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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 13-06

November 5, 2013

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

FROM: Thomas Brandeberry, CDBG Section Chief

SUBJECT: Implementing CDBG Activities Outside of a Grantee's Jurisdictional Boundaries

This Memo supersedes Management Memo 12-01

The purpose of this Management Memo is to communicate a HUD CDBG Final Rule change and clarify the statute and regulatory rules for grantees implementing CDBG activities outside their jurisdictional boundaries. These Final Rule changes became effective in May of 2012.

Note: The requirements set forth in this memo will be applied to all Notices of Funding Availability (NOFA), Program Income Waiver, Revolving Loan Activities (RLA), and any individual project approvals presented to the Department from the date of this memo forward.

Part 1 - Non-Entitlement Jurisdictions carrying out CDBG activities in another Non-Entitlement's Area

24 CFR 570.486 – Local Government Requirements - Final Rule language:

(b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.* Any activity carried out by a recipient of State CDBG program funds must significantly benefit residents of the jurisdiction of the grant recipient, and the unit of general local government must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents.

Housing and Community Development Act, 106(d)(2)(D) states:

To receive and distribute amounts allocated under paragraph (1), the State shall certify that each unit of general local government to be distributed funds will be required to identify its

community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs.

Per consultation with HUD, both statute and the Final Rule (24 CFR 570.486(b)) require that funding awarded to a Grantee must *significantly* meet the needs of **their** citizens.

Policy Statement

To ensure compliance with 24 CFR 570.486(b), the Department must review all requests for CDBG funding (NOFA applications, Program Income Waiver requests and RLA-funded projects) to determine that the applicant has sufficiently documented that the activity (programs or projects) will significantly benefit their jurisdictional citizens. If the Department determines the activity documentation shows the activity will not significantly benefit their jurisdictional citizens, or the Department is unable to determine if the activity will significantly benefit the jurisdictional citizens, the Department will deny the CDBG funding request.

Non-entitlement Cities: For cities, the eligible area is the incorporation boundaries. Cities applying for CDBG funded activities, including those funded with Program Income that will be operated beyond the city limits, will be required to show that the activity will **significantly benefit their citizens within the city limits**. This means activities that will benefit citizens beyond a city's jurisdictional boundaries will require documentation demonstrating how the activity will significantly benefit the citizens residing within the jurisdiction, and that the benefit to citizens outside the city limits will be insignificant.

Non-Entitlement City Examples:

- Public Service/Public Facility activities administered by a city with a service area that crosses jurisdictional boundaries (i.e., city limits) will require documentation evidencing the activity will significantly benefit the city's citizens before the activity(ies) can be deemed eligible.
- A city's Homebuyer Assistance and/or Housing Rehabilitation will require all assisted properties be within the jurisdictional boundaries of the city funding the properties. Homebuyer program guidelines must address eligibility requirements for households that reside outside the jurisdiction, but are purchasing a home within the city limits.
- Business Assistance being carried out by a city requires that the business be located within the City's limits and that a significant number of employees hired to create jobs must live within the city's boundaries.
- Microenterprise Technical Assistance (**TA**) falls under the public service requirements above.
- A city's Microenterprise Financial Assistance (**FA**)(loan and grant) recipients must have their business located within the jurisdiction's boundaries. *Note:* if the business has no store-front location, such as a proposed business that is not yet open, or is an internet- or home-based business, the microenterprise owner's home must be located within the city limits.

Non-entitlement Counties: Citizens of a county include those residents in the county's unincorporated areas, as well as those residing within any incorporated city located within the county. Therefore, the county may implement CDBG activities beyond the unincorporated area of the county, but may not fund or operate activities outside the county's boundaries (within another county's boundaries). The discussion below describes how this applies when the county has Entitlement cities within its boundaries.

It is **important to note** that if a county is going to carry out CDBG activities that would generate Program Income (RLA activities, for example) within *any* city's limits, Department Policy requires the county to obtain a letter from the city's Authorized Representative indicating they have no objection to the county receiving future proceeds (program income) that may result from an activity operated by the county within the city's jurisdictional boundaries.

Non-Entitlement County Examples:

- Public Service(s)/Public Facility(ies) funded by a county: No additional documentation is needed other than how the eligible activity will meet a National Objective.
 - A county's Homebuyer Assistance and/or Housing Rehabilitation assistance requires all assisted property to be within the unincorporated area of the county unless the county has a letter from the city's Authorized Representative indicating they have no objections to the county both funding a project within the city's jurisdictional boundaries **and** the county receiving the future proceeds (program income).
 - Business Assistance conducted by a county requires all of the following:
 - (1) The business must be located in the unincorporated areas of the county unless the county has a letter from the city's Authorized Representative indicating they have no objections to the county:
 - (a) Funding an activity within the city's jurisdictional boundaries **and**
 - (b) Receiving the future proceeds (Program Income); *and*
 - (2) The created jobs must be significantly filled by county citizens living within the county's boundaries and not in another county.
 - Microenterprise: TA falls under the above public service requirements so the county will not be required to submit any additional documentation other than evidence of how the eligible Micro activity will meet a National Objective.
 - Microenterprise Financial Assistance (loan and grants) requires the business location be in the unincorporated area of the county, or the county must obtain a letter from the city's Authorized Representative indicating they have no objections to the county both funding a project within the city's jurisdictional boundaries **and** the county receiving the future proceeds (program income). Note: the Department assumes that any financial assistance to an eligible Microenterprise business will have an actual location, even if the physical location is home based.
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Part 2 - Non-Entitlement Jurisdictions carrying out CDBG activities in Entitlement Areas - *This section supersedes Management Memo 12-01*

The CDBG Final Rule also added new language at 24 CFR 570.486(c) which states:

(c) Activities located in Entitlement jurisdictions. Any activity carried out by a recipient of State CDBG program funds in entitlement jurisdictions must significantly benefit residents of the jurisdiction of the grant recipient, and the State CDBG recipient must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents. In addition, the grant cannot be used to provide a significant benefit to the entitlement jurisdiction unless the entitlement grantee provides a meaningful contribution to the project.

Per consultation with HUD, it was determined that if non-entitlement funds are to be spent in an entitlement jurisdiction, the funding being expended must be proportionate to the beneficiaries being served in each of the jurisdictions. Thus, if 40% of the beneficiaries of the funding will be non-entitlement grantee citizens, then the non-entitlement grantee can only provide 40% of the project/program costs, and the entitlement jurisdiction must supply 60%. CDBG non-entitlement funding outside of a non-entitlement area **must always be proportionate** to the non-entitlement beneficiaries of the activity.

Policy Statement

To ensure compliance with 24 CFR 570.486(c), the Department must review all CDBG requests for funding (NOFA applications, Program Income Waiver requests and RLA-funded projects) to determine if the non-entitlement's share of funding for the activity is proportional to the entitlement's share of funding and that the basis for the proportional calculations is clearly and accurately documented. It is incumbent upon non-entitlement applicants to accurately quantify the number and type of non-entitlement beneficiaries and to maintain clear records showing the quantification is accurate and on-going. If, in its review, the Department determines the activity funding is not accurately proportional, or the Department is unable to determine the activity funding is accurately proportional, the Department will deny the funding request.

Note: For the entitlement community to make a meaningful contribution they will be required to use funds that they are in control of, for example, city's General Fund or the city's entitlement CDBG funding.