



Texas Department of Housing and Community Affairs

Texas Neighborhood Stabilization Program Re-Allocation **Notice of Funding Availability (NOFA)**

1) Summary

- a) The Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) announces the expected distribution and use of at least \$4,391,560 (amount includes administrative funds, see Figure 1) through the Neighborhood Stabilization Program Re-Allocation (“NSP-R”), which the U.S. Department of Housing and Urban Development (“HUD”) is providing to the State of Texas. This amount may increase over time based on deobligations; as additional funds become available, they will be announced on the Department’s website for continued application under this NOFA. The NSP funds were authorized by the Housing and Economic Recovery Act of 2008 (“HERA”) as an adjunct to the Community Development Block Grant (CDBG) Program for the redevelopment of abandoned and foreclosed homes and residential properties. A Substantial Amendment (“Amendment”) to the Action Plan for FFY 2008 was submitted by the State of Texas to HUD in order to update the Consolidated Plan for FFY 2005 through 2009 for the Texas Neighborhood Stabilization Program requirements. The Amendment was accepted by HUD on January 30, 2009. The NSP-R NOFA will redistribute funds returned by subrecipients, or through termination of contracts, from the Texas NSP1 awards.
- b) The availability and use of these funds is subject to the Community Development Block Grant regulations (24 CFR Part 570), as applicable, the federal HOME Investment Partnerships Program (HOME) regulations (24 CFR Part 92), as applicable, and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Part 58 for environmental requirements, 24 CFR Parts 84 and 85, as applicable, for such issues as procurement and conflict of interest, and 24 CFR Parts 100-115 for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules and program guidelines that govern the program.
- c) NSP-R will be awarded independently of the original Texas NSP1 awards. New applicants and current NSP1 subrecipients that are meeting current benchmarks are encouraged to apply for NSP-R funds. NSP-R funds may not be used to re-finance or replace original Texas NSP1 awards, but may be used to complete NSP1 projects. Terms and conditions of the NSP-R will not apply retroactively to NSP1 awards.

2) Allocation of Texas NSP-R Funds

TDHCA will coordinate activities in accordance with NSP guidelines including the establishment of financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties, purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed, establishment and operation of land banks, removal of blight, and the redevelopment of demolished or vacant properties. Households directly assisted with NSP funds must be income eligible and be at or below 120% of the Area Median Income (AMI), as defined by HUD or as otherwise restricted by this NOFA.

Figure 1. Program Distribution of Texas NSP-R Funds

Deobligated NSP funding	\$4,391,560
Future deobligated NSP funding	\$ unknown
Total Texas NSP-R funds	\$4,391,560.00

3) Definitions

As stipulated in the *Federal Register* Notice (Docket No. FR-5255-N-01) for the NSP, there are certain terms used in HERA that are not used in the regular CDBG program. Certain terms may be used differently in HERA and in the Housing and Community Development Act of 1974, as amended. When in conflict, definitions published in the *Federal Register* (Docket No. FR-5255-N-01) and any subsequent HUD Errata Notice are controlling for the Texas NSP.

4) Limitations on Funds

- a) In order to avoid allocating small amounts of funding that can have no meaningful impact on stabilizing of property values, the minimum award amount to an eligible entity cannot be less than \$500,000.
- b) Before the effective date of the Texas NSP-R Contract, an eligible entity that ultimately receives an award of Texas NSP-R may incur and be reimbursed for travel costs, as provided for with Administration funds, related to implementation training required by the Department as a condition of receiving an NSP-R award and Contract.
- c) Department-authorized pre-award costs for predevelopment activities, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be reimbursed if incurred before the effective date of a Contract so long as the costs are in accordance with 24 CFR §§570.205 and 206 and 24 CFR Part 58 and at the sole discretion of the Department.
- d) Additional limitations as defined in HERA and HUD NSP Notices regarding purchases, rehabilitation, and sale of homes, will be strictly enforced.
- e) The Department may develop and enforce additional contract management benchmarks to ensure the proportionate use of funds to meet the federal mandates regarding serving households earning not more than 50% of AMI, discounts on acquisitions and timely use of funds.

5) Administrative and Activity Delivery/Soft Costs Limitations

- a) Each applicant that is awarded NSP-R funds may also be eligible to receive funding for administrative costs. The award amount for the Administration line item shall not exceed five percent (5%) of the contract amount for all activities, except Land Bank activities. Administrative costs for Land Bank activities will be limited to a total of eight percent (8%) of the contract amount. These figures do not include Activity delivery costs described below. The administrator must use funds for all administrative costs in accordance with 24 CFR §§570.205 and 206, and Office of Management and Budget (OMB) Circulars A-87, A-122, A-102 and A-110, as applicable.
- b) Activity Delivery costs represent the costs incurred in implementing activities for specific housing units, separately from the general administrative costs, for which limits are set forth in the previous paragraph. The Texas NSP limits Activity Delivery costs according to activity as specifically described in program activity sections.
- c) Activity Delivery costs are soft costs that are directly related to and identified with a specific housing unit (property). Eligible project-related soft costs must be reasonable and consistent with industry norms. Specific eligible activities include:
 - i.) preparation of work write-ups, work specifications, and cost estimates;
 - ii.) architectural, engineering or professional services required to prepare plans, drawings or specifications directly attributable to a particular project;
 - iii.) inspections for lead-based paint, asbestos, termites or septic systems;
 - iv.) interim and final inspections by the construction inspector;
 - v.) financing fees, credit reports, title binders and insurance;
 - vi.) recordation fees, transaction taxes;
 - vii.) legal and accounting fees;
 - viii.) appraisal fees;
 - ix.) architectural and engineering fees, including specifications and job progress inspections;
 - x.) relocation costs;
 - xi.) site specific environmental reviews; and
 - xii.) lead hazard evaluation and reduction costs.
- d) For all activities, Activity Delivery costs must be reasonable and consistent with industry norms and will be restricted to a percentage of the non-administrative NSP costs per housing unit or property. The related Activity Delivery costs maximum will be based on the activity in a range from 5% to no more than 20% of the non-administrative NSP costs (hard costs).
- e) Activity Delivery costs for specific properties that are not ultimately acquired by the subrecipient may be reimbursed. Costs must be reasonable and consistent with industry norms, and may not exceed the maximum amount established for the related eligible activity.

- f) Activity Delivery costs may not exceed the forgoing limits without prior written approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or cost categories not identified in the Texas NSP NOFA.
- g) Subrecipients must certify that the amount being disbursed is for the actual amount of costs, including Administrative and Activity Delivery costs, and must provide documentation to support such costs.
- h) Eligible Costs are limited to those listed in §570, Subpart C, or as otherwise identified in the NSP *Federal Register* Notice. No duplicate disbursement of costs is allowed. Costs may only be disbursed as either a project Activity Delivery cost or Administration cost but not both. Additionally, costs may only be disbursed once per occurrence when providing both acquisition and construction assistance to the same Project or Activity.

6) Eligible and Prohibited Activities.

- a) The use of NSP-R grant funds must constitute an eligible use under HERA. Most of the activities eligible in NSP represent a subset of the eligible activities under 42 U.S.C. §5305(a). The NSP eligible uses must be correlated with CDBG-eligible activities. See Section 8 of the NOFA for a complete listing of eligible activities and uses.
- b) Prohibited activities include, but are not limited to:
 - i) The direct payment of delinquent taxes, fees, or charges on properties to be assisted with NSP-R funds;
 - ii) The payment of any cost that is not eligible under 24 CFR §§570.201- 570.206;
 - iii) Assistance to persons who owe payments identified by the Comptroller of Texas as relevant (including, but not limited to, child support, student loans, and delinquent taxes); or
 - iv) Assistance to any household whose property has current tax liens against it and/or judgment liens in favor of the State of Texas against it.

7) Eligible and Ineligible Applicants.

- a) Eligible applicants are Units of General Local Government and nonprofit organizations.
- b) Subrecipients under Texas NSP1 must have successfully met all contract milestones and thresholds as of the date of application, in order to be eligible for NSP-R.
- c) The following violations will cause an Applicant and/or any Applications they have submitted to be ineligible:
 - i) The Applicant is an Administrator of a previously funded Contract for which Department funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to application submission date; an exception may be made at the discretion of the Department if the deobligation was voluntary, part of project close-out or the remainder was completed on a subsequent Contract;

- ii) The Applicant has failed, (within the reasonable time allotted for response), to submit a response to provide an explanation, evidence of corrective action or a payment of disallowed costs or fees as a result of a monitoring review;
- iii) The Applicant has failed to make timely payment or is delinquent on any loans or fee commitments made with the Department on the date of the Application submission;
- iv) The Applicant has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs or has otherwise been debarred by HUD or the Department;
- v) The Applicant has violated the State laws regarding ethics, including revolving door policy;
- vi) The Applicant has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline;
- vii) The Applicant at the time of Application submission is subject to the following for which proceedings have become final:
 - (a) an enforcement or disciplinary action under state or federal securities law or by the NASD;
 - (b) a federal tax lien;
 - (c) or is the subject of an enforcement proceeding with any governmental entity.
- viii) The submitted Application has excessive omissions of documentation from the Selection Criteria; or is so unclear, disjointed, or incomplete, as determined by the Department, that a thorough review cannot reasonably be performed. If an Application is determined ineligible pursuant to this section, the Application will be terminated without the opportunity for corrections of administrative deficiencies.
- ix) The Applicant or anyone that has controlling (51%) ownership interest in the development owner or developer that is active in the ownership or control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the Land Use Restriction Agreement (LURA) (10 TAC §60.121); and
- x) Any Application that includes financial participation by a Person who, during the five-year period preceding the date of the bid or award, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or Reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 25, 2005, or was assessed a federal civil or administrative penalty in relation to such a contract.

8) Program Activities

a) General Requirements for all Activities

- i) **Income Targeting:** All NSP-R activities must benefit low, moderate and middle-income persons as defined in the NSP Notice ($\leq 120\%$ of area median income). As required in the NSP Substantial Amendment, at least 35% of the non-administrative award to each subrecipient should be targeted to benefit households with incomes less than or equal to 50% AMI. Due to the nature of Land Bank and Demolition activities, which cannot be reported as benefiting individual households at the time of

initial project expenditures, such projects must be undertaken in eligible census tracts, in which 51% or more of the households are at or below 120% of the Area Median Income.

- ii) **Program Income:** Any program income received from subrecipient activities utilizing Texas NSP-R funds must be returned to the Department. Revenue received by a private individual or other entity as a result of subrecipient activities involving NSP-R funds must also be returned to the Department.
- iii) **Appraisals:** Appraisals that conform to the requirements of the URA at 49 CFR part 24 and the requirements set forth in the NSP Notice, will be required for the purposes of determining the statutory purchase discount and the amount of available permanent financing based on loan-to-value for all NSP-R assisted acquisitions. The appraisal must be completed within 60 days of the final offer made for the property by a subrecipient or individual homebuyer.
- iv) **Discount:** All NSP-R assisted property acquisitions must attain the statutorily-required minimum 1% discount from the market appraised value, at the time of purchase. The discount is proven by an appraisal that meets NSP guidelines. Homebuyers purchasing foreclosed properties directly from the initial successor in interest must also attain the discount.
- v) **Protecting Tenants at Foreclosure:** Subrecipient and homebuyer purchases of property from the initial successor in interest in a foreclosure will be subject to Protecting Tenants at Foreclosure Act of 2009 (Public Law 111-22, Title VII) requirements.
- vi) **Environmental Review:** Subrecipients must complete environmental review procedures and receive release of funds prior to purchase of any property or commencement of construction.
- vii) **Benchmarks:**
 1. It is anticipated that successful applications for the Texas NSP-R will be submitted for consideration to the TDHCA Governing Board on May 13, 2010.
 2. Environmental Review and Clearance documentation for the subrecipient selected project must be submitted within 30 days of the contract start date
 3. All NSP-R funds must be obligated within 45 days of the contract start date. Obligation will be evidenced by a contingent purchase contract, contract for construction services, or other similar action that encumbers funds. If acquisition precedes a construction activity, an estimation of construction expenses may be utilized for the purposes of obligation of funding.
- viii) **Eligible and Ineligible Property:** Eligible property types for NSP-R assistance are limited to single-family homes and residential property (property intended for residential purposes, i.e. zoned residential or where there is no zoning, residential use is consistent with deed restrictions and any other limiting factors) including

condominium units, apartment units, cooperative units in mutual housing projects and multifamily residential property. Further restrictions on property eligibility may apply according to the planned NSP activity. Blighted non-residential properties may be cleared with NSP-R demolition funds.

1. Mobile Homes may be eligible for assistance if :
 - (a) The unit complies with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;
 - (b) The unit is permanently installed in accordance with the Texas Manufactured Housing Standards Act;
 - (c) The unit is permanently attached to utilities; and
 - (d) The ownership of the unit is recorded in the taxing authority of the county in which it is located.

ix) **HOME previously-assisted property:** If NSP funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 CFR Part 92, the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of this notice will apply.

b) **Financing Mechanisms**

Activity Type: NSP Eligible Use (A) Establish finance mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties.

CDBG Eligible Activities: 24 CFR §570.206 Activity delivery costs; Also, the eligible activities listed here to the extent financing mechanisms are used to carry them out: 24 CFR §570.201 (a) Acquisition, (b) Disposition, (n) Homeownership Assistance; 24 CFR §570.202 Rehabilitation.

TDHCA will make permanent mortgage financing and homebuyer assistance available to low-to-medium income households purchasing foreclosed homes. Qualifying households will work with subrecipient entities to identify appropriate properties and complete eligibility requirements. Subrecipients may offer financing for properties they have rehabilitated or constructed with Texas NSP-R funds, or for properties that homebuyers locate.

This activity will provide affordable ownership and rental opportunities by providing financing mechanisms to a subrecipient or individual homebuyer to purchase or facilitate the purchase of foreclosed homes or residential property.

i) **Permanent Ownership Financing for Low-Income Households**

1. Qualified Households earning 50% or less Area Median Income based on household size may obtain Mortgage Financing from TDHCA to purchase a foreclosed single-family home or residential property. Mortgage loans will be fully-amortized over 30 years with a zero percent (0%) interest rate. Fully amortizing scheduled repayment will be as set forth in loan documents executed at loan closing. Closing costs may be financed, up to 100% of the combined loan

to value. Qualified households may combine NSP-R permanent financing with homebuyer assistance from NSP, NSP-R or other sources.

2. A down payment of no less than \$500 will be required from all homebuyers receiving financing assistance through the Texas NSP-R. Qualified households participating in an approved self-help housing program may be allowed to substitute “sweat equity” for the down payment requirement.
3. All homebuyers accessing NSP-R permanent financing will be required to meet NSP Homebuyer Underwriting Guidelines

ii) **Down payment Assistance for Low and Moderate Income Households**

1. Households with income levels less than 120% of the Area Median Income based on household size will be eligible to access Texas NSP-R funds for down payment assistance, reasonable closing costs, principal reductions, and gap financing.
2. Assistance of up to \$30,000 will be available to assist in qualifying for private mortgage financing. Homebuyer Assistance will be in the form of a 2nd or 3rd position, zero percent (0%) interest, deferred-payment forgivable loan, with the principal reducing every year that the homebuyers’ occupy the home. A down payment of no less than \$500 will be required from all homebuyers receiving permanent financing assistance through the Texas NSP-R. Qualified households participating in an approved self-help housing program may be allowed to substitute “sweat equity” for the down payment requirement.
3. The full amount of an NSP-R Land Bank loan may be provided to an eligible household as Homebuyer Assistance, up to the \$30,000 maximum.

iii) **Affordability Period:** The Texas NSP-R has adopted the federal program standards for continued affordability at 24 CFR 92.254. The affordability period will be secured with a recapture provision

Affordability Periods for Texas NSP-R Homebuyer Assistance

Homeownership Assistance Amount Per-Unit	Minimum Period of Affordability in Years
Under \$15,000	5
Over \$15,000	10

iv) **Repayment:** The NSP-R homebuyer assistance and permanent financing loans are to be repaid if any of the following occurs before the end of the loan term: resale of the property; refinance of the first lien; repayment of first lien or if the unit ceases to be the assisted household’s principal residence. The amount of recapture will be based upon the recapture provision at 24 CFR §92.254(a)(5)(ii). Recapture of the amount of the NSP investment is reduced on a *pro rata* share based on the time the

homeowner has owned and occupied the unit measured against the required affordability period. The recapture amount is subject to available shared net proceeds in the event of sale or foreclosure of the housing unit.

v) **Restrictions:** The following loan requirements are imposed for all households receiving NSP-R financing:

1. No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;
2. All sources of financing may not exceed 100% combined loan to value;
3. No subprime Mortgage Loans are allowed;
4. Lenders must require the escrow of taxes and homeowners insurance;
5. An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and,
6. The debt to income ratio (back-end ratio), as defined in Fannie/Freddie conventional loan underwriting guidelines, may not exceed 45%.
7. Subrecipients must ensure that each NSP-assisted homebuyer who receives conventional financing from a third party obtains a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages (see, Statement on subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration). NSP-assisted homebuyers may not receive subprime mortgage loans. Compliance must be documented in the records maintained for each homebuyer.
8. Properties purchased with NSP-R assistance must be the household's primary residence within 30 days of closing the mortgage loan.
9. The Texas NSP will follow the Single Family Mortgage limits set under the February 2008 edition of Section 203(b) of the National Housing Act. Eligible entities may, with written approval of the Department, utilize as a mortgage limit the most recent 95% of Actual Median Sales for each county as promulgated by HUD. The current limit may be found on the HUD website, Here:
http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/max_price.cfm
10. NSP-R Homebuyer Financing is not available for investor purchases. The property financed must be the household's primary home.

vi) **Homebuyer Counseling:** All NSP-assisted homebuyers will be required to provide evidence of completion of at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. Evidence must include documentation describing the level of homebuyer counseling, including post purchase counseling.

vi) **Rental (Single-family and Multifamily) Residential Property Financing:**

1. The acquisition of foreclosed single-family and multifamily residential properties by subrecipients to create affordable rental opportunities may be funded through a

permanent loan with the Department. Financing terms will be dependent on the level of affordability provided.

