

# Guide to Neighborhood Stabilization Program (NSP) Eligible Uses

*This Guide is designed to present the activities that are eligible to be assisted under the Neighborhood Stabilization Program (NSP) found in Title III of Division B of the Housing and Economic Recovery Act of 2008. For guidance on how to apply for NSP funds, consult the [NSP Quick Guide for Grantees](#) and the [Application and Checklist](#).*

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## **I. GENERAL INFORMATION**

### **1. LOW AND MODERATE INCOME REQUIREMENT**

(Housing and Economic Recovery Act §2301(f)(3)(A)(i) and (ii))

#### **Requirements for the use of NSP funds:**

(1) All of the funds made available under this section are to be used with respect to individuals and families whose incomes do not exceed 120% of area median income.

(2) Not less than 25% of these funds are to be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50% of area median income.

Note that NSP redefines and supersedes the definition of “low- and moderate-income” of the CDBG program by allowing households whose incomes exceed 80% but are no greater than 120% of area median income to qualify for NSP funds. HUD will refer to this new income group as “middle income,” but continue to use the CDBG definitions of

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“low-income” and “moderate-income.” HUD will use the term “low-, moderate- and middle-income” (LMMI) to refer to the national objective of the program.

For more information on the 120% of area median income requirement consult <http://www.huduser.org/publications/commdevl/nsp.html>.

## **Meeting the National Objective:**

NSP allows for the use of *only* the LMMI national objective.

- Activities may NOT qualify under NSP using the “prevent or eliminate slums or blight” or “address urgent community development needs” objectives as allowed in the overall benefit provisions of the HCD Act and the CDBG regulations.
- Note that although NSP changes the low and moderate income requirement level of the CDBG program, the remaining requirements of 24 CFR 570.208(a) and 570.483(b) regarding area benefit, housing, and limited clientele benefit remain unchanged.

Examples of how funds can be used to meet the national objective:

**Housing Activities:** Providing or improving permanent residential structures that will be occupied by a household whose income is at or below 120% of area median income (LMMH).

- Acquisition, Rehabilitation, Rental, Sale, Conversion, Construction of Housing Units
- Homeownership Assistance
- Infrastructure for housing as part of redevelopment
- All Units must be occupied by those meeting the low- and moderate-income requirement.

**Area Benefit Activities:** Benefiting all the residents of a primarily residential area in which at least 51% of the residents have incomes at or below 120% of area median income (LMMA).

- Grantees must identify the service area of each NSP-funded activity.
- HUD will provide data on the percentage of low-, moderate- and middle income persons, by census tracts and block groups.  
See <http://www.huduser.org/publications/commdevl/nsp.html>
- Demolition, Acquisition, Lank Banks if maintenance and demolition also take place
- No use of the “upper quartile” provision for exception criteria communities.

**Limited Clientele Activities:** Serving a limited clientele whose incomes are at or below 120 % of area median income (LMMC).

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- Housing counseling for prospective purchasers/tenants
- Public facilities such as emergency shelters, group homes

## **Meeting the 50% of area median income requirement:**

- The requirement applies to each grant, not to the NSP program as a whole, nor each project or activity, nor each subrecipient.
- Compliance based on dollars, not number of units
- Principal way to comply will be through rental housing:
  - New construction or conversion
  - Acquisition
  - Rehabilitation

## **2. PRIORITY FOR AREAS OF GREATEST NEED**

(Housing and Economic Recovery Act §2301(c)(2))

- In distributing NSP funds, grantees are to give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, including those—
  - (A) with the greatest percentage of home foreclosures;
  - (B) with the highest percentage of homes financed by subprime mortgage related loan;
  - (C) identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures.
- HUD has developed a foreclosure and abandonment risk score to assist grantees in targeting the areas of greatest need within their jurisdictions. Grantees may wish to consult <http://www.huduser.org/publications/commdevl/nsp.html>

## **3. CONTINUED AFFORDABILITY**

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

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

#### 4. **TIMELY USE AND EXPENDITURE OF FUNDS** (Housing and Economic Recovery Act §2301(c)(1))

- Grantees must use NSP funds within eighteen months of receipt.

#### Relevant Definition:

*Use for the purposes of section 2301(c)(1).* Funds are used when they are obligated by a state, unit of general local government, or any subrecipient thereof, for a specific NSP activity; for example, for acquisition of a specific property. Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, or subrecipient during the same or a future period. Note that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of local government) are made.

- A grantee will be deemed to have received its NSP grant at the time HUD signs its NSP grant agreement (or amendment thereto if funds are later reallocated to the grantee).
- Grantees must expend on eligible NSP activities an amount equal to or greater than the initial allocation of NSP funds within four years of receipt of funds.

#### 5. **INFORMATION FOR STATES**

- Unlike the CDBG program, states may distribute funds to or within any jurisdiction within the state (e.g. entitlement communities and Indian tribes) that is among those with the greatest need, even if the jurisdiction is among those receiving a direct formula allocation of funds from HUD under the regular CDBG program or NSP.

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- Also, unlike the State CDBG program, a state receiving NSP funds may carry out NSP activities directly for some or all of its assisted grant activities in the same manner that entitlement communities are permitted under 24 CFR 570.200(f). Such activities include, but are not limited to, carrying out activities using its own employees, procuring contractors, private developers, and providing loans and grants through nonprofit subrecipients (including local governments and other public nonprofits such as regional or local planning or development authorities and public housing authorities).

## II. ELIGIBLE USES

(Housing and Economic Recovery Act §2301(c)(3))

### 1. FINANCING MECHANISMS

*§2301(c)(3)(A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate- income homebuyers;*

#### Relevant Definition:

*Foreclosed.* A property “has been foreclosed upon” at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

#### Correlated Eligible Activities from the CDBG Entitlement Regulations

- As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206.
- Financing mechanisms used to carry out CDBG eligible activities listed below.

### 2. PURCHASE AND REHABILITATION

*§2301(c)(3)(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;*

#### Relevant Definitions:

*Abandoned.* A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the

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property owner for at least 90 days, AND the property has been vacant for at least 90 days.

*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 an offer made for the property by a grantee, subrecipient, developer, or individual homebuyer.

## Acquisition:

- Section 2301(d)(1) of HERA requires any purchase of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property. Such discount shall ensure that purchasers are paying below-market value for the home or property.
- For mortgagee foreclosed properties, grantees must seek to obtain the “maximum reasonable discount” from the mortgagee, taking into consideration likely “carrying costs” of the mortgagee if it were to not sell the property to the grantee or subrecipient.
- Section 301 of the URA, regarding just compensation, does not apply to voluntary acquisitions.
- All acquisitions of property under NSP require an appraisal for purposes of determining the statutory purchase discount.
- For individual purchase transactions, the purchase discount is to be at least 5% from the current market appraised value of the home or property.
- For purchase transactions in the aggregate, the average purchase discount depends on how the purchase discount for an individual property is determined.
  - The average purchase discount shall be at least 10% if the State, unit of general local government, or subrecipient determines the discount for each purchase transaction through use of a methodology that results in a discount equivalent to the total carrying costs that would be incurred by the seller if the property were not purchased with NSP funds (provided the discount is at least 5%).
    - Such methodology shall provide for an analysis of the estimated holding period for the property and the nature and amount of the carrying costs of holding the property for this period.

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- Carrying costs shall include, but not be limited to: taxes, insurance, maintenance, marketing, overhead, and interest.
- If this methodology is not used, the minimum average discount shall be at least 15%.
- An NSP recipient may NOT provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay the necessary and reasonable costs related to the appraisal and transfer of title.
- Grantees that are contemplating using NSP funds to assist an acquisition involving an eminent domain action are advised to consult legal counsel before taking action, as this may present problems with the Takings Clause of the Fifth Amendment to the U.S. Constitution and prior Supreme Court rulings.
- Grantees are strongly encouraged to acquire and redevelop FHA foreclosed properties. HUD will provide technical assistance on its website regarding how these programs can effectively interact. See <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>. Grantees may also contact their local HUD FHA office for further information.
- HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d).

## 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. In their substantial amendment, grantees must define their housing rehabilitation standards that will apply to NSP assisted activities.
- Funds may be used for preservation, improving energy efficiency or conservation, or providing renewable energy source(s).
  - HUD encourages grantees to strategically incorporate modern green building and energy efficiency improvements to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

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- Grantees may fund costs, such as sales costs, closing costs, and reasonable developer's fees, related to NSP-assisted housing, rehabilitation, or construction activities.
- NSP funds may be used to redevelop acquired property for nonresidential uses, such as a public parks or mixed residential and commercial use.
- 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.

## Sale

- 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.
- Section 2301(d)(2) directs that the sale of such property shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition.
- The maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally include, among other things, costs related to the sale of 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.
- Each NSP-assisted homebuyer is required to receive and complete at least eight hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan.
- 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 for whom such mortgages are inappropriate.

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## Miscellaneous

- NSP funds may not be used for operating and maintenance costs as defined in the CBDG program.

## Correlated Eligible Activities from the CBDG Entitlement Regulations

- 24 CFR 570.201
  - (a) Acquisition
  - (b) Disposition
  - (i) Relocation
  - (n) Direct homeownership assistance to persons whose incomes do not exceed 120% of median income.
- 24 CFR 570.202 Eligible rehabilitation and preservation activities for homes and other residential properties. Note that rehabilitation may include counseling for those seeking to take part in the activity.

### 3. **LAND BANKS**

*§2301(c)(3)(C) establish land banks for homes that have been foreclosed upon;*

#### Relevant definitions:

*Land bank.* 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.

#### Land Bank Uses:

- A land bank may not hold a property for more than ten years without obligating the property for a 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.

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- For more information on land banks and examples of best practices visit: <http://www.hud.gov/offices/cpd/about/conplan/foreclosure/landbanks.cfm>

## Correlated Eligible Activities from the CDBG Entitlement Regulations:

- 24 CFR 570.201
  - (a) Acquisition
  - (b) Disposition

## 4. **DEMOLITION**

*§2301(c)(3)(D) demolish blighted structures;*

### Relevant definition:

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

### General information:

- The national objectives related to prevention and elimination of slums and blight and addressing urgent community development needs (24 CFR 570.208(b) and (c) and 570.483(c) and (d)) 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 dwellings units that are demolished or converted for activities assisted with NSP funds.

## Correlated Eligible Activities from the CDBG Entitlement Regulations

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

## 5. **REDEVELOPMENT**

*§2301(c)(3)(E) redevelop demolished or vacant properties*

- Grantees may fund costs, such as sales costs, closing costs, and reasonable developer's fees, related to NSP-assisted housing, rehabilitation, or construction activities.
- New construction of housing and building infrastructure for housing is an eligible use.

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- Grantees may redevelop property to be used as rental housing.
- Grantees are strongly encouraged to acquire and redevelop FHA foreclosed properties. HUD will provide technical assistance on its website regarding how these programs can effectively interact. See <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>. Grantees may also contact their local HUD FHA office for further information.

## Correlated Eligible Activities from the CDBG Entitlement Regulations

- 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
  - (n) Direct homeownership assistance (for persons whose income does not exceed 120% of median income)
- 24 CFR 570.204 Community based development organizations
- New housing construction

## **6. ADMINISTRATION AND PLANNING COSTS** (Housing and Economic Recovery Act §2301(c)(3))

- An amount of up to 10% of an NSP grant provided to a jurisdiction and up to 10% of program income earned may be used for general administration and planning activities as defined at 24 CFR 570.205 and 206.
- For all grantees, including states, the 10% limitation applies to the grant as a whole.
- There is no state match requirement for administrative costs as exists in the CDBG program.
- Activity delivery costs, as defined in 24 CFR 570.206, may be charged to the particular activity performed above and will not count as general administration and planning costs.

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- Pre-award Costs: A grantee may incur pre-award costs necessary to develop the NSP Application and undertake other administrative and planning actions necessary to receive the NSP grant, in compliance with 24 CFR 570.200(h). States may allow subrecipients to incur pre-award costs pursuant to 24 CFR 570.489(h).

## 7. OTHER USES

- If grantees would like to use funds for activities not specifically addressed, grantees must make a written request to their local HUD field office for approval. Such request must demonstrate that the proposed activity constitutes an eligible use under the NSP.
- If not otherwise stated, if an activity is ineligible under CDBG, it is ineligible under the NSP program.
- HUD will not consider requests to allow foreclosure prevention activities, such as refinancing mortgages and paying back taxes; or to allow demolition of structures that are not blighted; or to allow purchase of residential properties and homes that have not been abandoned or foreclosed upon as provided in HERA and defined in this notice.