

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 1003

[Docket No. FR-5115-P-01]

RIN 2577-AC78

**Prohibition on Use of Indian
Community Development Block Grant
Assistance for Employment Relocation
Activities**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the Indian Community Development Block Grant (ICDBG) program by prohibiting Indian tribes and Alaska Native villages from using ICDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another, if the relocation is likely to result in significant job loss. The proposed rule would prohibit Indian tribes and Alaska Native villages from using ICDBG funds for "job pirating" activities that are likely to result in significant job loss. "Job pirating," in this context, refers to the use of ICDBG funds to lure or attract a business and its jobs from one community to another. To prevent the rule from having an effect in situations where the relocation of a business causes an insignificant loss of jobs, the proposed rule would provide that a loss of 25 or fewer jobs from an area, as a result of an ICDBG-funded economic development project, would not constitute a significant loss of jobs.

DATES: *Comment Due Date:* November 7, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel (OGC), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at

<http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that Web site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. eastern time weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division, OGC, at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone number (301) 675-1600 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Information Relay Service toll-free number at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301-5320) (1974 HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) program. Section 106(a)(1) of the 1974 HCD Act authorizes grants to Indian tribes for the ICDBG program. HUD's regulations implementing the ICDBG program are

located at 24 CFR part 1003 (entitled "Community Development Block Grants for Indian Tribes and Alaska Native Villages"). The purpose of the ICDBG program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes. Grantees may use their ICDBG funds for activities authorized by section 105(a) of the 1974 HCD Act.

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

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

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

II. This Proposed Rule

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

III. Significant Features of the Proposed Rule

A. *Direct assistance to for-profit businesses.* Section 105(a)(17) of the 1974 HCD Act authorizes ICDBG recipients to provide direct assistance to for-profit businesses for economic development activities. Additionally, section 105(a)(15) authorizes recipients

to provide ICDBG funds to Community Based Development Organizations (CBDOs) for economic development activities that increase economic opportunities, or that stimulate or retain businesses or permanent jobs.

In accordance with the statutory language of section 105(h), the proposed rule would prohibit the provision of ICDBG assistance to for-profit businesses (including business expansions) under sections 105(a)(15) and 105(a)(17) of the 1974 HCD Act, if:

(1) The funding will assist in the relocation of a plant, facility, or operation; and

(2) If the relocation is likely to result in a significant loss of jobs in the area from which the relocation occurs.

The proposed rule would not cover the business activities of nonprofit entities. HUD believes that the likelihood of ICDBG assistance to a not-for-profit business relocation is limited.

B. Definition of "area." The statutory language of section 105(h) prohibits the relocation of any industrial or commercial plant, facility, or operation, from "one area to another," if the relocation is likely to result in significant job loss. HUD believes the relevant definition of labor market "area" for a Native American economic development project is the "Identified Service Area" for the eligible applicant, as defined in 24 CFR 1003.4.

C. Definition of "operation." Section 105(h) prohibits the use of ICDBG assistance with respect to the relocation of any industrial or commercial plant, facility, or "operation" from one Identified Service Area to another. This proposed rule would define the term "operation" to include, but not be limited to, any equipment, position, employment opportunity, production capacity, or product line.

D. Determining "significant loss of jobs." Section 105(h) prohibits ICDBG assistance for business relocation activities that "will result in a significant loss of employment" in the Identified Service Area from which the relocation occurs. This proposed rule would require that an ICDBG grantee, in determining whether a significant job loss would occur, collect labor force statistics for the Identified Service Area where the business is located before the relocation occurs. The grantee also would be required to document the number of jobs that the business plans to relocate to the new Identified Service Area.

In a large Identified Service Area, a job loss of one-tenth of one percent of the total labor market may constitute a large number of employees. Therefore, this proposed rule would provide that

in all cases a loss of more than 500 jobs will be considered to constitute a significant job loss. To prevent the rule from having an effect in situations where the relocation of a business causes an insignificant loss of jobs, the proposed rule would provide that a loss of 25 or fewer jobs from an Identified Service Area, as a result of an ICDBG-funded economic development project, would not constitute a significant loss of jobs.

In summary, a loss of 25 or fewer jobs as a result of a single activity will not constitute a significant job loss; any loss greater than 500 will continue to be counted as significant; and job losses between 25 and 500 must be less than 0.1 percent of the Identified Service Area's labor force to avoid being counted as significant.

E. Activities and businesses exempt from the job piracy prohibition. Under the proposed rule, certain activities and businesses would be exempt from the job piracy prohibition. This proposed rule would not apply to relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655) (implemented at 24 CFR part 42) (URA) and, with respect to the ICDBG regulations at 24 CFR 1003.602, microenterprises and assistance to businesses that buy equipment and/or inventory in arms-length transactions and move the equipment and/or inventory to another Identified Service Area.

1. Uniform Relocation Act and related assistance. HUD proposes to exclude relocation assistance required to be provided to a business under the URA. Businesses that receive such assistance and are required to relocate generally are not voluntarily relocating. In addition, relocation assistance under section 105(a)(11), as implemented at §§ 1003.201(h) and 1003.602(b), (c), and (d), should be excluded for the same reasons. HUD does not believe that the anti-pirating provisions were intended to prevent businesses that are forced to relocate as a result of a government action covered by the URA from relocating to another Identified Service Area.

2. Microenterprises. HUD considered whether microenterprises should be subject to the job pirating restrictions, but has determined that this type of business was not the intended target of the statutory prohibition. Microenterprises, generally, have five or fewer employees and typically do not seek resources to relocate jobs to other areas.

3. ICDBG-assisted arms-length transactions. The exemption for

businesses that buy equipment, inventory, or other physical assets in arms-length transactions is meant to protect assisted businesses that merely purchase equipment and inventory that are located in one Identified Service Area and move them to a new location. The job piracy prohibition targets businesses that move existing operations from one labor market area to another.

This proposed rule would apply to ICDBG assistance to a business that: (a) Shuts down or downsizes a facility and sells the equipment in a non-arms-length transaction (an example of a non-arms-length transaction is a firm selling equipment to a subsidiary); or (b) sells, in an arms-length transaction, an interest in an existing business, product line, customer base, or the entire stock-in-trade and goodwill of an existing business.

This proposed rule would not apply to assistance to a business that only purchases used equipment in an arms-length transaction. HUD believes that the sale and purchase of equipment, inventories, or other business assets on the open market were not intended to be included under the business relocation provisions of section 105(h).

F. Documentation requirements for ICDBG recipients and businesses. This proposed rule would require that, for each ICDBG-assisted business covered by this rule, the recipient's ICDBG project file must document: Whether the business has a plant, facility, or operation in an area outside of the recipient's Identified Service Area; and, if the business has one or more plants, facilities, or operations located in other areas, whether the business plans to relocate jobs from other locations to the site being assisted with ICDBG funds. Prior to a decision to provide ICDBG assistance to a business that has a plant, location, or facility in other areas, the recipient shall document whether the number of jobs relocated by the business at each of the locations that is losing jobs to the new facility would constitute a significant job loss, as defined in this rule. If the recipient decides to commit ICDBG assistance to a business, then it must require and obtain, as a condition for assistance, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs, at the time the agreement is signed, that would result in a significant job loss, as defined in this rule. The business must provide this certification to the recipient as a part of the agreement committing ICDBG assistance to the business.

IV. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the rulemaking process on matters that have tribal implications. Accordingly, HUD sent letters to all eligible funding recipients under the ICDBG program informing them of the nature of the forthcoming rule and soliciting comments. The Department received one response to the consultation request, expressing full

support for the proposed regulatory change. In addition, tribes have the opportunity to comment on this proposed rule, and HUD welcomes such comment.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of

Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 1003.209 & § 1003.505	15 plus	1	3	45

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5115-P-01) and must be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6974; and Ms. Sherry Fobear-McCown, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410-5000.

Environmental Impact

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 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. eastern time, weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are no unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. Therefore, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule, that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from

publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This proposed rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number for the ICDBG program is 14.862.

List of Subjects in 24 CFR Part 1003

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

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 1003 to read as follows:

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Add § 1003.209 to read as follows:

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

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

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

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

(i) § 1003.203(b); or

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

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

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

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

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

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

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

(2) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither

it, nor any of its subsidiaries, has plans to relocate jobs, at the time the agreement is signed, that would result in a significant job loss as defined in this rule.

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

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

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

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

3. Revise § 1003.505 to read as follows:

§ 1003.505 Records to be maintained.

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

Dated: May 1, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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