

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. 5321-N-03]**

**Notice of Change in Definitions and Modification to  
Neighborhood Stabilization Program (NSP)**

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

**ACTION:** Notice.

**SUMMARY:** On October 6, 2008, HUD published a notice advising the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and waivers granted under Title III of Division B of the Housing and Economic Recovery Act (HERA) of 2008, which established the NSP. On June 19, 2009, HUD published a bridge notice advising the public of substantive revisions and a number of non-substantive technical corrections to the October 6, 2008, notice, primarily as a result of changes to NSP made by Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”) (Pub. L. 111–005, approved February 17, 2009).

Today’s notice implements a program change resulting from an amendment to HERA made by the Helping Families Save Their Homes Act of 2009 (Public Law 111-22, approved May 20, 2009) (HFSHA), and which change was made retroactive to the date of enactment of HERA – July 30, 2008. This notice also advises of changes to the October 6, 2008, notice’s definitions for “Abandoned” and “Foreclosed” property to assist in better targeting NSP assistance for the purchase, rehabilitation, or redevelopment of abandoned and foreclosed properties.

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. FAX inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Title III of Division B of HERA (Pub. L. 110–289, approved July 30, 2008) appropriated \$3.92 billion for emergency assistance for the 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 considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP). HERA authorizes the Secretary to specify alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974 (the HCD Act) except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting the use of grant funds.

On October 6, 2008 (73 FR 58330), HUD published a notice entitled “Notice of Regulatory Waivers Granted to and Alternative Requirements for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008.” This notice advises the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and waivers granted. On June 19, 2009 (74 FR 29223), HUD published

a bridge notice which advised the public of substantive revisions and several non-substantive technical corrections to the October 6, 2008 notice, primarily as a result of changes to NSP made by Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-005, approved February 17, 2009) (Recovery Act).

Today's notice advises the public of two definition changes to the October 6, 2008 publication, based on the experiences of grantees in implementing the program and designed to increase the effectiveness of the program and speed its implementation. The effect of these changes will be to broaden the inventory of eligible properties, increase grantee capacity, and to reduce regulatory friction points affecting the speed of the program. NSP grantees may apply the new definitions as of the date of submission of their Substantial Amendment and Action Plan to HUD, regardless of the current status of acquisition, redevelopment or disposition activities already undertaken. Note that NSP assistance may only be provided to eligible activities carried out in compliance with all applicable NSP program requirements, including preparation and submission of an amendment to the initial Substantial Amendment to implement certain program adjustments. Additionally, this notice advises of a program change contained in section 105 of HFSHA, which affects those states receiving the minimum grant of \$19.6 million in NSP funding.

## **II. This Notice – Changes to NSP Notice**

HUD has determined that the following definition changes and alternative requirements are necessary to expedite the use of these funds for their required purposes.

### **A. Definitions of abandoned and foreclosed**

HUD determined that the definition of "Abandoned" on page 58331 of the NSP notice is too restrictive such that NSP funds are in some cases prevented from being employed as

contemplated by the HERA. HUD has received many comments from grantees and other interested parties that the current definition limits the opportunities to acquire properties in a strategic and timely manner. For example, the requirement that the property has been vacant for at least 90 days leaves out properties abandoned by owners, but where tenants are still in place. This then precludes grantees from the opportunity and ability to assist these properties with NSP funds, which would in fact protect the tenants that may be occupying such properties. This limitation has been determined to be a substantial barrier to preservation of existing affordable housing. Some comments received by HUD pointed out that abandonment predictably occurs when code enforcement in a high risk market is not followed up with a property acquisition strategy, and that abandonment is a function of a weak housing market in which residential units sell for substantially less than their replacement value. To provide grantees with greater flexibility in determining which properties to acquire, and greater opportunity to acquire properties in a strategically timely manner, HUD is amending the definition of “Abandoned” in the notice. HUD’s amendments are directed only to identifying program-specific eligibility criteria for using NSP funds to assist abandoned properties. These amendments should not be construed to supersede any state, local or tribal legal proceedings that may govern abandoned properties, as such term may be defined under state, local or tribal law, or any protection rights available to property owners or tenants under federal, state, local or tribal law.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C.4601)(URA) applies to the acquisition of real property for a Federally-funded program or project and also when persons are displaced as a direct result of acquisition, rehabilitation or demolition for a Federally-funded program or project. Property acquisitions which satisfy the applicable requirements of the URA regulations at 49 CFR 24.101(b)(1)-(5),

