

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR- 5321-N-04]

**Notice of Definition Revision to Notice of Fund Availability (NOFA) for Fiscal Year 2009:
Neighborhood Stabilization Program 2 (NSP2) under the American Recovery
and Reinvestment Act of 2009; Change in Definitions**

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

ACTION: Notice.

SUMMARY: On May 4, 2009, HUD posted on its website a notice of funding availability (NOFA) for the NSP2. The NOFA announced the availability of up to \$1.93 billion appropriated by the American Recovery and Reinvestment Act for NSP2. The purpose of the program is to stabilize communities by providing funds for the purchase and redevelopment of foreclosed and abandoned homes and residential properties.

This notice advises of changes to the Appendix 1 definitions for “abandoned” and “foreclosed” property to assist in better targeting NSP2 assistance for the purchase, rehabilitation, or redevelopment of abandoned and foreclosed properties. This notice only affects NSP2 grants already awarded by HUD. This notice does not reopen the application period.

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

On May 4, 2009, HUD posted its NSP2 NOFA at www.hud.gov/nsp. The posting of the NOFA was announced through a Federal Register notice published on May 7, 2009 (74 FR 21377). The NSP2 NOFA announced the availability of approximately \$1.93 billion available in competitive grants authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, approved February 17, 2009). The purpose of the program is to stabilize communities by providing funds for the purchase and redevelopment of foreclosed and abandoned homes and residential properties. The NSP program (NSP1) was authorized by the Housing and Economic Recovery Act (Public Law 110-289, approved July 30, 2008) (HERA), and NSP2 was authorized by the amendment to HERA made by Title XII of Division A of the Recovery Act.

Following issuance of the NSP2 NOFA, the NOFA underwent certain revisions. A notice issued on June 11, 2009 clarified, among other things, how applicants are to meet the geographic targeting requirements. A notice issued November 9, 2009, revised the NSP2 NOFA to: (1) correct an inconsistency in the NSP2 NOFA regarding when the lead member of a consortium must enter into consortium funding agreements with consortium members; and (2) extend the deadline for submission of such agreements to January 29, 2010. A notice issued on January 21, 2010, specified the NSP2 NOFA deadline date for submission of consortium funding agreements. (See Federal Register notices at 74 FR 28715, 74 FR 58973 and 75 FR 4410, and HUD's website at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm>.)

II. This Notice - Changes to Definitions of Abandoned and Foreclosed

This notice announces that HUD is revising the definitions of “Abandoned” and “Foreclosed.”

HUD determined that the definition of “Abandoned” on pages 41 and 42 of the NSP2 NOFA is too restrictive such that NSP2 funds are in some cases prevented from being employed as contemplated by the Recovery Act and 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 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 Appendix 1. HUD’s amendments are directed only to identifying program-specific eligibility criteria for using NSP2 funds to assist abandoned properties. These amendments should not be construed to supersede any state or local legal proceedings that may govern abandoned properties, as such term may be defined under state or local law, or any protection rights available to property owners or tenants under federal, state, or local 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. NSP2 grantees and subrecipients should ensure their activities are in compliance with all applicable URA acquisition and relocation requirements. NSP2 funds may be used to provide 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 NSP2 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 42 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 NSP2 NOFA, 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 impact in any way state or local laws governing foreclosures or any protection rights available to property owners and tenants under federal, state, local or tribal law. An NSP2 grantee may apply these new definitions as of the effective date of its grant agreement, provided all NSP2 program requirements are met for assisted activities.

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.

Note that an NSP2 grantee must consult HUD prior to making an amendment to the program proposed in its application, as no amendment to an approved application may be made unless HUD rates the approved application as amended and it scores high enough to have been selected for funding under the NSP2 competition.

III. NSP2 NOFA Amendments.

For the reasons provided in this notice, HUD is making the following changes to the NSP2 NOFA:

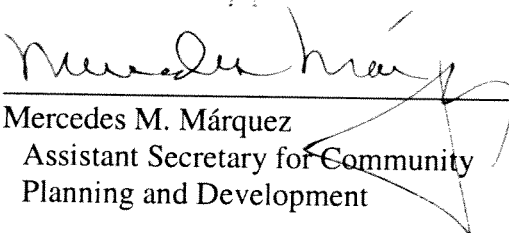
1. The definition of “Abandoned” on page 41 is revised to read as follows: “*Abandoned.* A home or residential property is abandoned if either a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or b) a code enforcement inspection has determined that the property is not habitable 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 or local law or otherwise meets a state definition of an abandoned home or residential property.”

2. The definition of “Foreclosed” on page 42 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, subrecipient, contractor, developer, or end user.”

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 2000


Mercedes M. Márquez
Assistant Secretary for Community
Planning and Development

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