SECTION VI. REAL PROPERTY ACQUISITION AND ONE-FOR-ONE REPLACEMENT

GENERAL POLICY: If CDBG funds are used to pay ANY part of the cost of acquisition, demolition, construction or rehabilitation activities for a project, the project IS subject to the requirements of the Uniform Relocation Act (URA) and Section 104(d) of the Housing and Community Development Act. If CDBG funds are used solely to pay the costs of general program administration or to pay for relocation assistance only, then URA and Section 104(d) are NOT triggered.

The acquisition of real property and/or the relocation of residents and tenants has the potential for being the most traumatic and emotional of experiences. Additionally, it is one where the local CDBG grantee is most vulnerable to ill-feelings, and perhaps litigation by impacted individuals. For these reasons, **it is imperative that the grantee have a written plan prior to proceeding with any acquisition or relocation activities**. This plan should include a standard set of procedures which assure that the acquisition process will be fair and equitable to all involved parties and contain methods by which the grantee will address grievances by impacted individuals.

If after reading this section it is determined that the Uniform Act (URA) **does** apply, **please contact your project monitor** for more information.

REAL PROPERTY ACQUISITION

A. DETERMINE WHETHER EACH PARTICULAR ACQUISITION IS GOVERNED BY TITLE III OF THE UNIFORM ACT. Even if the property was acquired prior to award or receipt of CDBG funds, if it was acquired with the intent to use CDBG funds for any part of the project, such as construction or rehabilitation activities, the project is subject to the URA and Section 104(d).

The URA requirements apply to permanent easements and to any acquisition of real property where there is federal financial assistance involved in any part of the project costs **EXCEPT** in the following instances.

- **Voluntary Transactions.** While a seller may voluntarily be offering property for sale, HUD does not necessarily consider it to be a "voluntary transaction" unless it can be demonstrated that the transaction meets ALL of the following criteria. (See **EXHIBITS VI A & B).**
  - acquisition is undertaken by an agency or person that **does** have authority to acquire property by eminent domain;
  - no specific site or property needs to be acquired;
  - property to be acquired is not part of an intended, planned, or designated project area;
  - agency determines and informs the owner IN WRITING that it will not use its power of eminent domain to acquire the property in the event that negotiations fail;
  - grantee will inform owner IN WRITING of what it believes to be the Fair Market Value. An appraisal is not required, however, the estimate must be prepared by a person familiar with real estate values and the agency's files must include an explanation of the basis for the estimate.
- Acquisition undertaken by an agency or person that DOES NOT have authority to acquire property by eminent domain, PROVIDED THAT:
  - prior to making the offer, the owner is clearly advised IN WRITING that if negotiations fail the agency will not acquire the property; and,
  - the agency informs owner IN WRITING of what it believes to be the Fair Market Value.

Whenever feasible, this information should be provided to the owner before making the purchase offer. The seller must be provided the opportunity to withdraw from the agreement after this information is provided.

- Acquisition from a public agency, if the acquiring agency does not have the authority to acquire the property through condemnation.

- Acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

- Acquisition of temporary easements**.** See **EXHIBIT VIII-F** under Labor & Construction**.**

The grantee is prohibited by Title III of the Uniform Act from taking any actions that might coerce the property owner into agreeing to the agency's final offer.

If the procedures under the Uniform Act are not applicable, the grantee prepares a "Notice of Determination of Exemption" (**EXHIBIT VI-D**) to be included in the project file. The Notice includes only a description of the parcel to be acquired and the criteria by which the locality determined that the Uniform Act does not apply to the acquisition. The Notice should be signed by the grantee's program coordinator and placed in the grantee's Real Property Acquisition File.

NOTE: If there is any dislocation of tenants from the property it must be noted that the grantee is aware that the move must be accomplished according to relocation assistance provisions contained in the Uniform Act. (See Section VII) Grantee is potentially responsible for payment at URA level of assistance to any tenant who moves from property as a result of negotiations to acquire property if they have not been properly informed even if negotiations fail and property is not acquired. (Please refer to Relocation Requirements, Secton VII, for more information.)

