

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.

Posted 10/31/08

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 subrecipient 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 non-profit 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 non-profit 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.

Posted 11/7/08

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 Agency must comply with 49 CFR 24.103 of the URA, which requires that the Agency order and obtain the appraisal.

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 tenant 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 downpayment 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, subgrantee, non-profit 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, non-profit, or individual homebuyers who use federally-funded downpayment 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 guideforms to assist NSP grantees in meeting these requirements. The guideforms 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 subrecipients 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 require 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, rehab 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 doesn't know what to do and doesn't 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 2/24/2009

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 haven't 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.

What is HUD’s expected turn-round time for reviewing and approving NSP grantees’ action plan amendments?

The Secretary of HUD has stated that HUD will review and approve amendments as quickly as possible. The absolute deadline for completing the action plan amendment review process is February 13, 2009.

Posted 10/31/08

Does the requirement to amend the local jurisdiction’s plan refer to the one-year action plan, or the 5-year consolidated plan?

The amendment that NSP grantees are required to submit refers to a substantial amendment to the 2008 action plan. Instructions and guidance on completing the amendment are located on the NSP website under the heading “Required Submissions for Eligible NSP Grantees.”

Posted 02/02/09

If the NSP activities identified in our action plan amendment are not approved or change what should we do?

If there are any problems with the action plan amendment submitted by the state, HUD will notify the state as quickly as possible to address the issue. If the NSP activities identified in an approved action plan amendment happen to change, the NSP grantee must allow for a *15-day public comment period* before submitting a new action plan amendment to HUD.

AFFORDABILITY REQUIREMENTS

Posted 11/7/08

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.

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”.

DISTRIBUTION OF FUNDS

How can residents in my community access NSP funds to combat the foreclosure crisis we are facing?

Please be advised that NSP grants are only distributed to designated NSP grantees—state agencies and local governments. HUD does not make grants directly to individuals or nonprofit organizations. Each grantee will have to determine how best to allocate its NSP grant so long as it complies with the eligible uses described in Title III of the Housing and Economic Recovery Act of 2008. When NSP grantees submit their action plan amendment to receive their NSP allocation, they will indicate how they plan to manage the funds. Local governments & states can distribute funds to other local governments, to nonprofits and other governmental entities, and can carry out activities directly. In some cases, NSP grantees may choose to manage their grants collaboratively with other NSP grantees or contract out to a private organization. Individual citizens or nonprofits should check with their local government or state to find out how they may receive assistance. Further, HUD will post contact information for each NSP grantee as soon as the information becomes available

Posted 10/31/08

An Urban County has four cooperating cities which participate in its CDBG program. Several NSP-related questions arise.

1. Can the County fund only in the unincorporated part of the County?

The NSP funds must be targeted to areas of greatest need. If those are all in the unincorporated part of the county, then it can fund only in those areas.

2. Can the County fund projects in cities that are not its urban county partners?

Yes, subject to the “greatest need” requirement and with an agreement between the county and the non-partner cities. The county must also document compliance with section 570.309 of the CDBG regulations. This section requires urban counties to determine that such an activity is necessary to further the purposes of the HCD Act and that reasonable benefits will accrue to residents within the jurisdiction of the grantee.

3. Can any city within the urban county (cooperating or not) apply to the state and receive NSP state funding?

Yes, as long as the state's rules allow it, any city could apply, as could the urban county itself.

Posted 11/7/08

Can a participating city that is a member of an urban county, request NSP funds from both the county and the state, as long as the funds received from the state and the county are not used on the same project/activity?

Any city or town that receives funds from a county NSP grantee as a participating jurisdiction in a county's program may also receive funds from the state. It is up to a state as part of its program design to decide whether it wishes to fund a city or town directly or to channel funding through the county for use in the city or town.

Posted 2/24/09

How does the NSP Request for Release of Funds process apply to a grantee that is receiving both a direct NSP allocation and state-allocated NSP funds?

The grantee must submit two separate Requests for Release of Funds; one would be directed to the State for the NSP State formula funds and one to HUD for the direct NSP allocation.

DRGR

Posted 11/20/08

When entering information into DRGR, where do I put the NSP grant amount that has been allocated to an activity?

When adding activities into DRGR use the field called "Total Budget, Disaster Recovery Grant," to put the NSP grant amount that has been allocated to an activity field and **do not** use the "Other Funds" field for NSP grant information. The distinction is crucial because NSP funds cannot be drawn down unless they are properly identified in DRGR.

Posted 02/06/09

In the DRGR system, where do I enter land banking activities?

We recently added activity types called Land Banking-Acquisition (NSP Only) and Land Banking-Disposition (NSP Only). Please choose the applicable activity type when adding or editing activities.

Posted 02/06/09

How do I enter activities in DRGR that do not match our action plan?

We recommend that grantees break out local programs whenever there is a different national objective, activity type or responsible organization administering the activity. NSP grantees should select the DRGR activity type that is most applicable to the NSP activity category being implemented.

Posted 02/06/09

How do NSP grantees track the 25% low-income set-aside as a separate activity in DRGR?

In DRGR, grantees should select *NSP Only-LMMH-25% Set-Aside* under an activity's national objective to track activities that meet the 25% low-income set-aside requirement as a separate activity. All other activities should be tracked with *NSP Only-LMMI* or *NA-Admin* for their national objective. Please note, the LMI, SB and UN national objectives are not applicable to NSP and should not be used for this program.

Posted 02/24/09

With the current economic climate we would like to know what the turnaround time is for requesting drawdown reimbursements. Also, I cannot find specific instructions for requesting a drawdown?

Drawdowns can be done in the DRGR system after a) the grant paperwork has been processed by your local CPD office and the HUD CFO office in Ft. Worth, b) grantee staff have submitted the info from their Action Plan into the DRGR system, and c) there are at least one authorized DRGR from your office to CREATE a voucher and another to APPROVE a voucher.

If everything is set up OK, vouchers submitted and approved in DRGR are usually processed by the next business day. Information about DRGR, submitting user account requests and a draft user manual will be posted soon at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/drgrs/cfm>

Could you provide me with a list of the standard activity names in DRGR? We're trying to come up with matches for the NSP activities and not having the activity names viewable here in the field is a problem.

Attached is a list of activity types we have in DRGR along with the performance measures I have associated with them. We don't really have "standard" activity types like IDIS has issued in their CPD notice. I can edit or change them as needed. I also can create or edit performance measures and then associate them with activity types. The only ones with Low-Mod breakouts are beneficiary data like persons assisted, households assisted, jobs created, etc. In the case of NSP, they should still report 0-50% AMI under low, 50-%80 AMI under mod and then the 80-120% AMI beneficiaries should end up being included in the total #s so we can back them out using a calculation.

If we think there are new good standard measures, then I can add them. But lots of grantees will add all sorts of measures on their own. In cases where they would not be typical measures most grantees would have for an activity type, I suggest the grantees report on those in the activity progress narrative. Some grantees think they have to put something in EVERY measure, but they should only put in the ones that really apply to the specific activity. An example in the disaster grants is tourism. Some are ad campaigns and others are events- the measures are very different for those.

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 subrecipient?**
- 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 downpayment assistance, participants in lease-purchase programs, and Sec. 8 homeownership voucher holders may use those mechanisms to purchase an NSP home, whether from a subrecipient or directly from the unit of government. Additionally, prospective purchasers may receive financial assistance from the NSP program, through such means as downpayment 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 subrecipients 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.

Posted 11/7/08

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 this link:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspeligibleuses.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 subrecipient would like to acquire a residential property with a blighted home. Once acquired, the subrecipient 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 subrecipient 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 subrecipient 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 subrecipients, since it has administrative funds available under NSP.

Posted 03/19/09

Can a subrecipient 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) subrecipients, 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 too §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 some other 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 non-profit 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 non-profit 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.

FORMULA ALLOCATION

How many local communities will receive direct funding from HUD?

More than 250 local cities and counties received grants as well as all 50 states, including Puerto Rico and the District of Columbia. Funding is also made available for the four Insular Areas.

How did you allocate the funding?

Congress intended this funding be targeted to areas of greatest need based on the number and percent of foreclosures, subprime mortgages and delinquencies and defaults. Further, Congress also required that each state receive at least \$19.6 million. Many states received significantly more than this mandatory minimum.

Again, following congressional intent to make sure these funds have maximum impact and are targeted to States and local communities with the greatest needs, HUD analyzed data from several different sources:

- The Mortgage Bankers Association *National Delinquency Survey* and the Census Bureau's *American Community Survey*;
- The Federal Reserve's Home Mortgage Disclosure Act (HMDA) data on high-cost loans at greatest risk of default and foreclosure;
- Office of Federal Housing Enterprise Oversight (OFHEO) on home price declines;
- Unemployment data from the Bureau of Labor Statistics; and
- U.S. Postal Service data on home vacancies.

Why didn't MY community receive a grant...we have needs too?

All communities will have access to grants, but Congress was very clear that the purpose of this funding was to target those areas with the greatest exposure to foreclosures, subprime mortgages, delinquencies and defaults. At Congress's direction, we believe we have developed a fair and data-driven formula that will do exactly that. We also wanted to make certain that this funding will have a meaningful impact at the State and local level.

The Housing and Economic Recovery Act of 2008 requires that State's must "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 needs. If your state government agrees that certain areas that didn't receive direct grants from HUD should get this funding, then it is incumbent on your state to target their funds to these areas.

What will this money do?

This funding is intended to stabilize neighborhoods. To do this, State and local governments can:

- Buy abandoned or foreclosed homes;
- Redevelop demolished or vacant properties;
- Demolish or rehabilitate abandoned, foreclosed or blighted properties;
- Offer down payment and closing cost assistance to low- to moderate-income homebuyers
- Reuse properties for affordable rental housing

In addition, these grantees can create "land banks" to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of property.

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/subrecipient 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 non-profit?

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.

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.

25% LOW-INCOME SET-ASIDE

Posted 10/31/08

The HERA legislation requires that 25% of the NSP funds shall be used for the purchase and redevelopment of residential properties that will be used to house individuals whose incomes do not exceed 50% of area median income. My city would like to purchase residential structures that will eventually be redeveloped by Habitat for Humanity or similar organizations, but expects that the redevelopment or rehabilitation will not take place for several years. Can we assign those units to the subrecipient without being certain of the date of redevelopment and still count them toward the 25% low-income set-aside?

No. The income targeting requirement is based on actual occupancy. The units could be land banked for up to ten years. However, land banking is an area benefit activity (LMMA) that would not satisfy the 25% set-aside, which must meet the housing national objective. HUD will determine at grant closeout whether the 25% below 50% requirement has been met. If the houses are not occupied by that time, they will not count toward any housing goal.

Updated 02/03/09

Is it true that an NSP grantee may use NSP funds to purchase residential property to be used as a homeless shelter to provide transitional or temporary housing? Is it also true that these funds used for this activity will not count towards the 25% set-aside for very low income households?

You may acquire residential property under Eligible Use B or non-residential property (Vacant land or vacant structures) under Eligible Use E. Under B, you could rehabilitate or reconstruct residential housing that is permanent housing (e.g. permanent supportive housing). In this case, if you can document that the residents are below 50% of area median income it would count toward the 25% set-aside.

Under E, redevelopment, you could construct new transitional or temporary residential facilities. Most shelters are not considered housing, since they are short-term. Similarly transitional or temporary residential programs would not be considered housing for very low-income households. You could assist with their construction as public facilities, but this would not count toward the 25% set-aside.

Posted 11/7/08

The HERA law requires that 25% of a grantee’s grant must be used for activities that will house individuals or families with incomes at or below

50% of the area median income. The NSP program also allows a grantee to use up to 10% of its grant for general administrative and planning expenses. Is the 25% low income targeting requirement applied to the entire grant amount, or only to the 90% of the grant that is not used for planning and general administration?

