

poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each Area ONAP's share of the total extent of overcrowded housing among the eligible Indian population.

(b) HUD will use other criteria to determine an allocation formula for distributing funds to the Area ONAPs if funds are set aside by statute for a specific purpose in any fiscal year if it is determined that the formula in paragraph (a) of this section is inappropriate to accomplish the purpose. HUD will use other criteria if it is determined that, based on a limited appropriation of funds, the use of the formula in paragraph (a) of this section is inappropriate to obtain an equitable allocation of funds.

(c) Data used for the allocation of funds will be based upon the Indian population of those tribes and villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

§ 1003.102 Use of recaptured and unawarded funds.

(a) The Assistant Secretary will determine on a case-by-case basis the use of grant funds which are:

- (1) Recaptured by HUD under the provisions of § 1003.703 or § 1003.704;
- (2) Recaptured by HUD at the time of the closeout of a program; or
- (3) Unawarded after the completion by an Area ONAP of a funding competition.

(b) The recaptured or unawarded funds will remain with the Area ONAP to which they were originally allocated unless the Assistant Secretary determines that there is an overriding reason to redistribute these funds outside of the Area ONAP's jurisdiction. The recaptured funds may be used to fund the highest ranking unfunded project from the most recent funding competition, an imminent threat, or other uses. Unawarded funds may be used to fund an imminent threat or other uses.

Subpart C—Eligible Activities

§ 1003.200 General policies.

An activity may be assisted in whole or in part with ICDBG funds only if the

activity meets the eligibility requirements of section 105 of the Act as further defined in this subpart and if the criteria for compliance with the primary objective of the Act set forth under § 1003.208 have been met. The requirements for compliance with the primary objective of the Act do not apply to imminent threat grants funded under subpart E of this part.

§ 1003.201 Basic eligible activities.

ICDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the grantee, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 1003.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with ICDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 1003.503.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 1003.207(a), carried out by the grantee or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. [However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to publicly owned and privately owned buildings, facilities, and improvements including those provided for in § 1003.207(a)(1).] Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the

aesthetic quality of facilities and improvements receiving ICDBG assistance. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in §1003.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in §1003.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph (c) are subject to the following policies in paragraphs (c)(1) through (c)(3) of this section:

(1) *Special policies governing facilities.* The following special policies apply to:

(i) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the ICDBG program may be provided with ICDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(A) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(B) The grantee can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(ii) *Equipment purchase.* As stated in §1003.207(b)(1), the purchase of equipment with ICDBG funds is generally ineligible. However, the purchase of construction equipment for use as part of a solid waste facility is eligible. In addition, the purchase of fire protection equipment is considered to be an integral part of a public facility, and,

therefore, the purchase of such equipment is also eligible.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with ICDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(3) *Special assessments under the ICDBG program.* The following policies relate to special assessments under the ICDBG program:

(i) *Definition of special assessment.* The term *special assessment* means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(ii) *Special assessments to recover capital costs.* Where ICDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(A) Special assessments to recover the ICDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(B) Special assessments to recover the non-ICDBG portion may be made provided that ICDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by low and moderate income persons; except that ICDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate income persons if the grantee certifies that it does not have

sufficient ICDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(iii) *Public improvements not initially assisted with ICDBG funds.* The payment of special assessments with ICDBG funds constitutes ICDBG assistance to the public improvement. Therefore, ICDBG funds may be used to pay special assessments provided:

(A) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental and citizen participation requirements; and

(B) The installation of the public improvement meets a criterion for the primary objective in §1003.208; and,

(C) The requirements of §1003.201(c)(3)(ii)(B) are met.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, materials, and the purchase of personal property and furnishings) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under §1003.207(b)(4)), homebuyer downpayment assistance or recreational needs. To be eligible for ICDBG assistance, a public service must be either a new service, or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the grantee through funds raised by the grantee, or received by the grantee from the Federal government in the twelve calendar months before the submission of the application for ICDBG assistance. (An exception to this requirement may be made if HUD determines that any decrease in the level of

a service was the result of events not within the control of the grantee.) The amount of ICDBG funds used for public services shall not exceed 15 percent of the grant. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total requested ICDBG grant amount.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the grantee has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the grantee determines that such an emergency condition exists and requires immediate resolution, ICDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities; and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of ICDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals

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families, businesses, nonprofit organizations, and farm operations where the assistance is:

(1) Required under the provisions of §1003.602 (b) or (c); or

(2) Determined by the grantee to be appropriate under the provisions of §1003.602(d).

(i) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(j) *Housing services.* Housing services, as provided in section 105(a)(21) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(21)].

(k) *Privately owned utilities.* ICDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(1) *The provision of assistance to facilitate economic development.* (1) The provision of assistance either through the grantee directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided under paragraph (1)(1) of this section shall not be subject to the restrictions on public services contained in §1003.201(e).

(3) For purposes of this paragraph (1), *persons developing microenterprises* means such persons who have expressed interest and who are, or after an initial

screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(m) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. Capacity building for private or public entities (including grantees) for other purposes may be eligible as a planning cost under §1003.205.

(n) *Assistance to institutions of higher education.* Provision of assistance by the grantee to institutions of higher education where the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart.

(o) *Homeownership assistance.* ICDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households to:

(1) Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(2) Finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(3) Acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that ICDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly);

(4) Provide up to 50 percent of any downpayment required from a low- and moderate-income homebuyer; or

(5) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer.

§1003.202 Eligible rehabilitation and preservation activities.

(a) Types of buildings and improvements eligible for rehabilitation or reconstruction assistance. ICDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes;