



# Federal Register

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**Monday,  
May 17, 2004**

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**Part II**

## **Department of Housing and Urban Development**

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**Funding for Fiscal Year 2003: Capacity  
Building for Community Development  
and Affordable Housing; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4864-N-01]

### Funding for Fiscal Year 2003: Capacity Building for Community Development and Affordable Housing

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

**ACTION:** Notice.

**SUMMARY:** The Consolidated Appropriations Resolution, 2003, makes available approximately \$34.3 million in Fiscal Year (FY) 2003 funds for capacity building 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 establishes the requirements for use of the FY2003 funds and takes effect upon issuance.

**FOR FURTHER INFORMATION CONTACT:** Karen Williams, Office of Community Planning and Development, Department of Housing and Urban Development, 1835 Assembly Street, Columbia, SC 29201-2480; telephone number (803) 253-3009. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Information Relay Service at 800-877-8339 or by calling (202) 708-2565. Except for the "800" number, these are not toll-free telephone numbers.

#### SUPPLEMENTARY INFORMATION:

##### 1. Authority

The Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7, approved February 20, 2003) (FY2003 Appropriations Resolution) appropriates approximately \$34.3 million for capacity building for community development and affordable housing as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note). These funds are subject to the provision in Title VI, section 601 of the FY2003 Appropriations Resolution that requires an across-the-board rescission of 0.65 percent. Therefore, a total of \$34,275,750 is available to be allocated this fiscal year. 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

Beginning in FY1994, HUD provided funding to Enterprise and LISC through the National Community Development Initiative (NCDI), as authorized by section 4 of the HUD Demonstration Act of 1993. In accordance with authorizing statutes, HUD divided the 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.

In subsequent years, pursuant to the various appropriations acts, funding was made available to Enterprise, LISC, Habitat for Humanity, and YouthBuild USA. In each of these years, HUD published a notice in the **Federal Register** that contained requirements for the funds that were made available to LISC, Enterprise, Habitat for Humanity, and YouthBuild USA.

Today's notice establishes requirements for the use of the FY2003 funds. 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

Of the FY2003 funds appropriated for section 4 activities, \$28.25 million is made available in equal shares to Enterprise Foundation and LISC for activities authorized by section 4, as in effect immediately before June 12, 1997. The funds are to be used for capacity building for community development and affordable housing. In addition, \$4.25 million is appropriated to Habitat for Humanity and \$2 million to YouthBuild USA for section 4 activities. Each organization will match the HUD assistance 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 \$2.5 million of their \$14.125 million share for activities in rural areas, including tribal areas. As stated above, these funds are subject to the 0.65 percent rescission provision in the FY2003 Appropriations Resolution. Therefore, a total of \$34,275,750 is available to be allocated, with LISC and Enterprise Foundation each receiving \$14,033,187, Habitat for Humanity receiving \$4,222,375, and YouthBuild USA receiving \$1,987,000.

This notice will take effect upon issuance.

##### 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 communitywide participation in assessing area needs; consulting broadly within the community; planning cooperatively 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 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 that 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 the Secretary's designee.

##### 5. Matching Requirements

As required by section 4 of the HUD Demonstration Act of 1993, the \$34.5 million appropriation, as reduced by the rescission of 0.65 percent to \$34,275,750, is subject to each award dollar being matched by \$3 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 February 20, 2003, to conduct activities.

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

##### 6. Administrative and Other Requirements

Each 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, 2004. 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, such as the number of housing units and facilities each CDC/CHDO produces annually during the grant period and the average cost of those units. However, when the activity described in

a work plan is to be undertaken in more than one community, a report indicating the areas in which the activity will be undertaken, along with appropriate goals and objectives, must be provided when that information is available. The performance reports also must 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) 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 the recipient will:

(1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received.

#### 7. Application Content

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

(a) Application for Federal Assistance (SF 424), Non-construction Assurances Form (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, each identifying costs for implementing the plan of suggested technical assistance (TA) activities by cost category, including:

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

(2) fringe benefits by staff position, identifying the rate, the salary base on

which the rate was computed, the 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, if applicable;

(5) equipment charges, if any, identifying each type of equipment, its quantity and unit cost, and total estimated equipment costs;

(6) consultant costs, if applicable, indicating 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, indicating 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, identifying 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 technical assistance (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 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

(b) *Wage Rates.* Unless triggered by other federal funds for a project under this grant, the requirements of the Davis-Bacon Act (40 U.S.C. 276) do not apply.

(c) *Relocation.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979 (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24 apply 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

an agency from promulgating policies that have federalism implications if the policies either impose substantial direct compliance costs on state and local governments and are not required by statute, or the policies preempt state law, unless the agency meets the consultation and funding 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 (2 U.S.C. 1601 *et seq.*).

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, 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 that 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 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 —

Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination,

Is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination, or

Has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974— 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.

Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings include, but are not limited to:

- (A) A voluntary compliance agreement signed by all parties in response to the letter of findings;
- (B) A HUD-approved conciliation agreement signed by all parties;
- (C) A consent order or consent decree; or
- (D) A judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

(ii) *Nondiscrimination Requirements.* Each organization receiving a grant under this notice and its subgrantees also 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 each of its subgrantees has a duty to affirmatively further fair housing. Each organization and subgrantee should include in its application or work plan the specific steps that it 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 8(f) of this notice;

(2) Section 3 of the Housing and Urban Development Act of 1968 (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-2 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 (42 U.S.C. 9816 note) and the Consolidated Appropriations Resolution, 2003, Pub. L. 108-7, 117 Stat. 550, approved February 20, 2003.

Dated: April 30, 2004.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

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