National Foreclosure Prevention and Neighborhood Stabilization Task Force

Outstanding NSP Issues

November 11, 2009

We, the members of the National Foreclosure Prevention and Neighborhood Stabilization Task Force, 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) and Bridge Notice issued in May and June of 2009. However, we have identified a number of outstanding regulatory and statutory 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.

Statutory Issues:

1. Vacant Properties and the 25% Very Low-Income Set-aside

Issue: Although NSP funds may be used for the purchase and redevelopment of vacant properties, HUD interprets the statute as saying that renting or selling these homes to very low-income households does not count toward the requirement that 25% of funds be spent on families with incomes below 50% of Area Median Income. HUD's strict reading of the statute is that only abandoned or foreclosed homes count toward satisfying the 25% requirement. At the same time, the most feasible way to achieve the 25% requirement in some communities is through the new construction or redevelopment of vacant multifamily properties on vacant properties, not all of which have gone through foreclosure proceedings.
Solution: Allow all eligible activities to qualify for the 25% set-aside for families with incomes below 50% of Area Median Income, as shown below.

> 2301 (f)(3)(A)(ii) not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used ~~for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used~~ to house individuals or families whose incomes do not exceed 50 percent of area median income.

2. Eligible Uses

Issue: 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.
Solution: The statute should be revised to clarify that financing mechanisms and land banks are to be used in support of the other activities eligible under NSP, as shown below.

> 2301 (c)(3) ELIGIBLE USES.—Amounts made available under this section may be used to—
>
> (A) establish financing mechanisms in support of activities eligible under subparagraphs (B) through (E), ~~for purchase and redevelopment of foreclosed upon homes and residential properties,~~ including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;
>
> (B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon in order to sell, rent, or redevelop such homes and properties;
>
> (C) establish and operate land banks for homes and residential properties in support of activities eligible under subparagraphs (B), (D), and (E) ~~that have been foreclosed upon~~;

(D) demolish blighted structures;

(E) redevelop demolished or vacant properties.

Regulatory Issues:

4. 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. Such a draw-down of funds to capitalize a loss reserve pool should be considered to meet HUD's definition of "obligate."

5. Time Limits on Acquiring Homes: Currently, HUD requires that all eligible homes be identified within 18 months. Grantees should be able to identify foreclosed homes as they come on the market, both before and after the 18-month deadline. Therefore, HUD should reconsider its current guidance and, rather, follow the precedent of the CDBG program, which allows funding of so-called single-family "pipeline" programs for which some or all properties have not been identified. The establishment of such pipeline programs should be considered to meet HUD's definition of "obligate."

6. Retention of Foreclosed Status: Properties should be considered foreclosed until they are rehabilitated and reoccupied. Therefore, foreclosed properties transferred within banks, from banks to bank subsidiaries, or from banks to nonprofit redevelopment agencies should be considered eligible NSP properties until they are returned to productive use.

7. 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 or financially abandoned by their owners, not necessarily by rental tenants.

8. Fees and Interest as Eligible Costs: Localities that are using leveraged capital, such as REO Capital Funds, should be able to consider associated fees and interest (and potentially principle) as eligible expenses for reimbursement under NSP. Such fees and interest should also be allowed as part of the calculation of the price of the home.

9. FHA-certified Secondary Mortgage Lenders: Nonprofits and other entities offering secondary mortgages to NSP homebuyers should not have to be certified FHA lenders. FHA should officially offer waivers to non-FHA-certified entities offering secondary mortgages through state and local NSP programs.