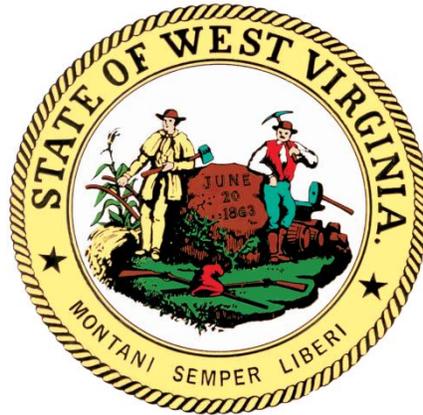


# **WEST VIRGINIA DEVELOPMENT OFFICE**



## **NEIGHBORHOOD STABILIZATION PROGRAM**

### **POLICIES AND PROCEDURES MANUAL**

**Revised March 5, 2013**

**Community Development Division**

**304-558-2234**



**EQUAL HOUSING  
OPPORTUNITY**

# West Virginia Neighborhood Stabilization Program (NSP)

## Policies and Procedures Manual

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**Appendices are provided under separate cover.**

This manual and the appendices are also available on the WVDO website at:

[www.wvcommerce.org/people/communityresources/applicationsanddownloads/default.aspx](http://www.wvcommerce.org/people/communityresources/applicationsanddownloads/default.aspx)

## I. Introduction

The Neighborhood Stabilization Program (NSP) for West Virginia is authorized by the Housing and Economic Recovery Act (“HERA”) (Public Law 110-289), which was signed into law on July 30, 2008. Originally introduced as HR 3221, HERA Division B, Title III establishes the NSP grant under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes heading. NSP was revised in February 2009 with the passage of the American Recovery and Reinvestment Act of 2009 (ARRA). The NSP is administered by the U.S. Department of Housing and Urban Development (“HUD”) and is considered a special Community Development Block Grant (“CDBG”) allocation. CDBG allocations for West Virginia are administered the West Virginia Development Office (“WVDO”). West Virginia was allocated \$19,600,000 in NSP funds by HUD.

WVDO partnered with the West Virginia Housing Development Fund (WVHDF) and the Governor’s Office of Economic Opportunity (GOEO) to administer NSP. WVHDF will act as a contractor to assist the WVDO in its roles as the administrator of the program. HUD mandates that the grantee set-aside 25% of its total NSP award amount (or \$4,900,000) to assist household at or below 50% area median income (AMI). GOEO, WVDO and WVHDF collaborated to select projects that meet this NSP requirement.

This policy and procedures manual is presented to provide an overview of WVDO policies and procedures as they pertain to NSP and step-by-step guidance on the implementation of NSP projects in the State of West Virginia. HUD notices, guidance and frequently asked questions about the NSP program can be found at [www.hudnsphelp.info](http://www.hudnsphelp.info).

The following **definitions have changed** since the Request for Proposal dated July 10, 2009, and in the NSP Project Agreements executed for each project in January 2010:

**“Grantee”** – This term will be used to refer to the West Virginia Development Office instead of “State.”

**“Sub-recipient”** – This term will be used for the nonprofit organizations and local units of government that were awarded funds for their NSP projects.

**“Developer”** – This term will be used for the for-profit businesses that were awarded funds for their NSP projects.

The sub-recipients and developers who were awarded NSP funds are required to comply with applicable laws and regulations governing the NSP and the CDBG program, and with the provisions of the West Virginia’s SCBG Application Guidelines applicable to the Project, and with all federal (and state) laws, regulations, and executive orders including 24 C.F.R. Part 70, 84, 85, OMB Cir. A-87, A-110, A-122, A133, as applicable to the NSP-assisted project, including, but not limited to:

- National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.
- The Davis-Bacon Act (and related acts).
- Section 3 of the Housing and Urban Development Act of 1968.
- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- Title I of Housing & Community Development Act of 1974.
- Housing & Economic Development Act of 2008.
- Title VI of the Civil Rights Act of 1964.

- Title VII of the Civil Rights Act of 1968.
- E.O. 11063, as amended by E.O. 12259.
- Section 109 of the Act.
- E.O. 11246, as amended by E.O. 12086.
- Lead-Based Paint Poisoning Prevent Act.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD implementing regulations at 24 C.F.R. Part 42 (WV Code, Chapter 54-3, also applies).

This manual is not meant to be a substitute for NSP regulations, but as a supplement to them. It is not exhaustive regarding all considerations affecting the use of NSP funds. While careful consideration and due care has been used in developing the manual, NSP participants are encouraged to consult with NSP staff to ensure correct interpretation of policies and regulations. WVDO reserves the right to add, remove or change policies, procedures or forms in this manual.

Disclaimer: Notwithstanding any information contained herein, where a conflict of language or omission of requirements occurs, the requirements of the Federal Notice and HUD Guidance on the Neighborhood Stabilization Program, as may be amended from time to time, shall prevail.

## **II. Purpose of the Neighborhood Stabilization Program**

The Neighborhood Stabilization Program (NSP) is authorized by the Housing and Economic Recovery Act (“HERA”) (Public Law 110-289) and requirements contained in the HUD Federal Register Notice published October 6, 2008 (Docket No. FR-5255-N-01) and as revised in a “Bridge Notice” published June 15, 2009 (Docket No. FR-5255-N-02). (The Bridge Notice includes changes from the American Recovery and Reinvestment Act of 2009 (ARRA).)

The primary purpose of NSP is to provide emergency assistance for West Virginia to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. West Virginia’s NSP program provides grants to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop homes in order to stabilize neighborhoods and stem the decline of house values in neighboring homes.

### III. General Requirements of NSP

#### A. Allocation of Funds

NSP funds committed to the State of West Virginia will be allocated as promulgated in the State of West Virginia's 2009 Amendment to the Consolidated Plan. In addition, the grantee may spend up to ten percent (10%) of its NSP allocation and 10% of any program income for administrative and planning expenses. WVDO is required to ensure that funds are used to address the areas of greatest need in terms of foreclosure.

In addition, WVDO is required to ensure that all NSP funding is obligated within 18 months following the execution of the NSP grant agreement with HUD, which occurred on March 4, 2009. Therefore, WVDO reserves the right to award funds to projects that are "ready to go" and to further adjust contracted amounts based upon actual performance and progress to obligate the funds within the initial 18 months of the grant agreement date or by September 4, 2010 and the State must expend all funds by March 4, 2013.

#### B. NSP Request for Proposals

##### Overview

The WVDO issued a Request for Proposals for the Neighborhood Stabilization Program on July 10, 2009. Applications were due on August 10, 2009, and awards were announced on December 2, 2009. **The RFP requirements as amended are integrated into this manual in order to provide guidance to sub-recipients and developers on the implementation of the NSP projects.**

The purpose of the NSP application is to provide subsidies in the form of grants for the acquisition and rehabilitation of foreclosed or abandoned housing that is affordable to households with incomes at or below 120% AMI.

The grantee established criteria based on and in order of magnitude:

1. Geographic targeting based on high need and risk areas per the NSP Action Plan Amendment
2. Project design in compliance with NSP, especially the requirement of 25% of the grantee's total NSP Award must assist households with incomes at or below 50% Area Median Income (AMI). **All awardees are required to meet their commitments to serve people in this income level.**
3. Organizational capacity to carry out the proposed activities in a timely manner and in compliance with NSP and other federal requirements.
4. Readiness to proceed in order to meet the deadlines of September 4, 2010 for obligation of funds and December 31, 2012 for expenditure of funds as defined by HUD in the NSP Notice (CFR.S255-N-01). Due to the expedited timeline for NSP, special consideration will be provided to those applications that are "Address Specific." The grantee defines "Address Specific" in the Definitions Section of this guide.

The grantee encourages the employment of veterans of the United States Armed Services.

## Time Frames

Obligation of Funds - All State of West Virginia NSP funds must be obligated by September 4, 2010. HUD defines obligation as when funds are obligated for a specific NSP activity (for example, acquisition of a specific property). Funds are obligated when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the grantee during the same or a future period. Funds are NOT obligated for an activity when sub-awards are made (for example, grants to local governments or other eligible entities.)

Expenditure of Funds - Per NSP Contracts, an amount of West Virginia NSP funds equal to the amount of NSP funds granted to the State by HUD must be expended by December 31, 2012, i.e. the sub-recipients and developers use a combination of funds drawn from their NSP Line of Credit together with NSP program income to reimburse for NSP activities. (E.g. a contractor rehabbed a house and the sub-recipient or developer uses NSP funds for reimbursement of the work completed.)

Performance Requirements - The grantee will closely monitor each sub-recipient and developer's performance and progress towards meeting the obligation and expenditure deadlines. While reviewing applications and making award decisions, the grantee reserves the right to adjust award amounts based on the capacity of the sub-recipient and developer and program design of their proposed project. The grantee reserves the right to withdraw and de-obligate funds of sub-recipients and developers that are substantially behind the benchmarks outlined in their submitted application and re-obligate them to other projects.

## Eligible Applicants

Nonprofit corporations with 501(c)(3) status and State of West Virginia Certificate of Existence;  
For-profit corporations with State of West Virginia Certificate of Existence;  
Local Units of Government;  
Public Housing Authorities; and  
Quasi-government Housing Agencies

## Organizational Capacity

Due to the strict time requirements of the NSP, the grantee assessed the capacity of each Eligible Applicant through this RFP process and analyzed the Applicant's ability to manage funds and housing projects, especially given the intense timeframe to obligate NSP funds. The grantee examined whether the Applicant has demonstrated its proficiency and ability to quickly and efficiently deliver programs such as CDBG and HOME. The grantee has sole discretion to determine whether each organization's experience managing housing projects qualified them to be awarded an NSP allocation.

## Development Team Approach

Although only one organization was on the Application, the grantee strongly encouraged that the Applicant take a "Development Team Approach" in applying for and administering NSP. The grantee wanted the Applicants to demonstrate that they have assembled a Development Team with sufficient experience and expertise to undertake and successfully complete the planned activities in a timely manner as described in the Application. The grantee asked for documentation that outlines the roles

and responsibilities of key team members to implement an NSP project. A successful NSP Development Team and Delivery System has the ability to successfully manage and complete the following:

- Acquisition
- Construction Management
- Funds Management and Compliance
- Marketing and Homebuyer/Tenant Cultivation
- Financial Structuring

### C. Eligible Geographic Areas

The use of the NSP is geographically limited to those Counties that the grantee has identified as Areas of Greatest Need and serves census block groups where at least 51% of the residents have incomes at or below 120% AMI (from now on referred to as Income-eligible Block Groups). For further information on the grantee’s methodology to determine the Area of Greatest Need please refer to the State of West Virginia Substantial Amendment to Fiscal Year 2008 Action Plan – Neighborhood Stabilization Program.

To determine if a proposed target area for a project is an income eligible block group, go to [www.policymap.com/maps](http://www.policymap.com/maps) or [www.hud.gov/nsp](http://www.hud.gov/nsp).

The grantee identified three levels of greatest need for NSP in West Virginia:

#### Level One Priority Area

The 12 counties with the highest priority to receive NSP funds are the following counties:

1. Berkeley	2. Brooke	3. Cabell
4. Fayette	5. Hancock	6. Jefferson
7. Marshall	8. Kanawha	9. Raleigh
10. Ohio	11. Wayne	12. Wood

#### Level Two Priority Area

The 13 counties with priority, only after all Level 1 Applications are considered, to receive NSP funds are the following counties:

1. Doddridge	2. Hampshire	3. Harrison
4. Lewis	5. Mason	6. Mercer
7. Pleasants	8. Pocahontas	9. Putnum
10. Roane	11. Summers	12. Tyler
13. Wirt		

#### Level Three Priority Area

The grantee considered applications from the 30 remaining counties with priority to receive NSP funds, only after all Level 1 and Level 2 Applications are considered.

## D. Eligible Activities

WVDO will distribute NSP funds for the following eligible activities:

1. Acquisition of abandoned and foreclosed properties
2. Rehabilitation of acquired abandoned and foreclosed properties
3. Demolition of blighted abandoned and foreclosed structures acquired using NSP funds for the purpose of rehabilitation or construction of housing
4. Program delivery costs incurred by sub-recipients and reasonable developer's fees related to NSP-assisted housing rehabilitation or construction activities. All program delivery costs must be directly related to NSP funded activities.
5. New construction of affordable housing for sale or rental to eligible homebuyers/tenants
6. Sale of residential properties acquired or acquired/rehabilitated using NSP funds
7. Rental of residential properties acquired or acquired/rehabilitated using NSP funds
8. Payment of reasonable down payment and closing cost assistance
9. Provision of homebuyer counseling to all purchasers of properties constructed, acquired, or acquired/rehabilitated with NSP funds

The following are the April 2010 definitions of foreclosed and abandoned with applicability to WV foreclosure law:

Abandoned: A home or residential property is abandoned if either a) mortgage, tribal leasehold or tax payments are at least 90 days delinquent, or b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state, local or tribal law or otherwise meets a State definition of an abandoned home or residential property.

Note: when the determination that a property is abandoned is to be based upon payment delinquency, then a "Notice of Default" pursuant to State of West Virginia Foreclosure Law must have been issued demonstrating no payment for at least 90 days. Tax foreclosures allow a 17 month redemption period; the grantee will not fund properties that are in the redemption period.

Foreclosed: A home or residential property has been foreclosed upon if any of the following conditions apply: a) the property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or b) the property owner is at least 90 days delinquent on tax payments, or c) under state, local or tribal law foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, contractor, sub-recipient, developer or end user.

Note: when the determination that a property is foreclosed upon is to be based upon payment delinquency, a "Notice of Default" pursuant to State of West Virginia Foreclosure Law must have been issued demonstrating no payment for at least the relevant amount of days. Note also that Mortgage Foreclosures do not have a redemption period, but Tax Foreclosures have a 17-month redemption period. The grantee will not fund applications with property in the redemption period.

### Description of NSP Eligible Uses

NSP Eligible Use	CDBG Eligible Activities	Type(s) of Properties
<b>A) Financing mechanisms</b> for purchase & redevelopment of <u>foreclosed homes &amp; residential properties</u>	<ul style="list-style-type: none"> <li>■ Program delivery cost for an eligible activity (designing &amp; setting it up)</li> <li>■ The financing of an NSP eligible activity – such as soft second loans, loan loss reserve, equity sharing</li> <li>■ Other activities eligible in uses below</li> <li>■ Housing counseling for those seeking to take part in the activity</li> </ul>	Foreclosed residential properties only
<b>B) Purchase and rehabilitate</b> homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties	<ul style="list-style-type: none"> <li>■ Acquisition</li> <li>■ Disposition</li> <li>■ Relocation</li> <li>■ Direct homeownership assistance</li> <li>■ Eligible rehabilitation and preservation activities for homes and other residential properties</li> <li>■ Housing counseling for those seeking to take part in the activity</li> </ul>	Foreclosed or abandoned residential properties only
<b>C) Land Banks</b> for home and residential properties that have been foreclosed upon	<ul style="list-style-type: none"> <li>■ Acquisition</li> <li>■ Disposition (includes maintenance)</li> <li>■ Housing counseling for program participants</li> </ul>	Foreclosed residential properties only
<b>D) Demolish <i>blighted</i></b> structures ONLY in connection with one of the other eligible uses	<ul style="list-style-type: none"> <li>■ Clearance of blighted structures only in conjunction with one of the above activities</li> </ul>	Any, but must be blighted
<b>E) Redevelop <i>demolished</i> or <i>vacant</i></b> properties	<ul style="list-style-type: none"> <li>■ Acquisition</li> <li>■ Disposition</li> <li>■ Public facilities and improvements</li> <li>■ Housing counseling public services (limited to purchasers or tenants of redeveloped properties)</li> <li>■ Relocation</li> <li>■ New housing construction</li> <li>■ Direct homeownership assistance</li> <li>■ Housing counseling for those seeking to take part in the activity</li> </ul>	Any, but property must be vacant

Eligible Uses by Eligible Property

	Eligible Uses	Foreclosed Homes and Residential Properties	Abandoned Homes and Residential Properties	Blighted Structures	Demolished Properties	Other Vacant Properties
<b>A</b>	<b>Financing Mechanisms</b>	Yes	No	Only if Foreclosed	N/A	Only if Foreclosed
<b>B</b>	<b>Purchase and Rehab</b>	Yes	Yes	If Foreclosed or Abandoned	N/A	No
<b>C</b>	<b>Land banks</b>	Yes (Homes & Residential Property only)	No (Foreclosed only)	Only if Foreclosed home	No	No
<b>D</b>	<b>Demolition</b>	Only if Blighted	Only if Blighted	Yes	N/A	Only if Blighted
<b>E</b>	<b>Redevelopment</b>	Only if Vacant	Only if Vacant	Only if Vacant	Yes	Yes
	<b>Comments</b>			<i>Locally defined Not limited to residential structures.</i>	<i>Not limited to residential structures.</i>	<i>Land or structures. Not limited to residential property</i>

**E. Meeting the Low-Moderate-Middle Income (LMMI) National Objective**

All NSP-funded activities must meet HERA’s Low-Moderate-Middle Income (LMMI) National Objective, which means to primarily benefit LMMI households. LMMI households are defined as households whose incomes do not exceed 120% of area median income, adjusted for family size (measured as 2.4 times the current Section 8 income limit for households below 50% of area median income, adjusted for family size). All households assisted using NSP funds shall have incomes which do not exceed 120% of area median income, adjusted for family size.

NOTE that if funding is used in areas that are CDBG entitlement communities area median income limits issued for that area apply (as opposed to the limits applicable to the balance of state).

The income of each household will be determined and documented using the Part 5 (Section 8) definition of income identified in HUD’s “Technical Guide for Determining Income and Allowances for the HOME Program” published in January 2005. This guide can be found at the following link: <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/2005/1780.cfm>. In addition, HUD has published the “Guide to Completing NSP Income Certifications” which can be found in the tool kit section on [www.HUDNSPhelp.info](http://www.HUDNSPhelp.info). Once the housing has been completed, documentation must be maintained that all assisted housing units are occupied by persons meeting the required income limits. Moreover, records must be maintained demonstrating that the housing meets the NSP affordability requirements over the period of time applicable to the amount of NSP funds used.

NSP further requires that not less than twenty-five percent (25%) of the total NSP funds allocated to the grantee shall be utilized to provide permanent housing for households with incomes at or below fifty percent (50%) of the AMI. The original NSP regulation stated that for a property to count towards the required set aside, it must be:

- Abandoned or foreclosed residential structure for rehabilitation/reconstruction
- Foreclosed residential vacant land for redevelopment

However, with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Publ. L 111-203, the requirements for the set aside were amended. The amendment removed the restriction that allows only abandoned or foreclosed upon homes or residential properties to be used to meet the set aside requirement. The legislation also allows NSP recipients to use vacant or demolished property to meet the set aside. This also allows recipients to use non-residential property under Eligible Use E, assuming local zoning requirements allow housing development on that property.

This new legislation applies to any unexpended or unobligated balances under NSP1. This includes:

- Projects for which funds, as of July 21, 2010, had not been obligated or for which funds had been obligated with no expenditures will be able to use the project costs to meet the set aside.
- Projects for which funds had been obligated, but only partially expended can credit any expenditure made after July 21, 2010 as set aside expenditures. This option is voluntary.

Thus, records must also be maintained that will enable computation of the amount of funds that may be counted towards meeting this requirement by the grantee. Sub-recipients and developers are required to meet any commitments made in their NSP Contract with the State to meet this 25% set aside. Note in this regard that for any NSP assisted housing that is used to help meet the 25% set aside, the references to LMMI in the paragraph above should be interpreted to mean LI (less than 50% AMI).

## **F. Program Delivery Costs and Developer Fees**

Program delivery costs (as described herein) and developer fees are eligible costs under the NSP program. The following provides a description of such costs that a sub-recipient may charge under the WVDO NSP program.

- a) All sub-recipients incur costs for planning, recordkeeping and reporting related to their NSP assisted properties and in meeting other program requirements. This includes staff costs and indirect costs such as overhead, office space and utilities.
- b) Besides these costs, certain other costs can be incurred related to the acquisition of properties, and rehab, reconstruction or construction of housing on such properties. When a sub-recipient selects a developer to carry out such activities, the developer may be provided a reasonable developer fee to cover their costs. When the sub-recipient does not use a developer, it may incur substantial costs for staff, travel and supplies directly required to carry out these activities, in addition to the hard and soft costs that these functions entail.
- c) Travel for NSP-related activities is an allowable program delivery cost. State policies for travel costs must be followed for mileage reimbursement, hotel costs and per diem. See the following website for the WV State travel policy:  
<http://www.state.wv.us/admin/purchase/travel/TravelRule.pdf>.
- d) The State will retain the final 10% of the Program Delivery Costs until the sub-recipient provides all close out documentation required by WVDO.

For purposes of the WVDO NSP program, all of the above described costs incurred by a sub-recipient are referred to as Program Delivery Costs. (A description of the soft costs that are eligible for reimbursement is provided in a later section of this manual. These are not considered to be Program Delivery Costs.)

WVDO will authorize a sub-recipient that does not employ the use of a developer to be reimbursed for its Program Delivery Costs in an amount not to exceed 10% of its NSP grant. For a sub-recipient that uses a developer, the combination of the amount paid as a developer fee and the sub-recipient's Program Delivery Costs that may be reimbursed may not exceed 15% of its NSP grant amount.

See Section III.G.(6) and (7) for more guidance on Program Delivery Costs and Developer Fees.

## **G. Funding Approval and Disbursement**

**This section is subject to modification by the WVHDF or grantee. Other documentation is likely to be required.**

WVHDF is responsible for reviewing documents required in this section (unless noted otherwise) and determining if projects meet program requirements. Since it is critical that projects be approved quickly in order to make the obligation deadline, sub-recipients and for-profits developers are encouraged to provide their documents in binders with tabs, and with properties and item numbers clearly identified. Send in documentation as soon as it is available; it will be reviewed on a first come, first served basis.

When WVHDF has approved properties for acquisition and rehabilitation/construction, then the WVDO will be notified. WVDO will then process the payment and checks will be mailed to sub-recipients and developers or be held for pick up from WVDO, and/or, where applicable, will notify the sub-recipient that it may use NSP program income for that purpose.

For projects that use NSP funds for the acquisition, rehab and/or development of multiple properties, all the documents will be required at the settlement of the first property. For approval and disbursement of funds for subsequent properties, at WVHDF's discretion, some of the project or organizational documents may not need to be resubmitted.

### **G. (1) Acquisition Approval**

Sub-recipients or developers will submit the following, in form and content acceptable to the WVHDF, in order to have a property approved for acquisition:

1. Evidence of foreclosure, if applicable
  - a. Copy of recorded Trustees Deed showing that the property has transferred from the mortgagor to the lender. OR
  - b. Title opinion certifying when and where the property was foreclosed upon.
2. Evidence of abandonment, if applicable.
  - a. Evidence that foreclosure proceedings have begun. OR
  - b. Evidence that mortgage or tax payments have not been made for 90 days. OR
  - c. Evidence that property has been vacant for 90 days.
3. Evidence of vacancy, if applicable. Acceptable verification includes the appraiser verifying the property is vacant on the appraisal report, or a letter from local government, or utility bills.

4. Documentation that properties are in NSP eligible Census blocks groups. A color print out from Policy Map is acceptable. Calculations will be required if the Policy Map color map is inconclusive with respect to a property's qualification. See Section III.C. for guidance.
5. Current market appraisal completed within 60 days of offer to purchase.
  - a. Properties with an anticipated value exceeding \$25,000 and acquired using NSP funds shall be appraised in conformity with the appraisal requirements of the Uniform Relocation Act (URA) at 49 CFR 24.103 by a licensed appraiser within sixty (60) days prior to the final offer to purchase the property.
  - b. The market appraised value of properties with an anticipated value of \$25,000 or less may be established based on a review of available data and shall be made by a person knowledgeable of and with experience in property valuation that WVDO determines is qualified to make the valuation.
  - c. Written notification to owner
    - i. Inform owner of property value.
    - ii. Inform owner that purchase cannot go forward without an amicable agreement
6. Evidence of discounted purchase of foreclosed property - Minimum discount 1% of current market appraisal. See Appendix 1.
7. Evidence that sub-recipient or developer sent and seller received URA NSP Voluntary Acquisition letter. See Appendix 3.
8. Copy of executed sales contract or enforceable option to purchase, including executed NSP addenda describing the NSP contingencies to purchase. See Appendix 4.
9. Copy of the Tenant Protection Certification from Seller certifying that the property has not been occupied by a "bona fide" tenant for at least 90 days and stating the delivery date of the 90-day notice to vacate. See Appendix 5. Attach a copy of the 90-day notice, including the manner and proof of delivery to the tenant, if applicable. NSP funds may not be used for relocation assistance.
10. Documentation that Environmental Review Record is complete.
11. Disclosure of the seller about lead paint, if applicable.
12. For property constructed prior to 1978, lead hazard evaluation by a certified inspector.
13. In addition, if lead is identified in the lead hazard evaluation, a detailed lead hazard reduction plan, in accordance with the regulations, will be required. The costs associated with reduction of lead hazards, in accordance with the regulation and guidelines, will be required to be separately identified within the rehabilitation budget.
14. Conflict of Interest policy.
15. Title Report that shows clear title can be obtained by the seller by settlement.
16. Affirmative Fair Housing Marketing Plan
  - a. For single family, use HUD Form 935.2b.  
[http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_35515.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35515.pdf)
  - b. For multifamily, use HUD Form 953.2a.  
<http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>
17. For both rental or homeownership provide documentation of project's feasibility to include:
  - a. For rental projects: A complete proposed development budget including soft costs and an itemized and costed write up or a detailed construction cost estimate with plans and specifications, proposed rents/expenses and a 10 year operating pro forma. Show all proposed financing sources and uses and amounts. Use forms provided in NSP RFP (Exhibit 7 Single Site Rental Workbook) modified as necessary for Sub-recipient or Developer's project or similar formats that serve the same purpose and are acceptable to the WVHDF.

- b. For homebuyer projects: a complete proposed development budget including soft costs and an itemized and costed work write up or a detailed construction cost estimate with plans and specifications. Show all proposed financing sources, uses and amounts. Provide a proforma of proposed owner financing demonstrating that a targeted very low-low-moderate-middle income family can afford to purchase the completed home. Use forms provided in NSP RFP (Exhibit 8 Scattered Site Homebuyer Workbook) modified as necessary for Sub-recipient or Developer's project or similar formats that serve the same purpose and are acceptable to the WVHDF.

When properties are approved for acquisition, their acquisition costs, related soft costs and program delivery costs may be obligated for NSP payment. Related soft costs include the cost of the appraisal, environmental review, building inspections and architect fees for developing sketches or schematics needed to assess constructions costs for purposes of determine the project's feasibility.

If a project needs only to complete the environmental waiting period and otherwise is approved, then it may move to the next step G. (2) to prepare for closing of its NSP grant.

### **G. (2) Acquisition Disbursement**

Sub-recipients and developers with approved properties may prepare for closing their acquisition. They should contact the WVHDF to start the process of having the documents prepared. They will submit the following, in form and content acceptable to the WVHDF, in order for WVDO to disburse funds for acquisition of property:

1. A completed and originally signed Request for Reimbursement for Neighborhood Stabilization Program form plus. A separate request form is required for each property. See Appendix 2. Include two sets of appropriate backup material.
2. NSP Promissory Note – See Appendix 6. Will be prepared by WVHDF.
3. NSP Credit Line Deed of Trust -- See Appendix 7. Will be prepared by WVHDF.
4. UCC Form – See Appendix 8.
5. NSP Contract between WVDO and Grantee, as amended.
6. Counsel's Opinion Letter – See Appendix 9.
7. Organization Documents
  - a. Copy of Articles of Incorporation
  - b. Copy of Bylaws, as amended
  - c. List of Current Board of Directors
  - d. Current Certificate of Existence from WV Secretary of State
  - e. A Non-profit's Internal Revenue Service Code 501(c)(3) certificate
8. Corporate Resolution authorizing one or more officers to sign all documents relative to the NSP grant, including the deed of trust, promissory note, construction contract and all other NSP related documents. This should be drafted by the sub-recipient's or developer's attorney.
9. Copy of title insurance policy on the subject property acceptable to WVHDF.
10. Copy of Comprehensive Liability Insurance Policy in form acceptable to the WVHDF.
11. Copy of Permanent Property Insurance Policy in form acceptable to the WVHDF. The West Virginia Development Office must be listed as a certificate holder or coinsured.
12. Fair Housing and Equal Opportunity Certification – See Appendix 10.
13. No Litigation Certificate – See Appendix 11.

After documentation is reviewed and approved, WVDFH will arrange for a closing and a funding disbursement.

### **G. (3) Construction/Rehabilitation Approval**

Sub-recipient and developers will submit the following, in form and content acceptable to the WVDFH, in order to have a property approved for demolition, construction or rehabilitation to begin:

1. For both rental and homeownership, provide:
  - a. Summary development budget that breaks out the updated costs by property and includes soft costs, Program Delivery Costs, and construction costs. Any other sources of income should be noted. Include a contingency allowance for all construction activities (10% for rehabilitation and 5% for new construction).
  - b. Updated Exhibit 7 or Exhibit 8 budgets for each property.
  - c. Itemized and costed work write-up or detailed, rehabilitation, construction and/or demolition cost estimate with plans and specifications. Use **either** AIA G702 and G703 forms **or** the form found in Appendix 16.
2. Copy of executed construction contract including contract clauses and provisions as applicable, including:
  - a. Davis-Bacon or other wage requirements;
  - b. Section 3 requirements (See WVDO Section 3 Plan for required text.  
[www.wvcommerce.org/app\\_media/assets/doc/peopleandplaces/hud/Section\\_3\\_Plan\\_for\\_WVDO.pdf](http://www.wvcommerce.org/app_media/assets/doc/peopleandplaces/hud/Section_3_Plan_for_WVDO.pdf) )
  - c. 10% retainage requirement and list of documentation required for release of retainage (See G(5) below).
3. Evidence of sub-recipient or developer's following procurement requirements for bidding of contracts.
4. Copies of the contractor's license and Workers Compensation policy.
5. To document that the contractor is not on the excluded parties list from the Department of Labor, use the website [www.epls.gov](http://www.epls.gov). Search for the contractor and print out the page to show that he or she is not in the database. See Section M. 7 for more information on debarment and suspension.
6. For lead abatement contracts, evidence that contractor is lead certified and licensed by the Toxics and Indoor Air Division of the West Virginia Department of Health and Human Resources to perform rehabilitation on homes built before 1978.
7. For asbestos abatement contracts, evidence that the contractor is asbestos certified and licensed with the West Virginia Department of Health and Human Services.
8. For contracts in excess of \$100,000, contractor's Payment and Performance Bonds or Irrevocable Letter of Credit is provided. See Appendix 12 and 13.
9. Documentation of Contractor's Builder's Risk Insurance and Workers Compensation Insurance is provided. The West Virginia Development Office must be listed as certificate holder or coinsured on the Builder's Risk policy.
10. Local approvals and permits are provided as required.
11. Evidence of Owner's liability insurance is provided. The West Virginia Development Office must be listed as certificate holder or coinsured.
12. Copies of current photo valid driver's licenses' of contractor are provided.
13. All rental projects must provide the following:
  - a. Application

- b. Management Plan
  - c. Management Agreement if a Managing Agent is hired to manage the property
  - d. Lease
  - e. House Rules or Property Rules
- All of the above will be similar forms to those used in HOME-assisted rental projects
14. A preconstruction conference will be held between the sub-recipient or developer's development team and representatives/inspectors of the WVHDF (and local inspectors if applicable). See Appendix 14 for an outline of topics to be covered.

Properties that have completed this process will be approved for a construction start. An initial draw for predevelopment soft costs may be submitted for payment prior to the first construction draw following the instructions in G. (4) 1, 2 and 3 below.

For properties developed by sub-recipients, the rehab/construction related hard costs, soft costs and program delivery costs may be obligated for NSP payment. For properties developed by developers, the obligation of these costs will take place after a detailed cost estimate is approved by the WVHDF and the WVDO is notified.

#### **G. (4) Construction/Rehabilitation Disbursement**

Grantee will disburse funds for demolition, construction or rehabilitation when the following conditions have been satisfied:

1. A completed and originally signed Request for Reimbursement for Neighborhood Stabilization Program form. A separate request form is required for each property. See Appendix 2. Include two sets of appropriate backup material.
2. General Contractor Affidavit, if appropriate. It must be an originally signed and notarized affidavit. See Appendix 15.
3. Contractor's Requisition signed by the contractor and architect, if appropriate. See Appendix 16.
4. A completed originally signed and notarized Waiver of Mechanics'/Materialmen's Lien may be required from each of the contractor's subcontractors and materials suppliers who have worked on or supplied materials to the project since the last Request for Reimbursement was submitted.
5. A completed Contractor Tracking Form (see Appendix 23) showing all contractors and subcontractors who have worked on the project since the last Request for Reimbursement was submitted. Attach copies of all contractor/subcontractor licenses and Workers Compensation Certificates not previously submitted.
6. Title policy update may be required at WVHDF's discretion.
7. Sub-recipient or developer submits, in form and content acceptable to the WVHDF, a WVHDF Request for Inspection form to the WVHDF. See Appendix 18.
8. When the project is 50% complete, a Section 3 progress report must accompany the next Request for Reimbursement, if applicable.
9. WVHDF Inspector inspects rehabilitation/construction work, reviews the Request for Reimbursement form and all appropriate backup material, conducts Davis-Bacon wage interviews (if applicable), and approves or modifies request in his/her sole judgment. NOTE: Incomplete or incorrect Requests for Reimbursements, as determined by the WVHDF Inspector, will be returned to the sub-recipient or developer for corrections.

After the inspection, WVHDF will transmit approved disbursement requests to the WVDO within five working days to the WVDO for review and payment.

#### **G. (5) Contractor Retainage**

Retainage in the amount of 10% of the demolition, rehabilitation or construction contract will be required for contractors. Retainage will be released within thirty (30) days after the final inspection is approved, and sub-recipient or for-profit developers submission, in form and content acceptable to the WVHDF, of all completion documentation as follows:

1. A completed and originally signed Request for Reimbursement for Neighborhood Stabilization Program form is required to request retainage. A separate request form is required for each property. See Appendix 2. Include two sets of appropriate backup material.
2. Certification of release of liens. See Appendix 17.
3. Owner's Hazard and Liability insurance.
4. Certificate of Occupancy by the local jurisdiction, if applicable.
5. Certification of final construction inspection by the WVHDF and any other applicable local jurisdiction.
6. Plumbing certification, HVAC certification, electrical certification, hazardous materials, and lead based paint certification by licensed contractors.
7. A final report documenting the contractor's Section 3 compliance, if applicable.

#### **G. (6) Developer Fee**

Developer Fee will be released when the sub-recipient and developers submit, in form and content acceptable to the WVHDF, all completed documentation as follows:

1. A completed and originally signed Request for Reimbursement for Neighborhood Stabilization Program form. A separate request form is required for each property. See Appendix 2. Include two sets of appropriate backup material.
2. Payout Schedule:
  - a. 15% of the developer fee will be paid when the acquisition disbursement is paid.
  - b. 15% of the developer fee will be paid when the construction commences.
  - c. 30% of the developer fee will be paid when the construction is 50% complete of each building.
  - d. 40% of the developer fee will be paid for rental projects when the final retainage pay request is approved by WVHDF and, or WVDO; OR 40% of the developer fee will be paid for homebuyer projects when the developer certifies that all the houses are occupied by income qualified buyers who received 8 hours of homebuyer counseling, and that the NSP Affordability Requirements are imposed on each homebuyer of NSP assisted property by language included in the homebuyer's Deed of Trust and Promissory Note. Also, provide a final Section 3 report of the developer's compliance activities, if applicable.

#### **G. (7) Program Delivery Costs**

1. By May 31, 2010, each sub-recipient will submit a budget for its projected allowable Program Delivery Costs per Section III, Part F, and any homebuyer education costs that will

be incurred through the term of its NSP Contract, which terminates on December 31, 2012. The budget should be detailed and cover the time period of the agreement, from December 2009 to December 2012. A brief budget justification should explain staff costs, the FTE for each position, and their role in the NSP project. Split the budget by property, and for each property, between those costs that are related to acquisition, demolition and/or rehab/construction. This budget should be submitted directly to WVDO for approval.

To request Program Delivery Costs:

- a. A completed and originally signed Request for Reimbursement for Neighborhood Stabilization Program form. A separate request form is required for each property. See Appendix 2. Include two sets of appropriate back up material and an itemized breakdown of the Program Delivery Costs that are being requisitioned.
- b. For travel, include a summary sheet of the travel expenses and back up invoices for hotel, car rental and gas, tolls, taxis and mileage. Parking receipts are not required. (See Section F for more information about travel costs.)
- c. For other operating expenses, attach all invoices. Acceptable documentation is receipts or invoices. For items that have a portion prorated to the NSP project or to multiple properties, provide justification for the percentage charged.
- d. For staff time, note the amount of each staff person's time spent on NSP, the rate of pay, and the time period during which such costs were incurred. Show the allocation of benefits for each staff person. Documentation for staff costs and benefits do not need to be attached. However, all staff costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges, and must be kept in the files onsite for future monitoring. Such records shall be maintained for a period as defined in Section M. 10. of this manual.
- e. WVDO will withhold 10% of the Program Delivery Cost budget until the sub-recipient provides all close out documentation required by WVDO. This will include a final report of the sub-recipient's Section 3 compliance activities, if applicable.

### **G. (8) Remaining Funds**

If any NSP-funded project has an available balance leftover from its approved NSP award after development completion and release of retainage, then the grantee will de-obligate those funds and reallocate such balance of NSP funds to other eligible activities. See Section H for additional performance information and Section T for more program income information. **The grantee must ensure that all NSP funds are obligated on or before September 4, 2010, and an amount of West Virginia NSP funds equal to the amount of NSP funds granted to the State by HUD are expended by end of NSP Contract date, December 31, 2012, and therefore will reallocate funds before those deadlines as necessary to determine that all such funds are obligated and expended.**

Sub-recipients may generate a request to reallocate unused funds for NSP eligible activities through a written request to the State. This initial request should include at a minimum, the estimated amount of unused NSP funds being requested, a description of the proposed NSP eligible activity, and a brief proposed scope of work. Prior to approval, all proposed new activities will be reviewed under the procedures set forth in Section G.(1) – G.(3) of this manual.

## G. (9) Contact Information

Fax, email or mail requests with all of the required documentation, to WVHDF/WVDO using the following contact information:

### **West Virginia Housing Development Fund**

Attn: Lynda Grass  
814 Virginia Street East  
Charleston, WV 25301  
Fax: 304-340-9945  
[lgrass@wvhdf.com](mailto:lgrass@wvhdf.com)

### **West Virginia Development Office**

Attn : Stephanie Martin  
Capitol Complex Building 6, Room 553  
Charleston, WV 25305  
Fax : 304-558-3248  
[Stephanie.K.Martin@wv.gov](mailto:Stephanie.K.Martin@wv.gov)

## **H. Performance Standards and Recapture of the NSP Award**

It is imperative that funds allocated to participants be used as quickly as possible and in the most efficient manner.

All funding necessary to complete this project should be secured at the awarding of this grant. Performance measures establish that the sub-recipient and developer should: (1) have all new units identified by **January 30, 2010**; (2) initiate environmental review procedures by **March 1, 2010**; (3) commence construction activities within seven months of the execution of the NSP Contract (**7/30/2010**). All financial obligations with suppliers, contractors, service providers in conjunction with the completion of its duties will be made by **July 31, 2010**, which is the federally established de-obligation date for West Virginia due to the 18 month obligation requirement specified in HERA. Furthermore, such duties shall be undertaken and completed in such sequences as to assure their expeditious completion; but, in any event, all of the services required shall be completed by **December 31, 2012**. Extensions to this date must be approved by the WVDO.

No extension will exceed March 4, 2013, because all funds not drawn down as of this date will be recaptured by HUD. If HUD should extend the deadline date for HERA, then and only then would the grantee consider an extension of this deadline.

If the sub-recipient or developer cannot provide documentation that the environmental review process has begun by March 1, 2010, the grantee will start the process of recapturing the NSP dollars so that they can be redistributed to sub-recipients and developers that can show they can utilize the dollars within the timeframe mandated by HUD under HERA. The performance measures in this section establish goals against which performance in the NSP Contract can be measured and evaluated during regularly scheduled monitoring visits by the WVHDF. Failure to meet these performance measures can result in termination of the NSP Contract or at a minimum the sub-recipient and developer's failure to adhere to the performance measurement requirements may (at the grantee's option) result in the sub-

recipient and developer's award hereunder being de-obligated with respect to all unexpended and/or unobligated funds.

Sub-recipients and developers that do not complete the required number of units or do not meet their commitments to sell or rent to people with incomes below 120% or 50% of the median income, as applicable, will be considered in default of their NSP Contract. **WVDO will recapture allocated funds that have not been used in accordance with these performance standards and NSP regulatory commitment and disbursement requirements.** This process is further defined in the NSP Contract Section 4.13. These funds will be placed back into the pool of funds that are available to fund other eligible NSP activities.

## **I. Requirements for Sub-recipients and Developers**

Sub-recipients that are government agencies are subject to the requirements set forth in OMB Circular A-87 "Cost Principles for State and Local Governments," certain provisions of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and A-133 "Audits of State and Local Governments and Nonprofit Organizations." Sub-recipients that are nonprofit organizations are subject to OMB Circular A-122 "Cost Principles for Nonprofit Organizations," certain provisions of 24 CFR Part 84 "Grants and Agreements with Institutions of Higher Learning, Hospitals and Other Nonprofit Organizations," and A-133 "Audits of State and Local Governments and Nonprofit Organizations."

Sub-recipients and developers are required to comply with the requirements set forth in the sub-recipient agreement signed by the WVDO and the sub-recipient or developer. As required by 24 CFR 570.501(b), WVDO will monitor sub-recipients and developers to ensure that NSP funds are being used in accordance with all program requirements and that sub-recipients and developers are adequately performing as required under sub-recipient agreements and procurement contracts. If performance problems arise, WVDO will take appropriate actions as described in 24 CFR 570.910.

See also Section III, Part F Program Delivery Costs.

## J. Acquisition of Properties Using NSP Funds

### Acquisition, Sales Contracts, and Obligations

Sub-recipients and developers must have executed acquisition contracts on or before July 31, 2010, for specific properties for funds to be considered obligated. Options that are financially binding are acceptable but non-binding instruments are not acceptable.

### Appraisals and Discount Requirements

Properties with an anticipated value exceeding \$25,000 and acquired using NSP funds shall be appraised in conformity with the appraisal requirements of the Uniform Relocation Act (URA) at 49 CFR 24.103 by a licensed appraiser within sixty (60) days prior to the final offer to purchase the property. Further guidance may be found at:

[www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal\\_guidance.doc](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal_guidance.doc). The market appraised value of properties with an anticipated value of \$25,000 or less may be established based on a review of available data and shall be made by a person knowledgeable of and with experience in property valuation that WVDO determines is qualified to make the valuation.

NSP requires that foreclosed properties acquired using program funding be purchased **at a discount of at least 1% from the current market appraised value of the home or property**. WVDO will require documentation to ensure the discount requirement is met including the address, appraised value, purchase offer amount and discount amount for each property.

**No acquisition of single-family dwellings will be allowed for property in excess of Federal Housing Administration (FHA) limits, currently set at \$271,050.** The current baseline amount for a single family dwelling in West Virginia is also \$271,050 but borrowers may be eligible for a larger loan if they live in certain high cost of living areas. Please see: [www.fhamortgagecenter.com/west-virginia.html](http://www.fhamortgagecenter.com/west-virginia.html)

### Voluntary Transactions and Tenants

All NSP-assisted property acquisitions must be voluntary acquisitions. Taking of property through eminent domain proceedings is NOT allowed, unless provided for within the regulations. The Uniform Relocation Act requires that notices are provided to property owners even those considered to be voluntary transactions. See Appendix 3 for the URA notice.

URA and Section 104(d) and 5305(a)(11) of Title I of the Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR Part 570.496(a) (the Barney Frank Amendment) govern the permanent displacement as well as temporary relocation of tenants in properties funded by NSP. For more information, refer to <http://www.hud.gov/offices/cpd/library/relocation/nsp/index.cfm>. In addition, ARRA includes additional provisions protecting the rights of property owners and “bona fide” tenants (see Section L for further information). **West Virginia NSP funds cannot be used for relocation assistance.**

### Acquisition of a Property for Another Party

WVDO may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay necessary and reasonable costs related to the appraisal

and transfer of title. If NSP funds are used to pay such costs when the property owned by WVDO is conveyed to a sub-recipient, developer, homebuyer, developer, or other jurisdiction, the property is NSP-assisted and subject to all program requirements, such as requirements for NSP-eligible use and benefit to income-qualified persons.

### Resale of Property to Homebuyers, and Recapture of NSP funds

Each awardee of NSP funds must maintain sufficient documentation on the acquisition and sale of each property to enable WVDO and HUD to determine compliance with the requirement to sell each property to homebuyers at an amount equal to or less than the cost to acquire and redevelop the property (not including holding costs). This information is also critical in any future recapture of NSP in compliance with Section H of this manual and any associated guidance memos.

### Purchase of FHA-Foreclosed Properties

Per NSP regulations, HUD strongly urges every community to consider and include FHA-foreclosed properties in their NSP programs. The nature and location of many FHA-foreclosed properties make them compatible with the eligible uses of NSP funds, the geographic areas of greatest need, and the income eligibility thresholds and limits.

## **K. Demolition of Blighted Structures**

HUD has taken the position for NSP1 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 in areas of greatest need. With NSP3, demolition will apply to residential structures only.

In general, demolition must have an end use that meets a national objective. There are a couple of cases in which the demolition can be an end in itself. First, in a LMMA area, if the property creates an extreme danger to public health or safety (like a meth lab or collapsing structure), then it can be considered an area benefit (LMMA). Second, if the demolition is done in concert with a coordinated program of redevelopment and/or rehab and/or new construction and/or other improvements, including other demolition, in a target area that is primarily LMMA, which together can reasonably be expected to improve the area, then it can also qualify as LMMA.

In all other cases, as with property in a land bank, it should lead to an end use that is eligible and meets a national objective in NSP. In this respect, land banked property and demolished property are just interim uses for which end uses must be planned. Such eligible end uses could include housing (redeveloped on the property), sale (or donation) of the property as side lots to LMMA neighbors, donation of the property to an LMMA community garden group, or use of the property as a public facility like a park that will serve an area that is primarily LMMA. If the property is acquired, it could temporarily be placed in a land bank, but the same requirements will ultimately apply to both types of property.

## **L. NSP Tenant Protections at Foreclosure**

Congress has expressed concern about evictions of tenants from foreclosed properties. New laws have recently passed to address this issue. The American Recovery and Reinvestment Act of 2009 (Recovery

Act) imposes requirements on the Neighborhood Stabilization Program (NSP) to ensure that bona fide tenants in NSP-affected properties received proper treatment. A more recent law, the Protecting Tenants at Foreclosure Act of 2009 (PTAF) provides similar protections for tenants facing eviction as a result of foreclosure on virtually all mortgaged rental properties in the United States. On June 24, 2009, HUD published a Notice in the Federal Register providing additional information on PTAF.

The tenant protection requirements directly affect *initial successors in interest* (ISII) who take title to property through foreclosure (including lenders and others who purchase property at foreclosure sales). This chart outlines the tenant protection requirements under NSP by the initial successor in interest:

LAW	RECOVERY ACT (American Recovery and Reinvestment Act)	
DATE OF APPLICABILITY	Residential Properties foreclosed after February 17, 2009	
PERSONS AFFECTED	Bona Fide tenant occupying residential property under a lease in effect before or on the date or notice of foreclosure.	Bona fide tenant occupying residential property under a tenancy in effect <b>after the date of notice of foreclosure.</b>
IMPLICATIONS	Initial successor in interest (see definitions) must allow such tenants to remain to end of the lease term* and provide a minimum of 90 days notice to move. These periods may overlap but cannot be less than 90 days.	Initial successor in interest (see definitions) must provide such tenants a minimum 90 days notice to move.

EXCEPTIONS: \* An ISII selling the property to a person occupying the home as the primary place of residence MAY terminate the lease, but MUST allow at least 90 days to vacate.

The tenant protection requirements in the Recovery Act are separate and apart from the obligations imposed on grantees by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The URA applies to any person displaced as a direct result of acquisition, rehabilitation, and/or demolition of real property for a Federal or federally-assisted project. Eligibility determinations under the URA and the required notices and relocation assistance requirements are different and separate from the tenant protections in the Recovery Act. One cannot assume that a person entitled to the tenant protections under the Recovery Act is also eligible for assistance under the URA (or vice versa).

#### Key Definitions

*Bona Fide lease or tenancy:* For purposes of this section, a lease or tenancy shall be considered *bona fide* only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arm's length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property. A "lease" does not have to be written, but either the lease or tenancy must meet the requirements of the Recovery Act.

Foreclosed: For purposes of applying the tenant protection requirements, 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 for this purpose until after the title for the property has been transferred from the former owner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

Initial Successor in Interest (ISII): Typically, the initial successor in interest in property acquired through foreclosure is the successful purchaser at foreclosure, such as the lender or trustee for holders of obligations secured by mortgage liens.

Options for WV sub-recipients to demonstrate compliance with NSP tenant protection requirements :

1. For purchase properties which were foreclosed upon **prior to Feb. 17, 2009** and obtain evidence of the date of foreclosure; they are not covered by the tenant protection requirements of NSP.
2. If purchasing properties foreclosed upon **after** February 17, 2009, obtain adequate documentation of tenant protection compliance (or inapplicability) from the ISII, such as:
  - a. A certification that only the former mortgagor and/or immediate family occupied the property at the time of the notice of foreclosure;
  - b. Copies of the tenant's lease and any notice to vacate issued by the ISII to substantiate compliance;
  - c. Where a tenancy existed without a written lease or at will, information on the tenancy and any notice to vacate from the ISII to substantiate compliance;
  - d. A certification of compliance with the NSP tenant protections (or the inapplicability of the tenant protections) from the ISII.
3. If the ISII **will not or cannot** certify or demonstrate compliance with the NSP tenant protections, it may be best to abandon the transaction.
4. If the property is still desired, and no certification or documentation of compliance can be obtained from the ISII, perform due diligence to determine whether any bona fide tenant occupied the property. If so, determine if they were allowed to remain through the end of the lease term or tenancy (as applicable) and received any required notices.
5. Sub-recipients that purchase tenant-occupied property can choose to continue to operate occupied units as rental properties, but only if the tenant household income qualifies under NSP.
6. If the sub-recipient knows that the ISII did not comply with the NSP tenant protection requirements and vacated the property contrary to the NSP requirements, abandon the transaction. NSP funds cannot be used for such properties.

NOTE: There is no assurance that these steps will eliminate potential lawsuits or other liability.

The use of the linked questionnaire by WV sub-recipients and developers will help to determine applicability of and demonstrate compliance with the NSP tenant protection requirements.

**If the ISII did not comply and the tenant is still in occupancy, the sub-recipient or developer may not assume this responsibility.**

The use of NSP funds is subject to a determination by a grantee that the ISII complied with the tenant protection requirements of the Recovery Act, that the grantee will assume this responsibility if the ISII did not, or that the tenant protections are not applicable. Therefore, if the sub-recipient or developer learns that the initial successor in interest did not comply with the NSP tenant protection requirements and a bona fide tenant was required to vacate the property contrary to the NSP requirements, abandon the transaction. NSP funds cannot be used for such properties.

If the property is occupied, or was vacated for the NSP-assisted project, the sub-recipient and developer must also determine if the occupant would be eligible as a displaced person under the ORA. If so, abandon the transaction unless there is a non-NSP source of funds to pay the relocation costs, since WVDO will not authorize the use of NSP funds for this purpose.

## M. Other Federal Requirements

NSP awardees and funded projects must adhere to all applicable other Federal requirements as outlined in 24 CFR part 570, HERA, ARRA, and NSP guidance from HUD. Key requirements are summarized below.

### 1. Equal Opportunity, Fair Housing and Section 3

The State shall not exclude any organization or individual from participation under any program funded in whole or in part by NSP funds on the grounds of age, disability, race, creed, color, national origin, familial status, religion, or sex.

The following federal requirements as set forth in 24 CFR 5.105(a), Nondiscrimination and Equal Opportunity, are applicable to NSP projects:

Fair Housing Act	24 CFR 100
Executive Order 11063, as amended (Equal Opportunity in Housing)	24 CFR 107
Title VI and VII of the Civil Rights Act of 1964 (Nondiscrimination in Federal Programs)	24 CFR 1
Title VIII Civil Rights Act of 1968	24 CFR 146
Age Discrimination Act of 1975	24 CFR 8
Section 504 of the Rehabilitation Act of 1973	41 CFR 60
Executive Order 11246, as amended (Equal Employment Opportunity Programs)	24 CFR 135
Section 3 of the Housing and Urban Development Act of 1968	
Executive Order 11625, as amended (Minority Business Enterprises)	
Executive Order 12432, as amended (Minority Business Enterprises)	
Executive Order 12138, as amended (Women's Business Enterprise)	

Executive Orders 11625, 12432, and 12138 require that participating jurisdictions and local programs must prescribe procedures acceptable to HUD for a minority outreach program to ensure the inclusion, to the greatest extent possible, of minorities and women entities owned by minorities and women in all contracts. Local programs must also develop acceptable policies and procedures if their application is approved by WVDO.

Section 3 procedures and requirements are outlined in section 2.07 of the NSP Contract. NSP sub-recipients and developers are bound by the Section 3 Policy for the West Virginia Development Office Community Development Block Grant Programs. The plan can be downloaded at: [www.wvcommerce.org/app\\_media/assets/doc/peopleandplaces/hud/Section\\_3\\_Plan\\_for\\_WVDO.pdf](http://www.wvcommerce.org/app_media/assets/doc/peopleandplaces/hud/Section_3_Plan_for_WVDO.pdf)

Sub-recipients and developers with Limited English Proficiency (LEP) speaking populations within their target market area must have an LEP Implementation Plan. They must ensure meaningful access to NSP information by providing it in the appropriate language for all English-speaking and LEP populations.

In addition to the above requirements, all NSP participants must ensure that their Equal Opportunity and Fair Housing policies related to activities funded by NSP are consistent with the current Consolidated Plan adopted by their jurisdiction or the State Consolidated Plan.

## **2. Affirmative Marketing**

Any entity applying for NSP funds must adopt affirmative marketing procedures and requirements for all NSP-assisted housing. The affirmative marketing plan and requirements for NSP-assisted project or house must be approved by WVDO prior to any NSP funds being disbursed for acquisition. HUD Forms 935-1(a) for single family and 935-2(a) for multi-family are acceptable. Affirmative marketing requirements and procedures must include ALL of the following:

- Methods for informing the public, owners, and potential tenants about fair housing laws and the policies of the local program.
- A description of what owners and/or the program administrator will do to affirmatively market housing assisted with NSP funds.
- A description of what owners and/or the program administrator (e.g., community development director) will do to inform persons not likely to apply for housing without special outreach.
- Maintenance of records to document actions taken to affirmatively market NSP-assisted units and to assess marketing effectiveness.
- A description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

## **3. Environmental Review**

In implementing NSP, the environmental effects of each activity must be assessed in accordance with the provisions of the National Environment Policy Act of 1969 and HUD's regulations at 24 CFR Part 58.

WVDO, as the NSP grantee, and the units of local government funded by WVDO will be responsible for carrying out environmental reviews for approved projects/programs. WVDO will approve the release of funds (ROF) for local governments and must request the release of funds (RROF) from HUD for any developments carried out by other types of entities. NSP funds are approved as a conditional commitment until the environmental review process has been completed, with the option to proceed, modify or cancel the project based upon the results of the review. WVDO reserves the right to require a Phase I Environmental Study as part of the environmental review process.

Sub-recipients and developers may NOT execute contracts for purchase of properties that may be funded with NSP until receiving written authorization from WVDO to do so. Detailed guidance on the environmental review process may be found in chapter 2 of the West Virginia Small Cities Block Grant Program Manual which is located on the WVDO website:

[www.wvcommerce.org/people/communityresources/applicationsanddownloads/default.aspx](http://www.wvcommerce.org/people/communityresources/applicationsanddownloads/default.aspx)

#### 4. Flood Plains/Wetlands

NSP funds may generally not be invested in housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards. WVDO discourages developments located in special flood hazard areas but, in some instances and with written permission from WVDO, houses located in a flood plain may be assisted. It is the responsibility of the sub-recipient and developer to evaluate any remedies to remove any properties from the flood plain and ensure the feasibility of the proposed plan. WVDO is willing to consider the proposed remedy and must approve the proposal in writing prior to approval of any NSP allocation. The community must be currently participating in the National Flood Insurance Program, and flood insurance must be obtained and maintained on the NSP-assisted property for the full period of affordability.

#### 5. Lead-Based Paint Requirements

The Lead-Based Paint Regulations described in 24 CFR Part 35 and Part 40 require that lead hazard evaluation and reduction activities be carried out for all developments constructed before 1978 and receiving NSP assistance. Buildings constructed prior to 1978 must include a lead hazard evaluation by appropriate lead-certified personnel. In addition, if lead is identified in the evaluation, a detailed lead hazard reduction plan, in accordance with the regulations, will be required. The costs associated with reduction of lead hazards, in accordance with the regulation and guidelines, will be required to be separately identified within the rehabilitation budget. All NSP fund allocations will be contingent upon the sub-recipient and developer agreeing to complete lead hazard reduction, evidenced by a clearance report performed by appropriate lead-certified personnel. In a development where NSP funds will be used on only a portion of the units, the lead-based paint requirements apply to ALL units and common areas in the development.

#### 6. Labor Standards

Davis-Bacon wage compliance and other federal laws and regulations pertaining to labor standards apply to all construction and rehabilitation contracts that are financed in whole or in part with NSP funds for residential property consisting of **eight (8) or more NSP-assisted units**.

Davis-Bacon and related laws include the following:

- Davis-Bacon and Related Acts (40 USC 276a-276a-7)
- Contract Work Hours and Safety Standards Act (40 USC 327-333)
- Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 276c)
- Fair Labor Standards Act of 1938, as amended (29 USC 201, et seq.)

The construction bids and contract for any NSP-assisted activity must contain the applicable wage provisions and labor standards. Davis-Bacon does not apply to projects using solely volunteer labor or to sweat equity projects. WVDO will monitor all developments subject to Davis-Bacon requirements to ensure compliance with all applicable regulations.

### Federal Davis-Bacon Coverage Chart

(Chart does not consider other non-federal public funds involved)

Financed Activity	Activity Covered?	Related Non-Federal Construction Covered?
Real Property Acquisition (land, pre-existing buildings, and other improvements)	N/R	No
Demolition (no construction on-site contemplated)	No	N/R
Demolition (to be followed by on-site construction)	Yes	No, if demolition done under separate contract by grantee (state, county, city, etc.) or its contractor before transfer of land to developer. Yes, if demolition contracted for by same entity (developer, contractor, etc.) doing private construction and will be carried out while contracting entity controls site.
Off-site Improvements (street work, storm sewer, and utility construction, etc.)	Yes	No, if off-site improvements are separately owned and the off-site work and on-site construction is provided for in separate construction contracts.
On-site Improvements (excavation/grading, storm drainage, utility or sewer work, paving/walks/stripping, site lighting, landscaping, etc.)	Yes	No, if on-site improvements are done under separate contract by grantee (state, county, city, etc.) or its contractor before transfer of land to developer. Yes, if improvements are designed and intended to serve building on the site; will be contracted for by same entity having building constructed; and will be carried out while contracting entity controls the site.
Cleaning During Construction	Yes	Yes
Cleaning After Construction to Prepare for Occupancy	No	No, if performed under separate contract.
Material Purchase	N/R	Yes, unless materials have an independent use.
Equipment, machinery, and Fixtures Purchase (as opposed to installation)	N/R	No, if purchased under separate contract.
Equipment, machinery, and Fixtures Installation (as opposed to, or in addition to, purchase)	Yes, if more than incidental amount of construction work involved in the installation *	Yes, if more than incidental amount of construction work involved in the installation*
Legal/Accounting Services	N/R	No, if obtained under a separate contract.
Architectural/Engineering Services	N/R	No, if obtained under a separate contract.
Construction Management	N/R	No, if obtained under a separate contract.

Tenant Allowance for Non-construction Expenses (furniture, business licenses, etc.)	N/R	No, if obtained under a separate contract.
Residential Down payment Assistance or Closing Costs	N/R	No, if rehabilitation or construction is occurring on fewer than 8 families.

N/R – Not relevant because no construction activity is involved.

\*Construction work involving installation is incidental if it is 13% or less of the total cost of the CDBG equipment; if it is greater; a 4-part test applies.

## 7. Debarment and Suspension

WVDO will require sub-recipients, developers, and contractors covered by 24 CFR 24 to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or on the excluded parties list from the US. Department of Labor, or voluntarily excluded from any entity from a federally funded transaction. Any participant that remains on a debarred or suspended condition shall be prohibited from participation in the WVDO NSP as long as they are classified in this manner.

## 8. Relocation

NSP funds are intended ONLY for use in purchasing/improving properties that have been abandoned and foreclosed. As such, all properties are expected to be vacant at the time of appraisal and offer to acquire. Should there be residents in any foreclosed property considered for NSP assistance, potential awardees must follow the residential anti-displacement and relocation plans in effect and outlined in the State’s approved Consolidated Plan and all applicable Uniform Relocation Assistance and Real Property Acquisition Act (URA) of 1970 provisions. It is the intent of WVDO that no properties that are occupied at the time of acquisition will be assisted with NSP funds. Applicable regulations can be found at 49 CFR Part 24. No WVDO NSP funds can be used for relocation costs.

## 9. Audit

Sub-recipients and non-profit developers expending more than **\$500,000** in Federal awards in a given fiscal year have an audit conducted in accordance with Generally Accepted Accounting Principles (GAAP) and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.” The audit must be included within the scope of a comprehensive, agency-wide audit. A pro rata share of the cost may be charged against the project. For every audit conducted, the sub-recipient or non-profit developer shall provide their auditor with all major documents, regulations, handbooks, program files and documentation required for the audit. Copies of final audit shall be provided to WVDO within 30 days of receipt.

All sub-recipients and non-profit developers expending less than \$500,000 of federal funds in a given fiscal year must have a financial review conducted by the State.

A project shall not be closed out until all costs claimed have been audited and any noted findings or concerns resolved. The State retains the right to review audit working papers during the audit for a period of three years after issuance of the final audit report. A statement to this effect must be included

in any contract or memorandum letter of agreement between the sub-recipient or non-profit developer and its auditors.

## **10. Record Keeping**

The sub-recipient and developer will keep such records as specified in 24 C.F.R. §570.506, *Records to be Maintained* and any other records as the grantee may reasonably require. The sub-recipient and developer agrees to keep such records so as to allow the grantee to perform a 24 C.F.R. §570.492, *State's review and audits*.

All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to NSP shall be clearly identified and readily accessible. Incomplete or missing backup documentation could result in repayment of the NSP funds by the sub-recipient.

All documents imposing resale/recapture provisions must be maintained for five (5) years after the termination of the affordability period. All other records pertinent to this grant and work undertaken as part of the project will be retained by the sub-recipient and developer for a period of three (3) years after notification by the grantee that the grant has been closed. The grant will close on March 4, 2013, so unless other notification is received; records need to be maintained until March 31, 2016. If any claim, litigation, or audit is initiated, the records must be retained until all claims, litigation, or audits have been resolved.

The grantee and duly authorized officials of the State and federal government will have full access to, and the right to examine, audit, excerpt and/or transcribe, any of the sub-recipient's or developer's records pertaining to all matters covered by its contract with the grantee.

## **11. Conflict of Interest**

Sub-recipients must have a conflict of interest policy in place that conforms to the requirements of 24 CFR Vol. V, 570.611. If a potential or certain conflict of interest arises, sub-recipients must bring the issue to the attention of the WVHDF as soon they are aware of the issue.

## **N. Procurement**

Local governments and sub-recipient entities are required to adhere to all applicable procurement requirements in the selection and award of contracts for goods and services. Therefore, all solicitation of bids for goods and services to be paid with NSP funds must be conducted openly and competitively in accordance with West Virginia State Procurement guidelines, as applicable.

These guidelines, in effect, require:

For procurements expected to cost between \$25k and \$50k, a Request for Quotations (RFQs) must be solicited, though no less than three qualified vendors shall be solicited to submit electronic or written quotations. Competitive sealed bidding or Request for Bids (RFBs) is the preferred method for purchases and acquisition of materials, supplies, equipment, and services expected to cost greater than \$50,000. Bidders must submit their sealed bid to the location

identified in the Request for Bids prior to the specified time and date of the bid opening. The award shall be made to the lowest responsible and responsive bidder.

The award of NSP funds to a developer is not subject to procurement requirements, but the awarding entity must review the developer's costs to ensure they are reasonable to be eligible under the program.

Detailed guidance on the procurement process may be found in Chapter 6, Construction Management, of the West Virginia Small Cities Block Grant Program Manual, which is located on the WVDO website: [www.wvcommerce.org/people/communityresources/applicationsanddownloads/default.aspx](http://www.wvcommerce.org/people/communityresources/applicationsanddownloads/default.aspx). Questions about procurement should be directed to WVDO.

## O. Contractor Requirements

All general contractors working on all NSP-funded developments must have an active license issued by the West Virginia Contractor Licensing Board as applicable and meet all requirements of contractors in the State of West Virginia, including securing and maintaining Builder's Risk insurance and compliance with workers compensation law. Contractors may not "share" a license. That is, WVDO will not allow one contractor to work from another contractor's license.

All WVDO NSP-funded projects must have a general contractor that is properly licensed by the West Virginia Contractor Licensing Board. Any questions regarding licensing issues and a list of licensed contractors may be directed to the State Licensing Board at the following address:

West Virginia Contractor's Licensing Board Building 6, Room B-749 State Capitol Complex Charleston, WV 25305 304-558-7890
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A special State license is also required for lead or asbestos abatement (see Section G(3)6 for further information).

Any contractor or subcontractor who has been debarred by any entity or had a contractor license suspended by any entity within the previous twelve (12) months will be prohibited from participating in the NSP. General contractors with contracts greater than \$100,000 who are working on NSP-funded developments will be required to obtain one of the following: (1) a payment and performance bond; or (2) an Irrevocable Letter of Credit in the amount of the construction contract acceptable to WVDO.

## P. Inspections

Inspections are required with all activities that are funded through the NSP. **Sub-recipients and developers must notify WVHDF a minimum of 3 business days in advance to schedule inspections.**

WVHDF will inspect all rehab and construct work. A regular inspection schedule for draws will be set at the preconstruction conference for each project. In addition to the draw inspections, the properties will also be inspected at the end of the following four stages as identified below. WVHDF may require more frequent inspections.

<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>
Excavation	Plumbing top-out	Flooring systems	Final Inspection
Metals	Electrical rough-in	Painting	
Termite treatment	Framing	Doors	
Rough-in plumbing	Roof	Cabinets	
Earth work	Interior wall systems	HVAC	
Water proofing (vapor barrier)	Exterior wall systems	Electrical top-out	
Footing	Ventilation	Special construction (elevators, etc.)	
Slab	Insulation	Appliances	

Rental housing development inspections may be scheduled more frequently, as warranted. The WVHDF inspector must attend any pre-construction meetings for NSP-funded developments. For rehabilitation projects, when a project is ready for a draw on funds, the property must be inspected and/or approved to verify that the work has been satisfactorily completed. WVHDF will prescribe forms to be utilized. **WVDO will only make payments on work that has been satisfactorily completed, inspected and approved by a WVHDF inspector.**

The inspection request form is found in Appendix 18. Sub-recipients and developers may fax or mail their inspection request, to WVHDF using the following contact information:

<p>West Virginia Housing Development Fund</p> <p>Attn: Lynda Grass 814 Virginia Street Charleston, WV, 25301</p> <p>Fax: 304-340-9945 <a href="mailto:lgrass@wvhdf.com">lgrass@wvhdf.com</a></p>
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WVHDF staff will coordinate with recipients of NSP funds and inspectors to schedule all inspections. WVHDF will review and forward all complete payment requests to WVDO.

## **Q. Budget Changes and Change Orders**

WVDO recognizes that changes in a development occur from time to time. The following process will be followed for budget changes:

- **Hard Costs Change Orders** - It is important that NSP participants submit change orders on the proper WVHDF form (Appendix 19) and the Request for Project Amendment Budget Change form (Appendix 24). Use of the contingency reserve for construction costs may only be approved by change order. All change orders must be approved in writing by the WVHDF staff prior to initiating work. **No payment of NSP funds will be made on change orders that have not been approved.**
- **Changes to Total Soft Cost, Program Delivery or Hard Costs Budget** - WVDO must approve in writing any changes that will cause the project to exceed its approved soft cost, program delivery and/or hard cost budget. A Request for Project Amendment Budget Change form must be submitted with original signature to WVDO for review and approval. See Appendix 24 for a copy of the form.

- Soft Costs Line Item Changes – Sub-recipients and developers may reallocate soft costs between line items without prior approval from WVDO. However, the change must be reported to WVDO on the next Request for Reimbursement as follows:
  - Attach a completed Request for Project Amendment Budget Change form (Appendix 24) to show the changes.
  - Certify in box 9 of Section III of the Request for Reimbursement that the change does not affect the total soft cost budget amount.
- Program Delivery Line Item Changes - Sub-recipients may reallocate program delivery costs between program delivery cost line items without prior approval from WVDO. However, the change must be reported to WVDO on the next Request for Reimbursement as follows:
  - Attach a completed Request for Project Amendment Budget Change form (Appendix 24) to show the changes.
  - Certify in box 9 of Section III of the Request for Reimbursement that the change does not affect the total program delivery cost amount.
- Transfer Funds between Properties (Activities) – During the course of construction and development, a sub-recipient or developer may determine that one activity was over budgeted while another was under budgeted.
  - To shift funds from one property to another, the sub-recipient or developer must submit a written request with revised budgets for both properties to WVDO for approval.
  - Attach a completed Request for Project Amendment Budget Change form (Appendix 24) to show the requested changes.
- Total Award - Any changes to a sub-recipient or developer’s NSP award by WVDO will be documented by a fully executed NSP Contract.

## **R. Closing of Transactions**

WVHDF will be the closing entity to provide closing services for all NSP property acquisitions, using WVHDF documents approved by WVDO. The services will be available and required in the county where the property is located. NSP staff will provide closing instructions for all NSP-funded transactions to the closing entity. Sub-recipient and developers will be responsible for payment of costs associated with closing the NSP portion of the transaction on both homebuyer and rental properties.

## **S. Reporting Requirements**

The sub-recipient and developer will submit such other reports to the grantee, in such form and with such frequency, as the grantee may prescribe, pertaining to the activities undertaken as a result of this contract.

See the following Appendices for reporting requirements and instructions:

- Appendix 25 - NSP Monthly Progress Report
- Appendix 26 - Program Income Reporting Form
- Appendix 27 - NSP Rental Occupancy Report
- Appendix 28 - NSP Homebuyer Close Out Report

The sub-recipient and developer will also be required to submit a final performance and financial report, in such form and within such times as the grantee may prescribe, at the occasion of grant closeout. Reporting requirements are subject to change and additional specificity based on further guidance from HUD.

## **T. Program Income**

The CDBG regulations at 24 CFR 570.500 define “program income” as the income generated from the use of CDBG funds that is received by the grantee or a sub-recipient. Since NSP funds are considered to be CDBG, this definition applies to the NSP program. The regulations go on to state that program income is subject to the same general requirements that apply to the program from which it is generated (in this case, to NSP rules and limitations).

Examples of program income in the context of the NSP program include:

- Interest and principal payments on a loan made using NSP funds.
- Proceeds from the sale of a house that has been acquired, constructed or rehabilitated using NSP funds.
- Funds recaptured from the resale of an NSP assisted property during the NSP-required affordability period.
- Any profit made from the rental of a property that has been assisted with NSP funds.

The above examples do not necessarily include all possible sources of program income. But it is important to remember that income is not program income unless it is received by the grantee (WVDO) or a sub-recipient. Thus, income that is received by a developer is not considered to be program income even though it is generated by a property that has been assisted with NSP funds.

### Reporting Receipt, Using, and Funding Eligible Activities With Program Income

- Within 3 business days of when program income is earned, the Sub-recipient must fill out a Program Income Reporting Form (Appendix 26). Include with the submission of this form a check for the full amount of program income to the West Virginia Development Office.
- Notification will be made to all NSP Sub-recipients and Developers on the availability of 90% of the earned PI. We encourage that proposals be submitted for funding consideration. It will be at the WVDO’s discretion to make additional awards or retain for unexpected costs such as cost over runs. All proposals determined to be eligible will be advanced and reviewed for funding consideration as received. To the extent applicable, criteria to be considered during the review will include: (1) the readiness of the project to proceed, if funded, (2) the availability of other sources of funding for the project, (3) other NSP considerations, such as existing open grants, fair housing initiatives proposed, impact on the area, applicant’s capacity to administer and operate the project and grant, if approved, etc.
- The West Virginia Development Office will consider an application in the form of a request (on letterhead), plus supporting documents regarding eligibility (such as maps, exhibits, budgets, etc.), to apply some or all of the Program Income earned toward an additional eligible project. This request, if granted, would constitute an additional award to the Sub-recipient’s original grant. Thereafter, this additional grant would be processed in the same way, with the same policies and procedures in effect as with the original grant.

### Program Income Earned from Rental Operations

- Any profit made from the rental of a property that has been assisted with NSP funds is considered program income. This profit is defined as gross income received by a sub-recipient from the use or rental of real property acquired and/or constructed or improved with NSP funds, less costs. These costs include all normal operating expenses, such as taxes, insurance, advertising, property management, maintenance and reserves for replacements. Any funds put into the replacement reserves can only be used for capital improvements.
- The computation to determine whether NSP assisted rental property has produced program income (and if so how much) is to be carried out on a yearly basis for every year that the property remains a rental property owned by the sub-recipient. Each such rental property owned by the sub-recipient is to be subject to separate calculation, but the results for all such properties may be combined for this purpose. The sub-recipient may select a common time period for all its NSP rental properties to facilitate this calculation. The use of the sub-recipient's fiscal year would be acceptable for this purpose.
- The net proceeds from rents would be considered program income. It must be reported to WVDO on a Program Income Reporting Form (Appendix 26) within 30 days following the annual calculation and returned along with the Form.

### Proration of Income

In any case where an NSP assisted activity that generates income also involved the use of other funds for acquisition, rehabilitation or construction, the computation of the amount of the income that will be considered to be NSP program income shall be determined by proration. That is, the percentage of the total of all funds used for the development of the project that was comprised of NSP funds shall be applied to the total income received to determine the portion that is NSP program income.

### Following Closeout

Once the NSP Contract with a sub-recipient is closed out all program income is to be reported to WVDO at the end of each year.

## **U. Monitoring**

Prior to closeout, WVHDF and/or WVDO will perform desk and on-site monitoring for all sub-recipients and developers utilizing NSP funds to determine compliance with the applicable regulations and requirements outlined in this manual and NSP regulations.

## **V. Three-Day Rule**

Funds requested in excess of \$5,000 must be deposited and expended within three working days after they are received. The receipt of the check starts the clock ticking, not the deposit of the check. Thus, if a state-issued NSP check is received on a Friday, it must be immediately deposited and checks should be written for the full amount of the deposit by the close of business on Wednesday. The Three-Day Rule

does not apply to program income earned, so those funds may remain in a bank account with the permission of WVDO. See Section III.T. for more information about program income.

## IV. The NSP Rental Housing Program

Recipients utilizing funds in the NSP Rental Housing Program must closely adhere to all NSP regulations, as well as to WVDO's program-specific guidelines and adopted policies.

Below are the requirements for NSP rental projects.

<b>National Objective</b>	Assisted properties are Low-, and/or, Moderate-, and Middle-Income Households.
<b>Eligible Renters</b>	Income at or less than 120% AMI according 24 CFR Part 5. 25% of total NSP award to the grantee must assist households with incomes at or below 50% AMI. Satisfy existing WVHDF Assisted Rental Housing Requirements. Families will be screened for eligibility including: <ul style="list-style-type: none"> <li>• Income Eligibility</li> <li>• Definition of a Family (HCV Standards)</li> <li>• Citizenship Status</li> <li>• Criminal Background</li> <li>• Social Security Requirements</li> <li>• Other Local Provisions</li> </ul> Permanent housing only. Leases must be longer than 31 days.
<b>NSP Eligible Use</b>	<p><b>"B"</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</p> <p><b>"D"</b> Demolition of blighted structures (only if immediate redevelopment strategy)</p> <p><b>"E"</b> Redevelop demolished or vacant properties.</p>
<b>NSP Eligible Property</b>	Foreclosed property must be purchased at a 1% Discount of Appraised Fair Market Value. Appraisal must be current. Abandoned or foreclosed homes and residential properties per the HUD definition. To count towards required 25% at 50% of AMI set aside, property must be: <ul style="list-style-type: none"> <li>• Abandoned or foreclosed residential structure for rehabilitation/reconstruction</li> <li>• Foreclosed residential vacant land for redevelopment</li> <li>• Vacant or demolished property (if obligated/unexpended after July 21, 2010)</li> <li>• Non-residential property redeveloped under eligible Use E if zoning code permits residential development (if obligated/unexpended after July 21, 2010)</li> <li>• Located in WV Target Areas</li> </ul> See Section III, Part D for more details on eligible uses
<b>Maximum NSP Subsidy</b>	<p><b>\$250,000</b> per rental unit.</p> <p>NSP cannot be used to subsidize human and/or social services.</p> <p>NSP cannot subsidize operations or rent-up reserves.</p>
<b>Financial Feasibility Requirements</b>	<p>Keep Unit Mix and Rents for Each Sized Unit</p> <p>Construction Budget</p> <p>Project Development Budget and Funding Sources</p> <p>15 Year Operating Budget</p> <p>Long-term financing is not required. If project carries a servicing loan, the debt service coverage ratio cannot be less than 1.25</p> <p>Operating Budget must show project can pay all operating expenses and contribute \$250 per unit per year to operating and replacement reserves.</p>

	Developer must deposit all residual receipts into restricted replacement reserve account.
<b>Professional Fees</b>	<p><b>Developer Fee:</b> For a Developer, 15% of Total Development Costs. For a sub-recipient that uses a developer, the combination of the amount paid as a developer fee and the sub-recipient’s program delivery costs that may be reimbursed may not exceed 15% of its grant amount.</p> <p><b>Property Management Fee:</b> 7.0% to 12% of annual gross income as determined by grantee and size and financial feasibility of project</p> <p><b>General Contractor Fee:</b> Grantee will conduct Cost Reasonableness study of comparable projects to determine appropriateness of GC fees</p>
<b>Rehab, New Construction, and Reconstruction Standards</b>	<p>Grantee encourages sub-recipients and developers to improve NSP-assisted units to a level of quality where it helps improve the values of adjacent properties on a residential street.</p> <p>Grantee will allow the following improvements so long as project is feasible and total NSP subsidy needed does not exceed \$250,000 per rental unit:</p> <ul style="list-style-type: none"> <li>• Enhanced Landscaping and Exterior Finishes</li> <li>• Addition of Porch, Bathroom, Car Port</li> <li>• Central Air Conditioning and Heating</li> <li>• Upgraded Counter Tops, Flooring and Finishes</li> <li>• Ceiling Fans</li> <li>• Appliance Packages with home purchase</li> </ul> <p>Rehabilitation of homes and residential properties shall meet all applicable local codes, ordinances, and zoning ordinances at the time of project completion. Where no such codes, ordinances and zoning ordinances exist such properties shall meet: the minimum HUD Section 8 Housing Quality Standards (HQS), the fire safety requirements of Chapter 7 of the 2009 International Property Maintenance Code, as well as the requirements for hardwired smoke detectors and GFI installation requirements of the 2009 International Property Maintenance Code.</p> <p>New construction of homes and residential properties shall meet all applicable local codes, ordinances, and zoning ordinances at the time of project completion. Standards set forth in the State Building Code as amended July 1, 2010, will be utilized as the minimum requirements including equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety from fire and other hazards and for safe and sanitary maintenance.</p> <p>All sub-recipients and developers are strongly encouraged to use NSP funds for improving energy efficiency utilizing green construction methods and materials, durability improvements, and for making marketing improvements as described in the Request For Proposals.</p> <p>Compliance with lead-based paint procedures is required. The activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K and R of this title. No contractor can work on a pre-1978 house unless he/she is lead certified and licensed by the State of West Virginia, unless the house that has the lead has been</p>

	abated by a contractor who is lead certified and licensed by the State of West Virginia.
<b>Timeline</b>	Obligation Period: January 2010 – September 4, 2010 Expenditure Period: January 2010 – December 31, 2012

## A. Other Eligible Activities

All rental projects must aim to re-inhabit abandoned, foreclosed or vacant properties through their acquisition, rehabilitation, reconstruction, new construction, or some combination thereof. Eligible projects include multiple buildings on a single site as well as single or multiple units on scattered sites. Units may be on scattered sites but must be within the same jurisdiction.

NSP funds may be used for a mixed-income development provided that a pro rata of NSP-eligible units are occupied by households meeting the income limits of the NSP. See Section III, Part E. Meeting the LMMI National Objective for details. Common area costs must be prorated based upon the number of NSP-assisted units and non-NSP-assisted units.

A building that is designed, in part, for other than residential housing may qualify as affordable housing under the NSP as long as NSP funds are used only for the residential portion and those units meet the rent and income limitations of the NSP.

## B. Eligible Costs

NSP Program funds may be used for certain development costs as dictated by 24 CFR Part 570 and outlined below:

1. **Hard Costs** – Eligible hard costs are the actual cost of constructing or rehabilitating housing. These costs include the following:
  - a. Construction, rehabilitation, or reconstruction (including the abatement of lead and/or asbestos) of affordable housing units
  - b. Site improvements (including utility connection costs, but not the costs to provide utilities to the site)
  - c. Demolition (must be done in conjunction with a specific affordable housing project)
  - d. Acquisition
  - e. Contingency reserve – a percentage of construction costs can be set aside for contingency (up to 10% for rehabilitation and 5% for new construction).
2. **Soft Costs** – Eligible soft costs must be “usual, customary, reasonable, and necessary” and may include the following:
  - a. Costs related to acquisition, such as the appraisal, environmental review, building inspection and attorney closing fee.
  - b. Finance related costs, i.e., title reports and updates, appraisal fees, surveys, origination fees and discount points, and construction interest
  - c. Current market study (not more than six (6) months old)
  - d. Project audit costs
  - e. Professional services (architectural, engineering, attorney, and other services provided for a specific project; consultation fees (not associated with organizational startup)

**DEVELOPERS CANNOT HIRE THEMSELVES AS CONSULTANTS ON ANY NSP-FUNDED PROJECT OTHER THAN ON A THIRD-PARTY BASIS.**

3. Program Delivery Costs and /or Developer's Fee, see Section III.F.

### **C. Rent Limits**

**NSP Program funds must benefit households with incomes no greater than 120% of the area median income** (50% of area median income for set-aside units), adjusted for family size. Rents in all NSP-assisted units must be set at "affordable rents," which is defined as follows:

West Virginia has two tiers of rents for NSP:

- Set-Aside Units for families with incomes below 50% Area Median Income (AMI): the maximum rent set for these units can be no higher than the published Low HOME rents less the appropriate Utility Allowance. The Utility Allowance is determined for each community by the local Public Housing Authority.
- Units for families between 51% to 120% of AMI – The maximum rent set for these units can be no higher than 30% of 100% of AMI adjusted for family size and the appropriate Utility Allowance. Rents must be calculated as follows:
  1. To determine 100% AMI, go to the HUD website for the latest income limits – <http://www.huduser.org/portal/datasets/il/il10/index.html>.
  2. On this chart, Very Low Income is 50% AMI, so double this number to determine 100% AMI for each bedroom size. For 1-BR units, use the 2 person income limit; for 2-BR units, use the 4 person income limit; for 3-BR units, use the 6 person income limit; for 4 BR units, use the 8 person income limit.
  3. Multiply each income limit by .3 (30%) – this is the maximum allowable rent per bedroom unit size.
  4. Divide by 12.
  5. Subtract the appropriate Utility Allowance. **Result is the monthly maximum allowable rent per bedroom size.** The Utility Allowance is determined for each community by the local Public Housing Authority.
  6. The Sub-recipient/Developer should set the rent at an amount less than the maximum allowed, and it should be reasonable given the comparable units in the local market. Also, the rents should not be so high as to unduly enrich the Sub-recipient or Developer.  
**Consequently, WVHDF and WVDO must approve the rents that are to be charged in this tier.**
- **If** a project receives Federal or State project-based subsidies and the tenant pays no more than 30% of his or her income, the maximum rent may be the rent allowable under the project-based subsidy program.

The rent limits and area median income incomes are recalculated on an annual basis by HUD. The State has adopted and sub-recipients and developers must adapt their projects to the HOME program affordability standards at 24 CFR 92.252(a), (b), (c), (e) and (f). These standards represent the minimum affordability standards and any other standards are subject to the review and approval of the WVDO.

Sub-recipients and developers who agree to provide units for very low-income households whose incomes do not exceed 50% of the AMI must continue to rent to these income levels throughout the affordability period.

HUD's "Technical Guide for Determining Income and Allowances for the HOME Program" published in January 2005 guide can be found at the following link:

<http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm>. In addition, HUD has published the "Guide to Completing NSP Income Certifications" which can be found in the tool kit section on [www.HUDNSPhelp.info](http://www.HUDNSPhelp.info). Projects must follow the Part 5 methodology, which is similar to the Section 8 program. Supporting documentation, such as W-2s, tax forms, and bank statements must be collected, reviewed, and kept in local records to demonstrate that the household's income was within the prescribed limit.

NSP requires that income only be verified at move in of the household; annual re-certifications are not required. Occupancy information must be reported to WVDO on the Rental Occupancy Report (Appendix 27); this report is due monthly during the rent up phase and then quarterly throughout the affordability period.

The current West Virginia HOME Income Limits, which apply to NSP, can be found at:

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/index.cfm>.

The current West Virginia High and Low Home Rents, which apply to NSP, can be found at:

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/>. The rent charged the tenant may not exceed the appropriate HOME Rent less a WVHDF-approved utility allowance for the unit.

## D. Project Affordability

Sub-recipients and developers must ensure continued affordability for NSP-assisted housing by the use of WVDO-approved enforceable recorded liens, written agreements, and contracts that ensure, to the maximum extent practical and longest feasible term, property assisted with NSP funds will remain affordable to individuals or families whose incomes do not exceed 120% of area median income or, for units originally assisted with funds that meet the 25% set-aside, will remain affordable to individuals and families whose incomes do not exceed 50% AMI.

The minimum affordability requirements for NSP are:

Rental Projects	
NSP Subsidy per Unit	Affordability Period
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years
Acquisition or Building of New Construction Unit	20 years

These are minimum requirements. The sub-recipient or developer may propose to implement more stringent affordability requirements than the minimum listed above to ensure that the properties remain affordable for as long as possible.

Rental property owners/managers will be required to document that the units are occupied by income-qualified households during the period of affordability, both upon initial occupancy of the units and each time they are vacated and re-occupied.

## E. Mixed Financing

Where NSP Program funds are used in conjunction with other financing programs, the more stringent project and occupancy regulations will apply.

## V. The NSP Homebuyer Housing Program

The Homeownership Housing Program is designed to provide NSP funds for the acquisition and rehabilitation or acquisition and new construction of single-family properties for sale to eligible LMMI and LMMA households to stabilize neighborhoods and promote homeownership.

Below are the requirements for NSP homebuyer projects

<b>National Objective</b>	Assisted properties are occupied by Low-, and/or Moderate-, and Middle-Income Households.
<b>Eligible Homebuyer Applicants</b>	Income at or less than 120% AMI according to 24 CFR Part 5 For properties that are to count towards meeting the 25% Set-Aside, household income at or less than 50% AMI Able to receive Mortgage based on traditional lending practices Complete at least eight (8) hours of homebuyer education Purchase an NSP-assisted House
<b>NSP Eligible Uses</b>	“ <b>A</b> ” Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan and/or loss reserves, and shared-equity, “ <b>B</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 “ <b>E</b> ” Redevelop demolished or vacant properties. See Section III, Part D for more details on eligible uses
<b>NSP Eligible Property</b>	Foreclosed property must be purchased at a 1% Discount of Appraised Fair Market Value. Appraisal must be current. Abandoned or foreclosed homes and residential properties per the HUD definition. To count towards required 25% at 50% of AMI set aside, property must be: <ul style="list-style-type: none"> <li>• Abandoned or foreclosed residential structure for rehabilitation/reconstruction</li> <li>• Foreclosed residential vacant land for redevelopment</li> <li>• Vacant or demolished property (if obligated/unexpended after July 21, 2010)</li> <li>• Non-residential property redeveloped under eligible Use E if zoning code permits residential development (if obligated/unexpended after July 21, 2010)</li> <li>• Located in WV Target Areas</li> </ul> See Section III, Part D for more details on eligible uses
<b>Maximum NSP Subsidy for Homeownership Rehab or Reconstruction</b>	<b>\$125,000</b> per home for combination of Development Subsidy and Homebuyer Subsidy needs based on subsidy layering feasibility analysis review. <u>Development Subsidy</u> : where the total development costs exceed sale price based on fair market appraised value of the improved home and/or <u>Homebuyer Subsidy</u> : where the homebuyer needs a write down of the first mortgage and/or down payment and closing cost assistance so that PITI meets affordability standards. Modeled on WVHDF CHDO program. For example, the subsidy required to complete the process to closing would be a development subsidy of 100, 000 and a homebuyer subsidy of \$50, 000. However, the maximum of NSP towards the subsidy layering would be \$125,000. Therefore the entity would need \$25,000 from other resources to complete the transaction. See Section I below for more information.

	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Use</th> <th style="text-align: center;">Maximum NSP Subsidy per Unit</th> </tr> </thead> <tbody> <tr> <td>Development Subsidy</td> <td style="text-align: right;">\$100,000</td> </tr> <tr> <td>Homebuyer Subsidy</td> <td style="text-align: right;">\$50,000</td> </tr> <tr> <td><b>Total Allowable NSP Subsidy</b></td> <td style="text-align: right;"><b>\$125,000</b></td> </tr> </tbody> </table>	Use	Maximum NSP Subsidy per Unit	Development Subsidy	\$100,000	Homebuyer Subsidy	\$50,000	<b>Total Allowable NSP Subsidy</b>	<b>\$125,000</b>
Use	Maximum NSP Subsidy per Unit								
Development Subsidy	\$100,000								
Homebuyer Subsidy	\$50,000								
<b>Total Allowable NSP Subsidy</b>	<b>\$125,000</b>								
<b>Required Reasonable Home Mortgage Terms</b>	<p>Repayment term of no more than 35 years with no balloon payment requirements</p> <p>Interest rate expressed as Annual Percentage Rate (APR) may not exceed 4% above US Prime Rate</p> <p>No adjustable rate mortgages</p> <p>No prepayment penalties</p> <p>Lender fees may not exceed 3% of loan amount</p> <p>First Mortgage lender must allow grantee to record NSP Second Mortgage and Deed Restrictions for the Affordability Period and Homebuyer Subsidy Agreement.</p> <p>Housing to Income Ratio of no less than 25% and no more than 33% of gross household income</p> <p><b><i>Total Debt to Income Ratio of no more than 42%. Lender may have more restrictive maximums.</i></b></p>								
<b>Rehab, New Construction and Reconstruction Standards</b>	<p>Grantee encourages sub-recipients and developers to improve NSP-assisted units to a level of quality where it helps improve the values of adjacent properties on a residential street.</p> <p>Grantee will allow the following improvements so long as project is feasible and total NSP development subsidy needed does not exceed \$100,000 per unit:</p> <ul style="list-style-type: none"> <li>• Enhanced Landscaping and Exterior Finishes</li> <li>• Addition of Porch, Bathroom, Car Port</li> <li>• Central Air Conditioning and Heating</li> <li>• Upgraded Counter Tops, Flooring and Finishes</li> <li>• Ceiling Fans</li> <li>• Appliance Packages with home purchase</li> </ul> <p>Rehabilitation of homes and residential properties shall meet all applicable local codes, ordinances, and zoning ordinances at the time of project completion. Where no such codes, ordinances and zoning ordinances exist such properties shall meet: the minimum HUD Section 8 Housing Quality Standards (HQS), the fire safety requirements of Chapter 7 of the 2009 International Property Maintenance Code, as well as the requirements for hardwired smoke detectors and GFI installation requirements of the 2009 International Property Maintenance Code.</p> <p>New construction of homes and residential properties shall meet all applicable local codes, ordinances, and zoning ordinances at the time of project completion. Standards set forth in the State Building Code as amended July 1, 2010, will be utilized as the minimum requirements including equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety from fire and other hazards and for safe and sanitary maintenance.</p> <p>All sub-recipients and developers are strongly encouraged to use NSP funds for improving energy efficiency utilizing green construction methods and materials,</p>								

	<p>durability improvements, and for making marketing improvements as described in the Request For Proposals.</p> <p>Compliance with lead-based paint procedures is required. The activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K and R of this title. No contractor can work on a pre-1978 house unless he/she is lead certified and licensed by the State of West Virginia, unless the house that has the lead has been abated by a contractor who is lead certified and licensed by the State of West Virginia.</p>
<b>Professional Fees</b>	<p><b>Developer Fee:</b> For a Developer, 15% of Total Development Costs not to exceed \$15,000 a unit. For a sub-recipient that uses a developer, the combination of the amount paid as a developer fee and the sub-recipient's program delivery costs that may be reimbursed may not exceed 15% of its grant amount.</p> <p><b>Sales Referral Fee:</b> 6% of Sales Price or \$6,000 (whichever is greater) per unit</p> <p><b>Homebuyer Education Fee:</b> \$1,500 per NSP-assisted unit sold to eligible homebuyer. Sales referral and homebuyer fees to be paid at closing</p> <p>Grantee will conduct Cost Reasonableness study of comparable projects to determine appropriateness of GC fees</p>
<b>Timeline</b>	<p>Obligation Period: January 2010 – September 4, 2010</p> <p>Expenditure Period: January 2010 – December 31, 2012</p>

## A. Eligible Activities

The properties rehabilitated or constructed must be made available for sale to NSP income-eligible LMMI buyer households. The funds can also be combined with permanent financing to assist eligible homebuyers.

Each homebuyer household is required to receive at least eight (8) hours of counseling from a HUD-approved counseling agency.

HUD maintains a list of approved counseling agencies that is available on the web at: <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=WV>

## B. Eligible Homebuyers

An eligible owner must have a household income at or below the middle-income limits as defined by HUD. Annual gross household income cannot exceed one hundred twenty percent (120%) of the median income for the area as defined by 24 CFR Part 5, adjusted for family size. Without exception, NSP funds cannot be used on projects where the income of the prospective homebuyer household is greater than one hundred and twenty percent (120%) of the area median income. Sub-recipients and developers are encouraged to set aside units to sell to owners at or below 50% of the AMI. When houses are designated as being under the set-aside in the NSP Contract, they must be sold exclusively to households at or below 50% of the AMI.

HUD's "Technical Guide for Determining Income and Allowances for the HOME Program" published in January 2005 guide can be found at the following link: <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm>. In addition, HUD

has published the “Guide to Completing NSP Income Certifications” which can be found in the tool kit section on [www.HUDNSPhelp.info](http://www.HUDNSPhelp.info). Projects must follow the Part 5 methodology, which is similar to the Section 8 program. Participants will use the Technical Guide and these forms for calculating and verifying incomes. Supporting documentation, such as W-2s, tax forms, and bank statements must be collected, reviewed, and kept in local records to demonstrate that the household’s income was within the prescribed limit.

Within 5 business days of a house being sold to an eligible homebuyer, the sub-recipient is required to provide WVDO a completed Homebuyer Close Out Report (Appendix 28.)

The homebuyer must provide proof of hazard insurance in an amount sufficient to cover replacement of the structure. The insurance policy must list WVDO on the policy as an additional insured/mortgagee.

The current West Virginia HOME Income Limits, which should be followed for NSP, can be found at: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/index.cfm>.

### **C. Homebuyer Education Counseling**

Homebuyers who are purchasing an NSP-assisted unit are required to receive and complete a minimum of eight hours of homebuyer education counseling before obtaining a mortgage loan from a HUD certified counseling agency. The course will include an overall view of homeownership, credit, budgeting, the mortgage process, home maintenance, repairs and improvements. Educators will collect and maintain specific information from education clients in accordance with the laws and governing organizations.

If the NSP Project activities involve assistance to homebuyers, then the sub-recipient or developer is responsible for fulfilling the HUD requirement that such homebuyers must receive at least eight (8) hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. In the circumstance where such a HUD-approved housing counseling agency is not within the sub-recipient or developer’s jurisdiction, then the required homebuyer counseling may be obtained from another such qualified organization that has been specifically approved by HUD at the grantee’s request, for the grantee’s NSP projects, including this Project.

Documentation that the assisted buyers received such counseling must be maintained by the sub-recipient and should be maintained in the qualified family’s folder.

### **D. Forms of Financial Assistance**

WVHDF will provide the legal documents that must be recorded for each property to enforce the loan/affordability period/recapture provisions.

### **E. Eligible Costs**

NSP Program funds may be used only for eligible costs as defined at 24 CFR Part 570. NSP funds may be used to cover soft and hard costs associated with a project. These costs include the following:

1. **Hard costs** – Eligible hard costs are the actual costs associated with the rehabilitation of the housing units and include the following:
  - a. Acquisition
  - b. Demolition
  - c. Site improvements
  - d. Construction, rehabilitation, or reconstruction
  - e. Contingency reserve – A percentage of construction costs can be set aside for contingency (up to 10% for rehabilitation and 5% for new construction).

The cost of repairs must be reasonable compared to the value of the house (i.e., the level of rehabilitation is intended to allow continued owner occupation for at least the affordability period as regulated by NSP). The rehabilitation must be financially and structurally feasible.

2. **Soft costs** – Soft costs must be “usual, customary, reasonable and necessary” and may include the following:
  - a. Finance related costs, i.e., credit reports, title reports and updates, appraisal fees, surveys, origination fees and discount points, and construction interest
  - b. Housing counseling contingent upon buyer purchasing an NSP-assisted property.
  - c. Project audit costs
  - d. Affirmative marketing and fair housing costs
  - e. Professional services (architectural, environmental review, engineering, and other services provided for a specific project)
  - f. Hazard insurance
3. Program Delivery Costs and /or Developer’s Fee, see Section III.F.

## **F. Sale of Units to Homebuyers**

NSP requires that properties acquired or acquired and rehabilitated/constructed with NSP funding be sold to eligible homebuyers at an amount equal to or less than the cost to acquire and redevelop the property by the funding recipient. This means that properties may not be sold at a profit. The cost may not include any holding costs incurred by the sub-recipient or developer. WVHDF will enforce and monitor these requirements through its closing documentation procedures and additional monitoring.

The homebuyer must obtain a mortgage loan from a lender who agrees to comply with the bank regulators’ guidance for non-traditional mortgages (see, Statement on Subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration, available at <http://www.fdic.gov/regulations/laws/rules/5000-5160.html>). Sub-recipients and developers must document compliance with this requirement for each homebuyer.

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

does include costs related to the sale of the property. As stated above, the costs of any holding- lawn maintenance, etc. may not be included in the purchase price.

Verification of income for the participant will be obtained through 3<sup>rd</sup> party independent- whenever possible. Participant supplied is also acceptable when 3<sup>rd</sup> party independent verification is not available. Acceptable types of verification include, but are not limited to:

- Statement from the employer
- Consecutive and original pay stubs
- Social Security Administration or other award letters
- Bank statements
- Pension benefit statements
- Temporary Assistance to Needy Families (TANF) award letter
- Affidavits
- Oral Statements documented in the file
- Other official and authentic documents from a federal, state, or local agency

### G. Affordability Period

Sub-recipients and developers must ensure continued affordability for NSP-assisted housing by the use of WVDO-approved enforceable recorded liens, written agreements and contracts that to the maximum extent practicable and longest feasible term that property assisted with NSP funds will remain affordable to individuals or families whose incomes do not exceed 120% of area median income or, for units originally assisted with funds that meet the 25% set-aside will remain affordable to individuals and families whose incomes do not exceed 50% AMI. Change of ownership or residents during the affordability period will subject the property to recapture of NSP subsidy, which will be Program Income to be used for NSP eligible uses.

The minimum affordability requirements for NSP are:

Homebuyer Projects	
NSP Subsidy per Unit	Affordability Period
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years

These are minimum requirements. The sub-recipient or developer may propose to implement more stringent affordability requirements than the minimum listed above to ensure that the properties remain affordable for as long as possible.

If the homebuyer subsidy is provided in whole or in part in the form of a “soft second” mortgage, the principal balance due the homebuyer’s note upon the sale of the home shall be reduced on an annual basis on the anniversary of the date of the note (“Period of Forgiveness”) as follows:

- If the original Principal amount of the Loan is less than \$15,000, the Principal balance shall be reduced at a rate of 20% per year for five (5) years, starting on the first (1<sup>st</sup>) anniversary of the date of this Note.

- If the original Principal amount of the Loan is \$15,000 - \$40,000, the Principal balance shall be reduced at a rate of 10% per year for ten (10) years, starting on the first (1<sup>st</sup>) anniversary of the date of this Note.
- If the original Principal amount of the Loan is more than \$40,000, the Principal balance shall be reduced at a rate of 6.67% per year for fifteen (15) years, starting on the first (1<sup>st</sup>) anniversary of the date of this Note.

## H. Recapture Provisions, Homebuyer Subsidies and Developer Subsidies

Homebuyers, as the recipient of the NSP Loan from the WVDO, must ensure continued affordability for NSP-assisted housing. The grantee enforces this requirement by an enforceable recorded Restrictive Covenants lien against the property for the maximum affordability period. If the homebuyer(s) sells, transfers, or ceases to occupy the property as his or her principal residence before the expiration of the affordability period, they will be required to repay to the WVDO an amount as calculated under the terms of their Promissory Note. The NSP assistance that is subject to recapture is based on the amount of NSP assistance that enabled the purchase of the property that has not been forgiven per the term of the homebuyer’s Promissory Note, subject to net proceeds. The net proceeds are the sales price minus loan repayments (other than NSP funds) and closing costs.

The following describes how to calculate developer and homebuyer subsidies for West Virginia NSP homeownership projects. Use this as a guide for completing Appendix 28, “Homebuyer Close Out Report.”

### Example of an NSP House Sold to a Low Income Buyer:

Assumptions	Amts in \$
Total Development Cost - NSP funds invested for acquisition, rehab/construction, soft costs, program delivery costs and related expenses	150,000
Market Value (upon rehab/construction completion)	80,000
Homebuyer’s Contribution (cash plus mortgage(s))	50,000
<b>Results</b>	
Development subsidy* (Total Development Cost less Market Value)	70,000
Homebuyer subsidy** (Market Value less Homebuyer’s Contribution)	30,000
Program Income - When house sells to homebuyer	50,000

#### \* Development Subsidy

- Equals Total Development Costs (hard, soft and program delivery cost) plus real estate commission fees less sale price.
 

+ Hard cost	+ Total Development Cost
+ Soft Cost	- <u>Market Value Upon Completion</u>
+ Program Delivery costs	Development Subsidy
<u>+Real Estate Commission Fees</u>	
Total Development Cost	
- Note that Homebuyer Education fees are not included in the calculation for determining Development Subsidy.
- Sub-recipient will obtain an after-construction/rehab appraisal. This appraised value will be the asking price for the home unless it is higher than the estimated total development cost of the home, in which case the price will be the same amount as the total development cost.

- When development costs exceed market value, the portion of NSP funds advanced to the project that is above the market value becomes a development subsidy to the project. Neither the sub-recipient nor the homebuyer is required to repay NSP funds used for an approved development subsidy.

**\*\* Homebuyer Subsidy**

- Equals assistance provided on behalf of the homebuyer to bridge the gap between the house's market value and the homebuyer's contribution. This may be provided in the form of one or more of the following: all or part of the closing costs, a contribution towards the down payment, a direct write-down of the market value in establishing the selling price, or the amount of funds owed by the homebuyer to the sub-recipient through a second mortgage on the property. Note that NSP funds may not be used to finance more than one half of the required down payment.
- The portion of this subsidy provided with NSP funds is subject to recapture if the homebuyer sells or otherwise disposes of the home during the NSP Affordability Period.
- The entire homebuyer's contribution is NSP program income to the sub-recipient when received at the sale's closing.
- Any portion of a recaptured homebuyer subsidy that was initially provided by NSP funds would be NSP program income to the sub-recipient.
- Any portion of the recaptured subsidy that was initially provided with other federal funds, such as HOME or CDBG, would be classified as program income to such other program(s), the amount of which would be determined on a pro rata basis, proportionate to such other funds contributed in relation to the NSP contribution.

When NSP homebuyers sell their house during the affordability period, then homebuyer subsidy will be recaptured, subject to available net proceeds and the Affordability Period schedule in Section G above. The following calculation is made to determine how much of the homebuyer subsidy is recaptured:

+Sales price for the house  
 -Mortgage principal repaid to lender  
 -Seller's closing costs  
-Seller's real estate sales commission  
 Seller's net proceeds from sale

-Cost of any capital improvements to the property paid by the homeowner  
-Down payment paid out of pocket when the house was initially purchased  
 Amount subject to recapture

If the homebuyer subsidy to be repaid is greater than the amount subject to recapture, then the seller only needs to repay the amount that is available.

If the homebuyer subsidy is provided using funds from another federal program in addition to NSP, and such other funds are designated as positioned either ahead or behind NSP, then the allocation of the funds recaptured between NSP and the other program(s) must reflect the relative position of each such program funds.