DONATIONS: If a CDBG project includes donated land, the property owner must be made fully aware of their right to receive just compensation for the property in question. If, after they are advised of their rights under URA, they still wish to donate the property, **an appraisal of the property must be completed.** This appraisal is **not necessary if** the owner **in writing**, releases the Grantee from this obligation, or the valuation problem is uncomplicated and the fair market value does not exceed $2,500.

B. IF SUBJECT TO URA, GRANTEE MUST:
(i.e., a non-voluntary transaction)

- Provide written notice to the property owner of interest in acquiring the property and basic protections of the Uniform Act including the Agency's obligation to secure appraisal. (HUD has an information brochure available entitled "When a Public Agency Acquires Your Property", HUD-1041-CPD. Contact Teri Davis in the Department of Local Affairs to obtain copies.) If the agency does not wish to trigger eligibility for relocation assistance at the time of this notice, it should ensure that this notice is not a "Notice of Intent to Acquire". (**Refer to Relocation Requirements - Written Notice Requirements in Chapter VII, page VII-2**)

- Have the property appraised to determine fair market value. If a structure exists on the property to be acquired, the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property. **Grantees are encouraged to obtain at least two appraisals of high value properties and properties requiring a complicated valuation process.**

- Have a written review appraisal performed by a qualified reviewing appraiser and determine just compensation for the property. The review appraiser's certification of the recommended or approved value of the property should be included in a signed statement which identifies the appraisal reports reviewed and explains the basis for the approval.

- Make a written offer to the owner.
- Review any additional materials related to determination of the purchase price.
- Make payment (applicable in those cases where the grantee and the property owner arrive at a mutually agreed upon purchase price.)
- Make a final offer before initiating condemnation procedures
- Maintain acquisition file for each property

In situations where the owner and the agency have come to a voluntary agreement and the agency has fully informed the owner of his/her rights under the Uniform Act and the owner is willing to waive those rights, the agency must have a signed statement to that effect (EXHIBIT VI-C).

NOTE: For projects that contain the acquisition of either land or structures, it is now permissible to enter into an "option to buy" agreement prior to the completion of the appropriate environmental review. The Grantee should utilize its non-federal revenue sources for the earnest deposit if one is required. IN ORDER TO AVOID THE ISSUE OF OBLIGATING FEDERAL FUNDS PRIOR TO THE COMPLETION OF THE ENVIRONMENTAL REVIEW, THE "OPTION" MUST CONTAIN THE PROVISION/CLAUSE THAT THE "OPTION" IS CONTINGENT UPON THE SUCCESSFUL COMPLETION OF THE ENVIRONMENTAL REVIEW.

IT IS STRONGLY ENCOURAGED BY THE STATE THAT THE GRANTEE, PRIOR TO SIGNING AN "OPTION", CONDUCT A PRELIMINARY "WALK THROUGH" OF THE SITE OR FACILITY, FOR THE PURPOSE OF DETERMINING THE LIKELIHOOD FOR THE NEED FOR ANY ENVIRONMENTAL MITIGATION THAT MAY BE NECESSARY AS A RESULT OF THE FINDING OF THE REVIEW. THE COST OF MITIGATION MAY BE UNAFFORDABLE GIVEN EXISTING REVENUES FOR THE PROJECT.

C. REAL PROPERTY ACQUISITION -- RECORDKEEPING REQUIREMENTS

The following information must be maintained for **at least three years** after each owner of the property and each person displaced from the property have received the final payment to which they are entitled.

- Identification of property and property owner(s)
- Evidence that owner was informed on a timely basis about acquisition and his or her rights.
- Copy of each appraisal report, including review appraiser's report and evidence that owner was invited to accompany each appraiser on appraiser's inspection of property.
- A record of any contacts with the property owner.
- Copy of written purchase offer and summary statement of the basis for the determination of just compensation; date of delivery to owner.
- Copy of purchase contract and documents conveying property.
- Copy of settlement statement identifying incidental expenses and evidence that owner received net proceeds due from sale.
- Copy of waiver signed by owner, if applicable.
- Copy of any appeal or complaint filed and response.

ONE-FOR-ONE REPLACEMENT OF HOUSING REQUIREMENTS
SECTION 104(d)

CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing. All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted with CDBG funds must be replaced with low/moderate-income dwelling units.

DEFINITIONS:

Low/moderate-income dwelling unit: a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent for Section 8 existing housing, except that the term does not include a unit that is owned and occupied by the same person before and after the assisted rehabilitation.

Market rent: generally the actual rent a tenant pays may be assumed to be the market rent except when rent is reduced to compensate tenant for service provided. **For owner-occupied property, it is the amount for which a comparable property rents.**

Vacant occupiable dwelling unit: a vacant dwelling unit that is in standard condition, or; a vacant dwelling unit that is in substandard condition but is suitable for rehabilitation, or; a dwelling unit in any condition that has been occupied at any time within the period beginning one year before the date of execution of the grantee's agreement with the property owner covering the rehab or demolition.

Comparable dwelling unit: a unit which is decent, safe and sanitary and functionally equivalent to the unit to be demolished or converted.

A. WHICH DWELLING UNITS MUST BE REPLACED?

Units which meet **ALL** of the following criteria must be replaced.

1. **Before** demolition or conversion the market rent **including utilities** did not exceed the fair market rents (FMR) established by HUD for the Section 8 existing housing program;

2. The dwelling unit is either **occupied or is a vacant occupiable** dwelling unit;

3. The dwelling unit is either going to be **demolished OR converted** so that it no longer serves as permanent housing.

NOTE: Anytime a structure is converted from permanent housing, whether owner or tenant occupied, to temporary or transitional housing, it is considered a public facility and the units must be replaced.

Prior to committing any funds that will result in the demolition or conversion of low/moderate income dwelling, the grantee must make public by publication in a newspaper of general circulation and submit to the Department of Local Affairs the following:

- a description of the proposed activity
- location on a map and number of dwelling units by size that are affected
- time schedule for commencement and completion of demolition or conversion
- location on a map of replacement dwelling units by size
- source of funding and time schedule for replacement (replacement housing must be initially made available for occupancy at any time during the period beginning **one year before** the grantee's submission of this information and ending **three years after** the commencement of demolition or conversion)

- basis of ensuring that replacement units will remain low/moderate for at least 10 years from initial occupancy.

- if any proposed replacement units are smaller than previous units, information demonstrating that it is consistent with the housing needs of lower-income households in the jurisdiction

EXAMPLES WHICH TRIGGER ONE-FOR-ONE REPLACEMENT REQUIREMENT:

- An apartment building with units in standard condition and rents below FMR is converted to an emergency shelter for the homeless using CDBG funds must have the units replaced.

- A seriously dilapidated unit that is vacant for less than one year before remodeling with CDBG into transitional housing for homeless and had a market rent below fair market rent, must be replaced.

- A dwelling unit that was owner-occupied before CDBG demolition and comparable units had a market rent below FMR must be replaced.

- An occupied dwelling unit that was below FMR before CDBG rehab and above FMR after rehab must be replaced.

- A dwelling unit that was substandard but suitable for rehab, vacant for two years and had a market rent below FMR prior to conversion and was converted with CDBG into commercial space must be replaced.

NOTE: **The income of the particular owner-occupant or renter is irrelevant in one-for-one replacement.**

B. WHAT COUNTS AS A REPLACEMENT DWELLING UNIT?

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

1. Replacement units **must be located within the grantee's jurisdiction** and, to the extent feasible, be located within the same neighborhood as the units replaced.

2. Replacement units **must be sufficient in number and size** to house no fewer than the number of occupants who could have been housed in the units that were demolished or converted (determined in accordance with applicable local housing occupancy codes.) The grantee may not replace demolished or converted units with smaller units. For example, a two bedroom unit cannot be replaced with two one bedroom units, unless before committing funds, the grantee has provided information to citizens and to the state demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in their jurisdiction.

3. The grantee **cannot count** rehabilitation of **owner-occupied units** as replacement units. The grantee **cannot count rehabilitation of tenant occupied units** as replacement units **unless:**
   - the unit was raised from substandard to standard condition, and
   - no person was displaced from the unit as a direct result of the activity, and
   - the unit was vacant for at least three months before the execution of the agreement between the grantee and the property owner.

4. Replacement units must be made available for occupancy at any time during the period beginning **one year before** the grantee submits the necessary information to the public and the Department of Local Affairs and ending **three years after** the start of the demolition or conversion.

5. Replacement units must be designed to **remain low/moderate-income dwelling units for at least 10 years** from the date of initial occupancy. They may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.