

HUD Seeking Public Comment on Proposed Rule Making Technical Conforming Changes to ICDBG Program Regulations

HUD has issued a proposed rule in the Federal Register:

<https://www.federalregister.gov/documents/2024/01/10/2024-00039/submission-for-community-development-block-grant-program-consolidated-plans-and-indian-community>. This rule proposes to make various changes to the Community Development Block Grant (CDBG) program regulations. As part of this rulemaking effort, HUD is also making some conforming technical changes to the Indian Community Development Block Grant (ICDBG) regulations.

All public comments are due March 11, 2024. HUD strongly encourages Tribes to provide HUD with feedback through the public comment process.

Please note that this is not the rule that the Office of Native American Programs (ONAP) is currently conducting Tribal consultation on. After completing its consultation sessions, ONAP will review all Tribal feedback and comments received on the ICDBG program and propose a second proposed rule that will be make substantive changes to the ICDBG regulations.

The following is a summary of the ICDBG conforming changes proposed in the published CDBG/ICDBG proposed rule:

- 1) The proposed rule includes the following terms to the ICDBG Definitions section:
 - a. “activity delivery costs”; and
 - b. “mixed use property”.
- 2) The proposed rule clarifies that the following are Eligible Activities:
 - a. Mixed-use properties that also contain ineligible uses, so long as the recipient expends ICDBG funds only on the eligible use;
 - b. Creation of tornado shelters to be an eligible activity under certain circumstances (while this has been allowed as an eligible ICDBG activity, it is now being codified);
 - c. Essential repairs and operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosures;
 - d. Reconstruction of housing (while this has been allowed as an eligible ICDBG activity, it is now being codified); and
 - e. Provide assistance to an economic development project through a for-profit entity that passes the funds through a financing mechanism (*e.g.*, Qualified Opportunity Funds and New Market Tax Credit investment vehicles).
- 3) The proposed rule clarifies the distinction between “activity delivery costs” and “administrative costs”.
- 4) The proposed rule makes clarifying changes to the ICDBG National Objectives:
 - a. Clarify the regulatory requirements and provide better guidance on Limited Clientele activities for the following presumed Low-to-Moderate Income (LMI) groups:
 - i. Include persons who meet the federal poverty guidelines and persons who are insured by Medicaid as presumed LMI;

- ii. Replace the category of “battered spouses” with “survivors of domestic violence”;
 - iii. Propose to presume that victims of human trafficking are homeless and therefore LMI; and
 - iv. Clarify that “illiterate adults” means adults unable to read and write in English and in their first language, if the adult’s first language is not English.
 - b. Add an exception of substantial rehabilitation and conversion of a nonresidential structure to a multifamily, non-elderly rental housing project to LMI national housing objective criteria; and
 - c. Revise the Job Creation criterion on when a person may be presumed to be low-to-moderate income in order to clarify the standards for recipients and encourage greater use of ICDBG funds for job creation and retention activities in many Tribal communities.
- 5) The proposed rule aligns the Annual Status and Evaluation Report (ASER) due dates with the due dates for Annual Performance Reports under the Indian Housing Block Grant program and also proposes to revise the ASER report form.
- 6) The proposed rule clarifies that “public disclosure” may also be a disclosure through any of the following media:
- a. publication on the recipient’s website, including social media;
 - b. electronic mailings;
 - c. media advertisements;
 - d. public service announcements;
 - e. and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers.