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**Department of
Housing and Urban
Development**

Office of the Assistant Secretary

24 CFR Part 571

**Community Development Block Grants
for Indian Tribes and Alaskan Native
Villages; Interim Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Community Planning and
Development**

24 CFR Part 571

[Docket No. R-92-1530; FR-2880-I-02]

RIN 2506-AB12

**Community Development Block Grants
for Indian Tribes and Alaskan Native
Villages**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations governing the Community Development Block Grant Program for Indian Tribes and Alaskan native villages. The amendments incorporate new policies and procedures. The Department received many comments from commenters who were upset that they would not have an opportunity to consult with the field office on the regulation and Notice of Fund Availability (NOFA). As a result of these comments, HUD has decided to issue an interim rule. The interim rule will enable the Department to distribute funds as quickly as possible, but will also enable tribes and Alaskan native villages to meet with representatives of the HUD field offices after one funding round to allow additional suggestions for modification of the regulation before it is issued in final form.

DATES: Effective date: June 8, 1992.
Comment due date: November 18, 1992.

FOR FURTHER INFORMATION CONTACT:
Stephen M. Rhodeside, Assistant
Director for the Indian Community
Development Block Grant Program,
State and Small Cities Division, Office
of Block Grant Assistance, room 7184,
Department of Housing and Urban
Development, 451 Seventh Street SE.,
Washington, DC 20410. (202) 708-1322.
TDD (202) 708-2565. (These are not toll-
free numbers.)

ADDRESSES: Interested persons are
invited to submit comments regarding
this rule to the Rules Docket Clerk,
Office of General Counsel, room 10276,
Department of Housing and Urban
Development, 451 Seventh Street, SW.,
Washington, DC 20410. Communications
should refer to the above docket number
and title.

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.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection
requirements contained in this rule have
been submitted to the Office of
Management and Budget (OMB) for
review under the Paperwork Reduction
Act of 1980 and have been assigned
OMB control number 2506.0043.

Background

Section 105 of the Department of
Housing and Urban Development
Reform Act of 1989 (Pub. L. 101-235)
("Reform Act") as amended by the
Cranston-Gonzalez National Affordable
Housing Act ("NAHA"), amended title I
of the Housing and Community
Development Act of 1974 ("Act"), by
transferring the authority for making
grants to Indian Tribes from the section
107 discretionary fund to the allocation
and distribution of funds provisions of
Section 106 of the Act. Under section
106, as so amended, one percent of the
title I appropriation, excluding the
amounts appropriated for use under
section 107, is allocated for grants to
Indian Tribes. The allocated amount is
to be distributed to Indian Tribes on a
competitive basis in accordance with
selection criteria "contained in a
regulation promulgated by the Secretary
after notice and public comment." The
Department issued the proposed rule on
June 21, 1991 to comply with the
requirement for publication for
comment. The Department is now
issuing an interim final rule, to give the
public an additional opportunity to
comment on the rule after it has been in
effect for one round of competition. This
will allow the public to see how the rule
works in conjunction with the Notice of
Fund Availability (NOFA).

Section 102 of the Reform Act requires
the Secretary to publish in the *Federal
Register* a NOFA regarding assistance.
In addition to announcing the
availability of funds, the NOFA will
further define application procedures
and selection criteria. The NOFA will
replace the regional rating and ranking
guides which formerly were contained in
the selection criteria.

*Section 571.602—Relocation and
Acquisition*

Section 571.602 describes applicable
relocation and real property acquisition
policies, including those implementing
the Uniform Relocation Assistance and
Real Property Acquisition Policies Act
of 1970 (URA). Under the government-
wide URA rule at 49 CFR part 24, any
person (family, individual, business,

nonprofit organizations, or farm)
displaced on or after April 2, 1989 as a
direct result of acquisition,
rehabilitation or demolition for a project
assisted under this part is entitled to
URA relocation assistance. The
acquisition of real property for a project
assisted under this part is also subject to
the URA. The URA policies are
described in HUD Handbook 1378,
Tenant Assistance, Relocation and Real
Property Acquisition.

The Department of Housing and
Urban Development (HUD) received just
over 100 individual comments from 23
sources on the proposed Indian
Community Development Block Grant
(ICDBG) regulation. HUD received 18
letters from tribes, 3 from federal
agencies, and the remainder from
regional and private organizations.
General comments are discussed first,
followed by specific comments.

Most of the comments HUD received
addressed two broad issues. The
General Comments section of this
preamble discusses these issues. The
specific comments and the Department's
responses are discussed under "Specific
Comments," according to the section
where they appear in the interim
regulation.

General Comments

Many comments centered on the
proposed rule's limits on applicants'
involvement in developing selection
criteria and in the pre-award process.
The commenters believed it would be
detrimental to tribes and villages to
keep them from consulting with HUD
field staff, developing selection criteria,
commenting on the Notice of Fund
Availability (NOFA) and submitting
supplemental information. The second
major concern of commenters related to
application submission requirements.
First, they asked about whether
applicants could improve their
applications by submitting supplemental
information. Second, they expressed
concern about a new HUD policy that
applications be received by the field
office, rather than postmarked, by a
certain date. Finally, commenters
suggested that applicants could not
develop and submit an application
within 30 days of NOFA publication.

Two recently enacted statutes
changed the Indian Community
Development Block (ICDBG) program
selection process: the Cranston-
Gonzalez National Affordable Housing
Act of 1990 (NAHA) and the HUD
Reform Act of 1989. NAHA requires the
Secretary of HUD to promulgate a
regulation containing selection criteria
used to award funds in competitive

programs. The Reform Act restricts the disclosure of information about HUD programs and discretionary funds. The proposed ICDBG rule contained changes reflecting the NAHA and Reform Act requirements. The NAHA requirement presented HUD with serious time constraints because the Department had to publish a proposed regulation for comment before developing and publishing the regulation and NOFA.

Section 103 of the Reform Act prohibits HUD officers or employees from disclosing, during the selection process, information used in arriving at a decision to award assistance. In accordance with the Department's regulations, the NOFA contains the selection criteria used to rate ICDBG applications. HUD is committed to involving the public in this process to the extent practicable. First, in order to publish a fair and coherent NOFA, HUD Headquarters consulted extensively with HUD OIP field offices throughout the NOFA's development. Since the OIP field offices are in frequent contact with the tribes within their jurisdiction, they were able to provide Headquarters with information on how various NOFA provisions would be received by ICDBG applicants. Second, HUD is publishing an interim regulation, rather than a final regulation, to facilitate additional future revisions based on public comments. Finally, after the NOFA and regulation have been published and the selection process has been completed, HUD field staff will hold public meetings to get suggestions on how to improve the NOFA.

Like the current regulation, the interim rule permits HUD field staff to provide general technical assistance. For example, HUD field staff may clarify program requirements and review the procedures required to process an application. In addition, the field staff may answer general questions posed by the tribes at a public meeting.

HUD received several comments about the requirement that following application submission, tribes will not be allowed to submit additional information to improve the application. This requirements has not been changed. It merely expands on § 571.302(b) of the current regulation, which allows applicants to submit only that information requested by the field office to help clarify the application. HUD's regulations at 24 CFR 4.105(b)(3) allow authorized employees, during the selection process, to contact applicants to seek clarification of the terms of an applicant's submission. HUD policy requires each NOFA to include a cure period for technical deficiencies of at

least 14 calendar days. Any deficiency that can be cured (e.g., the submission of a missing certification) cannot affect the rating of the application in either a positive or negative way.

Another concern of many commenters was the new requirement that applications be received by the field office, rather than postmarked, by a certain date. Commenters explained that remote tribes and villages can only rely on the mail service to postmark, not to deliver their applications, by a certain date. Taking into account these comments, HUD has decided that applications may be mailed provided that they are postmarked no later than midnight on the deadline date. If the application is physically delivered to a HUD Office of Indian Programs, the application must be received by close of business on the submission date stated in the NOFA. For the current funding round, HUD will allow 105 days from the date of the NOFA for submission of applications. This should be an adequate amount of time for all applicants.

Several commenters were concerned that 30 days is insufficient time to prepare an application. The regulation states, however, that Headquarters will publish a NOFA in the *Federal Register* at least 30 days before a deadline for application submission. The NOFA being issued with this regulation requires applications to be submitted no later than 105 days after the date of its publication.

Specific Comments

Section 571.4—Definitions

In response to comments about the ambiguity of the definition of program beneficiaries, this section will define "very low income beneficiary" as a beneficiary whose income does not exceed 50 percent of the area median.

Paragraph (j) defines "low- and moderate-income" beneficiary as a family, household, or individual whose income does not exceed 80 percent of the median income for the area in which it is located. The following paragraph outlines the method the Department uses to calculate the median income for any area.

If the potential beneficiary is located in a metropolitan area, area median income is based on the metropolitan area's median income. If the potential beneficiary is located in a nonmetropolitan area, the area median income is based on the median income of the county in which the beneficiary is located, or the median income of the entire nonmetropolitan area of the State in which the beneficiary is located,

whichever is higher. HUD will use published Section 8 income limits to determine whether a beneficiary is low- and moderate-income.

One commenter recommended that the definition of low- and moderate-income beneficiary in paragraph (j) not apply to infrastructure projects. The commenter argued that low- and moderate-income residents would be deprived of badly needed services because some residents have higher incomes. The definition in paragraph (j) is the standard CDBG definition of low- and moderate-income beneficiary. Infrastructure projects tend to be area benefit activities, which must serve an area where at least 51 percent of the residents are low- and moderate-income persons. Therefore, some non low- and moderate-income residents can benefit from CDBG funded infrastructure as long as at least 41 percent of the area residents are low- and moderate-income persons.

Paragraph (j) also states that applicants must include and identify tribal or village income distributions. One commenter suggested that such distributions can be infrequent, amounts may vary significantly, and counting them as income could hurt tribes already struggling to improve their economic base. The Department will determine on a case-by-case basis whether a tribal or village distribution constitutes income. For instance, HUD will not consider distributions to be income in cases where they are infrequent.

Section 571.6—Technical Assistance

For additional discussion of this section, see "General Comments," above.

One commenter suggested including in this section a provision for environmental review training. The Department will endeavor to provide such training to applicants, but believes it is inappropriate to include such a provision in the regulation.

Section 571.100—General

Paragraph (b)(1) has been changed to give the Assistant Secretary final authority to determine grant ceilings for each field office. Field offices will still recommend the ceilings for this jurisdiction. The reason for this change was to ensure that grant ceilings are appropriate on a national level. This section now formally states that field offices have different ceilings for different size tribes. This incorporates existing practice into the regulations.

The authority to set grant ceilings for imminent threat grants has been left

with the field. This provision now appears in § 571.400(c).

Section 571.101—Regional Allocation of Funds

Paragraph (c) states that population data will be used to allocate funds. Commenters asked which data sources HUD would use to count native populations. HUD will use Census data. HUD recognizes that Census data on Indian and Alaskan native populations may be incomplete or inaccurate. However, these are the only data that are consistently available, and they are reasonably representative when aggregated by region. HUD encourages tribes and villages to use their own survey or other locally collected data in their project applications, if they believe these to be more reliable.

Section 571.102—Recaptures

This new section will outline the Department's policy on recaptured and undistributed funds. HUD may recapture funds from grantees that fail to meet statutory or regulatory program requirements or that receive funds determined to be unneeded. HUD also may have undistributed (i.e., unobligated) funds. The Assistant Secretary for Community Planning and Development will determine the use of these funds on a case-by-case basis. Recaptured and undistributed funds will remain with the field office in the region from which they came, unless there is an overriding reason to redistribute the funds outside the region.

Section 571.201—Primary and National Objections

Paragraph (a) will be clarified by adding that at least 70 percent of single purpose grant funds must be used for activities that benefit low- and moderate-income persons. This provision increases the required percentage from 51 to 70 percent. Several commenters thought that the 70 percent represented a change in the definition of "low- and moderate-income," from 80 percent to 70 percent of the area median. The definition of low- and moderate-income has not changed.

Section 571.300—Application Requirements

The comments of this section centered on the need to maintain tribes' involvement in the NOFA process. The reasons for limiting public input in developing selection criteria are discussed in detail under "General Comments."

Commenters also expressed a concern about what they perceived as a short

amount of time to submit applications after publications of the NOFA. As discussed under "General Comments," the regulation gives applicants at least 30 days to submit their applications to the field office. (The NOFA that is being issued with this regulation gives applicants a much longer time in which to prepare their applications. The first sentence in paragraph (b) was deleted, because the application submission deadline will be established by Headquarters, since the NOFA will be issued on a national basis.

Paragraph (a) will be clarified by adding a statement that applications cannot request funds in excess of the grant ceiling.

Section 571.301—Screening and Review of Applications

HUD policy requires that applications be received, rather than postmarked, by a certain date. This HUD policy has been modified to allow that ICDBG program applications may be mailed, provided that they are postmarked no later than midnight on the deadline date.

Many commenters objected to the contents of paragraph (d), which outlines the kinds of information applicants may submit after they have submitted their application. Section 103 of the HUD Reform Act and 24 CFR part 4, the regulation implementing the Act, outline these requirements. For further discussion of the Reform Act and regulatory requirements, see "General Comments."

Two commenters requested that the final regulation include an appeals process. The Department notes that an informal appeals process already exists. To contest a field office's decision, an applicant should appeal to the Regional Administrator, and finally to Headquarters, about actions taken which the complainant believes are unjustified. Moreover, § 571.302(f) contains a provision for procedural error. If a procedural error by the field office in the current year's competition resulted in rejection of an application, that when corrected would have meant funding for an otherwise eligible applicant, HUD may fund that applicant from the next funding competition.

The requirement that at least 70 percent of the grant funds be used to benefit low- and moderate-income persons has been added to the screening requirements in § 571.301(a) so that the field will not have to rate and rank an unfundable application.

Section 571.302—Selection Process

The preamble to the proposed rule incorrectly labeled § 571.302(a)(2)(ii)(B) as "support of other HUD-assisted

projects" as a new performance criterion. The correct title of this subparagraph is "Housing assistance."

