of the community by lowering their flood insurance rates.

Then again, ultimately, because you're maintaining the property as green space in perpetuity, you're providing additional green space and recreational space for the community long term.

That said, there are definitely a lot of challenges of a buyout program. Here we've listed a few, which we will revisit when we go through toward the end of the webinar again on design and implementation of some of the best practices.

I think the key to remember with buyout programs is that they need to be thoughtfully planned, designed and implemented and that you have to think long term about how it's going to work for the community because in addition to, on the front end, trying to get participation, you also have to think for the long term in the community how they're going to be impacted by potential tax loss.

How are they going to afford the long-term operations and maintenance? So again, we'll revisit these challenges and some ways to work through them when you're implementing and designing a buyout program.

Now I'm going to turn it back over to Jen to cover the CDBG-DR and mitigation rules and requirements.

Jen Carpenter: All right, thanks Brandy. Let's jump into the exciting requirements. So we want to try to focus a little bit and identify where CDBG-MIT is different than CDBG-DR. So this is one place where it is quite a bit different.

So in CDBG-DR, most of you know that you have to tie it back to the event and again, I think that we – HUD, we will get better about choosing this, the verbiage around storms, because we know we've got wild fires happening in California and other types of disaster events.

They're not all storm related, so we will get there, I promise. We have to tie back to the disaster event in DR and make sure you're working in the most impacted and distressed areas. Those are the two big requirements on DR.

Then on the mitigation side, because we removed the tieback requirement, instead we're now mitigating its future risk. Your buyouts do have to meet the mitigation definition from the CDBG-MIT notice.

So you have to show how your buyout program's increasing resilience to disasters or – and reducing or eliminating long-term risk of loss of life, injury, damage and loss of property and suffering and hardship by lessening the impact of a future disaster. Again, we still have that most impacted and distressed areas requirement.

Then we also have requirements around who the eligible applicants are and in this case, for a buyout program, we're really just talking about the owners of eligible property types. Just keep in mind there's not really a restriction on that as long as, as Brandy mentioned, it's real property.

That can be residential, commercial, vacant properties. I also want to point out something that didn't make it in the slide, but I think it's important to remember. We have restrictions on some notices around second homes and I would encourage you, if I have grantees from different disaster areas listening, you want to go look in your notice.

Do a quick word search for second homes and see what it says. I can tell you for 2017 disasters and for CDBG-MIT, you can buy out second homes. Those second homes in those notices are defined, so make sure you're looking – you're looking at two things.

You're clarifying that you can buy out a second home and you're also double checking on the definition of a second home, because those two things have changed throughout the evolution of our notices.

Even to the extent that if you're a 2016 disaster recipient and you are subject to the November 2016 notice, that notice actually does not allow you to buy out second homes. So it's something you want to make sure you're looking, go back to your notice, do a word search.

Find second homes and see if you can buy out those properties. Across the board, we do not allow rehab assistance or housing incentives to go to second homes, but that buyout allowability is different in notices.

So make sure you're checking that out. Again, buyouts are allowable as an acquisition activity. We don't have a buyout eligible activity. It is just acquisition is the eligible activity. Then the final disposition and end use has to comply with your Federal Register notice. Again, just always go back and check. For the most part, all of them are required to keep that permanent open space. You have to have that through a covenant or a deed restriction.

There are limits on what can even go back on the land, if anything, and you can have – once you do a CDBG-DR or MIT buyout, no public assistance for that property for future disasters, so keep that in mind.

Again, and Brandy touched on this, but I just want to keep bringing it up because it is really important and think about this in your policies and procedures and how you're talking about a buyout.

If you're going to have a buyout program and then an acquisition for redevelopment programs, you just want to make sure the key factor in determining whether your acquisition is a buyout is whether that the intent of that purpose is to reduce risk of property damage in a flood plain or disaster risk reduction area.

So you know, that's your definition of a buyout. Make sure that's in your policies and procedures and then make sure you're following that. So we're going to go through the national objectives. These are spelled out pretty clearly in the notices, but I think it's worth noting here.

I think a lot of grantees sort of assume that the buyouts meet the housing national objective, but it is a little more complicated and so I just want to make sure that we're going through this and grantees are really thinking about, okay, am I actually following these steps to make sure I'm meeting this national objective?

So it's any activity that involves acquisition and/or rehab of a property to provide housing, so that's really the key. You're providing or improving on housing. So when you're doing a buyout, that's not really what we're doing, right?

