



NSP Policy Alert!

Guidance on the Impact of New Definitions for NSP-Eligible Properties

QUESTION: *How do the changes in the definitions to “abandoned” and “foreclosed” affect funding of NSP projects?*

Overview

- A wider universe of properties should qualify for NSP funding
- Achieving the 25% low-income set-aside requirement should be more attainable
- Properties that may have only qualified under Eligible Use E may now qualify under Eligible Use B
- Grantees will need to ensure that short-sale purchases comply with URA
- Relocation Requirements under URA and Tenant Protections still apply to NSP-assisted acquisitions
- The changes are retroactive to the submission of NSP1 Action Plans, if acquisitions met all NSP rules
- “Intermediary aggregators and servicers” may sell foreclosed properties to NSP grantees for a modest fee

Change in Definitions

The Neighborhood Stabilization Program has had two funding cycles, often known as NSP1 and NSP2. On April 2, 2010, HUD issued a new Notice (5321-N-04) for the NSP2 Program and on April 9, 2010 (5321-N-03) HUD issued a similar Notice for the NSP Program. These Notices changed the definitions of “foreclosed” and “abandoned” for the purposes of identifying eligible properties for NSP1 and NSP2. The new definitions are:

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.

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, orb) 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.

There are several implications of these new definitions that grantees should take into consideration as they move forward with program execution. This guidance clarifies issues of discount and appraisal requirements, short sales, Uniform Relocation Act implications, retroactive applicability, and other interpretations. Policies involving the application of Tenant Protection provisions are being addressed in a separate guidance memorandum that will be published in the near future. Grantees are encouraged to utilize the NSP Resource Exchange at www.hud.gov/nspta for additional guidance or to submit questions on NSP related issues.

Differences between the Old Definitions and the New Definitions

Abandoned			
Defined under October 6, 2008 Federal Register Notice		Defined under April 10, 2010 Federal Register Notice	
All factors must be present	Mortgage foreclosure proceedings have been initiated OR Mortgage payments are at least 90 days delinquent	Only ONE factor must be present	Mortgage or tribal leasehold payments are at least 90 days delinquent
	Tax foreclosure proceedings have been initiated OR Tax payments are at least 90 days delinquent		Tax payments are at least 90 days delinquent
	Property has been vacant for at least 90 days		Code enforcement: uninhabitable and no corrective actions within 90 days of notification
Property is subject to court-ordered receivership or nuisance abatement related to abandonment or meets state definition of an abandoned home			

Foreclosed			
Defined under October 6, 2008 Federal Register Notice		Defined under April 10, 2010 Federal Register Notice	
All factors must be present	Mortgage foreclosure proceedings have been completed	Only ONE factor must be present	Delinquency status at least 60 days delinquent
	Tax foreclosure proceedings have been completed		Tax payments are at least 90 days delinquent
	Deed in lieu of foreclosure has been completed		Foreclosure proceedings have been initiated or completed
			Foreclosure proceedings completed and title transferred to an aggregator or servicer

Discount and Appraisal Requirements for Foreclosed Properties

Section 2301(d)(1) of Housing and Economic Recovery Act (HERA) requires NSP-assisted acquisitions of foreclosed upon homes and residential properties to be at a discount from their current market appraised value. With some exceptions, the appraisals must also meet the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) appraisal requirements of 49 CFR 24.103 (even in cases of voluntary acquisitions). However, considering the revised definitions of “foreclosed” and “abandoned” there may be situations in which a property may be defined by either term. **If the property meets both the definition of “foreclosed” as well as “abandoned,” NSP considers it “foreclosed” and the discount and appraisal requirements apply.** Properties defined exclusively as abandoned or vacant are not subject to the appraisal and discount requirements. HUD’s Community Planning and Development policy has long held that, in cases of overlapping requirements, the more restrictive standard applies.

As an example, a house on which the owner is more than 90 days delinquent on tax payments can now be classified as foreclosed. The same circumstance also allows the house to be classified as abandoned. The grantee would not be allowed to avoid the discount and appraisal requirements by listing this property as “abandoned” in its reports. **Every property defined as foreclosed must be appraised** (and receive a discount) in accordance with HUD’s NSP Appraisal Guidance at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/policyguidance/index.cfm>

Short Sales Under NSP

The new definitions of “abandoned” and “foreclosed” allow the potential use of short-sale procedures for the grantee to acquire property directly from the owner. A short sale involves a sale of real property in which a lender agrees to accept the proceeds of the sale in satisfaction of an outstanding mortgage loan when the sale amount is less than the amount the borrower owes on the loan. Note that the lender’s acceptance of the offered short sale price may not release the mortgagor from all other obligations.

Short Sales and NSP Tenant Protection Requirements under the Recovery Act

The American Recovery and Reinvestment Act of 2009 (Recovery Act) imposes requirements on the Neighborhood Stabilization Program to ensure that bona fide tenants in certain foreclosed properties receive proper treatment. These requirements were described in the NSP Bridge Notice of June 19, 2009 and the NSP2 Notice of Fund Availability of May 4, 2009. The tenant protection requirements directly affect initial successors in interest who take title to property through foreclosure. Typically, the initial successor in interest (ISII) in property acquired through foreclosure is the successful purchaser at foreclosure, such as the lender or trustee for holders of obligations secured by mortgage liens. The revised definition of “foreclosed” includes the beginning stages of the foreclosure process as well the end. As result, when a NSP grantee purchases a “foreclosed” rental property directly from the mortgagor via a short sale, the grantee may become the ISII. NSP grantees should ensure acquisitions of foreclosed properties through short sales are properly categorized and satisfy NSP Tenant Protection Requirements. See separate guidance for more discussion of these requirements.

Short Sales and the URA

URA regulations governing real property acquisition, found at [49 CFR part 24, Subpart B](#), make a distinction between “voluntary acquisitions,” which meet the criteria in 49 CFR 24.101(b)(1)-(5) and other acquisitions, commonly referred to as “involuntary acquisitions.” Those acquisitions that qualify as

“voluntary” are exempted from the procedural requirements of Subpart B and must instead comply with requirements specifically set out at 49 CFR 24.101(b).

NSP-assisted acquisitions of foreclosed and abandoned homes and residential properties through a short sale are expected to be voluntary acquisitions and subject to the URA. However, there may be instances where such acquisitions cannot meet all criteria to qualify as “voluntary.” In such cases, the acquisition should be treated as an involuntary and will be subject to full URA Real Property Acquisition requirements. Grantees should ensure any NSP-assisted acquisition through a short sale is properly categorized and satisfies all applicable requirements of the URA. (See table below for more on voluntary and involuntary acquisitions.)

Relocation Requirements under the URA

Generally, in the case of a voluntary acquisition under the URA, an owner-occupant is not eligible for relocation assistance and payments. However, tenant-occupants (residential or nonresidential) who are displaced as a result of a voluntary acquisition may be eligible for relocation assistance and payments under the URA. In cases of involuntary acquisitions under the URA, both owner-occupants and tenant-occupants who are displaced as a direct result of the acquisition may be eligible for relocation assistance and payments under the URA. For URA relocation requirements, see the government-wide regulations at [49 CFR part 24](#) and guidance in [HUD Handbook 1378 – Tenant Assistance, Relocation and Real Property Acquisition](#).

Under an optional relocation assistance policy adopted in accordance with 24 CFR 570.606(d), an NSP grantee could provide optional relocation assistance to owner-occupants who are not covered by the URA or section 104(d) who voluntarily sell their property for an NSP-funded project (short sale). Such a policy could provide a moving cost allowance (flat rate, scaled, or other method determined by the grantee), and pay for security deposits and/or first month’s rent, or other assistance determined appropriate to enable the former owner to find rental housing.

Retroactivity for NSP1

The Notice states that “NSP grantees may apply the new definitions as of the date of submission of their Substantial Amendment and Action Plan to HUD, regardless of the current status of acquisition, redevelopment or disposition activities already undertaken” (Background, page 3). However, **any such activities must have met all NSP requirements at the time of purchase**. These changes apply to the initial NSP1 Amendment and Action Plan, generally submitted no later than Dec. 1, 2008. They were deemed unnecessary for NSP2 because most programs are just getting underway.

This means, for example, that grantees that acquired a property via short sale in 2009 may now use NSP funds to reimburse themselves for the purchase of that property. It could also mean that residential properties acquired as vacant, but not foreclosed or abandoned, may now count toward the 25% low-income set-aside under the new definitions. For retroactive purchases to be eligible, they must have met all NSP requirements at the time of purchase. This would include such requirements as environmental reviews, lead-based paint and appraisals, where applicable. Because of this, HUD does not expect to see numerous cases of retroactive action.

Aggregators and Servicers

The Notices also allow the purchase of properties on which foreclosure proceedings have been completed and for which title has been transferred to “an intermediary aggregator or servicer that is not an NSP grantee, contractor, subrecipient, developer, or end user.” To date, only wholly-owned subsidiaries or organizations acting as agents for the REO seller, which retained title, were eligible to sell properties to NSP grantees. It may take some time to learn whether and how different organizations offer aggregation services. Some possibilities are local non-profits or redevelopment authorities who bundle purchases to facilitate the process, or national non-profits which have heretofore only acted as clearinghouses. HUD does not expect many private firms to provide this service, due to fee limits, but they are not prohibited from acting in this capacity.

The preamble differentiates such entities from “investors” who normally will seek to maximize their profits. Eligible aggregators and servicers will typically charge a modest fee but not try to earn substantial profits. For example, an aggregator might charge actual costs or costs plus a nominal fee, in contrast to “flipping” a property for a 20% profit. As more large financial institutions develop mechanisms for selling properties, this could grow in significance. Grantees and HUD staff should contact Headquarters for guidance if questions arise.

GENERAL URA ACQUISITION PROCESS

(Refer to 49 CFR 24 Subpart B for detailed acquisition requirements)

Appendix 23, HUD Handbook 1378 - Tenant Assistance, Relocation, and Real Property Acquisition

VOLUNTARY ACQUISITIONS 49 CFR 24.101(b)(1)-(5)	INVOLUNTARY ACQUISITIONS 49 CFR 24.101(a) & (b)
<i>Determine if proposed acquisition satisfies criteria and requirements of 24.101(b)(1)-(5). If acquisition doesn't meet criteria (e.g., is subject to threat or use of eminent domain), refer to involuntary acquisition process and comply with 49 CFR 24 Subpart B requirements.</i>	<i>Determine if proposed acquisition is subject to threat or use of eminent domain. If not subject to eminent domain, refer to voluntary acquisition process and comply with applicable requirements of 49 CFR 24.101(b)(1)-(5).</i>
24.101(b)(1) - Agencies with eminent domain authority but will not use: must meet all conditions of 24.101(b)(1)(i) –(iv). <i>(see esp. 24.101(b)(1)(i) & (ii))</i>	* Notify owner of agency's interest in acquiring property and protections under the Uniform Act <i>(see 24.102(b))</i> (Optional: issue Notice of Intent to Acquire <i>(see 24.203(d))</i>)
* Agency will not acquire property if negotiations fail, and owner is so informed in writing <i>(see 24.101(b)(1)(iii))</i>	* Appraise property and invite owner to accompany appraiser <i>(see 24.102(c))</i>
* Agency informs owner in writing of property's estimated market value <i>(see 24.101(b)(iv))</i>	* Review the appraisal <i>(see 24.104)</i>
* Owner/s & owner occupants not eligible for relocation assistance / displaced tenants may be eligible <i>(see 24.2(a)(9)(ii))</i>	* Establish estimate of just compensation for property <i>(see 24.102(d))</i>
24.101(b)(2) – Agencies or persons without eminent domain authority:	* Provide owner with written offer and summary statement for property <i>(see 24.102(e))</i>
* Prior to offer, inform owner unable to acquire if negotiations fail <i>(see 24.101(b)(2)(i))</i>	* Negotiate with owner for purchase of property <i>(see 24.102(f))</i>
* Inform owner of property's estimated market value <i>(see 24.101(b)(2)(ii))</i>	* If negotiations successful, complete sale and reimburse property owner for related incidental expenses <i>(see 24.106)</i>
* Owner/s & owner occupants not eligible for relocation assistance / displaced tenants may be eligible <i>(see 24.2(a)(9)(ii))</i>	* If negotiations unsuccessful, consider an administrative settlement <i>(see 24.102(i))</i>
24.101(b)(3) – Acquisition from a Federal agency, State, or State agency, if acquiring agency without eminent domain authority:	* If negotiations still unsuccessful, consider acquiring property through eminent domain.
* Owner/s & owner occupants not eligible for relocation assistance / displaced tenants may be eligible <i>(see 24.2(a)(9)(ii))</i>	* Displaced persons eligible for relocation assistance <i>(see 24.2(a)(9)(i))</i>