

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4784-N-01]

Funding for Fiscal Year 2002: Capacity Building for Community Development and Affordable Housing

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

ACTION: Notice of funding for Fiscal Year (FY) 2002.

SUMMARY: The Fiscal Year 2002 HUD Appropriations Act provided \$31,000,000 in Fiscal Year 2002 funds for activities authorized in section 4 of the HUD Demonstration Act of 1993. Section 4 authorizes the Secretary to establish by notice such requirements as may be necessary to carry out its provisions. This notice takes effect upon issuance.

FOR FURTHER INFORMATION CONTACT: Karen Daly, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7216, Washington, DC 20410. Telephone Number (202) 708-3176 Ext. 5552. Persons with hearing- or speech-impediments may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339, or they may call: (202) 708-2565. Except for the "800" number, these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

1. Authority

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 107-73, 115 Stat. 651, approved November 26, 2001) (VA/HUD FY 2002 Appropriations Act) makes \$31,000,000 available from the Community Development Grants program for capacity building for community development and affordable housing as authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103-120, 107 Stat. 1148, approved October 27, 1993) (42 U.S.C. 9816 *note*). HUD will provide this assistance through the Enterprise Foundation (Enterprise), the Local Initiatives Support Corporation (LISC), Habitat for Humanity, and Youthbuild USA "to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs."

2. Background

In Fiscal Year 1994, HUD provided \$20 million to Enterprise and LISC through the National Community Development Initiative (NCDI), as authorized by section 4 of the HUD Demonstration Act of 1993. In FY 1996, \$10 million for NCDI was authorized by section 12(b)(3) of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 845, approved March 28, 1996). HUD divided appropriations equally between Enterprise and LISC. HUD published a notice in the **Federal Register** of March 30, 1994 (59 FR 14988), which set forth the requirements for receipt of these funds.

Today's notice contains requirements for the newly appropriated \$31,000,000. These funds may be used for new activities or, in the case of Enterprise and LISC, to continue NCDI activities that received funding under the notice dated March 30, 1994 (59 FR 14988). New grant agreements will be executed to govern these NCDI activities.

3. Allocation and Form of Awards

The VA/HUD FY 2002 Appropriations Act provides \$31,000,000 for activities authorized by section 4. Twenty-five million dollars of these funds is appropriated to Enterprise and LISC for activities authorized by section 4, as in effect immediately before June 12, 1997. HUD will equally divide \$25,000,000 of the appropriated funds between Enterprise and LISC. The funds are to be used for capacity building for community development and affordable housing—provided that at least \$5,000,000 of the funding is used in rural areas, including tribal areas. In addition, \$4,000,000 is appropriated to Habitat for Humanity and \$2,000,000 to Youthbuild USA for section 4 activities. Each organization will match the HUD assistance provided with resources from private sources in an amount equal to three times its share, as required by section 4. Enterprise and LISC each will use at least \$2,500,000 of their \$12,500,000 share for activities in rural areas, including tribal areas.

This notice, which takes effect upon issuance, also provides details regarding administrative and other requirements that shall apply to this program.

4. Eligible Activities

Eligible activities under this award include:

(a) Training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations (CDCs) and community housing

development organizations (CHDOs), including the capacity to participate in consolidated planning as well as in fair housing planning, continuum of care homeless assistance efforts, and HUD's Colonias Initiatives that help ensure community-wide participation in assessing area needs; consulting broadly within the community; cooperatively planning for the use of available resources in a comprehensive and holistic manner; and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

(b) Loans, grants, development assistance, predevelopment assistance, or other financial assistance to CDCs/CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities which create jobs for low-income persons; and

(c) Such other activities as may be determined by Enterprise, LISC, Habitat for Humanity or Youthbuild USA in consultation with the Secretary or his designee.

5. Matching Requirements

As required by section 4 of the Demonstration Act of 1993, the \$31,000,000 appropriation is subject to each award dollar being matched by three dollars in cash or in-kind contributions to be obtained from private sources. Each of the organizations receiving these funds will document its proportionate share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee after November 26, 2001, to conduct activities.

In-kind contributions shall conform to the requirements of 24 CFR 84.23.

6. Administrative and Other Requirements

The award will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A-122 (Cost Principles for Nonprofit Organizations), and OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

Other requirements will be detailed in the terms and conditions of the grant agreement provided to grantees, including the following:

(a) Each grantee will submit to HUD a specific work and funding plan for

each community showing when and how the federal funds will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 30 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters that need to be addressed prior to approval, or the work plan shall be construed to be approved. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities also are subject to the environmental requirements in paragraph 6(f) of this notice.

