



TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

Texas Community Development Block Grant Program

Acquisition

Administrator Workshop



Texas Community Development Block Grant Program Administrators Workshop
Acquisition



Introduction

Uniform Relocation Assistance (URA)

- HUD 49 CFR Part 24

Purposes of URA

- Owners of Real Property
- Persons displaced
- Acquiring entity (AE)

Grant Recipient Responsibility

The Uniform Relocation Assistance, also known as URA, provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of rehabilitation, demolition, or private acquisition carried out under federally assisted programs.

The regulations implementing the URA are not HUD regulations. They are federal regulations administered by the Federal Highway Administration.

CDBG-funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970, and the federal regulations for CDBG projects can be found in 49 CFR Part 24.

The purpose of URA is really to protect the rights of property owners and displaced persons. Specifically, it ensures:

- Each property owner is properly informed of their rights and is entitled to the payment of just compensation for their land, even if they are a direct beneficiary.
- Any person displaced as a direct result of federal or federally-assisted projects is treated fairly, consistently and equitably and will not suffer disproportionate injuries as a result of projects that benefit the public as

- a whole; and
- The term **acquiring entity or AE** refers to the entity performing the acquisition or under whose authority the acquisition is performed. The acquiring entity must document compliance with the laws and regulations.



Applicability

URA Acquisition rules apply:

- Fee simple title
- 15 or more years lease term
- Donation
- Permanent easement
- Temporary easement,
- Etc.

Easement is a legal right to occupy or use another person's land for specific purposes.

URA Acquisition rules **apply** to CDBG projects when acquiring any of the following:

- a fee for a simple title to the property;
- property that is leased for a term of 15 years or more
- Donation - **Even if property is willfully donated the acquiring entity must still follow federal acquisition procedures to ensure that the property owner was duly informed about her/his rights, the amount to just compensation, right to an appraisal of property, if applicable, etc.**
- URA rules apply to
- **properties subject to a life estate or a life use; and properties providing a**
- a permanent easement or temporary easements necessary for the project.

An **easement** is a legal right to occupy or use another person's land for specific purposes. The use of the land is limited, and the original owner retains legal title to the land.



Applicability

URA Acquisition rules do not apply:

- Property owner benefits
- Private-to-private acquisition for private use

Exceptions

- Public infrastructure for private enterprise
- Tennessee Valley Authority or USDA Rural Utilities Service

The URA does **not** apply to

- temporary easements needed *solely* to perform work intended exclusively for the benefit of the property owner; or
- When private-to-private acquisition is taking place. In this case, acquisition of one private entity from another private entity which is entirely for private use is not considered to be subject to URA.
- However, if CDBG funds are invested in public infrastructure to support that private enterprise, any acquisition with respect to that public infrastructure **would be** subject to URA; also, *if a* CDBG project that is also funded by either the *Tennessee Valley Authority* or the *USDA Rural Utilities Service* written mutual consent of both HUD and the other federal department or authority is required and the Relocation Assistance procedures for persons displaced as a result of the acquisition still apply.



Key Policies

Real Property

Refers to land, any buildings, structures, and equipment permanently attached or fixed to the land.

Environmental Clearance

Procurement and Acquisition

Condemnation

The following are key policies for Acquisition:

Real Property: public improvements related to a CDBG project must be constructed on publicly owned real property that is owned by the subrecipient/partnering entity to the grant or recorded as a right-of-way or easement.

As noted during the **Environmental** presentation, an AUGF (or Authority to Use Grant Funds) must be issued by TDA ---**before** any acquisition takes place. However, an option contract is one action that may be taken to obtain site control; this action may conclude in acquisition once the environmental review process is completed.

Procurement: Surveyors, appraisers, title companies, and other professionals whose services are required for acquisition must be procured under CDBG rules for procurement of professional services. Procurement of an attorney for legal services is not subject to competitive procurement requirements.

Condemnation is the legal process used for taking property under the authority of eminent domain. This is not the same as condemning a building for the suitability of persons to live in. **Condemnation procedures are governed by**

state law under Chapter 21 of the Texas Property Code.



Eminent Domain

KUT 90.5

Donate

What is eminent domain?

KUT 90.5 | By Nathan Bernier

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LISTEN • 9:47



Nathan Bernier / KUT

TxDOT's I-35 expansion project will have the biggest impact on properties along the east side of the upper decks. The upper decks will be removed and the highway's footprint widened to accommodate extra lanes.

Eminent Domain refers to the power of the government to take private property, with just compensation to the property owner, and convert the property to public use.

It balances the rights of property owners against the need of the community.

The statutory authority of the state of Texas grants eminent domain authority to state agencies, political subdivisions (such as cities, counties, and special districts) and some private entities.

For example: A city park needs to have ADA restrooms and there are several privately owned vacant lots around the park. In this case the city can consider use of eminent domain.



Methods of Acquisition

Donation

- Owner agrees

Just Compensation Purchase

- Appraisal or valuation

Negotiation Purchase

- Different price

Condemnation

- Legal process

An acquiring entity may acquire real property **AFTER** determining whether the acquisition is voluntary or involuntary through one of 4 methods:

Donation is the method of acquisition where the owner agrees to give, rather than sell, property to the acquiring entity.

Just Compensation Purchase

This method requires a valuation process—such as an appraisal or valuation through property tax records or appraisal district records to determine a fair price.

Negotiated Purchase

Negotiated purchase is the acquisition of property at a price different from the value that was determined through an appraisal or other just compensation valuation.

If purchasing through negotiation, the reason(s) for the negotiated value must be explained in a document called an administrative settlement.

Condemnation

Condemnation refers to the **legal process** of taking property under the authority of eminent domain.

Given the short term of the TxCDBG contract periods, TDA does **not** typically approve the use of condemnation in the acquisition of property. In addition, the use of TxCDBG funds to support the use of eminent domain on an economic development project that primarily benefits a **private entity rather than the**

public is prohibited.

Once you know the method for the acquisition, it needs to be decided if the action is voluntary or involuntary.



Determining Voluntary or Involuntary

Voluntary Acquisition

- Advantages
- **With** Eminent Domain Authority
 - *Private* property
- **Without** Eminent Domain Authority
 - *Public* property

Voluntary acquisition is solely about the ***potential of the transaction occurring as a result of the use or potential use of the authority of eminent domain.*** It has nothing to do with how a property is obtained.

There are real advantages of Voluntary Acquisition, for example:

- **it** simplifies the valuation process and saves time needed to acquire the property
- it relaxes the negotiation standards (an agency may offer less than fair market value and/or end negotiations with an owner who makes an unreasonable counteroffer)
- Owner-occupants are not eligible for relocation assistance.

Note: Tenants of the property **would be** eligible for relocation assistance.

A transaction is voluntary for agencies WITH eminent domain authority, if:

- The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits;

and

- The agency informs the owner in writing of the property's market value; and
- The agency also informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement; and if
- Tenants are displaced, the tenants are provided relocation assistance

For agencies WITHOUT eminent domain authority, a transaction is voluntary if:

- The agency notifies the owner in writing of the property's market value; and
- The agency notifies the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached; and if
- Tenants are displaced, the tenants are provided relocation assistance

In no case is it permissible for an entity to subsequently undertake an acquisition under threat or use its eminent domain authority, if initial negotiations for a voluntary acquisition fail.



Amended URA Regulations (New)

Voluntary Acquisition Simplified

- No longer have to establish specific site *not* needed.
- Acquiring Entity decides eminent domain will not be used.

Waiver Valuations

- Estimated value increased from $\leq \$10K$ to $\leq \$15K$.
- Two additional tiers for possible waiver valuation.
 - \$15K up to \$35K – Requires HUD approval
 - \$35K up to \$50K – Requires HUD approval

Amended URA regulations went into effect June 3, 2024. There are two changes significant to the TxCDBG Program.

The criteria for determining if an acquisition can be conducted as Voluntary has been simplified.

- The acquiring entity is no longer required to establish: *no specific site or property* is needed for the project.
- The acquiring entity may decide not to use eminent domain authority, but the Acquiring Entity is then committed to that decision.

Also, the estimated value of property to qualify for conducting a waiver valuation in lieu of a formal appraisal has increased from \$10,000 or less to \$15,000 or less.

- The new rules create two additional tiers with estimated property value ranges of greater than \$15,000 up to \$35,000 and greater than \$35,000 up to \$50,000.
- Both tiers over \$15,000 require HUD approval.



Determining Voluntary or Involuntary

Involuntary Acquisition

- Threat or use of eminent domain
- Local government or non-profit with eminent domain power

While there are protections for property owners under URA in both voluntary and involuntary acquisition, only involuntary acquisitions triggers the full acquisition requirements of the URA.

An acquisition is involuntary when an agency acquires property under the threat or the use of eminent domain.

Acquisitions that do not satisfy *all requirements* for voluntary acquisition (with eminent domain) described on the previous slide are considered involuntary - even if the property owner is a willing seller.

Refer to Chapter 6 for the specific steps for Voluntary and Involuntary Acquisition.



TDA-GO Reporting

Documenting Acquisition in TDA-GO

- Acquisition Plan
- Revisions to Acquisition Plan
- Acquired Parcels
- Acquired Parcels Summary

CDV22-0034-ACQ-01

Forms

Performance Report

Acquisition Plan

Acquired Parcels

Acquired Parcels Summary

In TDA-GO, the Acquisition Plan must be documented in the Performance Report-ACQ.

- All property(ies) anticipated to be acquired after actual needs are determined must be identified.
- The details documented must reflect the actual plans for the project – and not placeholder plans. Using **placeholder plans might result in compliance findings**
- Though the plan may be entered in TDA-go and approved by TDA before the issuance of the AUGF, this is **not** permission to acquire the property(ies). **Approval of the plan is not an environmental clearance.**

Revisions to the Acquisition Plan may be needed if a decision is made that an acquisition is not needed or found to be needed. Contact your Grant Specialist to have the Acquisition Report in TDA-GO returned for updating.

Once the Acquisition Subject Matter Expert approves the ACQ Plan

- Another tab will appear on the left titled Acquired Parcels.
- After TDA issues the Environmental Clearance (AUGF), each property to be acquired must have its own form/page.
 - Use the “Add” button in the top right corner of the Acquired Parcels page to create a new entry.
- There is nothing to submit, so there is no Submit button or status option. Parcel entries are for reporting only and will not have an approval process. Just be sure to click the Save button to lock in entries.

Parcels must be documented prior to making a payment request for the acquisition.



Acquisition Plan and Parcels Review

- Acquisition Type & Accuracy
- Map & Plan
- Environmental Clearance
- Documentation



The Acquisition Subject Matter Expert will be most concerned with:

- Whether the acquisition is voluntary or involuntary
- Does the determination of voluntary or involuntary fit?
- Is there a map that shows the acquisition(s) and nearby identifiable roads
- Does the map of the project location match the 'description of the real property to be acquired' on the Acquisition Plan?
- Has the grant obtained an AUGF for the Environmental Review prior to any execution of any sales or donation agreement?



Important Reminders

Funding Release:

- Must have environmental clearance before any acquisition
- No construction payments until Acquisition Report is approved

Schedule

- Early step in the agreement
- Title research
- Timely submission

Important Notes about Acquisition:

For funding to be released by TDA:

- Grant Recipient **MUST** have the Authorization to Use Grant Funds prior to any acquisition. Failure to have the AUGF prior to acquisition is a choice limiting action and **WILL** result in contract termination or similarly severe consequence.
- No TxCDBG construction funds will be released for payment to the Grant Recipient until the Acquisition Report is submitted and approved by TDA staff.
- If the Acquisition Plan indicates that acquisition is required, no TxCDBG construction funds will be released until the Acquired Parcel page has been completed for each parcel related to that construction.

Regarding Schedules -

- Careful completion and submittal of the Acquisition Report is an important early step to assure compliance. Failure to properly identify the type of acquisition (voluntary or involuntary) and then follow the proper procedure, including providing required notices, may result in financial penalties and/or project delays for corrective actions. In certain cases where no corrective action or alternative locations are appropriate, failure to follow URA procedures may result in contract termination.

- TDA recommends the acquiring entity begin title research early in the acquisition process to correct title issues that may cause delays.
- The process of obtaining an appraisal and review appraisal can be lengthy and must be accommodated in the project's schedule in order to complete the project within the grant agreement period. If delays in these processes do not allow for timely completion of the project, the project as contracted will need to be re-evaluated to determine its feasibility. Contact TDA for technical assistance.



Sources & Resources

TxCDBG Implementation Manual

<https://texasagriculture.gov/Grants-Services/Rural-Economic-Development/Rural-Community-Development-Block-Grant-CDBG/Forms>

HUD URA Training Modules:

<https://www.hudexchange.info/trainings/ura-the-hud-way/>

HUD Real Property and Relocation Handbook

1378.0:

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

It is important to know why we require specific procedures and documentation. Here are federal statutes REs and TDA must comply with for acquisition.

Appendix A in the Implementation Manual has resources with links for all chapters listed in one place.

Questions/Comments



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If you have any questions or concerns about acquisition, please contact your grant specialist or TDA's Acquisition Subject Matter Expert. We would be happy to discuss options and provide technical assistance to your community.