We're doing an acquisition. So in order to meet this national objective, the key is to pair your buyout award with another eligible activity that will help the homeowners secure housing. So usually that's home ownership assistance. Maybe it's a down payment assistance. Maybe it's closing costs. Whatever it is that will help that recipient secure housing, that's how you can meet your housing national objective and then you've tracked that person.

You know where that person ended up and they ended up in a housing unit and so you can claim that national objective assuming they're income qualified.

Then we also have an area benefit and this one you just have to make sure you're defining the service area based on what the end use is. Sometimes grantees like to sort of drop a flag in where their buyout is and say, okay, that's an area benefit.

But make sure you're defining the service area. So who is actually benefiting from this activity? What area is benefitting? Once you've defined that area and that, yes, the residents in that area are benefitting.

The area is primarily residential and 51 percent or more of the persons in that area are LMI. That's how you can meet an area benefit activity – or national objective, I'm sorry.

So then we have limited clientele. That's an easy one. If you limit your buyout program only to households that qualify as low and moderate income, that's how you can do – that's how you meet that national objective.

Again, you've got to use the pre-disaster evaluation, so they're getting a benefit. The urgent need national objective, if you're offering buyout or housing incentive to households that are not LMI, then you always have your urgent need national objective.

Most of the time we offer a waiver in your Federal Register notice for sort of a low dock urgent need. You just want to make sure you're meeting your overall benefit requirement, whatever those are in the notice; whether that's 70 percent or if it's been lowered. Make sure you're meeting that if you're going to use your urgent need national objective.

Then starting in, I'm going to say August of 2018, I think, 2018? We introduced these new national objectives. So as I went through those national objectives in the table in the last slide, maybe you are seeing that it's a little more complicated to meet the national objective than maybe people think.

So we wanted to give grantees a little more flexibility, allow you guys to get credit when you are buying out low- and moderate-income households in a buyout program. So we added these national objectives.

The LMI buyout national objective, LMB. So when you use DR funds to buy a property, it's owned by an LMI household and the award amount, which would include optional relocation, is greater than the post-disaster value.

So again, if you're paying them more than the fair market value, then they're getting more than they would on the open market. So they're getting a benefit from those funds. You can count that as an LMB.

It does count towards your overall benefit requirement and with this case, you do not have to track that homeowner. As I mentioned with the housing national objective, you have to track them, because that's about securing housing.

In this case, this is meeting a national objective with the buyout award as long as it's post-disaster value. Then for the housing incentives, just to try to clear this up a little bit, there's basically three ways that you could meet this national objective.

If you have an incentive, housing incentive program that's tied to a voluntary buyout of housing owned by a qualified LMI household and the housing incentive is to incentivize that household to move outside of the affected flood plain or to a lower risk area, then you can meet that national objective.

It's the incentive that pushes you over fair market value is the benefit here, right? Because [inaudible] if it's just fair market value, what they'd get on the open market, that's not a benefit, but when the housing incentive pushes you over that, that's where the benefit comes in.

That's how you meet a national objective. In this case, you do have to confirm that they're moving to a lower risk area, because that's part of their requirement.

The second bullet, when you're doing a housing incentive program tied to a voluntary acquisition, so this is not a buyout program. We're talking about acquisition for redevelopment here.

So if you have a housing incentive tied to a voluntary acquisition, it's owned by a qualified household, if the housing incentive is for the purpose of moving outside a flood plain or to a lower risk area, so you've got to incentivize that household to move and that's why you're offering this housing incentive, you can meet it in that case too.

Again, you do have to track them to make sure they ended up in the lower risk area or outside the flood plain. Then the third case is when it's just a housing incentive.

So you can offer housing incentives without tying them to another activity and in this case, the incentive would be for the purpose – has to be for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

We really see this, as Brandy mentioned earlier, the problem with buyouts and mobile homes. If your state treats mobile homes – does not treat mobile homes as real property, they are not eligible for a buyout.

This is really how you can structure a program with the same result, it's just not a buyout and you would offer them an incentive that they could use to purchase a mobile home in a lower risk area outside of a flood plain or whatever it is.

So it's just one of the things and you can meet this LMI, LMHI national objective and it counts towards your overall benefit.

All right, so now we're going to kind of jump into URA. I will just caveat all of this by telling you I am not a URA expert. These are the regs. I can read those and I can also provide some clarity about some of the clarifying language we put in the CDBG-MIT notice.

I'm going to go over that. If you have questions about this, let us know. Put them in the Q&A box and we will follow up with you if we need a URA specialist to answer it. But this stuff is really important and I just want to make sure grantees are following these steps, making sure they're doing this analysis before they jump into their buyout programs.

This is a big one. This regulation, 49 CFR 24, this is a four-part test. The agencies that have eminent domain authority need to consider before they start a buyout. You've got to go through this four-part test to see if your buyout program is truly voluntary, right? We don't get to just announce this is a voluntary buyout program and that's all I need to do, because there are some triggers here that you need to know about. This reg is very clearly defined.

This four-part test, you need to make sure you're going through it. Does my buyout program meet the voluntary test? So the first one is no specific site is needed and any of several properties could be acquired for the project purposes.

The property is not part of an intended plan or designated project area where other projects will be acquired within specific time limits. The agency informs the owner in writing of the property's market value 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.

So those are the four parts you have to meet. Again, if there are tenants displaced, tenants are provided relocation assistance. Then we're going to – I'll go back to this slide.

We're going to break down, in our mitigation notice, we took the second bullet and really kind of clarified what that means in a buyout context. So we'll hit that another slide, but let's go through this one.

If your agency does not have eminent domain authority, then this is the reg that applies to you and it's simply the agency notifying the owner in writing of the property's market value and that they notify the owner that they will not acquire the property if an amicable settlement cannot be reached.

Again, if you're displacing tenants, the tenants are provided relocation assistance. So here's the clarification in this CDBG-MIT notice. This is a clarification for the reg, so it applies. It doesn't just apply to CDBG-MIT.

This is us trying to clarify some questions we've had across DR and just for reference, and I will put this on the slides that get posted, but if you're looking for where this is in the CDBG-MIT notice, it's page 45,865. That's 4-5-8-6-5 and it's in the middle column of the notice.

You can read this there, but we've put it verbatim on the slide. It's just a way of us clarifying what is an intended, planned or designated project area and what would a buyout meet that definition and so that's not be a voluntary.

So 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 frame as determined by the grantee or acquiring entity for the project to move forward.

I'm just going to read this and then go to the next slide and then try to sort of talk it through. Also, we're moving forward with a project does not depend upon acquiring specific sites within those time frames for a clearly defined end use.

Let's go to the clarification. This criteria is satisfied if a broad buyout eligibility area is identified by the need to reduce risk, but no specific property must be acquired.

So if you're doing a buyout area and you have defined that area in your action plan or in your policies and procedures, let's say you're doing a disaster risk reduction area, so you have to make sure that that area is clearly defined.

As long as no specific property has to be acquired and as long as you don't have a clearly defined end use, and by that, we mean we're talking about something more specific than the categories of open space, recreation or flood plain and what land's management that are in our notice for what those end use has to be.

So if your defined end use is more specific than those categories, then you have an issue with moving to involuntary. So in most cases, we say, and Brandy mentioned this too, you know, it's not ideal to have a checkerboard buyout, right?

The whole point is to get those houses removed and out of harm's way, to get the people out of harm's way, but it does happen and we've seen successful buyout programs that not everyone has accepted the buyout award.

So that's the kind of thing we're talking about. If you are not forcing people, if you have not identified specific properties, like if we don't get these properties, we're not doing the buyout.

If that kind of stuff is not in your policies and procedures, you have met the test for a voluntary buyout in this part of the test. Then if your end use is just open space or recreation or flood plain and wetlands management, that is not a clearly defined end use.

So you just want to go look at this clarification. Make sure your policies and procedures are in line with that and that you're following that and then for this one part of the test, you will be in the voluntary buyout bucket.

So these are just applicable laws and regulations pointing grantees to some of these we've gone over, just so it's here as a resource for you. Then specifically on the URA side, again, not a URA expert, but this is kind of the basics.

So remember that if there are tenants in your buyout area, permanent and involuntary relocation can be triggered if they were living in one of the units in your buyout area. If the tenant is living in a housing unit at the time of the storm, there's some things to consider, right?

So we have, in our notices, in the past, offered 414 waiver. So you should look at your notice to see if there is a waiver for that requirement and how it is dated. We do require if you want to take advantage of that waiver, you have to identify that in your policies and procedures, so it's clear.

Again, this is all if you're moving on the program within one year of the disaster event. So a lot of the cases that we're dealing with now, it has been over a year and you don't have to worry about this much for our most recent grantees.

Usually, by the time you are implementing a program, it's been well over a year. But if you're within that one-year limit, you want to look at 414, look at the waiver, if you've been offered a waiver in your notice, make sure, if you want to take advantage of it, you are identifying that in your notice.

Then there's a waiver, again, check out your notice, but we usually do – we modify the one for one replacement requirement when the housing units be demolished meets grantee's definition of not suitable for rehab, you have to define not suitable for rehab in your action plan.

You want to make sure you're doing that and you're sticking to that. This is really about when you're purchasing these lower income housing units and that's established by the fee appraiser who makes a determination if that unit was rented on the open market, what would the owner charge in rent?

That's based on market factors typically available to an appraiser who can identify the market rent. So you want to see if you have units that meet that definition. You do have to separately track these units and then again check the definition.

If they don't meet the definition as you've defined not suitable for rehab, you must replace the affordable unit. So again, look at your notice for these waivers. Make sure you're following them as they're written in your notice.

All right, so let's talk a little about duplication of benefits. As we've mentioned, if you're just paying folks the fair market value of their property, we don't consider that a benefit. If they can get that same price out in the open market, then you don't really have a DOB to be triggered because they're not really getting any benefit from you, because they could get that price on the open market.

Again, if you're using post-disaster valuation and offering relocation assistance, that's a different thing and you should revisit your DOB analysis. But for most programs who will be offering pre-disaster value, which is going to be more than your fair market value, those excess funds over fair market value are considered as [inaudible] to the seller, making them a recipient of DR assistance.

So that means you have to do your DOB analysis and you should be documenting all other assistance if received and making sure that that assistance that was received was used for the intended use of the funds.

So I think a lot of people think, okay, duplication of benefits is about fund for the same purpose. Well, I'm buying out a home, so they would not have gotten a buyout prior, so all the other funds are for a different purpose.

I don't have to count them. Remember in our duplication of benefits analysis and in our notices, we talk about necessary and reasonable costs and that we need to acknowledge. You need to do the analysis, acknowledge the other funding they received and we need to make sure it was used for the intended use.

Now, you can do that through an inspection and most of our grantees do that. You can also, homeowners can provide their receipts and documentation to show you that, yes, I got this $10,000 in a repair award from FEMA and I did use it to repair my home, again, either through an inspection or through documentation.

As we've mentioned, this choice on valuation methods, grantees have to identify which one they're going to use and they have to apply it consistently. So we can't pick and choose which evaluation method you're going to use.

You have to either decide, okay, I'm doing the post-disaster value or I'm going to do fair market value. I'm going to turn it over to Brandy to talk about design and implementation.

Brandy Bones: Great, can you hear me? Good, okay. Thank you, Jen. So yeah, now we're going to dig in to, as we said, design and implementation. So take a little bit deeper dive into what we started with when we provided an overview of the buyout program and basics; then taken together with the CDBG-DR and mitigation rules and requirements to talk more thoroughly about how to go about really designing an impactful and then implanting a successful buyout program.

So again, one of the first, most fundamental things that you need to do when thinking about [inaudible] up a buyout program is a local engagement strategy.

This concerns your county or your municipality that you're going to have to work with throughout the project, throughout the program in which the properties fall and for any given buyout program, you may have multiple buyout areas.

So you may be dealing with multiple counties or municipalities and when you're working with them, there's a lot of considerations for them. They are going to have questions about the local long-term tax implication.

How is the demolition and the conversion of property and open space going to happen?

Who is going to maintain and monitor the properties long term to ensure that they're staying as open space and are maintained so that they are – can be useable by the community and then there's also a conversation to be had about the lowered recovery costs that they can realize by removing these properties from high risk areas, which we'll talk about in a little bit more detail.

Another really important part of the prong of an engagement strategy is property owners themselves.

So in a lot of cases, some of the most successful buyout programs are those where the conversations about buyouts have been occurring for a long time, or again, where they've been hit by multiple disasters and the conversations about wanting to leave have already started to occur.

So and if those conversations haven't started to occur, that's where you need to really do one by one, household by household outreach to see what the interest is to leave these high-risk areas and then if there is interest, what assistance and support do they need?

If not, why is there not and can some of that assistance and support be provided that people will become interested in such an opportunity that a buyout program can provide.

Then finally, it's not only going to be a question for owners that are being purchased and bought out is also where are they going to go? So that's where the local engagement strategy really has to think long term, both in terms of long-term maintenance of the property, but also what's going to happen to those that you're working with?

