



April 23, 2010

Community Planning and Development

NSP Policy Alert!

Guidance for Tracking and Reporting the Use of NSP Funds: Obligations for Specific Activities

QUESTION: *What action(s) must grantees take to obligate funds for specific activities?*

Overview

Section 2301(c)(1) of the Housing and Recovery Act of 2008 (HERA) requires grantees to use NSP funds within 18 months of the receipt of those funds. The NSP Notice published on October 6, 2008, provides that NSP funds are used for the purposes of section 2301(c)(1) when they are obligated by a grantee (or its subrecipient) for a specific NSP activity. Thus, compliance with the statutory use requirement requires the grantee (or subrecipient) to document the following:

- an obligation was incurred, and
- the obligation can be linked to a NSP specific activity.

Definition

The term “obligation” means the amounts of orders placed, contracts awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee (or subrecipient) during the same or a future period. Note that none of these actions would constitute a use for NSP purposes unless the action is related to a specific NSP activity. Except for certain activities (which are discussed below), HUD does not consider NSP funds obligated for a specific activity unless the obligation can be linked to a specific address and/or household. The NSP Notice explicitly provides that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of general local government) are made.

Obligations for Eligible NSP Activities

The following guidance is intended to aid grantees and subrecipients in understanding the action(s) necessary to obligate funds for specific activities. The guidance is provided for selected eligible activity categories under the CDBG entitlement regulations. Guidance is also provided for obligations related to new housing construction. Guidance is provided within this eligible activity framework because grantees must report obligations of NSP 1 funds by eligibility category, i.e.: (1) the correlated eligible activity specified in the NSP notice for the applicable NSP-eligible use, (2) general administration/planning, or (3) new housing construction pursuant to NSP-eligible use (E). Listed below are activities that NSP 1 grantees and subrecipients will undertake followed by guidance on obligating NSP funds for these activities.

1. **Acquisition of real property by a grantee or its subrecipient¹ (24 CFR 570.201(a))** – Acquisition costs may be reported as obligated when the grantee/subrecipient makes a purchase offer and it is accepted by the seller. Any activity delivery costs that are estimated to be incurred in connection with the acquisition (including those costs incurred after the 18 month obligation period) may also be recorded as obligated at the time the **purchase offer is accepted by the seller**. Activity delivery costs include the salary and overhead costs that are incurred by the grantee/subrecipient in carrying out the acquisition activity. Other costs expected to be incurred in connection with the specific acquisition (e.g., appraisal and inspection fees) may also be recorded as obligated when the purchase offer is accepted. To avoid the risk that funds will not be available if a purchase offer is accepted after the deadline for obligating NSP funds, grantees/subrecipients are well advised to condition purchase offers on acceptance by the obligation deadline.

2. **Rehabilitation (24 CFR 570.202)** – NSP funds may be used to rehabilitate property owned by the grantee (or its subrecipient) and property owned by a third party (e.g., an individual or a developer).
 - a. **Property owned by grantee/subrecipient:** NSP funds may be reported as obligated when a construction contract is awarded with respect to a specific property or other action is taken with respect to a specific property that is legally binding on the grantee/subrecipient (e.g., notice to proceed pursuant to an existing contract). Any activity delivery costs that are estimated to be incurred in connection with the rehabilitation may also be recorded as obligated at the time the contract is awarded or other obligating action is taken. Activity delivery costs include the salary and overhead costs that are incurred by the grantee/subrecipient in carrying out the rehabilitation activity. Other costs expected to be incurred in connection with the rehabilitation of the specific property (e.g., legal fees) may also be recorded as obligated when the contract is awarded or other obligating action is taken.

 - b. **Property owned by a third party:** As provided at 24 CFR 570.202(b)(1), NSP funds may be provided to private individuals and entities (including profit making and non-profit organizations) to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes.
 - (1) **Individual/occupant** - The grantee/subrecipient may record an obligation when it awards rehabilitation assistance (e.g., executes a grant or loan agreement) to an individual who will rehabilitate and occupy the property as a primary residence.

 - (2) **Developer²** - If the grantee/subrecipient provides assistance to a developer, the obligation may be recorded by the grantee/subrecipient when the developer's agreement is executed and the developer has identified specific properties to be acquired and/or rehabilitated. Therefore, NSP funds are not obligated if the grantee/subrecipient has entered into a non-specific agreement with a third party developer to finance acquisition and/or rehabilitation. HUD will consider NSP funds obligated for a specific activity only when the developer furnishes the grantee/subrecipient with information identifying specific properties and providing documented cost estimates (acquisition, construction,

¹ See definition for subrecipient in Notes section.

² See description of developer below.

and related costs, such as appraisal fees) for each identified property. Note that the grantee/subrecipient may record an obligation for components of project costs as the developer furnishes cost estimates (e.g., if the developer furnishes information regarding the cost of acquisition, it can be recorded by the grantee/subrecipient as obligated even though estimates of rehabilitation costs may not yet be available).

- 3. New housing construction (24 CFR 570.204 or pursuant to NSP-eligible use (E))** – Although this activity is not otherwise eligible under the CDBG program, except when undertaken by a community based development organization (CBDO), the NSP notice published on October 6, 2008, authorizes new construction of housing as part of NSP-eligible use (E) to redevelop demolished or vacant property. The new housing construction activity may be undertaken by a grantee/subrecipient or a third party (CBDO or developer):
 - a. Grantee/subrecipient:** NSP funds may be reported as obligated when a construction contract is awarded with respect to a demolished or vacant property. Any activity delivery costs that are estimated to be incurred in connection with the new construction may also be recorded as obligated at the time the contract is awarded. Activity delivery costs include the salary and overhead costs that are incurred by the grantee/subrecipient in carrying out the rehabilitation activity. Other costs expected to be incurred in connection with the new construction (e.g., architectural and inspection fees) may also be recorded as obligated when the contract is awarded.
 - b. CBDO or developer:** An obligation may be recorded by the grantee/subrecipient when an agreement is executed with a CBDO or developer that has control of the demolished or vacant property and has furnished the grantee/subrecipient with documented cost estimates (construction, and related costs, such as fees for architectural and engineering services, permits, inspections, etc.).
- 4. Clearance/demolition costs (24 CFR 570.201(d))** - Demolition costs should be reported as obligated when the grantee/subrecipient awards a demolition contract for a specific property.
- 5. Costs related to land-banked properties** – There are two categories of costs:
 - a. Acquisition costs (24 CFR 570.201(a))** – These costs should be reported as obligated when the requirements described under 1 above have been met. Note that a land bank falls within the definition of a subrecipient.
 - b. Disposition costs (24 CFR 570.201(b))** – On-going site security, other maintenance costs and disposition costs may be recorded as obligated when a contract has been signed for these services. When these services are carried out by the grantee or subrecipient directly, security and other maintenance costs can be charged as project delivery costs based on detailed cost estimates of expenses expected to be incurred.
- 6. Loss reserves for third party loans (typically undertaken pursuant to 24 CFR 570.201(n), 570.202, or in connection with new housing construction)** - If a grantee/subrecipient enters into an agreement with a third party lender under which the lender is required to make loans (e.g., for rehabilitation of foreclosed/abandoned properties) meeting prescribed lending and eligibility criteria and the grantee/subrecipient is required to deposit an amount into a loss reserve as each loan is made, the total amount expected to be deposited in the loss reserve may be obligated upon execution of the agreement. The amount to be obligated for the loss reserve shall be based on the expected future losses on the loans, taking into account expected default rates and

recoveries from liquidation of collateral. The grantee/subrecipient shall maintain the methodology and related documentation used in developing the loss reserve estimates in its records. Note that NSP funds obligated for a loss reserve are expended (i.e., deposited in the reserve) loan by loan, not in a lump sum.

- 7. Planning/program administration (24 CFR 570.205 and 570.206)** - The grantee/subrecipient may obligate the planning and general program administrative costs expected to be incurred in administering its NSP grant program. The costs may include those expected to be incurred after the 18 month obligation period. The amount obligated for general program administration should be based on cost estimates for the items listed under 24 CFR §570.206 (e.g., salary, travel, administrative services performed under third party contracts, indirect costs, and rent); provided, however, the aggregate amount obligated for planning and general program administrative costs by the grantee and its subrecipients shall not exceed 10% of the NSP grant amount plus 10% of program income earned. The obligation recorded for general program administrative costs shall not include the staff and other costs directly related to carrying out NSP activities. As noted above, these “activity delivery costs” are obligated as specific activities are carried out.
- 8. Housing counseling (24 CFR 570.201(e) or, to the extent permitted by the NSP notice, as an activity delivery cost of a correlated eligible activity)** – Grantees/subrecipients may record the total dollar amount of an agreement as obligated when the agreement is executed with a provider of counseling services.
- 9. Homeownership assistance (24 CFR 570.201(n))** – The grantee/subrecipient may record an obligation when it executes an instrument (e.g., commitment letter) that awards homeownership assistance (e.g., downpayment assistance or a mortgage loan) to an individual who will purchase a property pursuant to NSP-eligible use (B) or (E).

Grantees are reminded that at the end of the 18-month use period, each grantee’s accounting records and DRGR information must reflect outlays (expenditures) and unliquidated obligations that, in the aggregate, are at least equal to the NSP allocation. (The term “unliquidated obligations” means obligations incurred by the grantee/subrecipient for which an expenditure has not been recorded.) Obligations that are recorded erroneously or for activities that will not be carried out should be reduced accordingly.

Notes

Definition of subrecipient: As provided in the NSP Bridge Notice, published on June 19, 2009, “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 a state awards to. The term also includes any land bank receiving NSP funds from the grantee or another subrecipient.” Section 570.500(c) reads as follows:

“*Subrecipient* means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part.”

Developers: Note that the grantee/subrecipient is not required to treat certain third party development entities as subrecipients. The development entities may be private individuals or other entities, including profit making and nonprofit organizations. These development entities (or “developers”) receive NSP funds from the grantee/subrecipient to (1) acquire for the purpose of rehabilitation and/or to rehabilitate properties for use or resale for residential purposes and (2) construct new housing in connection with the redevelopment of demolished or vacant properties. The rehabilitation is undertaken pursuant to 24 CFR 570.202(b)(1) and the new housing construction is undertaken pursuant to 24 CFR 570.204 or the NSP notice published on October 6, 2008. In order to be treated as a developer, the entity must acquire site control of the property to be rehabilitated or redeveloped. That is, a grantee/subrecipient cannot designate an entity as a developer if it is simply providing construction services in connection with a property owned by the grantee/subrecipient.