



State of Missouri

Neighborhood Stabilization Program Guide

Guidance for Recipients of Neighborhood Stabilization Program Grants Authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008



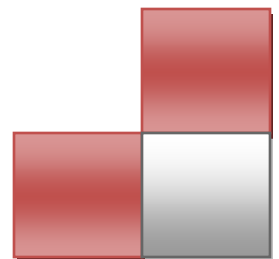
Missouri State Neighborhood Stabilization Program Guide

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Section 2

Introduction



Section 2: Introduction

The purpose of this manual is to assist participants in the State of Missouri Neighborhood Stabilization Program (NSP) to better understand the program and to administer it in ways that comply with applicable rules and regulations, further local goals and priorities, and fulfill Congressional intent. NSP addresses at least four important priorities:

- NSP expenditures will help to stimulate the overall national economy as part of the Federal Housing and Economic Recovery Act of 2008.
- NSP will assist the housing market by acquiring and rehabilitating foreclosed and often abandoned houses and residential properties.
- NSP will help stabilize neighborhoods with high concentrations of foreclosed and vacant homes.
- NSP can assist lower-income persons, including some individuals previously ineligible for federal housing assistance, obtain quality housing opportunities including homeownership.

In using this guide, it is important to understand that NSP is largely based upon the rules and guidelines of the Community Development Block Grant (CDBG) program. Sub-recipients of Missouri NSP funds include cities and counties that currently receive CDBG funds directly from the U. S. Department of Housing and Urban Development (HUD) and smaller cities and counties that receive CDBG funds through the Missouri Department of Economic Development (DED). Extensive materials are available for NSP and CDBG grantees that deal with all aspects of the programs. Of particular importance are the following:

- NSP Regulations, Federal Register dated October 6, 2008
- NSP “Bridge Notice” (Docket No. FR-5255-N-02)
- FY 2009 CDBG Administrative Manual issued by the Department of Economic Development of the State of Missouri
- Federal CDBG regulations (24 CFR Part 570) issued by the U. S. Department of Housing and Urban Development
- Basically CDBG: Understanding the Community Development Block Grant Program published by the U. S. Department of Housing and Urban Development as prepared by ICF Consulting, Inc.
- CDBG Guide to National Objectives and Eligible Activities for Entitlement Cities issued by U.S. Department of Housing and Urban Development
- Managing CDBG: Guidebook for Grantees on Sub recipient Oversight issued by U.S. Department of Housing and Urban Development
- State of Missouri 2005 Neighborhood Development Administrative Manual

This guide will not duplicate the existing materials noted above and elsewhere. Instead, the guide will highlight and clarify those provisions that are unique or particularly critical to NSP and provisions that clearly differ from current CDBG rules and policies. For example, CDBG allows grantees to meet any one of three “national objectives.” NSP is restricted to only one national objective, i.e., benefit to low- and moderate-income people. The CDBG program defines low- and moderate-income in terms of the Section 8 housing requirements (80% of area median income). NSP contains a new category of income eligibility that allows assistance to middle-income persons and families with incomes up to 120% of the area median income. Finally, CDBG provides a wide variety of eligible activities. NSP is limited to five basic categories of eligible activities.



There are a number of NSP issues that are unique or particularly critical for those who administer the program at the local level. These are marked with red flags.

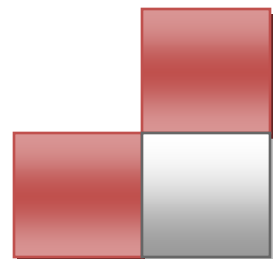
NSP and related economic stimulus programs are unique in the sense that Congress sees a particular urgency to using program funds and successfully completing planned activities. All NSP grantees, including the State of Missouri, are subject to critical deadlines for obligation and expenditure of funds that must be met. Failure to do so could cause the loss of funds through recapture at the State and local levels. All NSP participants should be mindful of timeliness issues and make sure all deadlines and benchmarks are met.



The NSP and CDBG materials use a variety of terms to define those who receive and manage program funds. The State of Missouri NSP program includes CDBG entitlement grantees as well as smaller communities and counties that receive CDBG funds through the State. For the sake of consistency, in this guide, the term “sub-recipient” refers to all entities that receive NSP funds from the State of Missouri.

Section 3

Program History, Background and Overview



Section 3: Program History, Background and Overview

The Neighborhood Stabilization Program (NSP) was authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008 (HERA) (Public Law 110-289). HUD's implementing regulations were published in the Federal Register on October 6, 2008. The purpose of NSP is to provide assistance to state and local governments to purchase and redevelop abandoned and foreclosed homes and residential properties. The NSP's sole national program objective is to assist persons of low, moderate, and middle income (LMMI).

Grants are essentially treated as Community Development Block Grant (CDBG) funds except where noted specifically in HERA. Effective administration of an NSP grant can be accomplished through utilization of this NSP program guidance, the State of Missouri's 2009 CDBG Administrative Manual, and the State of Missouri's 2005 Neighborhood Development Administrative Manual. The 2005 and 2009 manuals can be downloaded from the Department of Economic Development's website.

- Provisions or requirements specific to the NSP are covered in this document.
- The CDBG Administrative Manual governs procedures and requirements necessary for successful implementation of sub-recipient activities.
- The Neighborhood Development Administrative Manual provides guidance for Uniform Act compliance in real property acquisition and relocation, rehabilitation, and redevelopment activities with regard to housing quality standards, lead-based paint and contractor procurement.

NSP carries a number of requirements that differ from CDBG. The following are provisions which are uniquely NSP:

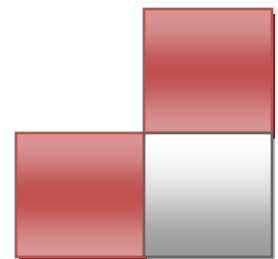
- Establishes a very tight time frame for committing (18 months) and spending (four years) all NSP dollars.
- Expands the eligibility threshold of beneficiaries from those whose incomes are less than 80% of area wide median income to those at less than 120% of median. This applies to Category I grantees only.
- Allows for land banking for homes that have been foreclosed upon as an eligible use of funds.
- Requires a purchase discount for acquiring properties. Discounts may be as low as 1%.
- Requires housing affordability, defined by the State of Missouri as no more than 30% of a beneficiary's monthly gross income being spent on their NSP assisted housing. The State of Missouri has adopted the HUD HOME Program affordability periods based upon the amount of NSP financial assistance to a particular dwelling unit.
- Requires housing rehabilitation standards for which the State of Missouri standards, found in Chapter III of its 2005 Neighborhood Development Administrative Manual, will serve as the minimum standard for NSP.
- Allows for new housing construction under redevelopment as an expressly eligible activity.



It is important to understand that the rules regarding NSP obligations (18 months) and expenditure (4 years) apply to the State of Missouri and the State NSP program as a whole. In order for the State to meet these deadlines and avoid the possibility of having funds recaptured by HUD or returned to the U.S. Treasury, each sub-recipient must be mindful of meeting all local deadlines and timeframes for NSP program execution. Failure to do so could result in recapture of funds by the State from local sub-recipients.

Section 4

Eligible Uses of Funds



Section 4: Eligible Uses of Funds

Most of the eligible uses of NSP funds are those that correspond with eligible activities listed in the CDBG Program. HUD regulation prescribes the following eligible fund uses for NSP:

1. Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties. Financing mechanisms include soft seconds, loan loss reserves, and shared-equity loans for low and moderate income homebuyers

This is eligible as an activity delivery cost. It is not a standalone activity but is eligible as a part of an eligible activity. Properties must have been foreclosed upon.

2. Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties

Real property acquisition is covered in Section 13. Also see the red flag to avoid permanent and involuntary displacement.

Rehabilitation standards must meet Housing Quality Standards (HQS) at a minimum. For HQS please see Chapter III of the State of Missouri 2005 Neighborhood Development Administrative Manual. The manual can be downloaded from the Department of Economic Development website. Green building and energy conservation measures are allowable rehabilitation costs for NSP.

NSP requires affordability for the end user. The State of Missouri requires that home owners and renters will pay no more than 30% of their gross income for their NSP assisted monthly housing expense. Homeowner property sales prices may not exceed the cost to the grantee to purchase and rehabilitate/redevelop the properties. Allowable also will be soft costs related to the sales transaction. Maintenance costs such as lawn mowing and boarding up vacant units may not be included in selling costs. HOME affordability periods will apply to NSP assisted properties. A 5 year affordability must be maintained when the amount of NSP costs per unit is \$15,000 or less; the affordability for an amount of \$15,000 to \$40,000 is 10 years; and, the affordability for an amount of \$40,000 or more is 15 years. New construction or newly constructed rental property which has been acquired with NSP funds carries a 20 year affordability period regardless of the amount of NSP funding that is spent on an individual unit.

Recording covenants that run with the land during the affordability period is the best method of assuring future NSP assisted housing affordability.

Eight hours of housing counseling is required by NSP for new home owners. Sub recipients who do not have access to qualified housing counseling services may request a HUD waiver of the requirement through the State of Missouri.

3. Establish land banks for homes that have been foreclosed upon

This is a departure from CDBG where land banks are not allowed as an eligible activity. Grantees can use funds for land banking only in LMMI areas as an area wide benefit activity. Abandoned or foreclosed upon properties are eligible for land banking. The holding period for land banking is limited to 10 years. Property disposition expenses are eligible, including necessary maintenance costs during the holding period.

4. Demolish blighted structures

Demolition of blighted structures can be a standalone activity and is eligible as an area wide benefit activity or can be a part of an otherwise direct beneficiary activity. Please see Chapter 5 on Income Requirements.

5. Redevelop demolished or vacant properties

Uses of funds under this provision can cover a wide range of CDBG and NSP eligible uses, consisting of the following:

- Acquisition
- Disposition
- Public facilities and improvements
- Housing counseling
- Relocation
- New housing construction
- Direct homeownership assistance

Affordability of redeveloped properties must be maintained for a period of 20 years. Eight hours of housing counseling is required of new home owners. Sub-recipients who do not have access to qualified housing counseling services may request a HUD waiver of the requirement through the State of Missouri.

In each of the uses of NSP funds described below, HUD's correlated activity under the CDBG entitlement regulations follows immediately underneath.

(A) Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers

- As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206.
- Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.

(B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties

- 24 CFR 570.201(a) Acquisition (b) Disposition, (i) Relocation, and (n) Direct homeownership assistance (as modified below);
- 570.202 eligible rehabilitation and preservation activities for homes and other residential properties.
- HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost

(C) Establish and operate land banks for homes and residential properties that have been foreclosed upon

- 24 CFR 570.201(a) Acquisition and (b) Disposition.
- HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost

(D) Demolish blighted structures

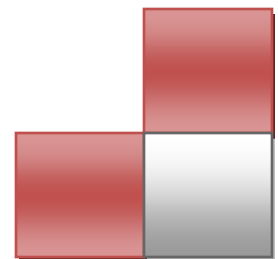
- 24 CFR 570.201(d) Clearance for blighted structures only.

(E) Redevelop demolished or vacant properties

- 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below).
- 24 CFR 570.202 Eligible rehabilitation and preservation activities for demolished or vacant properties.
- 24 CFR 570.204 Community based development organizations.
- HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery

Section 5

Income Requirements



Section 5: Income Requirements

There are significant differences between NSP income requirements and those used for the CDBG program. Income requirements for CDBG are expressed in the eligibility and national objectives provisions of the regulations. For CDBG the term “low- and moderate-income person” means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. In most cases, this equates to persons living at or below 80% of the area median income.

By serving persons of low- and moderate-income (LMI), CDBG grantees can establish that given activities meet at least the first of the three national objectives of the program:

- Activities benefitting low- and moderate-income persons;
- Activities which aid in the prevention or elimination of slums or blight;
- Activities designed to meet community development needs having a particular urgency.

Because of the unique nature of NSP, **Congress effectively expanded the CDBG program to a higher income level while limiting the national objectives options.**

For the purposes of NSP, activities designed to aid in the prevention or elimination of slums or blight and activities of a particular urgency do not qualify. Only one national objective, LMI benefit, can be used. Before we discuss the ways to meet this required national objective, it is important to understand some new terminology and requirements that relate uniquely to NSP.

- NSP funds must be made available to individuals and families with incomes that do not exceed 120% of the area median income. This is a significant increase in the LMI income level used for the CDBG program (Section 8 standards). Area median income varies by metropolitan area and non-metropolitan (balance of state) areas. HUD expects to post statistics on its website (www.hud.gov) for this purpose soon.
- No less than 25% of NSP funds can be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50% of the area median income.
- By expanding the LMI definition for NSP, HUD created a new, higher income eligibility category for those with incomes above 80% of median (CDBG rule) and up to 120% of median (NSA income limit). This new category is referred to as “low-, moderate- and middle-income” (LMMI).

The State intends to meet the second test (25% of NSP funds to benefit people at or below 50% of median) through the use of distinct categories of competition. By reserving at least 25% of available NSP funds to grants in Category 3 of the State NSP program and requiring those sub recipients to exclusively target people in the 50% or below group, the State should meet the overall test required by HUD. For this reason, Category 3 recipients will become particularly important. Performance failures by grantees in this category could create problems for the State

in achieving the overall level of benefit required. The State will be particularly vigilant of progress and performance issues involving Category 3 grantees. It is also important for grantees in Categories 1 and 2 to document and report activities that meet the 50% test to assure that the State will meet the overall program requirement.

As noted above, the CDBG requirements related to national objectives have been modified to meet the unique requirements of NSP. That does not relieve sub-recipients from meeting the LMI-benefit national objective and maintaining evidence to demonstrate compliance with this important requirement. Below are examples of ways to meet the NSP national objectives requirements using traditional CDBG approaches:

- LMI Area Benefit Activities
Area benefit activities are normally designed to provide for activities that benefit all of the residents of a given neighborhood or area. The area in question is primarily residential in nature. In CDBG, at least 51% of the area residents must be LMI in order to qualify. In NSP, at least 51% of the residents of the area must be LMMI (up to 120% of median income) in order to qualify. The most common activities that would meet this test would be demolition of substandard housing or the use of Land Banks when maintenance and demolition will also take place.
- LMI Limited Clientele Activities
In the CDBG program, activities can meet the LMI benefit test if the activities are designed specifically to benefit LMI people (not available to all residents). These are known as limited clientele activities. In such cases, income must be a controlling factor in order to benefit from the given activities. In NSP, the same general rules apply except the income requirement rises to the LMMI level. Good examples of NSP limited clientele activities are housing counseling services for prospective LMMI homebuyers or public facilities or shelters that are only available for LMMI persons.
- LMI Housing Activities
The most common means to establish a national objective is to be met is through the use of housing activities where income is a prerequisite. Keep in mind again that the income standard for NSP becomes 120% rather than 80% of median as in the CDBG program. Examples of acceptable housing activities are acquisition, rehabilitation, rental, sale conversion or construction of units, homeownership assistance or infrastructure for housing as part of redevelopment, all for LMMI persons.

The test for meeting the income targeting requirements above are based on dollars expended rather than units assisted. For that reason, grantees must maintain records to demonstrate the level of assistance provided for all NSA participants (especially those at or below 50% of median) and the exact amount of funds expended for each group.

Finally, it should be noted that assisting persons at or below 50% of median income to become homeowners can be extremely difficult, especially given the affordability requirements that must

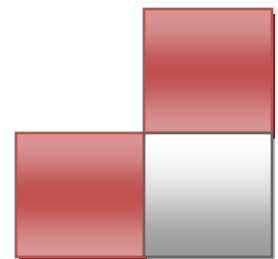
be met for NSP. For this reason, the State expects most people in the 50% group will receive rental assistance rather than homeownership.



The State NSP program as a whole must meet the requirement that at least 25% of all funds will benefit persons or families with incomes at or below 50% of area median income. Documenting and reporting the amounts obligated and expended for this category of activity is critical for all NSP sub-recipients, not just Category 3 sub-recipients with specific mandates to assist this group.

Section 6

Key Deadlines and Timeframes



Section 6: Key Deadlines and Timeframes

The NSP program was created as a companion to the CDBG program. Most of the regulations and rules that pertain to CDBG also pertain to NSP. One of the key distinctions lies in the deadlines and timeframes that are unique to NSP. **While the timely completion of activities and use of funds is important in CDBG, it is critical in NSP.**

When Congress created NSP, they were very clear that the funds must be used quickly due to the national housing crisis, particularly in areas with high foreclosure rates. Keep in mind that the economy and the housing markets can change quickly. It is imperative that the NSP funds are used as expeditiously as possible in order to help to stabilize housing markets in areas that are most affected.

There are two key deadlines that must be observed:

- Grantees must obligate NSP funds to purchase and redevelop abandoned and foreclosed homes and residential properties no later than **18 months** after execution of the grant agreement.
- All funds must be expended within **4 years** after execution of the grant agreement.



The deadlines for obligations and expenditures are tied to the State of Missouri's grant agreement date with HUD: **March 11, 2009**. For that reason, Missouri NSP sub-recipients must obligate all funds by **September 11, 2010** (18 months) and they must expend all funds by **March 11, 2013** (4 years).

The 18-month rule means that funds must be obligated (under contract) for specific activities, e.g., contract to purchase a specific property. Funds are considered to be obligated for an activity when orders are placed, contracts are awarded, services are received and similar transactions occur that require payment by the grantee or sub-recipient during the same or future time period.

The rule for expenditures is somewhat more complicated given the way funds can flow at the grantee level. Keep in mind that most sub-recipients will generate considerable program income from the re-sale of homes purchased with NSP funds. This means that the amount of initial grant award can be considerably less than the total amount of funds (including program income) available at the local level. For this reason, the expenditure rule requires grantees to expend an amount equal to or greater than the initial allocation of NSP funds within four years of receipt. In other words, if a grantee receives \$1,000,000 in NSP grant funds, they must expend at least \$1,000,000 on eligible NSP activities within four years, regardless of the actual amount of funds available due to program income or other sources. Due to the receipt and re-use of program

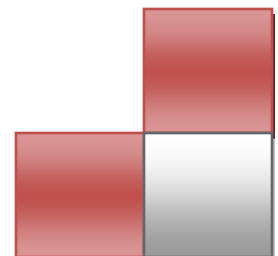
income, we expect most grantees will expend an amount considerably higher than their original NSP grant during the 4-year period established for the State of Missouri.

Because these deadlines (obligations and expenditures) apply to the State of Missouri, the State will closely monitor progress by each sub-recipient and for the State NSP program as a whole. If the State fails to meet either of these tests, HUD can recapture the funds. In order to prevent the possibility of losing NSP funds through recapture by HUD, the State will aggressively monitor ongoing performance by all sub-recipients. If a sub-recipient fails to demonstrate sufficient progress and performance to assure that the necessary timeframes will be met, the State will recapture funds as necessary and re-allocate them to other sub-recipients.

