

Legal Opinion: **CDD-0001**

Index: 1.700

Subject: River Park Square Project-Relocation of the City of Spokane

January 27, 2000

James C. Sloane, Esq.
City Attorney
808 Spokane Falls Blvd.
Spokane, Washington 99201-3326

RE: River Park Square Project—Relocation Responsibilities of the City of
Spokane

Dear Mr. Sloane;

This will respond to your letter of November 3, 1999, addressed to David Polatsek of this Office, and is pursuant to the several telephone conversations Mr. Stanley Schwartz of your staff has had with Mr. Polatsek on this subject. The problem presented involves the applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) to the displacement of a number of businesses as the result of demolition for a project receiving loan guarantees under section 108 of the Housing and Community Development Act of 1974.

As Mr. Polatsek has explained to Mr. Schwartz, the URA does not directly apply to displacement for a project assisted in this manner. Section 101(4) of the law defines “Federal financial assistance” as a “grant, loan, or contribution provided by the United States, *except any Federal guarantee or insurance. . .*”[Emphasis added.] A section 108 loan guarantee clearly comes within the language of this exception. However, Departmental regulations impose requirements identical to those of the URA in cases in which HUD assistance is limited to loan guarantees under section 108.

These regulations promote uniform treatment of displacements resulting from acquisition, rehabilitation or demolition accomplished for a project assisted directly with Community Development Block Grant funding *and* the same displacements produced through the use of guaranteed loans for which CDBG funds are security. The Department has promulgated the regulation appearing at 24 CFR Section 570.707. This section provides that the provisions of subpart K of 24 CFR Part 570 apply to guaranteed loan funds and other CDBG funds except to the extent they are specifically modified or augmented by the provisions of subpart M, which implements section 108 loan guarantees. Contained in Subpart K of Part 570 is Section 570.606(b), which imposes the relocation requirements of 49 CFR Part 24, the governmentwide regulation implementing the URA. In short, although the URA does not by statute apply to projects such as the one involved in the instant case, these regulations impose obligations identical to those contained in the legislation.

49 CFR Part 24 covers displacements occurring on or after the date of “initiation of negotiations”. This term, which represents Federal recognition of an assisted project, is defined in Section 24.2(k)(2) as (in the case of displacement caused by rehabilitation or demolition) the notice to a person that he or she will be displaced or, if there is no notice, the actual move of the person from the property. All persons whose displacement occurs on or after the date of this “initiation of negotiations” in a section 108 project are covered by relocation provisions identical to those imposed by the URA.

The definition of “displaced person” provided by the statute at Section 101(6) states that displacement must be the consequence of (among other things) rehabilitation or demolition undertaken *for* a federally-assisted program or project. This means that the actions of the developer were sufficient to trigger the legal obligations of the URA, because they were undertaken as an integral part of preparation for the assisted project. Section 211(a) of the statute requires that the cost of relocation assistance and payments shall be part of the cost of a program or project undertaken with Federal financial assistance and that the “displacing agency” shall be eligible for Federal assistance for these costs “in the same manner and to the same extent as other program or project costs.”

Section 101(11) of the URA defines “displacing agency” as “any State, State agency or *person* carrying out a program or project with Federal financial assistance which causes a person to be a displaced person” [emphasis added.] A displacing agency may undertake a project through the use of subgrants or by contract with a third party, but this does not relieve that defined agency of its responsibilities under the URA. Since the City of Spokane is the recipient of a loan guarantee pursuant to section 108, it follows that relocation costs occasioned *for* a program or project so assisted must be paid for in the same manner and to the same extent as the other costs of the program receiving this assistance. While it is not uncommon for the recipient of Federal financial assistance to contract with another to administer relocation assistance and assume its costs, in the instant case no such contract was entered into and the developer may therefore deny any responsibility for these costs.

We hope that this serves to clarify HUD’s position and to confirm the advice already provided to your staff.

Sincerely,

Elton J. Lester

Assistant General Counsel
Community Development Division