

# **Voluntary Acquisitions under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**

## **Identification of Implementation Challenges**

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## **Introduction**

The Federal Highway Administration (FHWA) sponsored this research to 1) develop and provide information on the use, implementation, best practices, and challenges associated with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA's) voluntary acquisition requirements, and 2) clarify the appropriate application of those requirements. This document provides an overview of the Federal regulations governing the use of voluntary acquisitions. It also synthesizes information collected through stakeholder interviews regarding the issues and challenges associated with implementing the voluntary acquisition requirements. Finally, the document describes best practices to achieve successful outcomes in conducting voluntary acquisitions, as well as recommendations that FHWA may consider to address the existing challenges faced in complying with voluntary acquisition requirements.

## ***Background***

The URA provides uniform, fair and equitable treatment for persons whose real property is acquired or who are displaced as a result of Federal or Federally-assisted programs or projects. The URA affects 18 Federal agencies and applies to all projects receiving Federal financial assistance involving the acquisition, demolition, or rehabilitation of real property, unless specifically exempted.

When the URA was initially enacted in 1970, each Federal agency that administered programs requiring acquisition of real property implemented their own regulations. Inevitably, this led to significant differences in Agencies' implementing regulations. In February 1985, a Presidential Memorandum<sup>1</sup>, named the U.S. Department of Transportation (DOT) as the Agency with lead responsibility for the URA. Within the U.S. DOT, responsibility for serving as the lead agency was delegated to the FHWA and is carried out by the Office of Real Estate Services. As the Federal lead agency for the URA, FHWA is responsible for developing, issuing, and maintaining the government-wide regulation, providing assistance to other Federal agencies, and reporting to Congress.

In 1987, Congress passed The Surface Transportation and Uniform Relocation Act of 1987, which made several statutory changes to the URA, including confirming the U.S. DOT as the lead Federal agency. In 1989, FHWA issued the Final Unified Rule (49 Code of Federal Regulation (CFR) Part 24). Subsequently, all other Federal Agencies rescinded their own rules and provided a cross reference to 49 CFR Part 24. Since 1989, the regulations have been amended several times, with the most recent update occurring in 2005.<sup>2</sup> The Final Rule revised the existing regulations to specify a narrower application of the "voluntary acquisition" concept to only federally assisted projects (prior to the 2005 amendment voluntary acquisitions also applied to direct Federal acquisitions). The Final Rule also added significant implementation guidance to Appendix A of 49 CFR Part 24. This guidance provides helpful insight to agencies on issues related to implementing voluntary acquisitions.

For programs and projects receiving Federal financial assistance, the URA regulatory requirements differ significantly for acquisitions of a voluntary nature and for acquisitions under threat or use of eminent domain (i.e. involuntary acquisitions). While there are protections for property owners

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<sup>1</sup> 50 FR 8953, March 5, 1985.

<sup>2</sup> Federal Register. January 1, 2005. Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Final Rule. 70 (2).

and tenants in both circumstances, only involuntary acquisitions trigger the full acquisition requirements of the URA found in 49 CFR 24, Subpart B.

### ***Study Objectives and Process***

As the lead Federal agency for the URA, FHWA is responsible for providing assistance to other Federal agencies in implementing the URA. As such, FHWA initiated this research effort to 1) identify challenges that agencies face in implementing the involuntary acquisition requirements of the URA, and 2) clarify the appropriate application of the URA's voluntary acquisition requirements.

FHWA convened a multi-agency working group to inform the research effort. The working group consisted of representatives from the following agencies:

- Federal Transit Administration (FTA)
- Federal Aviation Administration (FAA)
- Department of Housing Urban and Development (HUD)
- National Park Service (NPS)
- U.S. Army of Corps of Engineers (COE)
- Texas and Oregon State DOTs
- Portland Housing Bureau
- Los Angeles Housing Department

The research effort proceeded in two parts. First, the study team reviewed agency policy and guidance and relevant literature to assess institutional issues and processes related to voluntary acquisition requirements (see Appendix A). The study team found that, apart from agency guidance, the availability of literature on the topic is quite limited. Second, the study team conducted a series of interviews with representatives from Federal, state and local agencies in the working group on the implementation of voluntary acquisitions. The study team synthesized the information collected through the literature review and stakeholder interviews to identify the challenges and recommendations presented in this report.

## **Voluntary versus Involuntary Acquisition**

The real property acquisition requirements for direct Federal programs and projects, and those receiving Federal financial assistance are set forth in 49 CFR Part 24, Subpart B.<sup>3</sup> The requirements of Subpart B apply to any acquisition of real property that uses Federal financial assistance, except for acquisitions described in 49 CFR 24.101(b)(1)-(5) (outlined below). Such acquisitions are considered voluntary acquisitions. Property owners who sell their property in voluntary acquisitions are not displaced persons and are not eligible for relocation assistance and payment benefits. However, tenant occupants who are displaced as a result of the acquisition may be eligible for all applicable relocation benefits provided for under the URA.

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<sup>3</sup> 49 CFR Part 24: Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3bdda26e1102fe42dd21611091c4a569&rgn=div5&view=text&node=49:1.0.1.1.18&idno=49>

Per 49 CFR 24.101, the following acquisitions are exempt from the requirements of Subpart B:

(b)(1) - The requirements of Subpart B do not apply to acquisitions that meet all of the following conditions in paragraphs (b)(1)(i) through (iv):

- i. No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See appendix A, §24.101(b)(1)(i).)
- ii. 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 is to be acquired within specific time limits.
- iii. The Agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- iv. The Agency will inform the owner in writing of what it believes to be the market value of the property.

(b)(2) - Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

- i. Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and
- ii. Inform the owner in writing of what it believes to be the market value of the property. (See appendix A, §24.101(b)(1)(iv) and (2)(ii).)

(b)(3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(b)(4) The 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.

(b)(5) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

The primary focus of this research was acquisitions described in 49 CFR 24.101(b)(1) and (2). Figures 1 and 2 outline the voluntary acquisition process for these types of acquisitions.

**Figure 1: Flowchart of Process for Acquisitions Described in 49 CFR 24.101 (b)(1)**

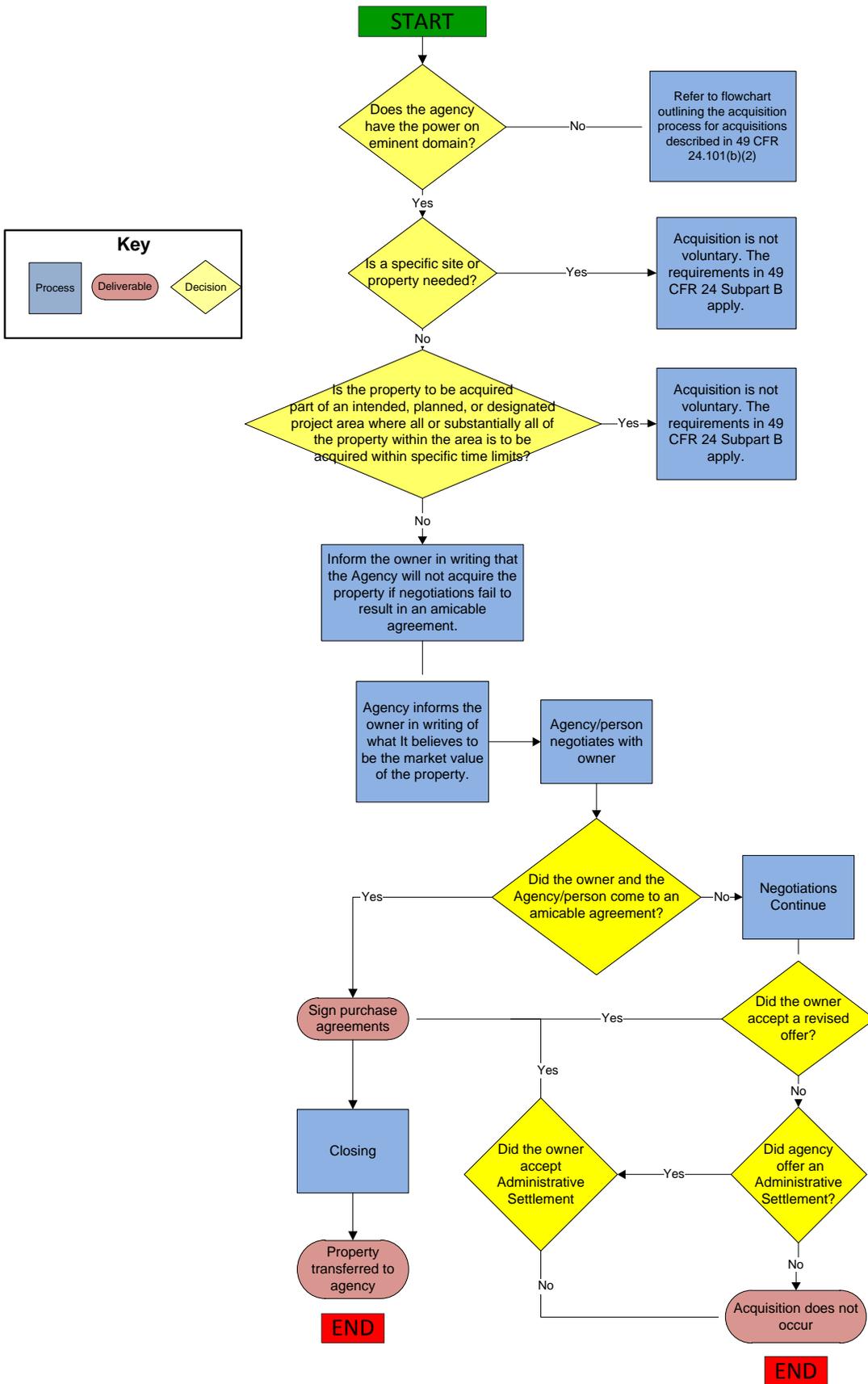
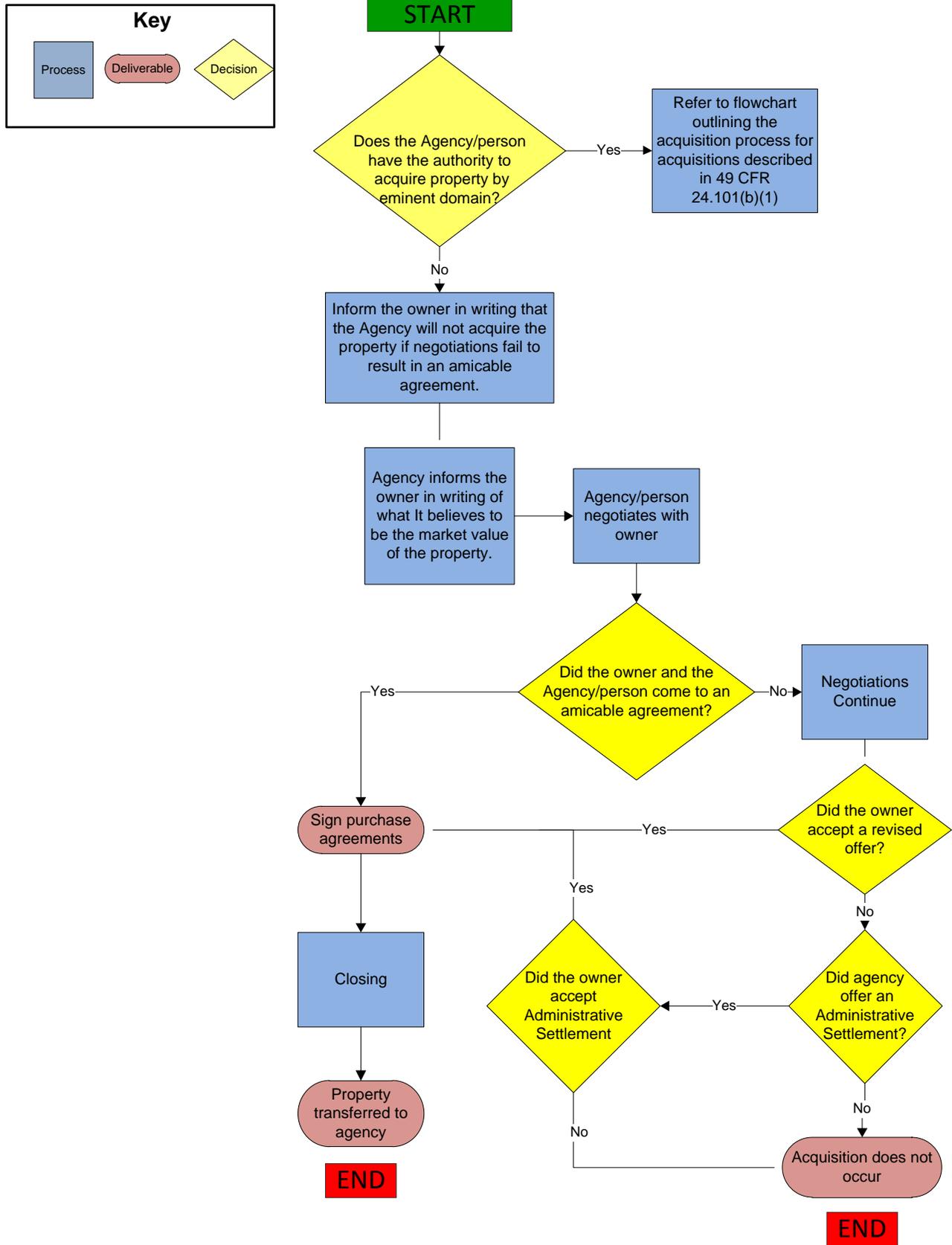


Figure2: Flowchart of Process for Acquisitions Described in 49 CFR 24.101 (b)(2)



## **Issues and Considerations in the Voluntary Acquisition Process**

The scope and character of Federal agencies' realty programs and projects differ significantly, as does their exposure to and experience with conducting voluntary acquisitions. Some Federal agencies, such as FHWA, FTA, and FAA, conduct relatively few voluntary acquisitions in a given year. Examples of Federal transportation programs where voluntary acquisitions are utilized include acquisitions related to corridor preservation or environmental mitigation. In contrast, other agencies, such as HUD, have numerous programs that entail the use of voluntary acquisitions under the URA. The differences in Federal agencies' use of the voluntary acquisition requirements also results in differences in the challenges that each agency faces in implementing the voluntary acquisition requirements.

Throughout the course of the project, working group participants provided information on the issues and challenges they face when complying with the URA voluntary acquisition requirements. Issues identified by the stakeholders include:

- Difficulty in gathering documentation pertaining to the acquisition;
- Required written disclosures perceived as an unnecessary and burdensome in some situations;
- Unclear guidance on the use of electronic notification for providing required written disclosures;
- Variations in staff knowledge and experience with URA voluntary acquisition requirements;
- Funding recipients' lack of knowledge about URA voluntary acquisition requirements;
- Lack of standards for compliance documentation;
- Difficulty in establishing market value of property prior to making an offer;
- Difficulty in obtaining funding for voluntary acquisitions, which by definition are not necessary for specific projects. Acquisitions of properties that qualify as voluntary are deemed lower priorities as compared to funding acquisitions to meet imminent project needs;
- Difficulty in obtaining owner cooperation to gain tenant information and permit tenant access;
- Having to pay unreasonable and/or excessive amounts to acquire a parcel of land where the power of eminent domain may not be used; and
- No control over the length of time it may take to negotiate and complete the acquisition.

Some of the issues identified are the result of inappropriate application of the voluntary acquisition requirements, while others are due to the nature of specific agency programs. The issues and challenges that Federal agencies face in implementing the voluntary acquisition requirements generally fall within four overarching categories. These four categories are examined in more detail below.

## ***Understanding What Qualifies as a Voluntary Acquisition***

As previously noted, due to the nature of their programs and projects, some Federal agencies and their funding recipients have limited experience with the use of voluntary acquisitions. Because these agencies only utilize voluntary acquisitions intermittently, staff never fully develops expertise in the process and related requirements. The project stakeholders noted a general lack of understanding among Federal agency employees and funding recipients regarding what qualifies as a voluntary acquisition and the associated requirements. The stakeholders noted that common misunderstandings of voluntary acquisitions include:

- Lack of awareness of the existence of URA voluntary acquisition requirements.
- The belief that any acquisition that involves a willing seller qualifies as a voluntary acquisition.
- The perception that property owners involved in a voluntary acquisition are entitled to relocation benefits.
- The view that voluntary acquisition requirements do not apply to transactions where there is no relocation.
- Confusion when it comes to consideration of how voluntary acquisition differs from early acquisition and/or hardship acquisition.

While Federal agencies sometimes provide funding recipients with information and guidance on the URA requirements, they face a constant challenge in ensuring that these funding recipients are cognizant of and adequately trained in the voluntary acquisition requirements.

## ***Establishing Market Value***

The URA regulations state that for programs and projects receiving Federal financial assistance, the Agency will “inform the owner in writing of what it believes to be the market value of the property.” (49 CFR 24.101[b][1][iv] and [b][2][ii]). Appendix A to the regulation further provides that “after an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement.” (Appendix A Sections 24.101[b][1][iv] and [2][ii]). Agencies are not required to have an appraisal, but they must have some reasonable basis for determining market value.

We heard from one stakeholder agency that, in the context of some of their programs, the requirement to establish market value prior to making an offer presents challenges for compliance. Estimating the market value of a property typically requires that an appraisal or some other opinion of value be prepared. In private market real estate transactions, a purchase offer is typically made prior to the appraisal; the offer is often contingent on the appraisal validating the offer amount.

The requirement to inform the owner in writing of the market value of the property also presents a problem in situations where a local agency or third party acquires a property in advance of Federal authorization or a Federal project designation. In such instances, the Federal funding agency must determine if the purchaser had intent to seek Federal financial assistance when it purchased the property. If the intent of the acquisition was for use in a federally funded program or project then the provisions of the URA and the implementing regulation apply.

Agencies rely on a variety of factors, including the timing of the acquisition, to determine intent. In addition, agencies will review documents, such as resolutions, city council meeting reports, and project agreements to help determine intent. However, in some situations it can be extremely difficult for an agency to determine intent.

Depending upon the circumstances under which noncompliance occurred, sometimes funding recipients are required to retroactively determine a property's market value as well as gather the appropriate proof or documentation of fair market value. This process can be extremely challenging. For example, in order to comply with the URA, agency/persons may be required to retroactively conduct an appraisal of the property. In some instances, if the appraisal indicates that the property is worth more than what was paid, the individual may be required to pay the seller additional monies.

Agencies note that the phrase "prior to making an offer..." which exists under §24.101(b)(2) does not exist in the requirements pertaining to eminent domain agencies under §24.101(b)(1), where it is more critical for property owners to be so informed. Some agencies indicated that this requirement seems unnecessary for use with agencies/persons with no power of eminent domain since an amicable agreement must always be reached in order for the property to be acquired.

### ***Fulfilling Documentation Requirements***

The project stakeholders identified several challenges involved with fulfilling the voluntary acquisition document requirements. One such requirement that agencies identified as presenting challenges in certain situations is the requirement to, prior to making an offer for a property, inform the owner that the Agency/person will not acquire the property if negotiations fail to result in an amicable agreement (49 CFR 24.101[b][1][iii]) and (49 CFR 24.101[b][2][i]). The stakeholders noted that some sophisticated sellers, such as banks and developers, view the paperwork as an impediment. The same stakeholders reported similar issues with some potential acquisitions. Several stakeholders also inquired whether the use of email to provide the required written disclosures to property owners satisfied the voluntary acquisition requirements.

### ***Definition of Initiation of Negotiations for Relocation Purposes***

The phrase "initiation of negotiations" is a term defined by the URA regulations to establish a displaced person's eligibility for relocation assistance under the URA. The URA regulations require that tenants who may be displaced as a result of a voluntary acquisition must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants of their potential eligibility when negotiations are initiated. In the case of permanent relocation of a tenant impacted by a voluntary acquisition, the initiation of negotiations (ION) does not become effective until there is a written agreement between the Agency and the owner to purchase the real property (49 CFR 24.2(a)(15)(iv)).

Some project stakeholders noted that the URA definition of the ION for voluntary acquisitions presents challenges when dealing with purchase contracts, and sometimes results in unnecessary expenses. These individuals noted that since purchase contracts are typically contingent on satisfying a variety of requirements prior to closing (e.g. home inspection, financing, or similar requirements), it is possible that some purchase contracts will be canceled. In some cases, the cancellation of the purchase contract occurs after tenants have already been notified of their eligibility for relocation assistance. When the purchase contract is canceled, the agency must retract the tenant's relocation eligibility, unless the tenant has already been moved, in which case the agency is obligated to pay for the person's relocation expenses.

## Best Practice Opportunities for Agencies

The nature of Federal agencies' projects and programs impacts how frequently they conduct voluntary acquisitions. The differences between agency projects and programs also manifest in the types of challenges that agencies face when conducting voluntary acquisitions. However, the project stakeholders identified a number of shared best practice approaches to simplify and streamline compliance with the voluntary acquisition requirements.

### ***Develop Training Materials***

Federal agencies should ensure that all staff involved in acquisitions are adequately trained in the URA, including voluntary acquisition requirements. In addition, agencies that deal with funding recipients should develop training protocols or technical assistance to ensure that all stakeholders are knowledgeable about what is required. Further, agencies should consider developing a voluntary acquisition guide and toolkit that provides checklists, sample forms and other tools to help ensure that the voluntary acquisition process is correctly followed.

