

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR-4825-I-01]

RIN 2577-AC43

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 revises the current regulation to extend the period for which an Indian tribe, after its first year of funding, may receive a minimum grant amount under the need component of the Indian Housing Block Grant (IHBG) formula. The minimum funding provision in the regulation for returning tribes expired on September 30, 2002. This interim rule authorizes the extension of the minimum funding provision under the need component through Fiscal Year 2003 to avoid hardship to the affected tribes.

DATES: *Effective Date:* July 24, 2003.

Comment Due Date: August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

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 via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

HUD issued regulations at 24 CFR part 1000 to implement certain provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*). Specifically, pursuant to section 302 of NAHASDA

(25 U.S.C. 4152), a formula was established to allocate funding for block grants among Indian tribes. In accordance with section 302, the formula was based on enumerated factors that reflected the need of the Indian tribes. The formula, as required by section 106 of NAHASDA, was developed through negotiated rulemaking. The final rule published on March 12, 1998 (63 FR 12349), provided, at 24 CFR 1000.328, for the minimum funding amount a tribe could receive under the need component of the formula. Section 1000.328 also provided that the minimum funding would not "extend beyond Federal Fiscal Year 2002." A further provision in § 1000.328 specified that "[T]he need for § 1000.328 will be reviewed in accordance with § 1000.306."

As indicated above, § 1000.328 contains a sunset provision with respect to the minimum funding amount, that is, funding would not "extend beyond Federal Fiscal Year 2002." Section 1000.306 (referenced in § 1000.328) provides for a review within five years of the promulgation of the rule to determine the need for the subsidy. It is clear, therefore, that the regulation when adopted intended that the IHBG formula would be reviewed before expiration of the minimum funding provision.

The negotiated rulemaking committee that will review the formula met on April 29, 2003. Resolving the issue of minimum funding by the negotiated rulemaking committee, however, may not be reached for several months. Consequently, because the minimum funding provision has expired and some time may elapse before the resolution of this issue by the negotiated rulemaking committee, if no action is taken now to extend the minimum funding provision, small tribes especially would be affected by the lapse in the funding provision.

This Interim Rule

This interim rule extends to Federal Fiscal Year 2003 the provision in § 1000.328 with respect to the minimum funding amount for returning tribes under the need component of the IHBG. The provision with respect to the minimum grant amount, *i.e.*, \$50,000, a tribe may receive in its first year of funding remains unchanged in this rule. That provision, unlike the minimum funding amount for returning tribes, has no expiration date. Accordingly, this rule applies only to the minimum grant amount that returning tribes may receive.

The Department believes that enlarging the time to Federal Fiscal Year 2003 for returning tribes to receive the

minimum grant amount would avoid unnecessary hardship to many tribes. Additionally, adoption of this rule allows more time for the negotiated rulemaking committee to meet to review the IHBG formula, including the issue of minimum funding. In the interim, the affected tribes will not suffer a financial loss because of the expiration of the provision in the current regulation.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department 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 the Department 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."

The Department 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 harmful reduction. The funding meets a critical need of many tribes, which will go unmet during the time that it otherwise would take to publish a rule for effect. The Department is still, however, soliciting public comment on this rule. Any comments received on this rule will be considered in adopting the final rule.

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, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-

1538) 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 mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

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 interim 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.

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). The finding of no significant impact is available for public

inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although HUD has determined that this interim rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any 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 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. An 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 2003, 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: May 30, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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