The HERA statutory language in question begins with the language “not less than 25 percent of the funds appropriated or otherwise made available under this section...” HUD believes that the 25% low income targeting provision must be counted against the entire grant amount. For example, if a grantee received an NSP allocation of \$4,000,000, and uses \$400,000 for planning and general administration, it has \$3,600,000 for specific activities. The grantee must ensure that at least \$1,000,000 (25% of \$4 million) of its grant is expended for housing for individuals and families with incomes at or below 50% of the area median income. If it were to only expend 25% of the \$3.6 million (or \$900,000), it would not be in compliance.

NSP INFORMATION SESSIONS

When will information on the NSP information sessions be available?

NSP grantees can register for NSP information sessions through the NSP website. Registration materials are currently available for the following sessions offered in 2008:

- October 10th in Orlando, FL
- October 14th in Columbus, OH
- October 16th in Orlando, FL

PROGRAM ADMINISTRATION

Will the general administration and planning costs for NSP be the same as CDBG (20%)?

No, the general administration and planning costs for NSP will **not** be the same as under the regular CDBG program. HUD is providing an alternative requirement that limits general administration and planning costs to 10 percent for NSP grants. Additional information on this requirement is in the Federal Register Notice under Section G. State’s direct action, “Requirements.”

Posted 10/31/08

If an NSP grantee allocates 10% of its NSP allocation to administrative costs in the Substantial Amendment Plan, does this constitute an obligation of the funds to meet the 18 month use requirement, even though the NSP grantee will be spending the funds over a four-year period?

The NSP definitions are derived from 24 CFR Part 85. These definitions include the terms “allocation” and “obligation,” which have very different meanings.

Allocating 10% of an NSP grant for general administration and planning costs does not necessarily mean that 10% of the NSP grant will be obligated to general administration and planning costs.

How and at what point funds are obligated for things like personnel costs will vary, depending in part on accounting procedures as well as the nature of the cost. For example, if an NSP grantee hired a consultant to perform NSP eligible activities; there would obviously be a signed contract between the NSP grantee and the consultant. However, for existing NSP grantee staff, obligating personnel costs would be no different from the regular CDBG program; whenever & however the staff is assigned this work. See §85.3 definitions of obligations & accrued expenditures. Certainly any consultants or contract employees that are hired would have to be under contract by the 18th month but that should not be a problem for existing staff.

Posted 11/7/08

Can the amount of NSP funds appropriated for program administration automatically meet the LMMH national objective such as CDBG general administration counts as automatically meeting LMA national objective?

The CDBG rule is based on the assumption that admin costs will be used in the same proportion as the remainder of the grant, split among LM, slum-blight, and urgent needs national objectives. However, in NSP, 100% of the funds must benefit LMMI persons, so it is a moot point. See part II E of the attached Notice for further description of ways to meet this requirement.

Posted 11/7/08

What are the procedures for entering into an agreement with the state program to administer a portion of our allocation?

NSP grantees have two options. They can either enter into a joint agreement with the state, where the state would manage the local government's entire allocation or the local government can enter into a subrecipient agreement with the state, where the state manages a specific activity. Please refer to the Urban County Notice 08-04 for further guidance.

Posted 11/20/08

Do NSP grantees have to identify expected expenditures for program administration in the action plan amendments submitted to HUD for NSP funding or it is presumed that 10% will be allocated to program administration?

All NSP grantees must explicitly identify the expected expenditures for program administration in their action plan amendments. HUD will not presume that all grantees will budget the full 10% of total NSP allocation allowable for program administration.

Can CDBG and HOME funds be used for activity delivery staffing cost or general administrative and planning staffing costs for the implementation of the NSP program?

The answer is different for activity delivery costs vs. general administrative & planning costs. There is no problem with using CDBG funds for general administrative and planning costs related to the NSP program. The CDBG regulations [24 CFR 570.200(a)(3)(i)] states that planning & general administrative costs will be considered to meet the primary national objective to the same extent that the grantee's program as a whole does.