The last sentence that allowed for separate competition based on size has been removed from paragraph (b)(1). Since paragraph (c) provides that all projects will be ranked against each other according to the point totals they receive, the provision allowing separate competition based on size was meaningless.

In reference to § 571.302(a)(2)(ii)(B) *Housing assistance*, commenters indicated that applicants should not be held accountable for individuals' spending habits. In order to relieve the applicant of such accountability, the first sentence of § 571.302(a)(2)(ii)(B) has been changed to place responsibility on the applicant, who " * * * must not take actions to impede the provision of housing assistance for low- and moderate-income persons." Actions to impede the provision of housing assistance include the consistent refusal of tribal courts to evict IHA tenants for the nonpayment of rent.

Several commenters believed it inappropriate to link CDBG assistance to the applicant's past performance in providing housing assistance. HUD is holding the applicant accountable for the tribe's or village's past performance, not for the housing authority's past performance. The Department believes that it is appropriate to link CDBG awards and housing requirements, and it does so in the Entitlement and State CDBG programs (e.g., grantees must certify that they will affirmatively further fair housing). One commenter suggested publishing selection criteria in the final rule, rather than in a NOFA. This suggestion has two drawbacks. First, the inclusion of selection criteria will make the regulation extremely complex and bulky (as the NOFA is rather lengthy). More importantly, publishing selection criteria in a NOFA gives HUD more flexibility to change the criteria in subsequent NOFA's as a result of public comments and experience with program administration.

Each field office will select two or more tiebreakers from the list in § 571.302(d). The field offices' choices will be listed in the NOFA. One commenter suggested that applicants be involved in choosing tiebreakers. Tiebreakers are like selection criteria; therefore, including the public in choosing tiebreakers would violate section 103 of the Reform Act, which prohibits HUD officers or employees from disclosing, during the selection process, information used in arriving at the decision to award assistance. For

further discussion of this provision of the Reform Act, see "General Comments."

Section 571.303—Housing Rating Category

The first paragraph of this section states that the applicant shall provide assistance only to tenants/homeowners whose payments are current, or who are current in a repayment agreement with HUD. One commenter noted the difficulty in obtaining current payment information. The Department expects the applicant to obtain the most recent payment information it can from the Indian Housing Authority (IHA). Note that the field office may grant exceptions to this requirement on a case-by-case basis.

One commenter questioned HUD's authority to require a certification from the applicant that it will use project funds to rehabilitate or construct units, or to provide direct home ownership assistance only where tenants/homeowners are current in their payments. The regulation has been clarified to state that HUD is not requiring a certification; it is requiring the applicant to make an assurance. The Definitions section of the NOFA defines "assure" as the applicant stating its intent to comply with the requirement.

Four changes were made to clarify paragraph (a) *Housing rehabilitation component*. First, (a)(1)(i) will read: "The percentage of CDBG funds committed * * *". Second, (a)(1)(ii) will be deleted, based on comments that a proposed project staffing plan is difficult if not impossible to develop prior to grant award. Third, (a)(1)(ii) will read: "The degree to which the applicant's selection criteria gives priority * * *". Finally, (a)(2)(ii) will read: "Post-rehabilitation maintenance policies," based on comments that it is difficult if not impossible to measure the quality of such policies at the time of application review.

Section 571.303(a)(3) permits applicants to use other government funds to leverage CDBG funds. One commenter assumed other government funds meant Housing Improvement Program funds from the Bureau of Indian Affairs. Leverage amounts include, but are not limited to such funds. The definition section of the NOFA further defines "leverage."

One change was made to § 571.303(a)(2)(vi), which will read: "A plan for any infrastructure needed to support housing to be developed." (This includes a conditional commitment.) This change was based on comments that applicants often cannot obtain a

financial commitment before the actual award of funds.

Two commenters stated that new housing construction (paragraph (c)) should not be CDBG-eligible activity, since other federal funds are available for new construction. The commenters suggested that the CDBG program should be used to fund activities that other programs do not. New housing construction continues to be an eligible activity under the limited circumstances provided for in subpart C of the Community Development Block Grant Regulations.

Two commenters opposed the use of CDBG funds for direct homeownership assistance. The National Affordable Housing Act of 1990 made direct home ownership assistance an eligible CDBG activity under section 105(a)(20) of the Housing and Community Development Act. The NOFA contains a detailed discussion of the new provision.

Note that ICDBG funds will provide new housing construction and direct homeownership assistance only where no other sources of funding can meet the needs of the household(s) to be served. This is a threshold requirement for both of these categories.

Direct homeownership assistance requirements now appear in paragraph (c)(2). These requirements were taken out of paragraph (c)(1) to respond to comments that paragraph (c)(1) was confusing because it referred to both new housing construction and direct homeownership assistance.

Section 571.304—Community Facilities

This category will consist solely of community facilities. Public services components of applications will be rated separately. (See discussion under § 571.306.)

The selection criterion set out in § 571.304(a)(2)(iii), and in (b)(2)(iii), that projects serve "a substantial number of low- and moderate-income persons," will be deleted. As a result, paragraphs (a)(1) and (b)(1) each will be worth 60 points; paragraphs (a)(2) and (b)(2) each will be worth 30 points.

This change responds in part to comments that national selection criteria will not be sensitive to regional differences. The national system has not been eliminated, however, because section 102 of the Reform Act requires HUD to publish selection criteria, and HUD Headquarters is best positioned to publish criteria applicable on a national level.

Commenters asked HUD to define the term "neediest." The NOFA will provide examples or define terms such as "neediest," which appears in paragraph (a)(1)(ii).

Paragraphs (a)(1)(iii) and (iv) will be combined, based on comments that rating them as separate factors would be redundant. Projects awarded points for providing infrastructure that does not currently exist or no longer functions adequately to meet current needs most likely would receive points for addressing a health or safety problem.

Paragraphs (b)(1)(iv) and (b)(1)(v) will be combined, based on comments that rating them as separate factors would give too much weight to each factor. Projects may be awarded points for meeting an essential community development need or for addressing a health or safety problem.

According to commenters, rating on the basis of whether a building provides multiple uses or multiple benefits (§ 571.304(b)(1)(iii)) would exclude facilities offering one service around the clock (e.g., a hospital/health clinic). This paragraph will be changed to read: "Provide multiple uses or multiple benefits, or have services available 24 hours a day."

Section 571.305—Economic Development Rating Category

Many commenters asked for a definition of "excessive" as it relates to the need for grant assistance. This requirement will be deleted. Applicants will be required to demonstrate the need for grant assistance by providing a determination that the assistance is appropriate to implement an economic development project. The first paragraph will also state that the applicant, in order to receive assistance, must document financial need, public benefit and that the proposed business has a reasonable likelihood of succeeding. The ICDBG program has limited resources; therefore, the Department has modified these requirements to target the neediest tribes and most needed projects and to assure that ICDBG funds do not go to projects that do not need ICDBG assistance.

Commenters also asked for a definition of "excessive" as it relates to a project's cash flow. The regulation no longer uses excessive in this context.

Based on comments on the importance of each element listed in paragraph (a)(1), they will be rated separately, and numbered (1) through (3) in the regulation. Paragraph (4) is "Viability of the business." If an application is proposing a start-up or expansion of a microenterprise, it will be rated according to criteria in paragraph (5), "Viability of the microenterprise." Finally, paragraph (6) covers leveraging.

Paragraph (b) is titled: "Permanent full-time equivalent job creation" to clarify how to calculate full-time jobs.

Paragraphs (b)(3) and (b)(4) have been combined, based on comments that employer commitment to provide training opportunities is a component of job quality.

Paragraph (c)(1) has been changed from "Use, improve, and expand members' special skills * * *." to "Use, improve, or expand members' special skills * * *". This change is intended to allow economic development projects to receive points if the tribal members' special skills are utilized in the economic development project. (The "and" promised to make it too difficult for tribes to receive points for this factor.)

One commenter suggested that the regulation is unfair in providing special opportunities for public housing residents. This rating factor addresses one of Secretary Kemp's six priorities for HUD: Empower the poor through resident management and homesteading. This factor encourages applicants to provide opportunities for residents of federally assisted housing to improve their economic situation while possibly improving their units.

Based on comments that the ICDBG program should encourage repayment of CDBG assistance, paragraph (c)(5) has been added to provide points for reuse of project funds for other CDBG activities that meet a national objective. To accommodate this change, paragraph (a), Project Viability, has been reduced from 60 to 55 points and paragraph (c), Additional Considerations, will be increased to 15 points.

Section 571.306—Public Services

Although public services activities may comprise no more than 15 percent of the total grant award, rating them separately gives applicants the opportunity to provide needed services that are unrelated to the primary activity. This approach responds to the concern that the public service project itself should be viable. In the past, services were funded as a component of a facilities application, without regard to their merits.

Commenters argued that the selection criterion of serving "a substantial number of low- and moderate-income persons" discriminated against small tribes, whose projects might serve a substantial percentage, but never a substantial number of low- and moderate-income persons. This criterion has been removed and replaced by paragraph (b)(iii), which reads: "an innovative approach to the delivery of the service(s)." This will recognize

innovative methods of resolving public service problems.

Paragraph (c)(iii) of proposed § 571.304 has been eliminated, as it restates the public service eligibility requirements of § 570.201(e)(1).

Section 571.307—Funding Process

Section 571.307(b)(2) of the current regulation gives successful applicants at least 30 days to provide supporting documentation at the request of the field office, prior to execution of the grant agreement. Section 571.306(b)(2) of the proposed rule changed the requirement to an amount of time to be specified by the field office, between 15 and 30 calendar days. Many commenters suggested retaining the 30-day period because of the difficulty of preparing and submitting such information in less time. The interim rule reestablishes the 30-day requirement.

Section 571.308—Program Amendments

Based on a comment that the \$10,000 amendment limit for addressing all parts of the previous rating cycle is too low, the final regulation will contain a \$25,000 limit. This will save applicants from preparing excessive paperwork to justify relatively small amendments.

Section 571.400—Criteria for Funding

One commenter suggested changing paragraph (b) to allow applicants to receive CDBG funds even if other funding sources are available. The purpose of this section is to provide funding for imminent threats where no other sources of funds are available. If other funding sources are available, there is no need to use these funds. Imminent threats are urgent needs, such as houses lost in a flood or recent contamination of the water supply, which is threatening a community's health and safety.

Section 571.403—Availability of Funds

A change has been made to give field offices the flexibility of either using remaining imminent threat funds to fund projects from the previous fiscal year or the new fiscal year. Previously all remaining funds had to be used as part of the new allocation of funds.

Section 571.502—Force Account Construction

One commenter asked for clarification of the conditions under which HUD may require a grantee to submit information related to force accounts. HUD may require the grantee to provide the information listed in paragraph (a), only when HUD cannot obtain the information itself.

Section 571.503—Indian Preference Requirements

One commenter suggested giving tribal, or at least local preference for training and employment, and in the award of contracts and subcontracts. This section gives priority to Indian organizations and Indian-owned enterprises. In an effort to retain the most qualified, most reasonably priced organization, grantees are required to advertise for bids or proposals. Of course, tribes may ensure that any tribal or local Indian organization is aware of any contracting activity. A grantee may advertise for non-Indian organizations and enterprises only if it is not satisfied with the response to its advertisements.

Section 571.505—Program Income

This new section addresses questions about the applicability of 24 CFR 570.504 to the Indian block grant program. The provisions of § 570.504(b) apply to all program income received prior to grant closeout. After closeout, any income received from the disposition of real property, or repayments of loans outstanding at the time of closeout, will not be governed by the provisions of this part, except that such income must be used for activities that are eligible and that meet a national objective. All other program income received after closeout will not be subject to the provisions outlined above.

Section 571.603—Labor Standards

The Secretary continues to waive the provisions of Section 110 of the Act (Labor Standards). The Department invites public comment on whether this waiver should remain in effect.

Section 571.604—Citizen Participation

One commenter noted that the proposed rule requires one tribal resolution certifying that the applicant has met the citizen participation requirements, and suggested that no additional resolutions be required. The NOFA requires applicants to submit current resolutions to ensure that the tribe has a commitment to comply with the requirements set forth in the regulation.

Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with: HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection

between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12291

This rule would not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes criteria for funding eligible recipients among Indian Tribes and has no impact on small entities.

Semiannual Agenda

This rule was listed as Item No. 1462 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53419) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. While the rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Registration of Consultants

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the Federal Register on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-3815; TDD: (202) 708-1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition of Advance Disclosure of Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That

regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

The catalog of Federal Domestic Assistance program number is 14.223.

The collection of information requirements contained in this rule were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and approved under OMB Control Number 2506-0043. Sections 571.300, 571.307, 571.500, 571.502, 571.504, and 571.700 of this rule have been determined by the Department to contain collection of information requirements. Additional comment on these information collection requirements is welcome as a part of public comment on the interim rule.

List of Subjects in 24 CFR Part 571

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

Accordingly, 24 CFR part 571 is revised to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

- Sec.
571.1 Applicability and scope.
571.2 Program objectives.
571.3 Nature of program.

Sec.

- 571.4 Definitions.
- 571.5 Eligible applicants.
- 571.6 Technical assistance.
- 571.7 Waivers.

Subpart B—Allocation of Funds

- 571.100 General.
- 571.101 Regional allocation of funds.
- 571.102 Recaptures.

Subpart C—Eligible Activities

- 571.200 General.
- 571.201 Primary and national objectives.
- 571.202 Nonprofit organizations.
- 571.203 Administrative costs.

Subpart D—Single Purpose Grant Application and Selection Process

- 571.300 Application requirements.
- 571.301 Screening and review of applications.
- 571.302 Selection process.
- 571.303 Housing rating category.
- 571.304 Community facilities rating category.
- 571.305 Economic development rating category.
- 571.306 Public services rating category.
- 571.307 Funding process.
- 571.308 Program amendments.

Subpart E—Imminent Threat Grants

- 571.400 Criteria for funding.
- 571.401 Application process.
- 571.402 Environmental review.
- 571.403 Availability of funds.

Subpart F—Grant Administration

- 571.500 General.
- 571.501 Designation of public agency.
- 571.502 Force account construction.
- 571.503 Indian preference requirements.
- 571.504 Grant closeout procedure.
- 571.505 Program income.

Subpart G—Other Program Requirements

- 571.600 General.
- 571.601 Nondiscrimination.
- 571.602 Relocation and acquisition.
- 571.603 Labor standards.
- 571.604 Citizen participation.
- 571.605 Environment.
- 571.606 Conflict of interest.

Subpart H—Program Performance

- 571.700 Reports to be submitted by grantee.
- 571.701 Review of recipient's performance.
- 571.702 Corrective and remedial actions.
- 571.703 Reduction or withdrawal of grant.
- 571.704 Other remedies for noncompliance.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions**§ 571.1 Applicability and scope.**

The policies and procedures described in this part apply only to grants to eligible Indian Tribes and Alaskan native villages under the Community Development Block Grant (CDBG) program for Indian Tribes and Alaskan native villages.

§ 571.2 Program objectives.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low- and moderate-income. The Federal assistance provided in this part is for the support of community development activities which further this objective. This assistance is not to be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 571.3 Nature of program.

The ICDBG Program is competitive in nature. The demand for funds far exceeds the amount of funding available. Therefore, selection of eligible applicants for funds will reflect consideration of the relative adequacy of applications in addressing locally determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 571.4 Definitions.

Act means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.).

Chief executive officer means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan native village.

Eligible Indian populations means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan native villages eligible under this part.

Extent of overcrowded housing means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census Available from the latest census referable to the same point or period of time.

Extent of poverty means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

Field offices means the HUD Offices of Indian Programs or other HUD field

offices having responsibility for the Indian CDBG Program.

HUD means the Department of Housing and Urban Development.

ICDBG Program means the Indian Community Development Block Grant Program.

Identified service area means:

(1) A geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area;

(2) The Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the Tribe; or

(3) The entire area under the jurisdiction of a Tribe which has a population of members of under 10,000.

Low- and moderate-income

beneficiary means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

Secretary means the Secretary of HUD.

Tribal government, Tribal governing body or Tribal council means the recognized governing body of an Indian Tribe or Alaskan native village.

Tribal resolution means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

URA means the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended.

Very low income beneficiary means a family, household, or individual whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the

applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

§ 571.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of the Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

§ 571.6 Technical Assistance.

On an annual basis, each field office will provide technical assistance to eligible applicants for these purposes:

(a) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(b) To inform eligible applicants of changes in the program.

§ 571.7 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a field office determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants—(1) Ceilings.* Each field office may recommend grant ceilings for single purpose grant applications. Field offices have the option of recommending different ceilings for different size tribes (e.g. tribes 5,000+ will have one ceiling and tribes with less than 5,000 will have a smaller ceiling.) Single purpose grant ceilings for each field office shall be established in the NOFA.

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the field office 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 and the administrative capacity of the applicant to complete the activities in a timely manner. Projects that do not meet a serious need to the applicant, or projects that do not have an impact on the need identified in the application will not be funded.

§ 571.101 Regional allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the field offices responsible for the program on the following basis:

(1) Each field office will be allocated \$500,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each field office based on the most recent data available from reliable sources referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total extent of poverty among the eligible Indian population; and

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

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case the Secretary may establish other criteria to determine an allocation formula for distributing funds to the field offices.

(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.

§ 571.102 Recaptures.

(a) After the rating and ranking process is completed, use of funds that the field office obtains from recapture of obligated funds from grantees that fail to meet statutory or regulatory requirements, or return of unneeded funds, will be determined by the Assistant Secretary on a case-by-case basis. The funds may be used to fund the highest ranking unfunded project, an imminent threat, or other uses as determined by the Assistant Secretary.

(b) Undistributed funds (funds that are unobligated at the conclusion of the rating and ranking process) will be treated the same as recaptured funds.

(c) Recaptured and undistributed funds will remain with the field office that they came from unless the Assistant Secretary determines there is an overriding reason to redistribute the funds outside of the field office's jurisdiction.

Subpart C—Eligible Activities

§ 571.200 General.

The eligibility requirements of part 570, subpart C of this chapter—Eligible

Activities—apply to grants under this part, except for those provisions which are specifically stated as applying only to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.201 Primary and national objectives.

(a) Not less than 70 percent of the funds of each single purpose grant must be used for activities that benefit low- and moderate-income persons under the criteria set forth in § 570.08(a) of this chapter. In determining the percentage of funds used for such activities, the provisions of § 570.200(a)(3) (i), (iv), and (v) of this chapter shall apply. The requirements of this paragraph do not apply to imminent threat grants funded under Subpart E of this part.

(b) In addition to the requirement of paragraph (a) of this section, each activity must meet one of the national objectives pursuant to the criteria set forth in § 570.208 of this chapter.

§ 571.202 Nonprofit organizations.

Tribal-based nonprofit organizations replace neighborhood-based nonprofit organizations under § 570.204(c)(1) of this chapter. A Tribal-based nonprofit organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 571.203 Administrative costs.

(a) For purposes of this part, technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in part 570, subpart C of this chapter.

(b) Technical assistance costs cannot exceed ten percent of the total grant award. As used in this part, *technical assistance* means the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 571.300 Application requirements.

(1) *General.* Applications are required for assistance under this part. An applicant shall submit only one application, which may not total more than the grant ceiling. An application may include an unlimited number of eligible projects, e.g., housing or public facilities. Each project within a single purpose grant application will be rated

separately, i.e., according to the rating category under which it fits. Field offices will fund the highest ranking projects from all applications, up to the grant ceiling. Applications shall include projects which can be completed within a reasonable period of time (generally not more than two years).

(b) *Application information.* Headquarters shall publish a Notice of Funding Availability (NOFA) in the Federal Register not less than 30 days before the deadline(s) for application submission. The NOFA will provide more details regarding:

(1) Information about the availability of funds;

(2) A description of the forms and procedures for completing an application and the field offices' deadlines. Such description shall be designed to help eligible applicants apply for the funds; and

(3) The criteria used to select applications.

(c) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations when applicable.

(d) *Costs incurred by applicant.* (1) Notwithstanding any provision in part 570 of this title, HUD will not reimburse or recognize any costs incurred before submission of the single purpose grant application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the field office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(e) *Publication of community development statement.* Applicants for single purpose grants shall prepare and

publish or post the community development statement portion of their application according to the citizen participation requirements of § 571.604.

(f) *Application components.* The NOFA will provide more detail about the application components outlined in this paragraph. Applicants for single purpose grants shall submit an application to the appropriate field office in a form prescribed by HUD. The application shall include:

(1) Standard form 424;

(2) Community development statement which includes:

(i) A brief description or an updated description of community development needs;

(ii) A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing a project; and

(iii) Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share, and amount of other funds by sources; and

(iv) Components that address the relevant selection criteria.

(3) A map showing project location, if appropriate; and

(4) Certification in the form of an official Tribal resolution that citizen participation requirements of § 571.604 have been met.

(5) As required by section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235), applicants that reasonably expect to receive more than \$200,000 of funding from HUD during the fiscal year must provide the following information:

(i) Other related assistance that is expected to be made available for the project by the Federal government, State government, unit of local government, Tribe, Alaskan native village, or any agency or instrumentality of the above.

(ii) Name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project include but are not limited to developers, contractors, and consultants involved in the application for assistance or the planning, development and implementation of the project or activities. Residency of an individual in housing for which assistance is being sought is not considered a pecuniary interest.

During the period that the application is pending, or the project is open, the applicant shall update the aforementioned disclosure within 30 days of any substantial change.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043)

§ 571.301 Screening and review of applications.

(a) *Criteria for acceptance.* Each field office will initially screen applications for single purpose grants. Applications failing this initial screening shall be rejected and returned to the applicants unrated. Field Offices will accept applications if:

(1) The application is postmarked no later than midnight on the submission date, if mailed;

(2) The applicant is eligible;

(3) The proposed activities are eligible;

(4) They contain substantially all the components specified in § 571.300(f); and

(5) At least 70% of the grant funds are used to benefit low and moderate income persons, in accordance with the requirements of § 571.201(a).

(b) *Demographic data.* HUD will review and accept demographic data provided by an applicant if, in HUD's determination the data are of the quality described in § 571.300(c). Where demographic data provided by an applicant are unacceptable, HUD will use the best available data at its disposal.

(c) *Grant ceiling.* HUD will review applications for compliance with grant ceilings that are established by the NOFA.

(d) *Information submitted on request.* A field office shall notify applicants in writing of any technical deficiencies in their applications. Applicants will have 14 calendar days from the date of the field office notification to correct any technical deficiencies. A technical deficiency is an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. The field office also may request information to resolve ambiguities in the application and may, in its discretion, request that an applicant submit information that may help to clarify an application that, in the field office's view, contains information that is inconsistent with known facts or data. Periodic NOFAs may further define technical deficiencies and the circumstances under which additional information will be requested. Applicants may submit only the information requested by HUD. Applicants may not submit information that will enhance a project's rating, and a new project(s) may not be substituted for one(s) proposed in the original application. The field office shall disqualify applicants that fail to submit the information requested if the field office determines that the applicant

failed to meet the threshold requirements or failed to show compliance with requirements of this part, or if the field office determines that the information on-hand is insufficient to make a rating decision.

§ 571.302 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests of § 571.301 to be rated and ranked, field offices must determine that the following requirements have been met:

(1) *Community development appropriateness.*

(i) The costs are reasonable;

(ii) The project(s) is appropriate for the intended use; and

(iii) The project is usable or achievable (generally within a two-year period).

If in the judgment of the field office, available data indicate that the proposed project(s) costs are unreasonable, is inappropriate for the intended use, or is not usable generally within two years, the field office shall determine that the applicant has not met this threshold requirement, and shall reject such project(s) from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that previously have participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the field office determines that the applicant does not have or cannot obtain the capacity to undertake the project(s), such project(s) will be rejected from further consideration.

(ii) *Performance—(A) Community development.* Performance determinations are made through the field office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* The applicant has not taken actions to impede the provision or operation of assisted housing for the low- and moderate-income members of the Tribe or Village. If inadequate performance is found, the

applicant shall be rejected from further consideration.

(C) *Audits.* 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 current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear non-monetary audit findings. In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Applications rating system.* (1) Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each field office's jurisdiction.

(2) Periodic NOFAs will further weight and define the rating factors contained in this subpart. Each field office will rate applications on the basis of their responsiveness to the factors contained in this subpart and in the periodic NOFAs.

(3) In addition to meeting the requirements of this section, which apply to all applications, the field office will examine each project submitted to determine in which one of the four rating categories set out in § 571.303 through § 571.306 the project most appropriately belongs. The project then will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component is 100, which is the maximum any project can receive.

(4) Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the application's other component(s). If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

(c) *Final ranking.* All projects will be ranked against each other according to

the point totals they receive, regardless of the rating category or component under which the points were received. Projects will be selected for funding based on this final ranking, to the extent that funds are available. If the field office determines that an insufficient amount of money is available to adequately fund a project, it may decline to fund that project and fund the next highest ranking project or projects for which adequate funds are available. HUD may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded, or if additional funds become available.

(d) *Ties.* Field offices shall approve projects involved in a tie that can be fully funded over those that cannot be fully funded. Only when such approval does not resolve a tie, shall the field office resort to one or more of the methods listed below ("tiebreakers"). Each field office's choice(s) of tiebreaker(s) will be published in the NOFA that is issued before each funding competition.

(1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the most low- and moderate-income persons.

(4) The application that benefits the highest percentage of low- and moderate-income persons.

(5) The applicant with the fewest projects that can be funded in the current year's competition.

(6) The applicant with the fewest active grants.

(e) *Competition documentation.* Field offices shall make available for public inspection each application and all related documentation and information, including letters of support, that indicate the basis on which the award was made or denied. Each field office shall make this documentation available for a period of at least five years starting 30 days from the date on which the award is made.

(f) *Procedural error.* If a field office makes a procedural error in the application and selection process that, when corrected, will result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant in the next year without further competition.

(g) *Setaside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the setaside

may be used to select projects for funding from the setaside.

§ 571.303 Housing rating category.

The "housing rating" category consists of three components: housing rehabilitation; land to support new housing; and new housing construction/direct homeownership assistance. Housing rehabilitation and new housing construction/direct homeownership assistance consist of three parts: Project need and design; planning and implementation; and leveraging. Land to support new housing consists of two parts: project need; and planning and implementation. Housing projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points. In those instances where a Tribe has established or joined an Indian Housing Authority (IHA) and has obtained housing assistance from HUD, its compliance with the resolution set out in article VIII of HUDs Model Tribal Ordinance will be a performance consideration under § 571.302. The applicant shall assure that it will use project funds to rehabilitate or construct units or to provide direct homeownership assistance only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit housing rehabilitation, new construction, or direct homeownership assistance in emergency situations.

(a) *Housing rehabilitation component.* All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application.

(1) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The percentage of CDBG funds committed to bring the housing up to standard condition, as defined by the applicant.

(ii) The degree to which the applicant's participant selection criteria gives priority to the neediest households.

(iii) Documentation of project need.

(2) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Rehabilitation policies, including adopted rehabilitation standards, rehabilitation selection criteria, and project planning documents.

(ii) Post-rehabilitation maintenance policies.

(iii) Quality of cost estimates.

(iv) Cost effectiveness of the rehabilitation program.

(3) Leveraging (10 points). Applicants must provide documentation of the amount and source of additional funds. This should include private contributions, including equity and loans, applicant funding, and other governmental funding.

(b) *Land to support new housing component.* (1) Project need (40 points). The field office will consider the amount of land that the applicant already has that is available and suitable for new housing. (Applicants that have suitable land available will rate poorly on this factor.)

(2) Planning and implementation (60 points). The field office will consider the following when reviewing each application:

(i) Suitability of land to be acquired.

(ii) Housing resources that are committed at the time of project application.

(iii) Availability/accessibility of supportive services and employment opportunities.

(iv) Commitment that families will move into the new housing.

(v) Land can be taken into trust or provisions have been made for taxes and fees.

(vi) Plan for any infrastructure needed to support housing to be developed. (If needed infrastructure exists, maximum points will be awarded.)

(vii) Extent to which the proposed site meets the applicant's needs.

(c) *New Housing construction/direct homeownership assistance component.* (1) New housing construction can only be implemented through a nonprofit organization that is eligible under § 571.202 or is otherwise eligible under § 570.207(b)(3) of this chapter. If an applicant plans to build housing covered by mortgage insurance under section 248 of the National Housing Act, the field office will not consider the provisions of paragraphs (c)(3)(i)(A) and (B) and (c)(4)(iv) of this section when rating the proposal. The remaining subparts will be weighted so that section 248 projects may receive a maximum of 100 points. All applicants for new housing construction grants shall adopt by current tribal resolution, construction standards and construction policies, prior to submitting an application. All applications for new housing construction grants must document that:

(i) no other housing is available in the immediate reservation area that is

suitable for the household(s) to be assisted; and

(ii) No other sources can meet the needs of the household(s) to be served; and

(iii) Rehabilitation of the unit occupied by the household to be housed is not economically feasible; or

(iv) The household to be housed currently is in an overcrowded unit (sharing unit with other household(s)); or

(v) The household to be housed has no current residence.

(2) If an applicant plans to provide direct homeownership assistance under section 907 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625) to low- and moderate-income homebuyers who will occupy existing units, the field office will not consider the provisions of paragraphs (c)(3)(i)(A) and (B) and (c)(4)(iv) of this section when rating the proposal. The remaining subparts will be weighted so that direct homeownership assistance projects may receive a maximum of 100 points. All applications for direct homeownership assistance grants must contain the following documentation:

(i) No other sources can meet the needs of the household(s) to be served; and

(ii) Rehabilitation of the unit occupied by the household to be assisted is not economically feasible; or

(iii) The household to be assisted currently is in an overcrowded unit (sharing unit with other household(s)); or

(iv) The household to be assisted has no current residence.

(3) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The applicant:

(A) Either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time; or

(B) Has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time due to a lack of funds.

(ii) Adopted housing construction policies and plan.

(iii) Beneficiary identification (all households are low- and moderate-income). The households to be served have documented needs for housing assistance that cannot be met from other sources.

(4) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Occupancy standards.

(ii) Site acceptability, including consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

(iii) Energy conservation design.

(iv) Housing survey.

(v) Cost effectiveness.

(5) Leveraging (10 points). Applicants must provide documentation of the amount and sources of additional funds. This should include private contributions including equity and loans, applicant funding, and other governmental funding.

§ 571.304 Community facilities rating category.

The "community facilities rating" category consists of two components: Infrastructure, such as water, sewer or roads; and buildings, such as a community center or child care facility. Each component consists of three parts: Project need and design; planning and implementation; and leveraging. Community facilities projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points.

(a) *Infrastructure component.* (1) Project need and design (60 points). The project will accomplish the following:

(i) Meet an essential community development need.

(ii) Benefit the neediest segment of the population.

(iii) Provide infrastructure that currently does not exist either within or outside the community or reservation, or replace an existing facility that no longer functions adequately to meet the current needs, or eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (30 points). The applicant will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale and cost.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

(b) *Buildings component.* (1) Project need and design (60 points). The project will accomplish the following:

(i) Benefit the neediest segment of the population to the greatest extent possible.

(ii) Provide a building that currently does not exist either within or outside (nearby) the community or reservation or replace an existing facility that no longer functions adequately to meet the current needs.

(iii) Provide multiple uses, multiple benefits or have services available 24 hours a day.

(iv) Meet an essential community need or eliminate or reduce a health or safety problem.

(2) Planning and implementation (30 points). The application will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale, and cost.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

§ 571.305 Economic development rating category.

(a) The economic development rating category has only one component, consisting of three parts: project viability; permanent full-time job creation; and additional considerations. Economic development projects may receive a maximum of 100 points.

(b) Economic development assistance may be provided only when a financial analysis is done which shows that the assistance to the business does not exceed the level of financial assistance needed to make the project financially feasible, public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success.

(c) In making this determination, for example, if the analysis of the financial information indicates an ability to repay the assistance, a grant would not be warranted if the financial assistance is going to a nongovernmental entity.

(1) *Project viability* (55 points). The application will be rated on the adequacy and quality of the following subparts:

(i) Market Analysis.

(ii) Management capacity.

(iii) Organization.

(iv) Viability of the business; or

(v) Viability of the microenterprise.

(vi) Leveraging.

(2) *Permanent full-time equivalent job creation* (30 points). The application will be rated on the adequacy and quality of the following subparts:

(i) CDBG cost per job.

(ii) CDBG cost per job targeted to low- and moderate-income persons.

(iii) Quality of jobs targeted to low- and moderate-income persons or employer commitment to provide training opportunities.

(3) *Additional considerations* (15 points). The project will accomplish one or more of the following:

(i) Use, improve, or expand members' special skills.

(ii) Provide spin-off benefits beyond the initial economic development benefits.

(iii) Provide special opportunities for residents of federally assisted housing.

(iv) Provide benefits to other businesses owned by Indians or Alaskan natives.

(v) Provide for reuse of project funds for other CDBG eligible activities that meet a national objective through repayment of CDBG assistance to the grantee or use of the profits of the tribally owned business.

§ 571.306 Public services rating category.

(a) Project need and design (45 points). The project will accomplish the following:

(1) Meet an essential community need.

(2) Benefit the neediest segment of the population.

(3) Eliminate or substantially reduce a health or safety problem.

(b) Planning and implementation (45 points). The application will show:

(1) A viable plan for continuing provision of the service(s).

(2) An appropriate and effective design, scale and cost.

(3) An innovative approach to the delivery of the service(s).

(c) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

§ 571.307 Funding process.

(a) *Notification.* Field offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the field offices in accordance with § 571.100(b).

(b) *Pre-award requirements.* (1) Upon notification by HUD of successfully competing for a grant, the applicant shall submit, on forms prescribed by HUD, the following:

(i) Implementation schedule.

(ii) Certifications.

(iii) Cost information, if changes have occurred or if the field office has adjusted the original grant request.

(2) Successful applicants also may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will be given at least thirty (30) calendar days, to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the field office may determine that the applicant has not met the requirements

and the grant offer may be withdrawn. The field offices shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(3) Grant amounts allocated for applicants unable to meet pre-award requirements will be offered to the next highest ranking unfunded project.

(4) New projects may not be substituted for those originally proposed in the application.

(c) *Grant award.* (1) As soon as HUD determines that the applicant has complied with the pre-award requirements and nothing has come to the attention of the field office which would alter the threshold determinations under § 571.302, the grant will be awarded. These regulations (*i.e.*, 24 CFR part 571) become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of part 58 of this title, except as otherwise provided in:

(i) Section 58.33, "Emergencies";

(ii) Section 58.34, "Exempt activities"; or

(iii) Section 58.22, "Activities," excepted from limitations on the commitment of funds and which are reimbursable under subpart C of part 570 of this chapter.

(3) HUD may impose other grant conditions where additional actions or approvals are required prior to the use of funds and such as:

(i) Pending site and neighborhood standards approval for a proposed housing project, if applicable;

(ii) Pending HUD approval of the use of Tribal work forces for construction or renovation activities in accordance with § 571.502; or

(iii) Pending receipt of other agencies' funding commitments required for the project. If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043)

§ 571.308 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments

involving the alteration of existing activities that will significantly change the scope, location, objective, of class or beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under § 571.300(f) (1) and (4), as well as any changes to the information requested under § 571.300(f) (2), (3) and (5).

(1) Amendments of \$25,000 or more shall address all the rating parts and subparts of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to complete promptly the modified or new activities;

(iii) Compliance with the requirements of § 571.604 of this part for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than \$25,000 shall be approved subject to meeting the requirements of paragraphs (b)(1) (ii), (iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 571.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, the field office may make funds available under this subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature and which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or

Federal funding sources cannot be made available to alleviate the threat.

(c) Field offices will establish grant ceilings for imminent threat applications.

§ 571.401 Application process.

(a) *Letter to proceed.* The field office may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 571.300(f). Applications which meet the requirement of this section may be approved by the field office without competition in accordance with the applicable requirements of § 571.307.

§ 571.402 Environmental review.

In accordance with 24 CFR 58.34(a)(8), grants for imminent threat to health or safety are exempt from some or all of the environmental review requirements of part 58 of this title, to the extent provided in that section.

§ 571.403 Availability of funds.

Field offices may set aside up to 15 percent of their allocation of funds under this part for imminent threat grants. The only funds reserved for imminent threat are those set aside by the field office each year. A field office may not retain imminent threat funds after the date upon which it receives its allocation for the succeeding fiscal year. Field Offices will use any imminent threat funds remaining to either fund the highest ranking unfunded project from the previous fiscal year or will use the funds as if they are a part of the new allocation of funds. Field offices must correctly indicate, however, the fiscal year the residual funds were originally allocated when the funds are awarded to applicants.

Subpart F—Grant Administration

§ 571.500 General.

The requirements of part 570, subpart J of this chapter Grant Administration—apply to grants under this part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

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§ 571.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan native village as the operating agency to undertake activities assisted under this part. The Indian Tribe or Alaskan native village itself, however, shall be the applicant. Designation of an operating agency does not relieve the Indian Tribe or Alaskan native village of its responsibility to assure that the program will be administered in accordance with all HUD requirements, including these regulations.

§ 571.502 Force account construction.

(a) The use of Tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be, listed on the Tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the Tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 571.308(b) or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu

of bonding if compliance with the bonding requirements specified in § 85.36(h) of this title is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

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§ 571.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "Tribal organizations" as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians and Alaskan natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD field office one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid is received, request field office review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment

supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) preferences and opportunities for training and employment shall be given to Indians;

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance.

§ 571.504 Grant closeout procedure.

Within 90 days of the date that HUD determines the grant has met the criteria

for closeout, the grantee shall submit to HUD a completed Financial Status Report (SF-269). In addition, the requirements of § 570.509 of this chapter, Grant closeout procedures, apply to the ICDBG program where applicable.

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§ 571.505 Program Income.

(a) The provisions of 24 CFR 570.504(b) apply to all program income received prior to grant closeout.

(b) Income received after closeout from the disposition of real property or repayments of loans outstanding at the time of closeout will not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the Act.

(c) All other program income received after closeout will not be governed by the provisions of this part.

Subpart G—Other Program Requirements

§ 571.600 General.

The following requirements of 24 CFR part 570, subpart K—Other Program Requirements—apply to grants under this part.

(a) Section 570.605 National Flood Insurance Program.

(b) Section 570.608 Lead-based paint.

(c) Section 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

(d) Section 570.610 Uniform administrative requirements and cost principles. Non-federally recognized tribes shall follow the requirements of 24 CFR part 85 and OMB Circulars A-87 and A-128.

[Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7332. (This is not a toll-free number.) There is a limit of two free copies.]

§ 571.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that recipients comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, or against an otherwise qualified handicapped individual.

(b) A recipient shall comply with the provisions of title II of Public Law 90-284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under

this part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "funded in whole or in part with funds made available under this part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.602 Relocation and acquisition.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, safe and habitable dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) 42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(d) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property. HUD will promptly review the proposal and inform the grantee of its approval or disapproval.

(e) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, (i.e., provide assurance of compliance as required by 49 CFR part 24). The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the grantee from any other source.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Displaced person.* (1) For purposes of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. This includes any permanent, involuntary move for an assisted

project, including any permanent move from real property that is made:

(i) After notice by the grantee or property owner to move permanently from the property, if the move occurs on or after the date of the submission of an application for financial assistance by the grantee to HUD that is later approved for the project.

(ii) Before the date of the submission of the application requesting assistance, if either HUD or the grantee determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the assisted project.

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between the grantee and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of

(1) the tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(2) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(1) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(2) other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the application for financial assistance to HUD and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a

"displaced person" or for any assistance provided under this section as a result of the project;

(ii) The person is not displaced, as defined under 49 CFR 24.2(g)(2).

(iii) The grantee determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered under this section.

(h) *Initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition.

§ 571.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

§ 571.604 Citizen participation.

(a) In order to permit residents of Indian Tribes and Alaskan native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of resident involvement which, at the least, include the following:

(1) Furnishing residents with information concerning the amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of residents on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by residents.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected residents an opportunity to

examine its contents and to submit comments.

(4) Affording residents an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) considered any comments and views expressed by residents and, if it deems it appropriate, modified the application accordingly, and

(2) made the modified application available to residents.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 571.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58.

§ 571.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110 shall apply.

[Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC, 20503, telephone (202) 395-7332. (This is not a toll-free number.) There is a limit of two free copies.]

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to businesses, individuals, and other private entities under eligible

activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202 of this chapter; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 570.203 or § 570.204 of this chapter).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this chapter, receiving funds under this part.

(d) *Exceptions requiring HUD approval—(1) Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the

cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Subpart H—Program Performance

§ 571.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the field office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress in completing activities, the work remaining, changes in the implementation schedule, and a breakdown of funds expended on each approved project;

(b) *Grantee assessment.* Description of the effectiveness of funded activities in meeting the recipient's community development needs; and

(c) *Environment.* (1) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(2) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

(Approved by the Office of Management and Budget under Control No. 2506-0043)

§ 571.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 571.702 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the recipient has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprogramming is subjected to the environmental review procedures of Part 58 of the title;

(6) Advise the recipient to reimburse the recipient's program account or line of credit in any amount improperly expended;

(7) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(8) Suspend the line of credit until corrective actions are taken.

§ 571.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the recipient also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the field office determines, on the basis of a review of the grant recipient's

performance, that the objectives set forth in § 571.701(a) (2) or (3) have not been met, the field office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 571.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply with any provision of this part even after corrective actions authorized under § 571.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring

reasonable notice and opportunity for a hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe

that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: February 24, 1992.

Randall H. Erben,

Deputy Assistant Secretary for Community Planning and Development.

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