

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5321-N-01]

Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability, waivers granted, alternative requirements applied, and statutory program requirements.

SUMMARY: This notice advises the public of the fund availability, competitions criteria, alternative requirements, and the waivers of regulations granted to recipients under an allocation of funds provided under the American Reinvestment and Recovery Act of 2009 (Public Law 111-005)(Recovery Act) for additional activities under Division B, Title III of the Housing and Economic Recovery Act of 2008 (Public Law 110-289)(HERA), as amended, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes heading, referred to throughout this notice as the Neighborhood Stabilization Program (NSP). As described in the Supplementary Information section of this notice, HUD is authorized by statute to specify waivers and alternative requirements for this purpose. This notice also notes statutory issues affecting program design and implementation.

DATES: Issuance Date: **May 4, 2009.**

Deadline for Receipt of Application: July 17, 2009. Applications must be received via paper submission to the Robert C. Weaver HUD Headquarters building by 5:00 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block

Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. FAX inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

A. Program background and purpose

Recipients will use the funds awarded under this notice to stabilize neighborhoods whose viability has been and continues to be damaged by the economic effects of properties that have been foreclosed upon and abandoned. In 2008, Congress appropriated funds for neighborhood stabilization under HERA. In 2009, Congress appropriated additional neighborhood stabilization funds, which are the subject of this notice.

When referring to a provision of the second appropriations statute, this notice will refer to the Recovery Act; when referring to the first appropriations statute, HERA; when referring to the grants, recipients, assisted activities, and implementation rules under the Recovery Act, this notice will use the term "NSP2". When referring to the grants, recipients, assisted activities, and implementation rules under HERA, this notice will use the term "NSP" or "NSP1." NSP2 is a component of the Community Development Block Grant (CDBG) program (authorized under Public the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (HCD Act)).

NSP2 funds will be awarded through competitions whose eligible applicants include states, units of general local government, nonprofits, and consortia of nonprofits. Any applicant

may apply with a for-profit entity as its partner.

There will be two competitions. Under the program round in this notice, applicants will compete for up to \$1.93 billion of NSP2 funds to carry out neighborhood stabilization programs. Under the technical assistance round in a separate notice, applicants will compete for no more than \$50 million of NSP2 funds to provide technical assistance, to include capacity building of local communities receiving NSP1 or any entity receiving NSP2 funding to carry out neighborhood stabilization.

Except as described in this notice, NSP2 funds are governed by published NSP requirements in the Program Requirements Appendix (Appendix 1) to this notice. If selected, applicants under NSP2 must be able to meet those program requirements in operating their NSP2 programs. The “**General Section**” electronic application submission and receipt requirements published on December 29, 2008, at 73 FR 79555, Section IV.B.2.a and b **do not apply, except** for paragraph IV.B.2.a and b , 4.b.(1) and (2) regarding **obtaining a Dun and Bradstreet Universal Numbering System** (DUNS) number and E, regarding funding restrictions. The logic model portions of the General Section also do not apply.

NOTE: You must annually update your registration in the Central Contractor Registration, otherwise HUD cannot verify the DUNS number and the Tax Identification Number (TIN) and thus HUD will be unable to make grant payments.

B. Program principles

HUD will select NSP2 programs that integrate the following principles:

- Retain CDBG distinctive requirements. Congress gave HUD broad waiver and alternative requirement authority, which HUD used in designing NSP2 program requirements. However, distinctive characteristics of the CDBG program including

the objectives of the HCD Act, financial accountability, local citizen participation and information, recipient selection of activities within broad federal policy parameters, and income targeting of beneficiaries were retained. All of these elements are required in NSP1 and NSP2.

- Target and reconnect neighborhoods. Invest funds in programs and projects that will revitalize targeted neighborhood(s) 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. Support NSP2 uses and activities that will rapidly arrest the decline of a targeted neighborhood(s) that has been negatively affected by abandoned or foreclosed properties.
- Assure compliance with the NSP “deep targeting” requirement. HERA requires that no less than 25 percent of the funds be used for purchase and redevelopment of abandoned and foreclosed-upon homes and residential properties to house individuals and families whose incomes do not exceed 50 percent of area median income.
- Ensure longest feasible continued affordability. Invest in affordable housing that will remain desirable and affordable for the longest feasible period.
- Support projects that optimize economic activity and the number of jobs created or retained or that will provide other long-term economic benefits.
- Coordinate planning and resources. 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 healthcare.

- Leverage resources and remove destabilizing influences. Augment neighborhood stabilization programs with other firmly committed resources. Eliminate destabilizing influences, such as blighted homes, that can prevent programs from producing results.
- Set goals. Set aggressive, but achievable, goals for outputs and outcomes.
- Ensure accountability. Ensure accountability for all programs, keep citizens actively informed, and provide all required NSP and Recovery Act reporting elements.

C. Objectives and Outcomes

1. Objectives. The primary objective of the CDBG program is the development of viable urban communities, by providing decent housing, a suitable living environment, and economic opportunity, principally for persons of low- and moderate-income. NSP2 recipients must strive to meet this objective in neighborhoods that are in decline (or further decline) due to the negative effects of a high number and percentage of homes that have been foreclosed upon. The first goal is to arrest the decline. Then the recipient must stabilize the neighborhood and position it for a sustainable role in a revitalized community. Among the specific objectives of the CDBG program (at 42 U.S.C. 5301) that are emphasized for NSP2 are:

- to foster the undertaking of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities;
- a more rational use of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other

needed activity centers; and

- the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

2. Outcomes. Measurable NSP2 short term program outcomes include, but are not limited to:

- Arrest decline in home values based on average sales price in targeted neighborhoods, and
- Reduction or elimination of vacant and abandoned residential property in targeted neighborhoods.

The long term outcomes may include, but are not limited to:

- increased sales of residential property in targeted neighborhoods, and
- increased median market values of real estate in targeted neighborhoods.

Successful applicants will provide baseline data and then report on these and certain output measures, such as numbers of properties acquired and number of households provided affordable housing by income category. Additional reporting requirements are provided in Appendix 1, paragraph O. Awardees may also suggest additional performance and outcome measures to be tracked for the duration of their programs.

D. Authorities

1. **Authority to make grants**. Funding made available under NSP2 is authorized by the Recovery Act, which appropriated \$2 billion for additional funds for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties as authorized under Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA) (Public Law 110-289, enacted July 30, 2008), as amended.

2. Authority to Provide Waivers and Alternative Requirements

- a. HERA provides under a rule of construction that, unless HERA states otherwise, grants made under its provisions are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP).
- b. The Recovery Act authorizes the Secretary to specify waivers and alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use of funds except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds. The Secretary finds that the waivers and alternative requirements in this notice and its Appendices are necessary to expedite or facilitate the use of these funds for their required purposes.
- c. Except as described in this notice and its appendices, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states or, for CDBG entitlement communities and nonprofits, including those at 24 CFR part 570 subparts A, C, D, J, K, and O, as appropriate, shall apply to the use of these funds. However, if you are a state applicant, HUD strongly urges you to take advantage of the waivers and alternative requirements provided for NSP2 that allow you to carry out activities directly rather than distributing the funds as is usual under the annual State CDBG program.
- d. A nonprofit or a consortium of nonprofits that is awarded funds will be subject to the same NSP and CDBG requirements as a CDBG entitlement community to the maximum extent feasible. Regulatory requirements at 24 CFR part 84 shall apply instead of part 85 and OMB Circulars for nonprofits will apply instead of those that apply to governmental entities.

Requirements for affirmatively furthering fair housing and environmental reviews are also different for nonprofit applicants. See Appendix 1, paragraphs S and T.

e. You must execute and submit the correct set of certifications, tailored for states, local governments, Tribes, or for non-governmental entities. The certifications are provided in Appendix 4.

f. All NSP2 assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR part 58 as explained in Appendix 1, paragraph T. Non-profit applicants that are not in consortium with a state, Indian tribe, or unit of general local government with jurisdiction over a project must have HUD conduct the environmental reviews in accordance with 24 CFR part 50. If the applicant is, or includes in consortium, a state, Indian tribe, or unit of general local government with jurisdiction over the project, the CDBG regulations apply as noted in Appendix 1, paragraph T and 24 CFR part 58. States, Indian tribes, and units of general local government may only conduct environmental reviews within their jurisdiction. Therefore, consortia planning projects that require environmental review outside the jurisdiction of a state, Indian tribe, or unit of local government that is a consortium member must receive environmental reviews from HUD under 24 CFR part 50 for those projects.

Grant applicants are cautioned that no activity or project may be undertaken, or federal or non-federal funds or assistance committed, if the project or activity would limit reasonable choices or could produce an adverse environmental impact, until all required environmental reviews and notifications have been completed by HUD or by a unit of general local government, Indian tribe, or state, and until HUD notifies the recipient that the review under 24 CFR part 50 is completed or HUD or the state approves a recipient's request for release of

funds under the environmental provisions contained in 24 CFR part 58. After the environmental review(s) pursuant to 24 CFR part 50 or 58 are completed and, as applicable, the grantee receives notice of completion from HUD or approval from HUD or the state of the request for release of funds and certification, the grantee may draw down funds from the line of credit.

g. Section 3 and the Uniform Relocation Act (URA) apply as required in 24 CFR part 570 and Appendix 1, paragraph K.

II. AWARD INFORMATION, Eligibility Information

A. Eligible applicants for the program round.

1. You must be a state government, a unit of general local government, a nonprofit entity or consortium of nonprofit entities. You must demonstrate the capacity and experience to carry out a program of NSP2 activities.
2. Nonprofit entities are public and private nonprofit organizations, including governmental entities, that are organized under state, local or tribal laws for other than profit-making activities. Public nonprofits include states, local governments, Indian tribes, and public housing authorities.
3. State and units of general local government are defined in the CDBG program in 42 U.S.C. 5202.
4. A consortium is defined as two or more private or public nonprofit organizations that collectively have the capacity and experience to carry out the proposed NSP2 activities in the target geography and that enter into an agreement to submit a single application for NSP2 funding. One organization must be designated as the lead applicant. The lead applicant must submit the application, and, if selected for funding, execute the NSP2 agreement with HUD and assume responsibility for the grant on behalf of the consortium in compliance with all program

requirements.

5. An eligible applicant may have a for-profit partner(s) who will assist in carrying out NSP2 activities. If you are applying with a for-profit partner, you will submit a firm commitment executed and dated by each for-profit partner with your application. All for-profit partners must be identified in your application. The integrated application must reflect your programs as a single program including your partner(s) and may only briefly summarize the individual partners' past experiences in factor 2. All other components of the application must reflect an overall program design. HUD will not consider individual program designs of partners in scoring an application. Second, prior to providing NSP2 funds to a for-profit partner, you must carry out a cost analysis and enter into a separate written agreement with each such partner. The agreement must include the applicable requirements described in Appendix 1, paragraph U, and set forth your partner's responsibilities for performance and compliance with NSP2.

6. If you are a consortium, you will enter into agreements at two points. First, a consortium agreement, submitted with the application, must be executed by all consortium members. The agreement must require the members to cooperatively carry out the NSP2 program in the approved application, and must authorize one member to act in a representative capacity for all members of the consortium (lead member) and assume overall responsibility for ensuring that the consortium's NSP2 program is carried out in compliance with all NSP2 requirements. The consortium agreement must state that the consortium funding agreements will be executed no later than December 1, 2009. If the lead member is a private nonprofit organization, but the consortium members include a state, Indian tribe, or unit of general local government, the agreement must authorize the member state, Indian tribe, or unit of general local government to assume all responsibility for environmental review, decision-making, and action for proposed

projects within its jurisdiction on behalf of the consortium in accordance with the requirements of 24 CFR Part 58. All consortium members must be identified in your application. The integrated application must reflect all consortium members' programs as a single program and may only briefly summarize the individual consortium members' past experiences in factor 2. All other components of the application must reflect an overall consortium program design. HUD will not consider individual program designs of consortium members in scoring an application. Second, after selection, but before the grant is awarded, the lead member must enter into a separate consortium funding agreement with each member of the consortium. These consortium funding agreements must describe the consortium member's specific activities under the NSP2 program, including timetables for completion, and applicable requirements in Appendix 1.

7. No entity may be the lead applicant on more than one NSP2 proposal. No one entity may be an applicant under more than one NSP2 proposal for a particular target geography or subset thereof.

B. Threshold Requirements

1. Eligible applicant. HUD will not consider an application from an ineligible applicant. An applicant must meet all applicable NSP2 threshold requirements described below:

- (1) You must be eligible to apply under NSP2 (see paragraph A above).
- (2) If nonprofit, you must describe how you qualify as an eligible applicant and provide evidence of your public or private nonprofit status, such as a current Internal Revenue Service (IRS) ruling that your organization is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986. If you do not have such a ruling, provide a signed and dated letter from the state attorney general or other appropriate state official that your organization is duly

organized under state law as a nonprofit. If you are a consortium, each consortium member must submit evidence of its nonprofit status to the lead applicant for inclusion in the consortium's application package. If you are a state or a unit of general local government, the signature of your chief executive officer or legally authorized designee on the SF-424 or the consortium agreement will suffice to establish that you are an eligible applicant.

(3) If a consortium, a consortium agreement executed by all consortium members.

(4) The civil rights threshold requirements, "Compliance with Fair Housing and Civil Rights Laws" that is in the **General Section** at Section III.C.2.c.

2. Amount. The amount of NSP2 funds requested must be of sufficient size to contribute toward significant and measurable neighborhood stabilization (see outcome measures above) in the target geography. To meet this requirement, the applicant's grant request must be for no less than \$5 million and must have the effect of either returning a minimum of 100 abandoned or foreclosed homes back to productive use or otherwise eliminating or mitigating their negative effects on the stability of the target geography.

3. Eligible fund use. HUD will not consider an application that includes ineligible uses of funds. Eligible NSP uses are delineated in Appendix 1, paragraph H, and you must propose to carry them out yourself or through entities with which you have a binding contractual relationship.

4. Income targeting / benefit. HUD will not consider an application that includes activities that do not meet the NSP national objectives requirements in accordance with Appendix 1, paragraph E.

5. Citizen participation. You must have completed the required citizen participation for your proposed application in accordance with Appendix 1, paragraph B.3., and submit your

application together with a summary of the citizen comments you received and the uniform resource locator (URL) of the website where your plan is posted. Minimum citizen participation involves publishing in a newspaper of general circulation or other general, news media outlet covering your target geography and posting on your official website a description of your proposed target geography, and proposed uses of NSP2 funds, in sufficient detail for affected citizens to understand how they may be affected, and soliciting and receiving comments.

6. Definitions

Your application must include as clearly labeled appendices the following definitions or standards that you will use in your NSP2 program:

- a. The definition of “blighted structure” in the context of state or local law,
- b. The definition of “affordable rents” (see Appendix 1, paragraph B.2.a. for requirements for affordable rents and continued affordability), and
- c. A description of your housing rehabilitation standards, which must include requiring that NSP2 housing construction must meet the accessibility standards at 24 CFR part 8, and that it be energy efficient and incorporate cost effective green improvements. All gut rehabilitation (i.e., general replacement of the interior of a building that may or may not include changes to structural elements such as flooring systems, columns or load bearing interior or exterior walls) of residential buildings up to three stories must be designed to meet the standard for Energy Star Qualified New Homes. All gut rehabilitation of mid -or high-rise multifamily housing must be designed to meet American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2004, Appendix G plus 20 percent (which is the Energy Star standard for multifamily buildings piloted by the Environmental Protection Agency and the Department of Energy). Other rehabilitation must meet these standards to the extent applicable to the

rehabilitation work undertaken, e.g., replace older obsolete products and appliances (such as windows, doors, lighting, hot water heaters, furnaces, boilers, air conditioning units, refrigerators, clothes washers and dishwashers) with Energy Star-labeled products. Water-efficient toilets, showers, and faucets, such as those with the WaterSense label, must be installed. Where relevant, the housing should be improved to mitigate the impact of disasters (e.g., earthquake, hurricane, flooding, fires).

7. Demonstrated Organizational Capacity

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 (such as housing counseling, or acquisition/disposition of housing or rehabilitation of housing as part of a neighborhood stabilization, land banking, or community development program) within the 24-month period immediately preceding the date of this NOFA. *HUD will only consider you to achieve this threshold if you demonstrate sufficient organizational capacity relevant to each NSP2 activity you propose to carry out.*

8. Geographic Need

- a. HUD is providing two foreclosure related needs scores at the Census Tract level, one that is based on the estimated number and percentage of foreclosures and another that combines estimated foreclosure rate with vacancy rate. Both scores rank need from 1 to 20, with 20 being census tracts with the HUD-estimated greatest need.
- b. For applicants proposing to carry out NSP2 activities, the neighborhoods identified must meet one or the other of the following requirements (you may only select one method):
 - (1) The average foreclosure needs index score for the identified target geography must be

18 or greater, as indicated by the index; or

(2) The average foreclosures with vacancy risk index score for the identified target geography must be 18 or greater, as indicated by the index.

c. Your proposed target geography need not be contiguous. You must demonstrate in your narratives addressing the rating factors that your NSP2 application will assist all of your proposed target geography. Single neighborhood, city-wide, metropolitan area-wide, regional, and national scale NSP2 applications are all possible.

d. Data and instructions for calculating the scores for your proposed target geography using the online NSP need calculation tool will be available on HUD's website, <http://www.hud.gov/nsp> on or after May 6, 2009, and remain until the NSP2 application deadline.

9. Threshold submission requirement.

Your application will only be rated and ranked if it meets all threshold requirements. Threshold requirements B.1. through B.6. above do not require separate submissions but must be addressed in the program summary, appendices (when specifically allowed by this notice), or in the submission requirements for the rating factors listed below. The threshold requirement for B.7. (demonstrated organizational capacity) must be addressed through a narrative description, and a very brief threshold capacity summary must also, together with B.8. (geographic need) be submitted to HUD separately, as described in the Delivery and Submissions – Threshold Need and Capacity section of this notice.

10. Other requirements

All other requirements are addressed in Appendix 1 and 4. Note especially that each selected applicant must make the required certifications, including, for example, that the applicant has and is following an anti-displacement and relocation plan. Certifications are included in

Appendix 4.

III. Application and Submission Information

A. Program information.

The NOFA contains all the information necessary for eligible applicants to submit an application for NSP2 funding. This section describes how you may complete an application and obtain additional information about the NSP2 NOFA and program. Copies of the published NSP2 NOFA and related application forms may be downloaded at <http://www.hud.gov/nsp>. There is no paper application kit for this program. All the information you need to apply is contained in this NOFA or is available online at <http://www.hud.gov/nsp>. The required forms will be available through a link at the same URL.

This published notice is the official document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in the notice and other information provided about the program, the published notice prevails.

1. Page limits

You are limited to 40 pages of narrative to respond to the 6 rating factors. A consortium is permitted up to 5 additional pages (total) to address the past experiences of its individual consortium members. You are permitted up to 1 additional page to describe the past experiences of each for-profit partner. Required appendices, forms, certifications, statements, and assurances are not subject to the page limitations. All pages must be sequentially numbered 1 through 40 (or 45 for a consortium, followed by the numbered individual pages for each for-profit partner, if any), for factors 1 through 6. Your application may include only the items listed in the Assembly Format and Content Checklist in Appendix 3. In responding to the factors, information must be included in your narrative response to each factor, unless this NOFA states

that the content should be included as an appendix. Any submitted supplemental information not required or requested by HUD will not be reviewed for consideration in the scoring of the application.

2. Assembly format and content

Your NSP2 application will be composed of an Application Overview, Narrative Statements (rating factors), Forms, Certification, and Appendices. To receive full consideration for funding, you should use the checklist in Appendix 3 to ensure that you address all requirements in your application.

3. General Section

a. Receipt date and time. The deadline for receipt by HUD is July 17, 2009, at 5:00 pm Eastern Daylight Time.

b. Delivery requirements – Threshold need and capacity.

HUD will provide a NSP2 Need Factor website for this purpose that will become available in early May for exploration and analysis of the need ratings for selected areas. In June, additional capacity will be added to the website to allow saving and editing a geographic configuration prior to submission. The website will continue to accept submissions up to the application deadline in July. After the deadline has passed, the site will remain available for continued use in exploring and determining areas of greatest need for NSP1 and 2.

To use the Need Factor website, you will log on and indicate how many units you have completed in the past 2 years. Then you will enter the census tracts in your proposed target geography. The system will give you a unique application number if you pass these thresholds. No NSP2 paper application may be submitted without the need factor application number prominently displayed. You will also need to provide your name and contact information on this

website before submitting to HUD. After receiving your submission, HUD can use the same website to verify that the submitted information passes the threshold tests. If you cannot complete the electronic submission of these threshold elements, the website will include instructions for submitting the threshold information in paper copy.

c. Delivery requirements – NSP2 paper application. The following procedures apply to the delivery and submission of applications in HUD Headquarters. Please read the following instructions carefully and completely, as failure to comply with these procedures may disqualify your application. HUD’s delivery requirements policies are:

(1) HUD will not accept or consider any applications delivered by hand.

(2) HUD will not accept or consider any applications sent by facsimile.

(3) HUD urges applicants sending packages by courier to the Robert C. Weaver Headquarters Building to use the following courier services, as these services have unescorted access to these buildings: United States Postal Service Express Mail Delivery, Federal Express (FedEx), and United Parcel Service (UPS). All deliveries are done between 7:30am and 5:00pm. All deliveries enter through the HUD loading dock to ensure all packages are scanned and x-rayed.

(4) Applications mailed to a location or office that is not designated for delivery of the application, which results in the designated office not receiving your application in accordance with the requirements for timely submission, will cause your application to be considered late and ineligible to receive funding consideration. HUD will not be responsible for directing packages to the appropriate office. You should pay close attention to these instructions as they can make a difference in whether HUD will accept your application for funding consideration. Please remember that a package sent to a federal facility is screened prior to delivery, so please

allow sufficient time for your package to be delivered. If an application is received late because of the processing time required for the screening, it will not be considered for funding.

Applicants are advised that they should place applications with the delivery service at least 48 hours prior to the receipt deadline date to allow for timely receipt by the deadline.

d. Proof of Timely Submission. Timely submission shall be evidenced via a delivery service receipt or a postal receipt with date and time stamp indicating that the application was delivered to a carrier service at least 48 hours prior to the application deadline, and, if applicable, that through no fault of the applicant, the delivery could not be made on or before the application due date. Couriers turned away from a HUD facility due to security issues will not be considered as meeting the requirement of “no fault of the applicant,” because applicants are advised by this notice that delivery delays can arise when using courier services, resulting in a late application submission.

e. Addresses. You, the applicant, must submit a complete application to “NSP 2 Applications Room 7286, Office of Block Grant Assistance, 451 Seventh St, SW, Washington, DC 20410.

When submitting your application, you must refer to the name of the program for which you are applying and include the correct room number to ensure your application is properly directed.

f. Copies of Applications. The application may be submitted with no additional copies.

g. Page Limitation and Font Size. Narratives addressing Factors 1-6 must be formatted so that the total number of pages submitted are equal to no more than 40 single-sided pages of single-spaced text based on an 8.5 by 11 inch paper, using a standard 12 point font. Reviewers will not review more than 40 pages for all the factors combined, with the exception of a consortium or applicant with a for-profit partner, which may submit a limited number of additional pages as allowed above.

h. Prohibition on Materials Not Required. Materials other than what is requested in this NOFA are prohibited. Reviewers will not consider resumes, charts, letters, or any other documents attached to the application. Do not permanently bind your application.

i. Funding restrictions. All activities must be eligible and meet a national objective in accordance with Appendix 1. General administration is allowed as described in Appendix 1. No more than 10 percent of an NSP2 award may assist demolition of housing unless you request and receive an exception from HUD as described in Factor 3. No NSP2 funds may be used to demolish any public housing (as defined by section 3 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a)).

j. Pre-award costs. Some pre-award costs are allowed as stated in Appendix 1, paragraph C.

k. Ineligible costs. Recipients may use NSP2 funds for allowable costs related to eligible activities. Allowable costs are described in OMB Circulars A-87 and A-122. Eligible activities are described in Appendix 1. All other costs are ineligible and unallowable.

IV. Application Review Information

A. Criteria

1. Factor 1: Need/Extent of the Problem (40 points)

a. Target geography. (10 points; also a threshold factor)

You must identify the specific geography in which you will carry out your NSP2 program, by census tracts, showing each area's two neighborhood stabilization index scores. (This must be the same geography used under threshold factor II.B.8. above.) This list may be submitted as an appendix that will not count towards the page limit.

You must provide a narrative describing the nature and extent of need for neighborhood stabilization in your target geography, based on quality data. At a minimum, your narrative for

this factor must address local housing market, credit, and employment needs that are contributing to decline of the targeted geography, including a discussion of how these factors relate to each other.

b. Market conditions and demand factors (30 points)

You must identify using quality data from an identified source and address in your narrative:

(1) A reasonable projection of the extent to which the market(s) in your target geography is likely to absorb abandoned and foreclosed properties through increased housing demand during the next three years, if you do not receive this funding. This may be based, for example, on projected job growth and in-migration or the opposite. (For purposes of this notice, market absorption rate is the rate at which abandoned or foreclosed homes in a market will sell or be lawfully reoccupied in a given period of time. This rate is often expressed as sales or re-occupancy per month. Total inventory of abandoned and foreclosed homes divided by the absorption rate for such homes equals the total months of inventory.)

(2) The extent to which over-building of housing units, over-valuation of housing, or loss of employment is a critical factor, or the most critical factor, causing abandonment and foreclosure in the target geography.

(3) The income characteristics of households in your target geography and information on housing cost burden for households at the 50 percent, 80 percent, and 120 percent of area median income levels.

(4) Any relevant social, governmental, educational, or economic factors contributing to local market conditions and contributing to neighborhood decline or instability within the target geography.

(5) A narrative describing which NSP2 activity categories are most likely to stabilize the target geography and why, based on the information in the above paragraphs. For example, HUD would expect that a community with a very low projected absorption rate for foreclosed property over the next three years might identify demolition and clearance as an appropriate stabilization strategy. A neighborhood in a community with a higher absorption rate but a very large number of properties now might need to help first-time homebuyers to afford available units. A neighborhood with a large number of abandoned properties might identify code enforcement, acquisition, and rehabilitation as the most likely to stabilize the target geography.

2. Rating Factor 2: Demonstrated Capacity of the Applicant and Relevant Organizational Staff (40 points)

a. Past Experience of the applicant. (30 points)

Provide examples of recent experience (within the last 24 months) managing neighborhood stabilization activities similar to the ones covered under this notice. Examples should include a discussion of the tasks undertaken, actual results achieved, and the specific skills and resources applied to each task. Describe concisely your experience in the specific activity categories identified above as the most likely to achieve neighborhood stabilization in the target geography, including experience with, as applicable:

- (1) City and regional planning,
- (2) Acquisition and disposition of foreclosed real estate,
- (3) Rehabilitation of housing,
- (4) Redevelopment of vacant property,
- (5) Program marketing and management of waiting lists for potential residents,
- (6) Accessing operating and investment capital,

(7) Working productively with other organizations.

b. Management structure (10 points)

(1) You must provide a description of your management structure, including an organizational chart that identifies all key management positions and the names and positions of staff managing NSP2. You must also describe your key staff and their specific roles and responsibilities for the day-to-day management of your proposed activities. If you are a consortium or applying with a for-profit partner, provide this information for each organization and also describe the management structure of the consortium or partnership(s) and the role of each entity. Do not include individuals' Social Security Numbers in your application.

(2) References. You should include at least two references for recent work similar to the programs covered under this NOFA and undertaken by you. References should only include a contact name, address, phone number and email address so HUD may verify the information. Alternatively, a reference may include one brief newspaper or journal article, program evaluation, or a transcript from a reputable independent source other than you. No video or audio recordings may be submitted.

3. Rating Factor 3: Soundness of approach (45 points)

a. Proposed Activities (15 points)

(1) Briefly describe the overall neighborhood stabilization program you propose to undertake, including any coordinated components that will not be directly funded with NSP. Address specifically whether you are proposing to expand an existing effort, including the sources of funding for that existing effort. Address specifically how and when your program will result in stabilization of the housing market in the target geography and achieve long-term economic benefits.

(2) Uses of funds and firm commitments

(a) Indicate how you will use NSP2 funds by providing a list or table showing the amount of funds budgeted for each eligible use and CDBG eligible activity (see Appendix 1, paragraph H for these uses and activities). Indicate the responsible entity for each use and activity. These proposed activities must be among the activities described as most likely to stabilize the target geography in Rating Factor paragraph 1.b.5. above.

(b) Briefly describe the proposed activities in a narrative, including the range of interest rates (if any); duration or term of assistance; tenure of beneficiaries (e.g., rental or homeownership); and location or address information.

(c) Identify whether the other funds are firmly committed (legally obligated to a specific activity or under your control and budgeted for a specific activity) or not. See II.A.5 and Rating Factor 4.

(d) Demolition and preservation.

(i) Your narrative must address why, based on market conditions, you chose the proposed mix of demolition of housing units versus preservation of housing units.

(ii) If you are proposing to demolish or convert any low- and moderate-income dwelling units as a result of NSP2-assisted activities, you must identify all information required in Appendix 1, paragraph K.1. in an appendix to your application.

(iii) If you believe the market conditions in your target geography warrant an exception to the limitation that no more than 10 percent of NSP2 funds may assist demolition activities, request the exception and justify your choice. Such an exception request must be clearly labeled as such and is not subject to the application page limits.

b. Project completion schedule. (5 points)

Briefly describe the project completion schedule, including milestones in each month for the critical management actions for you, including each consortium member or partner, start and end dates of each NSP-assisted activity, and your expected metrics and results. The schedule must show how you will comply with the deadlines imposed by the Recovery Act and included in Appendix 1, paragraphs O and M.

c. Income targeting for 120 percent and 50 percent of median (5 points)

All NSP2 funds must provide benefit to persons whose income does not exceed 120 percent of area median income. Also, 25 percent of each grant must be used 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. Describe specifically how your proposed NSP2 activities will meet these requirements.

d. Continued affordability (5 points)

The minimum requirements for continued affordability are described in Appendix 1, paragraph B.2. Describe how you will ensure, to the maximum extent practicable and for the longest feasible term, that all NSP2-assisted properties will remain affordable to persons whose income do not exceed:

- (1) 120 percent of area median income, and
- (2) 50 percent of area median income, as applicable.

e. Consultation, outreach, communications (5 points)

Ensuring transparency is a requirement for all the Recovery Act programs.

(1) Describe how you have consulted with units of local government and states with jurisdiction over your target geography, especially those that received NSP1 funding, in developing your proposal and how you will continue to consult during program implementation

if you are funded.

(2) Describe your proposed outreach and affirmative marketing actions and how you will ensure that you have qualified families available as NSP2-assisted units become available.

(3) Describe how you will continually communicate program design, progress, opportunities and results; process any complaints in a timely manner (respond within 15 working days, if feasible); and ensure that local citizens and other interested parties are informed about program policies.

f. Performance and monitoring (10 points)

CDBG grantees must have a plan for monitoring all program activities and ensuring performance. In addition to this, NSP2 recipients must also have an internal audit function. If you are a consortium, the internal auditor must be explicitly authorized in each consortium agreement to carry out internal audits of any NSP2-assisted activity. An internal audit function is not the same as the required annual Single Audit. An internal audit function will continually examine potentially risky areas of program operations and management and provide regular and valuable feedback to program managers and to those who hold them accountable. This feedback will include identification of risky management practices and missing or ineffective internal controls, areas that are not in compliance with program requirements, and ineffective implementation of established policies. To receive points for this factor, you must:

(1) Describe your monitoring plan.

(2) Describe how you will meet the internal audit requirement. Specifically identify the position(s) and agency responsible for internal audit.

4. Rating Factor 4: Leveraging other funds, or removal of substantial negative effects (10 points)

Provide measures of leveraged investments or removal of destabilizing influences that will result from use of your NSP2 award. This factor is quantitative; HUD will rank order applicant responses for subparagraph a separately from those for subparagraph b below. Those applications whose responses rate in the highest third of responders for either subparagraph will receive the maximum number of points. From the remaining applications, those whose responses rate in the second third for either subparagraph will receive 5 points. The remaining applications, those with scores in the lowest third for both subparagraphs, will not receive points for this factor.

a. **Leverage.** Leverage is expressed as the ratio of the value of firmly committed leveraged resources divided by the amount of NSP2 funds for which you are applying. Provide evidence of firm commitments of specific amounts of non-NSP, non-CDBG, and non-federal resources for investment in your NSP2 program (not including mortgages resulting from NSP2 down payment assistance to individual homebuyers) from state, local, private nonprofit, or private for-profit sources. A firm commitment means a written agreement under which you or another entity agree to perform services or provide resources for an activity specified in your application. Firm commitments in the form of cash funding (e.g., grants or loans), in-kind contributions, donated land and construction materials, and donated services will count as leverage. Leveraging does not include the dollar value of sweat equity and volunteer labor for your proposed activities. Leveraging does not include mortgage financing provided to homebuyers. Leveraged resources or services must be committed in writing and include your organization's name, the contributing organization's name (including designation as a federal, state, local, or private source), the proposed type of commitment, and the dollar value of the commitment as it relates to your proposed NSP2-assisted activities. Each letter of commitment

must be signed by an official of the organization legally able to make the commitment on behalf of the organization. Letters of commitment must be included as an appendix to your application, and do not count toward the page limitation; or

b. Calculate the value (using the HUD-provided rubric in Appendix 3 and providing documentation of your calculation, including citation of the data sources) of any destabilizing influences (such as blighted homes) you propose to remove as part of your NSP2 program.

5. Rating Factor 5: Energy efficiency improvement and sustainable development factors (10 points)

Describe how you will incorporate specific energy efficient, environmentally friendly or other sustainable or green elements in some or all of your NSP2 activities.

a. Transit accessibility. HUD will award up to 4 points for this factor for NSP target areas that are currently transit accessible or that you certify will be made transit accessible during the term of your NSP2 grant. Transit accessible is defined as being in a census tract with convenient bus service (local bus service every 20 minutes during rush hour or an express commuter bus); or being or bordering a census tract with a passenger rail stop or station (including, for example, commuter rail, subway, light rail, and streetcars). You will receive maximum points for clearly demonstrating both bus and rail service to all or most of your target geography. You may be awarded 1 or 2 points if you can demonstrate that all or most of your target geography has good access to transit or access to regional employment centers that does not require daily private automobile usage for commuting.

b. Green building standards. HUD will award up to 3 points for applications that comply with the required NSP2 rehabilitation standards and also demonstrate that new construction and gut rehabilitation activities will be required to exceed the Energy Star for New Homes standard and

that moderate rehabilitation or energy retrofits will purchase only Energy Star products and appliances. If you will require NSP2 homes to achieve an established environmental or energy efficiency standard such as Green Communities or equivalent, you do not need to provide the entire standard in detail, but you must provide HUD enough information to locate and reference the standard.

c. Re-use of cleared sites. HUD will award one point if the application demonstrates that all demolition sites will be re-used within the term of your NSP2 grant as replacement housing, for use as a community resource, or to provide an environmental function. Examples include community gardens, pocket parks, or floodplain impoundment areas.

d. Deconstruction. HUD will award one point if you will use deconstruction techniques for your NSP2 demolition activities. Deconstruction means salvaging and re-using materials resulting from demolition activities.

e. HUD may award one point for other sustainable development practices you describe and propose to incorporate into your NSP2 activities. Green practices recommended by HUD as part of the HOME Investment Partnerships program are included in Appendix 2 as a reference.

6. Rating Factor 6: Neighborhood transformation and economic opportunity (5 points)

HUD will award the points under this factor if you:

(1) certify that your proposed NSP activities are part of or consistent with an established comprehensive, regional, or multi-jurisdiction plan, such as a transportation, sustainable development, economic revitalization, or floodplain management plan (you should not submit the plan, but provide a web address or sufficient information so that HUD may otherwise obtain a copy of the plan from the authoring agency), and

(2) describe how your proposed NSP2 activities relate to and increase the effectiveness of

that established plan.

B. Review and Selection Process

1. HUD will evaluate all NSP2 applications that successfully complete technical processing for completeness and timely receipt and meet threshold requirements for need and applicant capacity, and threshold and submission requirements for Rating Factors 1 through 6. The maximum number of points awarded for the rating factors is 150.
2. Rating. Applications that meet all threshold requirements listed in Section B will be rated against the criteria in Rating Factors 1 through 6 and assigned a score. Applications that do not meet all threshold factors will be rejected and not rated.
3. Other factor: Past performance. In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including, but not limited to, the ability to account for funds appropriately; timely use of funds received either from HUD or other federal, state, or local programs; timely submission and quality of reports to HUD; meeting performance targets; timelines for completion of activities and receipt of promised matching or leveraged funds; and the number of persons to be served or targeted for assistance. HUD may consider information available from HUD's records; a name check review; public sources such as newspapers, Inspector General or Government Accountability Office reports or findings; or hotline or other complaints that have been proven to have merit. In evaluating past performance, HUD may elect to deduct points from the rating score.
4. Adjustments to Funding. To ensure the fair distribution of funds and enable achievement of the purposes or requirements of NSP2, HUD reserves the right to fund less than the full amount requested in an application. HUD will not fund any portion of an application that is not eligible for funding, does not meet the requirements of this notice or is duplicative of other funded

programs or activities of other funded applicants. If funds remain from funding the highest-ranking applications, HUD may fund all or part of the next highest ranking application. If an applicant turns down an award offer or fails to submit executed consortium funding agreements by December 1, 2009, HUD will make an offer of funding to the next highest-ranking application. If funds remain after all selections have been made, HUD may hold funds over for a subsequent competition. In the event that HUD commits a scoring error that, if corrected, would result in selection of an applicant during the funding round, HUD may select that applicant for funding, subject to the availability of funds.

5. **Ranking and Identification of Fundable Applications.** Applications that receive at least 30 of 40 points for Factor 2 will be fully reviewed. Applications that receive a total of 115 points or more will be eligible for selection. HUD will place applications in ranked order based on rating scores (after any adjustment for past performance) and funds availability.

6. **Technical Deficiencies.** After the application deadline date and consistent with regulations in 24 CFR part 4, subpart B, HUD will not consider any unsolicited information you may want to provide. However, HUD may contact you to clarify an item in your application or to correct technical deficiencies. To avoid unreasonably excluding applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. However, HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factor. Examples of curable (correctible) technical deficiencies include inconsistencies in the funding request or a failure to submit certifications. In each case, HUD will notify you in writing by describing the clarification or technical deficiency.

V. Award Administration Information

A. Selection and Award Notices

After HUD has rated all applications and has identified fundable applications receiving at least 115 points, HUD will notify each consortium with an application in the competitive range that the lead applicant has until December 1, 2009, to enter into a separate consortium funding agreement with each individual consortium member and to submit each executed agreement to HUD. The agreement must set forth the individual consortium member's or partner's responsibilities for carrying out NSP2 activities in a timely manner and for compliance with the NSP2 program requirements.

HUD will make selections from the fundable applications, not including any consortium application for which the executed consortium funding agreement(s) was not provided by December 1, 2009, based on ranked order based on ratings scores (after any adjustment for past performance) and funds availability.

After it makes selections, HUD will provide a grant agreement together with any grant conditions to each selected applicant. The applicant shall return the executed grant agreement within 30 days to HUD.

B. Debriefing

For a period of 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A request for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF-424 or by his or her successor, and be submitted to the Agency Contact in this NOFA. Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis on which assistance was provided or denied.

VI. Administrative Requirements

A. Use of the Disaster Recovery Grant Reporting (DRGR) system for detailed budgeting, funds access, and NSP2 compliance reporting.

Successful applicants will enter their activities and expected outputs and outcomes into an “action plan”, draw down funds, and provide regular reports in DRGR, as described further in Appendix 1, paragraph O. After award, HUD will inform recipients how to submit additional reporting for data elements, such as status of environmental reviews, required by the Recovery Act.

B. Amendments. No amendment to an approved application may be made unless HUD rates the approved application as amended and it scores high enough to have been selected for funding under the NSP2 competition.

C. Agency Contact

For further information and technical assistance, contact NSP2_help@hud.gov or call the Office of Block Grant Assistance at 202-708-3587.

D. Affirmatively furthering fair housing

Successful applicants and subrecipients must affirmatively further fair housing by promoting fair housing rights and fair housing choice in housing programs funded by the award. Successful governmental applicants or consortium members must meet the requirements for states and local governments under the CDBG program at 24 CFR part 570. Successful nonprofit applicants or consortium members and for-profit partners must affirmatively further fair housing by adopting and following procedures and requirements to affirmatively market NSP2-assisted housing opportunities. Affirmative marketing consists of taking actions to provide information and otherwise attract eligible persons in the housing market to the housing program without

regard to race, color, national origin, sex, religion, familial status or disability. The requirements and procedures include: methods for informing the public and potential homebuyers about federal fair housing laws; use of the Equal Housing Opportunity logo; procedures to inform and solicit applications from persons in the housing market area who are not likely to apply for the program without special outreach. See Appendix 1, paragraph S.

E. Certifications

Each applicant must submit the applicable signed and dated certifications from Appendix 4.

F. Note on statutory limitation on distribution of funds

No NSP2 funds shall be distributed to an organization that has been indicted for a violation under federal law relating to an election for federal office; or an organization that employs applicable individuals.

G. Information collection approval note

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2506-0185. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

H. Duration of funding

The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. Such a limitation may not be waived. The Recovery Act directs that NSP2 funds be available for obligation by HUD until September 30, 2010. Each recipient will have two years to expend 50 percent of its allocated NSP2 funds and

three years to expend all of its allocated NSP2 funds from the time HUD signs its NSP2 grant agreement. NSP2 program income received after the end of the grant period will be governed by the requirements of Appendix 1.

I. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for grants made under NSP2 is as follows: 14.256.

J. Procurement of Recovered Materials

State agencies and agencies of a political subdivision of a state that are using assistance under a HUD program for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

K. Buy American. Use of American Iron, Steel, and Manufactured Goods. Recipients may not use any funds obligated under this award for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless HUD waives the application of this

provision.

L. Wage Rate Requirements. Under Section 1606 of the Recovery Act, contractors and subcontractors hired with Recovery Act funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. Recipients selected for funding under this program will receive additional guidance on compliance with the Davis-Bacon Act. For more information about federal labor standards requirements in HUD programs, please visit the Office of Labor Relations website at www.hud.gov/offices/olr.

M. Whistleblower Protection. Each recipient or subrecipient awarded funds made available under the Recovery Act shall promptly refer to the Office of Inspector General for HUD any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The OIG hotline is 1-800-347-3735 and the website is <http://www.hud.gov/offices/oig/hotline>.

N. DUNS/CCR. Recipients must require that first tier-subrecipients begin planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR) no later than the first time NSP2 quarterly performance reports are due.

O. Responsibilities for Informing Subrecipients. Recipients agree to separately identify each

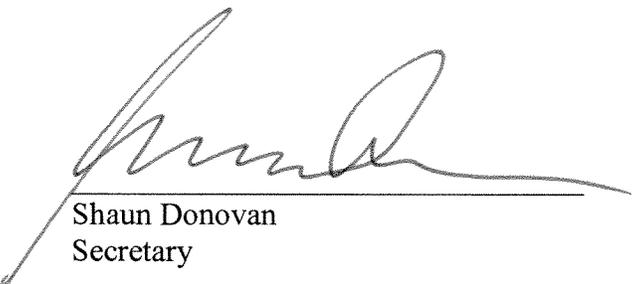
subrecipient, and document in DRGR the amount of NSP2 funds awarded to each subrecipient, if any.

P. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this NOFA in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Dated: _____

5/4/09



Shaun Donovan
Secretary

[FR-5321-N-01]

[FR-5231-N-01]

Appendix 1 – NSP2 Program Requirements for All Recipients

Appendix 2 – Recommended Green Elements

Appendix 3 – Application Checklists, Calculation Rubric

Appendix 4 - Certifications

Appendix I: Program Requirements

Notice of Fund Availability, Neighborhood Stabilization Program 2

The Department is using this Appendix to provide grant recipients, grant administrators and HUD field staff the program requirements and information about ways in which the requirements for NSP2 vary from regular CDBG and NSP1 program rules. Except as described in this notice, statutory and regulatory provisions governing the CDBG program shall apply to the use of these funds. State requirements include those at 24 CFR part 570 subpart I and for CDBG entitlement communities and other NSP2 recipients, those at 24 CFR part 570 subparts A, C, D, J, K, and O. For the purposes of NSP2, all non-governmental recipients shall comply with requirements applicable to entitlement communities under CDBG regulations, except nonprofit recipients are subject to (1) administrative requirements in 24 CFR 570.502(b) instead of 570.502(a) (see section M), (2) environmental review requirements in 24 CFR Part 50 when lacking a governmental consortium member with jurisdiction over a project (see section T), and (3) requirements for affirmatively furthering fair housing (see section S). Other sections of this Appendix will provide further details of the changes, the majority of which concern adjustments necessitated by HERA and Recovery Act provisions, simplifying program rules to expedite administration, or relate to the ability of state recipients to act directly instead of solely through distribution to local governments.

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For purposes of the NSP2 program, nonprofits will be subject to CDBG regulations for entitlement communities unless otherwise noted. The key differences are that nonprofits will be subject to (1) administrative requirements in 24 CFR 570.502(b) instead of 570.502(a), (2) environmental review requirements in 24 CFR Part 50 (see section T), and (3) requirements for affirmatively furthering fair housing (see section S).

Because it is a competitive program, HUD is treating a recipient's use of its NSP2 grant independently of the consolidated plan and annual action plan process. The NSP2 grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. HERA, Recovery Act and the NSP2 competition notice establish the need, target the geographic areas, and define the eligible uses of NSP2 funds. Treating the NSP2 independently from the regular CDBG submission requirements implements the Recovery Act direction to allocate funds competitively and facilitates the distribution of NSP funds, while ensuring citizen participation

on the specific use of the funds. Therefore, consolidated plan requirements at 24 CFR 91 are not applicable, including the certification of consistency with the consolidated plan to mean the NSP funds will be used to meet the congressionally identified needs of abandoned and foreclosed homes in the targeted areas set forth in the recipient's application. In addition, HUD is waiving the consolidated plan regulations to the extent necessary to adjust reporting to fit the requirements of the Recovery Act, the NSP2 competition and the use of the DRGR.

The waivers, alternative requirements, and statutory changes apply only to the grant funds appropriated under the Recovery Act and not to the use of regular formula allocations of CDBG funds and NSP1, even if they are used in conjunction with NSP2 funds for a project. They provide expedited program implementation and implement statutory requirements unique to this appropriation.

A. Definitions for purposes of the CDBG Neighborhood Stabilization Program 2

Background

Certain terms are used in HERA that are not used in the regular CDBG program, or the terms are used differently in HERA and the HCD Act. In the interest of speed and clarity of administration, HUD is defining these terms in this notice for all NSP2 recipients. States may define other program terms under the authority of 24 CFR 570.481(a), and will be given maximum feasible deference in accordance with 24 CFR 570.480(c) in matters related to the administration of their NSP programs.

Requirement

Abandoned. A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days, AND the property has been vacant for at least 90 days.

Blighted structure. A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

CDBG funds. CDBG funds means, in addition to the definition at 24 CFR 570.3, NSP2 grant funds distributed under this notice.

Current market appraised value. The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by a recipient, subrecipient, developer, or individual homebuyer; provided, however, if the anticipated value of the proposed acquisition is estimated at \$25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the recipient determines is qualified to make the valuation.

Foreclosed. A property “has been foreclosed upon” at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

Land bank. A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP program, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the

land bank is a governmental entity, it may also maintain foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

Subrecipient. Subrecipient shall have the same meaning as at the first sentence of 24 CFR 570.500(c). This includes any nonprofit organization (including a unit of general local government) that an NSP2 recipient awards funds to. The term also includes any land bank receiving NSP funds from the recipient or other subrecipient.

Use for the purposes of section 2301(c)(1). Funds are used when they are obligated by a state, unit of general local government, a nonprofit entity, consortium of nonprofit entities, or any subrecipient thereof, for a specific NSP activity. Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, nonprofit entity, consortium of nonprofit entities, or a subrecipient during the same or a future period. Note that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of local government) are made.

B. Pre-grant process

Background

To expedite the process and to ensure that the NSP2 grants are awarded in a timely manner, while preserving reasonable citizen participation, HUD is requiring a minimum time for citizen comments of 10 days. Application materials relating to target geography and proposed uses of funds must be posted on the applicant's official website as the materials are developed, published, and submitted to HUD. Applicants will also be required to provide the website address of the proposed and final plans to HUD for posting on HUD's program website.

Applicants are cautioned that, despite the competition process, they are still responsible for ensuring that all citizens have equal access to information about the programs. Among other things, this means that each recipient 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. This may mean providing language assistance services or ensuring that program information is available in the appropriate languages for the geographic area targeted by the applicant. Applicants must be aware of LEP speaking populations in their targeted geography. See Section III.C.4.f. of the General Section for further guidance.

Accordingly, the following describes the expedited steps for NSP2 grants:

- Proposed uses of funds and target geography published via the general news media and on the Internet for no less than 10 calendar days of public comment;
- Final uses of funds and target geography posted on the Internet and submitted to HUD in accordance with this Notice;
- HUD reviews applications, determines fundable applications, requests consortium funding agreements, if applicable;
- HUD selects recipients and prepares a cover letter, grant agreement, and grant conditions;
- Grant agreement signed by HUD and transmitted to the recipient;
- Recipient signs and returns the grant agreement within 30 days;
- HUD establishes the line of credit and the recipient requests and receives DRGR access;
- After the environmental review(s) pursuant to 24 CFR part 50 (nonprofits) or 58 (States or units of general local government) are completed and, as applicable, the recipient receives notice of completion from HUD (nonprofits) or an approval from HUD or the State of the Request for Release of Funds and certification (governmental entities), the

recipient may draw-down funds from the line of credit.

Requirement

1. General note. Except as described in this notice, statutory and regulatory provisions governing the CDBG program for states and entitlement communities, as applicable, shall apply to the use of these funds. In general, nonprofits are subject to the rules applicable to entitlement communities, unless modified by this Notice.
2. Continued affordability. Recipients shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of HERA, Section 2301(f)(3)(A)(ii), remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.
 - a. In its NSP2 application, the applicant will define “affordable rents” and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP2 activities. HUD will consider any applicant adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by an applicant to be enforceable and longer in duration. (Note that HERA’s continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b).)
 - b. The recipient must require each NSP2-assisted homebuyer to receive and complete at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before

obtaining a mortgage loan. If the recipient is unable to meet this requirement for a good cause (e.g., there are no HUD-approved housing counseling agencies within the recipient's jurisdiction, or there are no HUD-approved housing counseling agencies within the recipient's jurisdiction that engage in homebuyer counseling), the recipient may submit a request to its HUD field office for an exception to this requirement. Upon a determination of good cause, HUD may, subject to statutory limitations, grant an exception to this provision. Each exception must be in writing and specify the grounds for approving the exception. The recipient must ensure that the homebuyer obtains a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages (see, Statement on Subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration, available at <http://www.fdic.gov/regulations/laws/rules/5000-5160.html>).

Recipients must design NSP2 programs to comply with this requirement and must document compliance in the records, for each homebuyer. Recipients are cautioned against providing or permitting homebuyers to obtain subprime mortgages for whom such mortgages are inappropriate, including homebuyers who qualify for traditional mortgage loans.

c. If NSP2 funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure, the recipient must revive the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of this notice.

3.a. HUD is requiring applicants to provide no fewer than 10 calendar days for citizen comment. Specifically, applicants must, at least 10 days prior to application submission to HUD, post

information on (1) the amount of money, (2) uses of funds, and (3) in which target geography, it plans to address in its NSP2 program on its official website. With their NSP2 application package, applicants must include a summary of citizen comments received during the comment period and the URL address of the website where the plan is posted.

b. HUD is also requiring applicants to publish planned program information on (1) the amount of money, (2) uses of funds, and (3) the target geography in a newspaper of general circulation or other general news media outlets that cover the target geography of the application.

c. NSP2 recipients must provide a timely written response to every citizen complaint within an established period of time (within 15 days working days, where practicable).

4. DUNS Requirement and Central Contractor Registration. In accordance with the Notice of HUD's FY2009 Notice of Funding Availability, Policy Requirements and General Section (73 FR 79548) (Dec. 29, 2008) (General Section), all applicants must obtain a DUNS number and have an active registration in the Central Contractor Registration (CCR) to receive funds from HUD. Information on obtaining a DUNS number is available at

<http://www.hud.gov/grants/index.cfm>. Information on CCR registration is available at

<http://www.ccr.gov/Renew.aspx> and <http://www.ccr.gov/Help.aspx>.

C. Reimbursement for pre-award costs

Background

NSP2 recipients will need to move forward rapidly to undertake administrative actions, as soon as awards are announced. Therefore, HUD is granting permission for recipients to incur pre-award costs as if each was a new recipient preparing to receive its first allocation of CDBG funds. Applicants taking advantage of this waiver do so entirely at their own risk, as they may not be selected for NSP2 funding.

Requirement

24 CFR 570.200(h) is waived to the extent necessary to grant permission to applicants under this notice to incur pre-award costs as described in this Notice. Similarly, in accordance with OMB Circular A-87, Attachment B, paragraph 31, HUD is allowing states applying to HUD under this Notice to incur pre-award costs under the same terms. Nongovernmental entities cannot incur pre-award costs for activities other than administrative and planning because all other activities require an environmental review.

D. Grant conditions

For NSP2 recipients that HUD determines are high risk in accordance with 24 CFR 85.12(a) (governments) and 84.14 (nonprofits), HUD will apply additional grant conditions in accordance with 24 CFR 85.12(b) and 84.14.

E. Income eligibility requirement changes

Background

The NSP2 program includes two low- and moderate-income requirements at Section 2301(f)(3)(A) of HERA that supersede existing CDBG income qualification requirements. Under the heading “Low and Moderate Income Requirement,” HERA states that:

“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.”

Thus, NSP2 allows the use of *only* the low- and moderate-income national objective. Activities may **not** qualify for NSP2 under other CDBG national objectives using the “prevent or eliminate slums and blight” or “address urgent community development needs” objectives.

Second, this provision also redefines and supersedes the definition of “low- and

moderate-income,” effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of area median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program. To prevent confusion, HUD will refer to this new income group as “middle income,” and keep the regular CDBG definitions of “low-income” and “moderate income” in use. Further, HUD will characterize aggregated households whose incomes do not exceed 120 percent of median income as “low-, moderate-, and middle-income households,” abbreviated as LMMH. For the purposes of NSP2, an activity may meet the HERA low- and moderate-income national objective if the assisted activity:

- provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income (abbreviated as LMMH);
- serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income (LMMA); or
- serves a limited clientele whose incomes are at or below 120 percent of area median income (LMMC).

HUD uses the parenthetical terms above to refer to NSP national objectives in program implementation, to avoid confusion with the regular HCD Act definitions.

For recipients choosing to assist land banks or demolition of structures with NSP funds, the change to the income qualification level for low-, moderate-, and middle-income areas will likely include most of the neighborhoods where property stabilization is required. If an assisted land bank is not merely acquiring properties, but is also carrying out other activities 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)) to meet a national objective (LMMA) prior to final disposition of the banked property. HUD notes that the recipient must determine the actual service area benefiting from a land bank's activities, in accordance with the regulations.

However, HUD does not believe the benefits of just holding property are sufficient to stabilize most neighborhoods or that this is the best use of limited NSP funds absent a re-use plan. Therefore, HUD is requiring that a land bank may not hold a property for more than 10 years without obligating the property for a specific, eligible redevelopment of that property in accordance with NSP requirements.

Note that if a state provides funds to an entitlement community, the entitlement community must apply the area median income levels applicable to its regular CDBG program geography and not the "balance of state" levels.

Other than the change in the applicable low- and moderate- income qualification level from 80 percent to 120 percent, the area benefit, housing, and limited clientele benefit requirements at 570.208(a) and 570.483(b) remain unchanged, as does the required documentation.

The other NSP low- and moderate-income related provision states that:

"not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income."

HUD advises recipients to take note of this new threshold as they design NSP activities. This provision does not have a parallel in the regular CDBG program. Applicants must document that an amount equal to at least 25 percent of the requested NSP2 grant amount has been budgeted in the NSP2 application for activities that will provide housing for income-qualified individuals or families. Prior to and at grant closeout, HUD will review recipients for compliance with this provision by determining whether at least 25 percent of grant funds have been expended for housing for individual households whose incomes do not exceed 50 percent of area median income.

Requirements

1. Overall benefit supersession and alternative requirement. The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484 (for states), and 24 CFR 570.200(a)(3) that 70 percent of funds are for activities that benefit low- and moderate-income persons are superseded and replaced by section 2301(f)(3)(A) of HERA. One hundred percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of area median income. NSP shall refer to such households as “low-, moderate-, and middle-income.”
2. National objectives supersession and alternative requirements. The requirements at 42 U.S.C 5301(c) are superseded and 24 CFR 570.208(a) and 570.483 are waived to the extent necessary to allow the following alternative requirements:
 - a. for purposes of NSP only, the term “low- and moderate-income person” as it appears throughout the CDBG regulations at 24 CFR part 570 shall be defined as a member of a low-, moderate-, and middle-income household, and the term “low- and moderate-income household” as it appears throughout the CDBG regulations shall be defined as a household having an income

equal to or less than 120 percent of area median income, measured as 2.4 times the current Section 8 income limit for households below 50 percent of median income, adjusted for family size. A state choosing to carry out an activity directly must apply the requirements of 24 CFR 570.208(a) to determine whether the activity has met the low-, moderate-, and middle-income (LMMI) national objective and must maintain the documentation required at 24 CFR 570.506 to demonstrate compliance to HUD.

b. The national objectives related to prevention and elimination of slums and blight and addressing urgent community development needs (24 CFR 570.208(b) and (c) and 570.483(c) and (d)) are not applicable to NSP-assisted activities.

c. Each applicant whose application includes assisting rental housing shall develop and make public its definition of affordable rents for NSP-assisted rental projects.

d. An NSP-assisted property may not be held in a land bank for more than 10 years without obligating the property for a specific, eligible redevelopment of that property in accordance with NSP2 requirements. Recipients that have NSP2 funded properties in land banks at the three year expenditure deadline will be required to fulfill this duty as part of their grant close-out agreement.

e. Not less than 25 percent of any NSP grant shall be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income.

F. State distribution to entitlement communities and Indian Tribes

Background

Unlike the regular CDBG program, States receiving allocations under this notice may distribute funds to or within any jurisdiction within the state that is among those with the greatest

need, even if the jurisdiction is among those receiving a direct formula allocation of funds from HUD under the regular CDBG program. However, to ensure swift program implementation, HUD strongly urges state applicants to take advantage of their authority provided for NSP2 that allow States to carry out activities directly rather than distributing the funds as is usual under the annual State CDBG program.

Requirement

In accordance with the direction of HERA that recipients distribute funds to the areas of greatest need and the nature of the competitive program under the Recovery Act, 42 U.S.C. 5302(a)(7) (definition of “nonentitlement area”) and 24 CFR part 570, including 24 CFR 570.480(a), do not apply to NSP2 funding. There is no prohibition on states receiving NSP2 funds from distributing such funds to units of general local government in entitlement communities or to Tribes. The appropriations law supersedes the statutory distribution prohibition at 42 U.S.C. 5306(d)(1) and (2)(A).

G. State’s direct action

Background

In the State CDBG program, states receiving CDBG funds may not directly use the funds for activities, but must distribute them to units of general local government, which then use the funds for program activities. States may still use this “method of distribution” program model under NSP, but HUD reminds the states of the 2- and 3-year deadlines for expenditure of grant funds.

Therefore, a state receiving NSP funds may carry out NSP activities directly for some or all of its assisted grant activities, just as CDBG entitlement communities do under 24 CFR 570.200(f), including, but not limited to, carrying out activities using its own employees,

procuring contractors, private developers, and providing loans and grants through nonprofit subrecipients (including local governments and other public nonprofits such as regional or local planning or development authorities and public housing authorities).

For those activities a state chooses to carry out directly, HUD strongly advises the state to adopt the recordkeeping required for an entitlement community at 570.506 and the subrecipient agreement provisions at 570.503. Also, in such cases, as an alternative requirement to 42 U.S.C. 5304(i), the state may retain and re-use program income as if it were an entitlement community.

HUD is granting regulatory waivers of State CDBG regulations to conform the applicable management, real property change of use, and recordkeeping rules when a state chooses to carry out activities as if it were an entitlement community.

Requirements

1. Responsibility for state review and handling of noncompliance. This change conforms NSP requirements with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of 42 U.S.C.5304(e)(2), as amended, as modified by this notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local government and for its subrecipients.
2. Change of use of real property for state recipients acting directly. This waiver conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly.

For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), “unit of general local government” shall be read as “unit of general local government or state.”

3. Recordkeeping for a state recipient acting directly. Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: state records. The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of NSP funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: (1) enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the state; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the application. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

4. State compliance with certifications for state recipients acting directly. This is a conforming change related to the waiver to allow a state to act directly. Because a state recipient under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the state has failed to carry out its certifications, so that such basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements.

5. Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and

approving releases of funds. For this grant, HUD will allow a state recipient to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

H. Eligibility and allowable costs

Background

Most of the activities eligible under NSP represent a subset of the eligible activities under 42 U.S.C. 5305(a). Due to limitations in the reporting system, DRGR, the NSP-eligible uses must be correlated with CDBG-eligible activities. This correlation also reduces implementation risks, because it will ensure that the NSP grants are administered largely in accordance with long-established CDBG rules and controls. The table in the requirements paragraph below shows the eligible uses under NSP and the corresponding eligible activities from the regulations for the regular CDBG entitlement program that HUD has determined best correspond to those uses. If a recipient creates a program design that includes a CDBG-eligible activity that is not shown in the table to support an NSP2-eligible use, the Department is providing an alternative requirement to 42 U.S.C. 5305(a) that HUD may allow a recipient an additional eligible-activity category if HUD finds the activity to be in compliance with the NSP statute. NSP2 recipients should note that the Recovery Act amended the HERA eligible uses 2301(c)(3)(C) (land banks) and 2301(c)(3)(E) (redevelopment of demolished or vacant property) to read as shown in the table below. As under the regular CDBG program, recipients may fund costs, such as reasonable developer's fees, related to NSP2-assisted housing rehabilitation or construction activities. Regular CDBG administration and planning caps are not applicable to NSP grants, because some of the costs usually allocated (for example, the costs of completing the entire consolidated plan

process) would be excessive in the context of the NSP program. HUD is therefore providing an alternative requirement that an amount of up to 10 percent of an NSP grant provided to a jurisdiction and of up to 10 percent of program income earned may be used for general administration and planning activities as those are defined at 24 CFR 570.205 and 206. For all recipients, including states, nonprofit entities and consortia of nonprofit entities, the 10 percent limitation applies to the grant as a whole. The regulatory and statutory requirements for state match for program administration at 24 CFR 570.489 (a)(i) are superseded by the statutory direction at HERA, Section 2301(e)(2) that no matching funds shall be required for a state or unit of general local government to receive a grant.

Requirements

1. Use of grant funds must constitute an eligible use under HERA as amended by the Recovery Act.
2. In addition to being an eligible NSP use of funds, each activity funded under this notice must also be CDBG-eligible under 42 U.S.C. 5305(a) and meet a CDBG national objective.
- 3.a. Certain CDBG-eligible activities correlate to specific NSP2-eligible uses and vice versa. 42 U.S.C. 5305(a) and 24 CFR 570.201-207 and 482(a) through (d) are superseded to the extent necessary to allow the eligible uses described under section 2301(c)(3) of HERA in accordance with this paragraph (including the table and subparagraphs below) or with permission granted, in writing, by HUD upon a written request by the recipient that demonstrates that the proposed activity constitutes an eligible use under NSP. All NSP recipients, including states, will use the NSP categories and CDBG entitlement regulations listed below.

NSP-Eligible Uses	Correlated Eligible Activities From the CDBG Entitlement Regulations
(A) Establish financing mechanisms for purchase and redevelopment of	<ul style="list-style-type: none"> • As part of an activity delivery cost for an eligible activity as defined in 24 CFR

foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers	<p>570.206.</p> <ul style="list-style-type: none"> • Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.
(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	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition (b) Disposition, (i) Relocation , and (n) Direct homeownership assistance (as modified below); • 570.202 eligible rehabilitation and preservation activities for homes and other residential properties (HUD notes that rehabilitation may include counseling for those seeking to take part in the activity).
(C) Establish land banks for homes and residential properties that have been foreclosed upon	24 CFR 570.201(a) Acquisition and (b) Disposition.
(D) Demolish blighted structures	<ul style="list-style-type: none"> • 24 CFR 570.201(d) Clearance for blighted structures only.
(E) Redevelop demolished or vacant properties as housing	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below). • 24 CFR 570.202 Eligible rehabilitation and preservation activities for demolished or vacant properties. • 24 CFR 570.204 Community based development organizations. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost

b. HUD will not consider requests to allow foreclosure prevention activities, or to allow demolition of structures that are not blighted, or to allow purchase of residential properties and homes that have not been abandoned or foreclosed upon as provided in HERA and defined in

this notice. HUD does not have the authority to permit uses or activities not authorized by HERA.

c. New construction of housing is eligible as part of eligible-use (E) to redevelop demolished or vacant properties as housing.

d. 24 CFR 570.201(n) is waived and an alternative requirement provided for 42 U.S.C. 5305(a) to the extent necessary to allow provision of NSP-assisted homeownership assistance to persons whose income does not exceed 120 percent of median income.

e. No NSP2 funds may be used to demolish any public housing (as defined by Section 3 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a)).

f. In accordance with the Recovery Act, a recipient may not use more than 10 percent of its grant for demolition activities under HERA, Section 2301(c)(3)(C) and (D) unless the Secretary determines that such use represents an appropriate response to local market conditions.

Applicants seeking to use more than 10 percent of their grant amounts on demolition activities must request a waiver as part of the application process.

4. Alternative requirement for the limitation on planning and administrative costs. 24 CFR 570.200(g) and 570.489(a)(3) are waived to the extent necessary to allow each recipient under this notice to expend no more than 10 percent of its grant amount, plus 10 percent of the amount of program income received by the recipient, for activities eligible under 24 CFR 570.205 or 206. The requirements at 24 CFR 570.489 are waived to the extent that they require a state match for general administrative costs. (States may use NSP2 funds under this 10 percent limitation to provide technical assistance to local governments and nonprofit program participants.)

I. Rehabilitation standards

Background

HERA provides that any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties. This means that each applicant must describe or reference in its NSP2 application what rehabilitation standards it will apply for NSP2-assisted rehabilitation. HUD will monitor to ensure the standards are implemented.

HERA defines rehabilitation to include improvements to increase the energy efficiency or conservation of such homes and properties or to provide a renewable energy source or sources for such homes and properties. HUD has strongly encouraged NSP1 recipients to use grant funds not only to stabilize neighborhoods in the short-term, but to strategically incorporate modern, green building and energy-efficiency improvements in all NSP activities to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods. Several rating factors in the NSP2 Notice, including especially rating factors 5 and 6, also incorporate these program features.

J. Sale of homes

Background

Section 2301(d)(3) of HERA directs that, if an abandoned or foreclosed-upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition. (Sales and closing costs are eligible NSP redevelopment or rehabilitation costs.) Note that the maximum sales price for a property is determined by aggregating all costs of acquisition,

rehabilitation, and redevelopment (including related activity delivery costs, which generally may include, among other items, costs related to the sale of the property).

Requirements

1. In its records, each recipient must maintain sufficient documentation about the purchase and sale amounts of each property and the sources and uses of funds for each activity so that HUD can determine whether the recipient is in compliance with this requirement. A recipient will be expected to provide this documentation individually for each activity.
2. In determining the sales price limitation, HUD will not consider the costs of boarding up, lawn mowing, simply maintaining the property in a static condition, or, in the absence of NSP-assisted rehabilitation or redevelopment of the property, the costs of completing a sales transaction or other disposition to be redevelopment or rehabilitation costs. These costs may not be included by the recipient in the determination of the sales price for an NSP-assisted property.
3. For reporting purposes **only**, for a housing program involving multiple single-family structures under the management of a single entity, HUD will permit reporting the aggregation of activity delivery costs across the total portfolio of projects until completion of the program or closeout of the grant with HUD, whichever comes earlier.

K. Acquisition and relocation

Background

Acquisition of Foreclosed-Upon Properties. HUD notes that section 2301(d)(1) of HERA conflicts with section 301(3) of the URA (42 U.S.C. 4651) and related regulatory requirements at 49 CFR 24.102(d). Section 2301(d)(1) of HERA requires that any acquisition of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property and that such discount shall ensure that purchasers are paying below-

market value for the home or property. Section 301(3) of the URA, as implemented at 49 CFR 24.102(d), provides that an offer of just compensation shall not be less than the agency's approved appraisal of the fair market value of such property. These URA acquisition policies apply to any acquisition of real property for a federally funded project, except for acquisitions described in 49 CFR 24.101(b)(1) through (5) (commonly referred to as “voluntary acquisitions”). As the more recent and specific statutory provision, section 2301(d)(1) of HERA prevails over section 301 of the URA for purposes of NSP-assisted acquisitions of foreclosed-upon homes or residential properties.

NSP2 Appraisal Requirements. As noted above, section 301 of the URA does not apply to voluntary acquisitions. While the URA and its regulations do not require appraisals for such acquisitions, the URA acquisition policies do not prohibit acquiring agencies from obtaining appraisals. Appendix A, 49 CFR 24.101(b)(2) acknowledges that acquiring agencies may still obtain an appraisal to support their determination of fair market value. Section 2301(d)(1) of HERA requires an appraisal for purposes of determining the statutory purchase discount. This appraisal requirement applies to any NSP-assisted acquisition of a foreclosed-upon home or residential property (including voluntary acquisitions).

One-for-One Replacement. HUD is providing an alternative requirement to the one-for-one replacement requirements set forth in 42 U.S.C. 5304(d)(2), as implemented at 24 CFR 42.375, because the additional workload of reviewing requests could cause a substantial backlog at HUD and delay NSP2 program operations. Therefore, the alternative requirement is that an NSP2 recipient will not be required to meet the requirements of 42 U.S.C. 5304(d), as implemented at 24 CFR 42.375, to provide one-for-one replacement of low- and moderate-income dwelling units demolished or converted in connection with activities assisted with NSP funds. Alternatively, each

recipient must submit the information described below relating to its demolition and conversion activities in its application. The recipient will report to HUD and citizens (via prominent posting of the DRGR reports on the recipient's official Internet site) on progress related to these measures until the closeout of its grant with HUD.

URA requirements that do not conflict with HERA continue to apply. HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d). Guidance on meeting these requirements is available on the HUD website and through local HUD field offices. HUD urges recipients to consider URA requirements in designing their programs and to remember that there are URA obligations related to voluntary and involuntary property acquisition activities, even for vacant and abandoned property. HUD reminds recipients, especially nonprofits, to be aware of the requirement to have and follow a residential anti-displacement and relocation plan for the CDBG and HOME programs. This requirement is not waived for those programs and continues to apply to activities assisted with regular CDBG and HOME funds.

The Recovery Act included several provisions concerning tenants' rights that are applicable to acquisitions under HERA. A recipient must document its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property (typically, the initial successor in interest in property acquired through foreclosure is the lender or trustee for holders of obligations secured by mortgage liens) has provided *bona fide* tenants with the notice and other protections outlined in the Recovery Act. Recipients are cautioned that NSP funds may not be used to finance the acquisition of property from the initial successor in interest that failed to comply with applicable requirements unless it assumes the obligations of such initial successor in interest with respect to *bona fide* tenants. Recipients who elect to assume

such obligations are reminded that tenants displaced as a result of the NSP funded acquisition are entitled to the benefits outlined in 24 CFR 570.606.

Requirements

1. The one-for-one replacement requirements at 24 CFR 570.488, 570.606(c), and 42.375 are waived for low- and moderate-income dwelling units demolished or converted in connection with an activity assisted with NSP2 funds. As an alternative requirement to 42 U.S.C. 5304(d)(2)(A)(i) and (ii), each recipient planning to demolish or convert any low- and moderate-income dwelling units as a result of NSP2-assisted activities must identify all of the following information in its application:

- (a) the number of low- and moderate-income dwelling units reasonably expected to be demolished or converted as a direct result of NSP-assisted activities;
- (b) the number of NSP2 affordable housing units (made available to low- , moderate-, and middle-income households) reasonably expected to be produced, by activity and income level as provided for in DRGR, by each NSP2 activity providing such housing (including a proposed time schedule for commencement and completion); and
- (c) the number of dwelling units reasonably expected to be made available for households whose income does not exceed 50 percent of area median income.

The recipient must also report on actual performance for demolitions and production, as required elsewhere in this notice.

2. The following requirements apply to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a *bona fide* tenant at the time of foreclosure. The use of NSP funds

for acquisition of such property is subject to a determination by the recipient that the initial successor in interest complied with these requirements.

a. The initial successor in interest in a foreclosed upon dwelling or residential real property shall provide a notice to vacate to any *bona fide* tenant at least 90 days before the effective date of such notice. The initial successor in interest shall assume such interest subject to the rights of any *bona fide* tenant, as of the date of such notice of foreclosure: (i) under any *bona fide* lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

b.i. In the case of any qualified foreclosed housing in which a recipient of assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) (the “Section 8 Program”) resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit.

ii. Vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use.

iii. If a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to (A) an action or inaction by the successor in

interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with the Section 8 Program or (B) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(1) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (2) for the family's reasonable moving costs, including security deposit costs.

c. For purposes of this section, a lease or tenancy shall be considered *bona fide* only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arm's length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

d. The recipient shall maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements under section K.2.a. and K.2.b. If the recipient determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified in section K.2.a. and K.2.b. If a recipient elects to assume such obligations, it must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an activity assisted with NSP funds and maintain records in sufficient detail to demonstrate compliance with the provisions of that section.

3. The recipient of any grant or loan made from NSP funds may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under the Section 8 Program because of the status of the prospective tenant as such a participant.
4. This section shall not preempt any Federal, State or local law that provides more protections for tenants.

L. Note on eminent domain

Although section 2303 of HERA appears to allow some use of eminent domain for public purposes, HUD cautions recipients that section 2301(d)(1) may effectively ensure that all NSP-assisted property acquisitions must be voluntary acquisitions as the term is defined by the URA and its implementing regulations. HERA, Section 2301(d)(1) directs that any purchase of a foreclosed-upon home or residential property under NSP be at a discount from the current market appraised value of the home or property and that such discount shall ensure that purchasers are paying below-market value for the home or property. However, the Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use without just compensation. The Supreme Court has ruled that a jurisdiction must pay fair market value for the purchase of property through eminent domain. A recipient contemplating using NSP funds to assist an acquisition involving an eminent domain action is advised to consult appropriate legal counsel before taking action.

M. Timeliness of use and expenditure of NSP funds

Background

One of the most critical NSP2 provisions is the Recovery Act provision that recipients:

“ . . . shall expend at least 50 percent of allocated funds within 2 years of the date funds become available to the [recipient] for obligation, and 100 percent of such funds within 3

years of such date.

NSP2 recipients should note that timelines are significantly tighter than NSP1. If any NSP2 recipient fails to meet the requirement to expend its grant within the relevant timelines, HUD, on the first business day after that deadline, will simultaneously notify the recipient and restrict the amount of unused funds in the recipient's line of credit. HUD will allow the recipient 30 days to submit information to HUD regarding any additional expenditure of funds not already recorded in the Disaster Recovery Grant Reporting system (DRGR). Then HUD will proceed to recapture the unused funds.

Requirements

1. Timely expenditure of NSP2 funds. The timely distribution or expenditure requirements of sections 24 CFR 570.494 and 570.902 are waived to the extent necessary to allow the following alternative requirement: All NSP2 recipients must expend on eligible NSP2 activities 50 percent of their award of NSP2 funds within 2 years and 100 percent within 3 years. A recipient will be deemed by HUD to have received its NSP2 grant at the time HUD signs its NSP2 grant agreement.

2. Nonprofit recipients of NSP2 funds shall follow the uniform administrative requirements for CDBG subrecipients at 24 CFR 570.502(b) as if they were subrecipients under that section.

Governmental recipients shall follow the regular CDBG requirements at 24 CFR 570.502(a).

N. Alternative requirement for program income generated by activities assisted with grant funds

Background

The Recovery Act repealed Section 2301(d)(4) of HERA, which set requirements for the disposition of revenues generated by NSP assisted activities. Therefore, regular CDBG rules

governing program income shall apply. Recipients are strongly encouraged to avoid the undue enrichment of entities that are not subrecipients. For example, recipients are encouraged to structure assistance to developers that undertake acquisition and/or rehabilitation as loans rather than grants. Recipients are also encouraged to include language in agreements with entities that are not subrecipients that provides for recipients to share in any excess cash flow generated by the assisted project to the extent practicable. (Generally, excess cash flow on a real estate project is the amount of cash generated from operations, sales, or refinancing that is in excess of the amount required to provide the owner a reasonable return on its equity investment.)

Requirements

1. Revenue (i.e., gross income) received by a NSP recipient or subrecipient (as defined at 24 CFR 570.500(c)) that is directly generated from the use of CDBG funds (which term includes NSP2 grant funds) constitutes CDBG program income. To ensure consistency of treatment of such program income, the definition of program income at 24 CFR 570.500(a) shall be applied to amounts received by all NSP2 recipients.
2. Cash management. Substantially all program income must be disbursed for eligible NSP2 activities before additional cash withdrawals are made from the U.S. Treasury.
3. Agreements with subrecipients and other entities. NSP2 recipients must incorporate in subrecipient agreements such provisions as are necessary to ensure compliance with the requirements of this paragraph.

O. Reporting

Background

HUD is requiring regular reporting on each NSP2 grant in the DRGR system to ensure the Department gets sufficient management information to follow-up promptly if a recipient lags

in implementation and risks recapture of its grant funds. For NSP2, HUD will collect more regular information on various aspects of the uses of funds and of the activities funded with these grants in accordance with Recovery Act requirements. HUD will use the reports to exercise oversight for compliance with the requirements of this notice and for prevention of fraud, waste, and abuse of funds.

The regular CDBG performance measurement requirements will not apply to the NSP2 funds. The outcomes described in this Notice will apply to each NSP2 grant.

To collect these data elements and to meet its reporting requirements, HUD is requiring each recipient to report on its NSP2 funds to HUD using the online DRGR system. HUD will use recipient reports to monitor for anomalies or performance problems that suggest fraud, waste, and abuse of funds; to reconcile budgets, obligations, fund draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to LMMI persons; and as a basis for risk analysis in determining a monitoring plan. The recipient must post the NSP2 report on a website for the public when it submits the report to HUD.

A few additional data elements beyond those required by the CDBG program are required by the Recovery Act. After award, HUD will provide additional guidance to all NSP2 recipients on how to report those elements.

Requirements

1. Performance report requirement. Reporting requirements for NSP2 differ from the regular CDBG program in order to comply with Recovery Act reporting provisions. Therefore, the reporting form and timing requirements for NSP2 funds is that:
 - a. Each recipient must submit a quarterly performance report, as HUD prescribes, no later than 10 days following the end of each quarter, beginning 10 days after the completion of the first full

calendar quarter after grant award. In addition to this quarterly performance reporting, each recipient will report monthly on its NSP obligations and expenditures beginning 10 days after the end of the 21st month following receipt of funds, and continuing until reported total expenditures are equal to or greater than half the total NSP grant. After HUD has accepted a report from a recipient showing such expenditure of grant funds, the monthly reporting requirement will end and quarterly reports will continue until the 33rd month, when the monthly cycle will repeat until the entire NSP2 grant has been expended or the 36-month deadline reached. Each report will include information about the uses of funds, including, but not limited to, the project name, activity, location, national objective, funds budgeted and expended, the funding source and total amount of any non-NSP funds, numbers of properties and housing units, beginning and ending dates of activities, and numbers of low- and moderate-income persons or households benefiting. Reports must be submitted using HUD's web-based DRGR system and, at the time of submission, be posted prominently on the recipient's official website.

b. HUD may require the additional Recovery Act reporting elements to be reported in DRGR or in another system. HUD will provide additional guidance on meeting this statutorily required reporting after awards are announced. Elements will include status of National Environmental Policy Act (NEPA) reviews.

c. HUD will also require recipients to report on subawards in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282) and the Recovery Act. At a minimum, grantees will be required to name subrecipients, the amount awarded, the information on the award, the location of the subrecipient, a unique identifier, and other information specified by OMB. HUD will provide additional guidance on meeting the statutory and OMB requirements after awards are announced.

P. Note that FHA properties are eligible for NSP2 acquisition and redevelopment

The Department notes that it is an eligible use of CDBG grant funds to acquire and redevelop FHA foreclosed properties. The Department strongly urges every community to consider and include such properties under their NSP2 programs because the nature and location of many of these homes will make them very compatible with the eligible uses of grant funds, the areas of greatest need, and the income eligibility thresholds and limits. Furthermore, in many areas, FHA foreclosed properties will be available for purchase at below-market value to meet HERA requirements. FHA provides quick access to location, condition, and sales price information; FHA may also offer expedited closing time frames. These factors may help expedite NSP2 fund use.

HUD will provide technical assistance on its website regarding how these programs can effectively interact. Recipients may also contact their local HUD FHA field office for further information.

Q. Purchase discount**Background**

Section 2301(d)(1) limits the purchase price of a foreclosed home, as follows:

“Any purchase of a foreclosed upon home or residential property under this section shall be at a discount from the current market appraised value of the home or property, taking into account its current condition, and such discount shall ensure that purchasers are paying below-market value for the home or property.”

To ensure that uncertainty over the meaning of this section does not delay program implementation, HUD is defining “current market appraised value” in this notice. For mortgagee foreclosed properties, HUD is requiring that recipients seek to obtain the "maximum reasonable

discount" from the mortgagee, taking into consideration likely "carrying costs" of the mortgagee if it were to not sell the property to the recipient or subrecipient. HUD has adopted an approach that requires a minimum discount of one percent for each residential property purchased with NSP funds and a minimum average discount of five percent for all residential properties purchased with NSP2 funds during the three year expenditure period.

Requirements

1. Individual purchase transaction. Each foreclosed-upon home or residential property shall be purchased at a discount of at least one percent from the current market-appraised value of the home or property.
2. Purchase transactions in the aggregate. The average purchase discount for all properties purchased with NSP funds during the three year expenditure period shall be at least 5 percent.
3. An NSP2 recipient may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay necessary and reasonable costs related to the appraisal and transfer of title. If NSP2 funds are used to pay such costs when property owned by the recipient is conveyed to a subrecipient, homebuyer, developer, or other jurisdiction, the property is NSP-assisted and subject to all program requirements, such as requirements for NSP-eligible use and benefit to income-qualified persons.
4. The address, appraised value, purchase offer amount, and discount amount of each property purchase must be documented in the recipient's program records. The address of each acquired property must be recorded in DRGR.

R. Removal of annual requirements

Requirement

Throughout 24 CFR 570, all references to "annual" requirements such as submission of

plans and reports are superseded and replaced with the provisions of this notice as applies NSP2 funds, with no recurring annual requirements other than those related to civil rights and fair housing certifications and requirements.

S. Affirmatively furthering fair housing and accessibility requirements

1. Successful applicants and subrecipients must affirmatively further fair housing.

Nothing in this notice may be construed as affecting each NSP2 recipient's responsibility to carry out its certification to affirmatively further fair housing. For both successful governmental and nonprofit applicants, a provision on the obligation to affirmatively further fair housing will be incorporated into the NSP2 grant agreement and successful applicants will certify that they will affirmatively further fair housing as described in section (V) of this Appendix.

With respect to governmental applicants, HUD encourages each entitlement community and state CDBG applicant to review its analysis of impediments to fair housing choice to determine whether an update is necessary because of current market conditions or other factors.

Nonprofit applicants are not required to conduct an analysis of impediments to fair housing choice (AI) for the jurisdictions in which they will work, but they are urged to become familiar with the AI prepared by a state or entitlement CDBG community covering the target geography, and they must affirmatively market NSP2 assisted housing and carry out NSP2 activities that further fair housing through innovative housing design or construction to increase access for persons with disabilities, language assistance services to persons with limited English proficiency (on the basis of national origin), or location of new or rehabilitated housing in a manner that provides greater housing choice or mobility for persons in classes protected by the Fair Housing Act. Affirmative marketing consists of taking actions to provide information and otherwise attract eligible persons in the housing market to the housing program without regard to

race, color, national origin, sex, religion, familial status or disability. The requirements and procedures include: methods for informing the public and potential homebuyers about federal fair housing laws; use of the Equal Housing opportunity logo; and procedures to inform and solicit applications from persons in the housing market who are not likely to apply for the program without special outreach. Non-profit entities must also maintain records on such programs or activities and their results and must report annually to HUD the race and ethnicity statistics on persons receiving services funded by NSP2 on form HUD-27061.

2. Successful applicants are subject to Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.

T. Nonprofits and environmental review

All NSP2 assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR part 58. Non-profits, and other recipients that are not designated responsible entities under 24 CFR part 58, may not assume environmental review responsibilities and must receive HUD approved environmental reviews under 24 CFR part 50 unless they apply in consortia with states, Indian tribes, or units of general local government with jurisdiction over proposed projects. In the case of consortium applicants, states, Indian tribes or units of general local governments may perform the environmental reviews on behalf of the consortium for projects within their jurisdiction as described under Part 58.

For activities requiring environmental review, non-profits—and consortia without state, Indian tribe, or unit of general local government members with jurisdiction over the projects in question—will need to coordinate with their local HUD office to receive approval for relevant activities in compliance with 24 CFR part 50. States, Indian tribes, and units of general local

government may only conduct environmental reviews within their jurisdiction. Therefore, consortia planning projects that require environmental review outside the jurisdiction of state, Indian tribe, or unit of general local government members must receive environmental reviews from HUD under 24 CFR part 50 for those projects.

Recipients undergoing a Part 50 environmental review will be required to: (1) supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50; (2) carry out mitigating measures required by HUD or select alternate eligible property; and (3) not acquire, rehabilitate, demolish, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received.

Grant applicants are cautioned that no activity or project may be undertaken, or federal or non-federal funds or assistance committed, if the project or activity would limit reasonable choices or could produce an adverse environmental impact, until all required environmental reviews and notifications have been completed by HUD or by a unit of general local government, tribe, or state, and until HUD notifies the recipient that the review under 24 CFR part 50 is completed or HUD or the state approves a recipient's request for release of funds under the environmental provisions contained in 24 CFR part 58. After the environmental review(s) pursuant to 24 CFR part 50 or 58 are completed and, as applicable, the grantee receives notice of completion from HUD or approval from HUD or the state of the request for release of funds and certification, the grantee may draw down funds from the line of credit.

U. Consortia and for-profit partners

Background

The Recovery Act provides that eligible entities for the NSP2 competition shall include “States, units of general government, and nonprofit entities or consortia of non-profit entities,” which all may submit proposals with for profit entities. Applicants may consist of one or more non-profit or governmental entities applying as a consortium. Applicants that apply as part of consortium will submit an agreement committing members at the time of submission. Applicants HUD determines to be in the fundable range must sign a consortium funding agreement with the lead applicant specifying the distribution of funds and the responsibilities of each party by the date specified in the Notice.

Those applicants shall similarly submit a firm commitment binding the for-profit to performance with its application. Applications with a for-profit partner will demonstrate the relevant expertise of the for-profit partner (e.g., media company, financier, developer, consultant/contractor), the nature of the relationship demonstrated by a firm commitment, and the specific contribution of the for-profit entity (e.g., air time, marketing, full operating partner, etc.). For the purposes of NSP2, HUD considers a for-profit partner to be an entity that carries out NSP2 activities or provides some service to the program other than, or in addition to, financing.

Requirements

1. Grant agreements must be signed by a governmental or non-profit entity as the lead applicant and recipient.
2. Consortia agreements must be signed by all members at the time of submission. To be funded in accordance II.B.1(3) of this Notice, members must provide HUD with a consortia funding agreement that specifies the contributions and responsibilities of each consortia member, the division of NSP2 program funds, and binds each member to NSP2 program requirements.

3. The recipient, prior to authorizing payment for NSP2 activities carried out by the for-profit partner, shall (1) conduct a cost or price analysis as required under 24 CFR part 84 or 85, as applicable, that demonstrates how the recipient determined necessary and reasonable costs for such payment; (2) provide a firm commitment from the for-profit entity at the time of application submission; and (3) enter into a written agreement setting forth the partner's responsibilities for performance and agreement to comply with NSP2 program requirements in accordance with this Notice.

V. Certifications

Certifications for NSP2 applicants, alternative requirement. HUD is providing alternative certifications for states, local governments, nonprofits and Indian tribes as provided in Appendix 4.

W. Note on statutory limitation on distribution of funds

Section 2304 of HERA states that none of the funds made available under this Title or title IV shall be distributed to an organization that has been indicted for a violation under federal law relating to an election for federal office; or an organization that employs applicable individuals. Section 2304 defines applicable individuals.

X. Information collection approval note

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2506-0185. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Y. Duration of funding

The Recovery Act makes funds available to HUD to obligate to NSP recipients until September 30, 2010. The Recovery Act makes NSP2 grants available to recipients for up to three years after receipt of the grant from HUD.

Appendix 2

NSP2 Recommended Energy Efficient and Environmentally-Friendly Green Elements

HUD strongly recommends that your proposed project(s) incorporate the following additional energy efficient and environmentally-friendly Green elements into the design. No specific element is required and your scoring under Factor 5 will not be based on the use of any specific element. For the scoring, HUD is looking for thoughtful, achievable consideration and implementation of energy efficient and environmentally friendly elements inside your NSP2 program.

HUD is providing the guidance below because the Department has become aware during the implementation of NSP1 that many grantees are not aware that many of their common community development practices, such as trying to help police and teachers live in the neighborhood in which they work, are also considered sustainable and environmentally friendly. Similarly, most affordable housing units are also smaller and can easily be made more energy efficient than larger units. The increased energy efficiency then serves to increase the long-term affordability of the units.

Renewable Energy

1. *Passive Solar.* Orient the building to make the greatest use of passive solar heating and cooling.
2. *Photovoltaic-ready.* Site, design, engineer and wire the development to accommodate installation of photovoltaic panels in the future.

Sustainable Site Design

1. *Transportation Choices.* Locate projects within a one-quarter mile of at least two, or one-half mile of at least four community and retail facilities.
2. *Connections to Surrounding Neighborhoods.* Provide three separate connections from the development to sidewalks or pathways in surrounding neighborhoods.
3. *Protecting Environmental Resources.* Do not locate the project within 100 feet of wetlands; 1,000 feet of a critical habitat; or on steep slopes, prime farmland or park land.
4. *Erosion and Sediment Control.* Implement EPA's Best Management Practices for erosion and sedimentation control during construction.
5. *Sustainable Landscaping.* Select native trees and plants that are appropriate to the site's soils and microclimate.
6. *Energy Efficient Landscaping.* Locate trees and plants to provide shading in the summer and allow for heat gain in the winter.

Water Conservation

1. *Efficient Irrigation.* Install low volume, non-spray irrigation system (such as drip irrigation, bubblers, or soaker hose).

Energy Efficient Materials

1. *Durable Materials.* Use materials that last longer than conventional counterparts such as stone, brick or concrete.
2. *Resource Efficient Materials.* Use layouts and advanced building techniques that reduce the amount of homebuilding material required.
3. *Heat Absorbing Materials.* Use materials that retain solar heat in winter and remain cool in summer.

4. *Solar-reflective Paving.* Use light-colored/high-albedo materials and/or open-grid pavement with a minimum Solar Reflective index of 0.6 over at least 30 percent of the site's hardscaped areas.
5. *Local Source Materials.* Use materials from local sources that are close to the job site.
6. *Green Roofing.* Use Energy Star-compliant and high-emissive roofing, and/or install a Green (vegetated) roof for at least 50 percent of the roof area; or a combination of high-albedo and vegetated roof covering 75 percent of the roof area.

Healthy Homes

1. *Green Label Certified Floor Covering.* Do not install carpets in basements, entryways, laundry rooms, bathrooms or kitchens; if using carpet, use the Carpet and Rug Institute's Green Label certified carpet and pad.
2. *Healthy Flooring Materials: Alternatives.* Use non-vinyl, non-carpet floor coverings in all rooms.
3. *Healthy Flooring Materials: Reducing Dust.* Install a whole-house vacuum system with high-efficiency particulate air filtration.
4. *Sealing Joints.* Seal all wall, floor and joint penetrations to prevent pest entry; provide rodent and corrosion proof screens (e.g., copper or stainless steel mesh) for large openings.
5. *Termite-resistant Materials.* Use termite-resistant materials in areas known to be infested.
6. *Tub and shower Enclosures: Moisture Prevention.* Use one-piece fiberglass or similar enclosure or, if using any form of grouted material, use backing materials such as cement board, fiber cement board, fiber-glass reinforced board or cement plaster.

7. *Green Maintenance Guide.* Provide a guide for homeowners and renters that explains the intent, benefits, use and maintenance of Green building features, and encourages additional Green activities such as recycling, gardening and use of healthy cleaning materials.

8. *Resident Orientation.* Provide a walk-through and orientation to the homeowner or new tenants.

**Appendix 3 - Application Checklists and Aids
(Removing Negative Elements Rubric)**

a. Application Forms: (Not subject to the page limitations.)

_____ SF-424, Application for Federal Assistance (signed by the Authorized Organization Representative (AOR) who is legally authorized to submit the application on behalf of the applicant

_____ SF-424 Supplement, Survey on Ensuring Equal Opportunities for Applicant ("Faith Based EEO Survey (SF-424-SUPP)")

_____ NSP2 Non-profit Organization Qualification-- Narrative describing qualification as an eligible applicant and Evidence of Nonprofit or and Tax Exempt Status (in accordance with this NOFA).

_____ Consortium Agreement, if applicable.

_____ Program Summary

b. Narrative Statements Addressing: (Subject to the page limitations described above.)

_____ Factor 1 – Need and Market Conditions

_____ Factor 2 – Demonstrated Capacity

_____ Factor 3 - Soundness of Approach

_____ Factor 4 - Leveraging, integration, removal of negative effects

_____ Factor 5 - Energy efficiency

_____ Factor 6- Neighborhood transformation and economic opportunity

c. Disclosures: (Not subject to the page limitations.)

_____ SF-LLL, Disclosure of Lobbying Activities, as applicable.

_____ HUD-2880, Applicant/Recipient Disclosure/Update Report. ("HUD Applicant Recipient Disclosure Report")

d. Appendices: (Not subject to the page limitations.)

_____ A copy of your code of conduct.

_____ Leveraging documentation—firm commitment letters. (See factor 4.)

_____ Signed Certifications. (See Appendix 4 for the relevant certifications.)

_____ Calculation of removal of negative effects using HUD provided rubric

_____ Summary of citizen comments including URL where plan is posted

Other information should not be submitted and will not be considered in scoring the application.

RUBRIC FOR ADDRESSING VACANT PROPERTIES:

Some target neighborhoods with a foreclosure problem would be stabilized by a reduction in distressed housing stock and selected acquisition and rehabilitation. This is particularly true in communities that have experienced extended economic decline. The goal of this factor is to credit communities with a vacancy problem and a strategy on how to address all of the vacant properties in a target area in order to create stable healthy communities with a reduction in housing stock.

To receive a score, you must plan demolition or acquisition and rehab of a minimum of 25 currently vacant properties in the identified target areas. If you meet this minimum, the score is calculated as follows:

$$(1.5 \text{ times (Sum total of vacant properties proposed to be addressed through acquisition and rehab) + (Sum total of vacant properties to be addressed via demolition)) \text{ divided by (Sum total of all vacant residential properties in target area)}$$

The basic idea is that the greater proportion of vacant units in a neighborhood you address relative to the number that are vacant the higher your score. But you have to be

addressing a minimum number of units to get any score on this at all. The data for the denominator may be from the US Postal Service or from locally collected data.

Appendix 4: Certifications Neighborhood Stabilization Program 2

Background

CDBG formula program certifications do not apply to NSP2. HUD is providing the following certifications that are tailored to NSP2 grants as an alternative requirement. Separate sets of certifications for states and local governments, non-profits, and tribes are provided and must be signed and submitted by the lead applicant with each application.

State and Unit of Local Government Certifications

Each NSP2 **state or** unit of **local government** applicant will submit the following certifications:

1. Affirmatively furthering fair housing. The applicant certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.
2. Anti-displacement and relocation plan. The applicant certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan.
3. Anti-lobbying. The applicant must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.
4. Authority of applicant. The applicant certifies that it possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations and other program requirements.
5. Acquisition and relocation. The applicant certifies that it will comply with the acquisition and

relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24, except as those provisions are modified by the notice for the NSP2 program published by HUD.

6. Section 3. The applicant certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

7. Citizen participation. The applicant certifies that it is carrying out citizen participation in accordance with NSP2 requirements.

8. Use of funds. The jurisdiction certifies that it will comply with Title III of Division B of the Housing and Economic Recovery Act of 2008, as modified by the American Reinvestment and Recovery Act by spending 50 percent of its grant funds within 2 years, and spending 100 percent within 3 years, of receipt of the grant.

9. The applicant certifies:

a. that all of the NSP2 funds made available to it will be used with respect to individuals and families whose incomes do not exceed 120 percent of area median income; and

b. The applicant will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if NSP funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to

properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP funds if the jurisdiction certifies that it lacks NSP or CDBG funds to cover the assessment.

10. Excessive force. The applicant, if an applicable governmental entity, certifies that it has adopted and is enforcing:

- a. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and
- b. A policy of enforcing applicable state and local laws against physically barring entrance to, or exit from, a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

11. Compliance with anti-discrimination laws. The applicant certifies that the NSP grant will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations.

12. Compliance with lead-based paint procedures. The applicant certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

13. Compliance with laws. The applicant certifies that it will comply with applicable laws.

Non-profit Certifications

Each NSP2 **non-profit** applicant will submit the following certifications:

1. Affirmatively furthering fair housing. The applicant certifies that it will affirmatively further fair housing, which means that it will affirmatively market NSP2 assisted units and carry out

NSP2 activities that further fair housing through innovative housing design or construction to increase access for persons with disabilities, language assistance services to persons with limited English proficiency (on the basis of national origin), or location of new or rehabilitated housing in a manner that provides greater housing choice or mobility for persons in classes protected by the Fair Housing Act, and maintain records reflecting the actions in this regard.

2. Anti-lobbying. The applicant must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

3. Authority of applicant. The applicant certifies that it possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations and other program requirements.

4. Acquisition and relocation. The applicant certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24, except as those provisions are modified by the notice for the NSP2 program published by HUD.

5. Section 3. The applicant certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

6. Citizen participation. The applicant certifies that it is carrying out citizen participation in accordance with NSP2 requirements.

7. Use of funds. The jurisdiction certifies that it will comply with Title III of Division B of the Housing and Economic Recovery Act of 2008, as modified by the American Reinvestment and Recovery Act by expending 50 percent of its grant funds within 2 years and expending 100

percent within 3 years of receipt of the grant.

8. The applicant certifies:

a. that all of the NSP2 funds made available to it will be used with respect to individuals and families whose incomes do not exceed 120 percent of area median income; and

b. The applicant will not attempt to recover any capital costs of public improvements assisted with CDBG funds by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP funds if the jurisdiction certifies that it lacks NSP or CDBG funds to cover the assessment.

9. Compliance with anti-discrimination laws. The applicant certifies that the NSP grant will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations.

10. Compliance with lead-based paint procedures. The applicant certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

11. Compliance with laws. The applicant certifies that it will comply with applicable laws.

12. An application received from a non-profit or other potential recipient not designated as a

responsible entity under 24 CFR part 58 will constitute an assurance that the applicant agrees to assist HUD to comply with 24 CFR part 50 and that the applicant shall:

- (1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50;
- (2) Carry out mitigating measures required by HUD or select alternate eligible property; and
- (3) Not acquire, rehabilitate, demolish, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received.

In addition, an application from a consortium shall constitute such an assurance with respect to any NSP 2 project the consortium may undertake that is located outside the jurisdiction of a member state, Indian tribe, or unit of general local government.

Indian Tribe Certifications

Each NSP2 **Indian Tribe** applicant will submit the following certifications:

1. Anti-lobbying. The applicant must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.
2. Authority of applicant. The applicant certifies that it possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations and other program requirements.
3. Acquisition and relocation. The applicant certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR

part 24, except as those provisions are modified by the notice for the NSP2 program published by HUD.

4. Section 3. The applicant certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

5. Citizen participation. The applicant certifies that it is carrying out citizen participation in accordance with NSP2 requirements.

6. Use of funds. The jurisdiction certifies that it will comply with Title III of Division B of the Housing and Economic Recovery Act of 2008, as modified by the American Reinvestment and Recovery Act by expending 50 percent of its grant funds within 2 years and expending 100 percent within 3 years of receipt of the grant.

7. The applicant certifies:

a. that all of the NSP2 funds made available to it will be used with respect to individuals and families whose incomes do not exceed 120 percent of area median income; and

b. The applicant will not attempt to recover any capital costs of public improvements assisted with CDBG funds by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP funds

if the jurisdiction certifies that it lacks NSP or CDBG funds to cover the assessment.

8. Compliance with anti-discrimination laws. The applicant certifies that the NSP grant will be conducted and administered in conformity with nondiscrimination regulations at 24 CFR 1003.601.

9. Compliance with lead-based paint procedures. The applicant certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

10. Compliance with laws. The applicant certifies that it will comply with applicable laws.