

# HUD RAP

## (Relocation & Acquisition Policies)



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**Q:** In a federally assisted project in which the acquisition of a homeowner-occupant's property is subject to the Subpart B acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), can HOME funds be used to assist the person to purchase replacement housing?

**A:** HOME funds may be used to assist a homeowner-occupant in purchasing a replacement home only if the federally assisted project is HOME-assisted. HOME funds may be used for mandatory and optional relocation assistance in HOME-assisted projects. Mandatory relocation assistance authorized under 24 CFR 92.206(f) includes the cost of relocation payments and other relocation assistance to persons displaced by the project. Optional relocation assistance is authorized under 24 CFR 92.353(d). Both provisions limit the availability of HOME relocation assistance to displacements or relocations resulting from HOME-assisted projects.

When an acquisition is subject to the requirements of 49 CFR part 24, subpart B (e.g., under threat of eminent domain – commonly referred to as “involuntary” acquisition), the homeowner-occupant is considered a “displaced person.” Such persons are entitled to URA relocation assistance without government program restrictions. The participating jurisdiction's HOME program resale or recapture provisions, therefore, may not be imposed on mandatory relocation assistance.

When an acquisition is carried out in accordance with 49 CFR 24.101(b)(1) or (2) (commonly referred to as “voluntary” acquisition), the homeowner-occupant is not considered a “displaced person.” In such circumstances, HOME funds may be used for optional relocation assistance under 24 CFR 92.353(d) to assist the homeowner in purchasing replacement housing. Optional relocation assistance is not homebuyer assistance under 24 CFR 92.254, subject to the affordability requirements of the HOME program, which are imposed by resale or recapture provisions. However, because the participating jurisdiction formulates and adopts optional relocation assistance pursuant to a written policy

in accordance with 24 CFR 92.353(d), the jurisdiction may choose to impose HOME affordability restrictions. (NOTE: Optional relocation assistance is a project cost of the HOME-assisted project; it is not set up in IDIS as a separate homebuyer project even if the assistance is subject to HOME affordability restrictions.)

**Q:** May a HOME homeownership unit be used as a comparable replacement dwelling for a displaced homeowner?

**A:** As with rental housing, a homeownership unit that is subject to HOME program restrictions is not considered a comparable replacement dwelling for a displaced homeowner that owned the displacement dwelling free of any encumbrances, or with an encumbrance significantly smaller in time and scope.

In a taking in which the property is that of a homeowner-occupant, the URA is clear regarding how displaced persons must be treated. A displaced homeowner is entitled to referral to a comparable replacement dwelling under law. The elements of what constitutes such a dwelling are set out at length in the URA regulations at 49 CFR 24.2(a)(6). Paragraph (vii) of section 24.2(a)(6) requires that the dwelling be “currently available to the displaced person on the private market except as provided in paragraph (a)(6)(ix) . . . .” A subsidized homeownership unit, such as a HOME homeownership unit, is not considered to be available on the private market. A HOME homeownership unit must meet the long-term affordability requirements at 24 CFR 92.254(a)(4). To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements (24 CFR 92.254(a)(5)).

The imposition of the HOME resale or recapture requirements would not only conflict with URA requirements, but also the purposes of the URA. One of the purposes of the URA (see 49 CFR 24.1(b)) is “[t]o ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. . . .” An Agency (grantee/participating jurisdiction) cannot comply with 49 CFR 24.1(b) when the displaced homeowner owned the displacement dwelling encumbrance-free, or could sell his or her home without restriction, by requiring that the replacement property be encumbered with HOME program affordability restrictions.

A HOME-assisted unit may be offered as a comparable replacement dwelling only if the displaced homeowner received government housing assistance before displacement and the displacement dwelling was subject to resale, recapture or another encumbrance similar in time and scope. After offering one or more comparable replacement dwellings, a HOME-assisted unit may be offered as a referral to other suitable replacement housing. The Agency, however, remains obligated to inform the displaced homeowner of his or her options under the URA (e.g., a replacement housing payment based on a comparable replacement dwelling free of encumbrances).