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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5660-N-01]

Notice of Neighborhood Stabilization Program Closeout Requirements and Recapture

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice describes closeout requirements that apply to and additional regulations waived for grantees receiving grants under the three rounds of funding under the Neighborhood Stabilization Program.

DATES: Effective Date: **[Insert date of publication in Federal Register].**

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. FAX inquiries may be sent to Mr. Gimont at 202-401-2044

SUPPLEMENTARY INFORMATION:

Program Background and Purpose

The Neighborhood Stabilization Program (or NSP) was established by the Housing and Economic Recovery Act of 2008 (HERA) (Public Law 110-289, approved July 30, 2008), specifically Division B, Title III of HERA, for the purpose of stabilizing communities that have suffered from foreclosures and abandonment. As established by HERA, NSP provided grants to all states and selected local governments on a formula basis.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) (Public Law 111-5, approved February 17, 2009) authorized additional NSP grants to be awarded to states, local governments, nonprofits and a consortium of nonprofit entities, but on a competitive basis. The Recovery Act also authorized funding for national and local technical assistance providers to support NSP grantees.

The Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Public Law 111-203, approved July 21, 2010) authorized a third round of Neighborhood Stabilization grants to all states and select governments on a formula basis.

The purpose of the funds awarded under the three rounds of NSP is to target the stabilization of neighborhoods negatively affected by properties that have been foreclosed upon and abandoned. The notice, Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, published October 19, 2010 (75 FR 64322) ("Unified NSP Notice") provides further background for these programs, the program principles, and the objectives and outcomes of the NSP program. In addition, the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009, 74 FR 21377 (May 7, 2009), as amended by subsequent notices ("NSP2 NOFA"), includes requirements specific to the competitive round of funding under the Recovery Act.

The primary purpose of this notice is to revise requirements set forth in the Unified NSP Notice to provide the grant closeout framework for all three rounds of NSP by minimally adjusting the Community Development Block Grant (CDBG) closeout requirements (24 CFR 570.509). Following publication of this notice, HUD will update issued CDBG closeout guidance (CPD Notice 12-0004) to incorporate specific operating instructions for closeout of

NSP grants. These instructions will create an NSP closeout process that is nearly identical to the CDBG closeout process and place both sets of instructions in a single document. This approach takes advantage of NSP grantee (and HUD field staff) familiarity with the CDBG closeout procedures because, by the time of grant closeout, almost every NSP grantee will have completed closeout of a CDBG Recovery Act grant.

Since this notice applies to grantees receiving grants under the three rounds of funding under the Neighborhood Stabilization Program, the terms NSP1, NSP2 or NSP3 are used to describe each of the three funding rounds. When referring to the grants, grantees, assisted activities, and implementation rules under HERA, this notice will use the term "NSP1." When referring to the grants, grantees, assisted activities, and implementation rules under the Recovery Act, this notice will use the term "NSP2." When referring to the grants, grantees, assisted activities, and implementation rules under the Dodd-Frank Act, this notice will use the term "NSP3." Collectively, the grants, grantees, assisted activities, and implementation rules under these three rounds of funding are referred to as NSP.

NSP is a component of the CDBG program, authorized under Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301 et seq.).

Authority to Provide Alternative Requirements and Grant Regulatory Waivers

HERA appropriated $3.92 billion for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the grants are to be CDBG funds. HERA, the Recovery Act, and the Frank-Dodd Act authorize the Secretary of HUD to specify alternative requirements to any provision under Title I of the HCD Act except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint). The alternative requirements must be in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting for NSP1, or facilitating for NSP2 and NSP3, the use of grant funds. The CDBG requirements will apply to NSP except where this or other published notices supersede or amend such requirements.

This Notice specifies a new alternative requirement to a statutory requirement by extending the requirement that NSP program income be used for NSP purposes not only under the grant agreement, but after grant closeout. Except as described in this notice and previous notices governing NSP, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states or, for CDBG entitlement communities, including those at 24 CFR part 570 subparts A, C, D, J, K, and O, as appropriate, apply to the use of these funds. The State of Hawaii was allocated funds and will be subject to part 570, subpart I, as modified by this notice.

I. Alternative Requirements and Regulatory Waivers

A. Closeout Requirements

1. General Grant Closeout Requirements.

Background

This part of the Notice provides instructions on the closeout of all NSP grants. The procedures describe the grantee's continuing obligations with respect to program income, long-term affordability, and land-banked properties. This Notice provides an alternative requirement for section 104(j) of the HCD Act of 1974 and a waiver of 24 CFR 570.509 to the extent necessary to allow an NSP grantee to continue to use NSP program income on hand at the time of grant closeout with HUD in accordance with NSP program requirements, including this notice, instead of for community development activities in accordance with CDBG regulations.

All NSP program income on hand at the time of closeout must meet program requirements as specified, including meeting a national objective.

Requirement

A new Section Y is added to the Unified NSP Notice that reads:

Y. NSP Grant closeout procedures

An alternative requirement is provided for section 104(j) of Title I of the HCD Act and provisions of 24 CFR 570.509 are waived to provide that the CDBG closeout requirements apply as modified for NSP1, NSP2, and NSP3 grants as described below (The modifications adjust for the use of DRGR and the difference in the program names.):

(a) Criteria for closeout. An NSP grant will be closed out when HUD determines, in consultation with the grantee, that the following criteria have been met:

(1) All costs to be paid with NSP funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the grantee, as well as related administrative costs.

(2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with NSP funds (but excluding program income) has actually been completed.

(3) That not less than 25 percent of the grantee's NSP grant (initial allocation plus any program income) was expended to house individuals or families whose incomes do not exceed 50 percent of area median income.

(4) Other responsibilities of the grantee under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal

interest in keeping the grant agreement open for the purpose of securing performance.

(b) Closeout actions. (1) Within 90 calendar days of the date it is determined that the criteria for closeout have been met, the grantee shall submit to HUD the final quarterly report in the Disaster Recovery Grant Reporting (DRGR) system. If an acceptable report is not submitted in a timely manner, an audit of the grantee's grant activities may be conducted by HUD.

(2) Based on the information provided in the final performance report and other relevant information, HUD, in consultation with the grantee, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) HUD will cancel any unused portion of the awarded grant, as shown in DRGR and the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the grantee shall be refunded to HUD.

(4) Any costs paid with NSP funds which were not audited previously shall be subject to coverage in the grantee's next single audit performed in accordance with the regulations in 24 CFR part 84 or 85. The grantee may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) Closeout agreement. Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the grantee. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with NSP funds (excluding program income) after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of the amount of program assets, including:

(i) any program income on deposit in financial institutions at the time the closeout agreement is signed and of any program income currently held by subrecipients or consortium members;

(ii) a list of real property subject to NSP continuing affordability requirements;

(iii) a list of real property held in an NSP-assisted land bank;

(iv) if the grantee has assisted a land-bank, a plan detailing how the land bank will meet the 10-year maximum land holding requirement of Section II.E.2.d of the Unified NSP Notice and Appendix I, Section E.2.d of the NSP2 NOFA; and

(v) a management plan on the attached template describing how the grantee will enforce the NSP continuing affordability requirements, including the responsible organization for this function.

(4) Description of the grantee's responsibility after closeout for:

(i) Compliance with all NSP program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining NSP funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with NSP funds in accordance with the principles described in 24 CFR 570.505 and, for properties held in land banks, the requirement to obligate or otherwise commit a property for a specific eligible use in accordance with CDBG requirements;

(iii) Compliance with requirements governing NSP program income received subsequent to grant closeout, as described in 24 CFR 570.504(b)(4)-(5) and this Notice, and

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD, as unsatisfactory performance of the grantee, in the consideration of any future grant award under the NSP, CDBG, or HOME Investment Partnerships (HOME) programs.

2. Additional Grant Closeout Requirements

Background.

