

# Texas General Land Office

Community Development & Revitalization

## Buyouts and Acquisition:

### Frequently Asked Questions

**Q1. What entities are eligible to receive funding from the GLO to administer the Local Buyout and Acquisition Program (the Program)?**

**A1.** Units of local government and entities with the power of eminent domain authority are eligible to receive funding and will administer the Program as subrecipients after GLO Method of Distribution (MOD) approval.

**Q2. What activities are eligible for funding in the Program:**

**A2.** The following activities are eligible under the Program:

- Buyouts;
- Acquisition;
- Relocation Assistance with buyout or acquisition activities;
- Down-payment Assistance with buyout or acquisition activities;
- Demolition with buyout or acquisition activities;
- Housing incentives
- Activities designed to relocate families outside of floodplains;
- Public service within the 15 percent cap (e.g., housing counseling, legal counseling);
- FEMA Hazard Mitigation Grant Program (HMGP) cost share.

**Q3. What is the difference between a “Buyout” and an “Acquisition”?**

**A3. While Buyouts and Acquisitions are both acquisitions of real property, the intended end use for the property is what distinguishes a “buyout” from an “acquisition”.**

**Buyouts**=to reduce risk from future flooding of properties location in a floodplain, floodway or within a Disaster Risk Reduction Area (DRRA, see definition below) by converting the property to open space, recreational, or floodplain and wetlands uses. A DRRA is an area which is located outside of floodways or floodplains that is established by the subrecipient to reducing risks from the hazard that led to its designation in accordance with the buyout requirements of the approved action plan and Federal Register Notices. The property acquired will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreation, or floodplain and wetlands management practices. An appraisal is required but the local Program can decide as a policy whether to use a pre-disaster appraisal or a post disaster appraised value.

**Acquisitions**= may use the property for redevelopment activities while ensuring resiliency and mitigating the impact of future disasters. Acquisition is the utilization of CDBG-DR Disaster funds to acquire real property. Acquisition only is typically not considered a complete activity in the Program and must be combined with another eligible use (i.e. relocation assistance). The purchase price must be consistent with applicable uniform cost principals, for post disaster Fair Market Value (FMV).

**Q4. What professional services may be procured to achieve success for the Program?**

**A4.** The following is a list of some of professional services that may need to be procured.

- Appraisers
- Case Management Providers
- Demolition Experts
- Environmental Specialists
- Inspectors
- Realtors (if assisting with relocation)
- Surveyors
- Title Company

**Q5. What are the criteria for the property to qualify for the Program?**

**A5.** Each property must meet the following qualifications listed below:

- The property must have sustained damage from the disaster event
- The property must be in a flood plain/floodway/repetitive area; or the property must be designated as a Disaster Risk Reduction Area (DRRA). The DRRA will be defined by the Subrecipient and the DRRA must satisfy two criteria. The criteria must illustrate that the DRRA area is an environmental threat to the safety and well-being of the program beneficiaries and the area must be clearly delineated and mapped so that the public may easily determine which properties are located in the Subrecipient's designed DRRA's.

**Q6. Is a property appraisal required?**

**A6.** Yes, a qualified appraiser is required to perform the appraisal. The Program shall choose the appraiser and pay the cost of the initial appraisal. The appraiser shall contact the owner to schedule and gain access to the property, if required. The local Program can decide whether to use pre or post disaster appraisals for buyouts. However, for an acquisition, the Program must use the post disaster value appraisal.

**Q7. What if the property owner disagrees with the appraiser's determination for market value?**

**A7.** If the property owner disagrees with the appraisal, the property owner may, at their expense, have a second appraisal performed. The Program shall not reimburse the owner for the second appraisal. In the event of a pre-storm disaster appraisal, the Program can determine in policy if they want to accept an independent appraisal for a third-party transaction—like a refinancing—that was done relatively close in time to the storm as an appeal.

**Q8. Is there an income qualification component to the Program?**

**A8.** Yes, in most cases, where the applicant is going to be a CDBG-DR Buyout beneficiary, they will need to meet LMI qualifications. If houses are identified as meeting the national objectives of Urgent Need or Slum and Blight, they may qualify for parts of the Program.

**Q9. Does the Duplication of Benefits review apply?**

**A9.** Yes, under the Stafford Act: Sec. 312 – Duplication of benefits (DOB), any agency administering a federal grant must ensure that their assistance does not duplicate the benefits of any other assistance. If duplicate funding is discovered, the amount of the buyout award shall be decreased.

**Q10. How can Duplication of Benefits be prevented?**

**A10.** Property flood claim damage payments can be verified by the National Flood Insurance Program and a thorough review of the applicant's information will be conducted and evaluated.

**Q11. Who is responsible for the property after the Buyout or Acquisition is completed?**

**A11.** The Local entity is responsible for the property after the buyout or acquisition is completed. For Buyouts, the property must be maintained in perpetuity for open space, recreation, wetland or flood control and limited structures may be erected. In carrying out acquisition activities, subrecipients must ensure they are in compliance with their long-term redevelopment plans, and can only redevelop if the post disaster value was used for the purchase.

**Q12. If we resell the property after acquisition, can we use the money for other programs?**

**A12.** Sales proceeds in excess of \$35,000 in one calendar year will be considered program income and have to be returned to the GLO. If property sales are a part of program design the subrecipient must report program income semi-annually.

**Q13. Are there any types of ownership that are ineligible for the Program?**

**A13.** The following types of ownership are ineligible for the Program:

- Applicants who lost ownership of their home due to foreclosure;
- Applicants who have outstanding judgments, lawsuits that would prevent the issuance of a clear title on the property.

**Q14. For the buyout program, how is a designated “Disaster Risk Reduction Area” determined?**

**A14.** Disaster Risk Reduction Area criteria:

1. The hazard must have been caused or exacerbated by the Presidentially declared disaster for with the grantee received its CDBG-DR allocation;
2. The hazard must be a predictable environmental threat to the safety and well-being of Program beneficiaries, as evidenced by the best available data and science; and
3. The Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the Disaster Risk Reduction Area.
4. In carrying out acquisition activities, the subrecipient must ensure they are in compliance with their long-term redevelopment plans.

**Q15. Is environment clearance necessary?**

**A15.** Yes, all properties must receive environmental clearance status prior to any purchase offer being made.

**Q16. What if an eligible owner dies before closing of the transactions occurs?**

**A16.** If an eligible owner dies before the transaction is closed, the application will be processed in accordance with overall program guidance. The new owners of the deceased property must satisfy eligibility requirements as captured in the Subrecipients Program Guidelines, including HUD's national objective to serve low to moderate income households, e.g. Low to Moderate Buyout (LMB).

**Q17. Can incentives be offered to increase participation in the Program?**

**A17.** Yes, incentives may, and should be offered to increase participation, such as the following;

- Down Payment Assistance Incentive
- Replacement Housing Incentive to move to Higher Opportunity areas
- Housing Incentive
  - Social Vulnerability Incentive
  - Equity Incentive

**Q18. Is a damage assessment required?**

**A18.** Yes, an assessment by a certified or licensed inspector (HQS, TREC, or similar license) is required to specifically and clearly document storm related property damage via photographic evidence and detailed narratives.

**Q19. If a homeowner has negative equity on their mortgage, can they still participate in the Program?**

**A19.** Participation in the Program requires a clear title. If a clear title cannot be obtained, then the property does not qualify for the Program.

**Q20. Who is responsible for the demolition?**

**A20.** The local Program is responsible for the demolition of improvements on the property, but it is an allowable expense under the CDBG-DR Program.

**Q21. How long do we (local governments) have to complete the Program?**

**A21.** The Program must be completed as required by the applicable Federal Register Notice.

**Q22. Are rental properties eligible?**

**A22.** For Hurricane Harvey, the Program is limited to single family residences and vacant lots and for the 2015/16 Floods, this also includes multifamily residences, and single family rentals.

**Q23. What if houses have renters?**

**A23.** Federal law requires that when you contemplate taking federal funds (at application) that triggers the Uniform Relocation Act and provides renters with certain notices and protections. In this case, the Program will be permanent relocation and a URA policy will need to be developed.

**Q24.** If a homeowner has two parcels of land which are adjacent, and only one has a home (one being a vacant lot), can we buy them both?

**A24.** The Program can purchase both parcels of land, and they do not need to be re-platted to a single site. Purchase of land is allowed; however, it must meet the objective of the buyout program.

**Q25.** If a homeowner owns two parcels of land which are adjacent, and only one has a home (one being a vacant lot) can we purchase just the lot with the home? And are there restrictions on rebuilding on the vacant lot?

**A25.** The Program can purchase just one lot, and leave the homeowner with the second parcel of land. There are no restrictions within the HUD guidelines on the use of the funds once a home is purchased (as long as an incentive is not provided). However, the flood plain administrator for the area may have restrictions related to construction in the area.

**Q26.** If a homeowner demolished the home after the event, but applies to the buyout program, can the lot/home be purchased if they can prove the home previously existed?

**A26.** Yes, the subrecipient can purchase the home. The use of the County Appraisal District's records could be used to establish a value.

**Q27.** How does an involuntary buyout or acquisition activity work?

**A27.** Eminent Domain may only be used for a public use -- defined in Texas as ownership, use and enjoyment of the property by the State, a political subdivision of the state, or the public at large, or an entity granted the power of eminent domain under law, or the elimination of urban blight. Eminent Domain may not be used if a private benefit is conferred to a particular private party and may not be used if the primary purpose is for economic development or enhancement of tax revenues.