

ELIGIBLE-USE SCENARIOS

Posted 12/30/09

The NSP1 regulations state that a foreclosure is complete for purposes of the NSP1 program when the property is transferred from the former owner under some type of foreclosure proceeding (or via a deed in lieu of foreclosure) in accordance with state law. If a lender in PA has initiated a foreclosure action, obtained a judgment for the debt, and received authorization under the judgment to sell the foreclosed property at a sheriff's sale or through a receiver subject to court approval, would a grantee's purchase through the receiver with court approval qualify for NSP1 purposes?

A deed in lieu happens without a foreclosure action in PA – the owner/debtor signs a deed over to the lender rather than going through the foreclosure proceeding. Am I correct that the program is intended to have properties purchased directly from the foreclosure action at the sheriff or receiver's sale? The property need not have been sold at a sheriff's or receiver's sale to the lender or another third party then be purchased by the grantee (or grantee's developer) to qualify. The question arises from the regulations which state: 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.

If the grantee or its developer purchases the property through a receiver or sheriff's sale (without the lender 1st buying then selling the property to the grantee), it qualifies? Also, can the property either be abandoned or foreclosed to qualify for NSP1 or does it need to be both?

It looks like the lender here has obtained a final judgment authorizing the sale of the property to satisfy the mortgagor's debt. The catch here is that the grantee would be purchasing the property in question directly from the sheriff's or receiver's sale rather than waiting to have either the lender or a third party purchase the property, and then proceeding with acquiring the "foreclosed upon" property.

I don't think this would be problematic here for NSP1 purposes. One purpose of the program is to allow grantees to purchase properties that are in this similar status. Whether the grantee purchases the property directly from the lender after the foreclosure sale, or purchases the property directly at the foreclosure sale doesn't change the fact that the lender here has gone through the judicial foreclosure process in Pennsylvania and has obtained a judgment authorizing the sale of the property. Note that we have stated in our NSP1 Notice that HUD may not use NSP1 funds to carry out foreclosure prevention activities. However, this proposed purchase by the grantee would not amount to a foreclosure prevention

activity because the lender has already obtained a judgment authorizing the sale of the property after completing the judicial foreclosure process required in Pennsylvania. i.e. the foreclosure is essentially complete or will certainly be complete upon the grantee purchasing the property. While we do say in our Notice that 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...”, I think this situation would be authorized considering that the judgment is in place and the property is being sold as a foreclosed upon property upon the completion of a foreclosure action.

As I understand it, a property does not need to be both abandoned and foreclosed upon to qualify under NSP1. It can be either to qualify for assistance. “Abandoned” and “Foreclosed” properties are two separate categories with specific definitions in the Notice and a grantee can use NSP funds to acquire and rehab both foreclosed upon properties and abandoned properties.

Can NSP funds be used to acquire a home that is bank owned through a deed in lieu of foreclosure? 1) If the bank initiated the foreclosure process in the local courts, and the former owner decided to deed the property to the bank after the foreclosure process was instituted, does this constitute "foreclosed" property for purposes of NSP acquisition and rehabilitation? 2) If the bank instituted default proceedings, but did not start a foreclosure case in the local courts, and the former owner decided to deed the property to the bank before a foreclosure process was instituted, does this constitute "foreclosed" property for purposes of NSP acquisition and rehabilitation? In both scenarios, the deed recorded in the land records states that it is a deed in lieu of foreclosure.

The deed in lieu as described in example 1 is acceptable. The Federal Register Notice recognizes properties as "foreclosed" that have been transferred in lieu of foreclosure. If state or local law recognizes this as a transfer in lieu of foreclosure, then it meets the definition of "foreclosed."

Can an NSP1 grantee offer NSP1 funding to a person whose home has been foreclosed in order to buy back the same home or another home? Can a nonprofit purchase a foreclosed home and sell it back to the original owner whose home was foreclosed?

Nothing would prevent a grantee from taking these actions so long as the person receiving the NSP1 assistance meets the income qualifications. However, it is up to the grantee to decide whether this is an appropriate use of their funds.

Can NSP1 funds be used to redevelop a public facility (Eligible Use E) that will be owned and operated by a nonprofit (For example, turning a vacant

library into a homeownership center owned and operated by a nonprofit organization)?

Yes. Public facilities can be owned and operated by nonprofit entities. 24 CFR 201(c) provides the regulatory parameters for public facilities. It explains that nonprofit entities may acquire title to public facilities so long as these facilities are open for general use by the general public during normal hours of operation.

Posted 10/31/08

Can clients eligible to participate in the Section 8 Homeownership program also participate in financing provided through the NSP1? For example:

- 1. Can a Section 8 Homeownership client purchase a property that was acquired with NSP1 funding and made available for sale by a subrecipient?**
- 2. Can a Section 8 Homeownership client apply for NSP1 financing to acquire a home and then pay the mortgage with the Section 8 Homeownership Voucher?**

Yes, persons with down payment assistance, participants in lease-purchase programs, and Sec. 8 homeownership voucher holders may use those mechanisms to purchase an NSP1 home, whether from a subrecipient or directly from the unit of government. Additionally, prospective purchasers may receive financial assistance from the NSP1 program, through such means as down payment assistance, to purchase houses that have been acquired with NSP1 funds. The grantee must ensure through its underwriting that such forms of dual assistance do not overly subsidize the purchase, but they are allowed.

New construction is an eligible activity under NSP1, does the new construction have to follow the CDBG requirements and be done under 24 CFR 570.204 by a Community-Based Development Organization?

HUD does not have any specific restrictions on doing new construction of housing beyond the normal CDBG program requirements. New housing construction does not have to be done by a CBDO to be eligible under the NSP1 program.

Posted 11/7/08

Would such an activity still be eligible if the properties had been foreclosed and vacant versus foreclosed and operating under this scenario?

No, eligible use B does not require NSP1 assisted homes to be vacant. It only requires that they be abandoned or foreclosed. Please see NSP1 Notice for definitions of abandoned and foreclosed.

Posted 11/7/08

Do the resale/recapture provisions apply to properties assisted with NSP1 funding?

Yes. The resale recapture provisions to ensure continued affordability do apply. In its NSP1 action plan substantial amendment, a grantee will define “affordable rents” and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP1 activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration (Note that HERA’s continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b)).

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There will be a period of time between acquisition, rehabilitation, and resale where the NSP1 grantee will need to maintain the property (e.g. grass cutting, snow removal, insurance, etc.). Can the NSP1 grantee recover those costs from NSP1 funds as a delivery cost related to the activity?

Yes. Several sections of the NSP1 Eligible Uses, which are correlated with CDBG Eligible Activities on page 58338 of the NSP1 Notice, and excerpted below, allow Disposition. The CDBG regulations specifically permit temporary property maintenance as part of Disposition. The only constraint for NSP1 is that you cannot add these costs to the eventual purchase price.

Posted 11/7/08

Will a portion of NSP1 allocations be set-aside for supportive services?

There are no specific set-asides for any kind of use under NSP1. However, grantees could use NSP1 funds to support such services in certain circumstances. It will depend on the grantee, the housing stock, etc. Please see the eligible uses in the NSP1 Notice for further details.

Posted 11/7/08

Can a veteran preference of any type be placed on the housing produced using NSP1 funds?

A veteran's preference would not violate section 109 nondiscrimination requirements or any other NSP1/CDBG requirements.

Posted 12/01/08

An NSP1 grantee acquires a home for \$100,000; rehabilitation costs \$100,000; by NSP1 requirements the maximum sale price would be \$200,000. Can the home be resold to an income eligible individual for \$100,000 in order to comply with the NSP1 affordability requirements?

The parameters between which you are working are maximum homeownership assistance payments based on NSP1 affordability requirements and “reasonable costs” determined by OMB Circular A-87. If it costs the NSP1 grantee \$100,000 to subsidize the acquisition and rehabilitation costs to make a home comply with the NSP1 affordability requirements, then that would be allowable and not

unreasonable. However, if the NSP1 grantee subsidizes the home much further, you would need a solid explanation of the reasons to satisfy OMB A-87.

Posted 03/19/09

An NSP1 subrecipient would like to acquire a residential property with a blighted home. Once acquired, the subrecipient plans to demolish the blighted home and construct a new home on the same site. Would the construction of a new home on the same site be considered new construction or rehabilitation?

This activity would be considered rehabilitation. CPD Notice 07-08 p. 6 offers guidance on reconstruction and interprets it as a form of rehabilitation. In addition, the "CDBG Guide to National Objectives for Entitlement Communities" p. 2-83 interprets reconstruction as the rebuilding of a structure on the same site in substantially the same manner. The number of dwelling units on the site may not be increased; but, the number of rooms per unit may be increased or decreased. Please refer to these two documents for additional guidance on reconstruction.

Posted 03/19/09

We are planning to use our NSP1 Funds for homeownership assistance. NSP1 funding will be used to provide down payment and closing cost assistance as well as acquisition and rehabilitation. We are proposing that the Housing Authority be the subrecipient and implementing agency for the down payment and closing cost assistance loan program activity. However, the Housing Authority does not have funds available to initially "front" or capitalize the loan program. Therefore, after NSP1 funds are obligated to this activity in DRGR, can we create a voucher to drawdown funds for a quarterly or monthly advance to the Housing Authority to implement the program activity?

The grantee and its subrecipient cannot withdraw grant funds substantially in advance of the need for such funds to pay costs related to the approved activity. The procedure described in the NSP1 question would violate the cash management requirements at section 85.21. The working capital advance method of payment cannot be used in this case. The Housing Authority is not required to "upfront" the costs and get reimbursed. The County can make withdrawals of NSP1 grant funds to coincide with the timing of the scheduled disbursement of funds by the Housing Authority. The Housing Authority can notify the County of the need for grant funds (e.g., by submitting a request for payment) based on the scheduled closing. The County can withdraw funds through DRGR based on that request, although it must disburse the funds to the Housing Authority as soon as administratively feasible (usually within 3 business days of receipt). The Housing Authority must also disburse the grant funds in payment of activity costs as soon as administratively feasible (again, usually within 3 days of receipt of the funds from the County). The County cannot use budgetary shortfalls as the reason for failing to make timely payments to subrecipients, since it has administrative funds available under NSP1.

Posted 03/19/09

Can a subrecipient of an NSP1 grantee hire a for-profit entity?

Yes. A grantee may contract and pay for the services of (or goods provided by) a for-profit entity to (i) rehabilitate a property acquired with NSP1 funds, (ii) appraise a property to be acquired with NSP1 funds, (iii) construct a public facility, etc provided the contractor was selected through a procurement process that complies with 24 CFR 85.36. In such cases, the services or goods would be provided to the grantee. However, some CDBG activities involve the provision of assistance to third parties, including for-profit entities. One example is the use of CDBG funds to assist a for-profit business in carrying out an economic development project pursuant to 570.203(b). Another example that is relevant to the use of NSP1 funds is the authority under 570.202(b)(1) to assist "...private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes" (emphasis supplied). This authority under 570.202 will be used often under NSP1 and it will involve for-profit as well as nonprofit developers. Grantees are not required to select (or "hire") for-profit entities they will assist under 570.202 pursuant to a procurement transaction any more than they would be required to "hire" low-mod individuals they will assist pursuant to a procurement transaction.