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# I. NSP PROGRAM REQUIREMENTS

## INTRODUCTION

The Neighborhood Stabilization Program (NSP) was established for the purpose of stabilizing communities that have suffered from foreclosures and abandonment. NSP1 references the NSP funds authorized under Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008. Unless HERA states otherwise, NSP1 funds are to be considered Community Development Block Grant (CDBG) funds.

### **NSP has five eligible uses:**

1. Financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.
2. Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties.
3. Establish land banks for homes that have been foreclosed upon.
4. Demolish blighted structures; and
5. Redevelop demolished or vacant properties.

The Implementation Manual presents the procedures and requirements to be followed in implementing the NSP contract. The Manual will be revised as regulations and requirements change. Only the most recent edition of the manual will contain the rules in effect at any time.

## UNIFORM ADMINISTRATIVE REQUIREMENTS

HERA authorizes the use of alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974, as amended, (the HCD Act) except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint). Unless otherwise noted statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states shall apply to these funds.

### **Consistency with Consolidated Plan**

Grantees are required to use NSP funds in a manner that is consistent with the activities identified in the *State of Wisconsin's Substantial Amendment to 2008 Annual Action Plan* and that are supportive of the goals identified in that substantial amendment.

### **Program Targeting and Income Verification**

The NSP program includes two low- and moderate-income requirements that supersede existing CDBG income qualifications. All of the funds shall be used to assist individuals and families whose income does not exceed 120 percent of area median income (AMI). The regular CDBG definitions of "low-income" and "moderate-income" are the same. Households with income between 81-120 percent AMI will be referred to as "middle income." Use the HUD NSP Household Income Limits found on the HUD User website under [NSP Income Limits](#).

There are additional income targeting provisions associated with the use of NSP funds: not less than 30% of the funds made available to grantees 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% AMI.

Income eligibility is based on the annual (gross) income of all adults in the family. "Annual income" shall be as defined in 24 CFR Part 5.

## PROCUREMENT AND CONTRACTING PROCEDURES

When procuring property or services utilizing NSP or other federal funding, the Grantee must make sure it is compliant with standards involving procurement practices, contracting services, conflict of interest, and other related issues.

### Procurement

All NSP Grantees must establish written procurement procedures. The procedures or policies must cover acquisition of supplies and services.

When acquiring the services of a consultant to administer NSP or to provide other professional services (e.g., audit, architectural, engineering) to be paid with NSP funds proper procurement procedures must be followed. For professional services that are less than the simplified acquisition threshold of \$100,000 Grantees may use the simplified acquisition procedures as specified in 24 CFR Part 85.36 or 24 CFR Part 84.44.

Simplified acquisition procedures require that price or rate quotations be obtained from at least three qualified sources. If a local procurement policy is in place that is more restrictive than the simplified procedures described here, the local policy must be followed. Evidence that the appropriate procedure was followed must be in place in the procurement file.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

Grantees must, to the extent practicable and economically feasible:

- Give preference for products and services that conserve natural resources and protect the environment and are energy efficient.
- Make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises.

### Contracting

Grantees must ensure that every purchase order or other contract executed for federally assisted projects includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. Some of the clauses that must be incorporated into contracts include acknowledgment that contractors must follow Federal labor requirements (when they apply) like the Copeland Anti-Kickback Act, promise to comply with the Equal Employment Opportunity Executive Order, and recognition of conflict-of-interest provisions.

## CONFLICT OF INTEREST

NSP utilizes the CDBG program regulations regarding conflict of interest. The regulations require compliance with two different sets of conflict-of-interest provisions. The conflict-of-interest provisions in 24 CFR Part 85.36 or 24 CFR Part 84.44 apply to the procurement of property and services.

In addition, the CDBG regulations in 24 CFR 570.489(h) specify the requirements for providing assistance to individuals, businesses, and other private entities. This section applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving funds. The general rule is that no person who exercises or has exercised any functions or responsibilities with respect to activities assisted with grant funds or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement, or the proceeds, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

### **Family Includes:**

Spouse, Fiancée/fiancé, Children and children-in-law, Brothers and brothers-in-law, Sisters and sisters-in-law, Parents and parents-in-law, and/or anyone who receives more than 50% of their annual support from the person (e.g., adopted child, foster child).

### **Determining Potential Conflict of Interest**

Following are the steps to use to determine a potential conflict of interest:

- Identify “covered persons” for your NSP program.
- Add conflict of interest question to your NSP application.
- Inform applicants with potential conflict of interest that there will be public disclosure of their name.
- Publish “Conflict of Interest Publication Notice” one time in a local newspaper.
- Submit an Affidavit of Publication of the Notice and a letter giving a brief narrative of the situation to the NSP program administrator. The letter should include the applicant’s name, income level, how public disclosure was made, and description of why a waiver should be granted.
- DO NOT sign any loan closing documents until you have received a signed waiver.

### **Factors Considered for an Exception to the Requirements:**

- Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive the same interests or benefits as are being made available to the group or class;
- Whether the affected person has withdrawn from his/her functions/responsibilities or the decision-making process with respect to the specific assisted activity in question;

- Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict;
- Any other relevant factors.

**Sample Conflict of Interest Publication Notice:**

The (**Grantee Name**), hereby discloses its intention to make (**loan/grant**) of (\$) from the federal Neighborhood Stabilization Program (NSP) to (**Name of applicant**) for the purpose of home purchase. (**Name of applicant**) is the (**relationship**) of a(n) (**employee/board member**) of the (**Grantee name**). The (**employee/board member**) does not participate in the approval process for the (**loan/grant**). Comments concerning this notice will be accepted no later than ten (10) days after publication of this notice to: **Grantee name and address; ATT: name of person designated to receive complaints.**

## Part 5 Income Definition

The NSP program uses the Part 5 definition of income. Grantee are expected to use the Part 5 definition of income when determining a household's income eligibility for the NSP Program. The Part 5 requirements can be found in the [Code of Federal Regulations](#).

## II. GENERAL ADMINISTRATIVE REQUIREMENTS

### BACKGROUND

Acceptance of NSP funds obligates Grantees to ensure that NSP monies are used in accordance with all applicable requirements. This chapter will discuss eligible administrative costs, activity-related hard and soft costs, expenses allowable in sales price, and use of Program Income.

**Use of funds:** NSP funds are obligated by a Grantee for a specific NSP activity (for example, acquisition of a specific property) when an Activity Set-up is approved. Funds may be obligated for an activity for a sub-recipient when orders are placed, when offer to purchase is accepted and signed by both buyer and seller, construction contracts are awarded (sub-recipient requirement), services are received, and similar transactions have occurred that require payment by the State or Grantee during the same or a future period. In order to obligate rehab and redevelopment funds, those entities that are classified as developers will have documentation on file at the time of submitting the Activity Set-up for the scope of work, development/rehab budget and timetable for work to be done, signed by the individual in their organization authorized to sign contracts.

### PROGRAM ADMINISTRATIVE COSTS

The NSP allocation received by DHCD includes funds that may be used for reasonable administrative costs. The use of those funds is governed by the CDBG program rules.

Program administrative costs are those that are for general categories of work that are not related to a specific property. Payment of reasonable administrative costs for general management, oversight and coordination includes salaries, wages, and related costs of the Grantee's staff or other staff engaged in program administration. In charging costs to administration, the Grantee may use only one of the following methods during the grant:

- a. The entire salary, wages, and related costs allocable to the NSP program of each person whose primary responsibilities with regard to the program involve program administration assignments; or
- b. The pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments.

Program administration includes the following:

- Providing local officials and citizens with information about the program;
- Preparing program budgets and schedules;
- Developing systems for assuring compliance with program requirements;
- Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- Monitoring program activities for progress and compliance with program requirements;
- Preparing reports and other documents related to the program for submission to DHCD;
- Travel costs incurred for official business in carrying out the program;
- Administrative services performed under third party contracts of agreements, including such services as general legal services, accounting services, and audit services; and

- Other costs for goods and services required for administration of the program include rental or purchase of equipment, utilities, office supplies, and rental of office space; public information; fair housing activities; and special outreach activities.

