

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 1003

[Docket No. FR-4612-F-02]

RIN 2577-AC22

### Revision to the Application Process for Community Development Block Grants for Indian Tribes and Alaska Native Villages

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations for Community Development Block Grants for Indian Tribes and Alaska Native Villages (the "ICDBG" program). These amendments will permit the incorporation of the ICDBG grant application and selection procedures into HUD's SuperNOFA process. The SuperNOFA approach, in which the great majority of HUD's competitive funds are announced in one document, is designed to simplify the application process, bring consistency and uniformity to the application and selection process, and accelerate the availability of funding. In addition to the SuperNOFA-related amendments, this final rule amends the ICDBG program regulations to remove certain obsolete regulatory provisions and to clarify program requirements. This final rule follows publication of a November 2000 proposed rule and takes into consideration the public comments received on the proposed rule. After careful review of all of the public comments, HUD has decided to adopt the proposed regulatory amendments without change.

**DATES:** Effective Date: February 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Kruszek, Office of Grants Management, Office of Native American Programs, Department of Housing and Urban Development, Suite 3390, 1999 Broadway, Denver, CO 80202; telephone 1-800-561-5913 (this is a toll-free number). Hearing or speech-impaired persons may access this telephone number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. Ms. Kruszek may also be contacted via e-mail at: [Jacqueline\\_A.\\_Kruszek@hud.gov](mailto:Jacqueline_A._Kruszek@hud.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background—The November 6, 2000, Proposed Rule

The Community Development Block Grants program for Indian Tribes and

Alaska Native Villages (the "ICDBG" program) provides eligible grantees with direct grants for use in developing viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low- and moderate-income persons. On November 6, 2000 (65 FR 66592), HUD published a proposed rule to amend the ICDBG program regulations at 24 CFR part 1003. The principal reason for the proposed changes was to allow the integration of the ICDBG program application process into HUD's Super Notice of Funding Availability (SuperNOFA) approach. HUD, through letter dated July 12, 2000, provided Indian tribes and Alaska Native Villages with the opportunity to comment on the substance of the proposed regulatory changes during the development of the November 6, 2000 proposed rule. HUD received 7 comments on the proposed revisions, all in support of the regulatory changes and the incorporation of the ICDBG program requirements in the SuperNOFA process.

The SuperNOFA process, in which the great majority of HUD's competitive funds are announced in one document, is designed to simplify the application process, bring consistency and uniformity to the application and selection process, and accelerate the availability of funding. Unlike those HUD programs included in the SuperNOFA, the application process for funding under the ICDBG program has been implemented through separate stand-alone NOFAs. This was based, in part, on a determination that the considerations for grant award were substantially different for the ICDBG program when compared with those included in the SuperNOFA. Based upon closer review, HUD has determined that the SuperNOFA process, especially as it has evolved in the last two years, affords the degree of flexibility necessary to address important distinctions in funding considerations (such as project specific thresholds), while at the same time providing a framework within which application simplification procedures may be implemented. Certain regulatory changes, however, are required in order to permit the incorporation of the ICDBG program in the SuperNOFA process. Accordingly, HUD issued the November 6, 2000 proposed rule to revise the ICDBG program regulations application selection and rating procedures.

In addition to the SuperNOFA-related amendments, HUD took the opportunity provided by the November 6, 2000

proposed rule to make several streamlining and clarifying amendments to 24 CFR part 1003. These proposed amendments were non-substantive, but proposed to remove obsolete regulatory language and clarify existing program requirements. In addition, these proposed changes were designed to provide additional flexibility to address eligible activities under the ICDBG program.

The preamble to the November 6, 2000 proposed rule provides additional details regarding the proposed amendments to the ICDBG programs regulations at 24 CFR part 1003.

#### II. This Final Rule; Discussion of the Public Comments Received on the November 6, 2000, Proposed Rule

This final rule makes effective the policies and procedures contained in the November 6, 2000 proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on December 6, 2000. By close of business on that date, HUD had received 9 public comments on the proposed regulatory amendments, all from Indian tribes. After careful review of all the public comments, HUD has decided to adopt the proposed regulatory amendments without change. This section of the preamble presents a summary of the significant issues raised by the public commenters, and HUD's responses to the comments.

##### A. Comments Regarding National Rating of ICDBG Applications

*Comment:* Final rule should provide that Area ONAPs will continue to rate ICDBG applications. The November 6, 2000, rule proposed to remove the requirement that applications be rated by each Area Office of Native American Programs (ONAP). The public commenters objected to this proposed change. The commenters wrote that each Area ONAP has the advantage of being intimately familiar with local tribes and local conditions that may affect ICDBG project costs (such as weather patterns, the availability of construction materials, and the local labor market). Several of the commenters also disagreed that a national rating panel would help to expedite the funding process, and wrote they were unaware of any funding delays necessitating the proposed change. For these reasons, the commenters believe that national ratings would be less accurate and fair than those performed by the Area ONAPs.

*HUD response.* HUD is sensitive to the concerns expressed by these public

commenters, and assures them that a national review panel will not be used during the Fiscal Year (FY) 2001 ICDBG funding round. Applications for FY 2001 ICDBG funding will continue to be rated by the Area ONAPs. HUD continues to believe that the use of a national rating panel may assist in expediting the ICDBG funding approval process, and wishes to have the regulatory flexibility to consider such an option for future ICDBG funding rounds. The final rule provides HUD with this flexibility, but also continues to permit the rating of ICDBG applications by the Area ONAPs. HUD agrees with the commenters that there are several issues that need to be addressed before implementation of a national review panel. HUD will work with its tribal partners to address these issues of concern before establishing a national ICDBG review panel. HUD also wishes to note that, even if a national rating panel is established, ICDBG fund allocation and competition for these funds would continue to be made for and limited to each Area ONAP jurisdiction.

#### *B. Comments Regarding Tribal Consultation/Comment Period*

*Comment: The reduced 30-day comment period was insufficient.* Two commenters did not agree that the need to incorporate the ICDBG program in the FY 2001 SuperNOFA process justified reducing the customary 60-day public comment period for proposed rules to 30-days. One of the commenters wrote that delaying this incorporation would provide Indian tribes (and particularly small tribes) with the necessary time to become better acquainted with the SuperNOFA process.

*HUD response.* HUD agrees that public comment is essential to the success of the rulemaking process. In general, it is HUD's policy to provide the public with at least 60 days to submit comments on its proposed rules. However, HUD continues to believe that good cause existed to provide a reduced 30-day comment period for the November 6, 2000, proposed rule. The 30-day public comment period was necessary to ensure the inclusion of the ICDBG funding process in the FY 2001 SuperNOFA. Incorporation in the SuperNOFA will greatly benefit ICDBG program applicants. Among other benefits, the SuperNOFA's promotion of coordination and comprehensive planning will provide potential ICDBG grantees with greater flexibility in meeting local housing and community development needs, and will allow for the delivery of a wider, more integrated array of services. Provision of the

customary 60-day public comment period had the potential to delay the rulemaking process and might have jeopardized the incorporation of the ICDBG program in the FY 2001 SuperNOFA process.

Further, HUD, through letter dated July 12, 2000, provided Indian tribes and Alaska Native Villages with the opportunity to comment on the substance of the proposed regulatory changes during the development of the proposed rule. HUD received 7 comments on the proposed revisions, all in support of the regulatory changes and the incorporation of the ICDBG program requirements in the SuperNOFA process. Accordingly, the reduced 30-day comment period did not unduly restrict the ability of ICDBG program participants to express their views on the proposed rule, since they had already been afforded an opportunity to comment on the regulatory changes.

*Comment: HUD failed to consult with Indian Tribes prior to issuing the proposed rule.* Several commenters objected to the perceived lack of tribal consultation in the development of the proposed rule. The commenters wrote that HUD was required to consult with Indian tribes before issuing these proposed amendments, in accordance with Executive Order 13084 regarding consultation and coordination with Indian tribes (published in the **Federal Register** on May 19, 1998 (63 FR 27655)). Two of the commenters however, acknowledged that the proposed incorporation of the ICDBG program in the SuperNOFA process "has been known and discussed among the tribes for a period of time."

*HUD response.* As noted above, HUD consulted with Indian tribes and Alaska Native Villages during the development of the proposed regulatory amendments. HUD received 7 comments on the proposed revisions, all in support of the regulatory changes and the incorporation of the ICDBG program requirements in the SuperNOFA process. HUD is committed to continue its consultation efforts with Indian tribes and Alaska Native Villages in the implementation of these regulatory changes to the ICDBG program. For example, HUD will work with its tribal partners to address issues of concern before implementing a national ICDBG review panel. HUD has also scheduled a series of meetings with Indian tribes during the week of January 8, 2000 to solicit additional input on the implementation of, and possible future changes to, these regulatory amendments to the ICDBG program. Further, and in accordance with the requirements of Executive Order 13084,

HUD has also been working closely with Indian tribes in the development of its tribal consultation policy. The purpose of the consultation policy will be to enhance communication and coordination between HUD and federally recognized Indian tribes, and to outline guiding principles and procedures under which all HUD employees are to operate with regard to federally recognized Indian or Alaska Native tribes.

#### *C. Other Comments*

*Comment: How will HUD determine the "reasonableness" of project costs?* The November 6, 2000 rule proposed to revise 24 CFR 1003.100(b), which identifies the factors that an Area ONAP may take into account in approving a grant amount less than the requested amount. Specifically, HUD proposed to revise § 1003.100(b)(2) to clarify that the Area ONAP may consider the reasonableness of the project costs in making this determination. One commenter requested clarification on how HUD will determine whether proposed project costs are reasonable.

*HUD response.* The requirement that project costs be reasonable is not a new requirement, but is one of the threshold requirements for community appropriateness currently located at § 1003.301. As in previous years, information regarding how HUD will determine the reasonableness of project costs will be provided in the application kit for the FY 2001 ICDBG NOFA.

*Comment: Clarification is needed regarding outstanding obligations threshold requirement.* The November 6, 2000 rule proposed to continue to provide that an applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or has not agreed to a repayment schedule, will be disqualified from the ICDBG competition (see proposed § 1003.301(a)). One commenter requested clarification of this provision. Specifically, the commenter asked whether this provision refers "only to an outstanding financial payment due to HUD." The commenter was concerned that this provision could be interpreted to include any prior grants that are simply behind schedule or past the desired two year time frame for completion. The commenter wrote that "[m]any obstacles in the construction industry are unpredictable, beyond the control of the grantee, and are the result of completely reasonable dynamics specific to the industry, with compelling justification."

*HUD response.* The regulatory language in question was not revised by the November 6, 2000, proposed rule.

Rather, the quoted language is an existing requirement currently located at § 1000.301(a)(3)(iii). The language was repeated in the proposed rule solely for purposes of clarity and to place other proposed regulatory changes in context. This requirement has been consistently interpreted by HUD to refer only to outstanding financial debts or payments due to HUD as a result of ineligible costs or repayments.

*Comment: Clarification is needed regarding the SuperNOFA rating factors.* Current § 1003.303 (entitled "Project rating") establishes three separate rating categories: housing, community facilities, and economic development. Further, § 1003.303 establishes specific rating criteria for these categories (although some categories share similar criteria). The requirements for separate rating categories and related criteria based on the type of project are inconsistent with SuperNOFA requirements and procedures. Therefore, the November 6, 2000 rule proposed to amend § 1003.303 to provide for the use of the five uniform rating factors used in the SuperNOFA—Capacity, Need/Extent of the Problem, Soundness of Approach, Leveraging of Resources, and Comprehensiveness and Coordination. One of the commenters requested clarification on how HUD would measure need and the soundness of approach.

*HUD response.* Many of the criteria addressed by the SuperNOFA rating factors (such as need/extent of the problem, and soundness of approach) are currently addressed under the existing ICDBG rating factors, and will therefore be familiar to most ICDBG applicants. Additional details regarding the new rating factors will be provided in the ICDBG component of the SuperNOFA and the accompanying application kit.

### III. Findings and Certifications

#### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(2) of the Department's regulations, the amendments made by this final rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

#### *Regulatory Flexibility Act*

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. To the extent that the final rule has an impact on small Indian tribes and Alaskan Native Villages, it will be to reduce burden and expedite the ICDBG funding process. As described more fully in the preamble, the amendments made by this final rule will permit the incorporation of the ICDBG program application and selection procedures into HUD's highly successful SuperNOFA process. The inclusion of the ICDBG program in the SuperNOFA will simplify the ICDBG application process, conform the ICDBG application and selection procedures with those of other HUD competitive grant programs, and accelerate the availability of funding.

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *Consultation with Indian Tribal Governments*

In accordance with Executive Order 13084, *Consultation and Coordination With Indian Tribal Governments*, issued on May 14, 1998, HUD has consulted with representatives of tribal governments concerning the subject of this rule. HUD, through letter dated July 12, 2000, provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of the proposed regulatory changes during the development of the November 6, 2000 proposed rule. HUD received 7 comments on the proposed revisions, all in support of the regulatory changes and the incorporation of the ICDBG program requirements in the SuperNOFA process. The comments received by HUD indicate that the regulatory changes are not controversial, and are supported by most Indian tribes and

Alaska Native Villages. Additionally, the November 6, 2000, proposed rule provided Indian tribes with an additional opportunity to comment on the proposed regulatory changes. HUD has fully considered the public comments received on the proposed rule in the development of this final rule. HUD has also scheduled a series of meetings with Indian tribes during the week of January 8, 2000 to discuss implementation of, and possible future changes to, these regulatory amendments to the ICDBG program.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

#### *Catalog of Federal Domestic Assistance Numbers*

The Catalog of Federal Domestic Assistance Number for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages is 14.862.

#### **List of Subjects in 24 CFR Part 1003**

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 1003 as follows:

#### **PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES**

1. The authority citation for 24 CFR part 1003 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5301 *et seq.*

2. Revise 1003.100(b)(2) to read as follows:

#### **§ 1003.100 General.**

\* \* \* \* \*

(b) \* \* \*

(2) *Individual grant amounts.* An Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and

operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, the reasonableness of the project costs, and the administrative capacity of the applicant to complete the activities in a timely manner.

3. Revise § 1003.301 to read as follows:

**§ 1003.301 Selection process.**

(a) *Threshold requirement.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the competition.

(b) *Application rating.* NOFAs will define and establish weights for the selection criteria, will specify the maximum points available, and will describe how point awards will be made.

4. Revise § 1003.303 to read as follows:

**§ 1003.303 Project rating.**

Each project included in an application that meets the threshold requirements shall be competitively rated within each Area ONAP's jurisdiction under the five following rating factors. Additional details regarding the rating factors will be provided in the periodic NOFAs.

(a) *Capacity.* This factor will address the applicant's organizational resources necessary to successfully implement the proposed activities in a timely manner.

(b) *Need/Extent of the problem.* This factor will address the extent to which there is a need for the proposed project to address a documented problem among the intended beneficiaries.

(c) *Soundness of Approach.* This factor will address the quality and cost effectiveness of the proposed project, the commitment to sustain the proposed activities, and the degree to which the proposed project provides other benefits to community members.

(d) *Leveraging of resources.* This factor will address the level of tribal resources and resources from other entities that are used in conjunction with ICDBG funds to support the proposed project. HUD will evaluate the level of non-ICDBG resources based on the percentage of non-ICDBG resources provided relative to project costs.

(e) *Comprehensiveness and coordination.* This factor will address the extent to which the applicant's proposed activities are consistent with the strategic plans or policy goals of the community and further on-going priorities and activities of the community.

Dated: January 9, 2001.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 01-1206 Filed 1-16-01; 8:45 am]

**BILLING CODE 4210-33-P**