



Texas Department of Housing and Community Affairs

Texas Neighborhood Stabilization Program 1 Program Income (“NSP1-PI”)
REVISED Notice of Funding Availability (NOFA)
June 2012¹

1) Summary

The Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”) announces the expected distribution and use of approximately \$13,000,000.00 through the Neighborhood Stabilization Program One Program Income (“NSP1-PI”) NOFA. This amount may vary over time based on additional funding allocations, deobligations, and program income earned from Neighborhood Stabilization Program Round One “NSP1” Neighborhood Stabilization Program Re-Allocation “NSP-R” and NSP1-PI contracts; as additional funds become available, they will be announced on the Department’s website for continued application under this NOFA unless superseded by a subsequent NOFA for this fund source. The Neighborhood Stabilization Program created under the Community Development Block Grant (CDBG) Program provided for funding to be awarded for the redevelopment of abandoned, foreclosed, and vacant homes and residential properties and was initially authorized under Section 2301(b) of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L 110-289, approved July 30, 2008).

- a) 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, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations at 24 CFR part 135, relocation assistance provisions at 42 U.S.C §5304 (d) and 24 CFR Part 42, lead based paint procedures (24 CFR Part 35, subparts A, B, J, K, and R), 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.

¹ All applications currently pending Department review will be bound by the revisions in this NOFA.

- b) NSP1-PI will be awarded independently of the Texas NSP1, Texas NSP-R, or Texas Neighborhood Stabilization Program Round Three “NSP3” awards. New applicants and current subgrantees in good standing that have met benchmarks in existing Texas NSP contracts are encouraged to apply for NSP1-PI funds. NSP1-PI funds may not be used to replace Texas NSP1, Texas NSP-R, or NSP3 awards but with prior Departmental approval may be used to complete Texas NSP1, Texas NSP-R or Texas NSP3 projects in eligible target areas, if such projects are an eligible use under this NOFA and funds can be expended by NSP1 expenditure deadlines.
- c) The Department reserves the right to change the provisions of this NOFA based on updated HUD Notices or changes in state law.

2) Allocation of Texas NSP1-PI

TDHCA will coordinate activities in accordance with NSP guidelines including 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 of land bank/trusts, 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. To the extent that a development assisted with NSP1-PI funds is also assisted by one or more other programs, the development may be required to meet additional requirements imposed by those other programs.

Funds made available due to loan repayments from previously awarded funds will be made available to new applicants seeking funding for single family home ownership activities under a Reservation System. Multifamily rental activities (five or more units) will be funded through a combination of remaining NSP1 funds and de-obligated funds. Due to the size of multifamily awards and the amount of underwriting necessary prior to the award of funds, multifamily activity applicants will not utilize the Reservation System. However, all applicants for funds must become a Participant, as described below.

- a) Each applicant will be required to submit an entity application to participate under the NSP1-PI NOFA. The application can be found on the Department’s website. Entities will become “Participants” after approval by staff, and ratification by the TDHCA Governing Board. Following the execution of a Reservation System Agreement, applicants may reserve funds for single family activities using an online reservation system. Applicants proposing multifamily rental activities will not need to execute a Reservation System Agreement. Once an applicant is eligible, they will retain their eligibility through February, 2013, unless the applicant has an event described herein that causes them to lose their eligibility.
- b) Each entity 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 will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

- c) Applicants involving rental housing of five or more units must submit a rental project application (the Multifamily Uniform Application, or part two of the application process). The application, which can be found on the Department's website, may be submitted after the necessary approval process has been completed for the entity application.. The applicant may be required to participate in a phone call with the Director of Real Estate Analysis. This application is to be submitted in lieu of reserving funds through the Reservation System. The receipt date of a complete Multifamily Uniform Application will be used to prioritize deals for funding.
- d) If the Department's loan(s) on a rental property of five or more units would amount to more than 50% of the total development cost, except for developments also financed through the USDA-515 program, the Rental Project Application MUST include:
 - a. A letter from a third party CPA verifying the capacity of the applicant, developer or owner to provide at least 10% of the total development cost as a short term loan for development; and
 - b. A letter from the applicant, developer or owner bank(s) confirming funds amounting to 10% of the total development cost are available; or
 - c. Evidence of a line of credit or equivalent tool equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities.
- e) In the event that two or more rental housing applications come in on the same day and are both complete, practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which project will receive a preference in consideration for an awarded of funds.
 - i. The Application where the applicant already owns the land.
 - ii. The Application with the least amount of Texas NSP funds per Texas NSP restricted unit will win this second tier tie breaker.
- f) The Department will ensure review of materials required under the NOFA, Technical Guide, and Application and will issue a notice of any Administrative Deficiencies within ten (10) business days of the received date, if the Application meets minimum criteria. 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 will be terminated.
- g) If a submitted entity or project application fails to meet threshold criteria, has an entire section of the application missing; has excessive omissions of 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, the application 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.

- h) The Department may decline to consider any application or project 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.
- i) All entities and projects will be processed through the Department's application and project 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.
- j) 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 any time 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
- k) An applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.
- l) Each applicant will be required to demonstrate how the proposed project addresses their local needs and how, if applicable, it coordinates with their community's consolidated plan.

3) Definitions

- a) As stipulated in the Federal Register Notices (Dockets No. FR-5447-N-01, F-522-N02, and FR-5321-N-03) for 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-5447-N-01, F-522-N-02, and FR-5321-N-03) and any subsequent HUD Errata Notice or changes in State law are controlling for Texas NSP.
- b) The Department will use local code to determine the definition of a blighted structure, except that moral blight is not eligible. If there is no local definition, blighted

structure shall mean when a structure exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

- c) Words and terms shall have the same meanings as in the Texas Administrative Code 10 TAC §9.2, unless the context clearly indicates otherwise or as revised in this NOFA.

4) Limitations on Funds

- a) In order to avoid allocating small amounts of funding that would likely have no meaningful impact on stabilizing of property values, the minimum award amount to an eligible project cannot be less than \$15,000. The minimum award for a rental project consisting of five or more units cannot be less than \$250,000.
- b) In order to encourage investment of other sources of funding and to encourage the participation of multiple applicants, the maximum number of projects that can be in pending review status with Texas NSP1-PI funds for any applicant at any one time is three (3). This limit may be waived for applicants assisting troubled TDHCA properties, in the sole determination of the Department.
- 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, at the sole discretion of the Department, be reimbursed if incurred before the effective date of a Contract so long as the costs are in accordance with 24 CFR §§570.201-207 or §570.282(a) through (d) and 24 CFR Part 58 and the limitations herein.
- d) Additional limitations as defined in HERA, Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) “Dodd-Frank Act”, and HUD NSP Notices regarding purchases, rehabilitation, and sales of properties, will be strictly enforced.
- e) The Department may adjust 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, and other requirements, as applicable.
- f) Eligible Costs are limited to those listed in 24 CFR §570, Subpart C, 24 CFR §570, Subpart I, or as otherwise identified in the NSP *Federal Register* Notice or subsequent notices. No duplicate reimbursement of costs is allowed. Additionally, costs may only be reimbursed once per occurrence when providing both acquisition and construction assistance to the same Project or Activity.
- g) Nonprofit applicants for rental property may be eligible for a developer fee grant of up to 5% of the hard costs of the award.

- h) Subgrantees must certify, and provide invoices or other documentation, that the amount being reimbursed is for the actual amount of costs, including Activity Delivery costs.

5) Eligible and Ineligible Applicants

- a) Unless otherwise limited in this NOFA, eligible applicants are nonprofit organizations recognized by the Texas Secretary of State and required by federal regulation to use 24 CFR Part 84, units of general local government, special purpose units of government (including public housing and regional planning authorities), and Housing Finance Corporations authorized under the provisions of the Texas Housing Finance Corporation Act, Texas Government Code, Chapter 394.
- b) Subgrantees under Texas NSP1, Texas NSP-R, and Texas NSP3 must have successfully met all contract milestones and thresholds as of the date of application and be in compliance with those contracts in order to be eligible to apply under this NOFA; additionally, subgrantees must not be out of compliance with any and all TDHCA contracts at the time of award.
- 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 is delinquent on any loan payment or fee due to the Department on the date of the previous participation review in conducted;
 - 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:

1. An enforcement or disciplinary action under state or federal securities law or by the NASD;
 2. A federal tax lien; or
 3. Is the subject of an active enforcement proceeding with any governmental entity.
- viii. 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
- ix. 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.

6) Eligible and Prohibited Activities

- a) The use of NSP1-PI grant and/or loan funds must constitute an eligible use under HERA and this NOFA. 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. Eligible activities are described further in Section 7.
- 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 NSP1-PI funds;
 - ii. The payment of any cost that is not eligible under 24 CFR §§570.201-570.207 or §570.482(a) through (d);
 - 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 is subject to tax liens and/or judgment liens in favor of the State of Texas.
- c) NSP1-PI Homebuyer Financing is not available for investor purchases. The property financed must be the household's primary home.
- d) **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 applicants 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).

7) **Eligible Activities**

a) **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.

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

TDHCA will make permanent mortgage financing and homebuyer assistance available to low, moderate, and middle 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 NSP1-PI funds, or for properties that homebuyers locate.

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

1. Households earning 50% or less AMI 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. Households may combine NSP1-PI permanent financing with homebuyer assistance from NSP1, NSP-R, NSP1-PI or other sources.
2. A minimum investment of no less than \$500 will be required from all homebuyers receiving financing assistance through the Texas NSP1-PI. Households participating in an approved self-help housing program may be allowed to substitute "sweat equity" for the investment requirement.
3. All homebuyers accessing NSP1-PI permanent financing will be required to meet Texas NSP Homebuyer Financing Guidelines.
4. All homebuyer properties assisted with NSP1-PI funds must meet Housing Quality Standards.
5. All NSP1-PI assisted ownership units must pass inspection by a licensed Texas Real Estate Commission (TREC) inspector prior to occupation.

ii. **Down Payment Assistance for Low, Moderate and Middle Income**

Households

1. Households with income levels less than 120% of the AMI will be eligible to access Texas NSP1-PI 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 lien, zero percent (0%) interest, deferred-payment forgivable loan, with the principal reducing every year that the homebuyers’ occupy the home. A minimum investment of no less than \$500 will be required from all homebuyers receiving permanent financing assistance through the Texas NSP1-PI. 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 NSP1-PI Land Bank loan maybe provided to an eligible homebuyer as Homebuyer Assistance, under the same terms and conditions as described above. The amount of Homebuyer Assistance will be the lesser of the Land Bank loan on the property or \$30,000.
 4. All homebuyer properties assisted with NSP1-PI funds must meet Housing Quality Standards.
 5. All NSP1-PI assisted ownership units must pass inspection by a licensed Texas Real Estate Commission (TREC) inspector prior to occupation.
- iii. **Affordability Period:** The Texas NSP1-PI has adopted the federal program standards for continued affordability at 24 CFR 92.254, as a minimum. The ability of TDHCA to enforce this requirement for the full affordability period will be secured with a recapture provision in the loan documents in form and substance satisfactory to TDHCA and its counsel.

Affordability Periods for Texas NSP1-PI Homebuyer Assistance

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

- iv. **Repayment:** The NSP1-PI 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). For HBA, 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, otherwise recapture will be based on the loan balance. 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 NSP1-PI 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 \$2,500.00; and,
6. The debt to income ratio (back-end ratio), as defined in Fannie/Freddie conventional loan underwriting guidelines, may not exceed 45%.
7. The housing ratio (front-end ratio) may not exceed the limits described in the Texas NSP Underwriting Guidelines for each type of purchase money mortgage.
8. Subrecipients must ensure that each NSP1-PI 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.
9. Properties purchased with NSP1-PI assistance must be the household's primary residence within 30 days of closing the mortgage loan and throughout the affordability period.
10. 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. If HUD changes this requirement for the HOME program, Texas NSP will change as well. The current limit may be found on the HUD website,
http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/max_price.cfm

11. The Texas Neighborhood Stabilization Program Homebuyer Financing Guidelines and Eligible Property Requirements will apply for all NSP1-PI homebuyer transactions.

vi. Homebuyer Counseling: All NSP1-PI-assisted homebuyers will be required to provide evidence of completion of at least eight (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.

vii. Rental (Single-family and Multifamily) Residential Property Financing:

1. The acquisition of foreclosed, abandoned, or vacant properties by developers 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. Activity Delivery Costs only apply to those entities awarded funds under a Subrecipient Agreement, not those applicants awarded under a Developer Agreement.

- i) Properties of four or fewer units, leased to households at or below 50% of AMI will be eligible for financing through a loan at zero (0%) interest, fully amortized over 30 years through the Department, for eligible units. Activity Delivery Costs will be granted.
- ii) Properties of four or fewer units leased to households at or below 30% of the Area Median Family Income will be eligible for zero percent (0%) interest, deferred forgivable financing of no more than \$30,000 per unit. Any remaining amount over \$30,000 per unit may be financed with a loan at zero percent (0%) interest, fully amortized over 30 years. The principal balance of the subordinate notes will be reduced proportionately every year that the home is occupied by an eligible household. Activity Delivery Costs will be granted.
- iii) Properties of five or more units leased to households at or below 50% of AMI will be eligible for financing, for an up to 30-year amortizing for up to 30 years loan, at an interest rate ranging from (0%) interest to (5% interest) to be determined by the Director of Real Estate Analysis. Activity Delivery Costs will be part of the loan, if applicable. Activity Delivery Costs for Developers only include Project Soft Costs, and do not include such items that are typically included in Developer “overhead.”

- iv)** Properties of five or more units leased to households at or below 30% of the AMI in rental properties will be eligible for loan at zero (0%) interest, fully amortized over 30 years deferred-payment forgivable loan, through the Department, with the principal reducing every year that the unit is occupied by an eligible household. Activity Delivery Costs will be part of the loan, if applicable. Activity Delivery Costs for Developers only include Project Soft Costs, and do not include such items that are typically included in Developer “overhead.” No more than fifty percent (50%) of the NSP1-PI permanently financed units in a project may receive deferred-forgivable financing.
 - v)** If a Developer agrees to lease 30% of the NSP1-PI permanently financed units in a project to households at or below 30% of the AMI, the project may be eligible for up to 50% of the NSP1-PI to receive deferred-forgivable financing
 - vi)** At least 20% of the units in an assisted rental development must be leased to households at or below 120% of the AMI in order for any units to eligible for NSP1-PI permanent financing, regardless of affordability. Units leased to households over 50% of the AMI are not eligible for permanent NSP 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. For rental properties 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. If the HOME Program modifies this requirement, Texas NSP will follow the modification.
 4. 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.
 5. 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 or any other comparable voucher program, 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.

6. Affordability period requirements will apply to all assisted units. The federal NSP affordability period will be based on the amount of NSP funding per unit, and the remaining time period will be the State Affordability Period as outlined in Section 2306.269.

Federal Affordability Periods for Texas NSP1-PI Rental Properties

	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

- viii. Activity Delivery Cost Limits: Activity Delivery costs for all financing mechanisms will be limited to 15% of the NSP hard costs per housing unit or Property. These Activity Delivery Cost Limits apply to Project Soft Costs for projects awarded under Developer Agreements.

b) Purchase and Rehabilitation of Abandoned or 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 subgrantees will be funded through a loan with the Department. Awardees must sell or lease properties to eligible Low, Moderate, and Middle Income households within six (6) months of completion of rehabilitation or by November 30, 2013, whichever is sooner.
- ii. A home or residential property has been foreclosed upon if any of the following conditions apply: a) the property’s current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or b) the property owner is 90 days or more delinquent on tax payments, or c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP

grantee, subrecipient, contractor, developer, or end user.

- iii. A home or residential property is abandoned property if either 1) 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 action 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 local law.
- iv. Homes must be re-sold to eligible households at the lesser of the total development costs or the appraised value after rehabilitation.
- v. Rehabilitated residential property must result in permanent housing.
- vi. 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.
- vii. Abandoned and foreclosed properties that have been purchased and rehabilitated, or reconstructed under this activity may be eligible for financing under the same terms and conditions described under Use A—Financing Mechanisms.
- viii. Activity Delivery Cost Limits: Activity Delivery costs for acquisition-only activities will be limited to 20% of the hard costs per housing unit or property. Purchase and Rehabilitation and Rehabilitation only projects will be limited to 25% of the NSP hard costs per housing unit or property.

c) 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 subrecipients to assemble, manage temporarily, and dispose of properties for the purpose of stabilizing neighborhoods and encouraging reuse or redevelopment of the properties. Developers may not establish land banks.
- ii. Financing of Land Bank properties will be available in the form of an up to ten (10) year, deferred payable loan.
- iii. Release of the Land Bank lien for sale to a homebuyer will be conditioned on:

1. Repayment of the loan (unless it is rolled over to the homebuyer);
 2. Appraisal and documentation of total development cost and documentation that sales price is the maximum of the lower of the two;
 3. Documentation of homebuyer counseling;
 4. HQS and a TREC inspection; and
 5. Verification of income requirements for the homebuyer.
- iv. The full amount of the NSP1-PI Land Bank loan may be provided to an eligible homebuyer as NSP1-PI Homebuyer Assistance, up to the programmatic maximum of \$30,000. All conditions for Homebuyer Assistance described in this NOFA will apply.
- v. Properties held in a Land Bank with NSP1-PI financing are not eligible for interim rental use.
- vi. 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 meet the HUD definition of foreclosed; and
 3. NSP1-PI Land Bank properties may be held for no more than 10-years without obligating the property to a specific, eligible redevelopment in accordance with NSP1-PI requirements.
- vii. Land bank funding may only be used to acquire and dispose of eligible properties. NSP1-PI 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.
- viii. Activity Delivery Cost Limits: Activity Delivery Costs for Land Banking will be limited to 25% of the NSP hard costs per housing unit or property. At the discretion of the Department, activity delivery costs exceeding per unit limits may be spread among the portfolio of properties in a landbank as long as the activity delivery costs do not exceed the respective percentages for the Eligible Use Budget line items.
- ix. Subrecipients will be required to submit a Land Bank Plan, describing project milestones, future redevelopment plans and potential fund sources. Subrecipients will be required to provide evidence of capacity to fund administrative activities for the Land Bank in subsequent years of the contract.

d) 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. Units of Local Government and Housing Finance Corporations may use this activity type under a subrecipient contract. Developers may not use this activity type. Nonprofit subrecipients may only use this activity type if it is a land banked property, or part of a redevelopment activity.
- ii. 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. Local definition of blight may be applied, with the exception of a finding of “moral blight”. Funds to complete demolition activities not associated with acquisition, rehabilitation, or redevelopment will be provided as a grant.
- iii. This activity cannot be utilized to meet the federal low income target requirement for 50% AMI, but may be used in conjunction with other eligible activities.
- iv. Blighted structures to be removed should be located in eligible census tracts, in which 51% or more of the households are at or below 120% of the AMI.
- v. Subrecipients may reserve NSP1-PI demolition funds to remove blighted structures on properties they do not own, provided they are granted authority under law. Applicants may be required to demonstrate that all notice periods have concluded before reserving demolition funds and certify that there are no pending appeals against the demolition or that an elected judge or an appointed municipal judge in a court of record has approved the demolition.
- vi. If the subrecipient will record a lien on the property after demolition in accordance with local ordinance or custom, program income created by the lien must be returned to TDHCA upon receipt. HUD requires a LURA to be filed if the total federal investment in a property is \$25,000 or greater. TDHCA may require specific language to be included in demolition liens, providing for return of program income, or the subrecipient may be subject to a deferred, payable, unsecured note at zero percent (0%) interest, equal to the amount of the demolition costs.
- vii. Activity Delivery Costs: Activity Delivery Costs directly associated with the activity of clearance are limited to 10% of the hard costs required to carry out the activity.

e) Redevelopment

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

Eligible Activities: 24 CFR §570.201(a) Acquisition, (b) Disposition, (i) Relocation, (n) Homeownership Assistance

- 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 as permanent housing.
- ii. Properties must be sold to eligible households at the lesser of 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) or the post-rehabilitation appraised value.
- iii. Demolition as part of redevelopment is an eligible project expense, but it is limited to 10% of the NSP1-PI hard costs. The requirements regarding demolition described herein will apply.
- 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 acquisition-only activities will be limited to 20% of the hard costs per housing unit or property. Activity Delivery costs for Redevelopment will be limited to 25% of the NSP hard costs per housing unit or property. These Activity Delivery Cost Limits apply to Project Soft Costs for projects awarded under Developer Agreements.

f) General Requirements for All Activities

- i. **Income Targeting:** All NSP1-PI activities must benefit low, moderate and middle-income households as defined in the NSP Notice (\leq 120% of AMI). All NSP funded rental units must benefit households at less than or equal to 50% AMI, unless prior approval is received from the Department.
- ii. **Program Income:**
 1. Subrecipients shall not retain any Program Income (as defined at 24 CFR §570.500 (a) (1)) but not including the exclusions found at 24 CFR §570.500 (a)(4) of any kind however derived, including the retention of Program Income to fund other eligible Texas NSP activities. Any program income received from subrecipient activities utilizing Texas NSP1-PI funds must be returned to the Department within ten (10) business days. Revenue received by a private individual or other entity as a result of subrecipient activities

involving NSP1-PI funds must also be returned to the Department within ten (10) business days. Unless otherwise stated herein the subrecipient shall comply with the requirements of 24 CF.R §570.489(e) to account for program income, repayments, and recaptured funds.

2. Developers shall not retain any project income. Project income includes, but is not limited to, the following:
 - a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with NSP funds;
 - b) Proceeds from the disposition of equipment purchased with NSP funds;
 - c) Payments of principal and interest on loans made using NSP funds,
 - d) Proceeds from the sale of loans made with NSP funds;
 - e) Proceeds from sale of obligations secured by loans made with NSP funds;
 - f) Interest earned on project income pending its disposition; and
 - g) Funds collected through special assessments made against properties owned and occupied by households *not* of low and moderate income, where the assessments are used to recover all or part of the NSP portion of a public improvement.

3. Project income does not include:
 - a) Gross income from the use or rental of real or personal property acquired by Developer with NSP funds, less costs incidental to generation of the income;
 - b) Gross income from the use or rental of real property, owned by the Developer, that was constructed or improved with NSP funds, less costs incidental to generation of the income;
 - c) Funds collected through special assessments used to recover the non-NSP portion of a public improvement;
 - d) Proceeds from fund raising activities carried out by Developer receiving NSP assistance; and
 - e) Proceeds from the disposition of real property acquired or improved with NSP funds after five years following the NSP Federal

Affordability Period.

