



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

Special Attention of:

All CDBG Grantees
All CPD Field Office Directors

NOTICE: CPD-17-09

Issued: October 18, 2017
Expires: This Notice remains in effect
until amended, superseded, or
rescinded.

Subject: Management of Community Development Block Grant Assisted Real Property

PURPOSE

The purpose of this Notice is to assist Community Development Block Grant (CDBG) grantees and subrecipients in meeting CDBG program requirements governing the acquisition, management and disposition of real property. This Notice covers real property acquired or improved under the following HUD programs:

- Community Development Block Grant (CDBG),
- Section 108 Loan Guarantee Program,
- Competitively-awarded Economic Development Initiative (EDI),
- Brownfields Economic Development Initiative (BEDI) Programs, and
- Neighborhood Stabilization Program (NSP)

Grantees should be aware that any real property acquired or improved with Section 108, EDI, and BEDI funds may also be subject to the collateral security requirements specified in Section 108 contracts and related grant agreements.

ACQUISITION OF REAL PROPERTY **24 CFR 570.201(a)**

Grantees may use CDBG funds to acquire real property for any public purpose, as set forth in 24 CFR 570.201(a). Methods of acquisition include purchase, long-term lease (15+ years), donation or otherwise. When a long-term lease is used as the method of acquisition, shorter term lease agreements (e.g., one year) that are renewable are not considered to be long-term leases, even if the lease is renewed annually for 15 years. Grantees may acquire real property directly or provide CDBG assistance to another public agency, or public or private non-profit subrecipient to acquire real property. This means the property need not be publicly owned to serve a public purpose. The public purpose requirement may also be met when a non-profit organization uses CDBG funds to acquire a property for a CDBG eligible activity and the assisted property is open for use by the general public during all normal hours of operation.

Acquisition by a private for-profit entity is not eligible under §570.201(a). Whether a property is acquired by a grantee or by a subrecipient, it must also meet a CDBG national objective to be considered an eligible activity.

An acquisition of real property with CDBG funds is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Specifically, 24 CFR 570.606(e) requires that acquisition of real property for a CDBG-funded activity or series of activities (including CDBG-funded acquisition itself) must comply with the URA real property acquisition requirements at 49 CFR Part 24, Subpart B. Additionally, persons displaced because of the acquisition may become eligible to receive relocation assistance under 24 CFR 570.606 and 49 CFR Part 24. URA requirements are discussed in more detail further in this Notice.

MANAGEMENT OF CDBG-ASSISTED PROPERTY

The CDBG regulations at 24 CFR 570.502 provide that the CDBG program is subject to 2 CFR 200.302. Under 2 CFR 200.302(b)(4), each CDBG Entitlement grantee and subrecipient is required to have a financial management system that allows it to maintain effective control and accountability for all CDBG-assisted funds, personal and real property, and other assets. State grantees, under 24 CFR 570.489(k), must establish and implement policies and procedures that are consistent with State law and with governing the use, management, and disposition of real and personal property acquired with CDBG funds. Real property means land, including any land improvements and structures. It excludes moveable machinery and equipment.

A grantee can safeguard CDBG-assisted real property and ensure that the property is used solely for authorized CDBG program purposes by establishing and maintaining effective internal controls. A grantee must have an effective real property inventory system to track the property, including the ownership and use, for as long as it is subject to CDBG requirements. A grantee should ensure that CDBG-assisted real property is not placed at risk of being transferred to other entities if the transfer would result in the real property being used for an unauthorized purpose. Under 24 CFR 570.501, the use of designated public agencies, subrecipients, or contractors does not relieve the Entitlement grantee of responsibility for ensuring program compliance. Transferring CDBG-assisted real property to a third party in violation of the change of use requirements could result in the requirement to reimburse the CDBG program and a significant loss of program income that would have otherwise benefitted a grantee's program.

DISPOSITION OF REAL PROPERTY

24 CFR 570.201(b)

Disposition is the disposal of real property through sale, lease, donation, or otherwise. The disposition of real property acquired with CDBG funds is an eligible activity under §570.201(b). However, for disposition costs to be eligible, the use of the CDBG-acquired property after disposition must meet a national objective of the CDBG program. When property is disposed of for the same purpose as that for which it was acquired, the costs of disposition will meet the same national objective ascribed to the CDBG funds spent on its acquisition. If the property is being disposed of for a purpose other than that for which it was acquired, the new activity must be reviewed to determine whether a national objective will be met by the new use. To do so, grantees and subrecipients must follow the change of use requirements at §570.505 and §570.503(b)(7) for Entitlements and §570.489(j) for States, respectively.

CDBG funds may be used to pay costs incidental to disposing of CDBG-assisted property. Eligible costs would include the preparation of legal documents as well as fees paid for surveys, transfer taxes and other costs involved in the transfer of ownership of the CDBG-assisted property. Eligible costs would also include reasonable costs of temporarily managing the CDBG-assisted property until final disposition of the property occurs. Examples of such costs would be grass mowing and boarding of vacant buildings. Grantees should be aware that CDBG funds cannot be used for the maintenance of non-CDBG assisted properties, such as local tax-foreclosed properties. Because this activity only authorizes the costs of temporarily managing the CDBG-assisted property pending its disposition, care should be taken to avoid spending CDBG funds to manage properties for which there are no plans for disposition in the near future or where the market is such that it is not likely to be sold in the near future. If a national objective is not achieved after a reasonable period of time (such as 3-4 years), HUD may have a legitimate basis to question national objective compliance.

The disposition or change in use of real property owned by a faith-based organization is subject to 2 CFR Part 200, Subpart D in addition to CDBG-specific requirements. Under 24 CFR 5.109(j), the disposition of real property by a faith-based organization after its use for an authorized purpose, or any change in use of the property from an authorized purpose, is subject to the Government-wide regulations governing real property disposition at 2 CFR Part 200, Subpart D, and the HUD program regulations, as directed by HUD. A faith-based organization seeking to dispose or change the use of such real property must seek instructions from HUD regarding its compliance responsibilities.

CHANGE OF USE OF REAL PROPERTY- ENTITLEMENT GRANTEEES 24 CFR 570.505 & 24 CFR 570.503(b)(7)

CDBG-Assisted Property Within the Grantee's Control

Under §570.505, a grantee may not change the use or planned use (including the beneficiaries of such use) of any real property acquired or improved with CDBG funds in excess of \$25,000 without first providing affected citizens with notice of, and opportunity to comment on, any proposed change, and determining either:

- a. The new use meets one of the national objectives and is not a building for the general conduct of government; or,
- b. The new use is deemed appropriate (after consultation with affected citizens) but will not meet a national objective.

If it is determined the new use falls under b., the grantee must reimburse its CDBG program account in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion for the acquisition and improvements to the property. The requirements at §570.505 assume the property met a national objective before any change in its use. If the CDBG-assisted property never met a national objective, the grantee must reimburse its CDBG program account from non-federal funds. The reimbursed amount is treated as program income and must be spent in accordance with CDBG program income requirements.

This requirement remains in place as long as the grantee is a participant in the CDBG entitlement program. However, once the CDBG program has been reimbursed, the property is no longer subject to CDBG program requirements.

CDBG-Assisted Property in the Subrecipient's Control

Before disbursing any CDBG funds to a subrecipient, the grantee must have executed a written agreement with the subrecipient that remains in effect during any period that the subrecipient has control over CDBG funds, including program income. As a part of the requirements at §570.503 the written agreement with the subrecipient must include provisions that address change of use of a CDBG-assisted property.

Under §570.503(b)(7), property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 that is within the subrecipient's control, the property must either:

- a. Be used by the subrecipient to continue to meet one of the CDBG program's national objectives for at least 5 years after the expiration of the subrecipient agreement (or a longer time as specified by the grantee in the subrecipient agreement); or,
- b. If a national objective is not met during this time-period, the grantee must be reimbursed for the current fair market value, less any portion of the value attributable to non-CDBG funds. This payment would be considered program income to the grantee. No payment is required after the period specified in paragraph a. above.

Entitlement grantees should also be aware that if there is no subrecipient agreement or if the subrecipient agreement has no end date, then the requirements would apply indefinitely.

CHANGE OF USE OF REAL PROPERTY- STATE GRANTEEES 24 CFR 570.489(j)

Before disbursing any CDBG funds to a unit of general local government, the grantee must have executed a written agreement that remains in effect during any period that the unit of local government has control over CDBG funds, including program income. As a part of the requirements the written agreement should include provisions that address change of use of a CDBG-assisted property.

Under §570.489(j), a unit of general local government may not change the use or planned use (including activities undertaken by subrecipients) of any real property acquired or improved with CDBG funds in excess of the threshold for small purchase procurement (2 CFR 200.88) without first providing affected citizens with notice of, and opportunity to comment on, any proposed change, and determining either:

- a. The new use meets one of the national objectives and is not a building for the general conduct of government; or
- b. The new use is deemed appropriate (after consultation with affected citizens) but will not meet a national objective.

If it is determined the new use falls under b., the unit of general local government must reimburse its CDBG program account or the State's CDBG program, at the discretion of the State, in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion for the acquisition and improvements to the property. The requirements at §570.489(j) assume the property met a national objective before any change in its use. If the CDBG-assisted property never met a national objective, the unit of general local government must reimburse its CDBG program account or the State CDBG program from non-federal funds. The reimbursed amount is treated as program income and must be spent in accordance with CDBG program income requirements.

These requirements apply from the date CDBG funds are first expended for the property until five years after closeout of the unit of general local government's grant. If the change in use occurs after grant closeout but within 5 years of such closeout, the unit of general local government must reimburse the State's CDBG program account. States should also be aware that if there is no agreement with the unit of general local government or if the agreement has no end date, then the requirements would apply indefinitely.

CLEARANCE AND REMEDIATION

24 CFR 570.201(d)

Grantees may clear, demolish and remove buildings and improvements, including property not acquired with CDBG funds as an eligible activity. Clearance may include moving structures to other sites and remediating environmental contamination. Clearance and remediation activities must meet a national objective.

Demolition

Acquisition for the purposes of demolition is an eligible activity when demolition meets a national objective. If the grantee used CDBG funds to acquire the real property with structures that are being demolished, then it must retain the property for a public use or dispose of the property for an eligible use that meets a national objective. However, demolition of privately-owned property meeting a national objective constitutes an eligible activity and is not required to be used for a public purpose. The demolition of HUD-assisted or HUD-owned housing must be approved in advance by HUD.

Displacement of persons as a direct result of demolition for a CDBG-funded activity or series of activities (including CDBG-funded demolition itself) will generally make such persons eligible for relocation assistance under the URA and, if the displaced persons are low- or moderate-income, may also make them eligible for assistance under Section 104(d) of the Housing and Community Development Act. URA and Section 104(d) requirements are discussed in more detail further in this notice.

ENVIRONMENTAL REVIEW OF REAL PROPERTY

Prior to acquisition or disposition of any property (i.e. contracts or purchase of land), an environmental review must be completed. To determine the appropriate level of environmental review for property acquisition or disposition, all proposed or anticipated activities must be grouped

together (24 CFR §58.32), and the environmental review must consider any subsequent use or changes to the site. For example, if a property to be acquired will require rehabilitation or reconstruction, the environmental review must consider the full range of required activities in addition to the acquisition. More information about environmental review requirements can be found on the HUD Exchange at <https://www.hudexchange.info/programs/environmental-review/>.

RELOCATION ASSISTANCE

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) applies to acquisition of real property and to relocation of persons from real property that occurs as a direct result of acquisition, rehabilitation or demolition for an activity or series of activities undertaken with CDBG funding. The URA regulations for CDBG-assisted activities are found at 24 CFR 570.606 and at 49 CFR Part 24.

Section 104(d) applies to demolition or conversion to a use other than lower-income housing in connection with a CDBG-funded activity. A low- or moderate-income person is considered displaced and, therefore eligible for Section 104(d) relocation assistance if the person permanently moves from real property or permanently moves personal property from real property as a direct result of demolition of a dwelling unit or conversion of a lower-income dwelling to a use other than a lower-income dwelling unit in connection with a CDBG-funded activity. The Section 104(d) one-for-one replacement housing requirements may also apply to occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than lower-income dwelling units in connection with a CDBG-funded activity. Section 104(d) implementing regulations can be found at 24 CFR part 42, Subpart C. Additional HUD policy and guidance for Section 104(d) is available in HUD Handbook 1378, Chapter 7.

Additional information and resources on the URA or Section 104(d) are available by contacting a HUD Regional Relocation Specialist. A state-by-state list of Regional Relocation Specialists is available at www.hud.gov/relocation.

DOCUMENTING COMPLIANCE

Grantees and subrecipients must maintain documentation demonstrating compliance with §570.505, §570.506(d), §570.503(b)(7), and §570.489(j) respectively, regarding all disposition costs and any change of use of real property acquired or improved with CDBG assistance.

Under 570.489(k), State grantees must establish and implement policies and procedures that are consistent with State law and with §570.489 governing the use, management, and disposition of real and personal property acquired with CDBG funds.

Both State and Entitlement grantees can safeguard HUD-assisted real property and ensure that the property is used solely for authorized CDBG purposes by placing a lien against the property documenting the change of use requirements (or additional grantee-imposed use conditions or time limits). This will ensure that the change of use requirements are followed when disposition is undertaken years later. Grantees should also maintain a property log to track real property acquired or improved with CDBG funds in excess of \$25,000 (for Entitlements) or in excess of the threshold for small purchase procurement at 2 CFR 200.88 (for States).

Grantees must also comply with applicable fair housing and civil rights requirements, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Section 109 of Title I of the Housing and Community Development Act of 1974.

IDIS Specific Compliance

Compliance is also documented through accurate and complete information in the Integrated Disbursement and Information System (IDIS). Grantees with CDBG-assisted activities are required to enter the address of the activity's physical location into the activity address field. The grantee should not use post office boxes or the address of the organization administering the activity in the activity address field. Leaving the activity address field blank, with a post office box, subgrantee address or grantee address instead of the assisted property's address is considered to be inadequate documentation.

When program income is generated from the disposition of a CDBG-assisted property it must also be accurately documented in IDIS. A grantee should follow standard policies and procedures when reporting program income in IDIS. This includes receipting program income to the activity that generated the funds. This is completed by using the IDIS activity ID associated with the CDBG-assisted property. Complete instructions on reporting CDBG program income in IDIS are available at <https://www.hudexchange.info/resource/2685/idis-online-for-cdbg-entitlement-communities-training-manual/>.

CONCLUSION

These processes serve as a management tool for safeguarding CDBG-funded program real property. As HUD programs make a substantial investment in a community, CPD strongly recommends all grantees review applicable programmatic and overlay requirements, agreements, and their inventory of assisted projects to confirm that the disposition and change of use requirements are met to ensure continued compliance.

ADDITIONAL INFORMATION

Grantees with questions concerning this Notice should direct their inquiries to their local HUD Field Office Community Planning and Development Division. Field Offices should direct their questions to the Office of Block Grant Assistance at (202) 708-1577 for the Entitlement CDBG program or (202) 708-1322 for the State CDBG program.



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COMMON SCENARIOS INVOLVING ACQUISITION, DEMOLITION, DISPOSITION IN CDBG PROGRAM

Eligible Activity	End Use of Property	National Objective	Consequences
Acquisition Only	Property remains in public control. Example: Land acquired for public facility.	National objective based on end use; LMA or LMC in this example.	Document national objective. See Note A below.
	Never put to permanent use. Example: Acquired for housing, not developed.	Never achieved a national objective.	Ineligible activity. Reimburse the program for all CDBG funds expended. *
Demolition Only	CDBG is not used for acquisition. Remains in private ownership or public property acquired through other sources. Demolition is the only eligible activity. Example: Dangerous building taken down, site planted with grass.	Spot Slum and Blight Possibly Area Slum and Blight Possibly Urgent Need in limited situations. **	Eligible if property meets criteria in 24 CFR 570.208(b) or 24 CFR 570.483(c) and 70% overall benefit maintained
		LMA not available in CDBG. NSP allowed this because there was no slum and blight national objective.	Meet S&B criteria or reimburse the CDBG program.
Disposition Only	CDBG-funded upkeep and subsequent sale of CDBG-assisted property for eligible use. Example: Affordable housing.	LMH, S&B or other, depending on end use. If no end use, ineligible. If not acquired with CDBG funds, ineligible.	See Note A below. This scenario will generally involve CDBG acquisition.
Acquisition & Demolition	Clearance is the end use; no further activity planned.	Meets national objective for clearance, which also applies to the acquisition.	Any subsequent activity will trigger Change of Use. (Note C)
	If public property supports an eligible activity and meets a national objective. Example: Community garden in LMA; flood zone buyouts.	National obj. for Demolition: S&B. National obj. for Acquisition: Depends on the end use. Slum & blight: allowable if the end use is clearing blighted property in a flood zone. Urgent Need in limited situations**	Document national objective for both acquisition and demolition.

Eligible Activity	End Use of Property	National Objective	Consequences
	Property does not have an eligible end use. Demolition did not meet national objective. Example: Demolition of property that was not blighted with no resale.	If property never met national objective, it is ineligible.	Repayment of all CDBG funds spent on the acquisition/demolition is required (Not just current value). See Note D.
Acquisition & Disposition (no Demolition)	If property sold to private entity, and supports an eligible activity, then remains eligible activity. Example: Affordable housing	National objective for acquisition/disposition. Depends on the end use of the property. LMA, LMH, LMC, LMJ, or SBA	The disposition (end use) drives the national objective. See Note A below.
	If publicly- or privately-owned and does not meet a national objective. Example: Vacant land acquired and sold for church.	If no national objective is ever met for either Acquisition or Disposition, then it is ineligible.	Reimbursement of all costs required (not just current value).
Acquisition & Demolition & Disposition	Dangerous structure acquired and demolished, then sold or donated to non-profit developer of affordable housing.	Slum/blight for demolition. National objective for acquisition and disposition based on end use. In this example: LMH	Document national objective.
	Demolition meets national objective, but Acquisition/Disposition does not. Example: Structure razed but land remains unused.	Acquisition for clearance can meet S/B test. No disposition for an eligible use does not result in a Change of Use.	Repay current market value if a Change of Use does not meet a national objective. See Note C
	Property not blighted. Grantee sells cleared land for parking lot in upper income Census Block Group.	No slum and blight for demo. Parking lot meets no national objective. Parking lot meets no national objective.	Repayment of all CDBG funds spent on the acquisition/disposition is required.

Notes:

- * Sales proceeds are program income. Repayments are not considered program income. Repayments must be made to the line of credit from which they were drawn unless the funds were drawn from a grant that has since expired (over eight years old). Those repayments must be made to the grantee's local CDBG program account.
- ** In very limited situations, the urgent need national objective could be possible: e.g., demolition or acquisition-plus-demolition on buildings damaged by a tornado, massive fire, mudslide, etc. The grantee would have to demonstrate that its current conditions present a serious and immediate threat to public health and safety. If the property is sold or reused for another purpose, the reuse must meet a national objective or change of use applies (reimbursement of current fair market value required).
- A: If no accomplishments have been demonstrated after a certain period of time (e.g.3-5 years), HUD may have reason to question the national objective compliance.
- B. Acquisition by Eminent Domain: There is a statutory prohibition is against using CDBG fund in conjunction with eminent domain for economic development projects benefitting private for-profit businesses.
- C. Change of Use: 24 CFR 570.503 for entitlement subrecipients; 24 CFR 570.505 for entitlement grantees; 24 CFR 570.489(j) for the State CDBG program.
- D. Acquiring and/or holding property "for future use" is not an eligible activity.

REGULATORY REFERENCES:

- **ELIGIBILITY:** Acquisition - 24.CFR 570.201(a) for Entitlements, Section 105(a)(1) of the HCDA for States; Disposition - 24 CFR 570.201(b) for Entitlements, Section 105(a)(7) of the HCDA for States; Clearance-Demolition - 24 CFR 570.201(d) for Entitlements, Section 105(a)(4) of the HCDA for States.
- **NATIONAL OBJECTIVES:** Activities benefiting low- and moderate-income persons.24 CFR 570.208(a) for Entitlements, 24 CFR 570.483(b) for States; Slums and Blight 24 CFR 570.208(b) for Entitlements, 24 CFR 570.483(c) for States; Urgent Need 24 CFR 570.208(c) for Entitlements, 24 CFR 570.483(d) for States.