

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1003

[Docket No. FR-4612-P-01]

RIN 2577-AC22

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

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the Indian Community Development Block Grants program 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 proposed rule would amend the ICDBG program regulations to remove certain obsolete regulatory provisions and to clarify program requirements.

DATES: *Comments Due Date:* December 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

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 (303) 675-1690, extension 3306 (this is not a toll-free telephone 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.

SUPPLEMENTARY INFORMATION:

I. Background

A. The ICDBG Program

The Indian Community Block Grant Program for Indian Tribes and Alaskan Native Villages (commonly referred to as 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. HUD's regulations implementing the ICDBG program are located in 24 CFR part 1003. The program is administered by the Office of Native American Programs (ONAP) in HUD's Office of Public and Indian Housing.

ICDBG funds are distributed as annual competitive grants. Funds are allocated to each of the six Area ONAPs, so applicants compete for funding only with other tribes or eligible Indian entities within their area. All federally recognized Indian Tribes and Alaskan Native Villages are eligible to participate in the ICDBG program. Projects funded by the ICDBG program must primarily benefit low- and moderate-income persons. ICDBG funds may be used to improve housing stock, provide community facilities, improve infrastructure, and expand job opportunities by supporting the economic development of the communities, especially by nonprofit tribal organizations or local development corporations.

B. This Proposed Rule—Conforming the ICDBG Grant Application Procedures With HUD's SuperNOFA Process

This proposed rule would amend the ICDBG program regulations in 24 CFR part 1003. Specifically, the rule proposes to make several amendments to subpart D of these regulations, which establishes the ICDBG grant application and selection process. The principal reason for the proposed changes is that they would allow or facilitate the integration of the application process for the ICDBG program into HUD's SuperNOFA process.

In Fiscal Year 1998, HUD first published its first Super Notice of Funding Availability (SuperNOFA). 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. Equally important, the SuperNOFA approach is designed to increase the ability of applicants to consider and apply for funding under a wide variety of HUD programs. The most creative and novel element of the SuperNOFA is that it places heavy emphasis on the coordination of activities assisted by HUD funds to provide (1) greater flexibility and responsiveness by potential grantees in meeting local housing and community development needs, and (2) greater flexibility for eligible applicants to determine what HUD program resources best fit the community's needs.

The most recent SuperNOFA, published on February 24, 2000 (65 FR 9322), included 39 grant categories within programs operated and administered by HUD. However, 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 are required in order to permit the incorporation of the ICDBG program in the SuperNOFA process. Accordingly, HUD is issuing this proposed rule to revise the ICDBG program regulations at 1003.301 and § 1003.303, which establish the ICDBG application selection and rating procedures.

II. SuperNOFA Related Amendments

The most significant SuperNOFA related amendments that would be made by this proposed rule are as follows:

A. Use of SuperNOFA Rating Factors (§ 1003.303)

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, this proposed rule would amend § 1003.303 to provide for the use of the five uniform rating factors used in the SuperNOFA. Additional details regarding the rating factors would be provided in the ICDBG component of the SuperNOFA. The five rating factors are:

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

2. *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.

3. *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.

4. *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.

5. *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.

B. Conforming Changes to ICDBG Selection Process (§ 1003.301)

As a result of the proposed amendments to § 1003.303 described above, certain conforming changes must be made to § 1003.301, which establishes the ICDBG selection process. These conforming changes are as follows:

1. *Revised threshold requirements (§ 1003.301(a))*. Paragraph (a) of § 1003.301 establishes the threshold requirements for applicants of ICDBG funding. This proposed rule would amend § 1003.301(a) by removing the threshold requirements regarding community development appropriateness, applicant capacity, and applicant performance. The threshold requirements set forth in these paragraphs will more appropriately be incorporated in the SuperNOFA rating factors. As described above, the

SuperNOFA will contain ICDBG specific rating factors to award points based on the capacity of the applicant and the soundness of the applicant's approach. These rating factors will address, to the extent necessary, the threshold requirements currently contained in paragraph (a).

In several instances the current threshold requirements have proven unnecessary, and will not be included in the SuperNOFA rating factors. For example, HUD has determined that current § 1003.301(a)(1)(ii), which requires that the proposed project be appropriate for the intended use, is unnecessary. In addition, the housing assistance threshold requirement contained in current § 1003.301(a)(3)(ii) has never been invoked. Given the changes brought about by the Native American Housing Assistance and Self-Determination Act of 1996, (25 U.S.C. 4101 *et seq.*) (NAHASDA), it is unlikely that this requirement would be a consideration. (HUD's regulations implementing NAHASDA are located at 24 CFR part 1000.)

The proposed rule would retain a revised version of the threshold requirement contained in current paragraph (a)(3)(iii) regarding outstanding obligations. Specifically, the proposed rule would continue to provide that an applicant that has an outstanding ICDBG obligation to HUD that is arrears, or has not agreed to a repayment schedule, will be disqualified from the ICDBG competition. The proposed rule, however, would revise existing paragraph (a)(3)(iii) by removing the language regarding the effects of the applicant's failure to respond to a non-monetary audit finding in a satisfactory manner. This requirement will be included in the SuperNOFA capacity rating factor. The wording of current § 1003.301(a)(3)(iii) would also be revised to provide that the outstanding obligation need not only be the result of an audit finding but could also be the result of a determination of expenditure ineligibility made through another process (such as HUD monitoring).

2. *Removal of reference to former rating categories (§ 1003.301(c))*. The proposed rule would also make a necessary conforming change to current § 1003.301(c), which regards the rating of ICDBG applications. Specifically, the proposed rule would remove the references to the rating categories, consistent with the changes made to § 1003.303.

III. Other Streamlining and Clarifying Amendments to ICDBG Regulations

In addition to the SuperNOFA-related amendments, HUD has taken the opportunity provided by this proposed rule to make several streamlining and clarifying amendments to 24 CFR part 1003. These proposed amendments are non-substantive, but remove obsolete regulatory language and clarify existing program requirements. These changes are as follows:

A. Clarification Regarding Approval of Individual Grant Amounts (§ 1003.100(b)(2))

Section 1003.100(b)(2) identifies the factors that an Area ONAP may take into account in approving a grant amount less than the requested amount. This proposed rule would revise § 1003.100(b)(2) to clarify that the Area ONAP may consider the reasonableness of the project costs in making this determination.

B. Rating of Applications by Area ONAPs (§ 1003.301(c))

The wording of existing § 1003.301(c) would be amended to remove the requirement that applications be rated by each Area ONAP. Although fund allocation and competition for these funds would be made for and limited to each Area ONAP jurisdiction, HUD wishes the flexibility to consider such options as a national rating panel to help expedite the funding approval process.

IV. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the proposed regulatory amendments are necessary to permit the incorporation of the ICDBG grant application and selection procedures into HUD's SuperNOFA process. Inclusion in the SuperNOFA will greatly benefit ICDBG program applicants. The SuperNOFA process simplifies and brings consistency to the application procedures for the majority of HUD's competitive funding programs. The SuperNOFA's promotion of coordination and comprehensive planning also provides greater flexibility to potential grantees in meeting local housing and community development

needs, and allows for the delivery of a wider more integrated array of services.

HUD wishes to ensure that the proposed regulatory amendments are effective in time to ensure inclusion of the ICDBG program in the Fiscal Year 2001 SuperNOFA. Provision of the customary 60-day public comment period has the potential to delay the rulemaking process and might jeopardize the incorporation of the ICDBG program in the SuperNOFA process. The reduced 30-day comment period will help to ensure that ICDBG program participants are not deprived of the benefits conveyed by participation in the SuperNOFA.

HUD also notes that it provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of the proposed regulatory changes during the development of this 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 will not unduly restrict the ability of ICDBG program participants to express their views on this proposed rule, since they have already been afforded an opportunity to comment on the regulatory changes. Further, the comments received by HUD indicate that the proposed regulatory changes are not controversial, and are supported by most Indian Tribes and Alaska Native Villages.

For the above reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. However, HUD recognizes the importance of public comment in the development of its regulations, and welcomes public comment on the proposed rule. All public comments will be considered in the development of the final rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(2) of the Department's regulations, the amendments made by this proposed rule would 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 proposed 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 proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. To the extent that the proposed amendments have 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 proposed 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. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

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 proposed rule would 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 Indian Community Development Block Grant program 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 proposes to amend 24 CFR part 1003 to read 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.

3. 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: October 10, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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