



NSP Policy Alert!

Guidance on NSP Disposition and Demolition – March 14, 2013

I. INTRODUCTION

HUD is aware that market conditions in many target geographies require a mix of demolition and preservation of housing units to stabilize communities that have suffered from foreclosures and abandonment. This guidance seeks to clarify the way in which grantees can use Neighborhood Stabilization Program (NSP) funds to demolish and dispose of troubled properties. Please note that this guidance applies only to the NSP program, and unless otherwise stated should not be used for the Community Development Block Grant (CDBG) program activities.

Clearance (demolition) is an eligible activity under CDBG found in *24 CFR 570.201(d)*. In NSP, demolition is eligible on blighted properties under Eligible Use D, as a part of a Redevelopment Activity under Eligible Use E, or as part of a Reconstruction activity under Eligible Use B.

Clearance can include:

- Demolition of buildings and improvements;
- Removal of demolition products (rubble) and other debris;
- Physical removal of environmental contaminants or treatment of such contaminants to render them harmless; and
- Movement of structures to other sites.

Disposition is an eligible activity under CDBG found in *24 CFR 570.201(b)*. In NSP, disposition can be used as an allowable expense in an eligible activity, it can be both the eligible activity and end use, or as the eligible activity used to dispose of a property for an ineligible end use that meets a national objective. These scenarios will be explained fully in this guidance.

This guidance will examine demolition and disposition by focusing on the three main objectives grantees must achieve when expending NSP funds on a project. An activity must:

- Conform with the correct eligible USE
- Be an eligible ACTIVITY
- Meet a NATIONAL OBJECTIVE

In order to meet the national objective requirement, Section 2301(f)(3)(A) of the Housing Economic Recovery Act (HERA) states, “all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income.” As a result, NSP allows the use of *only* the low-moderate-middle-income (LMMI) national objective. This means that any clearance or disposition activity must meet the national objective requirement through LMMH (housing), LH25 (housing for households at 50% AMI), LMMA (area) benefit, LMMJ (jobs) benefit, or LMMC (limited clientele) benefit.

The rest of this guidance will explain in more detail when demolition is eligible as an end use or as an interim use, and also the different ways that demolition and disposition can meet the relevant national objectives.

Demolition Table: Meeting eligibility requirements and national objectives

		Eligible Use (EU)	National Objective
Demolition as End Use	Demolition with Acquisition	EU D - Demolish <u>blighted</u> properties NSP Closeout Notice now allows acquisition of blighted properties under EU D	LMMA
	Demolition without Acquisition	EU D - Demolish <u>blighted</u> properties	LMMA
Demolition for Housing Activities	Reconstruction (Rehabilitate housing)	EU B - Purchase and rehabilitate homes and residential properties that have been <u>abandoned or foreclosed upon</u> in order to sell, rent, or redevelop such homes and properties	LMMH
	Redevelopment (New construction or Reconstruction of housing)	EU E - Redevelop <u>demolished or vacant</u> properties as housing	LMMH

II. DEMOLITION

DEMOLITION AS AN END USE (with or without acquisition)

- Demolition of a single blighted property
 - **Eligibility:** Eligible Use D (EU D) – Demolish blighted structures. To demolish a single property with no other use intended for that land, grantees must document that this property meets their local legal definition of blighted.
 - HUD recommends that grantees place liens on all NSP demolished properties that have not been acquired, but a lien is required if NSP investment is \$25,000 or more. See Change of Use section for more information.
 - **National Objective:** The demolition of one property meets an LMMA national objective only if the grantee is eliminating conditions that are detrimental to public safety and health. HUD notes that the grantee must determine and document the actual service area benefiting from the demolition of the structure, in accordance with the regulations.
 - Examples: Dilapidated properties being used as drug houses or decaying structures that pose a safety hazard for anyone near them.
- Concentrated neighborhood demolition strategy
 - **Eligibility:** Eligible Use D (EU D) – Demolish blighted structures. Grantees can demolish blighted structures as part of a comprehensive neighborhood strategy, but grantees must document each property meets their local legal definition of blighted.
 - **National Objective:** The demolition of several properties can meet an LMMA national objective when they are part of a comprehensive neighborhood strategy. HUD notes that the grantee must determine the actual service area benefiting from the neighborhood strategy of demolition, in accordance with the regulations.
 - Example: Demolition of a majority of the blighted buildings in a 6 block target area where at least 51% of the households' incomes are less than 120% of area median income (AMI).

DEMOLITION FOR HOUSING ACTIVITIES

- Clearance as a part of Reconstruction Activity
 - **Eligibility:** Eligible Use B (EU 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. Reconstruction generally means the rebuilding of a structure on the same site in substantially the same manner, and falls under the category of rehabilitation according to CPD Notice 07-08 ([Get Notice Here](#)).
 - CPD Notice 07-08 states, “Grantees may reconstruct on the same site housing that is publicly or privately owned. Deviations from the original design are allowed for reasons of safety or if otherwise impractical. The number of dwelling units on a site may not be increased; but, the number of rooms per unit may be increased or decreased... Reconstruction of residential structures also permits replacing an existing substandard unit of manufactured housing with a new or standard unit of housing, manufactured or otherwise.”

- If an activity qualifies as Reconstruction **and** the clearance is *integral* to the reconstruction **and** the construction will be assisted with NSP funds, then the clearance activities may be treated as a part of the construction costs. The demolition is not required to be qualified separately under the program. In these circumstances, the clearance may be partial or total.

This means that when clearance is directly connected to the reconstruction activity, the demolition of a property does not have to qualify under EU D and therefore does not have to be blighted. Instead, the property must qualify as either foreclosed or abandoned.

- National Objective: The national objective for the Rehabilitation of housing (which would include any clearance activities) is always either LMMH or LH25, depending on the final beneficiary that resides in the property.
- Clearance as part of New Construction or Redevelopment (reconstruction)
 - Eligibility: Eligible Use E (EU E) - Redevelop demolished or vacant properties as housing. Where demolition is *integral* to the new construction of a building and the construction is assisted with NSP funds, the clearance activities may be treated as a part of the construction costs and need not be qualified separately under the program. Thus, when clearance is directly connected to New Construction of housing, the demolition of the property does not have to qualify under EU D. In these cases, the property does not have to be blighted but, instead, the property must qualify as vacant.
 - National Objective: The national objective for the New Construction of housing (which would include any clearance activities) is always either LMMH or LH25, depending on the final beneficiary that resides in the property.

DEMOLITION OF LANDBANK PROPERTIES

- Demolition in order to Landbank properties
 - Eligibility: Eligible Use C – Establish and operate land banks for homes and residential properties that have been foreclosed upon AND Eligible Use D - Demolish blighted properties. Because EU C only allows for acquisition and disposition of property, a grantee must qualify the demolition through Eligible Use D.

So these properties must meet the definition of *blighted and foreclosed upon*. This means that in a landbank, blighted and foreclosed properties can be demolished with Eligible Use D and then can continue to be held in a land bank.
 - National Objective: All three NSP Notices state, “if an assisted land bank is not merely acquiring properties, but is also working in an area in which other activities are being carried out that are intended to arrest neighborhood decline, such as maintenance, demolition, and facilitating redevelopment of the properties, HUD will, for NSP-assisted activities only, accept that the acquisition and management activities of the land bank may provide sufficient benefit to an area generally (as described in 24 CFR 570.208(a)(1) and 570.483(b)(1)). Therefore, these activities meet a national objective (LMMA) prior to final disposition of the land-banked property. HUD notes that the grantee must determine the actual service area benefiting from a land bank’s activities, in accordance with the regulations.”
 - While grantees that follow the above strategy can meet the LMMA national objective, HUD does not believe the benefits of simply holding property are

sufficient to stabilize most neighborhoods. Because of this, HUD is requiring an eligible re-use of the property within 10 years of the grantee's closeout agreement.

- Any NSP assisted properties remaining in the land bank ten years after the date of grant closeout shall:
 - revert entirely to the CDBG program, and
 - be immediately used to meet a national objective or disposed of in accordance with CDBG use of real property

RELOCATION REQUIREMENTS PERTAINING TO DEMOLITION:

- The purchase of real property by the grantee or other entities under this eligibility category is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Among other things, this could mean that persons displaced as a result of the acquisition and/or clearance must be provided with financial assistance. Temporary easements, acquisition from another public agency, and voluntary offers in response to a public solicitation are exempt from Uniform Act requirements.

Reference: §570.606.

III. DISPOSITION

- **Disposition as an allowable expense in an eligible activity**
 - Eligible Activity: Public Facility or Improvement
 - NSP1 Only: Eligible Use E - Redevelop demolished or vacant properties.
 - If a grantee is demolishing the property first and the demolition is *integral* to the development of the public facility, and where the construction or development is also to be assisted with NSP funds, the clearance activities may be treated as a part of the costs to develop the public facility and need not be qualified separately under the program. This means that when clearance is directly connected to the construction of a public facility, the demolition of the property does not have to qualify under EU D and, therefore, does not have to qualify as blighted but instead must qualify as vacant.
 - In this case, disposition would be an allowable cost related to disposing of the property as a public facility or improvement.
 - Example: Use as a green space, neighborhood park, community center, homeless shelter, or community garden. (NSP1 only)
 - National Objective: To meet the LMMA national objective, the public facility must be used for a purpose the benefits of which are available *to all the residents in a particular area* that is primarily residential. HUD notes that the grantee must determine the actual service area benefiting from the public facility, in accordance with the regulations.
- Eligible Activity: Special Economic Development
 - Eligibility: Eligible Use B (EU 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 and Eligible Use E (EU E) for NSP1 Only - Redevelop demolished or vacant properties.

- Example: A parking lot for a grocery store serving a LMM income neighborhood, a for-profit clinic that is designed to serve patients on Medicaid or welfare, or a home day care center that creates or retains jobs principally for LMM income persons
 - National Objective: This activity can meet the LMMA, LMMJ or LMMC national objectives. HUD notes that the grantee must determine and document the actual service area benefiting from the disposition of the structure(s), the jobs being created or retained, or that the facilities designed will be used predominantly by LMM income persons, in accordance with the regulations.

- **Disposition as both the eligible activity and end use**
 - Eligible Activity: Disposition (dispose of as a side lot)
 - Eligibility: Eligible Use B, C, D, and Eligible Use E for NSP1 only. A side lot is an individual parcel of property that is physically contiguous to an adjacent residential property. There are a few options grantees can consider when dealing with side lots:
 - Donate or sell the property to a neighbor in a qualified LMMI area to use as a side lot
 - If not in an LMMI area, sale for FMV – grantees can sell the property to a neighbor at FMV (the sale proceeds would be program income) and they can choose to finance the sale in a way that will ensure it is affordable to the neighbor (i.e. 0% interest on a 15 year loan).
 - Note: Continued affordability requirements do not apply because there are no housing units being produced from the NSP funds.
 - National Objective: In NSP, once you meet the LMMA national objective with the demolition, the disposition (and acquisition) activities will continue to meet the LMMA national objective. HUD notes that the grantee must determine and document the actual service area benefiting from the demolition(s) and disposition of the structure(s), in accordance with the regulations.

- **Disposition as the eligible activity for an ineligible end use that meets a national objective**
 - Eligible Activity: Disposition (dispose of property for an ineligible activity that meets a national objective)
 - NSP2 & NSP3: Eligible Use B, C, or D. There are certain activities allowed under CDBG and NSP1 that meet one of the eligible national objectives, but are ineligible using NSP2 or NSP3 funds (e.g. public facilities). HUD has determined that there are strategies for grantees that want to pursue these activities, as long as they meet an eligible national objective (LMMA, LMMJ or LMMC).
 - NSP grantees may dispose of NSP-assisted properties acquired or demolished for ineligible activities, or use such properties for NSP ineligible activities, as long as:
 - 1) the NSP-ineligible activities are not assisted with NSP funds
 - 2) The property was acquired under eligible use B, C, or D (Eligible Use E works for NSP1 only)
 - 3) The NSP ineligible activity will contribute to neighborhood stabilization in the NSP target area
 - 4) The initial acquisition or demolition and use of the property meets an NSP national objective

- 5) The planned use of these properties is described in the grantee's Action Plan or substantial amendment
- Once a grantee has acquired and/or demolished a property that is eligible under EU B, C, or D, grantees could, for example:
 - Donate land to a nonprofit or community group to develop a community garden – as long as it meets the LMMA national objective and no NSP2 or NSP3 funds are used in the construction of the facility.
 - Dispose of the property as a neighborhood playground, but the swing sets and equipment are purchased using other non-NSP funds and it meets the LMMA national objective.
 - Dispose of the property by leasing it out for the development of a senior center, as long as the construction and development is paid with other funds and it meets the LMMA or LMMC national objective.
 - **National Objective:** To meet the LMMA national objective, a public facility must be used for a purpose the benefits of which are available *to all the residents in a particular area* that is primarily residential. HUD notes that the grantee must determine the actual service area benefiting from the public facility, in accordance with the regulations.
 - To meet the LMMJ national objective, an activity must create or retain permanent jobs, at least 51 percent of which, on a full time equivalent (FTE) basis, are either held by LMM income persons or considered to be available to LMM income persons.
 - To meet the LMMC national objective, a facility must be designed to be used predominantly by LMM income persons.

IV. OTHER REQUIREMENTS

25% SET-ASIDE

- Keep in mind that demolition can only count towards a grantee's 25% set-aside when clearance is a part of a reconstruction or redevelopment activity that results in housing for individuals or families whose incomes do not exceed 50 percent of area median income. This is described above in "Clearance as a part of Reconstruction Activity" or "Clearance as part of New Construction." These activities are the only time when the costs of the demolition can be counted toward the LH25 national objective.

CHANGE OF USE PROVISIONS

- **Grantees should consult their CPD/NSP Representative to apply the Change of Use provision to a NSP-assisted property. HUD will review and approve these on a case-by-case basis.**
- Grantees must always ensure that the use of grant funds in both acquiring and demolishing properties constituted an eligible use under HERA and that the acquisition, demolition, and disposition of any property meets a national objective.
- Then any subsequent use of the cleared property must be treated as a "change of use" under *24 CFR §570.505 Use of real property* when the "real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000." This means:

- If a grantee spent less than \$25,000 on acquisition and/or improvements, and the initial acquisition and clearance met a national objective, the change of use provision would not apply. It is possible that a property can then pass out of the program and no other NSP regulations apply, but these cases must be reviewed by the grantee's Field Office Representative. Note that the cost of demolition is not included in this calculation because HUD counsel has determined that demolition is not an "improvement."
- If a grantee spent more than \$25,000 on acquisition or improvements and cannot continue to meet an LMMI national objective after it has demolished or disposed of the property, the property or interest must be sold at **the current fair market value (FMV)**. This could be because the grantee would like to transfer the property to another entity or pursue some other use that doesn't meet a national objective. Sale proceeds would be considered NSP program income.
- No matter what the NSP investment, if the grantee is never able to meet a national objective, the grantee must reimburse the program for the full cost of the activity.

TAKING REAL PROPERTY OUT OF THE NSP/CDBG PROGRAM

- When does the Change of Use rule apply (24 CFR 570.505) and when must the program be reimbursed for the entire cost?

Total NSP Funds Invested (excluding demo)	CHANGE OF USE: Initial Use met National Objective, but Subsequent Use does not	INELIGIBLE ACTIVITY: Activity never met a National Objective (Not a change of use)
Greater than \$25,000	Reimburse NSP for Fair Market Value	Reimburse NSP for all funds expended on project
Less than \$25,000	Ask HUD for permission to remove from program. HUD will verify expenses.	Reimburse NSP for all funds expended on project

	Eligible Activities		National Objectives	Examples
Eligible Use B	Housing		LMMH/LH25	Rehabilitate multi-family or single-family housing
	Disposition for Special Economic Development		1. LMMJ 2. LMMA	1. Create in-home day care center with new jobs 2. Long term lease of land for corner grocery store in target area
	Disposition for Ineligible activities		1. LMMA 2. LMMC	1. Donate to non-profit to develop community garden 2. Lease building for neighborhood senior center
Eligible Use C	Housing		LMMH/LH25	Rehab multi-family or single-family housing units
	Disposition (as an end use)		LMMA	Side lot in area with comprehensive disposition
	Disposition for Ineligible activities		LMMJ	Discounted sale of property to be used for a hair salon that creates new jobs
Eligible Use D	Disposition (as an end use)		LMMA	Sell or donate to neighbor as side lot
	Disposition for Ineligible activities		LMMA or LMMJ	Donate land for local business development
Eligible Use E	NSP1	Housing	LMMH/LH25	Construct new multi-family or single-family housing
		Public Facilities	LMMC	Homeless shelter
		Disposition for Special Econ Development	LMMA or LMMJ	Build a parking lot for a grocery store
		Disposition for Ineligible activities	LMMA or LMMJ	Lease to a for-profit to develop a shopping center
	NSP2 & NSP3	Housing Activity only	LMMH/LH25	Renovate or build new multi-family housing