may be considered voluntary, whereas acquisitions subject to the threat and use of eminent domain are considered involuntary and the acquisitions are subject to the full real property acquisition requirements of 49 CFR part 24, subpart B. Typically tenant-occupants displaced in connection with voluntary acquisitions are eligible for URA relocation assistance, whereas owner-occupants are not. In cases of an involuntary acquisition, both owner-occupants and tenant-occupants are eligible for URA relocation assistance. NSP grantees and subrecipients should ensure their activities are in compliance with all applicable URA acquisition and relocation requirements. NSP funds may be used to provide URA permanent and temporary relocation assistance as provided in 24 CFR 570.201(i). This includes permanent and temporary relocation assistance for eligible persons displaced by projects assisted with NSP funding.

Grantees need to be particularly careful when acquiring properties within the newly expanded definition of abandoned which now includes properties subject to code-enforcement actions. For instance, if a grantee has the power of eminent domain and a governmental subrecipient or contractor of that grantee uses NSP funds to acquire a property with a serious code enforcement deficiency, the grantee will likely need to approach the acquisition as an involuntary acquisition under the URA, subject to the full real property acquisition requirements of 49 CFR part 24 subpart B. For property acquisitions by other NSP-assisted entities, such as a non-governmental subrecipient, private developer, or homebuyer, the grantee is advised to carry out due diligence to ensure that prohibited coercion of the seller is in no way involved in the transaction. For example, a unit of government that has the power of condemnation and code enforcement, and provides funds to a non-profit to purchase properties condemned or deemed uninhabitable by that unit of government may give the property owner the perception that condemnation or eminent domain action might be used coercively to enable a subrecipient to buy

the property. Also illustratively, a case in which a city initiates a redevelopment project, selects the developer, controls the developer's activities by contract, commits itself to acquire by eminent domain any property that the developer fails to acquire through negotiation, and provides financing for the acquisitions, may be viewed as jointly “undertaken” by the city and the developer for acquisition and relocation purposes under the URA. The URA regulations at 49 CFR 24.102(h) prohibit agencies from advancing the time of condemnation, deferring negotiations, or condemnation or the deposit of funds with the court, or from taking any other coercive action to induce an agreement on the price to be paid for a property.

According to commenters, the definition of “Foreclosed” on page 58331 is very clear, but not a good match for market conditions in many areas. HUD has received numerous expressions of concern from grantees and other interested parties that the current definition needs to be modified to permit greater flexibility in addressing local market conditions. The definition limits a grantee’s ability to intervene strategically when a lender initiates but does not complete foreclosure, or where a default is allowed to linger. Further, many lenders are transferring properties to aggregators or servicers, which then arrange for final disposition. In some of these cases, current policy does not consider the properties to retain their foreclosed status after title is transferred to the aggregator or servicer. (By “intermediary aggregators and servicers” HUD does not mean “investors.” An aggregator or servicer will typically limit the resale price to acquisition plus a modest servicing fee; such organizations are not investors seeking to maximize the return on their capital.) For the same reasons that HUD is amending the definition of “Abandoned,” it is amending the definition of “Foreclosed.” To wait until foreclosure has been completed, as “foreclosed” was originally defined in the NSP notice, only allows the properties to further deteriorate and the neighborhoods in which such properties are located to further suffer

from these deteriorating conditions, making redevelopment harder and more time consuming to do. As is the case with the amendments to the definition of “Abandoned,” the amendments to “Foreclosed” should not be construed to supersede or affect in any way state, local or tribal laws governing foreclosures or any protection rights available to property owners or tenants under federal, state, local, or tribal law.

