



ESTADO LIBRE ASOCIADO DE PUERTO RICO

**Municipio de Salinas**

OFICINA DE LA LEGISLATURA MUNICIPAL

Apartado 1149

Salinas, Puerto Rico 00751

TEL. (787) 824-3060, Ext. 2401

**ORDENANZA NÚM. 31**

**SERIE 2010-2011**

ORDENANZA DE LA LEGISLATURA MUNICIPAL DE SALINAS, PUERTO RICO PARA AUTORIZAR AL HONORABLE CARLOS J. RODRÍGUEZ MATEO, ALCALDE DEL MUNICIPIO DE SALINAS A LLEVAR A CABO LOS PROCEDIMIENTOS NECESARIOS Y LEGALES CORRESPONDIENTES PARA LLEVAR A CABO UN CONVENIO DE DEPOSITANTE O “DEPOSITORY AGREEMENT” CON UNA INSTITUCIÓN BANCARIA DEL ESTADO LIBRE ASOCIADO DE PUERTO RICO, EN CUMPLIMIENTO DE LO EXIGIDO POR LA AUTORIDADES FEDERALES, ESPECÍFICAMENTE EL DEPARTAMENTO DE VIVIENDA FEDERAL (HUD), PARA QUE PUEDA FIRMAR, SUSCRIBIR Y EVALUAR LOS DOCUMENTOS EXIGIDOS EN LA CREACIÓN DE DICHO CONVENIO, Y ASÍ LOGRAR EL CUMPLIMIENTO CON LOS PARÁMETROS, CRITERIOS Y REQUISITOS DE ENTIDADES RECIPIENTES DE FONDOS FEDERALES Y PARA OTROS FINES.

**POR CUANTO:** Es compromiso del Gobierno Municipal de Salinas, el proveer servicios de excelencia a nuestra población y a su vez, mejorar y ampliar sustancialmente los servicios que actualmente se prestan. Además, es una obligación legal, el cumplir con todos los parámetros, leyes, reglamentos y requisitos exigidos por las autoridades estatales y federales que otorgan fondos para obra social e infraestructura en nuestro municipio.

**POR CUANTO:** El artículo 1.006 de la Ley número 81 del 30 de agosto de 1991, según enmendada, conocida como “Ley de Municipios Autónomos” señala:

“Se reconoce la autonomía de todo municipio en el Orden Jurídico, económico y administrativo. Su autonomía está subordinada y será ejercida de acuerdo con la constitución del Estado Libre Asociado de Puerto Rico, y este subtítulo”.

**POR CUANTO:** Basada en la autonomía legal, económica y administrativa otorgada a los municipios, estos están revestidos de poderes que hagan realidad dicha autonomía. El artículo 2.001 inciso (n) de la antes citada ley señala:

“El Municipio tendrá los poderes necesarios y convenientes para ejercer todas las facultades correspondientes a un gobierno legal y lograr sus fines y funciones. Cónsono con ello, dispone el artículo 2.001 inciso (t):

(t) "Ejercer todas las facultades que por ley se le deleguen y aquellas incidentales y necesarias".

**POR CUANTO:** El inciso (m) del artículo 2.003 dispone la facultad de la Legislatura Municipal para aprobar aquellas ordenanzas, resoluciones y reglamentos sobre asuntos y materias de competencia o jurisdicción municipal que, de acuerdo a esta ley o a cualquier otra ley, deban someterse a su consideración y aprobación.

**POR CUANTO:** El Municipio de Salinas tiene la obligación de cumplir con lo dispuesto en 24 CFR Section 982.156 requiere lo siguiente:

"Sec. 982.156 Depository for program funds.

- (a) Unless otherwise required or permitted by HUD, all program receipts must be promptly deposited with a financial institution selected as depositary by the PHA in accordance with HUD requirements.
- (b) The PHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.
- (c) The PHA must enter into an agreement with the depositary in the form required by HUD.
- (d)(1) If required under a written freeze notice from HUD to the depositary:
  - (i) The depositary may not permit any withdrawal by the PHA of funds held under the depositary agreement unless expressly authorized by written notice from HUD to the depositary; and
  - (ii) The depositary must permit withdrawals of such funds by HUD.
- (2) HUD must send the PHA a copy of the freeze notice from HUD to the depositary.

**POR CUANTO:** El Municipio de Salinas tiene la obligación de llevar a cabo un convenio o acuerdo de depositante con una entidad bancaria local. Ello tiene como propósito que haya un control efectivo sobre el uso, manejo y disposición de los fondos federales otorgados al municipio para diferentes programas y actividades de vivienda, infraestructura, asistencia directa a participantes y otros.

**POR CUANTO:** Mediante la firma del convenio de depositante, el municipio cumple con su obligación de mantener los fondos provenientes de programas federales bajo un control estricto de uso, manejo y desembolso.

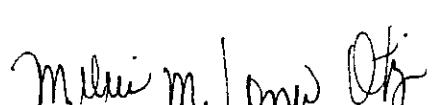
**POR TANTO: ORDENECE POR LA LEGISLATURA MUNICIPAL DE SALINAS, PUERTO RICO, LO SIGUIENTE:**

**Sección 1ra-** Autorizar, como por la presente se autoriza al Honorable Alcalde a suscribir los documentos privados o cualquier otro pertinente para establecer un acuerdo de depositante o “depository agreement” con una entidad bancaria local, en cumplimiento de lo establecido en 24 CFR 982.156.

**Sección 2da** – El Municipio acatará todos los requisitos, leyes, normas y reglamentos aplicables, para lograr el cumplimiento con lo exigido por las entidades federales, y así lograr un manejo y uso óptimo de los recursos fiscales otorgados al municipio. El municipio enviará copia del “depository agreement” a la legislatura municipal, así como el número de cuenta establecido para el mismo.

**Sección 3ra.**-Esta Ordenanza comenzará a regir inmediatamente luego de su aprobación por la Honorable Legislatura Municipal de Salinas y sea firmada por el Honorable Alcalde.

**Sección 4ta.**- Copia de esta Ordenanza, una vez aprobada, será remitida a la Oficina del Alcalde, Oficina del Comisionado de Asuntos Municipales (OCAM), Departamento de Vivienda Federal (HUD), Departamento de Finanzas, Oficina de Programas Federales y auditoría interna del Municipio de Salinas.

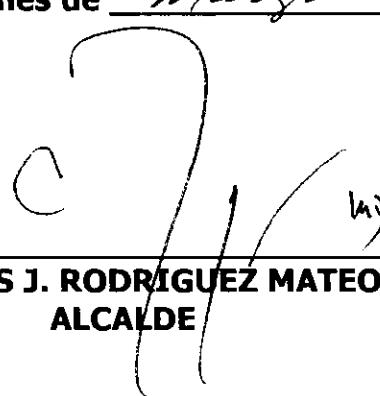


**Melvin M. Torres Ortiz**  
Pres. Legislatura Municipal



**Delia I. Pérez Amadeo**  
Sec. Legislatura Municipal

Firmada por el Hon. Carlos J. Rodríguez Mateo, MD, Alcalde a los 14 días del mes de Marzo de 2011.



**HON. CARLOS J. RODRIGUEZ MATEO, MD**  
**ALCALDE**

**CERTIFICACIÓN**

**YO, DELIA I. PEREZ AMADEO**, Secretaria de la Legislatura Municipal de Salinas, Puerto Rico, **CERTIFICO**; que la que antecede es copia fiel y exacta de la Ordenanza Núm. 31 Serie 2010-2011, adoptada por la Hon. Legislatura Municipal de Salinas, Puerto Rico en la Cont. de la Sesión Ordinaria celebrada el día 8 de marzo de 2011.

Se certifica además que dicha Ordenanza fue aprobada con los votos afirmativos de los siguientes Legisladores presentes en dicha Sesión; Hons. Melvin M. Torres Ortiz, Gilberto Reyes Suárez, Eris Torres Rivera, José M. Luna Nazario, Ismael Ortiz López, Iris Sanabria Rivera, Ismael Irizarry Alvarado, Ramón Colón Ortiz, Mildred Manzanet Navarro, Gerónimo Colón Vega, Ignacio Del Valle Alvarado, Emilio Nieves Torres, Roberto Burgos Torres.

**AUSENTE:** Hon. José L. Rivera Meléndez.

**EN TESTIMONIO DE LO CUAL**, libro la presente certificación bajo mi firma y sello oficial hoy 14 de marzo de 2011.



**DELIA I. PEREZ AMADEO**  
**SEC. LEGISLATURA MUNICIPAL**

Municipio de Salinas  
Oficina de Programas Federales

Tel: 787-824-5810

Fax: 787-824-4549

## Hoja de Trámite

A:

Delia Pérez, Legislatura Municipal

DE:

Srta. Ivette Ortiz Zayas, Directora de Programas Federales

FECHA:

1 de marzo de 2011



ASUNTO: Documentos de apoyo de la Ordenanzas  
que autorizara al Alcalde a firmar  
documentos entre el Banco y el Municipio  
fondo Hui) para su trámite correspondiente.

Recibido por:

Delia Pérez

Fecha:

1 marzo /2011

Hora:

3:40

**ESTADO LIBRE ASOCIADO DE PUERTO RICO  
GOBIERNO MUNICIPAL DE SALINAS  
LEGISLATURA MUNICIPAL  
SALINAS, PUERTO RICO**

Serie 2010-2011

Ordenanza Núm. *26-031*

Ordenanza de la Legislatura Municipal de Salinas, Puerto Rico para autorizar al Honorable Carlos J. Rodríguez Mateo, Alcalde del Municipio de Salinas a llevar a cabo los procedimientos necesarios y legales correspondientes para llevar a cabo un convenio de depositante o “depository agreement” con una institución bancaria del Estado Libre Asociado de Puerto Rico, en cumplimiento de lo exigido por la autoridades federales, específicamente el Departamento de Vivienda Federal (HUD), para que pueda firmar, suscribir y evaluar los documentos exigidos en la creación de dicho convenio, y así lograr el cumplimiento con los parámetros, criterios y requisitos de entidades recipientes de fondos federales y para otros fines.

**Por Cuanto:** Es compromiso del Gobierno Municipal de Salinas, el proveer servicios de excelencia a nuestra población y a su vez, mejorar y ampliar sustancialmente los servicios que actualmente se prestan. Además, es una obligación legal, el cumplir con todos los parámetros, leyes, reglamentos y requisitos exigidos por las autoridades estatales y federales que otorgan fondos para obra social e infraestructura en nuestro municipio.

**Por Cuanto:** El artículo 1.006 de la Ley número 81 del 30 de agosto de 1991, según enmendada, conocida como “Ley de Municipios Autónomos” señala:

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**Por Cuanto:** Basada en la autonomía legal, económica y administrativa otorgada a los municipios, estos están revestidos de poderes que hagan realidad dicha autonomía. El artículo 2.001 inciso (n) de la antes citada ley señala:

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(t) “Ejercer todas las facultades que por ley se le deleguen y aquellas incidentales y necesarias”.

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**Por Cuanto:** El Municipio de Salinas tiene la obligación de cumplir con lo dispuesto en 24 CFR Section 982.156 requiere lo siguiente:

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- (b) The PHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.
- (c) The PHA must enter into an agreement with the depositary in the form required by HUD.
- (d) (1) If required under a written freeze notice from HUD to the depositary:
  - (i) The depositary may not permit any withdrawal by the PHA of funds held under the depositary agreement unless expressly authorized by written notice from HUD to the depositary; and
  - (ii) The depositary must permit withdrawals of such funds by HUD.
- (2) HUD must send the PHA a copy of the freeze notice from HUD to the depositary.

**Por Cuanto:** El Municipio de Salinas tiene la obligación de llevar a cabo un convenio o acuerdo de depositante con una entidad bancaria local. Ello tiene



Estado Libre Asociado de Puerto Rico

# Municipio de Salinas

Oficina de Programas Federales y Sección 8  
Ivette Ortiz Zayas  
Directora

Apartado 1149 • Salinas, PR 00751

Tel. (787) 824-5310

Fax (787) 824-4549

hud\_069@yahoo.com

progfedsalinas@yahoo.com

20 de diciembre de 2010

**Sr. José Romero**

Director

Departamento de Finanzas

Municipio de Salinas

**Re: Depository Agreement**

Estimado señor Romero:

El Departamento de Vivienda Federal (HUD) exige que toda entidad que reciba Fondos Federales para programas de vivienda u obras de infraestructura, debe suscribir un Acuerdo de Depositante con la entidad bancaria correspondiente.

Adjunto documentos enviados por HUD para ser cumplimentados por el Señor Alcalde y la institución bancaria seleccionada.

Debe incluir la Ordenanza Municipal autorizando al Ejecutivo a firmar el mismo.

Sin otro particular y esperando su pronta atención a esta solicitud, quedo de usted.

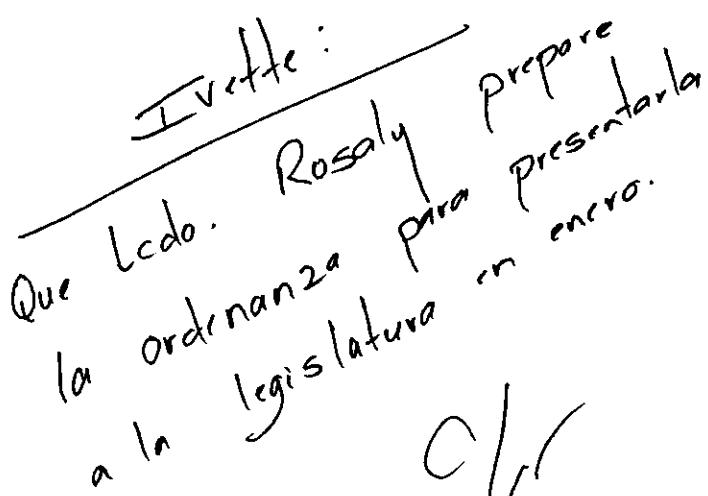
Cordialmente,

  
Ivette Ortiz Zayas  
Directora

nbf

Anejos

Cc: Hon. Carlos J. Rodríguez Mateo

  
Ivette:  
Que Lcdo. Rosaly prepare  
la ordenanza para presentarla  
a la legislatura en enero.

CF



# General Depository Agreement

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

OMB No. 2577-0270  
exp. 09/30/2013

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by and between \_\_\_\_\_

(herein called the "PHA/IHA"), a duly organized and existing public body corporate and politic of the \_\_\_\_\_

of \_\_\_\_\_

and \_\_\_\_\_

(herein called the "Depository"), located at \_\_\_\_\_

## Witnesseth:

Whereas, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more contracts (herein called the "Contract" with the PHA/IHA for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC 1437, et seq.); and

Whereas, under the terms of the Contract the PHA/IHA is required to select as depositories of its funds financial institutions whose deposits or accounts are insured by either — the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund as long as this Agreement is in force and effect.

Now Therefore, in consideration of the mutual covenants herein-after set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by either — the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

2. All monies deposited by the PHA/IHA with the Depository shall be credited to the PHA/IHA in a separate interest bearing deposit or interest bearing accounts, designated

writing and signed on behalf of the PHA/IHA by an officer or member designated by resolution of the Board of Directors of the PHA/IHA to have such authority. To assist the Depository in its obligation, the PHA/IHA shall furnish the Depository with a certified copy of the resolution.

4. Any securities received from the PHA/IHA or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safe-keeping for the PHA/IHA until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Account upon receipt.

5. If the Depository received written notice from HUD that no withdrawals by the PHA/IHA from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the PHA/IHA from said Accounts until the Depository is authorized to do so by written notice from HUD.

6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the Contract, and shall be under no duty to investigate or determine whether any action taken by either the PHA/IHA or HUD in respect of the Accounts are consistent with or are authorized by the Contract or whether either PHA/IHA or HUD is in default under the provisions of the Contract. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.

7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the PHA/IHA and HUD.

Accounts" (herein the "Accounts"). Any portion of PHA/IHA Funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. The PHA/IHA shall have possession of the securities (or the PHA/IHA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the PHA/IHA as a bailee (evidenced by safe keeping receipt and a written bailment for hire contract) and will be maintained for the full term of deposit. The Depository may substitute other securities as collateral to equal or increase the value. If PHA/IHA is an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.

3. Except as stated in Paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase investment securities with monies from the Accounts or to sell securities, if such order or directive is in

This Agreement may be terminated by either party hereto upon thirty days' written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in Paragraph 5.

8. HUD is intended to be a third party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall promptly notify the PHA/IHA of crediting or depositing of any monies in the Accounts.

10. The provisions of this Agreement may not be modified by either Party without the prior written approval of HUD.

11. Previous General Depository or Savings Depository Agreements, if any, entered into between the Depository and the PHA/IHA are hereby terminated and all monies and securities of the PHA/IHA on deposit with or held by the Depositories pursuant to the terms of said Agreement shall continue to be held for account of the PHA/IHA pursuant to and in accordance with the provisions of this Agreement.

12. At no time shall the PHA/IHA Funds in the Accounts be permitted to exceed the amount insured by Federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the PHA/IHA, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the PHA/IHA or, (b) on behalf of the PHA/IHA, purchase securities approved for

investment by the PHA/IHA. Such securities shall not be considered to be a part of the Account pursuant to Paragraph 4 hereof but shall be held by the Depository as custodian or trustee for the PHA/IHA in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated:

Income or other proceeds from securities held in the Securities Account shall, as directed by the PHA/IHA, upon receipt, be paid to or on behalf of the PHA/IHA; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this Paragraph, be deposited in the Accounts. If the Depository receives written notice from HUD pursuant to Paragraph 5 hereof that no withdrawals by the PHA/IHA from the Accounts are to be permitted, the Depository shall not honor any directive from the PHA/IHA to sell securities, or permit any withdrawals by the PHA/IHA, from the Securities Account until the Depository is authorized to do so by written notice from HUD. During the pendency of such restrictions on the Accounts and the Securities Account, the Depository, except as directed in writing by HUD, shall not remit any payment to the PHA/IHA for the purpose of limiting the amount of funds in the Account to the Insured Amount but shall instead purchase securities approved for investment by the PHA/IHA and hold such securities in the Securities Account.

(For use only in certain States that have statutes that prohibit Public Housing Agencies and Indian Housing Authorities from implementing paragraph 2.)

In Witness Whereof, the PHA/IHA and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

\_\_\_\_\_  
PHA/IHA

(SEAL)  
ATTEST:  
By \_\_\_\_\_

Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Depository

By \_\_\_\_\_

(SEAL)  
ATTEST:

Note: Strike paragraphs 11 and 12 if not applicable.

**Project-based Section 8 Contract Administration**

**DEPOSITORY AGREEMENT**

**1 Purpose of depository agreement**

This is a "Depository Agreement" (Agreement) between the Public Housing Agency (PHA) and the Depository (see Agreement signature page for names of the PHA and the Depository). The PHA is a "public housing agency" as defined in Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)). The Depository is a federally insured financial institution.

