

March 11, 2024

Regulations Division, Office of General Counsel  
Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, DC 20410-0500

RE: Docket No. FR-6148-P-01, Submission for Community Development Block Grant Program, Consolidated Plans, and Indian Community Development Block Grant Program Changes

The Council of State Community Development Agencies (COSCAR) is a national association dedicated to state programs supported by the U.S. Department of Housing and Urban Development Community Planning and Development (HUD-CPD) resources. COSCAR extends our sincerest appreciation to HUD on its publication of this federal register notice, Docket No. FR-6148-P-01. We are especially grateful to HUD-CPD's Office of Block Grant Assistance (OBGA) for their leadership and dedication to this effort.

The Community Development Block Grant (CDBG) program is a vital tool in addressing community-specific needs essential to quality of life and well-being of citizens nationwide. CDBG serves an effective role in facilitating projects and services critical to improving outcomes for low- and moderate-income populations. The access and availability of program funds remains unlike any program in the federal government. As such, changes become necessary for CDBG to adapt and respond to varying needs unique to individual communities.

Overall, COSCAR supports many provisions included in the proposed rule, its changes to program regulations and directives, and outcomes expected from these updates. Several proposed revisions to the current rule would better accommodate CDBG for economic development activities. Additionally, reforms to the public participation requirement are responsive to modern communications and media in the 21st century. Other provisions offer enhanced definitions to better clarify how CDBG can facilitate activities and benefit targeted populations.

Other proposals in the new rule concern states. Updates to the public benefit standard which provide further flexibility in addressing a CDBG national objective could fail to deliver investments as intended by the program. If retained in the final rule, we recommend that HUD issue guidance to ensure individual projects meet program goals. Additionally, the proposed updates on timeliness do not align with project timelines in state programs. We request further clarification as well specific to which proposed provisions in the rule apply to states as many only address entitlement grantees.

COSCAR remains committed to improving program performance and outcomes. As such, our association and partners continue to advance CDBG modernization through statutory updates. Targeted reforms include an increase to the state administrative cap (6%), the establishment of new construction of housing as an eligible

activity, and an increase to the public services cap (20%). We are also committed to strengthening program resources through program reauthorization. COSCDA recognizes HUD is unable to facilitate these changes as these involve statutory updates. We welcome HUD's endorsement and elevation of these priorities though in our outreach to the legislative branch.

The following responses have been informed by COSCDA's community development committee supported by state CDBG program directors. We would welcome an opportunity to partner with HUD on these and other areas critical to the program moving forward.

Sincerely,



Tess Hembree  
Executive Director

**Questions for Comment #1 (Low to Moderate Income Criteria – Creating and Retaining Jobs):**

*Would the proposed revised presumption encourage recipients to increase their use of funds for economic development activities?*

Yes, the proposed revised presumption would provide fewer barriers to recipients to use their respective CDBG funding for economic development activities. Specifically, a standardized presumptive poverty rate that aligns with areas of economic distress allows recipients to better apply resources to meet the national objective in support of low-to-moderate income (LMI) populations. Further, the updated requirement on application of American Community Survey (ACS) data instead of most recent decennial census affords use of the latest and most current demographic information in project identification and investment. The removal of the higher poverty requirement for central business districts addresses an ongoing complication in the program (especially in helping to facilitate CDBG in rural areas) and promotes greater flexibility to apply CDBG to communities. Additional revisions to the LMI jobs national objective with intent to improve readability and the removal of references to outdated programs should better communicate how funding recipients can facilitate project development through CDBG.

However, the revisions do not address the most challenging barriers to CDBG job creation projects: the pre-construction timeline to request federal funds and compliance with regulations on environment, labor, relocation, and procurement.

*Would the reduced burden on businesses be a significant or decisive factor in encouraging them to use CDBG funds for projects in underserved communities?*

Yes, the revised presumption regarding location of business could be a significant factor in a business accepting CDBG funding. It would depend upon the capacity of the business to ensure grant requirements are fulfilled as well as the ability of the grantee to provide necessary support to the business in fulfilling program/project compliance.

*What is the anticipated effect of eliminating the higher poverty requirement and the other poverty-related policies on private business investment in communities that lack access to opportunity?*

In general, CDBG requirements will not determine the business's location decisions, but rather will determine which business decisions can be supported with CDBG funding. The more consistent the requirements are, the more likely it is that CDBG funding can be a tool to support business success in a community with qualifying characteristics. Support for businesses in areas described by the simplified criteria is an important CDBG goal, even without the more targeted requirements for presumed LMI status.

In short, the proposed change should not be counted on as a major or definitive factor for a business to invest in an underserved community. Rather, updates to the poverty-related policies would reduce the burden on businesses and communities to demonstrate CDBG is being directed to meaningful developments aligned with the program's mission.

*What are the trade-offs between reaching more areas and having less targeting if the neighborhood poverty threshold is reduced from 30 percent to 20 percent?*

The revised policy is more applicable to entitlement programs than states as entitlements assess neighborhood-level poverty and related demographics to facilitate program investments. Typically, states rely on localities to share public needs and request funds for project development; what may be considered neighborhood-level in population for an entitlement could equate to an entire jurisdiction in the state program. Generally though the noted change adds clarity to the existing policy and eliminates nuances to better accommodate program investments.

*What other incentives could CDBG recipients establish that would encourage investment in communities, including historically marginalized communities of color, that have historically not received CDBG-funded investment or that experience relatively low private sector investment?*

The adoption of policies and procedures which can reduce program reporting, paperwork, and burdensome administrative compliance would be helpful in utilizing CDBG in traditionally underserved communities. Several flexibilities and waivers granted by HUD during the COVID-19 emergency declaration may be suitable to incorporate in state and local CDBG programs moving forward.

*How might HUD better encourage economic development in underserved communities, including historically marginalized communities of color, who have had disproportionately experienced disinvestment and have been denied economic opportunities?*

Streamlined reporting and a reduction of administrative requirements may better accommodate CDBG economic development investment in distressed communities. Clarification of CDBG requirements and rules through improved HUD technical assistance would also be helpful to communities and businesses.

### **Questions for Comment #2 (Modifying Prohibition on Assisting Relocation; Prevention or Elimination of Slums or Blight):**

*Relative to current requirements, would the proposed revision encourage recipients to carry out activities in underserved and blighted communities and therefore allow recipients to assist economic development in areas most in need of jobs and economic revitalization?*

Yes, the proposed revision better supports economic development in high-need areas. The revision encourages use of the National Program Objective to eliminate slum and blighted conditions without significant change to

the actual areas being targeted. The revision is a more understandable and clearer definition of blight, allowing flexibility while focusing on supporting documentation.

The added flexibility to allow LMAs to combine and retention of support to a relocated business is more applicable to entitlement programs than states. If a business determines that it will relocate outside of an LMA located in the non-entitlement program, it is likely to move far enough away that the new allowance would not apply.

*If the proposed revision does not encourage recipients to carry out activities in underserved and blighted communities, please explain why and share possible alternative standards that might more effectively balance HUD's goal of enabling recipients broader flexibility with using funds for remediation while still ensuring funds are allocated in a manner that broadly benefits the general public.*

A couple of recommendations may include –

- 1) HUD should give guidance on what criteria is detrimental to public health and safety. Local-specific conditions matter to determining what constitutes factors detrimental to public health and safety. An opportunity should be extended to allow communities this ability. An example could be a chart or other visual to define rehab and repair. Further, guidance could be shared detailing what is or is not slum or blight.
- 2) A name-change or rebranding of the category - calling it something less harmful than slum and blight may generate more interest in using program funds for project development. Alternative branding could include “local reinvestment” “place-based rehabilitation” "urban development” or “renewal.”

### **Questions for Comment #3 (Documentation of National Objectives Criteria Compliance – Creation or Retention of Jobs):**

*Are the proposed changes to the regulations, such as simplifying recordkeeping requirements, enough of an incentive for recipients to use CDBG funds for economic development activities?*

Yes, any simplification of the documentation will assist communities intending to use CDBG for economic development. COSCDA is supportive of the proposed revisions.

*Would the reduced burden on businesses encourage them to carry out economic development projects with CDBG funds in underserved communities?*

The reduced burden may encourage businesses in underserved communities that need support to pursue CDBG-funding. Other factors like availability of labor, geography, and access to other sources of capital are also important considerations to business development. Certainly, if CDBG is a suitable fit for business initiation or expansion, the revised policies make the program more attractive for alignment with the economic project.

*Because most grantees provide one-time assistance (such as a loan or grant) to each assisted business and because the wage for the job to be filled must be sufficient to allow the business to attract and retain the employee it needs, HUD does not anticipate this provision will produce any wage pressures. However, would the proposed change to substitute wage information for records of family size and income incentivize employers to keep wages at or below LMI levels in order to qualify for assistance?*

On its face, the proposed change may promote low wage work rather than support for entry-level jobs sufficient to support a family with several children. However, unless this has already occurred, we suggest HUD conduct or review economic research to support that CDBG-funded economic development projects would not

experience wage pressures that undermine the intent of the CDBG programs. One approach that may prove effective would be to include a requirement wherein the funds directed should be used to increase the proposed wage from one that would continue to be low-to-moderate after a probationary period, to one that increases the wage (after the probationary period) to exceed the low-to-moderate threshold as the funding year ends (incentivizing the scheduling of pay increases) with the CDBG funds.

HUD should exercise due diligence to ensure that the revised policies do not consequentially reduce wages for LMI populations.

*Are there alternative ways that might HUD better encourage economic development in underserved communities, including historically marginalized communities of color, particularly racially or ethnically concentrated areas of poverty, who have disproportionately experienced disinvestment and have been denied economic opportunities?*

One opportunity involves qualifying projects to meet a CDBG national objective (low and moderate-income populations) located in Small Business Administration (SBA) Historically Underutilized Business (HUB) zones. The SBA identifies areas with higher poverty levels at the census tract or county level to determine these special designations. HUB zones are regularly updated using the latest data. If a project is in a HUB zone, recipients could qualify the project in meeting a CDBG national objective. As a result, this would reduce time and resources needed to document and address the LMI national objective.

#### **Questions for Comment #4 (Special Economic Development Activities; Public Benefit Standard):**

*Would the proposed changes encourage a recipient to target CDBG projects in underserved communities in their jurisdiction?*

Yes, the proposed changes will help recipients better facilitate CDBG projects in underserved communities.

Regarding special economic development activities, recipients often experience issues with project timeliness when matching CDBG funds with other financing tools such as New Market Tax Credits (NMTC). The proposed change does not address this dilemma and therefore would not contribute to a recipient's ability to use CDBG with NMTC or similar financing.

The aggregate standard has proven difficult for grantees to navigate in the past. For example, in one state, CDBG economic development projects are often accommodated through CDBG investments to public infrastructure in support of business. However, since it is possible that another business will tap on to the water or sewer line, the aggregate standard is still in effect. As such, the amount of funds per person is not sufficient to move the project forward or considered minimal in comparison to the amount of required compliance. An elimination of the aggregate standard removes this barrier and allows recipients greater flexibility to facilitate economic development projects. In addition, the \$100,000 per FTE will encourage CDBG-ED use as the amount of funds available is more responsive to using the grant, its requirements, and business support.

*Would the proposed individual standards more accurately reflect the amount of CDBG funds necessary to carry out job creating activities?*

Yes, the updated standards better align with the amount of CDBG funding required for job-creation activities. The proposed changes of \$100,000 per FTE created/retained and \$2,000 per LMI person per goods/services would be more responsive to current job compensation and allows recipients greater justification to use CDBG

for business development. The updates will allow CDBG recipients to focus more funding on the creation and sustainability of smaller businesses which are the driving force of rural local economies.

*How frequently should the standard be updated for inflation, and should HUD update the standard automatically with a self-executing inflation calculation?*

Yes, the standard should be updated on a consistent basis with once every five years recommended as responsive timing accounting for inflationary changes.

#### **Questions for Comment #5 (Public Benefit Standard):**

*How can recipients demonstrate an alternative public benefit? For example, an increasing number of communities have either used or explored using CDBG funds for critical lifeline projects that have received funding from other Federal agencies, including the U.S. Department of Energy and the Federal Emergency Management Agency. Would it be appropriate to use objectives for other Federal programs to satisfy the CDBG program public benefit standards?*

COSCDAs would advise against the proposed change as presented and recommends further guidance to instruct recipients and the agency on demonstrating public benefit. Economic development projects can often be influenced by political pressure. While project outcomes may be good for residents and communities, the results may not meet CDBG goals.

The public benefit standards are clear measures of what is necessary to qualify CDBG funding for private business that cannot currently be influenced by local and state stakeholders. The standards protect both the grantee and business from accusations of favoritism or improper selection. If standards are flexible or non-existent, there would be concern political pressure could allow grantees too much ability to fund certain projects without qualifying data. Instead, evidence is needed to ensure funds meet a defined public benefit standard that supports CDBG goals.

In updating the public benefit standard, HUD should ensure that recipients have a process in place general and applicable to all recipients. Further, only recipients should be eligible to issue this request and not a third party. A cost-benefit analysis utilized by the CDBG recipient could offer supporting evidence of meeting a CDBG national objective. Additional consideration is advised for HUD to extend this flexibility as proposed and provide consistent and meaningful guidance to avoid situations of program investments not meeting a national objective. COSCDA offers its assistance to share further input to inform this process.

*Should there be additional criteria for what can be considered an alternative public benefit, and if so what might they be?*

As mentioned, consistent guidance creating boundaries for recipients to follow is strongly suggested. Also, an increase of \$100,000 standard for jobs created will mean a lower number of jobs supported in projects. HUD technical assistance should outline this change in outcomes for recipients to consider in program design and funding decisions.

#### **Question for Comment #7 (Closeout):**

*Would other or additional modifications to the closeout process ease grantee burden and ensure that HUD can confirm that grantees have met programmatic requirements prior to closeout?*

COSCOA supports the proposed closeout process overall. Regarding the proposed extension regulation, we recommend the following revision to item (d) (1):

(d) (1) Extension to allow for programmatic closeout for activities for which funds have been disbursed but which have not been completed.

(i) If the grantee has expended all grant funds at the time the final reports are due to HUD, but has not yet completed one or more activities to meet programmatic requirements, as defined in paragraph (c)(2) of this section, the grantee may request an extension of the end date of the period of performance by one year for completion of an activity(ies). The extension will be deemed approved 30 days after HUD receives the request, unless before that date HUD has notified the grantee that the extension is disapproved.

(ii) The grantee may request and HUD may authorize additional extensions of the end date of the period of performance by up to a total of two years for completion of an activity(ies).

(iii) However, this extension does not apply to the availability of any funds remaining in a grant's line of credit and HUD will initiate account closeout.

(iv) The recipient must submit an interim version of the final reports in accordance with and as required in paragraph (a) of this section, specifically noting any incomplete assisted activity. At the end of the extension period, or when the activity(ies) is completed, whichever is earlier, the grantee must submit the final reports including any required information regarding that activity(ies).

#### **Question for Comment #8 (Timely Performance; Timeliness and Program Income):**

*In proposing this shift, HUD is aware that the overall balance of funds in CDBG lines of credit may increase. Given the commitment to quarterly public status reports at the grant level, is this problematic? If yes, how? Also, if yes, suggest an alternate approach. If you are a grantee, will the timeliness proposal affect your local activity choices in favor of transformative or major construction projects?*

Do the proposed changes affect state programs? If so, the quarterly reporting would prove burdensome to non-entitlement recipients due to the amount of information involved to collect and input for documentation. Lines of credit may increase for states which already experience issues in timeliness. The proposed change may affect some state program activities, altering the types of activities and projects which receive priority and investments. As HUD looks to support states and entitlements in directing CDBG for projects with significant benefit to targeted populations, the update to quarterly reporting may inflict unnecessary pressure on recipients to make these types of investments.

*Additionally, the Department seeks feedback from the public, including from States, on whether it would be appropriate to apply the proposed new timeliness requirements for entitlements to States.*

The revised requirements would further reduce the ability of states to expend funds and meet HUD timeliness standards. More time is generally involved for states to expend funds and complete projects than entitlements. Several factors contribute to program timelines such as inconsistencies in program funds being received, extensive time involved in receiving funds from HUD, processing project proposals to vet and award funds, completing regulatory requirements such as environmental reviews, and navigating weather and seasonal conditions for construction, as well as providing technical assistance to smaller, rural non-entitlement communities with minimal capacity to complete work quickly. Often the role of the state as the funder of a project in a non-entitlement area includes assisting the unit of general local government in their procurement,

contracting, and project pre-development due diligence, or to identify and develop partnerships with local nonprofits to undertake projects with CDBG funds, extending the pre-project timeline of each project by months, if not years. Entitlements on the other hand typically can align their programs with investment priorities in a more expedient manner. This is accommodated by identifying locations to direct program funds and type of activity for investment ahead of funding receipt.

An additional reporting requirement as proposed would add further time and commitment to already limited programs at the state level and increase the burden on the non-entitlement units of general local government and their local subrecipient partners, already relying on the state for capacity support. The requirement is unnecessary and the attention necessary to address it may divert staff away from more meaningful areas of program management.

The proposed requirement may be intended to install practices encouraged by HUD previously for use of program income and Section 108 funds. If so, the move to install quarterly reporting may encourage states to reduce or eliminate activities which generate program income unless recipients maintain strong financial management and tracking capabilities.

The temporary increase in lines of credit funding, as a result of reprogrammed program income, can be accounted for by a phased implementation to the revised expenditure deadlines or by allowing non-entitlement units of general local government and their pass-through subrecipients to reprogram retained program income into new activities without requiring the funds to be returned to the state and re-awarded for the new activity following a full application process.

**Question for Comment #9 (Criteria for National Objectives—Meeting a National Objective, Appropriate Data Source):**

*Is six years from the initial drawdown of CDBG funds an adequate time period to demonstrate that activities have met a national objective?*

Yes, the six years proposed do provide enough time to demonstrate that activities have met a national objective. In concept, the timeline is sufficient to accomplish this. However, the challenge exists in demonstrating an activity has met a national objective in the Integrated Database Information System (IDIS). IDIS does not permit a grant closeout to occur without the input of an accomplishment. In the provided example, in which HUD funds are used for eligible costs incurred early in the project timeline, and drawn, other (local and non-federal) funds are supporting the project as well, for costs incurred months - if not years - after the initial project costs are incurred with federal funds. The other areas of the project remain incomplete and may not be completed within the six-year timeframe. Since accomplishments cannot be recorded until the project has been completed, grantees are unable to input this information until that time even though CDBG funds would be drawn down. Two changes are necessary to overcome the issue created by the proposed timeline: 1) An updated IDIS will need to accommodate when separate funds are drawn, and accomplishments completed. 2) The availability of a waiver or similar allowance will be essential to account for longer timelines typical that larger projects take to complete.

For projects which do require additional time due to unforeseen circumstances, it is recommended that HUD include a section in the CAPER for recipients to request an exception; this request function could be built around the existing activity remediation section. The accommodation would ensure transparency of any exception proposed and reduce burdens on HUD in reviewing requests.



**Question for Comment #10 (Period of Performance):**

*Is the proposed six-year period of performance an appropriate period of time to expend funds for activities under a given grant?*

A six-year period is adequate for activity completion, however the same timeline is not sufficient to expend all funds within an individual grant. COSCDA strongly recommends maintaining the seven-year period.

For states, a grant will involve activities obligated within the first fifteen months of the period of performance as well as additional activities supported by previously obligated funds that were never applied due to varying circumstances including projects that come under budget, fail to move forward, and use other funding sources and no longer use CDBG; funds which are returned to the grantee. Economic development projects such as job creation projects cited throughout this proposed rule are often less precise in determining funding amounts needed for project completion.

Two years is typically required for a grant cycle on infrastructure projects. The proposed rule fails to accommodate the necessary timing of varying program activities: time for original subrecipient award (two years); time to assess compliance, finalize monitoring and allowable costs, reprogram funds, and identify new activities to be funded (one year; second award (two years); assess compliance, finalize monitoring and allowable costs, identify any final deobligated funds, and identify existing activities that may receive these funds through a substitution process (six months); and assess compliance, finalize monitoring and allowable costs, and confirm no remaining funds are available. States are prohibited from directly carrying out activities, therefore efficiencies in timelines to meet the period of performance must realistically be managed by funding simple projects that are the least likely to encounter project delays or budget updates. States must balance the risks of funding early project development costs to ensure timely expenditure of funds and retain a portion of funds in order to meet timely completion of the activity for closeout, in order to ensure projects are completed in accordance with all required compliance resulting in the timely delivery of performance measures.

Last, it is requested that the period of performance end on September 1 of the year that falls seven years after the approval of a grant agreement. The standard date allows for best practices in program cycle planning, especially given the unpredictable schedule of the appropriations process. Seven years is consistent with current CDBG requirements regarding expenditure of funds.

An effective date is needed for the period of performance tied to a specific grant year of origin; as these changes are intended to effect changes in activity selection and may require program redesign, the end date for the period of performance should be established only for grants issued after the effective date of this rule and no earlier than grant year of origin 2024.

**Question for Comment #11 (Low- and Moderate-Income - Limited Clientele):**

*Would the proposed definition for adult illiteracy accurately reflect the presumed LMI group of “illiterate adults”?*

On this question, there is no objection to the proposed change.

Although not directly related to the question, we strongly support the additional categories of limited clientele presumed LMI benefit since means testing for federal poverty guidelines and state Medicaid coverage clearly supports the population intended to be assisted by CDBG funding.