QUESTION: How does the Dodd-Frank Wall Street Reform and Consumer Protection Act (Publ. L 111-203) amend the 25 percent set-aside requirement?

The recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (Publ. L 111-203) includes amendments to and a third appropriation for the Neighborhood Stabilization Program. HUD will establish the funding formula for new NSP funding of one billion dollars within 30 days of the law’s enactment (July 21, 2010).

Public Law 111-203 amends a requirement that has caused some difficulties for NSP grantees. Previously, the Housing and Economic Recovery Act of 2008 (HERA) required NSP grantees to use not less than 25 percent of their NSP grant 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. Public Law 111-203 amends this requirement by removing the restriction that allows only abandoned or foreclosed upon homes or residential properties to be used to meet this requirement. Grantees may now use vacant or demolished property to meet the set-aside as well. This language also allows non-residential property to be used if the project is undertaken under Eligible Use E, though such sites might require rezoning to allow the development of housing.

In addition, the new law states that this new flexibility “shall apply with respect to any unexpended or unobligated balances, including recaptured and reallocated funds made available” under the NSP1 and NSP2 enabling legislation. Current grantees that are developing housing for families with incomes below 50% of area median income on land that was not foreclosed or abandoned residential property may now be able to claim set-aside credit for some or all of those costs. There are three possibilities:

1. Projects for which funds have not been obligated or for which funds have been obligated with no expenditures will be able to apply all of the costs toward the set-aside.

2. Projects for which funds have been obligated and fully expended will not be able to claim this credit retroactively.

3. For projects for which funds have been obligated, but only partially expended, HUD will allow credit for any expenditures made after July 21, 2010. This option is voluntary, not required. This option will require the grantee to make some changes in the DRGR accounting for the project.

For each project under implementation option 3 for which a grantee wants to get 25% Low-income set-aside credit in DRGR, the grantee must create a duplicate of the activity in DRGR. The original activity, which will have an LMMI national objective, must be adjusted to show the share of obligations that relate
to all expenditures made before July 21, 2010, plus those disbursements and expenditures. The duplicate activity, which will have an LH25 national objective, will show the share of obligations related to all expenditures made on or after July 21, 2010, plus the counterpart disbursements and expenditures. Any grantee choosing to make such an adjustment should contact its local HUD field representative first, as this will entail an Action Plan change. The DRGR Help Desk is also available to help, as needed.