Activity delivery costs are trickier. The HERA law expanded the definition of 'low- and moderate-income', but for purposes of the NSP funding only. Regular CDBG funds must still comply with the HCDA definitions of income eligibility; in addition, new housing construction is eligible under NSP but not under CDBG. So, if a grantee wishes to use CDBG funds for activity delivery costs of NSP housing activities, then either all the NSP beneficiaries would have to be at/below 80% of area median income, or else the grantee staff time records would have to split out the time spent on beneficiaries who are not CDBG income eligible. That time could not be charged to the CDBG program. However, there are no limits on the amount of activity delivery costs that can be charged to NSP activities (or to CDBG activities either), so the only situation in which we can envision a grantee needing to use CDBG funds for NSP activity delivery costs might be after the 18-month deadline has passed for obligation of NSP funds.

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. ~~Program income received on or after July 30, 2013, must be remitted to HUD for deposit in the Treasury unless HUD approves a request to use the funds for other NSP purposes.~~

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'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 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, non-profit 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’re 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 % 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 + rehab costs.
- If the grantee acquires & 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 rehab 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 subrecipient (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 rehab 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 rehab 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 rehab it, then the combined purchase/rehab falls under Eligible Use A. The NOI is still program income, but there's 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 rehab, NSP gets its proportional share of the NOI.

2) Same scenario as above, however, the owner is a non-profit. 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 non-profit) 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 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 contains two housing units, at least one unit must be occupied by a low, moderate or middle income household.
- If a structure 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 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 a homebuyer to buy a foreclosed fourplex, where the owner will live in one unit, and NSP funds represent 60% of the acquisition and rehabilitation costs, then 2 of the 3 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 downpayment assistance for a homebuyer to purchase a condominium unit—then only that specific assisted unit must meet the income eligibility requirements.

Posted 11/19/08

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 contains one housing unit, that unit must be occupied by a low income household (at or below 50% of AMI) in order 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 contains two or more housing units, the proportion of NSP fund expenditures 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 the units in a multi-unit structure are occupied by low-income households, then a grantee can count 30% of the NSP funds expended on the project 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 than 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).

PUBLIC HOUSING

Posted 10/31/08

Can NSP funding be used to renovate vacant state- or federally-assisted public housing in NSP target areas?

There is no prohibition against this use of NSP funds, but HUD encourages grantees to seek funding from the agency that owns the property as well.

PURCHASE DISCOUNT

Updated 02/09/09

The NSP Federal Register Notice addresses the purchase discounts of 5% and 15% respectively. One is considered an individual purchase discount (5%) and the other is purchases in the aggregate (15%). If an individual purchase is just that, the purchase of a single property in one transaction, how do you define a purchase in the aggregate?

Aggregate purchases for NSP are defined as all foreclosed upon homes or residential properties that an NSP grantee purchases with its entire NSP grant.

Posted 02/09/09

How is the average purchase discount for an NSP portfolio calculated?

The NSP Federal Register Notice states that an individual purchase discount can be as low as 5%, but the implications of purchasing property at the minimum purchase discount means that other individual properties in an NSP grantee’s portfolio must be purchased at a discount greater than 15% so that the average discount for the NSP portfolio does not exceed 15%. See example below.

NSP Grantee Portfolio	Appraised Value	Purchase Price	Purchase Discount
House A	\$35,000	\$30,450	13%
House B	\$100,000	\$93,000	7%
House C	\$140,000	\$105,000	25%

Total foreclosed home acquisitions: 3

Average purchase discount: 15%

Posted 10/31/08

Purchasing units below the market value could further bring down the value of the homes in neighborhoods. To avoid this situation, can NSP grantees purchase homes at full price, with seller concessions to achieve the same result of paying less than full price, but the public record shows a market sales price? Likewise when the home is sold to a homebuyer, can NSP grantees sell it at market value, offer gifted equity and seller concessions so that the homebuyer does not pay more than the amount of the total eligible expenses?

The HERA legislation requires that homes be purchased at a discount below appraised value. It is difficult to understand how such concessions could be accurately valued to demonstrate compliance with the law. Therefore, HUD does not approve this practice. However, appraisers can account for government actions that depress values in a market; hopefully this will not present undue problems.

If a property seller does not agree to a purchase discount, can NSP grantees use other local funds to buy down the purchase price, thereby creating a purchase discount to comply with the NSP purchase discount requirement?

