Chapter 5: Acquisition

Introduction

This chapter describes the process required to acquire real property for any program-eligible activity funded wholly or partially with DOH funds. ("Real property" includes land with or without structures on it.) Acquisition assisted with DOH funds must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and current regulations, effective February 2005. This chapter also includes the appeals and record keeping processes for the acquisition of real property.

The following requirements apply to HUD-funded projects, which include those with DOH funds.

There may be situations in which other federal agencies participate with DOH funds in a project (e.g., Rural Development). In this case, a lead agency must be designated and if it is an agency working with funds other than CDBG, that federal agency's policies and requirements must be followed.

Section 5.1 General Acquisition Requirements

49 CFR 24.101

For the purposes of this manual, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are also subject to all of the same rules as other forms of acquisition unless the temporary easement exclusively benefits the property owner. Grantees should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

Acquisition rules must be followed whenever:

- The grantee undertakes the purchase of property directly;
- The grantee hires an agent, private developer, etc. to act on their behalf; and
- The grantee provides a nonprofit, or for-profit entity organization with funds to purchase a property; or
- The grantee provides federal assistance to individuals who are acquiring their own home (i.e. homebuyer assistance program).

Tip: HUD Handbook 1378, Chapter 5, recently updated, is a resource available for acquisition information and is available at HUD's web site:
https://www.hud.gov/sites/documents/1378C5CPDH.PDF

The URA regulations can also be downloaded from the Federal Highway Administration's website:
http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm

Note: The first step grantees should consider before undertaking any acquisition is a title search to determine the legal owner of the property.

Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 2: Environmental Review for detailed guidance.

Section 5.2 Voluntary Acquisitions and Donations

Grantees must understand the critical difference between voluntary and involuntary sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain**.** 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.

NOTE: The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if federal resources could be introduced later in the project.

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 project.

49 CFR 24.101

The URA recognizes three general types of purchases as potentially voluntary. Generally, they are:

1. Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the community states in writing it will not to use this power

   • *Example:* The grantee has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing and, if the offer is not accepted, be prepared to look for another property. The property will not be taken using the condemnation process.

   Handbook 1378, Chapter 5, Paragraph 5-3 B

2. **Purchases where the agency or person does not have the power of eminent domain**

   • *Example:* A nonprofit organization without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.

3. **Purchases of property from government agencies (federal, state, or local) where the grantee does not have the power of eminent domain over the other entity.**

   • *Example:* A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.

Sometimes there is confusion about what is actually considered "voluntary." 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)

Each type of voluntary acquisition, and the URA requirements pertaining to each, is described as follows:

- The public notice, advertisements and literature should include a description of what the grantee intends to purchase, its reasons, and any conditions of which a seller should be aware.
- The voluntary acquisition policy must a state that if a mutually satisfactory agreement cannot be reached, the grantee will not buy or condemn the property for the same purpose.
- The grantee should indicate that owner-occupants are not eligible for relocation benefits in the public notice and the acknowledgement form should be attached to the purchase offer.

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 the URA and are eligible for relocation benefits under the URA. (See Chapter 8: Fair Housing and Equal Access for more information.)

Voluntary Acquisition by a Grantee or Persons Acting on Behalf of a Grantee with the Power of Eminent Domain

To be considered a voluntary acquisition by a purchaser with the power of eminent domain, the property may not be part of a planned or designated project area where substantially all the property in the area will be purchased within a specified time frame.

The search for alternative sites for the project or activity may be limited to one geographic area, but if none of the owners are willing to sell voluntarily, the grantee must be prepared to look in another area for a suitable site. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated in an equivalent or like manner.

If a grantee determines that a specific site is necessary for a program or activity it is planning to undertake, then the sale cannot be considered voluntary. It is assumed that, if negotiations fail, the grantee could ultimately acquire the property through condemnation. Thus, the acquisition is not considered voluntary.

Handbook 1378, Chapter 5, Paragraph 5-3 A

Note: Temporary or permanent easements are only very rarely not part of a planned, designated project as defined above; therefore, easements are discussed under Section 5.3: Involuntary Acquisitions.

If someone else, such as a private developer or realtor, is authorized to act on the grantee's behalf in negotiating the purchase, and the grantee is prepared to intervene and use condemnation if the negotiations are unsuccessful, the acquisition is not considered voluntary.

In order to be voluntary, the grantee must meet all the requirements listed below and inform the property owner in writing that:

- Federal funds are involved in the transaction; however, the grantee will not use its power of eminent domain if negotiations fail to result in an amicable agreement; and

- The grantee's estimate of the market value for the property to be acquired as outlined below.

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.

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, an amount exceeding it, or for a lesser amount.

49 CFR 24.102(i)

Although not required by the regulations, it could be appropriate for grantees to apply the URA administrative settlement concept and procedures in the URA regulations to negotiate amounts that exceed the original estimate of market value (if they can demonstrate that the offer was reasonable and necessary to accomplish the project). If grantees anticipate they will offer an amount greater than market value, they must submit a request in writing and provide supporting documentation to DOH for a basis to pay an amount that is more than market value. DOH must provide approval prior to payment (cautionary note: this may establish a dangerous precedent).

Grantees cannot take any coercive action in order to reach agreement on the price to be paid for the property.

Voluntary Acquisition by Organizations without the Power of Eminent Domain (Including Nonprofits and Individuals)

Handbook 1378, Chapter 5, Paragraph 5-3 B

Nonprofit organizations and individual buyers generally do not have the power of eminent domain. Under such circumstances, the requirements for URA are limited. In these types of purchases, the buyer, who could be a private citizen, a developer, or an organization, must inform the seller of three things in writing:

1. The buyer does not have the power of eminent domain,
2. Federal funds are involved in the acquisition of their real estate, and the owner will not be eligible for relocation benefits, and
3. An estimate of the fair market value of the property, provided by a licensed real estate agent.

After the buyer/grantee has determined the property's market value and has notified the owner of this amount in writing, the buyer may negotiate freely with the owner to establish the purchase price. If the seller refuses to accept the offer, the buyer/individual must look for another property to purchase.

The seller must be notified of the preceding information using Attachment 5-1 from HUD Handbook 1378—Disclosures to Seller with Voluntary, Arm's Length Purchase Offer. If, for any reason, the seller is not informed of these facts prior to closing, the seller should be immediately informed and allowed to agreement without penalty.

Attachment 5-1
Notice to Owner

These notice requirements may appear to only protect the seller in a voluntary transaction; however, they also help to protect the grantee from after-the-fact claims by sellers. The notice assists the grantee/ buyer to document that the owner-occupant was fully advised that their purchase price was voluntarily negotiated, and they will not be eligible for relocation assistance. All organizations and individuals with DOH funds must comply with this requirement.

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

Voluntary Acquisition of Government Property

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the power of eminent domain. Grantees and individual buyers do not possess the legal authority to condemn government-owned property.

49 CFR 24.101 (b)(3)

Donations of Property

Voluntary acquisition includes donations of real property; however, the owner must be fully informed of his or her rights under the URA, including 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. Attachment 5-2 provides a sample form entitled "Sample Acknowledgement of Acquisition and Relocation Rights and Benefits under the Uniform Relocation Act."

Handbook 1378,
Chapter 5,
Paragraph 5-5

49 CFR 24.108

Attachment 5-2:
Sample Acknowledgement
of Rights

Section 5.3 Involuntary Acquisitions

Use of CDBG Funds and Eminent Domain

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.

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 DOH for further guidance prior to proceeding.

Easements

Temporary easements are subject to all of the same rules as other forms of acquisition with one exception. 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.

Otherwise, the URA applies. For example, if a grantee is installing a new water or sewer line and requires permanent 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 and subject to the URA. If a project involved building a water tower that would benefit a low- and moderate-income (LMI) area and a temporary right of way would be required for construction vehicles while it is being built, the purchase of the needed temporary easement would be covered by the URA.

Guidance on valuation/appraisals for easements may be found later in this section.

Involuntary Transaction Requirements

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. In accordance with the requirements of the URA, for involuntary transactions, the grantee must:

Handbook 1378, Chapter 5, Paragraph 5-4

- Notify the seller of the agency's interest to acquire their property;
- Obtain an appraisal in compliance with the URA and invite the seller to accompany the appraiser;
- Notify the owner and, if applicable, any tenants of their URA protections;
- Determine the fair market value of the property based on the appraised value (reviewed by a Review Appraiser)

- Offer the fair market value for the property being acquired; and
- Complete the sale as expeditiously as possible.

Notification Requirements

There are two key notices that grantees must issue when undertaking an involuntary acquisition:

- Notify the seller of the agency's interest to acquire their property by sending a Notice to Owner or a Notice of Intent to Acquire. Grantees should exercise caution if they choose to send a Notice of Intent to Acquire rather than a Notice to Owner as discussed in this section. (The Notice of Intent triggers relocation eligibility for owner-occupants and tenants.)

Handbook 1378, Chapter 5 Paragraph 5-4(A)(1)

- After an appraisal is complete (and reviewed by a review appraiser), the grantee must determine the amount of the offer and send the owner a Notice of Just Compensation (the full amount of the determined value). This Notice establishes the definite date for relocation benefits eligibility for all persons with legal residency, including non-residential occupants.

Timing of URA Coverage

It is important for grantees to know that the timing of an acquisition can trigger URA requirements. Regardless of the source of funds, any acquisition of property made by a state agency, on or after the date of submission of the DOH application for financing of an activity using that property, is subject to the URA.

- If an acquisition took place prior to application submission, it can be subject to the URA if DOH finds clear evidence that the purchase was done in anticipation of obtaining DOH 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.

Handbook 1378, Chapter 2 Paragraph 2-3H

Handbook 1378, Chapter 5 Paragraph 5-4A

DOH considers once a project is publicly announced and federal funds will be sought (date the public hearing for the application is advertised), your project is subject to NEPA/CEPA.

Notice to Owner

The Notice to Owner should be sent as soon as feasible after a site is selected. See Attachment 5-3 for a Sample Notice to Owner of this Chapter.

Attachment 5-3: Sample Notice to Owner (Involuntary)

This Notice:

- Expresses the agency's initial interest in acquiring the property.

- Informs the owner that the agency must conduct an appraisal of the property to establish fair market value, and that the owner has the right to accompany the appraiser.

Handbook 1378, Chapter 5, Paragraph 5-4 A

- States that the owner will be offered fair market value (just compensation) and what costs will also be covered.

- Informs the owner about the protections provided by the URA.

49 CFR 24.102(b)

The grantee should also send HUD's brochure (HUD Form 1041- CPD) entitled, "When a Public Agency Acquires Your Property." Refer to Attachment 5-4 of this chapter or download it from the DOH web site. The booklet explains the basic protections afforded the property owner by law.

Attachment 5-4: "When a Public Agency Acquires Your Property" brochure

To avoid triggering eligibility for relocation benefits at this time, 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 provide relocation benefits at this point. The following chapter deals with relocation and covers this Notice in detail.

Notice of Intent to Acquire

Some grantees choose to send a Notice of Intent to Acquire instead of a Notice to Owner. A Notice of Intent to Acquire (Attachment 5-5) must contain all the information included in a Notice to Owner, but would also state that the agency does intend to acquire the property, rather than expressing a preliminary statement of interest. The Notice should advise all occupants not to move.

Attachment 5-5: Sample Notice of Intent to Acquire

NOTE: Grantees should be aware that this Notice triggers eligibility for relocation benefits by occupants and there is the risk that occupants might move prior to the establishment and written offer of just compensation. Therefore, grantees should exercise caution if they choose to send a Notice of Intent to Acquire.

Basis for the Determination of Just Compensation

The written offer to the owner contains the just compensation and summary statement and is sent after an appraisal is complete and the agency has determined just compensation.

Once this amount has been determined, this written offer should be delivered promptly. A sample is provided as Attachment 5-6.

Attachment 5-6: Sample Statement of the Basis for the Determination of Just Compensation

- The delivery date of this written offer constitutes the date that triggers relocation eligibility related to the acquisition.

- This written offer must include an offer for the full amount of the just compensation.

Handbook 1378, Chapter 5, Paragraph 5-4 L(4)

49 CFR 24.102 (d)

A summary statement must be included that summarizes the basis for the should provide:

- A statement of the amount offered as just compensation,
- 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(e)

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

DOH provides a sample Notice of Intent Not to Acquire (See Attachment 5-7). The grantee should document the reason(s) for deciding against acquiring the property.

Attachment 5-7 Sample Notice to Not Acquire

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.

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.

Waiver Valuation

An appraisal is not required under two circumstances: (1) when a property is being donated and owner has waived his/her rights; or (2) when a property has a value estimated at $10,000 or less.

Handbook 1378, Chapter 5, Paragraph 5-4 E

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

49 CFR 24.102(c)(2)

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. This decision must be documented in the project file.

49 CFR 24.102(2)(ii)(B)

49 CFR 24.2(a)(33)

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

- 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.

Handbook 1378, Chapter 5, Paragraph 5-4 E (1)

Note: If the agency 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 worth less than $10,000, the grantee can use the Easement Appraisal Form. This form, which is Attachment 5-8, summarizes the information that the appraiser grantee must have on file to document the estimated value of the property.

Attachment 5-8: Easement Appraisal Form

If an owner chooses to donate the property for the easement, the grantee must document that the owner has acknowledged he/she has a right to the involuntary acquisition process, including appraisal, and that he/she is choosing to waive his/her rights under this process. Use Attachment 5-2 for this purpose.

Attachment 5-2: Sample Acknowledgement of Rights

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:

Connecticut General Statute Sec 20-501

- An appraiser must hold a Connecticut appraiser's license. A copy of the license must be included in the acquisition or procurement file.

- Grantees must select Connecticut licensed appraisers using proper procurement procedures.

- 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))

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 4: Procurement for more information on procurement of professional services.)

Handbook 1378, Chapter 5, Paragraph 5-4 J(11)

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 Attachment 5-9 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.

Attachment 5-9: Guide for Preparing Appraisal Scope of Work

Appraisal Process & Criteria

Appraisals must meet nationally/state-recognized industry standards. The appraiser may not use race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential property. The contract must also specify the content requirements of the appraisal report.

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.
- 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.

Review of Appraisal

After the initial appraisal is conducted, a review must be made by a Connecticut licensed appraiser under written contract. The review must be written, signed and dated. (See Attachment 5-10 for a sample Review Appraisal document.)

Attachment 5-10: Sample Review Appraisal

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.

49 CFR 24.104

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 Attachment 5-6). In addition to the initial written purchase offer, this Statement must also include:

Attachment 5-6: Sample Statement of the Basis for the Determination of 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 Attachment 5-11). As with all notices, receipt must be documented. 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.

Attachment 5-11: Sample Written Offer to Purchase

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 CRF 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.

Handbook 1378, Chapter 5, Paragraph 5-4 M

49 CFR 24.106

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.

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. *The grantee must get written pre-approval from DOH if the offer exceeds the amount determined to be fair market value.*

Closing the Sale or Condemnation

Before the agency takes possession of the property, the owner must be paid the agreed-upon purchase price. If the agency is taking the property through condemnation, the agency must deposit the full amount of just compensation with the court.

49 CFR 24.106

Willing Seller—No Condemnation Action Taken

If negotiations are successful in an involuntary acquisition, a contract for sale must be prepared and executed, and transfer documents secured. If payment exceeds the market value, and the grantee failed to obtain pre-approval of the amount from DOH the acquisition file must include a written justification of the amount paid. DOH will review these justifications carefully to ensure they are reasonable, and if the payment is determined to be unjustified, the payment will be disallowed.

49 CFR 24.102(j)

At the conclusion of settlement, the grantee must give the owner a Statement of Settlement Costs (see Attachment 5-12), which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or person handling the transaction. DOH requires that grantees must also obtain a copy of the cancelled check to document receipt for the purchase price,

Attachment 5-12: Sample of Statement of Settlement Costs

Condemnation Procedures

If negotiations are unsuccessful, condemnation proceedings may be initiated. Condemnation is a legal action and must be carried out by a city/county attorney and the city/county governing body should authorize the proceeding by resolution.

Copies of surveys and maps of the subject property must be filed and recorded in the applicable county office. Condemnation proceedings can then be initiated in the Circuit Court of the county in which the property is located. The grantee must deposit the amount determined to be just compensation in escrow with the court.

The petition filed in Circuit Court must include:

- Detailed project narrative sufficient to support the use of eminent domain.
- A legal description of the property being sought and its current and proposed use.
- An application to the court to appoint commissioners to award the amount of compensation the owner of the property is entitled to receive.

The court will appoint three qualified commissioners to visit the property and establish its fair market value. Within 15 days of their appointment, the commissioners will return a written report to the court establishing fair market value. At this time, the court will issue a summons to the owner, which states the amount the commissioners establish as the fair market value.

The owner has 20 days from the date he or she receives the summons to respond. If the owner does not respond during this period, the court will enter an interlocutory judgment that sets the amount of compensation and conveys title. The owner can file an exception to the interlocutory judgment within 30 days from the date the judgment was entered.

All exceptions relating to compensation will be determined by jury trial in the Circuit Court. The jury will set the amount of compensation. The owner can appeal the Circuit Court judgment to the Court of Appeals.

The city/county must pay the owner's court costs as well as its own court costs. If the process moves into appeal, the amount of compensation will be the amount established by the highest court.

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

Refer to Chapter 1: Project Administration for information on grievance procedures.

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 executive officer of the grantee and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the grantee's written procedures prior to pursuing judicial review.

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 administrative officer of the unit of local government or his/her 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.

Section 5.4 Section 104(d) One-for-One Unit Replacement

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing.

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 DOH the information required in the grantee's 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 DOH of updates) for the low- and moderate-income units demolished or converted in the project. See Attachment 5-13 for a sample of the One-for-One Replacement Summary Grantee Performance Report.

Attachment 5-13: 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 dilapidated unit, 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, must provide information to citizens and to DOH demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.
- 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 a four-year timeframe:

- Replacement units must be initially made available for occupancy at any time during the period beginning one year before the grantee's submission of the information required under 24 CFR 570.606(c) and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

24 CFR 570.606(c)(1)(iii)

- This period may slightly exceed four years. However, DOH requires all replacement units to be available before the project is closed.

A grantee that fails to make the required submission will lose the year before submission for counting replacement units

- Affordable for 10 years.

- Replacement units must be designed to remain LMI dwelling units for at least 10 years from the date of initial occupancy.

- A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhood where current market rents are moderate and projected future rents are expected to remain within future FMRs).

- 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.

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 public by posting in the Chief Elected Official's (CEO) office and submit the following information in writing to DOH for monitoring purposes:

- 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.

Exception to One-for-One Replacement

Replacement is not required if DOH determines that enough standard, vacant, affordable housing serving the jurisdiction 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 DOH.

The one-for-one replacement requirement does not apply to the extent DOH 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, DOH 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. DOH 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 jurisdiction.
- Number of vacancies—The number of vacant LMI dwelling units in the 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 jurisdiction. However, DOH 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 jurisdiction—DOH 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 DOH 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. DOH will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

Procedure for Seeking an Exception

The grantee must submit a request for determination for an exception directly to DOH. 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 DOH additional information supporting or opposing the request. If DOH, after considering the submission and the additional data, agrees with the request, DOH must provide its recommendation with supporting information to HUD.