The State will review grantee performance in a number of ways. On-site monitoring reviews will be conducted to determine program progress and compliance with NSP requirements. In addition, sub-recipients will be required to report activities in an ongoing manner through the Disaster Recovery Grant Reporting (DRGR) system developed by HUD. It is imperative that each sub-recipient establishes realistic performance benchmarks (in adherence to above program requirements) and that they report their progress promptly and accurately through the DRGR system. This will enable the State to maintain an accurate accounting of individual sub-recipient performance as well as overall performance as required by HUD. For more information regarding the DRGR system, recordkeeping and reporting, refer to Section 10 of this guide.

Section 7

Environmental Requirements



Section 7: Environmental Requirements

Participants in the NSP are subject to the National Environmental Policy Act of 1969 (NEPA) as amended. NEPA is the basic national charter for the protection, restoration, and enhancement of the environment. NEPA requires all federal agencies, and those individuals or entities including states participating in federally-funded projects, to identify and consider the environmental impacts, if any, of proposed actions utilizing federal funds. The consideration must include alternatives and mitigating measures meant to avoid or reduce any potential negative impacts resulting from proposed actions as well. This mandate is intended to inject environmental considerations into the decision-making process prior to actual commencement of a proposed, federally-funded project.

Sub-recipients of the Missouri NSP grants are subject to NEPA and other related federal, state, and local environmental laws as they administer their respective proposed stabilization projects. Under HUD's NEPA requirements, NSP sub-recipients must complete the NEPA-required environmental review process evaluating how, if at all, the proposed stabilization project may impact the environment and what, if any, short-term, cumulative, and long-term impacts may result from the proposed project prior to receiving any grant funds. The HUD requirements that will govern the environmental review process required for receipt of NSP grant funds include, but are not limited to:

- Environmental Review Procedures For Entities Assuming HUD Environmental Responsibilities (24 CFR Part 58);
- Office of Secretary of HUD, Environmental and Standards (24 CFR Part 51);
- Floodplain Management (24 CFR Part 55); and
- Protection and Enhancement of Environmental Quality (24 CFR Part 50) (HUD Procedure).

The extent of required environmental review depends upon the stabilization project proposed by the Recipient Communities, including specific project design and description. Fortunately for the Recipient Communities, the DED has prepared a detailed guide of the required NEPA environmental review process and procedures set forth in Chapter IV of the 2009 CDBG Administrative Manual. Because the DED is the approval authority of any environmental review, Sub-recipient Communities should refer to the CDBG Guidance as a critical tool in benchmarking compliance with the NEPA environmental review process. The CDBG Administrative Manual provides explanations regarding NEPA compliance, step-by-step instructions in conducting any required environmental review, and preparation of any supporting documentation, as well as statutory checklists setting forth the required environmental review content and analysis of environmental impacts. Careful adherence to the directives in the CDBG

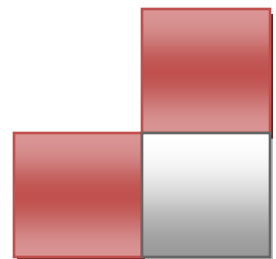
Administrative Manual will facilitate efficient environmental review of any proposed stabilization project.



PLEASE BE AWARE: Despite the extremely tight timeframe for committing and expending NSP funds, until the NEPA environmental review is completed and the Missouri DED has approved the environmental review and issued a formal release of funds, the Sub-recipient Community/Responsible Entity cannot: (1) obligate funds or expend funds from any source on a CDBG-assisted project, or (2) commence or make commitments to commence, property acquisition, construction, rehabilitation, demolition, or repair of properties. The limitations on activities pending clearance and approval are set forth in 24 CFR Part 58.22. Refer to the CDBG Manual for CDBG requirements concerning limitations on activities while approval is pending.

Section 8

Labor Standards



Section 8: Labor Standards

All CDBG grantees must comply with a set of federal laws and related requirements that are generally referred to as labor standards. The same rules apply to NSP. There are no separate or unique labor standards requirements that relate only to NSP. CDBG entitlement grantees should continue to follow the CDBG regulations listed at 24 CFR 570.603 and 570.607 and the statutes and provisions that are referenced in those regulations. Additional guidance is provided in Chapter 16 of the “Basically CDBG” training manual available on-line at www.hud.gov. Other NSP sub-recipients should follow the procedures outlined in Chapter VI of the Missouri CDBG Administrative Manual.

There are four Federal laws and one State law that must be followed:

- Davis-Bacon Act and related provisions (Federal)
- Copeland Anti-Kickback Act (Federal)
- Contract Work Hours and Safety Standards Act (Federal)
- Section 3 of Housing and Community Development Act (Federal)
- Missouri Prevailing Wage Law (State)

Following are brief descriptions of each of these provisions:

The Davis-Bacon Act, extended to Federal funding recipients contracting for construction work by approximately 60 “related acts,” requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the U.S. Department of Labor (USDOL) and are issued in the form of Federal wage decisions for each classification of work. **The law applies to construction and major alteration or repair contracts over \$2,000 except for residential rehabilitation as noted below (see Red Flag insert).** The USDOL publishes rates for Missouri that cover Heavy/Highway, Building, and Residential construction categories.

The Copeland Anti-Kickback Act makes it a criminal offense for any person to induce any person employed in the construction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under the terms of his employment. This Act also requires the submission of weekly payrolls and statements of compliance by all contractors in a format that meets the requirements of 29 CFR Section 5.5. **The regulations pertaining to Copeland Act payroll deductions and submittal of the weekly statement of compliance apply only to contractors and subcontractors performing on federally funded contracts in excess of \$2,000 and federally assisted contracts in excess of \$2,000 that are subject to federal wage standards.**

The Contract Work Hours and Safety Standards Act requires that workers receive overtime compensation at a rate of 1½ times their regular hourly wage after they have worked 40 hours in a work-week. **This applies to all NSP-funded construction contracts over \$10,000.**

Note: *Overtime requirements under Federal Fair Labor Standards Act (FLSA) remain applicable, and State overtime requirements sometimes differ from these rules.*

Section 3 of the Housing and Urban Development Act, as amended, requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. The current State CDBG Administrative Handbook requires adherence to Section 3 requirements for contracts in excess of \$100,000. For the purposes of NSP only, the State has adopted the HUD CDBG standards for Section 3. **Section 3 applies when a construction project involves a total of \$200,000 or more in services and the amount of contract or subcontract exceeds \$100,000.** While Section 3 requirements will not apply to most NSP contracts because of the relatively small amounts involved, grantees are strongly encourage to promote Section 3 practices to the maximum extent possible.

The Missouri Prevailing Wage Law (RSMo Chapter 290) is comparable to the national legislation in requiring prevailing wages, as determined by the Missouri Division of Labor Standards, to be paid to all laborers and mechanics on public works construction projects.

Note: *The State Annual Wage Order may include additional overtime requirements.*

For most NSP sub-recipients, it is important to note the exception provided for housing rehabilitation activities in the CDBG and NSP regulations. The federal labor standards requirements listed in Section 110(a) of the Housing and Community Development Act of 1974 “apply to the rehabilitation of residential property only if such property contains not less than 8 units” (24 CFR 570.603). In other words, if your NSP program only involves rehabilitation of residential structures containing 7 units or less, the Davis-Bacon rules do not apply. We anticipate that this will effectively exempt most or all of the NSP sub-recipients with the possible exception of those intending to provide substantial “redevelopment” activities as defined by the NSP regulations.



If you are performing residential housing rehabilitation as part of your NSP program, you should avoid rehabilitating individual structures that contain 8 or more units unless it is critical to meeting your NSP goals. Doing so will require you to adhere to a number of federal labor standards requirements that would not otherwise apply.

If your approved NSP application contains construction activities that might be subject to federal and state labor standards, there are a number of important things that you need to consider.

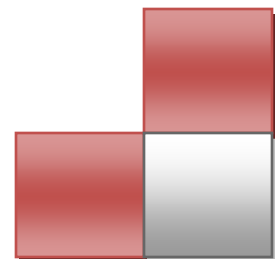
Congress and HUD expect NSP funds to be committed and used as quickly as possible. Labor standards requirements can delay projects and prevent you from using NSP funds quickly. For example, obtaining wage rate decisions and documenting wages as required by the Davis-Bacon Act can be difficult and time consuming. Be mindful of the thresholds shown above and avoid

any unnecessary complications and delays whenever possible. If, however, your NSP program necessitates activities that will require adherence to labor standards provisions such as Davis-Bacon, be sure to check with your assigned NSP Field Representative for assistance with understanding and compliance with the applicable requirements and to help you to expedite activities as much as possible.

Costs are an important concern in NSP as in all programs. Keeping costs as low as possible enables you to stretch your funds farther and it enables you to reach more people of low and moderate income. Again, unnecessarily triggering labor standards requirements could add significantly to program costs and ultimately prevent you from serving as many lower-income people as you would prefer.

Section 9

Procurement



Section 9: Procurement

When a grantee decides to use federal funds to obtain goods and services, federal procurement requirements must be followed. The same procurement rules that apply to the CDBG program also apply to NSP. NSP sub-recipients that are CDBG entitlement program participants should refer to the rules in the CDBG regulations at 24 CFR 570.502, 24 CFR 85.36 and Chapter 14 of the “Basically CDBG” handbook. Other NSP sub-recipients should follow the requirements and procedures outlined in Chapter VII of the Missouri CDBG Administrative Manual. If a sub-recipient utilizes nonprofit organizations in their NSP program, the nonprofits must follow the procedures outlined in 24 CFR Part 84 of the CDBG regulations and Office and Management and Budget Circular A-110.

The fundamental purpose of procurement standards is to assure that funds are used efficiently and effectively by providing for as much competition as possible in the selection and award process. Many grantees and sub-recipients use local procurement policies and procedures. When that is the case, care should be taken to be sure that the local system meets the minimum requirements of federal and state law and regulation.

There are four basic types of procurement procedures available to NSP sub-recipients:

- Small Purchases

The small purchase procedures are intended to simplify the acquisition of goods and services when the amounts are too small to warrant more competitive approaches. For CDBG entitlement grantees, these procedures apply to purchases of no more than \$100,000. For smaller cities and counties participating in the State CDBG program, the maximum amount is \$25,000. **The limit for the State of Missouri NSP program (entitlement and non-entitlement grantees) will be a single standard of \$100,000.** If the total amount for a given purchase falls below \$100,000, sub-recipients can obtain goods and services without a formal request for proposals or an invitation for bids. This can include professional services such as environmental review, engineering, architectural, and planning consulting as long as the amounts are below the maximums noted above. This does not mean that sub-recipients should not seek the lowest possible cost for the items purchased. For example, the purchase of small amounts of goods would involve receiving quotes from available vendors and selecting the one that best meets local needs at the lowest cost.



The small purchase limit for the State of Missouri NSP program has been increased to \$100,000. Please note that this change does not affect the State CDBG program. The small purchase limit for State CDBG will remain at \$25,000.

- Sealed Bids

The competitive sealed bid approach should be used for all goods and services that exceed the maximum amounts noted above for small purchases (\$100,000). This approach is used most often for large construction contracts. For the NSP program, the competitive sealed bid approach is most likely to be used for those sub-recipients that propose significant redevelopment activities. Under this approach, bids are solicited publicly from all available vendors and the lowest responsive and responsible bidder is selected. In order for this approach to work, sub-recipients should expect two or more responsible suppliers that would be willing to compete for the contract. Notice should be posted in a newspaper of general circulation as well as other sources that can assure the widest possible competition among all available vendors. The invitation for bids must provide adequate details, including notice of applicable federal rules, to enable bidders to be fully responsive. Other details regarding the bid opening, review, and award process are described in the handbooks and regulations noted above.

- Competitive Proposals

This is the procedure used to acquire professional services (engineering, architectural, planning, etc.) when the total amount is expected to exceed the small purchase limits. While costs are an important consideration in selecting competitive proposals, other factors such as demonstrated experience and expertise can be the key determinants for selection. The normal method used for competitive proposals is the Request for Proposals (RFP) or Request for Qualifications (RFQ) approach. This approach is similar to the sealed bids approach in terms of advertising, defining clearly the scope of work to be done and review/award of the final contract. As noted above, cost is a factor in the selection process but not the only consideration.

- Non-Competitive Proposal

This approach is used only when none of the other three approaches is feasible. Examples would be when the goods or services are available only from one vendor (i.e., sole source), when a public emergency exists that requires particular urgency or after solicitation using other methods that the above failed to produce adequate competition. In NSP, it is expected that there will be relatively few cases where the non-competitive proposal approach will be used. If you believe this approach is the appropriate one, we encourage you to contact your assigned NSP Field Representative for consultation before awarding a contract.

Conflict of Interest

While issues related to conflicts of interest are not directly tied to procurement methods, it is important to understand that conflicts must be avoided. All grantees and sub-recipients must have a written code of conduct designed to prevent conflicts of interest. The code must apply to all employees, officers and agents of the grantee and members of their immediate family. The

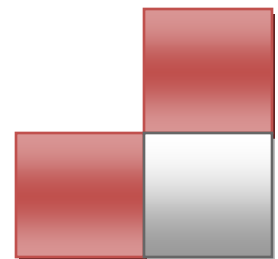
code should prevent anyone in a position of influence from obtaining financial interest or other benefits from a procurement action.

Use of Excluded Parties

Grantees and sub-recipients cannot award any contracts to individuals or businesses that are debarred, suspended or otherwise excluded, from participation in federally funded programs such as NSP. If you are about to award a contract or otherwise engage an outside person or business, you should check the federal list of excluded parties at www.epls.gov.

Section 10

Financial Management, Recordkeeping, and Reporting



Section 10: Financial Management

Funding Set-Up

For funding, grantees must first submit a complete request for funds (RFF). Authorized signature forms, designation of depository forms, an Automatic Clearinghouse Application (ACH/EFT application), and if necessary a complete vendor input form will also need to be submitted.

Request for Funds

RFFs must be completed through the MO NSP portal, electronically verified by the NSP field representative, and electronically submitted to the appropriate consultant Staff prior to drawdown by the state. Budget Status Report must be completed. (Refer to pages III-22 thru III-31 in the manual for examples of sample calculations and information for RFFs)

Drawdown Process

State will accept a Request for Funds (RFF) online through the MO NSP portal, following approval by the NSP Field Representative. RFFs will be reviewed daily and drawn within 24 hours. Payments to the vendor will generally occur within 3-5 business days following drawdown date for the RFF. Verify receipt of the RFF with your respective financial institution. Payment data will be entered in the MO NSP portal as it becomes available.

Funding Details

Amendments or transfers of funding between activities on the funding approval are discouraged. Only expenses for exempt activities (planning, audit, administration, and engineering design) can be requested until “Authority to Use Grant Funds/Completion of Environmental Review Requirements” has been issued. Grantees must provide adequate procedures for minimizing the time elapsing between the deposit of NSP funds and their disbursement.

Program Income

Section 2301(d)(4) requires any revenue from the sale, rental and redevelopment, rehabilitation or any other eligible use of NSP funds to be provided to and used by the state or unit of local government. Substantially all program income must be disbursed for eligible NSP activities before additional cash withdrawals are made from the US Treasury. Agreements with grantees must incorporate provisions as necessary to ensure compliance with the requirements of PI. Revenue generated by entities other than UGLG that is in excess of the cost to acquire and rehabilitated property must be provided to the state or UGLG and treated as PI. Disposition is governed as for UGLG.

Limitations and requirements are based on the NSP activity that generated the PI, and on the date the PI is received.

PI Date Received	Action
< July 30, 2013	Retained by state or UGLG if it is treated as additional CDBG funds and used in accordance with the requirements of Section 2301.
> or = July 30, 2013	Return to the Treasury
> or = July 30, 2013 in excess of cost to acquire and redevelop/rehabilitate property	May be retained by the state or UGLG if HUD approves request to use the funds for other NSP purposes.

Accounting Requirements

Basic standards and requirements for NSP projects are governed by:

- 24CRF 85, “Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments” as modified by 24 CFR 570, Subpart J, “Grant Administration.”
- OMB Circular A-87, “Cost Principles for State and Local Governments”
- NSP management Handbook

Financial Recordkeeping

Grantees must provide for accurate, current, and complete disclosure of financial status of the project by eligible program activity; maintain separate activity ledgers, including any additional local funding leveraged, for each program activity; produce accurate and timely financial and performance data through MO NSP portal, easily traced and verified by sourced documentation maintained at the grantee’s local office; adequately identify source and disposition of funds for NSP-funded activities, as well as any leveraged funding; provide stringent internal controls to maintain integrity of funds, property, and other NSP assets; and provide the minimum requirements for accounting records and source documentation include in CDBG Handbook, III-29 thru III-31.

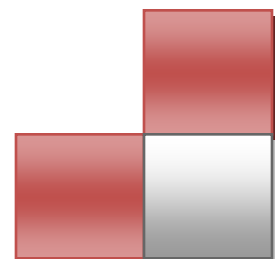
Performance Recordkeeping

Detailed information pertaining to acquisition and rehabilitations of each unit must be maintained. Income level of all households must be documented and reported quarterly through MONSP portal. Completed units, properties, and assisted households and leveraged funds will be reported as cumulative for the respective quarter only. Other information about the uses of funds may be required, including, but not limited to:

- The funding source and total amount of any non-NSP funds
- Numbers of properties and housing units
- Beginning and ending dates of activities
- Numbers of low- and mod- persons or households benefitting

Section 11

Contract Management



Section 11: Contract Management

In order to successfully complete NSP activities, sub-recipients are likely to need the assistance of third parties for a wide range of goods and services in areas such as legal, real estate, environmental review, engineering, and various other kinds of program and technical support. After obtaining these services through the competitive processes described in Section 9 of this guide, contracts need to be developed, executed, and managed. Because these contracts involve NSP funds, a wide variety of federal, state, and local requirements must be followed. In addition, contractors must be actively managed to assure that they adhere to their contractual obligations and that they are performing in a satisfactory manner.

Contracting Guidance Materials

The State of Missouri has provided an excellent set of contract management materials in Chapter VIII of the CDBG Administrative Manual. We strongly recommend that you refer to this information any time you are preparing third-party contracts. We will not seek to duplicate that material in this guide. Instead, we will highlight those items that would be particularly useful in administering NSP at the local level. Note that the forms are intended to be guides only. The exact content of each contract will vary depending on the nature of the goods and services to be provided and the nature of the relationship between the grantee and the contractor.

CDBG entitlement grantees and others might want to refer to the training materials provided by HUD in conjunction with the sub-recipient management training program. The handbook is entitled, Managing CDBG: A Guidebook for Grantees on Sub recipient Oversight. It is available at no cost on line at www.hud.gov/offices/cpd/communitydevelopment/library. While the handbook is designed to assist CDBG grantees to manage a wide range of third parties, the basic principles can be applied to NSP contract management as well.

Keys to Quality Contracting

- Statement of Work
The contracting process begins with a clear understanding of the exact nature of the services needed. Grantees must carefully assess the things that are needed to successfully administer the NSP program. When the services of a third party are required, sub-recipients should clearly describe the exact nature of the services needed as well as any performance issues related to those services. This will become the “scope of services” in the contract and the ultimate roadmap for the grantee and the contractor for performance.
- Records and Reports
Depending on the nature of the services to be provided, contractors will need to maintain records to demonstrate compliance with all contract provisions and they will need to report periodically to the sub-recipient regarding their performance. The contract should

detail the exact nature and timing of all recordkeeping and reporting. Particular attention should be paid to the key federal, state, and local requirements that must be met when federal funds are used.

- Method of Payment

The exact timing and method of payment should be clearly described as well as any information that will be required from the contractor to support invoices and payment requests. Sub-recipients must maintain records for each contractor including detailed information regarding each payment made. Keep in mind that “cost plus a percentage of cost” contracts are not permitted under any circumstances.

- Amendment, Suspension and Termination of Contract

Contracts should clearly explain all performance requirements including the basis for amending, suspending, or terminating of contracts in the event that performance problems occur. If there are any assets that might be in the control of the contractor, “reversion of assets” provisions should be included.

- Active Contract Management

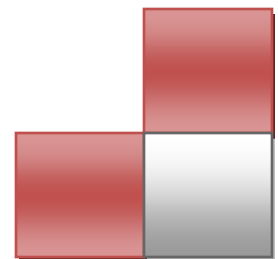
Contracts and contractors do not manage themselves. It is important that an ongoing relationship is maintained between the sub-recipient and third-party contractors in order to assure good performance. Periodic reports and reviews by the sub-recipient are necessary. When problems arise, they should be resolved as quickly as possible. This is important in all contracting but it is particularly important in NSP given the unique nature of the program and the critical timeliness issues that are involved. Failure to **actively manage** third-party contracts can cause unnecessary local performance problems that can jeopardize NSP funding.

- Sample Contracts and Agreements

As noted above, there are a number of excellent sample contracts and agreements available in the State CDBG Administrative Manual and HUD CDBG training materials. We strongly recommend using these guides whenever possible. Doing so will help to ensure that all necessary language and provisions are included and it will save time that will be critical in meeting the NSP timeliness requirements.

Section 12

Equal Opportunity, Fair Housing, and Accessibility



Section 12: Equal Opportunity, Fair Housing, and Accessibility

For the purposes of NSP and CDBG, the equal opportunity requirements are identical. There are no special exceptions or waivers made for these provisions. It is important to understand that the term “equal opportunity” when used in this context is extremely broad. It encompasses a wide range of federal statutes and requirements dealing with three broad areas:

- Equal Opportunity
- Fair Housing
- Handicap Accessibility

List of Applicable Laws

The “Basically CDBG” handbook provides the following summary of key provisions that apply to CDBG and NSP. For a detailed description of each of these provisions, refer to Chapter 19 of the “Basically CDBG” handbook:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)
- Restoration Act of 1987
- Section 109 of Title 1 of the Housing and Community Development Act of 1974
- Fair Housing Amendment Act of 1968
- Housing for Older Persons Act of 1995
- Age Discrimination Act of 1975
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Executive Order 11063
- Executive Order 11259
- Section 109 of Title I of the Housing and Community Development Act of 1974
- Equal Employment Opportunity Act
- Immigration Reform and Control Act of 1986

Prohibited Discrimination

No person can be subjected to discrimination because of race, color, religion, sex, disability, age, familial status or national origin. Sub-recipients should take steps to assure that discrimination of this kind does not occur in the administration of the NSP program or in the community as a whole. Sub-recipients should take care to ensure at least the following issues are addressed:

- Access to any advantage arising out of the project is not denied solely on the basis of race, color, religion, sex, disability, familial status, or national origin or offered for the enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.

- Selection of sites and locations for facilities and improvements do not have an exclusionary or discriminatory effect.
- Evaluation criteria and administrative practices do not have a discriminatory effect.
- Affirmative action is used to overcome the effects of past discrimination.
- A Fair Housing Poster is displayed in a prominent place at the office of the grantee and where applications for assistance are being taken.

Actions to Affirmatively Further Fair Housing

It is important to understand with respect to fair housing, grantees are required to administer their programs (NSP, CDBG, etc.) in a manner that **affirmatively furthers fair housing**. Sub-recipients are expected to review fair housing issues and concerns and to take affirmative steps to address impediments and barriers to fair housing. These requirements apply to the community as a whole, not just to the NSP program activities.



It is not enough to ensure that housing discrimination does not occur in the administration of NSP. Grantees and sub-recipients should go the “extra mile” of taking affirmative steps to further fair housing in all respects.

Examples of actions to affirmatively further fair housing include the following:

- Developing and implementing a fair housing resolution
- Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups
- Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory effect
- Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect
- Legal documents used by grantees and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice

Handicapped Accessibility and Section 504

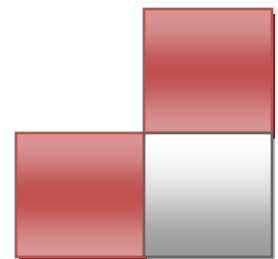
Persons with disabilities should not be excluded from full participation in the NSP program. This includes persons with impairments involving hearing, vision, speech, and mobility as well as those with developmental disabilities and persons that require in-home care or institutional care. Section 504 includes accessibility requirements that are applicable to newly constructed multi-family housing of five or more units as well as substantial rehabilitation of multi-family rental housing with 15 or more units. Because of the nature of NSP, we do not anticipate that there will be many instances that require Section 504 compliance.



If you are considering an activity that might require Section 504 adherence, you should contact your assigned NSP Field Representative at the earliest opportunity for assistance. Meeting design standards for Section 504 can be complex, costly, and time consuming.

Section 13

Property Acquisition



Section 13: Property Acquisition

Acquisition of real property is always a challenge. Acquisition of real property with federal funds can be particularly complex, time consuming, and costly. Because of the limited range of activities that are permitted with NSP and because of the critical timeframes, it is important to fully understand property acquisition procedures and to avoid any unnecessary pitfalls whenever possible.

Uniform Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) was created in 1970 in order to bring consistency and fairness to federally funded activities. It deals with the acquisition of real property and the relocation benefits and assistance that must be provided in covered circumstances.

Before we discuss the applicability of URA acquisition procedures to NSP, it is important to emphasize the relocation aspects of URA. Those requirements become effective whenever someone is **permanently and involuntarily displaced** by federally funded activities. Given the limited nature of NSP, we do not anticipate that the relocation requirements of URA will come into play.



If you are considering an activity that could displace people permanently and involuntarily, contact your assigned NSP Field Representative immediately. Doing so could trigger Uniform Act relocation requirements.

The property acquisition provisions of URA will be a factor in NSP because real property will be acquired using federal funds. In such instances, URA will govern such important issues as notice to the current owner of the property, the appraisal process used to establish fair market value, and the procedures used for the actual acquisition. For detailed guidance in this area, please refer to 24 CFR 570.606 of the CDBG regulations, Chapter 18 of the “Basically CDBG” training manual, HUD publication entitled “When a Public Agency Acquires Your Property,” Chapter IX of the State CDBG Administrative Handbook and the URA itself.

NSP Acquisition Considerations

As previously noted, NSP requirements mirror those of the CDBG program in most areas. However, there are a number of provisions and points of emphasis that are critical to NSP:

- Discount Purchase Price
- Use of Appraisals
- Amending Action Plan

- Tenant Displacement
- Voluntary Acquisition

Discount Purchase Price

Because of the unique circumstances associated with NSP, HUD expects grantees and sub-recipients to acquire property at costs that are below the current fair market value. Grantees and sub-recipients are expected to negotiate purchase prices in order to obtain the best possible prices for acquired properties. At a minimum, every home or residential property must be acquired at a price that is at least **1% below the “current market appraised value”** of the property. This rule replaces the previous two-tiered NSP rule regarding discounts for individual properties (5%) and for the portfolio as a whole (15%).

Use of Appraisals

In order to establish the current market appraised value of property, the sub-recipient must secure the services of a qualified appraiser. The appraiser can be an employee of the sub-recipient or an outside “fee” appraiser. In either case, the appraiser must be fully licensed or certified by the State of Missouri to perform the work in question. In addition, **review appraisals are required for all NSP programs if it is anticipated that 10 or more properties will be acquired with NSP funds.** For smaller programs, review appraisals are optional. Keep in mind that review appraisers must be licensed in the State of Missouri and they must be independent of the persons performing the original appraisals.

Appraisals are currently required for all properties with an estimated value of \$10,000 or more per the State CDBG Administrative Handbook. Federal NSP appraisal requirements apply to all properties with an estimated value of \$25,000 or more. Because of the time constraints imposed by NSP rules and the need for consistency, the State has agreed to adopt the federal rule of \$25,000 or more. In other words, **if the estimated value of the property to be acquired is less than \$25,000, an appraisal is not required.**

One of the issues unique to NSP is the discounted sales price requirements (1% rule). Many grantees expressed concerns that following this rule might indirectly drive down housing prices because of the use of comparables in the appraisal process. HUD has been advised that purchases of this kind (NSP discounts) should not be used by appraisers in establishing other housing values. Sub-recipients are encouraged to advise local real estate professionals and appraisers of this understanding.

Amending Action Plan

In order to participate in NSP, CDBG entitlement grantees must amend their current Annual Action Plan (Consolidated Plan) to cover NSP activities. It is important to remember that no

binding commitments should be made until the Annual Action Plan has been amended, environmental requirements have been met and appropriate appraisals have been performed.

Tenant Displacement

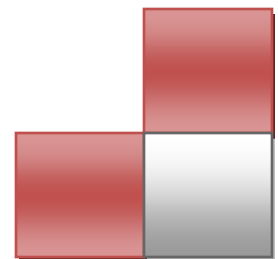
As noted earlier, sub-recipients must avoid acquiring occupied residential property to avoid any unnecessary displacement. There is one possible form of indirect displacement that must be considered. If you plan to acquire foreclosed property that was previously occupied by a “bona fide” tenant (excludes squatters or others not legally in residence), you must ensure that the previous tenant was given proper notice of impending action under the provisions of the Recovery Act. If that was not done and you decide to acquire the property, you must assume the notification obligations and you could trigger the displaced tenant provisions of the CDBG regulations (see 24 CFR 570.606).

Voluntary Acquisition

Finally, the use of voluntary acquisition procedures is important. Sub-recipients should notify all owners of prospective NSP properties that the sub-recipients will not acquire the property in the event that good faith negotiations fail to reach a mutually satisfactory conclusion. It is particularly important in terms of URA compliance that owners are notified in writing of this approach and that they understand that the use of eminent domain procedures will not occur if negotiations do not work.

Section 14

Program Monitoring and Oversight



Section 14: Program Monitoring and Oversight

Monitoring and oversight of the NSP program is important not only to assure that the program is managed in accordance with all applicable rules and guidelines, but more importantly, to be sure that the limited resources available are used in the best way possible to address local goals and priorities and to assist those who need help the most. Monitoring should be viewed as one component of a larger, ongoing partnership that involves training, technical assistance, and regular communications.

Monitoring Tools

Monitoring and oversight will be done using a variety of tools including reports provided through the Disaster Recovery Grant Reporting (DRGR) system. DRGR will provide important and timely information about the progress of each NSP grant including achievement of specified goals and benchmarks. We expect to continue regular, ongoing communications with all sub-recipients in order to share information that will be useful in managing NSP programs at the local level. Training and technical assistance will be a continuing priority in order to share important information about NSP and issues that occur, particularly at the local level. Finally, formal on-site monitoring will take place to document NSP performance and to identify and deal with any problems that might occur.

Monitoring Guides

We are advised by HUD that they will issue a monitoring handbook or guide specifically for NSP during the summer of 2009. As soon as that information is available, we will share it with all NSP participants. In addition, there are a number of existing resources that are extremely useful, not only as monitoring guidance for those managing NSP but also as “self-help” tools for program participants. CDBG entitlement recipients are familiar with the Community Planning and Development (CPD) Grantee Monitoring Handbook that is used by HUD to review CDBG and other HUD programs. We expect to follow the basic approach outlined in that handbook for the NSP program. In addition, the State of Missouri CDBG Administrative Manual provides detailed guidance for all grantees regarding recordkeeping and monitoring checklists for all aspects of the CDBG program. Because NSP is largely based upon the CDBG program, we expect to utilize much of this material for NSP with occasional modifications for those issues that are unique to NSP. We encourage all NSP sub-recipients to use these as ongoing management tools for the NSP program.

Monitoring Reviews

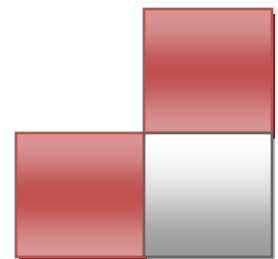
We expect to follow the same basic principles for NSP monitoring as are shown in the CPD Grantee Monitoring Handbook and the Missouri CDBG Administrative Manual. Following is a brief overview of the basic principles that we will follow:

- Monitoring Approach
Monitoring will be approached as a collaborative process. It is not viewed as a “gotcha” event or a punitive exercise.
- Risk-Based Analysis
Monitoring will be done on a “risk based” approach. Risk analysis will consider a variety of factors including the size and complexity of NSP grants and programs, local experience with managing programs similar to NSP, staff capacity, history of program problems or concerns, quality and accuracy of reporting, etc.
- Timing of Reviews
At a minimum, we plan to monitor every NSP sub-recipient at least twice during the life of the NSP program. One review will occur at the time of project start-up when the grantee is prepared to begin program activities and making funding draws. The other on-site monitoring will occur near the end of the NSP program. It will be designed to address issues specific to project closeout. Other monitoring will occur, both through on-site and remote means, on an as-needed basis.
- Monitoring Notice
Prior to any formal, on-site monitoring review, the assigned NSP Field Representative will contact the NSP sub-recipient to arrange a mutually acceptable time for the review. In addition, the sub-recipient will receive a letter confirming the review date and explaining the nature and purpose of the review including any specific areas of emphasis or concern. Sub-recipients are encouraged to perform a self-review prior to monitoring visits to assure that all requirements are met and that documentation exists to demonstrate compliance.
- On-site Reviews
On-site reviews will assess program performance and verify information reported through other means such as DRGR. Interviews will be conducted with local staff and records will be reviewed. The assigned NSP Field Representative(s) will conduct an entrance conference to meet local staff, understand roles and responsibilities and explain the purpose and nature of the review. In addition, an exit conference will be held at the end of the review to discuss preliminary conclusions.
- Conclusions
Monitoring conclusions can come in a variety of forms. NSP reviews will clearly identify at least two broad categories of conclusions: findings and concerns. Findings are violations of program requirements that must be corrected. Concerns are other matters that are not violations of program requirements but need to be addressed in order to improve program performance. Remedies and sanctions can be taken by the State of Missouri when findings occur. The State will seek to impose the least stringent remedy necessary to correct the identified problem, mitigate any adverse consequences of the problem, and prevent a recurrence.

- Monitoring Letters
Formal monitoring letters will be sent to each NSP sub-recipient, usually within 30 days after the conclusion of the on-site monitoring review. The letter will summarize all significant conclusions, both positive and negative. If findings and/or concerns are identified, the letter will specify to the maximum extent possible, corrective measure that should take place to correct the problems.
- Follow-up and Resolution of Conclusions
NSP sub-recipients should respond to on-site monitoring letters in a timely manner, usually within 30 days after receipt of the letter. The response depends on the conclusions identified in the monitoring letter. At a minimum, NSP sub-recipients should explain how they will correct any identified findings or concerns.
- Remedies for Non-Compliance
Absent HUD directives to the contrary, actions taken to address NSP deficiencies will follow the same procedures as currently used for the CDBG program (see 24 CFR 570.910). Any formal corrective actions must be taken by the State of Missouri. NSP contractors and NSP Field Representatives are not authorized to impose the corrective and remedial actions identified in the CDBG regulations.

Section 15

Project Closeout



Section 15: Project Closeout

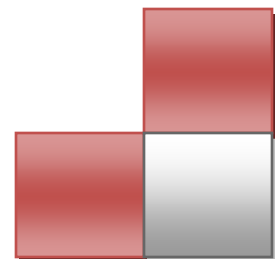
Grant close-out can occur after all of the sub-recipient's responsibilities under its grant agreement with the State of Missouri have been satisfied; all monitoring findings, if any exist, must be resolved; all funds must have been spent for eligible activities; and close-out reports and appropriate completion certification must be submitted. Close-out should be initiated within 90 days of completion of grant activities, and it is the sub-recipient's responsibility to arrange for a final monitoring.

The close-out process is detailed in Chapter XI of the 2009 CDBG Administrative Manual. Please visit this chapter for all forms necessary for grant close-out.

The only exception to the close-out requirements in Chapter XI is that grantees will not be required to hold a public hearing on grant performance.

