

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 1000****[Docket No. FR-4517-P-01]****RIN 2577-AC14****Revision to Cost Limits for Native American Housing****AGENCY:** Office of Public and Indian Housing, HUD.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would revise the way construction costs are controlled in the Indian Housing Block Grant (IHBG) program administered by IHBG grantees, who are Indian Tribes or their Tribally Designated Housing Entities (TDHEs). It would replace the system of HUD-established Dwelling Construction and Equipment costs with a choice between HUD-established Total Development Costs or standards established by the TDHE based on standards in its geographic area. This rule also would provide that the construction, acquisition, or assistance of non-dwelling buildings is either subject to standards established by the TDHE or to documentation of comparability to the size, design and amenities of similar buildings constructed in the geographic area.

DATES: *Comments Due Date:* June 19, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed 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. 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: Bruce Knott, Office of Native American Programs, at 303-675-1600, extension 3302, or email him at the following address: Bruce_A_Knott@hud.gov. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Reason for the Proposed Change**

Under the United States Housing Act of 1937 ("1937 Act") (42 U.S.C. 1437 *et*

seq.), the construction cost limits were called Total Development Cost limits, informally referred to as TDCs. These limits included the total cost of development, including both soft and hard costs of construction.

Under the Native American Housing Assistance and Self-Determination Act (NAHASDA)(25 U.S.C. 4101 *et seq.*), the new regulations provided for a new system of construction cost limits called Dwelling Construction and Equipment costs, also referred to as DC&Es (see 24 CFR 1000.156). In response to concerns expressed by tribes, the negotiated rule making (neg reg) committee designed DC&Es to begin from the same base design as TDCs, but limit only the hard costs of construction within five feet of the foundation, believing this would provide more flexibility in resolving unusual site cost issues. When tribes/TDHEs actually began utilizing DC&Es, they found them to be a barrier in providing housing as many tribes had historically used part of the soft cost allocation for the actual construction; therefore, when the cost limits included money for only the hard costs, the limits were inadequate.

In response to these new concerns, the National Office of Native American Programs (NONAP) began working with a tribal consulting group on the cost limit issue in the fall of 1998. This group was comprised of a tribal representative from each of the ONAP office jurisdictions, one HUD field staff person, and two HUD Headquarters staff. Their objective was to write language that incorporated both the self determination and affordable housing intentions of NAHASDA. This group wrote proposed changes for dwelling cost limits. This language was mailed to tribes and TDHEs for consultation in January, 1999. This group then wrote non dwelling cost limits and mailed them to tribes/TDHEs for consultation in April, 1999. The rule reflects comments received during the consultation and during HUD's clearance process.

Implications

If these proposed changes are adopted in substantially the same form as below, the Department will publish TDCs, instead of the present DC&Es. The tribes/TDHEs will choose whether to use the published TDCs, or develop their own standards, consistent with this rule.

Findings and Certifications**Public Reporting Burden**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply to

the proposed information collection requirements contained in §§ 1000.158 and 1000.162 because HUD anticipates that the requirements will apply to fewer than 10 TDHEs.

Consultation With Indian Tribal Governments

In accordance with Executive Order 13084, *Consultation and Coordination With Indian Tribal Governments*, issued on May 14, 1998, the Department has consulted with representatives of tribal governments concerning the subject of this rule. As described above, the rule originated from concerns brought to our attention by tribal representatives. In accordance with that Executive Order, the docket file for this rulemaking contains copies of written communications submitted to HUD by tribal governments.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires that an agency analyze the impact of a rule on small entities whenever it determines that the rule is likely to have a significant impact on a substantial number of small entities. While many TDHEs may be small entities, the effect of this rule developed in consultation with tribal representatives, will not be likely to have a significant impact on a substantial number of them. As mentioned above, it is expected that fewer than 10 TDHEs will be affected by this rule. To the extent that small entities will be affected, the impact is expected to be beneficial, as a result of the consultation that has taken place. We encourage small entities to submit comments, however, on ways that the impact of the rule on them could be minimized.

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. 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 at the address stated above.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, *Federalism*, has determined that this rule does not impose substantial direct compliance costs on States or local governments or preempt State law within the meaning of the Executive Order. As a result, the

rule is not subject to review under the order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year.

Regulatory Review

The Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made in this proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Catalog

The Catalog of Federal Domestic Assistance number for this 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, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to amend part 1000 of title 24 of the Code of Federal Regulations 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. 4101 *et seq.*; 42 U.S.C. 3535(d).

2. Revise § 1000.156 to read as follows:

§ 1000.156 Is affordable housing developed, acquired, or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Affordable housing must be of moderate design. For these purposes, moderate design is defined as housing that is of a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income. The local determination of moderate design applies to all housing assisted under an affordable housing activity, including development activities (e.g., acquisition, new construction, reconstruction, moderate or substantial rehabilitation of affordable housing and homebuyer assistance) and model activities. Acquisition includes assistance to a family to buy housing.

3. Add new §§ 1000.158, 1000.160, and 1000.162 to read as follows:

§ 1000.158 How will a NAHASDA grant recipient know that the housing assisted under the IHBG program meets the requirements of § 1000.156?

(a) A recipient must use one of the methods specified in paragraph (b) or (c) of this section to determine if an assisted housing project meets the moderate design requirements of § 1000.156. For purposes of this requirement, a project is one or more housing units, of comparable size and design, developed with assistance provided by the Act.

(b) The recipient may adopt written standards for its affordable housing programs that reflect the requirement specified in § 1000.156. The standards must describe the type of housing, explain the basis for the standards, and use similar housing in the Indian tribe's general geographic area. Units with the same number of bedrooms within a project must be comparable with respect to size, cost, and amenities. For each affordable housing project, the recipient must maintain documentation substantiating compliance with the adopted housing standards. The standards and documentation substantiating compliance for each activity must be available for review by the general public and, upon request, by HUD. Prior to awarding a contract for the construction of housing or beginning construction using its own workforce, the recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC discussed in paragraph (c) of this section and may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the

project. In developing standards under this paragraph, the recipient must establish, maintain, and follow policies that determine a local definition of moderate design which considers:

- (1) Gross area;
- (2) Total cost to provide the housing;
- (3) Environmental concerns and mitigations;
- (4) Climate;
- (5) Comparable housing in geographical area;
- (6) Local codes, ordinances and standards;
- (7) Cultural relevance in design;
- (8) Design and construction features that are reasonable, and necessary to provide decent, safe, sanitary and affordable housing; and
- (9) Design and construction features that are accessible to persons with a variety of disabilities.

(c) If the recipient has not adopted housing standards specified in paragraph (b) of this section, Total Development Cost (TDC) limits published periodically by HUD establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC and may not, without prior HUD approval, exceed the TDC maximum cost for the project.

§ 1000.160 Are non-dwelling buildings developed, acquired or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Non-dwelling buildings must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the buildings. The purpose of a non-dwelling building must be to support an affordable housing activity, as defined by the Act. These limits apply to buildings such as community facilities and office space; they do not apply to structures related to utilities or power supply.

§ 1000.162 How will a recipient know that non-dwelling buildings assisted under the IHBG program meet the requirements of 1000.160?

(a) The recipient must use one of the methods described in paragraph (b) or (c) of this section to determine if a non-dwelling building meets the limitation requirements of § 1000.160. If the recipient develops, acquires, or rehabilitates a non-dwelling building with combined funds (from NAHASDA and other sources), then the cost limit standard established under these regulations applies to the combined

activity. If funds are being combined from two different sources, the standards of the funding source with the more restrictive rules apply.

(b)(1) The recipient may adopt written standards for non-dwelling buildings. The standards must describe the type of building and must clearly describe the criteria to be used to guide the cost, size, design, features, amenities, performance or other factors. The standards for such buildings must be able to support the reasonableness and necessity for these factors and to clearly identify the affordable housing activity that is being provided.

(2) When the recipient applies a standard to a particular building, it must document the following:

- (i) Identification of targeted population to benefit from the building;
- (ii) Identification of need or problem to be solved;
- (iii) Affordable housing activity provided or supported by the building;
- (iv) Alternatives considered;
- (v) Provision for future growth and change;
- (vi) Cultural relevance of design;
- (vii) Size and scope supported by population and need;
- (viii) Design and construction features that are accessible to persons with a variety of disabilities;
- (ix) Cost; and

(x) Compatibility with community infrastructure and services.

(c) If the recipient has not adopted building program standards specified in paragraph (b) of this section, then it must demonstrate and document that the non-dwelling building is of a cost, size, design and with amenities consistent with similarly designed and constructed buildings in the recipient's general geographic area.

Dated: March 27, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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