

Dated: May 21, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5325-N-01]

Waiver of Certain Requirements in the Competitive and Noncompetitive Native American Housing Block Grant and the Indian Community Development Block Grant Programs Under the American Recovery and Reinvestment Act of 2009

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

ACTION: Notice.

SUMMARY: This notice implements actions to facilitate the expedited award and use of economic stimulus funds made available under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, approved February 17, 2009) (Recovery Act) for Native Americans. Accordingly, this notice identifies and advises the public of HUD statutes and regulations governing HUD's Native American Housing Block Grant (NAHBG) program, also known as the Indian Housing Block Grant (IHBG) program, and the Indian Community Development Block Grant (ICDBG) program that have been waived or temporarily suspended or deferred. These waivers are authorized in order to facilitate the expedited delivery and use of Federal Recovery Act funds for NAHBG and ICDBG housing and community development initiatives that are two of several components authorized by the Recovery Act to help stimulate the economy and alleviate the effects of a national recession. These waivers apply only to assistance appropriated by the Recovery Act, both formula and competitive, and do not apply to fiscal year appropriations for the IHBG and ICDBG programs under the Omnibus Appropriations Act, 2009 (Pub. L. 111-8, approved March 11, 2009). Tribes, Tribal organizations, and Tribally designated housing entities (TDHEs) that administer NAHBG and ICDBG programs should review this notice to determine which program requirements if waived, will ensure that Recovery Act funds can be awarded quickly and efficiently to meet the objectives of the Recovery Act. The waivers listed in this notice are applicable only to Recovery Act funds and will remain in effect until

September 30, 2012. Tribes, Tribal organizations, and TDHEs awarded Recovery Act funds for NAHBG or ICDBG activities have been granted waiver relief from statutes or regulations identified in this Notice.

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT:

Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone number (303) 675-1600 ext. 1625. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Recovery Act was passed in recognition of the need to quickly stimulate the American economy in light of the adverse events occurring in the financial and housing markets over the preceding months. The stated goals of the Act are to: (1) Preserve and create jobs and promote economic recovery; (2) assist those most impacted by the recession; (3) provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases. The Act specifies that Federal departments and agencies shall manage and expend the funds made available in the Act in a manner that commences expenditures and activities as quickly as possible consistent with prudent management.

HUD's Office of Public and Indian Housing (PIH) examined the statute and regulations governing the NAHBG and ICDBG programs and recommended waiver or temporary suspension or deferral of the statutes and regulations that PIH believes could impede Tribes, Tribal organizations, or TDHEs in their efforts to expeditiously implement Recovery Act projects and activities. Recipients of NAHBG and ICDBG Recovery Act funds may defer compliance with the requirements listed in this notice for a period of 36 months under the notification process described in this notice.

For several of the regulations listed in this notice for which a waiver was

granted, HUD did not waive the requirements entirely but deferred compliance until such time as compliance may be feasible. HUD does not want the time and resources of Tribes, Tribal organizations, and TDHEs diverted by requirements that are important but can be deferred or waived to ensure Recovery Act funds are awarded and placed under contract, in order to generate jobs and economic activity. As the economic recovery period proceeds, HUD may identify other statutory or regulatory waivers for which waiver is needed or determine that other alternative requirements may be necessary to assist with expeditious use of Recovery Act funds. Any additional HUD waivers or other alternative requirements will be announced by direct notice to Tribes and TDHEs and by **Federal Register** publication. If Indian Tribes and TDHEs identify other regulations that they believe should be waived, they should seek a waiver by submitting a waiver request to their Area Office of Native American Programs.

II. Authority To Grant Waivers

Generally, waivers of HUD regulations are handled on a case-by-case basis. The Recovery Act provided HUD with separate waiver authority. For funds appropriated for the NAHBG program, the Recovery Act authorizes HUD to waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary for the use of these funds (except requirements related to fair housing, non-discrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds. As for funds appropriated for the ICDBG program, the Recovery Act authorizes HUD to waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by HUD or the use by a recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute.

III. Waivers

The following statutory and regulatory waivers have been granted for recipients of NAHBG and ICDBG Recovery Act funds.

A. Statutory Waivers

Native American Housing Block Grant

1. *Indian Housing Plan (IHP) Submission Requirement.* Section 101(b)(1) of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) states that the Secretary may make a grant under the Act if an Indian Housing Plan (IHP) is submitted and determined to comply with the requirements of section 102 of the Act. Section 101(b)(2) provides the Secretary with waiver authority for a period of not more than 90 days. Under the Recovery Act, NAHBG formula funds will be provided as an amendment to the FY 2008 IHP as this is the fastest most efficient way to allocate Recovery Act funds. Sections 101(b)(1) and (2) are waived for any Tribe or TDHE that did not submit an IHP in FY 2008 and did not receive funding in FY 2008 under NAHASDA. A Tribe or TDHE that did not receive IHBG funds in FY 2008 need only submit an IHP amendment in order to receive Recovery Act funds. This waiver will ensure that Recovery Act funds are provided to all eligible applicants in an expedited manner.

2. *Local Cooperation Agreement.* Section 101(c) states that grants provided under NAHASDA may not be used for rental or lease-purchase homeownership units that are owned by the recipient unless the governing body of the locality within which the property that is subject to assistance is or will enter into an agreement with the recipient for the Tribe providing for local cooperation. Section 101(c) states that this provision may be waived by the Secretary if the recipient has made a good faith effort to fulfill the requirements of this Act and agree to make payments in lieu of taxes to the appropriate taxing authority. This Notice will enable Tribes that have made a good faith effort to fulfill the requirements of the Act to receive an expedited waiver so that they can develop projects quickly in their Indian area.

B. Regulatory Waivers

Native American Housing Block Grant

1. *24 CFR 1000.156 and 1000.158; Total Development Cost (TDC) Limits.* The current regulation states that affordable housing developed, acquired, or assisted under the IHBG program must be of moderate design. TDC limits are published annually to provide recipients with affordable housing cost standards. These standards can be exceeded by 10% with Area Office of

Native American Program (ONAP) approval and can be exceeded further if Headquarters approval is obtained. Justification is required to be submitted by the Tribe to justify an increase in the TDC of a unit or project. A waiver of this provision is provided to allow Tribes to exceed the current TDC maximum by 20% without HUD review or approval if the Tribe maintains documentation that indicates that housing will be for low-income families and the design, size, and amenities are moderate and comparable to housing in the area. The regulatory requirements are also waived to permit the current TDC limits to be used for both single-family and multi-family housing.

2. *24 CFR 1000.232; Tribal Certification Requirement for IHP Amendments.* The IHBG regulation at 24 CFR 1000.232 requires that a Tribal certification must accompany an IHP amendment when submitted by a TDHE to HUD. In many instances, a TDHE submits an IHP for several Tribes. At the time of the initial IHP submittal, Tribes certified that the TDHE is authorized to submit an IHP on its behalf. This waiver permits the TDHE to submit an amendment to an existing IHP without obtaining another certification from the Tribe. The request to waive this requirement is to expedite the IHP approval process and ensure that funds are provided to the Tribe as quickly as possible so that the timelines in the Recovery Act for obligation and expenditure of funds can be met.

Indian Community Development Block Grant

1. *24 CFR 1003.302(a); Project Specific Threshold Requirements—Housing Rehabilitation Standards.* The ICDBG regulation at 24 CFR 1003.302(a) requires that ICDBG applicants submitting applications for housing rehabilitation projects adopt, by Tribal resolution, rehabilitation standards and policies prior to submitting an application. This waiver permits those Tribal applicants who do not have standards and policies in place to submit an application and adopt such after the award. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a Notice of Funding Availability (NOFA). The requirement that project funds can be used to rehabilitate units where the homeowner's payments are current or the homeowner is current on an approved repayment period is not being waived. Area ONAP Administrators can

still approve exceptions to this requirement on a case-by-case basis in accordance with the current regulatory requirement.

2. *24 CFR 1003.302(b); Project Specific Threshold Requirements—New Housing Construction Standards.* The ICDBG regulation at 24 CFR 1003.302(b) requires that ICDBG applicants submitting applications for new housing construction projects adopt, by current Tribal resolution, construction standards prior to submitting an application. This waiver permits those Tribal applicants who do not have construction standards in place to submit an application and adopt such after the award. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a NOFA. The requirement that new construction can only be implemented through a non-profit organization may not be waived.

3. *24 CFR 1003.302(b); Project Specific Threshold Requirements—Available Housing Stock.* In addition, 24 CFR 1003.302 (b) also provides that in order to use ICDBG funds to build new housing, a Tribe must demonstrate that: (1) No other housing is available in the immediate reservation area; (2) no other sources can meet the needs of the household; (3) rehabilitation of the unit occupied by the household(s) to be assisted is not economically feasible; (4) the household(s) is in overcrowded conditions; or (5) the household has no current residence. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a NOFA. The requirement that new construction can only be implemented through a non-profit organization may not be waived.

4. *24 CFR 1003.302(c); Project Specific Threshold Requirements—Economic Development Analysis.* The ICDBG regulation at 24 CFR 1003.302(c) requires that ICDBG applicants submitting applications for economic development projects provide an analysis which, among other things, shows public benefit commensurate with the ICDBG assistance requested will result from the assisted project. Although the analysis requests several components, this waiver is only applicable to the following components: showing public benefit commensurate to ICDBG assistance; financial support from non-Federal sources committed prior to disbursement of Federal funds;

and not more than a reasonable rate of return on investment is provided to the owner. This waiver permits Tribal applicants to submit an application without these components and adopt such after the award. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a NOFA. All other analysis components remain required and must be submitted with the application and may not be waived. The components that must be submitted include the following: any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; grant funds used for the project will be disbursed on a pro rate basis with amounts from other sources; and establishing the project is financially feasible and that it has a reasonable chance of success.

5. *24 CFR 1003.303; Project Rating.* The ICDBG regulation at 24 CFR 1003.303 requires each project in an ICDBG application to meet project threshold requirements and then be scored based on five specific rating factors. The rating factors are capacity, need/extent of the problem, soundness of the approach, leveraging of resources, and comprehensiveness and coordination. Recovery Act funds under the ICDBG program can only be awarded to recipients who received ICDBG funding in FY 2008. These recipients have already demonstrated the capacity to administer the grants. In recognition of strict funding obligations deadlines in the Recovery Act and the specific Recovery Act provisions for awarding funds, this section is waived so that the NOFA can be drafted to delete the applicant capacity factor in the ICDBG NOFA and include a new factor to address the requirements of the Recovery Act.

6. *24 CFR 1003.604; Citizen Participation Requirements.* The ICDBG regulations at 24 CFR 1003.604(a)(2) require applicants to consult with residents prior to submitting their funding applications. The consultation requirements have the potential to delay the ability of ICDBG recipients to expeditiously facilitate Recovery Act funds for housing and community development needs. Accordingly, this section is waived so that the Tribe will not have to hold one or more meetings to obtain the views of residents on community development and housing needs. Tribes will be required to meet the citizen participation requirements by publishing or posting information on their plans to use Recovery Act funds

and accepting comments. However, comments will not have to be submitted prior to the application deadline date. The Tribe will be required to certify in its application that information has been published or posted for residents of the community in order to meet the citizen participation requirement.

Dated: May 4, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006-0029).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Reclamation (Reclamation, we) has forwarded the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Rural Water Supply Act, OMB Control Number: 1006-0029. Title 43 CFR part 404 requires entities interested in participating in the Rural Water Supply Program (Rural Water Program) to submit information to allow Reclamation to evaluate and prioritize requests for financial or technical assistance.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comments must be received on or before June 29, 2009 to assure maximum consideration.

ADDRESSES: You may send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395-5806 or e-mail to OIRA_DOCKET@omb.eop.gov. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84-52000, PO Box 25007, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Avra Morgan at: (303) 445-2906.

SUPPLEMENTARY INFORMATION:

Title: Reclamation Rural Water Supply Program, 43 CFR part 404.

OMB Control Number: 1006-0029.

Abstract: The purpose of the Rural Water Program is to provide assistance to small communities of 50,000 inhabitants or less, including tribes and tribal organizations, to plan the design and construction of projects to serve rural areas with industrial, municipal, and residential water. Specifically, Reclamation is authorized to provide financial and technical assistance to conduct appraisal investigations and feasibility studies for rural water supply projects. Reclamation's regulations (43 CFR part 404) establish criteria governing how the program will be implemented, including eligibility and prioritization criteria, and criteria to evaluate appraisal and feasibility studies.

Entities interested in participating in the Rural Water Program will be requested to submit information regarding proposed appraisal investigations and feasibility studies, to allow Reclamation to evaluate and prioritize requests for financial or technical assistance under the program. Reclamation will apply the program criteria to the information provided to determine whether the entity seeking assistance is eligible, whether the project is eligible for assistance, and to what extent the project meets Reclamation's prioritization criteria. Requests for assistance under the Rural Water Program will be made on a voluntary basis. There is no form associated with this information collection.

There are three different types of assistance that a project sponsor can request under the Rural Water Program, each of which requires different information to be submitted, as follows:

(1) *Review of a Completed Study.* To request Reclamation to review a completed appraisal investigation or feasibility study—which was not completed with assistance under the Rural Water Program, the entity making the request (the project sponsor) must submit a cover letter requesting Reclamation to commence the review. The cover letter must address the eligibility criteria set forth in §§ 404.6 and 404.7 of the regulations, and the prioritization criteria under § 404.13.

(2) *Assistance to Conduct an Appraisal Investigation.* To request technical or financial assistance to conduct an appraisal investigation, the project sponsor must submit a statement of interest in response to the program announcement, as explained in § 404.14. Reclamation will post a program announcement on www.grants.gov one time annually to provide notice to the public of the