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Neighborhood Stabilization Program 3: Reviewing Your Jurisdiction's Action Plan

This document summarizes key provisions of the Neighborhood Stabilization Program (NSP3) under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹ Jurisdictions must develop an action plan for using their NSP3 funds and make the plan available for public comment, providing advocates an opportunity to weigh in on NSP3 spending. These action plans are due to the Department of Housing and Urban Development (HUD) on March 1, 2011. This document discusses NSP3 topics that should be of particular interest to housing advocates who are reviewing their jurisdiction's NSP3 action plan.

NSP3 Background

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.² The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 provided another \$1 billion in NSP funding, referred to as NSP3. These funds were allocated to every state and to selected governments according to a need-based distribution formula outlined by Congress. A list of jurisdictions that will receive NSP3 funds is available on HUD's website.³

Among other uses, state and local governments may use these funds to purchase or rehabilitate foreclosed or abandoned properties. Communities must allocate at least 25% of these funds to house families whose incomes do not exceed 50% of area median income. Congress treats the NSP3 funds as Community Development Block Grant (CDBG) funds. Therefore, the funds are subject to the obligation to affirmatively further fair housing, as well as Section 3 employment requirements and the Uniform Relocation Act (URA). Grantees must submit Quarterly Performance Reports (QPRs) and post them on their websites, enabling advocates to continue to monitor the use of NSP3 funds and ensure that they are being used to help preserve and create affordable housing.

¹ Pub. L. No. 111-203, § 1497, 124 Stat. 1376 (July 21, 2010).

² For a detailed discussion of NSP1, see *HUD Issues Regulations Implementing the Neighborhood Stabilization Program*, 38 HOUS. L. BULL. 215 (2008).

³ http://hudnsphelp.info/media/resources/NSP3FundingTable_9-8-10.pdf

NSP3 Planning and Public Participation Requirements

By March 1, 2011, jurisdictions must submit to HUD either a substantial amendment or an abbreviated plan. All current CDBG entitlement jurisdictions must submit a substantial amendment to their HUD-approved consolidated plan and 2010 annual action plan that describes their NSP3 program. Non-entitlement jurisdictions must submit an abbreviated plan that describes their NSP3 program. HUD uses the term “action plan” to refer to both substantial amendments and abbreviated plans.

A jurisdiction’s NSP3 action plan must be published and posted on the jurisdiction’s website for at least 15 calendar days for public comment. NSP3 grantees must provide a summary of all public comments in an appendix that is attached to the action plan.

Issues of Particular Importance to Housing Advocates

To assist housing advocates in reviewing their jurisdictions’ action plans, we have compiled a checklist of issues that are of particular interest to individuals working with low-income families.

Public Participation

- If the jurisdiction has not posted its action plan online, advocates should remind it that it is required to do so.
- Jurisdictions should ensure that NSP3 program information is available in the appropriate languages for the geographic area served by the jurisdiction.
- Jurisdictions should hold public meetings for residents of neighborhoods where jurisdictions propose to acquire, rehabilitate, demolish, or construct properties.
- Advocates should urge jurisdictions to hold public meetings in conjunction with the drafting of their action plans.

Income Targeting

- What activities will the jurisdiction use to meet the NSP3 income-targeting obligations, which require jurisdictions to allocate at least 25% of their NSP funds to house families whose incomes do not exceed 50% of AMI?
- If feasible, consider urging the jurisdiction to exceed the income targeting requirements by spending more than 25% of its NSP funds to house families at or below 50% of AMI. It may be helpful to remind the jurisdiction that the Dodd-Frank Act removed a restriction requiring that only abandoned or foreclosed-upon properties be used to meet the low-income set-aside, making it easier for jurisdictions to meet the set-aside.
- The Dodd-Frank Act requires NSP3 grantees to “establish procedures to create preferences for the development of affordable rental housing for properties assisted with NSP3 funds.” HUD requires jurisdictions to describe these procedures as part of their NSP3 action plans. Does the jurisdiction’s action plan address how it will provide a preference for the development of affordable rental housing?
- How has the jurisdiction defined affordable rents? Will the rents in fact be affordable to low-income families?

- Does the jurisdiction plan to work with the local housing authority to develop strategies for making housing affordable to families at or below 50% of AMI, such as using project-based Section 8 vouchers or the Section 8 homeownership program?
- If the jurisdiction proposes to use homeownership assistance to meet its income-targeting requirements, is homeownership feasible in your jurisdiction for families at or below 50% AMI?

Continued Affordability

- For each project, how long will the jurisdiction maintain housing as affordable to families at or below 50% of AMI?
- To ensure that the housing will remain accessible to low-income residents over the long-term, has the jurisdiction indicated what mechanisms it will use to maintain the affordability of housing developed with NSP3 funds? How will the jurisdiction monitor affordability over time?

Target Geography

- Are the activities being carried out in neighborhoods that you agree have the greatest need?
- Has the jurisdiction explained why it is spending NSP3 funds in a particular neighborhood?

Fair Housing Considerations

- Will the jurisdiction's decision to create affordable rental housing in a particular area have the effect of perpetuating minority concentrations in the neighborhoods where the NSP3 funds will be spent?
- Is the jurisdiction using its NSP3 funds to develop affordable rental housing in areas with lower crime rates, lower minority concentrations, and quality schools?
- In marketing NSP3 homeownership or rental opportunities, does the jurisdiction plan to actively inform persons and groups less likely to participate in the local markets where the NSP3 funds are being spent?

Demolition

- Are the properties that the jurisdiction proposes to demolish in fact blighted? HUD guidance requires a definition of "blighted" that is consonant with local or state law. Is the jurisdiction complying with this definition?
- If the jurisdiction plans to demolish low- or moderate-income units, has it identified the number of units expected to be demolished, the number of NSP3 affordable housing units expected to be produced, and the number of dwelling units expected to be made available to families at or below 50% of AMI?
- Is the planned demolition of affordable housing units disproportionate to the creation of such units?

- Has the jurisdiction explained why it chose demolition of housing units versus preservation of the units, particularly with regard to affordable housing units?
- Is the planned demolition scattered all about, or will it be undertaken in a strategic way that can foster landbanking or larger scale redevelopment of affordable housing?
- Has the jurisdiction indicated whether the properties targeted for demolition are occupied? If so, has the jurisdiction indicated how it will minimize involuntary displacement of residents? Has the jurisdiction indicated how it intends comply with the requirements of the Uniform Relocation Act?

Tenants in Foreclosed Properties

- If the jurisdiction is acquiring tenant-occupied properties, has it indicated how it and/or future owners will comply with the Protecting Tenants at Foreclosure Act?

Employment Opportunities

- In addition to the employment requirements of Section 3 of the Housing and Urban Development Act of 1968, the Dodd-Frank Act requires that NSP3 grantees “shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity ... of projects funded under this section or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects.”⁴ HUD defines “vicinity” as each neighborhood identified by the jurisdiction as being an area of greatest need and requires that grantees describe how they will meet the local hiring requirement in their action plan.
- Has the jurisdiction explained how the use of NSP3 funds will result in employment and contracts with residents and small businesses in affected communities?
- Has the jurisdiction explained how it will meet the Section 3 numerical goals of 30% of new hires for low and very-low income individuals and 10% of the dollar amount of contracts for Section 3 businesses?
- Does the jurisdiction have a Section 3 plan, notify Section 3 individuals and Section 3 businesses of the opportunities, and require Section 3 language in its contracts?

Other Considerations

- Does it seem feasible that the jurisdiction will be able to expend all of its NSP3 funds within three years of receipt of those funds from HUD? If not, advocates should urge the jurisdiction to seek assistance from an NSP technical assistance provider.
- Does the number of properties that the jurisdiction plans to acquire or rehabilitate seem reasonable in light of the amount of the jurisdiction’s NSP3 allocation?
- Is the jurisdiction planning to partner with non-profits in order to maximize its capacity to serve low-income persons or individuals with special needs?
- Are energy efficiency and conservation included in rehabilitation activities?

Please contact Meliah Schultzman, mschultzman@nhlp.org, 415-546-7000 x. 3116, if you have strategies, documents, or information to share regarding local NSP3 advocacy.

⁴ Pub. L. No. 111-203, § 1497, 124 Stat. 1376 (July 21, 2010).

Additional Information on NSP

National Housing Law Project, Resource Center, Neighborhood Stabilization Program, <http://nhlp.org/resourcecenter?tid=109>

National Housing Law Project, NSP: Innovative Development Strategies for Very Low-Income Housing, http://nhlp.org/files/NHLP%20NSP%20Best%20Practices%20Final_0.pdf

National Housing Law Project, Resource Center, Section 3, <http://nhlp.org/resourcecenter?tid=115>

HUD, Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, 75 Fed. Reg. 64,322 (Oct. 19, 2010), http://hudnsphelp.info/media/resources/NSP3FederalRegisterNotice_October192010.pdf

HUD, Instructions for Competing the NSP3 Substantial Amendment or Abbreviated Action Plan, <http://hudnsphelp.info/index.cfm?do=searchResourceKeywordFacets&toptopicid=10^NSP%20Substantial%20Amendments>

HUD, Neighborhood Stabilization Program Resource Exchange, <http://hudnsphelp.info/>

Comment Letter for Neighborhood Stabilization Program 3 (NSP3) Action Plans

The attached letter is a general template for advocates commenting on Neighborhood Stabilization Program 3 (NSP3) action plans. Portions of this template have been excerpted from NSP1 comments prepared by the Massachusetts Law Reform Institute, the Legal Aid Society of Minneapolis, the Milwaukee Housing Coalition, Legal Aid of North Carolina, Rhode Island Legal Services, Baltimore Regional Housing Campaign, Boston Tenant Coalition, the American Association of Retired Persons, and the Housing Umbrella Group of Florida Legal Services Inc. NHLP wishes to thank these organizations for sharing their advocacy materials.

The comment letter addresses the topics listed below. Note that some of the topics may not apply to a particular jurisdiction's NSP3 proposal.

1. Placing an Emphasis on Rental Housing as Well as Homeownership
2. Providing Affordable Housing
3. Ensuring Long-Term Affordability
4. Maintaining Occupancy in Foreclosed Homes
5. Complying with Federal Tenant Protections
6. Furthering Fair Housing Goals
7. Demolishing or Converting Affordable Housing
8. Employment Opportunities

Dear [Jurisdiction],

Thank you for the opportunity to comment on your Neighborhood Stabilization program 3 (NSP3) funds. [Insert description of your organization here.] As you finalize your action plan, there are several issues we hope you will consider.

1. Placing an Emphasis on Rental Housing as Well as Homeownership

While homeownership is an important goal, it should not be overemphasized in [state/county/city]’s proposal. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires NSP3 grantees to “establish procedures to create preferences for the development of affordable rental housing for properties assisted with NSP3 funds.” HUD requires jurisdictions to describe these procedures as part of their NSP3 action plans. The rental housing preference recognizes that rental and/or cooperative housing under responsible ownership can be equally or more effective in stabilizing the targeted neighborhoods. Significant numbers of renters have been displaced or threatened with eviction as a result of the foreclosure crisis, and a sizable portion of NSP3 funds should be directed to them.

Additionally, HUD has found that single- and multi-family rental and special needs housing for people with disabilities have been effective means for meeting NSP’s income targeting requirements.⁵ HUD notes that homeownership should be used to meet the low-income set-aside only if a jurisdiction is confident that very low-income buyers can obtain mortgage financing.⁶

2. Providing Affordable Housing

We have several suggestions for implementing NSP3’s requirement that 25% of funds be used for residential properties that will house persons whose incomes do not exceed 50% of area median income (AMI). First, given NSP3’s emphasis on projects that optimize economic activity, [state/county/city] should aim to exceed the federal 25% threshold and devote a higher percentage of NSP3 funds to rental opportunities for persons at or below 50% of AMI. Additionally, part of the funds should be specifically dedicated to providing housing that would serve the neediest households: those at or below 30% of AMI. Furthermore, the proposal should consider mixed-income developments that include units that are affordable to families at or below 50% of AMI. Coordination with other resources, such as Low Income Housing Tax Credits, project-based Section 8 vouchers and tenant-based rental subsidies, would maximize benefits to families that need the most help.

Additionally, we suggest that you consider partnerships with public housing agencies that could acquire homes as rental properties, perhaps with an option of resale through the Section 8 homeownership program, or when conditions change, on the private market.

[Note: Advocates should also examine whether “affordable rents” as defined in the jurisdiction’s NSP3 action plan are in fact affordable to households with incomes at or below 50% of AMI.]

⁵ See HUD, NSP3 Design Guidebook 26 (Nov. 17, 2010), <http://hudnsp3help.info/media/resources/NSP3DesignGuidebook.pdf>.

⁶ *Id.* at 27.

3. Ensuring Long-Term Affordability

NSP3 recipients must ensure, “to the maximum extent practicable and for the longest feasible term,” that NSP3-assisted properties remain affordable to individuals whose incomes do not exceed 120% of AMI.⁷ Recipients also must ensure, to the extent practicable, that those units housing individuals whose incomes do not exceed 50% of AMI remain affordable to those individuals. At a minimum, [state/county/city] must comply with the HOME affordability periods, which require a minimum period of affordability of at least 10 years for rehabilitation or acquisition of existing housing totaling between \$15,000 and \$40,000, and a minimum affordability period of 15 years for rehabilitation or acquisition totaling more than \$40,000. Notably, under NSP1 several jurisdictions committed to affordability periods exceeding the HOME minimums, and we urge [state/county/city] to do the same. [State/county/city]’s proposal must identify the mechanisms it will employ to ensure permanent or long-term affordability for NSP3-funded housing.

4. Maintaining Occupancy in Foreclosed Homes

The proposal should prioritize avoiding abandonment and preserving the homes of tenants and former owners who remain after foreclosure. This would minimize the “musical chairs” detrimental impact on neighborhoods where current, often long-term, residents are forced out by foreclosing lenders, the property is acquired and rehabilitated, and new occupants are sought. Prioritizing occupancy will prevent the trauma of eviction, curb abandonment’s destructive impact on neighborhoods, and reduce the costs associated with providing shelter for displaced families.

We thus urge [state/county/city] to prioritize housing that allows tenants and former homeowners to remain as renters or purchasers of their homes. Targeting Section 8 assistance along with incentives to landlords to maintain tenancies would be an effective use of NSP 3 funds.

5. Complying with Federal Tenant Protections

The proposal should make clear that in acquiring and rehabilitating foreclosed properties, [state/county/city] will comply with federal protections for tenants living in these properties. If NSP3 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.⁸ 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.⁹

⁷ HUD, Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, 75 Fed. Reg. 64,322, 64,328 (Oct. 19, 2010),

http://hudnsphelp.info/media/resources/NSP3FederalRegisterNotice_October192010.pdf

⁸ *Id.* at 64,335.

⁹ *Id.*

6. Furthering Fair Housing Goals

To comply with fair housing and other civil rights obligations, the proposal should explain how NSP3 funds will be used to further fair housing choice and avoid the perpetuation of segregation and minority concentration in the areas where the funds will be spent. To meet these goals, [state/county/city] should use its NSP3 funds to develop affordable rental housing in higher opportunity areas with desirable jobs, lower crime rates, lower minority concentration, and quality schools. [Note: Advocates should discuss whether expenditure of NSP3 funds in the target geographic areas identified in the proposal would further fair housing choice.]

7. Demolishing or Converting Affordable Housing

[State/county/city] proposes to use a portion of its NSP3 funds for demolition. If any of the demolition activities involve low- or moderate-income units, [state/county/city] must identify all of the following in its application: (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 available for households whose income does not exceed 50% of area median income. [State/county/city] also must explain why, based on market conditions, it chose demolition of housing units versus preservation of the units. Additionally, [state/county/city] must develop and follow a residential anti-displacement and relocation plan.

8. Employment Opportunities

The Dodd-Frank Act requires that NSP3 grantees “shall, to the maximum extent feasible, provide for the hiring of employees who reside in the vicinity...of projects funded under this section or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects.”¹⁰ NSP3 grantees must describe how they will meet this local hiring and contracting requirement in their action plan. The NSP3 local hiring and contracting requirements do not replace [state/county/city’s] responsibilities under Section 3 of the Housing and Urban Development Act of 1968. For the Dodd-Frank obligation, HUD has adopted the Section 3 thresholds for determining if the jurisdiction or contractor must comply.¹¹

To comply with these complementary obligations, [state/county/city] should discuss in its action plan how it plans to satisfy the hiring and contracting requirements and ensure that any contractors and subcontractors also do so. The action plan should describe the outreach, the number of jobs that are anticipated, and the dollar amount of contracts set aside for Section 3 businesses and the partnerships that may be required in order to ensure that there is local hiring and contracting. Failure to comply with Section 3 may result in sanctions that limit a recipient’s future ability to participate in HUD programs.¹²

¹⁰ Small business and vicinity are defined at 75 Fed. Reg. 64,322, 64,340 (Oct. 19, 2010).

¹¹ 24 C.F.R. § 135.3(a)(3)(ii). If a jurisdiction or contractor is not required to comply, it should be encouraged to provide, to the maximum extent feasible, hiring, employment, and contracting opportunities to the target population. Cf. 24 C.F.R. § 135.3(d).

¹² 24 C.F.R. §§ 135.38F, 135.74(d); 73 Fed. Reg. 79,548, 79,552.

Thank you for your attention to these concerns. We look forward to being of further assistance in helping develop your proposal.

Sincerely,

[Your name, organization]