

Guidance on NSP-Eligible Acquisition & Rehabilitation Activities

This NSP Policy Guidance **describes how to determine whether or not a property is eligible for acquisition and or rehabilitation with NSP funds.** The following criteria will help determine eligibility: the NSP Notice published in the Federal Register on October 6, 2008 (statutory program requirements, waivers granted, and alternative requirements applied), timing parameters, acquisition protocols, a written agreement with any Third Party Entities (see page 3 for definition) prior to obligation of funds, and options for NSP acquisition assistance.

NSP Notice

The NSP Notice provides the criteria for acquiring and rehabilitating property under NSP. The Notice states that properties must have been **abandoned, foreclosed upon, or vacant** to qualify for NSP acquisition assistance (see Attachment). In purchasing homes and residential properties that have been foreclosed upon with NSP assistance, such **properties must be acquired out of foreclosure, meaning directly from the entities that obtained title to the properties through foreclosure (e.g., the lender or trustee for holders of obligations secured by mortgage liens).** **The acquisition of properties that have been abandoned with NSP assistance must occur while they are in abandonment status.**

Timing Parameters

NSP acquisitions are not authorized to begin until the grantee has submitted an action plan amendment to HUD. For most NSP grantees, the earliest acquisition start date would be December 1, 2008, but for those grantees that submitted an action plan amendment prior to December 1, 2008, an earlier date could be acceptable. For subgrantees, subrecipients, and other “Third Party Entities” (see definition on page 3), other requirements must first be met, as described in the Matrix on page 4.

Acquisition Procedures

In addition to submitting an action plan amendment, **NSP grantees and Third Party Entities alike must comply with the environmental review, purchase discount and appraisal (if foreclosed) and other eligible-use criteria** discussed in the Guidance on Eligible Uses prior to acquiring properties under NSP.

Agreements to Use NSP Funds

If the acquisition is performed by an “outside entity,” the **grantee must give permission or enter into an agreement with the outside entity prior to the acquisition in order to qualify for NSP assistance under Eligible Use B. Properties acquired out of foreclosure before these requirements have been met are no longer foreclosed or abandoned and therefore are only eligible for NSP assistance activities identified under Eligible Use E (if vacant).** This agreement may take the form of a contract, written commitment, preliminary commitment or other form that clearly describes the responsibilities and the requirements of each party. See the Attachment for a more extensive discussion of agreements with Third Party Entities.

Options for NSP Acquisition Assistance

There are a variety of options that can be used to acquire property under NSP. HUD regulations distinguish eligible entities based on those identified in §570.201(a), §570.202(b), §570.202(n) and §570.204. Depending on which category your entity falls into there are different requirements that must be followed to ensure compliance with NSP regulations. Listed below is a chart that explains the revenue implications, selection criteria and OMB Circular requirements that apply for acquisitions under NSP. Detailed explanations follow on page 3.

CDBG Regulations	Entity	Selection Criteria		Revenue Implications	OMB Requirements		
		C	NC		Treated as Program Income	Part 85/A-87	Part 84/A-122
§570.201(a)	NSP Grantee	NA	NA	Yes	Yes	No	Yes
	Subrecipient	GD	GD	Yes	No	Yes	Yes
§570.202(b)	NSP Grantee	NA	NA	Yes	Yes	No	Yes
	Developer: For Profit Private Nonprofit	GD	GD	No	No	No	No
	Subrecipient: Public Entity	GD	GD	Yes	Yes	No	Yes
					No	Yes	
	Individual Beneficiary	GD	GD	No	NA	NA	NA
§570.201(n)	Individual Beneficiary	GD	GD	No	NA	NA	NA
§570.204	CBDO	GD	GD	No	No	Yes	No

C – Competitive

NC – Non-competitive

NA – Not applicable

GD – Grantee determination

CBDO – Community-Based Development Organization

Individual Beneficiary – a homeowner who will occupy an NSP home as a primary residence

See following page for more detailed discussion of terms and regulatory bases.

Definition of Third Party Entities

Third Party Entities include subrecipients, individuals, and other private entities such as for-profit developers, non-profit developers or other entities. How they are selected, generate revenue, and keep records, summarized in the Table above, is described more fully below.

Public Entity or Private Nonprofit as subrecipient – Non-profit organizations and public entities under §570.201(a) can be designated by the NSP grantee as subrecipients, without a procurement process (See §570.500(c) for guidance). However, subrecipient agreements must conform to all the regulations under §570.503. Any revenues exceeding costs captured from properties sold or leased are classified as program income and must be used for NSP-eligible activities. At their option, grantees may allow subrecipients to retain Program Income, subject to §570.503 and 504.

Private Nonprofit, a For-profit organization, or an Individual as developer (not a subrecipient) – Non-profit organizations, For-profit organizations or individuals under §570.202(b)(1) can be given assistance to acquire residential property for the purposes of rehabilitation, resale, or use. The sales price of properties sold to NSP income-eligible individuals cannot exceed total costs (acquisition, rehabilitation, and development costs). Therefore, entities treated as developers must work within these parameters to generate a profit.

If engaged in rehabilitation, or for acquisition prior to rehabilitation, entities treated as developers may be selected through a competitive procurement process or may be designated as grant recipients without a procurement process. See §85.36 for procurement guidance. For rental projects or others not sold to individuals for use as a primary residence, revenues are not considered Program Income.

In addition, such entities are not subject to recordkeeping or audit requirements that do apply to subrecipients. This flexibility creates a burden on the grantee to underwrite all such transactions to avoid undue enrichment.

Community-Based Development Organizations (CBDO) – CBDOs are governed by the regulations in §570.204 and can be either nonprofit or for-profit entities. CBDOs can be treated as developers or subrecipients and would be subject to the same rules applied above depending on the grantee's determination of the relationship (whether the NSP grantee chooses to treat the CBDO as a developer or as a subrecipient).

Timeline Matrix

The following Matrix describes the **recommended sequence of events for grantees carrying out NSP activities directly and for those grantees that carry out NSP activities in collaboration with Third Party Entities**. These examples assume a simple transaction under Eligible Use B, in which property is acquired, rehabilitated, and sold, but the principles of these examples apply to all NSP assisted acquisitions and rehabilitation activities. The **requirements under B can be undertaken in any order, but MUST be performed prior to a commitment of funds** or a “choice-limiting action” as described in the Environmental regulations at 24 CFR Part 58. HUD encourages grantees to undertake tiered reviews, which can generally be completed for a group of properties in advance of the other steps in the process. Starting early also reduces the potential for delays at State Historic Preservation Offices.

RECOMMENDED SEQUENCE OF EVENTS FOR NSP ACQUISITION AND REHABILITATION

	Direct Grantee	Subrecipient (on behalf of grantee)	Private Developer (for-profit, non-profit)	Individual: Homeowner-Occupant
A. BEFORE grant award				
PRE-AWARD	May initiate activities before grant award by meeting all requirements and 570.200(h)	May initiate action only with explicit approval of grantee and in compliance with all requirements in Section B.		No action advisable prior to grantee’s receipt of funds.
B. AFTER grant award (No required sequence but MUST precede funds obligation)				
AGREEMENTS	Internal agreements not required for any department under the grantee’s jurisdiction.	Receive approval from grantee with agreement on who does what, when, how.	Developers MAY NOT incur administrative costs, but may charge fees and earn profits.	Apply to grantee or subrecipient to qualify based on income and other requirements. Receive preliminary approval to participate in NSP Program.
		If permitted in agreement, subrecipient may incur administrative costs.		
PROPERTIES	Locate one or more foreclosed, abandoned, or vacant properties in the areas of greatest need to acquire for the NSP. Ensure property qualifies, by location, type, condition, etc.			Find eligible property, in collaboration with NSP grantee or other party.
PRE-ACQUISITION REQUIREMENTS	Environmental review MUST be completed before committing funds. Only grantee can certify review & request release of funds	Work with grantee to understand what must be done and ensure no commitment of funds (choice-limiting action) before release of funds. Grantee alone can certify and request release of funds.		Not Applicable No role for Individual
1. Environmental				
2. Appraisal	Order URA-compliant Appraisal if foreclosed property or if sale not voluntary. Sale is not voluntary when potential exists for eminent domain if agreement cannot be reached.			Grantee will inform if Individual is required to obtain appraisal.
3. Uniform Relocation Act	Determine other URA applicability (e.g. relocation). American Recovery and Reinvestment Act places added restrictions on acquiring properties with tenants.			Not Applicable
4. Purchase Discount	Negotiate purchase discount with seller-servicer <i>if foreclosed</i> .	Consult with grantee on process for purchase price discount with seller-servicer; only applies <i>if property is foreclosed upon</i> .		
C. Purchase and Post-Purchase Phase				
ELIGIBILITY ATTAINED	After this point, the property has eligibly been acquired. It retains this status through any subsequent sales or transfers, such as directly to an eligible end user, or to another entity for rehabilitation and later sale to an eligible end user (LMMI family).			
REHABILITATION AND FINANCING OPTIONS	If the home is in need of repair and/or financial subsidy to make it affordable to LMMI, there are different options based on the type of property (foreclosed, vacant, etc.) and which NSP Eligible Use the grantee has employed. See the NSP Policy Guidance page for more detailed discussion of Eligible Uses (and property types) and Homeownership Assistance.			
INELIGIBLE PURCHASES	If a participant has acquired a property BEFORE meeting all the requirements above, the home is generally considered ineligible because it is no longer “foreclosed or abandoned”. However, some NSP assistance may still be possible; see Attachment for discussion.			

DEFINITIONS AND EXPLANATIONS

NSP-Eligible Acquisition Property Types

From Housing and Economic Recovery Act, Sec. 2301 (c)(3) and (f)(3):

- (A) purchase and redevelopment of foreclosed upon homes and residential properties,
- (B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon,
- (C) land banks for homes that have been foreclosed upon,
- (E) redevelop demolished and vacant properties, and
(From the 25% set-aside for low-income families), purchase and redevelopment of abandoned or foreclosed upon homes and residential properties.

Potential Considerations for Agreements with Third Party Entities

The Agreement may include, but is not limited to, these considerations:

- Effective start and completion dates,
- Appropriate locations in which to purchase (areas of greatest need),
- Property types (abandoned, foreclosed, vacant, homes and/or residential properties),
- If foreclosed, need for appraisal and purchase discount,
- Selection criteria (quality, price, level of repairs needed, terms),
- Need for complete environmental review and release of funds prior to closing,
- Estimated/maximum amounts of NSP funds per unit and number of units,
- Financial considerations (loan, grant, reimbursement process, etc.),
- Responsibility for rehabilitation, if required,
- Eligible purchasers/tenants, affordable rents, continued affordability,
- Deadlines for completion, disposition procedures,
- Financial records,
- Recordkeeping and documentation requirements; see especially 570.506(h) for developers.

Ineligible Acquisitions and Subsequent Participation

If a participant has acquired a property before meeting all the requirements above, the building is generally considered ineligible for NSP acquisition assistance under Eligible Use B because it is no longer “foreclosed or abandoned”. However, acquisition is an option for activities identified under Eligible Use E and if the grantee planned to rehabilitate the home, the grantee (or Third Party Entity, with grantee approval) may eligibly use NSP funding for financing and rehabilitation (if granted an Exception by HUD)