United States Department of Housing and Urban Development
Office Community Planning and Development

Special Attention of:

CPD Directors:
Albuquerque, NM
Fort Worth, TX
San Francisco, CA

Notice: CPD-12-008

This NOTICE is effective until it is amended, superseded, or rescinded

State CDBG Program Administrators:
Arizona, California, New Mexico, and Texas

Subject: **Guidelines for Administering the State Community Development Block Grant (CDBG) Colonias Set-Aside**

I. Purpose

In 2007-2008, the United States Department of Housing and Urban Development (HUD), Regional Office of Inspector General (OIG), Fort Worth, Texas, audited the administration of the State CDBG colonias set-aside in Arizona, California, New Mexico, and Texas (the four states along the United States-Mexico border). The audit was prompted by concerns that surfaced during an audit survey of the State of Texas' use of colonias set-aside funds. The OIG issued an audit report which indicated that HUD had not issued regulations that required the four states to comply with Section 916 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (the Act), and could not track accomplishments or report on the effectiveness of the set-aside funds in meeting the colonia residents' needs regarding water, sewage and housing. This Notice addresses the OIG findings by providing guidelines for proper administration of the State CDBG colonias set-aside. This Notice is effective immediately.

II. Background

The colonias set-aside was authorized in 1990, under the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101-625, Nov. 28, 1990) (the Act) and was made permanent by the Appropriations Act of 1997 (Pub L. 104-204, Sept. 26, 1996, 110 Stat. 2887). Section 916 of the Act requires the states of Arizona, California, New Mexico, and Texas to set aside up to 10 percent of their annual CDBG allocations to be used for eligible activities that meet the needs of the colonias. The Act defines a colonia as any identifiable community (i.e., with defined boundaries) within 150 miles of the United States-Mexico border in Arizona,

California, New Mexico and Texas, that was in existence before November 28, 1990, excluding metropolitan statistical areas with populations exceeding one million. The community must be determined to be a colonia on the basis of objective criteria including the lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing.

After each annual CDBG allocation, the percentage for the colonias set-aside for each of the four states is determined through consultations between HUD Headquarters, the CPD Field Offices serving each of the four states, State CDBG program administrators, and grassroots organizations representative of the interests of the residents of colonias. Over the past ten years, Arizona, New Mexico, and Texas have set 10 percent of their CDBG funds for colonias, while California has set aside five percent. Over the past ten years, Arizona, New Mexico (8.4% in 2010), and Texas have set aside 10% of their CDBG funds for colonias, while California has set aside 5%.

III. Guidelines for Administering the State CDBG Colonias Set-Aside

1. Addendum to the CDBG Grant Agreement

CPD Field Offices whose jurisdiction includes colonias in the four states must include language in their grant agreements which require the states to comply with Section 916 of the Act. The language should be included as an addendum to Form HUD-7082 so that a State official's signature on the form becomes acknowledgment of the State's responsibility to comply with Section 916 of the Act.

2. Guidance on Improving Administration of the Colonia Set-Aside

In accordance with the definition of "colonia" provided in Section 916(e)(1) of the Act, each state must maintain documentation on all colonias eligible for CDBG colonias set-aside assistance. Section 916(e)(1)(D) requires a colonia to have been in existence before the date of enactment of the Act, November 28, 1990. To comply with this requirement, states need to be able to document all colonias that were in existence before November 28, 1990. If a state no longer has its original documentation which shows that a colonia was in existence before November 28, 1990, it should contact its local CPD Field Office for guidance.

In addition to being in existence before November 28, 1990, Section 916(e)(1)(C) requires a colonia to be "determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing." This means that all three expressly named criteria be included in such list and that at least one of three be included in each instance. This determination should be made by the state or unit of general local government (UGLG). States using objective criteria, other than the three criteria statutorily provided, to designate a colonia, should discuss the criteria with their local CPD Field Office.

Section 916(c) of the Act states that, “[a]ssistance shall be made available… in accordance with a distribution plan that gives priority to colonias having the greatest need for such assistance." To meet this requirement, states must maintain documentation on each colonia eligible to receive assistance that identifies the needs of each colonia, especially with respect to water, sewage and housing. States must also maintain documentation describing the reasons for the distribution priorities and how the proposed distribution plan addresses the priority needs of the colonias. In determining which colonias to fund, States should take into account the capacity of the UGLG, to prevent providing a large amount of funding to local governments that do not have the expertise to implement projects. States should consider using their technical assistance funds to help UGLGs attain capacity, or encourage them to contract with competent entities (such as Regional Planning Commissions, neighboring jurisdictions, etc.). In summary, states must prioritize funding to the neediest colonias and ensure that colonias selected for funding have the capacity to administer the grant. The state’s documentation must support its funding decisions.

States and UGLGs are strongly encouraged to use CDBG colonias set-aside funds for projects addressing lack of potable drinking water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing. Although Section 916(b)(3) of the Act permits colonia set-aside funds to be used for any activities eligible for assistance under Section 105(a) of the Housing and Community Development Act of 1974, basic infrastructure (water and wastewater treatment systems) and housing activities should have priority under the colonia set-aside pursuant to the language of Section 916(a) of the Act. The states should provide a funding priority under the colonias set-aside for these types of activities and should only fund other activities if they are undertaken in conjunction with funding of basic infrastructure or housing activities.

While all funding must be distributed to an UGLG, a state should look very closely at an UGLG that fails to apply for colonias projects to ensure that they are not in violation of Title VI of the Civil Rights Act of 1964 or any other applicable Federal, State or local nondiscrimination law or regulation including 24 CFR 570.487(b) which requires the State and funded UGLGs to certify that they will affirmatively further fair housing.

3. Method of Distribution

Each state's method of distribution shall include all of the criteria that the state will use to select colonias for funding. Per 24 CFR 91.320(k)(1)(i), the method of distribution must provide sufficient information so that UGLGs will be able to understand and comment on it, comprehend the criteria and information that their application will be judged on, and be able to provide responsive applications. The method of distribution must include the relative importance of the criteria where applicable, and a description of the grant size limits, and threshold factors that will be applied. States must maintain documentation describing the reason(s) for the distribution priorities as described above that ensures the neediest colonias will be funded. It is important that the funding criteria be clear so that the States can receive the best possible applications from UGLGs to help improve the living conditions of colonia residents. States may consider holding technical assistance sessions with the UGLGs containing colonias.

4. Tracking and Reporting Colonia Activities and Performance

The Integrated Disbursement and Information System (IDIS) is HUD's web-based information system through which states drawdown CDBG funds and report project and activity performance. When Arizona, California, New Mexico, or Texas logon to IDIS during activity set-up, two checkboxes will appear prompting users to indicate whether the activity is located in a colonia and whether it is assisted with set-aside funds. In order to provide accurate reporting on the use of colonia set-aside funds, the completion of these two checkboxes is required.

5. Funding Entitlement Jurisdictions and Federally-Recognized Indian Tribes

Section 916 (e)(4) of the Act provides that the United States-Mexico border region includes the area within 150 miles of the border between the United States and Mexico, excluding any standard metropolitan statistical area (SMSA) with a population exceeding one million. This means that a colonia under Section 916 (e)(1) of the Act may be located in an entitlement jurisdiction as long as the SMSA's population is less than a million. States may fund these entitlement jurisdictions with colonia set-aside funds. This differs from the regular State CDBG program which prohibits the funding of entitlement communities. If a SMSA's population surpasses one million, colonia set-aside funds may be used in the SMSA for the fiscal years before the SMSA exceeded one million. For example if a SMSA exceeds one million in FY 2010, the grantee may use FY 2009 and earlier year colonia set-aside funds in the SMSA but cannot use colonia set-aside funds in the SMSA starting with the FY 2010 grant.

In addition, colonia set-aside funds may be used to fund colonias on Indian reservations that are located within 150 miles of the border. This also differs from the regular State CDBG program which prohibits States from directly funding Indian Tribes.

6. State must demonstrate compliance with the statutory and regulatory requirements of the Colonias set-side

To demonstrate compliance with statutory and regulatory requirements of the colonias set-aside, the four States must retain documentation to support the designation of colonias, eligibility of activities assisted with colonias set-aside funds, the State's system of funding areas of greatest need; and a description of accomplishments including activities completed and the number of colonias assisted. This information must be easily available so that it can be accessed and reviewed as necessary by HUD, the Inspector General, and the United States Government Accountability Office. Compliance with the statutory and regulatory requirements of the colonias set-aside implies the following:

A. Documentation to support the designation of colonias

(i) A list of all colonias within the State;

(ii) Documentation that each colonia existed before November 28, 1990, in accordance with Section 916(e)(1)(D) of the Act;

(iii) Documentation that each colonia is located within 150 miles of the United States-Mexico border in accordance with Section 916(e)(1)(B) of the Act;

(iv) Documentation that all of the State's designated colonias are identifiable (i.e., is an identifiable community) in accordance with Section 916(e)(1) of the Act;

(v) Documentation that each colonia is determined to be a colonia on the basis of objective criteria chosen by the state, including lack of potable water supply, lack of adequate sewerage systems, and lack of decent, safe, and sanitary housing, in accordance with section 916(e)(1)(C) of the Act.

B. Documentation to support the eligibility of activities assisted with colonias set-aside funds:

(i) Documentation that each activity assisted with colonia set-aside funds is eligible and meets a national objective in accordance with section 105(a) of Housing and Community Development Act (HCDA) of 1974, section 916(b) of the Act, and the CDBG regulations at 24 CFR 570.482 and 24 CFR 570.483; and,

(ii) Documentation that activities assisted with colonias set-aside funds benefit colonia residents in accordance with Section 916(a) of the Act

C. A description of the State's system of prioritizing the funding of colonias with greatest need in accordance with Section 916(c) of the Act including:

(i) Documentation identifying the needs of each colonia in accordance with section 916(c) of the Act;

(ii) Documentation describing the reasons for the distribution priorities;

(iii) Documentation describing how the State determines colonias with the greatest need in accordance with section 916(c) of the Act;

(iv) Documentation showing how the State ensures that UGLGs funds needy colonias located within their jurisdictions;

(v) Documentation that shows how the number of colonia-eligible jurisdictions relates to the amount of funding made available;

(vi) A description of the Method of Distribution and other guidance describing the methodology used to choose which colonias to fund in accordance with Section 916(c) of the Act; and

(vii) Documentation indicating whether the State consulted colonias interest groups in determining colonias' needs.

D. A description of accomplishments (listed in the PER) including completed activities and the number of colonias assisted:

(i) Documentation on whether colonia set-aside funded activities are completed pursuant to 24 CFR 570.489(i);

(ii) Documentation showing accomplishments:

(a) As a result of activities assisted with colonias set-aside funds for the current program year;

(b) As a result of activities assisted with colonias set-aside funds for the entire life of the set-aside.

7. Additional Documentation

States should maintain the following documentation on the colonia set-aside:

(i) Documentation on whether each colonia is co-terminus with the entire UGLG, if not the percentage that is coterminous should be indicated;

(ii) Documentation that activities beyond basic infrastructure or housing were only funded in conjunction with these activities.

(iii) A description of the State's process for undesignating a colonia;

(iv) A description of the State's internal controls system which separate colonias set-aside funds from other CDBG funds;

(v) A description of how colonias are monitored including;

(a) Documentation showing that the state monitors its colonias

(b) Documentation which describes how colonias set-aside and regular CDBG funded activities are monitored, stating whether they are monitored separately; and

(c) Documentation showing whether the state funds non-colonia set-aside projects in the colonias with State CDBG funds.

IV. Conclusion

The Department believes that states are committed to addressing the issues in the colonias through the use of the colonia set-aside. It is believed that each state is best positioned to determine the needs of its colonias and develop a program to meet these needs using colonias set-aside funds. The purpose of this Notice is to provide guidance to help States comply with requirements of the Act, the HCDA and the regulations while meeting the needs of the citizens of its colonias and respecting the principle of maximum feasible deference.

Questions related to this Notice should be directed to Steve Rhodeside, Director, State and Small Cities Division (SSCD), Office of Block Grant Assistance, 451 7th Street, SW, Room 7184, Washington, DC 20410. Mr. Rhodeside's phone number is (202) 402-7375.