

NEIGHBORHOOD STABILIZATION PROGRAM Explanation of Property Types under Each Eligible Use

INTRODUCTION

The Housing and Economic Recovery Act (HERA) uses different terms for each of the five Eligible Uses of funds in the Neighborhood Stabilization Program (NSP). HUD wishes to clarify these terms and to explain how this may affect what grantees can do with different types of property. The legislative language on Eligible Uses, following, shows the terms that will be discussed in underline. This memorandum also discusses the property types required to satisfy the requirement that 25% of the NSP funds are used to house individuals or families whose incomes do not exceed 50% of area median income.

In general, grantees must limit their activities in any Eligible Use only to those property types specifically cited. When combining uses (e.g. Acquisition and Rehabilitation under B with Financing under A), the more restrictive classification applies. All definitions should be understood to apply primarily to areas of greatest need or to constitute an improvement benefiting such areas as part of the overall NSP program. In addition, all activities must meet the national objective of benefiting low-, moderate-, or middle-income persons; NSP grantees may not use slum and blight removal or urgent needs as national objectives. Subsequent guidance will further define the correlated eligible activities from the CDBG entitlement regulations.

TERMS TO BE DISCUSSED

Housing and Economic Recovery Act Title III Sec. 2301 (c):

(3) ELIGIBLE USES.—Amounts made available under this section may be used to—

(A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate- income homebuyers;

(B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;

(C) establish land banks for homes that have been foreclosed upon;

(D) demolish blighted structures; and

(E) redevelop demolished or vacant properties.

Housing and Economic Recovery Act Title III Sec. 2301 (f) (3) (A):

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

DISCUSSION

A. Financing Mechanisms:

For “foreclosed-upon homes and residential properties”:

HUD interprets “homes” as any type of permanent residential dwelling unit, such as detached single family structures, townhouses, condominium units, multifamily rental apartments (covering the entire property), and manufactured homes where treated under state law as real estate (not personal property). The NSP Notice defines “foreclosed”; see excerpt below.

“Residential properties” includes all of the above plus vacant land that is currently designated for residential use, e.g. through zoning.

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

B. Purchase and Rehabilitation:

For “homes and residential properties that have been abandoned or foreclosed upon”:

As above, HUD interprets “homes” as any type of permanent residential dwelling unit, including detached single family structures, townhouses, condominium units, multifamily rental apartments (covering the entire property), and manufactured homes where treated under state law as real estate (not as personal property). The NSP Notice defines “abandoned” and “foreclosed”; see excerpts below.

“Residential properties” includes all of the above plus vacant land that is currently designated for residential use, e.g. through zoning.

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

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

C. Land Banks:

For “homes that have been foreclosed upon”:

This terminology limits land banking to “foreclosed upon” “homes” as defined above. The absence of a reference in this section to “residential properties” means that vacant land may NOT be acquired through land banks. However, it is permissible for acquired homes to be subsequently demolished and remain in the land bank.

Note that the definition of Land Banks at the beginning of the NSP Notice refers to vacant land, which has created some confusion. HUD regrets this inconsistency and is changing that section in an Errata Notice to be published soon.

D. Demolition:

For “blighted structures”:

The NSP Notice defines “blighted structures”, as shown below. HUD has taken the position that any type of structure that is blighted may be demolished with NSP funds. This means that commercial, industrial or other types of structures may be demolished in addition to homes and residential structures.

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

E. Redevelopment;

For “demolished or vacant properties”:

This Eligible Use allows communities to address the broadest range of property types. Because the legislation does not limit this use to homes and/or residential properties, HUD will permit grantees to acquire and redevelop ANY property type. This includes commercial or industrial property in addition to all types of residential property. Note that property acquired under Redevelopment need not be abandoned or foreclosed upon.

However, it MUST be vacant. “Vacant properties” includes both vacant land and properties with vacant structures on the land. However, HUD understands redevelopment to imply that properties were once developed; therefore undeveloped or “greenfield” sites may not be acquired under Eligible Use E.

HUD expects that, unlike land banks, properties acquired and improved under Eligible Use E must proceed expeditiously to construction. Properties that are eligible to be land banked with unknown end uses, or for which the end use is not imminent, should be considered for Land Banks (assuming that they have been foreclosed upon). Some corollary considerations also merit discussion, which follows the next section on housing for low-income persons.

Title III Sec. 2301 (f) (3) (A): Housing for individuals or families whose incomes do not exceed 50% of area median income:

For “purchase and redevelopment of abandoned or foreclosed upon homes and residential properties”:

HERA requires that grantees allocate 25% of their NSP funds for housing that serves lower income persons. Note that this is limited to abandoned or foreclosed upon homes or residential properties. The NSP definitions of “abandoned” and “foreclosed”, listed above, apply here also. HUD takes the position that this section refers to permanent housing; thus, such uses as homeless shelters cannot count toward the 25% requirement.

RELATED CONSIDERATIONS

The following discussion concerns implications of the preceding clarifications, or instances in which more than one set of requirements apply.

First, new housing construction (benefiting low-, moderate-, or middle-income persons) is permitted under Eligible Use E, and ONLY under Eligible Use E. This supersedes the limitation on new construction of housing in the CDBG program and is described in Sec. II H. 3.c of the NSP Notice (see excerpt below on page 5).

Second, housing rehabilitation is currently not a CDBG-correlated eligible activity under Eligible Use E. However, HUD is issuing an Technical Correction Notice to add it. The CDBG regulations on public facilities (24 CFR 570.201 (c)) do allow rehabilitation. Thus, a vacant structure acquired under Eligible Use E may now be renovated into a public facility, such as a neighborhood center. After publication of the Errata Notice, grantees will also be able to rehabilitate vacant structures for housing.

Third, grantees may wish to construct new housing for persons at or below 50% of median income, especially affordable rental housing. In this case, the law requires that the property be abandoned or foreclosed upon. The Notice limits new construction to Eligible Use E, which can take place only on vacant or demolished property. Therefore, to meet the 25% requirement, new housing construction can occur only on demolished or vacant land that is either abandoned or foreclosed upon. After publication of the Technical Correction Notice, rehabilitation of vacant residential structures will be permissible, but to meet the 25% requirement the property must also have been abandoned or foreclosed upon.

Finally, as defined in the CDBG regulations below, shelters for persons with special needs (such as homeless shelters and halfway houses) are public facilities. Renovation or new construction of such structures is eligible as a public facility under Eligible Use E. However, because they are not defined as permanent housing, they cannot count towards the requirement that 25% of the NSP funds “be used to house individuals or families whose incomes do not exceed 50% of area median income”.

ADDITIONAL REFERENCES

NSP Notice Dated Oct. 6, 2008

II. H. Eligibility and Allowable Costs

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

Housing and Economic Recovery Act Title III Sec. 2301(f)

(3) LOW AND MODERATE INCOME REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding the authority of the Secretary under paragraph (1)—

(i) all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income; and

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

CDBG regulations 24 CFR 570.201 (c):

Shelters for persons with special needs. Excerpt –

“Facilities designed for use in providing shelter for persons having special needs are considered public facilities Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims.”