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Part II

Department of Housing and Urban Development

24 CFR Part 1000

**Indian Housing Block Grant Allocation
Formula; Notice of Intent To Establish a
Negotiated Rulemaking Committee and
Request for Nominations; Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 1000

[Docket No. FR-4676-N-01]

**Indian Housing Block Grant Allocation
Formula; Notice of Intent To Establish
a Negotiated Rulemaking Committee
and Request for Nominations**

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

ACTION: Notice of intent to establish a Negotiated Rulemaking Committee and request for comments.

SUMMARY: HUD announces its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. The establishment of the committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG Program. Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a document in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for membership on the committee. The purpose of this document is to implement the requirements of section 564.

DATES: Comment Due Date: August 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding the Committee and its proposed members to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Office Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW., Washington, DC 20410-0500; telephone

(202) 401-7914 (this number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1998 (63 FR 12349), HUD published its final rule implementing the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (referred to as "NAHASDA"). NAHASDA reorganized the system of Federal housing assistance to Native Americans by eliminating several separate HUD programs of assistance and replacing them with a single 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. As required by 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). The March 12, 1998 final rule created a new 24 CFR part 1000 containing the regulations for the IHBG Program.

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 that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301-1000.340). Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made. In Federal fiscal year 2001, HUD allocated approximately \$643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provide that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003.

However, the recently enacted Omnibus Indian Advancement Act (Pub.L. 105-568, approved December 27, 2000) (referred to hereafter as the "Omnibus Act") makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to revisit the IHBG formula and to determine whether any changes, in addition to those mandated by the Omnibus Act, should be made to 24 CFR part 1000, subpart D.

The Omnibus Act made two statutory changes concerning allocations under the IHBG formula. First, section 1003(g) of the Omnibus Act amends section 302(d)(1) of NAHASDA to address the allocation of funds for operation and modernization of housing units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the "1937 Act") to tribes with an Indian housing authority that owns or operates fewer than 250 units. Further, section 1003(k)(3) of the Omnibus Act amends section 502(a) of NAHASDA to provide that any housing that was subject to a terminated contract for tenant-based assistance under the 1937 Act shall be treated as a dwelling unit for purposes of section 302(b)(1) of NAHASDA (which establishes the factors for determination of need under the IHBG formula).

II. Negotiated Rulemaking

HUD intends to establish a negotiated rulemaking committee for the purpose of reviewing HUD's regulations for the IHBG formula (24 CFR part 1000, subpart D), and negotiating recommendations for a possible proposed rule modifying the formula. The committee membership will consist of elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule. The committee would be established, and conduct its work, in accordance with the procedures of the Negotiated Rulemaking Act of 1990.

The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems. The establishment of the negotiated rulemaking committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the

distribution of funds under the IHBG formula.

The use of negotiated rulemaking procedures in this matter is consistent with the statutory goal of NAHASDA to respect the rights of Indian self-determination and tribal self-governance. Negotiated rulemaking also conforms to the consultation requirements of Executive Order 13175, entitled "*Consultation and Coordination with Indian Tribal Governments*," issued on November 6, 2000 (the Order was published in the **Federal Register** on November 9, 2000 at 65 FR 67249). Executive Order 13175 requires that Federal agencies establish regular and meaningful collaboration with Indian tribal officials in the development of Federal policies that have tribal implications.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide certain information regarding the formation of the committee, and solicit nominations for selection to the committee. The purpose of this notice is to implement the requirements of section 564.

III. Committee Membership

HUD's goal is to develop a committee whose membership reflects a balanced representation of Indian tribes. NAHASDA acknowledges the government-to-government relationship that exists between the Federal Government and federally-recognized Indian tribes. In furtherance of this fundamental principle, membership on the committee shall be limited to elected officers of tribal governments (or authorized designees of those tribal governments). HUD has determined that a total of 18 tribal representatives will fairly represent the wide range of diverse interests needed. One HUD representative will represent the interests of the Federal Government. Travel and per diem costs will be paid by HUD on an as-needed basis.

Section IV. of this notice establishes a procedure for nominating individuals with the requisite experience and expertise, representing a wide range of interests (including geographically diverse small, medium and large tribes) that are willing and able to work within a consensus framework, on determining the need to revise the IHBG allocation formula. HUD invites interested persons and organizations to submit nominations for members of this committee. HUD will review the nominations submitted for committee

membership to ensure that those selected will reflect the diversity of tribes in terms of size, location, and special circumstances. After review of all the nominations, HUD will publish a notice in the **Federal Register** announcing its proposed list of committee members, and soliciting public comment on the proposed membership.

HUD does not believe that each potentially affected tribe must have its own representative. However, HUD must be satisfied that the group as a whole reflects a proper balance and mix of interests. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

IV. Nominations for Committee Membership

Interested persons and organizations may nominate persons for committee membership by submitting a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice no later than August 15, 2001. Nominations for membership on the committee must include:

1. The name and address of the nominee and a description of the interests such person shall represent;
2. Evidence that the nominee is authorized to represent a tribal government or group of tribal governments related to the interests the person proposes to represent;
3. A written commitment that the nominee shall actively participate in good faith in the development of the rule under consideration; and
4. A written statement indicating how the nominee meets the following five selection criteria:
 - The nominee is an elected tribal officer, or is otherwise authorized by the tribal government to act on the tribe's behalf during the negotiated rulemaking sessions;
 - The nominee has demonstrated housing experience as a member of the board of commissioners of a housing authority, housing entity, or other tribal organization;
 - Selection of the nominee will help to ensure the committee contains an appropriate balance of representatives from small, medium and large Indian tribal governments;
 - Selection of the nominee will ensure the geographic diversity of the committee membership; and
 - The nominee has demonstrated ability to analyze and extrapolate complex data.

V. Final Committee Membership

After reviewing any comments on this notice and all nominations for membership, HUD will issue a follow-up **Federal Register** notice. That notice will announce HUD's proposed list of negotiated rulemaking committee members, and provide the public with an opportunity to comment on the proposed membership. The notice will also provide interested individuals and organizations with an additional opportunity to submit nominations for committee membership. HUD will announce the final composition of the negotiated rulemaking committee in a **Federal Register** notice.

VI. Tentative Schedule

At this time, HUD's tentative plan is to hold the first committee meeting in [insert approximate dates and locale]. The purpose of the meeting will be to orient members to the negotiated rulemaking process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter.

Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided the opportunity to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. In the event that the date and time of these meetings are changed, HUD will advise the public through **Federal Register** notice.

VII. Applicability of the Federal Advisory Committee Act (FACA)

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA) do not apply to this negotiated rulemaking committee. In accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4, approved March 22, 1995), FACA is not applicable to consultations between the Federal government and elected officers of Indian tribal governments (or their designated employees with authority to act on their behalf).

The Office of Management and Budget (OMB) has issued guidelines implementing section 204(b). The OMB

guidelines interpret the exemption broadly to include State, local, or tribal representative with the authority to act on behalf of the State, local, or tribal government, regardless of their actual employment status. As the OMB guidelines provide:

In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration. This exemption applies to meetings between Federal officials and employees and State,

local or tribal governments acting through their elected officers, officials, employees, and Washington representatives, at which 'views, information, or advice' are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive Order. The scope of meetings covered by this exemption should be construed broadly to include meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the

purpose of seeking consensus, exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration. (OMB Memorandum 95-20 (September 21, 1995), pp. 6-7, published at 60 FR 50651, 50653 (September 29, 1995)).

Dated: July 9, 2001.

Alphonso Jackson,

Deputy Secretary.

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