The Department of Housing and Urban Development (HUD) has entered into one or more annual contributions contracts (ACC) with the PHA for the purpose of providing rental assistance for residents of housing projects assisted under Section 8 of the United States Housing Act of 1937 (42 USC 1437f).

Under the terms of the ACC, the PHA is required to select as depository of Section 8 program funds a federally insured depository institution selected by the PHA in accordance with HUD requirements. The depository must be a financial institution whose deposits or accounts are insured, so long as this Agreement is in force, by either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF).

**2 Deposits and accounts**

- a The deposits and accounts of the Depository shall be insured by either the FDIC or the NCUSIF.
- b All monies deposited by the PHA with the Depository shall be credited to the PHA in interest bearing accounts (Accounts).
- c The Depository shall promptly notify the PHA of any monies credited or deposited in the Accounts.

**3 Collateralization of non-insured program funds**

a Any portion of PHA funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations.

b. For the full term of deposit, the PHA shall have possession of the securities (or the PHA shall take possession of the securities), or an independent custodian (or an independent third party) shall hold the securities on behalf of the PHA as a bailee (evidenced by a safe-keeping receipt and a written bailment for hire contract). The Depository may substitute other securities as collateral to equal or increase the value.

**4 PHA order or directive to depository**

a Except as stated in Paragraph 5, the Depository shall honor any:

(1) PHA check or other order to pay from the Accounts, or

(2) PHA directive to purchase investment securities with monies from the Accounts or to sell securities

b. Such PHA order or directive shall be signed on behalf of the PHA by the person or persons designated by the PHA to have such authority. The PHA shall furnish the Depository with a copy of the Board resolution or other appropriate evidence of authorization to issue such order or directive.

**5 HUD freeze notice**

If the Depository receives written notice from HUD that withdrawals by the PHA from the Accounts are not to be permitted ("freeze notice"):

- The Depository shall not permit any withdrawals by the PHA of any monies or securities in the Accounts, and shall not honor any PHA check or other order to pay from the Accounts or PHA directive to purchase or sell securities, unless withdrawals by the

PHA are expressly authorized by written notice from HUD to the Depository, and only to the extent authorized by such HUD notice.

- The Depository shall permit withdrawals by HUD from the Accounts, including withdrawals of any monies or securities in the Accounts.

## 6 **Depository obligations**

- a The Depository is not obligated to be familiar with, and is not charged with knowledge of, the provisions of the ACC. The Depository has no duty to investigate or determine whether any actions taken by either the PHA or HUD in respect of the Accounts are consistent with or authorized by the ACC, or whether either the PHA or HUD is in default under the provisions of the ACC.
- b The Depository may accept and act on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement, and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.

## 7 **TRANSFER OR TERMINATION OF AGREEMENT BY DEPOSITORY**

- a The rights and duties of the Depository under the Agreement shall not be transferred or assigned by the Depository without the prior written approval of the PHA and HUD.
- b The Agreement may be terminated by the Depository or the PHA upon thirty days' written notice to the other party and HUD.
- c The rights and duties of the Depository under the Agreement shall not be transferred or assigned, nor shall this Agreement be terminated, during any period in which the Depository is required to refuse to permit PHA withdrawals from the Accounts as provided in Paragraph 5.

## 8 **Rights of HUD; Modification of Agreement**

- a HUD is a third party beneficiary of the Agreement. HUD may enforce any provision of the Agreement, and may sue to enforce its provisions or to recover damages for breach of the Agreement.
- b The provisions of the Agreement may not be modified by either Party without the prior written approval of HUD.