4. Developer may not retain Project Income of any kind, however derived. When income is generated by an activity that is only partially assisted with NSP funds, the income shall be prorated to reflect the percentage of NSP funds used.
 5. The Developer shall provide reports of income as requested by Department. Income derived from NSP funds under the contract must be submitted to Department within ten (10) business days of receipt.
 6. Notwithstanding any provision in this section, no private individual, developer, or other entity will be unduly enriched by revenue generated with NSP funds. Any such enrichment will be considered Project Income received by a private individual, developer or other entity and must also be returned to the Department.
- iii. **Appraisals:** The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with either: 1) the appraisal requirements of the URA at 49 CFR Part 24.103. The appraisal must be completed or updated within 60 days of a final offer made for the property by a subgrantee or individual homebuyer. However, if the anticipated value of the proposed acquisition is estimated at \$25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the grantee determines is qualified to make the valuation. Appraisers must follow the Uniform Appraisal Standards for Federal Land Acquisitions.
- iv. **Discount:** All NSP1-PI assisted foreclosed property acquisitions must attain the statutorily-required minimum 1% discount from the market appraised value, at the time of purchase. The discount is confirmed by an appraisal that meets NSP guidelines, as stated herein. Homebuyers purchasing foreclosed properties directly from the initial successor in interest must also attain the discount.
- v. **Protecting Tenants at Foreclosure:** Subgrantee 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 and Recovery Act (Public Law 111-5) requirements.
- vi. **Environmental Review:** Subgrantees must complete environmental review procedures and receive release of funds by TDHCA prior to purchase of any property or commencement of construction. In addition, before beginning construction the applicant will have (i) received all requisite building permits and approvals of the Plans, (ii) filed and/or recorded all requisite plats and other instruments and (iii) complied with all Legal Requirements and Environmental Laws required to be met prior

to commencement of construction of the Improvements including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, The Texas Asbestos Health Protection Rules, Texas Mold Assessment and Remediation Rules, the provisions of the Texas Windstorm Insurance Association, Chapter 2210 of the Insurance Code for applicable coastal counties flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the property.

vii. **Contingency:** All projects, except for Demolition only and New Construction of Rental Property over five units, may include up to a 10% contingency of hard costs of construction for all activities. Demolition only projects may not include a contingency. Rental Property over five units may include up to a 7% contingency of hard costs of construction.

viii. **Benchmarks:**

1. Subgrantees will have up to 60-days from the date of a complete reservation to close a transaction in accordance with their award.
2. All projects involving acquisition and rehabilitation/reconstruction are anticipated to close the acquisition transaction by March 1, 2012 and begin construction by May 1, 2012.
3. All projects must have expended and requested reimbursement of all the hard costs of construction by December 31, 2012.
4. More specific benchmarks may be developed per project via completion of the reservation process, or through underwriting of the loan.

ix. **Eligible and Ineligible Property:** Eligible property types for NSP1-PI 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. All projects must have residential zoning or deed restriction at the time of project application. Further restrictions on property eligibility may apply according to the planned NSP activity. Blighted or vacant non-residential properties may be assisted with NSP1-PI funds, but only as part of a new construction, rehabilitation or reconstruction activity of single-family homes and residential property. Manufactured 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.
- x. **HOME previously-assisted property:** If NSP1-PI 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 unless the NSP1-PI affordability restrictions are greater and then the NSP1-PI affordability restrictions will apply. The Department will give priority consideration to applications which are completing the affordability period of distressed TDHCA properties. This determination will be made in the sole discretion of the Department.
- xi. **Energy Standards** Gut rehabilitation, reconstruction or new construction of residential buildings up to three stories must be designed to meet the standard for Energy Star Qualified New Homes. All gut rehabilitation, reconstruction or new construction of mid-or high-rise multifamily housing must be designed to meet American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2004, Appendix G plus 20 percent. Other rehabilitation must meet these standards to the extent applicable to the rehabilitation work undertaken. All projects must purchase Energy Star products and appliances. Water efficient toilets, showers, and faucets, such as those with the WaterSense label, must be installed.
- xii. **Compliance and Monitoring** All properties will be monitored using the procedures outlined in the Texas Administrative Code Chapter 60. All rental property owners will be required to file reports with the Department as outlined in Chapter 60. Rental properties will be required to pay an annual fee for the monitoring and compliance fees established by the Department from time to time, as assessed.
- xiii. **Target Score** All NSP1-PI assisted properties must be located in a census tract with a score of 12 or greater. The score determination is made concurrent with the reservation of funds for a specific property. The HUD data and mapping tool may be found on the HUD website, here: <http://www.huduser.org/portal/datasets/NSP.html> An exception to the target score requirement, in the sole determination of the Department, may be made for properties that were obligated under the NSP1 or NSP-R NOFAs.

g) Additional Requirement for Rental Properties

- i. Only qualified nonprofit organizations are eligible to receive financing for rental properties. A subrecipient may request funding, but must procure an eligible Developer. See the eligible entity section for additional guidance. In addition, for rental properties involving five or more units, an applicant must have the experience outlined in 10 TAC §48.4 or as defined in the threshold requirements in the Qualified Allocation Plan, current as of the date of application.
- ii. A single-site development of over 16 units must have the minimum common amenities listed in the Qualified Allocation Plan, current as of the date of application. The amenities will be required to be listed in the LURA.
- iii. All applications involving rental property will be required to demonstrate how the type of housing proposed is financially feasible in the target area.
- iv. It is anticipated that successful applications for entities considering rental projects involving five or more units will be submitted for consideration by the TDHCA Governing Board no later than March 2012.
- v. It is anticipated that rental projects involving five or more units involving rehabilitation or reconstruction only will close the TDHCA loan and begin construction by May 1, 2012.
- vi. It is anticipated that rental projects involving five or more units involving acquisition only funding will close the transaction by June 1, 2012 using the TDHCA loan.
- vii. NSP assisted new construction, rehabilitation, or renovation 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 and for Multifamily Housing must be discussed in the Property Condition Assessment.
- viii. As applicable, Davis-Bacon Labor Standards will apply, and for Rental Housing must be discussed in the Property Condition Assessment.

9) General Loan Requirements

a) Rental Development Loan Requirements

- i. The minimum loan may not be less than \$1,000 per NSP1-PI assisted unit or as otherwise restricted in this NOFA. 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 of five or more rental units must establish that the rehabilitation will substantially improve the condition of the housing and the scope, specifications and costs must be outlined in a Property Condition Assessment pursuant to 10 TAC §1.36. When NSP1-PI funds are used for a rehabilitation development the entire property must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a) (1) and as outlined herein.

- ii. When the Department funds will be in a first lien position and funds are to be used for new construction, redevelopment 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 is required. Such assurance of completion will run to the Department as obligee and must be documented prior to starting construction. The obligation must be from a surety acceptable to the Department in its sole and reasonable discretion. If there is an identify of interest between the Owner and the General Contractor, the Department may in its sole and reasonable discretion allow other methods of surety in lieu of the payment and performance bond.
- iii. NSP1-PI rental properties will be underwritten using the current year Real Estate Analysis Rules, except that if the Rules and the Federal or Texas NSP guidelines conflict, the provisions described in the HUD notice or described herein will govern.
- iv. NSP1-PI funds may only be used for the operating reserve if a third-party lender requires that funds be allocated for operating reserves as a condition for approving their loan. The amount of operating reserves may exceed amounts provided for in TDHCA's Real Estate Analysis rules only with documentation acceptable to the Department of the third-party lender's reserve requirements. If no third-party lender requirement is imposed in the transaction, the Department may require the developer to defer a fee or a portion of the fee to make the deposits to operating reserves until the end of the contract period. The Developer may not use NSP funds to pay for an on-going subsidy (or any other on-going project based rental assistance). The Developer is required to establish a Reserve for Replacement consistent with 10 TAC 1.37.

b) 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 and such other documents as TDHCA may reasonably require. All documents must be in form and substance satisfactory to TDHCA and its counsel.
- ii. For each Loan made for the development of housing with funds provided under the NSP1-PI program, the Department shall be provided with a 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. The title policy may not reflect any liens, charges, encumbrances, or other matters excepted from coverage that are not acceptable to TDHCA in its sole and reasonable judgment.

- iii. A note or bond and a mortgage or deed of trust: must contain provisions satisfactory to the Department; must be in a form satisfactory to the Department; and may contain exculpatory provisions relieving the borrower or its principal from personal liability if the Department agrees.

c) Documents Supporting Homebuyer Assistance

- i. The subrecipient must ensure that required documents as listed on NSP property Setup 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 NSP1-PI funds and termination of the Contract.
- iv. All NSP1-PI homebuyer financing will be secured with documents approved by the Department.

10) Activity Delivery/Soft Cost Limitations

- a) Activity Delivery costs are soft costs that are directly related to and incurred in carrying out activities for a specific housing unit or property, and they are separate and distinct from the general administrative costs. Because single family projects will apply to the reservation system with a pre-identified address(es), no general administrative costs will be allowed. General administrative costs are considered Developer overhead and are not eligible under the NSP. Activity Delivery costs will be granted for all projects except rental projects of five or more units where they will be part of the loan unless otherwise described in this NOFA, as applicable. The administrator must use these funds 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. The Texas NSP limits Activity Delivery costs according to activity as specifically described in the program activity sections and as stated herein.

- b) Eligible Activity Delivery Soft Costs must be reasonable and consistent with industry norms. Specific eligible activities may include (depending on entity type and activity), but are not limited to: i.) inspections for lead-based paint, asbestos, termites, or septic systems; ii.) interim and final inspections by the construction inspector; i.) financing fees, credit reports, title binders and insurance; ii.) recordation fees, transaction taxes; iii.) legal and accounting fees; iv.) appraisal fees; v.) architectural and engineering fees, including specifications and job progress inspections; vi.) relocation costs; vii.) site specific environmental reviews; viii.) lead hazard evaluation and reduction costs; ix.) preparation of work write-ups, work specifications, and cost estimates; x.) architectural, engineering or professional services required to prepare plans, drawings or specifications directly attributable to a particular project; xi.) staff time specifically related to the address of the project; and other soft costs that are demonstrably necessary to the production of an identified NSP-eligible housing unit and that are approved in writing by the Department before the costs are expended. Staff time, regardless of its specificity to an address, is part of Developer overhead, and not an eligible Activity Delivery Cost for Developers.
- c) The related Activity Delivery costs maximum will be based on the activity in a range from 5% to no more than 25% of the hard costs. Activity Delivery costs may not exceed the forgoing limits without prior written approval by the Department. Additionally upon prior approval of the Department, further exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction, noise studies, and/or cost categories not identified in the Texas NSP1-PI NOFA.
- d) For rental projects consisting of five or more units, Activity Delivery costs for specific properties that are not ultimately acquired by the subgrantee may be reimbursed, with the permission of the Department, only if the project has received a favorable underwriting report. Permission will not be given, if the applicant is not in good standing with TDHCA or under any Texas NSP contract. Costs must be reasonable and consistent with industry norms, and may not exceed 50% of the maximum Activity Delivery amount established for the related eligible activity (not including the Developer Fee).

11) Site and Construction/Development Restrictions

a) Single Family Housing

1. Pursuant to HERA, housing that is constructed or rehabilitated with NSP1-PI 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 and the National Electrical Code, as applicable. 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.

- 2.If a Texas NSP1-PI assisted single-family or duplex is newly constructed and reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514 of the Texas Government Code, and as implemented by TDHCA.
- 3.All NSP1-PI assisted properties must meet all applicable State and local housing quality standards and code requirements the housing quality standards (HQS) in 24 CFR §982.40. When NSP1-PI 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).
- 4.All NSP1-PI assisted ownership units must pass inspection by a licensed Texas Real Estate Commission (TREC) inspector prior to occupation.

b) Rental Housing

- 1.Pursuant to HERA, housing that is constructed, reconstructed or rehabilitated with NSP funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. When NSP funds are used for rehabilitation, the entire development must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a) (1). In the absence of a local code for new construction, reconstruction, or rehabilitation, NSP-assisted new construction, reconstruction or rehabilitation must meet, as applicable, International Residential Code and the National Electrical Code. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in an NSP-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Gut rehabilitation, reconstruction or new construction of residential buildings up to three stories must be designed to meet the standard for Energy Star Qualified New Homes. All gut rehabilitation, reconstruction or new construction of mid-or high-rise multifamily housing must be designed to meet American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2004, Appendix G plus 20 percent. Other rehabilitation must meet these standards to the extent applicable to the rehabilitation work undertaken.
- 2.Rental 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) and the Fair Housing Act Design Manual produced by HUD.

Additionally, pursuant to the current as of the date of the application 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. For rehabilitation developments, the scope, specifications and costs associated with complying with accessibility requirements must be identified in the Property Condition Assessment.

3. All NSP1-PI assisted properties must meet all applicable State and local housing quality standards and code requirements, which at a minimum must address UPCS and the housing quality standards HQS in 24 CFR §982.40. When NSP1-PI 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).
4. The Real Estate Analysis Rules current as of the date of the application, will apply, except that if the Rules and the Federal or Texas NSP guidelines conflict, the provisions described in the HUD notice or described herein will govern.
5. 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.

c) Additional Requirements (Single and Multifamily Housing)

- i. Any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation (excluding Reconstruction) with the exception of Developments with existing and ongoing federal funding assistance from HUD or TRDO-USDA, will be permitted in the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the Unit of General Local

Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain.

- ii. Subgrantees 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 Subgrantee to affirmatively market units and assess the results of these actions. An Affirmative Marketing Plan is required for all NSP1-PI properties.
- iii. Subgrantees 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) and 104(d) requirements set out in 24 CFR Part 42.
- iv. As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, all subgrantees must take reasonable steps to ensure that LEP persons have meaningful access to programs as implemented by HUD. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and conducting programs. A Language Assistance Plan is required for all subgrantees. A Language Assistance Plan is required for all NSP1-PI rental properties.
- v. Subgrantees will be required to provide job opportunities to low-income residents and businesses, to the greatest extent possible. Reporting of efforts and results according to Department policy will be required of all subgrantees. A Section 3 Plan is required for all NSP1-PI subgrantees.
- vi. All applicants must ensure compliance with the certifications required by HUD, as outlined in *Federal Register* Notices (**Dockets No. FR-5447-N-01, F-522-N-02, and FR-5321-N-03**).

11) Application Submission

- a) The Department will accept applications from 8 a.m. to 5 p.m. Austin local time

each business day, excluding federal and state holidays. Questions regarding this NOFA should be addressed to:

Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701
Telephone: 512.xxx.xxx
Email: eileen.manes@tdhca.state.tx.us

- b) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.
- c) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials.
- d) 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.
- e) **Application Workshop:** the Department will present an application workshop via webinar format on a date to be determined. The workshop recording will be available on the Department website. 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 here: www.tdhca.state.tx.us.
- f) Applications must be sent or delivered 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 and the NSP Technical Guide.*