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Part II

Department of Housing and Urban Development

24 CFR Part 1003

**Regulatory Reporting Requirements for
the Indian Community Development
Block Grant Program; Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 1003

[Docket No. FR-5232-P-01]

RIN 2577-AC79

**Regulatory Reporting Requirements
for the Indian Community Development
Block Grant Program**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the reporting requirements for the Indian Community Development Block Grant (ICDBG) program. First, the rule would provide for submission of a single annual report on the hiring of minority business enterprises, due to HUD each October. Currently, ICDBG grantees are required to report on these activities on a semi-annual basis, with reports being due to HUD on April 10 and October 10 of each year. Second, the proposed rule would require ICDBG grantees to use the Logic Model form developed as part of HUD's Notice of Funding Availability (NOFA) process. Requiring use of the Logic Model would conform ICDBG reporting requirements to those of other HUD competitive funding programs and would help ensure uniformity in the information provided by ICDBG grantees on performance goals, thereby facilitating the evaluation of grantee performance.

DATES: *Comment Due Date:* December 22, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic

submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service, toll free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone number 303-675-1600 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Information Relay Service, toll free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Indian Community Development Block Grant Program

Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301-5320) (HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) program. Section 106(a)(1) of the 1974 HCD Act authorizes grants to Indian tribes for the Indian CDBG (ICDBG) program. The purpose of the ICDBG program is the

development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes.

HUD's regulations implementing the ICDBG program are located at 24 CFR part 1003 (entitled "Community Development Block Grants for Indian Tribes and Alaska Native Villages"). Section 1003.506 of the ICDBG program regulations establishes several reporting requirements for ICDBG grantees. Specifically, grantees are required to submit an annual status and evaluation report (ASER) on previously funded open grants 45 days after the end of the fiscal year (FY) and upon grant closeout (§ 1003.506(a)). As more fully described below, ICDBG grantees are also required to submit two minority business enterprise reports each year (§ 1003.506(b)).

B. Minority Business Enterprise Reports

The governmentwide administrative requirements for grants and cooperative agreements to state, local, and federally recognized Indian tribal governments, codified by HUD at 24 CFR part 85, require that grantees and subgrantees "take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used whenever possible" (§ 85.36(e)). Consistent with these regulations, § 1003.506(b) requires that ICDBG grantees report on these activities on a semiannual basis, with reports being due to HUD on April 10 and October 10 of each year. Upon reconsideration, HUD believes that a single report would be less burdensome for grantees to prepare and suffice for HUD to monitor compliance with the minority business enterprise requirements of 24 CFR 85.36(e). This proposed rule would, therefore, revise § 1003.506(b) to provide for a single annual report to be due each year by October 10.

C. NOFA Logic Model

HUD announces the availability of competitive grant funding through issuance of NOFAs. The most recent ICDBG NOFA, announcing the availability of ICDBG funding for FY2009, was issued on May 29, 2009, with an application deadline of August 7, 2009 (see <http://www.hud.gov/offices/adm/grants/nofa09/icdbgsec.pdf>).

HUD's FY2004 NOFA process introduced a new planning form known as the Logic Model (form HUD-96010). Most grantees are required to submit a Logic Model form that identifies the problem or need that the grant will

address, the services or activities to be provided with grant funding, and the reporting tools that will be used to measure results achieved. As noted above, ICDBG grantees are required to report on performance outputs and outcomes as part of their ASER; however, Indian tribes have not been required to use the Logic Model form. Nevertheless, several ICDBG grantees have chosen to use the Logic Model form.

This exemption for Indian tribes was based on HUD's desire to consult with Indian tribes before making the form HUD-96010 a mandatory reporting requirement for ICDBG grant funding. As more fully described in section II of this preamble, entitled "Tribal Consultation," HUD undertook consultation with Indian tribes on the Logic Model form. After consideration of the views and opinions expressed during the consultation process, HUD is announcing its intent, through publication of this proposed rule, to require use of the Logic Model as an ICDBG program requirement. HUD received only three comments in response to its first request for comments on this subject. The proposed rule continues HUD's process of developing the regulatory changes with active tribal participation, by soliciting additional comments from Indian tribes on the mandatory use of the Logic Model in the ICDBG program.

As noted, several Indian tribes already use form HUD-96010. The required use of the Logic Model form would help ensure uniformity in the information provided by ICDBG grantees on performance goals, and, thereby,

facilitate the evaluation of grantee performance. The use of the Logic Model would also conform ICDBG program requirements to those of other HUD competitive funding programs, bringing greater consistency and uniformity in the administration of HUD grants.

The Logic Model would be included as part of the ASER requirement, which is codified at § 1003.506(a). Specifically, the proposed rule would add a new paragraph (a)(3) to § 1003.506 requiring that the ASER report contain "data on program outputs and outcomes in a form prescribed by HUD" (i.e., the Logic Model form HUD-96010). The current § 1003.506(a)(3) concerning the required grantee assessment of the effectiveness of a completed project would be redesignated as paragraph (a)(4) of § 1003.506.

II. Tribal Consultation

It is HUD's policy to consult with Indian tribes on matters that have substantial direct effects on Indian tribal governments. Accordingly, on September 7, 2007, HUD sent letters to all eligible funding recipients under the ICDBG program informing them of the nature of the forthcoming rule and soliciting comments. The proposed changes did not generate significant interest among Indian tribes. HUD received three responses to the September 7, 2007, letter. One of the tribes expressed full support for the changes to the ICDBG reporting requirements. A second tribe expressed support for the change to the minority enterprise business reports, but objected to the required use of the Logic Model.

The third Indian tribe wrote that the Logic Model requirement would impose a burden on small tribes.

HUD appreciates the responses received on the September 7, 2007, consultation letter. The Department has considered the issues raised by the tribes and, for the reasons discussed above in this preamble, continues to believe that the proposed changes would help ensure uniformity in the information provided by ICDBG grantees on performance goals and facilitate the accurate evaluation of grant performance. HUD is issuing this proposed rule to provide Indian tribes with an additional opportunity to comment on the required use of the Logic Model in the ICDBG program. HUD welcomes such comment, and all comments will be considered in the development of the final rule.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements for the ICDBG program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2535-0117 and 2535-0114. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

| Information collection | Number of respondents | Response frequency (average) | Total annual responses | Burden hours per response | Total annual hours |
|---|-----------------------|------------------------------|------------------------|---------------------------|--------------------|
| Minority Business Enterprise Report | 240 | annually | 240 | 1 | 240 |
| Logic Model Report | 200 | annually | 200 | 5.75 | 1,150 |

Total estimated burden hours: 1,390.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize, for those who are to respond, the burden of the collection of information, through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the

proposal by name and docket number (FR-5232) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: 202-395-6947

and

Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would not impose any economic burdens on small entities. Rather, the proposed regulatory amendments would simplify and reduce the reporting requirements for ICDBG program grantees. As discussed above in this preamble, the proposed rule would reduce the number of required small business enterprise reports from two to one, submitted each October. The proposed rule would also require the use of the Logic Model form in the preparation of the ASER, which ICDBG grantees already are required by regulation to submit to HUD.

As noted, several grantees already are using the Logic Model, which has been a familiar part of the NOFA process since FY2004. The required use of the Logic Model would conform the ICDBG reporting requirements to those of other HUD competitive funding programs. This proposed change will help ensure uniformity in the information provided by ICDBG grantees on performance goals, and, thereby, facilitate the evaluation of grantee performance.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

This proposed rule does 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. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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 does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor 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) (UMRA) 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 does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the ICDBG program is 14.862.

List of Subjects in 24 CFR Part 1003

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

For the reasons stated 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 part 1003 continues to read as follows:

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

2. In § 1003.506, redesignate paragraph (a)(3) as paragraph (a)(4), add a new paragraph (a)(3), and revise paragraph (b), to read as follows:

§ 1003.506 Reports.

(a) * * *

(3) *Program performance.* Data on program outputs and outcomes, in a form prescribed by HUD.

* * * * *

(b) *Minority business enterprise reports.* Grantees shall submit to HUD, for receipt by October 10 of each year, a report on contract and subcontract activity during the fiscal year.

Dated: September 23, 2009.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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