## ACTIVITY-RELATED HARD AND SOFT COSTS

### Activity-Related Hard Costs

Hard costs are associated with acquisition for resale (including direct down payment assistance), rental or landbanking, rehabilitation, redevelopment or new construction, demolition.

### Activity-Related Soft Costs

Activity-related soft costs are those costs considered eligible which are not hard costs and are directly related to the activity or redevelopment at a specific address, such as:

- Architectural, engineering or related professional services required to prepare plans, drawings, or specifications of an activity;
- Appraisals (unless appraiser on staff paid with administrative funds);
- Housing inspection fees, including Housing Quality Standards (HQS), code compliance, and Lead Risk Assessment and Clearance;
- Costs to finance an activity such as private lender origination fees, credit reports, fees for title evidence, recording fees and filing of legal documents, building permits, attorneys fees;
- Delivery costs, such as marketing, advertisements, real estate brokers (if required beyond selecting from agency's income eligible households from homebuyer pool);
- Property maintenance between acquisition and final disposition, such as property taxes, insurance, snow/lawn care, utilities, etc.;
- Construction loan origination fees & interest as well as construction management costs if by a consultant. If a staff person manages construction, costs must be specific to a particular property with all hours documented;
- Tenant relocation payments, including replacement housing payments and moving expenses; payments for the reimbursement of reasonable out-of-pocket expenses incurred in connection with temporary relocation; and
- Reasonable developer's fees (10-15%), related to NSP-assisted housing construction or redevelopment activities.

Activity-related soft costs should be kept to less than or equal to ten percent (10%) of total housing activities.

## EXPENSES ALLOWABLE IN SALES PRICE

While there are a number of expenses that may be reimbursed to the grantee with NSP funds for maintenance of a property prior to resale or rental, such as grass cutting, snow removal, insurance, etc., these expenses may not be passed onto the buyer in the sales price. Only those costs that are directly related to the acquisition and redevelopment/rehabilitation of the home, including sales and closing costs are eligible to be included in the sales price.

All activity-related hard costs (acquisition, rehab costs, demolition) are allowable expenses in the sale price of the house as well as any delivery costs that would be found on a HUD-1 Settlement Statement, such as appraisal, inspection, title, etc.

## PROGRAM INCOME

Program Income is defined as revenue that was directly generated from the use of NSP funds. Examples of NSP Program Income include:

- Proceeds from the sale or lease of property acquired/redeveloped/rehabilitated with NSP funds;
- Principal and interest payments on loans made from NSP funds;
- Revenue returned by individuals or other entities that are not grantees; and
- Recaptures on sales of homes pursuant to enforcement of NSP affordability requirements.

The original requirements for reinvestment of revenue generated from the sale, rental, redevelopment, rehabilitation, or any other eligible use that is in excess of the cost to acquire and redevelop or rehabilitate an abandoned or foreclosed upon home or residential property and for return of Program Income after the initial 5-year reinvestment period was repealed in HUD's Technical Correction Notice for NSP. The following use and retention guidelines were clarified in regard to Program Income:

Section 2301(d)(4) of HERA, which established requirements for the disposition of revenue generated by NSP assisted activities was repealed by the Recovery Act. As a result of the repeal is that Program Income received after July 30, 2013, is not required to be returned to HUD for deposit in the Treasury. However, the Program Income requirements of the CDBG program are still applicable to income directly generated from the use of NSP funds and received by grantees or subrecipients.

All Grantees must track Program Income received, obligated to new projects and expended. For new set-ups, if the Grantee has NSP Program Income available, it must be obligated before obligating additional contract dollars. When Program Income is received by the sub-grantee (or its partner), it must be deposited into and maintained in a non-interest-bearing account.

### Using Program Income on the Same or Different NSP Activities

NSP Program Income received may be utilized for any eligible NSP activities listed in the Grantee's contract with DHCD. Where possible, DCHD recommends using Program Income on the activity that generated it in order to simplify tracking and reporting. Having said that, Grantees are required to substantially exhaust Program Income received first **before** requesting additional funds regardless of the activity on which it was earned. This is sometimes referred to

as the First In, First Out (FIFO) rule. DCHD is defining substantially exhausted as not having more than \$5,000 of Program Income on hand.

*Example #1: The Grantee earns Program Income on NSP Eligible Use B1. Acquisition/ Rehab/Resale. The Grantee wants to use Program Income for NSP Eligible Use D. Demolition. If Demolition is already specified in the Grantee's contract with DCHD, no further action must be taken.*

*Example #2: The Grantee earns Program Income on NSP Eligible Use B1. Acquisition/ Rehab/Resale. The Grantee wants to use Program Income for Demolition, an NSP eligible use, but it is not in the Grantee's contract with DCHD. The Grantee will need to request a contract letter amendment from DCHD before obligating these funds to Demolition.*

### **Administrative Funds from Program Income**

Grantees will be allowed to request up to 10% of Program Income for eligible administrative expenses once *all* contract administrative funds have been paid out by DCHD. Please note: Contrary to previous guidance, Grantees should NOT reserve up to 10% of Program Income in a separate account for administrative expenses. See Financial Management Ch. III., pg. 6 for a more detailed explanation of the process of requesting funds.

### **Program Income and Revolving Loan Funds**

Program Income earned by any activity can be deposited into an RLF (Revolving Loan Fund) that is designated for a specific NSP eligible use (e.g. Acquisition/rehab of residential properties, landbanking, or redevelopment/new construction of residential properties). Please note: Contrary to previous guidance, even if the grantee deposits its Program Income into an RLF, the Grantee is still required to spend Program Income first.

## **MONITORING OF NSP GRANTEES**

All NSP Grantees will be monitored at least once per contract period. Many grantees will also receive a technical assistance visit during the contract period.

When DEHCR NSP representatives come to monitor the NSP program, Grantees can expect the following:

- Grantee will be notified well in advance of the monitoring visit.
- Grantee will receive a letter and/or email prior to the monitoring visit describing when the reps will arrive and what will be reviewed during the visit.
- Grantee will be asked to provide an area in which at least two people can work comfortably.
- NSP reps have the right to review any NSP file or record.
- NSP reps may request that Grantee arranges site visits to properties and/or with program beneficiaries.
- To the extent that Grantee is able to have the necessary forms and documentation organized and labeled, the monitoring visit will go quickly and smoothly.

To ensure that the general NSP program files are complete, Grantees are asked to complete the Program Files Checklist. NSP reps may also request that Grantees complete other checklists to facilitate efficient technical assistance and monitoring visits.

# NSP PROGRAM FILES CHECKLIST

GRANTEE NAME: \_\_\_\_\_ CONTRACT NUMBER: \_\_\_\_\_

REVIEW DATE: \_\_\_\_\_ REVIEWER: \_\_\_\_\_

## APPLICATION

- Application and supporting materials.
- Correspondence about the application.

## GRANT CONTRACT

- Date Grantee's governing body approved NSP acquisition process
- COMM award letters.
- Signed grant contract plus any amendments and correspondence about any grant conditions.
- Signed MOUs with partnering agencies (List partnering agencies & date executed)

## PROCUREMENT FOR SERVICES UNDER \$100,000

- Grantee maintains file with signed procurement policy.
- Contractors/consultants/engineers/auditors hired using
- Procurement: \_\_\_\_\_
- Price and rate quotations from three (3) qualified sources.
- Grantee provides a rationale for contractor selection or rejection.
- DHCD approval for purchase/lease of equipment valued in excess of \$2,000.

## PROCUREMENT FOR SERVICES $\geq$ \$100,000 (competitive sealed bid or competitive proposals)

- If using competitive proposal method for construction services document why sealed bid was not considered appropriate for formal Invitation for Bid (IFB) advertising in publications of general circulation
- Copy of RFP or IFB clearly stating technical requirements for good/services required
- Documentation of number of sources solicited for RFP or publications IFB was placed in
- Documentation of criteria used to evaluate proposals/bids
- Documentation of rationale of successful proposal's merit over other proposals/bids

## AUDIT

- Single Audit letter submitted per requirements.
- Previous concerns and findings addressed.

#### NSP IMPLEMENTATION MANUAL, POLICIES & PROCEDURES

- Current Implementation Manual & Forms.
- Documentation of up-to-date local income & rent limits.
- Approval of local policies by Committee/Board/Council.
- Housing Committee membership list.
- Housing Committee meeting minutes or affidavit of publication (Conflict of Interest).
- Process for identifying qualified contractors.
- Program outreach materials & application.
- Process for application approval, denial and documentation.
- Record of annual LMMI tenant verification (or established system).
- HUD-approved Homebuyer Counseling agency.
- Separate files for each street address assisted.

#### ENVIROMENTAL REVIEW

- Tier 1 approval from COMM (if applicable).

#### MISCELLANEOUS

Grantee understands 10-day project fund disbursement guideline.  
Grantee has collected "lobbying" forms from all contractors receiving  $\geq$ \$100,000.  
Grantee has Anti-Displacement Policy.  
Grantee maintains timesheets for grantee staff time on NSP Program.

## III. FINANCIAL MANAGEMENT

### INTRODUCTION

Grantees are required to establish record-keeping systems that are adequate to determine whether the NSP funds have been spent in accordance with federal and state laws.

The NSP utilizes forms for Activity set-up, payment requests, Activity completion reports and quarterly reports that reflect the information that we will need to enter into the Disaster Recovery Grant Reporting (DRGR) System. Please fill out each form completely in order to ensure timely processing.

### TRACKING FUNDS

Grantees must maintain a system for tracking obligated and unobligated balances. A transaction journal recording all receipts and expenditures by date, description of Activity/payee, amount, and budget category must be maintained and available for review. The entries in the journal must be supported with proper documentation, including bank statements, vouchers, and invoices.

It is recommended that a separate record be kept tracking the expenditures against the obligated/set-up amount for each Activity. This will enable you to have an accounting of all costs incurred at the street address level—even if funds are utilized from more than one NSP budget category.

**Other Funds:** It is anticipated that Grantees will utilize other sources of funds for activities. Maintain a record documenting the source of funds, amount, date, and purpose for which the funds were used. For example, a street address file should document the bank mortgage/HUD-1 Settlement Statement, any sources of down payment assistance—HCRI, AHP, homebuyer's funds; and other sources of rehab funds—CDBG, HOME. Lead hazard mitigation funds should also be tracked.

Administrative expenses for employees/grant administrators must be documented with time sheets. If Administrative dollars are used for supplies or rent through allocation of cost, an allocation plan must be on file.

## IV. OTHER FEDERAL REQUIREMENTS

Besides the rules and requirements for NSP, there are several additional broad federal rules that must be adhered to in the course of administering the program.

NSP Grantees must take measures to ensure non-discriminatory treatment, outreach and access to program resources. This applies to employment and contracting, as well as to marketing and selection of program participants. No person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded, denied benefits or subjected to discrimination under any program funded in whole or in part by NSP funds.

Information on Equal Opportunity, Fair Housing & Section 3 and the requirements thereof can be found in [Chapter 6](#) of the CDBG Implementation Handbook.

# V. LABOR STANDARDS

## INTRODUCTION

Federal (Davis-Bacon) wage requirements are made applicable to the NSP program by Section 110 of the Housing and Community Development Act of 1974, as amended. HUD regulations paraphrase the statutory provision and clarify that contracts for construction must contain federal wage provisions if NSP funds are used for any construction costs for housing with 8 or more units or projects costing more than \$2,000.

## APPLICABILITY

- Every contract for construction/rehabilitation of a housing structure that contains 8 or more units that is assisted with NSP funds must contain federal prevailing wage rates as established pursuant to the Davis-Bacon and Related Acts [40 U.S.C. 276(A)-7].

This act ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. The act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.

- Every contract must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).  
This act provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- Every contract is also subject to the Copeland (Anti-Kickback) Act (40 USC 276c).  
This act governs the deductions from paychecks that are allowable. It makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which s/he is entitled and requires all contractors to submit weekly payrolls and statements of compliance.
- The basic minimum wage for all work is established by the Fair Labor standards Act of 1938, As Amended (29 USC 201, et.seq.).  
This act also requires the payment of overtime at the rate of at least time and one-half, requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.
- The wage provisions apply to the construction of the entire activity – NSP-assisted and non-assisted portions, alike.

## SCOPE OF COVERAGE

- If the 8-unit threshold is met then the labor standards provision is triggered. There are activities other than “construction work” which do not trigger Davis-Bacon requirements; e.g., real property acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), and other non-construction items (business licenses, real estate taxes).
- Construction work for single-family homeownership activities in which NSP funds are used only to assist homebuyers to acquire single family housing are not covered. **The exception** is when there is an agreement with the owner/developer of the housing in advance of the construction work that NSP funds will be used to assist homebuyers to buy the housing and the construction contract covers 8 or more NSP-assisted units.
- Contracts that are part of a project of less than \$2,000 value are not covered.

Additional information on Labor Standards can be found in [Chapter 7](#) of the CDBG Implementation Handbook.

## VI. ENVIRONMENTAL REVIEW

All NSP projects are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), which establishes national policy and procedures for protecting, restoring and enhancing environmental quality. They are also subject to other statutes, Executive Orders and regulations dealing with a number of specific environmental concerns, such as historic preservation, floodplains, wetlands, noise and others. NEPA is intended to: (1) improve decision-making by ensuring that all relevant information is considered and (2) make that information available to the public.

Regulations are found in the [Environmental Review Procedures for Entitles Assuming HUD Environmental Responsibilities](#) - 24 CFR Part 58 Sections 58.10 through 58.14 require grantees to assume the responsibility for environmental reviews. Grantees can meet their responsibilities by familiarizing themselves with the areas addressed by environmental review and providing DHCD with accurate information about project sites. The Grantee has a legal responsibility for meeting all environmental review requirements stated in the NSP contract.

Detailed information and the requirements of the Environmental Review process can be found in the [Environmental Review Manual](#) found on the CDBG Resources and Training webpage.

# VII. ACQUISITION OF REAL PROPERTY

## INTRODUCTION

NSP eligible uses include purchase of homes and residential properties that have been foreclosed upon or abandoned in order to rehabilitate and sell, rent, or redevelop such homes and properties.

## RELEVANT DEFINITIONS

HUD recently made changes to the definition of "foreclosed" and "abandoned" under NSP. The changes to the definitions will allow more properties to qualify, remove existing barriers caused by market conditions, and help state and local grantees to meet a Congressional requirement that they obligate all of their NSP1 funding by September of this year.

### ***Redefining "foreclosed"***

HUD previously defined the term foreclosed to apply only to properties where the foreclosure process was completed. This original definition limited a grantee's ability to intervene strategically when a lender initiates but does not complete foreclosure, or where a default is allowed to linger. In addition, many lenders are transferring properties to aggregators or loan servicers, which then arrange for final disposition. In some of these cases, the previous policy did not consider the properties to retain their foreclosed status after title is transferred to the aggregator or servicer.

Properties will now be eligible for NSP assistance if any of the following conditions apply:

1. The property is at least 60 days delinquent on its mortgage and the owner has been notified; **or**
2. The property owner is 90 days or more delinquent on tax payments; or
3. Under state or local law, foreclosure proceedings have been initiated or completed; **or**
4. Foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, subrecipient, developer, or end user.

### ***Redefining "Notice of Foreclosure"***

Pursuant to Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed. If none of these events occur in the acquisition of a foreclosed property (e.g., in a short sale), in order to ensure fair and equitable treatment of bona fide tenants and consistency with the NSP definition of foreclosed, the date of notice of foreclosure shall be deemed to be the date on which the property is acquired for the NSP-assisted project.

### ***Redefining "Abandoned"***

The original definition required that the property be vacant for at least 90 days which effectively excludes properties abandoned by owners but where tenants are still in place thereby precluding local communities from assisting the properties with NSP funding or protecting the

tenants' occupancy. HUD determined this limitation was a substantial barrier to the preservation of existing affordable housing.

To address this limitation, HUD has expanded the definition of an abandoned property to include:

1. Mortgages, tribal leaseholds, or tax payments that have not been made by the owner for at least 90 days; **or**
2. A code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies; **or**
3. The property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state or local law or otherwise meets a state definition of an abandoned home or residential property.

### **Current Market Appraised Value**

The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to the final offer made for the property by a Grantee, developer, or individual homebuyer.

### **Down Payment**

Under CDBG down payment assistance is limited to 50% of the lender required down payment. Only assistance provided as a grant is subject to the 50% limitation.

## **NSP ACQUISITION & RELOCATION REQUIREMENTS**

Information and the requirements of Acquisition and Relocation can be found in [Chapter 5](#) of the CDBG Implementation Handbook.

### **Acquisition Of Property at Sheriff's Sale**

It appears that some grantees are considering purchasing properties at foreclosure sale. The properties don't meet the definition of "foreclosed", but could meet the definition of "abandoned", which could allow NSP funds to be used to purchase the property at a foreclosure sale. HUD has provided the following advice regarding purchase at Sheriff's sale, using the following example: 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**.

HUD's response:

*"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 issued 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.”*

## **DIRECT ASSISTANCE TO HOMEBUYERS**

Assistance to home buyers may be provided in two ways:

- Down payment/gap financing assistance to purchase a foreclosed home identified by the eligible buyer. This may include closing costs and rehabilitation assistance.
- Down payment/gap financing assistance to purchase a foreclosed home that the Grantee has acquired and rehabbed.

Grantees must ensure that homebuyers obtain a mortgage loan from a lender who agrees to comply with the bank regulators’ guidance for non-traditional mortgages.

Grantees are cautioned against providing or permitting homebuyers to obtain subprime mortgages.

Grantees must ensure that the homebuyer receives and completes at least eight (8) hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan.

Grantees must complete environmental review requirements before committing NSP funds to any homebuyer activity. If the Grantee purchased the property and rehabbed it no additional environmental review is necessary.

## APPRAISALS

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.

In Wisconsin, appraisers are licensed by the [Department of Safety and Professional Services](#).

Appraisals must be completed within 60 days of the final offer to purchase.

## INSPECTIONS

Prior to assistance with NSP funds, an inspection must be completed to determine if the unit is decent, safe, sanitary, and complies with state and local codes or can be brought into compliance. The minimum inspection standard is Housing Quality Standards (HQS). The [HQS Inspection Form](#) is available on the HUD website.

NSP strongly encourages the use of energy conservation measures and Green building. All required rehabilitation and replacement of appliances, systems, and components must use Energy Star qualified replacement components.

All units assisted with NSP funds must comply with the regulations implementing Title X of the 1992 Housing and Community Development Act (24 CFR Part 35). The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead.

All households receiving NSP assistance and occupying pre-1978 housing must receive the EPA approved information pamphlet on identifying and controlling lead-based paint hazards. The [Protect Your Family from Lead in Your Home](#) pamphlet is currently available on the EPA website.

## SALE OF GRANTEE ACQUIRED FORECLOSED PROPERTY

If an abandoned or foreclosed upon home or residential property is to be sold to an individual as a primary residence, no profit may be earned on such sale. The sale of such property shall be in an amount equal to or less than the cost to acquire and rehabilitate such home or property up to a decent, safe, and habitable condition.

The maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and costs related to the sale of the property. In determining the sales price, HUD will NOT consider the costs of boarding up, lawn mowing, maintaining the property in a static

condition, or, in the absence of NSP-assisted rehabilitation or redevelopment, the costs of completing a sales transaction or other disposition to be redevelopment or rehabilitation costs.

Grantees shall ensure, to the maximum extent practicable and for the longest feasible term that the sale of abandoned and foreclosed upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120% AMI. To meet the affordability requirements of NSP, DEHCR has adopted the HOME program standards as the minimal standard to ensure compliance. Grantees may impose affordability periods that are longer in duration. Information on the [HOME program](#) is available on the Division of Energy, Housing, and Community Development webpage.

## AFFORDABILITY PERIOD

For homebuyer and rental projects, the length of the affordability period depends on the amount of NSP investment in the property and the nature of the activity funded. Throughout the affordability period, the NSP-assisted housing must be occupied by income-eligible households. The affordability period requirements shall be enforced through the use of recapture provisions for homebuyer activities and through deed restriction of the assisted property for rental activities.