HERA does not address grant closeout. HERA directs through a rule of construction that unless HERA sets forth a different requirement, NSP funds shall be treated as CDBG funds. Therefore, the CDBG requirements apply to grant closeout. CDBG requirements address program income earned after grant closeout by a grantee with a continuing CDBG grant. NSP grants are generating program income and are likely to do so for several more years. In accordance with paragraph II.N of the Unified NSP Notice and Appendix I, paragraph N of the NSP2 NOFA, grantees must use program income for NSP eligible activities. After closeout, the HCD Act, at section 104(j), provides:

> “Notwithstanding any other provision of law, any unit of general local government may retain any program income that is realized from any grant made by the Secretary, or any amount distributed by a State, under section 106 if (1) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and (2) such unit of general local government has agreed that it will utilize the program income for eligible *community development activities in accordance with the provisions of this title*; except that the Secretary may, by regulation,

exclude from consideration as program income any amounts determined to be so small that compliance with this subsection creates an unreasonable administrative burden on the unit of general local government."

Given that demonstrated need for neighborhood stabilization exceeds available NSP funding, HUD has concluded that grantees should continue neighborhood stabilization activities with NSP program income after closeout to the extent sufficient program income is received annually to support viable projects. This notice therefore provides a continuing alternative requirement for section 104(j) that, after grant closeout, a CDBG grantee must use NSP program income in accordance with all NSP requirements with some exceptions. (1) In instances in which the annual NSP program income does not exceed $25,000, the funds shall be used for general administrative costs related to ensuring continued affordability of NSP units or added to the grantee's CDBG program income receipts and the CDBG requirements at 570.500(a)(4) shall apply, which may exclude such amounts from the definition of program income if combined earnings (NSP plus CDBG) are less than $25,000; and (2) in instances in which a grantee's annual NSP program income exceeds $25,000 and does not exceed $250,000, the requirement of paragraph II.E.2.e of the Unified NSP Notice, and Appendix I, paragraph E.2.e of the NSP2 NOFA, shall not apply.

Paragraph II.E.2.e and paragraph E.2.e restate the NSP statutory requirement that "not less than 25 percent of the funds appropriated or otherwise made available … shall be used to house individuals or families whose incomes do not exceed 50 percent of area median income." HUD believes that in applying this requirement to program income received after closeout, grantees need to receive sufficient annual program income to be able to comply. Using NSP1 grantee data, HUD analyzed the average cost to produce one unit of affordable housing assisted with NSP funds. The cost analysis considered costs associated with NSP eligible activities such as rehabilitation and new construction. HUD reasoned that Congress chose the percentage to be set aside in consideration of the large amount of funds that grantees received under their original grant. In other words, Congress did not intend to require NSP grantees to spend all of their NSP funds to house individuals or families whose incomes do not exceed 50 percent of area median income. With regard to program income, HUD notes that there are a number of grantees that are projected to generate only small amounts of program income after grant closeout. Thus, to maintain consistency with the manner in which Congress intended for the 25 percent set aside to be applied, HUD has determined that a minimum of $250,000 in annual program income may be necessary to comply with the requirement to spend 25 percent of any program income generated after grant closeout to house for individuals or families at or below 50 percent of area medium income and to produce at least one unit of affordable housing without significant burden.

The NSP continuation provisions apply to program income generated from the use of NSP funds by a CDBG entitlement or State grantee for the duration of the grantee's participation in the CDBG program in any year in which NSP funds exceed the thresholds above. Minimum annual reporting requirements will continue, initially in DRGR and later joined to the grantee's CDBG reporting in the Integrated Disbursement and Information System (IDIS).

After closeout, if a former NSP grantee wishes to use funds for acquisition of property into a land bank, HUD will hold that property subject to the same deadline as all other land-banked properties: the property will have ten years from the date the NSP grant closeout agreement is fully executed to meet an eligible redevelopment of that property in accordance with NSP requirements.

For NSP2, State and entitlement grantees that are consortium lead entities or a consortium member administering NSP2 funds subject to a consortium funding agreement, must comply with program income and land bank rules as described above. A local government that was not an entitlement grantee would be subject to the same requirements as 24 CFR 570.489(e)(3)(ii)(B). Non-profit grantees or members of consortia are not subject to ongoing NSP or CDBG program requirements with the exception of requirements imposed by HUD concerning the reporting of activities using miscellaneous revenue from the NSP program for 5 years and that any land bank properties be disposed of for a specific use supporting neighborhood stabilization within 10 years after grant closeout.

Revised Requirements

A new Section Z. is added to the Unified NSP Notice that reads:

Z. Closeout Procedures for Program Income, Land Banks, and Long-Term Affordability

Background

Program Income. NSP program income on hand at the time of closeout or received after closeout shall, subject to the *de minimis* exception provided for in Section Y, continue to be used in accordance with NSP requirements. The additional flexibility created by the legislation for the creation of financing mechanisms, development of new housing, operation of land banks, and service of families up to 120 percent of Area Median Income (AMI), will remain in place.

However, HUD notes that continued acquisition of new land bank property after closeout with NSP program income could undermine the urgency of finding uses for the properties already acquired. Grantees will be required to allocate 25 percent of program income to housing for families with less than 50 percent of Area Median Income when the amount of annual program income received by a grantee is sufficient to make application of this requirement reasonable. After grant closeout, former NSP grantees that are CDBG entitlements or State governments will report at least annually as provided for by HUD, initially in DRGR and later in an enhanced IDIS, on the receipt and use of program income, and the disposition of land banked properties. These grantees must also include NSP program income in the CDBG Action Plan or substantial amendment in accordance with CDBG requirements. All former NSP grantees, including nonprofits and non-entitlement units of general local government receiving funds directly from HUD, must report at least annually in a form acceptable to the Secretary regarding enforcement of any NSP continuing affordability restrictions. Reporting will continue over the course of the minimum period of affordability set forth in HOME program standards at 24 CFR 92.252 (e) and 92.254(a)(4).

Finally, most program income will be received by entitlement cities and counties, and by states, which have systems and procedures to manage NSP revenues, which are treated in most respects like CDBG revenues. However, non-profit consortium members in NSP2 grant consortia that receive revenues generated by NSP projects will not have access to the state and municipal CDBG tracking systems. Further, the CDBG regulation and Office of Management and Budget (OMB) circular implemented at 24 CFR 84.24(e) do not require that non-profit grantees continue to treat revenues generated from use of NSP funds and received after grant closeout as federal funds unless HUD regulations or the terms and conditions of the award provide otherwise. Thus, for grantees that are not direct formula CDBG grantees (non-profits and non-entitlement local governments, including those that are part of a consortium), HUD is requiring that revenues generated by projects funded before closeout but received within 5 years after grant closeout must be used for NSP eligible activities and meet NSP benefit requirements, but no other federal requirements would apply. With the exception of income earned from the sale of NSP-assisted real property or loans, any income earned by such post-closeout use of funds would not be governed by any NSP requirements and would be miscellaneous revenues, although HUD encourages such grantees to apply NSP principles to subsequent uses of the funds.

Disposition of Land Bank Property. The HERA created a use of funds which did not exist in the Community Development Block Grant program: land banks. HUD implemented this use in association with two CDBG eligible activities: acquisition of real property and disposition of real property. This tool has been used by a number of grantees, in all parts of the country but primarily in the upper Midwest, to hold property acquired with NSP funds that has no immediate demand in the housing market. Given the non-recurring nature on NSP funds, HUD set a limit of ten years for n NSP-acquired property to remain in a land bank without "obligating the property for a specific, eligible redevelopment of that property in accordance with NSP requirements."

In this Notice, HUD is adjusting the land bank disposition requirement in two ways. First, HUD is setting the start date of the 10-year period before which land held in a land bank must be obligated or committed for a specific use as the date of the closeout agreement. Second, HUD is re-stating the existing requirement for NSP-assisted properties held in a land bank to: "obligat[e]or otherwise commit[] the property for a specific use supporting neighborhood stabilization."

Long Term Affordability of Housing. The NSP authorization law, HERA, at section 2301(f)(3)(B), directs:

> The Secretary shall, by rule or order, ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, and redevelopment of abandoned and foreclosed upon homes under this section remain affordable to individuals and families….

NSP implements this direction by requiring each grantee to address in its submission how it will ensure continued affordability, and define affordable rents, standards, and enforcement mechanisms. Long-term affordability enforcement for homeownership activities, owing to the mostly automatic operation of the resale/recapture mechanisms, will ensure grantees are notified when a property is disposed of within the term of affordability. Grantees and HUD will require policies and procedures for tracking the re-use of funds recovered through these mechanisms.

Despite the difficulties of implementation, NSP rules do require grantees to have a system for securing the long-term affordability of NSP-assisted units. In many cases, this is implemented in developer or subrecipient agreements or in recorded property restrictions. Grantees must meet the requirement and HUD will monitor to verify compliance. To ensure some accountability for long-term affordability, this Notice requires that each NSP grantee regularly update a HUD-provided online registry of covered NSP properties throughout the affordability period for each property. HUD will also cover grantee review and tracking of the NSP property inventory in the standard CDBG risk analysis and monitoring protocols. At minimum, grantees must use the HOME program affordability periods as defined in 24 CFR 92.252 and 92.254. HUD expects former NSP grantees to continue to enforce affordability restrictions after grant closeout.

Requirements

1. Program Income. Gross revenues received by NSP grantees after closeout will be governed by the following requirements:

a. In general, annual funds received in excess of $25,000 shall be used in accordance with all NSP requirements for eligible NSP properties, uses and activities, including new construction, financing mechanisms, and management and disposition of land bank property.

b. If annual NSP program income does not exceed $25,000, the funds shall be used for general administrative costs related to ensuring continued affordability of NSP units or added to the grantee's CDBG program income receipts and the CDBG requirements at 24 CFR 570.500(a)(4) shall apply, which may exclude such amounts from the definition of program income.

c. Program income may provide benefit to individuals and families with incomes up to 120 percent of AMI as permitted in NSP under Section II.E;

d. If a grantee's annual NSP program income exceeds $250,000, 25 percent of the program income shall be used to house individuals or families below 50 percent of AMI; in instances in which a grantee's annual NSP program income does not exceed $250,000, the requirements of paragraph II.E.2.e does not apply.

e. NSP2 grantees that are not CDBG entitlement communities or States must use post-closeout revenues generated from NSP-assisted activities funded before closeout for NSP purposes. If the grantee does not have another ongoing grant received directly from HUD at the time of closeout, then in accordance with 24 CFR 570.504(b)(5), income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by NSP or CDBG rules, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the HCD Act. The provisions of 24 CFR 570.504(b)(5) are waived to limit its application to income received within 5 years of grant closeout. Any income received 5 years after grant closeout, as well as program income from funds outlaid after the date of the closeout agreement may be used without restriction. Such grantees are encouraged to use such funds in accordance with the principles above.

f. States may continue to act directly to implement NSP activities post-closeout.

g. HUD will provide direction to grantees by the date of closeout on procedures for reporting and tracking NSP program income revenues. Tracking will continue in DRGR until IDIS enhancements to allow NSP property registry and program income tracking are developed and released.

2. Disposition of Landbank Properties.

a. Grantees must not hold NSP-assisted properties in land banks for more than ten years. HUD will calculate this period beginning with the date of execution of the grant closeout agreement. HUD will provide direction to grantees by the date of closeout on procedures for reporting and tracking property held in land banks.

b. After grant closeout, landbank properties must be obligated or otherwise committed for a specific use that supports neighborhood stabilization. Properties in a landbank, or otherwise held by the grantee, will be considered obligated for redevelopment if the property is:

(1) Owned by a local government or non-profit entity and identified under a Consolidated Plan approved by HUD for use as a CDBG-eligible public improvement such as parks, open space, or flood control;

(2) Owned by a community land trust to create affordable housing;

(3) Transferred to and committed for any other use in the grantee's CDBG program, included in an annual Action Plan, subject to all CDBG regulations and no longer part of the NSP program;

(4) Designated for affordable housing in accordance with HERA and under development by an eligible development entity which has control of the site and has expended predevelopment costs; or

(5) Included in a redevelopment plan that has been approved by the local governing body.

c. Any NSP assisted properties remaining in the land bank ten years after the date of grant closeout shall revert entirely to the CDBG program and must be immediately used to meet a national objective or disposed of in accordance with CDBG use of real property requirements at 24 CFR 570.505.

3. Long-Term Affordability.

a. Grantees must ensure that, when a house is sold, the affordability requirements are met as provided in their NSP action plan substantial amendment or NSP2 NOFA application. Generally this will be through following the Resale or Recapture provisions of the HOME regulations at 24 CFR 92.254(a)(5). Property that serves owner-occupants may assure compliance with the continued affordability period by recording with the sale documents in the form of a lien on the mortgage loan and/or a covenant on the deed.

b. At a minimum, each property that serves rental household will meet the requirements of the HOME program, at 24 CFR 92.252 (a), (c), (e), and (f). This will require active oversight by the grantee to monitor the project for compliance. It is permissible to use program income to pay for such costs. If there is no program income, grantees may charge the project a small fee as part of their agreements with property owners based on documented costs to accomplish this monitoring, but only if the development has sufficient income after paying operating expenses.

c. HUD will establish reporting capability to maintain a property registry including information on all NSP properties still subject to continued affordability requirements at the time of grant closeout. Grantees must report as provided in the closeout agreement so long as program requirements apply to the unit or it fulfills the affordability requirement.

4. Non-Compliance.

In the closeout agreement, HUD will include a provision allowing the Department access to records and the ability to apply the corrective and remedial actions in 24 CFR 570.910 for grantees that do not fully satisfy this requirement.

B. Recapture Provisions

Background

Section 2301(c)(1) of HERA required NSP1 grantees to use their funds within 18 months of receipt. In the Unified NSP Notice, 75 Fed. Reg. 64326, HUD defined the term "use" to mean "obligate." The Unified NSP Notice also provided, at 75 Fed. Reg. 64323, that NSP1 grantees that failed to obligate their NSP1 funds within 18 months would be subject to corrective action or recapture of grant funds. States with unused funds would be subject to recapture of unobligated amounts up to $19.6 million because states were statutorily required to receive this amount regardless of their relative needs for funds. States received the $19.6 million base plus any need-based formula increment.

NSP1 grantees are required by the formula allocation notice and the terms of their grant agreements to expend 100 percent of their grant funds within 48 months of award. NSP2 and NSP3 grantees are statutorily required to expend an amount of NSP funds equal to 50 percent of their grant (grant plus program income) within 24 months and an amount equal to 100 percent of their grant within 36 months from the date HUD signed their grant agreement. One of the sanctions for failure to expend NSP grant funds by the relevant deadline is recapture.

HUD is providing that any NSP1 or NSP3 recaptured funds may be used in accordance with the provisions of section 106(c)(4) of the HCD Act (42 U.S.C. 5306(c)(4)) for the purpose of providing disaster relief. Although HUD had originally proposed to reallocate NSP1 funds for this purpose, in the subsequent Notice of Neighborhood Stabilization Program Reallocation

Process Changes, dated August 23, 2010, HUD recognized that NSP1 recaptured funds are not required to be reallocated under the disaster relief provisions and could instead be reallocated by formula. Upon further reflection and based on the limited funds to be recaptured, HUD has determined that recaptured funds should be used for disaster relief and is amending the Unified Notice to clarify reallocation options.

Revised Requirement

Section I.B.2.g. of the Unified NSP Notice at page 64324 is amended to read as follows: HUD may reallocate recaptured funds by formula or under the provisions of 42 U.S.C. 5306(c)(4).

Section I.B.3 of the Unified NSP Notice at page 64324 is amended to read as follows:

NSP3 grantees must expend 50 percent of their grants within 2 years and 100 percent of their grants within 3 years. HUD will recapture and reallocate the amount of funds not expended by those deadlines or provide for other corrective action(s) or sanction. HUD may reallocate recaptured funds by formula or under the provisions of 42 U.S.C. 5306(c)(4).

II. Other Technical Corrections

A. Demolition Eligible Activities and Jobs National Objective

Background

The Unified NSP Notice sets forth a table of eligible activities that are correlated with the statutory eligible uses of NSP. The table provides that "24 CFR 570.201(d) Clearance for blighted structures only" is a correlated activity for the demolition of blighted structures. HUD has recognized since publishing the last NSP Notice that acquisition and disposition are also eligible activities that are regularly correlated with using NSP funds for demolition. 24 CFR

570.201(a), (b).

The June 19, 2009 Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008; Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections at 74 FR 29223 ("Bridge Notice") clarified that job creation or retention was not an activity that could meet the HERA low- and moderate-income national objective. In this notice, HUD is revising its position to reflect market change and better support mixed use development to allow for NSP activities that create or maintain jobs for persons whose household incomes are at or below 120 percent of median income (LMMJ).

Revised Requirement

On page 64330 of the Unified Notice, and Appendix 1, section H.3.a of the NSP2 NOFA, modify the second full paragraph of the middle column to read:

> "Other than the change in the applicable low- and moderate-income qualification level from 80 percent to 120 percent and this notice's change to the calculation at 570.483(b)(3), the area benefit, housing, jobs, and limited clientele benefit requirements at 24 CFR 570.208(a) and 570.483(b) remain unchanged, as does the required documentation."

On page 64333 of the Unified Notice, and Appendix 1, section H.3.a of the NSP2 NOFA, revise the table of NSP eligible uses and activities to read:

NSP-Eligible Uses	**Correlated Eligible Activities From the CDBG Entitlement Regulations**
(A) Establish financing mechanisms for purchase and redevelopment of *foreclosed upon homes and residential properties*, including	• As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206. • Also, the eligible activities listed below to the

such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers	extent financing mechanisms are used to carry them out.
(B) Purchase and rehabilitate *homes and residential properties that have been abandoned or foreclosed upon,* in order to sell, rent, or redevelop such homes and properties	• 24 CFR 570.201(a) Acquisition (b) Disposition, (i) Relocation , and (n) Direct homeownership assistance (as modified below); • 24 CFR 570.202 eligible rehabilitation and preservation activities for homes and other residential properties. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost • 24 CFR 570.203 Special economic development activities.
(C) Establish and operate land banks for *homes and residential properties that have been foreclosed upon*	• 24 CFR 570.201(a) Acquisition and (b) Disposition. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost
(D) Demolish *blighted structures*	• 24 CFR 570.201(a) Acquisition, (b) Disposition, and (d) Clearance for blighted structures only
(E) Redevelop *demolished or vacant properties* as housing*	• 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below). • 24 CFR 570.202 Eligible rehabilitation and preservation activities for demolished or vacant properties. • 24 CFR 570.204 Community based development organizations. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost • NSP1 Only: 24 CFR 570.203 Special economic development activities.

*NSP1 funds used under eligible use (E) may be used for nonresidential purposes, while NSP2 and NSP3 funds must be used for housing.

B. Low-Income Set-Aside for NSP2

Background

This notice is revising the NSP2 NOFA to explicitly require NSP2 grantees to use an amount equal to 25 percent of program income before grant close-out 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. Although this requirement was stated in Unified NSP Notice, there was some confusion among NSP2 grantees whether the requirement applied to their program income. The law requires that 25% of the original grant amount plus program income be used for families at 50% of AMI and below, so this language is intended to eliminate any confusion.

Revised Requirement

Appendix I, section E.2.e of the NSP2 NOFA is revised to read:

Not less than 25 percent of any NSP grant (initial allocation plus any program income) shall be used to house individuals or families whose incomes do not exceed 50 percent of area median income. Each NSP2 grantee must spend an amount equal to 25 percent of any NSP program income in accordance with this requirement.

Duration of funding

The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. Such a limitation may not be waived. The appropriations acts for NSP1 and NSP3 grants direct that these funds be available until expended. However, HUD is imposing a shorter deadline on the expenditure of NSP funds in this notice.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for grants made under NSP1 are as follows: 14.218; 14.225; and 14.228.

Paperwork Reduction Act

HUD has approval from OMB for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)(2)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500.

Dated: November 16, 2012

Mark Johnston,
Acting Assistant Secretary for Community
Planning and Development.

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