

# PRESERVING AFFORDABILITY OF NSP FUNDED FORECLOSED PROPERTIES

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## PRESERVING AFFORDABILITY OF NSP FUNDED FORECLOSED PROPERTIES

*"The Secretary shall, by rule or order, ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental or redevelopment of abandoned and foreclosed upon homes and residential properties under this section remain affordable to individuals or families."*

-The Housing and Economic Recovery Act of 2008, section 2301 (f)3B

The recent HERA legislation included \$3.9 billion in funding for local efforts to purchase vacant and foreclosed properties. The local and state governments receiving HUD Neighborhood Stabilization Program (NSP) funding have until December 1, 2008 to amend their Action Plans to outline how they will use these new resources to respond to the foreclosure crisis. Among the issues that entitlement jurisdictions must address in these amendments is the question of preserving affordability.

Well-designed NSP programs can not only restore vacant properties and make them affordable to low and moderate buyers today but preserve them as lasting affordable housing and wealth building opportunities for future generations of new homeowners. A growing number of communities have been using resale price restrictions to create homes that remain affordable over the very long term. Communities use deed restrictions, covenants or Community Land Trusts to ensure that affordability is preserved for future lower income buyers. These programs which are sometimes called "Shared Equity Homeownership" programs allow homeowners to build significant wealth through homeownership but limit the extent of that wealth creation in order to maintain affordability.

Shared Equity Homeownership programs offer a way to use today's NSP investment to build a lasting stock of affordable homes that will remain affordable for one generation of homeowners after another. But because these programs can be more complex to establish and administer, NCB Capital Impact and its partners are providing assistance to help communities incorporate these strategies into their NSP plans.

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## NSP Program Affordability Requirements

NSP Funds may be used to provide or improve homes that will be occupied by households whose incomes do not exceed 120% of median income for the area. Twenty-five percent of all NSP Funds allocated to a jurisdiction, must be used to purchase and rehabilitate homes for households whose incomes do not exceed 50% of area median income.

Each home assisted with NSP program funds must remain affordable to low and moderate income households "to the maximum extent practicable and for the longest feasible term."

HUD considers compliance with the HOME regulations to satisfy the minimum affordability standard but encourages entitlement jurisdictions to pursue longer term affordability. In homeownership programs, the HOME regulations require affordability periods of only 5-15 years depending on the level of subsidy provided. They also require that all homes be the homeowner's primary place of residence during the compliance period.

HOME provides two mechanisms for preserving affordability:

**Recapture:** The jurisdiction provides funds to homeowners that are repaid based on a formula adopted by the jurisdiction, if a homeowner sells his or her unit, does not occupy the home as the owner's principal place of residence, or otherwise violates the affordability program requirements. Under the recapture provision, the homeowner may sell the home to any willing buyer at any price. Once the funds are repaid, the home is no longer subject to any restrictions. Examples of this approach include, but are not limited to:

- ⊕ Homebuyer loans that are forgiven over time,
- ⊕ Homebuyer loans that are repaid in full at sale,
- ⊕ Homebuyer loans repaid with interest at sale,
- ⊕ Homebuyer loans repaid at sale along with a share of appreciation.

**Resale:** The jurisdiction provides development subsidy that allows the home to be sold at a discount price relative to market and requires homeowners to sell to another income eligible buyer at an affordable price when they move. Examples of this approach include, but are not limited to:

- ⊕ Resale restrictions imposed through deed restriction or other covenant,
- ⊕ Resale restrictions imposed through Community Land Trust lease.

## Reaching beyond the minimum affordability period

While it is possible to meet HUD's minimum HOME program requirements with homebuyer down payment loans that require repayment of public money at the time of resale, communities that operate these programs find that when housing prices rise, recaptured funds are often insufficient to assist future buyers in the same income category. Even loans that require repayment with interest at the time of resale generally don't recapture enough to

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replace each assisted unit. This is because as housing costs rise, the level of assistance necessary to help a family in a given income category also rises.

In contrast shared equity homeownership programs maintain the value of public subsidy by retaining a share of the market price increase to benefit future buyers. Rather than selling homes at market price and providing second loans to buyers, shared equity homeownership programs sell the homes to eligible buyers at below market prices which the homebuyers can afford without second mortgages. Then rather than requiring repayment of the initial assistance, the programs instead require that homeowner sell at a similarly affordable price. Different programs use different formulas to determine this resale price but all of the formulas are designed to offer homeowners meaningful wealth creation opportunities in addition to preserving affordability.

Two of the most common mechanisms for preserving this kind of long term affordability are deed restricted homeownership and Community Land Trusts.

### **Deed Restriction Programs**

In a deed restriction program (which is sometimes referred to as a resale restriction program, resale price restriction program or recorded affordability agreement program), the jurisdiction would provide a loan to a developer to buy and renovate vacant and foreclosed properties and sell them to income eligible households. But instead of selling the house at market price (or at the developer's total cost) the price would be set based on the maximum that a household at the target income level could afford to pay. The buyer would make a small down payment and finance the remainder of the affordable purchase price with a traditional first mortgage from a bank or other lender. Because the price was affordable, they would not need a down payment or other loan from the jurisdiction.

At the time that the home was sold to an eligible buyer, the developer would repay a portion of the jurisdiction's loan and the remainder would be forgiven provided that the developer recorded the jurisdiction's deed restriction (or other recorded affordability restriction) to ensure long term affordability of the assisted unit. For example if a developer purchased a home for \$200,000 and invested an additional \$50,000 in renovations, marketing costs and other costs, but the affordable price was only \$175,000, the developer would have received \$250,000 from the jurisdiction but would repay only \$175,000. The remaining \$75,000 would be the permanent subsidy necessary to achieve affordability. The deed restriction (or other recorded affordability restriction) would be recorded against the title to the home and would require the homeowner to sell for no more than the affordable price and would typically allow the jurisdiction the first option to purchase the home.

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This approach ensures that a one time investment of today's housing funds will create a lasting stock of units that will sell over and over again at affordable prices to income eligible homeowners. In this way far more families can benefit from a limited initial investment. However, a deed restricted homeownership program can place significant demands on a jurisdiction's staff. To be effective in preserving affordability, the program will require dedicated staff on an ongoing basis to monitor units, support homeowners and manage and oversee the resale of units. Thoughtful local policies and procedures addressing issues like home improvements, maintenance, inheritance, and refinancing are essential to achieving a fair balance between the interests of today's homeowners and future buyers.

### **Community Land Trusts**

Like a deed restriction, a Community Land Trust (CLT), involves selling the home for a below market price and imposing a lasting restriction on the future resale price. A CLT is generally a community based nonprofit organization that specializes in stewarding affordability for long-term community benefits. The CLT buys the property and separates title between the land and the home, selling the home to the eligible buyer but retaining long-term ownership of the land in order to preserve affordability. A CLT leases the land to the homebuyer under a 99-year Ground Lease. Like a deed restriction, the CLT Ground Lease imposes resale price restrictions designed to balance the homeowner's opportunity to accumulate wealth against the community's need to preserve affordability of the home for future lower income buyers. Homebuyers, because they don't own the land, are more likely to understand that their home equity is restricted.

To use the CLT model in an NSP funded foreclosure program, a jurisdiction must already have an existing land trust or a community based nonprofit housing organization that is willing to act as a land trust. This nonprofit could serve as the developer, buying and renovating properties or could work closely with another developer. In either case the CLT would play a long term stewardship role, assisting homeowners, monitoring units to ensure that they are well maintained and owner occupied and managing future resale. When working with an independent developer, the CLT might also provide marketing, buyer screening and/or homebuyer training services.

The Community Land Trust (or other nonprofit operating as a land trust) takes permanent responsibility for monitoring and supporting homeowners with moderate and low incomes and overseeing future sales of assisted homes. The land trust receives a monthly ground rent which helps offset ongoing administrative costs.

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However, this strategy requires significant capacity on the part of the nonprofit partner. Not every community has an appropriate agency that is ready to take on this role. In exchange for giving up much of the administrative workload, the jurisdiction may have less direct control over the implementation of this program than, for example, a deed restriction program.

### **Key Roles**

**Development:** An experienced developer must identify appropriate properties, negotiate for their purchase, develop renovation budgets, and oversee construction and financing.

**Marketing and screening:** A CLT or a marketing partner must identify eligible homebuyers, manage a buyer waiting list or interest list, collect applications and screen buyers for eligibility and manage a lottery or other selection process (all in close coordination with the participating jurisdiction).

**Pre- and Post- Purchase Counseling and Education:** A counseling agency (or CLT) must provide low-income buyers with prepurchase counseling, general homebuyer education and post-purchase education. In addition buyers must receive education about the specifics of the program's resale formula and other restrictions to ensure that buyers know what they are buying. Some buyers may also need assistance in securing first mortgage financing approvals.

**Monitoring and Resales:** The jurisdiction or a CLT or other nonprofit partner must provide ongoing staffing to support homeowners and monitor to ensure that units remain owner occupied and meet other standards. When a homeowner sells, the this same entity will generally manage the process of marketing the unit to another qualified buyer, ensure that the unit sells for no more than the affordable price and ensure that any deferred maintenance issues are resolved.

## **Alternative or Fall Back Activities**

Because of the uncertainty about market conditions it may prove difficult to market resale price restricted Shared Equity Homeownership units. If market prices fall (or remain) close to or below the affordable prices, buyers will rightly prefer to buy unrestricted homes. In other markets, it may simply not be possible to sell homes at any reasonable price for some period of time. Wisely, the HERA legislation calls for jurisdictions to preserve affordability to the greatest extent practical while leaving flexibility for cases where creating long-term affordable housing is not an option at this point in time.

Jurisdictions that attempt to preserve affordability for the very long term, may nonetheless choose to include several back up options in their NSP amendments. If designed properly, these alternatives can allow those jurisdictions to acquire vacant or foreclosed homes now and retain the ability to convert them into permanently affordable homeownership at a later date. Among these options would be:

**Shared Appreciation Loans:** The program would invest NSP funds into a revolving fund which makes deferred payment loans to help eligible buyers acquire vacant or foreclosed upon homes – either directly in the market or from developers who have purchased and renovated

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these homes with NSP financing. By structuring these loans with subsidy recapture provisions that call for repayment of the initial loan plus a share of any market price appreciation, and also executing a purchase option agreement that allows the jurisdiction (or local nonprofit) the first right to purchase the homes, a program may be able to retain affordability in many cases.

Like Shared Equity Homeownership programs, shared appreciation loans may meet with buyer resistance if buyers feel that they are able to buy in the market without assistance. At the same time, these programs may not sufficiently preserve affordability if housing prices once again rise rapidly. However, compared with grants or forgivable loans to buyers, shared appreciation loans do a far better job of preserving the buying power of today's investments.

**Lease to Own:** In some places it may not be practical to sell homeownership units to lower income buyers under any approach (even outright grants of NSP funding). This may be due to the cost of housing even in a declining market, the inability of buyers to obtain private mortgage financing or other factors. In these places, lease to own (or leasing with an option to purchase) programs may offer a way to buy homes today, rent the homes to potential homebuyers for a period of time and later sell them to qualified buyers as permanently affordable homeownership units. In a lease-to-own program, tenants are identified who desire homeownership but are not ready to buy today because, for example, they are not able to qualify for financing. Ideally the program provides financial counseling and some mechanism to assist tenants in saving for their purchase. Some programs set aside a portion of monthly rent into a down payment account or similar structure. Tenants are given the option to buy their home at a later date at a predetermined affordable price. These programs can be designed to result in permanently affordable ownership but only if the ultimate terms of the long-term affordability restrictions are clearly disclosed to residents at the time that they choose to execute the lease agreement. For example, a program could offer tenants a chance to later buy the unit subject to a deed restriction or Community Land Trust lease.

One key challenge of lease-to-own is that many buyers may ultimately fail to purchase these units for one reason or another. In that case, program managers will either need to allow indefinite rental or face the challenge of evicting a family from the home. Neither option is ideal but it is virtually inevitable that some of the initial residents in any lease-to-own program will fail to qualify for purchase later.

**Land Banking:** Land banking should be seen as the NSP eligible activity of last resort. (However, particularly in soft markets, land banking can be a valuable tool for assembling properties for a neighborhood revitalization plan.) Generally a land bank acquires vacant or foreclosed-upon properties and holds them until the market recovers to the point where there is a more productive use for the property. The NSP program allows land banking of vacant

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and foreclosed upon homes for up to 10 years. This approach allows for flexibility regarding future uses of the properties but some jurisdictions may choose to land bank homes today in order to preserve them for later sale to low or moderate income buyers under a deed restriction or CLT model. The obvious down side to land banking is that holding homes vacant for long periods of time may harm rather than help efforts to revitalize affected neighborhoods. In most cases, any alternative which results in low or moderate-income households occupying the homes will be preferable to land banking. Nonetheless some jurisdictions may choose to include land banking in their NSP substantial amendments as a fall back measure in case their preferred activities prove infeasible. In determining who will carry out land banking activities, jurisdictions should remember that HUD will want to see the land owner as an 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". In addition, programs should be structured so that NSP funds can be used for upkeep costs.

## **Sample Amendment Language**

The materials following this memorandum are designed to assist entitlement jurisdictions in preparing their "Substantial Amendments". In order to access NSP funds, each jurisdiction must post its proposed Substantial Amendment by November 15, 2008 and submit the Substantial Amendment, as approved by the local jurisdiction by December 1, 2008. In particular, the materials accompanying the memorandum provide example language that may be useful to jurisdictions preparing their Substantial Amendments. The sample language describes a revolving acquisition and rehabilitation loan fund that is accompanied by one of four alternatives: (1) a deed restriction program; (2) a Community Land Trust program; (3) a shared appreciation loan program; (4) lease to own program.

In preparing Substantial Amendments and reviewing the materials below, each jurisdiction should be aware that the sample language provided is a starting point. Please note that HUD has not reviewed or approved the following memo and accompanying materials. As such, HUD may have comments or questions about the model programs outlined below. HUD may also require additional detail or modifications to the attached materials.

In addition, state and local laws will influence the design and implementation of NSP programs. Nothing in these materials is intended to provide or offer legal advice. Jurisdictions should work with their attorneys when developing and implementing NSP programs and prior to using the provided sample language in their Substantial Amendment.

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## SAMPLE Language for Amendments

*This sample language is intended to provide a starting point only. Each local program will differ. This language is provided without warranty and does not constitute legal advice. Jurisdictions should work with their attorneys when developing and implementing NSP programs and prior to using the provided sample language in their Substantial Amendment.*

## **Section C of The Substantial Amendment - MODEL**

### C. DEFINITIONS AND DESCRIPTIONS

- (1) Definition of “blighted structure” in context of state or local law.

{Consider state or local definitions in building code or redevelopment and community development laws}

- (2) Definition of “affordable rents.” **Note:** Grantees may use the definition they have adopted for their CDBG program but should review their existing definition to ensure compliance with NSP program –specific requirements such as continued affordability.

{If applicable, consider state or local funding requirements, including tax credit rents}

- (3) Describe how the grantee will ensure continued affordability for NSP assisted housing.

To ensure continued affordability for NSP assisted housing, the jurisdiction intends to use one or more of the following tools:

1. Deed Restriction Programs: Buyers of homes assisted with NSP funds enter into a deed restriction recorded against title to the home. The deed restriction will restrict the appreciation that the homeowner may earn upon sale and will require that the home be sold to other low- or moderate-income buyers. The deed restriction will also require owner occupancy of the home. This type of deed restriction program will exceed the minimum affordability standards of HUD's HOME program.

2. Community Land Trust Programs: NSP assisted homes sold to eligible buyers become part of a Community Land Trust program. Under the Community Land Trust program, the assisted home will be sold to an eligible buyer and the land will be retained by a nonprofit Community Land Trust. The Community Land Trust will then lease the land to the eligible buyer, and the lease will restrict the appreciation that the homeowner may earn upon sale of the improvements and will require that the improvements be sold to other low- or moderate-income buyers. The lease will also require owner occupancy of the home. This type of Community Land Trust program will exceed the minimum affordability standards of HUD's HOME program.

3. Shared Appreciation Loans: The program would invest NSP funds into a revolving fund which makes deferred payment loans to help eligible buyers acquire vacant or foreclosed-upon homes – either directly in the market or from developers who have purchased and renovated these homes with NSP financing. By structuring these loans with subsidy recapture provisions that call for repayment of the initial loan plus a share of any market price appreciation, and also executing a purchase option agreement that allows the jurisdiction (or local nonprofit) the first right to purchase the homes, the program may be able to retain affordability in many cases. This type of recapture program will exceed the minimum affordability standards of HUD's HOME program.

4. Lease to Purchase Program. The program would transfer ownership of homes rehabilitated with NSP funds to a jurisdiction or subrecipient who will operate a lease to purchase program. Initial rents would be required to conform with the requirements for affordable rents defined above. When the tenant is able to buy the home, continued affordability would be provided pursuant to either the deed restriction program, Community Land Trust Program, or through a shared appreciation loan.

- (4) Describe housing rehabilitation standards that will apply to NSP assisted activities.

{Consider meeting state or local building code standards}

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## **Section G of the Substantial Amendment:** **Model (Revolving Fund: Acquisition And Rehabilitation)**

*Note: the following example provides flexibility by separating the activity of financing the acquisition and rehabilitation of foreclosed upon and abandoned homes from the activity of subsidizing the ultimate homebuyers. A jurisdiction would include a Revolving Loan Fund for Purchase and Rehabilitation that provides temporary loans to developer. These homes assisted under the Revolving Loan Funds would then become part of one or more additional eligible activities, such as a deed restriction program, a Community Land Trust program, a shared appreciation loan program, or a lease to own program (all of which are described in detail, below). While it may make sense to include both a deed restriction and CLT activity in the NSP Substantial Amendment, each jurisdiction should ultimately pursue only one of these approaches because of the significant economies of scale in ongoing management.*

### **G. NSP INFORMATION BY ACTIVITY (COMPLETE FOR EACH ACTIVITY)**

(1) Activity Name:

Revolving Fund for Purchase and Rehabilitation

(2) Activity Type: (include NSP eligible use & CDBG eligible activity)

**NSP Eligible Use:** Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent or redevelop such homes and properties. (2301C(3)(b))

**CDBG Eligible Activities:** Acquisition, disposition, possible relocation, direct homeownership assistance, eligible rehabilitation and preservation activities for homes and other residential properties and housing counseling for those seeking to take part in the activity. (24 CFR 570.201(a) and 570.202)

(3) National Objective: (Must be a national objective benefiting low, moderate and middle income persons, as defined in the NSP Notice—i.e., ≤ 120% of area median income).

Housing assisted with NSP funds will provide permanent housing to low-, moderate- and middle-income persons (24 CFR 570.208(c))

(4) Projected Start Date:

January 2009

(5) Projected End Date:

Ongoing

(6) Responsible Organization: (Describe the responsible organization that will implement the NSP activity, including its name, location, and administrator contact information)

{Jurisdiction or subrecipient} will administer the revolving loan fund and will select development partners through a competitive request for proposals process.

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(7) Location Description: (Description may include specific addresses, blocks or neighborhoods to the extent known.)

(8) Activity Description:

Include a narrative describing the area of greatest need that the activity addresses; the expected benefit to income-qualified persons; and whether funds used for this activity will be used to meet the low income housing requirement for those below 50% of area median income.

For housing related activities, include:

- ⊕ tenure of beneficiaries--rental or homeownership;
- ⊕ duration or term of assistance;
- ⊕ a description of how the design of the activity will ensure continued affordability.

For acquisition activities, include:

- ⊕ discount rate

For financing activities, include:

- ⊕ range of interest rates

This activity will provide rare affordable homeownership opportunities for households earning less than 120% of Area Median Income. All homes assisted under this program will be sold to low-, moderate- and middle-income households or will become part of a lease to own program. Upon sale to income eligible households, the homes will also become subject to either (1) deed restriction program (2) Community Land Trust program, or (3) shared appreciation loan program. Such programs will promote long term affordability within the assisted area.

As noted above, this activity will be located in {insert name of area}. {Area} is an area of need because {insert information regarding foreclosures, rate of default, subprime loans etc.}

To implement this activity, the jurisdiction will acquire or provide funds for a developer to acquire vacant or foreclosed upon homes for a discount rate that is at least equal to 5% or is, in the aggregate for all homes that are part of the program equal to at least 10% of 15% (depending on the method used to determine the discount). The discounted price shall be supported by an appraisal meeting the requirements of the Notice.

Acquisition and development subsidy will be provided to developers in the form of a loan bearing zero to five percent simple interest.

These loans will be evidenced by one or more agreements designed to ensure that the selected developer complies with the discount rate acquisition requirements and performs any necessary renovations to bring each home up to the program's habitability standards within a commercially reasonable timeframe. In addition, the agreements shall ensure that the developer markets the homes in a manner consistent with the program's affirmative marketing guidelines, provides or arranges for at least 8 hours of homebuyer repurchase counseling from a HUD certified counseling agency, and sells the home to an eligible buyer as outlined below.

The jurisdiction will provide funds for the acquisition, rehabilitation and redevelopment of the homes (which shall include related eligible development and activity delivery costs, sales and closing costs, and reasonable developers fees) to the developer. Any funds provided by the jurisdiction to the developer will be supported by a reasonable development budget approved by the jurisdiction. The jurisdiction will make efforts to ensure that the developer adequately leverages the NSP funds provided by the jurisdiction.

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NSP funds provided for acquisition will be disbursed at closing and {jurisdiction} will establish a process for disbursing remaining funds as work is completed.

The developer will sell each home to an eligible buyer as set forth below:

1. Option 1 - Deed Restriction: The developer sells the home to an eligible buyer for an affordable price, which shall in no event be greater than the cost to acquire, rehabilitate and redevelop the home. If the affordable price is less than the cost to acquire, rehabilitate and redevelop the home, the developer retains a portion of NSP funds equal to the difference between the developer's eligible acquisition, rehabilitation and redevelopment costs and the affordable price. The jurisdiction shall determine or approve the affordable price. If the jurisdiction selects this Option 1, then the jurisdiction will require that the homes become part of its NSP deed restriction program. (See the deed restriction activity described below.)

2. Option 2 – Community Land Trust. The developer sells the home to an eligible buyer or a Community Land Trust organization for an affordable price, which shall in no event be greater than the cost to acquire, rehabilitate and redevelop the home. If the developer sells the home to an eligible buyer, it will convey only the improvements on the property to the homeowner. The land shall be conveyed to the Community Land Trust by developer (for nominal consideration). If the home is conveyed to the land trust, the land trust shall then sell the improvements only to the eligible buyer for an affordable price and the land trust shall retain the land, which it shall lease to the eligible buyer. If the affordable price is less than the cost to acquire, rehabilitate and redevelop the home, the developer retains a portion of NSP funds equal to the difference between the developer's eligible acquisition, rehabilitation and redevelopment costs and the affordable price. The jurisdiction shall determine or approve the affordable price. If the jurisdiction selects this Option 2, then the jurisdiction will require that the homes become part of its NSP Community Land Trust program. (See the Community Land Trust program activity described below.)

3. Option 3 – Shared Appreciation Loan Fund. The developer sells each home for an amount equal the cost of acquisition, rehabilitation and redevelopment of the home. The developer then repays the jurisdiction with the sales proceeds (provided, however that the developer may elect to retain any NSP funds which may not be charged to the eligible buyer as part of the sales price). If the jurisdiction selects this option, then the jurisdiction will provide a loan to the eligible buyer (see this activity more particularly described below). The principal amount of the loan will be equal to the difference between the purchase price and the affordable price, thereby making the home affordable to the buyer or such other amount as reasonably established by the jurisdiction. The jurisdiction will determine or approve the affordable price. If the jurisdiction selects this Option 3, then at the time of entering into the acquisition loan, the jurisdiction will commit funding for the loans that will be made to the eligible buyers. In this way, developers can be assured that the ultimate low, moderate or middle income buyers will be able to purchase the homes for an effective purchase price that is affordable to such buyers.

As an alternative to sale, the jurisdiction may require the home to be used in a lease to purchase program. Under such a program, the developer, the jurisdiction or a subrecipient initially rents the home to an income eligible tenant/purchaser at an affordable rent. When the tenant is ready to purchase the home, the developer sells the home to the tenant pursuant to either Option 1, 2, or 3, and the jurisdiction commits funds and ensures affordability as described in each option.

With each acquisition and renovation program, because the permanent investment in each assisted unit will be less than the initial cost of acquisition and renovation, the program will acquire and sell units in several phases with recaptured program income from one phase being utilized to finance subsequent phases, resulting in a program that continues until such time as the NSP funds must be repaid to HUD or are fully invested in homebuyer financing.

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Funds repaid by the developer will be treated as program income according to the terms of the Notice and used to fund additional NSP activities including additional acquisition and renovation financing.

I. Total Budget: (Include public and private components)

{insert budget}

J. Performance Measures (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels of households that are 50 percent of area median income and below, 51-80 percent, and 81-120 percent):

Number of units acquired, rehabilitated and sold: \_\_\_\_\_ {identify affordability levels}

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## **Section G of the Substantial Amendment:** **Model (Deed Restriction Program)**

*Note: the following example is intended to be used in connection with the revolving acquisition and rehabilitation loan fund which is described above.*

### **G. NSP INFORMATION BY ACTIVITY (COMPLETE FOR EACH ACTIVITY)**

(1) Activity Name:

Deed Restriction Program (also known as resale restriction agreement program or resale price restriction program)

(2) Activity Type: (include NSP eligible use & CDBG eligible activity)

**NSP Eligible Use:** A. Establish finance mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties. (2301C(3)(a))

**CDBG Eligible Activities:**

As part of an activity delivery cost for an eligible activity. (24 CFR 570.206)

Homeownership assistance and preservation activities for homes and other residential properties. (24 CFR 570.201(a) and 570.202)

(3) National Objective: (Must be a national objective benefiting low, moderate and middle income persons, as defined in the NSP Notice—i.e.,  $\leq 120\%$  of area median income).

Housing assisted with NSP funds will provide permanent housing to low, moderate and middle income persons (24 CFR 570.208(c))

(4) Projected Start Date:

January 2009

(5) Projected End Date:

Ongoing

(6) Responsible Organization: (Describe the responsible organization that will implement the NSP activity, including its name, location, and administrator contact information)

{Jurisdiction} will manage the program and monitor ongoing occupancy and affordability of assisted units.

(7) Location Description: (Description may include specific addresses, blocks or neighborhoods to the extent known.)

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(8) Activity Description:

Include a narrative describing the area of greatest need that the activity addresses; the expected benefit to income-qualified persons; and whether funds used for this activity will be used to meet the low income housing requirement for those below 50% of area median income.

For housing related activities, include:

- ⊕ tenure of beneficiaries--rental or homeownership;
- ⊕ duration or term of assistance;
- ⊕ a description of how the design of the activity will ensure continued affordability.

For acquisition activities, include:

- ⊕ discount rate

For financing activities, include:

- ⊕ range of interest rates

This activity will provide rare affordable homeownership opportunities for households earning less than 120% of Area Median Income. All homes assisted under this program will be subject to deed restrictions which will require that the homes remain affordable to low, moderate and middle income households for a specified term. Some homes assisted under this program may be made available to households whose incomes do not exceed 50% of area median income.

As noted above, this activity will be located in {insert name of area}. {Area} is an area of need because {insert information regarding foreclosures, rate of default, subprime loans etc.}

To implement this activity, the jurisdiction causes developers participating in the Revolving Fund for Acquisition Rehabilitation to sell the homes assisted with NSP funds to eligible buyers for an affordable price (which price shall be determined or approved by the local jurisdiction and will not exceed the costs of acquisition, rehabilitation and redevelopment of the home). The jurisdiction will also establish standards for and review the terms of homebuyer mortgages to ensure that such mortgages will not jeopardize the affordability of the assisted home.

Upon sale to the homeowner, the homeowner and the jurisdiction, subrecipient or the jurisdiction's nonprofit designee will enter into a new "Affordable Housing Resale Restriction Agreement," which will be recorded against title to the home. The Affordable Housing Resale Restriction Agreement shall impose owner occupancy and resale price restrictions designed to ensure long-term affordability of the assisted homes to the target income group. The Affordable Housing Resale Agreement may also recapture any subsidy provided to the homeowner (up to the market rate price of the unit) in the event the homeowner violates the affordability provisions in such agreement.

The Affordable Housing Resale Restriction Agreement shall have a term of 15 to 45 years. At the time of each resale of an assisted home a new eligible buyer, the jurisdiction (subrecipient or designee) shall enter into a new Affordable Housing Resale Restriction Agreement with the buyer, with a new 15 to 45 year term in order to maintain affordability for the longest period practical.

I. Total Budget: (Include public and private components)

{insert budget}

J. Performance Measures (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels of households that are 50 percent of area median income and below, 51-80 percent, and 81-120 percent):

Number of units which will become part of the deed restriction program: \_\_\_\_\_

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## **Section G of the Substantial Amendment: Model (Community Land Trust Program)**

*Note: the following example is intended to be used in connection with the revolving acquisition and rehabilitation loan fund which is described above.*

### **G. NSP INFORMATION BY ACTIVITY (COMPLETE FOR EACH ACTIVITY)**

(1) Activity Name: Community Land Trust

(2) Activity Type: (include NSP eligible use & CDBG eligible activity)

**NSP Eligible Use:** Establish finance mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties. (2301C(3)(a))

**CDBG Eligible Activities:** As part of an activity delivery cost for an eligible activity. (24 CFR 570.206). Homeownership assistance and preservation activities for homes and other residential properties. (24 CFR 570.201(a) and 570.202)

(3) National Objective: (Must be a national objective benefiting low, moderate and middle income persons, as defined in the NSP Notice—i.e., ≤ 120% of area median income).

Housing assisted with NSP funds will provide permanent housing to low-, moderate- and middle-income persons (24 CFR 570.208(c))

(4) Projected Start Date: January 2009

(5) Projected End Date: Ongoing

(6) Responsible Organization: (Describe the responsible organization that will implement the NSP activity, including its name, location, and administrator contact information)

{Describe the existing Community Land Trust or other local nonprofit agency which has agreed to serve as a CLT}

(7) Location Description: (Description may include specific addresses, blocks or neighborhoods to the extent known.)

(8) Activity Description:

Include a narrative describing the area of greatest need that the activity addresses; the expected benefit to income-qualified persons; and whether funds used for this activity will be used to meet the low income housing requirement for those below 50% of area median income.

For housing related activities, include:

- ⊕ tenure of beneficiaries--rental or homeownership;
- ⊕ duration or term of assistance;
- ⊕ a description of how the design of the activity will ensure continued affordability.

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For acquisition activities, include:

- ⊕ discount rate

For financing activities, include:

- ⊕ range of interest rates

This activity will provide rare affordable homeownership opportunities for households earning between 50% and 120% of Area Median Income. All homes assisted under this program will be part of a Community Land Trust program which will require that the homes remain affordable to low-, moderate- and middle-income households in perpetuity.

As noted above, this activity will be located in {insert name of area}. {Area} is an area of need because {insert information regarding foreclosures, rate of default, subprime loans etc.}

To implement this activity, the jurisdiction causes developers participating in the Revolving Fund for Acquisition and Rehabilitation to sell the homes assisted with NSP funds to eligible buyers or to the Community Land Trust organization for an affordable price. If the developer sells the home to an eligible buyer, it will convey only the improvements on the property to the homeowner for the affordable price. The land shall be conveyed to the Community Land Trust by developer (for nominal consideration). If the developer sells the home to the Community Land Trust organization, the Community Land Trust will convey the improvements to the eligible buyer for an affordable price. The affordable price shall be determined or approved by the local jurisdiction and will not exceed the costs of acquisition, rehabilitation and redevelopment of the home. The Community Land Trust will also establish standards for and review the terms of homebuyer mortgages to ensure that such mortgages will not jeopardize the affordability of the assisted home.

Upon sale of the improvements to the homeowner, the homeowner and the Community Land Trust organization will enter into a long term lease of the land. This ground lease (the "CLT Lease") shall impose owner occupancy and resale price restrictions designed to ensure long-term affordability of the assisted homes to the target income group. The CLT Lease may also permit recapture of any subsidy provided to the homeowner (up to the market rate price of the unit) in the event the homeowner violates the affordability provisions in land lease.

The CLT lease shall have a term of no less than 45 nor more than 99 years. At the time of each resale of an assisted home a new buyer, a new lease may be recorded in order to maintain affordability for the longest feasible time.

**I. Total Budget:** (Include public and private components)

{insert budget}

**J. Performance Measures** (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels of households that are 50 percent of area median income and below, 51-80 percent, and 81-120 percent):

Number of units which will become part of the Community Land Trust program:

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## **Section G of the Substantial Amendment: Model (Shared Appreciation Loan Program)**

*Note: the following example is intended to be used in connection with the revolving acquisition and rehabilitation loan fund which is described above.*

### **G. NSP INFORMATION BY ACTIVITY (COMPLETE FOR EACH ACTIVITY)**

- (1) Activity Name: Revolving fund for Homebuyer Second Loans
- (2) Activity Type: (include NSP eligible use & CDBG eligible activity)

**NSP Eligible Use:** A. Establish finance mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties. (2301C(3)(a))

**CDBG Eligible Activities:** As part of an activity delivery cost for an eligible activity. (24 CFR 570.206). Homeownership assistance and preservation activities for homes and other residential properties. (24 CFR 570.201(a) and 570.202)

- (3) National Objective: (Must be a national objective benefiting low, moderate and middle income persons, as defined in the NSP Notice—i.e.,  $\leq 120\%$  of area median income).

Housing assisted with NSP funds will provide permanent housing to low-, moderate- and middle-income persons (24 CFR 570.208(c))

- (4) Projected Start Date: January 2009
- (5) Projected End Date: Ongoing

- (6) Responsible Organization: (Describe the responsible organization that will implement the NSP activity, including its name, location, and administrator contact information)

{Jurisdiction or subrecipient} will manage the program.

- (7) Location Description: (Description may include specific addresses, blocks or neighborhoods to the extent known.)

- (8) Activity Description:

This activity will provide rare affordable homeownership opportunities for households earning between 50% and 120% of Area Median Income. {jurisdiction} will provide financing that is at least sufficient to bridge the gap between the purchase price which income eligible homebuyers can afford according to the program's affordability standards (as determined or approved by the jurisdiction) and the sum of the discounted market price of vacant and foreclosed upon homes in the target area plus the cost of rehabilitation and redevelopment of the homes to the program's standards.

As noted above, this activity will be located in {insert name of area}. {Area} is an area of need because {insert information regarding foreclosures, rate of default, subprime loans etc.}

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Financing will be provided in the form of deferred payment loans due upon sale of the assisted property or in the event the owner fails to occupy the property as a principal place of residence. At the time of the initial sale of each property the program will establish a recapture formula which will, to the maximum extent feasible given the then current market conditions, attempt to recapture both the initial subsidy and a share of any market price appreciation. Our initial expectation is that sellers will be required to repay a share of appreciation proportional to the ratio of the NSP second loan to the initial appraised value of the property. (ex. A buyer of a \$200,000 property receiving a \$50,000 NSP loan would need to repay the \$50,000 plus 25% of any price appreciation). These requirements would remain in place for the duration of ownership.

Because we cannot know with certainty what the market conditions will be at the time of sale there is a real risk that this approach may discourage potential buyers. In addition, first mortgage lenders or programs such as Fannie Mae or FHA may impose restrictions on the terms of this type of community soft-second financing. As such, the program may be modified to offer homes under a less restrictive recapture formula including potentially a share of appreciation, which declines over time or simple deferred interest at a 3% annual rate. It is expected that the program will recapture at least the value of the initial NSP investment and will exceed the minimum affordability requirements under the HOME program. However, there may be some instances when the soft-second financing will be forgiven at the end of the term of the loan.

In addition to providing a loan to the buyers, the jurisdiction or subrecipient may record an option to purchase the property against title to the property so that the jurisdiction or subrecipient can continue to invest in such property and retain it as part of the jurisdiction's permanent affordable housing stock. The jurisdiction will also establish standards for and review the terms of homebuyer first mortgages to ensure that such mortgages will not jeopardize the affordability of the assisted home.

All funds recaptured at resale of assisted properties will be treated as program income and reinvested in other NSP activities including additional homebuyer financing for future eligible buyers of the same or similar homes.

I. Total Budget: (Include public and private components)

{insert budget}

J. Performance Measures (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels of households that are 50 percent of area median income and below, 51-80 percent, and 81-120 percent):

Number of units financed: \_\_\_\_\_

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## **Section G of the Substantial Amendment:** **Model (Lease to Purchase Program)**

*Note: the following example is intended to be used in connection with the revolving acquisition and rehabilitation loan fund which is described above.*

### **G. NSP INFORMATION BY ACTIVITY (COMPLETE FOR EACH ACTIVITY)**

(1) Activity Name: Lease to Purchase Program

(2) Activity Type: (include NSP eligible use & CDBG eligible activity)

**NSP Eligible Use:** Establish finance mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties. (2301C(3)(a))

#### ***CDBG Eligible Activities:***

As part of an activity delivery cost for an eligible activity. (24 CFR 570.206)

Homeownership assistance and preservation activities for homes and other residential properties. (24 CFR 570.201(a) and 570.202)

(3) National Objective: (Must be a national objective benefiting low, moderate and middle income persons, as defined in the NSP Notice—i.e., ≤ 120% of area median income).

Housing assisted with NSP funds will provide permanent housing to low, moderate and middle income persons (24 CFR 570.208(c))

(4) Projected Start Date: January 2009

(5) Projected End Date: Ongoing

(6) Responsible Organization: (Describe the responsible organization that will implement the NSP activity, including its name, location, and administrator contact information)

{Jurisdiction or subrecipient} will manage the program.

(7) Location Description: (Description may include specific addresses, blocks or neighborhoods to the extent known.)

(8) Activity Description:

The program will provide, over time, affordable homeownership opportunities for households earning between 50% and 120% of Area Median Income. {jurisdiction or subrecipient} will administer this lease to purchase program whereby income-eligible potential buyers, who are likely to be able to assume a mortgage for or to purchase the property in one to five years, are initially allowed to rent a rehabilitated home and are then provided with required credit and homeownership counseling to enable them to accumulate the skills and resources needed to purchase the home within five years. The program includes property management

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services during the rental period. Affordable rents for the initial rental period will be determined by the jurisdiction as described in Section C above.

As noted above, this activity will be located in {insert name of area}. {Area} is an area of need because {insert information regarding foreclosures, rate of default, subprime loans etc.}

This program may operate in several ways. A developer who has acquired, rehabilitated, and redeveloped a home may also operate the lease to purchase program. In this case, the developer will initially rent the rehabilitated home to a tenant/purchaser at an affordable rent. Alternatively, the initial developer may not be the entity operating the lease to purchase program. In that case, the developer will sell each home to either the jurisdiction or the subrecipient operating the lease-purchase program for an amount equal to its cost of acquisition, rehabilitation and redevelopment. The developer will then repay the jurisdiction with the sales proceeds, which the jurisdiction may use to pay for the cost of acquisition by the subrecipient. The subrecipient may also receive a Fannie Mae or other lease-purchase mortgage for the affordable price, reducing the amount of NSP funds required to subsidize the purchase.

To ensure that program participants will be able to purchase their homes within one to five years, the program will include extensive and required face-to-face, post-rental, and post-purchase homebuyer education and early intervention. Counseling will include such issues as establishing a budget, a debt management plan, and IDA accounts, if applicable. During the lease period, the {subrecipient} must continue to provide counseling regarding such topics as credit management, financial planning, and home maintenance. In addition, the {subrecipient} must establish standards for tenant/purchasers so that it is likely that the tenant will eventually be able to purchase the home. These criteria will include such factors as the ratio of rent/mortgage to income, income stability, FICO score, and the like. Other features that will enhance the likelihood that the tenant will be able to buy the home include crediting a portion of the rent toward the future required down payment. In addition, an affordable purchase price is established when the tenant/purchaser moves into the home, and the tenant is given an option to purchase the home at that price. This ensures that the homebuyer is not priced out by future increases in the value of the home.

At the end of the rental period, the homes may be sold to the renters pursuant to the deed restriction program, Community Land Trust program, or shared appreciation loan program described above.

Because, inevitably, some renters will ultimately be unable to purchase their homes, the program will be structured to allow for either ongoing rental or, if this is infeasible, relocation of the tenant and payment of relocation benefits.

All funds recaptured at resale of assisted properties will be treated as program income and reinvested in other NSP activities including additional homebuyer financing for future eligible buyers of the same or similar homes.

**I. Total Budget:** (Include public and private components)

{insert budget}

**J. Performance Measures** (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels of households that are 50 percent of area median income and below, 51-80 percent, and 81-120 percent):

Number of units intended for lease-purchase: \_\_\_\_\_ {explain by affordability level}

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**Credits:**

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*NCB Capital Impact, the non-profit affiliate of NCB, provides financial services and technical assistance to create more affordable cooperative homeownership, assisted living, housing and services for the frail and elderly, and facilities for healthcare centers and charter schools. Headquartered in Washington, D.C., NCB Capital Impact has offices in California and New York. To learn more about NCB Capital Impact, its programs and initiatives in advancing education, affordable housing, health care and long-term care for low- to moderate-income individuals, visit [www.ncbcapitalimpact.org](http://www.ncbcapitalimpact.org).*

*This materials provided in this document provided without warranty and do not constitute legal advice. Jurisdictions should work with their attorneys when developing and implementing NSP programs and prior to using the provided sample language in their Substantial Amendment.*