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Neighborhood Stabilization Program (NSP2) Under the American Recovery and Reinvestment Act

This document summarizes key provisions of the Neighborhood Stabilization Program (NSP2) under the American Recovery and Reinvestment Act of 2009. It also discusses NSP2 topics that are of particular interest to housing advocates. For details on eligibility, the application process, and reporting information for awardees, advocates should consult the Notice of Fund Availability (NOFA) for NSP2¹ and the correction² to this NOFA issued by HUD. Advocates should also review the General Section to HUD's FY2009 NOFAs.³

Basic Information About NSP2

The Housing and Economic Recovery Act of 2008 created the Neighborhood Stabilization Program (NSP1), which provided \$3.92 billion to states and certain local governments to mitigate the negative impact of foreclosures on communities.⁴ In 2009, President Obama signed the American Recovery and Reinvestment Act, which allocated an additional \$1.93 billion toward a second round of Neighborhood Stabilization Program funds.⁵ Referred to as NSP2, states, local governments and nonprofits can use the funds to buy foreclosed or abandoned homes to be rehabilitated, sold, or demolished in order to stabilize neighborhoods. Competitive applications for the funds must be submitted to HUD by July 17, 2009, and applicants must provide a 10-day public comment period.

NSP2 is a component of the Community Development Block Grant (CDBG) program. CDBG's primary objective is developing viable urban communities through decent housing, a suitable living environment, and economic opportunity.⁶ NSP2 is designed to help achieve this objective

¹ NOFA for NSP 2 under the American Recovery and Reinvestment Act (May 4, 2009), <http://www.hud.gov/recovery/nsp2-nofa.pdf> [hereinafter NOFA for NSP2].

² NOFA for NSP 2 under the American Recovery and Reinvestment Act; Correction (June 11, 2009), http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp2_correction_nofa.pdf.

³ 73 Fed. Reg. 79,548, 79,552 (Dec. 29, 2008).

⁴ For a detailed discussion of NSP1, see *HUD Issues Regulations Implementing the Neighborhood Stabilization Program*, 38 HOUS. L. BULL. 215 (2008).

⁵ American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

⁶ NOFA for NSP 2 at 5.

by preventing the further decline of home values in neighborhoods, and reducing or eliminating vacant and abandoned residential properties in targeted neighborhoods.⁷

NSP2 differs from NSP1 in several important ways:⁸

- Funds are distributed on a competitive basis.
- Non-profit organizations can be grantees.
- Vacant or demolished properties can be redeveloped only as housing.
- Demolition of public housing is prohibited.
- Recipients can use only 10 percent of the NSP2 award for demolition, unless HUD determines that the locality needs a greater share of funds for this purpose.
- NSP2 recipients may not refuse to lease a unit benefiting from NSP2 funds to an applicant based on his or her status as a Section 8 voucher holder.
- Funds can be used to establish land banks for all residential properties.

After HUD has evaluated all applications, it will notify applicants of any additional requirements. Applicants will be selected and funds distributed sometime after December 1, 2009.⁹ All NSP recipients must expend 50 percent of their award within two years of the date funds were available to the recipient, and 100 percent of the funds must be expended within three years.¹⁰

Advocates should also be aware that the Recovery Act set aside \$50 million for technical assistance (TA) grants to be awarded, on a competitive basis, to states, local governments, nonprofits, for-profits, and consortiums of organizations.¹¹ Of this funding, \$11.5 million will be for local TA activities and \$38.5 million will be for national and regional TA activities. HUD's General Counsel has stated that it will allow for-profit organizations to be grantees without partnering with non-profit organizations. NSP-TA applications were due June 8, 2009.

Who Can Obtain NSP Funding

States, local governments, nonprofits and consortia of nonprofit entities can apply for NSP2 grants.¹² A for-profit organization must create a consortium with a non-profit organization in applying for and carrying out the program.¹³

⁷ *Id.* at 6.

⁸ National Low Income Housing Coalition, Neighborhood Stabilization Program (NSP) 2, <http://www.nlihc.org/template/page.cfm?id=213>; Enterprise Community Partners, Changes to the Neighborhood Stabilization Program (NSP) in the NSP2 HUD Notice of Funding Availability, http://www.enterprisecommunity.org/public_policy/foreclosure_prevention/documents/summary_of_nsp_program_changes.pdf.

⁹ NOFA for NSP 2 at 32.

¹⁰ *Id.* at 68.

¹¹ See HUD, Notice of Funding Availability for Fiscal Year 2009 Neighborhood Stabilization Program Technical Assistance, <http://www.hud.gov/recovery/nsp-ta-nofa.pdf>

¹² NOFA for NSP 2 at 9.

¹³ *Id.* at 9-10.