The new definition of foreclosed applies the term “current delinquency status”. This indicates the number of days (e.g., 30, 60, 90) the borrower is contractually past due. NSP grantees will use the Mortgage Banker Association (MBA) Delinquency Calculation Method to determine the current delinquency status of a mortgage. Under the MBA method, a loan would be considered delinquent if the payment had not been received by the end of the day immediately preceding the loan’s next due date (generally the last day of the month which the payment was due). Using the example above, a loan with a due date of August 1, 2009, with no payment received by the close of business on August 31, 2009, would have been reported as delinquent in September. From September 1 to September 30, 2009, the mortgage’s current delinquency status would be 30 days. On October 1, 2009, the mortgage’s current delinquency status would become 60 days.

## **B. Implementation of Public Law 111-22 for Certain States**

Section 105 of HFSHA amends section 2301(c) of HERA (42 U.S.C. 5301 note) to allow those states receiving only the minimum NSP allocation of \$19.6 million and that have NSP funds remaining after distributing in accordance with the priority established in section 2301(c)(2) of HERA to distribute those remaining funds to “areas with homeowners at risk of foreclosure or in foreclosure without regard to the percentage of home foreclosures to such

areas.” Section 105 of Public Law 111-22 affects the following states: Alaska, Arkansas, Delaware, Hawaii, Idaho, Maine, Montana, North Dakota, Nebraska, New Hampshire, New Mexico, Oregon, Puerto Rico, Rhode Island, South Dakota, Utah, Vermont, West Virginia and Wyoming.

States submitted a substantial amendment for NSP to their 2008 Annual Action plan to propose uses for the NSP funds, referred to herein as the “NSP plan”. The NSP plan included needs data identifying the geographic areas of greatest need and a narrative describing how the NSP funds would be distributed to those areas of greatest need in accordance with section 2301(c)(2) of HERA. Section 105 of HFSHA now allows states to re-program NSP funds to additional areas with homeowners at risk of foreclosure or in foreclosure without regard to the percentage of home foreclosures in such areas if they have fulfilled the requirements of section 2301(c)(2) of HERA. Eligible states, those that only received \$19.6 million in NSP funds, that wish to take advantage of this option, must provide a substantial amendment to their NSP plan. The amendment must contain several elements, including the state’s explanation of how it has fulfilled the requirement of section 2301(c)(2), distributing funds in a manner that gives priority to areas with greatest need, as outlined in the NSP plan.

A state may define program terms under the authority of 24 CFR 570.481(a) and will be required to define certain terms if it chooses to submit a substantial amendment. States will be given maximum feasible deference in accordance with 24 CFR 570.480(c) in matters related to the administration of their programs.

This amendment will not be subject to HUD approval, unlike the NSP plan. States that plan to amend their NSP plan must follow the alternative requirements found in section II.B.4.b. of the October 6, 2008, (73 FR 58330) notice as amended by the June 19, 2009, notice (74 FR

29223). The state will submit a copy of the substantial amendment to the HUD field office when the citizen participation is complete. Although the amendment is not subject to approval, HUD will monitor grantees to ensure proper implementation of the substantial amendment pursuant to section 105 of HFSHA.

HUD reminds grantees of the statutory deadline to obligate all NSP funds within 18 months from the date that HUD signed the agreement with the state. This deadline does not change for those eligible states that choose to amend their NSP plan pursuant to this notice. Therefore, if a state plans to amend its NSP plan pursuant to this notice, it is in the state's best interest to develop the amendment as soon as possible.

Except as described in this notice, the October 6, 2008, notice, and the June 19, 2009, notice, the statutory and regulatory provisions governing the Community Development Block Grant (CDBG) program including those at 24 CFR part 570, subpart I, shall continue to apply to the use of these funds. The modification pursuant to section 105 of HFSHA provides for no changes to the NSP eligible uses and corresponding CDBG eligible activities, other targeting requirements (e.g. the 25 percent set-aside), timeframes for obligation or expenditure or any other provision not explicitly annotated in this notice. The environmental provisions of 24 CFR part 58 remain in effect and funds cannot be drawn down until there is an approved Request for Release of Funds.

### **III. NSP Amendments**

The substantive revisions made by this notice are as follows. (The Federal Register page number identifies where the language to be revised can be found in the October 6, 2008, notice.)

#### Definition Changes

1. The definition of “Abandoned” on page 58331 is revised to read as follows: “*Abandoned.* A home or residential property is abandoned if either a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state, local or tribal law or otherwise meets a state definition of an abandoned home or residential property.”

2. The definition of “Foreclosed” on page 58331 is revised to read as follows: “*Foreclosed.* A home or residential property has been foreclosed upon if any of the following conditions apply: a) the property’s current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or b) the property owner is 90 days or more delinquent on tax payments, or c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, contractor, subrecipient, developer, or end user.”

3. Those states receiving only the minimum NSP allocation of \$19.6 million and that have NSP funds remaining after distributing in accordance with the priority established in section 2301(c)(2) of HERA may distribute those remaining funds to “areas with homeowners at risk of foreclosure or in foreclosure without regard to the percentage of home foreclosures to such areas.” States that choose to exercise this option must provide a substantial amendment to their NSP Plan.

Implementation of Public Law 111-22: Contents of the Substantial Amendment to the NSP Plan for States

1. General information about “fulfilled requirement of section 2301(c)(2)”:
  - a. Provide the original summary needs data identifying the geographic areas of greatest need in the grantee’s jurisdiction submitted in the NSP plan;
  - b. Define “fulfillment” in the context of section 2301(c)(2)
  - c. Explain how funds were distributed in a manner that met the requirements of section 2301(c)(2) of HERA, i.e., the state gave priority emphasis and consideration to the areas of greatest need, including those with the greatest percentage of home foreclosures, the highest percentage of homes financed by a subprime mortgage loan, and identified by the state or unit of general local government as likely to face a significant rise in the rate of home foreclosure. Provide documentation in support of this explanation.
2. General information about “remaining funds”:
  - a. Define “remaining funds”;
  - b. Detail the calculation methodology. The calculation of remaining funds may be performed on an area-by-area basis. In this manner, the state does not need to demonstrate that the requirements of section 2301(c)(2) have been met in all areas before the remaining amounts can be calculated, so long as funds have been programmed to meet the requirements of 2301(c)(2) in all areas.;
  - c. List the dollar amount of remaining funds.
3. Designation of additional area(s):
  - a. Define “Areas with Homeowners at Risk of Foreclosure or in Foreclosure”
  - b. Delineate additional area(s) for the receipt of remaining NSP funds; include specific data sources to support that these area(s) contain homeowners at risk of

foreclosure or in foreclosure.

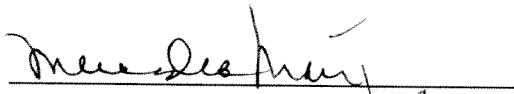
- c. Describe how the remaining funds will be distributed to additional area(s);
4. Information by activity describing how the state will use the remaining funds, identifying:
- a. the eligible use of funds under NSP;
  - b. the eligible CDBG activity or activities;
  - c. the area(s) that will be served with the remaining funds;
  - d. the expected benefit to income-qualified persons or household area(s);
  - e. appropriate performance measures for the activity (e.g. units of housing to be acquired, rehabilitated, or demolished for the income levels represented in DRGR, which are currently 50 percent of area median income and below, 51 to 80 percent, and 81 to 120 percent);
  - f. the amount of funds budgeted for the activity;
  - g. the name and location of the entity that will carry out the activity; and
  - h. the expected start and end dates of the activity.
5. A description of the general terms under which assistance will be provided, including:
- a. If the activity includes acquisition of real property, the discount required for acquisition of foreclosed-upon properties;
  - b. Range of interest rates (if any);
  - c. Duration or term of assistance;
  - d. Tenure of beneficiaries (e.g., rental or homeownership); and
  - e. If the activity produces housing, how the design of the activity will ensure continued affordability; and

- f. If the funds used for the activity are to count toward the requirement at section 2301(f)(3)(A)(ii) to provide benefit to low-income persons (earning 50 percent or less of area median income).
6. Information on how to contact grantee program administrators, so that citizens and other interested parties know who to contact for additional information.

**Finding of No Significant Impact**

A Finding of No Significant Impact (FONSI) 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). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Dated: ~~APR~~ 2 ~~2010~~

  
Mercedes M. Márquez  
Assistant Secretary for Community  
Planning and Development

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