



**Department of
Development**

Office of Housing and Community Partnerships

Ohio Neighborhood Stabilization Program Guidelines

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Grant amendments

Obligation and disbursement of NSP funds

Income eligibility

Activity descriptions

Selection and acquisition of properties

Funding

Introduction

As a result of the enactment of House Resolution (HR) 3221 by Congress, the U.S. Department of Housing and Urban Development (HUD) awarded more than \$3.9 billion of funds to states and communities across the country to address the nation's abandoned and foreclosed homes crisis through the Neighborhood Stabilization Program (NSP). The Ohio Department of Development (ODOD) received an NSP allocation of more than \$116.8 million. Subsequently, ODOD allocated more than \$83.3 million of the Ohio NSP funds to 17 cities, 12 counties and 21 regions in Ohio. The funds were allocated based on foreclosures, subprime loans, defaults, delinquencies and vacancy rates, with the areas of greatest need receiving funding. The funds may be used to improve neighborhoods by purchasing and redeveloping abandoned and foreclosed properties, establishing land banks and demolishing blighted structures. For more information, visit:

- <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>; and
- <http://www.development.ohio.gov/cdd/ohcp/NeighborhoodStabilizationProgram.htm>.

Federal Regulations

Award recipients implementing the Ohio NSP must follow the Community Development Block Grant (CDBG) Program rules and regulations, unless stated otherwise in the ***October 6, 2008 Federal Register Notice*** regarding Title III of Division B of the Housing and Economic Recovery Act (HERA) of 2008, which is posted on <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspnotice.pdf>.

Administrative Funds

In addition to the Ohio NSP grant award, ODOD will allocate administrative funds to the Ohio NSP award recipients (see allocation award letter for specifics). CDBG Program rules apply to these funds.

Lead Entity Responsibility

Cooperative Agreement

In Ohio NSP Regions, ODOD will require Cooperative Agreements between the Lead Entity and the other eligible local government award recipients in the region. The Cooperative Agreement must be signed by the Chief Executive Officer of all participating local governments; and if an eligible local government award recipient in the region, other than the lead government, carries out an eligible Ohio NSP activity a subrecipient agreement must also be signed.

Subrecipient Agreement

ODOD will allow a subrecipient agreement between the Ohio NSP award recipient Fiscal Agent (Lead Entity) and administrators (e.g., other eligible Ohio NSP award recipient, nonprofit organizations, regional planning commissions, community action agencies, etc.) The entities entering into a subrecipient agreement are required to execute a written subrecipient agreement containing the minimum requirements found at CFR 570.503. However, the Lead Entity must maintain responsibility for complying with federal environmental review regulations (see "Environmental Review" for more information). A sample subrecipient agreement will be provided. ODOD **will not** allow a subrecipient to enter into another subrecipient agreement with any other entity to administer any portion of the Ohio NSP.

Program Administration

Program Period

As required by HR 3221, the NSP funds must be committed by ODOD and obligated within 18 months of the issuance of a grant agreement by HUD. ODOD anticipates receiving the NSP grant agreement from HUD in January 2009. As a result, ODOD expects to review and approve the Ohio NSP applications on or before April 1, 2009, with the grant period beginning on April 1, 2009, the work completion period ending on March 31, 2013, the drawdown deadline of April 30, 2013 and the status report deadline of May 31, 2013.

Grant Amendments

For the Ohio NSP, an amendment will only be required if the award recipient proposes to add a target area or activity, or substantially change the amount of funds allocated to an activity. Award recipients will not be required to submit an amendment request to modify the outcome or per unit cost projections as included in the application (e.g., number of homes to be rehabilitated), though they will be expected to stay within their set limits of assistance. A request to exceed the limit of assistance may be requested from OHCP on a case-by-case basis.

Grant Extensions

Due to the four-year period imposed by HR 3221, ODOD will not approve any grant extensions and will be reviewing drawdown and expenditures closely to ensure that the Ohio NSP funds will be expended within the grant period. In addition, ODOD reserves the right to recapture and reallocate Ohio NSP funds that are not used in a timely or appropriate manner.

Obligation and Disbursement of NSP Funds

Ohio NSP award recipients and subrecipients must obligate all NSP funds by June 30, 2010. To do so, Ohio NSP award recipients must submit completed NSP Set-up and Cost Adjustment Forms (up to three sites per sheet) to ODOD on or before June 30, 2010 for every site address that will be acquired, rehabilitated, demolished, land banked, redeveloped (new construction); and/or for any household provided homeowner assistance with NSP funds (check all that apply). A copy of the submitted form must be retained by the NSP award recipient and/or subrecipient. NOTE: If you obligate funds for a particular site address, by submitting one of the forms listed above, but later want to obligate those funds to a different site address, please clearly note your intentions and both site addresses on the form.

At the end of the sixth month of the grant period (on or about September 30, 2009) OHCP will review the Ohio NSP award obligations. At that time, any award recipient that has not obligated at least 25 percent of the Ohio NSP award amount may be contacted. At the end of the 12th month of the grant period (on or about March 31, 2010), Office of Housing and Community Partnerships (OHCP) again will review the Ohio NSP obligations. At that time, any award recipient that has not obligated at least 75 percent of the Ohio NSP award amount will be contacted and, if necessary, funds may be recaptured and reallocated. By the end of the 13th month, award recipients are expected to have 80 percent of the Ohio NSP award obligated, by the end of the 14th month to have 90 percent obligated and by the end of the 15th month have 100 percent of the funds obligated. In addition, OHCP will monitor to ensure that the Ohio NSP funds are expended during the four-year grant period.

Additionally, Ohio NSP award recipients must submit one of the above listed forms to ODOD prior to submitting a Request for Payment and Status of Funds Report (DS5) to request NSP funds for a particular site(s). The DS5 must be signed by two designated officials authorized by the Lead Entity to sign a DS5 on the Authorized Signature Card for Request for Payments and Status of Funds Report (DS2). These signatures must be identical to those on the current DS2. The original executed DS5 must be submitted to the Ohio Department of Development, Office of Housing and Community Partnerships, 77 South High Street, 24th Floor, P.O. Box 1001, Columbus, Ohio 43216-1001; and a copy of the submitted document must be retained by the award recipient. An executed DS5 should be submitted each time the Fiscal Agent (Lead Entity) determines that funds are required to meet an anticipated cash need for the program, but, generally,

not more frequently than weekly or for requests totaling less than \$5,000. (NOTE: Dollar amounts must be rounded to the nearest dollar.) OHCP will not process DS5s for activities without an approved environmental review clearance. In addition, incomplete DS5s will be voided and returned to the award recipient.

The NSP Setup and Cost Adjustment Form, the DS5 and the DS2 will be available on <http://www.development.ohio.gov/cdd/ohcp/OHCPForms.htm> under "Fiscal."

Questions regarding the obligation and disbursement of NSP funds should be directed to Lori Jordan, of OHCP, by telephone at (614) 466-2285 or by e-mail at Lori.Jordan@development.ohio.gov.

Reporting

Ohio NSP award recipients must provide quarterly reports to ODOD regarding program accomplishments and expenditures. Reporting will be required by site address. ODOD will provide the appropriate reporting forms to award recipients.

Program Income

The U.S. Department of Housing and Urban Development recently announced that the NSP program income requirements as previously announced are expected to be modified. Therefore, ODOD will provide Ohio NSP award recipients with program income guidelines at a later date. However, Ohio NSP award recipients will be required to expend Ohio NSP program income dollars as quickly as possible.

Income Eligibility

The NSP includes two low and moderate income requirements, which are outlined in the ***October 6, 2008 Federal Register Notice regarding the HERA of 2008***. The HERA **does not permit** using the national objectives of Prevention or elimination of Slum and Blight, or addressing Urgent need using NSP funds. All funds, excluding administration, must meet the LMMI national objective.

An NSP activity meets the LMMI National Objective if it:

- Provides/improves housing that will be occupied by a household (owner or renter) at or below 120% of AMI (LMMH)
- Serves an area in which 51% of residents have income at or below 120% of AMI (LMMI)
- For Land Banking, the subsequent reuse meets LMMA requirements

Determining/Documenting National Objective Compliance

Any of the three definitions of Income definition found at 24 CFR 570.208 may be selected (except when using Area Benefit), but the selected definition must be used consistently throughout the program. For area benefit HUD census tract data is required, or income surveys using sound methodology with appropriate LMMI levels.

The NSP regulation does not dictate third party verification of income, thus the use of verifiable self-certification of income is permitted. However source documentation to ensure eligibility (copies of paystubs, tax returns, bank statements) is required. At a minimum, the HUD Technical Guide requirements for determining income eligibility must be met. The HUD Technical Guide for Determining Income may be found at the following link: <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>

Activity Descriptions

Activity Name: Residential Development

This activity will provide homeownership and rental opportunities to households with incomes at or below 120 percent of the area median income (also see the discussion of needs in 5 below); and the improvement and reuse of vacant and abandoned properties. This activity may include:

- acquisition/rehabilitation/rental or resale, where the property is purchased by the program administrator or grantee (e.g., a nonprofit organization or other entity administering the grant for the community), rehabilitated to meet the program standards and resold or rented to an income eligible household;
- direct purchase by an income eligible household, with NSP assistance (following an inspection of the property), which is then rehabilitated, as necessary, to meet the appropriate rehabilitation standards; or
- demolition of a blighted house, with a new house built on the site and sold or rented to an income qualified household.

In every case, a vacant and abandoned property is purchased, and the final outcome is homeownership or rental by an income eligible household. Each household benefitting from homeownership through this activity will be required to attend eight hours of homebuyer education from a HUD approved housing counseling agency. A list of HUD approved housing counseling agencies may be found at the following link: <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=OH>

National Objective: Direct Benefit to LMMI (low, moderate, and middle income) persons. For homeownership, the purchase price by the owner/occupant must not exceed the costs incurred by the grantee or subrecipient to purchase and develop the unit.

For Homeownership Projects:

Finance Mechanisms for homeownership: The finance mechanism for any direct assistance (down-payment assistance, affordability subsidy, etc.) must be in the form of a 0% interest, deferred loan, which will be completely forgiven over the affordability period. Development subsidies are also eligible costs, but may not be charged to the homebuyer. First mortgages must be of a fixed interest rate and not exceed a 30 year term.

Affordability: This covers two aspects of the project requirements:

- For homeownership activities, housing cost burden, which is the homebuyers costs for principal, interest, taxes and insurance (PITI), shall not exceed 30% of the household's gross monthly income.
- Long-term affordability requirements of the HOME Investment Partnerships Program requirements found at 24 CFR 92.254 will apply. The long-term affordability period is based on the dollar amount of final direct subsidy (i.e., the amount of the NSP assistance that enabled the homebuyer to purchase the dwelling unit) in the project and specific regulations for addressing the issues of the sale of a property prior to the end of the long-term affordability period, known as recapture apply. Resale provisions will not be an allowed affordability mechanism under the State of Ohio NSP, with the exception of Habitat for Humanity projects.

Recapture (sometimes called repayment) is a mechanism to recover all or a portion of the direct assistance if the buyer sells the house during the period of long-term affordability. Direct assistance is determined by the amount of direct assistance (downpayment assistance, closing cost assistance, mortgage financing, or interest rate buy down, etc.) that enabled the buyer to purchase the unit. Under this mechanism the homeowner is at liberty to sell the unit to any buyer, at any price the market will bear. Recapture involves the repayment of all or a portion of the assistance provided and includes a formula for shared net proceeds.

The long-term affordability period is based on the amount of NSP assistance.

Less than \$15,000	5 years affordability period
\$15,000 to \$40,000	10 years affordability period
More than \$40,000	15 years affordability period

The long-term affordability regulation is enforced through the use of a mortgage lien recorded on the property for the length of that period.

For Rental Projects:

Affordable rents for rental projects: Rental projects completed with NSP funds must be rented to households with incomes at or below 120% of the area median income adjusted for family size and county. The rents must be limited to not exceed the HOME rents for the period of affordability. Rents and incomes must be reverified annually during the period of affordability.

Affordability:

- Long-term affordability requirements of the HOME Investment Partnerships Program, found at 24 CFR 92.252 (a), (c), (e) and (f), will apply. The long-term affordability period is based on the NSP dollar amount per unit.

The long-term affordability period is based on the amount of NSP assistance per unit.

Less than \$15,000	5 years affordability period
\$15,000 to \$40,000	10 years affordability period
More than \$40,000	15 years affordability period
For Rental New Construction Projects:	20 year affordability period

The long-term affordability regulation is enforced through the use of a mortgage lien, deed restrictions, covenants running with the land, or other mechanisms recorded on the property for the length of that period.

Specific requirements for the residential development activity:

- Documentation must be maintained on the purchase and sale amounts of each property and the sources and uses of funds for each activity.
- Appraisals are required on all acquisitions using NSP funds, including the purchase of foreclosed/abandoned homes, residential properties and voluntary acquisitions.
- Foreclosed homes shall be purchased at a discount of at least 15% from the current market appraised value. The appraisal will be used to determine the purchase discount.
- The amount of assistance provided must be reasonable, and justifiable by the grantee. Grantees are required to be efficient in the use of NSP funds in order to adequately assist those most in need.
- Ohio NSP award recipients may only acquire property through voluntary acquisition. A willing sale form must be signed to document that the use of eminent domain was not involved.
- All homes that are sold or rented must meet the Residential Rehabilitation Standards, or other standards as outlined in our Consolidated Plan amendment and the application packet. OHCP also recommends that when projects are constructed or rehabilitated that effort be made to make the units more accessible and energy efficient, and that green building practices be used, where possible.
- On a case-by-case basis, with OHCP approval, NSP funds may be used for the construction of a new facility or rehabilitation of a vacant structure into emergency shelters for the homeless, transitional housing for the homeless, or domestic violence shelters. Emergency shelters and/or transitional housing must meet the OHCP Homeless Assistance Grant Program requirements. Domestic Violence shelters must meet Ohio Revised Code (ORC) Section 3113 requirements. OHCP will also need to see a justification of need for the facility and an explanation for how the facility will cover operating expenses on an on-going basis. Please contact Michael Hiler or Doug Harsany for details.

Activity Name: Demolition of Blighted Structures/Land Banking

The demolition of blighted structures and land banking will result in a temporary outcome of property which is cleared and/or acquired and held for future reuse. Subsequent redevelopment of the properties will be subject to the requirements outlined in the NSP regulations. However, redevelopment using NSP funds will be limited to residential uses as outlined in the State of Ohio Consolidated Plan amendment and as further described in this document under the selection and acquisition of properties.

When demolishing blighted structures, OHCP recommends considering the efficient (green) use of resources, including the possibility of deconstruction. When using deconstruction techniques, the value of reusing resources must be weighed against the added costs and concerns about environmental hazards such as lead-based paint that may be present on the building components.

For the purposes of the NSP activity outcomes, Land/Banking is considered the holding of any property beyond the grant period, though legal issues associated with the acquisition, holding, and disposition of property should be carefully considered by the grantee. If property is held beyond the end of the grant period, then that property must be redeveloped into a use meeting a national objective as described in the federal regulations within 10 years of the purchase of the property. Remember that there can only be one outcome for a particular project. The outcome is either residential development or land banking, but never both. If it is redeveloped during the grant period into a residential use, then it is residential development. If it is not, then it must meet the requirements of the demolition/land banking activity, and be counted as an outcome accordingly.

National Objective: Demolition of Blighted structures and/or land banking, with redevelopment of the property in order to provide a direct LMMI benefit, an LMMI area benefit, or an LMMI limited clientele benefit within 10 years of purchase of the property. The demolition of blighted structures (where no acquisition of property occurs) is also eligible with no required reuse in areas with at least a 51% concentration of LMMI households.

Specific requirements for this activity:

- The demolition of structures which are not blighted are prohibited.
- Documentation must be maintained on the purchase and sale amounts of each property and the sources and uses of funds for each activity.
- Appraisals are required on all acquisitions using NSP funds, and must be completed within 60 days prior to an offer made on the property. This requirement applies to the purchase of foreclosed/abandoned homes, residential properties and voluntary acquisitions.
- Foreclosed homes shall be purchased at a discount of at least 15% from the current market appraised value. The appraisal will be used to determine the purchase discount.
- The amount of assistance provided must be reasonable, and justifiable by the grantee. Grantees are required to be efficient in the use of NSP funds in order to adequately assist those most in need.
- Ohio NSP award recipients may only acquire property through voluntary acquisition. A willing sale form must be signed to document that the use of eminent domain was not involved.

Activity Delivery Cost (Soft Costs)

Activity delivery costs are eligible as part of each completed project or activity. Examples are the costs for preparation of rehabilitation work specifications, loan processing, appraisals, architectural or engineering services and property inspections, title search, environmental assessments, labor standards compliance, attending pre-construction conferences, attorney fees for preparing or reviewing contract documents or property acquisition activities. To be eligible activity delivery costs, the activity being "delivered" must be NSP eligible.

Activity Name: Administration

Activity description: Administrative funds related to carrying out the NSP will be available for general administrative and technical assistance costs. Grantees are provided a specific dollar amount of administrative funds, and must not spend anything other than the exact allocated amount on administrative costs. Administrative costs are reasonable costs of local governments to meet the requirements of NSP, including but not limited to general management and oversight, providing public information, technical support services, and assuring fair housing activities.

Administrative costs are not directly related to a specific activity. Such costs include reasonable costs of program management, coordination, monitoring and evaluation; providing information to citizens and local officials, preparing budgets, preparing performance reports, and resolving audit and monitoring findings. It also includes the costs of projects that fail to meet a National Objective, such as inspections on units that are determined unfeasible and not completed.

All sub-recipient administrative funds must meet the same requirements and are included in the total administrative award.

- NSP reference: NSP Federal Register dated Monday October 6, 2008 Section II, Part H 4.

Selection and Acquisition of Properties

The acquisition of properties is not necessary in every instance that NSP funds are used. For example, it is possible to demolish a house using NSP funds, without actually taking possession of the property. This could be done through a condemnation of a blighted property (make sure that you seek advice from your legal counsel before undertaking this type of action). In instances where the acquisition of property is necessary, there are a number of factors to be considered. Following are a few requirements regarding the use of NSP funds:

- There are five NSP eligible uses listed by HUD in the *October 6, 2008 Federal Register Notice regarding the HERA of 2008*: (A) establish finance mechanisms or purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers; (B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties; (C) establish land banks for homes that have been foreclosed upon; (D) demolish blighted structures; and (E) redevelop demolished or vacant properties. A determination of which of the five activities the activity in question falls under will be necessary in deciding what conditions the property must meet. For example, if it is your intent to purchase and rehabilitate a home, then the definition for this use falls under (B). Because use (B) requires the property to be abandoned or foreclosed upon, it will be necessary to understand the definition for these terms as provided in the NSP Notice on page 58331. To understand the term blighted, it is necessary to look at the definition in the NSP Notice page 58331 and the State of Ohio amendment to the Consolidated Plan regarding NSP.
- Because the term "vacant" is not defined in the NSP Notice, the State of Ohio is using answers provided in HUD's online *NSP Frequently Asked Questions* as a guide in providing a definition of vacant. The term vacant, as defined for the use of any State of Ohio NSP funds, means that the property is currently unoccupied, but was previously used for primarily residential purposes (see the definition of primarily residential below) within the past 60 years, and that this use can be documented.
- The State of Ohio is requiring the property in uses (D) and (E) above to be primarily residential or to previously have been primarily residential (within the past 60 years, as established by property records). Primarily, as used here means that at least 75% of the specific property to be addressed by the NSP or at least 75% of the property being addressed by NSP within close proximity to the property in question (e.g. on the same block) was residential within the past 60 years, and will be redeveloped as residential if NSP funds are used for redevelopment. Residential property, as defined by the State of Ohio for the purposes of this program, includes houses, apartment buildings and complexes, group homes, transitional housing, homeless shelters, and domestic violence shelters. It does not include hotels, public facilities such as schools or hospitals, commercial buildings, industrial structures, agricultural

facilities, or previously unused “green field” properties. In addition to the residential use described above, the property may have other, ancillary, non-residential uses.

- For Land Banking, the property must have a residential structure on it at the time of acquisition.
- Also see the notes under the compliance section on the acquisition of property.

Additionally, following are some points that should be considered when acquiring property:

- Who will be the interim owner of the property? Units of local government that are not interested in owning property may choose to utilize a non-profit as the interim owner that purchases, holds, makes improvements to, and/or disposes of the property.
- What conflicts of interests may exist where the owners of the property are also the administrators of the program?
- What type of a strategic framework will the community use to determine which properties to purchase? Thought needs to be given to the impact a particular property or group of properties has on the community, and the opportunity to create a discernable change in a neighborhood by the targeting of resources to areas that are most in need.
- What will be the costs of acquiring, holding, and/or making improvements to the property? There may be costs that are not immediately discernable. There may be liens on the property that need to be considered and cleared. Also, a careful analysis of the condition of the structure(s) on the property, and the existing infrastructure (water, sewer, gas lines, sidewalks, driveways, fences, trees, etc.) needs to be done. Thought should also be given to holding costs such as boarding up, dealing with potential vandalism and/or fires, mowing grass, trimming trees, insurance, taxes, etc.

Contractor Selection and Construction Management

I. Operating the program in a cost effective manner

A. Setting limits of assistance:

Grantees should establish limits for the amount of financial assistance available for each project type (new construction of units, rehabilitation of units, demolition of units, etc.). Grantees shall not exceed the per unit/case limits of assistance as outlined in their NSP Application without prior written approval from OHCP.

B. Obtaining adequate contractors:

The grantee will need to develop plans for ensuring that adequate contractors are available in the program to ensure adequate competition. Grantees must also have procedures for recruiting MBE/WBE and Section 3-owned businesses into the program.

C. Bidding requirements:

Grantees shall ensure that an adequate number of bids from qualified contractors are solicited and received for each construction/demolition project. All specifications must be organized and bid in a line item format. Lump sum bids that do not itemize costs consistent with the specification format are not acceptable. Any bid accepted must not exceed the staff in-house cost estimate by more than 10%. Note that the 10% threshold cannot be achieved by negotiating with the contractor or by removing items from the bid.

OHCP expects that at least three bids should be received for each rehabilitation project. To accomplish this, OHCP recommends that bids should be solicited from more than three contractors. While OHCP recognizes that it is not always possible to obtain at least three bids, OHCP expects that this should not become a common occurrence and that actions to increase the number of future bidders will be taken. When fewer than three bids are received, the following policies apply:

1. Grantees must document that a good faith effort was made to solicit as many qualified contractors as possible. If adequate solicitation has occurred but only two bids are received and

if at least one of the bids does not exceed the staff cost estimate by more than 10%, then that bid may be accepted.

2. If only one bid is received, the acceptance of that single bid is permitted, if it has been determined that the solicitation was adequate, the bid is reasonable and that bid is not more than 10% over the staff cost estimate.
3. A project must be re-bid if an adequate number of bids are not received and it is determined that the solicitation was also inadequate, or if all bids are unresponsive or otherwise unacceptable, or if all bids are more than 10% over the staff cost estimate.

The responsible contractor submitting the lowest responsive bid must receive the award. To determine if a contractor is responsible, grantees must decide if the contractor is qualified and able to proceed and perform the work as required. In other words, the grantee must be able to document that the contractor meets the financial, professional, insurance coverage and other performance requirements necessary to be an approved contractor. (Note: basic contractor responsibility must be determined before the bids are solicited). To determine if a bid is responsive, grantees must decide if the bid meets all of the submission requirements. For example, the bid must be submitted on time to the correct location, use the proper forms and attachments, and be completed, signed and priced as required.

In cases where the lowest responsive bid is more than 10% under the staff cost estimate, an analysis shall be made of the bid. The analysis should include an item-by-item comparison with the staff cost estimate in order to determine if the bid is competent and reasonable. An unreasonably low bid might indicate an inexperienced bidder who might not be able to complete the job. Such situations should be avoided.

In cases where it is determined that the lowest bidder is not responsive or responsible, the following actions and documentation must be maintained:

1. The next lowest responsible and responsive bidder is chosen and a valid reason for disqualifying the lowest bidder is cited and documented (e.g. the bid is unrealistic, there is reason to believe the contractor will not be able to complete the work in a satisfactory or timely manner, etc.); and
2. The reason(s) why the contract was awarded to a contractor other than the lowest bidder shall be satisfactorily documented in the project case file.

D. Procurement of Private Contractors:

Grantees are required to develop and adopt procurement policies and procedures consistent with federal and state regulations, and OHCP policies. This section covers the requirements for procuring private contractors for rehabilitation and repair projects. The procurement of contractors for rehabilitation and repair projects must follow one of three types of procedures, based upon whether the procuring party selecting the contractor is a local government, a non-profit, or a private property owner.

1. Procedures when the grantee is the procuring party

In the case where the local government grantee or sub-recipient procures the rehabilitation contractor, the procedures set forth in 24 CFR Part 85.36* would apply. All the procurement procedures and requirements required of competitive publicly bid contracts would also apply.

The requirements of public contracting apply whenever the grantee conducts the procurement and/or signs the contract for the work. Regarding public contracts, a number of documents and certifications must be signed and submitted by firms that enter into a contract with a local unit of government. Examples of these include "Section 3" certifications, the Copeland Anti-Kickback Clause, the Certification of Nonsegregated Facilities, the Property Tax Certification, and Non-Collusion Affidavits.

2. Procedures when the non-profit subrecipient is the procuring party (if the non-profit is a contracted administrator rather than a sub grantee, then they must follow the procedures required for the entity to which they are contracted.

In the case where the non-profit subrecipient procures the rehabilitation contractor, the procedures set forth in 24 CFR Part 84 would apply.

3. Procedures when a private property owner is the procuring party (“Streamlined Procurement”)

The provision at 24 CFR Part 85.36 does not apply to a rehabilitation contract which is in fact procured and executed by a private property owner who is the beneficiary of the assistance from the grantee or sub grantee. However, the procedures used should embrace sound principals of financial and project management to protect the public interest and ensure that the project is of high quality and completed in a timely manner.

E. Control of costs:

Any changes to the agreed upon work must be documented by a change order that indicates the change in work, change in price, and/or change in work completion dates. All parties must sign and date the change order. All change orders must be attached to the original contract.

Change orders should be kept to a minimum and should only be for items that could not be reasonably known when the work specification was prepared (e.g. hidden damage that is uncovered only during the construction process).

II. Ensuring the Quality of Work

A. Scope of work and work specifications

Work Write-Ups. Clearly written, well organized work write-ups must be prepared which precisely define the construction work to be undertaken to correct deficiencies and to meet the program’s prescribed standards.

B. Following the appropriate standards:

Ohio NSP award recipients must comply with ODOD Housing Handbook Part II – 2008 Residential Rehabilitation Standards (RRS), which is posted on

<http://www.development.ohio.gov/cdd/ohcp/publications.htm>.

In addition, for housing rehabilitation of pre-1978 structures, Ohio NSP award recipients must comply with applicable state and federal laws, rules and regulations governing the testing and treatment of lead-based paint, including disclosures to residents/buyers; and the ODOD lead-based paint policies included in the FY 2008 Ohio Consolidated Plan, and in Chapter 7 of the RRS which are also posted on

<http://www.development.ohio.gov/cdd/ohcp/publications.htm>.

Exceptions:

1. If local housing codes are more stringent than the RRS, Ohio NSP award recipients must also comply with the local housing code standard.
2. If the Ohio NSP award recipient is currently a HUD Community Development Block Grant (CDBG) Program Entitlement Community and/or a HOME Program Participating Jurisdiction and is administering a housing rehabilitation program funded through the CDBG/HOME Programs, the Ohio NSP award recipient may use either the locally adopted standards or the RRS when implementing the Ohio NSP locally. However, if the local standards will be used to implement the Ohio NSP, the Ohio NSP award recipient must submit a copy of the standards to ODOD (could be an electronic copy or a hard copy).

ODOD will encourage energy efficiency standards, such as the Leadership in Energy and Environmental Design Green Building Rating System or the Enterprise Green Communities Initiative.

C. Lead-based paint requirements:

Grantees must follow all applicable state and local regulations, laws and policies, including the requirements of the current HUD regulations in effect regarding Lead-Based Paint (LBP) (24 CFR Part 35). OHCP strongly encourages grantees to read the HUD LBP regulations (24 CFR Part 35 issued September 15, 1999), the state of Ohio LBP regulations (OAC Chapters 3701-32 and 3701-82 adopted April, 2004), and the other technical and administrative guides on LBP distributed by HUD, ODOD and Ohio Department of Health prior to designing and implementing a housing program. Grantees must also follow the guidance outlined in the 2008 version of the Residential Rehabilitation Standards (RRS).

D. Inspections and payment to contractors:

For all rehabilitation projects a thorough initial inspection of the project will be necessary to determine the scope of work that will need to be done and to develop an in-house cost estimate. An in-house cost estimate shall be developed by a qualified person(s) for all construction/demolition projects prior to putting the projects out to bid. The cost estimate shall be based on objective and factual sources such as data gathered from prior contract cost records, professional cost estimating manuals and/or price quotes from material suppliers. A copy of the in-house estimate shall be kept in the project case file.

All construction projects shall have interim inspections as necessary to ensure the smooth and timely flow of work and the quality of the work performed. An inspection of work shall be done prior to each payment to a contractor. Payments for rehabilitation work may only be made for specific work items, per the bid specification, that have been satisfactorily completed and inspected by the rehabilitation specialist and in accordance with the terms outlined in the contract. Funds shall not be released to a contractor until the contractor has provided a notarized release of liens. Specific work items shall be fully completed prior to payment. Payments for partially completed items are prohibited.

All construction/demolition projects shall have a final inspection. All punch list items shall be completed and inspected and lead-based paint clearance shall be obtained prior to final payment.

E. The screening of contractors:

The grantee must identify and document the requirements that local contractors must meet in order to participate in the program. The requirements should be rigorous enough to screen out unqualified or unstable contractors but not so stringent as to prevent the participation of an adequate number of competent contractors. The following requirements apply to the screening of contractors conducting work through the State's NSP.

1. Liability insurance:

Private contractors participating in a local rehabilitation program must have adequate liability and property damage insurance.

2. Workers compensation:

Private contractors with employees participating in a local rehabilitation program must, at a minimum, be paying into the Ohio's Worker's Compensation Program. Private contractors operating a sole proprietorship and who have no employees are exempt from this requirement. However, they must have proof of adequate private medical insurance coverage.

3. Check the Federal Debarred contractor list. Note that contractors and sub-contractors must not be debarred from working on federally assisted projects. Checks may be made at <http://epls.arnet.gov>.

4. The grantee must identify and document policies and procedures for barring poor performing contractors from continuing to participate in the program. OHCP expects grantees to establish and maintain a system for evaluating contractor performance.

5. The use of private owner-contractors:

OHCP does not recommend the use of private owner/contractors. If a private owner/contractor completes work on a project, he/she must be skilled in the trade(s) for the particular job completed, and must only be reimbursed for materials (no labor) following the completion of work and the submission of receipts.

III. Protecting the interests of all parties

A. Contracts:

Construction, rehabilitation or demolition of a property shall not take place until a contract has been executed between the appropriate parties and the "right of rescission" date has expired. The contract must at a minimum:

1. Identify a construction start and completion date;
2. Identify the total amount of money to be paid for the work;
3. Reference the responsibilities, terms and conditions for all parties;
4. Define daily property maintenance and site clean up provisions;
5. Provide any requirements and limitations regarding sub-contractors;
6. Reference the work specifications;
7. Be signed and dated by and provided to all affected parties;
8. Outline procedures for inspections, payments, changes in the scope or cost of work, resolving disputes and termination of the contract;
9. Contain all appropriate federal provisions, including, but not limited to equal opportunity, federal labor standards, etc.;
10. Include a copy of the final approved line-item bid as an attachment;
11. Detail the requirements regarding the release of liens;
12. Describe all applicable warranties; and
13. Provide procedures for the settling of disputes.

B. All rehabilitation work must carry at least a one-year warranty on materials and labor. In addition, the contractor must provide the owner with the manufacturer's warranties on all installed materials that carry a warranty.

C. Grantees must establish policies and procedures for addressing complaints and/or disputes.

Compliance Areas

The Housing and Economic Recovery Act, 2008 (HERA) authorizes the HUD Secretary to specify alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974, as amended, (the HCD Act) except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint).

HUD and the State do not have authority to provide alternative requirements for the National Affordable Housing Act (NAHA) or for the Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970 (URA). Unless the regulations describe how HERA has superseded one of their provisions, these statutes will apply as in the CDBG program.

Acquisition and Relocation

NSP - Acquisition and Relocation Resources are located on the web at

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

Ohio NSP award recipients may only acquire property through voluntary acquisition and may acquire only vacant properties that have been abandoned or foreclosed. Relocation is not an eligible activity in Ohio's NSP Program.

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

A property "has been foreclosed upon" at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law. To be eligible, foreclosed property must be vacant. Property occupied by tenants are generally not eligible unless the tenants were issued Move-In Notice (GUIDEFORM NOTICE TO PROSPECTIVE TENANT) prior to occupancy which states they will be displaced by the future acquisition of the property with federal funds. (see HUD Handbook 1378 – Appendix 29).

Generally the real property acquisition regulation at 49 CFR Part 24, Uniform Relocation and Acquisition Act (URA) apply to the NSP program. Regulations for Voluntary Acquisition are located in Title 49 of the Code of Federal Regulations Part 24.101 (b) (1)-(5). [HUD Handbook 1378](#) provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects. The HUD handbook can be found at <http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>.

The appendices of HUD Handbook 1378 provide sample forms to implement the voluntary acquisition process.

However, the NSP Program requires that any acquisition of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property and that such discount shall ensure that purchasers are paying below-market value for the home or property. An appraisal is required for the purposes of determining the statutory purchase discount.

The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by a grantee, subrecipient, developer, or individual homebuyer. (See Appendix 19 of HUD Handbook 1378 for a URA Guide for Preparing an Appraisal Scope of Work and Appendix 20 for a sample Agreement for Appraisal Services in the HUD Handbook 1378.) NSP grantees must have an appraisal done on each separate property purchased with NSP funds.

Persons performing appraisals of NSP funded acquisitions of “foreclosed upon” properties must meet the appraisal qualifications of 49 CFR 24.103(d). All persons performing such valuations must be qualified to perform an appraisal, even if they are on staff. The regulations at 49 CFR 24.103(d)(2) only require contract “fee” appraisers to be state licensed or certified. Staff appraisers are not required to possess such qualifications; however, they must be qualified. In most circumstances, staff appraisers possess a state appraisal license or certification, even though they are not required to do so by regulation.

One-for-One Replacement

State NSP grantee will not be required to meet the requirements to provide one-for-one replacement of low and moderate-income dwelling units demolished or converted in connection with activities assisted with NSP funds (see Section 104(d) of the Housing and Community Development Act and 24 CFR Part 42.375).

Civil Rights and Fair Housing

An overview of the fair housing policies that apply to NSP is located at

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/summittheofacts.doc>.

Every award recipient must certify the act of affirmatively further fair housing in the NSP grant agreement. Therefore, award recipients must carry out the normal responsibilities to fulfill the certification to affirmatively further fair housing. Grantees should take the opportunity to review the local analysis of impediments to fair housing choice to determine whether an update is necessary at this time because of current market conditions or other factors.

When developing a grant program, grantees should evaluate their program design to ensure opportunities are available to persons and its policies are not discriminatory. Grantees must design programs and outcomes to be in compliance with accessibility requirements. (See The Fair Housing Act, The Rehabilitation Act of 1973 and the Americans with Disabilities Act.)

Procurement of Administrative Services

Procurement of administrative services can be accomplished by contracting with a provider or by entering into a subrecipient agreement. Procurement regulations are located in 24 CFR 85.36. Additional guidance is provided in HUD Notice 96-5; Procurement of Consulting Services by Community Development Block Grant (CDBG) Recipients, HOME Participating Jurisdictions, and Subrecipients. The Notice is located on HUD’s website at:

<http://www.hud.gov/offices/adm/hudclips/notices/cpd/96-5CPDN.doc>.

Additional guidance on subrecipient management is found in HUD’s guidebook titled “Managing CDBG A Guidebook for Grantees on Subrecipient Oversight” and is located at:

<http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/ManagingCDBG.pdf>

If a grantee has an existing, active contract for administrative services, it was competitively procured in compliance with 24 CFR 85.36, it contains the federal provisions, the contractor has satisfactory performance, and possesses the ability to perform additional work, then the grantee may amend the contract to include administrative services for the NSP program.

Federal Labor Standards and Related Acts

Federal Davis-Bacon Wage Rates apply to laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with NSP funds in contracts of \$2,000 or more, except the rehabilitation of residential property designed for residential use by fewer than 8 families.

Demolition work funded by NSP, which is not related to future construction, is not subject to the labor standards requirement. For example, the demolition of a building because the structure is no longer needed would not in itself be a covered activity. However, where an existing building is being demolished as a phase of a construction project, both the demolition and the construction are covered.

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 Nonconstruction Expenses (furniture, business licenses, etc.)		No, if obtained under a separate contract.
Residential Downpayment 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 more, a 4-part test applies.

Environmental Review

Background

The environmental review process for NSP projects follows the existing guidance outlined at 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

NOTE: The Lead Entities, of the 21 Ohio NSP designated regions, assumes the role of Responsible Entity for the purposes of environmental review for all NSP activities in the region.

Structure of environmental review for NSP

Since grantees will not be able to immediately identify specific project sites at the beginning of the grant period, a *tiered environmental review* (24 CFR 58.15) will be the most effective way to organize environmental compliance.

A tiered environmental review consists of two distinct steps: a general *Tier 1* review, and a site-specific *Tier 2* review. The Tier 1 environmental review involves a broad analysis of relevant, general environmental conditions in an NSP Region. The Tier 1 review also provides structure for the Tier 2 review by establishing procedures for site-specific environmental compliance. The Tier 2 review focuses on site-specific environmental conditions that cannot be adequately evaluated at the Tier 1 level.

Please see “Environmental Review Information Sheet: Tiered Reviews,” which is posted on <http://www.development.ohio.gov/cdd/ohcp/OHCPForms.htm> under “Environmental Review Technical Assistance” for more information about the use of Tiering for NSP environmental compliance.

A note on Continued Relevance

Continued Relevance is an environmental finding that references a previously conducted environmental review. While certain NSP projects will mirror previously reviewed activities in specific target areas, the Lead Entity/Region structure of the program renders previous Tier 1 reviews unusable. In this way, for the purposes of the NSP, a Lead Entity must construct new Tier 1 environmental review records that reflect the regional focus of the program. Lead Entities will *not* be able to cite Continued Relevance to obtain a Release of Funds for NSP-funded activities.

Entitlement Communities Receiving a Direct Allocation and an Allocation from the State

Entitlement communities receiving a direct NSP allocation and an allocation from the State must submit two separate Requests for Release of Funds: one to HUD and the other to the State. Recipients must follow this procedure even if funds from both sources are applied to the same activity.

Coordination with the Ohio Historic Preservation Office

Most NSP-eligible activities will require some form of coordination with the Ohio Historic Preservation Office (OHPO) to comply with Section 106 of the National Historic Preservation Act. Lead Entities may facilitate compliance, however, by entering into a Coordination Agreement with OHPO. The Coordination Agreement describes types of activities that OHPO has determined are unlikely to affect historic properties, and therefore do not require individual review. Instead, the Lead Entity simply submits a list of all activities exempted from individual review based on the terms of the coordination agreement to OHPO at the end of the calendar year. Lead Entities with existing Coordination Agreements may apply the terms of these Agreements to the NSP. Lead Entities without existing Coordination Agreements should contact Bill Palmer at OHPO (614.298.2000) for more information.