

## **NSP2 FAQs**

*The following questions and answers are in response to MSHDA grantee inquiries. The answers address MSHDA specific procedures inclusive of NSP regulations.*

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### **03.17.11 Homebuyer Subsidy**

Question: *What happens when the subsidy needed to sell the home to low-income set-aside buyers exceeds \$30,000?*

Answer: There are no homebuyer subsidy limits for NSP2 funds; however, MSHDA will require a review by the CD Specialist for subsidy limits over \$30,000. The review will include but is not limited to ascertaining the buyer's ability to afford property taxes, utilities, and home maintenance given other monthly living expenses. The intent is to ensure long-term affordability thereby preventing future foreclosures. See MSHDA Policy Bulletin #11 for guidance on income determination for homebuyer programs.

Once a post-rehab appraisal is complete you can generate subsidies on individual properties.

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### **03.17.11 County Processing Fees for Tax Foreclose Properties**

Question: *Can a land bank pay a processing fee to a county treasurer when acquiring tax foreclosed property?*

Answer: A land bank can pay a standard "processing fee" to the county treasurer when purchasing tax foreclosed properties provided that the standard fee is charged to all properties whether they are purchased with NSP funds or not. Grantees will obtain for their grant file a clear itemization of costs being paid with sufficient records to show they have not double-paid any fees. This type of itemization is consistent with any cost being charged to NSP funds.

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### **03.17.11 Senior Housing Development**

Question: *Are senior housing projects eligible in NSP2 and can they help our city meet the low-income set-aside?*

Answer: The development of rental housing made available exclusively to seniors is eligible within NSP2. If the units in the project are, via a regulatory agreement or deed restriction, available for rent exclusively by households at or below 50% AMI, the development can be counted toward the Low Income Set Aside.

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### **03.17.11 Income Verification Process**

Question: *Will Cities and Land Banks be able to utilize the current income verification system they use locally or will they need to use MSHDA's system?*

Answer: All NSP2 Consortium members should use MSHDA's income verification forms located in Policy Bulletin #11. A participating jurisdiction, with their own HUD approved forms used for a housing component, may use their forms if they ensure that all the information gathered on MSHDA forms is included in the local forms.

The income verification method that is to be used for rental units is Part 5, Section 8. However, a Participating Jurisdiction (PJ) currently using another HUD approved method with a housing component may use that method for their NSP2 projects.

The 1040 income verification method must be used for homebuyer units. However, as mentioned above PJs currently using another HUD approved method with a housing component may use that method for their NSP2 projects.

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### **03.17.11 Procurement by Developers**

Question: *Do developers have to procure their own general contractors and subcontractors?*

Answer: Developers, because they are considered end users, are not required to follow a procurement process. Developers may select contractors and other providers of goods and services, such as rehab contractors, without competition. However, an NSP2 grantee is still required to conduct due diligence to make sure all costs are reasonable and necessary. Also, if their contract is for an amount greater than \$100,000 they must follow Section 3 requirements.

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### **04.08.11 Demolition**

Question: *Under what circumstances can we demolish a property as a stand-alone project?*

Answer: Broadly speaking, the NSP regulations expect that any NSP assistance to a property will lead to an NSP-eligible end use of that property, typically as LMHI housing. There are, however, limited circumstances under which NSP funds may be invested exclusively in the demolition of a blighted property under Eligible Use D with that demolition being treated as a stand-alone activity or end use. This policy is intended to discuss such cases and guide consortium members through how to qualify such a property, the considerations that surround demolition as a stand-alone activity, and the limitations on subsequent disposition of such properties toward non-NSP eligible purposes.

In all cases, the discussion below is limited to properties for which NSP funding was used only for demolition under Eligible Use D. Once NSP funds are used to acquire or maintain a property under any other eligible use category, there are specific requirements for the subsequent reuse of such property that apply—namely that the property must result in an NSP eligible reuse, the specifics of which vary somewhat between Eligible Uses B, C, and E.

### **Demolition as an Eligible End Use**

MSHDA consulted with HUD's Frequently Asked Questions and with HUD Technical Assistance providers prior to putting this guidance into writing. Following is the rationale to justify the use of demolition as an eligible end use.

Demolition is an eligible stand alone activity that meets the LMMA national objective by itself with no identified end use under only two circumstances:

1. The property is blighted, is in a LMMA area and is an extreme public health and safety hazard. HUD has determined that a national objective is met only when there is an extreme condition such as a fire hazard, a risk of collapse, a harboring of illicit activities, or other condition that is an immediate, serious and documented risk to the community. Please note a property that is an eyesore or a market negative does not meet the extreme threshold.

**OR**

2. The property is blighted, is in a LMMA area, and the area is part of a comprehensive area strategy for revitalization. HUD has determined that properties which are part of such a comprehensive strategy may be demolished and be considered an area benefit (LMMA).

MSHDA believes that the first circumstance identified above will rarely be needed or used by consortium members. The second circumstance will be the most likely used as all consortium members are implementing the comprehensive strategies identified in the NSP2 Consortium Application. Michigan's NSP2 application to HUD described focused investment to support strategic, long-term revitalization leading to housing development in target neighborhoods. Based on that objective, Michigan's NSP2 target census tracts meet HUD's criteria as areas where the grantee is undertaking a "coordinated program of redevelopment and/or rehab and/or new construction and/or other improvements, including other demolition, in a target area, which together can reasonably be expected to improve the area, can also qualify as LMMA." (Quote is taken from HUD FAQ #545).

In this context, **demolition only** is an acceptable stand alone end use subject to the following conditions:

- Property is in the NSP2 target census tract and in an LMMA area;
- Property is in a neighborhood where land use is primarily (i.e. majority) residential;
- Property is being demolished 1) as an extreme public health and safety hazard **or** 2) as part of a comprehensive neighborhood plan that includes other non-demolition components and the demolition is central to a comprehensive area strategy for revitalization;
- Property meets the definition of blighted contained within the consortium's application to HUD as follows:

### **Definition of Blighted Structure**

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.

**NOTE:** Property owned by a Land Bank is NOT automatically deemed as blighted. All project files must contain a written blighted certification letter which indicates which of the criteria that specific property meets deeming it blighted.

**NOTE:** Commercial, industrial or other types of structures may, under limited circumstances, be demolished in addition to homes and residential structures. **MSHDA will review and approve non-residential demolition on a case by case basis.** Please note a NEPA/Phase I will be required for demolition of a non-residential structure.

### **Submitting Non-residential Demolition to MSHDA:**

Consortium members proposing to demolish non-residential property as a stand-alone project not leading to an NSP2 eligible redevelopment must obtain pre-approval from MSHDA. You should contact your CD Specialist early in the process to discuss the project, and prior to moving forward, a letter and supporting documentation should be submitted for review that demonstrates consistency with each of the criteria noted above. MSHDA will review the submission to ensure that the project meets each of these criteria, especially that the demolition is central to a comprehensive redevelopment plan that includes other NSP activities. We expect that such projects will be rare.

In such cases, we suggest that local consortium members consult MSHDA before starting the Phase I and NEPA processes to ensure that the project, but for environmental considerations, will be approved.

### **Acquisition with Demolition:**

*At this time (March, 2011), this italicized section represents MSHDA's current policy on projects that include both acquisition and demolition. Continued discussions are underway with HUD, TA providers, and others to determine if any additional project paths may be available; if those discussions yield a broader interpretation, updates to this section will be published.*

*As further itemized below, if NSP2 funds are used to acquire a property that is then demolished, the future reuse of the property must be NSP2 eligible, namely that the property must be redeveloped as LMMI housing, transferred as a side-lot to an adjacent LMMI homeowner, or transferred to an eligible LMMA service provider. More specifically:*

- *Any demolition activities for property acquired under Eligible use C-Land Banking must additionally be foreclosed residential properties and are subject to redevelopment requirements within 10 years under the applicable HUD regulations related to Land Banking;*
- *Any demolition activities for property acquired under Eligible Use E-Redevelopment of Demolished/Vacant Properties must be vacant and be redeveloped as housing, under the applicable HUD NSP2 regulations, within the grant term.*

- *Any demolition activities for property acquired and/or redeveloped under Eligible Use B – Rehabilitation of Foreclosed or Abandoned Properties must be foreclosed or abandoned and rehabilitated/redeveloped as housing within the grant term.*

**Demolition of Property Owned by Consortium Member:**

Implicit within the policy framework above is the opportunity for an NSP2 consortium member to demolish a blighted property it owns or acquired through means other than NSP2—such a land bank that obtained a property through the tax foreclosure process—as a stand-alone activity. However, the underlying CDBG rules incorporated into NSP still impact the subsequent reuse of such a property. 24 CFR 570.505 contains specific expectations when grantee-owned (i.e. consortium member) property is assisted with CDBG, and by extension, NSP funds.

First, the property could subsequently be disposed of toward an NSP2 eligible end use. Generically, this is the program’s preferred outcome, pushing all assisted properties toward an NSP2 eligible redevelopment.

However, in other cases, the consortium member may determine that an NSP2 eligible reuse is not practical or achievable due to market considerations, site limitations, or the like. In such cases, the consortium member may dispose of the property toward a non-NSP2 eligible reuse subject to the following conditions:

1. Subsequent sale of the property should be consistent with the neighborhood redevelopment plan initially used to qualify the demolition as a stand-alone activity; and
2. Sale should be at market value (unless being donated to a nonprofit organization or governmental unit) with net proceeds of sale used:
  - a. First to repay any documented, necessary, and reasonable non-NSP direct costs incurred by the consortium member in the acquisition of the property; and
  - b. Second deposited as Program Income.

This discussion is limited to properties where NSP2 funds are used exclusively for demolition, and no NSP2 funds were used to acquire or maintain the property. Once NSP2 is used to acquire or maintain the property, there are specific requirements about subsequent reuse of the property that cannot be removed by a sale and collection of Program Income.

If you have any such properties or require advice on this issue, please contact MSHDA for further guidance.

**NOTE:** Regardless if demolition is part of an acquisition or stand alone strategy; all cross-cutting requirements (environmental/historical, etc.) must be met.

Additionally, the total expenditure for demolition by all consortium members may not exceed 32% of Michigan’s overall award.

**04.08.11  
Side-lot Split**

Question: *I’m doing a side-lot split. Do I need to place a lien on the property at the time of transfer to eligible adjacent property owners?*

Answer: No lien is required when the property is transferred to an income eligible adjacent property owner. The grantee is to confirm the adjacent property owner's LMMI eligibility before acquiring the lot.

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#### **04.28.11 Appraisal**

Question: *Are NSP2 consortium members required to use an appraisal to set the price of for-sale homes?*

Answer: Yes, MSHDA expects consortium members to obtain an appraisal to set the sales price. In cases where a consortium member is building several identical homes in close proximity to one another, MSHDA will consider using a single appraisal for each "home type."

Consortium members should consult with their CD specialist to determine when this is acceptable; considerations will include how "identical" the homes are and whether or not the building sites are substantially equivalent to another (i.e. in the case where the same house plan is being built on two sites, one on a larger lot next to a park and one on a smaller lot along a busier street, site distinctions may require individual appraisals).

Additionally, NSP regulations limit the sales price to the lesser of the market value or the actual cost of the project. In Michigan we expect project costs to universally exceed values, but consortium members should always check to ensure that the sales price does not exceed the total cost of completing the project.

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#### **04.28.11 Appraisal**

Question: *What happens when a buyer's bank orders an appraisal and it comes back for less than the listing price?*

Answer: There are several things to consider in this situation. First, banks are under new regulatory pressure to "wall off" loan officers from appraisers in an effort to combat abuses that helped lead to the foreclosure crisis, so there may be limited opportunities to discuss different value determinations with the bank's appraiser. Additionally, there may be legitimate reasons that the bank's appraiser reaches a different value. For example, the market in the neighborhood may have continued to decline as the most current comparable sales available may have been at lower prices. On the other hand, it is possible the bank's appraiser was not aware of or placed different value of specific features of NSP2 assisted homes—such as the increased energy efficiency or removal of lead based paint—as compared to "normal" homes on the market.

When there is a difference in the listing price and the bank's appraisal, NSP2 consortium members should first obtain a copy of the bank's appraisal to compare it to the one they used to set the price. If there are substantial differences or errors, the consortium member should work with the buyer to point out those differences and ask the bank to discuss the discrepancies with their appraiser.

Ultimately, however, there may be situations when the bank's appraiser holds firm and the NSP consortium member has to decide whether to sell the house at the lower price or let the sale fall through. In most cases, if the difference is relatively small (less than 10%), NSP consortium members should document the reason for adjusting the sales price and proceed with the sale. In cases where the difference is large (more than 10%), NSP consortium members should consult their CD Specialist who can review the context of the specific case and if need be approve a reduction in the sales price.

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#### **04.28.11**

##### **Phase I Environmental Assessment**

*Question: Are NSP2 consortium members required to order a Phase I environmental assessment before purchasing single family homes for rehabilitation or demolition and redevelopment?*

*Answer:* No, a Phase I assessment is not generally required for the purchase of a single family residential home. Neither HUD nor the environmental industry require, as a matter, of course a Phase I on single family residential homes as part of the due diligence expectations associated with required NEPA reviews.

Generally, this is because the risk of substantial environmental contamination on a single family home site is rather low, and unless a federal recipient has reason to believe that the site was used in another way or has a particular risk factor, a Phase I is not generally cost effective.

There may be exceptions. First, if an NSP2 consortium member's existing local policies require it to obtain a Phase I prior to purchasing property, you should follow your own local policies. Second, if you are aware of a specific reason to be concerned about the environmental status of the site, a Phase I may be advisable. For example, if a single family home being considered for purchase is immediately adjacent to an old gas station or dry cleaner, you may need to order a Phase I to determine how to answer question #7 on the site specific environmental checklist.

Finally, consortium members should note that several types of projects anticipated under NSP2 may require Phase I environmental assessments and/or site specific NEPA assessments. These include projects involving new construction or rehabilitation of multifamily structures of 5 or more units, demolition of non-residential properties, or projects that convert previously non-residential property to a residential use. Other projects involving property in a floodplain or other changes of use also may trigger additional scrutiny.

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#### **04.28.11**

##### **Payment and Performance Bonds**

*Question: Under what conditions are payment and performance bonds required for NSP funded projects?*

*Answer:* Federal requirements at 24 CFR Part 85 require payment and performance bonds for construction contracts in excess of \$150,000 (note that the federal "simplified acquisition

threshold” was recently increased from \$100,000 to \$150,000, resulting in changes to the point at which bonding is required. However, some references on the HUD website still refer to the \$100,000 figure.)

However, 24 CFR 85.36(a) also requires that states follow their own standards when those standards are more stringent than the federal requirements.

Furthermore, state law (MCL 129.201) require payment and performance bonds for all construction contracts of \$50,000 or more in the case of publicly owned buildings—which would include an NSP2 funded project where title is held by an NSP2 consortium member. Notably, contractors, subcontractors, and suppliers cannot place construction liens on publicly owned properties either.

There is no specific state law requirement for payment and performance bonds in the case of construction contracts for privately held buildings. In such cases the construction lien act helps protect subcontractors and suppliers.

So, the trigger payment and performance bonding differs depending on who owns the property:

When an NSP2 consortium member (including both Cities and Land Banks) holds title to the property, payment and performance bonds will be required for all construction contracts of \$50,000 or more. (Note that this analysis holds true regardless of whether the project is funded with NSP2, other HUD funding, or even state funding, so NSP2 consortium members may need to evaluate their non-NSP2 programs that involved real estate development to ensure they are in compliance with state law.)

When NSP2 funds are being provided to a developer that holds title to the assisted property, payment and performance bonds are required for all construction contracts of \$150,000 or more.