

NSP RFQ Frequently Asked Questions & American Recovery and Reinvestment Act of 2009 (ARRA) Notice of NSP Changes

Frequently Asked Questions - February 18, 2009

Question: *An applicant indicates that they want to explore rehabilitating a property that is blighted. The property is also currently occupied by tenants. There is no eligible NSP activity for a blighted property except “clearance of blight,” correct? And then the property could be redeveloped under the use “Redevelop demolished or vacant properties,” correct?*

Answer: **Yes, demolish blighted structures – Eligible Use D. Yes**

Question: *One of the eligible activities under the Eligible Use “Redevelop demolished or vacant properties” is relocation. Is it possible to propose two concurrent uses with the corresponding activities for a blighted property and relocate those families under E and clear the blighted property under D concurrently? Or would the property have to be purchased at a discount and redeveloped under B?*

Answer: **Yes the concurrent use of the different eligible uses of NSP is possible. A grantee could demolish a blighted property under eligible use D, and undertake the redevelopment, including the relocation activity, under Eligible Use E. This scenario only applies to blighted property**

Alternatively, an abandoned or foreclosed upon property could be purchased, at a discount, under Eligible Use B, families relocated, and property rehabbed as eligible activities under B. [Clarified by Regional HUD Office via e-mail]

Question: *What is the definition of vacant property under Eligible Use E?*

Answer: **A vacant property under Eligible Use E can either be vacant land or vacant buildings on the land. [Clarified by Regional HUD Office via e-mail]**

Further guidance indicates the following additional conditions in which vacant land can be considered eligible for NSP activities. In order for a property to be “redeveloped” under Eligible Use E, it must have been previously developed and is now vacant. Raw land would not be eligible for redevelopment. It will be up to the grantee to demonstrate that the property had been previously developed. Previous redevelopment could include vacant buildings or infrastructure improvements such as roads, water, sewer, power lines, etc. However, land that has been farmland, open space, wilderness, etc. would not be eligible for redevelopment. The Department has not imposed any specific standard on how long a property has to be vacant in order to qualify for redevelopment under Eligible Use E; grantees should exercise reasonable judgment in this area. [Reference HUD FAQ on Redevelopment; posted 11/20/08]

Question: *In meeting the 25% set-aside for low-income housing (50% AMI or below) could a blighted property that was then rehabilitated be used to meet this requirement or must the NSP funds, to meet*

the set-aside requirement, be used for the purchase or redevelopment of abandoned or foreclosed homes or residential properties.

Answer: To count towards the 25% set aside for low-income housing (50% AMI or below) the NSP funds would have to be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties. If the blighted property is also an abandoned or foreclosed upon home or residential property it could count towards the 25% set-aside. [Reference HUD FAQ on Prorating of NSP Funds/Posted 11/19/08][Additionally clarified by Regional HUD office via e-mail]

Question: *How many project forms and activity forms will be necessary for this application?*

Answer: Each applicant's proposed NSP Program will likely be different. All applicants will want to set out their entire requested NSP allocation on the NSP Program Information By Activity forms. If several Eligible Uses/Eligible Activities are proposed, applicants will want to include a Program Information sheet for each Eligible Use and detail the one or more activities they plan to undertake under each proposed use. It is possible that if an applicant is proposing one use with several eligible activities within that one use that only one form would be necessary. For agencies who propose to develop a broad-based NSP program that encompasses all eligible uses, the applicant would need to complete several NSP Program Information By Activity forms.

If specific projects are proposed, applicants will want to breakout the specific project by Eligible Uses/Eligible activities on the NSP Project Information sheet. This is an optional sheet for those projects that are "shovel ready" with known costs, known activities, known location(s), and performance measures. Additional points will be awarded if project level detail is submitted during the RFQ process. For applicants who do not know detailed information at the project level in the RFQ process, this form will be developed for specific projects as the projects are developed and will be used to determine "substantial progress" six months from grant award.

Question: *What constitutes a "public facility" under NSP?*

Answer: A public facility is defined under CFR 24.570.201 (c) as: *Facilities designed for use in providing shelter for person having special needs are considered public facilities. Such facilities include shelters for the homeless; convalescent homes; hospitals nursing homes; battered spouse shelters; half-way houses for run-away children; drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. Facilities shall be open for use by the general public during all normal areas of operation.*

Applicants will want to note that developing a "public facility" through NSP, even if the facility is targeted to serve individuals at or below 50% AMI, cannot be used to meet the 25% income targeting mandated in the NSP Regulation.

Question: *Where is the HDP workbook located?*

Answer: The HDP workbook is posted on the NSP web page and is adapted for the NSP program.

Question: *For mixed income projects, with some units above the 120% AMI; how should those units be treated in the NSP application?*

Answer: For those units, the units should be identified as “market rate units.” For applicants proposing using NSP for a portion of the funding for a large, mixed income project, applicants will want to carefully review the NSP guidance on *Prorating NSP Funds* provided in the HUD FAQs.

Question: *We have several scenarios under consideration, could you tell us if these activities would be eligible and if we’ve got the activities designated into the correct category?*

Scenario 1:

- Purchase a single family or multi-family building with significant deterioration and/or code violations (but not foreclosed on, i.e., a “blighted property” only.) (E)*
- Demolished blighted structure (D)*
- Construct new rental housing on lot (E)*

Answer:

Correct uses. Eligible activities under Use (D) Demolish Blighted Structures would be: Clearance. Eligible activities under Use (E) would be: acquisition and new housing construction.

Keep in mind that this project cannot be used to meet the 25% income targeting for 50% AMI or below. Keep in mind that the changes to the NSP regulation via ARRA mandates that no more than 10% of a state’s NSP allocation be spent on demolition activities under uses C & D. ARRA mandates that grantees may not refuse to lease or sell a dwelling unit in housing to a Section 8 (Housing Choice Voucher) participant.

Scenario 2:

- Purchase any existing residential structure (single family home, duplex, tri-plex, four-plex, five-plex, etc.) that has been foreclosed on but is not necessarily “blighted.” (B)*
- Renovate the structure as new affordable rental unit(s) (B)*

Answer: Correct. Applicants will want to remember that foreclosed upon residential structures must be purchased at a discount of no less than 5% for any one property and an aggregate discount of 15% over the agency’s total NSP program portfolio. An appraisal that sets the market value of the property from which the discount is calculated must be completed within 60 days of a final offer to purchase. NSP also requires that an environmental review be completed for every activity before funds are committed or spent. Changes to the NSP regulation via ARRA mandates that grantees may not refuse to lease or sell a dwelling unit in housing to a Section 8 (Housing Choice Voucher) participant.

Scenario 3:

- Purchase any existing residential structure (single family home, duplex, tri-plex, fourplex, five-plex, etc.) that has NOT been foreclosed on that poses significant rehab challenges (its original design lacks defensible space and enables criminal activity, it’s old and reaching the end of its useful life, it fails to meet major modern energy or safety codes, and/or it will cost more to rehab and maintain than redevelop and maintain; may not meet “blighted” standard, but is older, in poor shape, and generally is not economically worth rehabbing in light of a greater community goal of reducing density and replacing with quality new development meeting modern code requirements (B) or (E)*

-Demolish the property (D) Can such property be demolished with NSP funds and if so under what category? Only if it qualifies as blighted?
-Construct new rental housing on lot. (E)

Answer: The property described above can only be purchased, at a discount, and rehabbed under Eligible Use B if it has been abandoned or foreclosed upon. The property could only be demolished under Eligible Use D and redeveloped under Eligible Use E if there was a determination that the property was “blighted.” Purchase of existing residential structures that have not been foreclosed upon or abandoned is not an eligible NSP use. Redevelopment under E is only possible for demolished or vacant properties.

All projects will comply with a minimum property rehabilitation or inspection standard. For redevelopment or substantial rehabilitation, the inspection standards of the AHFC GOAL Program will apply which would allow a foreclosed property to be redeveloped under Eligible Use (B).

A property may be “blighted” and eligible for redevelopment under (E). The definition used for blighted is 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 (continuous and/or multiple code violations). AHFC reserves the right to inspect a property that is proposed to be blighted to determine whether the property meets the national standard. All blighted properties shall be inspected by a qualified inspector and a written report submitted that confirms that the property is blighted prior to beginning the demolition of the structure.

The construction of new rental housing is an eligible activity under the NSP Eligible Use (E): Redevelop demolished or vacant properties.

Scenario 4:

- Purchase a property without a permanent residential structure (i.e. vacant/unimproved land) (E)
-Construct new rental housing on vacant lot (E)

Answer: The redevelopment of vacant properties is Eligible Use E and new housing construction is an eligible activity under this use. In order for a property to be “redeveloped” under Eligible Use E, it must have been previously developed and is now vacant. Raw land would not be eligible for redevelopment. It will be up to the grantee to demonstrate that the property had been previously developed. Previous redevelopment could include vacant buildings or infrastructure improvements such as roads, water, sewer, power lines, etc. However, land that has been farmland, open space, wilderness, etc. would not be eligible for redevelopment. The Department has not imposed any specific standard on how long a property has to be vacant in order to qualify for redevelopment under Eligible Use E; grantees should exercise reasonable judgment in this area. [Reference HUD FAQ on Redevelopment; posted 11/20/08]

Question: What is the meaning of “direct service projects” under 1.6.1 Applicant Eligibility?

Answer: The intent of the language under “1.6 Eligible applicants; 1.6.1 Municipalities or units of local government who plan to complete direct service projects”; is to allow units of local government or Municipal government to participate and partner with other eligible applicants to develop viable

direct service projects in their communities, but not have Municipalities compete directly for NSP funds to administer and distribute which would add an additional layer of local regulation and/or an additional competitive process. Due to the short timeframe imposed by HERA, many of the initial comments received by potential NSP applicants indicated that they desired to apply directly to AHFC for NSP funds. AHFC encourages applicants to work with their respective local governments and Municipalities to develop projects that meet local needs.

Question: *Under Section 1.7.27 of the RFQ it states URA requirement noted at 49 CFR applies to NSP. If NSP is combined with HOME or CDBG, the one for one unit replacement will apply. URA cannot be provided to individuals in a blighted structure as an NSP activity. Does this mean that if we purchase a blighted property (no HOME or CDBG funds being used) that the URA requirements do not apply OR does it mean that we need to fund URA requirements from another source of funds other than NSP?*

Answer: Concurrent uses are possible. A grantee would demolish a blighted property under eligible use D, and undertake the redevelopment, including the relocation activity, under Eligible Use E. This scenario only applies to a blighted property. You will want to refer to the new provisions under ARRA that specifically address additional applicable provisions and protections afforded to tenants.

Question: Does a subrecipient need to be a non-profit?

Answer: Page 8 of the RFQ limits the eligible applicants to: Municipalities or Units of local government who plan to complete direct service projects; regional housing authorities; non-profit organizations; tribal organizations; any partnerships or joint ventures of the above-noted applicants; and community housing development organizations.

NOTE: Questions with regard to “Program Income” have not been addressed since the “Program Income” provisions in HERA were repealed.

American Recovery and Reinvestment Act of 2009 (ARRA)

Notice of NSP Changes

ARRA was signed by President Obama on February 17, 2009. This Act is a broad-based economic stimulus package.

An additional \$2,000,000,000 nationwide has been allocated for the Neighborhood Stabilization Program to remain available until September 30, 2010. Funding will be allocated by competitions for which eligible entities shall be States, units of general local government, and nonprofit entities or consortia of nonprofit entities, which may submit proposals in partnership with for profit entities. In selecting grantees, the Secretary of Housing and Urban Development shall insure that the grantees are in areas with the greatest number and percentage of foreclosures and can expend funding within the period allowed under this heading. Additional award criteria for the competitions will include demonstrated grantee capacity to execute projects, leveraging potential, concentration of investment to achieve neighborhood stabilization, and any additional factors determined by the Secretary of HUD. The Secretary may establish a minimum grant size and shall publish criteria on which to base competition for any grants awarded under this heading not later than 75 days after the enactment of ARRA and applications shall be due to HUD not later than 150 days after the enactment of ARRA. For applicants who are interested in applying directly for the NSP funds, AHFC encourages applicants to begin to prepare to apply. AHFC, at this juncture, has no intent to apply for additional NSP funds.

Additionally, several changes have been made to the Housing & Economic Recovery Act of 2008 with the passage of ARRA. HERA provided funds for the Neighborhood Stabilization Program. Several of the changes in ARRA may impact NSP RFQ applicants. Although federal agencies have not issued program regulations, the following summary has been developed to assist applicants who may need to revise their NSP RFQ application as a result of the new provisions. Applicants are encouraged to become familiar with Title XII of ARRA as the following information is a short summary of the changes intended to help applicants determine whether they will need to revise their NSP RFQ response and is not intended to be a full recap of the provisions within the Act. Major additions/changes are underlined.

- 1) The Program Income provisions of HERA under Section 2301(d)(4) have been repealed.
- 2) Section 2301(c)(3)(c) has been amended to read, "establish and operate land banks for homes and residential properties that have been foreclosed upon."
- 3) That funding used for Section 2301(c)(3)(E) shall be available only for the redevelopment of demolished or vacant properties as housing.
- 4) That no amounts made available may be used to demolish any public housing.
- 5) A grantee may not use more than 10% of its grant under this heading for demolition activities under Section 2301(c)(3)(C) and (D) unless the Secretary determines that such use is an appropriate response to local market conditions.
- 6) A grant recipient may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under Section 8 (Housing Choice Voucher Program) of the United States Housing Act.
- 7) A grantee may use up to 10 percent of the funds provided under this heading for grantees for the provision of capacity building of and support for local communities receiving funding under Section 2301.
- 8) The Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation or the use of funds except for requirements related

to fair housing, nondiscrimination, labor standards and the environment, upon a finding that such a waiver is necessary to expedite or facilitate use of such funds.

- 9) That in the case of any acquisition of a foreclosed upon dwelling or residential real property after the date of enactments with any amounts made available under ARRA or HERA, the initial successor in interest in such property pursuant to the foreclosure shall assume such interest subject to: (1) the provision by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure: (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit, subject to the receipt by the tenant of the 90-day notice or (B) without a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice. For any proposed NSP acquisition that includes tenants in residence, applicants will need to carefully review the full provisions under Section XII of ARRA with regard to tenancy, applicability of current lease, and the continuation of a Section 8 HAP contracts for Section 8 participants.