NSP assistance per unit	Length of affordability period (years)
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000 or rehab involving refinancing	15
New Construction	20

If NSP funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 CFR part 92, the Grantee must revive the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of NSP.

## REHABILITATION

Any rehabilitation of a foreclosed upon home or residential property shall be to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties. The State [HOME Minimum Housing Rehabilitation Standards](#) will apply to NSP assisted activities as a minimum standard (see table above).

Rehabilitation funds may be used for preservation, improving energy efficiency or conservation, or providing renewable energy source(s). HUD is encouraging the incorporation of modern green building and energy efficiency improvements to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

Grantees may rehabilitate property to be operated as rental housing by the grantee, by a subrecipient, by a lessee or by a purchaser. Grantees should note that the costs of purchase,

rehabilitation, conversion and sale of such properties are eligible NSP activities, but the expenses of actually operating the rental housing (such as maintenance, insurance, deficits in monthly operating income) and tenant-based rental subsidies are not eligible NSP activities.

## VIII. LAND BANKS

NSP allows the use of funds to establish land banks for homes that have been foreclosed upon. NSP has defined a land bank as follows:

A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

### USES

- A land bank may not hold a property for more than ten (10) years without obligating the property for specific, eligible redevelopment in accordance with NSP requirements. HUD does not believe that holding property alone is sufficient to stabilize most neighborhoods.
- The Grantee must determine the actual service area benefiting from a land bank's activities.
- NSP funds may only be used for acquisition.

Grantees will be required to provide a plan for reuse of properties as part of contracting requirements.

## IX. DEMOLITION

NSP funds may be used to demolish blighted structures. HUD has defined as blighted structure as follows:

A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

The State's Substantial Amendment uses the definition of blighted property contained in Wisconsin Statutes, Chapter 66 General Municipality Law, [s. 66.1333 (1) (2m) (bm), Wis. Stats.] as it applies to residential properties. that definition states, in part: *“any property within a city...which by reason of dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density or population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease,...retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use....”*

### GENERAL INFORMATION

- The national objectives related to prevention and elimination of slums and blight and addressing urgent community developments are not applicable to NSP-assisted activities.
- NSP grantees will NOT be required to meet the requirements of 42 U.S.C. 5304(d) as implemented at 24 CFR 42.375, which mandates one-for-one replacement of low- and moderate-income dwelling units that are demolished or converted for activities assisted with NSP funds.

## X. REDEVELOPMENT

The NSP Eligible Use definition for “(E) Redevelopment demolished or vacant properties” includes the eligible actions of:

- Disposition,
- Public facilities and improvements,
- Housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers of the redeveloped properties,
- Relocation; and
- New construction of housing.

### ELIGIBLE PROPERTY

For a property to be “redeveloped,” it must have been previously developed and is now vacant. Raw land would not be eligible for redevelopment.

Properties need not be foreclosed in order to be redeveloped. NSP only requires that the properties be demolished or vacant.

#### **Additional Considerations**

NSP funds can be used to demolish structures on the property prior to redevelopment. However, the structures must be blighted.

If NSP funds are to be used to purchase and then demolish and redevelop a property:

- The property must be a home/residential property that is abandoned or foreclosed upon [NSP Eligible Use (B) Purchase and rehabilitation];
- The demolition can be completed [Eligible Use (D)];
- The redevelopment is completed and the property(s) sold or rented.

If NSP funds are used to purchase and hold the property until sometime in the future:

- The acquisition will be undertaken as part of Land Banking. Under the land banking activity NSP funds can only be used for purchasing and maintaining or disposing of foreclosed upon homes—vacant property, abandoned property or non-residential property CANNOT be purchased under land banking.

#### **New Guidance**

NSP3 is the authorizing legislation for the third round of funding for NSP. It amends the 25 percent set-aside requirement by removing the restriction that allows only abandoned or foreclosed upon homes or residential properties to be used to meet this requirement. Instead, NSP1 and 3 grantees may also use vacant or demolished property to meet the set-aside requirement as well.