

DATE: October 6, 2009

TO: Mayor and City Council

FROM: Redevelopment Director

SUBJECT: Public Hearing and Resolution Adopting Neighborhood Stabilization Program (NSP) Income Reuse Plan

RECOMMENDATION

That City Council conducts a public hearing and adopts the attached resolution in connection with the Neighborhood Stabilization Program Income Reuse Plan.

BACKGROUND

Authorized by Title III of the Housing and Economic Recovery Act of 2008, the Neighborhood Stabilization Program (NSP) provides emergency assistance to states and local governments to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities. On February 2, 2009, The Department of Housing and Community Development (HCD), the State agency administering the State NSP funds, published a final amendment to its Community Development Block Grant (CDBG) Action Plan in order to allocate \$145 million in NSP funds received from the Department of Housing and Urban Development (HUD). As a result, Hayward received an allocation of \$1,554,489. HCD later released a Notice of Funding Availability (NOFA) to which the City responded. The application submitted was to receive the allocation and use it to implement an Acquisition, Rehabilitation, and Sale of Foreclosed/Abandoned Properties Program (the Program). HCD recently approved the City's NSP funding application.

DISCUSSION

This public hearing is held to adopt a Program Income Reuse Plan (the Plan) for the NSP Program. The Plan is required by Federal regulations for handling of income received as a result of NSP and federally-funded activities. If the City receives funds as a result of loan payments or the sale of rehabilitated properties, then those loan repayments and sales proceeds are considered program income. As such they must be spent on additional eligible activities. The attached Plan is the framework for such transactions. It includes provisions such as that program income: a) must be spent before any additional grant funds may be drawn down; b) has separate reporting requirements; and c) cannot be mixed with any other funds, including the open NSP grant funds.

As required, the Plan also specifies that program income received before July 30, 2013, may be retained by the City for reuse in the program. Program income received after that date must be returned to HCD.

FISCAL IMPACT

The City has received an allocation of \$1,554,489 and the NSP program will rely entirely upon this allocation to implement the Program. NSP activities are not expected to generate significant amounts of program income and, as required by the plan, any income generated must be spent on eligible activities within three months. It is expected that most of the income generated from the sale of purchased and rehabilitated foreclosed homes will be "recycled" back into the program to acquire and rehabilitate more foreclosed homes.

Up to five percent of the program income may be used for eligible administrative costs. There is also an allowance for payment of costs associated with program implementation. The funds to pay for these costs will not be recovered, therefore, decreasing the amount of income for future program activities.

PUBLIC CONTACT

State NSP guidelines require recipient jurisdictions to conduct a number of public hearings in order to receive funding and implement the program. The first hearing held by the City was during the Program design phase on April 15, 2009 during the monthly Citizens Advisory Committee meeting. Its purpose was to inform the public about the eligible and proposed uses of NSP funds. On May 26, 2009, staff held a second public hearing to request Council authorization to submit the application for NSP funding. The purpose of this report is to comply with the State requirement to hold public hearing to adopt a Program Income Reuse Plan.

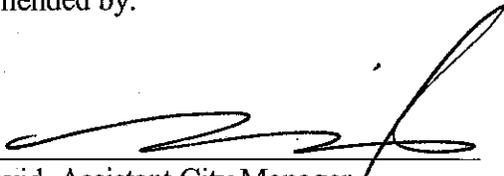
NEXT STEPS

No further City Council action is required to implement program activities. Staff will continue to comply with all the program requirements and meet the special conditions in order to enter into a contract with HCD and be able to implement the program. Execution of the contract with HCD is expected to take place within weeks. Once the contract is received and executed, the organization hired to implement the Program, Habitat for Humanity East Bay, can begin to acquire and rehabilitate homes in the target area. Habitat has already begun to identify foreclosed homes. It is anticipated that the Program can get underway before the end of the year.

Prepared by:

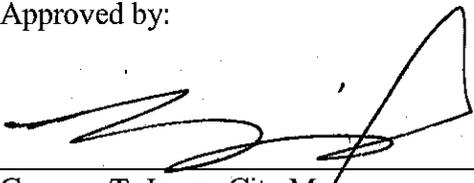

Maret Bartlett, Redevelopment Director

Recommended by:



Fran David, Assistant City Manager

Approved by:




Gregory T. Jones, City Manager

Attachments:

- NSP Program Income Reuse Plan
- Draft Resolution

**NEIGHBORHOOD STABILIZATION PROGRAM
PROGRAM INCOME REUSE PLAN**

Revision / Adopted Date October 6, 2009

Grantee Name City of Hayward
Grantee Address 777 B Street, Hayward, CA. 94541
Grantee Telephone # (510) 583-4246 **Grantee E-mail** omar.cortez@hayward-ca.gov

The purpose of this plan is to establish guidelines on the policies and procedures for the administration and utilization of program income received as a result of activities funded under the Neighborhood Stabilization Program (NSP).

Need for Plan Governing Reuse of NSP Program Income

NSP is authorized under Title III of Division B of the Housing and Economic Recovery Act of 2008 (HERA) and under the heading of the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes. HERA provides under a rule of construction that, unless it is otherwise stated, grants made under the NSP are considered to be Community Development Block Grant (CDBG) funds.

This Reuse Plan is intended to satisfy the requirements specified in federal statute and regulation at Section 104(j) of the Housing and Community Development Act ("the Act"), as amended in 1992 and 24 Code of Federal Regulations (CFR) 570.489 (e)(3) and of Title III of Division B of HERA.

These statutory and regulatory sections permit the Grantee to retain NSP Program Income generated by eligible NSP activities pursuant to HERA. The eligible NSP activities shall principally benefit low-, moderate-, and middle-income (LMMI) individuals and families, and limited to only those activities as described in the Grantee's Application and Exhibit B of the NSP Standard Agreement. Such activities may include:

- A. Establish financing mechanisms for purchase and redevelopment of foreclosed-upon homes and residential properties, including such mechanisms as soft-second, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers.
- B. 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.
- C. Establish land banks for homes that have been foreclosed upon.
- D. Demolish blighted structures.
- E. Redevelop demolished or vacant properties.

Acceptance of the NSP Program Income Reuse Plan

The NSP Program Income Reuse Plan must detail the proposed uses of NSP Program Income and confirm the jurisdiction's required compliance with state and federal regulations.

The NSP Program Income Reuse Plan must be adopted by the local governing board only after compliance with the Grantee's citizen participation process as specified in Federal Regulations at 24 CFR 570.486, Local Government Requirements.

The Grantee shall obtain the Department of Housing and Community Development's (Department) written acceptance before taking any site specific prohibitive choice limiting actions with any NSP Program Income funded activity.

Program Income Defined

NSP Program Income is defined in federal regulation at 24 CFR 570.500(a) which specifies that the NSP Program Income is the gross income received by the Grantee that has been directly generated from the use of CDBG/NSP funds. There are limitations and requirements based on the NSP activity that generated the program income and on the date the income is received. Examples of program income include:

- payments of principal and interest on housing rehabilitation or business loans made using CDBG/NSP funds,
 - interest earned on program income pending its disposition, net proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG/NSP funds,
 - income (net of costs that are incidental to the generation of the income) from the use or rental of real property that has been acquired, constructed or improved with CDBG/NSP funds and that is owned (in whole or in part) by the participating jurisdiction or subrecipient.
1. Program Income generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E).
 - a. Program Income received before July 30, 2013, may be retained by the Grantee if it is treated as additional CDBG/NSP funds and used in accordance with the requirements of Section 2301.
 - b. Program Income received on or after July 30, 2013, must be returned to the Department.

Any program income received by the Grantee on or after July 30, 2013, that is generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) (e.g., proceeds from the sale) and is not authorized to be retained as described below must be remitted to the Department.

Any program income received by a NSP grantee on or after July 30, 2013, that is generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) and that is in excess of the cost to acquire and redevelop or rehabilitate an abandoned or foreclosed-upon home or residential property may be retained if the Department accepts a request to use the funds for other NSP purposes.

Note that no profit can be earned on the sale of an abandoned or foreclosed-upon home or residential property to an individual as a primary residence; as provided under Section 2301(c)(3), the sale must be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate the home or property up to a decent, safe, and habitable condition.

- c. Revenue received by a private individual or other entity that is not a subrecipient.
 - i. Any revenue generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) that is in excess of the cost to acquire and redevelop (including reasonable development fees) or rehabilitate an abandoned or foreclosed-upon home or residential property must be provided to the state or unit of general local government and treated as program income. The disposition of the program income by the state or unit of general local government is governed by a. and b. above.
 - ii. Any revenue that is generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) and is received on or after July 30, 2013, shall be provided to the State and treated as program income. The disposition of the program income by the state is governed by b. above.
2. Program income generated by activities carried out pursuant to Section 2301(c)(3)(A), (C) and (E). Program income received may be retained by the State or unit of general local government if it is treated as additional CDBG/NSP funds and used in accordance with the requirements of Section 2301. Revenue received by a private individual or other entity that is not a subrecipient must be returned to the State.

Cash Management

1. All NSP Program Income must be disbursed for eligible NSP activities before additional NSP funds are made available to the Grantee for an advance or reimbursement.

- a. All NSP Program Income generated by NSP-funded activities must be placed in a separate NSP Program Income account.
 - b. The Grantee will be allowed to use the NSP Program Income to meet the used/obligated milestones. Furthermore, any NSP Program Income funds that are not shown to be used/obligated on the Grantee's next Quarterly NSP Program Income Report must be returned to the Department.
2. Agreements with subrecipients and other entities. States and units of general local governments must incorporate in subrecipient agreements such provisions as are necessary to ensure compliance with the requirements of this paragraph, including the requirement that program income be remitted to the Department. States, units of general local government, and subrecipients must incorporate in agreements with private individuals and other entities that are not subrecipients such provisions as are necessary to ensure compliance with the requirements governing disposition of revenue generated by activities carried out pursuant to Section 2301(c).

General Administration (GA) Cost Limitation

The Grantee will be allowed general administrative costs of up to five percent (5%) of all NSP Program Income expended during each fiscal year.

Activity Delivery (AD) Cost Limitation

The Grantee will be allowed activity delivery costs up to the percentage (%) of the total activity expenditure amount. The maximum activity delivery percentage (%) for each activity is:

Financing Mechanisms	Up to 5 percent (5%)
Housing Acquisition	Up to 8 percent (8%)
Housing Rehabilitation	Up to 10 percent (10%)
Disposition (Rental, Sale)	Up to 5 percent (5%)
Landbanking	Up to 10 percent (10%)
Demolition	Up to 8 percent (5%)
Redevelopment (public facilities, public improvements)*	Up to 8 percent (8%)

*** if complex labor standards are justified**

Reuses of NSP Program Income

The Grantee will be allowed to use the earned NSP Program Income for eligible NSP activities in the areas of greatest needs listed in the Grantee's Application and in Exhibit B of the NSP Standard Agreement.

Any NSP Program Income funds that are not shown to be obligated on the Grantee's next Quarterly NSP Program Income Report must be returned to the Department.

Program Income received on or after July 30, 2013, must be returned to the Department.

All program income generated by activities funded by NSP grants must be placed in a separate NSP program income account. ***(Do not commingle NSP Program Income funds with CDBG program income funds.)***

Reporting

The Grantee shall comply with all NSP reporting requirements, including, but not limited to:

Section 3 Report	by July 31 of each year
Wage Compliance Report (during construction period)	October 31 and April 30
Final Wage Compliance Report	thirty (30) days after construction is completed
Funds Request Form	as funds are needed.
Quarterly Performance and Expenditure Report	due 15 days after the end of each quarter
Quarterly NSP Program Income Report	due 15 days after the end of each quarter

The Quarterly NSP Program Income Report will detail all obligated program income receipts, expenditure amounts, and specific activity detail for all expenditures.

NOTE: Any NSP Program Income funds that are not shown to be obligated on the Grantee's next Quarterly NSP Program Income Report must be returned to the Department.

Federal Overlay Compliance

The Grantee shall ensure that the use of NSP Program Income under this NSP Program Income Reuse Plan complies with all federal overlay requirements, including, but not limited to:

- citizen participation
- Section 3 employment
- acquisition and relocation
- maintenance of adequate accounting and recordkeeping systems
- environmental review
- lead-based paint
- procurement
- equal opportunity
- labor standards
- property management

Revising This Plan

The Grantee has the authority to amend this document with a properly noticed Council/Board public hearing, board resolution, and acceptance by the Department.

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward