CDBG GRANT ADMINISTRATION HANDBOOK

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Chapter 6 – Acquisition and Relocation

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Table of Contents

ACQUISITION OF REAL PROPERTY 3
INTRODUCTION 3
GENERAL ACQUISITION REQUIREMENTS 3
Timing of URA Coverage 3
Terminology of the URA 3
VOLUNTARY ACQUISITION PROCESS 4
Step 1: Determine what Properties will be Acquired 5
Step 2. Determine Property and Ownership 5
Step 3. Notify Owner 5
Step 4. Determine the Value of the Property 5
Step 5. Make Offer 6
Step 6. Complete Acquisition or Decide Not to Acquire 6
INVOLUNTARY ACQUISITION PROCESS 6
Step 1: Determine what Properties will be Acquired 6
Step 2: Determine Ownership of Properties to be Acquired 7
Step 3: Establish a File for Each Property or Easement to be Acquired 7
Step 4: Notify Owner of Interest in Acquiring the Real Property or Easement 7
Step 5: Determine Value and Obtain Appraisal(s) and/or Market Estimates 7
Step 6: Establish and Offer Just Compensation 8
Step 7: Complete Acquisition or Decide not to Acquire 8
EASEMENTS 8
DONATIONS 9
ACQUISITION RECORDKEEPING 9
List Of Parcels 9
Acquisition Case File 10
APPEALS 10
SECTION 104(D) ONE-FOR-ONE UNIT REPLACEMENT 10
RELOCATION ASSISTANCE REQUIREMENTS 11
REVISION HISTORY 12

ACQUISITION OF REAL PROPERTY

INTRODUCTION

This chapter describes the process required to acquire real property for any program-eligible activity funded wholly or partially with CDBG funds. ("Real property" includes land with or without structures on it.) Acquisition assisted with CDBG funds must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) at 49 CFR 24.101 and CDBG regulations at 24 CFR 570.606.

GENERAL ACQUISITION REQUIREMENTS

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. If CDBG assistance is used in any part of a project, the URA governs the acquisition of real property related to that project and any resulting displacement, even if local funds were used to pay the acquisition costs. Private persons, corporations or businesses that acquire property or displace persons for a CDBG-assisted project are subject to the URA.

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 Grantee, on or after the date of the first public hearing for an activity using that property, is subject to the URA.**

Timing of Acquisition	Subject to URA	Not Subject to URA
Grantee acquires the property, including transfer of deed, before advertising the notice of the first Public Hearing (prior to application)		X
Grantee acquires the property after advertising the notice of the first Public Hearing (prior to application)	X	

Terminology of the URA

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 regulatory requirements that are clarified in this section.

- 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 later in this section.

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

VOLUNTARY ACQUISITION PROCESS

The Voluntary Acquisition Process 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.

In order to utilize the voluntary acquisition process, the following conditions must be met:

1) The Grantee (or Subrecipient) will not use the power of eminent domain to acquire the property, and the following conditions are met:
    a. No later than the time of the offer the Grantee informs the owner of the property in writing of the following:
    b. The Grantee will not acquire the property if negotiations fail to result in an amicable agreement; and
    c. The Grantee's estimate of fair market value for the property to be acquired.
2) Where an agency wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly. *(*See Appendix A to this part, section 24.101(b)(1)(ii).)
3) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits.

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 all three requirements must utilize the Involuntary Acquisition Process.

- ***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.*
- ***Voluntary Example****: Grantee is acquiring 5 homes as part of a city-wide demolition program.*
- ***Involuntary Example:*** *Grantee plans to acquire 15 of 20 homes in a redevelopment plan area for rehabilitation and resale as part of a homeownership program.*
- ***Voluntary Example****: Grantee is acquiring a commercial property through a tax deed (SDCL 10-25) for demolition and clearance.*
- ***Involuntary Example:*** *Grantee is acquiring a property by eminent domain for a public infrastructure project.*

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

Step 1: Determine what Properties will be Acquired

The Grantee, with its engineer or attorney, should review every proposed activity to determine property acquisition needs and identify the particular 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 there is often a need to acquire easements or rights-of-way.

Step 2. 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.

Step 3. 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 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. HUD has provided a sample Voluntary Acquisition Notice (VAN) letter for Grantees with the power of eminent domain. The sample letter includes 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 an 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, any tenants in legal occupancy (including non-residential occupants) are protected by the URA and are eligible for relocation benefits under the URA.

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 South Dakota.

Step 4. Determine the Value of the Property

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.

Step 5. Make Offer

The 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 Grantee'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. When making a written offer to the owner to acquire a property, the notice should include all the following:

- Notification that the Grantee will NOT use the power of eminent domain if an agreement cannot be reached.
- 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.).

The Grantee should discuss the offer to purchase with the property owner, including the basis for the fair market value and offer made.

Step 6. Complete Acquisition or Decide Not to Acquire

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, an option to purchase agreement may be signed. However, no binding purchase agreements may be signed until the Grantee has received Authority to Use Grant Funds from GOED. (See Chapter 2: Environmental Review) If the local government decides not to acquire a property at any time after the VAN has been sent to the property owner, written notification must be sent to the owner and any tenants occupying the property that the local government does not intend to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payment and assistance. This notice must be sent as soon as possible upon the decision not to acquire (no more than 10 days). The notice must be delivered in a way that verifies receipt (e.g., certified with proof of delivery, federal express, hand delivered with signed receipt).

INVOLUNTARY ACQUISITION PROCESS

For all acquisitions that do not meet the regulatory requirements for the Voluntary Acquisition Process, Grantees must utilize the full process under the URA, known as the Involuntary Acquisition Process.

Step 1: Determine what Properties will be Acquired

The Grantee, with its engineer or attorney, should review every proposed activity to determine property acquisition needs and identify the particular 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 there is often a need to acquire easements or rights-of-way.

Step 2: Determine Ownership of Properties to be Acquired

The Grantee must provide proof of ownership for the easement, land or building by conducting a title search of properties to be acquired for the project. This can be accomplished through a title search. If the owner has acquired the property through a means other than a warranty deed, then the Grantee must obtain either an attorney title opinion letter, or purchase title insurance through a title surety company. Permanent easement ownership may be determined by a search of records and accompanying attorney opinion letter stating the owner of record. In the case of public improvement activities, be sure to verify that the property to be improved is in the public domain. Sometimes rights-of-way are privately owned.

Step 3: Establish a File for Each Property or Easement to be Acquired

The Grantee must establish and maintain a file for each property or easement to be acquired and include copies of all acquisition documents. GOED has provided Form 6-1: Real Property Acquisition Checklist to assist Grantees.

NOTE: If the property to be acquired is tenant occupied, contact GOED prior to sending the Initial Notice to Property Owner to ensure that all HUD/URA Relocation Notices are provided as necessary.

Step 4: Notify Owner of Interest in Acquiring the Real Property or Easement

As soon as feasible, the Grantee shall notify the owner in writing of the Grantee's interest in acquiring the real property or easement and the basic protections provided to the owner by law. The Initial Notice to Property Owner (Form 6-2: Sample Notice to Owner), the HUD brochure, When a Public Agency Acquires Your Property and any applicable Housing and Urban Development (HUD) relocation notice should be delivered to the property owner with proof of delivery. If the forms are hand delivered, a receipt signed and dated by the property owner must be obtained. If the recipient does not read or understand English, the Grantee must provide translations and assistance. Documentation of the proof of delivery must be placed in the Grantee's acquisition file.

Step 5: Determine Value and Obtain Appraisal(s) and/or Market Estimates

Before the initiation of negotiations, the value of the real property or easement should be determined by the Grantee. If the estimate of property value is below $15,000 a market estimate can be obtained in lieu of an appraisal. The market estimate must be in writing and provided by a licensed real estate broker or appraiser. For properties under $15,000 in value, the market estimate is the basis of the offer. If the estimate of property value is above $15,000 the Grantee must have an appraisal and a review appraisal completed by individuals properly licensed by the South Dakota Real Estate Commission. The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The review appraisal should focus on determining the adequacy of the appraiser's supporting data, and the soundness of the appraiser's opinion of fair market value. For properties over $15,000 in value, the Review Appraisal is the basis of the offer. If an owner requests an appraisal of a property that the Grantee has determined to be less than $15,000 in value, an appraisal and review appraisal must be obtained. Regardless of the value of the property, the owner or the owner's designated representative, shall be given the opportunity to accompany the appraiser during the appraiser's inspection of the property. Before the appraisal is undertaken, the Grantee or the appraiser must formally invite the property owner to accompany the appraiser during the inspection of the property. Proof of delivery of the invitation must be obtained.

Step 6: Establish and Offer Just Compensation

Upon completion of Step 5, the Grantee shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. A copy of the market estimate (for projects under $15,000) or a copy of the review appraisal (for projects over $15,000) should accompany the offer. The offer or appraisal should include the following:

- A statement of the amount offered as just compensation;
- A description and location identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.); and
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such an interest is not covered by this offer.

Step 7: Complete Acquisition or Decide not to Acquire

The owner shall 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. The time given can vary significantly depending on the circumstances, but property owners must be given a reasonable amount of time to consider the offer. Once the property owner has accepted the written offer, an option to purchase or option to acquire an easement must be signed. No purchase agreements may be signed until after the Grantee has received Authority to Use Grant Funds from GOED. Until the Grantee has an executed contract with GOED, any executed purchase will be at the Grantee's risk.

EASEMENTS

Temporary and permanent easements are subject to all the same rules as any other 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, **including the trigger date**. 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.

As outlined above, a grantee must obtain an appraisal for any property, including easements, estimated to be worth more than $15,000. For easements worth less than $15,000, the grantee can use Form 6-3: Easement Valuation Form. This form summarizes the information that the grantee must have on file to document the estimated value of the property.

DONATIONS

Donations of property are permitted for most HUD funded projects. However, like all other acquisitions, the process is dictated by whether the acquisition meets the voluntary acquisition requirements at 49 CFR 24.101 (b) or the 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. The Grantee must follow the appropriate process with certain modifications listed below.

- 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. GOED has provided Form 6-4: Sample Voluntary Donation of Property a sample form that must "supplement" the required notices under the Voluntary or 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, make a partial donation, or require payment for the property.

If the acquisition would normally be considered involuntary, 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 his/her 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

If donations are being made by elderly, very poor, functionally illiterate, or non-English-speaking persons, the local government should carefully document the efforts made to ensure the owner understands their rights in order to demonstrate the owner is not persuaded or coerced into donating their property.

ACQUISITION RECORDKEEPING

List Of Parcels

For each project, the Grantee's files shall include a list identifying all parcels to be acquired for the project. Such a list may be maintained in a computer-generated format that also indicates, for project management purposes, progress made in carrying out the acquisition program.

Acquisition Case File

Acquisition notices, letters and other documents that are mailed are required to be sent by registered or certified mail, return receipt requested. If hand delivered the delivery should be evidenced by signature and date. Form 6-5: Acquisition Composite List must be completed on each CDBG project having any acquisition. A Real Property Acquisition Checklist (Form 6-1) must be completed for each parcel acquired. For each parcel acquired the Grantee files shall include the following:

- ✓ Identification of property and property owner(s)
- ✓ Determination of ownership (fee simple title, tax deed, etc.)
- ✓ If applicable, evidence that owner received a Preliminary Acquisition Notice accompanied by the notice entitled "When a Public Agency Acquires Your Property" with proof of delivery
- ✓ A copy of the valuation for each parcel obtained whether by appraisal or market valuation
- ✓ If applicable, a Statement of the Basis for the Determination of Just Compensation
- ✓ If applicable, a copy of the written purchase offer and proof of delivery
- ✓ If applicable, as in the case of a donation, a Property Donation Waiver
- ✓ Copy of a Contract of Sale or Act of Donation
- ✓ Copy of a Statement of Settlement Costs and evidence (via a copy of a cancelled check) that the owner received net proceeds (if applicable) due from sale
- ✓ Copy of recordation
- ✓ If applicable, a copy of an appeal or complaint filed and agency response

APPEALS

Grantees must promptly review all appeals in accordance with the requirements of 49 CFR 24.10. 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. Refer to Chapter 1: General Requirements for information on grievance procedures.

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.

24 CFR 42.375(a) states 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."

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 contact GOED for instructions and approval.

RELOCATION ASSISTANCE REQUIREMENTS

The relocation assistance provisions of the URA and Section 104(d) of the Housing and Community Development Act are applicable to homeowners, tenants, businesses and non-profits that must move as a result of an acquisition. Such homeowners and tenants are considered displaced persons. If the project involves displacement of the owner or tenant, please contact the CDBG Program Manager **immediately** before proceeding with the acquisition process. HUD Handbook 1378, Chapter 5, is a valuable resource for acquisition information regarding relocation requirements under the URA and 104(d) of the Housing and Community Development Act.

The handbook is available on HUD's website at:

https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

The URA regulations can also be downloaded from the Electronic Code of Federal Regulations (ecf.gov) at: https://www.ecfr.gov/current/title-49/subtitle-A/part-24

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	8/21/24	• Initial Release	S Deyo
2.0	5/22/26	• Updated Voluntary Acquisition requirements to reflect new URA regulations • Updated links throughout document	S Deyo