**PUBLIC HOUSING AGENCY**

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Name of PHA (print)

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Signature of authorized representative

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Name and official title (print)

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Date

---

**DEPOSITORY**

---

Name of depository financial institution

---

Signature of authorized representative

---

Name and official title (print)

---

Date

incurred for:

- (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and
- (2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- (3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

#### **Sec. 24.107 Certain litigation expenses.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- (a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or
- (b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or
- (c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

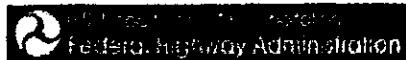
#### **Sec. 24.108 Donations.**

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in Sec. 24.102(c)(2).

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United States Department of Transportation - Federal Highway Administration



**FEDERAL-AID POLICY GUIDE**  
December 22, 1999, Transmittal 28

**49 CFR 24B**

OPI: HEPR

## **SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION**

### **PART 24 - UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

#### **Subpart B - Real Property Acquisition**

Sec.

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

Authority: 42 U.S.C. 4601 et seq; 49 CFR 1.48(cc).

[57 FR 33264, July 27, 1992]

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#### **Sec. 24.101 Applicability of acquisition requirements**

(a) General. The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

- (1) Voluntary transactions that meet all of the following conditions:
  - (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 geographic area on this basis, all owners are to be treated similarly.
  - (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 in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
  - (iv) The Agency will inform the owner of what it believes to be the fair market value of the property.
- (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 in the event negotiations fail to result in an amicable agreement; and
- (ii) Inform the owner of what it believes to be fair market value of the property.

(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.

(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.

(5) Acquisition for a program or project which is undertaken by, or receives Federal financial assistance from, the Tennessee Valley Authority or the Rural Electrification Administration.

(b) Less-than-full-fee interest in real property. In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, Sec. 24.101(b).)

(c) Federally-assisted projects. For projects receiving Federal financial assistance, the provisions of Secs. 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See Sec. 24.4(a).)

[54 FR 8928, Mar. 2, 1989; as amended at 54 FR 24712, June 9, 1989; 58 FR 26070, April 30, 1993 (effective date June 1, 1993)]

#### **Sec. 24.102 Basic acquisition policies.**

- (a) Expeditious acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.
- (b) Notice to owner. As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also Sec. 24.203.)
- (c) Appraisal, waiver thereof, and invitation to owner. (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in Sec. 24.102 (c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. (2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.
- (d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also Sec. 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.
- (e) Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:
  - (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

- (2) A description and location identification of the real property and the interest in the real property to be acquired.
- (3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.
- (f) Basic negotiation procedures. The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with Sec. 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.
- (g) Updating offer of just compensation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.
- (h) Coercive action. The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.
- (i) Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.
- (j) Payment before taking possession. Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.
- (k) Uneconomic remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See Sec. 24.2.)
- (l) Inverse condemnation. If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.
- (m) Fair rental. If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

#### Sec. 24.103 Criteria for appraisals.

- (a) Standards of appraisal. The format and level of documentation for an appraisal depend on the

complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

- (1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
- (2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
- (3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.
- (4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- (5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- (6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) Influence of the project on just compensation. To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at Sec. 24.2) of the retained improvement.

(d) Qualifications of appraisers. (1) The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to Sec. 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.)

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(e) Conflict of interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real

property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

#### Sec. 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

- (a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
- (b) If the ~~reviewing appraiser~~ is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with Sec. 24.103 to support an approved or recommended value.
- (c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

#### Sec. 24.105 Acquisition of tenant-owned improvements.

- (a) Acquisition of improvements. When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.
- (b) Improvements considered to be real property. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.
- (c) Appraisal and establishment of just compensation for tenant-owned improvements. Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater (Salvage value is defined at Sec. 24.2)
- (d) Special conditions. No payment shall be made to a tenant-owner for any real property improvement unless:
  - (1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and
  - (2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
  - (3) The payment does not result in the duplication of any compensation otherwise authorized by law.
- (e) Alternative compensation. Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law. [54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

#### Sec. 24.106 Expenses incidental to transfer of title to the Agency.

- (a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily