



## Chapter 8: Acquisition

### Overview

When utilizing CDBG funds for real property acquisition, Grantees are required to follow certain federal statutory and regulatory requirements. The primary of these are The Uniform Relocation Assistance and Real Property Acquisitions Act (URA) and Section 104(d) of the Housing and Community Development Act. Throughout this chapter you will find links to the applicable citations within the Code of Federal Regulations (CFR). An example of this is *49 CFR 24.101*.

The URA is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The URA (or sometimes Uniform Act for short) applies to acquisition activities and displacement (temporary or permanent). URA imposes requirements on HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers or others; AND, real property acquisition for HUD-assisted projects (whether publicly or privately acquired) must adhere to URA-established provisions.

Section 104(d): Section 104(d) of the Housing and Community Development Act of 1974 (also known as the “Barney Frank Amendments”) requirements may be triggered by demolition or conversion of residential units with CDBG funds. This law modifies and supplements requirements imposed by URA. This law has an impact on both acquisition and determining relocation benefits for low- and moderate-income households.

This chapter covers the acquisition requirements of:

- URA: CDBG projects involving acquisition, rehabilitation, or demolition are subject to the provisions of the Uniform Act (URA). Key requirements of the law include voluntary and involuntary acquisition processes, appraisals and the use of eminent domain.
- Section 104(d) of the Housing and Community Development Act applies to CDBG and other HUD funded programs. Key requirements of the law include, 1) a Residential Antidisplacement and Relocation Assistance Plan for Grantees, 2) required relocation assistance for displaced low- and moderate-income persons, and 3) one-for-one replacement of occupiable, affordable dwelling units.



These laws include requirements for relocation assistance to be provided to displaced persons, businesses, nonprofit organizations, and farms. Those requirements are covered in *Chapter 9: Relocation*.

This chapter provides guidance on carrying out Acquisition activities and is broken into the following sections:

- 8.1 General Acquisition Requirements
- 8.2 Voluntary Acquisition
- 8.3 Involuntary Acquisition
- 8.4 Eminent Domain
- 8.5 Donations
- 8.6 Easements
- 8.7 Appraisals & Just Compensation
- 8.8 Section 104(d) One-for-One Replacement

There may be situations in which other public entities, such as federal agencies (e.g., USDA Rural Development) or local agencies (such as a housing authority) participate with a Grantee using CDBG funds in a project. In such cases involving a federal agency, often that federal agency, rather than the CDBG Grantee, takes responsibility to fulfill URA requirements. The Grantee should either execute an MOU that clearly assigns this responsibility to the other public entity or clearly delineate that responsibility to that other entity.

**Tip:** HUD Handbook 1378 is a resource available for acquisition and relocation information and is available at HUD's web site. Links to specific sections of HUD Handbook 1378 can be found throughout this chapter. Additional guidance and resources can also be downloaded from the FHWA URA website.

[HUD Handbook 1378](#)

[FHWA URA Website](#)

## Section 8.1 General Acquisition Requirements

For the purposes of this chapter, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, long-term leases (50 years or more), and rights-of-way (including both temporary and permanent easements). Grantees should also be aware that all methods of acquisition (e.g., purchase by willing sellers and donations) are covered by the URA.

[49 CFR 24.101](#)



There are two types of acquisition transactions under the URA – voluntary and involuntary. It is critical that the Grantee understand the differences between them to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. This chapter describes those differences and the protections for sellers under each transaction type.

Grantees should not be confused by the terminology of acquisition for URA.

- Voluntary acquisition is not the same as just a willing seller. Voluntary acquisition must meet several requirements that are clarified in Section 8.2 of this chapter.
- Involuntary acquisition is not the same as eminent domain. Involuntary acquisition may occur with or without eminent domain. Also, involuntary acquisition may occur even if the buyer does not have eminent domain powers. Involuntary acquisition is defined, and the required procedures described in Section 8.3 of this chapter.

**CAUTION:** If an acquisition took place prior to application submission, it can be subject to the URA if HCD finds clear evidence that the purchase was done in anticipation of obtaining HCD funds for an activity. The URA also applies if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the project's end result is a federally assisted project.

[HUD Handbook 1378, Chapter 2, Paragraph 2-3 H](#)

[HUD Handbook 1378, Chapter 5, Paragraph 5-4 A](#)

Acquisition activities are subject to the URA if there is intent to acquire property for a federal or federally assisted project at any point during the course of a project.

[49 CFR 24.101](#)

Acquisition rules must be followed whenever the Grantee uses CDBG money to do one or more of the following:

- Undertake the purchase of property directly; or
- Hire an agent, private developer, etc. to act on their behalf; or
- Provide a nonprofit, or for-profit entity organization with funds to purchase a property; or
- Provide federal assistance to individuals who are acquiring their own home (i.e., homebuyer assistance program); or
- Accept donations of property for a CDBG-assisted project.



Also, Grantees should be aware of restrictions on using CDBG funds for acquisitions via eminent domain which are detailed in this chapter. Most notably, CDBG funds can only be used for eminent domain if the property is acquired for a public use.

There are three major sources of federal requirements that cover relocation and acquisition activities in CDBG programs:

- The Federal Highway Administration (FHWA), within the U.S. Department of Transportation, is the lead agency for administering URA. FHWA regulations, effective February 2005, implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24);
- Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR 570.488, 24 CFR Part 42; and,
- 24 CFR 570.606 provides the CDBG implementing regulations, which require compliance with the regulations, in the bullets listed above, in addition to other federal requirements.

[49 CFR Part 24](#)

[Housing and  
Community  
Development Act of  
1974](#)

[24 CFR 570.488](#)

[24 CFR Part 42](#)

[24 CFR 570.606](#)

Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to *Chapter 3: Environmental Review* for detailed guidance.

## Section 8.2 Voluntary Acquisitions

Voluntary acquisition is an abbreviated process under the URA that can be used in limited circumstances. A common misconception is that "willing seller", or "amicable agreement" means a transaction is "voluntary." This is not true under URA. The applicable requirements of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary.

[49 CFR 24.101\(b\)\(1\)-\(5\)](#)

In order to utilize the voluntary acquisition process, the project cannot:

- 1) Include the use, or the threat, of eminent domain power, even if the entity acquiring the property is a Grantee with such authority.
- 2) Require the acquisition of specific sites or properties for the project.



- 3) Include the acquisition of all, or substantially all, of the property within a targeted area within any specified time frame.

Below are several examples of projects or situations and how they meet or do not meet the requirements for a voluntary acquisition. Those that do not meet the requirement become involuntary acquisitions:

- No Eminent Domain Requirement:

*Voluntary Example:* Subrecipient working on behalf of a Grantee issues notice to owner of intent to acquire a property. The notice includes a commitment that the Grantee will NOT use

[HUD Handbook 1378, Chapter 5, Paragraph 5-3 A](#)

eminent domain powers to acquire if the subrecipient cannot reach an agreement on sale of property. The Grantee makes a good faith effort to reach an agreement. If an agreement cannot be reached the Grantee moves on to other potential properties.

*Involuntary Example:* Grantee issues notice to owner of intent to acquire a property but does not include a commitment to not invoke eminent domain. The owner is a willing seller and agrees to the offer of just compensation from the Grantee.

- Not Site-Specific Requirement:

*Voluntary Example:* Grantee plans to build a new community center but will seek an alternative site if negotiations fail to result in an amicable agreement.

*Involuntary Example:* Nonprofit that is expanding an existing community center by acquiring an adjacent property is a site-specific project.

*Voluntary Example:* Nonprofit conducts a feasibility study and multiple properties are possible, but one is most desirable due to financial reasons.

*Involuntary Example:* Nonprofit conducts a feasibility study that shows only one site is possible/feasible to meet program requirements.

- Not Acquiring All Properties:

*Voluntary Example:* Nonprofit is acquiring 15 homes as part of a city-wide rehab for resale program.



*Involuntary Example:* Grantee plans to acquire 15 of 20 homes in a redevelopment plan area for new housing construction.

The steps of voluntary acquisitions and the URA requirements are generally described as follows:

1. **Determine Property and Ownership:** The first step should include a review to determine property acquisition needs and identify any properties to be obtained. Activities such as street widening, water and sewer improvements, or sidewalk construction do not have an obvious property acquisition requirement but may necessitate acquiring easements. The Grantee must provide proof of ownership for the easement, land, or building by conducting a title search of properties and easements to be acquired for the project. The Grantee should obtain either an attorney title opinion letter, or purchase title insurance. Grantees should require owners to transfer the property with clear title.
2. **Notify Owner:** As soon as feasible, the Grantee shall notify the owner in writing of the Grantee’s interest in acquiring the real property or easement using federal funds. The Grantee should add explanation of the process and steps prior to closing on the acquisition. The Voluntary Acquisition Notice (VAN) must state that if a mutually satisfactory agreement cannot be reached, the Grantee will not buy or condemn the property for the same purpose.

[Voluntary Acquisition Notice \(VAN\) with Power of Eminent Domain](#)  
[VAN without Power of Eminent Domain](#)

HUD has provided a sample VAN letter for Grantees with the power of eminent domain or subrecipients acting on the behalf of such Grantees. HUD has also provided a sample letter for subrecipients that do not have the power of eminent domain and are not representing a Grantee that does. Both sample letters include a proposed sales price. This provision may be removed when providing early notice before the determination of value has occurred.

The Grantee should indicate that owner-occupants are not eligible for relocation benefits in the VAN and the acknowledgement form should be attached to the purchase offer.

[49 CFR 24.2\(a\)\(9\)\(ii\)](#)

While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, all tenants in legal occupancy (including non-residential occupants are protected by

[49 CFR 24.2\(a\)\(9\)\(i\)](#)



the URA and are eligible for relocation benefits under the URA. (See several sections below regarding relocation for more information.)

3. **Determine Value:** A formal appraisal is **not required** by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal. While an appraisal for voluntary transactions is not required, Grantees may still decide that an appraisal is necessary to support their determination of market value. Grantees must have some reasonable basis for their determination of market value.

If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of California.

There is a long history of inequity in real estate valuation, regardless of the intentions of the person conducting the valuation. For more information on completing market valuations in an equitable way, see *Appendix B: Equity and Belonging Toolkit*. Additional explanation about appraisals and determining value is found in *Section 8.7 Appraisals and Just Compensation* later in this chapter.

4. **Make Offer:** Grantee shall make a written offer to the owner to acquire the property for the amount determined. There is nothing in the regulations to preclude negotiations resulting in agreements at, above, or even below the agency's estimate of market value after the property owner has been so informed. Grantees cannot take any coercive action in order to reach agreement on the price to be paid for the property. Again, additional explanation is found in *Section 8.7 Appraisals and Just Compensation* later in this chapter. When making a written offer to the owner to acquire a property, the notice should include all the following:
  - Amount offered which also must inform the property owner of what the Grantee believes to be the market value of the property. The offer amount may be different than fair market value based on negotiations.
  - Description, location, and identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.).
5. **Complete Acquisition or Decide Not To Acquire:** The Grantee should discuss the offer to purchase with the property owner, including the basis for the fair market value and offer



made. The owner should be given a reasonable opportunity to consider the offer and present material that the owner believes is relevant to determining the value of the property and/or to suggest modifications in the proposed terms and conditions of the purchase.