(b) Each grantee shall submit to HUD an annual performance report due 90 days after the end of each calendar year, with the first report due on March 31, 2003. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. Additional information or increased frequency of reporting, not to exceed twice a year, may be required by HUD any time during the grant agreement if HUD finds such reporting to be necessary for monitoring purposes.

To further the consultation process and share the results of progress to date, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC during the life of the award.

(c) The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan such as: the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of these units. However, when the activity described in a work plan is not to be undertaken in a single community, a report indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives, will be provided when that information is available. The performance reports also will include a discussion of the

reasonableness of the unit costs; the reasons for slippage if established objectives and goals are not met; and additional pertinent information.

(d) A final performance report, in the form described in paragraph (c) above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

(e) Financial status reports (SF-269A) shall be submitted semiannually.

(f) Environmental review. Individual projects to be funded by these grants may not be known at the time the overall grants are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or local funds to a HUD-assisted project may be made until HUD has completed an environmental review to the extent required under applicable regulations and has given notification of its approval in accordance with 24 CFR 50.3(h).

7. Application Content

Grantees will be required to file an application containing the following:

(a) Application for Federal Assistance (OMB Standard Form 424), Non-construction Assurances (SF-424B), Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying, and the Fair Housing and Equal Opportunity certification described in section 8(f) of this notice;

(b) A Summary Budget for the amount of funds being requested and a similar summary budget for any amounts to be committed to NCDI activities. The Budget Summary identifying costs for implementing the plan of suggested Technical Assistance (TA) activities by cost category, in accordance with the following:

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour, estimated cost per staff position and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable;

(5) Equipment charges, if any. Equipment charges should identify the

type of equipment, quantity, unit costs, and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant, and total estimated costs for all consultants;

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other direct costs for the award; and

(9) Indirect Costs which should identify the type, approved indirect cost rate, base to which the rate applies, and total indirect costs.

These line items should total the amount requested for each Community Development (CD)-TA program area. The grand total of all CD-TA program funds requested should reflect the grand total of all funds for which application is made.

8. Findings and Certifications

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) *Wage Rates.* Unless triggered by other federal funds for a project under this grant, the requirements of the Davis-Bacon Act do not apply.

(c) *Relocation.* The Uniform Relocation Act applies to anyone who is displaced as a result of acquisition, rehabilitation, or demolition for a HUD-assisted activity.

(d) *Federalism.* Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or that preempt state law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This notice does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

(e) *Prohibition Against Lobbying Activities.* Applicants for funding under this notice are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104-65, approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this notice. Therefore, applicants must file with their application a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes has been made, a form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104-65, approved December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(f) *Fair Housing and Equal Opportunity.* (1) *Threshold*

Requirements. (i) *Compliance with Fair Housing and Civil Rights Laws.* Each organization receiving a grant under this notice and its subgrantees must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the nondiscrimination provisions enumerated at 24 CFR 1003.601.

If an entity that receives funding under this notice: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) Is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) Has received a letter of noncompliance findings under Title VI, Section 504, or Section 109, HUD will determine whether the charge, lawsuit, or letter of findings has been resolved to the satisfaction of the Department and, if not, will take appropriate action. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(ii) *Nondiscrimination Requirements.* Each organization receiving a grant under this notice and its subgrantees must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

(iii) *Affirmatively Furthering Fair Housing.* Each organization receiving a

grant under this notice and its subgrantees have a duty to affirmatively further fair housing. Each organization and subgrantee should include in their application or work plan the specific steps that they will take to remedy discrimination in housing and to promote fair housing rights and fair housing choice.

(g) *Lead-based Paint Provisions.* Each organization receiving a grant under this notice and its subgrantees must comply with the applicable lead-based paint provisions of 24 CFR part 35, including subparts J and K.

(h) *Certification.* Applications must contain a certification that the organization receiving a grant under this notice and all subgrantees will comply with (1) all the requirements and authorities identified in section (f) of this notice; (2) section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u); and (3) HUD's implementing regulations at 24 CFR part 135, which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for the metropolitan area (or nonmetropolitan county) in which the project is located.

Authority: Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103-120, 42 U.S.C. 9816 *note*), as amended, Pub. L. 107-73, 115 Stat. 651.

Dated: January 9, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

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