



Uniform Act for CDBG-DR

2018 CDBG-DR Problem Solving Clinic

Atlanta, GA | December 12-14, 2018

Welcome & Speakers

- Session Objectives
 - Explain URA rules and requirements and how URA is triggered
 - Share commonly asked questions and answers concerning URA and CDBG-DR funded buyout programs
- Speakers
 - Sara Neira, HUD
 - Will Rudy, HUD
 - Regina Montgomery, HUD



Agenda

- URA Overview
- Acquisition & Buyout FAQs
- URA



URA Overview



Uniform Act – 49 CFR 24

- Establishes minimum standards for federally funded programs/projects requiring the acquisition of real property or displace persons from their homes, businesses, or farms.
- Acquisition
- Rehabilitation
- Demolition



Uniform Act Concepts

- **Broadly applicable to all planned Federal projects (funded in part or in whole) with acq/rehab/demo in any phase**
 - Direct funding recipient liable for (in)actions of 3rd parties
 - Certain URA actions **MUST** be undertaken by the acquiring/displacing agency staff
 - Notice requirements at specified milestones in the activity/project lifecycle – synchronization
 - Uniform standards & practices



What “Triggers” the Uniform Act?

Site identification + planned or intended use of federal funds =
compliance actions commence

- “As soon as feasible” = General Info Notice (GIN) to all occupants at such time there exists:
 1. Documented legal intent of a project (pre-application/applications, Con/Action Plan or Amendments, site specific City Council resolutions),
AND
 2. Site identification
- Notice of Relocation Eligibility within 7-10 days of the “Initiation of Negotiations” for the project (based on the applicable milestone in CDBG/URA regs).



Acquisition & Buyout FAQs



Acquisition & Buyout FAQs

Question:

Are the URA & Section 104(d) waivers and alternative requirements issued in a Federal Register Notice optional?



Acquisition & Buyout FAQs

URA/104(d) **waivers and alternative requirements** issued in Federal Register Notices are **not optional**

- Designed to allow for flexibility in program implementation while adhering to the statutory requirements & become the new rule for program administration
- May present *options* grantees may or may not choose to exercise, for example the ability to use Tenant Based Rental Assistance (TBRA) in lieu of cash URA relocation housing payments
- Waivers & alternative requirements included in Federal Register Notices do not apply to other funds (State or Entitlement CDBG programs, Section 108 Loans, HOME, or other HUD programs)



Acquisition & Buyout FAQs

Most restrictive requirements apply in mixed federal aid projects:

- Affordable rental housing (LIHTC, USDA, etc.).
- Infrastructure or Public Facilities (DOT's, FHWA, USACE).
- Buyouts (FEMA)
- Consult HUD early when mixed federal aid projects are identified to ensure URA requirements are implemented consistent with requirements of all federal agencies
- Federal Agencies may designate one as the cognizant Federal Agency for compliance monitoring



Acquisition & Buyout FAQs

Question:

How do the URA acquisition requirements apply to CDBG-DR activities?



Acquisition & Buyout FAQs

When federal funds are planned, intended, or used for any activity or phase of a project and the phases are interdependent, the URA applies to the land acquisition (even if CDBG-DR does not fund the sale).

- Housing (rehabilitation, new construction, downpayment assistance, etc.)
- Infrastructure or other public facility activities that cannot be completed within existing right-of-way
- Economic development activities also can have URA acquisition requirements
 - Rehabilitation of an industrial building acquired by a nonprofit to use it as a training center for workforce development, URA acquisition requirements apply if the site was completed directly for the CDBG-DR project



Acquisition & Buyout FAQs

Question:

Are Uniform Act funds subject to a Duplication of Benefits (DOB) review?



Acquisition & Buyout FAQs

- Like other CDBG-DR expenditures, **CDBG-DR funds received by people as relocation or acquisition payments through the URA are subject to a DOB review** in compliance with The Stafford Act, (49 CFR 24.8(n))
- HUD November 2011 publication, *“Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees”* and in subsequent CDBG-DR Federal Register Notices



Acquisition & Buyout FAQs

Question:

We are contemplating a buyout program and are hesitant to use eminent domain.

Can we acquire properties from willing sellers first, then use eminent domain only to acquire land from owners that hold out?



Acquisition & Buyout FAQs

Within each activity or project, buyouts must follow a consistent, uniform acquisition process

- Determine in advance if a project can meet all the criteria at 49 CFR 24.101(b)(1)-(5) to be exempt from or is subject to the URA's basic acquisition policies at Subpart B
- When an agency complies with the “voluntary acquisition” requirements, it provides written notice to the owner that eminent domain will not be used to force a sale
- Although it is possible to conduct an acquisition program under the basic acquisition policies of Subpart B, and not use eminent domain, once the voluntary approach has been initiated an agency is precluded from using eminent domain



Acquisition & Buyout FAQs

Question:

The property for a proposed project is already under contract prior to the subgrantee's submission of an application to a State for CDBG-DR funds.

Is this subject to the URA?



Acquisition & Buyout FAQs

The Grantee must **analyze the timeframes of the application for federal funds relative to the date site control was obtained**

- “Project” means any activity or series of activities undertaken with federal financial assistance received or anticipated in any phase
- Where activities are determined to be interdependent, the URA applies
 - If an applicant entered into a contract to acquire the property with the intention of seeking federal funds to complete a project, the entire project would be subject to URA
 - If site control was obtained prior to the availability of federal funding, such as prior to the development of a CDBG-DR Action Plan, then the URA would not apply since the funding program was not in existence at the time the real estate was acquired



Acquisition & Buyout FAQs

Question:

We have a voluntary buyout program. When we make an offer to the property owner(s), we don't know if or when an agreement will be reached. Many factors can cause an application to fall out of the acquisition path. Execution of a purchase agreement is no guarantee the property will ultimately be acquired. Also, the length of time between the date a written offer is made and execution of the purchase agreement can vary significantly.

Given the uncertainty of the process, can we wait to initiate tenant contact until after title has transferred to our agency?



Acquisition & Buyout FAQs

General Information Notice is required “as soon as feasible” (site control + planned use of federal funds).

- **At Initiation of Negotiations (ION), agencies must “promptly” issue a Notice of Eligibility for Relocation Assistance.**
 - “Promptly” is within 7-10 days of ION
 - 3 comparable properties
 - Maximum amounts of replacement housing & moving payments
- The time between the CDBG-DR application and applicable ION date should be used to obtain household data and conduct market analysis needed to prepare a replacement housing payment and Notice of Eligibility at the milestone on which this occurs



Acquisition & Buyout FAQs

Question:

Is an appraisal required for acquisitions in a voluntary acquisition, including buyouts?



Acquisition & Buyout FAQs

- The URA does not require an appraisal when the acquisition is exempt from the Subpart B basic acquisition policies. For voluntary acquisitions, estimates of market value must be prepared by a person familiar with real estate values and include the basis for the agency's determination.
- An appraisal is a recommended best practice for determining the property's market value and for documenting cost reasonableness in accordance with CDBG program rules.
- HUD recommends the use of State licensed or certified appraisers.
 - A technical appraisal review for high value and/or complex valuation problems, such as disaster-damaged property, may also be reasonable.
- Regardless of the method chosen, it must be logically supported and uniformly applied as evidenced in individual casefiles.



Acquisition & Buyout FAQs

Question:

We understand “involuntary” acquisitions are subject to Subpart B of the URA and that process must be fully documented.

What documentation is HUD looking for to evidence compliance with voluntary acquisition requirements?



Acquisition & Buyout FAQs

- HUD reviews **project level details, such as an activity application or an approved CDBG-DR Action Plan, and individual property files for evidence the project met the criteria to be exempt from the URA's basic acquisition policies at Subpart B**
- 49 CFR 24.101(b)(1)-(5) example, the property is not part of an overall plan to acquire most or all properties in a geographic boundary within the same time period (Disaster Risk Reduction Areas)
- Records of negotiations between the acquiring agency and the owner
Justification for any deviation between the agency's estimate of market value and the final purchase price commensurate with the size of the CDBG-DR investment



Acquisition & Buyout FAQs

Question:

Our project involves development of a site under a 99-year lease. We understand leases with terms in excess of 15-years are considered acquisitions under the CDBG program.

How does that translate into compliance actions?



Acquisition & Buyout FAQs

- The URA considers leases in excess of 50 years to be a covered acquisition. HUD has long held that leases of 15 years or more are also subject to URA acquisition requirements
- First, determine if the proposed acquisition meets all conditions to be a “voluntary acquisition” or if the project is subject to the basic acquisition policies of Subpart B
 - **If a voluntary acquisition, document all criteria at 49 CFR Part 24.101(b)(1)-(5) has been satisfied with evidence of the property’s estimated market value**
 - Involuntary acquisitions trigger the basic acquisition policies of the URA found in 49 CFR Part 24 Subpart B
- **Records of negotiations, cost reasonableness, conveyance documents, etc.**



Acquisition & Buyout FAQs

Question:

We anticipate both voluntary and involuntary acquisition approaches in our various recovery programs.

What flexibility is there to pay more than market value for voluntary & involuntary acquisitions?



Acquisition & Buyout FAQs

- It is possible to pay more than market value when purchasing a property using either the voluntary or involuntary acquisition approach
- In both cases, an acquiring agency should be guided by administrative settlement provisions at 49 CFR 24.102(i) for any settlement in excess of the property's estimated market value or established just compensation
- **When federal funds pay for or participate in acquisition costs, the acquiring agency must maintain written justification for the higher amount stating the available information to support the incremental cost over and above the estimated market value or established just compensation**
 - The agency's documentation should be commensurate with the CDBG-DR expenditure, a minor increase will typically require less support



Acquisition & Buyout FAQs

- Grantees are **prohibited from arriving at a purchase price by automatically applying a percentage of value to all properties** and are subject to the cost principles in 2 CFR Part 200.404
- Grantees can **only use CDBG-DR funds towards eligible costs as justification for paying more** than market value
 - Example, since payment of liens is an ineligible use of CDBG-DR funds, the value of any liens on the property would not serve as justification for a negotiated price more than the agency's established just compensation or estimate of market value



Acquisition & Buyout FAQs

- For a “voluntary acquisition”, acquiring agencies should consider alternative sites to complete the project prior to entering into any purchase agreement at an amount that exceeds the agency’s estimate of market value but cannot be reasonably supported and justified
- **Unlike acquisitions subject to the basic acquisition policies of the URA Subpart B, agencies cannot use the costs and risks associated with eminent domain to support a negotiated settlement in a voluntary acquisition**



URA the HUD Way

- Free Web-based Training
- HUD Exchange October 2018
- Sign up for the Acq/Relo Mailing List



Questions

Regina Montgomery, Region 4

(678) 732 – 2701 | Regina.M.Montgomery@hud.gov

Sara Neira, Region 6

(817) 978 – 5937 | Sara.M.Neira@hud.gov

