

NSP Policy Alert!

Guidance on Amendment Procedures – Updated April 3, 2014

Note: *The Guidance on Amendment Procedures was revised April 3, 2014 to reflect updates to the NSP1, NSP2, and NSP3 amendment process. The original guidance was issued March 28, 2011.*

HUD has received many questions on how NSP grantees can make a substantial amendment to their approved NSP action plans. This guidance seeks to clarify when and how NSP1, NSP2, and NSP3 Grantees can amend their plans.

HUD encourages each grantee to carry out its NSP activities in the context of a comprehensive plan for the community's vision of how it can make its neighborhoods not only more stable, but also more sustainable, competitive, and integrated into the overall metropolitan fabric. HUD understands that NSP Grantees from time to time may need to make amendments to their approved action plans. Because NSP follows CDBG regulatory guidelines, NSP grantees should adhere to the following regulation dealing with Substantial Amendments:

24 CFR 91.505 (a) Amendments to the plan. *The jurisdiction shall amend its approved plan whenever it makes one of the following decisions:*

- (1) To make a change in its allocation priorities or a change in the method of distribution of funds.*
- (2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or*
- (3) To change the purpose, scope, location, or beneficiaries of an activity.*

- These regulations are clear that using funds or program income on a CDBG activity not included in the grantee's original action plan would trigger an amendment
- If a grantee adds or subtracts census tracts from their target area this would change the location and would trigger an amendment.
- A change in beneficiaries could mean the number of households a grantee will be assisting and it could also mean the income group a grantee planned on assisting. An example of this could be changing a project from Low Income (LH25 – 50% AMI) to Middle-Moderate Income (LMMI – 120% AMI) – this type of change would trigger an amendment because these are different groups of beneficiaries.
- A change in allocation priorities or change in scope could be triggered by decreasing the amount of units produced or by moving funds from one CDBG eligible activity to another.
 - *****NOTE***** Moving activities from one NSP eligible use to another NSP eligible use may not trigger an amendment; these changes usually occur because of property eligibility – a grantee discovers purchasing vacant homes is easier than purchasing foreclosed properties, so they

wish to move funds from Eligible Use B to Eligible Use E. HUD has determined that this kind of change would not trigger an amendment as long as the scope of the project remains the same.

However, grantees that move funds between the correlated CDBG activities could trigger an amendment. The chart provided at the end of this guidance (that is also a part of all three NSP Notices) separates NSP Eligible Uses and CDBG eligible activities, with the CDBG activities listed on the right.

For example, when a grantee moves funds from Rehabilitation to New Construction, this could trigger an NSP amendment if the amount is large enough that it changes the scope of your activities.

- HUD does not prescribe a certain percentage to use for moving funds between activities that could trigger an amendment, grantees reallocating funds from one activity's budget to another activity should determine whether that change affects the scope of their project (thus triggering a substantial amendment). For example, if a grantee's activity budget is \$10 million and you are moving \$900,000 to a different activity, this may be considered a small percentage but the reasonable citizen might consider that a substantial change. *Grantees should examine each case separately.*
- If the above examples do not apply and the change the grantee is making does not meet the definition of a substantial amendment, the grantee can make these minor changes in DRGR without following the substantial amendment process. It is a good idea to note these changes in DRGR so your CPD/NSP Rep is kept up to date.

NSP1 & NSP3 Amendment Process

Each grantee must follow its citizen participation process for substantial amendments found at 91.105 and 91.115. (Grantees have their own processes that may be more restrictive than these regulations – grantees must always follow the more restrictive standards.) Grantees should note that HUD has provided alternative requirements (for NSP1 & NSP3) to 42 U.S.C. 5304(a)(2) and waiving 91.105(k) and 91.115(i) to the extent necessary to allow the grantee to provide no fewer than 15 calendar days for citizen comment (rather than 30 days). Upon completion of the comment period, the jurisdiction must make the amendment public and must notify HUD that an amendment has been made. Each grantee should post the NSP amendment on its official website along with a summary of citizen comments received within the 15-day comment period. The jurisdiction should submit a copy of each amendment to their HUD Field Office Representative as it occurs.

On May 21, 2013, HUD published the Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Programs 1 and 3 (NSP1 and NSP3) Formula Grants; Amendment. This Notice revises the process of adding new census tracts to NSP1 and NSP3 grantees' target area. HUD has updated the data in the original tool designed for NSP3 and it is now available for use by NSP1 and NSP3 grantees. The data combines foreclosures, pre-foreclosures, real estate- owned, and vacant property transactions from March 2011 through September 2012. After May 21, all NSP grantees should be using the updated data found at <http://www.huduser.org/NSP/nsp3.html>.

For NSP1 Grantees: The updated data is available to NSP1 grantees for use in determining and designating areas of greatest need.

For NSP3 Grantees: After May 21, 2013, all NSP3 grantees must begin using the updated foreclosure needs map when amending their currently approved target areas. NSP3 grantees may continue to work

in target areas approved by HUD prior to the effective date of this Notice, but any amendments made to select new NSP3 target areas after May 21 must qualify based on information from the new maps and data.

NSP2 Amendment Process

NSP2 allocations were based on a competitive scoring process, which means any substantial amendment could affect a grantee's competitive score. The NSP2 NOFA dictates that, *"No amendment to an approved application may be made unless HUD rates the approved application as amended and it scores high enough to have been selected for funding under the NSP2 competition."* The NSP2 amendment process is different than granting amendments in NSP1 & NSP3.

The Department acknowledges that certain types of amendments may improve a grantee's capacity to successfully implement its NSP2 program. HUD is willing to consider technical changes that improve program performance, such as adding a new consortium member.

While HUD remains concerned that proposals to expand target geographies may negatively impact other rating factors and change approved programs, the Department recognizes that, in some circumstances, amendments to expand or modify target areas are appropriate. Such requests will be considered when the change is modest and well-supported by market and demographic data.

When applying for a substantial amendment, NSP2 grantees need to address every rating factor and sub-factor in the NSP2 NOFA that could be affected by their Amendment request. If a specific rating factor would not change the substance of the grantee's original application, please note that in the amendment request and the Panel will consult the grantee's original application. Amendments that state "No change" for every factor will be returned unrated.

Keep in mind, if a grantee changes the target geography of its NSP2 action plan, multiple factors could be affected. For example, a grantee may add new census tracts that are no longer accessible to transportation (Factor 5a: Transit accessibility) or perhaps these changes could affect a grantee's project completion schedule (Factor 3b: Project completion schedule). These issues should all be addressed under the appropriate rating factor.

Grantees that reduce the number of units they will affect must insure they will meet the minimum requirement of the NSP2 NOFA which states that grantees "must have the effect of either returning a minimum of 100 abandoned or foreclosed homes back to productive use or otherwise eliminating or mitigating their negative effects on the stability of the target geography."

New Guidance on Adding New Census Tracts in NSP2

Previously for NSP2, when a grantee was adding or subtracting a census tract from its target geography, the foreclosure needs map provided foreclosure-related needs scores at the census tract level. Grantees had to select tracts with an average combined index score of 18 or greater as indicated by the map. The needs scores were generated with foreclosure data from 2005–2008. This data is now outdated and in many cases it no longer reflects the foreclosure market in NSP2 target areas. Further, HUD improved mapping capabilities for NSP3, allowing NSP3 grantees to draw the outline of a targeted neighborhood rather than selecting best fit census tracts. This method allows a better correlation between the data provided and the target geography.

On May 21, 2013, HUD published the NOFA for NSP2 under the American Recovery and Reinvestment Act, 2009: Announcement of Availability of Updated Foreclosure Information. This Notice revises the

process of adding new census tracts to NSP2 grantees' target area. After May 21, NSP2 grantees that are adding census tracts to their approved target geographies must now use the updated data available at <http://www.huduser.org/NSP/nsp3.html>. Unlike NSP2 mapping previously, grantees are no longer constrained to Census Tract boundaries and can align their target areas more precisely with their intended service areas. Grantees can also test and compare different areas before choosing a final target area.

Working with the NSP Mapping Tool

On the updated NSP mapping site, HUD provides estimates of foreclosure need and a foreclosure related needs scores at the Census Tract level. The scores range from 1 to 20, with a score of 20 indicating census tracts with the HUD-estimated greatest need. The neighborhood or neighborhoods identified by the NSP2 grantee as being the areas of greatest need must have an individual score for the grantee's identified target geography that is not less than a score of 17. If more than one neighborhood is identified in the Action Plan, HUD will average the neighborhood NSP scores, weighting the scores by the estimated number of housing units in each identified neighborhood. HUD's mapping tool allows communities to assess the weighted average score of multiple target areas. NSP2 grantees working in multiple states must achieve a weighted average score across all states of 17 or higher (regardless of the individual state's minimum score). If a grantee working across several states is having difficulties meeting this standard, it should contact its CPD Representative.

Map Submission

The Areas of Greatest Need map should be created by following the instructions at the HUD NSP Mapping Tool for Preparing Action Plan website at <http://www.huduser.org/NSP/NSP3.html>. The tool assists NSP grantees to prepare data for citizens during the public comment period and to submit with their grant applications by allowing applicants to draw the exact location of their target neighborhood. The tool then calculates the number of housing units, Neighborhood NSP Score, and State Minimum threshold NSP score of the area drawn and sends an email back to the applicant within 24 hours. The email has an attachment containing the necessary data for the NSP2 amendment, along with information HUD can use to confirm the intended program area. This document should be included with any Action Plan amendment submission. If a grantee has more than one identified target area, it will need to include the PDF for each area.

****Note:** Grantees adding census tracts after May 21 will have an old group of census tracts (grandfathered in using the old system) and a new group of census tracts (using the new NSP3 mapping tool). HUD will keep these groups separate when rating amendments, grantees should make sure to keep them separate as well, especially as they look to closeout and need to subtract census tracts. Any subtraction will also be kept within either the old grandfathered group or the new group, depending on when the census tract was originally added. Grantees will have to keep an 18 average score in the old group and a 17 average score in the new group. The NSP2 NOFA also requires grantees to invest NSP2 funds in every census tract included in the final approved target geography. This means that before a grantee can close its grant, it must amend its action plan to subtract all census tracts where work did not occur, while still maintaining the minimum required foreclosure score.

Grantees must follow their original posting methods for each substantial amendment and submit proof to HUD that their amendment was posted for public comment for 10 days (the NSP2 requirement is shorter than the NSP1 & NSP3 requirement). Grantees must also include either a summary of citizen comments or an acknowledgement that they received no comments with their final amendment submission. HUD Headquarters will read each request and hold a panel to review the amendment, as it did for original submissions. If information is missing, the grantee will have an opportunity to provide it. Once all

the required information has been received, the process normally takes three to four weeks to complete. Please plan accordingly.

Template for NSP2 Amendment Submission

**Grantees must address every rating factor and sub-factor

- 1) Need/Extent of the Problem
 - a. Target Geography
 - b. Market Conditions and Demand Factors
- 2) Demonstrated Capacity and Relevant Organizational Staff
 - a. Past Experience of the Applicant
 - b. Management Structure
- 3) Soundness of Approach
 - a. Proposed Activities
 - b. Project Completion Schedule
 - c. Income Targeting
 - d. Continued Affordability
 - e. Consultation, Outreach, Communications
 - f. Performance and Monitoring
- 4) Leveraging
 - a. Leveraged Funds
 - b. Rubric
- 5) Energy Efficiency Improvements and Sustainable Development Factors
 - a. Transit accessibility
 - b. Green building standards
 - c. Re-use of cleared sites
 - d. Deconstruction
- 6) Neighborhood Transformation and Economic Opportunity

Grantees should send a soft copy of their amendment request to their CPD Representative at their Field Office and to Paul Patterson from the NSP Team (paul.g.patterson@hud.gov) and also a hard copy to HUD Headquarters:

Stanley Gimont
Director
Office of Block Grant Assistance
Department of Housing and Urban Development
451 Seventh Street, SW, Room 7286
Washington, DC 20410

NSP Eligible Uses and Correlated CDBG Eligible Activities

NSP-Eligible Uses	Correlated Eligible Activities From the CDBG Entitlement Regulations
(A) Establish financing mechanisms for purchase and redevelopment of <i>foreclosed upon homes and residential properties</i> , including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers	<ul style="list-style-type: none"> • As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206. • Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.
(B) Purchase and rehabilitate <i>homes and residential properties that have been abandoned or foreclosed upon</i> , in order to sell, rent, or redevelop such homes and properties	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition (b) Disposition, (i) Relocation, and (n) Direct homeownership assistance (as modified below); • 24 CFR 570.202 eligible rehabilitation and preservation activities for homes and other residential properties. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost
(C) Establish and operate land banks for <i>homes and residential properties that have been foreclosed upon</i>	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition and (b) Disposition. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost
(D) Demolish <i>blighted structures</i>	<ul style="list-style-type: none"> • 24 CFR 570.201(d) Clearance for blighted structures only.
(E) Redevelop <i>demolished or vacant properties</i> as housing	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below). <ul style="list-style-type: none"> • 24 CFR 570.202 Eligible rehabilitation and preservation activities for demolished or vacant properties. • 24 CFR 570.204 Community based development organizations. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost