

National Foreclosure Prevention and Neighborhood Stabilization Task Force

Outstanding NSP1 and NSP2 Issues

June 17, 2009

We, the undersigned organizations, are deeply committed to ensuring that the Neighborhood Stabilization Program (NSP) is as successful and impactful as possible. We know that HUD and Congress share this vision, and we are grateful for the statutory and regulatory changes made in the American Reinvestment and Recovery Act, the HUD NSP Notices of Funding Availability (NOFAs) issued in May and June of 2009, and the Bridge Notice issued last week. However, we have identified a number of outstanding regulatory changes that still need to be made. These changes are vital to the success of NSP and we ask that HUD and Congress act on them immediately.

Issues Specific to NSP2:

1. National Applicants: As currently constructed, the HUD NSP2 program NOFA makes it difficult for national and large regional organizations to submit funding applications that HUD will deem competitive. National and large regional nonprofit organizations have been working for the past year to establish efficient and scalable approaches to NSP activities that could increase NSP2's success. These important existing systems and solutions could be lost, given the NSP2 NOFA requirements, despite the fact that the NSP2 NOFA correction provided some additional flexibility and encouragement for national applicants. These problems can be overcome in either of two ways:
 - a. *Establish a set-aside*: The NOFA could be amended to explicitly enable national and large regional organizations to apply for a specific portion of the funds through a "set-aside." This competition would be based on the special assets that the applicants could deliver – e.g. financial resources designed to leverage NSP2 funds, access to foreclosed property, special expertise in the area of acquiring and assembling financing to redevelop properties and undertake direct development, and the organizations' visions as to how such an effort could be administered.
 - b. *Clarify rating factors for national and large regional applicants*: Alternatively, HUD could more clearly outline how an application would be scored under the current structure by clarifying its rating factors and their interpretation for national and large regional organizations. Organizations that will be using NSP2 funds to provide services and leveraged resources to support local programs should be given a more flexible opportunity to demonstrate that they will achieve positive results in the areas of Neighborhood Transformation, Energy Efficiency and Soundness of Approach without having to provide quantitative, area-based information for the entire country or region at the time of application.
2. Land Bank Capacity: Land banking is a relatively new national activity, and it will be very difficult for both national and local applicants to prove prior experience with this specific use as required by the NSP2 NOFA. Applicants proposing land banking activities should be allowed to demonstrate prior experience through similar activities, such as property acquisition, holding, maintenance, and/or disposition.

Issues Pertinent to both NSP1 and NSP2:

3. Loan Loss Reserves: It is important that NSP funds leverage other public, private and philanthropic funding, so the maximum beneficial impact can be achieved in distressed neighborhoods. As such, HUD NSP guidelines should permit the drawdown of sufficient NSP funds necessary to facilitate the use of loan loss reserve pools, as established in HERA, on a local, state and national basis. All loans generated from the capitalized reserve pools would remain subject to the NSP/CDBG rules. In addition, borrowers of loans backed by an NSP-funded loan loss reserve should not be considered subrecipients of NSP, and income and fees from loans backed by an NSP-funded loan loss reserve should not be considered program income.
4. Eligible Uses: HUD has determined that Eligible Uses A (financing mechanisms) and C (land banks) are only applicable to foreclosed properties, not all properties that are otherwise eligible for NSP funds. This narrow application of the original statute compromises the effectiveness of the program. HUD should broaden its interpretation of eligible properties, or the statute should be revised to clarify that financing mechanisms and land banks are to be used in support of the other eligible NSP activities.
5. Use of Funds for Non-Foreclosed Properties: HUD strictly interprets the HERA NSP statute by stating that vacant properties that have not been abandoned or foreclosed upon are not eligible to meet the 25% low-income set-aside requirement. This interpretation severely restricts the types of multi-family properties that can be acquired and rehabilitated for the lowest income group. HUD should amend its NSP1 and NSP2 Notices to explicitly allow vacant residential and non-residential properties to qualify for the 25% low-income set-aside. If HUD continues to assert that the statute prohibits such a regulatory amendment, it can revise its definition of "abandoned" in the notice such that abandonment is not tied to foreclosure proceedings.
6. Previously Acquired Properties: HUD has limited the eligibility of third-party acquisitions to those properties acquired after the date of submission of the NSP action plan (typically December 1st, 2008). The allowable date for these acquisitions should ideally be extended back to the enactment of HERA, or at least to the issuance of the NSP1 NOFA on October 6, 2008. A written agreement prior to acquisition should not be required between a grantee and a third party. Rather, a written agreement should be required only prior to the commitment of NSP funds.
7. Definition of Foreclosed: Properties should be considered foreclosed until they are rehabilitated and reoccupied.
 - a. The acquisition of properties by intermediaries using private funds, such as bulk purchasers or other third-party acquisition entities, should be permitted without negating the foreclosed status of the properties.
 - b. Environmental review requirements should adhere to the CDBG requirements that prohibit the commitment of funds or "choice-limiting action" prior to the completion of the environmental review, but which do not apply to prior acquisitions made with private financing.
 - c. Formal written clarification is required to confirm that other acquisition-related rules (e.g. purchase discount and appraisal) do not apply to projects purchased with private funds and that only receive NSP financing for rehabilitation.
8. Definition of Abandoned: Section 2301(c)(3)(B) of HERA allows NSP funds to be used for properties that have been "abandoned." The current HUD definition of "abandoned" is too

restrictive because of its strong connection to the foreclosure process and its requirement that a property be vacant for at least 90 days. This is extremely problematic in localities where the buildings have been abandoned by the owner, but rental tenants remain. Therefore, the definition of “abandoned” should be expanded to explicitly state that abandoned properties include those that have been functionally and financially abandoned by their owners, not necessarily by rental tenants.

9. Continued Affordability: It is necessary to clarify that “affordable rents” for NSP are not limited to the HOME rents as referenced in 24 CFR 92.252(a) (lesser of FMR or affordability for household at or below 65%AMI). It is also necessary to clarify that lease purchase tenants do NOT *have to* buy their home in 36 months (longer lease purchase periods are OK) and that the HOME rents as referenced in 24 CFR 92.252(a) do NOT apply if the home is not transferred to a homebuyer in 42 months. In both cases, affordable rents should be defined as: A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 120 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit.
10. Appraisals: There should be only one required appraisal, which should be obtained 60 days prior to the closing of the purchase transaction. This appears consistent with the proposal to allow a FIRREA-compliant appraisal in place of a URA-compliant appraisal.
11. Continued Affordability for Tenants of Owner-Occupied Properties: HUD is requiring that rents for small owner-occupied rental properties (2-4 units) must remain affordable for the specified affordability period. As a result, in addition to the affordability requirements placed on the homeowner, the owner must also impose rent restrictions and conduct ongoing income certifications for their tenants. This process can be burdensome on both the owner-occupant and the renters. The HOME regulations allow for a presumption of continued affordability for homeowners in certain markets, but this does not appear to apply to rental units. Therefore, HUD should not require ongoing income certifications for renters in small owner-occupied rental properties in areas where market rents, based on a market study, are expected to remain affordable to 120% of AMI.

The following members of the National Foreclosure Prevention and Neighborhood Stabilization Task Force endorse these recommended changes: