

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

Rule Title:

Community Development Block Grant (CDBG) Neighborhood Stabilization Program (NSP)

Rule No: 9BER09-1

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE:

Unless these funds are expended quickly in the areas most affected by foreclosures and subprime lending, homes will deteriorate and neighborhoods will suffer blight and degradation.

REASONS FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:

Promulgation of Rule Chapter 9BER09-1 using emergency rule procedures is the only available mechanism that adequately provides for the expeditious disbursement and use of the federal funds to address foreclosed and abandoned residential properties in order to stabilize and improve Florida neighborhoods.

SUMMARY:

This rule enables the Department of Community Affairs to distribute and administer CDBG Neighborhood Stabilization Program (NSP) funds in accordance with the provisions of Title III of Division B of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289.

THE PERSON TO BE CONTACTED REGARDING THIS EMERGENCY RULE IS:

Jacquelyn Dupree, Administrator, CDBG Program, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, telephone (850) 487-3644.

THE FULL TEXT OF THE EMERGENCY RULE IS:

9BER09-1 Community Development Block Grant Neighborhood Stabilization Program (NSP)

Funding.

(1) The objective of this emergency rule is to establish administrative procedures for implementing and managing NSP funded projects in accordance with Public Law 110-289 and 24 CFR Part 570. This emergency rule applies to all State-funded NSP grant recipients, whether Urban Entitlement or participants of the Florida Small Cities CDBG Program, located in the following jurisdictions:

Alachua County

Apopka

Bay County

Bradenton

Charlotte County

Citrus County

Clay County

Clearwater

Davie

Daytona Beach

Delray Beach

Ft. Pierce

Hernando County

Indian River County

Martin County

Melbourne

Miami Beach

Ocala

Okaloosa County

Osceola County

Palm Coast

Santa Rosa County

St. Johns County

St. Lucie County

Tallahassee

Titusville

(2) In order to expedite recovery measures, all portions of Rule Chapter 9B-43, F.A.C., are waived by this emergency rule, except the following: Rule 9B-43.0051 (2) (Lead Based Paint), (3) (Rehabilitation Standards), and (8) (Procurement) (selected portions of Grant Administration and Project Implementation). Except as described in the Federal Register Notice (Vol. 73, No. 194), all statutory and regulatory provisions governing the Community Development Block Grant (CDBG) program for states, including 24 CFR part 570 subpart I, for CDBG entitlement communities, including those at 24 CFR part 570 subparts A, C, D, J, K and O, and applicable program guidance, shall apply to the use of these funds. In addition, the following emergency rule provisions are applicable:

(3) Definitions.

(a) "Activity delivery costs" are non-administrative costs which can be directly associated with and required for an eligible NSP activity and may not exceed 10 percent of the housing construction budget. If paid to the developer, these costs shall be included in the developer fee. Activity delivery costs must be consistent with the guidelines in Technical Memo CDBG –HCD-08-01.

(b) "Affordable rents" is defined as the Fair Market Rents (FMR) as published annually by HUD for the sub-grantees.

(c) "Blighted structure" means a structure that has substantial deterioration in which conditions are leading to economic distress or endangerment of life, the sub-recipient jurisdiction agrees by ordinance that the structure is blighted, and one or more of the following factors are present:

1. Unsanitary or unsafe conditions;

2. Deterioration of site or other improvement; or

3. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness.

(d) "CATF" means the Citizen Advisory Task Force which the State's sub-recipient must create in order to provide public participation and comply with citizen participation requirements.

(e) "Current market appraised value" means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within sixty (60) days prior to an offer made for the property by a grantee, sub-recipient, developer, or individual homebuyer.

(f) "Day" means calendar day.

(g) "Developer" means an entity provided NSP funds for purchasing, rehabilitating and disposing of properties that have been abandoned or foreclosed upon including maintaining, assembling, and facilitating the redevelopment of vacant property, and/or marketing, and disposing of land-banked properties.

(h) "Developer Fee" is an amount in addition to activity costs paid to a developer in consideration of the developer's efforts. This amount is considered "estimated profit."

(i) "Foreclosed property" has been foreclosed upon at the point that, under state or local law, the mortgage or tax foreclosure is complete. The U.S. Department of Housing and Urban Development (HUD) generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

(j) "Land bank" is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP program, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and disposal of the land-banked properties. If the land bank is a governmental entity, it may also maintain abandoned or 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.

(k) "NSP Target Area" means a geographical area to be served by an NSP activity.

(l) "State Sub-recipient" refers to the unit of general purpose local government that is eligible to receive State NSP funds.

(m) "Sub-recipient" has the same meaning as in the first sentence of 24 CFR 570.500(c). This includes any nonprofit organization or unit of general purpose local government that the state awards NSP funding.

(n) "Subprime" refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. They may also display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria that may encompass borrowers with incomplete credit histories. Subprime loans are loans to borrowers displaying one or more of these characteristics at the time of origination or purchase. Such loans have a higher risk of default than loans to prime borrowers. Generally, subprime borrowers will display a range of credit risk characteristics that may include one or more of the following:

1. Two or more 30-day delinquencies in the last twelve (12) months, or one or more 60-day delinquencies in the last twenty-four (24) months;

2. Judgment, foreclosure, repossession, or charge-off in the prior twenty-four (24) months;

3. Bankruptcy in the last five (5) years;

4. Relatively high default probability as evidenced by, for example, a credit bureau risk score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or

5. Debt service-to-income ratio of 50 percent or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.

(o) "Revenue" for the purposes of section 2301(d)(4) of Title III of HERA has the same meaning as program income, as defined at 24 CFR 570.500(a), with the modifications in this notice.

(4) Interlocal Agreements. Housing acquisition and disposition, including homeownership assistance and counseling, will not require an interlocal agreement. NSP State sub-recipients proposing eligible public facility or infrastructure activities within the boundaries of another jurisdiction shall be required to enter into an Interlocal Agreement. Both jurisdictions must be eligible to participate in NSP. The Interlocal Agreement must include the following provisions, or submit documentation of an established relationship between jurisdictions, which includes the following provisions:

(a) Includes as parties all State sub-recipients whose jurisdictions are included in the project and/or target area(s);

(b) Authorizes the State's sub-recipient to undertake the activities in all jurisdictions included in the interlocal agreement; and

(c) Affirms that all activities are consistent with each sub-recipient's comprehensive plan and provides documentation which includes applicable excerpts of each sub-recipient's comprehensive plan in the supporting documentation section of the application.

(5) Expenditures and Limitations.

(a) State sub-recipients must submit at least one request for funds each month.

(b) Recipients and sub-recipients may maintain no more than \$100,000 cash-on-hand to meet daily cash needs. Amounts greater than \$100,000 shall be expended within twenty-one days or returned to the Department.

(c) Escrow Accounts. Recipients and/or sub-recipients may draw down CDBG funds and deposit them into an interest-bearing escrow account for rehabilitation. The sub-recipient must separately track, for each housing unit, the receipt and disbursement of all escrowed funds, including funds escrowed by a sub-recipient.

1. Funds may be requested only after execution of the contract by the State sub-recipient or their sub-recipients.

2. Escrowed funds must be used in accordance with the escrow agreement. The Department may refuse to disburse funds for escrow accounts if the State's sub-recipient fails to comply with the terms of prior escrow accounts.

3. Any request for escrow funds shall be accompanied by information identifying the activity and the basis for the amount, i.e., address of the home and the cost for rehabilitation. Escrowed funds must be expended within sixty days from date of deposit in the escrow account or be returned to the Department. At the end of a calendar quarter during which escrow funds were received, the State's sub-recipient shall submit a report identifying the amount and date escrow funds were received, the amount expended during the quarter and escrow balance. If there is a balance at the end of the quarter, and the 60-day period has not expired, a final report shall be submitted within seven days after the 60-day period, along with any unexpended balance and interest.

4. Interest earned on escrow accounts shall be returned quarterly to the Department.

(d) A land bank may not hold property for more than ten years without obligating the property for a specific NSP eligible activity. Under no circumstances may NSP grant funds be used:

- to pay more than the appraised value of the property, or

- for activities that displace a tenant/homeowner.

(e) Up to 6.8 percent of the funds allocated to a jurisdiction may be used for administrative costs as specified in 24 CFR 570.206.

(f) Developer Fees are defined under Section (3) Definitions, and the amount paid from NSP funds shall be limited to a maximum of 12 percent of the total project cost. Unless a contract involving developer fees is procured by competitive bids, or no NSP funds are used for developer fees, recipients and sub-recipients shall negotiate fair and reasonable developer fees as required by 24 CFR 85.36 (f) (2), which shall include preparing a cost analysis. Written justification for the developer fee amount, based on a cost analysis and consideration of at least the elements identified in 24 CFR 85.36 (f) (2), shall be part of the procurement documentation.

(6) No less than 25 percent of the State's NSP allocation shall be allocated to assist the NSP Low-Income (NSPLI) target population not exceeding 50 percent of area median income. These supplemental funds must be used to provide rental housing for those individuals and families whose incomes do not exceed 50 percent of area median income.

If the NSP sub-grantee does not have at least five years experience providing rental housing to a low-income target population, it must either partner with one or more local housing authorities or non-profit organizations in the county which have such experience, or designate one to be the eligible applicant for supplemental funding.

(7) Recapture and Re-allocation of NSP funds. The Department shall recapture unobligated funds through the following process for all NSP-funded grants.

(a) No later than 10 months following execution of the agreement between HUD and the State, the Department will recapture all unobligated funds (including applicable administrative funds) from the sub-grantee except for a specified percent (applied to all applicable sub-grantees) of the original NSP grant amount.

(b) No later than 15 months following execution of the agreement between HUD and the State, the Department will recapture all unobligated funds from the sub-grantee except for five percent of the original NSP grant amount.

(c) If the State sub-recipient has not spent its entire NSP award amount by the two-year grant completion date, the Department shall evaluate whether the State sub-recipient has made substantial progress and whether an extension may be granted. If it is determined that substantial progress is being made and at least 50 percent of the funds have been spent, the Department may grant up to two regular contract extensions for a total of no more than 18 months, as warranted by the overall progress, remaining activities, and funding. Following the extension(s), the Department shall recapture all unspent funds except for 10 percent of the original NSP grant amount, which will require a special extension in order to be spent after expiration of the regular extension(s).

(d) Any recaptured funds will be placed in the State's Incentive-Based Set-Aside to be redistributed.

1. Incentive-Based Set-Aside funds shall be distributed to sub-grantees based on the NSP funds they have obligated or spent. Sub-grantees that have funds recaptured are not eligible to receive funds redistributed through the Incentive-Based Set-Aside.

2. If the amount of Incentive-Based Set-Aside funds to be redistributed is deemed to exceed the capacity of the eligible sub-grantees to obligate these additional funds within 18 months from the date an agreement is executed between HUD and the State or to spend these funds

within the program's 4-year timeframe, the Department may reallocate these recaptured funds to other sub-recipients eligible for receiving NSP funds directly from HUD or to any other entity it deems appropriate to accomplish the purposes of Florida's NSP program.

(8) Duration of assistance. NSP assistance may be provided for a maximum of four years based on the State's program and availability of funding.

(8) Program Income. Any program income earned as a result of activities funded under this grant shall be returned to the Department within seven (7) days of receipt or as otherwise outlined in the State's substantial amendment to the 2008 Action Plan. Interest earned on escrow accounts shall be considered separately from program income.

(10) The Department shall conduct on-site monitoring visits to determine whether State's sub-recipients are complying with program requirements. Sub-recipients shall respond to any issues identified in a monitoring report within thirty (30) days after receiving the report. Failure to respond may result in the Department rejecting requests to draw funds.

(11) Amendments. All proposed amendments to the Subgrant Agreement must be approved by the Department.

(a) Documentation Required. All requests for subgrant agreement amendments shall include the following written documentation for review by the Department:

1. A cover letter signed by the Chief Elected Official or his or her designee which describes the need for the proposed changes and their effect upon the approved project.

2. All application forms that would be changed by the proposed amendment.

3. A revised activity work plans if activity accomplishments, schedules or expenditures will change as a result of the amendment.

4. A revised budget showing the current and amended budget, if amounts for activities will be changed.

5. If there is a change in activity location, a legible map which indicates the proposed change.

6. For amendments involving addition of an activity, reduction or deletion of an activity, or a reduction in proposed beneficiaries, a copy of the minutes of the meeting of the Citizen's Advisory Task Force (CATF) when the proposed amendment was reviewed.

7. A public hearing to obtain citizen comments is required for any amendment involving addition of an activity, reduction or deletion of an activity, or a reduction in proposed beneficiaries. This hearing is in addition to review by the CATF. A copy of this notice must be submitted with the request for an amendment.

8. Signature of the Chief Elected Official, or designee on Form DCA 07.02, Request for Amendment, (as adopted on March 28, 2002).

(b) The amendment must be received by the Department at least forty-five (45) days prior to the end of the subgrant agreement. If the amendment is extending the subgrant agreement period, it must be received by the Department at least ninety (90) days prior to the end of the subgrant agreement. No funds shall be obligated or expended on an activity until the Department approves the amendment if such funds are dependent on the amendment's approval.

(c) If the State's sub-recipient requests administrative closeout prior to the termination date of the subgrant agreement, any amendment affecting closeout and requiring Department approval must be included with the closeout.

(d) Time Extensions to Subgrant Agreements. Any proposed amendment extending the termination date of the subgrant agreement must be approved by the Department. The State's sub-recipient must explain any delay affecting project completion and must justify the need for the extension.

(12) Beneficiaries of Public Improvements. For activities where hookups or connections are required for beneficiary access to NSP-funded infrastructure, low-, moderate-, and middle income area benefit (LMMA) shall be determined by the number of low-, moderate-, and middle-income persons in households connected to and able to use the water, sewer or other

infrastructure at the time of administrative closeout. For activities where hookups or connections are required as a condition for beneficiary access to a NSP funded infrastructure, no hookup or connection fees shall be charged to very-low, low-, moderate-, and middle-income beneficiaries. Further, no portion of the project construction costs shall be charged to low-, moderate-, and middle-income beneficiaries.

(13) Housing Rehabilitation Standards. Upon completion of the housing rehabilitation program, all housing units addressed with NSP funds must be in compliance with the subgrantee's local housing code and the HUD Section 8, Housing Quality Standards. This requirement does not apply if the construction activity is limited to water hookups, sewer hookups, the abandonment of wells, or the abandonment of septic systems with no internal or external modifications to the housing structure.

(14) If manufactured housing units are used for replacement housing, they must meet the following specifications:

(a) Manufactured housing units must be built to HUD post-1994 construction standards.

(b) The units must be new, previously uninstalled manufactured housing units.

(c) Units must bear HUD compliance certification meeting HUD wind resistance construction standards for wind zone 3.

(d) The county shall inspect and approve the installation of all manufactured housing units.

(e) Units must be installed to the manufacturer's installation instructions.

(f) These funds may not be used for furniture or interior design costs, insurance, financing points, or add-on structures.

(g) Replacement units may be placed on leased land or resident-owned land.

(h) Site location must meet minimum safety criteria (e.g., not located in floodplain, not in high velocity wind zone, etc.).

(i) Units must be for owner-occupancy.

(j) The costs of each manufactured housing unit must not exceed the appraised value of the unit per the Fannie Mae/Freddie Mac manufactured housing appraisal guidelines currently in effect (e.g., Fannie Mae, Announcement 03-06, Appraisal Guidelines for Manufactured Housing).

(15) Adjustable Rate Mortgages. No adjustable rate mortgages can be obtained by persons acquiring houses assisted with state NSP fund. Mortgages must be for a fixed rate for a minimum of 15 years.

(16) Davis Bacon Labor Standards. Compliance with Davis Bacon Labor Standards will be required for construction, including rehabilitation, contracts that exceed \$2,000 unless the property where rehabilitation or construction will occur contains or, for new construction, will contain less than eight units.

(17) Eminent Domain. State NSP funds cannot be used in conjunction with properties acquired through eminent domain.

(18) Environmental Review. All activities and projects must comply with the requirements of 24 CFR Part 58. An environmental assessment must be submitted to the Department and a Release of Funds sent to the State's subgrantee prior to the obligation or expenditure of more than \$15,000 in administrative funds. No other funds can be obligated or expended prior to the Release of Funds being sent to the State's subgrantee.

(19) Housing Counseling. Each homebuyer assisted with NSP funds is required to receive and complete at least eight hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. The counseling may be funded with NSP funds.

(20) Property Acquisition. Each foreclosed property acquired with NSP funding must be acquired at a minimum discount of five percent below the current appraised value. The State encourages each applicant to obtain as much discount as possible. The overall portfolio of all properties purchased with the State's allocation must meet a minimum of 15 percent discount.

Each transaction will require a current appraisal completed within sixty (60) days of an offer made for the property.

(21) Settlement Cost. Subgrantees are encouraged to minimize settlement costs when selling to eligible property owners.

(22) Relocation Activities. No NSP funds can be used on permanent relocation activities under the State NSP. Temporary relocation is eligible provided the sub-recipient has an approved Anti-Displacement Relocation Policy.

(23) Subprime Mortgages. No subprime mortgages may be obtained by persons acquiring houses assisted with NSP funds.

(24) Uniform Relocation Act. All property acquisition is subject to the requirements of the federal Uniform Relocation and Real Properties Act. This applies to both voluntary and involuntary transactions.

(25) Subgrant Closeout.

(a) An administrative closeout may be submitted only after all activities have been completed and all documents required for final payment for all activities, including, but not limited to final inspections, release of liens, certificates of occupancy, and recording of liens has been received. If the sub-recipient has transferred funds from the NSP operating account or the escrow account and these funds remain under the control of the sub-recipient, the funds are not considered expended for purposes of administrative closeout unless they will be paid out as part of the closeout.

(b) At the time of submission of the closeout report, the State's sub-recipient must have available documentation which verifies its certification that all construction has been completed, inspected and approved by all parties prior to the subgrant agreement end date and submission of the administrative closeout.

(c) Upon completion of the activities contained in the State's sub-recipient CDBG subgrant agreement, including any amendments, the State's sub-recipient shall submit to the Department

a closeout which, at a minimum, gives the final statement of costs, certifies that the project and all non-administrative activities are completed and accepted, certifies that all costs except those reflected on the closeout have been paid, and reports the demographics of the program's beneficiaries.

(d) If any change has been made since the application map or the last map amendment, the closeout shall also contain a revised map of the activities completed during the term of the CDBG subgrant agreement.

(e) The closeout shall include a list of the households assisted under the subgrant agreement, and certify that they met NSP household income eligibility requirements. HUD or DCA may require additional information to be submitted.

(f) For activities where hookups or connections are required for beneficiary access to the public improvement, evidence at the time of closeout must show:

1. The total number of persons in all households in the service area;

2. The number of low-, moderate-, and middle-income households (LMMH) connected to the infrastructure; and

3. Projects meeting the low-, moderate-, and middle-income area (LMMA) NSP national objective must document that the number of LMMA persons in households connected to the infrastructure divided by the total number of beneficiaries in the service area equals at least 51 percent or higher.

(g) The closeout must contain original signatures from the authorized representative of the State's sub-recipient. Facsimile (FAX) submissions are not acceptable.

(h) If a State's sub-recipient fails to meet contractual requirements on time, the Department reserves the right to require that a State's sub-recipient financially (not administratively) close out a subgrant agreement in order to meet federal requirements for the timely distribution of funds set by HUD.

(i) The closeout is due within forty-five (45) days after expiration or termination of the subgrant agreement.

Specific Authority: 290.044, FS. Law Implemented: 290.0401-.048, FS. History -- New.

THIS RULE SHALL TAKE EFFECT IMMEDIATELY UPON BEING FILED WITH THE  
DEPARTMENT OF STATE.

Effective Date: .

