



HUD RAP

(Relocation & Acquisition Policies)

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Office of Affordable Housing Programs

Q: What do acquiring agencies¹ need to know about valuation of real property for a “voluntary acquisition” under 49 CFR 24.101(b)(1) thru (5) of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA), as amended? The acquiring agency has an obligation to advise the property owner of the market value of the property. How does that value impact on negotiations for an acceptable purchase price?

A: When acquiring real property under this section, an acquiring agency must have a reasonable basis for its determination of the property’s market value. Although not required for a “voluntary transaction” which meets these regulatory requirements, an appraisal is oftentimes necessary to support an agency’s determination of the market value of the property. In some cases (e.g. high value and/or complex properties), it would be both prudent and appropriate to make an appraisal and conduct a technical appraisal review in accordance with section 24.104 as part of the agency’s market value determination process.

After an acquiring 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 as required under 49 CFR 24.101(b)(1)(iv) or 49 CFR 24.101(b)(2)(ii), an acquiring agency may negotiate with the owner in order to reach agreement on a final purchase price. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for

¹ For purposes of this newsletter, “acquiring agency” refers to any State Agency, unit of general local government, non-profit organization or other person receiving HUD financial assistance that acquires real property for a HUD-assisted program or project. This would include direct recipients of HUD financial assistance (e.g., grantees, participating jurisdictions, public housing authorities) that carry out acquisitions themselves and eligible third parties that receive HUD financial assistance (e.g., subrecipients, State recipients, project sponsors, subgrantees).

the amount of the original estimate of market value, an amount exceeding it, or for a lesser amount.

Acquiring agencies are prohibited from taking any coercive action in order to reach agreement on the price to be paid for the property. Pursuant to 49 CFR 24.9, the agency must maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this prohibition. Acquiring agencies must adequately document their negotiations with the property owner to support that no coercive actions were taken. More detailed documentation may be necessary when negotiations result in an agreement for a lesser amount than the original estimate of market value.

Where negotiations exceed the original estimate of market value, acquiring agencies should be guided by the administrative settlement concept and procedures found in 49 CFR 24.102(i). The administrative settlement concept may be considered when reasonable efforts to negotiate an agreement at the amount offered have failed and a settlement would be deemed reasonable, prudent, and in the public interest. When federal funds pay for or participate in acquisition costs, an acquiring agency must document and maintain written justification for the higher amount. Such justification must state what available information supports exceeding the original estimate of market value. The level of documentation should fit the situation. A minor increase in the purchase price will typically require less support than larger increases.

If HUD grant funds are used to acquire properties, acquiring agencies must also be guided by the applicable OMB Circulars² when considering the original estimate of market value and any agreement which exceeds that amount. A fundamental requirement in the OMB Circulars is that costs charged to a federal grant must be reasonable. OMB Circular A-87, in particular, provides that costs must “[b]e necessary and reasonable for proper and efficient performance and administration of Federal awards.” Each OMB Circular provides additional guidance on determining whether a cost is reasonable. For states, local, and Indian tribal governments, OMB Circular A-87 provides as follows:

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

² Applicable OMB Circulars include OMB Circular A-87 “Cost Principles for State, Local, and Indian Tribal Governments,” OMB Circular A-122 “Cost Principles for Nonprofit Organizations,” and OMB Circular A-21 “Cost Principles for Educational Institutions.”

- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

To the extent applicable program requirements allow, acquiring agencies should consider alternative properties that may provide the same utility and which are currently available for purchase prior to entering into any agreement for a property which exceeds the original estimate of market value. When proposed agreements exceeding the agency's original estimate of market value cannot be legitimately supported and justified, federal funds may not be used in the purchase. If permitted under the applicable program regulations, an alternative property may be sought. Additionally, acquiring agencies must comply with applicable HUD program regulations and/or policies in negotiating agreements for a property which exceeds the agency's market value determination. If there is a conflict, HUD program regulations and/or policies prevail.

Documentation and support for all agreements (at, below, or above the original estimate) must be at an appropriate level to demonstrate compliance with applicable program requirements in the case of such reviews or audits as may be necessary and appropriate. All such agreements are subject to HUD review, and failure to provide such documentation may lead to corrective action when determined necessary.