

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 1000

[Docket No. FR-4999-P-01]

RIN 2577-AC61

**Use of Indian Housing Block Grant
Funds for Rental Assistance in Low-
Income Housing Tax Credit Projects**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Indian Housing Block Grant (IHBG) program regulations to specify the conditions under which IHBG funds may be used for project-based or tenant-based rental assistance. The proposed rule clarifies that such rental assistance may be provided in a manner consistent with assistance provided under section 8 of the United States Housing Act of 1937 on behalf of a tenant receiving assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

DATES: *Comment Due Date:* August 7, 2007.

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 www.regulations.gov. HUD strongly encourages commenters to submit comments electronically so that HUD can 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 www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, Director, Office of

Grants Management, Office of Native American Programs, United States Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202-4801; telephone (303) 675-1625 (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) changed 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. NAHASDA and its implementing regulations recognize tribal self-determination and self-governance while establishing reasonable standards of accountability. The regulations governing the IHBG program are located in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations.

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using an allocation formula, developed with the active participation of Indian tribes and using negotiated rulemaking procedures. The IHBG allocation formula is based on factors that reflect the need of Indian tribes for affordable housing activities. Based on the amount of funding appropriated annually for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan (IHP) for each Indian tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made. An Indian tribe (or its tribally designated housing entity (TDHE)) may use its IHBG funds for a wide range of affordable housing activities, including the provision of project-based or tenant-based rental assistance for eligible families.

II. Low-Income Housing Tax Credits

In 1986, Congress amended the Internal Revenue Code to create the Low Income Housing Tax Credit (LIHTC) (see 26 U.S.C. 42), a tax incentive to promote the development of affordable rental

housing. These tax credits encourage investment in affordable housing by providing developers a source of equity investment—an ownership interest in the housing project—in exchange for an agreement to limit rents to a level that would be affordable to low-income households. State housing agencies competitively allocate the credits to private developers who acquire, construct, or rehabilitate affordable rental housing.

Eligible projects receive Federal income tax credits over a 10-year period using a formula that, in part, takes into account certain eligible costs called “eligible basis.” Generally, Federal grants used with respect to a building or for its operation thereof result in a dollar-for-dollar decrease in eligible basis. However, the Internal Revenue Service (IRS) has recognized that certain types of Federal rental assistance payments are not Federal grants that require a reduction in a building's eligible basis. They include payments made pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (Section 8) and comparable programs or methods of rental assistance designated by the Secretary of the Treasury by publication in the **Federal Register** or in the Internal Revenue Bulletin. (See the IRS regulations at 26 CFR 1.42-16(b).) Section 8 is the statutory authority for HUD's principal rental assistance programs—the tenant-based Housing Choice Voucher program (with implementing regulations at 24 CFR part 982) and the Project-Based Voucher program (with implementing regulations at 24 CFR part 983).

HUD rental assistance programs (such as the project-based voucher program) address the requirements that apply when such program rental assistance is provided to tenants residing in LIHTC projects. However, the IHBG program regulations are silent with regard to the use of IHBG rental assistance in these projects. HUD has received requests from several Indian tribes and TDHEs that are IHBG recipients and wish to use their IHBG funds for LIHTC projects. Specifically, these requests came from eight IHBG recipients as well as one Native American housing association representing 32 Indian tribes, all requesting that HUD address the inability to use IHBG grants in LIHTC projects without penalty (*i.e.*, without the amount of the grant coming out of a building's eligible basis). This proposed rule would address these tribal requests.

III. This Proposed Rule

The proposed rule would add a new § 1000.103 to specify the conditions under which IHBG funds may be used for tenant-based or project-based rental assistance. Proposed § 1000.103 would clarify that IHBG funds may be used for project-based or tenant-based rental assistance. Further, the proposed rule clarifies that IHBG funds may be used for project-based or tenant-based rental assistance that is administered in a manner consistent with Section 8. IHBG funds used for project-based or tenant-based rental assistance must comply with the requirements of NAHASDA and 24 CFR part 1000. Only the Secretary of the Treasury may make a determination that project-based or tenant-based rental assistance complies with IRS regulations at 26 CFR 1.42–16(b) and, therefore, will not reduce the building's eligible basis. This proposed rule is necessary in order to begin the process of requesting IRS approval for the combination of IHBG funds with LIHTCs. This proposed rule, when promulgated in final form, will allow for such determination to be made. This proposed rule would not limit the range of eligible activities that an Indian tribe or TDHE may undertake. It merely will clarify one permissible use of IHBG funds.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection 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, please schedule an appointment to review the docket file by calling the Regulations Divisions at (202) 708–3055 (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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (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 rule would clarify that IHBG funds may be used for project-based or tenant-based rental assistance that is provided in a manner consistent with assistance provided under section 8 of the United States Housing Act of 1937 on behalf of a tenant receiving assistance under NAHASDA. This rule would not impose new requirements on IHBG program participants. 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.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made 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)). The Finding of No Significant Impact 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, please schedule an appointment to review the rule docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does

not have federalism implications and does not impose substantial direct compliance costs on state and local governments or 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 on the private sector. This rule would not impose any Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.862.

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.

For the reasons described in the preamble, HUD proposes to amend 24 CFR part 1000 to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

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

Authority: 25 U.S.C. 1401 *et seq.* and 42 U.S.C. 3535(d).

2. Add § 1000.103 to read as follows:

§ 1000.103 How may IHBG funds be used for tenant-based or project-based rental assistance?

(a) IHBG funds may be used for project-based or tenant-based rental assistance.

(b) IHBG funds may be used for project-based or tenant-based rental assistance that is provided in a manner consistent with section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) IHBG funds used for project-based or tenant-based rental assistance must comply with the requirements of NAHASDA and this part.

Dated: May 3, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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