

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### CFDA 14.862 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

#### I. PROGRAM OBJECTIVES

The primary objective of the Indian Community Development Block Grant (CDBG) program is the development of viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and expanded economic opportunities, principally for persons of low and moderate income. Indian CDBG assistance may not be used to reduce substantially the amount of local financial support for community development activities below the level of support prior to the availability of the assistance (24 CFR section 1003.2).

#### II. PROGRAM PROCEDURES

Two types of grants are eligible under the Indian CDBG (ICDBG) program. Single-purpose grants provide funds for one or more single purpose projects which consist 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. 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 HUD area office determines that such conditions exist and that funds are available for such grants (24 CFR section 1003.100). If the imminent threat grant was awarded pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. No. 116-136), please note the “Special Provisions for ICDBG-CARES Imminent Threat Grants” below.

#### Source of Governing Requirements

Implementing regulations are published at 24 CFR Part 1003.

#### Availability of Other Program Information

Additional information about the Indian CDBG program is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing).

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors**

are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	Y	N	Y

#### A. Activities Allowed or Unallowed

*Indian CDBG* – Funds (including program income generated by activities carried out with grant funds) may only be used for the following activities: (1) the acquisition of real property; (2) the acquisition, construction, reconstruction, or installation of public works, facilities, and sites, or other improvements; (3) code enforcement in deteriorated or deteriorating areas; (4) clearance, demolition, removal, and rehabilitation of buildings and improvements; (5) special projects for removal of material and architectural barriers that restrict accessibility by elderly and handicapped individuals; (6) payments to housing owners for losses of rental income incurred in temporarily holding housing for the relocated; (7) disposition of real property acquired under this program; (8) provision of public services (subject to limitations contained in regulations and to certain HUD determinations); (9) payment of the non-federal share for a grant program that is part of the assisted activities; (10) payment to complete a Title 1 Federal Urban Renewal project; (11) relocation assistance; (12) planning activities; (13) administrative costs; (14) acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings; (15) assistance to community-based development organizations; (16) activities related to energy use; (17) assistance to private, for-profit business, when appropriate to carry out an economic development project; (18) substantial reconstruction of housing owned and occupied by low- and moderate-income persons (subject to certain HUD determinations); (19) direct assistance to facilitate and expand homeownership; (20) technical assistance to public or private entities for capacity building (exempt from planning/administration cap); (21) housing counseling and housing activity delivery costs under Indian CDBG; (22) assistance to colleges and universities to carry out eligible activities; and (23) assistance to public and private entities (including for-profits) to assist microenterprises (24 CFR sections 1003.201–1003.206).

**B. Allowable Costs/Cost Principles**

1. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval, except for the following:
  - a. Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
  - b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
  - c. Organization costs require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable.
3. No person providing consultant services in an employer-employee type of relationship may receive more than a reasonable rate of compensation. Such compensation must not exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule (currently \$161,900). The Executive Pay Schedule may be obtained at <https://www.opm.gov/policy-data-over-sight/pay-leave/salaries-wages> (24 CFR section 1003.501(b)).

**C. Cash Management**

The auditor should refer to Part III for the basic compliance requirement information and 2 CFR section 200.305 (24 CFR section 1003.501).

**F. Equipment and Real Property Management**

1. For equipment purchased with Indian CDBG funds, the requirements of 24 CFR section 85.32 or 2 CFR section 200.313 apply with the exception that when the equipment is sold, the proceeds are considered program income (24 CFR section 1003.501(a)(6)).
2. Except for awards to faith-based organizations, the real property requirements in 2 CFR Part 200 do not apply. Generally, when real property that was acquired or improved using Indian CDBG program funds in excess of \$25,000 is disposed of, the Indian CDBG program must be reimbursed for its fair share of the current market value of the property. If disposition occurs after program closeout, the proceeds shall be used for allowable activities and meeting the primary objective of the program (24 CFR section 1003.504).

## I. Procurement and Suspension and Debarment

1. For the ICDBG program, HUD has determined that funds used are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (24 CFR section 1003.510), which means, to the greatest extent feasible, a recipient is to give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises. Auditors should be familiar with these preference in contracting procedures set forth in 24 CFR section 1003.510(d) that, among other things, require recipients to:
  - a. Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or
  - b. Use a two-stage preference procedure, as follows:
    - (1) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.
    - (2) *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
  - c. Develop, subject to Area ONAP one-time approval, the grantee's own method of providing preference.
2. Procurements that are within the dollar limitations established for small purchases under 2 CFR section 200.320 need not follow the formal bid or proposal procedures of 24 CFR section 1003.510(d) since these procurements are governed by the small purchase procedures of 2 CFR section 200.320. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts (24 CFR section 1003.510(d)(3)).

## L. Reporting

### 1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

## 2. Performance Reporting

*HUD 60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons (OMB No. 2529-0043)* – For each Indian CDBG that involves development, operating, or modernization assistance, the prime recipient must submit Form HUD 60002 information using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a), 135.5, and 135.90).

Information on the automated system is available at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3/spears](https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3/spears). The system was launched on August 24, 2015. The due date for submission of 2013 and 2014 reports was extended to December 15, 2015. SPEARS pre-populates Form HUD 60002 with recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the 12-month reporting period, typically to coincide with their respective fiscal cycle.

*Key Line Items* – The following line items contain critical information:

1. Number of new hires that meet the definition of a Section 3 resident
2. Total dollar amount of construction contracts awarded during the reporting period
3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period
4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of non-construction contracts awarded during the reporting period
6. Dollar amount of non-construction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the non-construction contracts

## 3. Special Reporting

Not Applicable

## N. Special Tests and Provisions

### Environmental Review

**Compliance Requirements** Program regulations provide that the responsible entity tribe will assume responsibilities for environmental review and decision making under the

requirements of 24 CFR part 58. An environmental review must be prepared for each project or activity. Funds may not be committed to a grant activity or project before the completion of the environmental review and approval of the Request for Release of Funds (RROF) and environmental certification. If the responsible entity tribe determines that it met a criterion specified in the regulations that would qualify the project as exempt or qualify the project for certain categorical exclusions, the RROF and environmental certification requirements do not apply (24 CFR sections 58.34 and 58.35, 24 CFR section 1003.605).

**Audit Objectives** Determine whether (1) the required environmental reviews have been performed and (2) program funds were not obligated or expended prior to completion of the environmental review process.

### **Suggested Audit Procedures**

Select a sample of projects for which expenditures were made and verify that:

#### *Environmental Reviews*

- a. Environmental determinations were made for each project or activity.
- b. Environmental determinations were supported by an environmental review, including supporting documentation for each applicable law and authority.
- c. For any project where an RROF and environmental certification was not submitted, the environmental review includes a written determination that the project or activity is exempt under a criterion of 24 CFR section 58.34 or is categorically excluded under a criterion of 24 CFR section 58.35(b), and meets the conditions specified for such exemption or categorical exclusion, with supporting documentation.

#### *Requests for Release of Funds*

- a. Examine HUD's approval of the RROF and environmental certification and note receipt dates.
- b. Review the expenditure and related records and determine the dates the funds were obligated or expended.
- c. Determine that funds were obligated or expended subsequent to RROF and environmental certification approval by HUD.

Additional information on environmental review requirements can be found at <https://www.hudexchange.info/programs/environmental-review/>.

## Special Provisions for ICDBG-CARES Imminent Threat Grants

### 1. General

On March 27, 2020, the CARES Act was signed into law. The Act provides for up to \$100,000,000 in ICDBG Imminent Threat funding to prevent, prepare for, and respond to coronavirus, for emergencies that constitute imminent threats to health and safety. This funding was provided in the form of grants to eligible Indian tribes and must be used to prevent, prepare for, and respond to the COVID-19. This funding must be used in accordance with the applicable requirements of the CARES Act, Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5103 et seq.), the [ICDBG implementing regulations at 24 CFR Part 1003](#), and the [ICDBG-CARES Implementation Notice, PIH Notice 2020-11](#) issued May 15, 2020.

In addition, under the CARES Act, Congress authorized HUD to waive or specify alternative requirements for any statute or regulation (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) that HUD administers to expedite or facilitate the use of ICDBG-CARES grant funds to prevent, prepare for, and respond to COVID-19.

On April 10, 2020, HUD issued [PIH Notice 2020-05](#) with waivers and alternative requirements authorized by the CARES Act. That Notice was superseded by [PIH Notice 2020-13](#) issued on July 2, 2020. [PIH Notice 2020-13](#) describes in detail the various updated waivers and alternative requirements that have been issued thus far with respect to ICDBG-CARES grants and fiscal year (FY) 2019/2020 ICDBG grants repurposed to address COVID-19.

**AUDITOR BE ADVISED:** Before auditing an ICDBG-CARES grant recipient, auditors are strongly advised to review the ICDBG-CARES Implementation Notice, [PIH Notice 2020-11](#), and [PIH Notice 2020-13](#), particularly Section 14 of [PIH Notice 2020-13](#) addressing the waivers and alternative requirements affecting ICDBG IT program with respect to ICDBG-CARES grants and FY 2020 ICDBG grants.

The following section identifies allowability considerations for the ICDBG program, followed by a summary of waivers and alternative requirements affecting the ICDBG program considered important by HUD. Because the COVID-19 pandemic was ongoing at the time this Compliance Supplement addendum was finalized, the auditor should make best efforts to identify and consider updates and revisions of [PIH Notice 2020-11](#) or [PIH Notice 2020-13](#) for ICDBG-CARES funding that were in place at the time of the audit. This can be done by visiting at [COVID-19 Recovery Programs site](#) of ONAP's website, CodeTalk, <https://www.hud.gov/codetalk>.

## 2. Activities Allowed or Unallowed

The CARES Act requires ICDBG-CARES grants to be used to prevent, prepare for, and respond to COVID-19.

To comply with this requirement, ICDBG-CARES grantees must ensure that all activities, projects, and programs being proposed can be tied to at least one of the following three eligible purposes:

- **Activities, Projects, or Programs to Prevent COVID-19**
- **Activities, Projects, or Programs to Prepare for COVID-19**
- **Activities, Projects, or Programs to Respond to COVID-19**

ICDBG-CARES grant funds may also be used to cover or reimburse allowable costs paid with non-federal funds by the ICDBG-CARES grantee, provided the funds were used to prevent, prepare for, or respond to COVID-19. This includes covering or reimbursing allowable costs incurred back to the date the Indian tribe began preparing for COVID-19, which may be prior to the date of enactment of the CARES Act, but in no event earlier than January 21, 2020.

The auditor should consider the following:

- **Prepare for:** ICDBG-CARES grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease.
- **Prevent:** ICDBG-CARES grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to the tribal community.
- **Respond to:** Once COVID-19 has spread in the community, examples of how ICDBG-CARES grantees may choose to respond to COVID-19 may include using ICDBG-CARES grant funds to care for those who have become infected and to limit the exposure and spread of the virus, providing emergency rent payments and other public services to families that cannot pay rent, carrying out activities to reduce severe overcrowding, preventing homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.

These descriptions are designed to provide general guidance and are not intended to limit the range of eligible ICDBG-CARES grant activities that can be carried out. Provided a grantee can reasonably tie their ICDBG-CARES activities back to one or more eligible purposes, HUD will accept the classification.

Ineligible Activities include:

- Activities, projects, or programs that are not reasonably tied to preparing for, preventing, and responding to COVID-19 are ineligible under the ICDBG-CARES program.
- Unless waived or modified by HUD, as provided in [PIH Notice 2020-13](#) and any similar waiver notice issued in the future, ineligible activities described in 24 CFR section 1003.207 continue to be ineligible (e.g., buildings or portions thereof used for the general conduct of government, political activities, general government expenses).

### **3. Waivers and Alternative Requirements Applicable Only to ICDBG-CARES Funding**

The following waivers and alternative requirements apply only to ICDBG-CARES grants (the new ICDBG funding provided under the CARES Act), FY 2020 ICDBG funds (both Single Purpose Grants and Imminent Threat Grants) appropriated under the Further Consolidated Appropriations Act of 2020 (Pub. L. No. 116-94), and FY 2019 ICDBG funds appropriated under the FY 2019 Consolidated Appropriations Act (Pub. L. No. 116-6). With respect to the FY 2019 and FY 2020 ICDBG funds, application of these waivers is permitted only on funding reprogrammed to address COVID-19.

These waivers and alternative requirements do not apply to ICDBG funds appropriated in any other prior year.

#### **a. Removal of Public Services 15 Percent Cap Under FY 2019 and FY 2020 ICDBG Grants**

**Statutory Authority:** Section 105 of HCD Act

**Regulatory Authority:** 24 CFR section 1003.201(e); FY 2019/2020 ICDBG NOFA

**Description:** Section 105 of the HCD Act and the ICDBG implementing regulation at 24 CFR section 1003.201(e) authorize the use of ICDBG funds to carry out public services activities, but provide that the amount of ICDBG funds used for public services shall not exceed 15 percent of the respective ICDBG grant. Congress lifted the 15 percent cap on public services funded under the ICDBG Imminent

Threat funding appropriated under the CARES Act and for FY 2019 and FY 2020 ICDBG funding in recognition of the great and immediate need for public services to help address and prepare for the impact of COVID-19 in tribal communities.

Accordingly, HUD has waived Section 105 of the HCD Act, 24 CFR section 1003.201(e), and language in the definition of the term “public services” in the FY 2019/2020 ICDBG NOFA to the extent necessary to remove the 15 percent cap on FY 2019/2020 ICDBG funding (both Single Purpose and Imminent Threat grants), to align with ICDBG Imminent Threat funding provided under the CARES Act.

ICDBG grantees that have been awarded FY 2019/2020 ICDBG funds must still comply with the provisions of 24 CFR section 1003.305 if they are seeking to amend their grants to carry out additional public services or other activities to prevent, prepare for, or respond to COVID-19.

b. **Rental Assistance, Utility Assistance, Food, Clothing, and Other Emergency Assistance**

**Statutory Authority:** Section 105 of the HCD Act.

**Regulatory Authority:** 24 CFR section 1003.207(b)(4)

**Description:** Section 105(a)(8) authorizes the use of ICDBG funds for a variety of public services. Under the implementing regulation at 24 CFR section 1003.207(b)(4), the general rule is that ICDBG funds may not be used for income payments. For purposes of the ICDBG program, income payments mean a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

COVID-19 is having a substantial negative impact on Native American families’ ability to work, earn an income, pay their rent or mortgage, access or pay for food and clothing, and access many other essential services. Many tribes and tribally designated housing entities (TDHEs) have reported to HUD that they shut down and community members are sheltering in place. To help tribal communities address these challenges, HUD has waived Section 105(a)(8) and 24 CFR section 1003.207(b)(4) to the extent necessary to establish the following alternative requirement:

- (1) ICDBG grant funds may be used to provide emergency payments for low and moderate income individuals or families impacted by COVID-19 for items such as food, medicine, clothing, and other necessities, as well as rental assistance and utility payment

assistance, without regard for the three-month limitation in 24 CFR section 1003.207(b)(4), but for a period not to exceed six months unless further expanded by HUD at a later date.

At the time of the issuance of [PIH Notice 2020-13](#), emergency mortgage assistance was limited to no more than three months under 24 CFR section 1003.207(b)(4). HUD may have provided additional waiver relief for ICDBG-funded mortgage assistance at a later date as the COVID-19 pandemic progressed.

As noted above the auditor is advised to check for any additional waiver relief at the “[COVID-19 Recovery Programs](#)” site of [HUD’s CodeTalk website](#) prior to addressing any issues related to the duration of assistance under this waiver.

- (2) These emergency payments must be used to either cover costs incurred directly by the ICDBG grantee in cases where the ICDBG grantee is providing this assistance, or made directly to a third party provider of such items or services on behalf of an individual or family, and may not be paid directly to an individual or family in the form of income payments, debit cards, or similar direct income payments. ICDBG grantees may establish lines of credit with third party providers (e.g., grocery stores) on behalf of specific beneficiary families, provided all expenses can be properly documented and all ICDBG-CARES funds used for this purpose are expended on eligible activities. In all cases, ICDBG grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible.

ICDBG grantees using this alternative requirement must document, in its policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable.

c. **Purchase of Equipment**

**Regulatory Authority:** 24 CFR sections 1003.207(b)(1) and 1003.201(c)(1)(ii)

**Description:** The purchase of equipment with ICDBG funds is generally ineligible under 24 CFR section 1003.207(b)(1), with some exceptions.

Given the immediate need for medical and personal protective equipment, and other related equipment needed to help prevent, prepare for, and respond to the COVID-19 pandemic in tribal communities, HUD has waived 24 CFR section 1003.207(b)(1) and authorized the use of ICDBG funds for the purchase of equipment necessary to prevent,

prepare for, and respond to the COVID-19. Equipment must be used for authorized program purposes, and any proceeds from the disposition of equipment will be considered ICDBG-CARES program income.

The auditor should check whether HUD issued further guidance on the disposition of program income after grant closeout. ICDBG grantees must ensure that ICDBG funds are used to supplement other federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

d. **Operating Expenses for Public Facilities**

**Regulatory Authority:** 24 CFR section 1003.207(b)(2)

**Description:** 24 CFR section 1003.207(b)(2) provides that expenses associated with repairing, operating, or maintaining public facilities, improvements, and services are generally ineligible, with some exceptions.

Indian tribes may find the need to use ICDBG funds to fund a variety of public facilities, including constructing facilities for testing, diagnosis, or treatment, rehabilitating existing facilities to establish infectious disease treatment clinics, acquiring and converting hotels, motels, or similar facilities to expand capacity of hospitals to accommodate isolation of patients during recovery, and more. These facilities will likely need to be operated and maintained for the duration of the COVID-19 pandemic. Accordingly, HUD has waived 24 CFR section 1003.207(b)(2) to the extent necessary to allow the use of ICDBG funds to pay for such operating and maintenance expenses of any public facility, to the extent it is used for COVID-19-related purposes. In incurring such costs, ICDBG grantees may not use this waiver to pay for associated staffing costs of such public facilities. ICDBG grantees must also ensure that ICDBG funds are used to supplement other federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

e. **New Housing Construction by Tribes**

**Statutory Authority:** Section 105 of the HCD Act

**Regulatory Authority:** 24 CFR section 1003.207(b)(3)

**Description:** 24 CFR section 1003.207(b)(3) generally prohibits the use of ICDBG funds for new housing construction, with some exceptions. ICDBG may be used for new housing construction if provided as last resort housing under 24 CFR Part 42, or when carried out by a Community-Based Development Organization (CBDO).

As HUD found in its 2017 Native American Housing Needs Study, severe overcrowding and substandard housing is a major challenge in Indian Country. These conditions increase risks of infection amongst low- and moderate-income Native American families. Indian tribes may find the need to construct temporary or permanent new housing to help prevent, prepare for, and respond to COVID-19, and may find it necessary to do so without having to carry out such activities through a CBDO. Accordingly, HUD has waived and modified Section 105 of the HCD Act and 24 CFR 1003.207(b)(3) to the extent necessary to provide for the following alternative requirement: Indian tribes and tribal organizations may use ICDBG funds to carry out new housing construction when such construction is carried out to reduce overcrowding, or to otherwise prevent, prepare for, or respond to COVID-19.

Such new housing construction must meet applicable federal accessibility requirements, including requirements under Section 504 of the Rehabilitation Act and 24 CFR Part 8.