

MICHIGAN NSP2 CONSORTIUM

POLICY AND PROCEDURES MANUAL

ACQUISITION MODULE

① ACQUISITION POLICY AND PROCEDURES ①

I.	INTRODUCTION	2
A.	Key Terms	2
II.	General Guidelines for NSP2 Acquisitions	4
A.	Abandoned or Foreclosed: Which Is It?.....	5
B.	Tenant Protections.....	5
C.	Appraisal Requirements	6
D.	Purchase Discount	7
E.	Meeting the 25% Low-income Set-aside Requirement.....	8
III.	Federal Cross-cutting Regulations for Acquisition.....	8
A.	Uniform Relocation Act	8
B.	Environmental Risk Assessment.....	8
C.	Environmental Review Checklist.....	9
D.	SHPO Review and Clearance.....	10
IV.	Eligible Property Types and Previous Ownership	11
A.	Acquired a Foreclosed Property on or after April 9, 2010.....	11
B.	Acquired Foreclosed Property prior to April 9, 2010	13
V.	Requirements of Acquisition Analysis Tool.....	13
A.	Acquisition Analysis Tool Requirements	14
B.	Executed Mortgage Copy and Original Note.....	14
VI.	Acquisition between Cities and Land Banks	15
A.	Defining Land Banks as Separate Governmental Authorities and the Impact on Acquisitions	15
B.	Value Added of Property in the Land Bank.....	16
C.	Eligible Tax Reverted Property Specific Tax (a.k.a. 5/50 tax)	17
D.	Public Purpose.....	17
E.	Subsequent Sales	17
F.	Strategic Acquisition and Conveyance Process with NSP2	17
VII.	Appendix and Attachments.....	19

I. INTRODUCTION

This Chapter provides NSP2 policy and guidance within the context of how members of the Michigan NSP2 Consortium may acquire NSP2-eligible property, specifically:

- Mortgage Foreclosed
- Tax Foreclosed
- Abandoned
- Vacant or Demolished

MSHDA will work with Cities and Land Banks to ensure their acquisitions comply with regulations, but also allow Cities and Land Banks to compete with private investors in the mortgage and tax foreclosure process.

A. Key Terms

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 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 abandonment pursuant to state or local law or otherwise meets a state definition of an abandoned home or residential property.

Appraisal: NSP-assisted acquisitions of foreclosed upon homes valued at or more than \$25,000 require appraisals that meet the URA appraisal requirements of 49 CFR 24.102 (even in cases of voluntary acquisitions.) *See attached "Guidance on NSP Appraisals – Voluntary Acquisitions"*

April 9, 2010: MSHDA received the NSP2 Release of Funds from HUD on April 9, 2010. Grantees, therefore, may conduct their site-specific Environmental Review for identified projects using their local process. Any property acquired prior to April 9, 2010 is not eligible to be reimbursed for acquisition, but NSP2 funds may be used to rehabilitate, redevelop, demolish or land bank such properties. If the property is sold, the grantee may use proceeds of sale to recoup documented expenses they incurred at acquisition. (This will reduce their Program Income.)

Bona Fide Lease or Tenancy: A lease or tenancy shall be considered bona fide only if:

- Mortgagor under the contract is not the tenant
- Lease or tenancy was the result of an arm's length transaction
- Lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property
- Lease does not have to be written, but the lease or tenancy must meet the requirements of ARRA

Deed in Lieu of Foreclosure: A Deed in Lieu of foreclosure is a disposition option in which a mortgagor voluntarily deeds collateral property in exchange for a release from all obligations under the mortgage. If the grantee can document that the mortgagor was at least 60 days delinquent at the time that the lender took title, then residential property and homes that were transferred via a deed in lieu of foreclosure could be considered "foreclosed."

Delinquency Status: The new definition of foreclosed applies the term "current delinquency status." This indicates the number of days (e.g. 30, 60, 90) the borrower is contractually past due. Grantees will use the Mortgage Bank Association (MBA) Delinquency Calculation Method to determine the current delinquency status of a mortgage. Under the MBA method, a loan would be considered delinquent if the payment had not been received by the end of the day immediately preceding the loan's next due date

(generally the last day of the month which the payment was due). Using the example above, a loan with a due date of August 1, 2009, with no payment received by the close of business on August 31, 2009, would have been reported as delinquent in September. From September 1 to September 30, 2009, the mortgage's current delinquency status would be 30 days. On October 1, 2009, the mortgage's current delinquency status would become 60 days and, therefore, be "foreclosed" as defined by NSP2.

Fair Market Value (FMV): An estimate of the market value of a property, based on what a knowledgeable, willing, and unpressured buyer would probably pay to a knowledgeable, willing, and unpressured seller in the real estate market. For the purposes of NSP2, FMV is based on property type and method of valuation:

- **Foreclosed: URA-compliant As-is Appraisal documenting current market-appraised value**
- Abandoned, vacant or demolished: Documentation citing reasonableness

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 90 days or more 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 as NSP grantee, subrecipient, contractor, developer, or end user.

Initial Successor in Interest (ISII): ISII in property acquired through foreclosure is the successful purchaser at foreclosure, such as the lender or trustee for holders of obligations secured by mortgage or tax liens. The County Treasurer is the ISII for tax foreclosed property. The Lender is the ISII for mortgage foreclosed property. The Grantee is the ISII for foreclosed property acquired through short sale.

Minimum Bid: Amount of delinquent taxes, penalties and fees, administrative costs or sale in Michigan Tax Foreclosure Statutory Auction Process.

Mortgagee: Lender of the mortgage loan.

Mortgagor: Borrower of the mortgage loan and owner of the property.

Notice of Foreclosure: Under the Frank Dodd Act that allocated funds for Neighborhood Stabilization Program 3 (NSP3), they clarified the definition of Notice of Foreclosure regarding Tenant Protections. The date of a Notice of Foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

Purchase Discount: Each foreclosed-upon home or residential property shall be purchased at a discount of at least one percent from the current market-appraised value of the home or property.

Real Estate-owned (REO): Property owned by a bank or lender as the result of a foreclosure.

Reasonable Transaction Costs: Costs that may be paid for with NSP2 that are necessary to effect the acquisition or conveyance that include the cost of surveys to identify the property to be acquired or conveyed, appraisals, preparation of legal documents, recordation fees, and other reasonable and necessary costs.

Short Sale: A short sales involves a sale of real property in which a lender agrees to accept the proceeds of sale in satisfaction of an outstanding mortgage loan when the sale amount is less than the amount the borrower owes on the loan. Note that the lender's acceptance of the offered short sale price may not release the mortgagor from all other obligations.

State Equalized Value (SEV): One half (1/2) of your property's true cash value based on a valuation of the County Tax Assessor.

Statutory Auction Process: After the title has transferred to the Foreclosing Governmental Unit, often the County Treasurer, the Statutory Auction Process begins and grantees are then eligible to acquire tax foreclosed property. The Statutory Auction Process has four phases:

- Right of First Refusal – Exercised by State, City and County (in that order) by first Tuesday in July.
- First Public Auction – Managed by County Treasurer in July, August or September, depending on County.
- Second Government Opportunity – City and County receive second chance to acquire property that did not sell at public auction. State does not get second chance.
- Second Public Auction – Managed by County Treasurer and held at least a month after first auction but prior to November. There is no minimum bid, but County Treasurer may establish a reasonable opening bid to recover costs.
- Remaining Properties – County Treasurer conveys property not sold in auctions to City, but City can object to transfer of one or more properties in writing by December 30. County Treasurer retains possession of all non-conveyed properties.

URA Tenant Protections: ARRA imposes requirements on NSP2 grantees to ensure that bona fide tenants in certain foreclosed and NSP2 targeted property receive proper treatment, i.e. receiving proper notification of foreclosure, time and notice to vacate, and, if applicable, URA relocation assistance.

URA Voluntary Acquisition: NSP2-assisted acquisitions are expected to be “voluntary” and must comply with requirements specifically set out at 49 CFR 24.101(b). (*See Sample URA Voluntary Acquisition Document*). The requirements of 48 CFR 24.101(b) are as follows:

1. 24.101(b)(1) Agencies with eminent domain authority, but will not use: Must meet all conditions of 24.101(b)(1)(i)-(iv), especially (i) & (ii), which are the following:
 - a). Agency will not acquire property if negotiations fail, and owner is so informed in writing (24.101 (b)(1)(iii))
 - b). Agency informs in writing of property’s estimated market value (24.101(b)(iv))
 - c). Owner(s) and owner occupants not eligible for relocation assistance, but displaced tenants may be eligible (24.2(a)(9)(ii))
 - d). URA Voluntary Acquisition Letter for those with powers of eminent domain will be presented and certified by Seller
2. 24.101(b)(2) Agencies or persons without eminent domain authority: Must meet all of the following conditions:
 - e). Prior to offer, inform owner unable to acquire if negotiations fail (24.101 (b)(2)(i))
 - f). Inform owner of property’s estimated market value (24.101(b)(2)(ii))
 - g). Owner(s) and owner occupants not eligible for relocation assistance, but displaced tenants may be eligible (24.2(a)(9)(ii))
3. 24.101(b)(3) Federal agency, State, or State agency without eminent domain authority:
 - h). Owner(s) and owner occupants not eligible for relocation assistance/displaced tenants may be eligible (24.2(a)(9)(ii))

II. GENERAL GUIDELINES FOR NSP2 ACQUISITIONS

HUD has several requirements for NSP2 acquisitions to be compliant, that include, but are not limited to:

- 1% Purchase Discount for Foreclosed Property based on current market-appraised value
- Zoning to determine Residential or Non-residential Property

- Appraisal Requirements of Foreclosed Property
- Tenant Protections of Foreclosed Property
- Environmental Review

The attached matrix “*General NSP2 Policy Guidelines for Acquisition*” seeks to clarify the requirements of properties by NSP2 Eligible Use, Property Type and Acquisition Due Diligence.

A. Abandoned or Foreclosed: Which Is It?

In April 2010, HUD updated the definitions of “Foreclosed and Abandoned.” When both definitions are met, HUD is requiring that grantees follow the “stricter of the two.” Foreclosed has more stringent due diligence, such as tenant protections, purchase discount and appraisal requirements, and, therefore, is “stricter of the two.” Grantees should categorize a property that is both “abandoned” and “foreclosed” as “foreclosed.” The matrix below assists with determining foreclosure status and necessary due diligence:

Status of Property	Foreclosed Definition	Abandoned Definition	Which is it?
Mortgage payments 90 days or more delinquent	Meets definition: “The property’s current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and owner has been notified of this delinquency	Meets definition: “Mortgage, tribal, leasehold, or tax payments are at least 90 days delinquent”	Foreclosed
County foreclosed on property and, therefore, tax payments are 90 days or more delinquent	Meets the following definitions: <ul style="list-style-type: none"> • Property owner is 90 days or more delinquent on tax payments, • Under state, local, or tribal law, foreclosure proceedings have been initiated or completed, • Foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not as NSP grantee, subrecipient, contractor, developer, or end user. 	Meets definition: “Mortgage, tribal, leasehold, or tax payments are at least 90 days delinquent”	Foreclosed
Tax payments 90 days or more delinquent 90 days or more with no corrective action on code enforcement inspection	Meets the following definition: <ul style="list-style-type: none"> • Property owner is 90 days or more delinquent on tax payments, 	Meets definition: “Code enforcement inspection determines property is not habitable and owner has taken no corrective action within 90 days of notification of the deficiencies”	Foreclosed

Refer to “*NSP2 Documentation Requirements of Foreclosed and Abandoned Properties*” for assistance with documenting the foreclosure status of targeted NSP2 property for acquisition

B. Tenant Protections

NSP tenant protection requirements under ARRA affect acquisitions of foreclosed properties under the NSP2 program and specifically those properties that were foreclosed and title was transferred after

February 17, 2009. Grantees may use the following methods to determine compliance with the NSP tenant protection requirements under ARRA.

Summary of NSP Tenant Protection Requirements Under ARRA		
Persons Affected	Any bona fide tenant occupying certain residential property under a lease in effect on or before the date of notice of foreclosure	Any bona fide tenant occupying certain residential property without a lease or with a lease terminable at will under state law at the time of foreclosures
Implications	Initial successor in interest (ISII) must allow such tenants to remain to end of the lease term* and provide a minimum 90 days notice to vacate. These periods may overlap but cannot be less than 90 days	ISII must provide such tenants a minimum 90 days notice to vacate.
Exception	*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.	

NSP Tenant Protections are separate and apart from the obligations imposed on grantees by the URA and do not supersede or affect in any way protections available to property owners or tenants under the URA. URA applies to any person displaced as a direct result of acquisition for rehabilitation and/or demolition of real property for a federally-assisted project. Eligibility determinations under the URA and the required notices and relocation assistance requirements are separate and distinct from the NSP tenant protections in ARRA. (*In the near future, MSHDA will publish guidance on Uniform Relocation Act Policy and Procedures.*) Any tenant lawfully occupying the property evicted by the owner/mortgagor in order to facilitate an acquisition under the NSP program (including short sales) is most likely eligible for URA relocation assistance and payments as a displaced person.

Under the Frank Dodd Act that allocated funds for Neighborhood Stabilization Program 3 (NSP3), they clarified the definition of Notice of Foreclosure regarding Tenant Protections. The **Date of a Notice of Foreclosure** shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

For strategies on how to comply with URA Tenant Protections, *see “NSP Tenant Protections at Foreclosure under the Recovery Act,”* HUD Policy Guidance on NSP Tenant Protections. HUD also requires grantees to complete the Tenant Protections Checklist for all targeted properties for acquisition. (*See “Questionnaire on Compliance with NSP Tenant Protection Requirements under ARRA”*)

C. Appraisal Requirements

The following NSP2 properties must meet the following appraisal, valuation or reasonableness criteria:

Property Type/Foreclosure Status	Appraisal Requirement	Documentation
Foreclosed, residential property with an estimated fair market value at or exceeding \$25,000	URA-compliant As-is Appraisal conducted within 60 days prior to entering purchase agreement If Appraisal older than 60 days, then request an Appraisal Update	Appraisal Update (as applicable)

Foreclosed, residential property with an estimated fair market value below \$25,000	Market-appraised value of the home or property is required. If Appraisal older than 60 days, then request an Appraisal Update	Appraisal Update (as applicable)
Abandoned, residential property	Market valuation to demonstrate reasonable purchase price.	No appraisal required, but documentation demonstrating reasonableness, MLS listing or doubling SEV Tax.
Vacant or demolished property as defined under Eligible Use E	Market valuation to demonstrate reasonable purchase price.	No appraisal required, but documentation demonstrating reasonableness, e.g. MLS listing or doubling SEV tax.

D. Purchase Discount

The 1% Purchase Discount is required for all foreclosed property acquired with NSP2 funds. Documentation verifying that each foreclosed-upon home or residential property is purchased at a one percent discount from the current market-appraised value of the home or property is required. It is not required for properties that are abandoned or “vacant or demolished” per the definitions provided by HUD and those acquired as “vacant or demolished” under “Eligible Use E – Redevelopment of vacant or demolished property as housing.”

Tax Foreclosed Property that will be acquired annually during the Tax Reversion Statutory Auction Process from April 9, 2010 through February 10, 2013 will also need to meet the 1% Purchase Discount.

See the matrix “NSP2 Scenarios” on potential ways to acquire property to meet the discount through the Statutory Auction Process with NSP2 funds.

E. Meeting the 25% Low-income Set-aside Requirement

HUD requires that each NSP2 grantee expend 25% of their total award to provide housing for households earning at or below 50% AMI.

The Dodd-Frank Act struck language that specified that funds meeting the 25 percent requirement must be used specifically for the purchase and redevelopment of abandoned and foreclosed homes or residential properties. This means that any NSP2 eligible activity used to house individuals or families at or below 50 percent AMI may be used to satisfy this requirement.

III. FEDERAL CROSS-CUTTING REGULATIONS FOR ACQUISITION

A. Uniform Relocation Act

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 for 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. Grantees 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). MSHDA will provide further guidance on URA at a later date.

MSHDA recommends that local grantees only acquire property that is vacant. In the event that local grantee seeks to acquire an occupied property, they should contact MSHDA to discuss the project before proceeding.

B. Environmental Risk Assessment

1. Lead-based Paint

As part of the NSP2 requirements, local grantees are required to certify and ensure that their activities comply with the same lead regulatory requirements that apply to Community Block Grant Development programs. These requirements are in the Lead Disclosure Rule (24 CFR part 35, subpart A), and the Lead Safe Housing Rule's provisions for rehabilitation (subpart J), and for acquisition, leasing, support services, or operation (subpart K), and the accompanying procedural requirements in subparts B and R.

Local grantees need to complete an Environmental Risk Assessment for Lead-based Paint on the NSP2-funded activities or projects when the planned end use is:

- Rehabilitation of Rental and Homebuyer Housing Units
- Deconstruction of Blighted Structures

For activities or projects where the end use is Demolition of Blighted Structures, no Environmental Risk Assessment is required to meet compliance.

For more information regarding compliance with the Lead rules, visit the OHHLHC's web site at: www.hud.gov/offices/lead/enforcement/regulations.cfm. MSHDA will provide further guidance on lead-based paint at a later date.

2. Asbestos

DEQ's NESHAP requirements for asbestos may apply to residential activities, depending on the type of activity. All consortium partners must contact the Michigan NESHAP Program for asbestos notification and reporting requirements: http://www.michigan.gov/deq/0,1607,7-135-3310_4106-11856--,00.html

C. Environmental Review Checklist

The environmental review process for NSP2 projects follows the existing guidance outlined at 24 CFR Part 58, Environmental Review Procedures for Entities assuming HUD Environmental Responsibilities.

Local grantees shall not undertake any NSP2 activities until it has been environmentally cleared – and therefore they **must not** expend any public or private funds (HUD, other Federal, or non-Federal funds) or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. If a local grantee uses any portion of Federal funds for acquisition, rehabilitation, conversion, leasing, repair or construction before completing the environmental review process, then HUD will require the denial of any Federal funds for that project.

1. Structure of the Environmental Review for NSP2

Since local grantees will not be able to identify immediately specific project sites at the beginning of the program 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:

- General Tier 1 Review

MSHDA conducted the Tier 1 environmental review, which involves a broad analysis of relevant, general environmental conditions in the NSP2 eligible census tracts. The Tier 1 also provides structure for the Tier 2 review by establishing procedures for site-specific environmental compliance. **MSHDA received Release of Funds effective April 9, 2010 from HUD.**

- Site Specific Tier 2 Review

The Tier 2 review focuses on site-specific environmental conditions that cannot be adequately evaluated at the Tier 1 level. Local grantees will complete the Tier 2 site-specific reviews and do the following:

- a). Complete the “*Environmental Review Project Checklist for Michigan NSP2 Consortium Sites*” (see **Attached**) for site-specific clearance to comply with Phase II of the NSP2 Environmental Assessment.
- b). If all the answers to the following questions are **no**, then this project is cleared from further environmental action.
- c). However, if you answer **yes** to any of the following, additional compliance requirements must be met and actions documented. Attach comments and rationale for actions taken and letters, permits, or other documentation signed by the regulating agency to show compliance requirements have been met.

2. Conditional Commitment of Funds

Local grantee cannot commit any funds to this project until all environmental procedures are completed and documented. However, responsible entities may provide a **conditional commitment of funds** for a specific project, pending environmental clearance, *provided* the conditional commitment does not provide the state recipient, subrecipient or contractor any legal claim to any amount of Federal funds to be used for the specific project or site unless and until the site has received environmental clearance. The language found in “*Conditional Commitment of Federal Funds prior to Environmental Release of*

Funds, HUD CPD 01-11” (see attached) is acceptable to include in an otherwise appropriately drafted purchase agreement.

D. SHPO Review and Clearance

HUD requires a site-specific environmental review be performed on every property prior to expending grant dollars on that site. Part 58 Environmental Review regulations require aggregation, meaning the Environmental Review takes into account the entire scope of work to be performed, including the rehabilitation or development of the site.

MSHDA strongly discourages deviations from the Environmental Review process required by HUD.

Consultation with the State Historic Preservation Office (SHPO) is one piece of the federally required Part 58 Environmental Review process. SHPO has announced that Land Banks are NOT required to consult with SHPO prior to the **acquisition** of foreclosed residential properties since the act of acquiring and land banking property has no adverse affect on the property. However, this does NOT remove the obligation to meet environmental review process for properties that will result in rehabilitation, demolition, or other potentially adverse affects.

To accommodate SHPO’s decision, MSHDA is amending the SHPO Consultation Form to allow **LAND BANKS** to indicate that NSP2 will be used to acquire and hold foreclosed residential properties without consulting SHPO.

Many Land Banks are planning to apply SHPO’s decision to the purchase of foreclosed residential properties they will transfer to their consortium partner who will demolish and/or redevelop. Land Banks will acquire these properties without SHPO consultation and then transfer the property to their consortium partner who will then consult with SHPO prior to redevelopment of the site.

MSHDA strongly advises grantees to consult SHPO regarding the full scope of the work PRIOR to acquiring property. Absent the SHPO approval/guidance on the full scope of the planned redevelopment grantees can not officially complete the Environmental Review Process, and are unable to determine if the project is economically viable.

Reminder: Each NSP2 grant budget contains a line item for “Activity Delivery Costs for Infeasible Activities”. This line item should be used to cover costs incurred by grantee staff to perform due diligence on sites that are then deemed infeasible. NOTE: Acquisition costs cannot be charged against this line item.

MSHDA realizes that some grantees are confident that the properties they acquire and transfer will result in the completion of an NSP2 eligible activity and are willing to accept the risks. Therefore, the SHPO Consultation Form will include an option for **LAND BANKS** to indicate that they will acquire without SHPO consultation and transfer the property to their consortium partner for redevelopment. The form must be signed by BOTH the Land Bank and their Consortium Partner indicating their understanding and acceptance of the risks (as follows).

IF the Land Bank uses NSP2 to acquire property with the intent to transfer it to their consortium partner to demolish or redevelop, one of three things will happen:

1. The property will be redeveloped as planned and result in an eligible end use.
2. The property is NOT redeveloped as planned and is transferred back to the Land Bank for future redevelopment (within 10 years). If NSP2 dollars were used to acquire under “B – Redevelopment of Abandoned/Foreclosed Property, those dollars would need to be returned to “B” and instead drawn from “C – Land Banking”.

3. If the property is NOT redeveloped as planned and the Land Bank opts **NOT** to take back the property for future redevelopment, ALL NSP2 dollars expended by ALL parties will be repaid to MSHDA. This includes the dollars the Land Bank used to acquire the property.

In the near future, MSHDA will publish instructions regarding the completion and review of the SHPO Consultation Form. *(See attached “SHPO Consultation Form.”)*

IV. ELIGIBLE PROPERTY TYPES AND PREVIOUS OWNERSHIP

The Michigan NSP2 Consortium received HUD Release of Funds on April 9, 2010. This means NSP2 funds may be used to acquire any property after April 9, 2010 that meets NSP2 eligible property definitions and due diligence requirements. The definitions and due diligence requirements are found in the matrix outlining “General NSP2 Policy Guidelines for Acquisition”.

The eligibility of property acquired **prior to April 9, 2010** depends on the foreclosure status and current owner. This outlines guidelines and policy on how to assess property acquired prior to April 9, 2010 and considers the following property types:

- Tax Foreclosed
- Mortgage Foreclosed
- Vacant or Demolished

A. Acquired a Foreclosed Property on or after April 9, 2010

Grantees should use the following matrix to determine the eligibility of property acquired on or after April 9, 2010 and assume that all property is vacant.

Property Type	Current Ownership	End Use	NSP2 Eligible Uses	Eligible Costs
Tax Foreclosed	City or Land Bank	Rehabilitate House for Sale or Rental*	Use B – Purchase, Rehab and Preserve	<u>Use B</u> - 100% financing of costs for all total development costs
Tax Foreclosed	City or Land Bank	Land Banking for Future Redevelopment	Use C – Land Banking	<u>Use C</u> - 100% financing for all costs for acquisition and land bank maintenance
Mortgage Foreclosed	City or Land Bank	Rehabilitate House for Sale or Rental*	Use B – Purchase, Rehab and Preserve	<u>Use B</u> - 100% financing of costs for all total development costs
Mortgage Foreclosed	City or Land Bank	Land Banking for Future Redevelopment	Use C – Land Banking	<u>Use C</u> - 100% financing for all costs for acquisition and land bank maintenance

Mortgage or Tax Foreclosed	For-profit or non-profit with grantee NSP2 agreement	Rehabilitate House for Sale or Rental*	Use B – Purchase, Rehab and Preserve	<u>Use B</u> - 100% financing of costs for all total development costs
Mortgage or Tax Foreclosed	For-profit or non-profit with grantee NSP2 agreement	Land Banking for Future Redevelopment	Use C – Land Banking	<u>Use C</u> - 100% financing for all costs for acquisition and land bank maintenance
Mortgage or Tax Foreclosed	For-profit or non-profit that does <u>not have</u> an NSP2 agreement with grantee	Housing for Sale or Rental	Use E – Redevelop vacant or demolished property as housing**	100% financing of costs for all total development costs

**Loses foreclosure status and, therefore, categorized as “vacant or demolished”

B. Acquired Foreclosed Property prior to April 9, 2010

Grantees should use following matrix to determine the eligibility of property acquired before April 9, 2010 and assume that all property is vacant.

Property Type	Current Ownership	End Use	NSP2 Eligible Uses	Eligible Costs
Tax Foreclosed prior to April 9, 2010	City or Land Bank	Rehabilitate House for Sale or Rental*	Use B – Rehab and Preserve	No reimbursement for acquisition, except reasonable transaction costs if City conveys to Land Bank of visa versa 100% costs for rehabilitation 100% costs for land bank maintenance
Tax Foreclosed prior to April 9, 2010	City or Land Bank	Land Banking for Future Redevelopment	Use C – Land Banking	No reimbursement for acquisition, except reasonable transaction costs if City conveys to Land Bank or visa versa 100% costs for land bank maintenance
Tax Foreclosed prior to April 9, 2010	For-profit or non-profit acquired it during a tax foreclosure sale	Housing for Sale or Rental	Use E – Redevelop vacant or demolished property as housing**	No reimbursement for acquisition, except reasonable transaction costs if Entity conveys to City or Land Bank 100% costs for redevelopment
Mortgage Foreclosed and acquired prior to April 9, 2010	City of Land Bank	Housing for Sale or Rental	Use E – Redevelop vacant or demolished property as housing**	No reimbursement for acquisition, except reasonable transaction costs if City conveys to Land Bank or visa versa 100% costs for redevelopment
Mortgage Foreclosed and acquired prior to April 9, 2010	For-profit or non-profit acquired	Housing for Sale or Rental	Use E – Redevelop vacant or demolished property as housing**	No reimbursement for acquisition, except reasonable transaction costs if Entity conveys to City or Land Bank 100% costs for redevelopment

**Loses foreclosure status and, therefore, categorized as “vacant or demolished”

V. REQUIREMENTS OF ACQUISITION ANALYSIS TOOL

For a City or Land Bank to receive an advance or be reimbursed for a NSP2 eligible acquisition through OPAL, the following requirements need to be completed and documented on the Acquisition Analysis

Tool. The Acquisition Analysis Tool will identify what items are required and what are optional at the time of acquisition. Below are the minimum requirements. The City or Land Bank may need to conduct further due diligence to determine feasibility and whether to move forward and approve the acquisition for their NSP2 program.

A. Acquisition Analysis Tool Requirements

The following sections of the Acquisition Analysis and corresponding Checklist tabs need to be completed:

- A. Property Information and Neighborhood Assessment
- B. Property Type, Condition and Characteristics
- C. Property Ownership Assessments
- D. Tenant Protections Assessment
- E. Environmental and Historic Review
- F. Cost Analysis Requirements
- G. Anticipated End Use
- H. Approval for Acquisition
- I. Title Insurance Commitment (if an Acquisition Reimbursement or OPAL Project Completion)
- J. Project Cost Estimates and Subsidy Analysis
- K. Negotiations and Settlement

B. Executed Mortgage Copy and Original Note

Grantees are required to execute the Neighborhood Stabilization Program Mortgage and Note for the full set-up amount less counseling. For NSP2, MSHDA must receive a copy of the executed Mortgage and original note prior to approving a Financial Status Report (FSR) except for in the following circumstances: 1) funds are being advanced or 2) a land bank is acquiring a property that will be transferred to their consortium partner for redevelopment with NSP2 funds. If funds are advanced and it is not a property that meets circumstance #2 above, then the executed Mortgage and original note will need to be sent into MSHDA prior to showing the expenditure of the dollars on the OPAL system. MSHDA will enter the date it was received into OPAL.

NOTE: MSHDA has determined that NSP Mortgages and Notes will not be required to secure acquisition dollars expended by Land Banks on properties that will be transferred to their consortium partner for redevelopment. Changes to OPAL are forthcoming.

VI. ACQUISITION BETWEEN CITIES AND LAND BANKS

A. Defining Land Banks as Separate Governmental Authorities and the Impact on Acquisitions

HUD regulations state that a grantee cannot use NSP2 funds to pay themselves for acquiring property. However, a grantee may use NSP2 funds to pay another entity. MSHDA received a legal opinion on June 25, 2010 through the Center for Community Progress that determines that a Land Bank is a separate governmental authority from its city, county or state government, e.g. Michigan Land Bank Fast Track Authority is separate from the State of Michigan; Berrien County Land Bank Authority is separate from Berrien County; and Detroit Land Bank Authority is separate from the City of Detroit. (*See attached "Legal Status of a County Land Bank Authority."*)

1. Tax Reversion Statutory Auction Process

Land Bank acquiring property in the Tax Reversion Statutory Auction Process, where the County Treasurer is the Foreclosing Governmental Unit (FGU), aligns with the intention of the NSP2 program. Per Michigan Law, all back taxes are cleared after the FGU forecloses on the property and receives title. The Minimum Bid for the Property is the sum of the costs for the County Treasurer to foreclose on a property and receive title, usually the sum of back taxes and assessments owed to governmental entities. In the Tax Reversion Statutory Auction Process, Minimum Bid is not actual back taxes and a County Treasurer does not have the authority to waive back taxes.

The Land Bank may pay costs of sale where proceeds go to the County Treasurer, so long as the acquisition meets NSP2 compliance standards. Therefore, to meet NSP2 compliance standards, a Tax Foreclosed Property acquired by a Land Bank from a County Treasurer must meet the following standards:

Tax Foreclosed Property

1. Appraisals and Other Acquisition Due Diligence: Land Bank must receive a URA Appraisal for any foreclosed properties. They also are required to complete the necessary due diligence as required for all acquisitions for foreclosed properties, including but limited to Site-specific Environmental Review Checklist, Tenant Protections, etc. Please refer to Acquisition Policy to determine the specific due diligence requirements.
2. Acquisition Costs for County Land Banks: Because the County Land Bank is a separate entity from the County Treasurer and the County Treasurer cannot waive back taxes nor re-establish the Minimum Bid Price, Eligible NSP2 Acquisition Costs include Land Bank's Cost of Sale to County Treasurer, so long as purchase price does not exceed 99% of Fair Market Value (FMV) **as determined by the current market-appraised value of the home or property**, the Land Bank will have complied with NSP2 and HUD regulations.
3. Acquisition Costs for Michigan Land Bank Fast Track Authority (MLB): Because the MLB is not only a separate entity from the County Treasurer, but also functions at the state level instead of the County Level, the MLB would have similar acquisition costs for tax foreclosed properties as a County Land Bank acquiring from a County Treasurer similar to the County Land Bank.

2. Mortgage Foreclosed and Other Property Types

A Land Bank may acquire mortgage foreclosed, abandoned and vacant or demolished property with NSP2 funds. If the Land Bank acquires a property with back taxes, liens or other acquisition costs owed to its city, county, or state government, please contact your CD Specialist and CAI Field Support Director. The Center for Community Progress is also available to provide a strategy on how a Land Bank may acquire such properties, as one option is the County Treasurers may waive back taxes on properties already owned by the Land Bank.

Examples are:

- Saginaw County Land Bank purchases an abandoned property through a voluntary acquisition with back taxes from the City, County, State and the School District. The Land Bank could pay the back taxes from the City, State and School District, but MSHDA is waiting for the legal opinion to see if they can pay back taxes owed to the County.
- Michigan State Land Bank Fast Track Authority purchases a REO listing in Grand Rapids. There are no liens from the State. The State Land Bank may proceed with the transaction.

B. Value Added of Property in the Land Bank

The Michigan Land Bank, Tax Reversion and Brownfield Laws provide legal and financial tools to the Land Bank in order to strategically assemble, maintain and redevelop property in the NSP2 Targeted Areas. These mechanisms include:

- **Quiet Title**: Land Banks can clear title within a 90-day period of any property held by them, which means all liens and past claims on a property are eliminated. Land Bank can clear title within a 90-period. This can also be done in a bulk process, where the land bank would clear title of hundreds of properties with one legal action, which is very efficient and cost-effective.
- **Brownfield Plan and Tax Increment Financing (TIF)**: All land bank owned properties become eligible for Brownfield incentives by a matter of definition. Land bank property taxable value drops to zero (if held over the December 31st to January 1st period of time), which allows all of the tax to be captured for eligible activities. Although this may not be necessary for NSP2 due to

the urgency to the HUD expenditure requirements, Land Bank can use TIF to finance acquisition and create scattered-site, multi-jurisdictional TIF plans, which can bring resources to development projects.

C. Eligible Tax Reverted Property Specific Tax (a.k.a. 5/50 tax)

A former land bank parcel cannot be combined with non-land bank parcel until 5 years after the date of the conveyance, as it sits on a different tax role at the assessors' office pursuant to state law.

When a Land Bank transfers a parcel of property from its inventory the ad valorem taxes are exempt and a specific tax is assessed for 5 years, pursuant to the Tax Reverted Clean Title Act. That specific tax is called the Eligible Tax Reverted Property Specific Tax (also known as the 5/50 tax).

When a land bank parcel is conveyed out of inventory, the parcel stays on that separate tax role (the specific tax role) for the next five years. A parcel on the specific tax role cannot be combined with a parcel on the ad valorem tax role as there is no physical method for the Assessors to combine two parcels from separate tax roles.

The solution is to transfer any parcels that are to be combined into the land bank. The parcels can be combined by the land bank under one new tax ID number and transferred out of the land bank's inventory as one parcel. That new (combined) parcel will be placed onto the specific tax role for 5 years.

D. Public Purpose

There are NSP2 requirements that impact the grantee's ability to acquire property through Tax Foreclosure that will need to be discussed with the County Treasurer, especially those cities who partnered with the Michigan Land Bank Fast Track Authority.

During the Right of First Refusal, cities, after the state, have the option of acquiring a property at minimum bid before the properties go to the first public auction. If the city decides to exercise their Right of First Refusal and acquire property from the County, they must demonstrate that the property will be used for a "public purpose." Prior to exercising their right, the cities and their partner land bank must inform the County Treasurer that NSP2 funds serves a "Public Purpose" because it is:

- Federal community development and affordable housing funds
- Meets the goals of the Michigan NSP2 Consortium and the collaboration between the state, cities and land banks to develop and implement neighborhood plans
- Using NSP2 funds to strategically assemble and prepare land to future long-term redevelopment that assists with the economic recovery of target neighborhoods and cities

E. Subsequent Sales

During the Right of First Refusal and if the city exercises their option, the tax foreclosed properties acquired, redeveloped and resold must send "subsequent sales" proceeds back to the County Treasurer. "Subsequent Sales" Proceeds are Sales Price less Total Development Costs. Due to the NSP2 requirements that the maximum sales price of a homebuyer unit is total development costs or appraised as-improved fair market value, whichever is less, there will be no "Subsequent Sales" Proceeds. The cities and their partner land bank must inform the County Treasurer that any property acquired with NSP2 funds at this point of the Statutory Auction Process will not receive "Subsequent Sales" Proceeds.

F. Strategic Acquisition and Conveyance Process with NSP2

Cities and their partner Land Banks will want to identify and assess the properties in the NSP2 target areas to determine their strategic, importance and value:

- If a rehabilitation project on a tipping point block, their due diligence will include not only NSP2 compliance, but understanding their target markets and examining quality of the neighborhood, existing housing stock, and marketability of property to sell or lease up by February 10, 2013
- If a long-term, future redevelopment project, ability to leverage the neighborhood amenities and anchors to prepare for the “New Michigan Urban Neighborhood.” A neighborhood that houses, employs, and serves businesses and residents-that assist in the sustained, economic recovery of Michigan.

The City and their partner Land Bank should develop a strategy and process for identifying, assessing and implementing a conveyance or acquisition strategy that maximizes NSP2 and the acquisition, holding, financing and conveyance mechanisms of the Land Bank. They will need to develop a strategy for property that is:

- **Currently-owned by the City:** What properties in their inventory should they rehabilitate immediately with NSP2? What properties should they convey to the Land Bank for strategic assembly of property in redevelopment areas?

Note: If property in City inventory were acquired or conveyed prior to April 9, 2010 and the Land Bank will land bank with NSP2, the Land Bank can only pay reasonable transaction costs. In no event, may the City reimburse or pay itself for acquisition.

- **Currently-owned by the Land Bank:** What properties in their inventory should be land banked, held and maintained with NSP2 funds that support the future long-term redevelopment plans of an NSP2 target area? Do they own any properties in tipping point blocks for rehabilitation or demolition to assist with neighborhood stabilization?

Note: If property in Land Bank inventory were acquired or conveyed prior to April 9, 2010 and the City will rehabilitate/redevelop with NSP2, the City can only pay reasonable transaction costs. In no event, may the City reimburse or pay itself for acquisition.

- **Tax foreclosed:** What properties should they target in the Statutory Auction Process? When should they acquire the property in the process and what method to ensure compliance with NSP2?
- **Mortgage foreclosed:** Who is Initial Successor in Interest (ISII)? What is the strategy to acquire –MSL Listing and Sales Agent, Bulk Purchase, Negotiations with Lender or Representative?
- **Privately-owned:** Who is the owner? What is the negotiation strategy?

VII. APPENDIX AND ATTACHMENTS

- ① Guidance on NSP Appraisals – Voluntary Acquisitions
- ☰ Tax Assessor Certification of True Estimated Cash Value, based on State Equalized Value.
- ☰ Sample URA Voluntary Acquisition Document
- ① General NSP2 Guidelines for Acquisition
- ① NSP2 Documentation Requirements of Foreclosed and Abandoned Properties
- ① NSP Tenant Protections at Foreclosure Under the Recovery Act
- ☰ Questionnaire on Compliance with NSP Tenant Protection Requirements Under the Recovery Act
- ☑ Environmental Review Project Checklist for Michigan NSP2 Consortium Sites
- ☑ SHPO Consultation Form
- ☰ Conditional Commitment of Federal Funds prior to Environmental Release of Funds