

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1003

[Docket No. FR-5115-F-02]

RIN 2577-AC78

Prohibition on Use of Indian Community Development Block Grant Assistance for Employment Relocation Activities; Final Rule

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

ACTION: Final rule.

SUMMARY: This rule amends HUD's regulations for the Indian Community Development Block Grant (ICDBG) program by prohibiting Indian tribes and Alaska Native villages from using ICDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another, if the relocation is likely to result in significant job loss. More specifically, the rule prohibits Indian tribes and Alaska Native villages from using ICDBG funds for "job pirating" activities that are likely to result in significant job loss. "Job pirating," in this context, refers to the use of ICDBG funds to lure or attract a business and its jobs from one community to another. To prevent the rule from having an effect in situations where the relocation of a business causes only an insignificant loss of jobs, the rule provides that a loss of 25 or fewer jobs from an area, as a result of an ICDBG-funded economic development project, would not constitute a significant loss of jobs. This rule follows a September 8, 2008, proposed rule, for which no public comments were received. This rule adopts the proposed rule without change.

DATES: *Effective Date:* February 12, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, 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

Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301-5320) (1974 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 ICDBG program. 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"). 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. Grantees may use their ICDBG funds for activities authorized by section 105(a) of the 1974 HCD Act.

Section 588 of the Quality Housing and Work Responsibility Act of 1998 amended section 105 of the 1974 HCD Act (42 U.S.C. 5305). Specifically, section 588 added to section 105 a new subsection (h) entitled "Prohibition on Use of Assistance for Employment Relocation Activities." This subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another, if the relocation is likely to result in significant job loss. Subsection (h) states:

(h) Prohibition on Use of Assistance for Employment Relocation Activities—Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

Applicants for ICDBG grants have been notified of this statutory requirement in annual Notices of Funding Availability.

II. The September 8, 2008, Proposed Rule

On September 8, 2008, at 73 FR 52166, HUD published a rule that proposed to implement subsection (h) of the 1974 HCD Act by revising HUD's ICDBG program regulations in 24 CFR part 1003. The rule proposed to establish a new § 1003.209 (entitled "Prohibition on Use of Assistance for Employment Relocation Activities"), which would describe the ICDBG job-piracy provisions. The September 8, 2008, rule also proposed to amend § 1003.505 (entitled "Records to be Maintained"), to ensure that appropriate recordkeeping requirements are met. The preamble to the September 8, 2008,

proposed rule provides at 73 FR 52166 through 52168, a more detailed discussion of the specific regulatory amendments proposed to be made to 24 CFR part 1003.

The September 8, 2008, proposed rule provided a 60-day public comment period. HUD received no public comments by the date of the close of the public comment period on November 7, 2008.

III. This Final Rule

At this final rule stage, HUD adopts the proposed rule without change.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0191.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. eastern time on weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are no unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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 Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the 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 the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) 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.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 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 5301–5320.

■ 2. Add § 1003.209 to read as follows:

§ 1003.209 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* ICDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one Identified Service Area to another Identified Service Area, if the relocation is likely to result in a significant loss of jobs in the Identified

Service Area from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of ICDBG funds for activities pursuant to:

(i) § 1003.203(b); or
(ii) §§ 1003.201(a)–(d), 1003.201(k), 1003.203(a), or § 1003.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to § 1003.204, a Community Based Development Organization (CBDO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's Identified Service Area. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of “directly assist,” unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Area.* The relevant definition of “area” for a Native American economic development project is the “Identified Service Area” for the eligible applicant, as defined in § 1003.4.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if the number of jobs to be lost in the Identified Service Area in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that area; or, in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of ICDBG assistance if the job is relocated within 3 years of the provision of assistance to the business; or the time period within which jobs are to be created, as specified by the agreement between the business and the recipient, is longer than 3 years.

(c) *Written agreement.* Before directly assisting a business with ICDBG funds, the recipient, subrecipient, or a CBDO (in the case of an activity carried out pursuant to § 1003.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one Identified Service Area to another, and, if so, the number of jobs that will be relocated from each Identified Service Area; and

(2) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs, at the time the agreement is signed, that would result in a significant job loss as defined in this rule.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance under § 1003.602(b), (c), or (d);

(2) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one Identified Service Area to another Identified Service Area and does not produce a significant loss of jobs in the Identified Service Area from which the relocation occurs.

■ 3. Revise § 1003.505 to read as follows:

§ 1003.505 Records to be maintained.

Each grantee shall establish and maintain sufficient records to enable the Secretary to determine whether the grantee has met the requirements of this part. This includes establishing and maintaining records demonstrating that the recipient has made the determinations required as a condition of eligibility of certain activities, including as prescribed in § 1003.209.

Dated: January 5, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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