

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

NSP PROGRAM GUIDANCE

Reference to HUD's NSP website containing regulations, bridge notice, Q & A: www.HUD.gov/nsp
NSP1 CFDA #s - 14.228 for MSHDA Grantees
NSP 2 CFDA #s – 14.256

SECTION I. FEDERAL COMPLIANCE REQUIREMENTS

Refer to www.michigan.gov/mshda

Click on Nonprofit and Local Government, Community Development Tools, then Policy Bulletins

Davis Bacon (if contract w/8 units or more) (See attached PDF-NSP Davis Bacon and MSHDA PB#14)
Fair Housing (MSHDA PB #22)

Lead Based Paint (MSHDA PB #26)

Section 3 (Being created – see attached NSP Section 3 Clause for Contracts for definitions)

Uniform Relocation Act (MSHDA PB #24) (additional Tenant Protections, see below)

First Mortgage Requirements – Expectations of Buyers

Additional NSP URA Requirement - Tenant Protections: Refer to HUD's Bridge Notice at:
www.HUD.gov/nsp

The following applies when NSP dollars are used to acquire foreclose rental property: Effective 2/17/2009, NSP dollars cannot be used in any property unless the grantee can document compliance for:

Occupied Units:

- Lender provides grantee with copy of 90 day relocation notice that was given to “bona fide” tenants, OR
- Grantee assumes NSP tenant protection obligations which may trigger relocation assistance to displaced persons under URA.

Vacant Units:

- Lender certifies that the property was not occupied by a “bona fide” tenant at the time of foreclosure (could verify no utility usage), OR
- That the tenant moved after receiving the 90 day notice. If “bona fide” tenants moved-out since the time of foreclosure, and did not receive the 90 day notice, every effort must be made to locate the former tenant and determine if the housing they currently occupy is affordable, and if not, the tenant may be eligible for relocation assistance.

NOTE: if the tenant has Section 8 assistance, the lender must agree to continue lease and HAP contract.

See attached URA Tenant Protections for guidance developed by HUD, ICF and MSHDA.

NSP-funded programs/projects must meet one of the following National Objectives: National Objective documentation should consist of either 1) data verifying in NSP eligible census tract with risk score greater than or equal to 6 and/or 2) income verification documentation that beneficiary households are at or below 120% AMI.

OPAL is automatically presuming eligibility based on the census data being entered and by the type of activities that are being funded – DRGR is also drawing against NSP activities that are automatically linked to its corresponding national objective. i.e. Homebuyer DPA is presumed to be <=120% AMI.

All documentation regarding national objective must be collected at the local level and provided (upon request) to the CD specialist.

Program Income: Refer to OCD Policy Bulletin #4 by clicking on www.michigan.gov/mshda. Click on Nonprofit and Local Government, Community Development Tools, then Policy Bulletins. **In addition, refer to “NSP1 Program Income, Developer Proceeds & Mortgage Proceeds” for additional guidance.**

- Grantee must have plan for reuse of program income during the calendar year in which it is received.
- Grantee must track all program income generated; grantee reports on OPAL only the program income that it actually receives (i.e., PI retained by a subrecipient of a MSHDA grantee must be tracked by the grantee but is not reported on OPAL). **(See OPAL Guidance below.)**
- Grantees must commit PI received to NSP eligible activities as it is received.
- According to HUD, NSP1 PI committed and expended will count toward the total grant award. Example: ABC Housing receives a \$500,000 grant. They set-up and commit \$500,000 to NSP-eligible activities. It makes no difference to HUD if the \$500,000 is 100% initial grant dollars, or if a portion of the dollars are NSP-PI. HUD realizes that some grantees will end up with uncommitted grant dollars. Stand by for further guidance from HUD.

OPAL Guidance for PI Account: Either the Agency Authorized Official or the Agency Administrator may create and enter data into the Program Income (PI) Account on OPAL. The PI Account resembles an electronic ledger system used to track the receipt, commitment, and expenditure of PI received by the grantee (like a check book). Grantees should include a description of each type of entry (i.e. PI received from the sale of 123 Main, or, PI committed to project at 456 Washington, or, PI expended on hard costs at 789 Michigan).

SECTION II - MSHDA PROGRAM COMPLIANCE REQUIREMENTS

Subsidy limits (Non-Entitlement):

- CD Max total subsidy \$100,000 per unit. (Guidance: development subsidy \$75,000; homebuyer subsidy 20%/\$25,000 as needed.)

Set-up Limit:

- None

Sale Price Limit (to Homebuyer): For foreclosed properties only, the sales price is limited to the fair market value, not to exceed the total development cost (acquisition, demolition, rehabilitate/construction and activity delivery costs).

NOTE: Grantee’s maintenance costs cannot be included in the sales price unless rehabilitation/new construction occurs.

Income Limits: Refer to MSHDA Policy Bulletin #11 at www.michigan.gov/mshda
Click on Nonprofit and Local Government, Community Development Tools, then Policy Bulletins

All households receiving NSP-assisted units or parcels, either through purchase or donation, must be at or below 120% ami. The NSP Entitlement grantees are required to use 25% of their NSP grant dollars to assist households at or below 50% ami.

[Part 5 method for verifying income is used for Homeowner Rehab](#) and [1040 method for verifying income is used for Homebuyer](#). Exceptions to this policy may be made if Entitlement grantee uses something other than 1040. See “comparisons” table below.

HUD Policy Guidance on Demolition: Per HUD, demolition can be an end use unto itself if the property to be demolished creates an extreme danger to public health and safety in a LMMA area, OR, if the demolition is done in concert with a coordinated program of redevelopment, rehab, new construction, demolition, or other improvements to improve the LMMA area.

Per HUD, when demolition is an interim use leading to another NSP-eligible end use, such as the redevelopment or housing, or sale or donation of parcels to adjacent neighbors, the beneficiary household(s) must have incomes at or below 120% ami.

HUD has not identified “urgent need” or “emergency” demolition as a National Objective under NSP. Therefore, any demolition activities need to be identified as removal of slums and blight for area-wide benefit.

Asset Test: Not applicable for NSP. Under other HRF-funded homebuyer programs, households are subjected to an asset test, meaning in some cases they were required to reduce the amount of their assets before receiving homebuyer subsidy.

Credit Requirements: Buyer purchasing redeveloped housing units must be able to obtain either a conventional mortgage that meets our typical ADR standards or a MSHDA Single Family loan product.

Interim Costs: Grantees may use Activity Delivery Fees to cover the short term costs associated with a specific site during the rehabilitation/construction phase. Grantees may not charge NSP for maintenance of demolished sites unless demolition is part of the immediate redevelopment resulting in an NSP-funded housing unit.

Property Requirements:

- None other than NSP required.
- We do not require public water, public sewer.
- **Assistance may NOT be provided for a manufactured home located on leased land, such as a mobile home park.**
- Double-wide or modular units permanently affixed to real estate are eligible if, at a minimum, it meets the following requirements:
 - age of unit, no older than 1976.
 - must be able to meet rehabilitation standards in MSHDA’s NSP Action Plan.
 - existing Title to the unit must be relinquished, and
 - the unit and land must be taxed as real estate.

Refer to Mary Townley of MSHDA’s Homeownership Division (517-373-6840) regarding other secondary market guidelines.

NSP Rehabilitation Standards: Follow the Action Plan located on MSHDA's website.

Grantees may use NSP funds to make accessibility modifications.

Additions (bedrooms, bathrooms, garages) allowed when needed for marketability? Yes

- Modifications for marketability are relevant to ADR-type projects.
- Modifications for marketability are NOT relevant to consumer-driven, pre-sold units (HPR-type).

Can garages be demolished using NSP? It depends:

- If the garage is the only structure on a parcel, and it is blighted – yes.
- If the demolition of the garage is part of an overall NSP-funded rehabilitation or new construction project – yes.
- If the parcel contains housing structures that are privately-owned (and not part of an NSP-funded redevelopment project) – no.

New Construction: Refer to MSHDA Policy Bulletin #10 and related attachments at www.michigan.gov/mshda. Click on Nonprofit and Local Government, Community Development Tools, then Policy Bulletins

OCD requirements apply: Energy Star, Inclusive Home Design.

Construction Mortgage and Note: See Forms.

These two documents are used to secure the grant dollars invested into each unit. The documents are between MSHDA and the grantee. They remain in place until the completion and an eligible household has been identified as the homebuyer. The Construction Mortgage and Note are used to secure funds use for acquisition, rehabilitation, and new construction. Most activities under eligible uses B, C, and E require a construction mortgage.

- Copy of signed mortgage to us; original to register of deeds. Recorded mortgage is forwarded to MSHDA.
- Documents are compliance documents, not primarily financing documents.
- The amount of the lien should equal the amount of NSP dollars intended to be used for acquisition, demolition, rehabilitation or new construction, and associated delivery costs. Grantees are not required to include NSP dollars that may be needed for counseling or direct homeownership assistance to the buyer of this unit.
- The mortgage and note are not required prior to requesting an advance for acquisition; but the documents must be submitted immediately following the acquisition, and prior to the onset of demolition/rehab/construction activities.
- The construction mortgage and note are required only when the grantee is the owner of the property. (When the grantee is not the property owner, other documentation is needed to assure compliance with NSP. (see "OCD Lien Requirements Table)

NOTE: Prior to February 2010, all activity checklists on OPAL, regardless of the eligible use, included the Construction Mortgage and Note. Early February of 2010, OPAL was re-programmed and the Construction Mortgage and Note now ONLY appear when they are required. Checklists for activities created prior to this date will contain the mortgage documents and related fields. See detailed instructions under "OPAL Activity Checklists" on page 8.

MSHDA NSP Loan Products: (Refer to Product Specifications at www.michigan.gov/mshda. Click on Homeownership, then Neighborhood Stabilization Programs.)

80/20 Loan

- Available from MSHDA lender
- Only for NSP-assisted units being rehabbed and sold in completed condition by grantees (not just MSHDA) or their subrecipients (ADR-type units)
- Not available for HPR-type projects; HPR-type projects must use non-MSHDA loan for first mortgage to buyer.
- 1% down-payment required from buyer

Acquisition Rehab Loan Program (Consumer-Driven DPA/Rehabilitation - HPR-type):

- This product will not be used by our grantees as it is intended for REO or bank-owned properties. Designed to help those entities dispose of foreclosed properties **within their portfolio**.

Non-MSHDA Mortgage Products: Conventional mortgages must meet OCD's requirements for acceptable mortgage products. Review "First Mortgage Requirements for CD Funded Homebuyer Projects" located in Section G of OCD's Housing Resource Fund Summary. (Log on to www.michigan.gov. Click Nonprofit and Local Government, Community Development Tools, then 2009 Housing Resource Fund.)

Homebuyer Subsidy: Whether the buyer uses the SF 80/20 product, or conventional mortgage, all buyers are eligible to receive, at a minimum, 20% of the purchase price as homebuyer assistance. Regardless of the first mortgage product, MSHDA expects the buyer to contribute at least 1% of the purchase price. NSP dollars may also be used to pay the balance of the buyer's required down payment (if required for conventional loans) and for closing costs.

Direct Homeowner Assistance will be secured by a soft second mortgage. In cases where the assistance is not funded by MSHDA's Homeownership Division the grantee will use MSHDA OCD's "Homebuyer Assistance Program 10 Year Forgivable Mortgage – Prorated Monthly", and the "Homebuyer Assistance Program 10 Year Forgivable Mortgage Note – Prorated Monthly" for assistance less than \$40,001 dollars. (See Forms)

NOTE: MSHDA is following HUD's Affordability Requirements. Homebuyer subsidy will be secured with a mortgage and a note between MSHDA and the homebuyer. The affordability period is based on the TOTAL dollar amount of assistance provided to the buyer.

Less than \$15,000 in assistance – 5 year forgivable,
\$15,000 to \$40,000 in assistance – 10 year forgivable,
Over \$40,000 in assistance – 15 year forgivable.

Grantees are required to use MSHDA's Homebuyer Subsidy Mortgages and Notes located on this website.

What happens at closing?

- MSHDA 80/20 Loan – Buyer comes to the closing table with funds covering 100% of the purchase price. The first mortgage is secured by a MSHDA conventional loan; the buyer brings their required 1%, the SF lender brings NSP dollars and a mortgage and note securing the homebuyer assistance.
- Non-MSHDA Loan – Buyer comes to the closing table with funds equaling their first mortgage and their required 1%. The grantees brings a second mortgage and note equaling the amount of homebuyer assistance (**usually** minimum of 20% of the purchase price), however, no NSP grant dollars exchange hands (**this is** a typical ADR).

So what does this mean for my grant/activity budget? No need to include Director Homeownership Assistance in the line-item budget for that activity.

OCD Lien Requirements - Who holds the lien?

	Held by (mortgagor)	Terms
Demolition (stand-alone or green space redevelopment)	Grantee or municipality (if privately-owned)	Minimum 5-year forgivable, not prorated. Retained in grantees file.
Demolition (as part of a OCD/NSP-funded construction project)	MSHDA	Amount of demolition will be included in the construction mortgage (see terms below).
Demolition w/end use being the sale or donation of vacant parcel.	Grantee (if privately-owned)	Minimum 5-year forgivable, not prorated, in the amount of the NSP assistance. If sold for less than Fair Market Value, w/in 5 years, lien transfers to the new owner.
Construction (as part of a OCD/NSP-funded construction project)	MSHDA	0%. \$0 payment, discharged upon resale in compliance with regulations and upon accountability for tracking of sales proceeds; allows repayment of any construction loans (sample). Required only if grantee is taking ownership.
Homebuyer subsidy	MSHDA CD or MSHDA SF	5, 10, or 15 year forgivable, pro-rated; 20% max (SF) or 20% limit with exceptions (CD). (Refer to "Homebuyer Subsidy" above.)
Habitat construction	N/A	Construction/ permanent financing to be held by HFHM.
Habitat homebuyer	HFHM	0%, affordable monthly payment, HFHM to hold payments in revolving fund. Habitat mortgage would not involve a forgivable second mortgage.

NOTE: If Grantee is not the owner of the property, and passing NSP dollars to a nonprofit, Land Bank, or Habitat for development of NSP eligible property, the grantees must have an agreement, contract, or lien against the property to ensure NSP dollars are used for eligible activities, buyers are eligible, first mortgage product meets our standards, PI is managed properly, etc.) Such agreements, contracts or liens will be held by the grantee within their project files.

Attached is a sample Subrecipient Agreement.

Counseling:

- Grantees must utilize the services of a MSHDA or HUD-approved counselors.
- Grantees should include the cost of counseling within the activity budget (up to \$350 for 8 hours).
- Counselors must not bill MSHDA's Homeownership Division for counseling provided to NSP homebuyers.
- Prospective sequential buyers are eligible for NSP-funded counseling for same unit. For example: grantee provides counseling to an eligible household intending to purchase the unit.

The deal falls through for some reason. Grantee may charge another \$350 for the next identified household.

Comparisons:

	NSP 17 (Entitlement)	Non-Entitlement
Incremental funding	Yes	No
Subsidy limits	None	Generally, \$100,000, with 20% or \$25,000 for DPA (exceptions considered)
Program changes	Generally yes	Only with approved amendment
Grant Amendments	Can move dollars between eligible uses.	Not allowed.
Low-income set-aside (25%) Under Eligible use B	Required	<ul style="list-style-type: none"> • Not required, but encouraged • Anticipated that 100% of Habitat units will sell to households at or below 50% AMI.
Income Verification	May use Section 5 if that is what they use for their CDBG programs (w/written notice to MSHDA).	IRS 1040. – Policy Bulletin 11.

SECTION III - GRANT MANAGEMENT

Advances:

- **Acquisition:** Grantees may request the dollars needed for acquisition in advance of the closing. Prior to requesting the advance, grantees are required to submit pre-closing documents (i.e. MSHDA proforma, accepted purchase offer, appraisal document (see the NSP Required Documents Checklist for guidance specific to appraisals). Grantees are expected to show advance dollars disbursed within 30 days. MSHDA may limit the amount of advance dollars.
- **Construction (inc. rehab):** reimbursement basis. Note that grantees may submit payment requests as frequently as necessary to assure prompt payment to contractors. Note that if work is invoiced from the contractor to the grantee, a FSR can be submitted and the payment is considered a reimbursement even though payment has not been made to the contractor.
- **Documentation of an escrow for rehab** that is held by a title company is considered an invoice documenting an expense. (Grantee may pay fees for inspections and construction draws by title companies from their activity delivery fee.)

Grant Amendments/Program changes:

- Non-entitlement grantees are restricted to the activities they proposed in their application. Grantees may request an amendment to their program description and budget in writing, or via the OPAL system. Amendments are considered valid upon receipt of the formally executed grant

amendment documents. Costs incurred prior to approval of an amendment may not be reimbursed.

- 17 Entitlement Cities may request grant amendments to activities within the eligible uses in writing, or via the OPAL system.
- Grant amendments should not increase the grant amount.
- 17 Entitlement Cities may request incremental grant increases above the initial award. To receive an increase, grantees must have set up at least one activity on OPAL, provided all required documentation, and submitted a request for reimbursement (not an advance) against that activity. In addition, the grantee must demonstrate the need for additional dollars.
- Grant may amend activity line item budgets, within the same eligible use category without consultation with OCD. For example, dollars may be moved from Acquisition to Rehabilitation.
- Grant amendments to transfer dollars from one activity type to another require consideration from OCD staff. Issues to take into consideration:
 - Will the edited budget result in the loss of a grant dollars previously intended to meet the 25% set-aside? Reminder: Only projects completed under Eligible Use B count towards the 25% set-aside.

Leveraged Dollars: If the amount of leverage included in a grant budget decreases by more than 50%, the grantee must request an amendment, either in writing or via OPAL, to ensure accuracy in the leveraged dollars reported to HUD.

Activity budgets: Once money has been drawn against an activity, if revisions to the activity budget are needed, contact Renee Conklin at 517/373-8544.

OPAL Activity Checklists: Prior to February 2010, all activity checklists on OPAL, regardless of the eligible use, included the Construction Mortgage and Note. Early February of 2010, OPAL was re-programmed and the Construction Mortgage and Note now ONLY appear when they are required.

Checklists for activities created prior to this date will contain the mortgage documents and related fields. The grantee and CDS will need to check these items off the checklist as if they were created/received even though they are not required. **Enter the following text under the “Comments” tab for the activity: “Mortgage documents not required for this activity.”**

FALSE DATA - In some cases Grantees and CDS may need to enter false data in order to check items off the checklist. When data is required, make sure that it is apparent, at a glance, that the information is false. Example: for false dates enter 01/01/9999, for false dollar amounts enter all zeros (0000) when dollar amounts are required, or all x’s (xxxxx) when text is required.

SECTION IV - CLARIFICATION ON VARIOUS ISSUES

Appraisals:

- HUD Q & A: “The NSP1 Notice requires that the buyer obtain an appraisal that is issued within 60 days from the date of the final offer. We realize that the initial offer may not comply with the purchase discount requirements; multiple offers may be made before a final purchase price is agreed upon.” (3/26/09, p. 4)
- Effect of this interpretation is that a grantee may submit an offer to purchase contingent on an appraisal that has not yet been done.
- For Homebuyer programs, a post-rehabilitation appraisal is required. The appraisal could be a combination pre and post rehab appraisal.

Acquisition Policy Guidance: For NSP acquired property MSHDA requires the following documentation:

Purchasing from private entity (not State of Michigan or State Land Bank)

Minimum at set-up: Unrecorded Covenant or Quit Claim deed and Commitment for Final Title Insurance (for amount paid for property).

If a grantee elects to set up a property with just a commitment for title insurance they are certifying when they set up the project on OPAL and/or requesting reimbursement that they have reviewed any exceptions identified as necessary to clear the title and that they have determined that obtaining a clear title is not an issue.

Minimum at completion: Recorded Warranty Deed and Final Title Insurance (for amount paid for property).

Purchasing from public entity (State of Michigan or State Land Bank)

Minimum at set-up and completion: Final Title Insurance

The buyer will not be able to get a warranty deed from the state, but the buyer will need to get title insurance. Otherwise, the buyer really doesn't know what he/she bought.

Purchasing from HUD

The following are required:

Signed HUD -1, Recorded "Deed for Michigan", Recorded "Sheriff's Deed on Mortgage Sale".

Purchasing tax-foreclosed property

There is no redemption period. MSHDA requires a recorded Warranty Deed because Michigan is a race-notice state, meaning that the first person to record a Warranty Deed will prevail. If an NSP recipient acquires a property but does not record their Deed, another person or entity record a Deed and take possession.

Purchasing mortgage-foreclosed property

Yes, you can purchase property that is still within the redemption period with NSP dollars. No, you cannot proceed with any activity on that property (funded either with NSP or Non-NSP) until after the redemption period expires.

A buyer could purchase the lender's interest in property that is in the redemption period. But the buyer would have no right to possession until the redemption period expires. Essentially, the buyer would be moving forward during the redemption period with risk that the mortgagor would redeem the property.

Back Taxes:

HUD Q &A: Can NSP1 funds be used to pay "back taxes," clear tax liens or other liens, code enforcement fines, etc. if they are associated with acquisition costs?

Yes, there are some situations where NSP1 funds could be used to pay these taxes, but the options are limited. If title to a foreclosed property is held by a private entity and the tax was levied by the NSP1 grantee or another jurisdiction, then NSP1 funds by be used indirectly to clear the tax liens through the acquisition process. For example, if the fair market value of a foreclosed property less the NSP1 required purchase discount is valued at \$100,000, and the property has a \$10,000 tax lien, the NSP1 grantee can acquire the property for \$100,000. The title company disbursing the funds from the transaction will give the seller \$90,000 less any applicable fees and \$10,000 will be forwarded to the jurisdiction that levied the tax lien. Please keep in mind that you have only 18 months to obligate your jurisdiction's NSP1 funds. Therefore, it is important that you

be careful not to take on acquisitions that may get mired in title or other issues preventing timely closing. If a property has title or other legal issues associated with it that could delay the acquisition, we strongly encourage you to move on to the next property.

Ineligible Tax Payments:

NSP cannot be used to reimburse the grantee for its tax-foreclosed units.

NSP can be used to pay current taxes as part of the acquisition cost when the foreclosed unit is owned by a private lender.

Tax pro rations:

May come out of fee/delivery cost or charged as a cost of sale.

Land Banks:

- “Land banks” are defined in Michigan law, established by county treasurers
- “Land Banking – C” is an option only for (a) land banks, or (b) grantees with agreements with land banks for specific properties
- Grantee acquires (E); land bank maintains under contract from city (C), grantee commits redevelopment project and NSP funding prior to 6/30/10 (conditional agreement OK) (E) for project; NSP funds for redevelopment expended by 9/30/12.
- Grantee acquires foreclosed/abandoned (B); demolishes if necessary (D); deeds to Land Bank; redevelop through rehab (B) or new construction (E); Land Bank pays holding costs (C) from grantee. Land Bank provides written agreement to grantee to sell the property when construction is complete and grantee keeps program income.
- Land bank acquires and maintains (C) and demos (D). Need an agreement (between MSHDA or MSHDA’s grantee and land bank) to dedicate to permanent use by 10 years after acquisition.

Contracts between Grantees and Contractors:

The following documents will be provided as Attachments to this Guidance for reference in either WORD or PDF for the grantees’ use.

NSP Bid Process
Executive Order 11246
Section 3 Clause
Labor Standards and Form 2516 – for DBRA (see Forms)

If you have further questions, please contact your Community Development Specialist.

NSP Administrative Fees, Activity Delivery Costs and Developer Fees

This document is intended to explain the differences between Administrative Fees, Activity Delivery Costs, and Developers Fees. The first section contains definitions of each; the second section explains the circumstances under which each can be claimed.

In addition, guidance is being offered through Questions & Answers related to activity and grant budgets, amendments, and potential findings.

DEFINITIONS

Administrative Fees:

- Included as a separate line in the budget.
- Eligible costs are those associated with running a PROGRAM.
- Billable expenses include staff time for administering the program (supervision, internal accounting/audit), Environmental Review, marketing, etc.
- Expenses must be itemized and documentation maintained by the grantee.

For NSP1, only the budgets of the entitlement communities (ENT) contain a line item for administrative fees. This amount is limited to 10% of the total grant award. Grants awarded through the NSP 1 competitive round did not receive Administrative Fees (except for Habitat for Humanity of Michigan).

NSP Activity Delivery Costs (ADC):

- Included as a separate line in the budget.
- ADCs are included in the MSHDA construction mortgage or other document securing NSP dollars during construction/rehabilitation.
- Billable expenses include costs associated with the non-hard costs of developing a specific site/address (i.e. inspections, specification writing, etc.).
- Grantees NOT receiving funding for Administrative Fees may charge expenses associated with the operation of the program to ADC (i.e. staff time used to attend training, educate realtors, market the program, etc). (See instructions for CFR grantees below.)
- Expenses must be itemized and documentation maintained by the grantee.

Maximum Activity Delivery Costs allowed as follows:

- Rehabilitation/New Construction – Grantees may claim 15% of the sum of the NSP-funded dollars used for acquisition and rehab/new construction and the other funds committed (for eligible uses B, E). Acquisition is considered a hard cost if the grantee is acquiring the property for resale.
- Demolition – 10% of the hard costs (eligible use D).
- Land Banking – not capped.
- Expenses must be itemized and documentation maintained by the grantee.

Developer Fees:

- Figured into the total development costs, NOT included in the line item budget.
- Included in the MSHDA construction mortgage or other document securing NSP dollars during construction/rehab.
- To be used to pay soft costs, overhead, and profit to the grantee/developer.
- Grantees need not submit documentation supporting developer fees to MSHDA.
- Developer fees can be claimed/paid for activities completed under eligible uses B and E.

Maximum Developer Fees allowed is as follows:

- Capped at 15% of the hard costs (for both ADR and HPR).
- Recommend disbursement of 50% during project, 50% when project is completed and all required documentation received.

WHO CAN CLAIM WHAT?

Entitlement Communities (ENT grant suffix) can claim:

- Administrative Costs for program operation,
- Activity Delivery Costs for soft costs and staff time for site specific tasks completed by City staff if grantee is the developer,
- Developer fees can be paid to other entities when the grantee is not the developer.

Grantees are NOT allowed to receive both Activity Delivery Costs and Developer Fees on the same project/activity.

Example: City of Washington is an ENT grantee. They are partnering with a nonprofit developer/owner of single-family homes. The nonprofit is receiving a developer fee for managing the rehabilitation and sale of the home.

The specification writing and inspection services are provided by the City. Who can claim what?

- The City may claim administrative fees associated with the oversight of the program.
- The nonprofit developer receives a developer fee.
- The City invoices the developer for the services they provide.
- The nonprofit pays the City for the services provided out of their developer fee.
- No Activity Delivery Costs are charged or allowed in this project.

Grantees funded in the Competitive Round (CFR grant suffix) that are developing property under eligible use B and E can claim:

- Activity Delivery Costs for soft costs associated with site-specific tasks (i.e. inspections, specification writing, etc.) completed by staff and expenses associated with the operation of the program (costs of conducting Comprehensive Environmental Review, staff time to attend training, etc.).
- Expenses associated with the operation of the program may be split among the units/sites developed and charged to Activity Delivery Costs for each site since the grantee did not receive Admin.

CFR Grantees partnering with another entity that is developing the property under eligible use B and E can claim:

- Developers Fees only.
- The grantee should negotiate keeping a share of the Developer Fee to cover expenses associated with the operation of the program, as well as duties they will be perform (i.e. overseeing rehabilitation, verifying the income of potential buyers, marketing, etc.)
- The sharing of developer fees shall be described in a contract/agreement between the grantee and developer.

CFR Grantees performing demolition only may claim Activity Delivery Costs for the costs associated with demolition (title clearance, disconnection of utilities, etc.).

NOTE: The cost to acquire properties is considered a hard cost of the project, not an ACD.

Questions & Answers:

Q: What if this guidance contradicts activities we already have under contract? We have an activity under contract and set-up on OPAL which includes claiming a developer fee as opposed to ADC?

A. Grantees will not receive findings for activities that are not set-up according to the written guidance provided by MSHDA as long as the activity was under contract prior to February 8, 2010, the date MSHDA originally issued this guidance.

Q. We are claiming Developers Fees for an activity set-up prior to February 8, 2010 and have not kept supporting documentation. The written guidance indicates that we should have used Activity Delivery Costs and maintained documentation. Will we receive a finding?

A. No. If you are a grantee MSHDA allowed to claim a Developer Fees on an activity under contract prior to February 8, 2010, you will not receive a finding for the lack of supporting documentation since it is not required for Developers Fees.

Q: What if our grant budget doesn't contain ADCs?

A. Your CDS will work with you to amend the grant budget. Basically, 15% of the uncommitted hard costs will be moved to ADC. From this point forward, every activity set-up on OPAL will contain a line item for ADC as well as the rehabilitation/new construction.

See the table on the following page for further clarification.

Guidance at a Glance

Grantee	Admin.	Activity Delivery Costs (ADC)	Developer Fees (DF)
ENT Grantees developing units	Yes	Yes	No
ENT Grantees partnering w/developer	Yes	No	Yes, payable to developer.
CFR developing units	No	Yes	No
CFR partnering w/developer	No	No	Yes, payable to developer or grantee may negotiate a share.
CFR doing stand-alone demolition	No	Yes	No
Habitat for Humanity of Michigan	Yes	No	No
Habitat Affiliate	No	No	Yes, if producing a unit eligible to be sold to a buyer < 50% ami (counts toward 25% set-aside) No, if unit is not sold to buyer w/income <50% ami.

ENT = Entitlement Communities receiving an NSP allocation from MSHDA.

CFR = Grantees that were funded through the NSP competition.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

NSP BID PROCESS

Davis-Bacon Procedures:

1. All Davis Bacon bid documents and contracts for NSP projects must contain the most current Federal Davis-Bacon Wage Determination (has to be in the documents in its entirety). This document can be obtained online at <http://www.access.gpo.gov/davisbacon>.
2. There are three documents which also must be included in the bid documents and contracts: Federal Labor Standards Provisions, Equal Opportunity Clause (Executive Order 11246), and the Section 3 Clause - if contract or combination of contracts for this activity exceeds \$100,000.
3. There is required bid advertisement language that should be used.
4. Within ten days prior to bid opening you need to online to ensure that the wage determination has not been updated. If it has been, an addendum will be required. Print a confirmation copy for the file so there is documentation that this step was completed.
5. Once the bids are opened, you need to contact our office or go to www.EPLS.gov and make sure that the lowest qualified bidder is not on the debarred contractor list.
6. Copies of the bid tab, bid documents, and contracts will need to be maintained in the project files.
7. Payroll review and on-site worker interviews will need to be conducted.

Executive Order a1246 language and the Section 3 Clause have been attached (in "WORD" format. HUD Form 2516 is not available in word format but can be accessed for electronic completion at: <http://www.nls.gov/offices/osdbu/forms/hud2516.xls>

NSP Budget Guide (11.10.09)

Eligible Activity	OPAL/NSP	DRGR Code
Administration	Administration	001 Administration
Financing Mechanisms	Multi Family Acquisition/Rehab/New Construction	A-001 Rehabilitation/reconstruction of residential structures Note: Selection reflects rehab/reconstruction but should also reflect acquisition.
	Direct Homeownership Assistance (MSHDA Product)	A-002 Homeownership Assistance to low- and moderate-income households Note: Selection reflects low and moderate but should also reflect low, moderate, and middle-income households and the counseling and moderate rehabilitation activities.
Acquisition/Rehab – Residential	Activity Delivery Costs (15%)	B-001 Rehabilitation/reconstruction of residential structures Note: Selection reflects rehab/reconstruction but should also reflect acquisition.
	Acquisition	
	Rehabilitation	B-002 Homeownership Assistance to low- and moderate-income households Note: Selection reflects low and moderate but should also reflect low, moderate, and middle-income households.
	Direct Homeownership Assistance (Local Product)	
Counseling		
Land Banks	Acquisition	C-001 Land Banking - Acquisition (NSP Only)
	Activity Delivery Costs (8% in	C-002 Land Banking – Disposition (NSP Only)
	Maintenance	
Demolition	Activity Delivery Costs (10%)	D-001 Clearance and Demolition Note: Selection reflects clearance and demolition but should also reflect debris removal and activity delivery costs.
	Demolition	
Redevelopment	Activity Delivery Costs (15%)	E-001 Construction of New Housing Note: Selection reflects new housing but should also reflect activity delivery costs and acquisition and may be for mixed-use.
	Acquisition	
	New Construction - Housing	
	Activity Delivery Costs (15%)	E-002 Rehabilitation/reconstruction of residential structures Note: Selection reflects rehab/reconstruction of residential but should also reflect activity delivery costs, acquisition, and could be for non-residential if deemed allowable.
	Acquisition	
	Rehab/Reconstruction Residential	
	Direct Homeownership Assistance	E-003 Homeownership Assistance to low- and moderate-income households Note: Selection reflects low and moderate but should also reflect low, moderate, and middle-income households
	Counseling	
	Activity Delivery Costs (15%)	E-004 Rehabilitation/reconstruction of public facilities Note: Selection reflects rehab/reconstruction of public facilities but should also reflect activity delivery costs and acquisition
	Acquisition	
Rehab/Reconstruction Public Facilities		



FEDERAL LABOR STANDARDS (DAVIS BACON and RELATED ACTS)

Grant Administration Guide Contents (All Davis Bacon Pages Begin With the Letter D)

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FEDERAL LABOR STANDARDS (29CFR Part 5)

Overview

Michigan State Housing Development Authority NSP grant recipients are required to comply with federal labor standards when using grant funds for construction activities. In general, federal labor standards will apply if the project involves NSP funded construction activities in excess of \$2,000. Construction is defined in its broadest form and includes rehabilitation, repair work, painting, decorating, and the cost of installing machinery and equipment if it is more than incidental (13% or more of total cost).

Federal labor standards requirements stem from the following federal statutes:

The Davis-Bacon Act

PLEASE REFER TO THE FOLLOWING POLICY BULLETINS:

http://www.michigan.gov/documents/mshda_PB14_Davis_Bacon_118788_7.pdf

and

http://www.michigan.gov/documents/mshda_PB14_Davis_Bacon_Assessment_Att_A_118789_7.pdf

The Davis-Bacon Act was enacted in 1931, amended in 1935 and 1964. The purpose of the act is to protect communities and workers from economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

Davis-Bacon requires the payment of locally “prevailing wages” and fringe benefits to construction laborers and mechanics employed in direct federal contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating).

The Contract Work Hours and Safety Standards Act (CWHSSA)

The Contract Work Hours and Safety Standards Act was enacted in 1962. It consolidated a number of “eight hour” laws, some dating back to 1890, which provided for overtime pay after 8 hours a day on federally funded construction projects. This act applies to all covered construction contracts funded under the MSHDA NSP Program.

The act requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked in excess of 40 in a work week.

The Copeland “Anti-Kickback” Act

The Copeland “Anti-Kickback” Act and implementing regulations in 29CFR Part 3, collectively provide the following safeguards:

- Prohibits “kickback” of wages and back wages.
- Requires that contractors on DBRA covered projects to submit weekly a statement of compliance.
- Regulates payroll deduction from wages.

FEDERAL WAGE RATES

The U.S. Department of Labor has distinguished four general types of construction for the purpose of making prevailing wage determinations: building construction, residential construction, heavy construction, and highway construction. In brief:

Building Construction includes the construction, rehabilitation, and repair of sheltered enclosures with walk in access for the purpose of housing persons, machinery, equipment, or supplies.

Residential Construction includes the construction, rehabilitation, and repair of single family houses, townhouses, and apartment buildings of no more than four (4) stories in height.

Highway Construction includes the construction, alteration, or repair of roads, streets, highways, runways, parking areas, and most other paving work not incidental to building or heavy construction.

Heavy Construction is a catch all category which includes those projects which cannot be classified as Building, Residential, or Highway. Heavy construction is often further distinguished on the basis of the characteristics of particular projects, such as dredging, water and sewer lines, dams, major bridges, and flood control.

When a construction project contains items which may result in multiple classifications as to the type of the project, a multiple wage determination may be appropriate if the construction items which fall into a separate type of construction comprise at least 20 percent of the total project cost. Generally separate types of construction activities which are less than 20 percent of the total project cost are considered to be incidental to the primary type of construction and a separate wage determination is not applicable.

When multiple wage determinations are incorporated into a bid specification, it is very important to provide specific instructions specifying the contract work to which each wage determination applies.

If any questions or disputes regarding the appropriate classification of the project arise the grantee should consult with the Michigan State Housing Development Authority's CD Specialist.

Federal wage rates can be obtained on-line at www.gpo.gov/davisbacon/mi.html.

Required CDBG Bid Advertisement

Place the following paragraph in your advertisement for bids:

This is a Federally Funded project.

The Contractor and Subcontractors on this project must comply with HUD contract provisions 24CFR part 85.36(i), the Davis-Bacon Act, Nondiscrimination, Equal Employment Opportunity, Affirmative Action, Section 3 requirements, Anti-Kickback Act, Federal Occupational Safety and Health Act and Department of Labor Standards and Regulations as set forth in the Contract Bid Documents. This municipality is an equal opportunity employer, businesses owned by women or minorities are strongly encouraged to bid.

CONTRACT REQUIREMENTS

PLEASE REFER TO THE FOLLOWING POLICY BULLETINS:

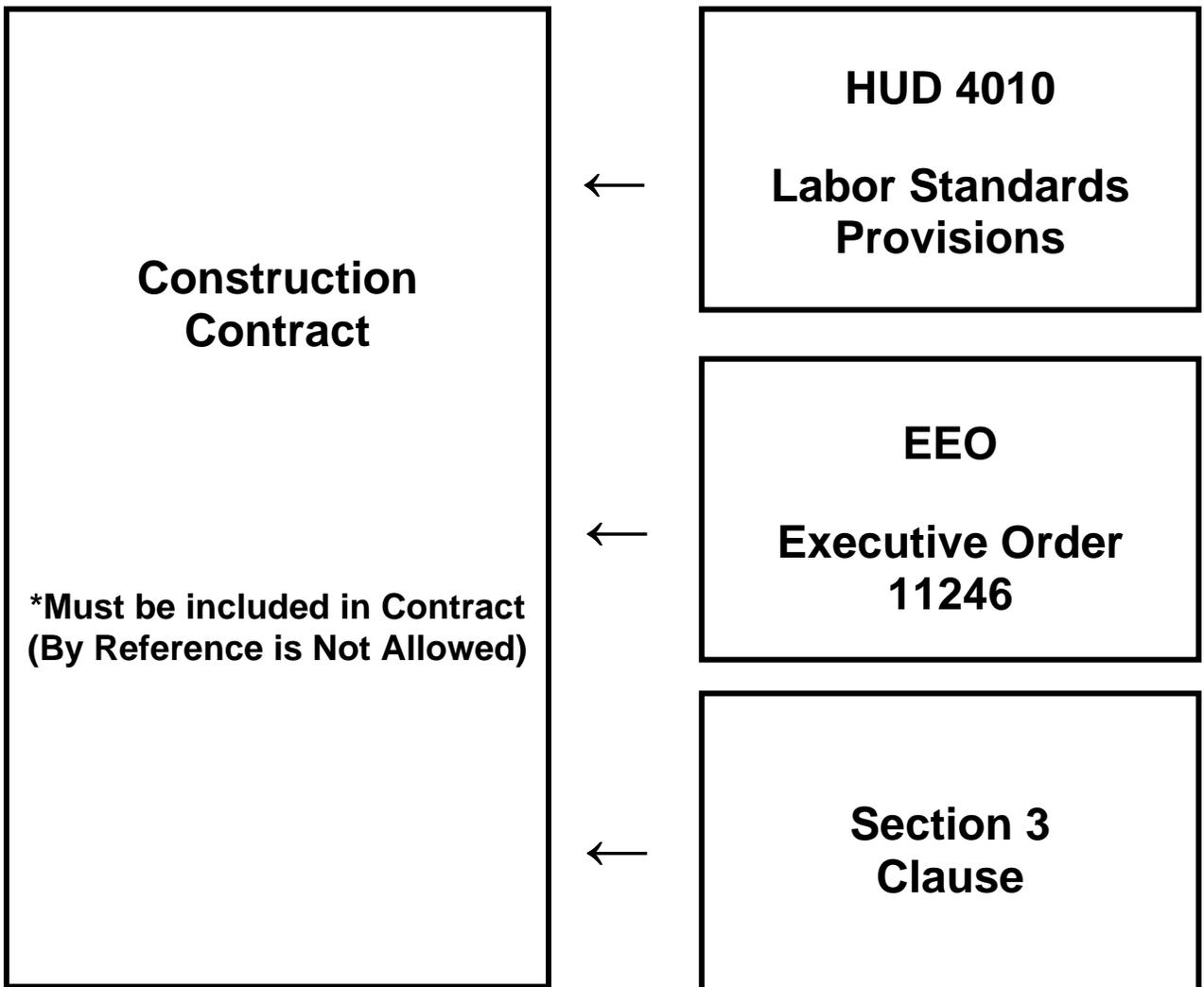
http://www.michigan.gov/documents/mshda_PB7_Contractors_Requirements_118766_7.pdf

All construction contracts, bid documents, and analogous instruments must contain a current and applicable federal wage determination. Federal wage determinations are modified weekly, and communities are responsible for going online to www.gpo.gov/davisbacon/mi.html 10 days prior to bid opening to receive the most recent modification to the wage decision.

All construction contracts, bid documents, and analogous instruments must contain a copy of the Federal Labor Standards Provisions (HUD 4010), Executive Order 11246, and the Section 3 Clause.

Prior to the disbursement of the NSP grant funds, the grantee must have signed bid documents and construction contracts in their office.

Prior to the disbursement of NSP grant funds, the grantee must have a signed Contract and Subcontract Activity form (HUD 2516) in their office.



CONTRACTOR ELIGIBILITY

PLEASE REFER TO THE FOLLOWING POLICY BULLETINS:

http://www.michigan.gov/documents/mshda_PB7_Contractors_Requirements_118766_7.pdf

Prior to awarding a construction contract, grantees must verify that contractors and subcontractors are not on the federal list of parties excluded from federal procurement and nonprocurement programs, a.k.a. the federal debarred list at <https://www.epls.gov/>

Grantees are required to determine all contractors and subcontractors who will be working on the project and to check the debarred list website for the contractor prior to contract award. Prime contractors should be informed during preconstruction conferences that it is their responsibility to inform local communities of the subcontractors so their eligibility can be verified prior to their working on the project.

This process must take place prior to contract award. If a contractor or subcontractor is found to be ineligible after the award of the contract, the contract must be terminated.

PRECONSTRUCTION CONFERENCE

A preconstruction conference should be held with the prime contractor and all available subcontractors prior to the start of construction. During this meeting contractors and subcontractors should be advised of their responsibilities under federal labor standards. The following major items concerning federal labor standards should be covered:

Is contractor/subcontractor aware of prevailing wages?

Does contractor/subcontractor have any questions on worker classification & pay rate?

Is contractor/subcontractor aware of fringe benefit requirement?

Is contractor/subcontractor aware that workers need to be paid weekly?

Is contractor/subcontractor aware of who receives weekly payroll reports?

Is contractor/subcontractor aware of overtime requirement?

Is contractor/subcontractor aware of need to display wages & DBRA poster?

Is contractor/subcontractor aware of employee interview requirements?

A report of minutes of this preconstruction conference should be placed in the project file. The minutes should contain the following information:

Project name and grant number

Name of contractor/subcontractors

Dollar amount of contract

Date and place of conference

Conference attendees

Summary of items covered

WEEKLY PAYROLL REPORTS

Each contractor, subcontractor, and any lower tier subcontractor shall submit **through the prime contractor** to the local community or its project administrator (whoever is directly administering the construction contract) weekly payroll reports. Weekly payrolls shall be completed for each week which there is work on the project. If no work is performed on a project during a given work week, no weekly payrolls need to be submitted. Weekly payrolls shall be numbered sequentially and the final payroll marked "final". Weekly payrolls shall be submitted by the prime contractor promptly, no later than seven work days following completion of the work week.

Weekly payroll reports shall contain the following information:

- Worker name, address and social security number
- Work classification (as described in wage determination)
- Hours worked each day
- Total weekly hours
- Rate of pay
- Gross amount earned
- Deductions and net pay for the week
- Statement of compliance
- Information on hourly cost of fringe benefits contributions
- Copy of the Contract and Subcontract Activity form (HUD 2516)

Weekly payroll reports shall be reviewed by the local community or project administrator. For each week and each contractor/subcontractor, a payroll review form shall be completed.

Contractors/subcontractors should not be reimbursed for any work completed until the weekly payroll reports for these weeks have been collected, reviewed and the local community or project administrator is satisfied that the correct prevailing wage rates are being paid. Final payment to the contractors/subcontractors should not be made until a sample of the weekly payroll reports has been reviewed.

Instances where it appears that the contractor/subcontractor may have paid less than prevailing wages, the MSHDA CD Specialist should be notified to provide technical assistance if needed.

All payroll reports must be available for review at the monitoring visit.

READING A WAGE DETERMINATION

Each federal wage decision is identified with a General Decision Number. It also contains the type of construction covered and the counties the wage decision is applicable to. The decision also contains a modification number and publication date. The modification number is used to determine if you have the most recent wage decision. Communities are responsible for contacting our office 10 days prior to bid opening to determine if they have the most recent modification to the wage decision.

Wage decisions are organized by type of work and worker classification. The worker classification is then broken down by area in which the work is performed. The worker classification contains a base rate and a rate for fringe benefits. These are the minimum wage scales for this classification.

In some instances, classification may be broken down into different groups. The wage decision will then contain an explanation of the type of work performed by each group.

The Fringe Benefit Rate may also be expressed as a percentage. The percentage should be calculated from the base rate. For example, the 3% + \$7.51 fringe for electricians means they need to receive fringe benefits equivalent to \$8.22 hr ($23.95 \times .03 + 7.51 = \8.22)

Wage decisions may also require that the contractor pay special overtime benefits to some classifications.

ADDITIONAL CLASSIFICATIONS

If the wage decision does not contain some of the classifications needed for the construction project, the grantee should contact our office for further instructions.

Any questions regarding the wage decision should be directed to the MSHDA CD Specialist.

Item #1

General Decision Number MI960005

Superseded General Decision No. MI950005

State: Michigan

Construction Type:
BUILDING

County(ies):

BAY	LAPEER	ST. CLAIR
GENESEE	SAGINAW	TUSCOLA

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Item #2

Modification Number	Publication Date
0	03/15/2006
1	04/19/2006
2	06/07/2006
3	07/05/2006
4	10/11/2006
5	12/13/2006
6	12/27/2006
7	01/17/2007

Item #3

LABORERS:
OPEN CUT:

Item #4

	Rates	Fringes
BAY, SAGINAW AND TUSCOLA COUNTIES:		

Item #5

LABORERS:		
GROUP 1	13.84	4.13
GROUP 2	13.96	4.13
GROUP 3	14.04	4.13
GROUP 4	14.34	4.13

Item #6

LABORER CLASSIFICATIONS

GROUP 1: Includes all construction laborers on building construction work except as specified below; Also includes pumps with a 3-in. or less discharge and not hooked up in battery; Mechanized buggy operators; Mortar mixed (when done by hand) and mason tender

GROUP 2: Mechanized mortar mixing; Air, electric and gas driven tools

GROUP 3: Air or electric driven pavement breakers; Concrete vibrator; Plaster tender and plaster mixed; Crock and/or pipelayer; Signal person and top person on caisson work.

GROUP 4: Tunnel miner; Tunnel mucker and tunnel and shaft underpinning contributing to structural support of buildings

GROUP 5: Driller, blaster, and burner

Item #7

ST. CLAIR COUNTY:	Rates	Fringes
ELECTRICIAN	23.95	3% + 7.51 ←

Item #8

PAID HOLIDAYS:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. If any of the above holidays fall on a Sunday, the following Monday shall be considered the holiday and, if work is performed, the rate shall be double time.

FRINGE BENEFITS

Fringe benefits are defined as an irrevocable contribution made by the contractor to a trustee or third party to a bonafide fringe benefit fund (does not include employee contributions). To be considered "bonafide" the fringe benefit must be of the type listed in the Davis-Bacon Act and federal regulations. The Payroll Certification Form should indicate the types of fringes offered by the Contractor and the hourly value of these benefits.

Examples:

- Life Insurance
- Health Insurance
- Pension
- Vacation
- Holidays
- Sick Leave

Contractors are advised that the use of a truck, Thanksgiving Turkey, Christmas Bonus or travel expenses are not considered bonafide fringe benefits. (Section 1(b)(2)(b) of the Davis-Bacon Act and 29CFR Part 5 section 5.23)

No credit may be taken for any benefits which are required by federal, state, or local law:

Examples:

- Workers Compensation
- Unemployment Compensation
- Social Security Contributions

Fringe benefits must be paid for all hours worked on the project including overtime hours. Fringe benefit contributions may be excluded from the half-time premium due as overtime compensation.

Over Time & Fringe Benefits

Example:

An employee worked 44 hours in one week as an electrician. The prevailing wage rate is \$12 hr plus \$2.50 in fringe benefits. To be correctly paid the electrician needs to receive

44 hrs x \$14.50 (base rate plus fringe rate)	=	\$638.00
4 hrs at overtime premium (½ of \$12 hr)	=	24.00
Total Pay		\$662.00

Contractors who do not pay fringes for their employees are required to make the cash contribution specified in the wage decision to their employees. Contractor's whose hourly contribution for fringe benefits are less than those specified in the wage decision need to make up the difference to employees in cash.

Statement of Compliance

All contractors and subcontractors are required to submit weekly statements of compliance.

EMPLOYEE INTERVIEWS

All grantees or their labor standards administrator are required to conduct employee interviews. The purpose of the employee interview is to establish a degree of compliance with federal labor standards. Interviews should be representative of all classifications of employees on the project.

Employee interviews may be recorded on Form HUD-11. The following information should be included when doing an employee interview:

Project Number. Include the Michigan NSP project Number.

Contractor or Employer. Enter the name of the contractor or employer.

Employee Name. Enter the employee's full name.

Permanent address. (Self explanatory)

Last Date Worked On CDBG Project. Interviewer should make it clear that federal labor standard requirements apply only to hours worked on the NSP project. Not to work on other non funded projects.

Hourly Rate of Pay. Determine what the worker is being paid hourly and if this includes employer paid fringe benefits.

Classification. Try to determine the type of work being done by the employee. This will assist you in determining the proper wage determination classification to be used. You may also want to note any specific duties or tools used by the employee which may assist you in determining the proper classification.

Signature. The interview form should be signed by the person conducting the employee interview.

TRUCK DRIVERS

Truck drivers are covered under the Davis-Bacon Act under the following circumstances:

All truck drivers performing work on the “site of work” are covered by the Davis-Bacon Act. “Site of work” is defined as the physical place or places in which the construction work is taking place and other adjacent or nearby property used by the contractor. Site of work may also include commercial suppliers or materials men established in the proximity of the project exclusively for the project after the opening of the bids.

Truck drivers transporting materials and/or supplies between the actual construction site and a facility deemed part of the site of work.

Truck drivers are not covered under the Davis-Bacon Act when:

Drivers of an independent trucking firm, or drivers/materials men hauling materials to and from a Davis-Bacon job to a commercial material supply facility which was not set up exclusively for the Davis-Bacon job.

Drivers of construction contractors and subcontractors hauling materials to a Davis-Bacon job from a commercial facility when they are off the “site of work”.

Record of Employee Interview

U.S. Department of Housing and Urban Development
Office of Labor Relations

OMB Approval No. 2501-0009
(exp. 08/31/2007)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name		
1b. Project Number			2b. Employee Phone Number (including area code)		
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code		
			2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>		
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits?	
				Vacation Yes <input type="checkbox"/> No <input type="checkbox"/>	4c. P Yes <input type="checkbox"/>
				Medical Yes <input type="checkbox"/> No <input type="checkbox"/>	
				Pension Yes <input type="checkbox"/> No <input type="checkbox"/>	
5. Your job classification(s) (list all) --- continue on a separate sheet if necessary					
6. Your duties					
7. Tools or equipment used					
8. Are you an apprentice or trainee? Y N <input type="checkbox"/> <input type="checkbox"/>					
10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week?					
9. Are you paid for all hours worked? <input type="checkbox"/> <input type="checkbox"/>					
11. Have you ever been threatened or coerced into giving up any part of your pay?					
12a. Employee Signature			12b. Date		
13. Duties observed by the Interviewer (Please be specific.)					
14. Remarks					
15a. Interviewer name (please print)			15b. Signature of Interviewer		15c. Date of interview

Payroll Examination

16. Remarks	
17a. Signature of Payroll Examiner	17b. Date

Instructions

General:

This form is to be used by HUD and local agency staff for recording information gathered during on-site interviews with laborers and mechanics employed on projects subject to Federal prevailing wage requirements. Typically, the staff that will conduct on-site interviews and use this form are HUD staff and fee construction inspectors, HUD Labor Relations staff, and local agency labor standards contract monitors.

Information recorded on the form HUD-11 is evaluated for general compliance and compared to certified payroll reports submitted by the respective employer. The comparison tests the veracity of the payroll reports and may be critical to the successful conclusion of enforcement actions in the event of labor standards violations. The thoroughness and accuracy of the information gathered during interviews is crucial.

Note that the interview itself and the information collected on the form HUD-11 are considered confidential. Interviews should be conducted individually and privately. All laborers and mechanics employed on the job site must be made available for interview at the interviewer's request. The employee's participation, however, is voluntary. Interviews shall be conducted in a manner and place that are conducive to the purposes of the interview and that cause the least inconvenience to the employer(s) and the employee(s).

Completing the form HUD-11

Items 1a - 1c: Self-explanatory

Items 2a – 2d: Enter the employee's full name, a telephone number where the employee can be reached, and the employee's home address. Many construction workers use a temporary address in the locality of the project and have a more permanent address elsewhere from which mail may be forwarded to them. Obtain a more permanent address, if available. Ask the employee for a form of identification (e.g., driver's license) to verify their name.

Items 3a – 4c: Enter the employee's responses. Ask the employee whether they have a pay stub with them; if so, determine whether the pay stub is consistent with the information provided by the employee.

Items 5 – 7: Be certain that the employee's responses are specific. For example, job classification (#5) must identify the trade involved (e.g., Carpenter, Electrician, Plumber) – responses such as "journeyman" or "mechanic" are not helpful for our purposes.

Items 8 – 12b: Self-explanatory

Items 13 – 15c: These items represent some of the most important information that can be gathered while conducting on-site interviews. Please be specific about the duties you observed the employee performing. It may be easiest to make these observations before initiating the interview. Please record any comments or remarks that may be helpful. For example, if the employee interviewed was working with a crew, how many workers were in the crew? Was the employee evasive?

The level of specificity that is warranted is directly related to the extent to which interview(s) or other observations indicate that there may be violations present. If interviews indicate that there may be underpayments involving a particular trade(s), the interviewer is encouraged to interview as many workers in that trade(s) that are available.

Items 16 – 17b: The information on the form HUD-11 may be reviewed for general compliance, initially. For example, are the job classification and wage rate stated by the employee compatible with the classifications and wage rates on the applicable wage decision? Are the duties observed by the interviewer consistent with the job classification?

Once the corresponding certified payroll reports are received, the information on the HUD-11 shall be compared to the payroll reports. Any discrepancies noted between the HUD-11 information and that on the payroll report shall be noted in Item 16, Remarks. If discrepancies are noted, follow-up actions to resolve the discrepancies must be taken.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and
- (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part

of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll

period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the

journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subpara-

graph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

SECTION 3 CLAUSE

1. All contractors and subcontractors and the City itself when acting as a contractor shall be asked to indicate a good faith effort to meet the Section 3 requirement by signing contracts which contain the clause set forth in 24 CFR 135.20(b) as follows:
 - A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
 - B. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the application for or recipient of Federal financial assistance, take appropriate action pursuant to the contract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal Assistance is provided, and to such sanctions.

EQUAL OPPORTUNITY CLAUSE (EXECUTIVE ORDER 11246)

SEE POLICY BULLETIN:

http://www.michigan.gov/documents/mshda/mshda_PB22_Fair_Housing_E_240128_7.pdf

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

NSP DEFINITIONS

Abandoned. A home or residential property is abandoned if either (a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or (b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or (c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state, local or tribal law or otherwise meets a state definition of an abandoned home or residential property. (Updated in Federal Register, Vol. 75, No. 68, Friday, April 9, 2010, Notice, page 3).

Blighted Structure. A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare. Further defined in the Michigan NSP Plan as:

A blighted property is a blighted / abandoned / uninhabitable property that meets any of the following criteria:

- Declared a public nuisance in accordance with local housing, building, plumbing, fire, or other related code or ordinance.
- Attractive nuisance because of physical condition or use.
- Fire hazard or is otherwise dangerous to the safety of persons or property.
- Has had utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

Has a subsurface structure or demolition debris that renders the property unfit for its intended use.

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 American 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 an NSP grantee, contractor, subrecipient, developer, or end user. (Updated in Federal Register, Vol. 75, No. 68, Friday, April 9, 2010, Notice, page 3).

Public Facilities and Services. Public facilities and services will be considered for funding based on the extent to which they are oriented to providing services for the immediate neighborhood as a primary market or constituency.

Vacant: "Vacant properties" includes both vacant land and properties with vacant structures on the land. However, HUD understands redevelopment to imply that properties were once developed; therefore previously undeveloped or "greenfield" sites may not be acquired under Eligible Use E.

For additional guidance on property types under each Eligible use, please refer to:

- (1) the NSP Budget Guide, and
- (2) http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp_terminology.pdf



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

GARY HEIDEL
INTERIM EXECUTIVE DIRECTOR

MEMO

TO: File
DATE: August 11, 2010
RE: Disallowed Costs Process for NSP

In the event potential disallowed costs are identified by OCD staff or others, the following steps should be taken:

1. The appropriate CD Specialist will ask the Grantee for an explanation – preferably through a telephone call or a site visit, though email can also be used. The CD Specialist will inform the Grantee that a written explanation and any required documentation must be submitted to the CD Specialist within 2 business days.

If the written explanation (and documentation if required) is received and is satisfactory – no additional action is necessary.

2. If the written explanation (and documentation if required) is not provided within 3 business days or is inadequate, the CD Specialist will notify the OCD Director, the OCD Field Services Director, and the OCD Internal Operations Director. These OCD staff (including the CD Specialist) will determine the appropriate course of action. At a minimum, a conference call with the Grantee will be held advising them of the situation and informing them that no additional funds will be disbursed pending resolution of the disallowed costs. During the conference call, all potential methods of resolution will be outlined and the grantee informed of the total dollar amount of the disallowance.

One of the methods of resolution may be for the grantee to consult with and/or request a waiver from HUD (handled through the Detroit Field Office). If the Grantee elects to pursue direct consultation with HUD regarding the disallowance for clarification and/or waiving of federal rules and regulations, MSHDA will not disburse any additional funding to the Grantee until a formal written response is received by the Grantee from HUD and provided to MSHDA.

3. Once a resolution is deemed satisfactory and complete all disbursements by MSHDA will resume. No disbursements will be allowed until all disallowed costs are repaid in full and/or the projects are removed from the OPAL system and restructuring of the grant activities to ensure compliance is complete.

If you have any questions, please contact your CD Specialist.



MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

**EQUAL OPPORTUNITY CLAUSE
(EXECUTIVE ORDER 11246)**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

OPAL / NSP ACTIVITY CHECKLISTS

For A only (Financing Mechanisms):

Activity Checklist #1:

- Activity Budget and Activity Information has been submitted/approved.
- MSHDA has received and reviewed all documents for disbursement of funds: 10/01/2009.
- Activity Completion Information
- Activity Household Characteristics (Homebuyer)

For B and E (Redevelopment of Abandoned/Foreclosed or Vacant/Demolished Property):

When line items in B or E are part of the activity budget, one of three activity checklists will appear depending on which one of the following box is checked:

Note: text in quotations will appear on OPAL.

Box 1. "Grantee will own the property being redeveloped for sale to an eligible household." (Result = Activity Checklist #2)

Box 2: "Consumer-driven DPA/Rehab" (Result = Activity Checklist #3)

Box 3: "A third-party owns the property being redeveloped for sale to an eligible household. (Result = Activity Checklist #4)"

Activity Checklist #2: **As is currently on OPAL (11 checkboxes).**

- Activity Budget and Activity Information has been submitted/approved.
- Upload property "before" picture:
(Upload text/capability)
- MSHDA has received and reviewed all documents for disbursement of funds:
(date).
- Date executed construction mortgage received: (date)
Date original construction mortgage note received: (date)
(Rehab and New Construction dollars are not allowed until both dates are entered.)
- Enter the following information from original recorded construction mortgage:
Liber, Page OR Instrument #, date executed, county recorded, etc
- Request for Discharge (etc.)
- Recorded Discharge of construction mortgage (date), etc.
- Activity Completion Information
- Activity Household Characteristics (Homebuyer)
- Contractor information Form
- Upload property "after" picture:

Activity Checklist #3: Same as #2 except four boxes related to construction mortgages are removed.

- Activity Budget and Activity Information has been submitted/approved.
- Upload property “before” picture:
(Upload text/capability)
- MSHDA has received and reviewed all documents for disbursement of funds:
(date)
- Activity Completion Information
- Activity Household Characteristics (Homebuyer)
- Contractor information Form
- Upload property “after” picture:

Activity Checklist #4: Same as Activity Checklist #3, except there is an last check box added (see below).

- Activity Budget and Activity Information has been submitted/approved.
- Upload property “before” picture:
(Upload text/capability)
- MSHDA has received and reviewed all documents for disbursement of funds:
(date).
- Activity Completion Information
- Activity Household Characteristics (Homebuyer)
- Contractor Information Form
- Upload property “after” picture:
- Grantee/Third Party Subrecipient Agreement. The grantee will enter the date of the Agreement.

For C (Land Banking):

For activities funded under C, the following checklist should appear:

Activity Checklist #5:

- Activity Budget and Activity Information has been submitted/approved.
- Upload property “before” picture:
(Upload text/capability)
- MSHDA has received and reviewed all documents for disbursement of funds:
(date).
- Date executed construction mortgage received: (date)
Date original constructed mortgage note received: (date)
(Rehab and New Construction dollars are not allowed until both dates are entered.)
- Enter the following information from original recorded construction mortgage:
Liber, Page OR Instrument #, date executed, county recorded, etc.
- Request for Discharge (etc.)
- Recorded Discharge of construction mortgage (date), etc.
- Activity Completion Information
- Activity Household Characteristics (Homebuyer)
- Contractor Information Form
- Upload property “after” picture:
- Maintenance/Disposition Plan - Date received by MSHDA (date): MSHDA’s responsibility to check the box.
- Date Property Disposed (date): Grantee’s responsibility to check the box.

For D Only (Demolition Only):

When Demolition is the only line-item within an activity, one of the two checklists will appear depending on which one of the following box is checked:

“Check the box that describes the property/project that will be undertaken with NSP grant dollars.”

Box 1 - “Demolition where ownership of vacant lot will be transferred .” (Result =Checklist #6 below)

Box 2 – “Demolition where re-use of vacant lot is funded by other sources (not NSP).” (Result=Checklist #7 below)

Box 3 – “Demolition where ownership is not transferred and no re-use is planned.” (Result = Checklist #7)

Activity Checklist #6:

- Activity Budget and Activity Information has been submitted/approved.
- Upload property “before” picture:
(Upload text/capability)
- MSHDA has received and reviewed all documents for disbursement of funds:
(date).
- Activity Completion Information
- Activity Household Characteristics (Property Recipient(s))
- Contractor Information Form

Activity Checklist #7: (same as #6 minus the “Activity Household Characteristics).

When Demolition is occurring in conjunction with redevelopment under B or E, the activity checklists for B and E take precedence

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

**NSP1 PROGRAM INCOME, DEVELOPER PROCEEDS
AND MORTGAGE PROCEEDS**

NSP1 Program Income

NSP Program Income consists of any revenue received by MSHDA or its subrecipients from the investment of NSP funds, including (but not limited to):

- Proceeds from the sale or lease of property acquired, rehabilitated, redeveloped with NSP;
- Principal and interest on NSP loans (see the NSP Mortgage Proceeds section below);
- Revenue returned to MSHDA or its subrecipients by non-subrecipients; and
- Recapture of home sale proceeds of NSP-assisted units under affordability agreements (see the NSP Mortgage Proceeds section below.)

MSHDA subrecipients may keep and reuse any program income only if (1) the agreement with MSHDA permits them to retain and reuse them and (2) the following procedures are followed:

- Grantees may use up to 10% of PI received for program administration.
- Grantees are expected to commit PI to NSP eligible projects upon receipt.
- Grantees are required to expend PI before drawing additional dollars from their grant.
- Grantees are required to track the receipt, commitment and expenditure of PI. MSHDA grantees will use the OPAL system to track PI.
- Grantees should set-up PI-funded activities on OPAL. MSHDA is in the process of revising the activity budget page to allow PI to be identified. Until this change is made grantees should include a small amount of NSP grant dollars in the activity budget and enter the PI as "other income" on the Activity Information page in OPAL.

Developers are not permitted to retain and reuse program income. See the next two sections for other proceeds that may be retained and reused by developers.

NSP Developer Proceeds

Amounts that are received by developers and are not required to be repaid to MSHDA or its subrecipients are considered Developer Proceeds and are NOT considered Program Income, including:

- Net operating income (NOI) from rental properties owned by developers;
- Net proceeds from the sale of NSP-assisted units; and
- Payments made on Purchase Money Mortgages by homebuyers to developers, but not including payments on NSP notes and mortgages.

While such amounts received by developers are not required to be returned to MSHDA as program income, NSP guidelines (and OMB cost principles) require MSHDA to ensure that the retention of developer proceeds does not constitute undue enrichment to the developer:

“(G)rantees are strongly encouraged to avoid the undue enrichment of entities that are not subrecipients. For example, grantees are encouraged to structure assistance to developers that undertake acquisition and/or rehabilitation as loans rather than grants. Grantees are also encouraged to include language in agreements with entities that are not subrecipients that provides for grantees to share in any excess cash flow generated by the assisted project to the extent practicable. (Generally, excess cash flow on a real estate project is the amount of cash generated from operations, sales, or refinancing that is in excess of the amount required to provide the owner a reasonable return on its equity investment.)”

(NSP Bridge Notice, Federal Register, Friday, June 19, 2009, p. 29224.)

Consistent with HUD requirements to ensure that undue enrichment of developers does not occur, MSHDA will institute the following requirements for NSP projects:

- **NSP Rental Projects:** NSP-assisted rental projects will be underwritten to determine reasonable cash flow based on developer investment. Excess cash flow over approved cash flow levels must be directed to operating and replacement reserves and capital improvements, or returned to MSHDA as partial payment of the NSP assistance.
- **NSP Homebuyer Projects:** Any net proceeds of sale (after all approved costs, including closing costs and developer fees have been paid) that represent a return of the original NSP investment must be repaid to MSHDA, unless such proceeds have been authorized for immediate reinvestment in additional NSP units in the MSHDA funding agreement.

Since the maximum sales price of NSP-assisted homebuyer units is capped at the total cost to acquire, redevelop, or rehabilitate the unit (including construction costs, program delivery costs, and a reasonable developer fee), there cannot be excess proceeds from a sale or additional profit beyond the developer fee.

NSP Buyer Subsidy Mortgage Proceeds

As noted under Program Income, any proceeds from NSP funded buyer notes and mortgages – including amortization payments and prepayments on resale – are defined as NSP Program Income and must be returned to MSHDA or the subrecipient.

Any NSP assistance provided to the buyer for down payment assistance, closing costs, price reduction and principal reduction, must be secured with lien documents between the homebuyer and MSHDA unless an alternate method of recapture is approved by MSHDA.

- MSHDA’s lien documents are stored on MSHDA’s website (at www.michigan.gov/mshda, click on Nonprofit and Local Government, Community Development NSP.)

Exception: If the developer is directly providing primary mortgage financing for the buyer (senior to the NSP recapture mortgage), and the mortgage includes some of the NSP investments funds, the developer must:

- Enter into a written agreement with MSHDA **or the subrecipient** that expressly permits the developer to retain and reuse any mortgage amortization proceeds or prepayment attributable to the NSP fund;
- Submit a plan to MSHDA for reuse of the portion of the primary mortgage proceeds attributable to the NSP funds for NSP eligible activities;
- Provide MSHDA with documentation for any project receiving such reinvested NSP proceeds to demonstrate compliance with program requirements; and
- Report annually on mortgage proceeds received and reused until such NSP funds have been reinvested.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

SECTION 3 CLAUSE FOR CONTRACTS

1. All contractors and subcontractors and the City itself when acting as a contractor shall be asked to indicate a good faith effort to meet the Section 3 requirement by signing contracts which contain the clause set forth in 24 CFR 135.20(b) as follows:
 - A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
 - B. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the application for or recipient of Federal financial assistance, take appropriate action pursuant to the contract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal Assistance is provided, and to such sanctions.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

SECTION 3 DEFINITIONS OF RESIDENTS AND BUSINESS CONCERNS

Section 3:

Contractors: For a contractor to be Section 3 Certified, the grantee must verify and document the following:

Section 3 business concern is a business that meets the following criteria:

- (1) 51 percent or more owned by section 3 residents; or
- (2) Whose permanent or full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Residents: Section 3 Residents are defined as follows:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or non-metropolitan county in which the section 3 covered assistance is expended, and who is:
 - (i) A *low-income person*, whose incomes do not exceed 80 percent of the area median, with adjustments for family size, except that the Secretary may establish income ceilings higher or lower than 80 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
 - (ii) A *very low-income person* whose incomes do not exceed 50 percent of the area median income, with adjustments for family size, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.
- (3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

ARRA:

Jobs Created: Jobs or positions created means those new positions created and filled, OR, those previously existing unfilled positions that are filled as a result of ARRA funding.

Jobs Retained: Jobs or positions retained means those previously existing filled positions that are retained as a result of the ARRA funding.

Reporting Guidance: The number of jobs shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the recipient.

Example: two full-time employees and one part-time employee working half days would be reported as 2.5 FTE.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

NSP TENANT PROTECTIONS AT FORECLOSURE

Overview

Congress has expressed concern about evictions of tenants from foreclosed properties. New laws have recently passed to address this issue. The American Recovery and Reinvestment Act of 2009 (Recovery Act) imposes requirements on the Neighborhood Stabilization Program (NSP) to ensure that bona fide tenants in NSP-affected properties received proper treatment. A more recent law, the Protecting Tenants at Foreclosure Act of 2009 (PTAF) provides similar protections for tenants facing eviction as a result of foreclosure on virtually all mortgaged rental properties in the United States. On June 24, 2009, HUD published a Notice in the Federal Register providing additional information on PTAF. See the last page for links to related documents and websites.

NSP recipients have requested information on complying with the Recovery Act tenant protections, which are included in the NSP Bridge Notice of June 19, 2009 and the NSP2 Notice of Fund Availability of May 4, 2009. The tenant protection requirements directly affect initial successors in interest who take title to property through foreclosure (including lenders and others who purchase property at foreclosure sales). The following are highlights methods grantees can use to determine compliance with the tenant protection requirements under NSP by the initial successor in interest. Questions on these requirements should be directed to NSP-Questions@hud.gov, not to HUD Regional Relocation Specialists.

SUMMARY OF GENERAL TENANT PROTECTION REQUIREMENTS

LAW	RECOVERY ACT (American Recovery and Reinvestment Act)	
DATE OF APPLICABILITY	Residential Properties foreclosed after Feb. 17, 2009	
PERSONS AFFECTED	Bona fide tenant occupying residential property under a lease in effect before or on the date of notice of foreclosure.	Bona fide tenant occupying residential property under a tenancy in effect after the date of notice of foreclosure.
IMPLICATIONS	Initial successor in interest (see definitions) must allow such tenants to remain to end of the lease term* and provide a minimum 90 days notice to move. These periods may overlap but cannot be less than 90 days.	Initial successor in interest (see definitions) must provide such tenants a minimum 90 days notice to move.
EXCEPTIONS	*An ISII selling the property to a person occupying the home as the primary place of residence MAY terminate the lease, but MUST allow at least 90 days to vacate	

Grantees need to be aware that the tenant protection requirements in the Recovery Act are separate and apart from the obligations imposed on grantees by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The URA applies to any person displaced as a direct result of acquisition, rehabilitation, and/or demolition of real property for a Federal or federally-assisted project. Eligibility determinations under the URA and the required notices and relocation assistance requirements are different and separate from the tenant protections in the Recovery Act. 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). Links to relevant websites are on the last page.

Key Definitions

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

Foreclosed: 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 owner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

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

Options for grantees to document compliance with NSP tenant protection requirements:

1. Purchase properties which were foreclosed upon prior to Feb. 17, 2009 and obtain evidence of the date of foreclosure; they are not covered by the tenant protection requirements of NSP.
2. If purchasing properties foreclosed upon after February 17, obtain adequate documentation of tenant protection compliance (or inapplicability) from the initial successor in interest, such as:
 - a. A certification that only the former mortgagor and/or immediate family occupied the property at the time of the notice of foreclosure;
 - b. Copies of the tenant's lease and any notice to vacate from the ISII to substantiate compliance;
 - c. Where a tenancy existed without a written lease or at will, information on the tenancy and any notice to vacate from the ISII to substantiate compliance;
 - d. A certification of compliance with the NSP tenant protections (or the inapplicability of the tenant protections) from the initial successor in interest.
3. If the ISII will not or cannot certify or demonstrate compliance with the NSP tenant protections, abandon the transaction.
4. If the property is still desired, and no certification or documentation of compliance can be obtained from the ISII, perform due diligence to determine whether any bona fide tenant occupied the property. If so, determine if they were allowed to remain through the end of the lease term or tenancy (as applicable) and received any required notices.

5. Grantees that purchase tenant-occupied property can choose to assume the Recovery Act tenant protection obligations and/or may continue to operate occupied units as rental properties.
6. If the grantee knows that the ISII did not comply with the NSP tenant protection requirements and vacated the property contrary to the NSP requirements, abandon the transaction. NSP funds cannot be used for such properties.

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

QUESTIONNAIRE ON COMPLIANCE WITH NSP TENANT PROTECTION REQUIREMENTS

To be completed on each property prior to acquisition. Proceed down the list unless directed otherwise.

Date of NSP Grantee inquiry regarding status of property _____

Name of ISSI _____

Property Address _____

- 1 Date ISSI became initial Successor In Interest (ISII) pursuant to a foreclosure on above property _____
IF DATE IS BEFORE 02/17/2009, STOP HERE Tenant Protections do not apply.
- 2 Date of Notice of Foreclosure _____
On or after the date of notice of foreclosure, was the property occupied? Yes No
IF NO, STOP HERE Tenant Protections do not apply.
- 3 If the property was occupied, is the lease or tenancy "*bona fide*"?
A. The occupant was the former mortgagor? Yes No
IF YES, STOP HERE Tenant Protections do not apply.
B. The occupant was a tenant (that was NOT the former mortgagor)? Yes No
Tenant Name: _____
C. Was lease or tenancy the result of an arms-length transaction? Yes No
D. Was the rent in an amount that is not substantially less than the fair market rent for the property? Yes No
If rent was subsidized, determine market rate as total of the tenant's portion and the subsidy paid on their behalf.
IF ANY answer to B-D is NO, STOP HERE Tenant Protections do not apply.
IF ALL answers to B-D are YES, you have a bona fide tenant, Continue.
- 4 Was the tenant occupying the property under a lease in effect **on or before the date of notice of the foreclosure?** Yes No
IF YES, proceed to #5. IF NO, proceed to #6.
- 5 What was the remaining term (end date)?
A. Has tenant vacated the property? Yes No
IF YES, date tenant moved. _____
B. Did the ISII allow the tenant to stay until the end of the lease term? Yes No
IF YES, skip to D. IF NO, answer C.
C. If ISII did not allow tenant to stay through lease term, did the ISII sell the property to a purchaser who will occupy the unit as a primary residence? Yes No
IF YES, go to D. IF NO, abandon transaction; ineligible for NSP funding.
D. Did the ISII provide at least 90 days notice to move? Yes No
When will that 90-day notice expire? _____
E. Based on these facts, did ISII comply with NSP tenant protection requirements? Yes No
F. If the ISII did not comply and the tenant is still in occupancy, will the grantee assume the responsibility? Yes No
- 6 If the property was occupied under a bona fide lease or tenancy effective after the date of notice of foreclosure, without a lease, or under lease terminable at will:
A. Has tenant vacated the property? Yes No
IF YES, date tenant moved. _____
B. Did the ISII provide at least 90 days notice to move? Yes No
When did/will that 90-day notice expire? _____
C. Based on these facts, did ISII comply with NSP tenant protection requirements? Yes No
D. If the ISII did not comply and the tenant is still in occupancy, will the grantee assume the responsibility? Yes No
- 7 The use of NSP funds is subject to a determination by the grantee that the ISII complied with the tenant protection requirements of the Recovery Act, that the grantee will assume this responsibility if the ISII did not, or that the tenant protections are not applicable. If the grantee learns that the initial successor in interest did not comply with the NSP tenant protection requirements and a bona fide tenant was required to vacate the property contrary to the NSP requirements, abandon the transaction. NSP funds cannot be used for such properties.
- 8 If the property is occupied, or was vacated for the NSP-assisted project, the grantee must also determine if the occupant would be eligible as a displaced person under the URA.

Acquisition and Redevelopment of Foreclosed or Abandoned Property for Resale

Address:

Revised:
Final?

A Uses of Funds for Development Per Unit			
1	Acquisition (including closing costs)	\$33,050	
2	Rehabilitation/Construction, not incl. lead paint costs	\$65,000	
3	Lead Paint Assessment/Clearance	\$550	
4	Lead Paint Rehab Costs	\$5,000	
5	Contingency	\$2,000	
6	Total		\$105,600
7	Maximum Activity Delivery Costs or Developer Fee @ 15%		\$15,840
8	Requested Activity Delivery Costs or Developer Fee	\$6,000	
9	Total Development Cost	\$111,600	
B Sources of Funds for Development Per Unit			
1	NSP Funds (Amount of Construction Mortgage)	\$91,600	
2	Construction Financing Leveraged	\$20,000	
3	Grant Funds Leveraged	\$0	
4	Total Sources for Development	\$111,600	
C Affordability and Market			
1	Sale Price (Lesser of Appraised Value or Total Development Cost)	\$70,000	
2	Estimated Annual Income of Buyer	\$25,000	
3	29% of Annual Income for PITI	\$7,250	
4	Annual Property Taxes	\$2,000	
5	Annual Homeowners Insurance	\$655	
6	Annual Principal and Interest Payment	\$4,595	
7	Affordable Monthly Principal and Interest Payment	\$383	
8	Estimated Interest Rate	5.500%	
9	Maximum Affordable Mortgage	\$66,783	
10	Mortgage write down	\$14,000	
11	Actual buyer's mortgage	\$55,300	
12	Down payment from buyer's funds (minimum 1%)	\$700	
13	Buyer's closing costs	\$3,500	
14	Buyer's prepaid taxes and insurance	\$1,200	
15	Actual down payment & closing cost assistance (Amount of Homebuyer Assistance Program Mortgage)		\$18,700
D Development Costs, All Proposed Units			
1	Acquisition		\$33,050
2	Rehabilitation or New Construction		\$78,550
3	Total Development Cost		\$111,600
E Total Leveraged Funds, Grants and Loans			\$20,000
F Program Income Expected from Sale			
1	Funds from the buyer at closing		\$56,000
2	Construction loan principal		\$20,000
3	Construction loan interest	\$0	
4	Seller's closing costs (including realtor's commission)	\$3,048	
5	Program income expected at sale		\$32,952
G Net Development Cost Per Unit			\$78,648
H Net NSP Funds Used Per Unit			\$58,648

SAMPLE BLIGHT CERTIFICATION LETTER

Date

City/Qualified Official Letterhead

RE: Blight Certification Letter for (Property's Address)

(Community Name) is a recipient of federal grant funds from the U.S. Department of Housing and Urban Development (HUD) Neighborhood Stabilization Program (NSP) to assist with blight removal (structural demolition/site clearance) activities within (target area name). (Community Name) has determined that your property meets the NSP definition of blighted property. This is based on the property located at XXXXX being in violation with the community's XXX and meeting the NSP definition of blight based on the following:

Example:

Dangerous and Unsafe Building Ordinance No. 73-4. The township's ordinance is "An ordinance to provide for the regulation and removal of dangerous and unsafe dwellings." "WHEREAS, the presence of dangerous and unsafe dwellings constitutes an attractive nuisance to children and endangers their safety; provides harborage for vermin; creates or enhances fire hazards, causes neighborhoods to become unsightly resulting in the depreciation of property values and, adversely affects the health, safety and general welfare of the inhabitants therein."

Based on its current condition, it has been determined that your property is eligible to qualify for federal demolition/site clearance assistance and meets the NSP definition of blight.

Certified by:

Signature of Local Authorized Official and/or Blight Certification Official
Type Name and Title: _____

Assistance to Homebuyers for Purchase and Moderate Rehab of Foreclosed Properties

Address: Sample HPR Property

Revised: 3/29/2010

Final? No

A

1	Estimated Annual Income of Buyer	\$25,000
2	29% of Annual Income for PITI	\$7,250
3	Annual Property Taxes	\$1,786
4	Annual Homeowners Insurance	\$685
5	Annual Principal and Interest Payment	\$4,779
6	Affordable Monthly Principal and Interest Payment	\$398
7	Estimated Interest Rate	6.500%
8	Maximum Affordable Mortgage	\$62,407
9	Appraised Value of Property at Close (Before Rehab)	\$60,000
10	Contract Sales Price	\$58,000
11	Percent below Appraised Value (must be at least 1% if foreclosed property)	3.4%
12	Settlement Charges to Buyer	\$3,658
13	Adjustments for Items Paid by Seller in Advance	\$1,498
14	Gross Amount Due from Buyer	\$63,156
15	Down Payment, Earnest Deposit or Other Funds by/for Buyer (Min. 1%)	\$580
16	Mortgage Write Down & Down Payment Assistance from NSP funds	\$11,600
17	Closing Cost Assistance from NSP funds	\$5,156
18	First Mortgage Amount from Buyer (Must be equal to or less than line A8)	\$45,820
19	Gross Amount Paid by or On Behalf of Buyer (Must match line A14)	\$63,156
20	Amount of NSP funds at Closing	\$16,756

B

1	Rehabilitation/Construction, not incl. lead paint costs	\$25,000
2	Lead Paint Assessment/Clearance	\$350
3	Lead Paint Rehab Costs	\$0
4	Contingency	\$0
5	Total Rehab	\$25,350
6	15% Maximum Activity Delivery Cost or Developer Fee	\$13,276
7	Documented Activity Delivery Costs or Developer Fee Expenses	\$2,500
8	Amount of NSP funds for Rehab	\$27,850

C Total NSP Funds Needed for Activity

1	Estimated NSP Funds for Acquisition	\$16,756
2	Estimated NSP Funds for Rehab	\$27,850
		\$44,606

D Total Leveraged Funds

		\$46,400
1	After rehab appraised value	\$65,000
2	Buyer investment	\$46,400
3	NSP Homebuyer Assistance Program Mortgage Amount	\$18,600

SAMPLE PROPOSED LETTER FOR VOLUNTARY PARTICIPATION DEMO

City Letterhead – Sent Certified Mail

Date

Property Owner's Name
Property Owner's Address

Dear Property Owner of Record:

(Community Name) is pleased to announce that they are the recipient of federal grant funds from the U.S. Department of Housing and Urban Development (HUD) Neighborhood Stabilization Program (NSP) to assist with blight removal (structural demolition/site clearance) activities within (target area name). (Community Name) has determined that your property meets the NSP definition of blighted property. This is based on your property being in violation with the community's XXX.

Example:

Dangerous and Unsafe Building Ordinance No. 73-4. The township's ordinance is "An ordinance to provide for the regulation and removal of dangerous and unsafe dwellings." "WHEREAS, the presence of dangerous and unsafe dwellings constitutes an attractive nuisance to children and endangers their safety; provides harborage for vermin; creates or enhances fire hazards, causes neighborhoods to become unsightly resulting in the depreciation of property values and, adversely affects the health, safety and general welfare of the inhabitants therein."

Based on its current condition, it has been determined that your property may be eligible to qualify for federal demolition/site clearance assistance. As the property owner of record, and in order to qualify for demolition assistance, you must be a voluntary participant. Through the grant process, the city cannot implement any demolition activities including site clearance without an amicable agreement between you (the property owner) and the grantee (the city). **Again, please understand that if you do not wish to participate, no further action to mandate site clearance will take place during the grant agreement's term of work.**

If you are interested in participating and alleviating the site issues that are currently in existence on your property then please sign below and return this letter to the city and additional follow-up information will be forthcoming. If you elect to not participate, then the funding being offered to assist your property will be dedicated to other properties that are determined by the city to qualify.

The funds will be strictly distributed and used by the city and they will handle all contracts and demolition related activities at no cost to the property owners. However, a lien will be placed on the property for the cost of the demolition. In addition, any change in use of the property will require a special reuse permit to be approved and issued by the city.

I certify that after reading the above information:

- I am not interested in participating in the blight removal (structural demolition/site clearance) grant process for my property parcel #: _____.
- I am interested in voluntarily participating in the blight removal (structural demolition/site clearance) grant process. I authorize (Community Name) to complete a title search on my behalf and/or to review the recorded deed to ensure that I am the property owner of record. Once the title search/recorded deed review has been completed and I am formally recognized as the property owner of record, I understand that the city will contact me to sign a construction

waiver of rights. Once I sign and return this letter, I understand that I will need to make arrangements to remove any wanted items from my property. Also by signing this letter, I voluntarily authorize the city to enter into a formal contract to complete the blight removal (structural demolition/site clearance) process on my property parcel #: _____ . In addition, I understand that there will be a lien placed on my property for the demolition costs.

Property Owner of Record Signature: _____ Date: _____

Please return this form as soon as possible to: via fax, regular mail, e-mail scan,???

We look forward to working with you to help make (Community Name) a better place to live, visit and enjoy.
Closing Remarks,

Signature of Local Authorized Official and/or Blight Certification Official

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
OFFICE OF COMMUNITY DEVELOPMENT

**NSP SUB-RECIPIENT AGREEMENT
SAMPLE DOCUMENT**

Disclaimer: Each grantee should consult with their legal advisors regarding the content of this document and add any additional provisions as deemed necessary.

**2009 Neighborhood Stabilization Program Sub-Recipient Agreement
Between (Grantee Name) And (Subrecipient Name)**

This Agreement is being entered into as of the _____ day of _____, _____. (Grantee Name) hereby referred to as the "City" located at (address) has been awarded Neighborhood Stabilization Program (NSP) funds through the Michigan State Housing Development Authority (MSHDA). The NSP funds were allocated to MSHDA through Title III of Division B of the Housing and Economic Recovery Act (HERA). Pursuant to the NSP regulations and MSHDA policy, the City is authorized to disburse NSP funds to eligible subrecipients for NSP eligible activities.

The City has determined that (Subrecipient Name) hereby referred to as the "Subrecipient" is an eligible entity which has represented and agreed to use the allocated funds in the amount not to exceed \$_____ for the (identify activity(s) by eligible use A-E) within the target area (define location and attach map). [Can be very generic]

The City has determined that (Subrecipient Name) has the capacity and capability to plan, manage, and complete all project requirements within the duration of the agreement which is defined as (term of work dates). The City recognizes that it retains certain monitoring obligations to ensure compliance with NSP rules and regulations both state and federal.

I. SCOPE OF WORK

The Scope of Work of the Grantee under this grant shall be to undertake and complete the following activities, subject to the limitations set forth in this grant agreement and applicable federal and state laws, rules, and regulations:

1. Prior to the commitment of any project funds, incurring any project costs, and state disbursement of grant funds, the City and Subrecipient shall complete an Environmental Review Record (including the Environmental Assessment if applicable), and secure written approval and release of funds. The release of funds represents local completion of the environmental review procedures and requirements as set forth in 24 CFR Part 58 issued by the U.S. Department of Housing and Urban Development. Project costs include costs to be paid by grant funds or other local, public or private funds.
2. If the project involves construction activities using grant funds, the Subrecipient shall provide for approval by the City a copy of all bidding documents or other evidence of compliance with federal labor standards for all construction activities financed in whole or in part with NSP funds.
3. If the project involves acquisition of private real estate, permanent easements or right-of-ways, or the relocation of persons, families or farms, the Subrecipient shall provide for approval by the City documentation of compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970.

4. If grant funds are to be used to engage consultants or engineers, the Subrecipient shall comply with the procurement process as required by 24 CRF Part 85.36. For contracts greater than \$100,000, the Subrecipient must use competitive negotiation through a request for proposal (RFP) or request for qualifications (RFQ) process. The Subrecipient must provide a copy of the RFP/RFQ; a list of respondents to the RFP/RFQ; their evaluation and recommendation for the award of contract; and the proposed contract. For contract costs less than \$100,000, small purchase procedures may be used and the Subrecipient must provide documentation of the process utilized.
5. The Subrecipient shall expend up to \$XXX of NSP grant funds for project activities as described below: [or if long in Attachment X]
This project description should include any of the following:

Through this agreement, the Subrecipient is being given the authority by the City to utilize the NSP funds for the specific programs/activities identified below:

Suggestions: Project specific activities and dollar amounts [both narrative and in budget format]
 Cap on the dollar amount per property
 Defined use of dollars – payment schedule
 1% purchase discount requirement
 Appraisal requirements
 Leverage (if applicable)
 What activity delivery costs are deemed reimbursable.
 Performance expectations/measurements - timeline
 Predisbursement Conditions/ Required Documents/Submission timelines
 Reporting requirements
 Reversion of Assets/Lien Requirements
 Insurance/Bonding Requirements

6. The City may, in its sole discretion, after discussions with representatives of the Subrecipient, modify or reduce the total amount of Grant assistance offered under this Agreement or terminate this Agreement and demand full repayment of disbursed Grant proceeds if the Subrecipient violates, fails, or refuses to comply with any term, condition, or provision of this Agreement.
7. The Subrecipient shall provide Program Progress Reports beginning December 15, 2009, and every quarter thereafter to ensure that the City can meet its MSHDA quarterly reporting deadlines.
8. During each of the City's fiscal years in which a disbursement of NSP funds is made under this agreement, the City shall file an Audit Report. The Subrecipient shall provide all requested documentation for auditing purposes to remain in compliance with the requirements of OMB Circular A-133.
9. Program income received before September 30, 2010 may be retained by the Subrecipient and used in accordance with HERA rules and regulations. All program income must be utilized as follows: [City policy determination as to whether to have them return it to the city and/or retain all or a portion of it for additional NSP eligible activities with prior MSHDA approval.] The City reserves the right to immediate recapture of any program income that has not been expended by September 30, 2010.

The Subrecipient must provide documentation to enable the city must report and track program income on OPAL.

10. If the Subrecipient is executing construction contracts exceeding \$100,000, the Section 3 Clause needs to be included in the contract document.

II. GENERAL TERMS AND CONDITIONS

1. Compliance by the Subrecipient: The Subrecipient shall comply with all applicable provisions of the "Statement of Assurances" as included in this agreement.
2. Maintenance of Records: The Subrecipient shall maintain records which will allow assessment of the extent of performance of the scope of work and which allow for the comparison of actual outlays with budgeted amounts. The Subrecipient's overall financial management system must ensure effective control over, and accountability for, all funds received. Accounting records must be supported by source documentation such as time sheets and invoices.
3. Retention of Records: The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other pertinent records for a period of three years after the city's receipt of a formal closeout letter from MSHDA occurs.
4. Amendments: The Subrecipient must obtain prior written approval of the City for grant amendments as follows:
 - a) changes of substance in the Scope of Work including new activities or alteration of existing approved activities;
 - b) extensions to the term of work performance for completion of project activities; and/or
 - c) NSP activity budget changes among approved NSP funded budget items.

The amendment request must be submitted by an authorized official of the subrecipient prior to contractually approving and/or incurring any requested budget line item modification costs.

5. Suspension of Grant: When a Subrecipient has failed to comply with the grant award stipulations, standards, or conditions, the City may, on reasonable notice to the subrecipients, suspend the grant and withhold further payments, or prohibit the subrecipients from incurring additional obligations of grant funds, pending corrective action by the Subrecipient or a decision to terminate in accordance with these Terms and Conditions. The City will allow all necessary and proper costs, which the Subrecipient could not reasonably avoid during the period of suspension, provided they meet the provisions of OMB Circular A-87.
6. Termination for Cause: The City may terminate this grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Subrecipient has failed to comply with the conditions of the grant. The City will promptly notify the Subrecipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Subrecipients, or recoveries by the City, will be in accordance with the legal rights and liabilities of the parties.
7. Termination for Convenience: The City or the Subrecipient may terminate this grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Subrecipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The City will allow full credit to the Subrecipient for the Subrecipient's share of the noncancelable obligations that were properly incurred by the Subrecipient prior to termination.
8. The Subrecipient and political subdivisions, agencies, and instrumentalities thereof, when engaged in letting contracts or procuring products or services which involve funds obtained from

the City shall ensure that bid specifications, project agreements, other controlling documents, and any other local requirements do not:

- (A) require bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects;
- (B) discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects; or
- (C) require any bidder, offeror, contractor, or subcontractor to enter into, adhere to or enforce any agreement that requires its employees as a condition of employment to:
 - (1) become members of or become affiliated with a labor organization; or
 - (2) pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share or labor organization costs relating to collective bargaining, contract administration or grievance adjustment.

By execution of this Agreement, (Subrecipient) acknowledges receipt of a copy of this Agreement and abides to the terms and conditions outlined within narrative and the attached statement of assurances.

Dated this _____ day of _____, _____.

Witnessed By:

Authorized Official for the Subrecipient

Print Name and Title

Dated this _____ day of _____, _____.

Witnessed By:

Local Authorized Official for the City

Print Name and Title

STATEMENT OF ASSURANCES - NEIGHBORHOOD STABILIZATION PROGRAM

PAGE ONE



The Grantee hereby assures and certifies that it has complied or shall comply with Division B, Title III of the Housing and Economic Recovery Act of 2008, (Public Law 110-289)(HERA) and related statutes and implementing rules, regulations, and guidelines applicable to projects financed under the Michigan NSP program. Specific assurances and certifications include but are not limited to the following:

1. Compliance with grant and financial management guidelines in 24 CFR Part 85, Administrative Requirements for Grants to State and Local Governments, and U.S. Office of Management and Budget Circular No. A-87, Cost Principles for State and Local Governments.
2. Expend all program funds in accordance with the requirements of 24 CFR 570 pertaining to eligible project costs for the CDBG program.
3. Compliance with Civil Rights and Equal Opportunity statutes as set forth in Title I of the Civil Rights Act of 1964 (Public Law 88-352), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), the Michigan Civil Rights Act 453 of 1976, the Michigan Fair Employment Practices Act (MCL 423, 301-423, 311), related statutes and implementing rules and regulations. The Grantee shall implement its NSP program in conformance with the requirements of 24 CFR 570.904 pertaining to equal opportunity and fair housing.
4. Compliance with Labor Standards statutes as set forth in the Davis-Bacon Fair Labor Standards Act (40 U.S.C. 276a-276a-5), related statutes and implementing rules and regulations.
5. Compliance with Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4831). The Grantee shall implement its program in conformance with the requirements of 24 CFR 570.608 and 24 CFR Part 35 pertaining to the testing for and abatement of lead-based paint in HUD-associated housing.
6. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and implementing NSP regulations through 24 CFR 570.606 pertaining to displacement, relocation, and acquisition.
7. Compliance with OMB Circular No. A-133, Audits of States, Local Governments and Non-Profit Organizations and implementing rules and regulations.
8. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and implementing rules and regulations 24 CFR Part 8. The Grantee acknowledges and agrees that the housing quality standards for units assisted with NSP program funds must, at a minimum, meet the housing quality standards contained in 24 CFR 570.251 for the duration of this Agreement.
9. Authorized state officials and representatives will have access to all books, accounts, records, reports, files, and other papers, things, or property pertaining to the project in order to make audits, examinations, excerpts and transcripts; each contract or subcontract also shall provide for such success to relevant data and records pertaining to the development and implementation of the project.
10. Compliance with further statutory, regulatory, and contractual requirement(s) now or hereafter in effect which are applicable to the receipt and expenditure of NSP Funds, as administered by the U.S. Department of Housing and Urban Development and the Authority. The Grantee shall implement its program in conformance with 24 CFR 570.489(c) to assure that no funds available under this agreement are requested until funds are needed for payment of eligible costs. Further, the amount requested must be limited to the amount needed.
11. The Grantee shall implement its NSP program in conformance with the requirements of 24 CFR

570.611 pertaining to conflict of interest.

12. The Grantee shall implement its NSP program in conformance with the requirements of 24 CFR 570.605 pertaining to flood insurance.
13. The Grantee agrees to assume all of the responsibilities for environmental review, decision making and action as specified and required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and Section 104 (f) of Title I of the Housing and Community Development Act and implementing regulations 24 CFR Part 58.

In addition, the Grantee hereby assures and certifies that it has complied or shall comply with implementing rules, regulations, and guidelines applicable to projects financed under the Michigan NSP program. Specific assurances and certifications include but are not limited to the following:

1. The grantee certifies that the following definition of blighted properties approved by the State of Michigan NSP Plan will be utilized. A blighted property is a blighted/abandoned/uninhabitable property that meets any of the following criteria:
 - Declared a public nuisance in accordance with local housing, building, plumbing, fire, or other related code or ordinance.
 - Attractive nuisance because of physical condition or use.
 - Fire hazard or is otherwise dangerous to the safety of persons or property.
 - Has had utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.
 - Has a subsurface structure or demolition debris that renders the property unfit for its intended use.
2. The grantee certifies that all rental projects assisted with NSP funds will comply with the HOME affordability periods as defined below.

<u>Investment per Unit</u>	<u>Minimum Length of the Affordability Period</u>
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years
New construction of rental housing	20 years

3. The grantee certifies that all rehabilitation activities will be completed in compliance with the State of Michigan Rehabilitation Code for Existing Buildings, Incorporating the 2003 Edition of the International Existing Building Code, published by the Michigan Department of Energy, Labor, and Economic Growth, Bureau of Construction Codes and Fire Safety.
4. The grantee certifies that all proposed areas served with NSP funds will have a HUD foreclosure risk score of 6 or above and that demolition will take place in only those areas designated as LMMA.
5. The grantee certifies that properties acquired in collaboration with Land Banks will have a plan for redevelopment/reuse within ten years.
6. The grantee certifies that all first mortgage products will meet MSHDA Single Family standards.

Certified By: _____

Its: _____, an authorized signatory

SAMPLE VOLUNTARY ACQUISITION

(Make two copies. Leave one with the seller and keep the other copy in project file.)

This is a guide-form. It should be revised to reflect the circumstances.

Used for Homebuyer Assistance Programs - Acquisition and Down Payment Assistance
Complete prior to acceptance of Purchase Agreement

NOTIFICATION TO SELLER

Grantee or Agency Letterhead

Date

Dear Owner:

The purchaser of your property located at _____ is being assisted with funding from the Neighborhood Stabilization Program (NSP) provided through the (city or county) of _____. The purpose of this letter is to inform you of your rights under Federal law when Federal funds are involved in property acquisition.

This is a **voluntary sale**. Activities funded by the NSP Program are covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, commonly called "the Uniform Act or URA". URA protects persons whose property is taken **involuntarily** or who are forced to move as a direct result of a Federally-funded project.

However, because this is a **voluntary sale** negotiated between you and the (buyer, city, or county) and there is no threat of eminent domain or condemnation to take your property, this sale is **not regulated** by URA except for the following notifications which we must present to you:

Use if the city or county is acquiring the property:

1. The (city or county) will not use its power of eminent domain to take your property if we cannot reach an agreement through negotiation.
2. The fair market value of the property located at _____ has been estimated at \$_____. The purchase price we are offering is \$_____. You have the authority to accept or reject our offer just as you would in a private transaction.

Use if a nonprofit or individual is acquiring the property:

1. The purchaser does not have power of eminent domain to take your property if we cannot reach an agreement through negotiation.
2. The fair market value of the property located at _____ has been estimated at \$_____. The purchase price we are offering is \$_____. You have the authority to accept or reject our offer just as you would in a private transaction.

You, as the seller, are not eligible for relocation assistance under the URA because the proposed sale is considered voluntary, and the above information is being provided to you prior to executing a purchase agreement or sales contract. If you have any questions or require additional information, please contact _____ at _____ between the hours of _____ and _____.

Sincerely,

Name and Title

(Note following page and document.)

(Use this portion of form for seller's signature, if seller receives Notification after Purchase Agreement was completed.)

Owner Receipt of Information

Grantee or Agency Letterhead

I, _____, the owner of the property located at _____ certify that I have received and understood the above information. I further certify that this notice was received:

_____ Prior to executing a purchase agreement.

_____ After the purchase agreement was executed; however, I **do not** wish to terminate this voluntary sale.

Signed: _____

Date: _____