

The Department of Finance and Administration, Local Government Division (“DFA”) hereby gives notice that DFA will conduct a public hearing in Room 309, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on August 26, 2008 at 10:00 a.m. concerning amendments to 2.110.2.10 NMAC, 2.110.2.17 NMAC, 2.110.2.18 NMAC and 2.110.2.19 NMAC of the Small Cities Community Development Block Grants Rule (hereinafter referred to as the “CDBG Rule”).

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on August 25, 2008, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Ariana Vigil, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4975 or from the DFA internet website

<http://nmdfa.state.nm.us>

IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AID OR SERVICES TO ATTEND OR PARTICIPATE IN THE HEARING, PLEASE CONTACT OUR OFFICES ONE WEEK PRIOR TO THE MEETING, OR AS SOON AS POSSIBLE.

#### **2.110.2.10 ELIGIBLE APPLICANTS**

**A.** All counties, incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

**B.** Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, etc., cannot apply directly for assistance, other than planning grants.

**C.** However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

**D.** Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3<sup>rd</sup> St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923.

[2.110.2.10 NMAC - Rp 2 NMAC 110.2.10, 08-30-01; A, 08-13-04 A, 09-28-07; A, xx-xx-08]

#### **2.110.2.17 APPLICATION REQUIREMENTS**

**A.** Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).

(2) Applicants in the economic development, emergency may be submitted at any time and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

(4) Planning, economic development and emergency applications may be submitted, at anytime, even if the applicant has not completed other CDBG projects.

~~[(5) Counties may submit multiple applications for planning grants for water associations.]~~

**B.** Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

**C.** Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

**D.** Application requirements for the following minimum requirements apply to all applications for

CDBG funding:

- (1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;
- (2) projects shall be completed within twenty-four months of an award of funding;
- (3) applications may not exceed \$500,000;
- (4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff.

**E.** Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy or certification of operation must be in place).

(2) All audit and monitoring findings, for CDBG projects, must be resolved.

(3) The current fiscal operating budget for any local public body applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/monthly reports are current before CDBG applications deadline.

(5) The following set aside categories are exempt from threshold requirement: planning, economic development, and emergency.

**F.** Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with ~~[Section 26 of these regulations]~~ 2.110.2 NMAC, all applications in the economic development category must provide at least ~~[two private dollars]~~ one private dollar for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

**G.** Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

**H.** Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

- (iv) water reuse systems for both potable and non-potable water;
  - (v) distribution system leak repair;
  - (vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;
  - (vii) water rate structures establishing rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility and are designed to encourage water-use efficiency and reuse in a fiscally responsible manner and
  - (viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.
- (c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

**I.** Asset management - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application (EPA 816-R-03-0160 September 2003). [2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07; A, xx-xx-08]

**2.110.2.18 APPLICATION PROCEDURES AND CONTENT:** The application packet provided by local government division will be used for infrastructure, housing, public facility, capital outlay, colonias, emergency categories, economic development and planning.

**A.** An applicant must submit an original and ~~three~~ two copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate council of governments.

**B.** Applications must be received at the local government division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed. [2.110.2.18 NMAC - Rp 2 NMAC 110.2.18, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, xx-xx-08]

#### **2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS**

**A.** Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

**B.** Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation,, department of health, state engineer's office, state agency on aging, economic development department, state fire marshal and governor's commission on disability

**C.** Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

**D.** Division staff will receive comments from state agencies regarding specific projects.

**E.** The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding ~~[consideration]~~ in the following categories: infrastructure, housing, public facility, capital outlay and colonias ~~[applications]~~ application categories. For infrastructure, housing, public facility, capital outlay and colonia application categories, the following nine (9) criteria are used to score the application. In addition, for colonias applications, the applicant needs to fulfill the four conditions in Subsection G of 2.110.2.19 NMAC.

(1) **Description and need** - (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. ~~[Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area:~~

~~\_\_\_\_\_ (a) lack of potable water;~~  
~~\_\_\_\_\_ (b) lack of an adequate sewage system;~~  
~~\_\_\_\_\_ (c) lack of safe, sanitary housing;~~  
~~\_\_\_\_\_ (d) source documentation must also be provided.]~~ It is only necessary to answer the questions on the application that pertain to the appropriate application category and do not answer questions on the application that pertain to other categories.

(2) **Benefit to low and moderate and appropriateness** - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or  
(b) addresses the prevention or removal of slum or blighting conditions; or  
(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) **Leveraging** - (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

(4) **Citizen participation** - (10 points) extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs;.  
(b) pledges opportunities for active citizen participation during the project, where applicable; and;  
(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

(5) **Planning** - (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local (ICIP), which has qualified for publication in the most recent local (ICIP) published prior to the CDBG application deadline.  
(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.  
(c) 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.  
(d) 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.  
(e) 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.  
(f) 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) **Feasibility/readiness** - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. Examples of actions that can be taken prior to submission of the application to receive maximum points are:

(a) ~~[acquire necessary property]~~ necessary real property or easements acquired; (5)  
(b) ~~[secure professional services]~~ professional services contract executed; (5)  
(c) ~~[complete plans, specifications, or preliminary engineering report, etc.]~~ completed plans, specifications, bid documents, or preliminary engineering reports; (5)  
(d) complete the environmental review process (5).

(7) **Cost benefit** - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

(8) **User fees and revenues** - (10 points) What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?

(a) Rates developed by asset management as presented by the New Mexico Tech, environmental finance center (EFC). (10 points)  
(b) rates developed by a rate analysis, excluding asset management or allowance for replacement of reserve funds. (5 points)  
(c) rates developed by other. (1 point)

(9) **Non-funded applicants** - (10 points) - Applicants that were not funded in the prior year.

**F. Planning criteria category**

(1) **Consistency (25 points):** Document the degree to which the proposed planning project is consistent with the applicants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan, or its planning documents or studies.

(2) **Appropriateness (25 points):** Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program, i.e.,

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender; or

(b) addresses the prevention or removal of slum or blighting conditions; or

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) **Public involvement (25 points):** Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan, including a minimum of one public hearing with proper notice in accordance with law.

(4) **Implementation strategy (25 points):** Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

**G. Colonias criteria category -** When submitting a colonias category application, the applicant shall provide documentation to substantiate that a majority of the following conditions exist in the project area:

(1) lack of potable water;

(2) lack of an adequate sewage system;

(3) lack of safe, sanitary housing;

(4) source documentation must also be provided.

~~[G.]~~ **H.** Economic development rating criteria is included in Section 2.110.2.26.

~~[H.]~~ **I.** Site visits will be conducted as needed during the ~~[application review process]~~ life time of the project to verify ~~[the]~~ or review information presented ~~[in an application]~~.

~~[I.]~~ **J.** Division staff will present its recommendations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

~~[J.]~~ **K.** Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, 12-14-06; A, 09-28-07; A, xx-xx-08]