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DIVISION OF FINANCIAL ASSISTANCE
FEDERAL PROGRAMS BRANCH****Community Development Block Grant Program**

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**CDBG MANAGEMENT MEMORANDUM**
Community Development Block Grant Program - Memorandum Number 15-02

January 22, 2015

MEMORANDUM FOR: Non-Entitlement Jurisdictions Eligible for State Community Development Block Grant (CDBG) Program

FROM: Thomas Brandeberry, CDBG Section Chief

SUBJECT: State CDBG Program's Guidance on Code Enforcement Activities

The purpose of this management memo is to provide guidance on the use of State Community Development Block Grant (CDBG) funds for code enforcement activities.

I. WHAT IS CODE ENFORCEMENT?

The Housing and Community Development Act of 1974 (HCDA) permits the use of CDBG funds for selected code enforcement activities. Section 105(a)(3) of the HCDA permits "the use of CDBG funds for code enforcement in deteriorated or deteriorating areas in which such enforcement, together with the public or private improvements or services to be provided, may be expected to arrest the decline of the area."

Code enforcement must be conducted in a primarily residential service area where 51% of the residents are low- and moderate-income; and code enforcement may only pay for the enforcement of state and/or local codes.

Eligible code enforcement activities assisted under HCDA 105(a)(3) do not include the costs of correcting the code violations, which may be an eligible rehabilitation cost, provided a national objective is met. Rehabilitation of buildings and code enforcement activities are listed in the HCDA as separate eligible activities.

There are varying definitions and standards for code enforcement. Code enforcement is defined by some jurisdictions as the prevention, detection, investigation, and enforcement of violations of statutes and ordinances regulating public health, safety, and welfare. Code enforcement can also include the maintenance and preservation of the value and appearance of residential properties within its boundaries. Some jurisdictions' code enforcement efforts focus more on buildings and structures, while others are concerned

with community cleanliness, public advertisement displays, garage sales, lawn care, environmental concerns (such as abandoned tires), and the condition of motor vehicles on the streets.

For CDBG program purposes, code enforcement is defined as a process whereby local governments gain compliance with ordinances and regulations regarding health and housing codes, land use and zoning ordinances, sign standards, and uniform building and fire codes. Code enforcement may take place only in primarily residential areas. The legislative language requiring “other improvements” to be made to arrest the decline of the area suggests a greater emphasis on structural issues. As a result, the CDBG program will expect that localities emphasize health and safety issues in buildings. Ancillary efforts to address violations of codes concerning vacant lots, signs, and motor vehicles are permitted in conjunction with efforts regarding buildings, but should represent a minor part of the code enforcement program.

II. PURPOSE OF CODE ENFORCEMENT

All jurisdictions in California have building codes, which are rules that must be followed to comply with the minimum levels of safety for buildings and non-building structures. The objective of these building codes is to ensure the health, safety, and protection of the public in the construction and occupancy of buildings. Building codes affect such matters as structural integrity, fire resistance, lighting, electrical, plumbing, sanitary facilities, ventilation, and seismic design. Therefore, the condition of buildings may be reflected in building, property maintenance, zoning, and/or other locally-adopted codes or ordinances, the enforcement of which would all be eligible with CDBG funds.

The purpose of having building codes and enforcement inspections is to protect the public health, safety and welfare. As an example, a house may not have the required number of electrical outlets in each room, which may result in too many items being plugged into an extension cord, resulting in a fire. Additional examples are bathrooms venting into attics, resulting in roof deterioration, and the structural integrity of floor and roof joists.

Code enforcement inspections may also seek to encourage residents (homeowners and tenants) to maintain the appearance and value of their housing units. It is hoped that other residents are motivated to keep their housing units in compliance with local codes because of the good condition of the surrounding housing units. Since this does not always happen, units of government enforce housing codes to ensure that housing units are maintained. Housing units that are well-maintained and meet all local housing codes and standards protect the health and safety of occupants, improve the value of the residential units in a neighborhood and give such neighborhoods the appearance of being well-maintained. Housing units that are dilapidated and/or vacant could attract squatters, vandals, drug crimes, and rodents.

III. NATIONAL OBJECTIVES FOR CODE ENFORCEMENT

A. Low- and Moderate-Income Area Benefit

Code enforcement activities may meet the national objective of benefit to low- and moderate-income persons on an area basis under § 570.483(b)(1) when carried out in deteriorated or deteriorating areas and when carried out in conjunction with public or private improvements, rehabilitation, or services that may be expected to arrest the deterioration of the area. This national objective may be met when code enforcement inspections are conducted on single or multi-family housing units and other publicly or privately-owned buildings. The building or facility being inspected must be located in a primarily residential area where a minimum of 51 percent of the residents in those areas are low- and moderate-income.

While residences and other real property in private ownership may be subject to code enforcement, the corrections of the code issues in such buildings would not meet the low- and moderate-income housing national objective (LMH). In addition, code enforcement inspections of public facilities serving presumed beneficiaries such as severely disabled adults, battered spouses, and persons with AIDS would not meet the low- and moderate-income limited clientele national objective (LMC). This is because the costs of the code enforcement actions, by themselves, do not provide a direct benefit to the homeowners or the users of the public facilities. It is the correction of the code violations that directly benefit the residents; thus, **the code enforcement must meet the area benefit (LMA) national objective.**

B. Activities Designed to Meet Community Development Needs Having a Particular Urgency

Grantees may experience tornadoes, floods, hurricanes, and other disastrous events that do not rise to the level of Presidential declarations. In this instance, grantees would not receive Federal Emergency Management Agency (FEMA) funds to alleviate the effects of the disaster. There may also be areas that experienced Presidentially-declared disasters, and FEMA funds were received and exhausted. In both instances, there may remain a need to address the devastation caused by the disaster. An area that was not previously deteriorated may become so if the effects of the disasters are not fully addressed because of a shortage of funds, and areas that were deteriorating before the disaster may further deteriorate.

Grantees, with Department approval, may conduct code enforcement inspections in areas that experienced disasters to ensure that citizens are not residing in homes or frequenting buildings with environmental contaminants and other problems that affect their safety and welfare. Following a disaster, for example, buildings may have mold and mildew, which are environmental contaminants. In such instances, code enforcement may meet the urgent need national objective. In the CDBG program, the grantee certifies and the Department determines, that existing conditions pose a serious and immediate threat to the health and welfare of the community, the disastrous occurrence is of recent origin (18 months before

the grantee's certification) or recently became urgent, that the grantee is unable to finance the activity on its own, and that no other funding resources are available. Grantees must be able to document that the inspections for code violations and enforcement of codes were designed to address an **urgent need**, met the timing of the development of the serious condition, and have evidence demonstrating that no other financial resources were available to address the urgent need.

C. Other National Objective Compliance Considerations

Grantees must ensure that they are not paying the salaries for code enforcement personnel over their entire jurisdiction. Grantees may not use CDBG funds to pay for code enforcement inspections in every area or neighborhood or for a grantee's entire jurisdiction (e.g., citywide or countywide). The areas where the inspections are being carried out using code enforcement inspectors whose salaries are paid with CDBG funds must be identified as deteriorated or deteriorating.

Presently, the Department is unable to use the slum/blight national objective for code enforcement activities.

IV. ELIGIBLE CODE ENFORCEMENT COSTS

A. Code Enforcement Inspections

The cost of conducting code enforcement inspections is an eligible CDBG expense. Section 105(a)(3) of the HCDA permits the use of CDBG funds for code enforcement. Costs incurred for inspection and enforcement of codes, such as salaries and related expenses of code enforcement inspectors and legal proceedings, are eligible costs.

If a grantee is responsible for code enforcement, that grantee may conduct code enforcement inspections using its own employees. If the grantee contracts for code enforcement inspection services, the cost of procuring a code enforcement inspection company or specialist is an eligible CDBG general administration cost. Grantees may contract with another unit of government to perform code inspection services; hiring another government entity is not subject to federal procurement requirements at 24 CFR 85.36.

To conduct inspections in various areas within its jurisdiction, code enforcement inspectors may require the use of a vehicle. Purchase of equipment not an integral structural fixture (such as vehicles) with CDBG funds is eligible when necessary for use by a grantee in the administration of activities assisted with CDBG funds. However, the grantee must be able to demonstrate that the vehicle is only being used for code enforcement inspections in CDBG-eligible areas. This may require logs to be kept for each trip. The vehicle may not be used for any other purpose. Vehicles may be leased with CDBG funds. Grantees may also purchase vehicles with non-CDBG funds (e.g., general funds) and then charge the CDBG program for their use. In the case of code enforcement, the use allowance may be an eligible activity cost (if not part of the grantee's approved indirect cost allocation plan).

Generally, costs directly associated with the implementation of this activity that can be directly allocable to the activity and the staff implementing the activity would be considered eligible.

B. Enforcement Actions

The costs of legal proceedings that result from code enforcement inspections are also a CDBG-eligible expense. Grantees or their contractors issue citations and/or fines for code violations. Fines collected under code enforcement activities are not considered CDBG program income (see Section VI below). The staff costs associated with processing and issuing the citations, collecting and processing fines, and postage are all eligible activity costs. The property owner may challenge the citation or fine assessed. A hearing may be scheduled to ensure that the property owner receives due process. The cost of the hearing is an eligible CDBG expense. The salaries of the hearing officers may be paid with CDBG funds proportionate to the time they spend hearing and deciding the appeals from code enforcement citations or fines resulting from CDBG-assisted code inspections and enforcement expenses. If the grantee pays legal fees to an attorney as part of the proceedings, the grantee may charge to the CDBG program the legal fees allocable to CDBG code enforcement. These costs are considered activity costs under HCDA 105(a)(3). *A defendant's legal costs are not eligible costs.*

V. **INELIGIBLE CODE ENFORCEMENT COSTS**

While the cost of correcting the violations is not an eligible code enforcement cost under HCDA 105(a)(3), the regulation states that code enforcement *must* be performed in conjunction with improvements, rehabilitation, or services. The purpose of this requirement is to ensure that the deteriorated or deteriorating areas are being made safe and sanitary for the general public, not to generate revenue via code violation fines.

Grantees may trigger concerns about the eligibility of code enforcement if it appears that the CDBG program is being used for general government expenses or if the use of CDBG funding appears excessive in relation to the community's overall enforcement program. Grantees should use CDBG for code enforcement as appropriate to advance the goals of the CDBG program in areas designated for such activity. HCD is not discouraging the use of CDBG in these cases; however, grantees are prohibited from using CDBG funds for general government expenses.

The cost to rehabilitate single unit housing or multi-family housing structures may be eligible under Section 105(a)(4) of the HCDA. The rehabilitation of public facilities and improvements on publicly-owned buildings is eligible under Section 105(a)(2) of the HCDA. Demolition of buildings may be eligible under Section 105(a)(4) of the HCDA. ***Charging costs associated with these other CDBG activities would be ineligible costs under Code Enforcement.***

Grantees may not use CDBG funds to pay for code enforcement inspections and enforcement in every area or neighborhood or for a grantee's entire jurisdiction (e.g., citywide or countywide).

VI. REVENUE FROM CODE ENFORCEMENT INSPECTIONS AND ENFORCEMENT OF CODES

Jurisdictions may assess a fine to the owner of the property that incurred the code violation. Since the fines are the end result of carrying out a CDBG-assisted activity, some grantees may have been treating these fines as program income. However, such fines are not program income because they do not meet the definition of program income at 570.489(e).

Rather, revenue from code enforcement fines should be treated either as applicable credit against CDBG expenditures or as general revenue, depending on how the grantee's internal policy considers the revenue.

Applicable credits are receipts or reductions of expenditure type transactions that offset or reduce expense items allocable to the CDBG awarded activity. To the extent that such credits accruing to or received by the grantee relate to allowable costs, they shall be credited to the CDBG awarded activity either as a cost reduction or cash refunds, as appropriate.

There are two instances that would lead to the determination that the code enforcement fines are to be considered applicable credits: (1) the cost of the inspections for code violations and enforcement of codes, which may include the inspectors' salaries, must have been wholly or partially paid for with CDBG funds; and (2) the intended purpose of the code enforcement fine, as reflected in local codes, handbook, manual, etc., is to recover the costs incurred for the code enforcement activities without regard to the source of funds for payment of the code enforcement activity. The second criterion means that local code or procedure requires that collected fines be used to recover the costs of code enforcement, regardless of the source of the funds used to pay these costs. For example, if 50 percent of a code enforcement inspector's salary is paid with CDBG funds and his or her code inspections in Target Area A resulted in \$5,000 in fines being assessed, \$2,500 would be considered an applicable credit against the CDBG expenditure, *but only if the intended purpose of assessing the fine is to recover the code enforcement expenditures.*

Code enforcement fines should be treated as general fund revenue if:

- 1) the purpose of the fine is not to recover the cost of the code inspections and enforcement; or
- 2) the costs of carrying out the code inspections and enforcement were not paid with CDBG funds; or
- 3) the amount of the fine exceeds the costs paid with CDBG funds.

For example, a grantee may require that revenues from code enforcement fines go into a dedicated fund that is used solely for some other purpose, such as after-school education programs.

VII. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA)

Although the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA) and Section 104(d) of the Housing and Community Act of 1974 (HCDA) are not automatically triggered by code enforcement activities, grantees should be mindful that in some cases the URA and section 104(d) could apply. For example, for purposes of the URA, if the code enforcement action is undertaken to evict persons from a federally-assisted project involving acquisition, rehabilitation or demolition, URA requirements may be triggered. For purposes of section 104(d) of the HCDA, if the code enforcement is being conducted “in connection with” an anticipated development project involving demolition or conversion, the HCDA requirements may apply. See [HUD Handbook 1378](#), Chapters 1-4 J.3 and 7-4 A.3. for guidance on this issue.

VIII. FAIR HOUSING AND CIVIL RIGHTS CONSIDERATIONS

Section 109 of Title I of the Housing and Community Development Act of 1974 prohibits the Department’s CDBG grantees from conduct that will cause discrimination on the grounds of race, color, national origin, religion, or sex, in the participation in any program or activity funded in whole or in part with Federal financial assistance.

Pursuant to 24 CFR 5.105 (a), the Department’s CDBG grantees must also comply with various fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. Grantees must assure that all CDBG-funded activities, including code enforcement activities, do not discriminate on the basis of race, color, religion, sex, disability, familial status, or national origin.

Pursuant to Section 504 of the Rehabilitation Act of 1973, grantees should implement affirmative efforts to involve and ensure equal access to people with disabilities; therefore, varied approaches may be required to assure effective communication and information dissemination. For example, the code enforcement agency could ensure that electronic information concerning the building code is accessible to persons with disabilities. As another example, the code enforcement agency could conduct outreach to organizations representing persons with disabilities to inform them about inspection services to ensure compliance with accessibility requirements and about procedures for filing accessibility-related complaints. Also, pursuant to Section 504, the code enforcement agency must ensure that its communications offices and hearing rooms are accessible to persons with disabilities.

Grantees receiving CDBG funds should take reasonable steps to ensure meaningful access to their programs and activities to limited English proficient (LEP) individuals. For more information, see [LEP](#).

For additional information on code enforcement activities for both entitlement and non-entitlement grantees, see [HUD's CPD Notice 14-016](#).

Questions concerning this Management Memo should be directed to your Contract Management [Representative](#).