



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors

All CDBG Grantees

Notice: CPD-14-016

Issued: October 2014

Expires: This Notice Is Effective Until It Is
Amended, Superseded, or Rescinded

SUBJECT: Use of CDBG Funds for Code Enforcement Activities

This Notice provides guidance on the use of CDBG funds for code enforcement activities. It will address the following topics:

- I. What is Code Enforcement?
- II. Purpose of Code Enforcement
- III. Eligible Code Enforcement Costs
 - A. Code Enforcement Inspections
 - B. Enforcement Actions
- IV. Ineligible Activities National Objectives for Code Enforcement
 - A. Low and Moderate Income Area Benefit
 - B. Prevention or Elimination of Slum/Blight Area on An Area Basis
 - C. Prevention or Elimination of Slum/Blight Area on A Spot Basis
 - D. Slum/Blight Urban Renewal Completion
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 - F. Other National Objective Considerations
- V. Fair Housing and Civil Rights
- VI. Revenue from Code Enforcement Activities
- VII. 2012 Statutory Provision on Code Enforcement
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I. WHAT IS CODE ENFORCEMENT?

The Housing and Community Development Act of 1974 (HCDA) and the CDBG regulations permit 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.” This provision is codified in the CDBG Entitlement program regulations at 24 CFR 570.202(c), which reads as follows:

Code enforcement. Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

Eligible code enforcement activities assisted under 24 CFR 570.202(c) for entitlement communities do not include the costs of correcting the code violations, which may be an eligible rehabilitation cost, provided a national objective is met. In the Entitlement CDBG program, the rehabilitation costs are separate and distinct from code enforcement activities carried out under 570.202(c). Rehabilitation of buildings and code enforcement activities are also listed in the HCDA as separate eligible activities. The State CDBG regulations do not contain a section listing eligible activities, and the Entitlement eligibility provisions are not binding on states. States may use the Entitlement regulations as interpretive guidance in addition to Section 105(c) of the HCDA. Throughout this Notice, the text will refer to the Entitlement regulations regarding eligible activities; states should refer to the citations from the HCDA.

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, commercial, and industrial buildings 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 in primarily residential, commercial, and industrial 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 form a minor part of the code enforcement program.

II. PURPOSE OF CODE ENFORCEMENT

Most jurisdictions in the United States 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 may attract squatters, vandals, drug addicts, and rodents.

Code inspections are also done to protect the health and safety of persons utilizing buildings such as public facilities. For example, a privately-owned daycare center utilized by children may have peeling paint on its walls, which may pose a danger to children who may eat it, even if it does not contain lead, or loose floorboards may pose a tripping hazard for children and adults. In addition, the owners of such facilities may face legal liability if someone is seriously injured. This may be the grantee if it is a public facility or a nonprofit carrying out an eligible activity.

Code enforcement can help to reduce crime in a neighborhood, as well. The “broken window” theory was introduced in 1982 by social scientists James Q. Wilson and George L. Kelling. Their research showed that, if broken windows in a structure are not repaired, vandals are more likely to break more windows. Crime levels thus tend to be higher in areas where repairs are not accomplished. Therefore, jurisdictions monitor and maintain buildings,

particularly in urban areas, to prevent vandalism and further deterioration so that neighborhoods are well-maintained and experience less crime.

III. 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 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. The CDBG Entitlement program regulations at § 570.202(c) provide that costs incurred for inspection and enforcement of codes, such as salaries and related expenses of code enforcement inspectors and legal proceedings, are eligible costs. In the Entitlement CDBG program, eligible code enforcement costs do not include the costs of correcting the code violations. Rehabilitation activities in § 570.202(a) and Section 105(a)(4) of the HCDA are distinct from code enforcement activities carried out under Section 105(a)(3) of the HCDA and § 570.202(c).

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 activity delivery cost. Grantees may contract with another unit of government to perform code inspections services; hiring another government entity is not subject to 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. According to § 570.207(b)(1)(iii), purchase of equipment not an integral structural fixture (such as vehicles) with CDBG funds is eligible when necessary for use by a recipient or its subrecipients 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 is an eligible activity delivery cost [see § 570.207(b)(1)(iii)]. Appendix B, Item 11 of 2 CFR Part 225¹ (formerly OMB Circular A-87) describes cost allocation and use allowances and how costs may be maintained for vehicle usage.

¹ OMB Circulars A-87, A-110, and A-122, were incorporated into 2 CFR Parts 225, 215, and 230, respectively. On December 26, 2014, the Uniform Administrative Requirements (2 CFR Part 215, A-102), Audit Requirements (A-133) and Cost Principles (2 CFR Parts 225 and 230) will be superseded by 2 CFR Part 200.

Grantees may also use CDBG funds to purchase uniforms and/or coveralls if they are a job requirement for code enforcement inspectors and are a regular city-incurred expense. Appendix A of 2 CFR Part 225 states that for the cost to be allocable to a Federal award, it must be consistent with policies, regulations, and procedures that apply uniformly to both federally-financed and other activities of the non-federal entity. Such costs would be considered activity delivery costs.

CDBG funds also may be used to purchase hand-held computers or tablets to record information as the code enforcement inspection is being conducted. The purchase or lease of such devices is an eligible activity delivery cost. If CDBG funds are used to purchase computers or tablets, the grantee must be able to demonstrate that they are only being used for code enforcement inspections in CDBG-eligible areas. If computers or tablets are leased or are purchased with non-CDBG funds, grantees must ensure that the use charges to the CDBG program are appropriately allocated by the percentage of time they are used for inspections carried out for CDBG purposes in CDBG-eligible areas and for non-CDBG purposes.

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. The staff costs associated with processing and issuing the citations, collecting and processing the fines, and postage are all eligible activity delivery 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 delivery costs under § 570.202(c). A defendant's legal costs are not eligible costs.

IV. INELIGIBLE CODE ENFORCEMENT COSTS

CDBG funds may be used for the costs for inspection of code violations and enforcement of codes in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area. While the cost of correcting the violations is not an eligible code enforcement cost under § 570.202(c), 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. As fiscal stress has put pressure on local budgets, HUD has seen examples of significant increases in CDBG code enforcement budgets, while overall spending on enforcement remains the same. Grantees should use CDBG for code enforcement as appropriate to advance the goals of the CDBG program in areas designated for such activity; HUD is not discouraging the use of CDBG in these cases. However, § 570.207(a)(2) prohibits grantees from using CDBG funds for general government expenses. Code enforcement is an eligible cost that may be paid from local and CDBG funding sources, and grantees have been tempted to shift existing code enforcement efforts to CDBG to relieve pressure on general fund budgets. HUD will look into cases where this appears to be happening to ensure that CDBG code enforcement activities adhere to the targeting and supporting services required for CDBG eligibility.

The costs of the rehabilitation, improvements, and services are not required to be CDBG-assisted, although some of the rehabilitation and improvement costs may be CDBG-eligible. The cost to rehabilitate single unit housing or multifamily housing structures may be eligible under § 570.202(a) and (b) and Section 105(a)(4) of the HCDA. The rehabilitation of public facilities and improvements on publicly-owned buildings is eligible under § 570.201(c) and Section 105(a)(2) of the HCDA. Rehabilitation of commercial buildings may be eligible under §§ 570.202(a), 570.203(a) or (b) and Section 105(a)(14) of the HCDA. Demolition of buildings may be eligible under § 570.201(d) and Section 105(a)(4) of the HCDA.

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., city- or county-wide) unless the entire jurisdiction is deteriorating. Grantees may use state or local law to determine what constitutes a deteriorated/deteriorating area. The standards identified at §§ 570.208(b)(1) and 570.483(c)(1) may also be used to determine if an area is deteriorated or deteriorating. (See Section VI.B. below.)

V. 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 § 570.208(a)(1) (for Entitlements) or § 570.483(b)(1) (for states) 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 multifamily housing units, commercial buildings, 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.

Some metropolitan cities and urban counties have few or no areas where 51 percent of the residents are low- and moderate-income. For these grantees, the CDBG law authorizes an

exception criterion to be able to undertake area benefit activities. Specifically, Section 105(c)(2)(A)(ii) of the HCDA, as amended, states that an activity shall be considered to principally benefit low- and moderate-income persons when “the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income.” This is implemented in the regulations at § 570.208(a)(1)(ii), which identifies the methodology to calculate a grantee’s exception threshold. A list of exception grantees is available at <http://www.hud.gov/offices/cpd/systems/census/lowmod/exception.cfm>.

While residences and other real property in private ownership may be subject to code enforcement, code enforcement of such buildings would not be considered to 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. The rehabilitation or improvement of the homes and public facilities subject to code enforcement address the LMH or LMC national objective criteria.

B. Prevention or Elimination of Slum/Blight on an Area Basis

Code enforcement activities may qualify under the national objective of prevention or elimination of slums/blight on an area basis under § 570.208(b)(1) (for Entitlements) and § 570.483(c)(1) (for States).

Code enforcement activity will be considered to address prevention or elimination of slums or blight in an area if:

- (i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;
- (ii) The area also meets the conditions in either paragraph (A) or (B):
 - (A) At least 25 percent of properties throughout the area experience one or more of the following conditions:
 - (1) Physical deterioration of buildings or improvements;
 - (2) Abandonment of properties;
 - (3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(4) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(5) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

Note that many of the criteria in (i) and (ii)(A) overlap with state or local definitions of slums and blight. Grantees may use some or all of these provisions as the basis for delineating “deteriorated or deteriorating areas” for eligibility purposes, even if the LMA criteria are being used for national objectives purposes. However, grantees are cautioned that there are some limits on their ability to use these requirements for both delineating deteriorated/deteriorating areas and for meeting the slum/blight national objective. For example, a determination that public improvements are in a general state of deterioration can be a basis for defining a slum/blighted area, but would not by itself sufficiently justify why a code enforcement program needs to be undertaken on private property in a given neighborhood. Conversely, state or local laws may provide a grantee with sufficient basis to define “deteriorated or deteriorating areas”, but do not by themselves qualify an area as slum or blighted for national objective compliance. Some state or local definitions include criteria that have nothing to do with physical conditions of the built environment (such as “undeveloped land” or “inappropriately zoned” parcels.) In these cases, inappropriate requirements should not be included in the basis for a grantee’s determinations.

This national objective may be used when carrying out the inspection and enforcement of code violations in areas that are designated as slum or blighted as a way of bringing much-needed improvements to such areas. The area does not have to be primarily residential, and code enforcement need not be limited to residential structures. Commercial and industrial buildings, and sometimes vacant lots, can lead to deterioration as well.

A redetermination of the area must be carried out every 10 years for the area to continue to qualify as a designated slum or blighted area. The grantee must maintain documentation that the area qualified as a slum or blighted area. The documentation must demonstrate the boundaries of the area, the date of the designation, the conditions and standards that qualified the area at the time of its designation in sufficient detail to show how it met the criteria for designation, and how the code enforcement addressed a condition that led to the decline of the area.

C. Prevention or Elimination of Slum/Blight on a Spot Basis

Please note that code enforcement activities cannot meet the slum/blight spot national objective. The legislation and regulations require code enforcement to be undertaken in deteriorated or deteriorating areas, ruling out consideration of individual structures not located in such areas.

D. Slum Blight Urban Renewal Completion

Although this national objective rarely applies, it remains an option for the few grantees that have outstanding urban renewal plans or areas. Grantees that want to conduct code enforcement inspections and enforcement in areas identified in the urban renewal plans may do so under the slum/blight urban renewal completion national objective if it is an activity that is necessary to complete the urban renewal plan. The grantee must be able to document this national objective by having a copy of the Urban Renewal Plan in effect at the time of closeout of HUD financial assistance under title I of the Housing Act of 1949 or financial settlement under Section 112 of the HCDA, and a description of how the inspections for code violations and enforcement of codes are needed to complete the urban renewal plan for the area.

E. 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 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 Entitlement program, grantees must certify 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. In the State program, the unit of general local government certifies, and the state determines, that those same conditions exist. Grantees must be able to document that the inspections for code violations and enforcement of codes were designed to address the 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.

Please note that if CDBG-Disaster Recovery funds are used, the requirements to document urgent need may differ; and, they may depend on the requirements that apply to the specific appropriation of disaster recovery funds involved.

F. Other National Objective Compliance Considerations

Grantees must ensure that they are not paying the salaries for code enforcement personnel over their entire jurisdiction, unless the grantee has determined that its entire jurisdiction is deteriorated or deteriorating. The areas where the inspections are being carried out using code enforcement inspectors whose salaries are paid with CDBG funds must be deteriorated or deteriorating. In some communities, this will be areas that demonstrate substantial abandonment or that are designated as slum/blighted areas by local or state law.

Many of the criteria at § 570.208(b)(1)(i) and (ii)(A) overlap with state or local definitions of slums and blight. Grantees may use some or all of these provisions as the basis for delineating “deteriorated or deteriorating areas” for eligibility purposes. However, there are some limits on grantees’ ability to use these requirements for both delineating deteriorated/deteriorating areas and for meeting the slum/blight national objective. State or local laws may provide a grantee with a sufficient basis to define “deteriorated or deteriorating areas” but that definition may not meet the state or local law definition to qualify an area as slum or blighted for national objective compliance purposes. In addition, some state or local definitions include criteria that have nothing to do with physical conditions of structures (such as “undeveloped land” or “inappropriately zoned” parcels). The grantee must be careful not to apply inappropriate requirements as the basis for its determinations.

When carrying out eligible code enforcement activities under the slum/blight or urgent need national objectives, grantees should be mindful of the statutory overall low- and moderate-income benefit requirement: over a period of time specified in the grantee’s certification, not to exceed three years, not less than 70 percent of CDBG funds shall be expended for activities that benefit low- and moderate-income persons.

VI. FAIR HOUSING AND CIVIL RIGHTS CONSIDERATIONS

Section 109 of Title I of the Housing and Community Development Act of 1974 prohibits CDBG grantees and sub-grantees from conduct that will cause discrimination on the ground 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), CDBG grantees and sub-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 and sub-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, CDBG grantees and sub-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.

Recipients of CDBG funds should take reasonable steps to ensure meaningful access to their programs and activities to limited English proficient individuals. As an aid to recipients, the Department published *Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance) in the Federal Register at 72 FR 2732. For assistance regarding LEP obligations, go to www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf. For more information on LEP, please visit www.hud.gov/offices/fheo/promotingfh/lep.cfm.

Finally, CDBG recipients and subrecipients must affirmatively further fair housing in their use of such funds. Grantees may offer services to affirmatively further fair housing in code enforcement. Such costs, examples of which follow, are not eligible code enforcement expenses but could be eligible as public services or program administrative costs. Both of these categories have caps on the overall activity expenses.

- Providing mobility counseling or referrals to housing counseling agencies for persons temporarily or permanently displaced by code enforcement actions;
- Training staff on fair housing requirements;
- Providing outreach to marginalized populations
- Establishing partnerships with Fair Housing Organizations, state and local fair housing agencies, and community-based organizations representing protected classes under the Fair Housing Act.

VII. 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 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 § 570.500(a). Rather, revenue from code enforcement fines should be treated either as applicable credits against CDBG expenditures or as general revenue.

Appendix A of 2 CFR Part 225 defines applicable credits as receipts or reductions of expenditure type transactions that offset or reduce expense items allocable to Federal awards. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

There are two instances that must be met for code enforcement fines 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 law, 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 law 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 revenue if:

- 1) the purpose of the fine is not to recover the cost of the code inspections and enforcement;
- 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 jurisdiction 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. Other income received by governments that may be considered general revenue include income earned from investments and income received from the payment of fines.

VIII. 2012 STATUTORY PROVISION ON CODE ENFORCEMENT

Title II of Division F of the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 (Pub. L. 112-141) amended Section 105(a) of the Housing and Community Development Act of 1974 to add a new Section 105(a)(27) to the HCDA. This provision permitted CDBG funds to be used to supplement existing state or local funding for administration of building code enforcement by local building code enforcement departments, including:

- 1) increasing staffing;
- 2) providing staff training;
- 3) increasing staff competence and professional qualifications;
- 4) supporting individual certification or departmental accreditation; and
- 5) capital expenditures specifically dedicated to the administration of the building code enforcement department.

This legislation permitted training for code enforcement staff to be considered an activity delivery cost rather than a program administrative cost. This statute had a sunset date of July 6, 2014; CDBG-assisted activities allowed via this statutory authority are no longer eligible.

However, some grantees may have undertaken code enforcement activities under its auspices while it was in effect. In particular, CDBG assistance provided under the authority of Section 105(a)(27) of the HCDA was required to be matched using non-Federal funds as follows:

- 1) For building code enforcement departments serving an area with a population of more than 50,000, not less than 50 percent of the total amount of CDBG funds provided for this activity;
- 2) for building code enforcement departments serving an area with a population of between 20,001 and 50,000, not less than 25 percent of the CDBG funds provided for this activity; and
- 3) For building code enforcement departments serving an area with a population of less than 20,000, not less than 12.5 percent of the CDBG funds provided for this activity.

Section 105(a)(3) of the HCDA and § 570.202(c) also permit the use of CDBG funds to pay the salaries of code enforcement inspectors. Training in code enforcement procedures and practices and paying for courses to increase inspectors' abilities to carry out efficient and proper code inspections and enforcement are eligible as activity delivery costs of CDBG-assisted code enforcement activities under Section 105(a)(3) of the HCDA and § 570.202(c). CDBG assistance under these provisions does not require a match and there is no sunset for these provisions.

IX. RECORDKEEPING REQUIREMENTS

The Entitlement CDBG program regulations at § 570.506 identify records that must be kept by grantees carrying out CDBG-assisted activities. The State CDBG program regulations at § 570.490(a) and (b) identify records that states and units of general local government must maintain and provides that the content of records maintained by the state shall be as jointly agreed upon by HUD and the states. A copy of those requirements may be accessed at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_16372.pdf.

The lack of time distribution records and documentation to demonstrate use of CDBG funds for code enforcement in eligible areas has been a significant problem for some grantees. Not having complete and accurate documentation has resulted in monitoring findings and disallowed costs. Grantees have been required to repay significant sums of money from non-federal funds because they did not maintain records delineating the deteriorated or deteriorating areas, or records demonstrating that the CDBG program only paid for code enforcement costs in those areas. HUD has seen instances in which automobiles were purchased ostensibly for code enforcement purposes solely in defined areas, but the vehicle was assigned to a motor pool with no restrictions on who could use it; those costs had to be repaid. To avoid this problem, grantees should ensure that their records and documentation demonstrate activity eligibility, national objective compliance, allowability of costs, and cost reasonableness. In addition, grantees must ensure that their time distribution records regarding time spent conducting code enforcement in eligible areas is accurate. Having this information readily available is critical for grantees to avoid monitoring findings and disallowed costs.

At a minimum, grantees are required to have records that provide a full description of each activity being assisted with CDBG funds, including its location, if applicable; the amount of CDBG funds budgeted, obligated, and expended for the activity; and the provision in 24 CFR 570 subpart C or section 105(a) of the HCDA under which it is eligible. In addition, grantees must also have records that demonstrate how activities meet the criteria for national objectives in §§ 570.208 or 570.483. Records that grantees should maintain when carrying out CDBG-assisted code enforcement activities include:

- The state and local law definitions of deteriorated/deteriorating.
- A description of the conditions of the areas in which CDBG funds are used for code enforcement, demonstrating that these areas meet the state local law definition of deteriorated/deteriorating.
- If the low/moderate income area benefit national objective criterion is used, the boundaries of the areas in which CDBG funds are used for code enforcement that demonstrate compliance with this national objective.
- If the slum/blight area national objective criterion is used, the grantee's delineation of the areas inspected as slum/blighted under state or local law; a determination that a minimum of 25 percent of the buildings in the delineated area have either physical deterioration, property abandonment, chronic high occupancy turnover rates, and/or significant declines in property values or abnormally low property values relative to other areas in the community; and documentation of known or suspected environmental contamination.
- If the slum/blight urban renewal national objective criterion is used, the Urban Renewal Plan in effect at the time of closeout of Federal financial assistance under the Housing Act of 1949 or financial settlement under Section 112 of the HCDA, documentation that the urban renewal plan is incomplete, and a description of how the code enforcement inspections and enforcement were needed to complete the plan for the area.
- If the urgent need national objective is used, for entitlement grantees, a certification that the buildings inspected posed a serious and immediate threat to the health and welfare of the community, the disastrous occurrence was of recent origin (18 months before the grantee's certification, and that no other funding resources were available to assist the activity [§ 570.208(c)]. For the State CDBG program, the unit of general local government makes the certification, and the State determines, that the criterion above was met. See § 570.483(d).
- Identification of other activities to be carried out (whether CDBG-assisted or not) that will arrest the decline of the areas and their funding sources.
- Compliance with the procurement standards at § 85.36 when equipment and services are procured.

Grantees should also be able to justify expenses for necessary equipment and their use (e.g., uniforms/coveralls, handheld computers, gasoline, vehicle lease payments or use allowances). Grantees should maintain salary records (salaries, benefits, timesheets) of code enforcement inspectors being paid with CDBG funds and a description of all areas they are responsible for inspecting. The grantee must also document costs for legal proceedings such as salaries of hearing officers and attorneys.

CDBG funds may be used to pay for salaries, related benefits and costs such as uniforms, equipment, and vehicle use allowances, only for staff responsible for conducting inspections in specific target areas or areas that meet the low and moderate income area benefit national objective. Furthermore, such costs should be supported by time distribution records (if costs are treated as direct charges) or an indirect cost allocation plan prepared in accordance with applicable Federal cost principles. Grantees should charge the salaries of hearing officers in the same manner whenever possible. By doing so, grantees can avoid charging the CDBG program for the costs of code enforcement inspections carried out in ineligible areas and/or for charging the entire cost of their code enforcement programs to the CDBG program.

Questions concerning this Notice should be directed to your local HUD Field Office. Field Offices should direct their questions to the Entitlement Communities Division at (202) 708-1577 or the State and Small Cities Division at (202) 708-1322.