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## Administrative Law - Eligibility under the Uniform Relocation Act: Federal Mortgage Insurance and the Determination of Displaced Person

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## Recent Developments

### ADMINISTRATIVE LAW—ELIGIBILITY UNDER THE UNIFORM RELOCATION ACT: FEDERAL MORTGAGE INSURANCE AND THE DETERMINATION OF “DISPLACED PERSON”

#### I. INTRODUCTION

The passage of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA or Act)<sup>1</sup> marked Congress' attempt to “establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.”<sup>2</sup> In following this congressional mandate, the courts have construed the definitional provision of the URA, section 4601(6),<sup>3</sup> somewhat inconsistently, especially in cases involving foreclosure on federally insured mortgages.<sup>4</sup>

This note will focus on the eligibility requirements for URA benefits in connection with federally insured mortgages. Specifically, it will address the question of whether persons relocated due to the mortgage foreclosure process qualify as “displaced persons” within the meaning of section 4601(6). The various constructions of section 4601(6) by the circuits will be examined and, after a comparison of these conflicting views, a conclusion as to whether or not foreclosure on a federally insured mortgage should bring a relocated individual within the URA's definition of “displaced person” will be offered.

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1. 42 U.S.C. §§ 4601-4655 (1970). For a general discussion of the URA, see Eichenberg, *From Capitol Hill: A Uniform Relocation Act: The Price of Uniformity*, 3 URB. LAW. 480 (1971); Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 745 (1971); *Special Research Study—Relocation—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—An Empirical Study*, 26 MERCER L. REV. 1329 (1975) [hereinafter cited as *Special Research Study*]; Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U.L. REV. 552 (1976); Note, *In the Path of Progress: Federal Highway Relocation Assurances*, 82 YALE L.J. 373 (1972).

2. 42 U.S.C. § 4621 (1976). The URA is divided into three subchapters: Subchapter I includes the General Provisions, *id.* §§ 4601-4603; Subchapter II deals with Uniform Relocation Assistance, *id.* §§ 4621-4638; and Subchapter III contains the Uniform Real Property Acquisition Policy, *id.* §§ 4651-4655. This note will concentrate on the Uniform Relocation Assistance provisions. *Id.* §§ 4621-4638.

Section 4621, the declaration of policy, provides:

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

*Id.* § 4621. However, assistance conferred under the URA is often not quite as broad as this declaration of policy would suggest. See *Moorer v. HUD*, 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978). For discussion of *Moorer*, see note 71 *infra*.

3. 42 U.S.C. § 4601(6) (1976). This provision defines the term “displaced person” for the purposes of the URA. *Id.* The section is actually an entitlement provision since the operational sections of the URA confer benefits on those individuals attaining the status of a “displaced person” within the meaning of the Act. See *id.* §§ 4622-4625. For the text of § 4601(6), see note 14 *infra*.

4. Compare *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978) and *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974) with *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978). For a discussion of federally insured mortgages, see note 22 *infra*.

## II. ELIGIBILITY UNDER THE UNIFORM RELOCATION ACT

Effective as of January 2, 1971,<sup>5</sup> the URA consolidated scattered federal relocation statutes.<sup>6</sup> The Act places greater emphasis on the federal government's assumption of relocation costs than previous enactments.<sup>7</sup> Benefits conferred include payments for actual reasonable moving expenses,<sup>8</sup> compensation for direct losses of personal property as a result of relocating or discontinuing a business,<sup>9</sup> and advisory assistance.<sup>10</sup> In addition, homeowners<sup>11</sup> and tenants<sup>12</sup> are provided with special assistance in locating suitable replacement housing.<sup>13</sup> To qualify for these benefits, one must meet the statutory definition of "displaced person" contained in section 4601(6) of the URA.<sup>14</sup>

5. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, § 221, 84 Stat. 1894 (1971).

6. Uncodified section 220 of the URA fully or partially repealed eleven laws. *Id.* § 220. Prior to the enactment of the URA, the most utilized mechanisms for providing federal relocation assistance included § 114 of the Housing Act of 1964, ch. 338, § 114, 78 Stat. 788 (repealed 1971), and § 30 of the Federal-Aid Highway Act of 1968, § 30, 82 Stat. 830 (repealed 1971). See *Special Research Study*, *supra* note 1, at 1334-41.

7. Compare 42 U.S.C. §§ 4623(a)(1), 4624(1) (1976) with Federal-Aid Highway Act of 1968, § 30, 82 Stat. 830 (repealed 1971). The URA increased the amount of available relocation assistance payments. Under the URA, displaced homeowners may receive up to \$15,000 in replacement housing payments in addition to payments for moving expenses and losses of personal property. 42 U.S.C. § 4623(a)(1) (1976). Displaced tenants may qualify for a maximum of \$4,000 in replacement housing payments. *Id.* § 4624(1) (1976). See notes 11-13 and accompanying text *infra*. For a critique of the assistance conferred under the URA, see *Special Research Study*, *supra* note 1, at 1329, 1341-50.

8. 42 U.S.C. § 4622(a)(1) (1976). The head of the federal agency is obligated to make payments and provide relocation advisory services under the URA. *Id.* §§ 4622-4626. Payments are made for both personal and commercial relocations. *Id.* § 4622.

9. *Id.* § 4622(a)(2). Actual reasonable expenses incurred while a displaced person is searching for a replacement business or farm are also reimbursed. *Id.* § 4622(a)(3).

10. Section 4625 establishes a relocation assistance advisory service program. *Id.* § 4625. Its function is to ensure that the relocation needs of displaced persons are satisfied. *Id.*

11. *Id.* § 4623. Displaced homeowners are eligible for an additional \$15,000 in order to secure suitable replacement housing. *Id.* § 4623(a)(1). See note 7 *supra*. Accommodations for mortgage insurance may also be provided. 42 U.S.C. § 4623(b) (1976).

12. 42 U.S.C. § 4624 (1976). This section allows additional payments of displaced tenants of up to \$4,000. *Id.* § 4624(1). See note 7 *supra*. This money is to be used for either rental payments or a down payment on a house. 42 U.S.C. § 4624 (1976).

13. 42 U.S.C. §§ 4623(a)(1), 4624(1) (1976). Of particular importance to the displaced homeowner or tenant is § 4630, which extended URA responsibilities to state agencies receiving federal financial assistance. *Id.* § 4630. This section requires that a federal agency may not approve federal funding for a state program until it receives assurances from the state agency that decent, safe, and sanitary replacement housing will be available to the displaced persons within a reasonable period of time prior to displacement. *Id.* § 4630(3). The agency must also ensure that relocation advisory services are supplied. *Id.* § 4630(2). See note 10 *supra*.

14. 42 U.S.C. § 4601(6) (1976). Section 4601(6) provides in pertinent part:

The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance. . . .

*Id.* See note 3 *supra*.

One may achieve the status of a "displaced person" within the meaning of section 4601(6) in either of two ways: 1) if a person moves from real property as a result of the acquisition of such property for a program or project undertaken by a federal agency or with federal financial assistance (the acquisition clause);<sup>15</sup> or 2) if a person moves from real property as a result of a written order from the acquiring agency to vacate the property for a program or project undertaken by a federal agency or with federal financial assistance (the written notice clause).<sup>16</sup>

Courts have examined other definitional provisions of the URA in order to determine whether a claimant has satisfied either of these criteria in a particular factual situation.<sup>17</sup> While the terms "federal agency" and "federal financial assistance" have specific statutory definitions,<sup>18</sup> the words "acquisitions," "project," "program" and "acquiring agency" do not. In the typical situations to which the URA applies,<sup>19</sup> this absence of statutory definitions for certain terms creates no obstacles to claimants of URA benefits. For example, the URA ordinarily applies to a situation where an agency with the power of eminent domain, such as the Department of Transportation, condemns dwellings in order to demolish them and to construct an interstate highway on that site.<sup>20</sup> In such a case, former residents of the condemned buildings would be eligible for URA benefits.<sup>21</sup>

In other factual settings, however, eligibility for benefits is not so clear. One such situation exists where a landlord-mortgagor with a federally in-

15. 42 U.S.C. § 4601(6) (1976).

16. *Id.*

17. For cases where the phrase "Federal agency or with Federal financial assistance" of § 4601(6) was determinative of the litigants' claims for URA assistance, *see* *Moorer v. HUD*, 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978) (persons relocated due to private company's acquisition of property for rehabilitation with the aid of federal mortgage insurance are not "displaced persons"); *Parlane Sportswear Co. v. Weinberger*, 513 F.2d 835 (1st Cir.), *cert. denied*, 423 U.S. 925 (1975) (tenant evicted by private institution receiving federal grants is not a "displaced person"). *See also* *Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency*, 389 F. Supp. 486 (N.D. Cal. 1975); *Feliciano v. Romney*, 363 F. Supp. 656 (S.D.N.Y. 1973).

18. 42 U.S.C. §§ 4601(1), 4601(4) (1976). The term "Federal agency" includes "any department, agency, or instrumentality in the executive branch of the Government" and "any wholly owned Government corporation." *Id.* § 4601(1). "Federal financial assistance" means "a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia." *Id.* § 4601(4).

19. *See* H.R. REP. NO. 1656, 91st Cong., 2d Sess. 1-2, *reprinted in* [1970] U.S. CODE CONG. & AD. NEWS 5850, 5850-51. The House Report identified sample public projects which may require the acquisition and clearance of sites which previously served residential and commercial uses. *Id.* Included in these projects were highway construction, urban renewal, and hospital construction. *Id.* The House Report explained the meaning of the term "displaced person" by providing the examples of persons required to relocate due to: 1) acquisition of rights-of-way for federal-aid highways; and 2) construction sites for post offices. *Id.* at 4-5, *reprinted in* [1970] U.S. CODE CONG. & AD. NEWS at 5853-54.

20. *Uniform Relocation Assistance and Land Acquisition Policies—1970: Hearings on H.R. 14898, S.1, and related bills before the Comm. on Public Works House of Representatives*, 91st Cong., 1st & 2d Sess. 598 (1969-1970) (Sup. Doc. No. Y4. P96/11: 91-30) (statement of Francis C. Turner, Administrator, Federal Highway Administration, Department of Transportation).

21. *See* *Lathan v. Volpe*, 455 F.2d 1111 (9th Cir. 1971).

sured mortgage<sup>22</sup> defaults, and the federal agency receives title to the property from the mortgagee as a prerequisite to the mortgagee's recovery on the federal mortgage insurance.<sup>23</sup> Confronted with claims for URA assistance from tenants required to relocate as a result of this foreclosure process, the courts have found it necessary to examine the undefined words of section 4601(6) in reaching their conclusions on eligibility.<sup>24</sup> Differing statutory constructions of these undefined terms have evolved within the circuits. The Second, Seventh, and Eighth Circuits have adopted an *in pari materia* approach,<sup>25</sup> whereas a common meaning construction has been accepted by the D.C. Circuit.<sup>26</sup> Eligibility for URA benefits depends upon the method of statutory construction adopted by the court in interpreting section 4601(6).<sup>27</sup>

### III. ELIGIBILITY IN THE FEDERAL MORTGAGE INSURANCE CONTEXT

#### A. *The In Pari Materia Approach of the Second, Seventh, and Eighth Circuits*

In *Caramico v. HUD*,<sup>28</sup> the Second Circuit first interpreted the applicability of section 4601(6) to foreclosures on federally insured mortgages.<sup>29</sup> In *Caramico*, the Federal Housing Administration (FHA)<sup>30</sup>

22. As a measure in spreading the mortgage risk and as an inducement for private industry to provide housing, the Department of Housing and Urban Development (HUD), pursuant to the National Housing Act, insures mortgages for single family and multiple family dwellings. 12 U.S.C. §§ 1701 to 1715z-11 (1976). See H. AARON, SHELTER AND SUBSIDIES 74-90 (1972); G. NELSON & D. WHITMAN, REAL ESTATE FINANCE AND DEVELOPMENT 487-513 (1976). For example, § 1709 provides for the Secretary of HUD to insure any mortgage meeting certain conditions in order to assist private industry in providing housing for displaced families of low and moderate income. 12 U.S.C. § 1709 (1976). See H. AARON, *supra*, at 77-78; G. NELSON, *supra*, at 487-88. In order to recover on a claim on the mortgage, the lender must either assign the mortgage to the Federal Housing Administration (FHA) or acquire title to the property and transfer that title to the FHA. 12 U.S.C. §§ 1710, 1713(g), 1713(k) (1976); G. NELSON, *supra*, at 511. See generally 24 C.F.R. §§ 203.355-.417 (1977). The effect of the mortgage insurance is that the lender will regard the insurance contract as shifting the risk of default on the loan to the insurer and, consequently, the mortgagee will be willing to charge the same interest rate to the "risky" borrower as it would to the most creditworthy borrower. H. AARON, *supra*, at 81-89; G. NELSON, *supra*, at 488.

23. See 12 U.S.C. § 1710 (1976); 24 C.F.R. §§ 203.358-.361 (1977); note 22 *supra*. See also note 33 *infra*.

24. See, e.g., *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978); *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974); *Harris v. Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), *aff'd*, 555 F.2d 1357 (8th Cir. 1977).

25. See, e.g., *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974); *Harris v. Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), *aff'd*, 555 F.2d 1357 (8th Cir. 1977). See notes 28-99 and accompanying text *infra*.

26. See *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978). For discussion of *Cole*, see notes 100-36 and accompanying text *infra*.

27. For example, under the approach of *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974), a "project" for the purposes of § 4601(6) necessarily involves construction. See notes 41-48 and accompanying text *infra*. Application of the *Caramico* analysis to the facts of *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978), would probably result in a denial of URA benefits to *Cole* plaintiffs. See notes 100-36 and accompanying text *infra*.

28. 509 F.2d 694 (2d Cir. 1974).

29. *Id.* at 694-96.

30. The FHA is a subagency of HUD. *Id.* at 696 n.2.

had insured mortgages on multiple family dwellings<sup>31</sup> and, following a default by the landlords, the mortgagees foreclosed.<sup>32</sup> Pursuant to an FHA regulation requiring that the property be delivered unoccupied to the FHA before a mortgagee could recover on the mortgage insurance,<sup>33</sup> the mortgagees sought to evict the tenants from the dwellings.<sup>34</sup> In response, the tenants filed suit to enjoin the eviction and to secure assistance under the URA.<sup>35</sup> The district court held that URA assistance was not available to the tenants.<sup>36</sup>

In affirming,<sup>37</sup> the Second Circuit emphasized that although there may have been an "acquisition" in the present case,<sup>38</sup> the tenants had failed to demonstrate that the acquisition was "for a program or project undertaken by a Federal agency or with Federal financial assistance."<sup>39</sup> According to the court, the tenants were not displaced persons within the meaning of the acquisition clause of section 4601(6).<sup>40</sup> Distinguishing between acquisitions resulting from mortgage insurance transactions and those intended to be covered by the URA,<sup>41</sup> the *Caramico* court emphasized that the former are "random and involuntary."<sup>42</sup> In contrast, the court noted that normal urban renewal projects involve a deliberate governmental decision to dislocate certain individuals for the benefit of the entire area.<sup>43</sup> Relying on the URA's

31. *Id.* at 696. According to the trial court, the FHA insured mortgage was pursuant to the amended § 1709 of the National Housing Act. *Caramico v. Romney*, 390 F. Supp. 210, 212 (E.D.N.Y. 1973), *aff'd sub nom. Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974), *citing* 12 U.S.C. § 1709 (1976).

32. 509 F.2d at 696.

33. 24 C.F.R. § 203.381 (1977). This regulation required the mortgagee to certify that the property is vacant unless the Secretary of HUD provides otherwise. *Id.* In *Caramico*, the tenants claimed that they possessed a due process right to participate in the decision of the FHA not to waive the general regulation that the buildings be delivered unoccupied. 509 F.2d at 699-702. The court agreed, and ordered the Secretary of HUD to provide the minimum due process safeguards of sufficient notice and an opportunity to be heard. *Id.* at 701-02. *Compare* 24 C.F.R. § 203.381 (1975) *with* 24 C.F.R. § 203.381 (1977) (due process guidelines for tenant incorporated into regulations).

34. 509 F.2d at 696.

35. *Id.* at 697. The tenants claimed that the evictions were improper because of the failure to provide URA benefits for those evicted. *Id.* See 42 U.S.C. §§ 4622, 4624, 4625 (1976); notes 8-10 & 12-13 and accompanying text *supra*.

36. 390 F. Supp. at 214-15.

37. 509 F.2d at 702.

38. *Id.* at 697. Plaintiffs asserted that HUD's policy of requiring a vacant dwelling before it will satisfy the FHA insurance claim resulted in an eviction due to the "acquisition" of real property within the meaning of the URA. *Id.*

39. *Id.* The court reasoned that an eviction due to an "acquisition," absent further showing, did not satisfy the qualification requirements for URA benefits. *Id.*

40. *Id.* For a summary of the acquisition clause, see text accompanying note 15 *supra*.

41. 509 F.2d at 697-98. The plaintiffs had argued that the federal mortgage insurance program's vacant delivery requirement is similar to a federal urban renewal scheme in that the vacant conveyance enables HUD to "deal with the property by rehabilitation or other disposition." *Id.* at 697.

42. *Id.* at 698.

43. *Id.*

legislative history<sup>44</sup> and other statutory provisions of the Act,<sup>45</sup> the Second Circuit decided that “program” or “project” within the meaning of section 4601(6) contemplates construction.<sup>46</sup> Default acquisitions, the court declared, are inconsistent with this construction concept because they involve no conscious governmental decision<sup>47</sup> and effectively “represent a failure of the FHA program rather than its desired result.”<sup>48</sup>

Unlike *Caramico*, which involved the acquisition clause of section 4601(6),<sup>49</sup> *Alexander v. HUD*<sup>50</sup> presented the Seventh Circuit with an opportunity to construe the written notice clause contained in the displaced person definition of the URA.<sup>51</sup> In *Alexander*, the tenants of an apartment project sought relief under the URA after the Secretary of Housing and Urban Development (HUD) had given them written notice to quit.<sup>52</sup> HUD’s initial involvement with the *Alexander* apartment complex arose when HUD issued mortgage insurance pursuant to section 1715(d)(3) of the National Housing Act.<sup>53</sup> Following the mortgagor’s default, HUD was assigned the note and mortgage on the property,<sup>54</sup> and subsequently foreclosed due to the continuing default of the mortgagor.<sup>55</sup> HUD thereafter acquired title to the apartment complex at a marshal’s sale.<sup>56</sup> After attempts to continue operation of the deteriorating complex proved futile,<sup>57</sup> HUD decided to

44. *Id.* The court quoted a discussion of the policies underlying the URA by the Committee on Public Works of the House of Representatives. *Id.*, quoting H.R. REP. NO. 1656, 91st Cong., 2d Sess. 1-2, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850, 5850-51. The *Caramico* court focused on the illustrations of major public projects listed in the report, such as the construction of a highway, an urban renewal project, and the construction of a hospital, in disposing of the plaintiffs’ claims. 509 F.2d at 698. See note 19 *supra*.

45. 509 F.2d at 698. The court noted that various sections of the URA indicate “that construction programs are the type Congress had in mind in providing displaced person assistance.” *Id.* The court cited § 4626, referring to “actual construction” of a federal project, and § 4625(a), providing for aid where an acquisition causes economic injury to neighboring property, in support of its position. *Id.*, citing 42 U.S.C. §§ 4626, 4625(a) (1976). The court further observed that § 4651 describes acquisition methods that are inconsistent with the FHA’s takeover of defaulted property. 509 F.2d at 698, citing 42 U.S.C. § 4651 (1976). The district court had also indicated that § 4624 (assistance to tenants) speaks in terms of occupancy of the acquired property “for not less than 90 days prior to the initiation of negotiations for acquisitions of such dwellings.” 390 F. Supp. at 214, citing 42 U.S.C. § 4624 (1976). The district court intimated that this phrase refers to “the normal preliminary to condemnation proceedings.” 390 F. Supp. at 214. See also 42 U.S.C. § 4651(a) (1976).

46. 509 F.2d at 698.

47. *Id.* at 698-99.

48. *Id.* at 699.

49. *Id.* at 697. See text accompanying note 15 *supra*.

50. 555 F.2d 166 (7th Cir. 1977), cert. granted, 98 S. Ct. 3087 (1978).

51. 555 F.2d at 168-69, construing 42 U.S.C. § 4601(6) (1976). For a summary of the written notice clause, see text accompanying note 16 *supra*.

52. 555 F.2d at 167-68.

53. *Id.* at 167. See 42 U.S.C. § 1715 l(d)(3) (1976). For general discussion of federal mortgage insurance, see note 22 *supra*.

54. 555 F.2d at 167.

55. *Id.*

56. *Id.*

57. *Id.* at 167-68. HUD had employed the Federal Property Management Corporation to manage and to repair the buildings. *Id.* Affidavits attesting to the condition of the complex

terminate the project<sup>58</sup> and distributed written notices to quit to the tenants of the complex.<sup>59</sup>

The Seventh Circuit noted that although *Alexander* and *Caramico* were factually distinguishable,<sup>60</sup> the issue presented in the two cases was essentially “whether the activity of the governmental agency was ‘for a program or project undertaken by a Federal agency, or with Federal financial assistance.’”<sup>61</sup> Relying on the URA’s declaration of policy,<sup>62</sup> the *Alexander* court determined that the words “program” and “project” of section 4601(6) were intended to include “those activities designed for the benefit of the public as a whole.”<sup>63</sup> According to the court, a decision to terminate a project does not constitute a project within the meaning of the URA absent “some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole.”<sup>64</sup> The court concluded that the order by HUD to vacate the apartment buildings because “that project had become an irretrievable failure cannot be considered” a project for the purposes of the URA.<sup>65</sup> The Seventh Circuit consequently denied relief to the tenants since they were not “displaced persons” within the meaning of section 4601(6).<sup>66</sup>

In construing section 4601(6) in connection with federal mortgage insurance, the Second<sup>67</sup> and Seventh Circuits<sup>68</sup> centered their analyses on the word “project.”<sup>69</sup> In contrast, the United States District Court for the Eastern District of Missouri and the Eighth Circuit focused on the “as a

provided evidence of roach and vermin infestation, inoperable elevators, poor security, inadequate or nonexistent hot water and heat, and other deplorable conditions. *Id.* The tenants had alleged that HUD breached an implied warranty of habitability. *Id.* at 168. The court held, however, that there was no implied warranty of habitability in a lease of a public housing unit owned by HUD. *Id.* at 171.

58. *Id.* at 168.

59. *Id.*

60. *Id.* at 169. In *Caramico*, the private mortgagee sought to evict the plaintiff-tenants. 509 F.2d at 696. In *Alexander*, HUD, which had acquired title to the complex at a marshal’s sale, sought to evict the tenants. 555 F.2d at 169. For a general comparison of *Caramico* and *Alexander*, see *id.* at 169-70.

61. 555 F.2d at 169, quoting 42 U.S.C. § 4601(6) (1976). For the text of this provision, see note 14 *supra*.

62. 555 F.2d at 169-70, citing 42 U.S.C. § 4621 (1976). The court noted that the terms “program” and “project” are not defined in the URA and that the legislative history does not illuminate Congress’ intent with respect to these terms. 555 F.2d at 169.

63. 555 F.2d at 170. The court further explained that “persons displaced by such programs are persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need.” *Id.*

64. *Id.* This qualification was in response to the plaintiffs’ contention that since HUD had the options of rehabilitating, demolishing, or selling the complex, its actions in evicting the tenants constituted a federal program or project. *Id.*

65. *Id.*

66. *Id.* at 168-70.

67. See notes 28-48 and accompanying text *supra*.

68. See notes 50-66 and accompanying text *supra*.

69. See notes 38-48 & 61-66 and accompanying text *supra*.



result of an acquisition" phrase of section 4601(6) in *Harris v. Lynn*.<sup>70</sup> Although *Harris* did not involve foreclosures on federal mortgage insurance, the case demonstrates the mode of interpretation likely to be employed by the Eighth Circuit in that context.<sup>71</sup> *Harris* involved a claim for URA benefits by former tenants of a project owned by the St. Louis Housing Authority (Authority).<sup>72</sup> The construction of the project was financed during the 1950's through development loans made by the federal government.<sup>73</sup> In 1973, deplorable conditions at the housing complex prompted the Authority to terminate the project.<sup>74</sup> HUD concurred in the Authority's decision,<sup>75</sup> and after the tenants were relocated, the vacant buildings were demolished with modernization funds provided by HUD.<sup>76</sup> The Eighth Circuit upheld the district court's denial of the URA assistance to the litigants.<sup>77</sup> The district court had held that the plaintiffs were "not 'displaced persons' within the meaning of any of the factual situations set forth in section 4601(6) and 4637."<sup>78</sup>

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70. 411 F. Supp. 692, 694 (E.D. Mo. 1976), *aff'd*, 555 F.2d 1357 (8th Cir. 1977). In affirming the decision of the United States District Court for the Eastern District of Missouri, the Eighth Circuit expressly adopted the legal reasoning employed by the district court in denying URA benefits to the claimants. *Harris v. Lynn*, 555 F.2d 1357, 1359 (8th Cir. 1977), *aff'd* 411 F. Supp. 692 (E.D. Mo. 1976).

71. The Eighth Circuit specifically considered federal mortgage insurance and URA eligibility in *Moorer v. HUD*, 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978). *Moorer* involved the dislocation of persons by a private company which had acquired the property for rehabilitation with the aid of federal financial assistance in the form of mortgage insurance and interest rent subsidy payments. 561 F.2d at 177-78. Holding that the plaintiffs were not "displaced persons" entitled to benefits under the URA, the court concluded that the "plain statutory language indicates that URA benefits are available to displaced persons only on projects undertaken by federal agencies or by state agencies receiving federal financial assistance." *Id.* at 178-79. The court found support for its position in several of the operational sections of the URA. *Id.*, citing 42 U.S.C. §§ 4622(a), 4627, 4628, 4630 (1976). It took particular notice of the fact that mortgage insurance is expressly excluded from the definition of "Federal financial assistance." 561 F.2d at 178-79, citing 42 U.S.C. § 4601(4) (1976). For the text of § 4601(4), see note 18 *supra*. The court also drew extensively upon the legislative history of the URA in its analysis. 561 F.2d at 179-82. The court asserted that the "URA was intended to benefit those displaced by public agencies with coercive acquisition power, such as eminent domain," and proposed a test for determining whether URA benefits attach: "Was the real property acquired by a governmental entity with the power of eminent domain?" *Id.* at 182-83.

72. 411 F. Supp. at 693. The tenants based their status as "displaced persons" on two alleged "acquisitions": 1) the 1951 "acquisition" of the property by the Authority through the use of federal development loans; and 2) the 1955 "acquisition" of the property by the federal government by virtue of a "declaration of trust" whereby the Authority purportedly acknowledged that it held the property for the benefit of the Public Housing Administration, the predecessor of HUD, and holders of bonds issued pursuant to a contract between the Authority and the United States, pending satisfaction of all indebtedness on the bonds. *Id.* at 694.

73. *Id.* at 693. The tenants claimed that these loans constituted federal financial assistance within the meaning of § 4601(6), thus qualifying them for the status of "displaced persons" under the URA. *Id.*

74. *Id.* The project was characterized as a "human disaster area." *Id.*

75. *Id.*

76. *Id.*

77. 555 F.2d at 1359. The Eighth Circuit adopted the legal reasoning of the district court as the disposition of the tenants' claims for URA benefits. *Id.* See note 70 *supra*.

78. 411 F. Supp. at 694. Section 4637 provides, *inter alia*, that a person who "moves from his dwelling . . . as a direct result of any project or program which receives federal financial

Observing that "Congress advisedly limited the eligible class (in Section 4601(6)) to those forced to move as a result of an 'acquisition,'" <sup>79</sup> the Eastern District of Missouri construed the phrase "as a result of the acquisition of such real property . . . for a program or project undertaken by a Federal agency, or with Federal financial assistance" to mean that section 4601(6) eligibility required the federal acquisition of property for a program or project to directly cause the dislocation of the individuals claiming URA assistance.<sup>80</sup> Examining the Authority's alleged 1951 "acquisition" of the property<sup>81</sup> and the government's alleged 1955 "acquisition" of the property,<sup>82</sup> the *Harris* court determined that neither of these transactions resulted in the relocation of the tenants in 1973.<sup>83</sup> Grounding its analysis on the URA as a whole<sup>84</sup> and on the Act's legislative history,<sup>85</sup> the *Harris* court characterized "acquisition" as the key term for the purposes of section 4601(6) eligibility.<sup>86</sup> Consistent with its determination that the tenants were not dislocated by an "acquisition" within the meaning of the URA, the *Harris* court denied their claim for URA benefits.<sup>87</sup>

Common to the Second, Seventh and Eighth Circuits<sup>88</sup> is an *in pari materia* construction<sup>89</sup> of the entitlement provision of the URA. Each circuit has construed section 4601(6) within the context of the statute as a whole.<sup>90</sup>

assistance under title I of the Housing Act of 1949, . . . or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall . . . be deemed to have been displaced as the result of the acquisition of real property." 42 U.S.C. § 4637 (1976). The court held that the statutory language of this particular provision did not apply to the facts in the instant case. 411 F. Supp. at 695-98.

79. 411 F. Supp. at 695.

80. *Id.* at 694, quoting 42 U.S.C. § 4601(6) (1976).

81. 411 F. Supp. at 694. The district court noted that the plaintiffs could not have been displaced "'as a result' of the 1951 acquisition by the Authority" because the plaintiffs were not residing at the property at that time. *Id.* See note 72 *supra*.

82. 411 F. Supp. at 694-95. The *Harris* court stated that under applicable Missouri law, the instrument entitled "declaration of trust" did not operate to transfer equitable or legal title to the property to the federal government and therefore did not constitute an "acquisition" by the federal government for the purposes of the URA. *Id.* See note 72 *supra*. The court asserted that even if the government had "acquired" the property within the meaning of § 4601(6) by operation of the "trust" instrument, the plaintiffs were not displaced *as a result* of the government's alleged 1955 acquisition of ownership. 411 F. Supp. at 695 (emphasis added).

83. 411 F. Supp. at 694-95.

84. *Id.* at 695, citing 42 U.S.C. § 4637 (1976). For the pertinent text of § 4637, see note 78 *supra*. The court noted that there are "a number of references in the Act to 'acquisition' and 'acquiring agency.'" 411 F. Supp. at 695. Moreover, the court construed uncodified § 219 of the Act as evidencing congressional intent to limit the class of people eligible for URA benefits. *Id.*

85. 411 F. Supp. at 695.

86. *Id.* The court equated the terms "acquisition" and "acquiring agency." *Id.*

87. *Id.* at 697-98.

88. See notes 70 & 71 and accompanying text *supra*.

89. For cases establishing the foundation for *in pari materia* construction of statutes, see, e.g., *White v. United States*, 305 U.S. 281 (1938); *Hellmich v. Hellman*, 276 U.S. 233 (1928); *Kohlsaatt v. Murphy*, 96 U.S. 153 (1878).

90. See notes 45, 62-63 & 84 and accompanying text *supra*.

The *Caramico* and *Harris* courts buttressed their interpretation of section 4601(6) by referring to the legislative history of the URA.<sup>91</sup> In *Caramico* and *Alexander*, the Second and Seventh Circuits determined that the terms “project or program” contemplate benefit to the public as a whole,<sup>92</sup> and maintained that a failure of a project could not be characterized as a “project” within the meaning of section 4601(6).<sup>93</sup> The *Caramico* court, stressing the voluntary and deliberate aspects of a program or project,<sup>94</sup> added that inherent in these terms is the concept of construction.<sup>95</sup>

In its interpretation of section 4601(6), the United States District Court for the Eastern District of Missouri concentrated on the term “acquisition” within the context of the entire phrase “as a result of the acquisition of such property . . . for a program or project undertaken by a Federal agency, or with Federal financial assistance.”<sup>96</sup> Moreover, the *Harris* court examined the cause of the dislocation of the individuals claiming URA assistance,<sup>97</sup> and found no causal relationship between the 1951 and 1955 transactions and the subsequent termination of the project in 1973.<sup>98</sup> In its analysis, the district court employed an *in pari materia* approach in construing section 4601(6).<sup>99</sup>

### B. The Common Meaning Approach of the District of Columbia Circuit

In *Cole v. Harris*,<sup>100</sup> the D.C. Circuit analyzed the nexus between federally insured mortgages and URA eligibility from a different perspective. *Cole* entailed the saga of Sky Towers,<sup>101</sup> an apartment complex which was purchased by a nonprofit corporation that had secured a federally insured mortgage on the property.<sup>102</sup> The defaults of two general contractors during the planned rehabilitation of the complex forced the mortgagee to foreclose.<sup>103</sup> The mortgagee then conveyed the title to Sky Towers to HUD in

91. See notes 44 & 85 and accompanying text *supra*. The *Alexander* court concluded that the legislative history of the URA failed to illuminate the meaning of the terms “project or program” for the purposes of §4601(6). See note 62 *supra*.

92. See notes 41-43 & 62-63 and accompanying text *supra*.

93. See notes 41-42, 47-48 & 64-65 and accompanying text *supra*. The *Alexander* court noted that “an order by HUD to vacate a public housing project because that project had become an irretrievable failure cannot be considered . . . a program or project” under the URA. 555 F.2d at 170. The *Caramico* court observed that the “default acquisition may be said to represent a failure of the FHA program rather than its desired result.” 509 F.2d at 699.

94. See notes 41-43 and accompanying text *supra*.

95. See notes 44-46 and accompanying text *supra*.

96. See text accompanying note 80 *supra*.

97. See notes 81-83 and accompanying text *supra*.

98. See notes 81-83 & 87 and accompanying text *supra*.

99. See note 84 and accompanying text *supra*.

100. 571 F.2d 590 (D.C. Cir. 1977), *cert. granted*, 98 S. Ct. 3087 (1978), *aff'g in part and rev'g in part* *Cole v. Harris*, 389 F. Supp. 99 (D.D.C. 1975).

101. 571 F.2d at 592. Sky Towers was built during the 1950's. *Id.*

102. *Id.* The insurance was obtained pursuant to § 236 of the National Housing Act. *Id.*, citing 12 U.S.C. § 1715z-1 (1976). The purchase of Sky Towers occurred in 1970. 571 F.2d at 592. For a general discussion of federal mortgage insurance, see note 22 *supra*.

103. 571 F.2d at 592. The trial record indicated that at the time of the defaults by the general contractors, the mortgagee was willing to allow the nonprofit sponsor to complete the

order to satisfy the statutory requirements for qualification for the mortgage insurance benefits.<sup>104</sup> Fifteen months later,<sup>105</sup> HUD, determined that further rehabilitation of the complex was futile and decided to demolish Sky Towers and sell the vacant land.<sup>106</sup> Toward this end, HUD distributed written notices to vacate to the tenants.<sup>107</sup> Several of the buildings were subsequently demolished.<sup>108</sup> Former tenants brought suit alleging, *inter alia*, that HUD had failed to comply with the requirements of the URA.<sup>109</sup> The district court issued a preliminary injunction against further demolition and evictions<sup>110</sup> and, several months later, granted partial summary judgment for the plaintiffs, holding that the tenants who had vacated Sky Towers were entitled to benefits under the URA.<sup>111</sup> In affirming this aspect of the trial court's decision,<sup>112</sup> the D.C. Circuit declared that the tenants qualified as displaced persons under the "plain terms" of the written notice clause of the URA.<sup>113</sup>

Relying on what it considered to be the common meaning of the words of section 4601(6), the court, in an opinion written by Chief Judge Bazelon, concluded that HUD had "acquired" Sky Towers with the foreclosure of the mortgage<sup>114</sup> and that the demolition constituted a "program or project."<sup>115</sup> The court asserted that "[t]his common sense interpretation is reinforced by consideration of the policies of the [URA]."<sup>116</sup>

In support of its conclusion that the former tenants qualified as displaced persons under the notice clause, the court remarked that section 4601(6) does not require that a federal project be contemplated at the time

rehabilitation work. 389 F. Supp. at 101. HUD, however, "insisted that the property be foreclosed." *Id.* The lower court suggested that HUD's action was grounded upon compliance with a federal housing regulation. *Id.*, citing 24 C.F.R. § 236.56 (1977). Indeed, the dissent in *Cole v. Harris* relied heavily on this regulation in its analysis. See note 122 and accompanying text *infra*.

104. 571 F.2d at 592. Title was transferred pursuant to 12 U.S.C. §§ 1713(g), 1713(k) (1976). See note 22 *supra*.

105. 571 F.2d at 592. HUD took title on June 15, 1973; its decision to terminate the project occurred in September 1974. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. 389 F. Supp. at 100. The tenants claimed eligibility under the written notice clause of § 4601(6). *Id.* For a summary of the requirements of the written notice clause, see text accompanying note 16 *supra*.

110. 389 F. Supp. at 99-100.

111. 571 F.2d at 594.

112. *Id.* at 595.

113. *Id.*

114. *Id.*

115. *Id.* The purpose of the demolition was to eliminate urban blight. *Id.* The court added that this fact distinguished the instant case from *Alexander*. *Id.* at 596 n.27, quoting *Alexander v. HUD*, 555 F.2d 166, 170 (7th Cir. 1977), cert. granted, 98 S. Ct. 3087 (1978). See notes 63 & 64 and accompanying text *supra*.

116. 571 F.2d at 595. The court stressed that the purpose of the URA is "to ensure that displaced persons do not 'suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.'" *Id.*, quoting 42 U.S.C. § 4621 (1976). See note 2 and accompanying text *supra*.

of acquisition.<sup>117</sup> Rejecting both the statutory construction<sup>118</sup> and the legislative history<sup>119</sup> offered by the Government to rebut this conclusion, the court asserted that the "notice clause is clear on its face."<sup>120</sup>

Claiming that the majority opinion ignored important precedent,<sup>121</sup> the vigorous dissent in *Cole* declared that: 1) both the acquisition clause<sup>122</sup> and the written notice clause<sup>123</sup> contemplate a voluntary acquisition; and 2) both an actual acquisition and a notice of a proposed acquisition must be for a program or project.<sup>124</sup> The dissent characterized both HUD's insistence that the property be foreclosed<sup>125</sup> and its subsequent receipt of title<sup>126</sup> as "involuntary,"<sup>127</sup> and determined that the mortgage foreclosure acquisition of Sky Towers was not within the "programs or projects" contemplated by the URA.<sup>128</sup> Following a careful examination of the legislative history of the URA,<sup>129</sup> the dissent concluded that the notice clause was intended to cover only those who receive written notice prior to an acquisition and relocation, regardless of whether or not the proposed acquisition does in fact occur.<sup>130</sup>

117. 571 F.2d at 596. It should be noted that under the written notice clause of § 4601(6), the real property need not be acquired. 42 U.S.C. § 4601(6) (1976). See H.R. No. 1656, 91st Cong., 2d Sess. 4, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850, 5853 ("If a person moves as a result of such [written] notice, it makes no difference whether or not the real property is acquired.").

118. *Id.* The Government cited *Caramico* for the proposition that § 4601(6) requires HUD, at the time of the acquisition, to have a particular project or program in mind. *Id.* The Government contended that this restriction also applies to the "acquiring agency" of the written notice clause. *Id.* The court refuted this argument by noting that *Caramico* involved the acquisition clause and by distinguishing the terms "acquisition" and "acquiring agency" as used in the alternative provisions of § 4601(6). *Id.* The court then suggested that under the written notice clause, only "the order to vacate . . . must be for a federal program or project." *Id.* at 596-97 (emphasis supplied by the court).

119. *Id.* at 597-98 & n.32.

120. *Id.* at 597.

121. *Id.* at 599-600 (Wilkey, J., dissenting), citing *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), cert. granted, 98 S. Ct. 3087 (1978); *Harris v. Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), aff'd, 555 F.2d 1357 (1977); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

122. For a summary of the acquisition clause, see text accompanying note 15 *supra*.

123. For a summary of the written notice clause, see text accompanying note 16 *supra*.

124. 571 F.2d at 601 (Wilkey, J., dissenting).

125. *Id.* at 601-02 (Wilkey, J., dissenting). The dissent speculated that HUD could not issue the mortgage insurance increase required by the mortgagee for allowing the sponsor to complete the rehabilitation because 24 C.F.R. § 236.56 (1977) would be violated. 571 F.2d at 601-02 (Wilkey, J., dissenting). Section 236.56 prohibits HUD from issuing mortgage insurance for projects where the rents will exceed the rents for similar housing. 24 C.F.R. § 236.56 (1977). The dissent concluded that HUD was obligated to insist that the mortgagee foreclose and, therefore, the action was involuntary. 571 F.2d at 601-02 (Wilkey, J., dissenting). See note 104 and accompanying text *supra*.

126. 571 F.2d at 601-03 (Wilkey, J., dissenting). See note 104 and accompanying text *supra*.

127. 571 F.2d at 603 (Wilkey, J., dissenting).

128. *Id.* at 601-03 (Wilkey, J., dissenting). The dissent relied on the Second and Seventh Circuits' definition of "projects" as excluding involuntary acquisitions. *Id.* See notes 38-48 & 62-66 and accompanying text *supra*.

129. 571 F.2d at 608 (Wilkey, J., dissenting), citing H.R. REP. NO. 1656, 91st Cong., 2d Sess. 4, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850, 5853.

130. 571 F.2d at 608 (Wilkey, J., dissenting). The dissent based its limited construction of the written notice clause upon a comparison of the original Senate URA bill and the House

In support of its determination that for both the acquisition clause and the written notice clause, the actual acquisition or notice of proposed acquisition must be for a "program or project,"<sup>131</sup> the dissent relied upon the other provisions of the URA<sup>132</sup> and upon case law.<sup>133</sup> The dissent cited *Caramico*, *Alexander* and *Harris* as supporting the proposition that there can be no "acquisition for a program or project" if "HUD's accession to title is involuntary."<sup>134</sup>

*Cole's* departure from the other circuits' interpretation of section 4601(6) is a function of the method of statutory construction employed by the D.C. Circuit, which applied a common meaning construction to the terms of this provision.<sup>135</sup> The *Cole* court determined that since the terms of section

version which was subsequently enacted. 571 F.2d at 607-09 (Wilkey, J., dissenting), *citing* S.1, 91st Cong., 2d Sess. § 1(6), 116 CONG. REC. 40163 (1970); S.1, 91st Cong., 1st Sess. § 105(1)-(5), 115 CONG. REC. 31372 (1969). Judge Wilkey noted that in the original Senate version, the definition of "displaced person" included those forced to move "as a result of the acquisition or reasonable expectation of acquisition of . . . real property in whole or in part, by a Federal or State agency." 571 F.2d at 607 (Wilkey, J., dissenting), *quoting* S.1, 91st Cong., 1st Sess. § 105(1)-(5), 115 CONG. REC. 31372 (1969) (emphasis supplied by the court). Comparing the original Senate version with the enacted version, the dissent emphasized that § 4601(6) as enacted limited URA eligibility. 571 F.2d at 609 (Wilkey, J., dissenting). The dissent relied on the only sentence in the House Report that explained the meaning of the written notice clause: "If a person moves as a result of such a notice to vacate, it makes no difference whether or not the real property actually is acquired." *Id.* at 608 (Wilkey, J., dissenting), *quoting* H.R. REP. NO. 1656, 91st Cong., 2d Sess. 4, *reprinted in* [1970] U.S. CODE CONG. & AD. NEWS 5850, 5853. The dissent remarked that consideration of this statement within the context of the legislative evolution of the written notice clause rendered it "clear and unmistakable in meaning." 571 F.2d at 608 (Wilkey, J., dissenting). Judge Wilkey concluded that the enacted version of § 4601(6) does not cover "all persons displaced with notice from property *already owned and acquired by the agency.*" *Id.* at 609 (Wilkey, J., dissenting) (emphasis supplied by the court). Rather, the dissent suggested that § 4637 is the relevant statutory provision in such a situation. *Id.* at 611 (Wilkey, J., dissenting), *citing* 42 U.S.C. § 4637 (1976). For the text of § 4637, *see* note 78 *supra*.

131. 571 F.2d at 609 (Wilkey, J., dissenting). Judge Wilkey noted that this conclusion was the basis of his dissent from the views of the majority. *Id.*

132. 571 F.2d at 609 (Wilkey, J., dissenting), *citing* 42 U.S.C. §§ 4622(a), 4625(a) (1970). The dissent noted that the operational sections of the URA begin with the phrase: "Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person. . . ." 571 F.2d at 609 (Wilkey, J., dissenting), *quoting* 42 U.S.C. §§ 4622(a), 4625(a) (1976) (emphasis supplied by the court). The dissent reinforced its argument by referring to § 4651(5), 42 U.S.C. § 4651(5) (1976), which "directs all agencies to schedule construction projects in such a way that no person occupying real property is required to move 'without at least ninety days' written notice . . . of the date by which such move is required." 571 F.2d at 609-10 (Wilkey, J., dissenting), *quoting* 42 U.S.C. § 4651(5) (1976) (emphasis supplied by the court).

133. 571 F.2d at 610 (Wilkey, J., dissenting), *citing* *Harris v. Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), *aff'd*, 555 F.2d 1357 (8th Cir. 1977). The dissent relied on *Harris* as support for the proposition that the URA "does not apply to persons displaced from property *already in the ownership* of the concerned agency, even though a notice to vacate for a project may be given." 571 F.2d at 610 (Wilkey, J., dissenting) (emphasis supplied by the court). For discussion of *Harris*, *see* notes 70-87 and accompanying text *supra*.

134. 571 F.2d at 609 (Wilkey, J., dissenting), *citing* *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *cert. granted* 436 U.S. \_\_\_\_ (1978); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974); *Harris v. Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), *aff'd*, 555 F.2d 1357 (8th Cir. 1977).

135. *See* notes 114-16 and accompanying text *supra*.

4601(6) are clear on their face, a probe into legislative history is unwarranted.<sup>136</sup> One consequence of this mode of construction is that assistance under the URA is awarded in cases in which relief would be denied under the *in pari materia* approach.<sup>137</sup>

#### IV. STATUTORY CONSTRUCTION OF SECTION 4601(6): AN ANALYSIS AND COMPARISON.

Although the cases present varying factual situations,<sup>138</sup> an issue central to each is the statutory construction of section 4601(6) with respect to "acquisitions" resulting from foreclosure on property subject to federal mortgage insurance.<sup>139</sup> Under the general rules of statutory construction, legislative intent is a controlling factor,<sup>140</sup> but resort to legislative history should be limited to instances where the statutory language is unclear.<sup>141</sup> Consequently, a threshold question in cases concerning entitlement to URA benefits with respect to properties subject to federal mortgage insurance is whether the language of section 4601(6) is ambiguous.

The D.C. Circuit in *Cole* has determined that the words of this section are clear,<sup>142</sup> whereas other circuits, in an effort to ascertain the intended meaning of the undefined terms of section 4601(6), have resorted to an inquiry into the policies underlying the Act,<sup>143</sup> to an examination of the URA,<sup>144</sup> and, finally, to a review of legislative history.<sup>145</sup> Consistent with the concept that sections of an act *in pari materia* should be construed together,<sup>146</sup> these circuits have indicated that section 4601(6) should be interpreted to prevent conflicts with other provisions of the URA.<sup>147</sup>

It is submitted that these circuits, in construing the undefined terms of section 4601(6) consistently with the URA as a whole, have correctly interpreted these words. Otherwise, apparent inconsistencies between sections 4601(6) and other URA provisions emerge. For example, it is suggested that without an implied restriction that the "acquisition" of section 4601(6) be voluntary, the policies of section 4651 concerning negotiations to acquire real

136. 571 F.2d at 597. The *Cole* court indicated that an examination of legislative history would be appropriate only if it were clear and convincing. *Id.*, citing, *United States v. United States Steel Corp.*, 482 F.2d 439, 444 (7th Cir.), cert. denied, 414 U.S. 909 (1973). The majority concluded that the legislative history of the notice clause is, "at best, inconclusive." 571 F.2d at 597. See *id.* at n.32.

137. See note 27 *supra*.

138. See notes 28-36, 50-59, 70-76 & 100-08 and accompanying text *supra*.

139. But see notes 70 & 71 and accompanying text *supra*.

140. See *United States v. Cooper Corp.*, 312 U.S. 600, 607 (1940).

141. See *Piper v. Chris-Craft Indus., Inc.*, 430 U.S. 1, 26 (1977); *United States v. Public Util. Comm'n*, 345 U.S. 295, 315 (1953).

142. See notes 112-20 and accompanying text *supra*.

143. See notes 62 & 63 and accompanying text *supra*.

144. See notes 45, 62 & 84 and accompanying text *supra*.

145. See notes 44 & 85 and accompanying text *supra*.

146. See *White v. United States*, 305 U.S. 281, 292 (1938); *Hellmich v. Hellman*, 276 U.S. 233, 237 (1928).

147. See notes 44, 62 & 84 and accompanying text *supra*.

property<sup>148</sup> would not be applicable to many federally insured mortgage foreclosures.

Moreover, it is submitted that the term "acquisition" necessarily contemplates voluntariness: it should possess an active rather than a passive nature for purposes of the URA. A federally insured mortgage foreclosure procedure should therefore not constitute an "acquisition" within the meaning of section 4601(6). The importance of *Caramico* with respect to this issue lies not in its conclusion that a "program or project" necessarily involves the concept of construction,<sup>149</sup> but rather in its emphasis on the factors of deliberateness and voluntariness associated with a decision to "construct." "Program or project," it is submitted, should be defined for URA purposes as a program or project designed to benefit the public as a whole.<sup>150</sup>

In *Cole*, the D.C. Circuit appeared to accept the *Caramico* court's concept of voluntary acquisition, but distinguished that case because it involved the acquisition clause and not the written notice clause of section 4601(6).<sup>151</sup> Asserting that the terms "acquisition" as used in the acquisition clause and "acquiring agency" as used in the written notice clause are not the same,<sup>152</sup> the *Cole* majority remarked that, for purposes of the written notice clause, the focus should be on the phrase "as a result of a written order" and a literal interpretation should be followed.<sup>153</sup> The Supreme Court, however, has admonished the courts to "place the words of a statute in their proper context by resort to the legislative history" since such history "illuminates the meaning of acts, as context does that of words."<sup>154</sup> It is suggested that the legislative history of the URA indicates that the words "acquiring agency" used in the written notice clause refer to the agency contemplating an acquisition<sup>155</sup> and that an emphasis is placed on the deliberate aspects of an "acquisition." It is therefore submitted that under both the acquisition and written notice clauses, a voluntary action, such as an acquisition or decision to acquire, by a federal agency or state agency receiving federal financial assistance is required.

This conclusion is reinforced by the *in pari materia* approach to construing the undefined terms of section 4601(6). Under this method, no conditional determination of ambiguity is required because the *in pari materia* rule of construction is mandated.<sup>156</sup> It is submitted that the *Cole* court failed to consider the written notice clause in unison with the other provi-

148. 42 U.S.C. § 4651 (1976). These policies require "[t]hat the head of a Federal agency . . . make every reasonable effort to acquire . . . real property by negotiations." *Id.* § 4651(1). Moreover, the Act provides that the property be appraised before the initiation of negotiations relating to its acquisitions. *Id.* § 4651(2).

149. See text accompanying notes 46-48 *supra*.

150. See 42 U.S.C. § 4621 (1976).

151. See text accompanying note 113 *supra*.

152. 571 F.2d at 596.

153. *Id.*

154. *Tidewater Oil Co. v. United States*, 409 U.S. 154, 157 (1972).

155. See H.R. REP. NO. 1656, 91st Cong., 2d Sess. 4, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850, 5854. See also *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934).

156. See generally cases cited note 146 *supra*.



sions of the URA, and that its “common meaning” construction of section 4601(6) is therefore misleading. The *Cole* majority rejected the argument that section 4637<sup>157</sup> of the Act would be surplusage if the written notice clause were given its plain meaning.<sup>158</sup> Assuming the *Cole* court was correct in its determination that the two provisions may be read consistently, it is nonetheless submitted that a simultaneous consideration of section 4637, the remaining sections of the URA, and the written notice clause of section 4601(6) would lead to the conclusion that the terms of the written notice clause are indeed ambiguous.<sup>159</sup> Resort to legislative history, it is submitted, would therefore be not only legitimate but also necessary for a correct construction of the written notice clause of the URA, particularly within the context of a federally insured mortgage foreclosure procedure.

#### V. CONCLUSION

A foreclosure on a federally insured mortgage, it is submitted, does not constitute an “acquisition” within the terms of the URA, nor does the governmental agency become an “acquiring agency” after receipt of the title to property due to this foreclosure process. Adopting the rationale of *Caramico*, it is submitted that foreclosures on federally insured mortgages are involuntary responses to the mortgagor’s default, and consequently do not satisfy the voluntary “acquisition” required under an *in pari materia* construction of section 4601(6). The relocation of persons as a result of the mortgage foreclosure process, or even after this process has been completed, should not fall within the coverage of the Act, because no “acquisition,” as that word is used within the URA, has occurred.

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157. 42 U.S.C. § 4637 (1976). Section 4637 provides that persons who are required to relocate as a result of certain federal aid programs involving urban renewal shall, “for the purposes of [the URA], be deemed to have been displaced as the result of the acquisition of real property.” *Id.* See note 78 *supra*.

158. 571 F.2d at 597 n.32. The dissent suggested that if the written notice clause were to be given its “common sense” meaning, the written notice clause would encompass all persons to which § 4637 is addressed and thereby obviate the need for that provision. *Id.* at 612 (Wilkey, J., dissenting), citing 42 U.S.C. § 4637 (1976). The dissent asserted that the fact that Congress specially provided coverage for certain persons in § 4637 indicated that Congress could not have intended that the written notice clause be construed according to its “common sense” meaning. 571 F.2d at 612 (Wilkey, J., dissenting). Characterizing this assertion by the dissent as “misguided,” the *Cole* majority remarked that the basis for the dissent’s reliance on § 4637 was not apparent as “written notice is not required by either program referred to in [§ 4637].” 571 F.2d at 597 n.32, citing 42 U.S.C. §§ 1455(c)(1), 3307 (1976). For the text of § 4637, see note 78 *supra*.

159. For the reasoning of the *Cole* dissent on this issue, see note 130 and accompanying text *supra*. It is submitted that if the operational sections of the URA were also to be given a “plain meaning” construction, assistance would not always be available for displaced persons under the written notice clause as the required “acquisition” may not occur. See 42 U.S.C. §§ 4622-4630 (1976). This interpretation would also be contrary to legislative intent. See H.R. REP. NO. 1656, 91st Cong., 2d Sess. 4, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850, 5854. Indeed, the *Cole* majority indicated the ambiguity of the written notice clause with reference to § 4637: “Congress could quite reasonably conclude that even under the notice definition it was uncertain that persons displaced by these [federal aid] programs would be eligible for [URA] benefits.” 571 F.2d at 597 n.32.