



**NEW JERSEY DEPARTMENT OF  
COMMUNITY AFFAIRS**

**NEIGHBORHOOD STABILIZATION PROGRAM**

**OPERATIONAL MANUAL**

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**New Jersey Department of Community Affairs  
Neighborhood Stabilization Program  
Operational Manual**

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## Introduction

The New Jersey Department of Community Affairs, Division of Housing and Community Resources (the "Department") has the responsibility to administer \$51,470,620 in funds allocated under the federal legislation called the Housing and Economic Recovery Act of 2008 ("HERA"). Under Title III of HERA, the Neighborhood Stabilization Program ("NSP") provides emergency assistance to states and local governments for the redevelopment of abandoned and foreclosed homes.

This Operational Manual sets forth the eligible fund uses, terms, and conditions under which NSP funds may be used to acquire, rehabilitate, and redevelop abandoned and foreclosed homes and residential properties that might otherwise become sources of abandonment and blight for the purpose of stabilizing neighborhoods. Eligible fund uses are:

- Acquisition of foreclosed-upon housing units, abandoned housing units and vacant land;
- Rehabilitation of housing units in order to sell or rent such housing units to households at or below 120 percent of Area Median Income;
- Demolition of blighted structures;
- New construction of housing for projects involving the redevelopment of demolished or vacant properties; and
- Redevelopment of acquired property for residential and non-residential uses, including public parks, commercial uses or mixed residential and commercial use

This Operational Manual may, from time to time, be amended as necessary to comply with rulings and interpretations from the US Department of Housing and Urban Development ("HUD"), amendments to the underlying statutes, regulations, rules or procedural changes made by the Department.



## Section 1 - NSP Program Requirements

### Eligible Activities

Generally, the following development costs are NSP-eligible as administered by the Department:

- Acquisition
  - Of foreclosed-upon housing units and abandoned housing units
  - Of vacant housing units and vacant land, for redevelopment
- Demolition, limited to “blighted structures” and to redevelopment
- Construction costs
  - Rehabilitation
  - New construction, limited to redevelopment
  - Both categories above may include **amenities** (see definitions, page 27)
- Soft costs, including professional fees
- Working capital and reserves
- Mortgage buy-down
- Downpayment and closing cost assistance
- Developer fee, limited to 8% of total project cost (acquisition and soft costs can be included in total project cost)
- Administrative allowance, limited to “units of local government” and further limited to \$2,000 per unit

A grantee will use NSP funds to create affordable homeownership units and/or affordable rental units within the neighborhood/target area that the Department has reviewed and approved.

### Ineligible Activities

These include, but are not limited to:

- Foreclosure prevention (activities such as refinancing mortgages, paying back taxes or mortgage payments, and underwriting counseling-related expenses)
- Demolition of non-blighted structures
- Any NSP activity that is not located within the approved neighborhood/target area

In addition, unless otherwise specifically stated, if an activity is ineligible under the CDBG Program, it is ineligible under the NSP Program.

### NSP Funds Obligation Requirements

Timely use of NSP funds is a requirement under HERA. NSP Grantees must obligate the NSP funds awarded to them by March 10, 2010. Any funds that have not been obligated by this date will be recaptured by the Department. Funds are considered “obligated” for an activity when orders are placed, contracts are awarded, services are received or similar transactions that require payment by the Department; they are not considered obligated when sub-awards are made to recipients.

Also, NSP Grantees must expend the NSP funds awarded to them by March 13, 2013. Any funds that have not been expended by this date will be recaptured by the Department.

### Acquisition Discount

For every foreclosed property that is purchased using NSP funds, its acquisition price must be at least 1% below its current market appraised value. This is a HERA requirement, as modified by HUD’s NSP “Bridge Notice” from HUD dated June 11, 2009. Appraisal requirements are discussed in more detail in Section 2 of this manual. The NSP Grantee must keep a record of

the address, appraised value, purchase offer amount and discount amount for each foreclosed property purchased using NSP funds.

Affordability of NSP Units

All residential units that are created or assisted with NSP funds must be affordable to households whose incomes do not exceed 120 percent of area median income (“AMI”):

<b>NSP - NEW JERSEY - 120 PERCENT OF A.M.I. INCOME LIMITS (effective March 19, 2009)</b>								
<b>COUNTY</b>	<b>1 PERSON</b>	<b>2 PERSON</b>	<b>3 PERSON</b>	<b>4 PERSON</b>	<b>5 PERSON</b>	<b>6 PERSON</b>	<b>7 PERSON</b>	<b>8 PERSON</b>
Atlantic	\$57,450	\$65,650	\$73,850	\$82,100	\$88,650	\$95,200	\$101,800	\$108,350
Bergen, Passaic	\$76,600	\$87,550	\$98,500	\$109,450	\$118,200	\$126,950	\$135,700	\$144,450
Camden, Burlington, Gloucester, Salem	\$65,350	\$74,700	\$84,000	\$93,350	\$100,850	\$108,300	\$115,750	\$123,250
Cape May	\$56,450	\$64,500	\$72,600	\$80,650	\$87,100	\$93,550	\$100,000	\$106,450
Cumberland	\$50,300	\$57,500	\$64,700	\$71,900	\$77,650	\$83,400	\$89,150	\$94,900
Essex, Morris, Sussex, Union	\$73,600	\$84,100	\$94,600	\$105,100	\$113,550	\$121,950	\$130,350	\$138,750
Hudson	\$59,700	\$68,250	\$76,800	\$85,300	\$92,150	\$98,950	\$105,800	\$112,600
Hunterdon, Middlesex, Somerset	\$84,100	\$96,100	\$108,100	\$120,100	\$129,750	\$139,350	\$148,950	\$158,550
Mercer	\$75,700	\$86,500	\$97,300	\$108,100	\$116,750	\$125,400	\$134,050	\$142,700
Monmouth, Ocean	\$73,650	\$84,200	\$94,700	\$105,250	\$113,650	\$122,100	\$130,500	\$138,900
Warren	\$72,300	\$82,650	\$93,000	\$103,300	\$111,600	\$119,850	\$128,100	\$136,400

Additionally, at least 25% of the NSP funds must be used for residential units that are affordable to households whose incomes do not exceed 50 percent of AMI:

<b>NSP - NEW JERSEY - 50 PERCENT OF A.M.I. INCOME LIMITS (effective March 19, 2009)</b>								
<b>COUNTY</b>	<b>1 PERSON</b>	<b>2 PERSON</b>	<b>3 PERSON</b>	<b>4 PERSON</b>	<b>5 PERSON</b>	<b>6 PERSON</b>	<b>7 PERSON</b>	<b>8 PERSON</b>
Atlantic	\$23,950	\$27,350	\$30,800	\$34,200	\$36,950	\$39,650	\$42,400	\$45,150
Bergen, Passaic	\$31,900	\$36,500	\$41,050	\$45,600	\$49,250	\$52,900	\$56,550	\$60,200
Camden, Burlington, Gloucester, Salem	\$27,250	\$31,100	\$35,000	\$38,900	\$42,000	\$45,100	\$48,250	\$51,350
Cape May	\$23,500	\$26,900	\$30,250	\$33,600	\$36,300	\$39,000	\$41,650	\$44,350
Cumberland	\$20,950	\$23,950	\$26,950	\$29,950	\$32,350	\$34,750	\$37,150	\$39,550
Essex, Morris, Sussex, Union	\$30,650	\$35,050	\$39,400	\$43,800	\$47,300	\$50,800	\$54,300	\$57,800
Hudson	\$24,900	\$28,450	\$32,000	\$35,550	\$38,400	\$41,250	\$44,100	\$46,950
Hunterdon, Middlesex, Somerset	\$35,050	\$40,050	\$45,050	\$50,050	\$54,050	\$58,050	\$62,050	\$66,050
Mercer	\$31,550	\$36,050	\$40,550	\$45,050	\$48,650	\$52,250	\$55,850	\$59,450
Monmouth, Ocean	\$30,700	\$35,100	\$39,450	\$43,850	\$47,350	\$50,850	\$54,350	\$57,900
Warren	\$30,150	\$34,450	\$38,750	\$43,050	\$46,500	\$49,950	\$53,400	\$56,850

These median-income figures are subject to periodic change by HUD, usually on an annual basis.

NSP-funded units must remain affordable for a minimum time period, as follows (in accordance with the HOME Program affordability rules, which HERA has authorized to be used for NSP: 24 CFR 92.252(a),(c),(e) and (f) for rental units, 92.254 for homeownership units):

<b>NSP amount per-unit</b>	<b>Minimum affordability period, in years</b>
Less than \$15,000	5
\$15,000 to \$40,000	10
More than \$40,000	15
New Construction (rental units only)	20

Legal documents (deed restrictions) must be executed and recorded to secure the agreed-upon affordability period. The Department will provide model documents for this purpose.

For NSP-funded homeownership units, an income-eligible household should pay no more than 28% of its gross income for mortgage loan principal and interest, real estate taxes, insurance and condominium/association fees. For NSP-funded rental units, an income-eligible household should pay no more than 30% of its gross income for the contract rent and tenant-paid utilities. The Department will use the most current HUD-approved utilities allowance chart to determine the tenant-paid utilities figure for each unit.

Each household that occupies an NSP-funded unit, whether homeownership or rental, must be certified by the NSP Grantee as being income-eligible, in compliance with either the 50% AMI standard or the 120% AMI standard. The NSP Grantee must identify the entity that will be responsible for certifying income eligibility and for on-going monitoring during the agreed-upon affordability period. This entity will be memorialized in the NSP Grant Agreement, and will be subject to the Department's review and approval.

**NSP Funding Limits**

NSP funding on a per-unit basis may not exceed the following subsidy limits:

<b>COUNTIES</b>	<b>0 BR</b>	<b>1 BR</b>	<b>2 BR</b>	<b>3 BR</b>	<b>4 BR</b>
Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, Warren	\$137,319	\$157,410	\$191,411	\$247,622	\$271,814
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem	\$134,776	\$154,495	\$187,866	\$243,037	\$266,781

These limits may be revised periodically by HUD.

### Sales Price Limitation, Homeownership Units

The sales price of an NSP-funded homeownership unit, involving an existing property which was previously foreclosed-upon or abandoned, must not exceed the cost to acquire and rehabilitate the housing unit.

### Construction Standards

All residential units that are created or assisted with NSP funds must be constructed, or rehabilitated, in full compliance with New Jersey's Uniform Construction Code ("U.C.C."); this is a stricter standard than HUD's Section 8 Housing Quality Standards. The U.C.C. includes the Rehabilitation Subcode which applies to construction work for existing buildings, covering work that ranges from minor repairs to gut rehabilitation/reconstruction. The NSP Grantee must obtain the appropriate Certificate of Occupancy for each building that contains a completed NSP-funded unit from the municipality where the building is located.

NSP-funded units should be constructed with features that will reduce energy and utility usage and costs, and also reduce or eliminate indoor environmental hazards. Resources for this purpose can be found through the following weblinks:

US Environmental Protection Agency: <http://www.epa.gov/greenbuilding>

US Department of Energy: <http://www.eere.energy.gov>

NJHMFA Green Homes Office, "2009 Green Future Guidelines":

<http://www.state.nj.us/dca/hmfa/gho/resources/future> (document link is in the "Related Links" box)

In terms of the "2009 Green Future Guidelines", the most relevant construction-related features for NSP purposes are: indoor air quality; building durability and moisture control; energy efficiency; and water conservation (use either the "LIHTC: Green Future" column or the "Balanced Housing" column from the matrix on page 2 of these guidelines). To the extent that it is feasible, the Department recommends that NSP-funded units be Energy Star certified, especially for newly constructed units; additional information can be found through these links:

<http://www.state.nj.us/dca/hmfa/gho/dprograms/energystar>

<http://www.njcleanenergy.com>

The Department also recommends that NSP Grantees commission an energy audit for each existing residential property it is considering for acquisition and rehabilitation, prior to acquiring the property, in order to determine the needed energy efficiency upgrades.

NSP Grantees are encouraged to incorporate HUD's healthy homes interventions including these seven steps ensuring housing is made and kept:

- **Dry:** Ensure proper drainage away from housing; clean repair gutters and downspouts, repair leaks seal roofs and windows.
- **Safe:** Install safety devices on doors, cabinets, window blinds and outlets; store all poisonous items out of reach of children and labeled in the proper containers; install smoke detectors and carbon monoxide detectors; have appropriate fire extinguisher available.
- **Well-ventilated:** Service and maintain heating and cooling systems; provide exhaust fans for kitchens, bathroom and dryers to the outside to reduce mold; change furnace filters regularly.



- **Pest-free:** Provide proper storage and disposal for food products, caulk and seal holes; use least toxic pest management methods.
- **Contaminant-free:** Remove lead based paint hazards properly; provide test kits for radon; reduce volatile organic compounds in paint, carpet, etc.
- **Clean:** Install dust walk-off systems in entry ways; provide smooth, cleanable surfaces; provide effective storage space and containers; choose flooring that is easy to clean; provide vacuum with HEPA filters; implement weekly cleaning regimen.
- **Well-maintained:** Important maintenance calendar for inspecting, cleaning, repairing, replacing housing components/systems.

The NSP Grantee should evaluate each NSP-funded unit that will be rehabilitated for the presence of hazardous materials, including lead-based paint and asbestos, and visible mold or water infiltration. If hazardous materials are present, they must be removed or mitigated in accordance with applicable federal, state, and local laws, regulations, and ordinances. If mold or water infiltration is observed, it must be mitigated; any moldy materials that cannot be properly cleaned must be removed.

#### Homebuyer Counseling

For NSP-funded homeownership units, the prospective buyer must receive 8 hours of comprehensive homebuyer counseling from a HUD-approved housing counseling agency prior to purchasing the unit. The NSP Grantee should identify HUD-approved housing counseling agencies in its service area for potential homebuyers to contact. HUD may grant exceptions to this requirement if a HUD-approved housing counseling agency cannot be located. Pre-purchase counseling should not be reimbursed prior to the sale of the involved NSP homeownership unit.

Additionally, post-purchase housing counseling is an NSP-eligible expense.

A listing of HUD-approved housing counseling agencies in New Jersey can be found through the following link:

<http://www.hud.gov/local/nj/homeownership/hsgcounseling.cfm>



## Section 2 - Federal Requirements

### National Objectives

The NSP 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 Low and Moderate Income National Objective requirement all funds appropriated under HERA shall be used with respect to individuals and families whose income does not exceed 120 percent of Area Median Income (AMI). An NSP Activity may meet the national objective if the assisted Activity:

1. provides or improves permanent residential structures that will be occupied by Low-Moderate-Middle Income Households whose incomes are at or below 120 percent of AMI;
2. serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of AMI, a Low-Moderate-Middle Income Area

All NSP-funded units will comply with requirement #1 above. Income Limits charts, for 120 percent of AMI and 50 percent of AMI were previously displayed (see page 4). These charts are current for 2009; they are subject to revision by HUD, usually on an annual basis.

All NSP-funded units must be occupied by households that have been certified to be income-eligible, as previously discussed in the Affordability section (see pages 4-5).

### Environmental Review

NSP Grantees must complete an *environmental review record* for **each** NSP-funded project, which will be submitted to the Department for review and approval. This is required before the Department can authorize the release of NSP funds for a project. NSP Grantees cannot commit NSP or non-NSP funds, by way of contract or other agreement, or take any other action regarding a project until the environmental review record is completed, then reviewed and approved by the Department.

Where NSP funds will be used for the acquisition of a foreclosed and/or abandoned property, the NSP Grantee may enter into an option agreement for that property under the following conditions:

- The cost of the option is a small portion of the entire purchase price;
- The option agreement contains language stating that the purchase of the property is subject to completion of the HUD-required environmental review record and a review by the State Historic Preservation Office (SHPO); and
- The option agreement contains language stating that the environmental review must end in a determination indicating the property is in compliance with the National Environmental Policy Act of 1969 (NEPA) before the property is purchased.

Depending on the type of project and the activities therein, a different level of environmental review will be required. The different levels of environmental review include:

1. Exempt
2. Categorically Excluded, but not subject to Statutory Compliance (24 CFR 58.5)
3. Categorically Excluded and subject to Statutory Compliance
4. Environmental Assessment
5. Environmental Impact Statement.

It is likely that most of the environmental reviews will be either #3 or #4 above. #3 will generally apply to projects requiring rehabilitation, and the “Statutory Compliance Checklist” will need to be completed. #4 will apply to projects with new construction and with substantial rehabilitation/reconstruction of existing buildings; the “Statutory Compliance Checklist” and the “Environmental Assessment Checklist” will need to be completed. Guidance and forms for the environmental review can be found here:

<http://www.nj.gov/dca/divisions/dhcr/offices/cdbg.html#environmental>

The Department will utilize a “tiered” environmental review process for the NSP-funded projects, which both complies with environmental review requirements (24 CFR 58) and expedites the review process even if units to be assisted with NSP funds are not yet identified. In Tier 1 of the review process, for each NSP-funded project:

- The NSP target area is identified
- The units to be assisted with NSP funds are identified, if known
- The project activities to be done in the target area are described
- The NSP funding amount is listed, along with the other funding sources and amounts
- The environmental review components are identified that can be addressed for all properties within the target area (i.e., all properties in target area are not within a mapped floodplain boundary); and
- The environmental review components are identified that can only be addressed at the Tier 2 review level for specific properties, along with a brief description of the additional review to be done under Tier 2 (i.e., the southwest quadrant of the target area is within a mapped floodplain boundary; a project unit in that area will be reviewed for compliance with floodplain requirements, including mitigation of flood risks and purchase of flood insurance).

In Tier 2 of the review process, the specific environmental review components that are not addressed under Tier 1 must be fully addressed, with relevant supporting documentation. Identification of the units to be assisted with NSP funds will be required.

The Department published a “Combined Notice” (“Notice of Finding of No Significant Impact” and “Notice of Intent to Request Release of Funds”) on July 25, 2009 to provide public notice of the Tier 1 review findings, to cover all of the NSP-funded projects. Following this, the Department submitted a “Request for Release of Funds” to HUD’s New Jersey State Office. This “Request for Release of Funds” has been approved by HUD. No further request to HUD by the Department with respect to the environmental review process will be necessary, unless there is a change in target area boundaries, project activities or environmental conditions.

NSP Grantees must submit to the Department appropriate Tier 2 environmental review documentation, covering each NSP-funded unit. Generally, this Tier 2 documentation will include (if not previously submitted for specific sites): historic properties (a/k/a “Section 106”); floodplain; wetlands; and man-made hazards (including noise and toxic sites/toxic conditions). The “Statutory Compliance Checklist” should be used for Tier 2 documentation. Also, if an NSP-funded project involves substantial rehabilitation/reconstruction of existing buildings or new construction, the “Environmental Assessment Checklist” is also required (if not previously submitted). For either of these checklists, any compliance category that has already been covered under Tier 1 review should be listed as *not applicable* or “N/A”.

For an NSP Grantee that is a county or municipal government, a “Combined Notice” must be published with respect to the Tier 2 documentation, as a legal notice in the newspaper of general circulation which serves the municipality where the NSP project will be done. The “Combined Notice” must list the census tracts involved (for the NSP project as a whole) and the property addresses if known. After the required waiting period (usually 15 days, adjusted for weekends and holidays), the county or municipal NSP Grantee must submit a “Request for Release of Funds” to the Department for review and approval.

As referenced previously in this section, the Department must review and approve the environmental review documentation before NSP funds can be released for a project, and before NSP-related project activity can occur (most particularly acquisition of property and construction work).

### Appraisals

Each purchase of a foreclosed-upon property by an NSP Grantee must be supported by an appraisal that establishes the “current market appraised value” for the property, and thus the basis for discounting the purchase price by a minimum of 1%, as required by HERA and modified by HUD’s NSP “Bridge Notice” dated June 11, 2009. This is defined as the value of a foreclosed-upon home or residential property, established through an appraisal made in conformity with the appraisal requirements of the federal Uniform Relocation Act (at 49 CFR 24.103), and completed with 60 days prior to an offer made for the property by the NSP Grantee. 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 that is based on a review of available data and is made by a person the NSP Grantee determines to be qualified to make the valuation.

Following are appraisal requirements that are listed in the Uniform Relocation Act at 49 CFR 24.103(a)(2):

1. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
2. All relevant and reliable approaches to value. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
3. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
4. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
5. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

Two appraisals will be required: an “as-is” appraisal, and an “as completed” appraisal which takes into account the construction work to be done at the property. These appraisals must be completed before the property can be purchased.

### Labor Standards

Labor standards laws apply to projects using NSP funds and involving physical construction such as public facilities and residential rehabilitation of eight or more units on a site. Rehabilitation of single family, detached housing units is exempt as long as fewer than eight units are included in the contract.

When a contract for work that includes NSP funds is bid or awarded, the contractor and subcontractors must comply with the applicable labor standards laws. NSP Grantees are required to ensure compliance with these laws. Guidance and forms for labor standards can be found here:

<http://www.nj.gov/dca/divisions/dhcr/offices/cdbg.html#labor>

In particular, the “Labor Standards Handbook” that can be accessed through the above link will be useful for further explaining the requirements and forms.

Exhibit B of this manual contains a table describing various development activities and whether federal prevailing wages (or “Davis/Bacon” wages) may be required.

HUD has published a document, “Streamlining Davis/Bacon” which explains HUD’s efforts to improve the labor standards administration process:

<http://www.hud.gov/offices/olr/streamline.cfm>

### Lead-Based Paint

HUD’s lead-based paint regulatory requirements (24 CFR Part 35) governing the acquisition, rehabilitation, leasing, operations, and sale of NSP-funded housing are applicable. These will be most applicable for rehabilitation of buildings constructed prior to 1978, or demolition of buildings constructed prior to 1978. Also, the US Environmental Protection Agency (EPA) has issued lead paint regulations (40 CFR Part 745), effective as of April 22, 2010, that will be applicable to the same universe of buildings. A number of pamphlets have been developed to provide information about lead paint hazards and ways to identify and address those hazards:

- *Renovate Right - Important Lead Hazard Information* (this pamphlet was developed by EPA and includes its new requirements)
- *Protect Your Family From Lead In Your Home*
- *Living Safely With Lead - What Every Tenant Needs To Know*
- *Landlords and Lead - Know The Rules*

These pamphlets are available through the **Leadsafe NJ Program** webpage:

[http://www.state.nj.us/dca/dcr/leadsafe/educa\\_material.html](http://www.state.nj.us/dca/dcr/leadsafe/educa_material.html) (scroll down to “Program Book” section)

Also, the following web pages contain additional resources, including links for more technical information about lead hazard identification and mitigation:

- HUD’s Office of Healthy Homes and Lead Hazard Control - Renovation, Repair and Painting (<http://www.hud.gov/offices/lead/training/rrp/rrp.cfm>)
- EPA (<http://www.epa.gov/lead/index.html>).

