

HUD NSP Problem Solving Clinics

In early 2010, HUD offered a series of locally-based Neighborhood Stabilization Program (NSP) Problem Solving Clinics on implementing the NSP program. The clinics were targeted to the needs of individual housing markets and thus were open to grantees and their nonprofit, developer and financial institution/ lender partners from each local market area.

The NSP Problem Solving Clinic provided grantee, non-profit staff, and other stakeholders access to technical experts and HUD staff that were able to field program design and implementation questions, provide clarifications on regulations, and suggest alternative approaches to address hurdles and roadblocks.

Both one-on-one sessions between specific grantees and experts, as well as more general workshop sessions were offered. Below is the transcript from one of the workshops.

Workshop: NSP Eligible Uses and Costs **Presenter: Marsha Tonkovich, ICF International**

PRESENTER: All right, good morning everybody. So we are here to talk about eligible activities and national objectives. And while we're going to give you guys the sort of regulatory guidance framework for what you can do with your NSP money, I want to encourage us to ask applied questions. So I'll kind of set out for you what the rules are about what you're allowed to do and what you're not allowed to do, but then we'd like to have you guys ask us questions as we go. And we're also going to share with you — I've been doing training on this topic for about — it's been close to a year now, and I'll share with you some of the kinds of questions I've received as it relates to eligible activities and national objectives.

I have HUD experts here with me as well and they're happy to jump in. And I'll also turn to them throughout the presentation to ask them questions about the kind of things, the Q and A's, if you have questions about those. So don't feel like you have to wait until the end of the presentation — in fact I'm going to encourage you to jump in and ask questions as we go. You need to do something with the mic? [man fixes mic on shirt] I feel like Diane Sawyer, or something like that. Except I don't have— you know how— have you ever seen on TV the way they always have tucked into their back pocket a— OK. So let's jump in and start talking about eligible activities.

So you all — I think most of you know me so we won't spend a lot of time on the introductions. But John, can you say just a word about yourself for us?

JOHN LASWICK (HUD): Crazy.

PRESENTER: All right. John equals crazy — all right.

JOHN LASWICK: No. So David and I have been working on the sort of policy side for [inaudible] so we've answered a lot of questions, we've heard a lot of questions.

MAN: Wait a second. [Woman hands microphone to John]

JOHN LASWICK: OK, more than one word. We've been working on policy for the last year or more. And I think we've seen an evolution, just in terms of where people are in the program – we're getting a lot more detailed questions now. I know there's some grantees that still aren't out of the door but I think most of them are into the program now and feel a little concerned so I think the timing's good. We're trying to be responsive, we'd like to be more proactive, we're developing some other programs, but if you run into the NSP Question box, we always try to get back to you very fast. And so we're going to keep that up.

PRESENTER: Great, thank you John. So we, as we're videotaping here, we will ask you guys to talk into the microphone just so that we can capture the questions, and I'll try to repeat them as well, because the intent is to put this up on the NSP website that you guys have seen.

So, let's start talking about eligible uses, eligible activities. As you know there are five of them that were set out in the statute. There have been a lot of questions about how those five groupings, or buckets, of activities were set up. They are tied to the CDBG eligible activities, so one of the questions we get all the time about eligible activities or eligible uses under NSP is, "Well do the CDBG rules convey over to NSP?" What do you guys think the answer is? Generally, yes. Generally, yes.

Let me give you an example. The CDBG statute says that when we do direct homeownership assistance, right, under that category called "direct homeownership assistance," we can't spend more than 50 percent – we can't pay for more than 50 percent of the down payment. Right? Everybody seen that in the CDBG statute before? So the question is well does that same 50 percent of the down payment rule apply over to NSP? What do you guys suppose the answer is?

WOMAN IN AUDIENCE: Yes.

PRESENTER: Yes. It does. So some of those same kinds of rules that apply to CDBG are going to apply to NSP. There are some exceptions and we'll talk as we go through this about those exceptions, and I encourage you guys to ask us those questions as we go along.

Now, in order to be able to talk about NSP eligible uses, we have to first talk about types of properties because there's sort of this matrix, when you think about eligible uses under NSP, which has to do with the types of thing I want to fund – Right? Homeownership, rehab, acquisition, whatever it is – and a crosswalk to the type of property that I can do that on. Right? Whether it's foreclosed, abandoned, vacant, whatever it is. And what you have to do in order to decide whether you can fund the type of activity you want to fund is you have to go through that intersection. So you have to look at the intersection of property type and eligible use, or

eligible thing I want to fund. And it's that intersection where you have flexibility for NSP. And so let's start with those property types and then get into the sort of things you can fund.

So you have a lot of definitions. Some of these have been more than clear than others – you had a lot of questions about a few of them. And I'm going to ask John to jump in on some of these.

So "abandoned": Abandoned, you know, kind of has a use and real estate lingo. We've all thought about abandoned properties. But it has a fairly strict definition under NSP. And so the abandoned definition says that mortgage or tax foreclosures – so some type of legal proceeding – has begun. So it's not enough – it's not enough – that, you know, that's been a dilapidated property in my community for 30 years. It has to be a property where someone has begun the foreclosure proceedings of some type. Second point: Nobody's paid anything on this property in 90 days. And third point: It's been vacant for 90 days. So that third point is the one that people have had some struggles with – because we can have a lot of properties where, they're being foreclosed upon, they are, in fact not getting any payments because the owner has walked away, but they've decided to rent it out, pending disposition, right? Those kinds of properties, unfortunately, will currently not apply with the definition of abandoned.

So what might you do? How might you get around that problem? Has anybody had that issue come up in their community? Anybody? OK. Well, let's look at the definition of foreclosure. Does the definition of foreclosure say that it has to be vacant? It does not. It does not. And so if you have tenants in residence you could wait until it goes through the foreclosure process, and once title has indeed transferred, it's been foreclosed, even though there are tenants who are currently in place. You could proceed with it as a foreclosed property. So even though we might not have a vacant property doesn't mean we can't find a way to do it under NSP. So that's one of those examples of kind of working within the structure.

Let's talk about the definition of "foreclosed." Foreclosed is: a legal foreclosure proceeding has occurred – whether it's tax foreclosure or financial foreclosure – and title has transferred. So that's the key part you want to take home here – title has transferred. So I'll let John jump in but we've had a lot of questions having to do with sort of 'courthouse steps' kinds of acquisitions. Right, where we know we're going to go to foreclosure – the bank has given, you know, 12 million notices to the owner, we know that they're going to go through it. But in order to avoid foreclosure on the courthouse steps, the buyer is going to sell it– the owner is going to sell it to the lender. Or somebody else is going to buy it, like we know that— we know it's going to go through foreclosure so a nonprofit is going to buy it just before we have to go through that whole legal process. Unfortunately given this definition, those kinds of acquisitions do not count as foreclosed. We have to have actually been through the foreclosure process and title has to have at least momentarily transferred hands. Now the lender can come in and sell it – the minute they take title to it there could be, that same day, a similar sale to a nonprofit, a developer, a homebuyer, whoever it is. So time doesn't have to have elapsed, but title has to have transferred. So we've had a lot of questions around that issue. John, do you want to jump in with anything about that?

JOHN LASWICK: Yes. One alternative – And I don't want to jump your next slide; I can't remember – is deeds in lieu of foreclosure. So sometimes you might be able to negotiate with the— we consider that, the notice considers that an equivalent to foreclosure— so, because there's some language in there about equivalence. So sometimes you can negotiate, save some of the steps, save some of the costs and time involved – it doesn't always work. Sometimes it can be with an abandoned property because you have to have had the foreclosure proceedings have started, so if you've got a willing seller and there isn't any opposition you can sometimes do that. You can't – and this is a fine line – however, do short sales. And I'm not sure I can even define how fine that line is. Short sales, basically are from the seller, from the homeowner to the end user. We want to see it going back through the lender. And you could say, "How come— why is a deed in lieu of foreclosure different?" And I have to call my attorney, but maybe you can— [gestures toward presenter]

PRESENTER: Yeah, I think the difference is – and it will depend upon your state and local law because many state and local real estate law has the definition of what a deed in lieu of foreclosure— what that process— what that legal process looks like. So part of being able to do that, you're going to have to look to state and local law to see whether or not that is indeed deemed to be an equivalent to foreclosure – in other words an equivalent method of transferring title. It's not true in all jurisdictions that it is. It's because it has a legal framework to it.

OK, so here is the big question that's been coming up for folks: timing. We have a number of situations – because this foreclosure process that has now been going on for, in some jurisdictions a couple of years, in other jurisdictions longer than that. And so we have properties that were purchased out of foreclosure – by a nonprofit, by a homebuyer, by whoever it might have been – two years ago. So it was indeed a foreclosed property when they bought it, but now the title is held by a nonprofit, by the homeowner, by whoever it is, and they're coming in for NSP and saying, "OK, can I get rehab help?" Right? And so they're saying, "Well it was foreclosed." Here's the problem: Under this definition of foreclosed, it has to be foreclosed at the time that we commit to the NSP activity. So, properties that were purchased two years ago? NSP didn't exist at that point. So in terms of thinking about timeline, what we're talking about here is properties that were purchased after December of last year – because that's when you guys put your action plans into HUD for NSP – and properties when you have an individual who's going to acquire it with their own funding and then they're going to come in for rehab assistance from you, that when they bought the property there was the intent to do the NSP rehab, and so they followed all those rules at the front end – right, the environmental, and the— whatever other rules might have come up – the noticing, and all the things that might have come up. And so they're under some sort of agreement or some sort of approval from the grantee that, yeah you need to give rehab assistance to this activity. So this timing thing is really important, because you have a lot of people coming forward and saying, "Give me NSP," but unfortunately it pre-dates either an agreement with the grantee or it pre-dates that December date of when NSP really began. So that's been a big, sticky issue for many of us. Questions on timing or foreclosure before I move on? All right, let's keep going.

Blighted. So you'll see we're going to talk about demolition in a few minutes. A blighted property is one that the grantee itself has defined as being blighted. So in the action plan that you wrote for HUD where you asked for approval of your program, you will have had a definition of blighted – often it ties back to your consolidated plan or your CDBG program. We're going to talk later about why this is important, but you need to have definition of what counts as a blighted property.

Land banking. So land banking is acquiring a property for a temporary holding period – and we'll talk in a moment about how long that period can be – and the idea is that eventually, when the market clears up or when you've decided what you want to do with the site, you will flip that property into some other use. So maybe you're going to buy it and hold it, and then later on turn it into rental housing. Or buy it, hold it, and when the market recovers you're going to do homebuyer assistance. Whatever it might be, the idea is that the land bank is going to currently hold that property, maintain it, you know, keep it up, board it up, whatever you might do, while you're waiting to see what you're going to do in the long term with that property.

Vacant. This obviously means that no one is currently living in the unit. But it could also mean that it's land that is vacant, so there is no unit there – it's vacant, open land. But in order to count as vacant – this is the general definition and we're going to tweak it a little bit – in order to count as vacant, it has to have once been developed. So in order to be vacant, you have to have once been something, right, you can't just be farmland. So when we say vacant land we're not talking about big swaths of green space, we're not talking about farmland, we're not talking about forests, you know, preserves, that kind of stuff. We are talking here about land which has been in housing use or commercial use or some other sort of use, or which – and this is the tweak – or which is infill housing, infill land, in a developed area. So what they're really trying to avoid here is not the sort of infill lots in the neighborhood. What they're trying to avoid here is those big, you know, lots of land the developer might have bought with the idea there was going to be some grand, you know, housing development on that land, and they never did anything with it – it's a big, open farmer's field with no infrastructure, no roads, no streets, no sewer, nothing on the site. That's the kind of thing we're saying you can't do as vacant property. OK, John, anything you want to add on that?

JOHN LASWICK: No, I think you got it all there.

PRESENTER: OK. All right, homes, that's what it sounds like – it's a residential unit, and residential properties could include vacant land which is zoned for residential. So it's either a unit or it's inclusive of units but it's also inclusive of land which is zoned for single- or multi-family housing.

OK, so let's jump into the eligible uses. I won't go through all the parts of this – I'm going to try to focus on the common questions we've been getting. So the first eligible use is financial mechanisms. And I will say, as I said, having been doing this with John and David from HUD for

the last year or so, this is the area – or one of the two areas – where we’ve gotten the most eligibility types of questions because nobody quite knows how to use this eligibility category. It sounds grand and broad, but it sort of isn’t. And so what it is, is when you’re doing something where you are financing an activity which is otherwise eligible under the other eligible uses, so B through E. So it’s where you’re going to do your sort of innovative financing mechanisms – your innovative financing activities – and you’re only going to be doing it, however, on foreclosed properties and homes. So remember how I said we have this intersection of the uses and the property types? Here’s that intersection. So it has to be foreclosed and it has to be a financing mechanism. So not vacant properties, not abandoned properties – foreclosed properties. And again what I’m doing is an innovative financing thing. Now folks have said to me, “Does that mean all my down payment programs, all of my homebuyer programs – they all have to somehow go under this eligible use?” No. You will see as we look at Eligible Use B and Eligible Use E that direct homeownership assistance, down payment and closing costs, financing programs, are otherwise eligible in other places. This is the place where you’re going to do your more innovative, kind of, unusual financing. So let me give you a couple of examples:

Loan loss reserve. That’s not directly financing Peter as a homebuyer, or a developer, Justin, who’s doing homebuyer development – rather what it is saying is, We’re going to set up a loan loss reserve so that as Peter and Justin do activities, if they should default we’ll make the lender— the private lender’s hole. So it’s a guarantee, if you will. That’s an innovative financing tool – and we have a couple of jurisdictions who are doing similar sorts of things. You might be doing a land trust, right, where you’re going to use NSP money to acquire foreclosed properties, and you’re going to hold it – the nonprofit or the public agency is going to hold that land in a sort of a public trust, and then develop something else on the site, so it’s an innovative kind of a model – that might go here. So this is going to have more limited applicability than it would seem, because it’s really—you can do lots of stuff easier under some of the other eligible uses.

Yeah, Dorothy?

DOROTHY: Well, I had understood—

MAN: Please wait for the mic.

DOROTHY: I had understood Eligible Use A to also include the time the grantee used to design whatever forms of financial assistance they wanted to apply.

PRESENTER: OK, so good question. So Dorothy’s question is: Does Eligible Use A include the time involved in sort of designing my program, getting up to speed? Not necessarily. Those kinds of costs are program delivery or activity delivery costs that we’re going to talk about in a few minutes – they actually could be tied to all the other eligible uses, depending on how your program is designed. So for example, if I were setting up my monitoring systems or my—not my monitoring systems—my inspection systems, let’s say, for foreclosed or abandoned properties under Eligible B, I could charge that as a delivery cost under Eligible Use B. So it would not have to be—this really is not intended as sort of this overarching sort of uber kind of management

activity. Really, that really isn't its intent. It really is these sort of innovative financing approaches. John, would you want to add to that?

JOHN LASWICK: Yeah, I'd say this is probably the most frequently misunderstood eligible use for all the reasons that Marsha has cited. I think even—we saw this in the NSP2. People thought – and it's a reasonable deduction – that anytime you're doing financing it must be it. Well, we've been evolving our own understanding and kind of getting to the point where we realize that almost everything you do can be done through another eligible use and, as Marsha said, it's only these more complex transactions – we were just talking in New York City recently about doing a revolving loan fund that was going to capitalize a loan loss reserve. And there's some tradeoffs in terms of when you're committing funds, and when you're actually spending them, and how much of a pain in the neck it is to set these things up. But in their case, they were using 18 million dollars worth of NSP money and 6 million dollars worth of their own money to generate a 55-million-dollar loan pool. So that was worth a fair amount of front-end effort. In most cases you're not going to need to get that complicated, and default back to homeownership assistance, which is available under B and E, and you can do almost anything under that. Rehab is eligible under B and E, and you can do financing under rehab, so we'll talk about that in a minute.

PRESENTER: Right. So, again, you probably won't use this category as much because it has some more limitations than those other categories do. So let's—I think we've covered those common categories—these common questions, so let's move onto Eligible Use B. This is the big category; this is where the majority of your money is probably going to go. And this has to do with acquiring, rehabilitating, redeveloping foreclosed – and here's more flexibility – or abandoned properties and they could be units, it could be properties under the residential property definition that we just had. And what—the idea here is that you are doing whatever activity – acquisition, rehabilitation or whatever it is – to assist in those foreclosed and abandoned properties. So lots of flexibility in terms of being able to do not only assistance to a developer who could acquire, develop and sell – or acquire develop and rent – but also you could do direct assistance to an individual homebuyer here. So under direct homeownership assistance you could be directly assisting an individual family. So lots of flexibility in this eligible category.

We talked about this question before – the timing of the foreclosures – I think we've covered that. So that leaves us to the next question: So can I give rehabilitation assistance if someone already bought the property – and it was a foreclosed property or an abandoned property – they come in and say, OK, now give me rehab assistance. So what do we say to that? Could I give rehab assistance to someone who privately acquired their home? What do you guys think? Only one instance – what's the instance? What kind?

MAN IN AUDIENCE: Agreement.

PRESENTER: An agreement, right? That if they have an agreement with the grantee, that, yeah, you may go buy this with your private bank financing, and if you do that, you follow these rules about the noticing and do everything you have to do, we'll come in and give you NSP rehab

assistance. So we're not saying that the acquisition and the rehab have to be covered – but we are saying there has to be a plan.

OK. Eligible Use C. So this is our land banking eligible use. We mentioned the definition of this is holding this for an interim period of time and then selling it off to a secondary use—or redeveloping for a secondary use. Here's the length of that period: Ten years. Ten years. So the maximum amount of time – it could be shorter – but the maximum amount of time I can hold something in a land bank is 10 years, and I need to have a plan. So you can't just buy the property and say, "Well, you know, we'll figure it out someday down the road." We want to see a plan for how you're going to figure out what are you going to reuse? – how are you going to reuse this property? So you're going to have a reuse plan for the land bank. OK, a lot of questions about land banking, because is this typically eligible under CDBG, guys? Typically not eligible. So this is one of those categories where we're kind of forging new ground. So let's talk about some questions as it relates to it.

So, what rules apply to the reuse of land held in a land bank? So I buy the land for the land bank, it is now being held in the land bank, six years later I've said, OK we're ready to do—my market has recovered. I am ready to do something with the properties that are in the land bank. Can I do whatever I feel like? What do you guys think? Does that sound like what you could probably do? No. No – right.

So what do you suppose you can do? Stuff that is eligible under NSP, right? So when I reuse the property – when I take it out of the land bank and I'm going to use it for whatever activity – rental, homebuyer, whatever – that reuse of the property has to be eligible and has to meet a national objective. So at the point at which I peel it out of the land bank, I have to have a plan for making true to my document that reuse of the property. So land banking is not a way – this has been a common misunderstanding about land banking. Land banking is not a way to get around those NSP eligibility rules. Right? It's a way of sort of making the decision a little farther down the road. And let's be frank – it's a way of getting my money obligated, right? Because I go out and acquire the property and hold onto it for awhile. But it's not a way of saying, hmm, it doesn't really have to be eligible. OK? So that's land banking. Anybody trying land banking? Do we have any grantees in the room trying it? You guys are?

MAN IN AUDIENCE: Well, yeah, we have a plan.

PRESENTER: You have a plan to do land banking. OK. Do you know what's in your plan yet?

MAN: Can we wait for the microphone?

PRESENTER: We're waiting for the microphone. Sorry. Run a little faster, c'mon.

MAN IN AUDIENCE: [Inaudible]

PRESENTER: OK, so you guys are going to go through your activities—so to recap, in case you couldn't hear, they're going to work with a commercial bank to identify properties who will be in this land bank. OK, and so once you've done that you'll then figure out the reuse down the road.

MAN IN AUDIENCE: Exactly.

PRESENTER: OK. So the key thing on that kind of an activity – that's a good example – the key thing on that kind of activity is it has to be in a defined target area. Right, so a land bank is not operating citywide just to hold the properties wherever we feel like it – the land bank is in a defined geographic area where you're buying the properties. Now you're not going to buy all the properties or you probably won't buy all the properties in that geographic area – you might. But you're going to target your land bank in that geographic area. Which means you might have multiple land banks. So you could have Land Bank A in the westside neighborhood and Land Bank B in the whatever other neighborhood – that's OK. But you can't sort of have a land bank that's kind of pick-and-choose among the jurisdictions. OK.

What's the national objective for a land bank? We just said that what we're going to do is buy the land bank—buy the land and we're going to hold it for a while. How do we meet the national objective? This has been one of the big problems with land banking, right? Because we're buying the property and we're probably boarding it up. Or perhaps we're renting it out while pending its final sale. How do we meet the national objective in that case? Here's the answer: It depends on what you're doing. Right? If what you're going to do is rehab the houses in the land bank – so that they're not neighborhood blight, they're not, you know, pulling down the neighborhood but you're going to actually rehab them – then you can go ahead and meet the national objective at that point and do it based upon the area who is benefiting from the fact that you're rescuing these houses. Right? So you've got a targeted area, and you're going to go in and buy up, let's say 20 houses. And you're going to rehab those 20 houses so they're not a health hazard, they're not a deterrent for the neighborhood. Then you can go ahead and call that low-mod area. Right? But let's say you're just going to buy the houses, you're going to board them up, you're going to hold onto them, you're not going to do any actual work on them. Then you don't meet the national objective at that point. When do you guys think we meet the national objective? When we do what? On the disposition. Right. On the reuse. So you've got to look at what you're doing in the land bank and that will help you to meet the national objective or to make the decision.

JOHN LASWICK: Marsha?

PRESENTER: Yeah?

JOHN: I'm a little confused about the distinction about rehabbing the properties – are you putting them in a temporary use then? Because I would say that housing use should be low and moderate housing in terms of area benefit. How were you thinking about area benefit?

PRESENTER: That's a good question. You guys in your notice, what you guys have said is that if you're doing some kind of rehabilitation – and I imagine rehab- or maintenance-related could be housing, but it could also be another use as well. And I think if it's housing, and it's going to be an interim housing use, then you might use the housing national objective as well. But I think the point we're trying to make to you guys, is if you don't do anything; you just buy the property – you haven't met the national objective at that point. OK? So that's the key thing. You might use housing if you're doing housing. You might use area if what you're doing is rehabbing it so that, as I said—something so that it can be kept up if you're not renting it out yet, or maybe you're going to turn it into commercial. OK, everybody get the distinction here? OK, good.

So Eligible Use D. Demolition. This has been a big use of the money. You see a lot of folks who want to see demolition. And the question was, "Can I demolish any old unit I feel like?" No. Does that sound like that program would work? No, right. So demolition – what we're going to do is demolish units which are dilapidated. And how did we say we figure out what is dilapidated – where does that come from?

MAN IN AUDIENCE: Blight.

PRESENTER: Blighted. Where does that definition come from? What did we just say? Where do you define blight?

WOMAN IN AUDIENCE: Action plan.

PRESENTER: In your action plan. So you guys have each defined blight in your action plan that you submitted to HUD. So to determine which units you can demolish you have to go back to that action plan and say, does this unit meet that definition. If it does, then you're allowed to do demolition. Now, here's the intersection question: Notice here that it says, "Demolition of blighted structures." Does it say anything about foreclosed, abandoned, vacant? No. Residential? No. So you can do demolition of pretty much any type of structure so long as it meets a couple of tests. Right, so long as it actually is blighted. So when HUD comes out to look at you, you're going to want to make sure you've in fact done some sort of inspection to prove that the unit was in fact blighted. And you're going to want to make sure that it's tied to the overarching NSP rules related to – tied to – those areas of greatest need – right, we said we're investing NSP money in those areas of greatest need. Right, so we might not be doing demolition citywide – we might be doing it in some of these targeted areas of need, which you have identified, again, in your action plan.

So common questions on demolition. What is the actual objective of demolition? Well it kind of depends...what do you guys think the national objective of demolition depends on? What I'm doing, how I'm reusing it. There is actual a fairly new Q and A that came out about this topic and the point it makes to folks is: you have to look at why you're doing the demolition and what you're going to use it for. If you're doing the demolition for public health and safety reasons— let's say it's a very dilapidated building and it's a danger to the kids in the neighborhood, then

you could say it meets the area benefit national objections because tearing down that building benefits the residents of that neighborhood. But if you're tearing a building down just because it doesn't have an economic use anymore, maybe it's not cost effective to rehab it, but it's not really a health and safety issue for the neighborhood then you're going to meet the national objective based on the reuse of the property. So you demo it and then you're going to turn it into a public facility. The public facility meets the national objective. Or you're going to build housing. The housing meets the national objective. So you're going to have to look at the specific projects to make that decision.

JOHN LASWICK: There is a lot of overlap between land banks and demolition, because they both hinge on what that end use is going to be. So you've got to be clear on that. One little side note on one of the examples Marsha gave is the other time you can claim area benefit for demolition is if you're engaged in a comprehensive neighborhood redevelopment that's targeted and you have other demolition activity going on. Most communities I've talked to aren't doing that, so you're back to [inaudible]. But there are things you can do more with demolished properties than land banks perhaps that could meet a national objective such as an NSP1 creating a small neighborhood park or selling a property to an adjacent neighbor or donating it to a low income adjacent neighbor as a side lot, chances are it will be maintained a little bit better...and creating a community garden that a non profit wants to operate. Land banking is driven by the market, or the lack of a market, so if you really lack a market, you might be looking for other uses than housing there and just to make sure those [uses] are eligible and meet a national objective, but it's not limited to housing.

PRESENTER: Now change of use. Change of use rules. We talked about this idea that I acquire a property or I demolish a property or both and a meet a national objective—let's say it was one of those health and safety issues or it was one of those targeted activities, and so I buy the property, I demolish, I meet the national objective at the front end, but then two years from now I say it's vacant land, I now want to change it from vacant land into a super-duper golf course. This is where the change of use rules are going to come in. If you buy the property and you demolish it and you're going to turn it into something else down the road, that would be what is called a change of use under CDBG and when you do that change of use, that use either has to be an eligible activity and meet a national objective or you might end up having to pay the money back to HUD. So the key thing here is, you can't just say, oh I met the national objective up front, I'm done, I never have to think about this property again. No, the rule says you've bought it with NSP dollars or you've demolished it with NSP dollars so we're probably going to have to look at that change of use down the road. So just be aware there are ongoing things related to these properties.

WOMAN IN AUDIENCE: For how long does that apply?

PRESENTER: Good question. The answer is, it depends.

JOHN LASWICK: I think the answer is they don't know yet. Well really, your CDBG programs continue, so there is this ongoing relationship—we haven't really decided what we're going to do at the end of the NSP program in four or five years.

PRESENTER: But if you were to default to the CDBG rules, the CDBG rules say if it's a sub recipient who owns the property it's going to be five years, if it's going to be the grantee or some branch of the grantee (like the parks department) who own the property it's going to be in CDBG rule in perpetuity. So it hasn't been fleshed out for NSP yet, but if you default to CDBG it does mean an ongoing obligation happens on that site. John would you agree?

JOHN: Yeah.

PRESENTER: Okay, one question I've gotten a lot lately because people are trying to put NSP together with HOPE VI—there was some misunderstanding out there that you could not use NSP money to demolish public housing. That is not true. Under NSP1, not NSP2—this is going to be different for NSP2, but under NSP1 you are allowed to use NSP money to demplich public housing if you've gotten permission from HUD to do demolition of the public housing. Typically that permission will come from public housing—the PIH part of HUD, because you can't tear up public housing without PIH's approval, but once you've received that approval you are allowed to use NSP funds to demolish public housing. Again, assuming it's a blighted structure...it meets all the other NSP rules. So you can combine NSP with HOPE VI.

Eligible Use E. One of the more flexible eligible uses, but lots and lots of questions. This is the redevelopment activity and here we're saying it's a property that's vacant or demolished and what we're going to do with that site is reuse it for something else. And so that reuse could be housing, it could be housing rehabilitation, housing construction—for those of us who have been doing CDBG for a long time—yeah! on housing new construction, so there's some flexibility here on that. But it could be some other kinds of uses, public facilities are here, public services are here. So this category is very broad assuming the type of property you're looking at is indeed a vacant property. We defined vacant a little bit earlier. So common questions that I get on this one are, "Am I allowed to do parks, community centers, other kinds of public facilities under Eligible Use E?" There's a misunderstanding, people thought it wasn't allowed; under NSP1 the answer is yes, you can do all those public facilities. Now this is going to be different for NSP2, but for NSP1 we can do public facilities if it meets this test that the property was vacant and it's in one of those targeted areas of greatest need and we're helping that area of greatest need. So we can do public facilities. So if you're in one of those communities where you have enough housing, you're inundated with housing, you're market is overbuilt, then this might be something you want to consider looking at for the money. So how in fact can I do a park, a community center, a senior center, whatever it is—again in your target area.

JOHN LASWICK: A homeless shelter.

PRESENTER: A homeless shelter, another good example.

JOHN: Just to reiterate what I was trying to say before, let's look at the kind of things, and you can do most under E, and this is where most of mine are going to come through. So you buy a property that's foreclosed or abandoned or even vacant, now under disposition you can look in you CDBG eligibility definitions and find out sale of property, disposition—that sale could be a donation, which means you could you give somebody the land assuming you meet a national objective. So that's a way to finance it. You can do public facilities...direct homeownership assistance. Repeat after me, direct homeownership assistance is not just down payment assistance. This is the most misunderstood concept and it's not your fault because it's not in our regs right now. If you look at the legislation and what you've been able to do with homeownership assistance, it's principle reduction. So if you haven't given the land away or the building away you can write down the entire deal to virtually zero if you've got a reason to do so. If that's not financing, I don't know what is. And under rehabilitation as well, if you look into the rehab section there is a section in there about financing and there is something that says you can do financing and there is a whole list of different kinds of financing and anytime there is rehab involved and for purposes of E since there is nothing in CDBG about new construction we're saying the same thing for new construction. A key point of which is that somebody could be a developer or they're just like an end user, a home owner that is getting a rehab loan...so they're getting some financing without a lot of the normal restrictions of the CDBG program. This is why you don't need to be in A very much, if at all.

PRESENTER: And let me add two things about rehab before we leave it and then we'll keep going here. Two other things we get a lot of questions on are reconstruction...yes, so you can tear down an existing structure, build back. Or if you had a property that was once there...so it's now vacant—it was developed a year ago and had a fire, reconstruction on the same site is okay—similar types of buildings.

JOHN LASWICK: Let me just say that since you can do new construction I don't know why you'd bother with [rehab], because there is some site limitations and things like that. Reconstruction is a way to essentially allow rebuilding of structures under CDBG which doesn't allow new construction.

PRESENTER: And the other one we get a lot is commercial rehab. So this is a rehab category—so under CDBG rules it's a rehab...could I do commercial rehab on the bottom under the CDBG rules for what you can and can't rehab and residential rehab on the top? And the answer is yes. So this category could include commercial rehab if again it's in one of those targeted neighborhoods and it's related to turning around that neighborhood for the purposes of NSP. So you're not just going running around doing commercial development—it's tied to those neighborhoods, but you could have commercial redevelopment as part of this and it might be apart of the strategy. So let me keep going.

So we talked about those common questions. I would encourage you to go to the 25 percent set aside workshop that's going to be held because there is more information about which units count and it's particularly important for redevelopment.

What can't you do? So pretty much what's not allowed under CDBG is generally not allowed under NSP, but there are some exceptions. The new construction, the land banking, they are some things you can do under NSP.

So things you really can't do. So we can't do foreclosure prevention, you have to question all the time, "Can I use NSP to help somebody to stay in an existing house that might be foreclosed?" No. We're not going to refinance their mortgage or something like that. "Can I demolish anything I feel like?" No, it has to be a blighted structure. "Can I acquire properties that don't meet one of the eligibility categories—A, B, or E?" No. it has to be abandoned, foreclosed or vacant.

JOHN LASWICK: We're going to skip over the 25 percent?

PRESENTER: Yeah, because there is a separate break out on it. So do you want to say a word about it?

JOHN LASWICK: Yeah. It's just that you can do new construction and you can do rehab under E with vacant properties, but if you want it to count for your 25 percent low-income set aside it has to be abandoned or foreclosed in addition to being vacant. That's just straight out of the laws. And it has to be residential property. So that old school you have and you want to put a senior center in, great, go for it, but you can't count it toward your 25%.

PRESENTER: And in that breakout session they'll talk to you more about those topics. The other thing that some people have been trying to do...so if I have a tax foreclosed property—I the city own the property because I've taken it through tax foreclosure, can I use that as NSP money to sort of make myself whole? In other words, pay myself for the acquisition of the property. Does that sound like something you can probably do? No. So the answer is no, you can't do that, you can't use the money to acquire something you have foreclosed. However, you can pay for all those title transfer costs, all those closing costs, and all those things that relate to that transfer.

MAN IN AUDIENCE: This relates to the land bank issue. In the district underdeveloped land is about 30 percent and we'd like to land bank and if you land bank you have to pay more money. Can NSP funds subsidize that 30 percent? Because you can get waivers but now with all the local governments having deficits and it's very difficult to get them, so you have to go through the 30 percent...

PRESENTER: It's a good question. So his question is, they have a lot of abandoned and vacant properties in their district and I'm sure it's true in other communities as well and so they're going to put the properties in this land bank they talked about earlier and the question is, "Could NSP somehow defray the taxes because obviously real estate taxes would continue to accrue on that property even though a non-profit is holding it in a land bank?" The question is, "Could NSP be used to pay those ongoing property taxes?" *Ehhh*, no, it doesn't sound like an eligible use to me.

JOHN LASWICK: You can maintain it which does include insurance.

PRESENTER: But I'm not sure about taxes.

JOHN LASWICK: Well, curiously, you can purchase a tax foreclosed property from another jurisdiction for what they're selling it for or market value...or one percent below appraised value, you just can't buy it from yourself.

PRESENTER: Ok, let's keep going. One other question we get is admin versus program delivery cost or activity delivery cost. We can pay for both types of costs through NSP. We can pay for our administrative costs, and those are the costs for us as a grantee or for our sub recipients to run the program overall. So our executive director, our personnel, our human resources staff, our receptionist, the folks that sort of run the agency that does the NSP...as an admin cost: our comp plan development, our action development and all those sorts of things. But, we can also pay as an activity delivery cost outside of the ten percent cap for the staff who do things like inspections, work write-ups, appraisals, working with homebuyers, underwriting the deal with the developers, all those sorts of things that do those specific types of projects are outside the ten percent and can be charged to each of the eligible activities. So A through E that we just looked at. Each of those, we can pay for our grantee costs, or our service and fee costs, or our partner costs to deliver those types of units and they get charged to the delivery of the program. And that's a really important distinction; you don't have to stuff them under you ten percent.

We talked about types of admin costs and price of activity delivery costs. Here's the key thing on activity delivery costs, we get this question all the time, "Do I have to track the activity delivery costs to each individual unit that I am financing?" So for those of us that work on HOME programs, HOME makes you do that—so the question is, "Do I have to do that for NSP?" The answer is, you don't have to do it. So you're not required, let's say it's going to cost somebody's salary to administer your...to do your appraisals or do your underwriting—do I have to somehow allocate that by unit. You don't have to, but there is a reason why you might want to. Anybody know the reason why you might want to? What's the cap on how much you can sell a unit for? Right, when you want to sell the unit to somebody who's a homebuyer; I can sell my unit for my total development cost, right? My cost to deliver that unit, my underwriting, my appraisal, all that kind of stuff is a part of my total development cost. So if I want to build that in to the price I want to sell it to the homebuyer for then I have to be able to track those costs to those units. Do I have to do it? No. In some markets, is that a good idea? Probably not, because I might actually end up with a sale price that is higher than the market, but it's something that you can consider—it's an option for the grantee.

JOHN LASWICK: Can I add something? A common question is we have to administer the program with general administration and with project delivery cost so how do we commit those funds, because we don't have a contract with our selves and we know we're going to have to go beyond the 18 months to keep delivering the program? And the good news is we'll be coming out with a statement shortly that says that we consider that you're signing a grant agreement

that pledges you to administer the program and therefore both the ten percent, or whatever the percentage that you set aside for general administration, and your estimated project delivery costs, activity delivery costs, can be considered to be committed and they'll be available for the full four years if you need it based on our legal relationship with you and that commitment you've made to complete the program. Of course, if you don't complete the program then you're in twice as much trouble with us, but that's not going to happen. Those of you who come to these trainings will never have that problem.

PRESENTER: Let me finish up national objectives really quick before we get you guys out of here. So obviously we talked about the fact every activity has to meet a national objective, no matter what one you're funding they all must and we have some flexibility in NSP—normal CDBG is capped at the 80 percent of median, here NSP it's going to go up to 120 percent. Our most common national objective will be the low-mod housing or low-mod-middle income housing. And if it's a single unit, it will be the owner of that unit that's 120 percent. If a duplex, it's one of the two. And one key thing I want to point out that's different than normal CDBG and many people miss this when they look at the rules for NSP—one of the good flexibilities that HUD came up with for this, is proportional funding. So for NSP—normally under CDBG we have to get 51 percent of the units low income occupied, for NSP it is proportional to the amount of money you put into the deal. So if you put 30 percent of the development cost with NSP we want 30 percent of the units to be low-mod-middle income. If you put in 60 percent of the financing in—60 percent of the units. So you're going to have a proportion to the funding is the number of low-mod-middle income or 120 percent of median units, you could have lower income of course, but in those units you're not going to go above 120. So proportionately, really a great flexibility that we don't have under normal circumstances under CDBG.

Two other national objectives before we wrap up. So you could do area benefit, we talked about the fact you could do an urban land bank, some other things and you might have limited clientele. When might limited clientele happen, what kind of housing? Group homes or whenever working with people with special needs or public facilities for persons with special needs. So we might be using it in very limited circumstances, but do know that the limited clientele can not be used for housing. If you're going to count it as a housing activity, you're not using limited clientele.

OK, questions on eligible activities or national objectives? OK, thanks everybody.