

# **Welcome to the Texas Neighborhood Stabilization Program**

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# **Chapter 1. WELCOME TO THE TEXAS NSP**

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## CONGRATULATIONS

- Congratulations on your Texas Neighborhood Stabilization Program (NSP) award.
- The Texas Department of Housing and Community Affairs (TDHCA) works closely with Contract Administrators (CAs) to ensure that eligible Texans have access to affordable, decent, safe, and sanitary housing. Together our commitment to affordable housing goes beyond the enforcement of administrative procedures and extends to the people and the communities being served.

## ***USING THE NSP TECHNICAL GUIDE***

- This *NSP Technical Guide* provides Program information to help the CA successfully administer a NSP Contract in accordance with federal and state programmatic and compliance requirements. It is important to note that the *NSP Technical Guide* is to be used as a supplement, and does not serve as a final authoritative interpretation of the regulations specified in applicable rules and regulations.
- Updates to the NSP Technical Guide may be published periodically, as a response to policy changes by HUD or TDHCA, or to make technical adjustments. Updates will be posted to the NSP website and will take precedence over the contents of this document.
- Follow procedures described in the *NSP Technical Guide* and use all referenced TDHCA forms. TDHCA's manuals, guides, and forms are available online at:

<http://www.tdhca.state.tx.us/nsp/index.htm>

## ***PROGRAM GOALS***

### **DISCLAIMER**

This Technical Guide is for CAs and/or any related parties as support and practical guidance in the administration of the NSP Program. It is not intended to change, enlarge, or restrict any requirement found in the contracts, loan documents, Department of Housing and Urban Development (HUD) publications or guidance, Texas Department of Housing and Community Affairs (TDHCA) rules and policies, any Texas NSP Notice of Funding Availability (NOFA) and/or any related federal, state or local rule.

- TDHCA receives NSP funding as a state formula grantee, and then makes awards to eligible subgrantees (subrecipients and developers) who use the funds to put foreclosed, abandoned and/or vacant properties back into productive use as affordable housing. TDHCA works in conjunction with Texas communities to:

- Stabilize Texas communities by preventing blight and continued declining property values
- Increase the supply of safe, decent, and sanitary affordable housing for Low-Income Households;
- Strengthen the abilities of Units of General Local Government (UGLGs) and nonprofit organizations to meet the housing needs of the state; and
- Strengthen partnerships between government and the private sector to provide affordable housing to eligible Texans.

### ***PROGRAM REGULATIONS***

- The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by HR3221, the “Housing and Economic Recovery Act of 2008” (HERA) (Pub. L 110-289, approved July 30, 2008), as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The NSP3 allocation of funds is provided under Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) (Dodd-Frank Act).

- HUD requirements for the NSP program may be accessed through HUD websites:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>

<http://www.hudnsphelp.info/>

- The Texas NSP program has adopted HOME guidelines for certain housing activities. The HOME Investment Partnerships Program is authorized by Title II, Cranston-Gonzalez National Affordable Housing Act of 1990, (42 United States Code §§12721 et seq.) and HUD’s Regulations at Title 24, Code of Federal Regulations, Part 92 (referred to as the Final Rule), as amended, which may be accessed online at:

<http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/finalrule.pdf>

- State regulations governing TDHCA are defined in:

- Title 10, Texas Administrative Code, Part 1 Chapters 1, 9, and 60.

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=1](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=1)

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=9&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=9&rl=Y)

and

- Texas Government Code, Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

- The NSP Program is subject to federal and state laws, regulations and Executive Orders (classified in general by compliance area), which include but are not limited to:

### **General**

1. The Housing and Community Development Act of 1974, as amended and as implemented by the most current HUD regulations (24 CFR Part 570).
2. 2008 Consolidated Plan including the “Substantial Amendment” submitted for the State of Texas NSP funds:  
<http://www.tdhca.state.tx.us/nsp/docs/08-NSPSubstantialAmendment-Submitted.pdf>  
<http://www.tdhca.state.tx.us/nsp/docs/10-SubstantialAmendment-Update.pdf>
3. 2010 Consolidated Plan including the “Substantial Amendment” submitted for the State of Texas NSP funds  
<http://www.tdhca.state.tx.us/nsp/docs/NSP3-SubstantialAmendment.pdf>

### **Program and Financial Management**

4. 24 CFR Part 84 or 85, as applicable.
5. Federal OMB Circular A-110
6. Federal OMB Circular A-133.
7. Federal OMB Circular A-87.
8. Conflict of Interest provisions at 24 CFR 570.489(h)
9. Texas Uniform Grant Management Standards
10. TDHCA Real Estate Analysis Rules and Guidelines, as applicable.

### **Civil Rights**

11. Title VI - Civil Rights Act of 1964.
12. Section 109 - Title I - Housing and Community Act of 1974.
13. Title VIII of the Civil Rights Act, 1968 (Fair Housing Act), as amended.
14. The Americans with Disabilities Act of 1990.
15. Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375, Parts II and III.
16. Executive Order 11063 - Equal Employment Opportunity, as amended by Executive Order 12259.

17. Section 3 of the Housing and Development Act of 1968, as amended §118 of Title I, Community Development and Housing Act, 1974, and implemented by HUD regulations.
18. Age Discrimination Act of 1975.
19. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses.
20. Section 504 of the Rehabilitation Act of 1973 and implementation regulation (24 CFR Part 8).
21. Title 10, Texas Administrative Code, Part I, Chapter 60, Subchapter B.

### **Labor Standards**

22. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations.
23. The Davis-Bacon Act (40 U.S.C. §276(a) to (a-7), as supplemented by Department of Labor Regulations 29 CFR Parts 1 - 3, 5 - 7.
24. The Copeland "Anti-Kickback" Act (18 U.S.C. §874) as supplemented by Department of Labor regulations.
25. Use of Volunteers on Projects subject to Davis-Bacon and HUD's Prevailing Wage Rates (24 CFR Part 70).

### **Acquisition/Relocation**

26. Texas Property Code
27. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (46 U.S.C. §4601 and regulations at 49 CFR Part 24) and §104(d) of the Housing and Community Development Act set out in 24 CFR §42..
28. Protecting Tenants at Foreclosure: Developer 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.
29. Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law. 111-203) requirements.

### **Housing**

30. The Truth in Lending Act (Regulation Z).
31. Title I Consumer Protection Act (PL 90321).
32. The Lead Based Paint Poisoning Prevention Act (42 U.S.C. §§4831-5 et al.) and HUD implementing regulations (24 CFR Part 35).

33. The Residential Lead-Based Paint Hazard Reduction Act of 1993 (PL 102-550).
34. EPA's Regulations on Lead; Renovation, Repair, and Painting Program 40 CFR Part 745.
35. The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§5401 et. seq. as amended).
36. Real Estate Settlement Protection Act (24 CFR Part 3500).
37. SAFE Mortgage Licensing Act (24 CFR Parts 30 and 3400).

### **Environmental**

38. The National Environmental Policy Act (NEPA) of 1969, as amended by Executive Order 11991 of May 24, 1977 and the Council on Environmental Quality's (CEQ) NEPA Regulations, 40 CFR Parts 1500-1508;
39. Environmental Review Procedures for the CDBG Program, 24 CFR Part 58;
40. The National Historic Preservation Act of 1966, as amended; particularly §106;
41. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971;
42. The Reservoir Salvage Act of 1960, as amended, particularly §3, as amended by the Archeological and Historic Preservation Act of 1974;
43. Flood Disaster Protection Act of 1973, as amended;
44. Executive Order 11988, Floodplain Management, May 24, 1977;
45. Executive Order 11990, Protection of Wetlands, May 24, 1977;
46. Shore Assistance Act of 1977 (O.C.G.A. §§12-5-230, et. seq.);
47. The Coastal Zone Management Act of 1972, as amended;
48. The Safe Drinking Water Act of 1974, as amended;
49. The Endangered Species Act of 1973, as amended, particularly §7;
50. The Archeological and Historic Preservation Act of 1974;
51. The Coastal Resources Barriers Act of 1982;
52. The Wild and Scenic Rivers Act of 1968, as amended;
53. The Clean Air Act Amendments of 1970, as amended;
54. HUD Environmental Standards (24 CFR Part 51) Environmental Criteria and Standards;
55. Farmland Protection Policy Act of 1981 (and the regulations at 7 CFR Part 658).

## Other

Other resources include, but are not limited to, guidelines, requirements, regulations, and/or policies issued by:

- HUD Community Planning and Development (CPD) Notices, Model Guides
- U. S. Department of Labor (DOL);
- U. S. Department of Energy (DOE); and
- Applicable state, county, and local statutes.

## DEFINITIONS

1. **Abandoned** – A home or residential property is abandoned if either a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state or local law or otherwise meets a state definition of an abandoned home or residential property.
2. **Acquisition** – The attainment of or transfer of ownership for a residential structure (either newly constructed or existing) for which the NSP-assisted Household or subgrantee had no previous ownership interest.
3. **Activity** – (1) one of the types of assistance that may be conducted using NSP Program funds; or (2) a single housing unit with a unique physical address (including a Manufactured Housing Unit (MHU)). The terms ‘Project’ and ‘Activity’ are frequently used interchangeably.
4. **Affidavit** – A declaration made under penalty of perjury before a notary public.
5. **Affordability Period** – The period of time during which an assisted Household is contractually obligated to occupy the assisted property as its principal residence.
6. **Anticipated (Projected) Annual Gross Income** – The total income the applicant household expects to receive in the twelve (12) month period following the effective date of *the Household Income Certification (Form 14.02)*.
7. **AMI (Area Median Income)** - For purposes of NSP, the median income for each county or Metropolitan Statistical Area (MSA). The AMI varies by household size. The 50% and 120% limits are available:  
[www.huduser.org/publications/commdevl/Section8Limits\\_50\\_120.xls](http://www.huduser.org/publications/commdevl/Section8Limits_50_120.xls)  
[www.tdhca.state.tx.us/pmcomp/irl/docs/10-HOME-CDBG-NSPIncomes.xls](http://www.tdhca.state.tx.us/pmcomp/irl/docs/10-HOME-CDBG-NSPIncomes.xls)
8. **AMFI (Area Median Family Income)** – See AMI above
9. **Appraisal** - An appraisal which meets the criteria specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”), as further defined in 49 CFR §24.103.



10. **Benchmarks** – Time markers included within the Texas NSP Rules and/or contract specifying points at which progressive performance achievements should be accomplished.
11. **Blight** – Property exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.
12. **Budget (*Exhibit B*)** - The estimated costs for a project or series of projects defined in a performance contract/scope of work (*Exhibit A*).
13. **CDBG Act** - The Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended. Unless otherwise noted in HERA (as amended) and the alternative requirements in the NSP Notices, NSP is governed by the CDBG regulations.
14. **Certification** – A document or form signed by the CA and/or other applicable parties attesting that the information provided has been verified as true, correct, and complete. A consultant’s signature does *not* represent the CA’s approval or certification on any NSP document or form.
15. **Certifying Officer (CO)** – The individual responsible for ensuring that environmental reviews and clearance procedures are properly performed in accordance with HUD requirements and 24 CFR Part 58. The CO has the legal capacity to represent the entity and is subject to the jurisdiction of the federal courts.
16. **Closing Agent** – A neutral third party that facilitates the closing of a real estate transaction including a title company or an attorney.
17. **Conflict of Interest** – A situation in which an individual may have competing professional and/or personal interests which make it difficult for him/her to fairly fulfill his/her duties.
18. **Consolidated Plan** – A federally required document describing the needs, resources, priorities and proposed activities to be undertaken by TDHCA with respect to certain HUD programs, subject to annual approval by HUD.
19. **Contract Administrator (CA)** – A subgrantee which enters into a contractual agreement (NSP Contract) with TDHCA to administer funds received through the NSP Program.
20. **Contract Administrator (CA) Representative** – An individual authorized by the CA’s Executor to have access to the online TDHCA Housing Contract System. A minimum of two CA Representatives must be appointed. Each CA Representative can either enter or approve Activity Setups and Draw Requests, but the same individual may not *both* enter *and* approve the same Activity Setup or Draw Request.
21. **Contract Period** – The length of time between the NSP Contract’s Effective Date (starting date) through its ending date. Any work performed or expense incurred on an activity must take place *within the NSP Contract period*.
22. **Contractor** – For the purposes of the NSP Program, the Contractor is the Contract Administrator.

23. **Current Market Appraised Value** - The value of a property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR §24.103 and completed within 60 days of the final offer made for the property by the Subrecipient, developer, or individual homebuyer; provided, 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 subgrantee determines is qualified to make the valuation.
24. **Date of Assistance** – The date a NSP buyer (a) closes on a loan to purchase an existing NSP; or (b) enters into contract with a Building Contractor to construct a new home that is being acquired.
25. **Deferred, Forgivable Loan** – a secured Loan whose principal and/or interest installments are postponed and forgiven annually over the contractually specified period of time, provided that all other contractual obligations are met.
26. **Developer** – a private nonprofit organization that has a development agreement/contract with TDHCA.
27. **Dodd- Frank Act** - The Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010). Specifically, the NSP3 allocation of funds is provided under Section 1497.
28. **Effective Date** – The date on which all applicable parties (i.e. CA Executor and TDHCA Executive Director) have signed the NSP Contract.
29. **Eligible Area** – A census block group in which at least 51 % of the residents have incomes at or below 120% of AMI (LMMH-Low- Moderate- and Middle-Income Household).
30. **Eligible Costs** - Costs for the activities specified Exhibit B of the NSP Contract for which NSP funds are budgeted, provided that such costs (i) are incurred in connection with any activity which is eligible under HERA and §105A of Title I of the CDBG Act, and (ii) conform to all NSP requirements.
31. **Eligible Use** – One of the five categories for use of NSP funds: (A) Financing Mechanisms; (B) Purchase and Rehabilitation; (C) Land Bank; (D) Demolition, and (E) Acquisition and Redevelopment.
32. **Environmental Requirements** - The requirements described in 24 CFR Part 58.
33. **Executor** – The individual designated by the CA to sign the NSP Contract.
34. **Expiration Date** – The 60<sup>th</sup> day following the NSP Contract end date.
35. **Feasibility Analysis** – The process of performing a budgetary justification for New Construction which compares the cost of Rehabilitation to the construction costs of a housing unit.
36. **Financial Interest** – The amount of assistance an NSP owner is contractually obligated to repay to TDHCA (i.e. the Final Loan Balance).

37. **Foreclosed** - A home or residential property has been foreclosed upon if any of the following conditions apply: a) the property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or b) the property owner is 90 days or more delinquent on tax payments, or c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, subrecipient, contractor, developer, or end user. Termination or eviction under a Contract for Deed is not considered foreclosure.
38. **HERA** – The Housing and Economic Recovery Act of 2008, Title III (§2301) of which authorizes the Neighborhood Stabilization Program.
39. **HIC** – Household Income Certification which documents the household eligibility to receive NSP assistance.
40. **HIC Effective Date** – The date on which all applicable parties (i.e. all Household members aged 18 or over and the CA's authorized representative) have signed the HIC.
41. **Historically Underutilized Business (HUB)** - An entity with its principal place of business in Texas, and which is at least 51% owned by an individual who is an Asian Pacific American, Black American, Hispanic American, Native American, and/or an American woman who resides in Texas and has a proportionate interest in, and demonstrates active participation in the control of, operations and management of the entity's affairs.
42. **Homebuyer Assistance** – Homebuyers with income between 51% to 120% AMI will be eligible to access Texas NSP funds for down payment assistance, reasonable closing costs, principal reductions, and gap financing in amount needed to qualify for mortgage financing, but not to exceed \$30,000. Households with income at or below 50% AMI will also be eligible for principal reductions and gap financing in an amount needed to qualify for 100% financing through the Texas NSP, but not to exceed \$30,000. The assistance will be in the form of a deferred forgivable loan contingent upon the total amount of assistance, creating a 2<sup>nd</sup> or 3<sup>rd</sup> lien with a term based on the federal program standards for homeownership assistance at 24 CFR §92.254.
43. **Housing Contract System (HCS) or Contract Database (CDB) System** – The TDHCA electronic database used to facilitate administration of the NSP Contract, including funding and disbursement.
44. **Household** – One or more persons occupying a housing unit.
45. **Land Bank** – Governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land or residential properties for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment or urban property. For the purposes of NSP, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and

- dispose of the land-banked properties. If the land bank is a government entity, it may also maintain foreclosed property that it does not own, provided 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.
46. **LMMA** - Low-Moderate-and Middle-Income Area. An area where at least 51% of the residents have income at or below 120% of AMI.
  47. **LMMH** – Low- Moderate-and-Middle-Income Households. Households with income below 120% of Area Median Income. Low income households have incomes below 50% of AMI. Moderate income households have incomes between 50% and 80% of AMI and Middle income households have incomes between 80% and 120% of AMI.
  48. **Loan** – Financial assistance that is awarded in the form of money and an executed written agreement between TDHCA and a borrower for a specific purpose and that is required to be repaid.
  49. **Loan Closing** – The settlement of a real estate loan transaction during which loan documents are executed and funds are exchanged.
  50. **Low income set aside** - Refers to the HERA requirement that not less than 25 percent of the NSP administered by the grantee shall be used for the purchase and redevelopment of properties that will provide permanent housing to individuals or families whose incomes do not exceed 50 percent of area median income. For the Texas NSP program, subgrantees are required to reserve not less than 35% of the NSP funds to benefit households at or below 50% AMI. The exact amount of the setaside is determined by the NSP contract.
  51. **Manufactured Housing Unit (MHU)** – A structure transportable in one or more sections which, in traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein
  52. **Modular Housing** – A home built in sections in a factory to meet state, local, or regional building codes. Once assembled, the Modular unit becomes permanently fixed to one site. Modular Homes are treated the same as site-built housing for the purposes of the NSP Program.
  53. **New Construction** - Construction of a new site-built home on a site on where no permanent site-built home previously existed (i.e. replacement of an existing substandard MHU with a site-built home). Or construction of a new site-built housing unit(s) on previously vacant land. (*Note: New Construction is not Rehabilitation - refer to definition of Rehabilitation provided below.*)
  54. **NSP Contract** – The executed written agreement between TDHCA and the CA administering the NSP Program that outlines performance requirements and responsibilities assigned by the document.

55. **Notice of Funding Available (NOFA)** – A notification published in the Texas Register when funds become available for award.
56. **Participant** – An eligible individual or Household receiving NSP assistance.
57. **Performance Statement/Scope of Work (Exhibit A)** – The portion of the NSP Contract which identifies the type of assistance, number of Households to be assisted, income eligibility requirements, and other contractual obligations.
58. **Principal Residence** – The primary housing unit a Household occupies.
59. **Program Income** – The gross income received from the use of program funds.
60. **Project** – (1) a single housing unit with a unique physical address (including an MHU); or (2) when used in the context of environmental clearance procedures, *all* individual addresses being assisted under the NSP Contract. The terms ‘Project’ and ‘Activity’ are frequently used interchangeably. A unique number is assigned by HUD to each assisted address when a Project (Activity) setup is approved.
61. **Protecting Tenants at Foreclosure Act of 2009 “PTFA”** - Pub.L No. 111-22, Title VII, §§701-704 (2009) protects tenants from eviction because of foreclosure on the property they are renting.
62. **Rehabilitation** – Repair, modification, and/or improvement made to an *existing* site-built residential structure through an alteration, addition, or enhancement. (*Note: Rehabilitation is not New Construction - refer to definition of New Construction provided above.*)
63. **Recipient** – Individuals or Organizations that receive funds from Subgrantees.
64. **Reconstruction** –The rebuilding, on the same lot, of housing standing on a site at the time of execution of a contract. The number of housing units on the lot may not be changed as part of the reconstruction project, but the number of rooms per unit may change. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.
65. **REO (Real Estate Owned)** - Property which has undergone foreclosure and title is now held by a bank or other financial institution.
66. **Residential Property** – A dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land belonging to an owner and available for use by residents. Property restricted or designated for residential use by zoning, deed restriction or similar mechanism.
67. **Responsible Entity (RE)** – An environmental designation made by HUD for cities and counties which exercise land use responsibility for the areas in which their NSP activities are located. Non-profit organizations, public housing authorities, and councils of governments cannot be designated as REs; TDHCA serves as the RE for these entities.
68. **Retainage** – A sum withheld from the payments requested by a Contractor as an assurance for quality of work and Project completion. The sum withheld is paid no

sooner than the thirty-first day following completion of construction, in accordance with the construction contract(s).

69. **Service Area** – The city, county, and/or place identified in the NSP Contract that the CA will serve.
70. **Statutory Purchase Discount** - For NSP1, any property must be acquired at a 5% discount or more from the current market-appraised value of the home or property, unless waived by TDHCA. The portfolio of properties acquired by each CA must reflect an overall 15% discount from current appraised values. For NSP-R, any property must be acquired at a 1% discount.
71. **Subcontractor** – For the purposes of the NSP Program, the Subcontractor is the Building Contractor.
72. **Subgrantee** - The CA's entity or organization.
73. **Substantial Amendment** - The Substantial Amendment to the State of Texas 2008 CDBG Action Plan for the Neighborhood Stabilization Program approved by HUD on January 30, 2009 and updated on February 25, 2010.
74. **Subrecipient** -- UGLG/nonprofits who have a subrecipient agreement/contract with TDHCA.
75. **Support Documentation** – Documents which verify and/or confirm that the information provided by applicants to the CA, and/or information or requests submitted by the CA to TDHCA, are true, correct and complete. Support Documentation may also be required to verify purpose, source and use of funds expended, and/or other factors, as determined appropriate by TDHCA. TDHCA may require Support Documentation other than that specified in this Technical Guide or in other TDHCA forms to verify data or information. Data collection is authorized under 24 CFR §570.490 and Title II, Cranston-Gonzalez National Affordable Housing Act and related authorities. Information on expenditures of federal funds is public information and is generally available for disclosure. CAs are responsible for ensuring confidentiality when public disclosure is not required. The CA agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.
76. **Title Commitment** – A written report from a title company showing the status of a property's ownership and *pledging to issue a title insurance policy* when the requirements shown therein are met. The Title Commitment report shows all current claims against the property that were in existence before the sale or loan transaction. A Title Commitment is equivalent to a binder for other types of insurance, which commits, or binds, the insurance company to issue the policy as set forth in the commitment.
77. **Timeline** (Exhibit C) – Portion of the NSP Contract which defines milestone and threshold dates for contract performance.
78. **Texas Minimum Construction Specifications** – Standard required for construction and rehabilitation projects.

79. **Vacant** – Unoccupied property or land that was once developed. Greenfield sites are not eligible for NSP land bank activities.
80. **Unit of General Local Government (UGLG)** – A city, town, county, or other general purpose political subdivision of the state. For NSP, this category also includes certain public nonprofit organizations such as a Public Housing Authority or a Council of Local Government.

### ***TDHCA ACRONYMS***

- **AMI** Area Median Income
- **AMFI** Area Median Family Income
- **CA** Contract Administrator
- **CDBG** Community Development Block Grant
- **CFR** Code of Federal Regulations
- **CO** Certifying Officer
- **COI** Conflict of Interest
- **CLA** Construction Loan Agreement
- **CPD** Community Planning and Development
- **COG** Council of Governments
- **EA** Environmental Assessment
- **ERR** Environmental Review Record
- **HBA** Homebuyer Assistance
- **HCS** Housing Contract System
- **HIC** Household Income Certification
- **HIW** Household Income Worksheet
- **LMMA** Low, moderate, and middle-income area
- **LMMH** Low, moderate, and middle-income households
- **LURA** Land Use Restriction Agreement
- **HERA** Housing and Economic Recovery Act
- **HUD** United States Department of Housing and Urban Development
- **IFB** Invitation for Bid
- **MHU** Manufactured Housing Unit
- **NOFA** Notice of Funding Available
- **NSP** Neighborhood Stabilization Program
- **PCR** Project Completion Report
- **PHA** Public Housing Authority
- **PTFA** Protecting Tenants at Foreclosure Act
- **RE** Responsible Entity
- **RFP** Request for Proposal
- **RFQ** Request for Qualifications
- **TA** Technical Assistance
- **TAC** Texas Administrative Code
- **TDHCA** Texas Department of Housing and Community Affairs
- **TMCS** Texas Minimum Construction Standards

- **UGLG** Unit of General Local Government

## ***CONFLICT OF INTEREST***

In accordance with 24 CFR §570.489(h) and policies adopted by TDHCA the following Conflict of Interest requirements apply to all NSP contracts and activities:

### **Applicability.**

(1) In the procurement of supplies, equipment, construction, and services by recipients and by subgrantees, the conflict of interest provisions in 24 CFR §§84.42 and 85.36, respectively, shall apply. See TDHCA's procurement requirements in Chapter 5 in this Guide for more information.

(2) In all cases not governed by 24 CFR §§84.42 and 85.36, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by a subgrantee or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to 24 CFR §570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §570.203, 570.204, 570.455, or 570.703(i)).

(a) Conflicts prohibited. The general rule is that no persons described in paragraph (b) of this section who exercise or have exercised any functions or responsibilities with respect to NSP activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a NSP-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a NSP-assisted activity, or with respect to the proceeds of the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

(b) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the subgrantee, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(c) Exceptions. Upon the written request of the recipient, TDHCA may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) Threshold requirements. TDHCA will consider an exception only after the subgrantee has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and



(ii) An opinion of the subgrantee's attorney that the interest for which the exception is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, TDHCA shall conclude that such an exception will serve to further the purposes of the NSP program and the effective and efficient administration of the subgrantee's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

### ***COMPLAINT PROCESS POLICY AND PROCEDURES***

- TDHCA is authorized to resolve and answer complaints. Accordingly, TDHCA has established a dispute resolution process providing a standard procedure for resolving disputes that may arise during the administration of the NSP Contract.
- For TDHCA to process a complaint, the complaint *must* be received in writing and must include the name and contact information of the complainant. Consumers may submit complaints in writing directly to TDHCA at the following address:

Texas Department of Housing and Community Affairs  
Attn: Housing Resource Center

P.O. Box 13941  
Austin, Texas 78701  
or via fax at: (512) 475-1672

or they may utilize the, web-based complaint submission system available online at:  
<http://www.tdhca.state.tx.us/complaint.htm>

- A complainant may also submit his/her written complaint to any TDHCA employee, who will, in turn, submit it to the Housing Resource Center.
- The Housing Resource Center will add written complaints to the TDHCA Complaint Database which will assign a control number to the complaint and HRC will forward the complaint to the appropriate TDHCA division. The complaint will be reviewed and/or investigated and the findings will be submitted to the Housing Resource Center.
- TDHCA will provide to the complainant and to each person who is a subject of the complaint with a copy of TDHCA's policies and procedures relating to complaint investigation and resolution.
- The Executive Director or designee will either notify the complainant of the resolution of the complaint within 15 business days after the date the Housing Resource Center received the complaint, or notify the complainant, within such period, of the date the complaint can be resolved.
- The assigned division shall notify the complainant of the status of the complaint at least quarterly and until the final disposition of the complaint unless the notice would jeopardize an undercover investigation.
- An information file about each complaint will be maintained by the Housing Resource Center and will include:
  1. Name of the person who filed the complaint;
  2. Date the complaint is received by TDHCA;
  3. Matter of the complaint;
  4. Name of each person contacted in relation to the complaint;
  5. Summary of the results of the review or investigation of the complaint; and
  6. Explanation of the reason the file was closed, if TDHCA closed the file without taking action other than to investigate the complaint.
- For more information see TDHCA's general policies and procedures at:  
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=1&rl=2](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=1&rl=2)

## **Chapter 2. PROGRAM FACTORS**

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### ***ELIGIBLE ACTIVITIES***

- Eligible Use A – Financing Mechanisms
  - Financing for purchase and redevelopment of foreclosed upon homes and residential properties for ownership or rental use by eligible households
    - Homebuyer Assistance (HBA)
    - Permanent Financing (NSP Mortgage)
- Eligible Use B – Purchase and Rehabilitation
  - Purchase and rehabilitation of foreclosed or abandoned homes and residential properties
    - Acquisition
    - Rehabilitation
    - Disposition
    - Relocation
    - Homeownership Assistance
    - Housing Counseling
- Eligible Use C – Land Bank
  - Assemble, temporarily manage and dispose of foreclosed homes or residential properties
- Eligible Use D – Demolition
  - Demolish blighted structures
- Eligible Use E – Acquisition and Redevelopment
  - Redevelop demolished or vacant properties for housing
    - Acquisition
    - Disposition
    - Housing Counseling
    - Relocation
    - New Housing Counseling
    - Homeownership Assistance
    - Rehabilitation

## ***PARTICIPANT ELIGIBILITY FACTORS***

- Participants receiving NSP assistance must demonstrate and document compliance with the following requirements:
  - *Income Eligibility:* The Household income may not exceed the AMI percentage specified in the NSP Loan Documents.
  - *Principal Residence:* The NSP homebuyer must certify that he/she will occupy the assisted address as his/her Principal Residence.
  - *Homebuyer Counseling:* The NSP homebuyer must provide evidence verifying that he/she has completed 8-hours of homebuyer counseling program/class with a HUD-approved counseling agency.
  - *No Prohibited Liens:* The participant may not have tax liens, child support liens, student loan liens, or mechanic's/materialmen's liens in delinquency. Also, the property must not have current tax liens and/or judgment liens in favor of the State of Texas against it.

## ***NSP SUBSIDY LIMIT FACTORS***

- The maximum amount of assistance available to an eligible Household is limited by the terms specified in the Notice of Funding Availability (NOFA) under which the NSP Contract was awarded *and* by the terms of the NSP Contract *Performance Statement/Statement of Work, (Exhibit A)*.

### Maximum Acquisition Assistance

- Acquisition assistance is the total of downpayment, closing costs, and acquisition soft costs provided to the Household.
- For Texas NSP, the maximum acquisition assistance that may be provided to an eligible Household is limited to \$30,000.
- The final amount of homebuyer acquisition assistance will be determined by a needs-based calculation, and the requirements of the NSP Homebuyer Financing Guidelines. In no case will the amount of assistance provided to a household exceed their documented need in order to close the contemplated purchase.

### Maximum Purchase Price

- The purchase price of a home being acquired using NSP funds, plus the value of the Rehabilitation or New Construction (if applicable) may not exceed 95% of the area's median purchase price.
- HUD permits the pre-economic stimulus *FHA 203(b) Mortgage Limits* to be used as a surrogate for determining 95% of the area median purchase price.
- The purchase price must be documented on the certified HUD-1 settlement statement.
- The maximum purchase price for a home that has been acquired, constructed or rehabilitated and resold by an NSP Contract Administrator is limited to the lesser of

the hard cost to acquire and construct/rehabilitate, or 100% of the combined loan-to-value as determined by appraisal.

- The maximum purchase price for each household is controlled by the amount of loan they can afford. The maximum affordable purchase price is determined through application of the requirements of the NSP Homebuyer Financing Guidelines. ***LOAN FACTORS***

### ***PRIMARY MORTGAGE LOAN RESTRICTIONS***

- Households receiving homebuyer assistance may not receive the following types of primary mortgage loans:
  - Adjustable rate mortgage loans (ARMs);
  - Interest rate buy-down loans;
  - Mortgages with a loan-to-value ratio equal to or greater than 100%;
  - Subprime mortgage loans;
  - Loans including an origination fee or any other fee associated with the mortgage Loan (other than fees reimbursed to third parties) in excess of 2% of the Loan amount; and
  - Loans to Households in which the debt-to-income ratio (“back-end ratio”) exceeds 45%.

### ***HOUSING QUALITY STANDARDS (HQS) FACTORS***

#### Acquisition Only

- Existing housing acquired with NSP funds must meet all applicable state and local housing quality standards and code requirements at occupation. In the absence of such standards and requirements, the housing units must meet HUD’s Housing Quality Standards (HQS) per 24 CFR §982.401.
- ewly constructed (i.e. never previously occupied) site-built housing acquired with NSP funds must comply with International Residential Code (IRC) and all other applicable codes, standards, and specifications upon completion of construction.

### ***CONSTRUCTION FACTORS***

#### Acquisition with Rehabilitation

- Rehabilitation may only be conducted on existing site-built housing which has been acquired with NSP funds. An MHU may not be rehabilitated beyond minor make-ready repairs (e.g. paint); MHUs must be replaced with either a new MHU, a Modular Home, or a newly constructed site-built structure.

- Upon completion of NSP rehabilitation construction, the entire housing unit, *not just the Rehabilitated portion*, must be in compliance with all applicable minimum required standards, codes, specifications, and ordinances including, but not limited to:
  - Texas Minimum Construction Standards (TMCS); and local standards as they apply.

#### Acquisition with Redevelopment

- Redevelopment may be provided for an existing substandard housing unit that has been acquired with NSP funds as follows:
  - Replacing a substandard site-built structure with a newly constructed site-built structure or Modular home;
  - Replacing a substandard site-built structure with a new MHU;
  - Replacing an existing substandard MHU with a newly constructed site-built structure or Modular home;
  - Replacing an existing substandard MHU with a new MHU.
- Redevelopment performed to replace an NSP-acquired housing unit must comply with, at a minimum, the following criteria:
  - Applicable construction and/or manufacturing codes, standards, specifications, and ordinances;
  - Site-built newly constructed housing units must comply with International Residential Code (IRC);
- Redevelopment may include:
  - Demolition and removal of the old sub-standard structure (refer to “Demolition” below); and
  - Replacement of the old structure with a newly constructed site-built housing unit.
- The newly constructed housing unit must be on the same lot as the structure that was standing on the site at the time of Project Setup.

#### NSP3 Funded Rehabilitation or Construction

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. Water efficient toilets, showers, and faucets, such as those with the WaterSense label, must be installed.

## ***MANUFACTURED HOUSING UNITS (MHUS)***

- A Manufactured Housing Unit (MHU) is defined by HUD as “*a structure, transportable in one or more sections which, in the traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.*”
- Because manufactured housing retailers frequently identify all their products as “modular homes” it is important that any home being purchased as an MHU actually complies with HUD’s definition for MHU. Each home type is identified by a distinct factory label which must also confirm compliance with HUD construction standards. Modular homes are subject to treatment as site-built housing and must comply with different construction standards.
- An NSP-acquired MHU may be replaced with a new MHU, a new modular home, or a newly constructed site-built structure.
- If an MHU is provided as an NSP home, it must be:
  - In compliance with construction and manufacturing standards per 24 CFR §92.205 and the Texas Manufactured Housing Standards Act; and
  - Permanently installed and connected to utilities in accordance with the Texas Manufactured Housing Standards Act; and
  - Properly registered as *real property* with TDHCA Manufactured Housing Division following Loan Closing and with the appropriate taxing authority of the county in which the MHU is sited.
    - A *Statement of Ownership and Location (SOL) (MHD Form 1037)* is the only satisfactory legal evidence of ownership of an MHU in the State of Texas.
    - Coordinate MHU registration with the title company or closing attorney, as applicable, and the MHU vendor *in advance* of the scheduled closing date;
    - Ensure the SOL is submitted timely to TDHCA Manufactured Housing Division with the \$55.00 SOL fee. Include a check made payable directly to TDHCA Manufactured Housing Division (the SOL fee is an eligible closing cost.).
    - Follow up on the registration to ensure proper documentation has been provided and an SOL has been obtained.
- The serial number of the NSP-acquired and/or replacement MHU must be included in the Loan documents provided by TDHCA Legal Division for Loan Closing.
- Installation of all MHUs in which TDHCA has a financial interest must be inspected by TDHCA Manufactured Housing Division.

## ***MODULAR HOUSING***

- A modular home is defined by HUD as a “*home built in sections in a factory to meet state, local or regional building codes. Once assembled, the modular unit becomes permanently fixed to one site.*”
- Modular homes are treated the same as site-built housing for the purposes of the NSP Program and may be purchased with NSP funds if they:
  - Comply with applicable local, state and federal construction and safety codes, standards, and specifications;
  - Comply with accessibility requirements per Texas Government Code §2306.514; and
  - Are permanently installed and connected to utilities; and
  - Are properly registered as *real property* with TDHCA Manufactured Housing Division.
- Because manufactured housing retailers frequently identify all their products as “modular,” it is important to verify that any home being purchased as a modular home actually complies with HUD’s definition for modular housing and is properly registered. Each home type is identified by a distinct factory label which must also confirm compliance with HUD construction standards. Modular homes are subject to treatment as site-built housing and must comply with specific construction standards.

## ***NSP RENTAL HOUSING PROGRAM FACTORS***

### Land Use Restriction Agreement (LURA)

- Rental units assisted by state or federal funds must, at a minimum, meet compliance requirements for affordability and physical condition throughout the term specified in the LURA. The LURA is included with the Loan closing documents and must be recorded in the appropriate public records.
- The LURA places restrictions on the use of the NSP-assisted property throughout the stated compliance period, which may be up to 40 years, even in the event of future sale of the property or transfer of ownership.
- The compliance period defined in the LURA typically runs concurrently with the the TDHCA Loan. The compliance requirements in the LURA adhere to the property without regard to any separate debt instrument or repayment of debt.
- The compliance requirements will include restrictions on rent, the income of the occupants, the marketing of units, and the condition of the property, as well as requirements to document and report on compliance in these areas.

### Operating Deficit Reserve

- NSP funds may only be used to cover the cost of funding an initial replacement reserve for New Construction and Rehabilitation Projects for a twelve month period if



other funds are used that require such a reserve. Initial deposits to operating reserves are not eligible expenses under NSP.

- Eligible costs are limited to six months of Project operating expenses, less management fees, plus debt service.

#### NSP-Assisted Units

- The Texas NSP has adopted HOME Program requirements for affordability and, in general, will use the TDHCA HOME RHD program guidance in NSP rental housing program implementation.
- The NSP Program distinguishes between units assisted with NSP funds and units not assisted with NSP funds. This distinction allows NSP funds to be spent on mixed-income Projects while still targeting NSP dollars only to income-eligible Households.
- NSP Program rent and occupancy rules apply only to NSP-assisted units.
- The number of NSP-assisted units required in a Project is described in the NSP Contract (Performance Statement, Exhibit A).
- The minimum number of NSP-assisted units required by a particular NSP Contract is determined by TDHCA and varies with each NSP Contract. TDHCA may choose to specify a minimum number of units that must be designated as NSP-assisted, and then develop the needed subsidy amount based on the total NSP-eligible costs.

#### Fixed and Floating Home Assisted Units

- Developments with both NSP-assisted and non-assisted units must, at the time of commitment, designate either “fixed” or “floating” units.
- **Fixed:** When NSP-assisted units are “fixed,” specific units are designated as NSP-assisted and are, therefore, subject to NSP Rent and occupancy requirements throughout the Contract’s affordability period.
- **Floating:** When NSP-assisted units are “floating,” the specific units that are designated as NSP-assisted may change over time as long as the total number of NSP-assisted units remains constant.
  - The floating designation allows some flexibility to vary designated units, and may prevent “stigmatizing” specific units as low-income.
  - If the floating designation is used, ensure that throughout the affordability period the NSP-assisted units remain comparable to non-assisted units in terms of size, features, and numbers of bedrooms.

#### Allocating Costs to NSP-Assisted Units

- Before determining the allowable NSP subsidy amount, TDHCA and the Development Owner must establish the total NSP-eligible cost for the Project.
- For mixed Projects with NSP-assisted and non-NSP-assisted units, the Development Owner must allocate costs across units appropriately.

- If NSP-assisted and non-assisted units are comparable in size, features and number of bedrooms, the NSP-eligible costs can be pro-rated across the assisted units. (Since floating units, by definition, must be comparable, costs should always be pro-rated.)
- If the NSP-assisted and non-assisted units are not comparable, the actual costs must be determined and allocated unit-by-unit. The specific units identified to “receive” NSP funds must be fixed (that is, designated as NSP-assisted).
- HUD Notice CPD 98-02, which is provided online at:  
<http://www.hud.gov/offices/cpd/lawsregs/notices/1998/98-2.pdf>, provides further guidance on allocating costs in Projects with HOME and non-HOME units, and may be referred to as a resource for NSP-assisted projects.

## Chapter 3. ADMINISTRATIVE FACTORS AND TYPES OF ELIGIBLE COSTS

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### ***CONTRACT REVIEW***

- The NSP Contract will *not* become effective nor be considered legally binding until it has been signed by all parties, including the CA's Executor *and* TDHCA's Executive Director (ED) or designee.
- No changes may be made to the NSP Contract as presented for execution. Amendments to NSP Contracts may be requested in accordance with the NSP Rules, NOFA, and the contract terms. Some contract amendments will require approval by the TDHCA Governing Board.
- NSP Contract sections unique to each CA include the following:
  - *Section 1, Contract Period* – Identifies the number of months between the NSP Contract's Effective Date and its ending date. Any expenses to be reimbursed with NSP funds must be incurred within the stated Contract Period.
  - *Performance Statement/Scope of Work (Exhibit A)*
    - – Identifies requirements specific to the CA, including but not limited to:
      - Type of assistance to be provided to eligible participants;
      - Number of Households to be assisted for each level of income;
      - Types of loans to be provided;
  - *Budget (Exhibit B)* – Identifies the total combined amount of Project and administrative funds awarded to the CA under the NSP Contract.
  - *Project Implementation Schedule (Exhibit C)* – Identifies the timeline for benchmark and milestone activities.
- Failure to meet *all* requirements specified in the NSP Contract may affect the CA's future TDHCA funding.
- In order for TDHCA to activate the NSP Contract in the TDHCA Housing Contract System (HCS)/Contract Database) System, the following documents must be received by TDHCA:
  - *Executed NSP Contract* – Signed by the CA's authorized Executor;
  - *TDHCA NSP Contract System Access Request* – Provides identifying information regarding the CA's Executor and authorized Representatives;
  - *Direct Deposit Authorization (Form 74-176)* – Authorizes the Texas Comptroller to deposit NSP funds into the CA's specified bank account. Attach a copy of any previously submitted form or submit a new one for each contract.

- *Texas Application for Payee Identification Number (Form AP-152)* – Identifies the CA’s federal taxpayer identification number and its organizational structure. Attach a copy of any previously submitted form or submit a new one for each contract.

## ***PROCEDURAL OVERVIEW***

- The following steps outline the *approximate* administrative steps that should be followed in the administration of the NSP Contract.
  1. *Review and Execute the NSP Contract* – Read, sign, and return the NSP Contract and required activation documents before beginning the administration or commitment of any NSP funds. The NSP Contract becomes effective the date on which it is fully executed by *all* parties.
  2. *Setup Recordkeeping System* – Develop a filing and accounting system which includes Program Files, Project Files, and the Environmental Review Record.
  3. *Establish Procurement Procedures* – Appoint committees or individuals responsible for ensuring this selection process follows local, state, and federal requirements, as applicable. Separate and specific procurement requirements apply to the Acquisition of professional services (consultants), Building Contractors, and small purchases. CA’s must maintain clearly documented procurement records for all NSP-eligible activities.
  4. *Conduct Environmental Review for Exempt Activities* – Do not commit or expend administrative funds until written notification of environmental clearance has been received from the TDHCA Environmental Specialist. Submit the *Certification of Exemption for HUD Funded Projects [24 CFR §58.34(a)]* to the TDHCA Environmental Specialist.
  5. *Conduct Affirmative Marketing* – Develop an Affirmative Marketing Plan, conduct affirmative marketing and publicize availability of funds. CA’s must maintain clearly documented affirmative marketing procedures, along with documenting the results of affirmative marketing efforts.
  6. *Conduct Section §3 Marketing and Establish Section §3 Recordkeeping* – Develop a Section §3 Plan, conduct Section §3 outreach and publicize availability of jobs. Maintain record of all Section §3 hiring and contracts in preparation for reporting to TDHCA.
  7. *Establish Limited English Proficiency (LEP) Plans and Procedures* – Conduct testing and use the results to develop an LEP plan in accordance with the requirements found in Federal Register guidance FR-4878-N-02. Procure services as required in order to assure that LEP plan requirements are met, and maintain records of the plan , procedures and results.
  8. *Establish Application Intake Procedures* – Designate individuals responsible for accepting applications, establishing review criteria, scoring/ranking applications received, verifying eligibility status, and selecting participants.

9. *Conduct Procurement of Professional Services* - Appoint committees or individuals responsible for ensuring this selection process follows local, state, and federal requirements, as applicable. Professional Services to be procured include, but are not limited to, consultants, appraisers, and inspectors. CA's must maintain clearly documented procurement records for all NSP-eligible activities.
10. *Conduct Environmental Clearance for Non-Exempt Activities* – Do not commit or expend funds, or begin demolition or construction (if applicable) on any Project until written notification of environmental clearance for the Project has been received from the TDHCA Environmental Specialist. Conduct the site-specific environmental clearance, as applicable and submit the appropriate environmental forms to the TDHCA Environmental Specialist.

***DO NOT expend or commit Project funds until written notification of environmental clearance has been received from TDHCA and/or HUD.***

11. *Conduct Procurement of Building Contractors* - **For NSP Contracts that include Rehabilitation or Construction activities:** Conduct procurement procedures in a fair, open, and competitive manner. Procurement must be supported by complete and accurate inspections, work-write-ups, specifications and similar supporting documents.
12. *Order Appraisals* - Get an appraisal which meets the criteria specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”), as further defined in 49 CFR §24.103 and supports the required discount.
13. *Submit Administrative Draw Requests* – Electronically submit Draw Requests for administrative costs incurred. The cumulative administrative Draw Requests is limited to 10% of the NSP Contract’s total available administrative funds until NSP Project funds are drawn. Subsequent Administrative Draw Requests are limited to the equivalent pro-rated percentage of total Project funds expended.
14. *Submit Project Setups* – **For NSP HBA and Mortgage Activities:** Submit the *Setup Checklist for Homebuyers*– and applicable required Support Documentation to the assigned NSP Division Program Specialist through the Housing Contract System.
15. **For NSP Subgrantee Activities:** Submit the NSP *Setup Request Checklist for Subrecipient Activities* and applicable required Support Documentation to the assigned NSP Program Specialist through the Housing Contract System..
16. *Conduct Loan Closing* –
  - For NSP HBA and Mortgage Activities:** Coordinate required events to close the homebuyer transaction.

- **For Acquisition with Rehabilitation or construction contracts:** Upon receipt of the prepared Loan documents, attend Loan Closing to execute required documents, request the closing draw and schedule Rehabilitation construction. Do not begin rehabilitation or construction activities until the NSP Loan has closed.

***TO PREVENT DELAY IN CLOSING THE NSP LOAN - DO NOT begin construction or rehabilitation activities before closing.***

17. **Conduct Demolition – For Demolition Contracts:** Submit all required documentation to set-up the clearance activity in the Housing Contract System using the Setup Request Checklist for Demolition.
18. **Submit Project Draw Requests – For NSP HBA and Mortgage Activities:** Only one Draw Request is submitted for payment of closing costs and homebuyer funds. Eligible CA expenses may be submitted for *reimbursement of Activity Delivery costs after closing the homebuyer transaction.* **For Acquisition with Rehabilitation or Construction Contracts:** A Closing Draw Request for Acquisition and closing costs is submitted concurrently with Loan Closing. Interim Draw Requests may be **submitted based upon terms specified in the Construction Loan Agreement (CLA).** The Final Draw Request may be submitted upon 100% completion of construction and must include Project Completion information. The Retainage Release may be requested 30 days following the date of *Final Inspection*
19. **Request Release of Retainage – For Acquisition with Rehabilitation or Construction Contracts:** Submit the Retainage Draw request no earlier than 30 days following completion of *construction.* Retainage will not be released by TDHCA before the 31<sup>st</sup> day following construction completion based upon the completion date provided in *Final Inspection.*

### ***REACHING CONTRACTUAL BENCHMARKS***

- TDHCA will evaluate compliance with contractual obligations throughout the administration of the NSP Contract to ensure substantial progress toward meeting contractual benchmarks
- If the CA fails to meet a Benchmark requirement and does not seek, or is not granted, an amendment or forbearance extending the Benchmark time limit, funds may be entirely or partially deobligated by TDHCA.
- Each Benchmark is an individual Contract term and subject to timely completion and/or the amendment processes. A Benchmark extension may or may not extend the entire Contract, at TDHCA’s discretion. A forbearance of Benchmark requirements will not extend the contract end date. Failure to meet forbearance terms may subject the NSP contract funds to deobligation by TDHCA.

- The NSP contract term will match the allowable longest term for the planned NSP Activities. Individual eligible activities will carry appropriate benchmarks requirements, regardless of the contract term. Performance will be based on the benchmarks listed in Exhibit C in the subgrantee contract, beginning from the Contract Effective Date.

### ***PROGRAM INCOME***

- Program income is any income received by the CA that was directly generated from the use of NSP funds.
- Do not retain program income of any kind. Submit program income to TDHCA within ten days of its receipt to TDHCA's Accounting Division at the address indicated below.
  - Record the source and amount of the program income in the accounting and financial records and in the Program File;
  - Reference the following:
    - NSP Contract number;
    - Name of assisted Household;
    - Project address;
    - Project number.

### ***REFUNDS***

- Submit refunds to TDHCA's Accounting Division at the address indicated below.
  - Record the explanation and amount of the refund in the accounting and financial records and in the Program File;
  - Reference the following:
    - NSP Contract number;
    - Name of assisted Household;
    - Project address;
    - Project number.

### **TDHCA Mailing Address for remittances:**

**Texas Department of Housing and Community Affairs**

**ATTENTION: Accounting Division**

**P. O. Box 13941**

**Austin, TX 78711-3941**

## ***TECHNICAL ASSISTANCE***

- The purpose of Technical Assistance (TA) is to assist, instruct, and guide the CA in the most effective and efficient methods for successfully administering the NSP Contract.
- TA is provided continually by NSP Program Specialists in person at on-site visits, by phone, email, and through the Housing Contract System.
- TA is provided during NSP training workshops.

### On-site Technical Assistance

- On-site TA is provided at the CA's request or if TDHCA determines it is the most effective means for providing instruction.
- Recurring administrative errors or insufficient documentation may result in TDHCA staff recommendation for an on-site TA visit.
- A high composite risk assessment score may indicate a need for on-site TA.
- An on-site TA visit typically includes:
  - Focus on CA's specific questions and concerns;
  - HCS System assistance;
  - Discussion/explanation of program requirements, documentation, and procedures.
- A letter notifying the CA of the scheduled TA on-site visit is mailed, faxed, or e-mailed.
- TDHCA may require CA staff to attend periodic training programs including, but not limited to:
  - Income Eligibility trainings;
  - Environmental trainings; and
  - Other trainings as deemed by TDHCA to be beneficial and appropriate to the CA's needs.

### Amendments

- Per 10 TAC §9.3, amendment requests may be approved under the following circumstances:
  - *Time extensions:* The TDHCA Executive Director (ED) may provide up to one year on the end date of any Contract. However, in no circumstances may the NSP1 Contract be extended past March 3, 2013.
  - *Increase in funds:* The TDHCA ED may approve and authorize a request for increased funds if such modification does not increase the Contract dollar amount by more than 25% of the original Contract amount.



- Amendment requests that increase the dollar amount by more than 25% of the original Contract amount, or that significantly decreases the benefits to be received by TDHCA, in the estimation of the ED, will be presented to the Board for approval.
- *Benchmarks:* The TDHCA ED may approve and authorize a request to extend a Benchmark completion date.
  - Amendment requests that significantly alter the terms of the NSP Contract may, at the discretion of the ED, be presented to the Board for approval.

#### Requesting an Amendment

- Ensure compliance with all monitoring and auditing requirements for all programs administered by TDHCA.
- The CA’s authorized Executor must sign and submit a written amendment request to the assigned NSP Division Program Specialist.
- The amendment request must include:
  - A stated request for the specified change to the NSP Contract;
  - Clear explanation and justification for the request;
  - Description of extenuating, unusual, and non-foreseeable circumstances and/or explanation of compelling reasons for necessity of request;
  - “Pipeline” report indicating number (and names, if known) of Households anticipated to be assisted;
  - A schedule of completion from the Building Contractor (if applicable); and
  - A schedule indicating percentage of completion for construction currently underway (if applicable).
- Unless the NSP Contract has been amended, any funds not committed to a Household or Property by the applicable benchmark are subject to deobligation.

### **IMPORTANT!**

**An NSP Contract amendment *DOES NOT* automatically extend the end date of other existing Loan documents. Such documents will require modification and extension on a case-by-case basis.**

#### ***PROGRAM RECORDKEEPING REQUIREMENTS***

- Per 24 CFR §570.490 and 1 TAC §§5.141 - 5.167 all CAs are required to adhere to the following record keeping requirements:
- The CA is contractually obligated to retain all records pertaining to the NSP Contract *at its regular place of business.*

--Original records and/or documents may not be moved to a consultant's place of business or to any location not under ownership or specific control by the CA.

- Retain all NSP Program records and any supporting documentation, for the greater of: (i) five years after close-out of the HUD grant to the state of Texas (not the closeout of this Contract); (ii) if notified by the Department in writing, the date that the final audit is accepted with all audit issues resolved to the Department's satisfaction, or (iii) a date consistent with the period required by other applicable laws and regulations as described in 24 CFR §§570.487 and 570.488. Records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five (5) year period, until five (5) years after the affordability period terminates. All files must be available for public inspection in accordance with the Texas Public Information Act and be available at the CA's office.
- All records, bookkeeping, accounts, reports, files, and other papers or property belonging to or in use by the CA which pertain to the NSP Contract must be made accessible to TDHCA, the State of Texas, the U. S. Department of Housing and Urban Development (HUD), the Comptroller of Public Accounts, Texas Attorney General or any of their duly authorized representatives. TDHCA will periodically monitor all records. These records include but are not limited to:
  1. Records providing a full description of each activity undertaken;
  2. Records demonstrating that each activity undertaken benefits low, moderate, or middle income persons;
  3. Records required to document the purchase and sale amounts of the property, discounts, and the sources and uses of funds for each activity;
  4. Records documenting compliance with the fair housing and equal opportunity requirements of the NSP program, including but not limited to the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program;
  5. Records documenting efforts to ensure that any subsequent purchaser has compiled with the tenant protection requirements under §§K.2a and K.2.b. of the NSP *Federal Register* NOFA;
  6. Other records necessary to document compliance with Subpart K of 24 CFR §570.487.

#### Filing Requirements

- Develop, prepare and maintain a recordkeeping system which includes three separate types of filing, as follows:
  - Program File;
  - Project Files; and
  - Environmental Review Record (ERR).

## Program Files

- Create a single, separate Program File containing documentation pertinent to the overall administration of the NSP Contract.
- Provide a separate tab, folder, or section for each different type of documentation, including, at a minimum:
  - NSP Contract
    - TDHCA will return to the CA an original fully executed (i.e. signed by both the CA's Executor and TDHCA's ED) NSP Contract.
  - Accounting
    - Documentation of receipts of NSP Program funds – all receipts must be tracked and reconciled;
    - Documentation of disbursements of NSP Program funds – all disbursements must be tracked and reconciled;
    - Bank statements for the NSP Contract bank account(s) – statements must be reconciled monthly;
    - Adequate Support Documentation for all receipts and disbursements;
    - Summary of Draw Requests, payments received, payment dates, and any other financial transactions pertaining to NSP Projects;
  - Procurement
    - Documentation explaining the procurement selection and evaluation criteria;
    - Justification for lack of competition when competitive bids or offers are not obtained;
    - Basis for award costs or prices;
    - Documentation of cost and/or price analyses used in connection with every procurement action which may include:
      - Comparison of price quotations submitted;
      - Market prices
      - Discounts available;
      - Review and evaluation of each element of cost to determine reasonableness and allowability.
    - Copies of applicable scopes of work [for Requests for Proposals (RFPs)] or construction-related activities [for Invitations for Bid (IFBs)] used to develop proposal/bid requirements;
    - Copies of published and/or posted RFPs and IFBs;
    - Copies of proposals and bids received;

- Documentation verifying the procurement selection and evaluation process was followed in accordance with applicable local, state, and federal requirements;
- Copies of contracts made with service providers (consultants), Building Contractors, and/or other Subcontractors;
- Affirmative Marketing
  - The Affirmative Marketing Plan for NSP properties, including any supporting documentation and support of all conclusion regarding households least likely to access the NSP program.
  - Documentation verifying of all affirmative marketing efforts undertaken;
  - Copies of program brochures, notices, hand-outs, and other advertising materials or publications;
  - Copies of invoices for paid advertising and publication services;
  - Tear-sheets (actual publication torn from the newspaper) or other printed materials including date of publication;
  - Transcripts of radio or other media announcements including dates and times of publications;
  - Documentation of public outreach efforts, including dates, times, locations, and content of information and/or materials provided;
  - Evidence of outreach efforts to individuals with Limited English Proficiency.
- Economic opportunities in accordance with Section §3 of the Housing and Urban Development Act of 1968;
  - The Section §3 Plan for outreach to low and very-low income residents and businesses,
  - Documentation verifying that, to the greatest extent possible, the CA provides job training, employment, and contract opportunities for low- and very-low income residents of the assisted Service Area in connection with federally funded activities.
- Limited English Proficiency
  - The Limited English Proficiency testing results and support for languages identified
  - The Limited English Proficiency Plan
  - Documentation verifying that CA has provided access to the program for residents with Limited English Proficiency
- Accessibility Records (Section 504) of CA's Workplace
- *Self-Evaluation Section 504*

- Documentation verifying the CA ensures accessibility to Persons with Disabilities of any area and/or location at which applications for NSP assistance will be accepted;
- Documentation verifying all such areas were examined and any problems identified and rectified;
- Description of modifications made and remedial steps taken.
- All other Program-related documentation not specific to a single Project or to the environmental review process.

#### NSP HBA and Mortgage Project Files

- Create a separate Project File containing all records and documentation pertaining to *each applicant* for assistance, regardless of whether or not the applicant was approved to receive NSP funding.
- *Disapproved applicants:* Project Files for applicants who *do not* receive assistance must include:
  1. Copy of completed Intake Application and all other forms provided to the applicant;
  2. Support Documentation provided by applicant;
  3. Documentation of the application verification process conducted by CA;
  4. Copy of notification letter to the applicant stating why assistance was not provided;
  5. All other documentation or information related to the applicant and the verification process conducted.
  6. Documentation that may create an opportunity for identity theft, including Patriot Act forms or copies of social security or credit records should be appropriately redacted.
- *Approved applicants:* Project Files for applicants who receive assistance must include, at a minimum, the following:
  1. An explanation of the NSP program in general terms and its benefits to buyers and the community.
  2. A good faith estimate of the general locations and price ranges of NSP Homes that may be available for Buyers to purchase, and a good faith estimate of typical buyer-paid closing costs.
  3. The NSP application approval criteria.
  4. Waiting list policies.
  5. The requirement for attending pre-purchase counseling (if approved).

6. Applicant's household size and estimate of monthly income, with a statement that the income amount must be verified prior to the Applicant being approved for NSP assistance.
7. A good faith estimate of the amount (or range of amounts) and terms of Homeowner Financial Assistance that Applicant may qualify for, based on an analysis of Applicant's financial and other data provided.
8. A general description of an NSP buyer's obligations for repayment of subsidies, and resale controls on homes sold (if any).
  - All other documentation or other information pertaining to the applicant and/or the Project;
  - Copy of any document submitted to TDHCA;
  - Description and address of each Project with physical location indicated on a map;
  - Copies of all Loan Closing documents;

***DO NOT* submit a copy of *any* form or document to TDHCA without retaining a copy for your files!**

#### NSP Purchase and Rehabilitation or Redevelopment Projects

- Create a project file for each address proposed for NSP Assistance. Files should be maintained for each project entered into the Housing Contract System, regardless of ultimate disposition.
- Maintain record of all project-specific documentation, including purchase agreements and addendums, title insurance commitments, PTAF records, inspections and estimates, appraisals, and any other documents generated as part of the initial assessment process.
- Closing records should be maintained in a separate section of the file, along with the NSP loan documents.
- Record of all project-specific procurement activities must be maintained, including copies of bid notices, bids received, documentation of the selection process, and all contracts for work to be performed at the address.
- Copies of all draw requests, including project and activity delivery charges. Maintain copies of all invoices, applicable lien releases and inspections, and any other supporting documentation

#### Environmental Review Record (ERR)

- Create an Environmental Review Record (ERR) file to contain all Support Documentation, forms and clearance notifications pertaining to the tiered review. The tiered review records will be independent of the site-specific clearance record.

- Create a *separate* Environmental Review Record (ERR) file to contain all Support Documentation, forms, and clearance notification(s) pertaining to every project address, as applicable.
- Environmental clearance forms, including the following, are available online at:  
<http://www.tdhca.state.tx.us/program-services/environmental/index.htm>
  - 24 CFR §58.6 Compliance Documentation Checklist;
  - 24 CFR §53.34(a) Certification of Exemption for HUD Funded Projects;
  - 24 CFR §58.35(a) Certification of Categorical Exclusion (subject to §58.5) (Attachment I);
  - Statutory Checklist (Attachment H);
  - Combined Notice of FONSI and NOIRROF;
  - Notice of Intent to Request Release of Funds;
  - 7015.15 – Request for Release of Funds and Certification (Attachment S);
  - Environmental Review Guide (Attachment K);
  - Form 7 – Environmental Clearance Status);
  - Notice for Early Public Review and Final Notice.

#### Completing TDHCA Forms

- NSP Program Specialists will review all submitted documents for accuracy and completeness.
- Incorrect and incomplete documents and forms must be corrected and/or completed by the CA before TDHCA may process Setups, Draw Requests, and/or Project Completion Reports.
- Forms other than those developed and provided by TDHCA must be approved prior to use. Failure to provide the proposed alternative form to the Program Specialist prior to setup or draw submission may delay processing for a Project. ALWAYS use the most current TDHCA forms, which are available online:

<http://www.tdhca.state.tx.us/nsp/forms.htm>

- CA's may use forms from other TDHCA programs, with prior approval from the NSP Program Specialist.

#### Correcting Forms and Documents

- Never use “white-out” correction fluid or correction tape on a signed legal document or on Support Documentation submitted to TDHCA for Setups or Draw Requests;
- To make a correction to a legal document or form:
  - Draw a line through the incorrect portion of the document and write in the correction; AND

- Ensure that *each* hand-written correction or change made to a document is initialed by *each* person who signed the document.

***Example: Correcting a Signed Legal Document or TDHCA Form***

$$\begin{array}{l}
 2 \text{ people signed the original document} \\
 \times \underline{3 \text{ corrections made after the document was signed}} \\
 \hline
 \text{Total} = 6 \text{ initials required to correct the document}
 \end{array}$$

Administration Costs

- Administration costs, are *actual expenses* incurred which are not directly linked to a specific Project but are necessary and reasonable and directly attributable to the administration of the NSP Contract. These are sometimes called administrative costs or developer fee costs. Examples of such costs include:
  - General management and/or oversight;
  - Routine coordination of NSP program activities;
  - Outreach activities;
  - Exempt administrative environmental clearance;
  - Tiered environmental clearance
  - Pro-rata allocation of goods and services used specifically to administer the NSP Contract, including but not limited to:
    - Office supplies;
    - Purchase or rental of office equipment,
    - Maintenance of office equipment.
  - Travel costs incurred for official business required specifically for administration of the NSP Contract;
  - Providing public information regarding the NSP Contract;
  - Conducting affirmative marketing for the NSP Contract;
  - Pro-rata allocation of rental and maintenance costs for office space used specifically for administration of the NSP Contract.
  - The award amount for Administration costs shall not exceed 5% of the contract amount for all activities.
    - For certain NSP1 contracts with Land Bank activities administrative costs will be limited to a total of 8%, of which 2% will be reserved for long term oversight
  -



- Indirect costs may be used *only if a specific, current “indirect cost allocation plan” has been reviewed and approved by HUD or other federal agency. The Indirect Cost Allocation Plan must be presented for TDHCA review and approval prior to the first administrative draw.*
- Only costs incurred within the contractual term are eligible. *However, administration costs related to procurement of a Service Provider (i.e. consultant) and NSP-related training (including travel to attend such training) which were incurred prior to the Effective Date of the NSP Contract, but after the NSP award date will be allowed.*
- The CA must enter the Administrative Draw Request in the online HCS System *at the NSP Contract level.* Administrative costs are not directly associated with a Project.
- Adequate Support Documentation must be received by TDHCA in order to complete processing and approval of any Administrative Draw Request.
  - Refer to *NSP Administrative Draw Request Checklist* for a listing of required Support Documentation
- *Initial Administrative Draw Request* – A maximum of ten percent (10%) of the NSP Contract’s total administrative funds may be drawn before any Project funds are drawn, following approval of required Support Documentation. Subsequent administrative funds will be paid in proportion to the percentage of the NSP Contract’s total Project funds drawn (see Chapter 11 – Setups and Draw Requests).
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***Example: Documentation for Administrative Costs\****

COST CATEGORY	SUPPORT DOCUMENTATION
<ul style="list-style-type: none"> <li>• Accounting,</li> <li>• Bookkeeping,</li> <li>• Automated electronic data processing,</li> <li>• Budgeting</li> </ul>	<ul style="list-style-type: none"> <li>• Itemized invoice, if acquired externally;</li> <li>• If performed by CA’s staff, Wage Salary Calculator and Support Documentation (i.e. general ledger, pay stub). Staff time submitted for reimbursement must be applicable to the NSP Contract only.</li> </ul>
<ul style="list-style-type: none"> <li>• Compensation for CA’s personnel for administering the NSP Contract</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Wage Salary Calculator</i> and Support Documentation (i.e. general ledger, pay stub). Staff time submitted for reimbursement must be applicable to the NSP Contract only.</li> </ul>
<ul style="list-style-type: none"> <li>• Maintenance and repairs (not address specific),</li> <li>• Operations</li> </ul>	<ul style="list-style-type: none"> <li>• Itemized invoice, if acquired externally;</li> <li>• <i>Wage Salary Calculator</i> and Support Documentation (i.e. general ledger, pay stub). Staff time submitted for reimbursement must be applicable to the NSP Contract only.</li> </ul>

COST CATEGORY	SUPPORT DOCUMENTATION
<ul style="list-style-type: none"> <li>▪ Equipment</li> <li>▪ Insurance</li> <li>▪ Materials and supplies</li> <li>▪ Professional services</li> <li>▪ Publication and printing</li> <li>▪ Rent</li> <li>▪ Payroll Taxes</li> <li>▪ Training</li> <li>▪ Travel</li> <li>▪ Utilities</li> <li>▪ Communications</li> <li>▪ Affirmative marketing and public relations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Itemized invoice for portion of expenses applicable to the NSP Contract only.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Affirmative marketing plan</li> <li>▪ Costs incurred to develop written plan, advertising materials, hand-outs, public presentations, etc.</li> </ul>	<ul style="list-style-type: none"> <li>▪ If acquired externally, itemized invoice specifying exact services provided and line-items costs for each service.</li> <li>▪ If performed by CA's staff, Wage Salary and Support Documentation (i.e. General ledger, pay stub).</li> <li>▪ Only costs directly attributable to the administration of the NSP Contract may be submitted for reimbursement.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Exempt administrative environmental clearance</li> <li>▪ Cost incurred in the completion of a <i>Certification of Exemption for HUD-funded Projects</i> for administrative expenses.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Financial management</li> <li>▪ Costs incurred to manage an accounting system which tracks Program related transactions.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Procurement of professional service provider</li> <li>▪ Costs incurred to procure a professional service provider (i.e. consultant) using required negotiated bidding procedures.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Recordkeeping</li> <li>▪ Costs incurred to develop, prepare, and maintain a Program recordkeeping system in the order prescribed by TDHCA which includes three separate types of filing.</li> </ul>	

\* *This list is not all-inclusive.*

*Contact TDHCA for additional clarification on specific costs incurred.*

## ***ACTIVITY DELIVERY COSTS***

- Project costs are expenses incurred which are directly associated with a specific NSP Project, including, applicable costs incurred in the acquisition and construction process. Activity Delivery costs may also be referred to as soft costs.
- Adequate Support Documentation must be received by TDHCA in order to complete processing and approval of any Project Draw Request.
- The Project's Loan Closing must be complete and all required documents executed before a Project Draw Request may be processed.
- Activity Delivery costs for properties that are considered for acquisition but not closed may be eligible for reimbursement. Eligible costs include appraisals, inspections, staff time related to due diligence activities, and similar charges.
- Activity Delivery costs consist of reasonable and necessary indirect costs incurred by the CA that are attributable to a specific Project, including but not limited to:
  - Affirmative marketing\* (refer to flexible costs below);
  - Lead-based paint inspections \* (refer to flexible costs below);
  - Property inspections\* (refer to flexible costs below);
  - NSP Home buyer counseling;
  - Closing costs, including but not limited to:
    - Title commitment;
    - Recording fees;
  - Legal and accounting fees;
  - Service provider (i.e. consultant) fees;
    - If service provider fees (i.e. consulting fees) are allocated to a Project, they must be identified on the HUD-1 Settlement Sheet and included as an additional settlement charge;
    - Provide separate Support Documentation identifying specific service provider activities performed and amounts invoiced.
    - The cost of HQS Inspections for homebuyer transactions are appropriately charged to the CA Activity Delivery, rather than the homebuyer.

***Example: Recording Service Provider Fee on a HUD-1 Settlement Sheet***

<b>Settlement Charges Paid From Borrower's Funds at Settlement</b>	
<b>Page 2</b>	
1108. Title insurance	499.00
1107. Attorney's fee	351.00
1113. Escrow fee	250.00
1400. Total settlement charges ( <i>this is carried over to page 1</i> )	1,100.00

***HARD COSTS***

- **Purchase and Rehabilitation or Construction Contracts:** Costs to complete the purchase of property, in addition to progress payments for costs complete rehabilitation or construction by the CA.
  - Work must be completed prior to the Completion Date in the Construction Loan Agreement, in order to be eligible for reimbursement. *If work will not be completed by the Completion Date, the NSP Program Specialist should be notified immediately.*
  - All charges submitted for reimbursement must match the budget categories created at project set-up. If a construction budget change is necessitated by a change to conditions or specifications after the loan has closed, submit NSP Construction Change Order form with the appropriate supporting documentation. If the Change Order increases the total construction costs beyond the loan amount, a loan modification will be necessary if funds are available.
  - **Closing** - Submit the *Draw Request for Closing Funds* with required supporting documentation after the activity setup is approved
    - This draw request requires documentation from the Title Company that will be closing the loan. It is the CA's responsibility to coordinate the submission of documents by all parties
    - Funds will be wired directly to the Title Company, after loan documents have been prepared and transmitted. Funds will be released only after NSP review and approval of the closing documents.
- **Interim Construction Draws** Submit the *Draw Request Checklist for Construction* with required Support Documentation.
  - The Application and Certificate for Payment and Lien Waiver forms provided with each Construction Loan Agreement must be included for each draw. The

forms must be completed properly and executed by an authorized signatory for the loan documents.

- Lien Waivers and proof of payment (cancelled checks or journal printouts) must accompany each invoice submitted for reimbursement.
- Lien Waivers dated prior to payment will not be accepted.
- Progress Inspections and pictures of work completed must accompany each draw request.
- New Construction draws will be paid under a 5-draw structure as described in the loan documents. In no case will percentage of completion, or draws for materials delivered but not installed, be paid. All work must be completed prior to submission of the corresponding draw.
- 10% of the total of reimbursable expenses will be withheld until construction is completed and the retainage period has expired.
- **Final Construction Draw** Submit the Draw Request Checklist for Construction with required support documentation.
  - The Affidavit of Completion (from the Construction Loan Agreement) and Final Inspection must accompany the Draw Request
  - 10% of the total of reimbursable expenses will be withheld until construction is completed and the retainage period has expired.
- **Retainage Draw** The retainage draw may be requested 31 days after the final draw, using the Draw Request Checklist for Construction
  - The Retainage period starts at the Final Inspection.
  - Completion is documented by the Affidavit of Completion and Final Inspection. If the projects involves new construction or major rehabilitation (required a building permit), the Certificate of Occupancy may be substituted for the Final Inspection.
- 

## ***HOMEBUYER TRANSACTIONS***

**Homebuyer Costs** NSP-eligible costs for Homebuyer transactions are described in the Homebuyer Financing Guidelines section of this Manual

## ***FLEXIBLE COSTS***

- Certain costs may be charged as **either** administration costs **OR** activity delivery. These flexible costs are limited to:
  - Application intake and processing;
  - Credit reports;

- Environmental review applicable to a specific Project;
- Property inspections;
- Information services;
- Project document preparation;
- Professional Services, including legal or appraisal fees
- Charging flexible costs to a specific Project or to Administration has several implications:
  - Project costs count toward the maximum per-unit subsidy limit;
  - Charging costs to Administration reduces the amount available for program management costs.

## Chapter 4. MONITORING

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- Federal regulations require TDHCA to monitor the performance of CAs receiving NSP funds to ensure compliance with state and federal requirements.
- Monitoring is primarily conducted by TDHCA's Compliance and Asset Oversight Division through desk reviews, risk assessments, and on-site visits.
- Monitoring may be conducted by other Divisions within TDHCA, including Environmental, Davis-Bacon, or Section 3.
- CA records may be monitored by HUD or the Office of the Inspector General, either through TDHCA or directly with the CA,
- Information on expenditures of Contract funds is public information and is generally available for disclosure. CAs are responsible for ensuring confidentiality when public disclosure is not required.
- Monitoring procedures consist of reviewing contractual performance, confirming accuracy and thoroughness, and evaluating compliance with established requirements.
- Monitoring includes, but is not limited to, review of the following:
  - Federal and state requirements applicable to the type of assistance being provided;
  - Participant eligibility;
  - Program targeting;
  - Property eligibility;
  - Eligible costs;
  - Procurement;
  - Property standards;
  - NSP investment per unit;
  - Written agreements;
  - Affirmative marketing;
  - State and federal fair housing laws;
  - Section 3 Reporting;
  - Financial management;
  - Fiscal system integrity
  - Cost allocation;
  - Recordkeeping;
  - Conflict of interest policy;

- Uniform Relocation and PTFA Requirements;
- Davis Bacon Requirements; and
- Limited English Proficiency Policy.

### ***MONITORING OBJECTIVES***

- Monitoring efforts are guided by five basic objectives:
  1. *Performance* – To ensure the commitments made by the CA in the *Performance Statement/Scope of Work (Exhibit A) and Budget (Exhibit B)* and the NSP Contract are met.
  2. *Expenditure of NSP Funds* – To ensure the NSP funds are expended in accordance to federal and state requirements in the timelines prescribed by federal and state guidelines.
  3. *Compliance* – To ensure federal NSP requirements and state policies, procedures and requirements have been followed.
  4. *Prevention of Fraud and Abuse* – To ensure the CA has adequate protections against fraud and misuse of funds in place.
  5. *Quality Workmanship* – To ensure that workmanship provided on assisted properties complies with applicable federal, state and industry standards and specifications.

### ***PROGRAM AREAS MONITORED***

- Monitoring compliance falls into four general areas:
  - Administrative and Financial Monitoring;
    - Determine whether the CA has all necessary fiscal controls properly in place to ensure:
    - Adherence to state and federal publications and regulations including, but not limited to:
      - OMB Circulars;
      - 24 CFR Parts 84-85;
      - 10 TAC Chapter 53;
      - Texas Government Code;
      - TDHCA policies and procedures;
    - Enforcement of written agreements;
    - Adequacy of internal controls;
    - Timely and accurate reporting;
    - Documentation of the NSP Contract’s administration;
  - Program monitoring;



- Determine whether proper procedures, forms, and files, including the ERR, are in place to carry out the NSP Program in compliance with state and federal requirements through the examination of the CA's program policies, procedures, financial files, program file structure, maintenance and content.
- Project monitoring;
  - Ensure each funded activity meets all NSP requirements such as subsidy levels, eligible beneficiaries and eligible properties through the examination of Project File structure, Project File maintenance, Project File content, sample units and reports.
- Construction/on-site monitoring
  - Includes a physical inspection of assisted properties through site visits which provide critical information about the progress of the Contract, accuracy of Program files, and the quality of work being performed on the assisted properties.

### ***SELECTION OF CONTRACTS TO BE MONITORED***

- All NSP Contracts are subject to selection for monitoring and review at any time.
- Selection of NSP Contracts to be monitored is based upon a risk assessment.
- CAs may also be monitored as a result of failures to meet contractual Benchmarks, citizen complaints, HUD requests, or previous findings.

### ***DESK REVIEW***

- Desk reviews involve examining Support Documentation submitted by the CA to:
  - Track Contract performance
  - Ascertain compliance with federal and state program requirements;
  - Determine whether CA's records adequately document compliance;
  - Identify aspects where the CA is performing well or where improvement is needed.
- The following Support Documentation may be requested, but is not limited to:
  - Program Files;
  - Project Files;
  - Administrative records;
  - Financial records.
- The number of files reviewed may vary with the number of NSP Contract activities being undertaken.
- A *Notification Letter* will be sent to the CA requesting that the Support Documentation be submitted to the TDHCA offices by a given deadline. The notification will detail the specific information that staff will be reviewing. The notification, as well as all

correspondence from TDHCA, will be sent directly to the CA. Courtesy copies may be sent to the consultant working with the CA.

- Monitors will perform an analysis of the documentation submitted and complete monitoring tests to ensure and document the CA's compliance status.
- At the conclusion of the desk review, a monitoring report will be provided to the CA with an opportunity to correct any misconceptions or misunderstandings, secure additional information or clarification, and to report any steps or processes the CA may already be taking to address areas of non-compliance or non-performance.

### ***ON-SITE MONITORING VISITS***

- On-site monitoring visits are performed by Monitors to:
  - Ascertain compliance with federal and state program requirements;
  - Determine whether CA's records adequately document compliance;
  - Identify aspects where the CA is performing well or where improvement is needed.
- A Monitor will visit the CA's place of business and review Program Files, Project Files, ERR, administrative records, and financial records for adequacy, thoroughness, and accuracy.
- A Monitor will perform physical inspections of assisted units/properties.
- The number of file reviews and property inspections conducted may vary with the number of NSP Contract activities being undertaken.
- A *Notification Letter* will be sent to the CA giving the date, time and purpose of the on-site visit. The notification will detail the specific information that PMC Division Contract Monitoring staff will be reviewing that *must be available* on the day of the visit. The notification, as well as all correspondence from TDHCA, will be sent directly to the CA. Courtesy copies are sent to the consultant working with the CA.
- On the date of the on-site visit, the Monitor will conduct an entrance interview with the CA (and if applicable, the Consultant) to ensure that the funding recipient has a clear understanding of the purpose, scope and schedule for the monitoring visit.
- Monitors will select Project Files for review and will perform inspections for the activities selected.
  - For NSP Contracts of up to five units, all Project Files and units will be reviewed and inspected.
  - For Contracts of more than five units, Monitors will review a fifteen percent (15%) sample and will inspect a minimum of five units.
- The review sample may be randomly or subjectively selected. Units identified as out of compliance from a complaint will be specifically selected for review and inspection.
- Monitors *must be accompanied* by a member of the CA's staff during the physical inspection of the assisted units.

- Monitors will perform an analysis of the documentation in the files and complete monitoring tests to ensure and document the CA's compliance status.
- Information may also be obtained through interviews with the CA's personnel or Household members assisted. The documents and information gathered will serve as a basis for conclusions to be included in the monitoring report.
- At the conclusion of the visit, Monitors will conduct an exit interview to present preliminary results of the monitoring visit, provide an opportunity to correct any misconceptions or misunderstandings, secure additional information or clarification, and to report any steps or processes the CA may already be taking to address areas of non-compliance or non-performance.

### ***MONITORING REPORTS***

- Monitors will issue a monitoring report within forty-five (45) days from the date of the desk review or the on-site visit.
- The CA will have 30 days to submit a written response. Management letters do not require a response.
- The monitoring report will detail findings, if any, of non-compliance identified during the review and prescribe corrective action. A correction period of 30 days will be given to correct all findings. CAs may request an extension of the corrective action period for up to an additional 30 days.
- At the conclusion of the corrective action period, Monitors will review the corrective action documentation submitted by the CA.
  - If the corrective action does not sufficiently resolve the identified issue(s) of non-compliance, questioned or disallowed costs may result. If it is determined that costs will be disallowed costs, the CA must submit repayment of the disallowed costs immediately. After the refund has been received TDHCA will issue a close-out letter and close the review.
  - If the corrective action sufficiently resolves the identified issue(s) of non-compliance, TDHCA will issue a close-out letter and close the review. Failure by the CA to take the action specified in the monitoring report may be cause for suspension or termination of the NSP Contract and deobligation of any remaining NSP funds and could led to recommendation for inclusion on TDHCA's debarment list and associated financial penalties.

### ***SINGLE AUDIT REQUIREMENTS***

- CAs are responsible for submitting the *Audit Certification* within sixty (60) days after their fiscal year end.
- Submit an *Audit Certification* for each fiscal year end occurring during the Contract term, even if the Contract term ends prior to the end of the fiscal year. The *Audit Certification* is required even if there was no Contract activity during the fiscal year.

- CAs subject to single audit requirements (refer to the *Audit Requirement Instructions* included with *Audit Certification* must submit the Single Audit Report prepared by a Certified Public Accountant (CPA) within nine months after their fiscal year end, or 30 days after receipt of the audit reports, whichever is earlier.
- Failure to submit either the *Audit Certification* or a Single Audit Report in a timely manner will result in *Draw Requests being disapproved for payment until* the CA becomes current with the federal audit requirements.

## Chapter 5. PROCUREMENT

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### ***FEDERAL PROCUREMENT REGULATIONS***

- Procurement procedures and selection processes must be integrated into the CA's NSP Program and must comply with all applicable federal procurement regulations including, but not limited to:
  - 24 CFR §§84.40 - 84.48 – Applicable to non-profit organizations and non-Units of General Local Government (non-UGLGs);
  - 24 CFR §85.36 – Applicable to Units of General Local Government (UGLGs) including public housing authorities;
  - 24 CFR §570.489(g)
  - Title VI, Civil Rights Act of 1964 §601 – Nondiscrimination in Federally Assisted Programs;
  - Section 3, Housing and Urban Development Act of 1968.
- CAs may also be subject to additional and/or more restrictive local and/or state procurement requirements such as:
  - Texas Local Government Code §262.003(a) establishes thresholds for *counties*;
  - Texas Local Government Code §252.021(a) establishes thresholds for *cities*;
  - Texas Local Government Code, Chapter 2254 – applicable to counties and municipalities;
  - Texas Local Government Code, Chapters 252, 271 and 392 –applicable to housing authorities.
- Conduct procurement procedures in a fair, open, and competitive manner.
- The required method of procurement depends, in part, on the types of services being procured, the value of the procurement, and the appropriate local, state, and federal laws governing the purchase.
- Establish a written code of conduct governing employees, officers, or agents engaged in administering a NSP Contract, and appoint a Procurement Officer to manage the bid process.
- Establish written procurement procedures which, at a minimum, address the following:
  - Avoid purchasing unnecessary items;
  - Conduct analyses to ensure the most economical and practical procurement;
  - Ensure solicitations for goods and services include all the following:
    - Clear and accurate description of material, product, or service to be procured;

- Requirements the bidder must fulfill, and all factors to be used in evaluating bids and proposals;
- Description of functions to be performed, and the level of performance required;
- Where applicable, specify “brand name or equal;”
- To the extent practicable, refer to dimensions using the metric system of measurement;
- To the extent practicable, ensure preference for products and services that conserve natural resources, protect the environment, and are energy efficient.
- Ensure that every purchase order or other contract executed for federally-assisted activities includes any clauses required by federal statutes and Executive Orders and their implementing regulations.

### ***HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)***

- Per 24 CFR §84.44(b) and §85.36(e), whenever possible ensure positive efforts are made to utilize small businesses and minority- and woman- owned business enterprises by conducting the following steps:
  - To the fullest extent practicable, use minority- and woman- owned business enterprises;
  - Publicize opportunities and arrange time frames for purchases and contracts to encourage participation by small businesses, minority- and woman- owned business enterprises;
  - Consider whether firms competing for larger contracts intend to subcontract with minority- and woman- owned business enterprises;
  - Encourage contracting with consortia of minority- and woman- owned business enterprises when a contract is too large for one of these firms to handle individually;
  - Use services of Small Business Administration and Department of Commerce’s Minority Business Development Agency to solicit and utilize minority- and woman- owned business enterprises.
- Texas Government Code §2161.127 requires that State Agencies encourage and report the use of Historically Underutilized Businesses (HUBs) when administering state and/or federally funded programs. The State of Texas defines an Historically Underutilized Business (HUB) as:
  - At least 51% owned by an Asian-Pacific American, Black American, Hispanic American, Native American, and/or American woman,
  - An entity with its principal place of business in Texas; and
  - Has an owner residing in Texas with a proportionate interest that actively participates in the control, operations, and management of the entity’s affairs.

- Ensure HUB outreach by:
  - Developing written policies and procedures;
  - Maintaining records and submitting statistical data on HUB participation;
  - Completing the *NSP Contract and Subcontract Activity Report* and submit to TDHCA with the Project's final Draw Request.
  - Forwarding notices of contract opportunities to small business organizations and Chambers of Commerce;
  - Utilizing local media (television, radio, newspaper);
  - Announcing the NSP Contract award in mailings, such as utility bills or other widely distributed media.
- Report HUBs on the *NSP Contract and Subcontract Activity Report* - which must be submitted with the Final Draw Request. Any Building Contractor or lower-tier Subcontractor reported on *NSP Contract and Subcontract Activity Report* must also be entered into the HCS/CDB System for each Project prior to submitting a Final Draw Request.
- Contract activities or purchases may be divided into smaller tasks or services to allow participation by HUBs and/or smaller businesses.
- Additional information regarding minority and woman- owned business enterprises and HUBs is available from:
  - Small business development resource centers;
  - Small Business Administration – Texas;
  - Minority Business Development Agency of the U.S. Department of Commerce- General Services Agency.

***OTHER APPLICABLE PROCUREMENT THRESHOLD AMOUNTS***

- Municipalities (cities and counties) and Housing Authorities may be subject to more stringent state and local procurement regulations and/or procedures.
- Ensure compliance with the most stringent applicable procurement requirements.

***DEBARMENT***

- NSP funds may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any service provider or vendor during any period for which the service provider or vendor has been debarred, suspended, or designated as ineligible on the federal Excluded Parties Listing System.
- The Excluded Parties Listing Service is available online at:  
<http://www.epls.gov/>

## ***CONFLICT OF INTEREST***

- Per 24 CFR Parts 84 and 85, no employee, officer or agent of the CA may participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Such a conflict would arise when the CA's employee, officer, or agent or any member of his/her immediate family, his/her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
- The CA's officers, employees, and agents may not solicit nor accept gratuities, favors, or anything of monetary value from Contractors, or parties to sub-agreements.
- 24 CFR 570.489(h) includes specific requirements regarding the acquisition and disposition of real property and the provision of assistance by a subgrantee or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to 24 CFR §570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §570.203, 570.204, 570.455, or 570.703(i)).
- Requests for resolution of potential conflicts of interest must be submitted in writing to the assigned NSP Program Specialist. Such request will be forwarded by TDHCA to HUD for final determination. See Chapter 1 for more information.

## ***CONTRACTUAL PROVISIONS***

- Per 24 CFR §92.504, the contents of the procurement contract will vary depending upon the role the service provider is assuming and on the type of Project.
  - The agreement must describe the use of the NSP funds, including the specific tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for TDHCA to effectively monitor performance under the agreement. Agreements must require performance of specific tasks within described timeframes to be eligible.
  - The agreement must specify compliance with all applicable federal, state, and local laws and regulations, including NSP Program requirements.
  - Requests for disbursement of NSP funds may not be made until eligible costs have been incurred and funds are needed for payment.
- Per 24 CFR §84.48 and §85.36, procurement contracts must contain contractual provisions or conditions including, but not limited to:
  - Language acknowledging compliance with federal labor requirements, as applicable;



- Scope of services conducted or work provided listing all activities to be performed. Terms and conditions of the may be either written directly into the contract or incorporated by reference to an attachment;
  - Provisions allowing for administrative, contractual, or legal remedies in cases in which contract terms are violated or breached;
  - Language stating that failure to adequately perform under the contract may result in penalties up to and including state and/or federal debarment from performing additional work for state or federal awards;
  - Provision for remedial action as appropriate;
  - Provisions for termination, including the manner for termination and basis for settlement;
  - Language authorizing TDHCA and HUD to directly review, monitor, and/or audit the provider or Contractor's performance and/or records of work performed under the contract;
  - Language stating that all pertinent records must be retained by the CA at the CA's regular place of business;
  - Schedule or timeline for completion of contractual terms;
  - Names of all parties to the agreement;
  - Contract effective dates (starting and ending dates);
  - Specified amount of compensation to be provided, including both the maximum amount authorized by the contract and the method of payment. Retainer contracts are *not* permitted.
  - Reference to the statutory authority by which the CA is awarding the contract;
  - Name of the authorized individual serving as the CA's primary contact person;
  - Procedure for amending the scope of work and/or compensation to be provided; and
  - Explanation of the circumstances under which the CA or firm can cancel/terminate the contract.
- Include all information required for obligation of funds, as described in HUD Policy Guidance. Contracts for rehabilitation, construction or demolition services must include the address(es) at which the work will be performed, along with a detailed line-item budget. Lump-sum or non-address specific contracts are not eligible for reimbursement.

## ***PROCUREMENT OF PROFESSIONAL SERVICES***

### General

- Costs incurred for professional services conducted prior to execution of a professional services contract may *not* be reimbursed with NSP funds, but may be paid out of the CA's non-NSP funds.
- Prior approval from TDHCA is not necessary before execution of a contract for professional services.

### Competitive Negotiation

- Use competitive negotiation procedures to ensure professional service providers are procured on the basis of demonstrated qualifications and competence to perform the services for a fair and reasonable price. Procurement of professional service providers may not be based solely on the lowest priced proposal.
- Professional services include, but are not limited to:
  - Consultants;
  - Architects;
  - Accountants;
  - Professional engineers;
  - Surveyors;
  - Real estate appraisers.
- Consultants may not participate in, advise, recommend, or direct any part of the process for procurement of themselves or for other consultants providing the same type of services.

### Request for Proposal (RFP)

- A Request for Proposal (RFP) is conducted for qualifications-based procurement of professional services.
- Develop a well defined scope of work to be used as the basis for the RFP by itemizing tasks according to each major area of compliance or management that is to be performed.
- Generally, the RFP should be:
  - Published at least once a week for two consecutive weeks in a newspaper published in the Service Area. If no newspaper is published in the Service Area, the notice must be posted at the city hall.
  - The date of the first newspaper publication (or the date of posting, if applicable) must be prior to the 14<sup>th</sup> day before the date set to publicly open the proposals.
- The deadline for receipt of proposals should be no earlier than 10 days from the date of public advertisement and/or mailing dates of the RFP.

- The published RFP should include, at a minimum:
  - Specification of required tasks (scope of work);
  - Date of the RFP's opening and closing;
  - Time constraints for completion of required tasks;
  - Description of the criteria to be used by the CA in the evaluation of proposals received; and
  - Instructions for responding to the RFP.
- RFP Package – Develop an RFP package providing detailed instructions on proposal requirements. The RFP package must include, at a minimum:
  - A cover letter listing the following:
    - Summary description of NSP Program activity being provided;
    - Summary of RFP requirements and scope of work;
    - Definition of conflict of interest;
  - List of requirements to be included in proposals submitted by a service provider, including, at a minimum:
    - Service provider's references, including past and current clients;
    - List of federal programs previously managed by the service provider;
    - Description of service provider's capacity to perform the specified tasks;
    - Service provider's proposed time requirements for completing specified tasks;
  - Requirements must not contain features that might unduly restrict or reduce competition.
  - A sample professional services contract identifying required terms and conditions.

#### Preliminary Cost Analysis

- Conduct a preliminary cost analysis by making an independent estimate of anticipated costs for services being procured and itemized in the RFP.
- Use the cost analysis as an aid in determining reasonableness of proposals that are received.

#### Evaluation and Selection of Proposals Received

- *Purpose* - The evaluation committee has two primary roles:
  - To establish written criteria or factors to be used for selecting and rating competing bidders; and
  - To review proposals received and select the most qualified service provider.
- *Members* - Appoint individuals to serve in a bid evaluation committee who do not have potential conflicts of interest with any of the individuals, firms, or agencies

under review (i.e. family relationships, close friendships, and business dealings), or with any person who might potentially receive benefits from NSP-assisted activities.

- *Criteria* - Written selection criteria should fit the needs of the specific proposed activity being conducted and must include a clear and accurate description of the technical requirements of the services being procured.
- *Review* - After the deadline for submitting proposals has passed, conduct a thorough, uniform and well documented review of the proposals received using only the specific selection criteria identified by the evaluation committee.
  - Contact references provided in the proposal;
  - Determine the service provider's level of expertise, experience, and past performance;
  - Consider the service provider's ability and willingness to comply with all applicable laws and regulations;
  - Consider the service provider's financial and technical resources;
  - Retain written documentation of the evaluation process in the Program File.
- *Selection* - Professional service providers may not be procured based solely on the lowest priced proposal. Select and award professional service contracts based on demonstrated competence, qualifications, and fair and reasonable prices.
  - The professional service provider deemed the most qualified must be awarded the contract only after meeting the reasonable, responsive, and responsible tests:
    - *Reasonable* – bidder demonstrates he/she can accomplish the job in question;
    - *Responsible* – bidder demonstrates he/she is able to fully perform the requirements of the job and has the integrity and reliability that will assure good faith performance;
    - *Responsive* – bidder has submitted a bid/proposal that fully conforms to the information requested in the RFP.
- *Notification* - Respond in writing to selected service providers *and* to service providers whose proposals were not accepted. Retain documentation of the notification in the Program File.

#### Procurement of Small Purchases

- Per 24 CFR §§84.44(e)(2) and 85.36(d)(1), small purchase procedures are those relatively simple and informal procurement methods for securing services (other than construction or professional services), supplies, or other property costing no more than \$100,000
  - CAs subject to additional and/or more restrictive thresholds must comply with them.
- If small purchase procedures are used, *documented* price or rate quotations must be obtained from an adequate number of qualified sources:
  - *Recommended:* obtain and evaluate a minimum of three price quotations;

- *Required:* document all price quotations obtained and retain all procurement documentation received in the Program File;
- Telephone quotations are permissible for procurement of small value items (such as office supplies, etc.). Document the following:
  - Date and time quotation was received from supplier;
  - Details of items quoted including description, brand name, model, color, size, etc.;
  - Name of person(s) providing the price quotation;
  - Actual price quoted;
  - Relevant information provided by the supplier; and
  - Signatures and dates on which CA personnel conducted and approved the procurement.

## ***PROCUREMENT OF BUILDING CONTRACTORS***

### General Procurement Requirements

- Procure Building Contractors using competitive sealed bid procedures. Bids are publicly solicited and awarded to the responsible bidder whose bid: (1) conforms with all terms and conditions of the Invitation for Bid (IFB); and (2) is the lowest in price.
- Sealed bids received must be accepted and evaluated in accordance with specified procurement procedures.
- Ensure that all Building Contractors, Subcontractors, and vendors performing work or providing materials have not been debarred from contracting with federally funded activities.
  - Retain documentation verifying the Building Contractor's eligibility status in the Project File.
- Submit the final bid for the selected Building Contractor to TDHCA with the first draw request for the project, as an attachment to the Draw Request Checklist for Construction Activities. TDHCA may request a copy of the final bid and/or contract prior to the first draw, for verification of obligation.
- The Building Contractor must provide documentation verifying he/she is covered by general liability insurance. Per 10 TAC 53.83(d), the Building Contractor may not be required to provide coverage for an amount exceeding the value of the contract. Retain a copy of liability coverage documentation in the Project File.

### Invitation for Bid (IFB)

- The CA must publish an Invitation for Bid (IFB) at least once a week for two consecutive weeks in a newspaper located in the Service Area. If no newspaper is published in the Service Area, the notice must be posted at the city hall.

- The date of the first newspaper publication (or the date of posting, if applicable) must be prior to the 14<sup>th</sup> day before the date set to publicly open the proposals.
- The deadline for receipt of bids should be no earlier than 10 days from the date of public advertisement and/or mailing dates of the IFB.
- The published IFB should include, at a minimum:
  - Addresses of properties being Rehabilitated or replaced with New Construction;
  - Specification of required Building Contractor qualifications. Requirements must not contain features that might unduly restrict or reduce competition, and may include but are not limited to:
    - Description of type and amount of experience required;
    - Any required certifications, registrations, licenses;
    - Specifications, codes, standards to which the construction is subject;
    - Requirement that Building Contractor demonstrate adequate staffing, capacity, and resources;
  - Description of construction work to be performed;
  - Time constraints for completion of required construction;
  - Description of the criteria to be used in the evaluation of bids received;
  - Opening and closing dates for the IFB;
  - Date and location at which sealed bids are to be publicly opened;
  - Instructions for responding to the IFB, including the location and date for obtaining a detailed IFB Package (see below).

#### IFB Package

Develop an IFB Package (to be provided to potential bidders) which includes the following:

- Cover letter listing the following:
  - Summary description of NSP Program activity being provided;
  - Summary of IFB requirements and scope of work;
  - Definition of conflict of interest;
- Information explaining specific bid requirements such as:
  - Building Contractor's references, including past and current clients;
  - List of federal programs previously managed by the Building Contractor;
  - Description of Building Contractor's capacity to perform the specified tasks;
  - Building Contractor's proposed time requirements for completing specified tasks;

- Building Contractor's bid amount for each property address being assisted.
- *If New Construction:* List of property address(es) being newly constructed with detailed site and building plans;
- *If Rehabilitation:* Copy of the *Work Write-Up* (excluding any cost estimates) thoroughly describing the items to be repaired and/or replaced for each property address being assisted.
- Instructions specifying identification of bid costs for each separate line item or trade category identified on the *Work Write-Up*;
- Copy of *Texas Minimum Construction Standards (TMCS) (Appendix A-3)*;
- Copy of *Texas Minimum Construction Specifications (TMC Specifications) (Appendix A-4)*;
- Copy of other applicable construction codes, standards, and specifications;
- Instructions for submitting a bid, including date, time, and address and conditions;
- Listing of required registrations, licensing, insurance, and bonding;
- Listing of other Building Contractor requirements including:
- Building Contractors submitting bids to participate in the NSP Program must certify they understand they are bidding on a federally funded, state administered construction contract.
- No contract may be awarded to any person or firm, including Building Contractors and Subcontractors, who has been debarred, suspended, proposed for debarment, or placed in ineligibility status on the Excluded Parties List by HUD, TDHCA, or any other applicable agencies.
- Building Contractors must certify all work for all Projects will meet or exceed TMCS and TMC Specifications, and any local codes, specifications, and/or standards for all properties. Additionally, any work performed for New Construction must comply with the International Residential Code.
  - All materials must be new and of good quality;
  - All work must be performed with skilled craftsmanship and accomplished with care.
- General liability insurance requirements – if not provided directly by the Building Contractor, the CA must obtain and document coverage in an amount equal to or exceeding the construction contract amount(s).
- All rehabilitation work performed by the Building Contractor must be guaranteed for a period of one year, during which the Homeowner may require correction of construction defects. Should the Building Contractor fail to make adequate repairs and/or corrections within 30 days, the CA and/or Homeowner may take any necessary legal recourse as prescribed in the construction contract(s). Upon

completion and acceptance of work performed, the Final Inspection must be completed. The one-year warranty period begins on the date of completion.

- All new construction must have a one-year workmanship and materials warranty, a two-year mechanical and delivery system warranty, a ten-year structural warranty, and a ten-year warranty of habitability.
- All requests for payment of work completed must be made in writing using the NSP Draw Request for Construction Expenses and include an attached itemized list of costs and fees being billed.
  - Payments for costs incurred are made to the CA only upon completion of work performed.
- Ten percent (10%) Retainage will be held by the CA until 30 days after the final inspection date. Retainage will not be released by TDHCA before the 31st day following construction completion.

### Bid Opening

- Do not open any sealed bids received until the designated opening date. Sealed bids received from bidders must be opened in a public place on the specified date at the specified time and recorded as they are opened.
- A CA may opt to allow electronic receipt of bids only if written rules have been adopted which ensure the identification, security, and confidentiality of electronic bids, and ensure that the electronic bids remain effectively unopened until the proper time.
- Publicly open and read aloud the names of bidders, including the stated prices included with each bid on the designated opening date at the designated location.
- No later than the 45<sup>th</sup> day after opening the bids, evaluate each bid and select a bidder.

### Bed Evaluation Committee

- Appoint individuals to serve on a bid evaluation committee. The evaluation committee has two primary roles:
  - To establish written criteria or factors to be considered for evaluating and selecting bidders; and
  - To review bids received and select the Building Contractor who offers the lowest responsible bid and provides the best value for the CA.
- Evaluation committee members must not have potential conflicts of interest with any of the individuals, firms, or agencies under review (i.e. family relationships, close friendships, and business dealings) or with any person who might potentially receive benefits from NSP-assisted activities. Evaluation committee membership must include an individual with signatory authority for approval.



- Written selection criteria should fit the needs of the specific proposed activity being conducted and must include a clear and accurate description of the technical requirements of the construction being performed.
- After bids have been publicly opened and read, the evaluation committee must conduct a thorough, uniform, and well-documented review of the bids received:
  - Contact references provided in the bid;
  - Assess the Building Contractor's level of expertise, experience, and past performance;
  - Consider the Building Contractor's ability and willingness to comply with all applicable laws and regulations;
  - Consider the Building Contractor's financial and technical resources;
  - Retain written documentation of the evaluation process in the Program File.
- Construction contracts are awarded to the lowest responsible bidder who clearly demonstrates competence, compliance with required qualifications, and fair and reasonable prices and who offers the best value for the CA.
- In evaluating bids, the evaluation committee should ensure the selected bid is:
  - *Reasonable* – bidder demonstrates he/she can accomplish the job in question;
  - *Responsible* – bidder demonstrates he/she is able to fully perform the requirements of the job and has the integrity and reliability that will assure good faith performance;
  - *Responsive* – bidder has submitted a bid that clearly responds and fully conforms to the information requested in the IFB.
- The evaluation committee must respond in writing to selected bidders *and* to bidders whose bids were not accepted. Retain documentation of the notification in the Program File.

#### Selecting a Qualified Building Contractor

- Consider the following questions when procuring a Building Contractor:
  - Is the Building Contractor debarred from contracting for state or federal funding;
  - Does the Building Contractor specialize in the type of work to be performed?
    - If not, will a specialty contractor (i.e. Subcontractor) be procured by the Building Contractor?
  - Has the Building Contractor been in business under the same name for the amount of time they claim to have been, or have they operated under several different business names?
  - Is the Building Contractor a member in good standing of Better Business Bureau and/or other construction-related organizations?

- Will the Building Contractor be able to offer flexibility with products which will result in cost-effective construction?
- Will the Building Contractor adequately supervise construction and communicate progress?
- Are the Building Contractor's employees and/or workers adequately trained in construction *and* safety?
- Does the Building Contractor clearly understand NSP regulations, loan requirements, and payment procedures?

#### Bid Variations Exceeding 15%

- Any or all bids may be rejected if there is a sound documented reason.
- If all bids received from Building Contractors vary 15% or more from the CA's previously prepared cost estimate, the CA must determine whether the cost estimate or the bids received are more reasonable.
  - Bids are too low:
    - Do bids received sufficiently address all the housing deficiency items listed in the CA's cost estimate? If so, is such deletion prudent?
    - Are products provided in the Building Contractors' bids of sufficient quality and workmanship to comply with local, state, and federal standards?
  - Bids are too high:
    - Do bids received include additional items not addressed by the CA's Cost Estimate? If so, are such additional items necessary?
    - Are products provided in the Building Contractors' bids of quality and workmanship which exceed required standards? If so, is the additional cost justified?
- Additional considerations:
  - Will a reduction in the scope of work help to lower costs while still meeting the applicable property codes, standards, and specifications?
  - Should the Cost Estimate be revised based upon inclusions/exclusions provided in the bids received and/or additional information that may have been provided by the Building Contractors?
  - Will a change in the materials or techniques to be used reduce costs without compromising quality or the required standards?
  - Should other bids be obtained?

#### Procurement of MHU's

- When procuring a single MHU, it is permissible to use Small Purchase procurement procedures by obtaining documented price quotations from several licensed MHU vendors *unless more stringent procurement requirements are applicable.*

- When procuring multiple MHUs at one time, and the total price exceeds \$100,000, then the sealed bid procurement procedure is required.
  - Reminder: The CA may also be subject to more restrictive state and local procurement requirements.
- Ensure that each MHU purchased complies with all state and federal safety and manufacturing requirements and that it will meet the needs of the assisted household.
- Documented price quotations and/or sealed bids must specify the following for *each* unit being purchased:
  - Manufacturer;
  - Certification that the MHU is new;
  - Certification that the MHU is a *manufactured* housing unit (not a modular housing unit);
  - Model number or name;
  - Unit size;
  - Number of bedrooms and bathrooms per MHU;
  - Appliances;
  - Demolition and removal of old MHU or, if applicable, site-built structure;
  - Permanent installation of new MHU, including provision for under-pinning (skirting) and compliance with TDHCA Manufactured Housing requirements;
  - Any additional site work being provided by the MHU vendor including:
    - Septic system;
    - Steps and rails
    - Accessibility features, if applicable;
- If additional site work is required which will not be provided by the MHU vendor, provide a separate signed work contract from the Subcontractor detailing the type of service(s) being provided and specifying applicable costs.

## **Chapter 6. ENVIRONMENTAL CLEARANCE**

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- The National Environmental Policy Act (NEPA) of 1969 was enacted by Congress to ensure that federal agencies consider and address all environmental impacts resulting from the activities and Projects they sponsor. All Federal entities were required to develop their own set of regulations to implement NEPA. HUD's regulations can be found at 24 CFR Part 58.
- As an Agency that has elected to administer a HUD program, TDHCA must ensure the program complies with HUD's environmental provisions.
- It is critical that the CA understands that conducting all applicable environmental review procedures including site specifics (if applicable) and obtaining written notice of environmental clearance is *mandatory* and must be completed BEFORE:
  - Committing or expending funds for contracts, loan closings and any type of acquisition, demolition, new construction including reconstruction, or rehabilitation; (this also applies to all leveraged funds); or
  - Taking physical action on a site.
- All federally funded activities require an environmental review and an environmental review record to be maintained
- Multi-family activities also require a Phase 1 ESA.

### ***TDHCA's ROLES***

#### CA's Organizational Status

- The CA's organizational status determines TDHCA's role in authorizing environmental clearance.
  - **Cities and Counties** – act in the capacity of **Responsible Entities (REs)**. REs accept the jurisdiction of the courts and are responsible for complying with all required environmental clearance procedures. They also must submit the Request for Release of Funds Package to TDHCA. **TDHCA, acting as HUD**, reviews and authorizes the documents and issues the Authority to Use Grant Funds.
  - **All other entities:** non-profit organizations, for-profit organizations, council's of government, public housing authorities – may not act in the capacity of REs. These entities must still conduct all required environmental clearance procedures and submit the complete environmental review record including checklists and all applicable support documentation to TDHCA. **TDHCA acting as the Responsible Entity** then reviews, signs and forwards the Request for Release of Funds package to HUD. HUD reviews and issues the Authority to Use Grant Funds.

### Certification of Exemption

- It is important to understand that the Certification of Exemption for HUD Funded Projects (24 CFR §58.34(a)) provides environmental clearance limited to and applicable to only the following administrative activities:
  - Environmental and other studies, resource identification, and the development of plans and strategies;
  - Information and financial services;
  - Administrative and management activities;
  - Public services that will not have a physical impact or result in any physical changes;
  - Inspection and testing of properties for hazards or defects;
  - Purchase of insurance and tools;
  - Engineering or design costs;
  - Technical assistance and training;
  - Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters, imminent threats, or physical deterioration;
  - Payment of principal and interest on loans made or obligations guaranteed by HUD.
  - Any of the Categorical Exclusions listed in §58.35(a) provided there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5
- Before a Project may be Setup or funds may be committed or expended, the CA must conduct the applicable environmental review procedures including, if tiering, the site-specific review and obtain written clearance from TDHCA.

**FOR FURTHER INFORMATION.** For additional environmental information, refer to the following websites:

<http://www.tdhca.state.tx.us/program-services/environmental/index.htm>  
<http://portal.hud.gov/portal/page/portal/HUD/topics/environment>

## **Chapter 7. OTHER FEDERAL REGULATIONS**

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In addition to being subject to the obligations specified in the NSP Contract and in state regulations, the CA is subject to the applicable federal regulations including, but not limited to:

- Fair housing;
- Limited English Proficiency Policy
- Affirmative marketing;
- Accessibility;
- Lead-based paint;
- Relocation and displacement;
- Labor standards.

### ***EQUAL OPPORTUNITY REGULATIONS***

- Federal regulations applicable to the NSP Program regarding equal opportunity (fair housing and affirmative marketing) include, but are not limited to:
  - Title VI, Civil Rights Act of 1964 (42 U.S.C. §§200d et seq.) – defines and prohibits discrimination based on race, color, or national origin. Its protections were greatly expanded by subsequent legislation.
  - Fair Housing Act (42 U.S.C. §§3601 – 3620) – prevents discrimination in rental and ownership housing and prohibits all forms of discrimination in public and private housing markets based on race, color, sex, religion, national origin, disability, or familial status.
  - Age Discrimination Act of 1975 (42 U.S.C. §6101) – prohibits discrimination based on age in programs or activities receiving federal financial assistance, including NSP-funded housing. Note: the Fair Housing Act does define circumstances in which a developer can lawfully develop rental housing exclusively for elderly residents.
  - Equal Opportunity in Housing (Executive Order 11063) – charges federal housing agencies with the responsibility of enforcing non-discrimination laws, and empowers HUD to carry out all actions necessary to prevent discrimination in housing.
  - Equal Employment Opportunity (Executive Order 15246) - prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin. Provisions to implement this prohibition must be included in all construction contracts exceeding \$10,000.
  - Section 3, Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) - provides for training and employment opportunities, to the extent possible, to lower-

income residents of the project area and to provide contracts associated with federally funded projects to businesses located in the project area or to businesses owned, in substantial part, by residents of the project area. The project area is defined as the entire city or county in which the project is located.

- Limited English Proficiency Plan which provides access to federal programs for non-English speakers as outlined in the Final Guidance published in the Federal Register, Volume 72, Number 13, page 2731  
<http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf>  
 For more information see <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>

***FAIR HOUSING***

- Fair housing regulations prohibit discrimination in housing based upon race, color, religion, sex, age, national origin, familial status, or disability. Further information regarding Fair Housing requirements may be accessed on HUD’s website <http://www.hud.gov/offices/fheo/FHLaws/index.cfm>
- Develop and adopt written a fair housing plan which ensures the CA will conduct methods for carrying out applicable federal requirements including:
  - Complying with federal laws, executive orders, and regulations;
  - Maintaining records documenting compliance with fair housing procedures;
  - Accommodating persons with Special Needs whenever possible.
  - Establishing fair housing enforcement procedures and/or organizations;
  - Marketing to persons less likely to apply for NSP assistance;

***Example: State and Federally Protected Fair Housing Rights***

<b>FAIR HOUSING GUARANTEE</b>	<b>STATE and FEDERAL LAW PROHIBITS</b>
Opportunity to participate	<ul style="list-style-type: none"> <li>• Prohibits denying a qualified individual the opportunity to participate in, or benefit from, federally funded housing, aid, benefit, or service.</li> </ul>
Equality of benefits	<ul style="list-style-type: none"> <li>• Prohibits failure or refusal to provide a qualified individual the opportunity for equal participation and benefits.</li> </ul>
Equality of opportunity	<ul style="list-style-type: none"> <li>• Prohibits failure or refusal to permit a qualified individual to participate in a program or service that provides equal opportunities and benefits.</li> </ul>

<b>FAIR HOUSING GUARANTEE</b>	<b>STATE and FEDERAL LAW PROHIBITS</b>
No assistance may be provided to entities that discriminate	<ul style="list-style-type: none"> <li>Prohibits federal agencies from providing significant assistance to an agency, organization, or person that discriminates on the basis of race, color, sex, religion, national origin, age, familial status, or disability in any aspect of a federally assisted activity.</li> </ul>
Opportunity to serve on boards	<ul style="list-style-type: none"> <li>Prohibits denying a qualified individual the opportunity to participate as a member of planning or advisory boards.</li> </ul>
No denial of right to a dwelling	<ul style="list-style-type: none"> <li>Prohibits denying a dwelling to an otherwise qualified buyer or renter because of a disability</li> </ul>
No discriminatory limitation of benefits	<ul style="list-style-type: none"> <li>Prohibits limiting in any manner a qualified individual in the enjoyment of any right, privilege, advantage, or opportunity afforded to others</li> </ul>
Most integrated setting appropriate	<ul style="list-style-type: none"> <li>Prohibits providing programs or services to qualified individuals in settings that are unnecessarily separate or segregated</li> </ul>

### ***AFFIRMATIVE MARKETING REQUIREMENTS***

- NSP CAs are required to conduct affirmative marketing to ensure that individuals who may be eligible to receive NSP funding but who are less likely to apply for housing assistance are aware of available affording housing opportunities.
- Affirmative marketing must be conducted in a non-discriminatory manner without regard to race, color, national origin, age, religion, sex, disability, or familial status.
- Develop and adopt a written affirmative marketing plan specifying the methods and procedures to be used for informing potential NSP Program participants who are not likely to have knowledge of or apply for the available housing assistance. The affirmative marketing plan should include the following:
  - Methods to be used to inform the general public that NSP funds are available to eligible Households
  - Statement regarding use and display of the federal equal housing opportunity logo which must be included in advertising materials. The equal housing opportunity logo is available online at:  
<http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm>
  - Description *specifying* procedures to be undertaken to inform persons who are not likely to apply without special outreach efforts;



- Description of the records that will be used to document actions taken to affirmatively market NSP-assisted units;
- Description of how affirmative marketing actions will be evaluated for effectiveness and periodically re-assessed;
- Description of corrective action(s) to be taken when requirements are not met;
- Examples of affirmative marketing efforts include:
  - Communicating the equal housing opportunity message in outreach to the community by inserting the logo and slogan into written outreach tools, press releases, newsletters, brochures, advertisements, direct mailings, IFBs, RFPs, and advertising;
  - Identifying populations within the Service Area that are least likely to apply for housing assistance and tailoring advertising efforts to reach them;
  - Distributing marketing materials to area social service agencies who work with minorities, disabled individuals, or protected groups;
  - Use of commercial media including:
    - Newspapers and publications;
    - Radio;
    - Television;
    - Billboards.
    - Publication of brochures, leaflets, and handouts;
  - Make advertising and printed materials available in non-English languages spoken by minority groups residing in or near the Service Area;
  - Speaking to and otherwise informing community leaders and organizations, housing owners, social service agencies, public and/or non-profit groups, lenders, realty groups, and other interested parties through both formal and informal meetings.
  - Include information regarding dates and times to apply for NSP Program assistance (see Chapter 8 – Application Intake and Determining Eligibility).

For multifamily projects, HUD Form 935.2a, Form 935.2a (<http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf>) is strongly encouraged to be used to assist in creating an Affirmative Marketing Plan.

## ***ACCESSIBILITY***

### Accessibility Regulations

- In addition to the federal equal opportunity regulations for fair housing and affirmative marketing (provided above), the following accessibility requirements are also applicable to the NSP Program:
  - *Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8)* – prohibits discrimination against Persons with Disabilities in any program receiving federal

funds and governs the design and construction of housing to ensure inclusion of accessibility features to disabled persons.

- *Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C §§155, 201, 218, and 225)* – prohibits discrimination against Persons with Disabilities in all programs and activities sponsored by state and local governments and gives HUD jurisdiction over discrimination against people with disabilities as it pertains to housing programs.
- *Architectural Barriers Act of 1968 (42 U.S.C. §4151)* – requires that public buildings (i.e., those intended to be accessible to the general public) and conveyances financed with federal funds must be designed, constructed, or altered to provide accessibility to the physically handicapped.
- *Fair Housing Act* Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended – requires that new multi-family buildings must be designed and constructed to have fully-accessible common areas. These buildings must also incorporate basic adaptive features and ground floor and elevator-accessible dwelling units to allow for use by people with disabilities. In addition to these requirements, when housing is created using federal funding, at least 5% of a project’s dwellings must be fully accessible to people with mobility impairments, and an additional 2% must be accessible to people with vision and hearing impairments.  
(<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/summitfheofacts.doc>)
- *Texas Government Code §2306.514* - requires that any *newly constructed* single-family residence built using NSP funds must, upon completion, meet specific accessibility requirements.
- HUD *encourages* the incorporation of accessible design and construction features into all housing developed with NSP funds in order to provide “visitability.” Housing that is “visitable” includes: (1) 32-inch clear openings in all interior and bathroom doorways; and (2) at least one accessible means of entry into the NSP. By adopting these visitability standards the CA increases the ability of mobility-impaired persons to visit others with independence.

#### Lead-based Paint

- Federal lead-based paint regulations specify five requirements for properly addressing lead-based paint:
  - Notification;
  - Lead hazard evaluation;
  - Lead hazard reduction;
  - Ongoing maintenance; and
  - Response to children with environmental intervention blood lead level (EIBLL).

- Any housing unit built before 1978 must be inspected for hazards associated with the presence of lead-based paint. If the assisted housing unit was built after January 1, 1978, TDHCA will not reimburse or expenses for lead-based paint testing, risk assessment, or any other type of testing related to lead-based paint.
- EPA requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes, child care facilities and schools be certified by EPA and that they use certified renovators who are trained by EPA-approved training providers to follow lead-safe work practices. Individuals can become certified renovators by taking an eight-hour training course from an EPA-approved training provider.
- Retain documentation in the Project File verifying:
  - Required notifications were provided to all applicants, including:
    - *Protect Your Family from Lead in Your Home*
      - Federal law requires that this HUD pamphlet, which provides information about the hazards of lead-based paint, be provided to persons buying, renting, or renovating a Home.
    - *Receipt of Lead-Based Paint Notification*
      - Provides a receipt verifying the Household received the required informational materials pertaining to lead-based paint.
    - *Lead Safe Housing Requirements Screening Worksheet*
      - Federal law requires that this form be retained in every Project File for projects which include federal funds.
    - *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*
      - <http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf>
  - Lead reduction work (if required) was completed; and
  - Clearance (if required) was obtained.
- For more information on lead-based paint requirements, contact:
  - HUD's Office of Lead Hazard Control provides information online at: <http://www.hud.gov/offices/lead>
  - The National Lead Information Center can be reached at 1-800-424-LEAD, or online at: <http://www.epa.gov/lead>
  - HUD sponsored training: HUD offers Lead-Safe Work training to Building Contractors and accredited lead abatement workers. There is no cost associated with these trainings. Information is available online at: [www.hud.gov/offices/lead/training/index.cfm](http://www.hud.gov/offices/lead/training/index.cfm)

- Texas Department of Health Toxic Substance Control Division, Environmental Lead Branch at (512) 834-6612, 1-888-778-9440 available online at:

<http://www.dshs.state.tx.us/>

#### Relocation

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), and its implementing regulations, 49 CFR Part 24, require relocation assistance where acquisition has occurred. The Uniform Act was expanded in 1987 to cover displacement of individuals resulting from Rehabilitation, demolition, or private acquisition carried out under a federally-assisted Project or program regardless of the tenant's income.
- Section 104(d) of the Housing and Community Development Act ("The Barney Frank Amendments") and HUD's Residential Anti-Displacement and Relocation Assistance Plan include additional relocation requirements for displaced persons whose income is at or below 80% of AMI. This extra level of relocation protection may be triggered for low-income Households when units are converted or demolished with Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), or HOME funds.
- This section relates only to residential relocation. If the Project involves non-residential (commercial/industrial) relocation, which is more complex than residential relocation, contact TDHCA for guidance.

#### Relocation Plan

- A Relocation Plan is required for all federal and federally-assisted programs or Projects. The Relocation Plan, which must address problems associated with displacement, must be included with the NSP application for funding, and must include the following:
  - Nature of the displacing activity;
  - Evaluation of program resources available to carry out Relocation;
  - Relocation budget, which must be adequately supported for the purposes of reimbursement;
  - Relocation survey or study, which must include:
    - Estimates of the number of displaced persons/Households;
    - Estimates of the number of comparable replacement units; and
    - Suitable locations that are affordable, decent, safe, and sanitary;
  - The Relocation Plan must address:
    - Determining eligibility of tenants;
    - Relocating eligible tenants as quickly as possible;
  - Developing payment plans;

- Counseling services;
- Grievance procedures; and
- Operating procedures.
- Relocation records must be maintained and accessible for review by TDHCA.

### Coordination of Services

Ensure that all reasonable steps are taken to minimize displacement as a result of a Project. At an early stage, consult with the occupants of the site to be acquired, Rehabilitated, or demolished. Tenant participation in the design of a Project will usually facilitate a smooth Relocation process. Public meetings to encourage involvement of tenants should be held in a meeting room that accommodates all audiences regardless of disability.

### Displacement

- Displacement occurs when a “Person” (defined as a family, individual, business, farm, or nonprofit organization) permanently moves from the real property as a direct result of federally assisted acquisition, demolition or Rehabilitation. The Person may also be considered displaced if the necessary notices are not provided in a timely manner and the displaced Person moves for any reason.
- Persons not considered displaced include:
  - Those who were evicted for cause, but not if the eviction is taking place to avoid paying relocation costs;
  - Those who have no legal right to occupy the property;
  - Those occupying the property for the purpose of obtaining relocation benefits;
  - Those who before leasing or occupancy but after application, receive written notification of the possibility that displacement or an increase in rent will occur and that relocation assistance will not be provided;
  - Those who retain the right of use and occupancy of the property following acquisition (e.g. life estates);
  - Those who after being fully informed of their legal rights, waive them; or
  - When the Development Owner and TDHCA decide (and HUD agrees in writing) that there was no displacement as a direct result of the Project.

### Levels of Relocation Assistance

- All Persons displaced by Rehabilitation, demolition, or private acquisition associated with federal money are eligible for reimbursement of moving expenses. Actual moving expenses can be reimbursed or a schedule provided by the U.S. Department of Transportation can be used, which is available online at:

[www.fhwa.dot.gov/realestate/](http://www.fhwa.dot.gov/realestate/).

- Tenants who have occupied the unit for 90 days prior to the “initiation of negotiations” are eligible for a different level of housing payment, provided that they move to an affordable, decent, safe, and sanitary unit within one year and file a claim within 18 months after the move. The “initiation of negotiations” is defined as the date on which the Development Owner applies for NSP funds.
- Tenants who have occupied the unit less than 90 days prior to the initiation of the negotiations are also eligible for a replacement housing payment, provided that they move to an affordable, decent, safe, and sanitary unit within one year and file a claim within 18 months after the move.
- The formula for calculating this replacement housing payment differs from the formula for Households who occupied the property for at least 90 days. In order to calculate down payment assistance or rental assistance to the displaced Person, use the Claim for Rental Assistance or Down Payment Assistance (HUD Form 40058).

#### Notification Requirements

- Provide notices to all current and potential tenants who will be displaced informing the displaced tenant of his/her eligibility for relocation assistance and the type of assistance available. If a tenant will not be displaced, he/she must receive the conditions and terms under which they can occupy the property after completion of the Project.
- A summary of the required notices is presented below. Refer to *HUD Handbook 1378, Relocation Assistance to Tenants Displaced from Their Homes* for detailed information regarding the timing and content of all required notices, available online at:  
<http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>.
- The *General Information Notice (GIN)* informs the tenant of the property that a Rehabilitation Project is proposed, cautions the occupant *not to move* prematurely, and advises him/her of his/her rights under the law. GIN notices must be provided to occupants when the Applicant submits an application for NSP funding to TDHCA. To proceed with NSP funds, the Applicant must have already made this notification.
- Most of the GIN requirements can be met by issuing the Household an appropriate HUD notice from *HUD Handbook 1378, Relocation Assistance to Tenants Displaced from Their Homes*.
- A *Move-in Notice* must be given to potential occupants of a property before they become tenants. If the potential occupant moves into the property, he/she may be displaced or receive a rent increase and will not be entitled to relocation assistance.
- The Temporary Relocation Notice states that a Household will be temporarily relocated and specifies the conditions of the temporary move.
- The Notice of Eligibility informs the Household of its eligibility for relocation assistance, and describes the assistance and procedures for obtaining assistance.

- The 90-Day Notice must either:
  - State the specific date by which the property must be vacated; or
  - Specify the earliest date by which the occupant may be required to move, and indicate that the occupant will receive a vacate notice at least 30 days in advance of the specific date by which he/she must move.
- Notices served, whether for temporary or permanent relocation, must be sent by certified or registered first-class mail, with returned receipt requested. Notices may also be personally served. Evidence of delivery to every affected Person must be documented.
- *Important Note: Failure to issue appropriate notices in a timely fashion may result in relocation payments made where they would otherwise not have been required.*

### Preparing for Relocation

- Follow a timeline when implementing relocation activities. The timeline must be written in a language that is understandable to the tenants and applicants. If English is not the primary language of the tenant or applicant, appropriate foreign language translations must be made available.
- Interview tenants and applicants to determine their needs for relocation assistance. During this interview, explain the relocation process to the tenants and applicants and ensure that they understand. Give special attention to:
  - Assistance to be provided;
  - Benefits available;
  - Replacement housing payments cannot be made unless the Household relocates into a standard unit;
  - The importance of keeping in touch with the Development Owner; and
  - The need to notify the Development Owner before moving.
- Develop a record of relocation which includes a tracking methodology for monitoring purposes.
- Determine the tenant's replacement-housing needs. All comparable units must be affordable, decent, safe, and sanitary, as defined in the regulations.
- Develop a referral list of available housing which meets the tenant's identified needs.
- Units included in the referral list must be inspected to ensure that all applicable codes and standards are met.
- Make a list of comparable affordable replacement housing available in areas that do not have concentrations of either low-income or minority Households. If such opportunities are available, the units should be located in a low-concentration area.
- If the tenant is able to continue residing in the building or in a nearby building located on the same site, he/she must be sent a Notice of Non Displacement at the initiation

of negotiations. This notice is also available in HUD Handbook 1378, Relocation Assistance to Tenants Displaced from Their Homes.

- Provide assistance in securing suitable units. The process of finding suitable housing will involve continuous contact with tenants to solicit information, establish rapport, provide referrals to housing resources, accompany tenants to inspect possible dwellings, and keep up-to-date information on the availability, prices, and rentals of comparable sales and rental housing.
- Retain up-to-date information on the availability, prices, and rentals of comparable sales and rental housing.
- Inspect all units and certify that those eligible units meet code requirements before being placed on a referral list.
- If the Development Owner has made a reasonable choice of suitable replacement housing opportunities available to the tenant or applicant, issue the 90-Day Notice to Vacate. The date on which the property must be vacated cannot be less than 30 days after the Development Owner has obtained title to the property or legal right of possession, whichever is earlier.
- If relocation has not been completed within six months of the date of issuance of the Notice of Eligibility, document the reason for the delay and the plan for timely completion.
- If the relocation involves inhabitants of manufactured housing, follow the procedures in 49 CFR Part 24 pertaining to occupants of manufactured housing.

#### Eligible Costs for Moving and Related Expenses

All displaced Persons/Households are eligible for reimbursement of moving costs and may choose to receive either **fixed** moving expenses or **actual** moving and related expenses.

#### Fixed Moving Expense

- Fixed moving expense is based upon the number of rooms in the residence. Any person displaced from a dwelling unit/residence is entitled to receive a fixed expense as an alternative to a payment for actual moving and related expenses. This allowance is determined according to the applicable schedule approved by the U.S. Department of Transportation Schedule located online at:  
<http://www.fhwa.dot.gov/realestate/flxsch96.htm>.
- A person who is displaced from permanent residence with occupants of a dwelling with congregate sleeping space that is ordinarily utilized by three or more unrelated Persons is also entitled to receive moving expenses.
- A displaced “homeless” Person (such as an occupant of an emergency overnight shelter) is not considered to have been displaced from a dwelling of permanent residence and, therefore, is not entitled to a fixed moving expense or dislocation



allowance. Such a Person may however, be eligible for a payment for actual moving expenses.

#### Actual Moving and Related Expense

- Any displaced tenant/Person is entitled to payment of his/her actual moving and related expenses, as the Development Owner determines to be reasonable and necessary. These costs must be supported by proper documentation. Examples of eligible expenses are as follows:
- Transportation: Transportation of the displaced Person and personal property. This may include reimbursement at the current mileage rate for personally owned vehicles that need to be moved. Transportation costs for a distance 50 miles are not eligible unless the Development Owner determines that relocation beyond 50 miles is justified.
- Personal Property: Packing, unpacking, crating, and uncrating of personal property.
- Storage: Storage of personal property for a period not to exceed 12 months unless the Development Owner determines that additional time is necessary.
- Appliances: Disconnecting, dismantling, removing, reassembling, and reinstalling relocated Household appliances and other personal property, including furniture.
- Utilities: Disconnection of utilities and reinstallation of utilities, telephone, and cable services.
- Credit Checks/Application Fees/Security Deposits: These fees are eligible expenses when the displaced tenant/Person applies for a rental housing unit.
- Insurance: Insurance coverage for the replacement value of the property in connection with the move and necessary storage. The replacement of value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced Person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Other moving-related expenses determined by the Development Owner to be reasonable and necessary.
- The following are examples of ineligible costs:
  - Interest on a Loan to cover moving expenses;
  - Personal injury;
  - Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Development Owner;
  - The cost of moving any structure or other real property improvement in which the displaced Person reserved ownership;
  - Costs for storage of personal property on real property owned or leased by the displaced Person before the initiation of negotiations.

### Replacement Housing Expense

- A tenant or owner-occupant who has occupied the property for 90 days or more is eligible for replacement housing expenses. This assistance is determined based upon comparison of rent/utilities and base monthly rent for comparable homes and the current home.
- Tenants and applicants must receive their replacement housing payments in installments.
- A tenant who relocates to an ownership unit is eligible for down payment assistance, which must be applied to the purchase price of the replacement dwelling and related incidental expenses. Down payment assistance for a renter who wishes to become a homeowner is calculated in the same manner as his/her renter assistance payment except that there is no provision for the new unit actually selected by the Household. The down payment assistance must be paid in lump sum.
- Some tenants and applicants will not wait to locate comparable units. If the Household moves after initiation of negotiations, but before it has been offered an affordable, decent, safe, and sanitary comparable unit, determine whether the unit selected by the tenant is standard.
- If the selected unit would be considered standard, make the replacement housing payment based upon that rent/utility level, regardless of how expensive or large the unit. Thus, it is in the Development Owner's best interest to deliver the Notice of Eligibility and offer a comparable unit immediately after initiation of negotiations. If the selected unit would not be considered standard, the Development Owner cannot make a replacement housing payment, although moving expenses are still allowed. The Development Owner must (1) offer the Household a comparable unit and inform the Household that it must move to a standard unit to receive the replacement housing payment, or (2) opt to Rehabilitate the Household's current unit to bring it up to applicable codes and standards.
- Payments for down payment must be applied to the purchase of a replacement dwelling and related incidental expenses.
- The Development Owner may not question the tenant's use(s) of the payment as long as the Household initially occupies a standard unit.
- *Important Note:* Relocation payments are not considered as income. Per 49 CFR §24.08, no relocation payment received by a displaced Person shall be considered as income for the purposes of the Internal Revenue Code or for the purpose of determining the eligibility or the extent of eligibility of the Person for assistance under the Social Security Act or any other federal law, except for a federal *law providing low-income housing assistance*.

### Denial of Claims

- Claims may be denied for any of the following reasons:
  - The unit is substandard;

- The move was not completed within one year of the date of removal from the acquired dwelling or the date of receipt of final payment (if owner-occupant), whichever is later; or
- The claim was not submitted within 18 months of the move.
- If the claim will be denied because the replacement unit is not free of lead base paint:
  - Make every effort to satisfy the lead-based paint poisoning prevention requirement; and
  - Notify the NSP Program Specialist 15 days in advance of the denial and indicate the efforts it made to secure compliance with the requirement.
  - *Important Note: Denial of a claim on this basis is unwise unless extraordinary efforts were made and failed.*
- When a claim for payment must be denied:
  - Inform the claimant in writing of the reason for denial;
  - Indicate what assistance is available to bring the current unit up to applicable codes and standards (in the case of a substandard unit);
  - Indicate the ongoing opportunity to qualify for assistance by moving into a standard unit (if the case of moving to a substandard unit is the reason for denying the claim);
  - Fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment, if possible; and
  - Fully document its initial notification and all later reminders of the requirement to submit the claim within 18 months of the move (if this is the reason for denying the claim).

### Rent Burden

- Occupants who move because their rent went up, and they could not be offered an affordable, decent, safe, and sanitary unit within the Project, are "rent-burdened" and are due the same relocation considerations as an occupant who is physically displaced.
- Rent burden is classified as an economic displacement if a tenant's rent increases as a result of a federally assisted activity and the rent is more than the tenant can afford.
- Rent burden is the lesser of 30% of the tenant's average monthly gross income, or the monthly rent and estimated average utility costs of the displacement dwelling or the welfare rent (as paid welfare localities only). Use HUD Form 40058 to determine the appropriate rent burden.
- Tenant Based Rental Assistance funds may be used to prevent rent burden and economic displacement.

### Section 104(d), Barney Frank Considerations

- If CDBG, UDAG, or HOME funds are used as a part of the total Project cost, §104(d) of HUD's Anti-Displacement Plan may apply to the Project.
- A different rent formula is used to determine benefits if a low-income Household who was displaced as a result of demolition and/or conversion. The level of assistance is calculated by subtracting the Total Tenant Payment (TTP) calculation of the Household from the lesser of the comparable rent or the rent of the unit selected by the Household. This figure is then multiplied by 60.
- Section 104(d) benefits for moving are similar to URA, except, that 104(d) allows a benefit for payment of a security deposit.
- Section 104(d) of the Anti-Displacement Plan applies to displaced low-income Households and requires one-for-one replacement of occupiable "low-moderate income dwelling units," including units in substandard condition which are "suitable for Rehabilitation," demolished or converted to other use (including change in the number of bedrooms). NSP modifies the one-for-one replacement requirement, if the contemplated project will demolish or convert "low-moderate income dwelling units" contact TDHCA for additional guidance.
  - "Suitable for Rehabilitation" may be defined by the Development Owner, but includes units in any condition that have been occupied within a one year period (except by a squatter) preceding the executed contract date.
  - It may take up to three years from the time of demolition or conversion to replace the affected units. The replacement units must be designed to remain at or below the Section 8 rent limits for ten years. In some cases, newly Rehabilitated vacant units may count as replacement units.

### Grievance Process

- Adopt a grievance procedure that outlines an appeals process, which includes:
  - The grounds for filing an appeal;
  - To whom appeals should be filed;
  - Appropriate time limits; and
  - The displaced Person's right of appeal to the state, if the complaint cannot be satisfactorily resolved.
- When carrying out relocation activities, submit a report, if applicable, to the NSP Program Specialist. The report must define the relocation displacement activities that have occurred within, or as they relate to, the NSP Contract period at the time of contract completion.
- The full scope of Tenant Assistance Relocation and Real Property Acquisition requirements can best be understood by a careful review of the entire HUD Handbook 1378. The HUD Handbook 1378, including all revisions and updates, will take precedence over any requirements described in this section.

Requirement for NSP Acquisitions

- URA Voluntary Acquisition Letters.  
<http://168.39.88.72/nsp/docs/NPSNoEminent.pdf>  
<http://www.tdhca.state.tx.us/nsp/docs/NSPWithEminent.pdf>

Protecting Tenants at Foreclosure Act of 2009

- The CA must comply with the Protecting Tenants at Foreclosure Act of 2009 “PTFA” Pub.L No. 111-22, tit.VII, §§701-704 (2009) in all NSP acquisitions.
- CA efforts to ensure that the initial successor in interest (ISII) in foreclosed upon residential real property has provided bona fide tenants with the notice and other protections outlined in PTFA must be documented in order for the property to be eligible for NSP financing.
- If the initial successor in interest failed to comply with applicable requirements, the property will not be eligible for NSP financing unless the CA assumes the obligations of such initial successor in interest with respect to bona fide tenants. If the subgrantee elects to assume such obligations, it may only do so if the tenant is still occupying the property and will provide any tenant displaced as a result of the NSP funded acquisition with the assistance outlined in 24 CFR §570.606.
- If the CA knows that the ISII did not comply with the NSP tenant protection requirements and vacated the property contrary to the NSP requirements, NSP funds cannot be used to acquire such properties.
- For more information see  
[http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/tenant\\_protections\\_guidance\\_090909.pdf](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/tenant_protections_guidance_090909.pdf)

**RECOVERY ACT PROVISIONS**

<b>Summary Of NSP Tenant Protection Requirements Under The Recovery Act</b>		
<b>PERSONS AFFECTED</b>	Any <i>bona fide</i> tenant occupying certain residential property under a lease in effect on or before the date of notice of foreclosure.	Any <i>bona fide</i> tenant occupying certain residential property without a lease or with a lease terminable at will under state law at the time of foreclosure
<b>IMPLICATIONS</b>	Initial successor in interest (ISII) (see key terms) must allow such tenants to remain to end of the lease term* and provide a minimum 90 days notice to vacate. These periods may overlap but cannot be less than 90 days.	ISII (see key terms) must provide such tenants a minimum 90 days notice to vacate.

<b>EXCEPTION</b>	*An ISII selling the property to a person occupying the home as the primary place of residence MAY terminate the lease, but MUST allow at least 90 days to vacate.
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*Please note:* the Recovery Act tenant protection requirements do not preempt any federal, tribal, state or local law that provides greater protections for tenants, including, but not limited to the Protecting Tenants at Foreclosure Act of 2009 (PTFA) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

#### Labor Standards

- As applicable, Davis Bacon Wage and Labor Standards and reporting requirements will apply to NSP projects. For more information see <http://www.hud.gov/offices/olr/index.cfm>

## Chapter 8. HOMEBUYER APPLICATION INTAKE AND ELIGIBILITY DETERMINATION

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*In addition to determining Applicant Eligibility as described in Chapter 8 of the Manual, CA's must assure that Homebuyers meet the Loan Qualification requirements in Chapter 12, Loans and Loan Closing*

### APPLICATION INTAKE PROCESS

#### Planning the Application Intake Process

- Begin the application intake process by conducting affirmative marketing (see Chapter 7 Other Federal Regulations) which provides information regarding the following:
  - *Location* – Determine where and how applications will be accepted. Special accommodations may be required for elderly and/or disabled applicants who are unable to reach the application site or for applicants who rely on public transportation.
  - *Timing* – Decide whether applications will be accepted on a continuing basis, only at specific times, or for a limited period of time. Applicants must be given a reasonable time frame in which to complete the application and return the required Support Documents. All interested parties must be given the opportunity to complete an application.
- Develop written policies and detailed procedures for a *Selection Plan* (to be retained in the Program File) – must include a comprehensive explanation of methods and procedures as follows:
  - Conduct the application intake interview and gather required Support Documentation (see “Forms Required for Application Process” and “Information and Documentation Provided to all Applicants” below).
  - Prioritize eligible applicants – examples include:
    - *Date of Receipt* - Applications are processed in the order in which they are received (i.e. first come-first served);
      - Names of applicants not receiving assistance under the current NSP Contract are added to a Waiting List, pending availability of future funding.
    - *Scoring and Ranking* - Applications are scored and ranked based upon pre-determined weighting criteria, as detailed in the written Selection Plan (see above);

- A limited time period for accepting applications is established and all applications are held until the stated deadline passes.
  - Applications are then reviewed and scored, and assistance is awarded to highest scoring applicants until available funding is exhausted;
  - Names of lower-scoring applicants may be added to a Waiting List.
- Create and use a Waiting List - the CA must determine the sources from which applications for assistance will be obtained. Applicant names may be obtained from:
    - New applications received; or
    - Prior Contract Waiting Lists – may be used only if a prior similar housing assistance program was affirmatively marketed to residents of the Service Area within the past two years.
      - New *Intake Applications* must be obtained and current eligibility determined for applicants selected from any Waiting List.
      - Documentation of the previous affirmative marketing efforts must be retained in the current Program File; or
      - All information required to determine where a Household is to be placed on the Waiting List must be recorded on the *Intake Application*). Place the applicant’s name on the Waiting List in accordance with the established method of prioritization.

Forms Required for Application Intake

- Whenever possible, ensure that the *Intake Application* is completed *by the applicant* (see “Information and Documentation Provided to all Applicants” below).
- The *Intake Application* and its associated application forms may be completed on site, or issued to the applicant to be completed and returned to the CA at a later time along with appropriate Support Documentation.
- Upon receipt of all completed application forms and appropriate Support Documentation, ensure that an original of each required form is signed by all applicable parties and retained in the Project File.
- Record on the completed *Intake Application* the date and time on which the application forms and Support Documentation were received.

**A consultant cannot sign a NSP document or form in any capacity other than “preparer.”**

**A consultant’s signature does not represent the CA’s authorization, approval, or certification.**



### Information and Documentation Provided to all Applicants

- Ensure that each of the following application forms are thoroughly explained to the applicant and that copies of each have been provided to the applicant:
  - *Intake Application*
    - The *applicant* himself/herself must complete the *Intake Application*. If the applicant is unable to complete the application him/herself, it is permissible for a relative, friend, or other representative to complete the *Intake Application* on his/her behalf. In such cases, the CA must document on the *Intake Application* that the information was provided by the applicant but was recorded by his/her representative. If the applicant does not have a suitable representative to assist in completing the form, an authorized CA staff-person may complete the application on his/her behalf. Record the information on the *Intake Application* exactly as it is provided by the applicant *and* document on the form that assistance was provided at the applicant's request *and* initial and date each such notation.
    - ALL blanks on the *Intake Application* must be completed. If a portion or section does not apply, insert "N/A" (Not Applicable).

**TDHCA may require additional Support Documentation other than items specified in this Technical Guide in order to verify data or information.**

- Ensure that no conflict of interest exists between any applicant Household member and persons designated by the CA to receive, evaluate, assist, or process applications.

### Eligibility Factors

- Participants receiving NSP Homebuyer financing must demonstrate and document compliance with the following requirements:
  - *Income Eligibility:* The Household income may not exceed the AMI percentage specified in the NSP Contract. **For all Homebuyer Contracts** – the Household income may not exceed 120% AMFI.
  - *Principal Residence:* Obtain a signed *Certification of Principal Residence* from the Homebuyer attesting that he/she will occupy the assisted address as his/her Principal Residence.
  - *Service Area:* Verify the assisted address is located within the Service Area identified in the NSP Application.
  - *Homebuyer Counseling:* Obtain evidence (a Certification of Counseling verifying program completion) verifying the Homebuyer has completed a HUD-Approved Homebuyer counseling program/class.
  - *No Prohibited Liens:* Verify the assisted property is not encumbered with tax liens, or mechanic's/materialmen's liens.

- Complete the income verification timely and upload the *Intake Application* onto the HCS.

#### Notifying Applicants

- TDHCA will notify each applicant Household of its eligibility status *in writing* within 15 days of receipt of the completed *Intake Application*. Notifications will communicate the following:
  - The Household has been determined eligible to receive assistance;
  - The Household has been determined ineligible to receive assistance (provide written explanation for the denial of assistance);
  - The Household has been added to a Waiting List; or
  - The Household is instructed to re-apply at a later date.
- Retain a copy of the status notification letter in the applicant's Project File.

### ***VERIFYING INCOME ELIGIBILITY***

#### Verify Household Income

- Verify all income and asset information provided by the applicant.
  - Best practice: Obtain third-party verification of applicant Household's income.
  - In the event third-party verification is not available or cannot be obtained, obtain and verify other Support Documentation. Pay stubs presented as Support Documentation cannot be older than 120 days *from the HIC Effective Date*.
- HUD has determined that the use of information from the previous year's tax returns is not an "effective" method of determining annual income
- If an applicant does not submit Support Documentation sufficient to verify the information he/she provided, he/she may be dropped from consideration for assistance after a reasonable period of time (at least 30 days) has passed.

#### Determining Anticipated (projected) Annual Gross Income

- Anticipated (Projected) Annual Gross Income is an estimation of future income a Household expects to receive based upon the current monthly income annualized over a 12 month period.
- Compare the Anticipated (Projected) Annual Gross Income to HUD's *current* Maximum Income Limits and determine the Household's income eligibility.
  - Refer to the NSP Contract *Performance Statement/Statement of Work (Exhibit A)* to determine the percentage categories of income the CA is contractually obligated to assist.
  - Maximum Income Limits for each income range are updated annually and posted online at: <http://www.huduser.org/datasets/nsp.html>

- **Refer to the *Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition*** for comprehensive information regarding determination of Household income for NSP.