No. Title III of the Housing and Economic Recovery Act of 2008 requires that any property purchased in whole or in part with NSP funds must be purchased at a discount, regardless of the sources of the money.

How would the purchase discount requirements apply to a bulk purchase of properties?

Arranging to purchase multiple properties in bulk may not have much effect on meeting the individual and aggregate purchase discount requirements. The individual discount requirement still applies to each individual house and an appraisal is required for each house. If a grantee made three different bulk purchases of 10, 20 and 7 houses each, and then separately bought 4 other houses one at a time, the aggregate purchase discount is applied to all 41 houses. However, using a bulk purchase arrangement might help the grantee to meet the lower, 10% aggregate discount, if those bulk purchase prices were determined using carrying costs & other factors identified in the notice.

Posted 11/20/08

Does the purchase discount apply when an NSP grantee provides financing to an eligible individual for the purchase of a home?

The purchase discount is required for all foreclosed homes acquired in part or in whole with NSP funds by the grantee directly or indirectly by individuals receiving NSP funding from the grantee.

Posted 2/24/09

Title III of the Housing and Economic Recovery Act of 2008 requires that any property purchased in whole or in part with NSP funds must be purchased at a discount, regardless of the sources of the money. My question is: if property is not purchased with any NSP funds but the grantee provides NSP funds for the construction or rehab of property that is acquired with other funds, do the acquisition discount requirements apply? Since aggregate purchases for NSP are defined as all properties that an NSP grantee purchases with its entire NSP grant, I can't see how non-NSP acquisitions would fit into this calculation.

We have just clarified this policy here. The purchase discount applies to all NSP-assisted purchases in which the purchase cannot be separated from the overall transaction (such as 100% mortgage financing under Eligible Use A). If the NSP assistance can be structured to be independent of the rest of the financing, then the purchase discount is not required. For example, if the program requires buyers to buy a unit and get a first mortgage privately, and then comes in at the end with a separate low-interest rehab loan, then they would not need the purchase discount. The grantee would still have to make some sort of commitment to the buyer before the purchase, but keeping the transactions separate would avoid that requirement. The line needs to be clear. In many cases, there will be no easy way to make the distinction and so the appraisal and purchase discount requirements will apply. I hope that answers your question.

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.

Posted 2/24/09

It boils down to whether acquiring a property under Eligible Use E, Redevelopment, and then disposing of it at a discount constitutes a financing mechanism. Since acquisition and disposition are both eligible activities under E, and since there seems to be no prohibition on discounting, and since it is not a financing program per se, it seems to me that this does not fall under Eligible Use A. I believe that we have said such discounts under B are not financing mechanisms, so this appears to be consistent with that thinking.

No, I don't think what's described above is a "financing mechanism" that would be carried out under eligible category A. I think 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, loss reserves established in connection with loans) or other form of indebtedness.

REGULATORY INFORMATION

**Have the NSP regulations been published yet in the Federal Register?
If so, is it possible to get an electronic copy?**

Yes, the NSP Federal Register Notice is currently available on the NSP website. It was also published in the Federal Register on October 6, 2008, cited under 73 FR 58330.

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 rehabs 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.

We have several letters from various groups, including the Kentucky Association of Radon Professionals, asking that we require radon testing and abatement on every property acquired with NSP funds. The letter indicates that HUD was mandated, as part of the McKinney act, to ensure occupants of HUD housing covered under the Act are not exposed to hazardous levels of radon. I'm guessing that the mandate doesn't apply to NSP but wanted to check with you all to confirm. Can you let me know?

The U.S. Department of Housing and Urban Development does not have requirements for the installation of radon testing and abatement systems for units constructed with HUD assistance.

The attached form (HUD-9548-e) is the Department's Radon gas and mold notice release agreement given to purchasers of single family HUD-owned properties, i.e., properties that had previously received FHA insurance, but were default and were acquired by HUD. The form requires the purchaser to accept the property "as is", but also provides useful information with regards to Radon gas and mold. Also attached is form HUD-92564-CN, which advises homebuyers under FHA's single family insurance program to get a home inspection and also encourages testing for radon.

HUD assumes compliance by the users with all applicable State and local regulations. Individuals concerned about radon should check with their respective State radon office. Some states require only licensed contractors installing radon testing and abatement systems.

STATE DISTRIBUTIONS

If NSP grantees represent the areas of greatest need within a state, does this mean that state programs must allocate all NSP funds to these areas? If so,

how will NSP grantees manage to obligate both direct NSP allocations and the additional funding from state programs within the 18-month required timeframe?

It is true that communities receiving direct NSP allocations represent the areas of greatest need as determined by HUD's formula allocation methodology, but states are not limited to funding those communities. In many states there are likely to be other communities that qualify for NSP funding despite the fact that they did not receive a direct allocation. Each state will have to determine the most appropriate way to allocate its NSP funding considering areas of greatest need, as well as past performance and capacity to carry out NSP activities within the 18-month required timeframe.

Posted 10/31/08

Are the data sets, down to the block level that were gathered by HUD going to be released to grantees for the entire state?

No, but the data that HUD acquired is available to the Block Group level, which should be sufficient to establish areas of greatest need. HUD's estimates of income levels and housing conditions are contained in those data sets, which are available at:

<http://www.huduser.org/publications/commdevl/nsp.html>

Posted 11/7/08

The NSP notice stated that HUD will provide a simplified "crosswalk" of NSP and State CDBG requirements for state grantee administrators. I believe this link is on page 6 of HUD's NSP Instructions for Grantee Submission document on the HUD website, but the link is bad. How can I be able to access this document?

There is no longer a need for the crosswalk of NSP/State CDBG requirements and this statement should not have appeared in the NSP Notice. The original intent of the crosswalk was to advise states about the applicable federal regulations (entitlement regulations or state regulations) applicable to states when they directly administer the NSP program. As the notice was finalized it was decided that states would be provided with the flexibility to use the State CDBG regulations or the Entitlement regulations for certain items. The final NSP notice "strongly advises" states use the entitlement regulations for recordkeeping and sub-recipient agreement provisions, etc. See Section G "State's direct action" for more information.

The crosswalk that you mentioned on page 6 of HUD's NSP Instructions for Grantee Submission document on the HUD website is only a visual aid to help grantees correlate NSP eligible use activities with activities under the regular CDBG program. The website has been fixed and you should be able to access it now.

Posted 11/12/08

In determining areas of greatest need, can NSP grantees use estimates in addition to actual numbers? Does HUD have some guidance about what it considers significant in terms of a threshold for targeting? For example, what percent of homes foreclosed or number of sub-prime loans would be considered to be high enough to qualify as an area of greatest need?

The state may use estimated need numbers to target areas of need, but the state needs to clearly articulate in their action plan amendment how they determined the areas of greatest need and what data sources they relied on to make this determination. HUD does not have guidance on threshold amounts—each state’s situation and needs are different and each plan to address the foreclosure crisis will be different, and we will defer to the State’s judgment as long as it is reasonable.

Posted 11/12/08

Can a state hold back a portion of its allocation for distribution later (e.g. 6 months after the first distribution) because they are concerned that a high foreclosure rate or other market changes are expected in certain areas and they want to make sure they have enough money for those areas?

No. The state is expected to submit the Action Plan substantial amendment based on the full allocation and the conditions in place or expected (see HERA law regarding factor #3—“areas likely to face a significant rise in foreclosures”) at the present time. A grantee can submit an amendment to change the plan if circumstances change from what was initially submitted. In addition, a state’s substantial amendment can provide that the state will hold 2 separate competitions (and state the criteria that the funds will be competed on) to account for changed conditions. The problem with this approach is that the 18 month-rule still applies, so the competitions would have to be close together in time. In addition, remember, unlike the “regular” CDBG program, simply obligating funds to a unit of general local government/entitlement or other entity does not address the “use” requirements. See the “definitions” section of the Notice.

Posted 11/12/08

Can a state set aside NSP funds for rural areas or other target areas, because they just don’t have good data on small places yet and don’t want to get a bunch of applications which warrant funding under the targeting criteria and then not have enough money?

A set-aside is not a good idea. The state should outline, to the greatest extent possible, how the funds address the areas of greatest need—including rural areas. States can highlight several rural areas (thus narrowing the field of potential applicants), then collect information from these rural localities to help target NSP funds. For example, the state can determine that 5 areas of the state are the highest need, and determine that those areas will get 20% of the available funding each, and then have a competition within those areas to distribute the 20%.

Posted 11/12/08

We are concerned that some of the areas of greatest need may not have the capacity to administer NSP funds. As a result, the state would have to hire an NSP administrator or administer the areas' allocated funds at the state level. If an area receiving NSP funding lacked the capacity to administer the funds it's possible that the state would have to withdraw the funding and reallocate it. Can HUD offer any guidance on how states should handle these situations?

HUD would not force the state to fund an entity that clearly lacks capacity. The State could consider hiring a consultant or awarding funds to a regional planning commission or other entity to help localities of highest need that lack capacity so they can benefit from NSP.

Posted 11/12/08

If NSP funds are distributed on an application or proposal basis for eligible areas with greatest need, can states offer the entire menu of eligible uses and let the localities apply for NSP funding based on the activities that best meet their local needs?

The state should have a general sense of the specific needs that exist in the state and then be able to address those needs with the appropriate eligible activity. It is recommended that states first identify which localities are eligible to apply for NSP funding. Next, states must determine how NSP funding will be distributed amongst these localities based on need. Through the process, states will learn which eligible uses are most appropriate for a given locality. Further, states must determine that localities receiving NSP funding have the capacity to administer the funds in a timely manner. Finally, keep in mind if a state chooses to have a competition for NSP funding, the criteria for selecting localities must be clear and in conformance with the NSP Notice.

Posted 11/12/08

Do all NSP activities have to start with a foreclosed property?

No, all activities do not have to start with a foreclosed property. Please review the five eligible uses listed in the NSP Notice.

Posted 11/12/08

What types of redevelopment are eligible under NSP? Must it be all housing, or can some be commercial or public facilities, etc.?

The main purpose of the NSP program is to redevelop abandoned and foreclosed homes. Public facilities are permitted under eligible activity "e" to the extent that they support housing. Although commercial redevelopment is not an ineligible use of funds, it is not the intent of the program, and thus should not be a significant use of the state's NSP allocation.

Posted 11/12/08

How does HUD define transitional housing for NSP?

Non-permanent housing is eligible as a public facility. As this type of housing is not permanent it cannot be counted toward the HERA law provision that grantees must use 25% of NSP funds to house individuals or families whose incomes do not exceed 50% of area median income.

Posted 11/12/08

What can be expected in terms of performance measures for NSP?

HUD is still working through these issues and expects to have more information soon. We will post the information on our website when it becomes available.

Posted 11/12/08

What are the required submissions for states to receive their NSP allocations? If states are distributing NSP funding on an application basis, how should this be indicated in their submissions to HUD?

The SF 424 and the certifications are required. The substantial amendment to the 2008 Action Plan must state how the state will distribute its funds to areas of highest need.

Posted 11/12/08

We cannot access the DRGR slides on the NSP website. Please advise.

Last week, a new version of the DRGR slides were made available on the website (with and without notes) at:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsg/drgs.cfm>

States can contact Mark Mitchell if they still cannot access the training:

Mark.Mitchell@hud.gov

Posted 11/12/08

If the NSP activities identified in our action plan amendment are not approved or change what should we do?

If there are any problems with the action plan amendment submitted by the state, HUD will notify the state as quickly as possible to address the issue. If the NSP activities identified in an approved action plan amendment happen to change, the NSP grantee must allow for a 15 day public comment period before submitting a new action plan amendment to HUD.

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 by 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**

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, so HUD will help these communities implement their programs. Meanwhile, we are actively encouraging local governments to coordinate with each other and with their state governments. Implementing these programs may require an area-wide or even regional approach. We believe it may require state and local planners to put their collective heads together to ramp up these programs in a very short time frame.

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

What will happen if grantees don’t obligate their funding within 18 months?

HUD will recapture the funds.