Section 16

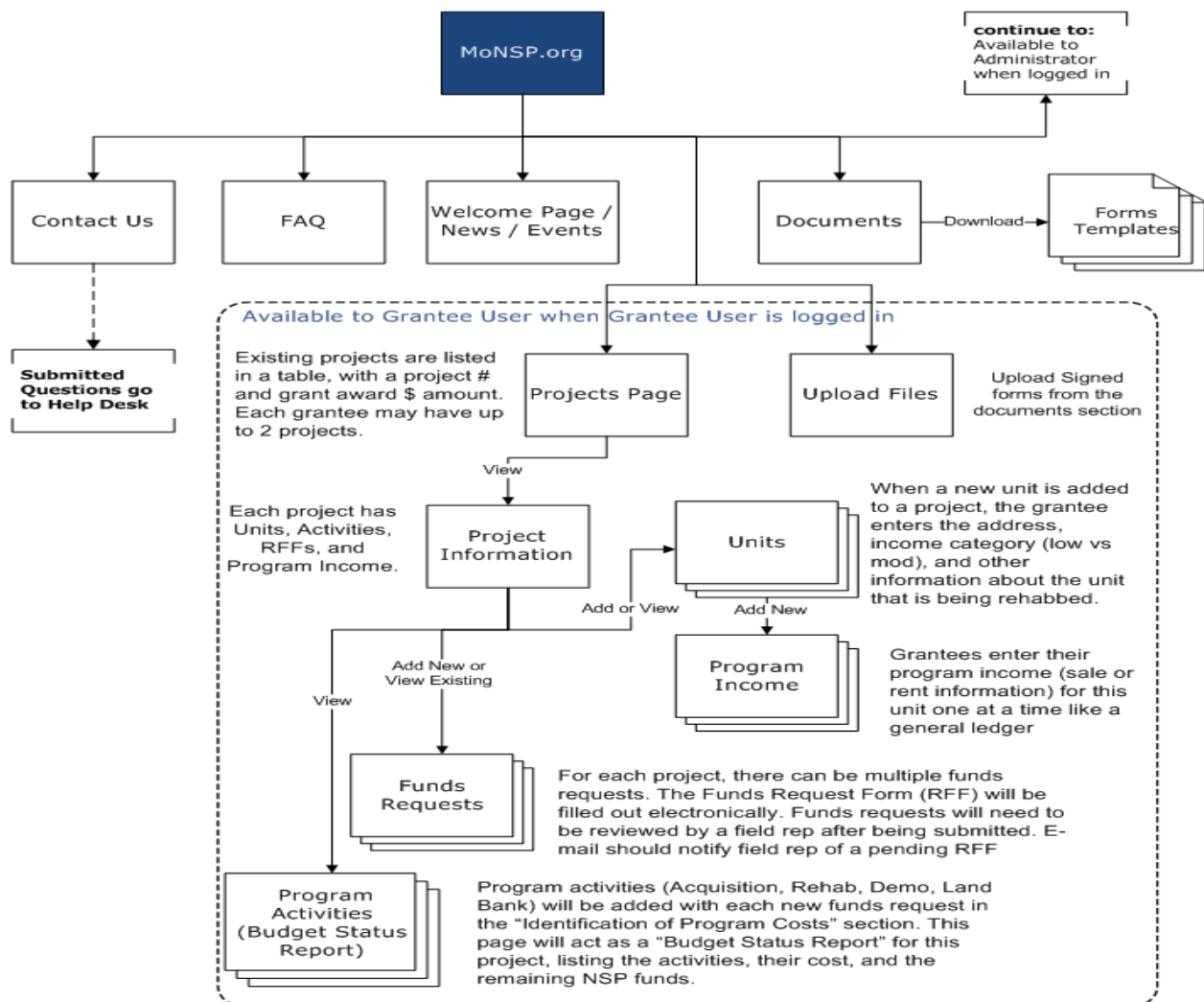
MO NSP Web-Portal

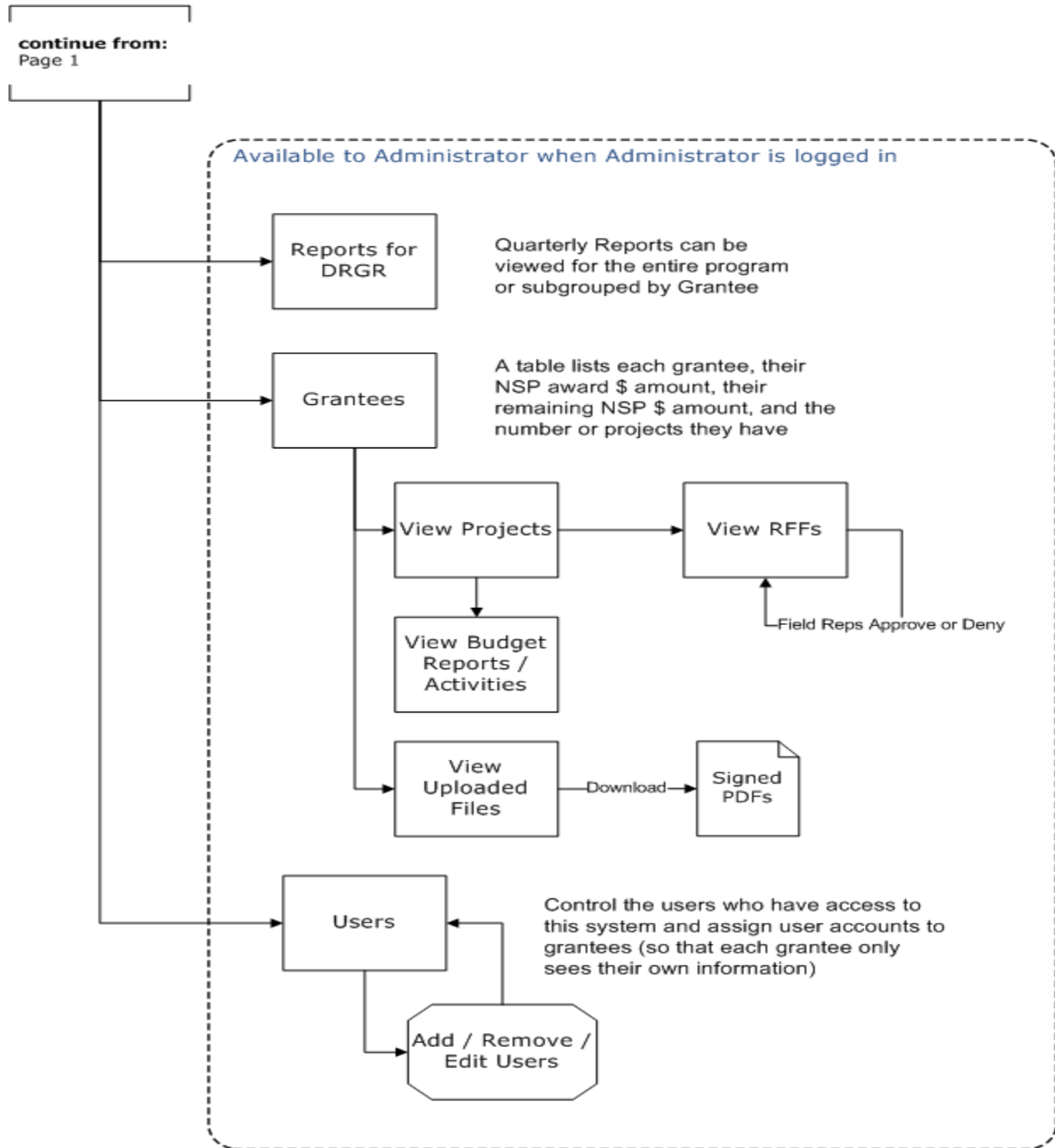


Section 16: MO NSP Web-portal

The MO NSP web-portal is readily available to NSP field representatives, reciprocal communities and grantees, and any interested parties. The web-portal can be accessed from anyplace where internet is available and will provide contact and program information as well as provide e-mail capabilities such as correspondence between NSP field representatives and grantees. The web-portal will also be the tool used for NSP field representatives' required reporting. NSP field representatives will be able to complete and submit standardized forms available at the web-portal for required tracking and reporting. This data can then be easily processed and generated into specified reports as varying as costs, income generated, and demographics. A call center and help desk will be provided for administrative services. The call center and help desk will provide program information, technical assistance, and be the primary for phone and e-mail correspondence.

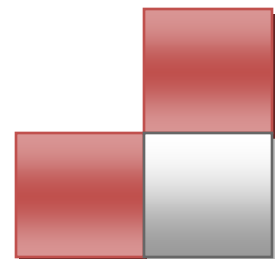
The following flow-charts demonstrate the methods and channels of communication for the MO NSP Web-portal.





Section 17

Frequently Asked Questions



Section 17: Frequently Asked Questions

Since NSP is a new program, questions regarding eligibility, activity implementation, and a host of NSP specific program requirements are expected. Program understanding and good communication from participants at all levels of government are critical.

The following are NSP questions and answers by activity category which have already surfaced.

ACQUISITION & RELOCATION

What are the parameters of authority for an NSP grantee that is acquiring properties before receiving its grant award?

A grantee can start incurring costs prior to receiving its grant award beginning September 29, 2008. If a grantee wants to start incurring costs beyond general planning and administrative costs, the grantee needs to comply with the provisions of 24 CFR 570.200(h) of the Entitlement regulations—most notably the environmental review requirements. A grantee must also identify these pre-award costs in the substantial amendment to its action plan which it is developing for NSP funding.

Can NSP grantees use NSP funds to provide down payment assistance and cover closing costs for families purchasing foreclosed properties rather than acquiring property directly?

Yes. Providing down payment assistance and closing costs to buyers are eligible under Eligible Use A. However, limiting your homeownership assistance activities to down payment and closing cost assistance may create additional challenges for you to meet the other program requirements such as stabilizing target areas of greatest need, ensuring that properties are vacant prior to purchase, and ensuring that properties assisted with NSP funds meet the housing habitability standards.

If a mortgage lender requires that funds be allocated for operating reserves as a condition of the lender approving a mortgage for a multifamily housing project, can NSP funds be used for the operating reserves?

Yes, NSP funds can be used for operating reserves if the NSP grantee can demonstrate that such a requirement is consistent with industry practices and the dollar amount of the required reserves is consistent with local industry standards.

Can an NSP grantee perform a neighborhood-wide appraisal to determine the current market assessed value of properties that are being considered for acquisition?

No. NSP grantees must have an appraisal done on each separate property purchased with NSP funds. It may be possible to have one appraiser perform appraisals on multiple properties, but the appraisals must identify a value for each property. In other words, an "appraisal" that indicates that the median value of all 3-bedroom houses in the neighborhood is \$75,000, the median value of 2-bedroom houses is \$68,000, etc. would not be acceptable.

Do NSP grantees need to identify the specific properties they intend to acquire with NSP funds in the substantial amendment to the action plan?

No. The substantial amendment is submitted well in advance of program implementation and there are too many unknown factors that impact property acquisition making it nearly impossible for an NSP grantee to know specific properties they plan to acquire. For example, NSP grantees will not know what properties will be on the market several months from now or which properties are the best uses of NSP funds.

If an NSP grantee incurs eligible costs through a failed acquisition of an abandoned or foreclosed property are the incurred costs still eligible?

Generally, yes. HUD recognizes that an NSP grantee may investigate the acquisition of some properties and incur costs before acquiring it (such as the cost of an appraisal or a title search), but then decide that the acquisition is not feasible. In such a case, HUD would support an NSP grantee that chooses to walk away from a property that looks to be problematic, rather than getting bogged down and losing valuable time when the 18-month obligation requirement is drawing near. For drawdown and reporting purposes, a grantee can allocate the project delivery costs of property acquisitions (or considering purchasing) across all properties under the acquisition eligibility category.

Posted 10/31/08

If the former owner is still living in a property, as a tenant, in a lender-foreclosed property, would the NSP grantee be required to pay relocation in order to acquire the property?

In the situation where you have a home that “has been foreclosed upon” (required by NSP), the former-owner who is still in the property is usually no longer an owner (State law is going to dictate here). The former owner may be a tenant, if the new owner (the lender) has allowed them to stay under a lease agreement...or, they may not be a legal occupant and may be subject to a pending eviction (again, state law will dictate here). So, grantees need to be very careful about determining an “occupant’s” status and entitlements. An unlawful occupant (see 49 CFR 24.2(a) (29)) who is displaced for an NSP-funded acquisition will not be entitled to relocation assistance and payments. However, a lawful occupant displaced for an NSP-funded acquisition will generally be eligible for relocation assistance and payments under the URA.

Posted 10/31/08

What if a grantee wants to purchase a property under NSP that is occupied by the former-owner (who is now a tenant under a lease agreement with the lender), and intends to rehabilitate and re-sell the property to the former-owner/current-tenant? Would the tenant be eligible for relocation assistance during rehabilitation? What if they were not able to purchase the property at a later date?

If the grantee does not intend to permanently displace a legal tenant during the acquisition and rehabilitation of a property, the grantee can provide the tenant with a Notice of Non-displacement (see Handbook 1378, page 2-4, D and the sample guide form in Appendix 4). You will find our Handbook on the web at www.HUD.gov/relocation. If you require a legal tenant to move temporarily for rehabilitation of the property, you must pay temporary relocation costs (see page 2-8, paragraph 2-7 of the Handbook).

Pitfalls: Are you sure that the rehabilitation work will be completed in less than a year (maximum time for temporary relocation)? Do you know what the sales price will be based on the NSP rehabilitation requirements? Are you sure that the tenant will be financially capable of purchasing the property after the rehabilitation is done and you are ready to sell the property to them?

If the tenant is not financially capable of purchasing the property at the end of your proposed “lease to own” agreement, will you allow them to continue to rent or will you require them to move (pursue eviction)? There are “eviction for cause” standards in the URA at 49 CFR 24.206. The issue may become what provisions relating to down payment or other program eligibility requirements are stated in the lease agreement and whether failure to meet those terms by some specified point in time would be considered “material” and is the nature of the breach “serious” or “repeated” and would be considered a basis for eviction under local law.

It is quite possible that evicting or requiring a non-purchasing tenant to move for failure to meet the purchase requirements of your NSP program may make them eligible for relocation assistance. It is critical that you properly structure your “lease to own” agreement and program in accordance with federal, state, and local law and that you adequately pre-screen rent-to-own homebuyers before entering into an agreement with them. This may be a very risky program design.

There is confusion about whether NSP funds can acquire any “real property” or only “homes and residential properties”. Can the NSP funds be used to rehabilitate foreclosed properties that are not residential when those activities will further neighborhood stabilization, such as a community grocery store?

Yes, under Eligible Use E, a grantee may acquire demolished or vacant properties (including vacant structures) that are not residential for redevelopment. As noted in the question, these must generally be located in targeted areas of greatest need and support the activities in the area that are acquiring, repairing, and selling foreclosed or abandoned houses. Eligible uses A, B, and C are limited to homes and residential properties.

If an NSP grantee or sub-recipient purchases a vacant foreclosed home with NSP funds and uses other private financing for the rehabilitation, can the LMA national objective be used, meaning the home could be sold to a household over 120% AMI (provided that the home is located in a low-mod area in accordance with the LMA/LMMA national objective)?

No, this is not allowed in the NSP program. While it is true that the LMMI neighborhood will benefit indirectly from the acquisition and rehabilitation of a vacant home, the NSP Notice is clear that the primary beneficiary must be an LMMI household. As in the CDBG program, all housing rehabilitation activities must meet the national objectives as housing, not area benefit. The NSP Notice specifically states that an activity meets the HERA national objective if the activity “provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120% of area median income.”

Posted 11/7/08

If a nonprofit wants to open a homeless shelter and they buy the property for the shelter before NSP funding is available, would the property still be considered vacant? If so, can a nonprofit own a piece of property that is vacant and redevelop it?

A nonprofit can undertake a public facility under 24 CFR 570.201(c), as part of Eligible Use E (Redevelopment). Under that regulatory provision, a nonprofit can own or operate a public facility provided that its services are available to the general public.

From the question, HUD assumes that the grantee or the nonprofit entity intends to use some source of funds other than NSP funds to acquire the property. Ownership of the property has no bearing on whether it is vacant, under Eligible Use E. A vacant property is one on which the land and/or buildings are vacant (unoccupied). If there are no structures on the property, then the vacant property can be redeveloped (a homeless shelter built on it) under Use E. If there are blighted structures on the property, the grantee or nonprofit could use other funds to demolish those structures; the property would then be vacant and can be redeveloped under Use E. If, however, the grantee or the nonprofit wishes to also use NSP funds to demolish any structures on the property, the demolition itself must be eligible under use D, and thus the buildings must be blighted. The grantee and the nonprofit should be aware that their acquiring the property with other funding may have implications regarding the applicability of Environmental and Uniform Act requirements, since NSP funds are clearly envisioned for eventual use in this project.

Posted 11/7/08

We are considering a rent to own program, where the property is first rented to an income qualified family while we work with them to save a down payment and get their credit improved. If something happens where it becomes necessary to evict the tenant later, will we have to pay relocation benefits?

Under the URA, a person who is evicted for cause (see 49 CFR 24.206) is not eligible for relocation assistance. The complicating factor here might be what is behind the question—do they anticipate evicting the tenant because at some point in time the tenant may be unable to fulfill the purchase requirements or are they anticipating that the tenant may become delinquent on the rent (which would clearly fit the eviction for cause requirements)?

Posted 11/7/08

Can NSP funds be used to refinance existing mortgages and prevent foreclosure?

No. NSP funds may not be used to refinance existing mortgages and prevent foreclosure. The program was designed to stabilize communities through acquisition and redevelopment of properties that have already been foreclosed or abandoned. NSP grantees should design activities based on the eligible activities listed in the NSP Notice.

Updated 03/26/09

URA regulations require grantees to send a letter to the sell (Bank) regarding the occupancy and other conditions 60 days before closing. Does this requirement apply to NSP? Can the appraisal be completed by the lender holding the property or must the acquiring entity order the appraisal?

The NSP Notice requires that the buyer obtain an appraisal that is issued within 60 days from the date of the final offer. We realize that the initial offer may not comply with the purchase

discount requirements so multiple offers may be made before a final purchase price is agreed upon. There is no time limit for “closing” an acquisition under NSP.

The acquiring entity can order the appraisal if it complies with the NSP Appraisal Guidance (located on the NSP website, under NSP Resources box, under Policy Guidance).

Posted 11/7/08

If a jurisdiction institutes a lease-purchase program, will the grantee be required to relocate the tenant if he/she does not qualify to purchase the property at the end of the lease term?

Assuming this is a new tenant, who was not in the property at the time of the Initiation of Negotiations (ION) for acquisition, demolition, rehabilitation, or conversion of a lower income unit for an NSP-funded project, someone the URA would consider a “subsequent tenant”: if before the tenant agreed to occupy the unit, they were provided with a Move in Notice (see 24 CFR 570.606(b)(2)(ii)(B)) that advised them they were occupying an NSP-funded project for a lease-to-own program and that if they were unable to meet the eligibility requirements to become an owner within the program’s time limit that they would not be eligible for relocation assistance under either the URA and/or section 104(d) (see Appendix 29 of Handbook 1378 for a sample Move in Notice) that neither the URA nor 104(d) relocation payments may be an issue. The key is that the tenants know the possibility that they could be displaced BEFORE they move in (so they could choose not to move in if they did not want to take the chance and agree to the terms of the project).

This brings to mind the eviction for cause standards in the URA 49 CFR 24.206. The issue may become what provisions relating to down payment or other program eligibility requirements are stated in the lease and whether failure to meet those terms by some specified point in time would be considered “material” and is the nature of the breach “serious” or “repeated” and would be considered a basis for eviction under local law.

It is quite possible that a non-purchasing tenant may be made eligible for relocation assistance for failure to meet the homeownership requirements at a later date if they were evicted or asked to leave for failure to meet the requirements.

Posted 11/13/08

What is the Initiation of Negotiations (ION) date for NSP (the date on which a tenant-occupant becomes eligible for relocation assistance and must be issued a Notice of Eligibility)?

If the tenant is displaced as a result of privately undertaken rehabilitation, demolition, or acquisition, NSP uses the definition of ION found at 24 CFR 570.606(b) (3) of the CDBG regulations: The date of the execution of the loan or grant agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property. Otherwise, the definition found in the URA at 49 CFR 24.2(a) (15) is applicable.

Posted 11/13/08

Must a recipient of NSP funds (grantee, sub-grantee, nonprofit organization, individual homebuyer, etc.) who will use NSP funds to acquire foreclosed property under the voluntary acquisition provisions of the Uniform Act (URA) provide written notice to the owner (bank, mortgagee, etc.) that it will not acquire the property if negotiations fail to

result in agreement and inform the owner in writing of what it believes to be the fair market value of the property?

Yes. The URA acquisition requirements apply to anyone who uses NSP funds (or any Federal financial assistance) to acquire property including any Agency, nonprofit, or individual homebuyers who use federally-funded down payment or other financial assistance. To meet the requirements at 49 CFR 24.101(b)(1)-(5) (commonly known as the URA voluntary acquisition requirements), the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, that the acquisition will not take place. Further, under the NSP, an appraisal of foreclosed property must be made to determine the current fair market value 60 days prior to making the final offer and the owner must be advised that, under NSP, the acquisition price must be at a discount from the fair market value (the offer price should reflect the discount proposed by the buyer). There are specific URA voluntary acquisition requirements that must be met depending on whether or not the buyer has the power of eminent domain and will not use it (see 49 CFR 24.101(b)(1)(i)-(iv)) or if the buyer does not have the power of eminent domain (see 49 CFR 24.101(b)(2)). Any acquisition under possible threat of eminent domain cannot be considered a “voluntary acquisition” (even if the seller is willing to negotiate). HUD has developed a number of sample guide forms to assist NSP grantees in meeting these requirements. The guide forms and other information and resources are available on the NSP Acquisition & Relocation Resources page at: <http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm>.

Posted 11/13/08

On page 58331, the NSP Notice requires the use of the URA appraisal process. Does that mean that grantees must do both an appraisal and a review appraisal?

No. The Notice specifies that the URA appraisal requirements of 49 CFR 24.103 must be used in the valuation of NSP funded “foreclosed upon” properties. The URA review appraisal requirements of 49 CFR 24.104 are not required, nor is an appraisal review required. However, NSP grantees and sub-recipients may choose to adopt an appraisal review process and URA appraisal review requirements for NSP funded acquisitions if they so choose.

Posted 11/13/08

Must appraisers meet all state certification requirements and be FIRREA certified or could knowledgeable grantee staff perform this function?

Persons performing appraisals of NSP funded acquisitions of “foreclosed upon” properties must meet the appraisal qualifications of 49 CFR 24.103(d). All persons performing such valuations must be qualified to perform an appraisal, even if they are on staff. The regulations at 49 CFR 24.103(d) (2) only requires contract “fee” appraisers to be state licensed or certified. Staff appraisers are not required to possess such qualifications; however, they must be qualified. In most circumstances, staff appraisers possess a state appraisal license or certification, even though they are not required to do so by regulation.

Posted 11/13/08

Can NSP funds be used to provide financial assistance to relocate a tenant from an area defined as “greatest need” in a grantee’s action plan if the tenant must move but is not displaced by an NSP-funded acquisition or other activity?

No. NSP cannot be used to provide financial assistance to persons not displaced by an eligible NSP activity.

Posted 11/13/08

How do we define “project” under NSP for the purpose of complying with the URA?

The URA regulations define “program or project” at 49 CFR 24.2(a) (22). There is no alternative definition provided under NSP.

Posted 11/13/08

If there were tenants in the property when the lender/servicer completed foreclosure and the lender/servicer completes the eviction process prior to initiation of negotiations for the sale of the property to a locality that uses NSP funds to acquire the property, does the locality need to comply with the 12-month look-back provision of the URA?

There is no 12 month “look back” period in the URA statute or regulations. Any legal occupant who is evicted for the purpose of evading a relocation obligation may be eligible for assistance. The URA does address “Eviction for Cause” at 49 CFR 24.206.

Under section 104(d), HUD looks at “vacant occupiable” lower-income dwelling units that have been occupied within 3 months before the execution of an agreement for one-for-one replacement purposes and we would see this as a reasonable timeframe for any NSP grantee to consider when approaching an owner about purchasing a foreclosed property under this new program (for some level of assurance that the owner did not evict a legal occupant in order to sell the property as vacant to the grantee). However, a grantee must use due diligence when approaching any owner about purchasing property with Federal funds, particularly if the property is currently occupied or may have been recently occupied, to assure that the project does not influence the owner’s decision to evict an occupant and cause their displacement in order to participate in the grantee’s program.

Where an owner either evicts a tenant in order to sell a property as “vacant” to an Agency for a HUD-funded project, HUD will usually presume that the tenant was displaced “for the project.” In such cases, the Agency would be responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the Agency can prove that the tenant’s move was not attributable to the project (see HUD Handbook 1378, Chapter 1, paragraph 1-6 J.1, regarding evictions for additional guidance).

<http://www.hud.gov/offices/adm/hudclips/handbooks/cpdh/1378.0/1378chp1CPDH.pdf>

Posted 11/13/08

The NSP Notice states that the 104(d) one-for-one unit replacement requirements are waived. Are the 104(d) relocation requirements also waived? It is likely that many NSP activities will involve demolition or conversion so 104(d) might well be triggered.

No, as stated in the Notice, HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d). The 104(d) relocation assistance provisions of 24 CFR 42.350 are applicable to NSP funded projects and have not been waived. Additionally, NSP funding recipients must also comply with the 104(d) Residential Anti-displacement and Relocation Assistance Plan (RARAP) requirements of 24 CFR 42.325, which also have not been waived.

Posted 11/13/08

If the grantee buys properties under NSP and allows a tenant to move in to a property prior to sale, rehabilitation or demolition under eligible activities (B) or (D), would that tenant be entitled to relocation assistance if they are later required to move out? If yes, can this requirement be mitigated by using the “move-in notice” prior to when the tenant signs their lease? Note that this issue could include both residential and commercial tenants if the grantee allows these tenants to occupy the acquired site.

If a new residential-tenant (who was not in the property at the time of the Initiation of Negotiations (ION) for acquisition of a property for an NSP-funded project--someone the URA would consider a “subsequent tenant”) were provided with a Move in Notice that complies with 24 CFR 570.606(b)(2)(ii)(B) prior to leasing or occupying the property (see Appendix 29 of Handbook 1378 for a sample Move in Notice), then neither the URA nor section 104(d) relocation payments would be applicable. The key is that the tenant be fully informed of the possibility that they could be displaced for the planned project BEFORE they move in (so they could choose not to move in). This same principal could be applied to non-residential tenants who receive a Move in Notice based on the URA definition of “persons not displaced” under 49 CFR 24.2(a)(9)(ii)(B) and (C) since the non-residential tenant would have moved in after ION and be fully informed of the pending project. We do not see how this could apply to an activity funded under D of the NSP notice (demolish blighted structures), as any property that is blighted would not seem to be suitable for occupancy.

Posted 11/13/08

Normally under the URA, if a grantee is purchasing all or substantially all of the properties in a target area, those purchases must be considered to be “involuntary”. Under NSP, if a grantee is buying all or substantially all of the abandoned or foreclosed properties in a targeted area (for example for a land bank or an area of greatest need), would those acquisitions be considered “involuntary” and if yes, would the URA involuntary sale rules apply or would the NSP Notice text on page 58339 mean that the voluntary process would be followed?

The URA does not use the terminology “target area.” We believe this question relates to “voluntary” acquisition requirements which must be fulfilled under 49 CFR 24.101(b) (1) (ii). While a grantee may be planning to purchase all of the abandoned or foreclosed properties in a targeted area, it is unlikely that this purchase will encompass all property located in an area (some properties will not be abandoned or foreclosed or for sale) and not all such properties may ultimately be acquired by the grantee if agreement cannot be reached. Unless this acquisition is being made under the threat of eminent domain or for a specific designated purpose with defined boundaries that are limiting (such as construction of a multi-family housing project or a community center or park on a site defined as two specific blocks), we do not see that purchasing foreclosed properties for a land bank that has no specific end-result planned for the property at the time of the acquisition or make acquisitions of foreclosed properties that are randomly available in a specific zip code or neighborhood subject to the involuntary requirements. The acquisition of abandoned properties for a land bank is not an eligible use of NSP funds under (C) of the NSP notice.

Posted 11/13/08

A bank has foreclosed on a property and a tenant in the property is forced to move as a result. There are no Federal funds involved in a purchase of the property or reuse. The tenant does not know what to do and does not have immediate funds to find another place. Can a city use NSP funds to provide relocation assistance (security deposit, first month's rent, etc.)?

The tenant is not eligible for URA assistance or payments, nor may NSP funds be used to assist this tenant (since they were not displaced by the NSP program). However, the City could develop a program using CDBG funds to provide optional relocation assistance (see 24 CFR 570.606(d)).

Posted 11/13/08

If NSP funds are combined with other federal funds in a project, including CDBG or HOME, would the NSP rules apply or the standard URA and 104(d) rules including one for one replacement of units?

It is possible that both would apply. The answer would depend on the nature of the project and the use of funds. If NSP funds are used to purchase a foreclosed property, then the acquisition is subject to the NSP requirements (appraisal, discount, etc.). If HOME funds are used for rehabilitation of this foreclosed property into rental housing affordable to low-moderate income persons, then the HOME rules on income eligibility, HOME rents, affordability period, etc., are applicable. If CDBG funds are used for demolition to convert a low-moderate income dwelling unit that was on this NSP-acquired property into a park, then the one-for-one replacement requirements of section 104(d) are applicable (even if NSP was used for acquisition of the property).

Posted 11/13/08

The section 104(d) one-for-one replacement requirement for lower income dwelling units demolished or converted has been replaced in NSP by a disclosure of the units affected and reporting on new low- and moderate-income units created. Could a jurisdiction count any affordable units produced under the NSP program toward meeting its one-for-one replacement requirement under another project funded with either CDBG or HOME?

Yes. An affordable unit created with NSP-funds may be counted as a replacement unit against a grantee's one-for-one replacement obligation created as a result of the use of CDBG or HOME funds for another project, provided the NSP unit meets the requirements of 24 CFR 42.375(b).

Posted 11/13/08

This is a multi-part question:

- 1. If the grantee buys property for the purposes of a land bank under eligible activity (C) and allows tenants to move into the units pending their final use, would that tenant be entitled to relocation assistance if they are later required to move out? The issue with this eligible activity is that grantees have 10 years to re-use the property so it could presumably be many years later that someone would be asked to move out once a final use is determined.**

If no person was displaced by the acquisition of the property for the land bank, then the URA is not applicable at the time of the acquisition. If the grantee allows a tenant to move into the acquired property prior to a planned federally-funded re-use project, the tenant-occupant is not eligible for relocation assistance as a result of the original acquisition (see 49 CFR 24.2(a)(9)(ii)(B)). However, the tenant-occupant may be eligible for relocation assistance if they are made to move for a planned re-use project that is funded with federal financial assistance.

2. **Further, the source of funds for the re-use of the property may not be NSP or other federal resources. If the re-use of the property is paid by state, local, or private funds and the tenant is then asked to move out, would their move be considered to be caused by a “federal project” and thus would the URA be triggered at that point?**

A tenant who is required to move for a planned re-use project that is not federally-funded, would not be subject to the URA (however, such a move may be subject to state or local relocation requirements).

3. **The issue for grantees will be keeping track of the status of these properties over time as they are re-used. Note that this issue could include both residential and commercial tenants if the grantee allows these tenants to occupy the land banked structures.**

Any low- or moderate-income property assisted with NSP funds is subject to the alternative reporting requirements in the notice (see section K).

Posted 11/20/08

If a home is purchased and rehabilitated with NSP funds:

Is there a minimum threshold for reselling the home?

No. There is no minimum price threshold so long as the sale of the home conforms to the NSP affordability requirements.

Does the buyer’s purchase discount count against the 50% limitation on direct assistance to homebuyers?

The 50% limit applies to down payment assistance. Other means of writing down the purchase price such as purchase price discounts, soft second mortgages, etc., do not count against the down payment assistance cap.

Posted 11/20/08

Does NSP trigger Davis Bacon requirements when the funds are used solely for down payment assistance or closing costs?

No. Davis Bacon applies only when rehabilitating or constructing 8 or more units.

Posted 12/01/08

Can a property be purchased through a short sale using NSP funds?

Short sales are typically used to prevent a foreclosure. Owners use the proceeds of short sales to settle outstanding obligations with lenders. As such, the title to the property remains in

the hands of the homeowner until the sale is executed. Accordingly, a short sale property would not meet the definition of a “foreclosed upon” property provided in the NSP Notice.

Posted 12/23/08

We are negotiating with private lenders and GSEs regarding negotiated purchase prices for foreclosed properties. The city will not actually acquire the properties, but will provide financing assistance to homebuyers to purchase the homes from the title-holder or a nonprofit will purchase the properties. One GSE has agreed to sell houses for \$100 (for houses under \$20,000) or 50% of the appraised value (for those above \$20,000); another GSE has agreed to sell for \$0 (for houses under \$20,000) or a negotiated discount (for those above \$20,000). The purchaser will be charged \$350/property in closing costs. Do NSP requirements mandate that we have current appraisals if we are using NSP funding to cover transaction costs, despite the fact that the properties themselves are being sold for \$0 therefore eliminating any discrepancy in value that would necessitate a refreshed appraisal?

HUD agrees that there is a de minimus nominal acquisition cost below which it is not necessary to obtain an appraisal. For example, if a property is being donated or “sold” for zero, or if the sale price is less than the average market cost of an appraisal, HUD agrees that an appraisal is not needed. However, if the negotiated purchase price is established as some percentage of the property value, then the grantee must obtain a current appraisal upon which to base this determination of current market appraised value.

Posted 2/24/09

In reviewing a few of the substantial amendments for NSP posted on the web, it appears that some grantees are considering purchasing properties at foreclosure sale using NSP (Louisville, KY for example). The properties don't meet the definition of "foreclosed," but could it meet the definition of "abandoned," which could allow NSP funds to be used to purchase the property at a foreclosure sale? The mortgage or tax foreclosure proceedings have been initiated, mortgage/tax payments have not been made in 90 days, and the property has been vacant for 90 days. It still brings up the issue of appraised value, since that would be set by the County when it determines the sale price, not the purchaser through an appraiser.

If a home to be sold at sheriff's sale qualifies as “abandoned” based on the definition in the NSP Notice, then a grantee could bid for the property at the sale. No appraisal is required to purchase “abandoned” properties under NSP.

However, acquisition of a property at a sheriff's sale with NSP funds does not release the grantee from the requirements of the URA with regard to purchasing property. The acquisition policies of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) apply to any acquisition of real property for a federally funded project except for acquisitions described in 49 CFR 24.101(b)(1) through (5) (commonly referred to as “voluntary acquisitions”). The same standards apply to the acquisition of real property at a foreclosure sale for a federally funded project. An acquiring Agency undertaking a “voluntary” acquisition must comply with the procedures described in 49 CFR 24.101(b). For instance, purchasing property under the “voluntary” acquisition provisions at 49 CFR 24.101(b) (1)-(2) requires certain disclosures concerning the voluntary nature of the acquisition and the purchaser's estimate of the market value of the property. An acquiring Agency must also comply with

governing State and local law. The acquiring Agency should consult such laws to determine the identity of the legal title owner at the foreclosure sale and whether any applicable URA disclosures can be made to the legal title owner.

It is essential that an acquiring Agency consult State foreclosure law before acquiring property at a foreclosure sale. Issues including, but not limited to, the following must be taken into consideration:

- Does the State require a judicial foreclosure process? If not, then what process is used to foreclose the property?
- During and after foreclosure, who will hold legal title to the property?
- During and directly following foreclosure, who has the right to possess the property?
- Does the foreclosed upon owner have any redemption rights under state law?
- To what degree will the title being passed at the foreclosure sale be marketable?
- What subordinate rights and interests in the property are wiped away as a result of the foreclosure proceeding?

If state or local law precludes compliance with the Uniform Act's acquisition provisions, the acquiring Agency should contact its local HUD Regional Relocation Specialist. The Regional Relocation Specialist will consult with CPD Headquarters and program counsel regarding any potential conflict between the requirements of the Uniform Act and State/ local law in order that appropriate next steps can be determined. Contact information for HUD's Regional Relocation Specialists can be found at www.hud.gov/relocation/contacts.

Posted 3/30/09

When can an NSP grantee begin acquiring properties under NSP or authorize sub-recipients or private entities to acquire properties with NSP?

NSP acquisitions are not authorized to begin until the grantee has submitted an action plan amendment to HUD. For most NSP grantees, the earliest acquisition start date would be December 1, 2008, but for those grantees that submitted an action plan amendment prior to December 1, 2008; an earlier date could be acceptable. In addition to submitting an action plan amendment, NSP grantees must comply with the environmental review, purchase discount and other eligible-use criteria discussed in the Guidance on Eligible Uses prior to acquiring properties under NSP. If the acquisition is performed by a sub-recipient, private developer or homebuyer, the grantee must give permission or enter into an agreement prior to the acquisition. Properties acquired out of foreclosure before these requirements have been met are not eligible for NSP assistance. If you have any doubts about the compliance of an acquisition, please contact your local HUD representative or email nsp-questions@hud.gov before proceeding.

Posted 06/03/09

Is an NSP grantee required to have a separate Residential Anti-displacement and Relocation Assistance Plan (RARAP) for each NSP-funded project?

No. As part of its Consolidated Plan, each jurisdiction is required to submit a certification that it has in effect and is following a Residential Anti-displacement and Relocation Assistance Plan (RARAP) in connection with any activity assisted with funding under the CDBG or HOME Programs (including NSP). Any grantee receiving funds from the state, local government, or Participating Jurisdiction under their CDBG, HOME or NSP Programs should be

made aware of and required to comply with the jurisdiction's existing RARAP. Individual project RARAPs are not prohibited, however, maintaining, managing, and enforcing multiple plans is not recommended. Guide form RARAP has been developed in the event that any jurisdiction wants to consider revisions to its existing RARAP. The RARAP requirements are addressed in 24 CFR 42.325.

AFFORDABILITY REQUIREMENTS

Updated 04/21/09

How does HUD define “continued affordability” and how long do NSP grantees have to monitor NSP-funded activities?

As stated in the NSP Notice, Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of Section 2301(f)(3)(A)(ii), remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration. However, where NSP and HOME requirements conflict, the NSP requirements take precedence.

Posted 06/08/09

What are NSP grantees required to do in terms of income certification for rental programs?

HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but new tenants must meet the prevailing income limits when taking occupancy of an NSP-assisted unit throughout the period of affordability.

Related Discussion:

To meet the requirement of continued affordability for the NSP Program, the Notice in Section II B (3) (a) says that “HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration.”

Section 92.254 of the HOME regulations affects homeowner programs. In practice, homeowners will have their income certified under the Resale Provision at initial occupancy and when a new owner purchases the home. Under the Recapture Provision, the new purchaser does not certify his or her income, but the funds are returned and a new purchaser certifies that they meet the income limits.

For rental programs, the HOME regulations at 92.252 (h) require annual recertification of tenant incomes. However, this section was not adopted in the NSP Program because the CDBG Program has not required annual recertification; the sections that were adopted, 92.252 (a), (c), (e), and (f), require initial certification and affordable rents. Grantees have therefore questioned when they must certify the incomes of tenants after initial occupancy.

In keeping with legislative intent, CDBG policy, and income certification in Homeowner Programs, HUD has determined that tenant incomes must be certified as meeting the applicable income limits at initial occupancy and at any time a new tenant occupies a unit. Existing tenants are not required to recertify their incomes annually but, to ensure consistency; new tenants must meet the prevailing income limits when taking occupancy of an NSP-assisted unit throughout the period of affordability. This requirement applies both to tenants below 50% of Area Median Income and those below 120% of median.

DEMOLITION

Posted 11/7/08

Can NSP funds be used for demolition of abandoned properties regardless of whether they have been foreclosed or not?

Yes, this may be eligible under eligible use D, provided the structures meet a local definition of “blighted.”

ELIGIBLE-USE SCENARIOS

Can an NSP grantee offer NSP funding to a person whose home has been foreclosed in order to buy back the same home or another home? Can a nonprofit purchase a foreclosed home and sell it back to the original owner whose home was foreclosed?

Nothing would prevent a grantee from taking these actions so long as the person receiving the NSP assistance meets the income qualifications. However, it is up to the grantee to decide whether this is an appropriate use of their funds.

Can NSP funds be used to redevelop a public facility (Eligible Use E) that will be owned and operated by a nonprofit (For example, turning a vacant library into a homeownership center owned and operated by a nonprofit organization)?

Yes. Public facilities can be owned and operated by nonprofit entities. 24 CFR 201(c) provides the regulatory parameters for public facilities. It explains that nonprofit entities may acquire title to public facilities so long as these facilities are open for general use by the general public during normal hours of operation.

Posted 10/31/08

Can clients eligible to participate in the Section 8 Homeownership program also participate in financing provided through the NSP? For example:

- 1. Can a Section 8 Homeownership client purchase a property that was acquired with NSP funding and made available for sale by a sub-recipient?**

2. Can a Section 8 Homeownership client apply for NSP financing to acquire a home and then pay the mortgage with the Section 8 Homeownership Voucher?

Yes, persons with down payment assistance, participants in lease-purchase programs, and Section 8 homeownership voucher holders may use those mechanisms to purchase an NSP home, whether from a sub-recipient or directly from the unit of government. Additionally, prospective purchasers may receive financial assistance from the NSP program, through such means as down payment assistance, to purchase houses that have been acquired with NSP funds. The grantee must ensure through its underwriting that such forms of dual assistance do not overly subsidize the purchase, but they are allowed.

New construction is an eligible activity under NSP, does the new construction have to follow the CDBG requirements and be done under 24 CFR 570.204 by a Community-Based Development Organization?

HUD does not have any specific restrictions on doing new construction of housing beyond the normal CDBG program requirements. New housing construction does not have to be done by a CBDO to be eligible under the NSP program.

Posted 11/7/08

If a municipality completes a tax foreclosure on a property and keeps it vacant waiting for the market to rebound, would such a property be eligible for NSP funding?

This could be eligible under eligible use C as part of a land bank or it could be eligible under eligible use B if the municipality is rehabilitating homes that will be sold, rented, or redeveloped for income eligible individuals.

Posted 11/7/08

Would such an activity still be eligible if the properties had been foreclosed and vacant versus foreclosed and operating under this scenario?

No, eligible use B does not require NSP assisted homes to be vacant. It only requires that they be abandoned or foreclosed. Please see NSP Notice for definitions of abandoned and foreclosed.

Posted 11/7/08

Do the resale/recapture provisions apply to properties assisted with NSP funding?

Yes. The resale recapture provisions to ensure continued affordability do apply. In its NSP action plan substantial amendment, a grantee will define “affordable rents” and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration (Note that HERA’s continued affordability standard is longer than that required of sub-recipients and participating units of general local government under 24 CFR 570.503 and 570.501(b)).

Posted 11/7/08

There will be a period of time between acquisition, rehabilitation, and resale where the NSP grantee will need to maintain the property (e.g. grass cutting, snow removal, insurance,

etc.). Can the NSP grantee recover those costs from NSP funds as a delivery cost related to the activity?

Yes. Several sections of the NSP Eligible Uses, which are correlated with CDBG Eligible Activities on page 58338 of the NSP Notice, and excerpted below, allow Disposition. The CDBG regulations specifically permit temporary property maintenance as part of Disposition. The only constraint for NSP is that you cannot add these costs to the eventual purchase price.

Updated 12/5/08

Can NSP funds be used to rehabilitate properties already in the municipality's portfolio that were abandoned, vacant, foreclosed upon, or subject to tax sale prior to the housing crisis? If no, what is "prior to the housing crisis?" I don't see anything in the NSP Notice to support or negate this use.

Yes. NSP grantees may use properties already in portfolio that meet the definitions of abandoned or foreclosed in the NSP Notice. Keep in mind the following advice from the Guide to NSP Eligible Uses, which you can find at the following link:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspelibleuses.doc>

Posted 11/7/08

Will a portion of NSP allocations be set-aside for supportive services?

There are no specific set-asides for any kind of use under NSP. However, grantees could use NSP funds to support such services in certain circumstances. It will depend on the grantee, the housing stock, etc. Please see the eligible uses in the NSP Notice for further details.

Posted 11/7/08

Can a veteran preference of any type be placed on the housing produced using NSP funds?

A veteran's preference would not violate section 109 nondiscrimination requirements or any other NSP/CDBG requirements.

Posted 12/01/08

An NSP grantee acquires a home for \$100,000; rehabilitation costs \$100,000; by NSP requirements the maximum sale price would be \$200,000. Can the home be resold to an income eligible individual for \$100,000 in order to comply with the NSP affordability requirements?

The poles between which you are working are maximum homeownership assistance payments based on NSP affordability requirements and "reasonable costs" determined by OMB Circular A-87. If it costs the NSP grantee \$100,000 to subsidize the acquisition and rehabilitation costs to make a home comply with the NSP affordability requirements, then that would be allowable and not unreasonable. However, if the NSP grantee subsidizes the home much further, you would need a solid explanation of the reasons to satisfy OMB A-87.

Posted 03/19/09

An NSP sub-recipient would like to acquire a residential property with a blighted home. Once acquired, the sub-recipient plans to demolish the blighted home and construct of a

new home on the same site. Would the construction of a new home on the same site be considered new construction or rehabilitation?

This activity would be considered rehabilitation. CPD Notice 07-08 p. 6 offers guidance on reconstruction and interprets it as a form of rehabilitation. In addition, the “CDBG Guide to National Objectives for Entitlement Communities” p. 2-83 interprets reconstruction as the rebuilding of a structure on the same site in substantially the same manner. The number of dwelling units on the site may not be increased, but the number of rooms per unit may be increased or decreased. Please refer to these two documents for additional guidance on reconstruction.

Posted 03/19/09

We are planning to use our NSP Funds for homeownership assistance. NSP funding will be used to provide down payment and closing cost assistance as well as acquisition and rehabilitation. We are proposing that the Housing Authority be the sub-recipient and implementing agency for the down payment and closing cost assistance loan program activity. However, the Housing Authority does not have funds available to initially "front" or capitalize the loan program. Therefore, after NSP funds are obligated to this activity in DRGR, can we create a voucher to drawdown funds for a quarterly or monthly advance to the Housing Authority to implement the program activity?

The grantee and its sub-recipient cannot withdraw grant funds substantially in advance of the need for such funds to pay costs related to the approved activity. The procedure described in the NSP question would violate the cash management requirements at section 85.21. The working capital advance method of payment cannot be used in this case. The Housing Authority is not required to “upfront” the costs and get reimbursed. The County can make withdrawals of NSP grant funds to coincide with the timing of the scheduled disbursement of funds by the Housing Authority. The Housing Authority can notify the County of the need for grant funds (e.g., by submitting a request for payment) based on the scheduled closing. The County can withdraw funds through DRGR based on that request, although it must disburse the funds to the Housing Authority as soon as administratively feasible (usually within 3 business days of receipt). The Housing Authority must also disburse the grant funds in payment of activity costs as soon as administratively feasible (again, usually within 3 days of receipt of the funds from the County). The County cannot use budgetary shortfalls as the reason for failing to make timely payments to sub-recipients, since it has administrative funds available under NSP.

Posted 03/19/09

Can a sub-recipient of an NSP grantee hire a for-profit entity?

Please see 24 CFR 570.200(f) *Means of carrying out eligible activities* for guidance. As that provision points out, activities (other than those authorized under 570.204(a)) may be undertaken by (i) the recipient through its employees or procurement contracts (which could involve the procurement of goods or services from for-profit entities), (ii) sub-recipients, or (iii) local public agencies (e.g., housing authorities). Activities carried out under 570.204(a) can only be carried out by the entities specified in that section.

That being said, there has been some confusion about the status of “developers” under the CDBG program and, by extension, the Neighborhood Stabilization Program. The confusion centers on

the applicability of the procurement requirements under 24 CFR 85.36 to the selection of the developer. A grantee might hire (or procure) and pay for the services of (or goods provided by) a for-profit entity to (i) rehabilitate a property acquired with NSP funds, (ii) appraise a property to be acquired with NSP funds, (iii) construct a public facility, etc. In such cases, the services or goods would be provided to the grantee. However, some CDBG activities involve the provision of assistance to third parties, including for-profit entities. One example is the use of CDBG funds to assist a for-profit business in carrying out an economic development project pursuant to 570.203(b). Another example that is relevant to the use of NSP funds is the authority under 570.202(b)(1) to assist "...private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes" (emphasis supplied). This authority under 570.202 will be used often under NSP and it will involve for-profit as well as nonprofit developers. Grantees are not required to select (or "hire") for-profit entities they will assist under 570.202 pursuant to a procurement transaction any more than they would be required to "hire" low-mod individuals they will assist pursuant to a procurement transaction.

ENVIRONMENTAL REVIEW

Posted 11/7/08

For a single family home that is being demolished and rebuilt, what type of environmental review will be required under NSP? Is a demo/rebuild considered rehabilitation or new construction? If new construction, will a full Format II be required?

The level of environmental review required depends upon the program design and project description. The responsible entity should consider the use of the categorical exclusion at §58.35(a) (4) which reads:

§58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a) (3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to §58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a) (4) (i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a) (3) (i) of this section).

"Individual action" as used in §58.35(a) refers to an individual approval action about the particular dwelling unit(s) and may include new construction, demolition, and/or reconstruction (demolition and new construction). However, note that this categorical exclusion does not apply to rehabilitation of a building for residential use.

A responsible entity (RE) may apply the categorical exclusion at §58.35(a) on an individual application basis, allowing the RE to use this categorical exclusion when an individual applicant is submitting an application for construction, demolition, and/or reconstruction of dwelling units. For instance, if the RE designs a program where individual applicants will be submitting applications for new construction of up to four dwelling units, then each individual application may be considered to be categorically excluded per §58.35(a)(4)(i). Another example is if the RE designs a program where individual applicants will be submitting applications for a project of five more housing units on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site, then each individual application may be considered to be categorically excluded per §58.35(a) (4) (ii).

However, it should also be noted that if the program is clearly designed and intended to develop a specific block/neighborhood or other limited geographic area, then an environmental assessment for the program/area will be required.

Posted 11/13/08

After an NSP grantee acquires real property with its NSP funds, are subsequent transfers of real property subject to HUD's environmental compliance review requirements?

All HUD environmental compliance review requirements apply only to federally assisted projects. Therefore, as long as the CDBG requirements apply to the transfers of title and or the use of the property as a result of the transfer, HUD's environmental review requirements also apply. For NSP this means that environmental review requirements will apply:

1. When an NSP-acquired or -assisted property is sold to a homebuyer, to some other purchaser such as to operate a multi-family building, or for a redevelopment purpose, and no more NSP funds will be used; or,
2. When all NSP funds that have been committed to the property have been expended on the property (no more than four years after receipt of funds); or
3. When a land-banked property is dedicated to a permanent use (in no more than ten years).

Posted 11/13/08

How does the NSP Request for Release of Funds process apply to a locality receiving both a direct NSP allocation and NSP funding from the state program?

There have to be two separate Requests for Release of Funds from the NSP grantee. One would be directed to HUD for the direct NSP allocation the locality receives and the other would be directed to the State for the NSP State formula funds.

Posted 11/13/08

Since land banking is not allowed under the CDBG program, are there special rules governing how land banking is assessed?

There are no special rules for land banking. However, one must be aware of whether land banking the property will result in a change in land use. If not, then a compliance review of only related environmental laws (§58.5) is required. But if there is a change in use, an environmental assessment under the National Environmental Policy Act is required too (§58.35(a) (5)).

Posted 11/13/08

Are localities receiving NSP funding from the state program required to participate in the National Flood Insurance Program?

No. Localities receiving NSP funding from the state program are not required to participate in the National Flood Insurance Program. However, any locality receiving both NSP State formula funds and a direct NSP allocation, can only use its direct NSP allocation for acquisition or construction (including rehabilitation) of buildings in a special flood hazard area (SFHA) if it is participating in the National Flood Insurance Program.

Posted 11/20/08

If an environmental review and request for release of funds is completed for a project/activity in a particular location, is it necessary to perform separate environmental reviews for replicated projects/activities that take place at the same location?

No. HUD regulations (24CFR Part 58.35(b) (7) allow a responsible entity that has successfully completed the environmental review, and the request for release of funds and certification of compliance (RROF) process has been approved by HUD to add supplemental funding to the project without performing a new environmental review or RROF if the activities, location, and environmental conditions have not changed from the original review.

HUD regulations 24CFR Part58.35 (b) states:

“Categorical exclusions not subject to §58.5. The department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.”

HUD regulations 24CFR Part58.35 (b) (7) describes one such activity. It states:

“Approval of supplemental assistance (including insurance or guarantee) to project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47”

Posted 11/20/08

Under CDBG environmental regulations, we are required to complete a formal environmental assessment or EA (per 24CFR58.36) when acquiring/rehabilitating/disposing of five or more housing units that are within 2,000 feet of each other. An EA can take 3-4 months to complete through the FONSI/NOI/RROF/ROF process and may cost in excess of \$10,000. One of our strategies for the NSP program is to focus resources on geographical target areas, which could involve acquiring and rehabilitating owner occupied single units within 2000 feet of each other. Under the NSP guidelines and requirement for commitment of funds within 18 months, would acquiring and rehabilitating single units within 2000 feet of each other require an EA?

The environmental regulations at 24 CFR 58.35(a)(3)(i) and 58.35(a)(5) do not require an environmental assessment when acquiring, rehabilitating, and/or disposing of five or more existing housing units that are located within 2,000 feet of each other. Generally, rehabilitation, acquisition, and disposition actions are categorically excluded from the National Environmental Policy Act (NEPA) and absent extraordinary circumstances (see §58.2(a) (3) for definition of extraordinary circumstances) an Environmental Assessment is not required.

Rehabilitation of residential buildings (with one to four units) is categorically excluded from NEPA, but is subject to review under the federal environmental laws and authorities at §58.5 when the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or wetland. (See 24 CFR 58.35(a) (3)).

Acquisition or disposition of an existing structure is also categorically excluded from NEPA, but subject to review under the federal environmental laws and authorities at §58.5 provided that the structure will be retained for the same use. (See 24 CFR 58.35(a) (5)). In accordance with 24 CFR 58.35(a) (6), combinations of categorical exclusions listed in §58.35(a) may be combined, allowing for the acquisition, rehabilitation, and disposition of an existing single family house to be categorically excluded from NEPA.

Posted 11/20/08

In completing the environmental Appendix A forms, if we acquire vacant residential structures, rehabilitate and resell them as residential structures (without any change in the number of dwelling units), would these actions be considered an increase in residential density?

No. It is HUD policy that where HUD funds are used to rehabilitate or reconstruct housing on a site where housing previously existed, 24 CFR Part 51, Subpart C does not apply if the number of dwelling units on the site is not increased. The responsible entity will need to document in the environmental review record that Subpart C does not apply because the number of people exposed to hazardous operations is not increased. However, if there is an increased number of dwelling units on the site, then compliance with 24 CFR Part 51, Subpart C is required and the responsible entity must not approve projects located at less than the acceptable separation distance from a hazard, as defined in §51.201, unless appropriate mitigation measures are implemented or are already in place. (See 24 CFR 51.202(a)). The acceptable separation distance (ASD) is the distance from above ground stationary containerized hazards of an explosive or fire prone nature, to where a HUD assisted project can be located. HUD has developed an on-line calculation tool to help responsible entities assess the ASD. See <http://www.hud.gov/offices/cpd/environment/asdCalculator.cfm> Additional guidance on 24 CFR Part 51, Subpart C is available in the Department's guidebook "Siting of HUD- Assisted Projects Near Hazardous Facilities" which can be found on-line at:

<http://www.hud.gov/offices/cpd/environment/training/guidebooks/hazfacilities/>

Appendix A refers to recommended format designed to meet the specific needs of Region 9. For more information specific to Region 9 forms, please contact your Region 9 HUD Environmental Officer. Ernest Molins (northern CA, NV, HI and Guam) at 415-489-6731 or

Ernest.Molins@hud.gov. Elizabeth McDargh (southern CA and AZ) at 213-534-2578 or

Elizabeth.McDargh@hud.gov.



Posted 11/20/08

We already have CDBG programs in places which have received environmental clearance (contingent on site specific reviews) and a Release of Funds from HUD. Certain NSP programs will be the same as the current CDBG programs. Can NSP funds be considered “supplemental assistance” per 24 CFR 58.35(b) (7), so as not to require another environmental review and Release of Funds?

The environmental review needs to be amended and recertified, as appropriate, when there are changes in the scope, magnitude, location, or environmental circumstances of a proposal. If these factors regarding a HUD environmentally approved proposal do not change, then the addition of other funds by the same responsible entity will not require additional environmental review or certification or clearance. However, a determination that the project description (including the scope, magnitude, location, or environmental circumstances), as environmentally approved, has not changed, is required.

In lieu of a Request for Release of Funds/Certification for the new NSP funds, the program office may ask the responsible entity to send in a copy of this determination and a copy of the first Authority to Use Grant Funds issued for the same project.

Posted 2/24/09

If NSP funds are used to acquire a property, are subsequent transfers of the property subject to HUD environmental compliance review requirements?

Yes. All HUD environmental compliance review requirements apply to federally assisted projects. Therefore, as long as the CDBG requirements apply to the transfers of title and/or the use of the property as a result of the transfer, HUD environmental review requirements apply. Listed below are scenarios that show when environmental review requirements will apply:

- 1) When an NSP acquired or assisted property is sold to a homebuyer or to another purchaser, such as to operate a multifamily building or for a redevelopment purpose and no more NSP funds will be used; or
- 2) When all NSP funds that have been committed to the property have been expended on the property (no more than four years after receipt of funds); or
- 3) When a land-banked property is dedicated to a permanent use (in no more than ten years).

The environmental review requirements under NSP are taken from the regular CDBG program, but land banking is not allowed under the regular CDBG program. Does that mean that the environmental review requirements do not apply to land banking under NSP?

There are no special rules for land banking. However, one must be aware of whether land banking the property will result in a change in land use. If there is a change in land use, the NSP grantee must complete both an environmental assessment for compliance with the National Environmental Policy Act is required (§58.35(a) (5)) and a compliance review of only related environmental laws (§58.5). If there is no change in land use, the NSP grantee is only required to complete a compliance review of only related environmental laws (§58.5).

For those communities receiving NSP funds indirectly from the state, are they required to participate in the National Flood Insurance Program?

No. Communities receiving NSP funds indirectly from the state are not required to participate in the National Flood Insurance Program. However, if a community receives both a direct NSP allocation and state-allocated NSP funds, they must participate in the National Flood Insurance Program.

FINANCING MECHANISMS

Posted 11/7/08

A grantee wishes to make a loan (the “NSP Loan”) to a nonprofit entity (the “Developer”) to finance the purchase of foreclosed upon homes and residential properties for rehabilitation (or redevelopment) and resale to low- and moderate-income homebuyers. Upon completion of the rehabilitation (or redevelopment), the Developer will sell each property to an NSP income eligible homebuyer and take back a “purchase money mortgage” (i.e., a promissory note secured by a lien on the property). The payments received by the Developer on the purchase money mortgages will be used by it in accordance with NSP requirements to finance the purchase and rehabilitation (or redevelopment) of additional foreclosed upon properties for subsequent resale to NSP income eligible homebuyers. The Developer will take back a purchase money mortgage on each sale. The terms of the NSP Loan may provide for no interest and no principal amortization until the maturity date, and may contain such other terms as may be negotiated between the Developer and the grantee, subject to compliance with applicable NSP requirements. The NSP Loan terms may also provide for forgiveness of the Developer’s repayment obligations, in whole or in part, upon completion of the approved activities, as specified in the NSP Loan agreement, in accordance with NSP requirements.

Posted 11/7/08

Is this activity eligible?

The activity can be carried out as a financing mechanism pursuant to Section 2301(c)(3)(A) if the grantee provides the NSP funds to the Developer as a loan that is evidenced by a promissory note or other obligation. The financing mechanism can be used to carry out the correlated eligible activities for Section 2301(c)(3)(A) that are listed on page 58338 of the NSP Notice published in the *Federal Register* on October 6, 2008.

Posted 11/7/08

Must the revenue received by the Developer from payments on the purchase money mortgage be returned to the grantee or can it be retained by the Developer for similar uses?

The NSP Notice provides that revenue received by a private individual or other entity that is directly generated by an activity carried out pursuant to Section 2301(c)(3)(A) must be provided to the grantee. However, since the grantee could immediately use that revenue to make another loan to the Developer for a similar activity, the loan agreement between the grantee and Developer can provide for continued use as described above, subject to compliance with all applicable NSP requirements. Grantees are reminded that Section 2301(d) (3) provides that, if an abandoned or foreclosed-upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal

to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition.

Posted 11/7/08

Must the revenue be returned to HUD after five years?

Revenue generated by activities carried out pursuant to Section 2301(c) (3) (A) does not have to be returned to the grantee after five years.

Updated 01/23/09

Given the challenging mortgage market, our state Housing Finance Agency (HFA) would like to create a mortgage revenue bond loan program that would use prudent underwriting while reaching out to a lower credit score population with the use of NSP monies to fund a loan loss reserve for this HFA loan product.

1. What documentation does NSP require grantees to maintain for loan loss reserves?

HUD expects a grantee to be able to demonstrate that the methodology used to determine the interest rate that would be applied to individual loans be indicative of the net cost of losses on the loans. HUD prefers a methodology that reflects the following approach: the interest rate applied to loans should be developed based on estimates of future defaults (including timing), recovery rates (including timing of recoveries), and other factors (e.g., costs of recovery) that would affect the estimates of future losses. The loss rate used to determine the amount disbursed into the loss reserve as each loan is made should be derived by discounting net cash flows (i.e., losses-recoveries+/- other receipts/disbursements) to the present and dividing the result by the net present value of loan disbursements over the period that loans will be made. The estimates of future losses would normally be based on historical data for comparable loans.

2. Would at least 25% of the loans covered in the reserve need to be under 50% AMI?

No, but the use of NSP funds by HFA would be included in the overall calculation.

3. Would the use of the NSP funds in the loan loss reserve escrow account be considered a direct use of NSP funds to each of those loans?

Yes

4. Would the use of these funds in a loan loss escrow require that each of the properties in the pool be subject to the Inspections, Environmental review, etc., requirements of NSP funds?

Yes. If NSP funds are used with respect to any loan, the proceeds of that loan must be used in accordance with the requirements that would apply if NSP funds had been used directly.

- 5. Is there anything that would prohibit a borrower who uses the HFA loan that is backed by the loan loss escrow from using other NSP funds for down payment and/or rehab needs, if the NSP funds come through another non-profit within the state?**

NSP funds can be used to supplement financing under private loans so long as NSP funds are used in accordance with applicable requirements.

- 6. If there is interest earned on the loan loss reserve fund, it is our expectation that the earnings would remain in the loan loss escrow and over time provide the credit enhancement to more units. Is this acceptable?**

The methodology described above assumes that the interest earned on the loss reserve would be used in conjunction with the initial deposited funds to pay losses as they occur. Thus, it is not expected that material amounts of interest would be left to carry out additional activities.

- 7. Once the program income remittance date passes on July 30, 2013, could earnings continue to remain in the growing loan loss escrow until all of the loans in the pool have been paid off?**

Yes. Again, the methodology assumes that funds in the loss reserve will be invested and the earnings will be used (in conjunction with the original deposit) to pay losses as they occur.

- 8. Would the balance of the loan loss escrow, after all of the loans have been paid off, be required to be returned to HUD or could the HFA seek a waiver to keep the loan loss fund to continue to be a credit enhancement for another generation of loans?**

If funds remain after all loans are repaid, they should be returned to the NSP program accounts and used in accordance with requirements then in effect. Note that HUD expects grantees to periodically evaluate loss to the loss reserves and adjust the amount in the reserve based on actual experience on loans and estimates of future losses.

- 9. If NSP funds are used to finance homes with a 0% interest rate are the monthly principal repayments on the loan program income?**

Yes. The principal repayments received would be used to provide more buyers with the same program as funds accrue.

- 10. What documentation would be required for HFA to collect from program recipients since the NSP funds went to the HFA and not directly to the buyer?**

The HFA would have to document the current market appraised value, purchase discount, and income eligibility of the homebuyer.

11. Is there anything that would prohibit a borrower who uses this HFA loan from using any other NSP funds for down payment and/or rehabilitation needs, if the NSP funds are from another nonprofit within the state?

No. If other NSP funds are used to supplement the HFA assistance and the use of the NSP funds complies with applicable requirements, it is possible for a borrower to receive NSP funds for multiple purposes.

Posted 12/5/08

Does a servicer of second mortgages derived from Neighborhood Stabilization Trust funds (CDBG) need to be a HUD approved servicer?

There is no requirement in the NSP Notice regarding qualifications for servicers of second mortgages aside from conformance with OMB Circular A-87. NSP grantees (cities, states) may impose their own requirements in accordance with relevant state and local laws and regulations.

Posted 2/24/09

We are developing a homebuyer program to utilize part of our NSP allocation. Our program will operate similar to our existing program and we plan to offer up to \$50,000 to assist buyers in the purchase of foreclosures; further we plan to make this a 3% simple interest loan forgivable after 15 years. If for whatever reason the buyer fails to satisfy the 15 years and alienates title, besides the initial investment return with interest, how would we calculate the amount of appreciation due to be returned?

Our Financial Management chief says that for owner-occupied homes which are someone's principal residence, there will be no recapture of any appreciation. The program income would be limited to the NSP investment, minus any forgiveness, etc. If you make the NSP funds a grant, there is no repayment required, but you'd still have to ensure long-term affordability through resale or other provisions, secured by a covenant running with the land or a lien at some nominal value. Only income properties would be liable for a proportional share of net proceeds. You can require more (via a shared equity arrangement, for example) but are not required to do so by HUD.

HOMEOWNERSHIP COUNSELING

Updated 02/20/09

If a homebuyer completed homeownership counseling prior to obtaining approval to participate in the NSP-assisted homebuyer program, is additional counseling necessary to comply with the NSP homebuyer counseling requirement?

HUD Headquarters will consider granting an alternative requirement for homebuyers who completed homeownership counseling prior to obtaining approval to participate in the NSP-assisted homebuyer program on a case-by-case basis.

Posted 02/20/09

If a homebuyer previously owned a home, would it still be necessary for the homebuyer to complete homebuyer counseling to participate in the NSP-assisted homebuyer program?

All homebuyers participating in the NSP-assisted homebuyer program must comply with the NSP homebuyer counseling requirement regardless of whether they previously owned a home

or not. However, as stated above, HUD Headquarters will consider granting an alternative requirement for homebuyers who completed homeownership counseling prior to obtaining approval to participate in the NSP-assisted homebuyer program on a case-by-case basis.

Updated 12/5/08

Does the required homeownership counseling for purchasers of foreclosed homes count as a public service and is this activity subject to the 15% public service cap?

Homeownership counseling is not explicitly listed as a separate eligible activity under Eligible Uses A, C or D. Under Eligible Use B, this counseling can be eligible as counseling related to acquisition for the purpose of rehabilitation. Housing Counseling is eligible under Use E, as a public service; this provision is intended to include housing counseling for prospective tenants of redeveloped properties. This provision would have limited applicability to programs where a grantee/sub-recipient wants to sell existing residential properties to homebuyers, since Eligible Use E only concerns the redevelopment of vacant/demolished properties.

HUD has determined that homeownership counseling required under Section II.B.3.b. of the NSP Notice should be treated as an activity delivery cost of the homeownership assistance activity itself. Other types of housing counseling, such as for prospective tenants, must be classified as a public service. Any housing counseling which is categorized as a public service must: (a) comply with the statutory 15% cap on public service obligations, and (b) must be an eligible activity listed in the NSP Notice as corresponding to one of the five Eligible Uses.

Grantees are also reminded that Section II.B.3.b. requires that the counseling is to be provided by a HUD-approved housing counseling agency. Any grantee proposing to use some other entity to provide this counseling must request and receive HUD approval for an alternative requirement.

Updated 12/01/08

Can NSP grantees provide homeownership counseling directly rather than contracting with a HUD-certified nonprofit?

No, NSP grantees must contract with a HUD-approved housing counseling agency unless the NSP grantee is given HUD approval to use an alternative counseling program.

Posted 12/01/08

What is the expected format to fulfill the required 8 hours of homebuyer counseling?

The homebuyer counseling requirement can be fulfilled using a classroom style, individual (one-on-one) or a combination of both formats.

Updated 02/20/09

What will homebuyers need to prove they have fulfilled this requirement?

Homeowners will need a certificate from a HUD-approved housing counseling agency and NSP grantees will be expected to maintain copies of these certificates to demonstrate compliance with this requirement.

LAND BANKS

Updated 12/5/08

Can land banking include purchasing a foreclosed or abandoned property that has a structure on it or does the property have to be vacant land?

As stated in the statute “[NSP funds can be used to] establish land banks for homes that have been foreclosed.” Therefore, in order to acquire property for land banking purposes, the property must have a structure on it.

Posted 04/21/09

How does a land bank differ from a land trust?

The basic differences are timing and land use. A land bank is a short-term means of managing land that may not have a defined purpose and cannot be immediately used (e.g. market conditions), while a land trust is a long-term land management technique with a defined purpose and benefit for another party.

Posted 04/21/09

Can NSP funds be used to support land trusts?

Yes. Land trusts could be classified as financing mechanisms permissible under Eligible use A of NSP. For example, the land trust could acquire homes or residential land with NSP funds, then build new or rehabilitate existing homes and sell them to NSP-eligible homebuyers, while retaining ownership of the land. The occupant would own the structure and lease the land. The exclusion of the price of land keeps the overall cost lower, allowing the home to remain affordable long-term.

PROGRAM INCOME

The Federal Register Notice discussion on program income says that the sale of property must be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate the home or property, but the example talks about a \$25,000 profit. How can there be profits if the sale must be in an amount equal to or less than the acquisition cost?

It is true that in some circumstances the sale of a property will not generate a profit, but there is a vital distinction. The requirement regarding the sale price has to do with selling a property to someone for use as their residence (see Notice section J). The example cited in the Federal Register Notice question concerns program income requirements, and it talks about selling a multifamily building (such as a rental property), but the example does not talk about selling individual units to individual homeowners; it talks about selling the entire building. Nothing prohibits selling a residential building to an investor, developer, or a nonprofit for a profit.

If an NSP grantee uses both NSP and CDBG funds to acquire and rehabilitate a property, how do you prorate the program income and in this situation can profits be generated?

The proration is based on the amount of NSP and regular CDBG funds used. For example, if an entitlement community buys a property for \$10,000, rehabilitates it for \$10,000, and then sells it for \$22,000 (assuming the sale is not to an individual for use as a primary residence). The cost of acquisition and rehabilitation is paid with NSP funds (75%) and entitlement funds (25%). The NSP program income is \$16,500 (75% of \$22,000) and regular CDBG program income is (\$5,500). The profit that is subject to be returned to the Treasury is

\$1,500.

Updated 03/16/09

How long do NSP grantees have to track program income on NSP-funded activities?

As stated in the NSP Notice, program income from NSP-funded activities is subjected to limitations and requirements based on the NSP activity that generated the program income and on the date the income is received. Program income received before July 30, 2013, may be retained by the state or unit of general local government if it is used for eligible NSP activities.

Section 2301(d) 4 has been repealed under the American Recovery and Reinvestment Act of 2009. HUD guidance is forthcoming.

Posted 2/24/09

We are developing a homebuyer program to utilize part of our NSP allocation. Our program will operate similar to our existing program and we plan to offer up to \$50,000 to assist buyers in the purchase of foreclosures; further we plan to make this a 3% simple interest loan forgivable after 15 years. If for whatever reason the buyer fails to satisfy the 15 year agreement and alienates title, besides the initial investment return with interest, how would we calculate the amount of appreciation due to be returned?

For owner-occupied homes which are someone's principal residence, there will be no recapture of any appreciation. The program income would be limited to the NSP investment, minus any forgiveness, etc. If you make the NSP funds a grant, there is no repayment required, but you would still have to ensure long-term affordability through resale or other provisions, secured by a covenant running with the land or a lien at some nominal value. Only income properties would be liable for a proportional share of net proceeds. You can raise the affordability requirements (via a shared equity arrangement, for example), but are not required to do so by HUD.

Updated 3/12/09

Does HUD allow "debt service" as an operating expense when calculating net operating income (NOI)?

CDBG/NSP program income includes gross income from the use or rental of real property less costs (expenses) incidental to generation of the income. Program income generated by rental projects is determined by deducting operating expenses from gross rental income. Debt service consists of principal and/or interest. Payment of principal is not a cost; it is a reduction of a liability. Interest is a cost of capital, not an operating expense. Therefore, neither principal nor interest can be deducted from gross income for the purpose of determining program income.

However, these restrictions would apply only if the entity that owns the property is the grantee or its sub-recipient. These restrictions would not apply if the property owner were a developer, nonprofit, or "other entity."

If an NSP grantee (city, county, town, state) uses NSP funds to acquire a foreclosed multifamily family property, sells it to a private owner, and provides the owner with NSP funds to rehabilitate the property, is the revenue that the owner receives from the rents considered to be program income? If yes, how is the program income calculated

considering the project's operating expenses? Is any portion of the income generated by the project considered program income to be returned to the grantee?

It may help to illustrate the answers by laying out several different scenarios – comparing the ones you are suggesting to other scenarios.

- If the grantee were to simply acquire and then sell the property “as is” to the purchaser under Eligible Use B, the sales proceeds would be all program income if the entire acquisition cost was paid for with NSP funds. If NSP funds were a portion of the acquisition cost, then amount of NSP program income is equal to the percent of the acquisition cost paid for with CDBG funds.
- If the grantee were to acquire, rehab and then sell the property to the purchaser under Eligible Use B, the sales proceeds would be program income proportionate with NSP’s share of the acquisition plus rehabilitation costs.
- If the grantee acquires and sells the property under eligible use B (and the buyer uses some financing source other than NSP for their purchase) and as part of the sale the grantee provides a rehabilitation loan to the purchaser under Eligible Use A, then the sales proceeds received by the grantee are program income. The net operating income (NOI) from the property will also be NSP revenue that must be returned to the grantee, because it is generated from a property that is improved with NSP funds. The calculation of NSP revenue is based on the housing owners’ net operating income (sum of income generated, minus operating expenses incurred in generating the income, such as maintenance, insurance, etc). Debt service payments (i.e., principal and interest) are NOT subtracted out of the income to determine NOI, because interest is a cost of capital, not a cost of generating the program income, and payment of principal is a reduction of a liability and not a cost. The debt service is paid out of the NOI. Guidance on NSP program income has distinguished between revenue received by a grantee or sub-recipient (calling it program income) and revenue received by an individual or other entity that is not a sub-recipient (simply referring to it as revenue that must be returned to the grantee that becomes program income when received by the grantee). If other non-NSP funds went into the rehabilitation and in this case the acquisition, the amount that is NSP revenue would be proportional to the NSP share of the total costs. The program generated as a result of the rehabilitation loan, being from eligible use A, is not subject to the before/after 07/30/13 date and the subsequent requirement to return program income to the Treasury. If for some reason the sale took place on or after 07/30/13, the sales proceeds would be subject to return to HUD/Treasury because that would be program income generated from Eligible Use B.
- If the grantee acquires the property under Eligible Use B, and then provides NSP financing to the purchaser to acquire the property from the grantee AND to rehabilitate it, then the combined purchase/rehabilitation falls under Eligible Use A. The NOI is still program income, but there is no differentiation needed between which program income was generated from Eligible Use A versus eligible use B. The debt service on the purchase and the rehab are both paid to the grantee out of the NOI. And again, if other non-NSP funds are involved in financing the purchase and/or rehabilitation, NSP gets its proportional share of the NOI.

2) Same scenario as above, however, the owner is a nonprofit. It makes no difference if the nonprofit is being treated as a developer or “other entity.” The only situation in which it would be different would be if the nonprofit were being treated by the grantee as a sub-recipient.

3) The owner (private or nonprofit) sells the property but the property remains affordable. Are proceeds from the sale deemed to be program income? The affordability standards are in essence separate from the program income requirements. The affordability requirements need to continue on even after the owner sells the property to someone else.

PRORATING NSP FUNDS

Posted 11/19/08

How should grantees apply the statutory requirement regarding benefiting persons at or below 120% of AMI to multi-unit housing properties? Does the language in Section 2301(f)(3)(A)(i) of HERA mean that every unit in a multi-unit housing structure must be occupied by individuals or households with incomes at or below 120 percent of area median income?

Section 2301(f)(3)(A)(i) of the Housing and Economic Recovery Act of 2008 (HERA) requires that “all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income.” Paragraph (ii) of this section further provides that “not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income.” HUD has determined that these requirements shall be applied to NSP-assisted housing activities—those that meet the low- and moderate-income housing national objective criteria—as follows:

Meeting the 120% AMI targeting requirement:

- If a structure is assisted in whole or in part with NSP funds and it contains one housing unit, that unit must be occupied by a low, moderate, or middle income household in order to meet the national objective requirements and the NSP income targeting requirement.
- If a structure is assisted in whole or in part with NSP funds and contains two housing units, at least one unit must be occupied by a low, moderate, or middle income household.
- If a structure is assisted in whole or in part with NSP funds and contains three or more housing units, the proportion of units occupied by low, moderate, and middle income households must be equal to or greater than the proportion of NSP assistance in the total project development costs borne by NSP funds. Thus, if NSP funds represent 50% of the total development costs for a project, then at least 50% of the units must be occupied by low, moderate and middle income persons upon completion and occupancy. If NSP funds are the sole funding source for a project, then all units must be occupied by low, moderate, and middle income persons. If a grantee assists an income eligible homebuyer to buy a foreclosed four-plex, where the owner will live in one unit, and NSP funds represent 60% of the acquisition and rehabilitation costs, then two of the three rental units must be occupied by income eligible tenants; but if NSP funds were no more than 25% of the total costs, then none of the rental units need be occupied by income eligible tenants.
- Where two or more rental buildings being assisted are or will be located on the same or contiguous properties and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose to be a single structure.

- Activities such as acquisition of land, demolition, and installation of infrastructure that are undertaken as a precursor to, or otherwise support the development of housing, may be considered to meet this requirement based on the occupancy of the housing that actually results from these activities.
- If a unit is not initially occupied by the time that a grantee's grant is ready for closeout, it cannot be counted as having been occupied by an income-eligible household.
- Where a grantee can demonstrate that NSP assistance only assisted a specific unit in a multi-unit structure and not the structure as a whole—such as down payment assistance for a homebuyer to purchase a condominium unit—then only that specific assisted unit must meet the income eligibility requirements.

Updated 04/30/09

How should grantees count multi-unit housing properties toward the requirement to expend 25% of NSP funds for housing for persons at/below 50% of AMI? Do the requirements of Section 2301(f)(3)(A)(ii) mean that a grantee can only count expenditures toward the low-income housing targeting requirement if every unit in a multi-unit structure is occupied by a low-income individual or household?

Meeting the 50% AMI targeting requirement:

- In order to be countable toward the low-income targeting requirement, the NSP funds must be used for the purchase or redevelopment of abandoned or foreclosed homes or residential properties. Redevelopment of non-residential properties or residential properties that are not abandoned or foreclosed upon cannot be counted toward meeting this requirement.
- In order to be countable toward the low-income targeting requirement, the housing must be permanent housing that meets the LMMH national objective criteria. Homeless shelters, group homes for the developmentally disabled, etc. that are categorized as eligible public facilities cannot be counted toward meeting this requirement.
- If a structure is assisted in whole or in part with NSP funds and contains one housing unit, that unit must be occupied by a low-income household (at or below 50% of AMI) in order to count NSP expenditures for the activity toward the low-income targeting requirement. In this case, 100% of the NSP expenditures can be counted toward this requirement.
- If a structure is assisted in whole or in part with NSP funds and contains two or more housing units, the proportion of NSP funds to the total development costs that can be counted toward the low-income targeting requirement is equal to the proportion of units occupied by low income households. If 30% of total development costs come from NSP funds, then 30% of the units in a multi-unit structure must be occupied by low-income households in order to count toward the low-income targeting requirement.
- For purposes of this requirement, it is irrelevant whether NSP funds are the sole funding source or are combined with other funds.

PUBLIC FACILITIES

Posted 10/31/08

Can vacant public properties, such as a city fire station, be redeveloped under Eligible use E—redevelop demolished or vacant properties? The facility is located in a low-mod census tract needing a public facility for neighborhood activities.

Simply locating it in an LMMI area is not sufficient in itself. If the redevelopment activities support the housing activities in the target area, then YES, it would be eligible.

Posted 11/7/08

Can NSP funds be used for homeless shelters and transitional housing?

It is important to differentiate between the between eligibility of activities, income targeting requirements, and CDBG national objective requirements that apply to the NSP program. NSP funds can be used to develop homeless shelters or transitional housing. Facilities designed to provide shelter for persons having special needs, such as homeless shelters and group homes, are eligible as public facilities under 24 CFR 570.201(c). Any such facilities that are not permanent housing would be categorized as a public facility. It is possible to redevelop demolished or vacant property for such use under Eligible Use E, Redevelopment. Under Eligible Use B, a grantee could purchase and rehabilitate residential properties for reuse as special needs housing.

For a housing activity to count toward meeting the NSP program requirement that 25% of a grantee's NSP funds must be expended for activities that benefit households at or below 50% of area median income, it must be considered permanent housing and not a public facility under 24 CFR 570.201(c); and it must meet the low/moderate/middle income housing national objective criterion under 24 CFR 570.208(a).

REDEVELOPMENT

Posted 11/7/08

Please clarify how an NSP grantee would redevelop blighted structures that do not fall under the definition of foreclosed or abandoned?

To the extent that a grantee wishes to use NSP funds for activities that are eligible under only one of the five eligible uses, the five eligible uses listed in HERA and the NSP Notice can be viewed as severable and discrete. However, the provisions of the different Eligible Uses become cumulative if a grantee wishes to use NSP funding for multiple eligible activities on the same project, and those eligible activities are not all categorized under the same one Eligible Uses.

Under Eligible Use E, a grantee may use NSP funds to redevelop a property that is vacant or has been demolished. Providing NSP funds are only used for redevelopment activities listed under Eligible Use E, the property need not be abandoned, foreclosed upon, or previously residential.

If the property to be redeveloped is not vacant or previously demolished, NSP funds can be used to demolish structures on the property prior to redevelopment under Eligible Use D. However, in order to use NSP funds for demolition, the structures must be blighted, but they need not be abandoned and they need not be residential.

If a grantee wishes to use NSP funds to purchase and then demolish and redevelop a property, then they must qualify the acquisition under Eligible Use B. Under Eligible Use B, homes and residential properties can be purchased with NSP funds if they are abandoned or foreclosed upon; the grantee can rehabilitate, sell, or rent such properties under Eligible Use B; the demolition can be undertaken under Eligible Use D, and the grantee can redevelop the properties under Eligible Use E.

If a grantee wishes to purchase a home and envisions redeveloping the property sometime in the future for some presently-unknown use, the acquisition can be undertaken under Eligible Use C, Land Banks; Eligible Use C can be used only for purchasing and maintaining or disposing of

foreclosed upon homes; vacant property, abandoned property or nonresidential property cannot be purchased under Eligible Use C. However, if the redevelopment of the property is imminent, then Eligible Use C would not be appropriate, as the grantee's intent is clearly not to just buy the property and hold it for some indeterminate period for eventual reuse.

If a grantee wishes to use NSP funds to provide financing to another entity for that other entity to purchase or redevelop a homes or residential properties, that must be undertaken under Eligible Use A; the property must be foreclosed upon and must be residential.

Posted 11/7/08

Can redevelopment activities be done in an area that does not have a lot of abandoned or foreclosed properties? One of the proposed redevelopment projects would call for the purchase of a vacant multi-unit complex (approximately 270 units of prior LMI housing) from a for-profit individual in the amount of over \$6million. Would the local grantee be able to purchase and redevelop it into a mixed income property?

The NSP Notice requires grantees to give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, but it does not mandate that grantees work only in those areas. HUD advises grantees to have a strong rationale for undertaking projects outside areas of greatest need. If you have determined that your proposed project makes sense, the Notice would allow purchase and redevelopment of a vacant multifamily structure into a mixed use project.

Posted 11/20/08

Does "vacant property" refer to vacant land or vacant buildings?

A vacant property under Eligible Use E can either be vacant land or vacant buildings on the land.

Posted 11/20/08

Is vacant, undeveloped land eligible to be redeveloped under Eligible Use E?

In order for a property to be "redeveloped" under Eligible Use E, it must have been previously developed and is now vacant. Raw land would not be eligible for redevelopment. It will be up to the grantee to demonstrate that the property had been previously developed. Previous redevelopment could include vacant buildings or infrastructure improvements such as roads, water, sewer, power lines, etc. However, land that has been farmland, open space, wilderness, etc. would not be eligible for redevelopment. The Department has not imposed any specific standard on how long a property has to be vacant in order to qualify for redevelopment under Eligible Use E; grantees should exercise reasonable judgment in this area. A property that had once been a factory and has been idle for 20 years is not going to raise any issue. However, reasonable minds might question using NSP funds to redevelop a site where the previous development was demolished 100 years ago and the property has lain fallow ever since.

Posted 11/20/08

Can NSP grantees redevelop property that was not foreclosed upon?

Yes, under Eligible Use E, properties need not be foreclosed in order to be redeveloped. NSP only requires that these properties be demolished or vacant.

Updated 03/06/09

If a property is acquired under Eligible Use E and then disposed of at a discount, would these actions constitute a financing mechanism?

No, your example above would not be considered a “financing mechanism.” A financing mechanism for NSP purposes must involve the use of NSP grant funds in connection with a loan (e.g. direct loan, loan guarantee, or loss reserves established in connection with loans) or other form of indebtedness.

REHABILITATION STANDARDS

Can NSP funds be used to secure abandoned properties and minimize vandalism prior to rehabilitation?

Yes. Securing property may be eligible as part of the rehabilitation costs or as a disposition cost under NSP depending on how your program is structured. Keep in mind the definition of "abandoned property" under the NSP Notice.

Posted 2/24/09

Would we be able to pay for energy efficient appliances as part of a rehabilitation activity? The goal for all of our rehabilitations is to reach a HERS rating of 85, and those appliances are part of that package.

The Rehabilitation Standards located in section (I) of the NSP Notice include energy-efficient improvements. Appliances that can be provided in the CDBG program may also be provided in the NSP Program. These include refrigerators, and stoves, and do not include washers, dryers, and window air conditioners.

TAX LIENS

Posted 10/31/08

According to the NSP Notice, “an NSP recipient may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay the necessary and reasonable costs related to the appraisal and transfer of title.” Is the NSP recipient the municipality administering the funds or are the subcontractors of the municipality? If it is the municipality, then would that preclude down payment assistance to a homeowner who purchases a HUD \$1 home from the municipality which must be in the chain of title or a municipal land-bank?

The unit of general local government (municipality or urban county) is the recipient. Sales at nominal value (One Dollar Houses, for example) are acceptable. The recipient may use down payment assistance to assist purchasers of tax-foreclosed houses. The concern in prohibiting third party purchases on tax-foreclosed properties is that grantees will in effect reimburse themselves for the value of the tax lien. HUD does not allow units of government to receive funds in this way, which would also reduce available NSP funding for other projects.

Updated 01/23/09

Can NSP funds be used to pay “back taxes,” clear tax liens or other liens, code enforcement fines, etc. if they are associated with acquisition costs?

Yes, there are some situations where NSP funds could be used to pay these taxes, but the options are limited. If title to a foreclosed property is held by a private entity and the tax was levied by the NSP grantee or another jurisdiction, then NSP funds can be used indirectly to clear the tax liens through the acquisition process. For example, if the fair market value of a foreclosed property less the NSP required purchase discount is valued at \$100,000, and the property has a \$10,000 tax lien, the NSP grantee can acquire the property for \$100,000. The title company disbursing the funds from the transaction will give the seller \$90,000 less any applicable fees and \$10,000 will be forwarded to the jurisdiction that levied the tax lien. Please keep in mind that you have only 18 months to obligate your jurisdiction's NSP funds. Therefore, it is important that you be careful not to take on acquisitions that may get mired in title or other issues preventing timely closing. If a property has title or other legal issues associated with it that could delay the acquisition, we strongly encourage you to move on to the next property.

TIMELINESS OF USE & EXPENDITURE OF NSP FUNDS

Updated 04/08/09

How long do States and local communities have to spend this money?

Grantees have 18 months to obligate these funds, and four years to expend funds. Congress was very clear that this money be put to work quickly. In some areas, this level of federal funding will be unprecedented. Thus, HUD expects that grantees will have contracts signed or, at minimum, made written offers for properties within 18 months. Options or other non-binding instruments are not acceptable.

Congress was very clear that there is an urgency to deal with a national housing crisis.

Updated 05/18/09

How does HUD determine when NSP funds have been obligated?

As stated in the NSP Federal Register Notice page 58332, "Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, or sub-recipient during the same or a future period. Note that funds are not obligated for an activity when sub awards (e.g., grants to sub recipients or to units of local government) are made." In other words, HUD expects grantees to obligate funds to specific activities. The following are examples of obligations for a "specific activity:"

- Execution of an agreement with a REO holder to acquire one or more foreclosed upon properties;
- Execution of a contract to rehabilitate an abandoned or foreclosed upon property;
- Execution of a loan agreement;
- Issuance of a purchase order for equipment/supplies used to maintain acquired property;
- Execution of a demolition contract;
- Administrative action necessary to assign a staff person to work on NSP activities.

The execution of a sub-recipient agreement would **NOT** qualify as an activity that counts toward meeting the 18-month obligation requirement.

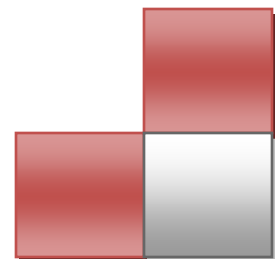
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What will happen if grantees do not obligate their funding within 18 months?

HUD will recapture the funds.

Section 18

Key Definitions



Section 18: Key Definitions

The definitions that follow are provisions that apply to the State of Missouri NSP.

Abandoned: A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days, and the property has been vacant for at least 90 days.

Affordability: The standard for affordability is that the eventual owner or renter of a NSP assisted property is paying no more than 30% of gross income toward their housing expense.

Blighted Structure: A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to health, safety, and public welfare. Communities participating in the State's NSP funding must determine blighted structures by declaring the use of an existing dangerous building ordinance, building code level of violation, or applicable occupancy or habitability designation and applying such ordinance, code violation, or designation in a manner consistent with the definition. The ordinance, code violation, or designation must be applied to the specific structure, not to the area as a whole. The predominance of blight in an area does not allow blight to be assumed for each structure inside the area.

Community Development Block Grant (CDBG): A HUD grant program to help urban communities by fixing up distressed homes.

Current Market Value: The current market appraised value is the value of a foreclosed upon home or residential property that is established through an appraisal made in requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by a sub recipient, developer, or individual home buyer.

Disaster Recovery Grant Reporting System (DRGR): A HUD web application to monitor and report on the progress of urban redevelopment grants including NSP.

Foreclosed: A property has been foreclosed upon at the point that, the mortgage or tax foreclosure is complete with a formal transfer of ownership from the former homeowner under a foreclosure proceeding or transfer in-lieu-of foreclosure under state or local law.

Grantee: Groups that have been granted NSP funds.

HUD: United States Department for Housing and Urban Development

Land Bank: A land bank is governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging the reuse or redevelopment of urban property. A land bank must operate within a specific, defined geographic area. It will purchase properties

that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land banked properties. If the land bank is a governmental entity, it may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

MONSP.org: Web portal with Missouri NSP information for grantees and sub-recipients to help them through the NSP process.

MONSP Team: A consortium of individuals and companies involved with WillCo Technologies, Inc. to provide assistance in the Missouri NSP contract.

Middle Income: This is a new term which is unique to NSP. It is the income group between 80% of area median to 120% of area median.

Missouri State NSP Guide: A guide that will be available on MONSP.org that outlines procedures for NSP grantees and sub-recipients.

Neighborhood Stabilization Program (NSP): HUD grant program under CDBG making funds available specifically for the purpose of helping neighborhoods that have suffered from foreclosures and abandonment. NSP funds can only be used on foreclosed homes.

NSP Field Representative: A person from the MONSP team that will be assigned to a sub-recipient to help them implement their NSP program and stay in compliance with NSP and CDBG rules. There will be multiple NSP Field Representatives. Each Representative may be assigned to more than one sub-recipient.

Project: A contract/funding approval between the grantee and grantor that outlines the amount of funds being awarded and how those funds are to be used.

Program Income: Program income is any revenue that is generated by the sub-recipient for activities through the use of NSP funds. Program income must be spent on a first in-first out basis before further funds are drawn for activities. It is expected that considerable program income will be generated through the use of these funds. As such program income obligated or spent will be counted toward meeting the timeliness requirements of NSP.

Request for Funds (RFF): Grantees must submit a request for funds to draw down their overall grant award a little at a time.

Program Activity: An activity outlined by the Project that grantees will perform and must report on. Examples of activities are Financing, Acquisition, Rehabilitation, Land Bank – Acquisition, Land Bank – Disposition, Demolition, Redevelopment, and Administration. The Project outlines the amount of money available for each activity. Some activities will be applied to a specific unit and some will not.

Sub recipient: Units of general local government that have been granted NSP funds by the State of Missouri are sub-recipients of the state which is the grantee under this program.

Unit: This is a housing unit (home) that is being acquired and rehabilitated.