- (a) Units leased to households at or below 50% of the Area Median Income will be eligible for financing through a 30-year amortizing loan at zero percent (0%) interest through the Department, for eligible units.
 - (b) Units leased to households at or below 30% of the Area Median Income in multi-family properties will be eligible for a 30-year zero percent (0%) interest, deferred-payment forgivable loan, with the principal reducing every year that the unit is occupied by an eligible household. No more than fifty percent (50%) of the NSP-R permanently financed units in a project may receive deferred-forgivable financing.
 - (c) Single family homes leased to households at or below 30% of the Area Median Income will be eligible for zero percent (0%) interest, deferred forgivable financing of no more than \$30,000 per unit. The principal balance of the subordinate notes will be reduced proportionately every year that the home is occupied by an eligible household.
 - (d) At least 20% of the units in an assisted development must be leased to households at or below 120% of the Area Median Income in order for any units to be eligible for NSP-R permanent financing, regardless of affordability. Units leased to households over 50% of the Area Median Income are not eligible for permanent NSP-R financing.
2. Eligible property types are limited to single-family homes and residential property including condominium units, cooperative units in mutual housing projects and multifamily residential property.
 3. The maximum per-unit subsidy amount and subsidy layering allowable under the HOME Program using Section 221(d)3 limits as defined as 24 CFR §92.250 will apply. The TDHCA underwriting guidelines in 10 TAC §1.32 will be used, which set as a feasibility criterion a 1.15 debt coverage ratio minimum.
 4. Properties will be restricted under a Land Use Restriction Agreement (“LURA”), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, prohibit the discrimination of renters using Section 8 Housing Choice Vouchers, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.
 5. Minimum affordability period requirements will apply to all assisted units. The affordability period for NSP-R permanently financed affordable units will be a minimum of 30 years.

Affordability Periods for Texas NSP-R Rental properties

Rental Housing Activity	Minimum Period of Affordability in Years
Rehabilitation or acquisition of existing housing per unit: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15
New construction or acquisition of newly constructed housing	20
Units with NSP Permanent financing	30

vii) Activity Delivery Cost Limits: Activity Delivery costs for all financing mechanisms will be limited to 10% of the NSP non-administrative costs per housing unit or property. At the discretion of the Department, activity delivery costs exceeding per unit limits may be spread out among the portfolio of properties as long as the activity delivery costs do not exceed the respective percentages for the Eligible Use Budget line items.

c) Purchase and Rehabilitation of Foreclosed Properties –

Activity Type: NSP Eligible Use (B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent or redevelop such homes and properties.

CDBG Eligible Activities: 24 CFR §570.201(a) Acquisition, (b) Disposition; 24 CFR §570.202 Rehabilitation.

- i) The acquisition and rehabilitation of foreclosed and abandoned single-family and multifamily residential properties by subrecipients will be funded through a deferred-payable two (2) year loan with the Department. Properties must be sold or leased to eligible Low-to-Medium Income households within 12 months of completion of rehabilitation.
- ii) The purchase and rehabilitation of abandoned property may be funded if foreclosure proceedings have been initiated, the property has been vacant for at least 90 days, and no payments have been made on the mortgage or taxes have been made for 90 days.
- iii) Homes must be re-sold to eligible households at a price no higher than the cost to acquire and rehabilitate the property.
- iv) Rehabilitated residential property must result in permanent housing.
- v) Rehabilitation includes activities and related costs as described in 24 CFR §570.202(b), but limited to the improvement or modification of an existing residential property through an alteration, addition, or enhancement including the demolition of

an existing residential property and the reconstruction (rebuilding of a structure on the same site in substantially the same manner) of residential property.

- vi) Activity Delivery Cost Limits: Activity Delivery costs for acquisition will be limited to 15% of the NSP non-administrative costs per housing unit or property. Rehabilitation will be limited to 20% of the NSP non-administrative costs per housing unit or property. At the discretion of the Department, activity delivery costs exceeding per unit limits may be spread out among the portfolio of properties as long as the activity delivery costs do not exceed the respective percentages for the Eligible Use Budget line items.

d) Land Bank

Activity Type: NSP Eligible Use (C) Establish land banks for home and residential properties that have been foreclosed upon.

CDBG Eligible Activities: 24 CFR §570.201 (a) Acquisition and (b) Disposition

- i) A land bank may be established by the subrecipient to assemble, manage temporarily, and dispose of properties for the purpose of stabilizing neighborhoods and encouraging reuse or redevelopment of the properties.
- ii) Subrecipients will be required to submit a Land Bank Plan, describing project milestones, future redevelopment plans and potential fund sources. Financing of Land Bank properties will be available in the form of a ten (10) year, deferred payable loan. Release of the Land Bank lien will be conditioned on repayment of the loan & occupation of the property by an NSP-R eligible household.
- iii) The full amount of the NSP-R Land Bank loan may be provided to an eligible homebuyer as NSP-R Homebuyer Assistance, up to the programmatic maximum of \$30,000. All conditions for Homebuyer Assistance in the section above will apply.
- iv) Subrecipients are limited to the types of properties that may be acquired using land bank funding in the following manner:
 - 1. Properties must be located within an eligible census tract in which 51% or more of the households are at AMI of 120% or less;
 - 2. Acquired properties must have been foreclosed upon through a legal proceeding under Texas state law, which includes, but is not limited to tax foreclosures and financial foreclosures;
 - 3. Properties to be acquired must be located within a defined service area, as described by the Applicant according to the requirements in the Texas NSP Application; and
 - 4. NSP-R Land Bank properties may be held for no more than 10-years without obligating the property to a specific, eligible redevelopment in accordance with NSP-R requirements.
- v) Land bank funding may only be used to acquire and dispose of eligible properties. NSP-R funds may also be used for basic, reasonable maintenance intended to stabilize the property and for the temporary management of the property which includes maintenance, assembly facilitating the redevelopment of and marketing of land banked properties. If the land bank is a governmental entity, it may also maintain foreclosed property that it does not own provided that it charges the

owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

- vi) Administrative cost reimbursement for land bank activities will be limited to the first three years of the NSP-R contract. Subrecipients will be required to provide evidence of capacity to fund administrative activities for the Land Bank in years 4-10 of the contract.
- vii) Activity Delivery Cost Limits: Activity Delivery costs for Land Bank will be limited to 20% of the NSP non-administrative costs per housing unit or property. At the discretion of the Department, activity delivery costs exceeding per unit limits may be spread out among the portfolio of properties as long as the activity delivery costs do not exceed the respective percentages for the Eligible Use Budget line items.

e) Clearance (Removal of Blight or Demolition)

Activity Type: NSP Eligible Use (D) Demolish Blighted Structures

CDBG Eligible Activity: 24 CFR 570.201(d) Clearance of blighted structures only.

- i) Clearance is intended to address areas of greatest need, where subrecipients can prove that blighted structures are affecting property values in the area and pose a threat to human health, safety, and public welfare. Funds to complete demolition activities will be provided as a grant.
- ii) This activity cannot be utilized to target the 35% requirement for 50% AMI, but may be used in conjunction with other eligible activities. Blighted structures to be removed must be located in eligible census tracts, in which 51% or more of the households are at or below 120% of the Area Median Income.
- iii) Subrecipients may use NSP-R demolition funds to remove blighted structures on properties they do not own, provided they are granted authority under law.
- iv) Activity Delivery Costs: Activity delivery costs directly associated with the activity of clearance are limited to 5% of the hard costs required to carry out the activity. At the discretion of the Department, activity delivery costs exceeding per unit limits may be spread out among the portfolio of properties as long as the activity delivery costs do not exceed the respective percentages for the Eligible Use Budget line items.

f) Redevelopment

Activity Type: NSP eligible use (E) Redevelop Demolished or Vacant Properties

CDBG Eligible Activities: 24 CFR §570.201(a) Acquisition, (b) Disposition, (c) Public Facilities, (e) Public Services, (i) Relocation, (n) Homeownership Assistance (restricted)

- i) Redevelopment of demolished or vacant properties will address areas of greatest need throughout the state, where vacant properties are contributing to declining land values. Eligible redevelopment activities include acquisition, rehabilitation and new construction of housing for eligible ownership or rental use.
- ii) Subrecipient financing for acquisition and redevelopment activities will be made available in the form of a deferred-payable zero-interest loan. The loan will be due three years from the contract start date.

- iii) Acquisition, rehabilitation and new construction of residential properties must result in permanent housing. Properties must be sold to eligible households at a price no higher than the cost to acquire and construct the home (some activity delivery costs associated with the sale of the property may be included).
- iv) “Vacant properties” includes both vacant land and properties with vacant structures on the land; however, vacant land must be infill properties or previously developed. “Greenfield” sites may not be acquired under Eligible Use (E).
- v) Activity Delivery Cost Limits: Activity Delivery costs for Redevelopment will be limited to 20% of the NSP non-administrative costs per housing unit or property. At the discretion of the Department, activity delivery costs exceeding per unit limits may be spread out among the portfolio of properties as long as the activity delivery costs do not exceed the respective percentages for the Eligible Use Budget line items.

9) General Loan Requirements

a) Multifamily Rental Development Loan Requirements.

- i) Award amounts are limited to available funding as limited in the application process and respective applicant pool. The minimum loan may not be less than \$1,000 per NSP-R assisted unit. The Department’s underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum. Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing. When NSP funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a) (1).
- ii) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.
- iii) The Texas NSP will adopt the federal program standards for continued affordability for rental housing at 24 CFR §92.252, however, multifamily housing units may be required to adhere to a 30-year affordability period as defined in the Texas Government Code §2306.185, which outlines State of Texas long-term affordability requirements. Units targeting households earning 50% of AMI must maintain income and rent restrictions for households at that level published by the Department. Units permanently financed with NSP-R funds will have a 30-year affordability period.

c) Documents Supporting Mortgage Loans

- i) All mortgage Loans shall be evidenced by a mortgage or deed of trust note and by a mortgage that creates a lien payable to TDHCA on the housing development and on all real property that constitutes the site of or that relates to the housing development.

- ii) For each Loan made for the development of housing with funds provided to the state under the NSP-R program, the Department shall obtain a mortgagee's title policy in the amount of the loan. The Department may not designate a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. The borrower shall select the title insurance company to close the loan and to provide the mortgagee title policy.
- iii) A note or bond and a mortgage or deed of trust:
 - 1. must contain provisions satisfactory to the Department;
 - 2. must be in a form satisfactory to the Department; and
 - 3. may contain exculpatory provisions relieving the borrower or its principal from personal liability if the Department agrees.

d) Documents Supporting Homebuyer Assistance and Rehabilitation Loans

- i) The Subrecipient must ensure that required documents as listed on NSP property Set-up forms, underwriting guidelines, or program manuals are timely submitted to the Department, in order to request that Loan documents be prepared for the Household.
- ii) Additional documentation may be requested in order to complete the appropriate underwriting review.
- iii) The subrecipient will be responsible for timely coordination of all parties in order to meet closing deadlines. Continued late submission of required documents or lack of response to Department requests may result in de-obligation of NSP-R funds.
- iv) All NSP-R homebuyer financing will be secured with documents issued by the Department.

10) Site and Construction/Development Restrictions

a) Single Family Housing

- i) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with NSP funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, the housing must meet the International Residential Code or Texas Minimum Construction Standards (TMCS), as applicable, and be in compliance with the basic access standards in new construction, established by §2306.514 of the Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK.
- ii) If a Texas NSP-R assisted unit is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514 of the Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

- iii) All NSP-R assisted properties must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the Housing Quality Standards in 24 CFR §982.401. When NSP-R funds are used for rehabilitation the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).
- iv) All NSP-R assisted ownership units must pass inspection by a licensed Texas Real Estate Commission inspector prior to occupation.

b) Multifamily Rental Housing

- i) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, NSP-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a NSP-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.
- ii) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601–3619). Additionally, pursuant to the 2010 Qualified Allocation Plan (QAP), 10 TAC §50.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.
- iii) All of the current Qualified Allocation Plan and Real Estate Analysis Rules 10 TAC §50.6, excluding subsections (d), (f), (g), (h) and (i) apply.

- iv) All NSP-assisted housing must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When NSP funds are used for rehabilitation, the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a) (1).
 - v) Multifamily housing assisted with NSP funds must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, and the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
 - vi) All applications with multifamily housing units intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.
 - vii) Rental units secured through Texas NSP assistance must be inspected prior to occupancy and must comply with Housing Quality Standards (HQS) established by HUD in 24 CFR Part 92.
 - viii) Multifamily properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.
- c) **Additional Requirements (Single and Multifamily Housing)**
- ii) NSP assisted new construction or rehabilitation will comply with federal lead-based paint requirements including lead screening in housing built before 1978 in accordance with 24 CFR Part 92.355 and 24 CFR Part 35, subparts A, B, J, K, M, and R.
 - iii) Davis-Bacon Labor Standards, as applicable.
 - iv) Section 3: Recipients will be required to provide job opportunities to low-income residents and businesses, to the greatest extent possible. Reporting of efforts and results on a quarterly basis will be required of all subrecipients.
 - v) Affirmative Marketing. Recipients must adopt affirmative marketing policies and procedures in furtherance of Texas' commitment to non-discrimination and equal opportunity in housing. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the

available housing without regard to race, color, national origin, gender, religion, familial status or disability. Records should be maintained describing actions taken by the Administrator to affirmatively market units and assess the results of these actions.

- vi) Subrecipients may not retain Program Income of any kind, including Program Income to fund other eligible NSP Activities. Subrecipients must submit any Program Income received to the Department within ten (10) days of receipt. Note: Revenue for the purposes of HERA has the same meaning as program income, as defined at 24 CFR §570.500(a) with the additional modifications as defined in the *Federal Register* notice for NSP.
- vii) Texas NSP will require adherence to the guidelines set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24).

11) Selection Criteria and Priorities

- a) The State of Texas has established the priorities and scoring described below that will be used in the application review process. While the criteria are important to demonstrate a successful proposal, the scoring structure was designed to ensure that the State complies with the HUD Notice designed to prioritize areas of greatest need, meets applicable CDBG regulations, and efficiently and effectively expends the funds.
- b) All applications must meet a minimum total score of 50 points to be considered for funding. Should applications meeting this minimum score threshold exceed available funding, such eligible applications will be retained regardless of date of submission until such a time that funding is available in sufficient amounts to fund the applications or a subsequent Texas NSP NOFA is released.
 - i) Maximum Total Score = 100 Points:
 - 1. Readiness to Proceed (50 Points)
 - 2. Greatest Need (20 Points)
 - 3. Neighborhood Stabilization (20 Points)
 - 4. Low-Income Households (10 Points)
 - ii) **Readiness to Proceed (50 Points):** In recognition of the very short timeframe available for obligation of NSP-R funds, proposals that include identified properties for acquisition including contingent contracts or options to purchase will be given priority.
 - iii) **Greatest Need (20 Points):** NSP-R activities must be completed in eligible census tracts, as determined by HUD under the Neighborhood Stabilization 2 NOFA. Applicants are required to provide evidence that activities will meet a Neighborhood Stabilization purpose, in a census tract with a threshold foreclosure needs score of 18 or more. The HUD data and mapping tool may be found on the HUD website, here: <http://www.huduser.org/nspgis/nsp.html> Priority will be given to projects serving communities with the highest needs scores.

- iv) **Neighborhood Stabilization (20 Points):** A narrative description that defines NSP-R-funded activities and meets the program's mission to alleviate distress of housing foreclosure and abandonment of properties caused by problematic mortgage lending activities. Priority will be given to applications which identify specific properties for eligible activities or provide a list of households to be assisted.
- v) **Assistance to Low-Income Households at or Below 50% AMI (10 Points):** In order to emphasize affordability for households at or below 50% of the area median income (AMI), the State will give priority to proposals that will serve persons in this income category beyond the Texas NSP minimum allocation wide requirement of 35% for non-land bank activities. Proposal scores will be prorated according to the additional percentage of funds that will benefit households at or below 50% AMI.

12) Review Process

- a) Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits, as applicable. Applications received on or before 5:00 pm on Tuesday, April 20, 2010 will be prioritized for funding based on competitive scoring and the amount of funding available, currently at least \$4,391,560. Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.
- b) Eligible applications which meet minimum scoring criteria for funding consideration, but for which the amount of funding currently available is insufficient, will be retained by the Department until such a time that funding is available in sufficient amounts to fund the applications or a subsequent Texas NSP NOFA is released.
- c) Applications for NSP-R received after April 20, 2010 will be scored competitively with applications received by the due date but for which there were insufficient funds (should any exist) to determine funding priority and retained until such a time that funding is available in sufficient amounts to fund the applications or a subsequent Texas NSP NOFA is released.
- d) The Department will ensure review of materials required under the NOFA and Program Guide and will issue a notice of any Administrative Deficiencies within ten (10) business days of the received date. Administrative deficiencies are omissions, inaccuracies or incomplete information on the application that can be readily corrected. Applications with Administrative Deficiencies not cured within a subsequent ten (10) business days may be terminated. Applications that have completed this phase will be reviewed for recommendation to the Board.
- e) If a submitted Application has an entire section of the application missing; has excessive omissions of documentation from the Selection Criteria or required documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency. To the extent that

a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

- f) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.
- g) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.
- h) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the minimum award amount.
- i) In accordance with §2306.082, Texas Government Code and 10 TAC §1.17, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.
- j) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.
- k) Eligible applicants within communities should coordinate to ensure that their proposals address their local needs. Duplication of requests for a community may delay the allocation agreement and could result in a reduced amount of time available for applicants to contract for specific acquisitions. In the application, applicants are required to identify:
 - i) The geographic neighborhoods and communities targeted for Texas NSP Re-allocation funds within their area;
 - ii) The Texas NSP eligible activities proposed to meet the specific needs in each area;
 - iii) The strategy for maximum revitalization and impact of funds.

13) Application Submission

- a) All applications submitted for the Select Pool under this NOFA must be received on or before **5:00 p.m. on Tuesday April 20, 2010**, regardless of method of delivery for consideration in the initial competitive application award process. After that date, applications will be held until such a time that funding is available in sufficient amounts to fund the applications or there is no longer the need to reallocate recaptured NSP1 funding.
- b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Questions regarding this NOFA should be addressed to:

Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, Texas 78701
Telephone: (512) 475-3726
E-mail: marni.holloway@tdhca.state.tx.us

- c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.
- d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials.
- e) All Application forms will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
- f) **Application Workshop:** the Department will present an application workshop via webinar format on a date to be determined. The workshop will address information such as the Application preparation and submission requirements, evaluation criteria, state and federal program information, and environmental requirements. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us
- g) **Audit Requirements:** An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to

the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

h) Applications must be sent via overnight delivery to:

**Texas Department of Housing and Community Affairs
Attn: Neighborhood Stabilization Program
221 East 11th Street
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Texas Department of Housing and Community Affairs
Attn: Neighborhood Stabilization Program
Post Office Box 13941
Austin, TX 78711-3941**

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the administration of the Neighborhood Stabilization Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.