Applicants must demonstrate that they have the capacity and experience to carry out the program.¹⁴ This means that applicants must have successfully carried out and completed a program eligible under NSP2 involving at least 75 units of housing between May 2007 and May 2009.¹⁵ Applicants must request at least \$5 million and return at least 100 abandoned or foreclosed homes back to productive use or mitigate their negative effects on the targeted communities.¹⁶

Applicants must also demonstrate geographic need, which is based on estimated numbers and percentages of foreclosures and vacancy rates. Data and instructions for calculating the geographic needs scores for an applicant's proposed target areas are available on HUD's website, <http://www.hud.gov/nsp>.¹⁷

HUD has stated that applicants who are not typical CDBG grantees but are capable of a high level of capacity (such as local transit boards and public housing authorities) are eligible to apply. HUD may be able to lower the number of properties that must be completed. National groups could be eligible if they work in a number of communities.

How NSP Funding Can Be Used

NSP2 funds can be used for:

- Establishing financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties.¹⁸
- Purchasing and rehabilitating abandoned or foreclosed homes and residential properties in order to sell, rent, or redevelop these homes and properties.
- Establishing land banks for homes and residential properties that have been foreclosed upon.
- Demolishing blighted structures.¹⁹
- Redeveloping demolished or vacant properties as housing.²⁰

NSP2 funds cannot be used for foreclosure prevention activities, demolition of structures that are not blighted, or purchase of properties that have not been abandoned²¹ or foreclosed.²²

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 14. ("As an initial indication that you have the ability to expend an NSP2 grant within the statutory deadlines, you must demonstrate that you have successfully carried out and completed activities eligible under this notice involving at least 75 units of housing...within the 24-month period immediately preceding the date of this NOFA." The NOFA is dated May 4, 2009.)

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 15.

¹⁸ These mechanisms include soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers. *Id.* at 58.

¹⁹ Under NSP2, recipients may not use more than 10 percent of NSP2 funds for demolition unless they request an exception from HUD. *Id.* at 20.

²⁰ NOFA for NSP2 at 57-58; *see also* HUD Community Planning & Development, Neighborhood Stabilization Program Grants, <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>.

²¹ A home is abandoned when foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made for at least 90 days, and the property has been vacant for at least 90 days. *See id.* at 42.

Programs must meet the following principles:

- Invest in programs and projects that will revitalize targeted neighborhoods and reconnect those targeted neighborhoods with the economy, housing market, and social networks of the community and metropolitan area as a whole.
- Rapidly arrest decline of targeted neighborhoods that have been negatively affected by abandoned or foreclosed properties.
- Ensure that at least 25 percent of the funds are used to purchase and redevelop abandoned and foreclosed properties to provide housing for individuals and families whose incomes do not exceed 50 percent of area median income.
- Invest in affordable housing that will remain desirable and affordable for the longest feasible period.
- Demonstrate that the project will optimize economic activity and the number of jobs created or retained, or that it will provide other long-term economic benefits.
- Integrate neighborhood stabilization programs with other federal policy priorities and investments, including energy conservation and efficiency, sustainable and transit-oriented development, integrated metropolitan area-wide planning and coordination, improvements in public education, and access to health care.
- Augment neighborhood stabilization programs with other firmly committed resources.
- Eliminate destabilizing influences, such as blighted homes.
- Set aggressive, but achievable, goals for outputs and outcomes.
- Ensure accountability for all programs, keep citizens actively informed, and provide all required NSP and Recovery Act reporting elements.²³

Additionally, projects must comply with Fair Housing and Civil Rights laws,²⁴ and improvements must be energy efficient and incorporate cost-effective sustainability.²⁵

Key Elements for Housing Advocates

This section summarizes several key issues of interest to housing advocates, including: (1) public comment period; (2) Section 3 requirements; (3) affordability requirements; (4) protections for Section 8 tenants; (5) demolition and conversion of affordable housing; (6) fair housing requirements; (7) limited English proficiency; (8) HUD counseling requirements; and (9) reporting requirements.

²² *Id.* at 58. “Foreclosed” is defined as the point that, under state or local law, the mortgage or tax foreclosure is complete. *See id.* at 42. A foreclosure is not considered to be complete until after the title for the property has been transferred from the former homeowner. *Id.*

²³ NOFA for NSP 2 at 3-5.

²⁴ *Id.* at 12.

²⁵ *Id.* at 13.

Public Comment Period

Applicants must publish the proposed uses of funds and target geography in the general news media and on the applicant's official website for at least 10 days to allow for public comment.²⁶ The application must be submitted together with a summary of the citizen comments received and the URL of the website where the plan is posted.²⁷ There is no requirement that applicants conduct public hearings. This may present difficulties for advocates who want to monitor the use of NSP2 funds, especially where applicants are entities that are not traditional CDBG grantees. Advocates should consider contacting recipients of NSP1 funds to determine whether they know which entities plan to apply for NSP2 funds.

The consolidated plan requirements at 24 C.F.R. part 91 are not applicable to NSP2 funds.²⁸

Compliance with Section 3

The purpose of Section 3 is to provide employment and other economic opportunities to low- and very-low income individuals residing in localities where HUD funds are expended.²⁹ NSP-funded projects must comply with Section 3 of the Housing and Urban Development Act of 1968,³⁰ ensuring "to the greatest extent feasible" that 30 percent of new hires are Section 3 residents, and that 10 percent of covered construction contracts and 3 percent of covered non-construction contracts go to Section 3 business concerns.³¹ Failure to comply with Section 3 may result in sanctions that limit a recipient's future ability to participate in HUD programs.³² There are several documents advocates should review regarding Section 3 obligations.³³

A project using NSP funds must also meet the objectives of the Housing and Community Development Act of 1974,³⁴ which includes financial accountability, local citizen participation and information, recipient selection of activities within broad federal policy parameters, and income targeting of beneficiaries.

²⁶ *Id.* at 44.

²⁷ *Id.* at 12-13.

²⁸ *Id.* at 41.

²⁹ 12 U.S.C. § 1701u(a)-(b) (2008).

³⁰ § 1701u; NOFA for NSP2 at 88, 90, 93; HUD, Economic Stimulus Funding and the Creation of Jobs, Training, and Contracting Opportunities (2009), http://portal.hud.gov/portal/page?_pageid=153,1&_dad=portal&_schema=PORTAL.

³¹ 24 C.F.R. § 135.30(b)-(c) (2008). For definitions of "Section 3 resident" and "Section 3 business concern," see 24 C.F.R. § 135.5 (2008).

³² Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs; Notice, 73 Fed. Reg. 79,548, 79,552 (Dec. 29, 2008).

³³ See *id.*; NOFA for NSP2 at 88, 90, 93; HUD, Economic Stimulus Funding and the Creation of Jobs, Training, and Contracting Opportunities (2009), http://portal.hud.gov/portal/page?_pageid=153,1&_dad=portal&_schema=PORTAL.

³⁴ 42 U.S.C. § 5301.

Affordability Requirements

All NSP2-assisted activities must benefit persons whose income does not exceed 120 percent of area median income (AMI).³⁵ Further, 25 percent of each grant must be used for residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of AMI.³⁶ NSP2 recipients must ensure, “to the maximum extent practicable and for the longest feasible term,” that NSP2-assisted properties remain affordable to individuals whose incomes do not exceed 120 percent of AMI.³⁷ Additionally, recipients must ensure, to the extent practicable, that those units housing individuals whose incomes do not exceed 50 percent of AMI remain affordable to those individuals.³⁸ In their NSP2 applications, recipients must define “affordable rents,” as well as the continued affordability standards and enforcement mechanisms that will apply to their NSP2 activities.

Protections for Section 8 Tenants

If NSP2 funds are used to acquire housing occupied by Section 8 tenants, the initial successor in interest is subject to the lease and to the housing assistance payments (HAP) contract.³⁹ A public housing agency that is unable to make payments under the HAP due to the owner’s rejection of the payments, the owner’s failure to maintain the unit, or the PHA’s inability to identify the owner, may use the payments for utilities that are the owner’s responsibility, or for the family’s moving costs.⁴⁰

NSP2 recipients may not refuse to lease a housing unit benefiting from NSP2 funds to a prospective renter because he or she is a Section 8 participant.⁴¹

Demolition or Conversion of Affordable Housing

NSP2 funds may not be used to demolish public housing.⁴² However, no such prohibition exists regarding other low- and moderate-income dwelling units. Further, recipients are not obligated to meet the requirements at 24 C.F.R. § 42.375 to provide one-for-one replacement of low- and moderate-income dwelling units demolished or converted in connection with NSP2-assisted activities.⁴³ As an alternative requirement to the one-for-one replacement provisions of 42 U.S.C. § 5304(d)(2)(A), recipients planning to demolish or convert low- and moderate-income units as a result of NSP2-assisted activities must identify all of the following in their applications: (1) the number of low- and moderate-income units expected to be demolished or converted; (2) the number of affordable units (made available to low-, moderate-, and middle-income households) expected to be produced; and (3) the number of units expected to be made

³⁵ NOFA for NSP2 at 25, 28.

³⁶ *Id.* at 25.

³⁷ *Id.* at 45.

³⁸ *Id.*

³⁹ *Id.* at 65; *see also* Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22 (S.896) (2009).

⁴⁰ NOFA for NSP2 at 65-66.

⁴¹ *Id.* at 67.

⁴² *Id.* at 20.

⁴³ *Id.* at 64.

available for households whose income does not exceed 50 percent of area median income. Applicants must also explain why, based on market conditions, they chose demolition of housing units versus preservation of the units.⁴⁴ Further, recipients may not use more than 10 percent of NSP2 funds for demolition unless they request an exception from HUD.⁴⁵

Recipients must comply with the relocation assistance provisions at 42 U.S.C. § 5304(d).⁴⁶ Recipients must develop and follow a residential anti-displacement and relocation plan.⁴⁷

Fair Housing Requirements

NSP2 recipients must affirmatively further fair housing by promoting fair housing rights and fair housing choice in NSP2-funded programs.⁴⁸ Further, they are subject to Section 504 of the Rehabilitation Act of 1973.⁴⁹ Governmental applicants must meet the fair housing requirements set forth at 24 C.F.R. part 570.⁵⁰ They must conduct an analysis of impediments (AI) to fair housing choice, take appropriate actions to overcome the effects of any impediments, and maintain records reflecting the analysis and related actions.⁵¹

Nonprofit applicants should become familiar with the AI prepared by the entitlement community covering the geography targeted in their applications.⁵² Further, nonprofit applicants must carry out NSP2 activities that further fair housing through design or construction that increases access for persons with disabilities, through language assistance services to persons with limited English proficiency, or through location of housing in a manner that provides greater housing choice or mobility for persons protected by the Fair Housing Act. Nonprofits must also solicit applications from persons who are not likely to apply for the housing without special outreach. Finally, they must maintain records regarding these efforts.

Limited English Proficiency

Recipients of NSP2 funds must take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency (LEP), pursuant to Title VI of the Civil Rights Act of 1964.⁵³ This may include providing language assistance services or ensuring that program information is available in appropriate languages for the geographic area targeted by the applicant. Further, applicants must be aware of LEP populations in the targeted areas.

⁴⁴ *Id.* at 24. The waiver of the federal obligation does not mean that local or state one-for-one requirements are extinguished.

⁴⁵ *Id.* at 20.

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 63, 87, 90.

⁴⁸ *Id.* at 74.

⁴⁹ *Id.* at 75.

⁵⁰ *Id.* at 33.

⁵¹ *Id.* at 87.

⁵² *Id.* at 74.

⁵³ *Id.* at 44; *see also* Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs; Notice, 73 Fed. Reg. 79,548, 79,552 (Dec. 29, 2008).

HUD Counseling Requirement

Recipients must require NSP2-assisted homebuyers to receive and complete at least eight hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan.⁵⁴

Reporting Requirements

Recipients must submit quarterly performance reports to HUD regarding the use of the funds, numbers of properties and housing units, and numbers of low- and moderate-income persons or households benefiting.⁵⁵ Recipients must prominently post these reports on their websites. Additionally, recipients must submit monthly expenditure reports until their expenditures are at least half the total NSP2 award. Monthly reports must also be submitted during the last three months of the NSP2 award period.

Additional Information on NSP2

Text in the Recovery Act: <http://www.nlihc.org/doc/NSP2-ARRA.pdf>

NSP 2 Notice of Fund Availability:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp2-nofa.pdf>

Correction to NSP 2 Notice of Fund Availability:

http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp2_correction_nofa.pdf

HUD's NSP2 Webpage:

www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm

Neighborhood Stabilization Program 2, May 14, 2009, 2:00pm - 4:30pm, Webcast, available at

<http://www.hud.gov/webcasts/archives/recoveryact.cfm>

Powerpoint Presentation by HUD:

http://portal.hud.gov/portal/page?_pageid=153,8006808&_dad=portal&_schema=PORTAL

NSP2 Frequently Asked Questions:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp2faq.pdf>

HUD, Economic Stimulus Funding and the Creation of Jobs, Training, and Contracting Opportunities (2009):

http://portal.hud.gov/portal/page?_pageid=153,1&_dad=portal&_schema=PORTAL

⁵⁴ NOFA for NSP 2 at 45-46.

⁵⁵ *Id.* at 71.

Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs; Notice, 73 Fed. Reg. 79,548, 79552 (Dec. 29, 2008).

Enterprise Community Partners, Summary of Application Requirements:

http://www.enterprisecommunity.org/public_policy/foreclosure_prevention/neighborhood_stabilization.asp

Enterprise Community Partners, Changes to the Neighborhood Stabilization Program (NSP) in the NSP2 HUD Notice of Funding Availability:

http://www.enterprisecommunity.org/public_policy/foreclosure_prevention/documents/summary_of_nsp_program_changes.pdf

NSP2 Summary by the National Low Income Housing Coalition:

<http://www.nlihc.org/template/page.cfm?id=213>