Complete the HIC Form

- Complete a *Household Income Worksheet (HIW)* and *Household Income Certification (HIC)* for each applicant Household.
  - *HIW* – Include notations demonstrating how the Household’s income was calculated (i.e. “show your work” on the page or attach a calculator tape indicating how hourly rate x days per week x # of weeks, etc.).
  - *HIC*– If used in Excel format, the *HIC* will automatically calculate Projected Annual Gross Income based on the data entered. List all adults and dependents living in the unit. If a Household member has no income, enter zero in the appropriate space on the *HIC*. Attach a separate page if additional space is needed.
- The *HIC* Effective Date is the date on which the applicant Household’s head, co-head, spouse and members age 18 or over *and* the authorized CA staff-person sign and date the *HIC* All parties must sign the *HIC* on the same date.
  - The signatures serve as certification by all parties that all the information provided is true and correct.

***HIC Effective Date***  
**Household members AND authorized CA staff-person**  
**must sign the *HIC* on the same date.**

- The Date of Assistance is the date on which the purchase contract between the Homebuyer(s) and the Seller is signed.
- The *HIC* becomes invalid if more than six months have elapsed between the *HIC* Effective Date and the Date of Assistance. The six-month date is referred to as the Stale Date.
- If the Stale Date has passed, complete the following steps:
  - Obtain an updated *Intake Application*;
  - Obtain updated income Support Documentation;
  - Re-verify the Household’s income eligibility;
  - Create an updated *HIC*;
  - Re-certify the Household’s eligibility; and
  - Submit the updated *HIC* to TDHCA.
- Retain the old *HIC* and the updated *HIC* in the Project File.

### ***Example: Determining the Stale Date***

CA determines the Applicant Household is eligible for assistance.

Both the applicant and the CA sign the *HIC (Form 14.02)* March 1

Purchase transaction closes and loan documents are signed September 2

*The Household's income eligibility expired on September 1<sup>st</sup>. As of September 2<sup>nd</sup>, more than 6 months have elapsed from the date on which the applicant was determined to be income qualified. The Project is NOT ELIGIBLE for reimbursement because the NSP Homebuyer's eligibility was not re-verified before the 6 months elapsed.*

#### Verify Service Area

- Verify the physical address of the assisted property is located in the Service Area identified in the NSP Application. NSP assistance may not be provided to a property located outside the contractually-identified Service Area.

#### Verifying Homebuyer Counseling

- NSP applicants must participate in a HUD-Approved homebuyer counseling program for a minimum of eight (8) classroom hours.
  - The counseling program/class must be taught by a certified instructor.
  - Subject matter for homebuyer counseling may include, but is not limited to:
    - Instruction in financial management;
    - Homebuyer education;
    - Credit management;
    - Job training and/or placement.
  - Retain a copy of the Homebuyers Certificate of Counseling in the Project File.

#### Participant Briefing

- After verifying all the applicable eligibility factors and determining the applicant is eligible to receive Homebuyer Assistance, conduct a briefing with him/her to explain NSP Program requirements.
- Ensure that the Homebuyer is informed of his/her rights and responsibilities, and that he/she understands what to expect throughout the Acquisition process.

## **Chapter 9. DETERMINING TENANT ELIGIBILITY APPLICATION AND SELECTION PROCESS**

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- Conduct the application process in a fair and non-discriminatory manner.
- Ensure that the application documentation received from a prospective tenant includes information sufficient to verify the applicant's eligibility status. Documents required from the applicant must, at a minimum, include:
  - Verification of all income and assets;

### ***APPLICATION PHASE***

- Deciding how, when and where to accept applications from prospective tenants requires several logistical decisions, including but not limited to:
  - *Announcement*: Refer to Chapter 7 – Other Federal Regulations
  - *Location*: Where will applications be accepted?
  - *Timing*: Will applications be accepted on a continuing basis, only at certain times, or for a limited period of time? All interested parties must be provided the opportunity to complete an application. When a completed application is returned by a prospective tenant, record on the form the date and time on which it was received.
  - *Application*: Develop written leasing criteria for objectively selecting tenants and for establishing applicant Household eligibility to receive NSP assistance. Selection criteria may include, but is not limited to:
    - Household income;
    - Rental history;
    - Credit history;
    - Criminal history; and
    - Procedures for providing written notification to applicants who have been denied assistance;Notification must specify the reason for denial.
- The application form must properly screen for all types of income and assets. The applicant himself/herself, not the Development Owner, should completely fill out the application form. Ensure all relevant eligibility information has been disclosed and verified.
- Method of Selection: DO NOT establish preferences that discriminate on the basis of race, color, religion, sex, national origin, disability, or familial status. Examples of acceptable priority factors include target populations identified in the contractual

agreement; persons defined as having Special Needs; and applicants who are involuntarily displaced, including victims of domestic violence.

- Verify the eligibility of each applicant and confirm all information related to the prospective tenant's employment, income, assets, and liabilities.

### ***WAITING LISTS***

Develop clearly established policies and procedures for maintaining a waiting list in a fair and equitable manner. All information required for determining where a Household is to be placed on the waiting list must be recorded during the application phase. If Special Needs populations are prioritized, then those so identified would be moved ahead of other applicants.

### ***INCOME ELIGIBILITY***

- This NSP Technical Guide provides only a brief overview of income eligibility requirements. For detailed and comprehensive information for verifying income refer to:
  - HUD's Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition (Appendix A-35); and
  - HUD Handbook 4350, as applicable.
- TDHCA recommends that all NSP Rental Property owners attend income eligibility training annually. The "First Thursday Income Eligibility" training is provided at TDHCA headquarters in Austin on the first Thursday of every month, and is presented by knowledgeable TDHCA staff. The training focuses on required procedures for verifying income eligibility, including any applicable regulatory updates. For more information regarding this and other training opportunities, refer to TDHCA's websites:  
<http://www.tdhca.state.tx.us/home-division/home-training.htm>, and  
<http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>.
- TDHCA has adopted the Part 5 definition Annual Gross Income for use in the NSP Rental Housing Development program. The Part 5 definition must be used when determining a prospective tenant's income eligibility. The income definition remains the same throughout the affordability period.
- The income eligibility of an applicant Household is based on its Anticipated Annual Gross Income (as defined by Part 5). Prior to permitting a prospective tenant Household to occupy a NSP-assisted unit, confirm the Household is income eligible by:
  - Verifying the Household's income;
  - Calculating the Anticipated Annual Gross Income; and
  - Certifying that it does not exceed the applicable income limit for the NSP-funded project.

- NSP-assisted units must be occupied with income eligible Households. In order to comply with federal regulations regarding income eligibility:
  - Obtain sufficient information from the prospective tenant Household;
  - Verify the information;
  - Calculate the Household's Anticipated Annual Gross Income;
  - Confirm the Household's income eligibility; and
  - Certify that the information is complete and accurate.

### ***INCOME VERIFICATION***

- Obtain sufficient source documents from the prospective tenant Household including, but not limited to:
  - Wage statements;
  - Pay stubs;
  - Bank statements;
  - Social Security award letter; and
  - Third party verification from employers.
- Do *not use* a Household's self certification of income or a certification from another rental assistance program to determine income eligibility at initial occupancy.

### ***ASSET VERIFICATION***

Verify all assets belonging to a prospective tenant Household through third-party or first-hand Support Documentation and retain Support Documentation in the Tenant File. Include the cash value of the assets and the projected income from the assets on the *Household Income Certification* form.

### ***ASSISTANCE PAYMENTS FROM OTHER SOURCES***

- At initial occupancy, obtain current reliable source documentation and verify the income and assets of all prospective tenant Households, including Households receiving Section 8 assistance.
- At recertification for Section 8 voucher holders, the Development Owner may request copies of a Section 8 Household's most current executed HUD Certification Form 50058 or use TDHCA's Income Verification for Households with Section 8 Certificates in lieu of conducting income/asset verifications.

- *Important Note: Generally, NSP does not require recertification for rental units. However, other funding sources have such requirements.*

### ***TIMING OF INCOME CERTIFICATIONS***

- All Households occupying a NSP-assisted unit must be income eligible and must have executed an Income Certification form prior to, or on the day of, move-in. If more than 120 days has elapsed between the date on which the Household is determined to be income eligible and date on which NSP assistance is provided, re-examine the Household's income.
- Support Documentation provided for verification of income may be no older than 120 days from the effective date of the Income Certification form.
- Recertification's of income eligibility is not required for NSP, but may be required for other applicable fund sources. If recertification of an NSP tenant is performed, retain a copy of the recertification documents in the tenant file.

### ***MAINTAINING CORRECT NUMBER OF NSP RENT UNITS***

- Complete the following steps to maintain the correct numbers of NSP Rent units required in the Performance Statement/Scope of Work (Exhibit A) of the Development Owner's NSP Contract.
  - At initial occupancy of each NSP-financed unit, determine the tenant income level required.
  - If the property is financed with multiple fund sources, or includes NSP units at more than one income level
    - Determine the number of units required by for each income level
    - Execute leases only with tenants that meet the required income eligibility for that unit.
    - NSP financed units may "float" within a project and need not be designated, the minimum number of each type of unit must be maintained at all times.
      - If the NSP-financed property is restricted to only one income level, assure that any new tenant households meet all income eligibility requirements prior to occupancy.

### ***RENTAL SUBSIDIES FROM OTHER PROGRAMS***

Development Owners may not refuse to lease NSP-assisted units to a holder of a Section 8 voucher or to a holder of a comparable document evidencing participation in a Tenant-Based Rental Assistance (TBRA) program solely because of the applicant's participation in a rental subsidy program.



## ***UTILITY ALLOWANCES***

- When Households are responsible for utilities, NSP Rent limits must include an allowance for the cost of tenant-paid utilities (e.g., heat, lights, air conditioning, water, sewer, oil, or gas). If the Development Owner pays all utilities, no adjustment in the NSP Rent limits is needed to determine the maximum rent that can be charged for a NSP-assisted unit.
- The method used to determine utility allowances may be impacted by other fund sources applied to the property
  - *Option 1: Rural Housing Services (RHS)* – Developments that are assisted by RHS or have any RHS-assisted tenants must use the applicable RHS utility allowance. Do not use any of the other methodologies for any units on RHS Developments.
  - *Option 2: HUD Regulated Buildings* – If the building is not RHS-assisted and “the rents and utility allowances of the building are reviewed by HUD on an annual basis” use the applicable HUD utility allowance. Do not use any of the other methodologies for any units on HUD regulated Developments.
  - *Option 3: PHA Methodology* – This methodology is not available for RHS and/or HUD regulated Developments. To use the PHA methodology Development Owners must contact the applicable Housing Authority to obtain the utility allowance schedule.
  - *Option 4: Written Local Estimate* – This methodology is not available for RHS and/or HUD regulated Developments. To use this methodology the Development Owner must obtain an estimate, in writing, for the provider of the applicable utility.
  - *Option 5: Agency Estimate* – This methodology is not available for RHS and/or HUD regulated Developments. To use this methodology the Development Owner must follow the procedures detailed in the Compliance Monitoring Rules (10 TAC, Chapter 60) which are amended from time to time.

## ***LEASES***

- HOME regulations, adopted by Texas NSP, require a one-year lease unless the resident and the Owner both agree to a shorter lease term.
- Prohibited lease language is outlined in 24 CFR §92.253.
- The lease contract must specify the rent amount and include procedures for adjusting rents.

## ***TERMINATION OF TENANCY***

- Do not terminate tenancy or refuse to renew the lease of a NSP-assisted tenant unless serious or repeated violations of the terms and conditions of the lease have occurred,

including but not limited to violation of applicable federal, state, or local law, or for other good cause.

- Any lease termination or refusal to renew must be preceded by not less than 30 days written notice specifying the grounds for termination.

## Chapter 10. PROPERTY INSPECTIONS

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### ***INSPECTORS***

- Inspectors must be qualified, and no conflict of interest may exist between the inspector and any other party involved in the program.
- Inspectors should have NSP or other state and/or federal program experience regarding compliance with state and federal construction regulations. *Recommended* inspector qualifications include:
  - Documented experience of two or more years with hands-on housing Rehabilitation and documented experience in the development of satisfactory *Work Write-Up/Cost Estimates*, with continued good performance as monitored by funding entities; OR
  - Documented experience of one or more years in a successful housing inspection program and continued good performance during program administration; OR
  - Documented completion of an acknowledged housing inspection course of study, followed by good performance and monitored by funding entities.
- An inspector's failure to carry out satisfactory inspections during the administration of a NSP Contract will result in the inspector and/or CA being required to complete an acknowledged course of study and testing before being authorized to inspect housing.
- Inspectors must be procured following requirements for professional services, unless they are CA staff.
- Generally, Inspection costs are appropriately charged to Activity Delivery.

### ***LEAD-BASED PAINT INSPECTIONS***

- Any housing unit constructed before 1978 must be inspected for hazards associated with the presence of lead-based paint.
- If the assisted housing unit was built after January 1, 1978, TDHCA will not reimburse expenses for lead-based paint testing, risk assessment, or any other type of testing related to lead-based paint.
- Retain documentation in the Project File verifying:
  - Required notifications were provided to all applicants;
    - *Protect Your Family from Lead in Your Home*;
      - Federal law requires that this HUD pamphlet, which provides information about the hazards of lead-based paint, be provided to persons buying, renting, or renovating a home.

- *Receipt of Lead-Based Paint Notification;*
  - Provides a receipt verifying the Household received the required informational materials pertaining to lead-based paint.
- *Lead Safe Housing Requirements Screening Worksheet*
  - Federal law requires that this form be retained in every Project File for projects which include federal funds.
- Lead reduction work (if required) was completed; and
- Clearance (if required) was obtained.

### ***PROPERTY INSPECTIONS HOMEBUYER TRANSACTIONS***

- All ownership units must be inspected by an independent professional inspector commissioned by the purchasing household. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must provide a copy of the inspection report to the purchasing household, the Contractor and the Department. The Contractor or Department may disapprove the unit based on information contained in the independent inspection.
- *Required documentation of property inspections for Homebuyer transactions include;*
  - *HUD HQS Inspection Checklist;* and
  - A Texas Real Estate Commission Inspection.

### ***PROPERTY INSPECTIONS FOR REHABILITATION ACTIVITIES***

#### Conducting the Initial Inspection for Rehabilitation

- Inspect the property chosen for Acquisition and Rehabilitation to determine the level of Rehabilitation that will be required to bring the property into compliance with Texas Minimum Construction Standards (TMCS) or local building codes. Submit the completed Initial forms to the NSP Division Program Specialist through the Housing Contract System:
  - 
  - Include interior and exterior “before” photos taken prior to performance of any Rehabilitation or New Construction work. Indicate the property address on all photos.
  - For MHUs being replaced, the *Initial Inspection* must adequately document the need for replacement, since Rehabilitation is not permitted for MHUs. Ensure the *Initial Inspection* specifically states the assisted property is an MHU.

- For site-built housing being Rehabilitated or replaced with New Construction, ensure the *Initial Inspection* clearly states the type of construction required to bring the assisted property into compliance with applicable codes, standards, and specifications.

### Preparing the Work Write-up for Site Built Structures

- In addition to providing the basis for procurement of rehabilitation, the Work Write-up provides the basis for the budget in the construction loan. In order to prevent time-consuming change orders or loan modifications, it is essential that the Work Write-up be complete and accurate.
- A Work Write-Up is only required for Rehabilitation of a site-built structure. A Work Write-Up is *not* required and is not an eligible cost when the assisted property is being replaced by an MHU or a newly constructed site-built structure.
- For Rehabilitation that is not New Construction: Following completion of the *Initial Inspection*, prepare the Work Write-Up using the *Work Write-Up/Cost Estimate* itemizing all required repairs, including reasonable expenses for each repair item and trade category.
- The Work Write-Up is used in determining the:
  - Repairs required to bring the assisted property into compliance with applicable codes, standards, and specifications;
  - Basis for developing the scope of work to be included in the Invitation for Bid (IFB) used to procure the Building Contractor or the MHU vendor.
    - *Reminder:* The Work Write-Up is used to estimate the Project's cost. However, the cost estimate should *never* be provided to or shared with a Building Contractor prior to bidding. Only bid proposals within 15% of the cost estimate can be accepted, unless justification as described in the Procurement section of this manual is appropriate and documented.
- At a minimum, the Work Write-Up must include the following:
  - Specific types of repairs, replacements, installations, etc. to be provided;
  - Clear description of work to be performed;
  - Quantities involved in completing the work (measurements, number of units, etc.);
  - Location of the work to be performed;
  - Estimated time-line for completion of Rehabilitation.
- The *Work Write-Up/Cost Estimate* must be approved and signed by the CA.

### Preparing Cost Estimates for Site Built Structures

- Following completion of the Work Write-Up process, use the Work Write-Up/Cost Estimate to determine the Project's estimated cost, taking into consideration the estimated reasonable cost required to bring each repair item and trade category into compliance with all applicable codes, standards and specifications.
- Use the cost estimate when determining reasonableness of bids received from Building Contractors.

### Feasibility Analysis with Cost Estimate for Construction of Replacement Homes

- A Feasibility Analysis is a written budgetary *assessment* of the costs required to bring the assisted property into compliance with applicable codes, standards, and specifications, which includes a recommendation for the appropriate type of construction to be provided for the Project.
- The Feasibility Analysis must take into consideration all factors affecting both the Household and the property, including but not limited to current and projected value, home size, type of structure, life expectancy of the structure as rehabilitated, surrounding neighborhood, type of construction required including energy efficiency factors, accessibility needs, etc.
- There is *no threshold amount* at which replacement with New Construction is "required." The decision whether to Rehabilitate or replace a house with New Construction must be made on a case-by-case basis – it is never determined strictly on the basis of costs involved.
- Prepare the Feasibility Analysis following completion of the *Initial Inspection* and retain in the Project File. The Feasibility Analysis must include:
  - Notes and information pertinent to determining the construction required;
  - Reference to or attached copy of *Initial Inspection* (with photos);
  - Current value of the home being Rehabilitated or replaced with New Construction;
  - Estimated after-Rehabilitation value of the assisted property;
  - A statement explaining and justifying the decision for either course of action;
  - *For replacement with New Construction:*
    - *Site-built structure being replaced with a newly constructed site-built structure:* a comparison of the estimated line-item costs for *both* New Construction *and* Rehabilitation and a statement explaining and justifying the decision for either course of action.
    - *Site-built structure being replaced with a new MHU:* a comparison of line-item costs for Rehabilitation of the old site-built structure and replacement costs for a new MHU;

- *Old MHU being replaced with a newly constructed site-built structure:* a listing of estimated line-item costs for site-built New Construction;
- *Old MHU being replaced with a new MHU:* a listing of estimated line-item costs for a new MHU;

### Conducting Progress Inspections

- The *Progress Inspection Report* must be completed to ensure quality control and to identify potential problems or areas of concern as construction progresses. Each progress inspection should include inspection forms, filed notes, sketches, and/or photographs adequate for verification of the stage of construction being examined.
- For new construction of an assisted property with a newly constructed site-built structure:
  - A *minimum* of four progress inspections are required
  - A *maximum* of seven progress inspections are permitted per Project.
  - Progress inspections are required prior to submission of each draw request for reimbursement of construction costs.
- For the replacement of an assisted property with a new MHU, a maximum of two progress inspections of the new MHU are permitted.
- Progress inspections should be performed before work is “covered up” by subsequent construction (i.e. inspect electrical before the drywall is begun).
- Progress inspections will:
  - Provide evidence of completion for the purpose of Draw Requests;
  - Check quality of craftsmanship.
- Recommended types of inspections for a newly constructed site-built structure include, but are not limited to:
  - Soil and reinforcing bar (re-bar) prior to concrete being poured;
  - Electrical, plumbing, framing, HVAC, and insulation before sheetrock is installed.
- Include photos verifying construction progress with each *Progress Inspection* submitted for Draw Requests.
- TDHCA may make periodic construction site visits to verify construction progress and/or completion.

### Conducting the Final Inspection

- Submit the *Final Inspection* including “after” photos of the completed construction, to TDHCA with the final Draw Request to document:

- Construction was completed according to contractual requirements;
- Program requirements including *TMCS* have been met or exceeded;
- Punch list items have been addressed and any deficiencies corrected.

#### Incipient Deficiencies

- Incipient deficiencies are concealed or “hidden” flaws or potential defects which, if not repaired, would be reasonably expected to deteriorate and potentially become violations of applicable codes, standards, or specifications.
- The costs for repairing or replacing incipient deficiencies are eligible NSP expenses.
- Discovery of defective elements and/or incipient deficiencies during the construction process must be brought to the immediate attention of the *CA in writing*. When repairs are made, the repairs should reasonably match the surrounding materials in the original design and dimension of the home as approved by the CA.



## **Chapter 11. SETUPS AND DRAW REQUESTS**

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### ***WHAT ARE “SETUPS” AND “DRAW REQUESTS”?***

- “Setup” refers to the process for authorizing the reservation of federal NSP funds in order to ensure monies are made available for the acquisition and/or construction being undertaken.
- “Draw Request” refers to the process for authorizing and requesting the transfer of the reserved federal funds to the CA in order to pay for eligible costs incurred during the administration of the NSP Contract and/or construction of housing units.

### ***ELECTRONIC DATA SUBMISSION***

- Both Setups and Draw Requests require the electronic submission of data, as well as the provision of Support Documentation to TDHCA as requested. Support Documentation is provided by attachment of items to Setups and Draw Requests in the Housing Contract System. Other methods of providing documentation must be approved by the NSP Program Specialist prior to submission.
- Authorize a minimum of two individuals to access, enter, and approve electronic data submissions by completing the *NSP Contract System Access Request*.
  - An authorized user may both enter and approve electronic transactions, but cannot approve data that he/she entered. One authorized user must enter the data electronically, and another authorized user must approve and submit online.
- A unique access password will be assigned by TDHCA to each authorized individual. The password may be changed by the authorized user.
  - Note: The password and user id MAY NOT be provided to any user other than the person to whom it is specifically assigned. Consultants may NOT be authorized to act on behalf of the CA to approve submissions of Setup or Draw Request data. Do not share a password or user identification.
- If changes to authorized personnel are made, a new *NSP Contract System Access Request* must be immediately submitted. The completed form may be submitted via email, with the original following by US Mail.
- Incomplete Activity Setups or Draw Requests will not be reviewed. It is the CA’s responsibility to assure that all items on the applicable checklist are included in each request
- Do not attach documents that are not listed on the checklist unless directed by NSP staff.

## ***STATUS CATEGORIES***

- Setups and Draw Requests submitted with incorrect or insufficient Support Documentation will not be approved by TDHCA. Electronic requests will be identified by the following status categories:
  - *Pending* – CA has entered data online, but the data has not been submitted by the second individual authorized by the CA to TDHCA for approval, or electronic submission has remained unresolved longer than 30 days. NSP staff do not receive notification of pending setups or draw requests;
  - *Pending PM Approval* – CA has entered and submitted data and Support Documentation to TDHCA for approval. NSP staff receive notification that the setup or draw request is ready for review and approval;
  - *Active* – Setup has been approved and CA may submit Draw Requests;
  - *Closed* – All funds have been requested and disbursed, the Project Completion Report has been processed by TDHCA, and any remaining funds de-obligated;
  - *Cancelled* – Funds are cancelled and de-obligated per CA’s written request due to applicant ineligibility or other explained circumstance;
  - *Suspended* – Refer to electronic notes provided by NSP Division Specialists regarding reason for suspend status;
  - *Disapproved by PM* – Electronic notes provided by NSP Division Specialists will indicate deficiencies;
  - *Pending Loan Closing* – Setup is approved and funds have been committed. Project is awaiting completion of Loan Closing.
  - *Pending Amendment* – Setup is undergoing TDHCA internal review.
- Take corrective action on any “Disapproved” Setups and/or Draw Requests. *No further action will be taken by TDHCA until the CA has completed adequate corrective measures.*

## ***ENTERING SETUP DATA IN THE HCS SYSTEM***

- **Enter the Project information on the appropriate HCS System Setup screens.**
  - Attach the appropriate Checklist from the NSP Forms Library <http://www.tdhca.state.tx.us/nsp/forms.htm>
  - Attach the required documentation listed on the Checklist
  -

## ***SUBMITTING SETUP INFORMATION***

- In the event the NSP Division Specialist determines the Setup request or its accompanying documentation is incomplete, he/she will disapprove the Setup, electronically and inform the CA by entering online Notes in the HCS System. Correct all deficiencies, submit additional and/or corrected Support Documentation as requested, and then electronically re-submit the disapproved Setup. DO NOT CREATE A NEW SETUP OR DRAW REQUEST.

***DO NOT create a new Setup or Draw Request when correcting an existing electronic submission!***

- A disapproved Setup remaining in the HCS System for more than 30 days will be set to “Pending” status and will default back to the CA’s online notification screen. No further action may be taken by the NSP Division Specialist on setups set to “Pending” status.
- After the NSP Division Specialist has verified all eligibility factors, Support Documentation, and other requirements, the Setup will be approved and NSP funds will be committed to the Project.
- Draw Requests for costs incurred can be submitted after an activity number has been assigned to the Project and it has been set to “Active” status.

***TDHCA may require additional Support Documentation other than items specified in this Technical Guide or in TDHCA forms to verify data or information submitted by a CA.***

## ***DRAW REQUESTS***

### Administrative Draw Requests

- Administrative Draw Requests are funded out of the portion of the NSP award specified for administrative costs.
- Administrative costs are not directly associated with a Project and must be entered in the online HCS System *at the NSP Contract level*.
- Submit the *NSP Administrative Draw Request Checklist* and all required Support Documentation to the NSP Division Program Specialist.
- *Initial Administrative Draw Request* – A cumulative maximum of 10% of the NSP Contract’s total administrative funds may be drawn before any Project funds are drawn.

- *Subsequent Administrative Draw Requests* – Subsequent administrative funds will be paid in proportion to the percentage of the NSP Contract’s total Project funds drawn to date, less any administrative funds already disbursed.

***Example: Initial Administrative Draw Request***

Total Project funds awarded for the NSP Contract		\$300,000
	<u>X</u>	<u>5%</u>
Total <i>administrative</i> funds awarded for the NSP Contract	=	\$ 15,000
Maximum initial draw percentage allowed – 10%	<u>X</u>	<u>.10</u>
<b>Maximum available for <i>Initial Administrative Draw</i></b>	=	<b>\$1,500</b>
<b>Total Administrative Expenses Incurred</b>	=	<b>\$1,700</b>
 <b>Procedure:</b>		
1) Enter Administrative Draw Request into the online TDHCA Housing Contract System for the \$1,500 maximum allowable initial draw.		
2) Submit all Support Documentation for the <b>total</b> \$1,700 to TDHCA.		
3) After Project funds have been drawn, enter a <b>second</b> Administrative Draw Request for the remaining \$200 (see example below).		

***Example: Subsequent Administrative Draw Requests***

Total <i>Project</i> funds expended to date:		\$150,000
Total <i>Project</i> funds awarded for the NSP Contract	<u>÷</u>	<u>\$300,000</u>
Percentage of total <i>Project</i> funds expended	=	50%
Total <i>administrative</i> funds for the Contract:		\$ 15,000
Less: Initial Administrative Draw paid	-	<u>\$ 1,500 (from example above)</u>
Balance of remaining administrative funds		\$ 13,500
 <b>Procedure:</b>		
<i>Since only 50% of project funds have been expended, a maximum of 50% of total administrative funds less any administrative funds already received, are available to be</i>		

<i>drawn:</i>			
\$15,000 x 50%	=	\$7,500	Maximum available
Less:	-	<u>\$1,500</u>	Received from Initial Administrative Draw
	=	<b>\$6,000</b>	<b>Administrative funds now currently available</b>

***DRAW REQUESTS FOR HBA AND PERMANENT FINANCING  
(ACQUISITION-ONLY) CONTRACTS***

*First Draw Request for HBA (Acquisition-Only) Contracts - Reimbursement of Closing Costs. Submit the NSP Draw Request Checklist for Closing Funds for acquisition costs (including downpayment and closing costs) to be paid at Loan Closing to the NSP Division Program Specialist. Include all specified Support Documentation.*

***PROJECT DRAW REQUESTS – ACQUISITION WITH  
REHABILITATION***

*First Draw Request for Rehabilitation and Construction Contracts - Reimbursement of Closing Costs*

- Submit the NSP Draw Request Checklist for Closing Funds or NSP Draw Request Checklist for Activity Delivery Costs, as appropriate for acquisition costs (downpayment and closing costs) that were not paid with NSP funds at the Loan Closing to the NSP Division Program Specialist. Include all Support Documentation specified in the Draw Request

*Interim Draw Requests for Reimbursement of Rehabilitation or Construction Costs*

- Interim Draw Requests for Rehabilitation or Construction Costs must be periodically submitted in accordance with the terms specified in the Construction Loan Agreement (CLA) as construction progresses.
- In accordance with Texas Government Code 2253, TDHCA will withhold 10% of the construction costs requested (hard costs only) on each construction Draw Request as Retainage. The Retainage is held pending resolution of any deficiencies and receipt of all required lien waivers and affidavits, and will be released by TDHCA no earlier than the 31<sup>st</sup> day from following construction completion.

Submit the NSP Draw Request Checklist for Construction Expenses with Support Documentation specified on the Checklist for reimbursement of Construction Costs.

After construction is 100% completed, submit the *NSP Draw Request Checklist for Construction Expenses* with Support Documentation specified on the form. Request for Release of 10% Retainage withheld for construction hard costs for Rehabilitation and Construction Contracts with the Draw Request.

Ensure the Project Completion Report (PCR) data has been entered electronically into the HCS System (no further Support Documentation must be submitted).

Submit the *NSP Draw Request Checklist for Construction Expenses* with Support Documentation specified on the form .

Retainage may be requested *no earlier than 30 days* following the date of construction completion documented on the *Final Inspection* (Retainage will not be released by TDHCA before the 31<sup>st</sup> day following construction completion).

### **60-DAY GRACE PERIOD – EXPIRATION DATE**

- TDHCA allows a 60-day grace period following the NSP Contract end date for submission of all Draw Requests and/or Support Documentation. The end of the grace period is referred to as the Expiration Date.
- Ensure the following has been completed prior to the Expiration Date:
  - Draw Request has been electronically submitted for reimbursement of costs incurred *on or before* the NSP Contract end date;
  - *Project Completion Report (PCR)* data has been submitted and all contract activities have been closed in the online HCS System.
- Expenses incurred during the 60-day grace period are *not* eligible for reimbursement.
- No funds may be committed to a Project during the 60-day grace period.

### ***Example: Determining Exactly 60 Days***

Contract end date: **September 30<sup>th</sup>** Expenses incurred after this date are *NOT ELIGIBLE* for reimbursement.

Calculate 60 days:

October = 31 days

November = 30 days

Total = **61 days**

**November 29<sup>th</sup> would be the 60<sup>th</sup> day following Contract expiration!**

In this example, the NSP Contract expires on November 30<sup>th</sup> and no Draw Requests may be processed or paid by TDHCA *even for expenses incurred prior to NSP Contract end date.*

### **Remember!**

Draw Requests must be processed through TDHCA's NSP and Accounting Divisions, and are then submitted to the Comptroller for final review and payment. Submit Project Draw Requests early enough to allow sufficient time for processing them AND any remaining Administrative Draw Requests. Absolutely no Draw Requests will be processed after the Expiration Date.

***Example: Submit Administrative Draws in a Timely Manner***

Contract end date:	<b>September 30<sup>th</sup></b>
End of Grace Period:	<b>November 29<sup>th</sup></b>
Final Project Draw Request processed:	<b>November 29<sup>th</sup></b>

Normally, after payment of a Project Draw Request the proportional share of administrative funds available increases. In this example the increased administrative portion would be available for draw on November 30<sup>th</sup>. However, this NSP Contract's grace period ends on November 29<sup>th</sup> and the Contract expires as of November 30<sup>th</sup>. No further Draw Requests of any kind may be processed; any remaining administrative funds are forfeited.

**Remember!**

Draw Requests must be processed through TDHCA's NSP and Accounting Divisions, and are then submitted to the State Comptroller final review and payment. The entire process must be completed before the grace period ends. Submit Project Draw Requests early enough to allow sufficient time for processing them AND any remaining Administrative Draw Requests.

## **Chapter 12. LOANS and LOAN CLOSING**

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***In addition to determining Applicant Eligibility as described in Chapter 8 of the Manual, CA's must assure that Homebuyers meet the Loan Qualification requirements in Chapter 12, Loans and Loan Closing***

Purchase money first lien mortgages and subordinate homebuyer assistance are available separately or in combination through the Texas Department of Housing and Community Affairs (Department) Neighborhood Stabilization Program. It is expected that most borrowers using Texas NSP permanent mortgage financing will also access Texas NSP Homebuyer Assistance to reduce the out-of-pocket ownership cost. Please see the Texas NSP Homebuyer Assistance Guidelines section of this document for further information.

### ***TEXAS NSP PERMANENT MORTGAGE FINANCING***

#### **GENERAL LOAN ELIGIBILITY**

These guidelines describe the requirements for the underwriting of single-family, owner-occupied residential mortgages under the Texas NSP. Income eligibility for permanent mortgage financing is restricted to households whose income is at or below 50% of Area Median Family Income (AMFI).

<http://www.tdhca.state.tx.us/pmcomp/irl/home-cdbg-nsp.htm>

#### **Loan Terms**

- purchase money first lien mortgage;
- 30 years fully amortized;
- interest rate fixed at zero (0%) percent interest, for the life of the loan; and
- monthly mortgage payment includes principal, property taxes, hazard insurance (PTI), and Flood Insurance (if applicable)

#### **Maximum Loan Amount**

The maximum loan amount is the amount of loan for which the homebuyer qualifies based on the allowable housing ratio ("front end ratio") of 28% and the maximum debt-to-income



ratio (“back end ratio”) of 45%. Homeowner Association fees are considered as part of the housing (front-end) ratio, and may impact the homebuyers loan qualification.

**The housing ratio is calculated as:** total borrower loan qualification income X.28=PITI

**The debt-to-income ratio is calculated as:** total monthly debt (including proposed PITI)/total borrower loan qualification income.

The maximum loan amount may not exceed the pre-economic stimulus 203(b) limit established for the area. The HUD limits by county are available at:

[http://www.tdhca.state.tx.us/home-division/forms/docs/A28-FHA203b\\_Limits\\_PreStimulus.pdf](http://www.tdhca.state.tx.us/home-division/forms/docs/A28-FHA203b_Limits_PreStimulus.pdf)

### Minimum Loan Amount

The minimum loan amount under the Texas NSP is \$1,000.00.

### Maximum Loan-To-Value

The maximum combined loan-to-value for all ownership financing is 100% of the appraised market value of the property. Homebuyer closing costs and allowable prepaid expenses may be financed, so long as the final Combined Loan to Value (CLTV) does not exceed 100%.

**The Combined Loan to Value is calculated as:** First lien + other liens + closing cost / appraised value = CLTV

### Purchase Price

Borrowers using Texas NSP financing to purchase homes from third-party Sellers must achieve a 1% discount from the appraised market value of the property. The appraisal must be conducted within 60 days of the final offer to purchase the property.

If Borrowers are purchasing the home from a Texas NSP subgrantee that has used NSP funds for the initial purchase and rehabilitation or construction of the property, the purchase price shall be the lesser of 1) the hard cost to acquire and rehabilitate or construct; or 2) 100% of the appraised market value.

### Non-Occupying Co-Borrowers

Non-occupying co-borrowers or co-signers are not allowed.

## ***HOMEBUYER ELIGIBILITY***

### Homebuyer Minimum Investment

A minimum investment of \$500.00 will be required from all homebuyers receiving permanent mortgage financing through the Texas NSP. Availability of the required payment is documented by deposit to an escrow account as the earnest money payment for the Earnest Money Purchase Contract. Homebuyers may provide more than the minimum \$500.00 at closing; any additional funds will be applied to a principal reduction.

Qualifying households will be allowed to participate in a self-help housing program, with written approval of the Department, through which a minimum number of self-help construction hours will be allowed to substitute as “sweat equity” for the \$500.00 minimum investment requirement. The value of “sweat equity” will be calculated at \$10.00/hour.

### Homebuyer Education

All NSP-assisted homebuyers will be required to complete at least eight hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. A homebuyer education certificate dated within 6 months of the purchase contract will be required for evidence of completion.

### Ownership of Other Property

The financed property must be owner-occupied and the borrower may not have an ownership interest in any other residential dwelling at the time of loan closing. A manufactured home, regardless of the type of land ownership, is considered a residential dwelling for this purpose.

Ownership in a timeshare, either as a deeded interest or a right-to-use arrangement, is not considered ownership in a residential dwelling for Texas NSP purposes due to the very limited (typically one or two weeks per year) access to the unit.

### Asset Limits

The total household liquid assets are limited to a verifiable total not to exceed \$20,000. Liquid assets are defined as cash deposited in unrestricted checking, savings (including money market and certificate of deposit accounts), mutual fund or brokerage accounts, or the net value of assets that may be easily converted to cash, such as stocks or bonds. Retirement and education savings plans are excluded from this calculation.

Homebuyers that have reached mandatory age for withdrawal from retirement accounts are exempt from the asset limit.

### Valid Social Security Number

- All Borrowers must provide evidence of a valid social security number
  - An ITIN (Individual Taxpayer Identification Number) is not allowed
- All Borrowers must have reached the age of 18 prior to application for Texas NSP financing.

### Verification of Rent

Verification of rent (VOR) for a 12-month period is required for all applications. This document must be in the form of a direct verification from the landlord (unrelated third party) or verified by the credit reporting agency. If renting from a family member, additional documentation is required (bank statements, cancelled checks, money orders).

If an applicant does not have available rental history within the last 12 months the Borrower's credit report must reflect four trade lines with a twelve month history. Borrowers that do not have a traditional credit history or an available rental history are not eligible for NSP Permanent Mortgage Financing.

### Borrower Income Eligibility Limits and Calculations

Income eligibility calculations will adhere to requirements and restrictions provided in 24 CFR Part 5. Combined household income may not exceed the current 50% AMFI amount for the prospective property location.

The current income limit at the time of application for Texas NSP financing will be used to determine eligibility. The AMFI limit used to determine borrower eligibility are published annually by TDHCA, and are available on the Department website:

<http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

- Household annual income may not exceed 50% of the annual HUD AMFI for the property location;
- The Texas NSP will use the definition of annual gross household income provided by HUD, as calculated according to *24 CFR Part 5* to determine an applicant household's eligibility for assistance. [http://www.tdhca.state.tx.us/cdbg/first-supplemental/CDBGforms/A35-Technical\\_Guide\\_Income.pdf](http://www.tdhca.state.tx.us/cdbg/first-supplemental/CDBGforms/A35-Technical_Guide_Income.pdf); and
- The annual income calculated to determine AMFI for program eligibility purposes is not equivalent to income calculated for loan qualification purposes. These are two distinct and separate income calculations. Please refer to the INCOME/EMPLOYMENT section for information on income guidelines for loan qualification purposes; and Household Income Eligibility must be evidenced by use of the appropriate TDHCA Household Income Certification, and supported by sufficient verifiable evidence.

## ***HOMEBUYER LOAN QUALIFICATION***

### Income/Employment

All forms of current employment income must be verified using a verification of employment (VOE) along with paystubs covering a three month period; a minimum work history of two years employment prior to application must be verified with VOE's or W-2's.

#### Hourly Wage:

- Paid weekly: Hourly rate x number of weekly hours x 52/12 = monthly income
- Paid bi-weekly: Hourly rate x number of bi-weekly hours x 26/12= monthly income
- Paid Semi-monthly: Hourly rate x number of semi-monthly hours x 24/12 = monthly income

### Overtime and Bonus Income

Overtime and bonus income may be considered only if it is customary for the type of employment and the likelihood to continue is verified by employer on the VOE. A period of two years must be used in calculating the average overtime and/or bonus income.

### Seasonal Employment

The borrower must have at least a two-year history of seasonal employment prior to application. Future employment must be verified on the VOE with the employer indicating the expectation of rehiring the borrower next season. A period of two years must be used in calculating the average income.

### Part time employment

A two-year history of part-time employment prior to application must be verified. A period of two years must be used in calculating the average part-time income.

### Employment paid in cash

Cash payments must have been declared on income tax returns for two years immediately prior to application. A period of two years adjusted gross income from income tax returns must be used in calculating the average income.

### Self-employed/Commissioned Borrowers

Self-employed homebuyers must have been in the same business for the two years immediately prior to application, and have a current business license or other verification of two years of operation. The file must contain evidence confirming a two-year history of self-

employment in the same business, verification from a local or state business regulatory or registration office, or the evidence of business license issued.

A period of two years adjusted gross income from income tax returns must be used in calculating the average income. If the borrower's earnings trend for the previous two years is *downward* and the most recent tax return or P&L is *less than the prior year's tax return*, the borrower's most recent year's tax return or P&L must be used to calculate his/her income. In addition, the borrower must have had income sufficient to support the proposed mortgage in *each* of the preceding two years.

Self employed and commissioned Borrowers must provide the following documentation:

- signed, dated individual tax returns, with all applicable tax schedules for the most recent two years; and
- year to date profit and loss (P&L) statement and balance sheet; and
- The subgrantee must obtain signed forms IRS 4506, IRS 8821, *Tax Information Authorization*, or whatever form or electronic retrieval service is appropriate for obtaining tax returns directly from the IRS for any loan that requires the borrower's tax returns in order to calculate income.

## ***OTHER SOURCES OF INCOME***

***Note: All sources of other income should appear to have all likelihood of continuance for a minimum of three years.***

### Non-Taxed Income

The amount of continuing tax savings attributed to regular income not subject to Federal taxes may be added to the borrower's gross income. The borrower's non-taxed gross income may be "grossed up" to 120% for purposes of calculating repayment income.

### Retirement/Pension Income

Income must be verified by a third party source and must continue for a minimum of three years.

### Social Security/Disability

Award must be verified by the current award letter. In cases that the homebuyer has payments directly deposited, copies of bank statements may be provided as verification.

### Alimony, Child Support, or Separate Maintenance

A copy of the Divorce Decree, indicating the borrower is eligible to receive maintenance support and/or alimony for a continuance of at least three years must be provided. Supporting data must be obtained: including bank statements, court correspondence, or copies of money orders to evidence receipt of ordered payments for the previous twelve months. If the Divorce Decree is less than twelve months from the date of application, evidence of receipt of payment for no less than four months is required. If the child support is sporadic or inconsistent, an average of the last two years may be used to determine child support income for loan qualification purposes only.

***Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.***

### Notes Receivable and Installment Sales

A copy of the Note must be provided indicating the borrower is eligible to receive the Note income and payments are likely to be received consistently for the first three years of the mortgage, along with evidence of receipt of payment for the previous twelve months.

### Trust Income

Obtain a letter from the executor of the trust to verify continuance for the first three years of the mortgage. If the borrower is the executor, a copy of the trust must be obtained.

## ***CREDIT UNDERWRITING REQUIREMENTS***

### **Borrowers with credit scores under 560 will not be considered.**

Credit scores strongly impact the underwriting decision. Regardless of the credit score, evaluating all risk factors in each credit report will assist in determining the underwriting decision. Borrowers with credit scores of 560 and above must have:

- A minimum of three trade lines with a minimum twelve month history;
- No more than one (1) thirty day delinquent revolving account within the last twelve months;
- No delinquency on installment accounts within the last twelve months;
- No delinquent rental history within the last twelve months;
- No collections (except medical), garnishments, liens, etc. for the last twelve months; and,
- An aggregate amount not to exceed \$2,500 on collection accounts older than twelve months (excluding medical collection accounts).

*Regardless of credit score, borrowers who do not meet the minimum requirement of three trade lines with a minimum twelve month history, can utilize the non-traditional credit*

*guidelines at the end of the Credit Underwriting section. In no instance may nontraditional or alternative credit qualification be used to offset derogatory credit scores or derogatory trade lines.*

### Credit Report

An original copy (no older than 90 days from the date of closing) of a three bureau merged credit report (Tri-merge) from the Subgrantee is required. Credit reports must be issued directly to the subgrantee's business name and physical address; The Tri-merge credit report should include each applicant's complete name, social security number, and current address. If the subgrantee does not have capacity to request the credit reports directly from the reporting bureaus, the Department will provide the required report.

Tri-Merge credit report should include:

- Subgrantee's name and address
- Applicants' complete name(s), social security number, and current address
- All revolving and installment accounts with outstanding current balances together with minimum monthly payment
- Public records for the last 24 months

### Inquiries

New inquiries appearing on the credit report within the last twelve months require explanation regarding the purpose for inquiry and whether credit was granted; if credit was granted, provide current statement with current balance and minimum payment amount.

### Liabilities

All revolving and installment credit reported on the Tri-Merge credit report will be considered in debt-to-income calculation (ratios).

### Co-Signed Liabilities

All co-signed liability listed on the Tri-Merge credit report must be included on debt-to-income calculation.

### Collection account(s)

An aggregate amount not to exceed \$2,500 (excluding medical collection accounts) may remain open. Explanation letters are required for each collection account outstanding.

### Bankruptcy

The bankruptcy must have been discharged at least two years before the borrower application date. An explanation letter for the bankruptcy must be included with the application, and reestablished credit must be evidenced on the credit report.

### Foreclosure

Foreclosure of applicant's primary residence must be at least three years old and have been caused by circumstances beyond personal control: including death of the primary wage earner, loss of employment, divorce, or long term serious illness. Documentation of the circumstances leading to foreclosure must be provided.

### Judgments, Law suits, & Liens

All final judgments and liens against the borrower must be paid in full prior to closing.

### Federal, State or Local Debt

Borrowers who are delinquent on any federal, state or local government debt, such as Federal Tax Liens are not eligible for Texas NSP financing.

### Student Loans

*Note: Texas Government Code 2252.903, 403.055, and 2107.008 prohibit the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person who owes a debt, tax delinquency, student loan delinquency, or a child support delinquency that is subject to a payment law prohibiting the Comptroller from transferring funds.*

Credit report from a national credit reporting bureau for each applicant will be required in order to determine the status of any student loan. An applicant who is delinquent in student loan payments may be *ineligible* to receive Texas NSP assistance unless he/she can provide documentation of either:

- Elimination of the delinquency by payment in full to the appropriate state agency (Texas Higher Education Coordinating Board), and evidence of current status on any monthly payments due; or
- A written payment agreement with the appropriate state agency to eliminate the delinquency, and evidence of current status on *both* the payment agreement and on any monthly payments due.

### Child Support

*Note: Texas Government Code 2252.903, 403.055, and 2107.008 prohibit the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person who owes a debt,*



*tax delinquency, student loan delinquency, or a child support delinquency that is subject to a payment law prohibiting the Comptroller from transferring funds.*

Payer of child support: An applicant, whose life documentation (including a divorce decree) indicates he/she is *obligated to pay* court-ordered child support and has been reported by the Texas Attorney General as being delinquent in payments owed, is *ineligible* to receive NSP assistance unless he/she can provide documentation of either:

- Elimination of the delinquency by payment in full to the appropriate state agency (Texas Attorney General), and evidence of current status on any monthly payments due; or
- A written payment agreement with the Texas Attorney General to eliminate the delinquency, and evidence of current status on *both* the payment agreement and on any monthly child support due.

#### Revolving Accounts with No Minimum Payment

For any revolving accounts with an outstanding balance but no specific minimum monthly payment, the payment must be calculated at the greater of:

- 5% percent of the balance, or
- \$10.00, unless there is a specific monthly payment for the account.

#### Nontraditional Credit Qualification

Limited or no credit scores should not be the sole determination for ineligibility as a homebuyer under the Texas NSP program. Thus strong evidence may be provided to support the ability of the Borrower to meet the proposed mortgage obligation.

When evaluating applicants with insufficient (less than three trade lines &/or trade lines under twelve months history) or no credit history, alternative credit qualification may be used. In no instance may nontraditional or alternative credit qualification be used to offset derogatory credit scores or derogatory trade lines.

Alternative credit letters should support the Borrower's credit worthiness. Three letters of credit from creditors on their company letter head verifying a minimum credit history of twelve months with no derogatory credit must be provided. Credit letters should be mailed or faxed to the Subgrantee, at no time shall the applicant handle delivery of alternative credit letters.

Primary sources of alternative credit references may include:

- Utility companies
  - gas;
  - electricity;
  - water;

- land-line home telephone; or
- cable TV.
- Insurance coverage (for example, medical, auto, life, renter's insurance – not payroll deducted);
- Payment to child care providers – made to a business providing such services;
- School tuition;
- Retail Stores – department, furniture, appliance stores, specialty stores;
- Automobile lease;
- A documented twelve-month history of saving by regular deposits (at least quarterly/non payroll deducted/no checks returned for insufficient funds reflected), resulting in an increasing balance to deposit account;
- A personal loan from an individual with repayment terms in writing and supported by cancelled checks to documents payment; or
- Cell phone.

In providing above listed Non Traditional credit documentation, evidence must support:

- no history of delinquency on rental housing payments;
- no delinquency on revolving and installment type credit history; and
- no collection accounts/court records reporting (other than medical) filed within the past twelve months.

#### Age of Credit Documents

Credit documentation may not be more than 90 days old on the date the application package is submitted to the Department.

#### Non-Purchasing Spouse

A non-purchasing spouse is not required to sign mortgage loan disclosures nor Real Estate Lien Note but must execute the Deed of Trust at closing. Income from a non-purchasing spouse will not be used for loan qualification purposes but all household income will be considered in determining income eligibility for participation in the Texas NSP program, regardless of non-purchasing spouse status. All liabilities will be calculated in the debt-to-income ratio.

### ***PROPERTY ELIGIBILITY***

#### Property Type

- Single Family Residence
- Condominium
- Town Home

- Manufactured Home Unit (MHU, with limitations)

#### Eligible Property

- Existing structures and new construction are eligible
- Property must have been foreclosed if financing is provided as an activity under NSP Use A – Financing Mechanisms, and purchased directly from the Successor in Interest at foreclosure
- Properties purchased and rehabilitated, or constructed as an activity under a Texas NSP contract.
- Properties must be vacant at acquisition
- Notices as required under the Uniform Relocation Act must be included with all purchase offers. See the NSP Forms Library for Voluntary Acquisition Guideform letters <http://www.tdhca.state.tx.us/nsp/forms.htm>
- Properties must pass HQS and TREC inspections

#### Manufactured Housing Requirements

- The manufactured home must be 22 feet wide (single-wide manufactured homes are not acceptable);
- The land and improvements must be included under one mortgage or deed of trust;
- Must assume characteristics of site-built housing;
- The subject property must be taxed as real property at closing;
- The manufactured home must meet Federal Manufactured Home Construction and Safety Standards established by the Department of Housing and Urban Development in 1976. A “certification label” must be affixed to each transportable section of the manufactured home. Homes constructed prior to this time or not in accordance with this standard will be unacceptable;
- Must be permanently affixed to a site-built foundation system that is appropriate for the soil conditions of the site and designed to meet local and state codes. The transportation devices (wheels, axles, and trailer hitch) must be removed; and
- A copy of the engineer’s report is required.

#### Appraisal Report

A complete Appraisal Report is required. The Appraisal is required to meet all Uniform Relocation Act requirements, as modified by the Neighborhood Stabilization Program. Please see the NSP Appraisal guidelines

[http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal\\_guidance.doc](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisal_guidance.doc) for a complete description of acceptable appraisals for NSP-assisted properties. Appraisals must be completed within 60 days of the final offer to purchase property.

### Survey

New surveys with certification to the buyer, the Title Company, and all lenders (including the Department) are required for all Texas NSP-assisted properties. The survey must be completed with the benefit of a title commitment and conform to the requirements of the title insurance company's standards, or any applicable legal standards relating to surveys. A copy of the survey is required as part of the loan package. If the property was previously purchased and rehabilitated by the Seller as an activity under a Texas NSP contract, the survey from that purchase may be provided with an acceptable affidavit certifying that conditions have not changed.

### Escrows

An escrow account must be established for property (real estate) taxes, hazard/homeowners insurance and, if applicable, flood insurance. Private mortgage insurance is not applicable on any of the Texas NSP mortgage loans. Two month's reserves for property taxes, hazard insurance and, if applicable, flood insurance will be collected at closing.

### Prepaid Items

Prepaid items are collected at closing to cover accrued and unaccrued hazard insurance and property (real estate) taxes. Two months of property taxes and fourteen months of hazard insurance must be used to establish prepaid items.

### Standard Flood Hazard Determination

Life of Loan Flood Determination is required prior to closing. If property is determined to be in a flood plain, flood insurance is required. The homebuyer is required to certify that they understand the requirements and cost of flood insurance.

## ***NSP HOMEBUYER ASSISTANCE (HBA)***

The Texas NSP provides Homebuyer Assistance (HBA) for properties used as the eligible borrower's principal residence. This subordinate homeownership financing under the Texas NSP program will be provided as a deferred, forgivable, 0% interest loan, to households at or below 120% of the AMFI. HBA may not exceed \$30,000, with the final amount based on calculated need. Permanent mortgage financing may be provided by the Department in addition to homebuyer assistance, if the household is at or below 50% of the AFMI. Please see the Texas NSP Homebuyer Financing Guidelines for a complete program description and further information.

- Subordinate, second or third lien (third lien position requires prior written Department approval)
- Deferred forgivable mortgage
- Amount based on demonstrated need as evidenced by Good faith estimate and HUD-1 Settlement Statement
- \$30,000 maximum
- Assist homebuyer households to qualify for first lien mortgage financing.

### HBA Affordability Period

No payment will be due for the Texas NSP HBA unless the property fails to meet the affordability period. The Affordability Period, as defined by 24 CFR 92.254, is the period of time during which an assisted household is contractually obligated to occupy the assisted property as its principal residence.

Forgiveness of the HBA loan will be calculated as a pro rata annual share over the loan term. At each anniversary of the loan a portion of the loan balance will be forgiven, such that a zero balance remains at expiration of the term. For example: 1/10<sup>th</sup> of the balance will be forgiven annually for a 10-year note; 1/5<sup>th</sup> of the balance will be forgiven annually for a 5-year note.

The loan term will be determined by the loan amount

- Properties receiving less than \$15,000 of HBA will have a 5-year affordability period and a 5-year loan term.
- Properties receiving equal to or more than \$15,000 up to the program maximum will have a 10-year affordability period and a 10-year loan term.

### HBA – Use of Funds

HBA funds may be used for:

- Down payment assistance

- Gap financing – principal reduction
- Closing costs

Down payment assistance is limited to 50% of the lender's programmatically required down payment prior to individual qualification. For example, if the lender required down payment is 5% of the purchase price, the Texas NSP HBA may be used for 2.5%. The balance of the HBA amount, up to \$30,000 total, may be used for gap financing.

#### Closing Cost

Allowable expenses are restricted to reasonable third party fees. Fees payable to third party lenders are limited to 2% of the loan amount for all charges, including but not limited to origination, discount point(s), application, and/or underwriting fees. Third party fees that are supported by an invoice and reflect on the HUD-1 will not be included in the 2% limit.

#### *For Texas NSP HBA loans originated from the NSP 1-Program Income or NSP3fund sources only:*

Other than surveys and appraisals reimbursed to third-parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed \$2,500.

#### Subordinate Financing

It is expected that the Texas NSP HBA lien will be subordinated to the buyer's purchase money mortgage.

#### Maximum Loan-To-Value

The maximum combined loan-to-value for ownership financing is 100% of the market appraised value. Closing costs and allowable prepaid costs may be financed, so long as the final combined loan-to-value does not exceed 100%.

#### Purchase Price

Borrowers using Texas NSP HBA financing to purchase homes from third-party Sellers must achieve a 1% discount from the appraised market value of the property. The appraisal must be completed within six months of the final offer to purchase the property.

If Borrowers are purchasing the home from a Texas NSP subgrantee that has used NSP funds for the initial purchase and rehabilitation or construction of the property, the purchase price shall be the lesser of 1) the hard cost to acquire and rehabilitate or construct; or 2) 100% of the appraised market value.

### Homebuyer Minimum Investment

A minimum investment of \$500.00 will be required on the purchase transaction from all homebuyers receiving assistance through the Texas NSP. Homebuyers may provide more than the minimum \$500.00 at closing; any additional funds will be applied to a principal reduction.

Qualifying households will be allowed to participate in a self-help housing program, with written approval of the Department, through which a minimum number of self-help construction hours will be allowed to substitute as “sweat equity” for the \$500.00 minimum investment requirement. The value of “sweat equity” will be calculated at \$10.00/hour.

### Repayment

HBA loans will be come due and payable if the property fails to complete the affordability period requirements

- If the property ceases to be the owner’s principal residence, or the first lien is paid off – whether by cash-out refinance or sale, the portion of the HBA loan that remains outstanding must be repaid;
- The payoff amount will be calculated on an annual pro-rata basis from the most recently passed anniversary date of the loan; and
- The final payoff amount will be subject to the availability of proceeds at sale.

### Homebuyer Education

All NSP-assisted homebuyers will be required to complete at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. Evidence of completion must include documentation describing the level of homebuyer counseling, including post-purchase counseling. The Homebuyer Education Certificate may not be more than six months old at the date of the purchase contract.

### Ownership of Other Property

The financed property must be owner-occupied and the borrower may not have an ownership interest in any other residential dwelling at the time of loan closing. A manufactured home, regardless of the type of land ownership, is considered a residential dwelling for this purpose.

Ownership in a timeshare, either as a deeded interest or a right-to-use arrangement, is not considered ownership in a residential dwelling for Texas NSP purposes due to the very limited (typically one or two weeks per year) access to the unit.

### Demonstration of Need

Applicants must demonstrate that HBA is necessary to complete purchase of the property. Demonstrated need will be calculated by the subgranteesubgrantee using the NSP Homebuyer Assistance Worksheet provided by the Department.

### Eligible Mortgage Financing

The homebuyer must qualify for primary mortgage financing from a recognized lender to purchase the home:

- The first lien mortgage must be a fully amortized, fixed rate loan for up to 30 years;
- The housing ratio (“front end ratio”) must fall between 28-32% and the total debt ratio (“back end ratio”) may not exceed 45%;
- The origination fee and any other fees associated with the primary mortgage may not exceed 2% of the loan amount ; and
- Must include escrow for taxes and insurance, including flood insurance if applicable.
- Homeowner Association fees must be considered in the housing ratio.

Ineligible Mortgage Financing: Adjustable Rate Mortgages (ARMS), Balloon Payment mortgages, Wraparound mortgages, Graduated mortgages, Negative Amortization mortgages, Sub-prime mortgages or other non-traditional financing are NOT allowed under this program.

## ***PROPERTY ELIGIBILITY***

### Property Type

- Single Family Residence
- Condominium
- Town Home
- Manufactured Home Unit (MHU, with limitations)

### Eligible Property

- Existing structures and new construction are eligible
- Property must have been foreclosed if financing is provided as an activity under NSP Use A – Financing Mechanisms, and purchased directly from the Successor in Interest at foreclosure
- Properties purchased and rehabilitated, or constructed as an activity under a Texas NSP contract.
- Properties must be vacant at acquisition



- Notices as required under the Uniform Relocation Act must be included with all purchase offers. See the NSP Forms Library for Voluntary Acquisition Guideform letters <http://www.tdhca.state.tx.us/nsp/forms.htm>
- Properties must pass HQS and TREC inspections

### Manufactured Home Requirements

- The manufactured home must be 22 feet wide (single-wide manufactured homes are not acceptable);
- The land and improvements must be included under one mortgage or deed of trust;
- Must assume characteristics of site-built housing;
- The subject property must be taxed as real property at closing;
- The manufactured home must meet Federal Manufactured Home Construction and Safety Standards established by the Department of Housing and Urban Development in 1976. A “certification label” must be affixed to each transportable section of the manufactured home. Homes constructed prior to this time or not in accordance with this standard will be unacceptable;
- Must be permanently affixed to a site-built foundation system that is appropriate for the soil conditions of the site and designed to meet local and state codes. The transportation devices (wheels, axles, and trailer hitch) must be removed; and
- A copy of the engineer’s report is required.

### Appraisal Report

A complete appraisal Report is required. The Appraisal is required to meet all Uniform Relocation Act requirements, as modified by the Neighborhood Stabilization Program. Please see the Texas NSP Appraisal guidelines ([http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisahl\\_guidance.doc](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/docs/appraisahl_guidance.doc)) for a complete description of acceptable appraisals for NSP-assisted properties. Appraisals must be completed within 60 days of the final offer to purchase.

### Survey

New surveys with certification to the buyer, the Title Company, and all lenders (including the Department) are required for all Texas NSP-assisted properties. The survey must be completed with the benefit of a title commitment and conform to the requirements of the title insurance company’s standards, or any applicable legal standards relating to surveys. A copy of the survey is required as part of the loan package. If the property was previously purchased and rehabilitated by the Seller as an activity under a Texas NSP contract, the survey from that purchase may be provided with an acceptable affidavit certifying that conditions have not changed.

### Escrows

An escrow account must be established for property (real estate) taxes, hazard/homeowners insurance and, if applicable, flood insurance by the first lien lender. Private mortgage insurance is not applicable on any of the Texas NSP mortgage loans.

### Prepaid Items

Prepaid items are collected at closing to cover accrued and unaccrued hazard insurance, property (real estate) taxes and per diem interest.

### Standard Flood Hazard Determination

A life of the loan flood determination is required prior to closing. If property is determined to be in a flood plain, flood insurance is required. The homebuyer is required to certify that they understand the requirements and cost of flood insurance.

## ***CHARACTERISTICS OF A DEFERRED, FORGIVABLE LOAN***

### **WHAT IS A “0%, DEFERRED, FORGIVABLE” LOAN?**

- HBA assistance is provided in the form of a 0%, Deferred, Forgivable Loan in which:
  - No interest is charged; and
  - Installment payments are postponed (i.e. deferred – no monthly payments are made by the assisted Household) annually throughout the Affordability Period (i.e. the Loan term) unless an event occurs which results in termination of forgiveness (see “Events Which Result in Termination of Forgiveness” below); and
  - Balance is reduced (i.e. forgiven) annually throughout the Affordability Period (i.e. the Loan term) unless an event occurs which results in termination of forgiveness (see “Events Which Result in Termination of Forgiveness” below).
- Annual forgiveness is based upon the number of *full* years the assisted Household occupies the assisted property as its Principal Residence.

### **WHAT IS “FORGIVENESS”?**

- A portion of the Deferred Forgivable Loan balance is forgiven annually, based upon the number of *full* years the assisted Household occupies the Rehabilitated or newly constructed property as its Principal Residence. The amount owed on the Loan is reduced incrementally throughout the Affordability Period until the balance is zero.
- The start date for the Homeowner’s Affordability Period begins on the first day of the month following the Construction Loan Agreement (CLA) end date.

### ***Example: Calculating Pro-Rated Deferred Forgivable Loan Balance***

For a \$15,000 Homebuyer Assistance Note \$3000 will be forgiven annually until the end of the Note Term.

<b>Number of Full Years Occupancy</b>	<b>Date of Forgiveness (Anniversary of Note Date)</b>	<b>Total Amount Forgiven to Date</b>	<b>Unforgiven Balance</b>
<b>1</b>	<b>February 1, 2010</b>	<b>\$3,000</b>	<b>\$12,000</b>
<b>2</b>	<b>February 1, 2011</b>	<b>\$6,000</b>	<b>\$9,000</b>
<b>3</b>	<b>February 1, 2012</b>	<b>\$9,000</b>	<b>\$6,000</b>
<b>4</b>	<b>February 1, 2013</b>	<b>\$12,000</b>	<b>\$3,000</b>
<b>5</b>	<b>February 1, 2014</b>	<b>\$15,000</b>	<b>0</b>

Events which Result in Termination of Forgiveness

- Forgiveness ceases and the Deferred, Forgivable Loan becomes due and payable in full if any of the following occur:
  - Assisted Household ceases to occupy the assisted property as its Principal Residence;
  - All or part of the assisted property is sold;
  - All or part of the assisted property is leased, transferred, or foreclosed *unless it occurs as a result of*:
    - Creation of a lien subordinate to the TDHCA lien;
    - Transfer of ownership interest is between co-makers of the TDHCA Loan;
    - Transfer of ownership interest due to the death of a co-maker of the TDHCA Loan if at least one other co-maker remains alive and continues to occupy the assisted property as his/her Principal Residence.
  - The first lien mortgage Loan is:
    - Paid in full;
    - Refinanced or assumed by a new borrower without the consent of TDHCA;
    - Becomes due and payable in full for any reason;

Determining the Affordability Period

- The Affordability Period is the period of time during which an assisted Household is contractually obligated to occupy the assisted property as its principal residence.
- The term of the Deferred, Forgivable Loan is based on the Affordability Period requirements defined by 24 CFR §92.254 as follows:

***Example – Term of Deferred, Forgivable Loan (Affordability Period)***

<b>HBA Contractual Terms</b>	
<b>Amount of NSP Assistance Provided to Household</b>	<b>Term of Deferred, Forgivable Loan (Affordability Period)</b>
Under \$15,000	5 years
\$15,000 to \$30,000	10 years

- The start date for the Affordability Period is the closing date for the Homebuyer purchase.

## ***RECAPTURE FACTORS***

### Sale of the Assisted Property

- In accordance with 24 CFR §95.254 and the terms of the applicable TDHCA Deferred, Forgivable Loan Note, in the event the assisted housing unit is sold, the unforgiven balance of the Loan will be paid from the available net proceeds of the sale. Net proceeds include the sales price of the property, less the balance of a superior Loan and closing costs.
- If net proceeds are insufficient to repay the full amount of the unforgiven Loan balance and the borrower's investment in the assisted property, the borrower's investment will be paid first from the available proceeds and the Loan will be repaid to the extent of funds available. Any remaining Loan balance will be forgiven
- If there are no net proceeds, repayment of the Loan is not required and any remaining Loan balance will be forgiven.

### ***Example – Determining the Recapture Amount for a Sale***

Harry Jones received HBA assistance for purchase of a home on January 1, 2009, and signed a 10-year deferred forgivable Loan with a final Loan balance of \$28,000 and a maturity date of January 1, 2019. Mr. Jones sells the property for \$70,000 to Mildred Green on July 1, 2011, after having occupied it for only 2½ years occupancy. The unpaid, unforgiven balance of the \$30,000 Loan will be pro-rated based on the number of *full* years of occupancy by Mr. Smith, calculated as follows:

#### Step 1 – Determine Unforgiven Balance

Affordability Period – 10 years

Number of *full years* occupancy – 2

Annual forgiveness =  $\$28,000 \div 10 = \$2,800$  per year

Total forgiveness for full years occupancy =  $\$2,800 \times 2 = \$5,600$

Balance immediately due and payable to TDHCA =  $\$28,000 - \$5,600 = \$22,400$

#### Step 2 – Determine Net Proceeds

Sale price	\$70,000
Less: Closing Costs	<u>(\$ 4,200)</u>
Net proceeds from sale	\$65,800
Less: HBAR Balance to TDHCA	<u>(\$22,400)</u>
Net to Mr. Jones	\$43,400

After \$4,200 closing costs are paid, Mr. Jones' available net proceeds from the sale of his NSP are \$65,800. The \$22,400 unforgiven Loan balance is paid to TDHCA and the remaining \$43,400 is paid to Mr. Jones. *In the event the HBA Loan balance exceeds the*

available net proceeds from the sale, any unpaid balance remaining after available net proceeds are applied is forgiven.

***Example – Determining Recapture for a Transfer of Ownership (non-sale transaction)***

John Smith (80% AMFI) received HBA assistance to purchase a home on January 1, 2009, and signed a 10-year deferred forgivable Loan with a final adjusted balance of \$30,000 and a maturity date of January 1, 2019. Mr. Smith *transfers* ownership of the property to Maggie Johnson on July 1, 2010, after only 1½ years occupancy. The unpaid, unforgiven balance of the \$30,000 Loan will be pro-rated based on the number of *full* years of occupancy by Mr. Smith, calculated as follows:

Affordability Period – 10 years

Number of *full* years occupancy – 1

Annual forgiveness = \$30,000 ÷ 10 = \$3,000 per year

Balance immediately due and payable to TDHCA = \$30,000 - \$3,000 = \$27,000

***LOAN CLOSING***

- A Loan Closing is the step in a real estate transaction during which Loan documents are executed and funds due are exchanged.
- Loan Closing must be handled by a title company or by an attorney licensed to practice law in the State of Texas.
  - The title company or, if applicable, the closing attorney, is referred to as the “Closing Agent.”
- Reminder: The *HIC* is invalid if more than six months have elapsed between the *HIC* Effective Date and the Date of Assistance (refer to Chapter 8 – Application Intake and Determining Eligibility). Obtain updated *Intake Application* income Support Documentation, re-verify the Household’s income eligibility, create an updated *HIC*, re-certify eligibility, and submit the updated *HIC* to TDHCA.
- Costs associated with Acquisition, including downpayment assistance and closing costs, will be paid at the time of Loan Closing. An electronic Draw Request for Closing Funds must be submitted to TDHCA prior to closing.
- Submit all required Support Documentation as indicated on the applicable *Draw Request Checklist*, and/or as instructed by a NSP Division Program Specialist and/or Closing Specialist.
- Following completion of Loan Closing, specified Loan documents must be recorded in the County Clerk’s office for the county in which the assisted property is located. The

CA must ensure the *recorded original* documents (referred to as “trailing documents”) are forwarded to TDHCA.

## ***REQUESTING A LOAN CLOSING***

### Homebuyer Acquisition-Only Loan Closing

- *At least 30 days prior to the anticipated Loan Closing date*, submit NSP *Set-Up Checklist for Homebuyer Activities* with specified information and Support Documents and ensure the Project has been activated in the HCS System and funds have been committed. Required information includes, but is not limited to:
  - Borrower’s and Co-Borrower’s (if applicable) full *legal* names. All names must be presented *exactly* as they are to appear on legal real estate documents;
  - Physical address of the assisted property;
  - Any other names previously used by a borrower (i.e. maiden names, names used for previous marriages, etc.);
  - Name and address of Closing Agent being used to conduct Loan Closing;
  - Type of structure being acquired.
  - TDHCA will prepare the Acquisition-related Loan documents for all transactions.

### Internal Procedures Completed Prior to Loan Closing

- Upon receipt of the appropriate complete *Setup Checklist* the NSP Division Program Specialist will request that the NSP Division Closing Specialist initiate preparation of Loan documents.
- The NSP Division Closing Specialist will:
  - Review the request for preparation of loan documents submitted by the CA;
  - Work in conjunction with the NSP Division Program Specialist to clearly communicate with the Closing Agent;
  - Verify eligibility factors and other information pertaining to the real estate transaction; and
  - Provide necessary information to the Legal Division for preparation of all HBA and Permanent Financing Loan Documents.
- Upon receipt of the applicable Loan documents from the Legal Division, the NSP Division Closing Specialist will ensure Loan documents are sent to the appropriate Closing Agent;
  - Note: It is the CA’s responsibility to ensure the Loan documents have been *received* by the Closing Agent.

- A Loan may not be closed until the following has been completed:
  - The Homebuyer must be provided with a copy of all Loan documents for his/her review *at least 24 hours prior to Loan Closing*;
  - NSP Division Closing Specialist has reviewed the preliminary HUD-1 prepared by the Closing Agent;
  - NSP Division Closing Specialist has verified that the *HIC* Effective Date is not older than six months from the scheduled date of Loan Closing;
  - NSP Division Closing Specialist has approved the Loan Closing.

## ***AFTER THE LOAN CLOSING***

### Recorded Documents

- The Closing Agent must immediately submit the original executed Loan documents to TDHCA Closing Division for review and authorization to record.
- After receiving authorization to record from TDHCA, the Closing Agent must submit Loan documents which must be recorded (in accordance with the Closing Instructions) to the County Clerk’s office for recording (in the county in which the assisted property is located).
  - In the event TDHCA Legal Division identifies deficiencies in the executed Loan documents, such deficiencies must be resolved by the Closing Agent in order to obtain recording authorization.
- Upon completion of recording, the County Clerk will forward the recorded Loan documents to either the Closing Agent, TDHCA, or the Homebuyer in accordance with instructions provided to the Closing Agent.
- Ensure that original *recorded* documents (referred to as “trailing documents”) are properly forwarded to TDHCA within 90 days after Loan Closing.
  - Failure to provide trailing documents to TDHCA in a timely manner may result in suspension of the NSP Contract and delay in payment of future Draw Requests.
- Ensure that the Closing Agent submits to TDHCA any original executed Loan document not requiring recording.



## Chapter 13. CONSTRUCTION CONTRACTS

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**DO NOT INITIATE DEMOLITION OR CONSTRUCTION ACTIVITIES PRIOR TO LOAN CLOSING.**

**Any Project for which demolition or construction has begun prior to Loan Closing becomes immediately INELIGIBLE for NSP assistance and NO costs incurred will be reimbursed.**

### ***BUILDING CONTRACTOR REQUIREMENTS***

- Building Contractor requirements include but are not limited to:
- Building Contractors participating in the NSP Program must certify they understand they are working on a federally funded, state administered construction contract.
- If at any time during the contracted period it is determined that the Building Contractor and/or lower-tier subcontracts has been debarred or suspended from participation in the NSP Program, no further disbursements may be paid to him/her.
- Building Contractors must certify all work for all Projects will meet or exceed TMC Specifications, and any local codes, specifications, and/or standards for all properties. Additionally, any work performed for New Construction must comply with the International Residential Code.
  - All materials must be new and of good quality;
  - All work must be performed with skilled craftsmanship and accomplished with care.
- The Building Contractor must provide evidence that he/she is covered by general liability insurance. If the Building Contractor does not have proper insurance coverage, the CA must obtain and document coverage in an amount equal to or exceeding the construction contract amount(s).
- All work performed by the Rehabilitation Building Contractor must be guaranteed for a period of one year which begins on the date of Project completion as indicated in *Final Inspection*. The Homeowner may require correction of construction defects at any time during the warranty period.
  - During the warranty period, should the Building Contractor fail to make adequate repairs and/or corrections within 30 days from date of written request, the CA and/or Homeowner may take any necessary legal recourse as prescribed in the construction contract(s).
- Upon completion and acceptance of construction work performed, the *Final Inspection* must be completed. The one-year warranty period (see above) begins on the date of completion.

- TDHCA requires that the Builder certify the construction and habitability for new construction for a ten-year period.

### ***CHANGE ORDERS***

- Change Orders which increase the amount of the Project's budget will require modifications to the existing Loan documents. New Loan documents must be prepared by TDHCA Legal Division and all parties must execute them at either a title company or an attorney's office before any expenses incurred for the Change Order items will be reimbursed.
  - Because of this requirement, TDHCA *strongly recommends* that the Project be Setup for each property be based on a carefully documented work-write-up and/or builders bid. Contingency funds may be added to each Rehabilitation budget: 15% of the hard costs of rehabilitation is added if the total rehab costs are less than \$25,000, if rehabilitation or construction costs exceed \$25,000 the contingency will be 10% of the total costs. Any un-used funds remaining after completion of the Project will be deobligated.
- If it is later determined that additional work or changes to construction procedure or materials are required, the Building Contractor must submit to the CA a proposal specifying the work needed, including the estimated costs and the time required for such work to be completed.
- Use the Building Contractor's proposal and information to prepare a *Change Order Request* and complete the following:
  - Compile a detailed explanation of the need for the change and the budget revision;
  - Obtain signatures as applicable:
    - Building Contractor;
    - CA;
  - Attach photographs of work completed to date;
  - Submit the *Change Order Request* and explanation to TDHCA.
- Costs incurred for construction expenses related to Change Orders will not be reimbursed until:
  - Change Orders have been approved by TDHCA; and
  - If applicable, new modified Loan documents have been prepared by TDHCA Legal Division and fully executed by all applicable parties.
- If a health and/or safety issue requiring a Change Order is discovered during construction or Rehabilitation contact TDHCA *immediately*.

**Reminder:**

**Increases to the budget will require MODIFICATIONS to the existing Loan documents. New Loan documents must be prepared by TDHCA Legal Division and all parties must execute them before any expenses incurred for the Change Order items will be reimbursed.**

**IMPORTANT!**

**Upon completion of construction, including Rehabilitation, the ENTIRE structure must comply with all applicable codes, standards, and specifications, including TMCS and TMC Specifications.**

***CONSTRUCTION AFFIDAVITS***

- An Affidavit is a declaration made under penalty of perjury before a notary public.
- There are significant penalties, both civil and criminal, for making false affidavits. Penalties may include a \$4,000 fine, confinement in jail for a period not to exceed one year, or both, and personal liability of the individual signing the affidavit for any loss or damage resulting from the false statement. Refer to Texas Property Code 53.026, 53.085, 53.259, and 53.106.
- For the purposes of the NSP Contract, the CA acts in the capacity of “Contractor” and the Building Contractor acts in the capacity of “Subcontractor.”

***LIEN WAIVER AFFIDAVITS (INTERIM AND FINAL) BY CONTRACTOR***

- By signing the *Lien Waiver Affidavit by Contractor*, the Contractor (i.e. the CA):
  - Acknowledges receipt of payment for the portion of work performed through the specified date; and
  - Waives its right to file a mechanic’s or materialman’s lien against the Homeowner’s property.
- The applicable *Lien Waiver Affidavit by Contractor* (must):
  - Be signed by the Contractor (i.e. the CA);
  - Be notarized;
  - Include the legal description of the assisted property as Exhibit A;
  - Be recorded in the County Clerk’s office in the county in which the assisted property is located.
- Submit the original recorded *Lien Waiver Affidavit by Contractor* to TDHCA with the interim Draw Request.
- Retain a certified copy of the notarized, recorded *Lien Waiver Affidavit by Contractor* in the applicable Project File.
- LIEN WAIVER AFFIDAVIT By signing the *Lien Waiver Affidavit* the Subcontractor (i.e. the Building Contractor) or vendor:

- Acknowledges receipt of payment for the portion of work performed through the specified date; and
- Waives his/her right to file a mechanic's or materialman's lien against the property.
- Any *unpaid* Subcontractor or vendor may have the right to file a mechanic's or materialman's lien against the property, so it is essential that the Contractor (i.e. the CA) obtain waivers from each Subcontractor, lower-tier Subcontractor, or vendor who has worked or provided material for the Project as the work progresses.
- Obtain the applicable *Lien Waiver Affidavit* from the Building Contractor *and* from *each* lower-tier Subcontractor and vendor who performed work or contributed materials for construction.
- Submit to TDHCA *only* the *Lien Waiver Affidavit* provided by the Building Contractor. Retain all other lien waivers received from lower-tier Subcontractors in the applicable Project File.
- The applicable *Lien Waiver Affidavit* must:
  - Be signed by the Building Contractor;
  - Be notarized;
  - Include the legal description of the assisted property on Exhibit A;
  - Be recorded in the County Clerk's office in the county in which the assisted property is located.
- Submit the original recorded *Lien Waiver Affidavit* to TDHCA with the interim Draw Request.
- Provide a certified copy of the *Lien Waiver Affidavit* to the Homeowner.
- Retain a certified copy of the notarized, recorded *Lien Waiver Affidavit* by in the applicable Project File.

### ***AFFIDAVIT OF COMPLETION***

- The CA must, as a condition of obtaining final payment from TDHCA, provide a notarized, recorded *Affidavit of Completion* stating that construction is complete and no liens exist against the property for unpaid construction-related expenses.
- The *Affidavit of Completion* must:
  - Be signed by the Contractor (the CA);
  - Be notarized;
  - Include the legal description of the assisted property on Exhibit A;
  - Be recorded in the County Clerk's office in the county in which the assisted property is located.

- Submit the original recorded *Affidavit of Completion* to TDHCA with the Request for Release of Retainage.
- Provide a certified copy of the *Affidavit of Completion* (to the Homeowner).
- Retain a certified copy of the notarized, recorded *Affidavit of Completion* in the applicable Project File.

### ***PLANS, SPECIFICATIONS, CODES, AND STANDARDS***

- Adopt and apply the appropriate written standards and specifications for all construction Projects and comply with all applicable local, state, and federal codes and ordinances.
  - Standards provide a description of *minimal* acceptability.
  - Specifications provide a *detailed description* of materials, procedures, and/or processes that must be used in a construction project.
  - Codes and ordinances provide *legally enforceable* mechanisms for ensuring compliance with standards and specifications.
- Upon completion of construction, the entire assisted property must comply with all applicable codes, standards, specifications, and plans.
- Housing with any sub-standard condition remaining after completion of construction (either Rehabilitation *or* New Construction) will be considered non-compliant and not eligible for reimbursement.
- Unless construction, safety, or health codes, standards, or specifications more stringent than TMCS apply to the assisted property, then TMCS will apply to all Rehabilitation and New Construction activities. Ensure that the most stringent applicable codes, standards, and specifications are used, which may include but are not limited to the following:
  - State;
  - Local;
  - Zoning ordinances;
  - State and federal standards for manufactured housing, as applicable; and
  - State and federal modular housing standards, as applicable;

### ***PLANS***

- Construction plans must meet or exceed TMC Specifications.
- Construction plans should include detail sufficient to construct the project, including any required accessibility features.
- Retain a copy of the applicable construction plans in the Project File.

- Upon completion, the Rehabilitated/Reconstructed property may not be of a smaller design, have reduced features, or have standards other than what is specified in the applicable plans.

### ***TEXAS MINIMUM CONSTRUCTION SPECIFICATIONS (TMC SPECIFICATIONS)***

- Adopt specifications which meet or exceed TMC Specifications. Any construction performed using NSP funds must comply with, at a minimum, TMC Specifications.
- If the CA is subject to other construction specifications, the more stringent standards apply.
- If specifications other than TMC Specifications are adopted, submit the set of written specifications to TDHCA for approval before proceeding with construction. Specifications must identify:
  - Quality of materials to be used in the housing project;
    - Minimum acceptable grades and types ;
    - Manufacturer (i.e. brand name).
  - Methods of construction and installation, or special instructions and guidance for:
    - Workmanship;
    - Materials;
    - Equipment.
- When grades or brand names are identified by TMC Specifications, the *Work Write-Up/Cost Estimate* must include the phrase “or written approved equal” if other materials may be used.
- TMC Specifications provide a basis for settling disputes pertaining to quality.

### ***INTERNATIONAL RESIDENTIAL CODE (IRC)***

- International Residential Code (IRC) is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions.
- New Construction must comply with IRC.
  - Municipalities in the State of Texas are required to adopt IRC for use in new construction.
- IRC may be obtained online at:
  - [www.iccsafe.org](http://www.iccsafe.org)

## ***MANUFACTURED HOUSING UNIT (MHU) CONSTRUCTION REQUIREMENTS***

- MHUs must comply with construction, installation, and safety requirements for:
  - HUD; and
  - Texas Manufactured Housing Standards Act.

## ***RESCHECK***

- REScheck is software developed by United States Department of Energy (DOE) for use in ensuring that newly constructed homes using federal funds comply with the applicable minimum energy efficiency ratings.
- Upon completion of construction, Reconstructed and Newly Constructed housing must comply with DOE's Model Energy Code (MEC) as evidenced by the REScheck Certificate which indicates the housing unit's energy efficiency rating.
- A housing unit's energy efficiency rating is calculated based on the types and specifications of materials actually used in construction. The REScheck calculator is available online at:  
[www.energycodes.gov/rescheck/](http://www.energycodes.gov/rescheck/)
- Ensure that the Building Contractor's REScheck Certificate is obtained and includes data for the *actual* materials used in construction.
  - The final REScheck Certificate must be *dated after completion* of New Construction as indicated on the *Final Inspection*, and must be signed by the Building Contractor.
  - Submit a copy of the REScheck Certificate to TDHCA with the final Draw Request.
  - Retain the original REScheck Certificate in the Project File.

## ***ACCESSIBILITY REQUIREMENTS***

- Reconstructed and Newly Constructed housing units receiving NSP assistance must meet specific accessibility requirements in accordance with Texas Government Code §2306.514, as follows:
  - Entrances:
    - Housing unit must have at least one entrance door (may be located on the front, side, or back of the building) on an accessible route served by a ramp or no-step entrance and having, at minimum, a standard 36 inch door;
  - First floor of building:
    - Each interior door of the housing unit must have, at minimum, a 32 inch door, unless the door provides access only to a closet of less than 15 square feet in area;

- Each hallway must have a width of at least 36 inches and be level with ramped or beveled changes at each door threshold;
- Each bathroom wall must be reinforced for potential installation of grab bars; and
- Each electrical panel or breaker box, light switch, or thermostat may not be higher than 48 inches above the floor;
- Each electrical plug or other receptacle must be at least 15 inches above the floor.
- Breaker boxes:
  - If the applicable building code or codes do not prescribe another location for the breaker boxes, each breaker box must be located not higher than 48 inches above the floor inside the building on the first floor.

### ***ACCESSIBILITY OF REHABILITATED HOMES***

- Although Texas Government Code §2306.514 does not specifically address Rehabilitated housing, reasonable accessibility improvements to Rehabilitated units are allowable and should be provided if reasonable.

### ***GENERAL PROPERTY IMPROVEMENTS (GPIs)***

- General Property Improvements (GPIs) are eligible costs if they are:
  - Included with construction required to bring a home into compliance with applicable codes, standards, and specifications;
  - Necessary, and;
  - Reasonable in cost.
- Examples of eligible GPI's include, but are not limited to:
  - Construction to eliminate inefficient design or underutilized space, such as moving or removing walls (i.e. to create an accessible route, etc.);
  - Carbon monoxide detectors;
  - Landscaping for prevention of deterioration of grounds; and
  - Fencing to improve safety and security of property and occupants.
- It is appropriate to provide or repair a structure in keeping with existing neighborhood characteristics. These activities should be included as part of the original *Work Write-Up/Cost Estimate* and not as an addition made through a Change Order.
- Luxury items are not eligible expenses and include, but are not limited to:
  - Hot tubs or Jacuzzis;
  - Skylights;
  - Granite countertops;



- Chandeliers.

## ***CONSTRUCTION COMPLETION***

### Dates of Completion

- Construction must be completed in accordance with terms specified in the Construction Loan Agreement (CLA).
  - The construction completion date may not extend past the NSP Contract end date.
- The construction completion date specified in the CLA does *not* change in the event the NSP Contract is amended to allow an extension of time.
  - An extension of the specified construction completion date is a modification requiring creation of new Loan documents by TDHCA Legal Division and execution at a title company or an attorney's office by applicable parties.
  - The date of the Final Inspection ( is used to determine:
    - Start date of the one-year warranty;
    - Start date for 30-day Retainage period (Retainage will not be released by TDHCA before the 31st day following construction completion).

***Title 18, §1001 of the United States Code states that a person is guilty of a FELONY for knowingly and willingly making false or fraudulent statements to any department of the United States Government.***