

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 1000**

[Docket No. FR-5093-I-01]

RIN 2577-AC69

Extension of Minimum Funding Under the Indian Housing Block Grant Program

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

ACTION: Interim rule.

SUMMARY: This interim rule provides authority for Indian tribes to receive a minimum grant amount under the need component of the Indian Housing Block Grant (IHBG) Formula for Fiscal Year (FY) 2007. The minimum funding provision currently in effect in HUD's regulations limited authority for receipt of a minimum grant amount to FY2006. HUD and Indian tribes, through negotiated rulemaking procedures, developed and published a proposed rule to address ways to improve and clarify the IHBG Formula regulations, including the minimum funding provisions. The reinstatement of the authority for minimum grant amounts in FY2007 will avoid hardship to the affected tribes until the revised minimum funding provisions contained in the negotiated rule are issued as a final rule and become effective.

DATES: *Effective Date:* November 20, 2006.

Comment Due Date: December 18, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD

Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410-0001; telephone (202) 401-7914 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) streamlined the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

The regulations governing the IHBG Program are found in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. The part 1000 regulations were established as part of a March 12, 1998, final rule implementing NAHASDA. In accordance with section 106 of NAHASDA, HUD developed the March 12, 1998, final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570).

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula (IHBG Formula) that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the IHBG Formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301-1000.340). The IHBG Formula consists of two components: (1) Need and (2) formula current assisted stock (FCAS). Generally, the amount of

funding for a tribe is the sum of the need component and the FCAS component, subject to a minimum funding amount authorized by § 1000.328.

The minimum funding provision at § 1000.328 provides that in the first year of NAHASDA participation, an Indian tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant adjusted to \$50,000. In subsequent fiscal years, an Indian tribe whose allocation is less than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000. As originally adopted by the negotiated rulemaking committee and reflected in the March 12, 1998, final rule, § 1000.328 provided that minimum funding under the need component would not extend beyond Fiscal Year 2002.

Section 1000.328 also specifies that the need for the minimum funding provisions will be reviewed in accordance with § 1000.306. Section 1000.306 provides that the IHBG Formula be reviewed within five years after promulgation to determine whether any changes are needed. The negotiated rulemaking committee intended that the IHBG Formula would be reviewed before expiration of the minimum funding provision.

In accordance with § 1000.306, HUD established a negotiated rulemaking committee for the purposes of reviewing and developing changes to the regulations governing the IHBG Formula, including the minimum funding provisions. However, the work of the committee continued beyond FY2002 and the expiration of the minimum funding provisions. Accordingly, on June 24, 2003 (68 FR 37660), HUD published an interim rule extending the minimum funding under the need component through FY2003 in order to avoid hardship to the affected Indian tribes. The interim rule provided for a 60-day public comment period. HUD received no comments in response to the interim rule. Due to the ongoing work of the negotiated rulemaking committee, the minimum funding provisions were again extended through FY2006 (see the interim rules published on June 17, 2004 (69 FR 34020) and January 27, 2005 (70 FR 4000)).

On February 25, 2005 (70 FR 9490), HUD published the proposed rule that was developed by the negotiated rulemaking committee. However, because the final rule implementing these regulatory changes has not yet been published and made effective, HUD has determined that an additional extension is required for the minimum

funding provision of § 1000.328. If action is not taken now to extend the minimum funding provision, Indian tribes, especially small Indian tribes, would be affected by the lapse of the minimum funding provision.

II. This Interim Rule

The interim rule authorizes for FY2007 the provision in § 1000.328 with respect to the minimum funding amount under the need component of the IHBG for tribes returning for their second or subsequent year's grant. The provision with respect to the \$50,000 an Indian tribe receives in its first year of funding under the IHBG Program is not revised by this interim rule. That provision, unlike the minimum funding amount for returning Indian tribes, has no expiration date. Accordingly, this rule applies only to the minimum grant amount that returning Indian tribes may receive.

The reinstatement of the authority for minimum grant amounts in FY2007 will avoid unnecessary hardship to the many Indian tribes until the revised minimum funding provisions contained in the negotiated proposed rule are issued as a final rule and become effective. Once effective, the minimum funding provisions established by the negotiated final rule will supersede the current regulations. In the interim, affected tribes will not suffer a financial loss because of the expiration of the minimum funding provision in the current regulation.

III. Justification for Interim Rulemaking

Generally, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The rule will allow a minimum amount of funding to continue to Indian tribes without a significant lapse in time during which the tribes would be foreclosed from receiving funds entirely or would receive a significant reduction in funds. The funding meets a critical need of many tribes, which would go unmet during the time that it otherwise would take to publish a rule for effect. Further, as noted above in this

preamble, this interim rule follows publication of other HUD interim rules, which similarly extended the IHBG minimum funding provisions. The rules were non-controversial and welcomed by Indian tribes. Although the previous interim rules invited public comments, HUD did not receive any public comments opposed to the extension of the minimum funding provisions. HUD, however, solicits public comment on this rule.

IV. Findings and Certifications

Executive Order 13132

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This interim rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for the June 24, 2003, interim rule, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding remains applicable to this interim rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule does not impose any new or modify existing regulatory requirements. Rather, the rule is exclusively concerned with extending the minimum funding provisions under the need component of the IHBG Formula. To the extent the interim rule has any impact on small entities, it will be to the benefit of small Indian tribes that are the primary beneficiaries of the minimum funding provisions. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the IHBG Program is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public Housing, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 1000 to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 2. Revise § 1000.328 to read as follows:

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant

adjusted to \$50,000. The Indian tribe's IHP shall contain a certification of the need for the \$50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2007, an Indian tribe whose allocation is less

than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000. The need for this section will be reviewed in accordance with § 1000.306.

Dated: September 20, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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