When you're meeting with local governments and perspective applicants, it's important to come prepared with information about exactly all of those questions and how the program itself will work.

What are going to be the roles and responsibilities of both them as well as the grantee administering the program itself throughout the process and if you can come with material that really answer those questions and anticipate what their questions will be, you can get started on the right foot.

Again, for example, with buyouts, property owners, owners that are in the buyout areas, one of their first questions and concerns will likely be how much money are they going to receive from the proceeds of the sale?

Again, particularly for lower income populations, this will be very front-of-mind. So if a property owner still has an existing mortgage on the home, that of course will come out of the proceeds from the sale.

So what exactly incentives need to be paid to this in the extent for them to be able to resettle and relocate and working on the front end as part of your engagement strategy to sort through those questions is really critical. We talked about determining buyout areas. Again, with the CDBG-DR 2017 notice and the CDBG mitigation notice, you have a lot more flexibility as a CDBG-DR grantee to take into account a lot more different disaster variables in determining where you want to do buyouts.

So it's not just about where flood plain or 100-year flood plain is. It can be a conjunction of a lot of other variables, including things related to, for example, if you have a fire event where – repetitive fire events, that could be a disaster risk reduction area. You can kind of look at the data that you have to kind of come together to figure out what the buyout area is.

It's often advisable to get a hands on your hazard mitigation grant program, FEMA program, to understand if there have been past interests in HMGT funding for what they would call voluntary acquisition and from that data, you can begin to identify where there are already communities that have expressed interest in the past for buyout, but there may not have been available funding. Those are where you're likely to have more success and can be higher on your list in determining buyout areas where you're going to have higher levels of participation. Another key thing to consider is having counseling and legal aid. So buyout programs are unique.

They're not your typical homeowner repair, rehabilitation or reconstruction programs where homeowners are going to go back to their existing homes and they are not home ownership assistance programs either where typically your applicants are already homeowners.

So the process of moving carries significant cost in and of itself and then there may be different costs associated with moving into a new home that's in a lower risk area, such as higher property taxes and some of these costs may not be offset by lower flood insurance costs or even lower utility costs.

This is where housing counseling can really help with a buyout program in helping applicants who are going to be dealing with a different set of issues than other typical housing recovery programs you may have experienced administering will really come in handy.

That is something to consider and housing counselors has a toolbox that they can tap to also help with some financial considerations where a concern may be homeowners that are in buyout areas, whether they should relocate and remain homeowners and if that's the appropriate next step for them in their relocation plan.

The other aspect is legal aid. So in some of these buyout property areas that you may be working, there may be title issues and you can work with local legal aid agencies to help deal with cloudy title issues, because of course you're going to have to establish clear title before the local government or other entity can take title to the land.

Buyout programs also can offer some workforce development opportunities, so there's some considerations. When you're doing demolition and clearance activities, this actually can provide an opportunity for local workforce development opportunities.

They tend to be easier to train on those types of activities, so you look into opportunities to do that. You can identify partners who can connect residents with additional workforce opportunities when they're actually faced with relocating.

Again, you're not bringing these homeowners back to their homes once they've been purchased, connecting them with employment opportunities can be a consideration.

Then when you are also thinking about the relocation or resettlement of communities that are in buyout areas, you want to identify housing in an area that is also not going to potentially disrupt their current employment situation to the extent possible and if not, then connect them with workforce development opportunities where they can find employment elsewhere.

Again, kind of can very holistically what are going to be all of the considerations that are going to come into play to applicants who are participating in buyout programs that again are not often typical in other housing recovery programs where people are going back to where they lived previously.

So I touched on disposition strategies a little bit in the beginning when we went through the process flow and actually there was a really good question asked that I'm going to clarify now about that seemed to be a little bit tension between what was in the property flow and then what I said later.

So in typically buyout programs, a lot of cases a local municipality or the county or Louisiana parish will take title to the property and maintain it long term. That's just one option. Another disposition strategy is actually to convey the property to a nonprofit such as a conservation land trust.

So I just want to clarify that. It's not only allowable to transfer the property to a government. You can also transfer it to a nonprofit.

In some cases, depending on the buyout area and the level of participation you get, there may be some scenarios where it's appropriate to convey the property to a homeowner that's remaining, during a voluntary buyout program, and provide it as side yards and then just put in place an agreement that they can't redevelop the land.

Under any of these disposition strategies, the [inaudible] applies around the long-term reuse of the property. That is that there cannot be any redevelopment on the land and in order to ensure that, you should report a deed restriction or covenant running with the land to ensure that no redevelopment happens and then there should be some monitoring to ensure that takes place.

You definitely have multiple disposition strategies and multiple types of entities that can take long-term title to the property.

In some communities, there's been successful coupling of FEMA hazard mitigation grant program funding with CDBG-DR and hopefully now CDBG-MIT funded buyout programs.

So hazard mitigation grant program funding is provided to states and then localities can apply for voluntary acquisition funding to really essentially do the same thing that HUD CDBG-DR funded buyout programs do, which is acquire the property and maintain it as green space in perpetuity to take high risk property out of productive use.

HMGP requires a 25 percent local match for each disaster and so you can consider coupling your HMGP program with CDBG-DR funds and use CDBG-DR or mitigation funding as a non-federal cost share requirement under HMGP.

You can also use CDBG-DR or CDBG-MIT assistance for housing incentives that aren't allowed under FEMA HMGP. So you can have a FEMA HMGP funded program that also gets coupled with housing incentives so that you can have more participation from homeowners who otherwise couldn't relocate with just the proceeds from the FEMA HMGP program.

As with all use of CDBG-DR or CDBG-MIT funding for match, when you do that, it automatically triggers that the program overall is now a HUD funded program and the HUD requirements and applicable cross cutting requirements do apply.

So you're going to have to meet both FEMA and HUD requirements for the program. So the timeline, and I think this is conveyed a bit when we were looking at the process flow that I think maybe the fourth or fifth box is actually when you get to application launch with the buyout program.

So the timeline really involved a lot of upfront engagement and communication and agreement with the localities in which the buyout areas are and with the property owners where you're trying to do buyouts.

So these programs, keep in mind, do require in depth planning, data collection, engagement outreach and a lot of education to understand what the programs are and are not.

In some communities, it's going to be a very sensitive topic to talk about buyouts and so it's really important to be crystal clear up front about what the program is and is not so that you can have positive interaction with the communities and have a good dialogue to get to understanding about why someone may want to participate.

This process can take months, particularly if you're working in buyout areas where this is something new to them and not something the community has considered in the past.

Property owners themselves, again, it's different than housing recovery programs. This is a decision to leave their homes or leave their businesses if you're acquiring commercial properties.

Some property owners may be readily able to make that decision very quickly and others will take more time and case management to get there. We talked a little bit about clearing cloudy titles and succession issues.

Again, in some areas that's going to be more complicated than others and that can take some time to clear up. As with all CDBG-DR and mitigation funded activities, you're going to have the environmental review.

You should get that process kicked off from the beginning and this is an acquisition activity, obviously though with the end use being reduction of use. So it's just like any other real property sale with a closing and transfer of property from the homeowner or commercial property owner to the long-term holding entity.

To revisit some of the challenges that we talked about in the beginning, the loss of the tax base can be accurate, but there's a couple ways to talk about that with communities where buyout areas are located.

One of them is that really every time residents or businesses are flooded or damaged by a disaster, it really has an economic impact in and of itself and disrupts the local economy and demands additional public resources for responding and recovering from that disaster event, which in and of itself has impacts on local government's short and long term budget and operations.

So when talking to local governments about it and even taking – looking and then analyzing with local governments, you can work with them to actually show the long-term potential positive economic impacts of moving properties out of high-risk areas to actually save funding and resources in the long term.

Then another way to deal with the lost tax base issue, and it goes along with the relocation and resettlement challenge as well that you face with residents and even sometimes commercial business owners as well, is if you can identify lower risk properties that are located in the community and can redevelop that into housing and commercial quarters that those property owners can relocate to, they really aren't going to realize the loss in tax base.

That, of course, definitely requires more resources and definitely more planning up front but is a possibility if you do have sufficient planning done and sufficient funding to do that. The increase in maintenance and monitoring costs, again, in some communities you may have a land trust or nonprofit that can take that on.

Also, in considering and planning for the long-term use of that property as a public park, you can do certain things like make sure that you're returning it to really its natural state and maybe native grasslands and other things that decrease the long-term maintenance and the regular maintenance that [inaudible] properties.

Another thing is definitely less than 100 percent participation. There's almost no buyout program that I'm aware of, and Jen, you can chime in, that voluntarily has had 100 percent participation. There are probably, I'm sure, some examples, but that is difficult.

So structuring the incentives up front in a way that makes it possible for all property owners to even consider participating is a first step towards increasing participation, but you with the grantee and working with the community will definitely have to decide what is enough participation to make the buyout program still something that you want to move forward with.

Then again, I think we've touched on a lot of the things that residents are going to have to consider. They're leaving their communities, their support system and they're going to have to consider the financial implications of that decision. So things like legal aid and housing counseling and really thoughtful case management throughout the process is critical to overcoming some of those challenges.

So with that, I am going to turn it back over to Jen to talk about the rest of the webinar series and then we're going to spend the rest of the time taking questions.

Jen Carpenter: All right, thanks, Brandy. So we just wanted to – if you're new to the CDBG-MIT webinar series, just let you know that this is our fourth webinar in this series. We've done these other three on the slide.

The slides and transcripts and recording have been posted for the first two. You can find those in the HUD Exchange and then the public participation one that we did on the 30th, I just saw some emails going back and forth. Those materials should be posted in the next day or so. It usually takes us about a week to get these slides posted and the transcripts and everything up to the HUD exchange, so we always get lots of questions about that.

So typically give us about a week and we'll get everything up there so you can go back to it and pull down the slides if you want to. Then we have two more webinars that we've announced in the series.

We might be adding a few more, but this is what we have on the schedule. Next week we'll be working with our partners at FEMA again on this webinar and they're going to be doing the FEMA BCA toolkit, a demo of that.

We'll also touch on some of the alternative requirements we have on doing a BCA. Again, for CDBG-MIT, BCAs are required for covered projects. That's why we are doing that webinar. Then the week after, we're going to do a best practices webinar and really dig into some transformative mitigation projects.

Just to get everyone a little inspired. So we've got a lot of questions in the queue. I'll see if we can grab some of them. Again, on some of these URA questions, we will note these and maybe we can do some question and answer slides and add to the end when we post the slides to follow up so everyone can see the answer.

Going to start here at the end. Someone asked is allowing CDBG-DR assistance for housing incentives only for 2017 disasters? No. I want to say it was introduced for 2015 disasters. It might have been earlier, so check your notice, but I can definitively tell you 2015, '16 and '17 disasters all have that housing incentive language. CDBG-MIT also has that language in there, so you can use those for those disasters.

All right, let's go back to the beginning of these questions. Brandy, if you want to jump in with any of the questions you have, feel free to. So someone asked, "Why would a grantee ever use the post-disaster value and not the pre? Isn't it always higher?"

So interestingly enough, we have heard of some cases, and actually I've heard of it in Missouri and I've heard of it in New York City, so it's not unique to only specific markets, that sometimes they have found some homes where the post-disaster value is actually higher than the pre-disaster value.

So it is something you want to consider. You probably do want to get those valuations. Someone asked if you need both of those numbers and I believe when the appraiser pulls the comps for the properties, usually they can do both, right?

So they can pull comps for the value today and the value a month before the storm. That's what those values are based on, so you can get both of those numbers and look at it for an area before you – if you feel like you need to rethink your evaluation. Just remember, it does have to be consistently applied, so once you determine what you're going to choose, you do have to stick with it.

Brandy Bones: Can I add some more points, Jen?

Jen Carpenter: Yes.

Brandy Bones: So one being just to go back to what Jen's portion of the presentation, also if you remember, if you do post-disaster value, duplication of benefits is naturally not an issue, which again, there might be some weird scenario where that might be a very important consideration depending on the buyout area.

I don't know when, but that's another reason to potentially think about it. Then two, I think it's definitely very wise when you're getting appraisals and shouldn't really increase costs to get both the pre and post storm value for a number of considerations, including your national objective.

But also, when you're getting appraisals, if you can also – again, this usually isn't really a cost implication of paying the fair market rent of the home, because that will apply back to your basically documentation around the one for one replacement waiver so that you can document that in case it doesn't fall into that requirement that you've got everything aligned from a documentation perspective. So some guidance on appraisals.

Jen Carpenter: Okay. And then we have a question asking, "Does the published HUD guidance on determining service areas for low mod area activities also apply to CDBG-DR and CDBG-MIT?" I would say yes.

It might be easier to, if there's specific guidance, but again, it's the same in CDBG that you have to define the service area. I think that's always like the biggest thing that folks forget to do. Define the service area and make sure you're detailing how the residents in that service area are benefiting from – in the buyout case, from the greenspace, from the whatever it is.