Generally, if NSP-funded construction work includes rehabilitation of existing housing, the following table briefly describes the required testing and treatment methods:

<b>Cost of Rehabilitation Work</b>	<b>Testing/Treatment Methods</b>
\$1 to \$5,000 per unit	Limited Paint Testing Lead-Safe Work Practices
\$5,001 to \$25,000 per unit	Risk Assessment Interim Controls
\$25,001 and above per unit	Risk Assessment Lead Abatement - interior Interim Controls - exterior

In all instances, the NSP-funded unit must be re-inspected to determine that the lead-paint hazard has been “cleared”.

NSP Grantees must retain records demonstrating compliance with Part 35 requirements for the Department’s review.

Fair Housing, Equal Opportunity and Civil Rights

The regulations pursuant to Title I of the Housing and Community Development Act of 1974 (“HCDA”), the law authorizing the CDBG Program, require applicants to assure through certification that all activities will be conducted in accordance with Section 109 of HCDA (the nondiscrimination clause), Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive Orders 11246 and 11063. These requirements are briefly described below:

1. *Title VI of the Civil Rights Act of 1968*  
Nondiscrimination in any programs or activities receiving Federal financial assistance.
2. *Section 109 of Title I - Housing and Community Development Act of 1974*  
Nondiscrimination in any program or activity subject to the provisions of this title. No person in the United States shall on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part under this Title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.
3. *Title VIII of the Civil Rights Act of 1968, as amended*  
Prohibition against discrimination based on sex.

4. *The Fair Housing Law*

Provides protection against the following acts, if they are based on disability, race, color, religion, sex, national origin, or family status:

- Refusing to sell or rent to, deal or negotiate with any person
- Discriminating in terms or conditions for buying or renting housing
- Discriminating by advertising that housing is available only to persons of a certain family status, race, color, religion, sex, or national origin
- Denying that housing is available for inspection, sell or rent when it really is available
- "Blockbusting" - For profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood
- Denying to anyone the use of or participation in any real estate services, such as brokers' organizations, multiple listing services or other facilities related to the selling or renting of housing
- Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations and insurance companies

5. *Executive Order 11063 - Equal Opportunity in Housing, as amended by Executive Order 12259.*

All departments and agencies are directed to take all action necessary and appropriate to prevent discrimination in housing and related facilities owned or operated by the Federal Government or provided with Federal financial assistance and in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government.

6. *Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375.*

Part II - Employment under Federal contracts. Non-discrimination in employment by government contractors and subcontractors.

Part III - Federally assisted construction contracts. Non-discrimination in employment under federally assisted construction contracts. Parts II and III are administered by the Department of Labor.

7. *Section 3 of the Housing and Development Act of 1968, as amended and as implemented by HUD regulations at 24 CFR Part 135*

Section 3 provides that to the greatest extent feasible, training and employment opportunities shall be made available to lower income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents. More information about the reporting requirements for Section 3 is provided below.

HUD's webpage for Fair Housing laws and regulations is:

<http://www.hud.gov/offices/fheo/FHLaws/index.cfm>

As recipients of federal funds, NSP Grantees must also comply with accessibility requirements (Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990). Together, these federal laws require all recipients of federal financial assistance to ensure accessibility for persons with disabilities. All projects receiving federal financial assistance, must be designed, constructed and altered to be fully accessible to people with mobility and sensory impairments. Also, the federal Fair Housing Act requires new multifamily buildings to be designed and constructed to have fully accessible



common areas. These buildings must incorporate basic adaptive features in ground floor and elevator-accessible dwelling units to allow for use by people with disabilities. Generally, building construction in New Jersey is compliant with these requirements, since the NJ Uniform Construction Code contains accessibility and adaptability standards.

NSP Grantees must keep track of the following information and provide it to the Department upon request:

- Actions taken to promote Fair Housing during the NSP grant period
- The race/ethnicity of the households assisted through the NSP grant
- The number of female headed households assisted through the NSP grant

With respect to Section 3, NSP Grantees must report annually about the number of persons they have employed, whether directly or through contract or subcontract, including lower-income residents of the area where the NSP-funded units are located (“Section 3 residents”); and also about contracts they have awarded to small businesses located within the project area or owned in substantial part by project area residents (“Section 3 businesses”). There is an overall federal requirement that at least 30 percent of employment via NSP must be for Section 3 residents, and at least 10 percent of contracts let by NSP Grantees as a result of NSP funding must be for Section 3 businesses. The report form, “Section 3 Summary Report” (HUD Form 60002) will be available for download from the Department.

HUD Title VI regulations (24 CFR 1) requires that all of its federally assisted recipients record and maintain information on the race, color or national origin of persons who are applicants for, participants in, or beneficiaries of the NSP Program.

#### Relocation

If acquisition of a property for NSP purposes by an NSP Grantee will result in the displacement of existing residents of that property, whether temporary or permanent, the federal Uniform Relocation Act’s requirements must be followed. Further guidance on relocation assistance is available on HUD’s website at:

<http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm>.

In particular, the “NSP Voluntary Acquisition of Foreclosed Property - Information Notice” must be downloaded and used by an NSP Grantee for each foreclosed property it plans to acquire using NSP funds.

#### Tenant Rights

NSP was modified by the American Recovery and Reinvestment Act of 2009, effective February 17, 2009 to contain tenant rights requirements. These requirements apply to renter-occupied housing units which may receive NSP funds via an NSP Grantee, namely acquisition of a foreclosed-upon property by an NSP Grantee which contains one or more occupied rental units. These requirements have the effect of protecting a tenant in a foreclosed-upon property which is eligible for NSP assistance from being immediately evicted without notice.

If an NSP Grantee purchases, or intends to purchase, a residential property that has been foreclosed-upon, which contains one or more rental units, and there are legal tenants residing in some or all of the units, then the tenants shall not be required to vacate their units without first being provided a “notice to vacate” by the current property owner at least 90 days before the

effective date of such notice. The “notice to vacate” period is extended in the following situations:

- If the legal tenant has a valid lease to the unit, which gives the tenant the right to occupy the unit until the lease’s ending date
- If the legal tenant, with a valid lease, is receiving federal Section 8 housing assistance

There are possible exceptions to these “notice to vacate” situations:

- If the legal tenant will become the owner of the unit in which s/he is residing, then the lease may be terminated effective on the date of sale of the unit; the current property owner is still required to provide a 90 day “notice to vacate” to the tenant
- For a unit with a legal tenant who is receiving Section 8 housing assistance, the tenancy may only be terminated prior to the sale of the property if it is unmarketable while occupied, or if the subsequent purchase desires the unit for personal or family use

The NSP Bridge Notice dated June 11, 2009 contains additional language for situations in which a public housing agency is unable to make payments under a Section 8 housing assistance contract to a unit with a legal tenant (see Section E, paragraph 2(b)(iii) of the Bridge Notice).

The current property owner (whether the NSP Grantee or another party) has the primary responsibility to provide the “notice to vacate” where it is applicable. The NSP Grantee must maintain documentation of its efforts to ensure that the tenant rights requirements have been satisfied, where applicable. NSP funds may not be used for the acquisition of property that fails to comply with the tenant rights requirements, unless the NSP Grantee agrees to assume these obligations. Also, a tenant who is determined to have been displaced from a rental unit because of an NSP-funded acquisition is entitled to relocation benefits (24 CFR 570.606).

These NSP tenant rights requirements shall not pre-empt any Federal, State or local law that provides more protections for tenants.

#### Limited English Proficiency

NSP Grantees must “take reasonable steps” to ensure that limited English proficiency (“LEP”) persons have meaningful access to programs services and information funded through their NSP Grant. “Taking reasonable steps” includes, but is not limited to the following:

- The Grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction by complying at all times with the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* published in the January 22, 2007 *Federal Register*

#### Program Income

Income that is generated from the use of NSP funds will be considered “program income” and must be returned to the Department. This includes revenue received by a unit of general local government or sub-recipient (as defined at 24 CFR 570.500(c)) that is directly generated from the use of NSP funds. This also includes revenue received by the Department from repayments by an NSP Grantee for an NSP project-specific loan. This can include proceeds from the sale of a completed homeownership unit to an eligible homebuyer, or an annual payment from a

completed rental project; this will be further discussed below, in the “Structure of NSP Funds” section. Program income is further defined in the CDBG regulations at 24 CFR 570.500(a).

#### Records Retention

An NSP Grantee is responsible for retention of financial records, supporting documents, statistical records, environmental review records and all other records pertaining to the NSP project for a minimum of five (5) years from the date of the grant close-out, following completion of the NSP Project (refer to the Final Payment/Grant Close-Out section, page 24).



## Section 3 - Other Requirements

### Matching Funds

For each approved NSP Project, a minimum of 25 percent of the sources of funds needed to develop the project must come from a source other than the Department's NSP funds. These other sources of funds include public funds (e.g. CDBG, HOME) and private funds (e.g. commercial mortgage loan for permanent/construction financing, developer equity).

### Grant Agreement

The Department will enter into a written agreement ("Grant Agreement") with the NSP Grantee that will govern the specific use(s) of NSP funds, in accordance with the application that was submitted by the NSP Grantee and that was reviewed and approved by the Department. This NSP Operational Manual will be appended by reference to the Grant Agreement.

An NSP Grantee that is a municipal or county government may enter into a written agreement ("Third Party Contract") with a grant sub-recipient that is carrying out activities which are eligible uses of NSP funds, as listed on page 3 of this manual. The NSP Grantee will submit the Third-Party Contract to the Department for review and approval, after which it can be executed. At a minimum, the language in Section C, Paragraph 8b of the Grant Agreement must be included in the Third-Party Contract; it is recommended that all the requirements contained in Section C of the Grant Agreement should be incorporated into the Third-Party Contract. A Third-Party Contract is not required for an NSP Grantee that will not delegate grant activities to a sub-recipient; this generally refers to a non-governmental NSP Grantee, such as a non-profit development organization or a for-profit development organization.

### Payments and Financial Management

An NSP Grantee will request payment of NSP funds for reimbursement of actual expenses that have been incurred, or prior to acquisition of eligible properties, after the environmental review process has been completed for the unit(s) for which NSP funding is being requested. Specifically this will mean all Tier 2 environmental review compliance (e.g. historic preservation, manmade hazards) has been documented and submitted to the Department for review, and the Department has accepted the Tier 2 environmental review findings (refer to the Environmental Review section, pages 10-11). Payment requests will be submitted to the Department via SAGE (the on-line grants and applications system). Each payment request will consist of two parts:

- Electronic submission of a Financial Status Report - Expense Report ("FSR"), via SAGE
- Submission of a fully-signed FSR Payment Voucher (with original signatures) and back-up documentation for each item listed in the FSR to be reimbursed, via regular mail or overnight delivery

The following list of items is part of the required back-up documentation for an FSR. This list is a sample and is not all-inclusive; it will be adjusted for the needs of each NSP Grant Agreement.

- For **acquisition**: completed environmental review record (ERR) for the involved property or properties; signed contract(s) for sale; property appraisal(s) (both "as-is" and "as completed"); evidence of clear title; settlement sheet(s) (HUD-1); "NSP Voluntary Acquisition of Foreclosed Property" letter(s) if applicable; proof of foreclosure and

vacancy, if applicable (*NOTE: NSP funds may be requested in advance of a scheduled closing on an eligible property, to be available for use at the closing; the required documentation must be received by the Department at least ten (10) business days before the scheduled closing, as part of an FSR submission*)

- For **demolition**: completed ERR for the involved property or properties; copy of blight determination/declaration from municipality; copy of demolition permit from municipality; contractor requisition for payment, signed by licensed architect or engineer; photographs of site, before and after demolition
- For **construction**: completed ERR for the involved property or properties; copy of building permit(s) from municipality; contractor requisition for payment, signed by licensed architect or engineer; photographs showing construction progress, both exterior and interior; for non-municipal grantees, items required under Section C, Paragraph 3 of the NSP Grant Agreement (this includes a copy of final plans, specifications and cost estimates, certified by an architect/engineer; and evidence that all necessary titles, permits and approvals have been secured)
- For **non-construction costs** (e.g. professional fees): copy of the invoice or bill, with the item(s) requested for reimbursement clearly marked

The NSP Grantee must establish and maintain a financial management system for the NSP funds in accordance with the requirements in Section XII of the “General Terms and Conditions for Administering a Grant/Loan” which accompanies the Grant Agreement.

#### Homeownership units

In addition to acquisition and development costs, NSP funds may be used for **mortgage buy-down**, in order to price an NSP-funded unit at a neighborhood-stabilizing level (in accordance with its “as-completed” appraised value) and then reduce the home mortgage loan to an amount that an eligible homebuyer can afford, if needed. NSP funds used for this purpose may replace up to 20% of the sales price. It should be assumed that the homebuyer will pay 28% of its gross household income for housing costs (mortgage loan principal and interest, real estate taxes, homeowner’s insurance, and condominium/association fees). NSP funds may also be used for **downpayment and closing cost assistance**, if a homebuyer is unable to provide the full required amounts. With respect to downpayment, the homebuyer must provide a minimum of 50% of the amount required by the mortgage lender (this is a CDBG Program requirement that is applicable to NSP).

*Example: an NSP-funded unit is priced for sale at \$125,000; the eligible homebuyer can afford a mortgage of \$115,000 under the 28% housing cost assumption; as a result, a mortgage buy-down of \$10,000 is needed (8% of the sales price), using NSP funds. If the required downpayment is \$3,750 (3%), the homebuyer must provide at least \$1,875 and NSP funds can cover the balance. The total NSP subsidy for mortgage buy-down and downpayment would be \$11,875 (note that closing cost assistance is not included here and would add to this total).*

The NSP Grantee must complete and submit a development budget and affordability analysis; the Department will provide the format for this budget and analysis. Remember that NSP funding on a per-unit basis may not exceed the subsidy limits listed on page 5 of this manual.

During the construction period, NSP funds must be secured by a mortgage note and mortgage. The borrower will be the developer of the intended NSP units; if the NSP Grantee is a unit of government, then the borrower will be the grant sub-recipient. The mortgage must be recorded in the county where the housing units are located. The Department will provide model

mortgage loan documents if requested. The borrower must submit a draft of the mortgage loan documents for the Department's review and approval, after which they can be executed and recorded. The Department's NSP construction mortgage loan will have a 0% interest rate, and will occupy a first mortgage lien position unless other financing, whether existing or arranged for the project, requires that it be in a subordinate mortgage lien position. The Department's loan will occupy a superior mortgage lien position to all other public funding that may be awarded for an NSP project. The Department will keep a record of the amount of NSP funding being provided to each unit in an NSP project.

Once an NSP-funded unit is completed and an eligible homebuyer is ready to purchase it, the Department, upon request from the NSP Grantee or sub-recipient, will execute a "partial release of mortgage" document to release the unit from the NSP construction mortgage lien, permitting its sale. If the NSP construction mortgage loan occupies first mortgage lien position, the sales proceeds will be remitted to the Department and will be considered program income, as previously referenced (see p.16). If the NSP construction mortgage loan does not occupy first mortgage lien position, but the sales proceeds exceed the amount of the mortgage loan that occupies first lien position, then the "excess" sales proceeds will be remitted to the Department and will be considered program income.

At the time of closing on a completed NSP unit by an eligible homebuyer, the Department will require the homebuyer to execute a Mortgage Note and Mortgage in the amount of NSP funding for the unit that has not been remitted to the Department from sales proceeds. This will include amounts provided to the homebuyer for mortgage buy-down, downpayment and closing cost assistance, if applicable. The Mortgage Note will have the following terms:

- The loan will have a 0% interest rate
- The loan period will be equal to the required affordability control period (see p. 7)
- There will be a 5-year period during which none of the NSP mortgage loan principal will be forgiven (the "hold period")
- After the hold period ends, mortgage loan principal will be forgiven at a fixed percentage annually, until the loan period ends:
  - For a 10-year loan, the fixed percentage will be 20%
  - For a 15-year loan, the fixed percentage will be 10%
  - For a 20-year loan, the fixed percentage will be 6.67%
  - For a loan period greater than 20 years, the fixed percentage will be calculated by the Department, based on the loan period less the hold period

The loan will be subordinate to the home mortgage loan obtained and closed on by the homebuyer to purchase the completed NSP unit.

Also, the Department will require the homebuyer of the completed NSP unit to execute a Deed Restriction document to secure the required affordability controls (see page 5). The Mortgage and Deed Restriction documents must be recorded in the county where the housing unit is located.

During the required affordability period, a deed-restricted NSP homeownership unit may only be sold by its current owner to a new eligible homebuyer (income has been certified as less than 120% AMI). The new price for the unit must be set at a level that is affordable to the new homebuyer, as follows:

- For each calendar year that has passed since the unit was previously purchased by an eligible buyer, the percentage increase in the HUD median income (100% AMI) for a 4-person household in the county where the unit is located will be determined, from the previous year
- The percentage increases will be applied consecutively, starting with the initial sales price and continuing for each applicable year thereafter. The calendar year in which the initial NSP sale occurred will be the base year for the purpose of calculating and applying the percentage increases to the initial sales price.
- *Example: if an NSP unit is sold for \$125,000 initially (in 2009), and its owner wants to sell it 3 years later (in 2012), and the HUD 4-person median income for the applicable county increased by 2%, 2.5% and 3% respectively during those years...then the new price for the unit will be \$134,608 ( $\$125,000 \times 1.02 = \$127,500$ ;  $\$127,500 \times 1.025 = \$130,687$ ;  $\$130,687 \times 1.03 = \$134,608$ )*

The Mortgage Note, Mortgage and Deed Restriction must be legally transferred to the new homebuyer.

The requirement that a deed-restricted NSP homeownership unit must be sold to another eligible buyer during the required affordability period may be waived in very limited instances, if the homeowner can sufficiently demonstrate negative consequences for adhering to the resale requirement. A waiver request must be submitted in writing to the Department (c/o Division of Housing and Community Resources), which reserves the right to request additional information from the homeowner in order to make a decision. If a waiver is granted, the NSP Mortgage Note will become due and payable, to the fullest extent that the principal balance can be repaid from sales proceeds, and the deed restriction will be removed.

The pricing and affordability requirements discussed in the section and elsewhere in this manual are not fully consistent with the requirements of the Uniform Housing Affordability Controls (UHAC), which sets the standards for affordable housing units being eligible to be counted as satisfying a municipal affordable housing obligation via the Council on Affordable Housing (COAH). An NSP Grantee that wants its units to be COAH-eligible will need to review the UHAC standards and price them in accordance with those standards. UHAC standards can be accessed via COAH's website: <http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html>

The Department will reserve the right to review the NSP Grantee's records (or grant sub-recipient, if applicable) with respect to income certifications for the buyers of the NSP-funded units.

#### Rental units

In addition to acquisition and development costs, NSP funds may be used to capitalize an **operating reserve** to cover up to 12 months of project operating costs, including primary debt service.

For NSP-funded rental units that will be designated for occupancy by a very-low income household (50% AMI or less), the gross rent (contract rent and tenant-paid utilities) must not exceed the "Low HOME Rent Limit" that is published annually by HUD. It should be assumed that the tenant will pay no more than 30% of its gross household income for gross rent. Recognizing this, the gross rent should be set \$50-\$100 below the "Low HOME Rent Limit", to extend more flexibility in finding and qualifying an eligible tenant. The Department will make the most current "Low HOME Rent Limit" figures and the utilities allowance chart available to NSP Grantees and to owners of NSP-funded rental units.



For NSP-funded rental units that will be designated for occupancy by a low, moderate or middle income household (above 50% AMI, but less than 120% AMI), the gross rent should be set at a reasonable level, so that a tenant will pay no more than 30% of its gross household income for gross rent. HUD's published "High HOME Rent Limit" and "Fair Market Rent" figures will be acceptable for these units; the Department will make these figures available.

The NSP Grantee must complete and submit a development budget and affordability analysis; the Department will provide the format for this budget and analysis. Remember that NSP funding on a per-unit basis may not exceed the subsidy limits listed on page 5 of this manual.

NSP funds must be secured by a Mortgage Note and a Mortgage, starting with the construction period, continuing through the required affordability period. The borrower will be the developer of the intended NSP units; if the NSP Grantee is a unit of government, then the borrower will be the grant sub-recipient. The Mortgage must be recorded in the county where the housing units are located. The Department will provide model mortgage loan documents if requested. The NSP Grantee or sub-recipient must submit loan documents for the Department's review and approval, after which they can be executed and recorded. The Mortgage Note will have the following terms:

- During the construction period, the interest rate will be 0%
- After the construction period, when the completed unit is occupiable (defined as the issuance date of the final Certificate of Occupancy by the municipality where the unit is located), the interest rate will be 1%
- The loan will occupy a first mortgage lien position unless other financing, whether existing or arranged for the project, requires that it be in a subordinate mortgage lien position
- The Department will offer two options for the use of net cash flow (defined as revenue minus expenses, with expenses including debt service if applicable).
  - The first option is to allow the borrower to retain net cash flow, which must then be deposited into a replacement reserve account to cover future housing costs, such as replacement or repair of systems and fixtures. The reserve account must be interest-bearing. The borrower will submit an annual statement that details deposits into and withdrawals from the replacement reserve account, including explanations for the withdrawals.
  - The second option is for the borrower to make an annual loan payment to the Department, which will be considered program income. The amount of this payment will be negotiated; generally it will not exceed 50% of net cash flow and will be proportional to any loan payment required by other subordinated mortgage loans

Also, the Department will require the borrower to execute a Deed Restriction document to secure the required affordability controls (see page 5). The Deed Restriction document must be recorded in the county where the housing units are located. If the NSP rental units are located in scattered-site properties, the Department will require the NSP Grantee to execute a Deed Restriction document for each property. The final Certificate of Occupancy issuance date will be the starting date for affordability controls and establishes the anniversary date for future rent changes.

Rent increases will be allowed for all NSP-funded rental units on an annual basis, effective as of the established anniversary date (or the first day of the month following the anniversary date). The amount of the rent increase will be established by the percentage difference between the most current 4-person household median income (100% AMI) for the county where the units are located, and the prior year's 4-person household median income.

*Example: for a rental unit in Trenton, the 2009 4-person median income figure is \$90,100; the 2008 4-person median income figure is \$85,400. The difference between these figures is \$4,700. The permitted rent increase is  $(4700/85400=)$  5.5%.*

For units designated for very-low income households, the gross rent may not exceed the most current "Low HOME Rent Limit". Also, a municipal ordinance which regulates rent increases will take precedence if it allows a lower increase amount.

The income designation for NSP-funded rental units must continue for the entire period of affordability controls. Thus, a unit designated for, and initially occupied by, a very-low income tenant must always have a very-low income tenant. If there is a vacancy in an NSP-funded rental unit, the new tenant must have the same income designation as the prior tenant; an income certification will be required. Also, for multi-family buildings that contain both NSP and non-NSP rental units, the income designation shall not be transferred at any time and must remain "fixed" to the original location (e.g. street address, apartment number) for the entire period of affordability controls.

The rent-setting and affordability requirements discussed in the section and elsewhere in this manual are not fully consistent with the requirements of the Uniform Housing Affordability Controls (UHAC), which sets the standards for affordable housing units being eligible to be counted as satisfying a municipal affordable housing obligation via the Council on Affordable Housing (COAH). An NSP Grantee that wants its units to be COAH-eligible will need to review the UHAC standards and set rents in accordance with those standards. UHAC standards can be accessed via COAH's website: <http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html>

The Department will require an annual submission by the NSP borrower of the following information:

- Listing of all NSP-funded rental units, showing: the current tenant, date of occupancy, contract rent, tenant-paid utilities, income designation for unit (very-low or low/mod)
- Evidence that the NSP borrower is current on property taxes and property insurance, for each property with NSP-funded rental units
- Copy of fully-signed lease for each NSP-funded rental unit
- Income and expenses statement for the NSP project as a whole
- Statement regarding the replacement reserve account (if applicable) and the operating reserve account (if applicable) - detailing deposits into and withdrawals from the replacement reserve account, including explanations for the withdrawals

An NSP-funded rental unit may be rented to a household with a Housing Choice Voucher, also known as a Section 8 certificate. However, the rents must be set in strict accordance with NSP requirements and in consultation with the Department's NSP staff. This means, for example, that a unit designated for occupancy by a very-low income household, the rent shall not be set

at, and the owner shall not collect, the “Fair Market Rent” which HUD has published for the location. The Department will monitor the rents on a regular basis, and will report to its housing field offices the rents it has approved for the NSP-funded rental units.

The Department will reserve the right to perform on-site inspections to determine if the units remain habitable, in compliance with HUD’s Housing Quality Standards. The Department will also reserve the right to review the NSP Grantee’s records (or grant sub-recipient, if applicable) with respect to income certifications for the tenants of the NSP-funded units.

### Insurance

During the construction period for an NSP project, the borrower of the NSP funds must obtain insurance coverage for the NSP-funded units. This coverage must include:

- Loss or damage by fire
- Comprehensive general public liability, covering all claims for bodily injury and property damage
- Builder’s risk
- Flood insurance, if any of the NSP-funded units are located within a federally-designated 100-year floodplain

The Department must be named as a mortgagee for these policies.

After the construction period ends and the NSP-funded units are occupiable, the policies listed above must convert to a standard policy or policies, on a full replacement basis, covering the full amount of the permanent NSP funding for the units. Flood insurance is still required if applicable. The Department must be named as a mortgagee for these policies.

### Reporting and Monitoring

The Department will require quarterly reports from NSP Grantees on the status of their NSP-funded projects. The quarterly report must be submitted electronically via SAGE (the Department’s on-line grants and applications system), using a format provided by the Department. Generally, an NSP Grantee will be required to report on the following criteria: acquisition of properties, construction completion, qualifying eligible households and occupancy of completed units. The information in these reports will in turn be submitted to HUD as required under HERA (via the “Disaster Recovery Grant Reporting” system, or DRGR). NSP Grantees that do not provide reports in a timely and accurate fashion will be restricted in their ability to submit payment requests via SAGE.

NSP Grantees must constantly monitor performance to ensure that time schedules are being met, projected milestones are being accomplished, and other performance goals are being achieved in accordance with the approved application. In addition, grant activities must be conducted in compliance with federal and state requirements. Problems, delays, or adverse conditions that will affect the NSP Grantee’s ability to meet its program objectives or its time schedules must be promptly reported to the Department.

The Department will perform periodic monitoring visits during the term of the NSP Grant Agreement to view and assess progress on the approved grant activities, and to review records being kept by the NSP Grantee to ensure that all applicable federal and state requirements are being met.

## Procurement

NSP Grantees will comply with the procurement standards under 24 CFR 85.36 (if the grantee is a county or municipal government) or 24 CFR 84.40-48 (for all other grantees). The following procurement criteria are also applicable:

- The NSP Grantee is the responsible authority, without recourse to HUD or the Department regarding the settlement of all contractual and administrative issues arising out of the procurement entered in support of the award or other agreement
- The NSP Grantee must conduct all procurement in a manner to provide to the maximum extent practicable, open and free competition
- The NSP Grantee must maintain records to detail the significant history of procurement. These records include, but are not limited to: files on the rationale for selecting the method of procurement used, selection of the contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract
- Pre-qualified lists of vendors/contractors, if used, must be current, developed through open solicitation, include adequate numbers of qualified sources, and must allow entry of other firms to qualify at any time
- Steps should be taken to assure that women and minority businesses are utilized when possible as the sources of supplies, equipment and services
- The NSP Grantee must ensure that awards are not made to any party that is debarred or suspended or is otherwise excluded for or ineligible for participation in the Federal assistance programs under Executive Order 12549
- There must be written selection procedures for procurement transactions
- The NSP Grantee must not use "costs plus a percentage of cost" pricing for contracts
- The NSP Grantee must have protest procedures in place to handle and resolve disputes relating to its procurement and in all instances report such disputes to the Department
- There must be a documented system of contract administration for determining the consistency of contractor performance
- The NSP Grantee must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts

## Final Payment/Grant Close-out

The Department shall withhold 10% of the grant amount from the NSP Grantee until the approved grant activities have been completed and the NSP Grantee has submitted to the Department all required documentation that evidences completion of the grant activities. The specific documentation will be tailored for the needs of each NSP grant, but generally will include the following:

- HUD-1 settlement sheet for each property acquired using NSP funds - if not previously submitted
- Appraisal for each property acquired using NSP funds (both "as-is" and "as completed") - if not previously submitted
- Certificate of Occupancy (or Certificate of Continued Occupancy) for each NSP-assisted property, from the municipality in which it is located
- Certification from the administrative entity of the income eligibility for each household that occupies a completed NSP unit
- Original versions of NSP mortgage loan documents, executed and recorded
- Original affordability control documentation, executed and recorded
- Narrative and photos
- Final certification of costs and funding sources for the entire grant. If the grantee is not a unit of government, this certification must be completed by a certified public accountant

The Department will review this submitted documentation and, if acceptable, will release the final grant payment and close-out the NSP grant.

#### Audit Requirements

The NSP Grantee shall comply with the audit requirements that are listed in Section XXVIII of the "General Terms and Conditions for Administering a Grant/Loan" which accompanies the Grant Agreement.

#### Conflict of Interest

Federal regulations (24 CFR 570.611) require an NSP grantee to request a waiver from the Department based on an actual, potential or appearance of a conflict of interest in the provision of grant related assistance or in the procurement of supplies, equipment, or construction contracts.

Conflict of interest regulations apply to any person who is an employee, agent, consultant, officer, or elected official of the grantee. Any persons who exercise any functions or responsibilities with respect to NSP-related activities, or have an interest in any NSP contract, subcontract or agreement, either for themselves or for family members or business associates, are covered by this provision.

The Department may grant a conflict of interest waiver to the Grantee on a case by case basis. Grantees may request a waiver by submitting the following:

- A disclosure of the nature of the conflict, including evidence that there has been public disclosure of the conflict (e.g., minutes of a public hearing of the grantee's governing body); and
- A written opinion from the grantee's attorney that the interest for which an exemption is sought would not violate applicable law (federal, state, local)

Factors that the Department will consider in granting a waiver include:

- Whether the exception would provide a significant cost benefit to the grantee or an essential degree of expertise would not otherwise be available;
- Whether an opportunity was provided for open competitive bidding or negotiation;
- Whether the person affected is otherwise a potential program beneficiary and the exception will result in the person receiving the same assistance as that offered to other program beneficiaries;
- Whether the affected person has withdrawn from his or her decision-making role in respect to the specific program activity;
- Whether the interest or benefit was present before the affected person was in the conflict of interest situation;
- Whether undue hardship will result to the grantee or the affected person; and/or any other relevant considerations.

#### Failure to Perform under NSP Grant Agreement (Suspension, Termination)

In the event that the Department or an audit has determined that the NSP Grantee has failed to comply with the NSP Grant Agreement, the NSP Grantee shall perform remedial actions to correct the deficiency, as determined and required by the Department, which may include:

1. Repayment or reimbursement of NSP funds which were expended for purposes other than those permitted by the NSP Grant Agreement;
2. The recapture of NSP funds disbursed by the State but not yet expended by the Grantee;
3. The return of any equipment, materials or supplies purchased, leased or lease purchased using NSP funds to the supplier; and
4. Other actions as the Department deems appropriate.

These actions, if required, shall be performed by the NSP Grantee in the time period specified by the Department in writing to the NSP Grantee. The Department may refuse NSP funding requests by the NSP Grantee, suspend the program or take other actions as the Department deems appropriate to ensure proper performance.

The Department may terminate the NSP Grant Agreement in whole or in part, at any time before the date of completion, whenever it is determined by the Department that the NSP Grantee has failed to comply with the conditions of the NSP Grant Agreement. The Department shall notify the NSP Grantee in writing of the determination and the reasons for the termination, together with the effective date. The NSP Grantee shall not incur new obligations for the terminated portion after the effective date of the revocation of the NSP Grant Agreement, and it shall be the NSP Grantee's duty to cancel all outstanding obligations.

#### Evidence of Misconduct

The Department will enforce all provisions of the NSP Program and refer any evidence of fraud, misrepresentation or other misconduct by an NSP Grantee, in connection with program operation, to the appropriate state or federal authority for appropriate legal action.

## EXHIBIT A

### **DEFINITIONS**

**Abandoned** - The status of a housing unit when mortgage or tax proceedings have been initiated, no mortgage or tax payments have been made by the owner for at least 90 days and the housing unit has been vacant for at least 90 days

**Acquisition discount** - The reduction of the acquisition price for a foreclosed housing unit that is purchased using NSP funds, at least 1% below current market appraised value

**Administrative allowance** - NSP funding that is limited to a grantee that is a unit of government (county or municipality) and which does not exceed \$2,000 for each NSP unit

**Amenity** - an appliance, device or item that is permanently installed into an NSP unit, separate from general construction, which can be shown to be reasonable and necessary for the unit's occupant. This can include: dishwasher, stove, refrigerator, washing machine, clothes dryer

**Area Median Income (AMI)** - Income figures, specific to county and to household size, that are published periodically by HUD, usually on an annual basis. For NSP, these figures will be published for the 50 percent and 120 percent thresholds.

**Blighted** - The condition of a structure, including a housing unit, when it displays objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety and public welfare. Under New Jersey law, a municipality may exercise its police power to take appropriate action to remediate a property if the property is "unfit for human habitation or occupancy, or use, due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitation facilities, or due to other conditions rendering such building or buildings, or part thereof, unsafe or unsanitary, or dangerous or detrimental to the health or safety or otherwise inimical to the welfare of the residents of said municipality..." (N.J.S.A. 40:48-2.3)

**Closing cost assistance** - An eligible project cost, using NSP subsidy for costs associated with the sale of a completed NSP housing unit to an eligible homebuyer, if that homebuyer does not have sufficient cash to cover the amount. Costs can include, but are not limited to: appraisal, deed preparation, loan origination fee, pre-paid insurance, pre-paid property taxes, recording fee, title insurance.

**Current market appraised value** - The value of a foreclosed-upon residential property established through an appraisal completed within 60 days prior to an offer made by a municipal or a for-profit/non-profit developer. However, if the anticipated value of the proposed acquisition is \$25,000 or less, the property's value may be established by a valuation that is based on a review of available data and made by a person who is qualified to make this valuation; this person's qualifications must be reviewed and approved by the Department.

**Developer fee** - An eligible project cost, allocating profit to the developer of an approved NSP project. The fee is limited to 8% of total project cost; acquisition and soft costs are includable under total project cost.

**Downpayment assistance** - An eligible project cost, using NSP subsidy to cover up to 50% of the amount required of an eligible NSP homebuyer by a mortgage lender to purchase a completed NSP housing unit, if that homebuyer does not have sufficient cash to cover the amount. The amount is usually a percentage of the sales price, e.g. 5%.

**Foreclosed** - The status of a housing unit at the point that, under state or local law, mortgage or tax foreclosure proceedings are complete and the prior owner no longer has the legal right to own, occupy and use the premises

**Housing unit** - Any type of permanent residential dwelling unit, including detached single-family buildings, 2 to 4-family buildings, townhouses, condominium units, and multi-family apartment buildings (5 or more units).

**Low, moderate, middle income** - Describes a household with a gross income that is greater than 50% of Area Median Income, but is less than 120% of Area Median Income

**Mortgage buy-down** - An eligible project cost, using NSP subsidy to reduce the home mortgage loan for an NSP-funded homeownership unit to an amount that an eligible homebuyer can afford, while maintaining the sales price at a neighborhood-stabilizing level in accordance with its "as-completed" appraised value

**Redevelopment** - An activity, comprising part or all of an approved NSP project, that does not involve abandoned and foreclosed housing units. This can include: acquisition of vacant land and vacant housing units; demolition; and development costs (including new construction of housing units).

**Rehabilitation** - Construction work in accordance with the NJ Uniform Construction Code, Rehabilitation Subcode (NJAC 5:23 - 6.3) to improve existing housing units.

**Very-low income** - Describes a household with a gross income of 50% of Area Median Income or less



**EXHIBIT B**

**DEVELOPMENT ACTIVITIES AND APPLICABILITY OF DAVIS/BACON WAGES**

<b>Development Activity</b>	<b>Davis/Bacon Wages Required?</b>	<b>Notes</b>
Land Acquisition	No	
Demolition, with no subsequent construction	No	
Demolition, followed by new construction	See Notes	NO, if demolition is done by an entity other than the project developer, prior to the land being transferred to the developer YES, if demolition is done by the project developer and the land has been transferred to the developer
Off-site improvements (street work, storm sewers, utility construction etc.)	Yes	
On-site improvements (excavation/grading, storm drainage, sewer connection, paving, site lighting, landscaping etc.)	See Notes	YES, if done by the project developer, the land has been transferred to the developer and the improvements will benefit buildings on the site NO, if done by an entity other than the project developer, prior to the land being transferred to the developer
Contracts for public utility services (gas, electricity, water)	No	
Cleaning, during construction	Yes	
Cleaning, after construction to prepare for occupancy (separate from construction contract)	No	
Materials purchase	No	
Purchase of fixtures, equipment, machinery	No	
Installation of fixtures, equipment, machinery	Yes	But only if the installation involves more than an incidental amount of construction work
Fees for architect, engineer, attorney, accounting etc.	No	
Construction management	No	