Several of the agencies interviewed provide training and guidance materials to their staff and funding recipients. For example, the FAA developed the document, *Lessons Learned: Solutions to Common Problems and Needs*, which outlines the preferred solution and FAA requirements for common problems faced in real property acquisitions for airport projects. HUD provides training through its Headquarters and Regional Relocation Specialists, webinars, and Notice of Funding Availability broadcasts. HUD also maintains a website<sup>4</sup> with comprehensive information about real estate acquisition and relocation, including information on the differences between voluntary and involuntary acquisition of property. HUD's Handbook 1378, *Real Estate Acquisition and Relocation Policy and Guidance*, provides comprehensive information on HUD's official policy and guidance on voluntary acquisitions.

### ***Develop Templates and Standards***

Several agencies have developed compliance documentation formats and standards to help ensure consistency across the agency and its funding recipients. For example, HUD has created a number of guide forms for funding recipients to use to help them satisfy some of the voluntary acquisition requirements.<sup>5</sup> There are different guide forms to use depending upon whether the agency has eminent domain authority or not. The guide forms are generic, and may not be applicable to every situation a grantee might be facing.

## Recommendations for FHWA, URA Lead Agency

While there are specific actions that all Federal agencies can pursue, FHWA is uniquely positioned as the lead agency on URA implementation to provide information and guidance to stakeholders in order to address the challenges faced in complying with URA voluntary acquisition requirements. Based on discussions with the stakeholders, the following next steps and recommendations were suggested. While FHWA makes no commitment at this time as to the implementation of the recommendations, FHWA will carefully consider the action items presented.

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<sup>4</sup> HUD. Real Estate Acquisition and Relocation Website. [www.hud.gov/relocation](http://www.hud.gov/relocation)

<sup>5</sup> HUD's guideforms are available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/library/relocation/policyandguidance/handbook1378](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378)

### ***Pursue Regulatory Changes***

FHWA, in coordination with the Federal agencies affected by the URA, could propose regulatory changes to address some of the challenges and issues agencies face in complying with voluntary acquisition requirements. A potential area for regulatory change identified by the project stakeholders includes creating exemptions for types of acquisitions that fall outside the scope of the URA.<sup>6</sup>

### ***Develop Educational Materials***

Currently, much of the training regarding the URA, and real estate acquisition and relocation processes only briefly touches upon voluntary acquisitions. FHWA, in coordination with the Federal agencies affected by the URA, could develop training content on voluntary acquisitions that agencies could utilize to enhance their own internal training and educational materials. In addition, FHWA could work with the International Right of Way Association (IRWA) to develop courses tailored to voluntary acquisitions.

### ***Update Frequently Asked Questions***

Following updates to the URA in 2005, FHWA published a Frequently Asked Questions (FAQ) document to explain the statute and implementing regulations.<sup>7</sup> FHWA could update its FAQ document to address some of the challenges that agencies face in implementing the voluntary acquisition requirements. Some specific issues that could be addressed through the FAQs are:

- *Clarifying the intent of the URA and how it relates to market transactions.* The primary objective of the URA always has been to protect and ensure fair treatment for persons whose property is acquired and/or who are forced to move by Federal or federally-assisted programs or projects. Federal policy has been to apply the provisions of the URA to all persons whose property is acquired or who are displaced for a Federal or federally-assisted project if there is any Federal funding in any part of the project. One of the Federal stakeholder agencies has raised concern that the current definition of “Federal financial assistance” results in the URA being applied to many of its projects that may not fit with the intent of the regulation.
- *Interpretation of the appropriate ION for situations involving purchase contracts.* The current definition establishes ION at the time of written agreement between the owner and agency/person acquiring the property. FHWA issued guidance providing some flexibility which can be applied to “option contracts”, however, the guidance does not specifically pertain to “purchase contracts”.
- *Guidance on whether email can be used to provide required written disclosures.* Being able to utilize email or other electronic notification systems to fulfill the disclosure requirements would help streamline the voluntary acquisition process.

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<sup>6</sup> One of the Federal stakeholders indicated that for programs that provide homeowner assistance to low- to moderate-income households, sub-grantees are experiencing significant difficulties in complying with the voluntary acquisition provisions of 49 CFR Part 24. As a result of the issues raised by the stakeholder agency, its legal counsel and FHWA’s legal counsel will enter into discussions to evaluate the circumstances of those certain programs. Following those discussions, FHWA may develop some new guidance or information regarding the applicability of the URA to certain kinds of programs/projects, if warranted.

<sup>7</sup> FHWA. Uniform Act Frequently Asked Questions. January 4, 2005.

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