How are they benefitting? And make sure you've defined that clearly. So I will answer this. I was able to run this by our URA specialist really quick and she got back to me so fast so I can answer it.

Someone asked, can a locality choose to make rental properties ineligible to avoid paying URA costs? Guessing you probably already know the answer to that question. There really should not be a categorical exclusion to avoid URA or relocation costs.

Some grantees have done that and there can be open litigation because of it. So that is not something we would recommend doing and thanks to Bree Coleman, our URA specialist, for getting me that answer. I appreciate it.

Okay. Then we have some more questions about – sorry for the background noise, I apologize, about the mobile homes and purchasing those and asking specific questions about if the owner occupant of the mobile home owns the land that the mobile home sits on, even though the mobile home is considered personal property.

Again, we do have this restriction for buyouts that it does need to be real property, but you can consider purchasing the land. I would also – they ask also can you demolish the mobile home?

Yes, you can demolish it. We have grantees that are doing that and again, as we mentioned, housing incentives are a great way to offer those folks incentive to move, right? Then you can't do a buyout award for the personal property.

You could offer – set up an incentive program, set the incentive for the price of a new mobile home unit and maybe include cost to set that unit up somewhere else, out of harm's way. So it is possible to do it, just keep in mind you cannot acquire personal property.

Brandy, do you have any more of these on your side that you wanted to answer? There's another question, which you basically touched on already, but can a private property owner or can a nonprofit take ownership of a buyout property if the deed is recorded to keep it as open space?

I think you mentioned side lots and stuff, if you want to just touch on that again.

Brandy Bones: Yeah, sure. So basically, yes, that is fine. You can have other types of entities that are not government entities hold title to the property. Again, though, it just needs to be restricted as to no redevelopment on that space.

That's really the key thing. Then there's a kind of related question about like why you would need clear title. Again, no entity is going to want to acquire a property, be on the hook for its long-term maintenance and perpetuity without having free and clear title.

That's like part of that – that's why that process is very important before you take ownership from a private property owner as well.

Then there's one last question I just got asked, "Can you buy out a homeowner who decides to become a renter for their future home?" And ultimately that will, in some ways, depend on – essentially the answer is yes.

That's not really a complicating issue. For the most part, again, going back to determine design perspective and outcome perspective, you really don't want to make homeowners into renters, but in some very specific household situations, it may be appropriate that they can't maintain the long term cost of owning a home and for their personal situation, renting makes more sense. So that and with national objectives it doesn't even really matter where they end up going, so that is not an issue.

Jen Carpenter: We have another question I think would be good to answer. "Could you expand on the ability to acquire land and redevelop it? We have areas where we have affordable housing that's flood prone. The land will need to be redeveloped to be viable in the face of sea level rise."

So again, this is eligible, but it is not a buyout, right? You can do acquisition for redevelopment where the purpose is to build back more resiliently. You can do that under what the DR or with MIT funds, but that is not a buyout program, right?

So the intent of that acquisition would be to build back in a more resilient way. You would get the co-benefit of a reduction in risk, but that is not the point of a buyout. So eligible, just we're going to call it something different.

So we got a lot of questions on one for one and leasing. I will work with our URA folk to get answers on these. I think these are good questions and we will follow up. I think probably the best way to do that is we can just add some question and answers at the end of the PowerPoint before we post it.

We've also been talking about doing some guidance, so hopefully we'll be able to do that soon. I think I've hit all the questions that I think we can answer. Brandy, just any more on your end that you wanted to answer? I think we could probably get back to [inaudible].

Brandy Bones: There was one just about redevelopment and thinking about, you know, where people are going to resettle or relocate and I think again, the CDBG-DR notice for 2017 as well as the CDBG-MIT notice is really clear about where and when you can redevelop land and what the requirements are for, like, example, you can't redevelop in certain areas around the cost.

I would, again, encourage you to look back at the Federal Register notice to identify whether if you find sites that would be suitable and are lower risk for redevelopment of housing to help people relocate and stay within their community.

The guidance in the CDBG-DR and MIT notice are pretty clear about where and what rules apply to using CDBG-DR and MIT funding for that and also relocating people.

Jen Carpenter: Okay. So I think that's it and we'll follow up on the other questions we got that we didn't get to, especially the URA ones and we appreciate everyone's participation today and thanks for listening.

(END)