Once the property owner has accepted the written offer, a purchase option agreement must be signed. No binding purchase agreements may be signed until the environmental review process has been completed. (See *Chapter 3: Environmental Review*)

If the seller refuses to accept the offer, the buyer/individual must look for another property to purchase.

**Tip:** Homebuyers assisted with CDBG funds to purchase a home fall under voluntary acquisition. Homebuyers must provide the requisite information to the sellers of homes to be purchased.

**NOTE:** Regardless of the form of acquisition used, it is strongly recommended that the Grantee maintain a log of contacts with the owner in the acquisition file.

## Section 8.3 Involuntary Acquisitions

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. Many of the basic provisions for involuntary acquisitions are similar to voluntary, but there are important differences in the requirements. As discussed above, even a “willing seller” may require that the involuntary acquisition process be used. This section addresses the requirements and process of involuntary acquisitions, which includes acquiring with or without eminent domain.

[HUD Handbook 1378, Chapter 5, Paragraph 5-4](#)

### Involuntary Requirements

In accordance with the requirements of the URA, for involuntary transactions, the Grantee must:

1. **Determine Property and Ownership:** The first step should include a review to determine property acquisition needs and identify any properties to be obtained. The Grantee should conduct a title search of properties and easements to be acquired for the project. The Grantee should obtain either an

[HUD Handbook 1378, Chapter 5 Paragraph 5-4\(A\)\(2\)](#)  
[49 CFR 24.102](#)





attorney title opinion letter, or purchase title insurance. Grantees should require owners to transfer the property with clear title.

2. **Notify Owner:** As soon as feasible, the Grantee shall notify the owner in writing that the Grantee may acquire the real property or easement using federal funds and the basic

[HUD Handbook 1378, Chapter 5 Paragraph 5-4\(A\)\(1\)](#)

protections provided to the owner by law. This notification shall include specific notice that the agency does not represent the rights of the property owner and that he/she may want to obtain legal counsel. This additional notice about securing legal counsel is necessary if the Grantee anticipates the possibility that the acquisition will require use of California’s eminent domain/condemnation process. All tenants in legal occupancy (including non-residential occupants are protected by the URA and are eligible for relocation benefits under the URA. (See *Chapter 9: Relocation* and several sections below regarding relocation for more information.)

The Grantee should send either a “Notice to Owner” or a “Notice of Intent to Acquire” and the HUD brochure informing the owner about the process and their rights under the URA. While the Notice to Owner merely informs the property owner of the Grantee’s interest in acquiring the property, the Notice of Intent to Acquire is a commitment to acquire, which is specifically used to establish relocation eligibility prior to Initiation of Negotiations (ION). The ION date serves as a milestone in determining a person’s eligibility for relocation assistance, including moving costs and a replacement housing payment. More information can be found in *Chapter 9: Relocation*.

- The Notice to Owner should advise all occupants not to move. The Notice only informs the property owner of the Grantee's initial interest in acquiring their property, but it is not a commitment to acquire the property and provide relocation benefits at this point.
- The Notice of Intent to Acquire states that the agency **does** intend to acquire the property, rather than expressing a preliminary statement of interest. The notice must also contain all of the information included in a Notice to Owner above. **The Notice of Intent to Acquire triggers relocation eligibility** for owner-occupants and tenants. Therefore, the Notice should advise all occupants not to move until notification of relocation benefits is provided.

[Sample Notice to Owner](#)



- Grantees should exercise caution in determining when to utilize a “Notice of Intent to Acquire” rather than a “Notice to Owner.”

- The Grantee may assure compliance with all of the regulatory requirements of information that must be included in the notice by sending HUD's brochure (HUD Form 1041- CPD) entitled, "When a Public Agency Acquires Your Property." The booklet explains the basic protections afforded the property owner by law, provides additional explanation of the acquisition process, and relocation benefits.

[“When a Public Agency Acquires Your Property” Brochure](#)

3. **Determine Value:** Determine the value of the property based on the appraised value (reviewed by a Review Appraiser) in compliance with the URA and invite the seller to accompany the appraiser. Additional explanation about appraisals and determining value is found in Section 8.7 Appraisals and Just Compensation later in this chapter. As mentioned above, for more information on completing market valuations in an equitable way, see *Appendix B: Equity and Belonging Toolkit*.

4. **Notify Owner of Just Compensation:** Provide a written offer to the owner that contains the just compensation and summary statement sent after an appraisal is complete and the agency has determined just compensation. This written offer must include an offer for the full amount of the just compensation. Once this amount has been determined, this written offer should be delivered promptly. A sample is provided as Appendix 8-1.

Appendix 8-1:  
Sample Statement of  
the Basis for the  
Determination of Just  
Compensation

A statement must be included that summarizes the basis for just compensation and should provide:

[HUD Handbook 1378,  
Chapter 5 Paragraph  
5-4 \(L\)\(4\)](#)

- The amount offered as just compensation, and
- A description and location of the property to be acquired, and
- Identification of the buildings, structures, equipment, and fixtures that are included in the offer.

[49 CFR 24.102 \(d\)](#)

5. **Close the Sale/Condemnation/Decide Not to Acquire:** The Grantee must determine whether it can go forward and close the sale, move to condemnation, or decide not to



acquire. The decision will be dependent on the seller's willingness as well as project necessities.

- Willing Seller: If negotiations are successful in an involuntary acquisition, a contract for sale must be prepared and executed, and transfer documents secured. Remember, the environmental review process must be completed before entering into a binding sales agreement. (See *Chapter 3: Environmental Review*)
- Condemnation: If seller is not willing to convey the property, the Grantee must determine whether it will pursue condemnation through eminent domain powers. If taking the property through condemnation, the Grantee must deposit the full amount of just compensation with the court. Additional details about condemnation and eminent domain are provided in Section 8.4 of this chapter.
- Decide Not to Acquire: If the Grantee decides not to buy or condemn a property, notice must be provided to the owner as described below.

[49 CFR 24.102\(j\)](#)

### Notice of Intent Not to Acquire

If the Grantee decides not to buy or condemn a property at any time after the Notice of Intent to Acquire or Notice to Owner has been sent to the property owner, the Grantee must send written notification, "The Notice of Intent Not to Acquire" to the owner and any tenants occupying the property. This written notice must be sent within 10 days of the decision not to acquire. Sending this notice will assist in keeping all affected persons informed of the Grantee's actions.

[49 CFR 24.5](#)

Appendix 8-2  
Sample Notice  
of Intent Not to  
Acquire

Appendix 8-2 provides a sample Notice of Intent Not to Acquire. The Grantee should document the reason(s) for deciding against acquiring the property.

### Administering Notices

Notices should be sent by certified or registered mail, return receipt requested, or hand delivered by agency staff. Grantees must document receipt of the notices by the owner or occupant. If the owner or occupant does not read or understand English, the Grantee must provide translations and assistance. Each notice must give the name and telephone number of agency staff that may be contacted for further information.



## Section 8.4 Eminent Domain

Eminent domain is the power of the government to take private property for public purposes with payment of just compensation. The U.S. Constitution and state laws govern the process of determining just compensation and taking of property through eminent domain procedures.

Involuntary acquisitions may or may not require eminent domain procedures. The Grantee pursuing involuntary acquisitions must determine upfront whether it may pursue a property through the eminent domain process even if choosing later to not do so.

No CDBG funds may be used to support any federal, state or local projects that seek to use the power of eminent domain unless eminent domain is employed for a public use. This restriction is based on both federal and state laws.

The types of projects that meet the definition of public use include: mass transit, railroads, airports, seaports or highway projects, as well as utility projects which benefit or serve the general public or other structures designated for use by the general public or which have other common carrier or public utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfield Revitalization Act. Public use cannot include economic development projects that primarily benefit private entities. Grantees contemplating the use of eminent domain for any use or project should contact HCD for further guidance prior to proceeding.

Even when eminent domain is used in a project in projects designed for public use, such as a park or improved water system, eminent domain processes can disproportionately harm communities who are rendered marginalized by systems for the benefit of communities who are already centered in policy decisions. For more information on how to mitigate harm when utilizing eminent domain, see *Appendix B: Equity and Belonging Toolkit*.

### Condemnation Through Eminent Domain Procedures

If negotiations are unsuccessful, condemnation proceedings may be initiated. Condemnation is a legal action and must be carried out by Grantee entities authorized by California statutes, which should authorize the proceeding by resolution. Grantees should

[California Code of Civil Procedures Title 7: Eminent Domain](#)



utilize an attorney to coordinate and represent the Grantee in the condemnation process. The requirements and procedures for condemnation, which are allowed only for public uses, are detailed in the California Code of Civil Procedures Title 7: Eminent Domain.

Before filing a condemnation procedure with the court, the condemnor (Grantee) must document the following steps were taken with the condemnee (property owner), which are consistent with the URA acquisition process described in this chapter:

- Reasonable efforts to negotiate with the property owner or their personal representative
- At initial contact with a property owner, the Grantee provided to the property owner information regarding acquisition and relocation. Such information shall include a disclosure, conspicuously located, which states that the Grantee does not represent the rights of the property owner and that the property owner may want to obtain independent advice or unbiased counsel. Best practices dictate that Grantees provide information to the property owner with information on accessing free or reduced-fee legal services.
- Impartial, qualified appraiser must make at least one appraisal of all property proposed to be acquired.
- Grantee provided a copy of the appraisal, and if requested, any official appraisal review notes upon which the negotiations are based, to the property owner at the time of negotiation or at least 45 days prior to making the Notice of Offer.
- Provide a “Notice of Offer” to the property owner by certified mail within reasonable period of time after the governmental entity votes to condemn the property. If the property owner is unknown or one whose whereabouts are unknown, such notice shall also be published once in a newspaper of general circulation in the county where the property is located.
- If the offer is accepted, the transfer of title shall be accomplished within 30 days after acceptance, including payment for taking of the property. If the offer is not accepted within 30 days after the service of the Notice of Offer, the Grantee shall commence condemnation proceedings within 90 days after the expiration of the 30-day offer period.

[Property Owners Pamphlet on Use of Eminent Domain](#)



## Section 8.5 Donations

Donations of property are permitted for most HUD funded projects. However, like all other acquisitions, the process is dictated by whether the acquisition is subject to the voluntary acquisition requirements at 49 CFR 24.101 (b) or involuntary acquisition procedures outlined at 49 CFR 24.102. The Grantee must first assess whether the acquisition would fit the definition of voluntary or involuntary if it was not a donation. Then, the Grantee should adhere to essentially the appropriate acquisition procedures with certain modifications due to the donation. Those modifications are as follows:

[HUD Handbook 1378, Chapter 5, Paragraph 5-5](#)

[49 CFR 24.101\(b\)](#)

[49 CFR 24.102](#)

- **Notice:** The owner must be fully informed of his or her rights under the URA, including the VAN or Notice to Owner at the earliest possible point in the project. The owner also must be informed of the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the Grantee, in writing, from its obligation to appraise the property. The Grantee must keep this acknowledgement in the project file. Appendix 8-3 provides a sample form entitled "Sample Notice to Owner and Request for Donation" to supplement the notices required under the voluntary and involuntary process.
- **Property Value:** If owner requests either that fair market value be set or just compensation established as applicable, provide that information to the owner. Once informed of the value, the owner can donate the property without having the appropriate value offered. Even in a donation, the property owner has the right to have the value (just compensation or fair market value) established, and then to be offered that amount just so that they can know what they are not accepting.
- **Complete Acquisition:** If the owner decides to seek a part of the offer, or all of the offer and not a donation after all, that is the owner's choice. The owner must be fully informed and make his or her own decision. Proceed to closing once the owner has agreed to either donate or make a partial donation of property. Appendix 8-4 provides a sample property donation agreement.

[Appendix 8-3:  
Sample Notice to  
Owner and Request  
for Donation](#)

[Appendix 8-4:  
Sample Property  
Donation Agreement](#)

If the property would be an involuntary acquisition, Grantees should follow the acquisition procedures, including the steps to determine just compensation. Adhering to those steps is



particularly helpful in case the owner changes their mind to either not donate or only partially donate the property.

Also, Grantees should avoid giving tax advice that the property amount donated can be used for tax purposes. Instead, if asked, refer the owner to an accountant or the IRS regarding whether a donation can be used for tax purposes.

## Section 8.6 Easements and URA Requirements

Easements provide “rights-of-way” access that may be permanent or temporary. Permanent and temporary easements are acquisitions that are subject to URA provisions. Grantees must determine whether the acquisition of the easement is considered a voluntary, involuntary, or donation acquisition. Then, the Grantee should adhere to the applicable acquisition procedures imposed by URA. Easements, both temporary and permanent, are only very rarely considered voluntary. Once a project is planned or designated project site selected, it is generally a site-specific acquisition requiring that involuntary acquisition procedures be used.

Temporary easements have one exception that exempts them from the same rules as other forms of acquisition. The exception is a situation where the easement is for the exclusive benefit of the property owner. For example, if a Grantee obtained a temporary easement for parking construction equipment in the yard of the home that is being rehabilitated with CDBG funds, the easement would exclusively benefit the owner and would not be subject to the URA.

Examples of easements in which the URA applies include, but are not limited to, the following:

- Installing a new water or sewer line and requires easements from property owners along the path of the line to install the line and ensure access for maintenance and repairs over time, permanent easements will be required.
- Building a water tower that would benefit a low- and moderate-income (LMI) area and a temporary right of way will be required for construction vehicles while it is being built, temporary easement will be required.

A Grantee must obtain an appraisal for any property, including easements, estimated to be worth more than \$10,000. The Grantee may also seek a donation from property owners to acquire easements that do not solely benefit the property owner. Guidance on appraisals and just compensation for easements and rights-of-way as well as potential steps to seek donations



of such easements may be found later in this chapter. See Section 8.7 Appraisals and Just Compensation.

## Section 8.7 Appraisals and Just Compensation

This section describes the requirements and procedures to establish the value of property for either voluntary or involuntary acquisitions under the URA. This section also addresses requirements for appraisals in that process.

### Market Value for Voluntary Acquisitions

To estimate market value in a voluntary acquisition, Grantees must follow specific procedures:

- A formal appraisal is *not* required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal.
- While an appraisal for voluntary transactions is **not required**, Grantees may still decide that an appraisal is necessary to support their determination of market value. Grantees must have some reasonable basis for their determination of market value.
- If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of California.

After a Grantee has established a market value for the property and has notified the owner of this amount in writing, a Grantee may negotiate freely with the owner in order to reach an agreement. Since these transactions are voluntary, negotiations may result in agreement for the amount of the original estimate, or for a lesser amount.

### Waiver Valuation

An appraisal is not required under two circumstances: (1) when a property is being donated and owner has waived their rights; or (2) when a property has a value estimated at \$10,000 or less. (See Easements below for rights-of-way and easements less than \$10,000.)

[49 CFR 24.102\(c\)\(2\)](#)

[HUD Handbook 1378,  
Chapter 5,  
Paragraph 5-4 E](#)





If a Grantee determines that a formal appraisal is not required, then the valuation process used is called a waiver valuation.

The determination that a property has a value less than \$10,000 must be based on a review of available data by someone who has sufficient understanding of the local real estate market. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of California. This decision must be documented in the project file.

[49 CFR 24.2\(a\)\(33\)](#)

[49 CFR  
24.102\(c\)\(2\)\(ii\)\(B\)](#)

A waiver valuation is not appropriate when the following situations arise:

[HUD Handbook 1378,  
Chapter 5,  
Paragraph 5-4 E \(1\)](#)

- The use of eminent domain is anticipated;
- The anticipated value of the proposed acquisition is expected to exceed \$10,000;
- Possible damages to the remainder property exist;
- Questions on highest and best use exist;
- The valuation problem is complex; or
- Hazardous material/waste may be present.

**NOTE: If the entity acquiring a property offers the property owner the option of having the property appraised, and the owner chooses to have an appraisal, the agency shall obtain an appraisal and not use the waiver valuation method described above.**

## Easements

As outlined above, a Grantee must obtain an appraisal for any property, including easements, estimated to be worth more than \$10,000. For easements and rights-of-way worth less than \$10,000, the Grantee can use the Easement Valuation Form. A sample of this form, Appendix 8-5, summarizes the information that the Grantee must have on file to document the estimated value of the property.

Appendix 8-5:  
Sample Easement  
Valuation Form



## Appraisals

For acquisitions requiring the estimation of fair market value, the URA requires only one appraisal and a review of this appraisal by a qualified person. The following sections describe the contents of an appraisal and appraiser qualifications.

### Appraiser Qualifications

For properties estimated to be worth more than \$10,000, an appraisal must be conducted. There are several minimum requirements for appraisers, including:

- Procurement of appraisers and review appraisers shall be carried out in accordance with procurement or small procurement policies as described in *Chapter 5: Procurement*. (For additional guidance on preparing a scope of work see Contracting for Appraisal section below.)
- California Bureau of Real Estate Appraisers has established licensing and certification levels for appraisers doing business in the state. The level of appraiser required is based on either the kind of property or, if non-residential, the value of the property. [California Licensed Real Estate Appraisers](#)
- A fee appraiser must be state licensed or certified in accordance with Title XI of the Financial Institutions Reform Recover and Enforcement Act (FIRREA) of 1989. [49 CFR 24.103\(d\)\(2\)](#)
- Appraisers, or persons performing the waiver valuation, must not have any interest—either direct or indirect—with the owner or property they are to review. This would be a conflict of interest. [49 CFR 24.102\(n\)\(1\)](#)
- No person shall attempt to unduly influence or coerce an appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal.
- Persons functioning as negotiators may not supervise nor formally evaluate the performance of any appraiser or waiver valuator. [49 CFR 24.102\(n\)\(2\)](#)
- No appraiser may negotiate on the agency's behalf if he or she performed the appraisal, review or waiver valuation, on the property. There is an exception for properties valued at \$10,000 or less [49 CFR 24.102 \(n\)\(3\)](#)



## Contracting for an Appraisal

In order to procure an appraiser, the Grantee should request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. (See *Chapter 5: Procurement* for more information on procurement of professional services.)

The Grantee must execute a professional services contract with an independent appraiser. The contract must include a detailed scope of services that the appraiser will perform. See the Guide for Preparing Appraisal Scope of Work.

[Guide for Preparing Appraisal Scope of Work](#)

Payment for the appraiser's services, or waiver valuation, must not be based on the amount of the resulting property value.

## Appraisal Process & Criteria

Appraisals must meet nationally/state-recognized industry standards. The contract must specify the content requirements of the appraisal report. The appraiser may not discriminate based on race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential property. Additionally, best practices take into account the inequities that are built into the real estate market. For more information see *Appendix B: Equity and Belonging Toolkit*.

The Grantee or the appraiser must invite the property owner in writing to accompany the appraiser during inspection of the property. This notice should be given before the appraisal is undertaken. A copy of the notice should be placed in the property acquisition file along with evidence of receipt by the owner.

At a minimum, all appraisals must contain the following:

- The purpose and function of the appraisal.
- A statement of the assumptions and limiting conditions affecting the appraisal.
- An adequate legal description of the property, any remnants not being acquired, and its physical characteristics.
  - This should also include key information such as title information, location, zoning, present use, highest and best use, and at least a five-year sales history of the property.

[HUD Handbook 1378, Chapter 5, Paragraph 5-4 J\(11\)](#)



- An explanation of all relevant approaches to value.
  - If sales data are sufficient, the appraiser should rely solely on the market approach.
  - If more than one method is used, the text should reconcile the various approaches to value and support the conclusions.
- A description of comparable sales.
- A final statement of the value of the real property.
  - For partial acquisitions, the appraisal should also give a statement of the value of damages and benefits to the remaining property.
- The effective date of the valuation appraisal.
- A signature and certification of the appraiser.
- The report shall be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

### Conduct Review Appraisal

As mentioned above, in the case that a property is subject to a valuation under the URA and does not meet the requirements for the limited “voluntary” process or is over \$10,000, a Review Appraisal is required. After the initial appraisal is conducted, a review must be made by a California licensed appraiser under written contract. The appraiser must fulfill the requirements described in the Appraiser Qualifications section above. The review must be written, signed and dated.

[49 CFR 24.104](#)

The review appraiser must examine all appraisals to check that the appraisal meets all applicable requirements, and to evaluate the initial appraiser's documentation, analysis, and soundness of opinion.

If the review appraiser does not approve or accept an appraisal, it may be necessary to seek a second full appraisal. If the review appraiser does not agree with the original appraisal and it is not practical to do a second appraisal, the review appraiser may re-evaluate the original appraisal amount.



## Establishing Just Compensation

After a review of the appraisal, the Grantee must establish just compensation and present this in a written offer to the owner.

Just compensation cannot be less than the appraised market value. In determining this amount, the Grantee (not the appraiser) may take into account the benefit or detriment that the upcoming project will have on any remaining property at the site.

[49 CFR 24.102\(d\)](#)

If the owner retains or removes any property improvements, (for example, permanent fencing) the salvage value of the improvement should be deducted from the offer of just compensation.

If an entire parcel is not being acquired, and the agency determines that the owner would be left with an uneconomic remnant, the agency must offer to purchase this remnant. An uneconomic remnant is defined as a parcel of real property with little or no value to the owner. An example of this might be a remnant not large enough for future use or without access to a street.

[49 CFR 24.102\(k\)](#)

The Grantee must prepare a written Statement of the Basis for the Determination of Just Compensation to be provided to the property owner (see Appendix 8-1). In addition to the initial written purchase offer, this Statement must also include:

Appendix 8-1:  
Sample Statement of  
the Basis Just  
Compensation

- A legal description and location identification of the property;
- Interest to be acquired (e.g., fee simple, easement, etc.);
- An inventory of the buildings, structures, fixtures, etc., that are considered to be a part of the real property;
- A statement of the amount offered as just compensation;
- If there are tenant-owned improvements, the amount determined to be just compensation for the improvements and the basis for the amount;
- If the owner keeps some of the property improvements, the amount determined to be just compensation for these improvements and the basis for the amount;
- Any purchase option agreement should be attached; and



- If only a part of the parcel is to be acquired, a statement apportioning just compensation between the actual piece to be acquired and an amount representing damages and benefits to the remaining portion.

A copy of this Statement should be placed in the property acquisition file.

## Negotiating the Purchase

As soon as feasible after establishing just compensation, the Grantee must send the owner a Written Offer to Purchase which includes the Statement of the Basis for the Determination of Just Compensation (see the sample provided). As with all notices, receipt must be documented. Please contact HCD for assistance with drafting a Written Offer to Purchase. If the property is occupied by a tenant, owner or business, the Grantee must issue a written Notice of Eligibility for Relocation Benefits as soon as possible after the written offer to purchase (also called the "Initiation of Negotiations") is made.

[Appendix 8-1:  
Sample Statement of  
the Basis Just  
Compensation](#)

The most recent URA regulations emphasize that the agency should make reasonable efforts to conduct face-to-face negotiations with the owner or the owner's representative. The owner may present relevant information that bears on the determination of value and may suggest modifications to the proposed terms and conditions of the purchase. The agency must give these suggestions full consideration.

[48 CFR 24.102\(f\)](#)

If the owner's information or suggestions would warrant it, the agency may ask the appraiser to update the current appraisal or order another appraisal. If this results in a change in just compensation, the agency must adjust the offer.

The owner must be paid for costs to transfer title to the agency. These costs may be advanced instead of reimbursed and they include recording fees, legal fees, prepayment penalties, and incidental costs.

[HUD Handbook 1378,  
Chapter 5, Paragraph  
5-4 M](#)

Documentation of negotiation proceedings should be placed in the project acquisition file. Grantees should be sure to thoroughly document the justification for payment if it is more than the original offer of fair market value.

[49 CFR 24.106](#)

HCD will only allow CDBG funds to pay up to the fair market value established by a California licensed appraiser. Any cost above that amount must be derived from local funds or another source of funding included in the project. However, HCD may allow CDBG funds to be expended that exceed fair market value if a court orders a higher amount through eminent domain



procedures or other extenuating circumstances. The Grantee will need to use an administrative settlement for any acquisition that exceeds fair market value. Consult with HCD in such circumstances.

If payment exceeds the fair market value and HCD accepts the acquisition, the acquisition file must include documentation of the funding sources other than CDBG that covered the amount paid which exceeds fair market value. The Grantee should also retain a copy of the administrative settlement.

## Section 8.8 Section 104(d) One-for-One Unit Replacement (Project Requirements)

The basic concept behind the Section 104(d) requirements (also known as the “Barney Frank Amendments”) is that CDBG funds may not be used to reduce a Grantee's stock of affordable housing. These requirements supplement and overlap the provisions of URA both for the Grantee’s activities in undertaking a project and relocation benefits provided to displaced persons.

This section focuses on requirements imposed as part of the acquisition, design, and resulting construction of any project that was previously available as residential units for low- and moderate-income households. Section 104(d) also imposes additional requirements regarding relocation of tenants. *Chapter 9: Relocation* addresses those relocation requirements.

The 104(d) regulations state that: "All occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units in connection with an assisted activity must be replaced with comparable low-income dwelling units."

[24 CFR 42.375\(a\)](#)

Before obligating or expending funds that will directly result in demolition or conversion, the Grantee must make public and submit to HCD the information required in the Grantee's Residential Anti-displacement and Relocation Assistance Plan. HUD has provided a sample plan that can be adopted by the Grantee and must be submitted with project application.

[Sample Residential  
Anti-displacement and  
Relocation Assistance  
Plan](#)

There are four key issues in understanding the one-for-one replacement requirement.



- Which dwelling units must be replaced (and which need not be replaced)?
- What counts as a replacement dwelling unit?
- What information must be made public and submitted to the state before execution of contracts?
- What is the exception to one-for-one replacement rules?

All replacement housing must initially be made available for occupancy at any time during the period beginning one year before the Grantee makes public the information required under the Residential Anti-displacement and Relocation Assistance Plan and ending three years after the commencement of the demolition or rehabilitation related to the conversion. Also, a One-for-One Replacement Summary Grantee Performance Report must be submitted before relocation activities can begin and kept updated (informing HCD of updates) for the low- and moderate-income units demolished or converted in the project. See the HUD One-for-One Replacement Summary Grantee Performance Report.

[One-for-One Replacement Summary Grantee Performance Report](#)

## Dwelling Units That Must Be Replaced

Grantees must replace a housing unit if the unit meets all three conditions listed below:

- Condition 1: It meets the definition of low/moderate dwelling unit. A low/mod dwelling unit is defined as a dwelling unit with a market rent (including an allowance for utilities) that is equal to or less than the Fair Market Rent (FMR) for its size. A reduced rent charged to a relative or on-site manager is not considered market rent.

[HUD Fair Market Rents](#)

### AND

- Condition 2: It is occupied or is a vacant occupiable dwelling unit. A vacant occupiable dwelling unit is defined as:
  - A dwelling unit in standard condition (regardless of how long it has been vacant); or
  - A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); or





- A unit that is not suitable for rehabilitation, which has been legally occupied within three months from before the date of agreement.

**AND**

- Condition 3: It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing (including conversion to a homeless shelter).

It is important to note that the income of the particular occupant is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activity, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

### Criteria for Replacement Units

Replacement low- and moderate-income dwelling units may be provided by any public agency or private developer. Replacement units must meet all of the following criteria:

- Replacement units must be located within the Grantee's jurisdiction and, to the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units lost. (Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.)
- Replacement units must be sufficient in number and size to house no less than the number of occupants who could have been housed in the units that are demolished or converted.
- The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The Grantee may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units) unless the Grantee, before committing funds, provides information to citizens and to HCD demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the Grantee. Provided in standard condition and vacant; rehabilitation of occupied units toward replacement does not count. Replacement low-



and moderate-income dwelling units may include units that have been raised to standard from substandard condition if:

- The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the Grantee and the property owner); and
- No one was displaced from the unit as a direct result of the assisted activity.
- Provided within the specified timeframe:
  - Replacement units must be made available for occupancy during the period beginning one year before the Grantee's submission of the information required under 24 CFR 42.375, described below under Grantee Submission Requirements, and ending three years after the commencement of the demolition or rehabilitation related to the conversion. A Grantee that fails to make the required public notice will lose the year before submission for counting replacement units. **HCD requires units be made available prior to closeout of the CDBG grant, or within 3 years of demolition, whichever is earlier.**
  - This period may slightly exceed four years. However, HCD requires all replacement units to be available before the project is closed.
- Replacement units must be designed to remain LMI dwelling units for at least 10 years from the date of initial occupancy. Replacement low- and moderate-income dwelling units may include, but are not limited to, public housing, existing housing receiving Section 8 project-based assistance, HOME or CDBG- funded units that have at least a 10-year affordability period.

[24 CFR 42.375\(b\)\(4\)](#)

## Grantee Submission Requirements

Before a Grantee executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low- and moderate-income dwellings units or the conversion of low- and moderate-income dwelling units to another use, the Grantee must make the following information available to the public, and submit documentation in writing to HCD:

[24 CFR 42.375\(c\)](#)

- Description: A description of the proposed assisted activity.



- Location and number of units to be removed: The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a LMI dwelling units as a direct result of the assisted activity.
- A time schedule for the commitment and completion of the demolition or conversion.
- Location and number of replacement units – the location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.
- If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available.
- Basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy,
- Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the housing needs of lower-income households in the Grantee.

### Exception to One-for-One Replacement

Replacement is not required if HCD determines that enough standard, vacant, affordable housing serving the Grantee is available. A Grantee may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by HCD.

The one-for-one replacement requirement does not apply to the extent HCD determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within the Grantee's jurisdiction.

In determining the adequacy of supply, HCD will consider whether the demolition or conversion of the low- and moderate-income dwelling units will have a material impact on the ability of lower-income households to find suitable housing.

HCD will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:



- Vacancy rate: The housing vacancy rate in the local government’s jurisdiction.
- Number of vacancies: The number of vacant LMI dwelling units in the local government’s jurisdiction (excluding units that will be demolished or converted).
- Waiting list for assisted housing: The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the Grantee. However, HCD recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.
- Consolidated Plan: The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- Housing outside the local government jurisdiction: HCD may consider the supply of vacant low- and moderate-income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the Grantee's jurisdiction. Such additional dwelling units shall be considered if HCD determines that the units would be suitable to serve the needs of lower-income households that could be served by the low- and moderate-income dwelling units that are to be demolished or converted to another use. HCD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

Grantees are encouraged to consider the impact to the make-up of neighborhoods and communities when considering the demolition or conversion of affordable housing. More information can be found in *Appendix B: Equity and Belonging Toolkit*.

### Procedure for Seeking an Exception

The Grantee must submit a request for determination for an exception directly to HCD. Simultaneously with the submission of the request, the Grantee must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HCD additional information supporting or opposing the request. If HCD, after considering the submission and the additional data, agrees with the request, HCD must provide its recommendation with supporting information to HUD.



## Section 8.9 Appeals

The Grantee must develop an appeals procedure.

### Appeals

Grantees must promptly review all appeals in accordance with the requirements of applicable laws and the URA. Grantees must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations.

[49 CFR 24.10](#)

### Who May Appeal

Any person, family, or business directly affected by the acquisition and/or relocation activities undertaken by a Grantee may appeal. All appeals must be in writing and must be directed to the Chief Elected Official of the Grantee undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the Grantee's written appeals/grievance procedures prior to pursuing legal remedies.

### Basis for Appeals

Any person, family, or business that feels that the Grantee failed to properly consider his or her written request for financial or other assistance must file a written appeal with the agency personnel identified within 60 days of the date of receipt of the administering agency's written determination denying assistance.

### Review of Appeals

The Grantee shall designate a Review Officer to hear the appeal. The Review Officer shall be the administrative officer of the Grantee, or their designee provided neither was directly involved in the activity for which the appeal was filed. The Grantee shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair and full review of the appeal.

[49 CFR 24.10\(e\)\(f\)\(g\)\(h\)](#)

Promptly after receipt of all information submitted by a person in support of an appeal, the Grantee shall make a written determination on the appeal, including an explanation of the basis on which the decision was made and notify the person appealing a Grantee's decision.



If the appeal is denied, the Grantee must advise the person of his or her right to seek judicial review of the Grantee's decision.

Appendix 4-7 contains sample procedures that can be used by the Grantee to address potential complaints or appeals for decisions about URA and related laws. See *Chapter 4: Additional Grantee Requirements*.

Appendix 4-7: Sample Grievance Procedures
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