

## 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: Monitoring or Tracking for Performance and Compliance**

**Presenter: David Kramer, TDA**

PRESENTER: So welcome everyone. My name is David Kramer and I'm a senior consultant with TDA and we were assigned to present this course this afternoon. And we have some help from a lot of HUD staff who I think may outnumber the audience at this point. But Eva Fontheim, why don't you introduce yourself, and what do you know about monitoring and tracking?

EVA FONTHEIM (HUD): I'm Eva Fontheim and I work for the CDBG program in the states and small cities division in particular, and I've been in that office for eight years. I'm now the GTM for the NSPTA project. My monitoring experience is limited to the state program and I've probably been on about six monitoring trips at this point. So I'd be happy to answer any questions.

PRESENTER: Great, so glad that you're here. So, if I could just get a sense of the audience, how many of the audience are grantees? [Raises hand] OK, we have about five or six grantees. How many are TA providers? [Raises hand] OK, we have one. And the rest are HUD staff? Who are the HUD staff? [Raises hand] OK, great, thank you all for joining us.

So this is going to be a very short presentation and I think you've all — how many of you have attended earlier sessions this morning? So you kind of have the drill? This is being videotaped. For any questions, we'll need to repeat it until Lorena gets you the microphone. So Lorena can get you the microphone so because all this is both visually as well as auditorially recorded. So we invite questions as we go along so feel free to ask as we cover a topic to do that. We will probably cut our session a little short because we started a little late and we have many more this afternoon and we need to keep kind of on track here.

So here's what we'd like to do today. We wanted to— basically, we're highlighting this because we recognize the importance of most of our work of grantees, that is, is being carried out by

subrecipients or developers or other contractors. So for the grantees that raised their hands, would you say that's true or are you doing all the work yourself? How many are doing all the work yourself? [Raises hand] None. OK, so this is pretty critical that we monitor what our subrecipients are doing. NSP introduces a category of developer — although that's true for other programs as well, but highlights that — because a lot of what people are doing in the NSP program is developing affordable housing from acquisition to rehab, to sale or to rent. Now, we want to provide in this course a couple techniques in monitoring. And as everyone knows because it is so new the handbooks and guidebooks and all that, that we're used to using in CDBG and HOME, are still being developed as we speak. Is that correct? [Looks to audience]

WOMAN IN AUDIENCE: Uh, sorry.

PRESENTER: They're not published yet, right? That's correct?

MAN IN AUDIENCE: Yes.

PRESENTER: So somebody answered for you.

WOMAN IN AUDIENCE: Yeah.

PRESENTER: OK, so what we have to rely on is the guidebooks that are out there for CDBG and HOME. What chapters of the HUD guidebook 6509, anybody know — that's the basic guidebook. We're talking about Chapters 3 and 4 for CDBG and Chapter 7 for HOME, and simply it's a question of adapting it to NSP.

So part of the reason why we feel this is important is we want to make sure that the NSP program is implemented in a timely manner and of course 18 months is one of the shortest turnarounds of any new Federal programs that I'm aware of. Are there others that have a shorter turnaround period? I'm not aware of any. So this is kind of extraordinary because of course it's in extraordinary times, and so there's a lot of emphasis on getting the money out in a short period of time. Yes?

MAN IN AUDIENCE: [Inaudible]

PRESENTER: What's that? Right, thank you. So it's 18 months — I'll repeat that. The period of time is 18 months and it's to have it used or obligated. Is that the right term?

MAN IN AUDIENCE: And then you have four years to spend it.

PRESENTER: And then you have four years to spend it. Thank you very much. So we want to make sure that we comply with all regulations. Most of those regulations are, besides the additional requirements of NSP, are — and we'll go into detail on this — are based on CDBG, and for those that use HOME as the safe harbor to define affordability, of course knowing about HOME is also useful. So improving management quality — basically if there is good

monitoring that pretty much equals, in my mind, good management. Solid agreements, and with timeliness and benchmarks, all are good management tools at the same time of being good monitoring devices. Certainly, this is to help us avoid and solve problems. And the best way to solve problems is to try to catch them in the beginning. And close monitoring of all aspects of the process allows us the opportunity to kind of nip them in the bud. So clear agreements also avoids misunderstandings and therefore the ultimate audit hassles.

So there are some other considerations. And one of the basic considerations is good monitoring based on good agreements builds a good foundation for good working relationships. So I always like to quote Robert Frost about good fences make good neighbors. Well good boundaries, good agreements, make for good relationships with our subrecipients and developers.

So, who needs to monitor? So who's responsible? So whoever is directly responsible to HUD needs to be very clear about what they're doing in monitoring. [Turns on slide presentation] Oops, I'm looking at my slides but not yours. Thank you.

So — enough said about that. So let's talk about subrecipients, developers and contractors. And these definitions are important because they have a lot to do with the extent that you monitor or the extent that you procure. So there are clear differences between subrecipients and developers and contractors. Some subrecipients act as our administrators to carry out our activities, and that must be procured — we'll see that next slide. And developers are to carry out our activities. And basically contractors are performing a service for the subrecipient.

MAN IN AUDIENCE: [Inaudible]

PRESENTER: Yes?

MAN IN AUDIENCE: [Inaudible]

PRESENTER: Hold for the microphone.

MAN IN AUDIENCE: You said subrecipients are to be procured. It's the contractors that have to be procured — not the subrecipients.

PRESENTER: I'm sorry. Thank you. So contractors — and we're getting to that, thank you — contractors provide the goods and services directly to the grantee. So basically they're the ones that need to be procured, but other rules that applied to subrecipients may not apply to contractors. So basically there's a tradeoff between how much we put into the front end in selecting through procurement and how much they have to be monitored versus subrecipients or developers who have to be monitored even more.

OK. So basically for anyone receiving funds — whether they be subrecipients, whether they be developers or whether they be contractors — it's pretty important that monitoring takes place throughout the cycle of the project. So for example, it's important that in order to — before

even selecting a subcontractor or a developer — that there be a good screening, so that we pick entities that are qualified, they're competent, at least not on the debarred list. We assess certain risks, so if for example, it's— an entity that we want to subcontract with has little capacity or new staff, we might want to make sure that we adjust our agreements and our expectations to align with that risk. And in some cases we may not even want to select them. We can't assume that all those we select have all the information that they need, and therefore taking some responsibility for orienting and training is important. And then of course making strong written agreements: spell it out in detail and have lots of the detail so that there's no misunderstandings, there's clarity about deadlines, about how money can be used.

Setting performance standards, so that all our agreements include benchmarks with clear deadlines, so that as we monitor and they aren't reaching a deadline they can pick that up and make adjustments. Now a lot of the performance standards we could probably borrow from CDBG and HOME, so some of the existing agreements — that might be useful. So clearly the whole NSP program is a goal-oriented process, and part of this is to make sure that — good monitoring and tracking — is to make sure that subrecipients or developers or contractors are meeting program regulations, that progress is being measured, and of course this is something that we enter into quarterly reports on DRGR, so that's the kind of information we'll be collecting. And good monitoring also is to improve the product. So as the process moves along and adjustments need to be made in that process that improvements can be made.

So what needs to be monitored or tracked? So clearly progress toward a deliverable. This connotes that we should have benchmarks would be a good way of doing that. Identify all the compliance issues in the agreement terms. For example, what might some agreement terms be that we would pick up specifically for NSP? Any ideas? Yes?

PERSON IN AUDIENCE: [Inaudible]

PRESENTER: The 25 percent rule would be a pretty key issue. Any others?

WOMAN IN AUDIENCE: Properties that have been acquired.

PRESENTER: OK, that properties that have been acquired, that have been abandoned or foreclosed on, are acquired with a discount. Good one. And the list goes on for all the various aspects of the NSP program.

The third is tracking the money to make sure that anything that's spent complies first of all with the agreement and of course anything in the agreement complies with requirements of the NSP program.

So ways to improve the program. So one way, I would think, would be good tracking, because tracking helps to determine whether a particular activity is on schedule or is fulfilling all its requirements. And we won't know that unless we're in touch, unless we respond to reports,

whether we get those reports. And of course these reports are written, need to be part of our filing system, so that files can tell us the story of what's going on.

Now let's talk a little bit about what are some of these NSP aspects. So how many attended the first session this morning about what's eligible and ineligible? [Raises hand] OK, so we're not going to repeat all those, but clearly all those have to be eligible according to HERA. CDBG is the basis for most eligible activities, with the requirement, the primary requirement that it meets the national objective of low-moderate income, and in NSP of course that is changed to include middle income up to 120 percent. So anything that falls outside of that must have a written approval by HUD so that any activity that is tracked has to be either part of what's required under NSP and CDBG and have an exception.

So most of the eligible activities are pretty much driven by CDBG except those that are specifically identified in the NSP regulations and we'll talk about a couple of those although our purpose is not to review them this afternoon. There's some obvious examples, like for CDBG, new construction before sale is not allowed except in certain circumstances and new construction for redevelopment is an eligible activity under NSP.

Some ineligible activities just to summarize: If it's ineligible under CDBG then it's definitely ineligible under NSP. A couple examples, what's not eligible under HERA is foreclosure prevention. So foreclosure prevention is funded separately, in a separate program, I'm assuming that that's part of the reason for that. So there is a requirement for counseling in NSP, but it's pre-purchase counseling. So NSP is designed for those properties that have fallen out of the market and there are other programs to deal with attempting to prevent that, and I think that's the reason for that foreclosure prevention.

EVA FONTHEIM: Mike, there's one new activity in NSP that's not required— or is not allowed under CDBG, and that's land banking. And new construction is somewhat frowned upon.

PRESENTER: What's that?

EVA FONTHEIM: Under rare circumstances is new construction allowed. In CDBG.

PRESENTER: In CDBG, right. OK, so there are a number of areas, of projects, and land banking is one of them, and there are various activities under land banking. You want to expand on that?

MAN IN AUDIENCE: I was just going to say land banking is the eligible use. The activities that make up land banking is just acquisition and disposition.

PRESENTER: OK, thank you. So in CDBG for example, there are times when non-blighted structures can be demolished. That's not true for NSP — they have to be blighted. And what's the definition of blighted? So the local grantee gets to define that, and, so that's how that's determined. So purchase of properties not abandoned or foreclosed upon, except if they're

under certain uses, but the usual programs or uses require that they be either abandoned or foreclosed upon.

So the major area for national objectives of NSP, or the only area, is the low-mod for NSP. And basically that has two differences, basic differences with CDBG, and the one is the income limit, which is 120 percent AMI. And there is a special set-aside for under 50 percent of 25 percent of the funds. So things like slum and blight and urgent need national objectives are not applicable to NSP.

So we talked about the difference of the 25 percent. So costs that are allowable: Any cost in the agreement or authorized by the contract agreement. And of course that is based on what's eligible. And then anything that's expended, it needs to be checked against an invoice, and then reviewed against OMB A87 or other applicable Federal cost circular.

So for example, what would be an example of a Federal expense that's not allowable? Very common one. When I came in this morning I looked for coffee and stuff like that. So what do we get? Water. I even had to look for that a while in the major room. So, OK, what else does HUD look for, particularly under NSP? Rehab standards, which are true for CDBG and HOME, and there's a whole set of rules determining that — they have to be set locally. The sale of homes in NSP — they cannot be sold for any more than the cost, which would include acquisition, rehab and other costs related to development. So that's the limit under NSP and that's a big difference particularly with HOME.

There are other program issues and one of those that comes to my mind quickly is the whole affordability issue and how that's determined. And that can be determined by any grantee but most use HOME affordability requirements as a safe harbor for that. We talked about purchasing properties have to be 1 percent less than the appraised value. There are some exceptions to that, as you might have gotten this morning — those under \$25,000 or those that are vacant under other uses. Then the cross-cutting requirement — all because it is Federal money, all the Federal requirements that then kick in, whether it's displacement issues under Uniform Relocation Act, environmental issues, and all the others — Davis-Bacon, all apply. So part of— yes?

MAN IN AUDIENCE: Where does relocation come to play with empty and vacant homes?

PRESENTER: I'm trying to think of an example. Any thoughts?

MAN IN AUDIENCE: The issue comes with the Recovery Act amendment to NSP, which provided this bonafide tenant language, which basically says if you're buying a foreclosed home, it could be vacant, but you have to ensure that no tenant was displaced at the time of notice of foreclosure, and that if there was a tenant in the property that they were given at least 90 days notice to relocate. So it's not so much that you are relocating an existing tenant, but it's more of a liability issue. If you purchase this property and you don't have a certification from the REO holder that you acquired it from, someone could come to you and say, hey, I was kicked out of

this property, and now they have a case against you. OK we've been working with Peter Werwath to develop a document, but what—

PRESENTER: This has to do with acquisition.

MAN IN AUDIENCE: Strictly acquisition.

PRESENTER: So in acquiring properties when it is occupied or when they have to be transferred in a point where they're not occupied, where the tenant is dealt with in some way.

MAN IN AUDIENCE: Yeah, it's not just the—

PRESENTER: We have a hand up back there?

MAN IN AUDIENCE: Well.

PRESENTER: You want to continue?

MAN IN AUDIENCE: I was just trying to—

PRESENTER: OK, go ahead.

MAN IN AUDIENCE: It's not so much that the property is currently occupied. It's the point at which if there was a tenant, were they given the notice? Right, so today the lender may be selling the property and it's vacant. What the law is concerned with is at the time that the property became a foreclosure — that notice was given: this is now a foreclosed property — was there a tenant in there? If there was, were they given 90 days notice? So you may be buying a vacant property, but the certification relieves you of this liability.

SECOND MAN IN AUDIENCE: [Inaudible]

FIRST MAN IN AUDIENCE: It's optional. We have a form available to you. It'll be on the resource exchange website. But you don't have to use it, banks don't have to accept it, but it's intended to provide guidance to you in navigating this requirement.

PRESENTER: So the question was is a form that covers this situation available? Thank you. Question over here.

WOMAN IN AUDIENCE: Why isn't the liability on the banks? Why are we going to be liable for this maybe months after — or years after — the fact? I don't understand.

PRESENTER: Yeah, these are all issues related to acquisition, and I think we're giving—there is at least a panel on the one-to-one that deals with acquisition where they go into this.

MAN IN AUDIENCE: [Inaudible]

PRESENTER: They did not talk about it. OK. So do we have any— do you want to answer?

WOMAN IN AUDIENCE: Joan Morgan is here.

PRESENTER: Alright, so where is Joan Morgan?

MAN IN AUDIENCE: No, no she's at the one-on-one.

PRESENTER: Oh, she's on the 101. So—

MAN IN AUDIENCE: I had a question actually, I mean, if we're finished with this topic, in regards to the purchase discount. That's in regard to the 1 percent after-price, 1 percent below. What if it comes a little under? We had our appraisal that came in and it was like .64. Do we have leeway to round up to 1 percent?

PRESENTER: Whoa. [To woman in audience] You want to answer that?

WOMAN IN AUDIENCE: So, we usually don't accept rounding.

MAN IN AUDIENCE: OK. And then—

WOMAN: No. N-O.

MAN IN AUDIENCE: OK, can we average? What about if we— can we average? It's individual, so it has to be 1 percent? Because we're having an issue. I'm actually from Fairfax County and we have a program for our first-time homebuyers using NSP funds as a second trust, and we had recently won one that came back under contract. But the appraisal came under 1 percent. And then my next question is, I mean, I know we're using their appraisal, but just the method— looking at how they did their appraisal, it wasn't averaging the sales, and there was one that was not even sold yet — it was still listed. So I mean just the standards of the appraisal or how they come about, because if we do it, it might be appraised at 1 percent, but just their method that they used.

PRESENTER: OK, this is a great example of the kinds of things that get picked up in monitoring. And there are certain requirements dealing with what standards the appraisals should maintain. And is there a guidance on that? For appraisals? I know there are specific kinds of parameters for that, but is there actual HUD guidance on appraisals? There is?

WOMAN IN AUDIENCE: There's a document on the resource library.

PRESENTER: OK. Related to appraisals?

WOMAN IN AUDIENCE: On the NSP web resource page.

PRESENTER: OK, look on the NSP resource page and there's at least a discussion on appraisals. And the appraiser has to have certain certifications, I believe, and they have to follow certain appraisal practices.

MAN IN AUDIENCE: [Inaudible]

PRESENTER: Wait a minute, hold it. Let's just one with the microphone.

MAN IN AUDIENCE: I was just going to say, we can, maybe after the session, deal with his particular case and link him with a HUD resource.

PRESENTER: OK, great. So as you saw there were about five or six HUD persons in the room. Grab one of those afterwards and talk more specifically. You had another comment here?

MAN IN AUDIENCE: I was just going to say that one of the bigger issues is who's doing the appraisal, not whether that person is certified, because if it's the bank appraisal, even though they may be using similar comps, there is wide disparity in what the result may be versus an independent appraisal.

PRESENTER: OK. This is not a black and white kind of environment. This is a very gray environment when we get into appraisals, as we know from doing appraisals. OK, I wanted to move on. I wanted to just remind us that even though we're emphasizing regulations, whether the ones that NSP adds to CDBG, the primary purpose is to address the whole issue of foreclosures, destabilizing communities, and so creativity is encouraged in order to reach our ultimate goal of stabilizing communities. So just wanted to, in the midst of all these requirements and regulations, is that not get lost in the discussion.

Wanted to just add one more comment about building long-term affordability. When you think about the crises that we're in and the opportunity that presents us, there's kind of an extraordinary opportunity to capture properties for the long term, for affordability. And so that's why I think there are renewed interest and expanded interest in mechanisms like land trust to preserve long-term affordability. There are all kinds of other mechanisms, but just something, another resource for looking at that, to take advantage of this opportunity.

So, just wanted to talk about some other resources for monitoring and tracking subrecipients and developers and contractors. The new website, of course, that was launched today, but looking at the various kinds of notices and other resources on the Web. So are there any other comments or questions or statements that anyone would like to make?

So we got done a little early. Is that OK? All right. So there are handouts and we would like you to get into the practice of doing an evaluation. Is that right? So please pay attention to the

yellow sheet on your table and fill it out. That would help us greatly improve upon what we're doing with the workshops. OK, well thank you all.

WOMAN IN AUDIENCE: Thank you very much.

MAN IN AUDIENCE: Thank you.