



United South and Eastern Tribes, Inc.

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www.regulations.gov

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Office of Regulatory Affairs and Collaborative Action

Attention: Elizabeth Appel

Department of the Interior

1849 C Street, NW MS 3642—MIB

Washington, D.C. 20240

Re: Comments of the United South and Eastern Tribes, Inc. on the proposed rule revising 25 CFR Part 256, Housing Improvement Program 1076-AF22, Docket ID: BIA-2014-0004

Dear Ms. Appel,

The United South and Eastern Tribes, Inc. (USET) is pleased to provide the Bureau of Indian Affairs (BIA or “the Bureau”) with the following comments on the Proposed Rule that would revise current regulations at 25 CFR Part 256, Housing Improvement Program (HIP).

USET is a non-profit, inter-Tribal organization representing 26 federally recognized Indian Tribes from Texas across to Florida and up to Maine.¹ USET is dedicated to enhancing the development of Tribal nations, to improving the capabilities of Tribal governments, and assisting USET Member Tribes in dealing effectively with public policy issues and in serving the broad needs of Indian people.

Given the important role that the HIP plays in addressing the unmet housing needs of low-income American Indians, USET is pleased that the Bureau recognizes the need for updates and improvements to the program. However, we have concerns related to a number of the proposed changes, especially in light of the HIP’s limited appropriation. In addition, we note that the Proposed Rule does not address the HIP’s funding formula methodology, which does not currently function well for USET Tribes.

Need for Additional HIP Appropriations

Unlike many other line items in the BIA budget, appropriations for the HIP have been declining. In 2006, the HIP appropriation was \$22.6 million, but since then, it has steadily decreased and is currently funded at \$8.009 million for Fiscal Year (FY) 2015. The President’s FY 2016 Budget Request contains only a \$12,000 increase for the

¹ USET member Tribes include: Alabama-Coushatta Tribe of Texas, Aroostook Band of Micmac Indians of Maine, Catawba Indian Nation of South Carolina, Cayuga Nation of New York, Chitimacha Tribe of Louisiana, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians of North Carolina, Houlton Band of Maliseet Indians of Maine, Jena Band of Choctaw Indians of Louisiana, Mashantucket Pequot Indian Tribe of Connecticut, Mashpee Wampanoag Tribe of Massachusetts, Miccosukee Tribe of Florida, Mississippi Band of Choctaw Indians, Mohegan Tribe of Connecticut, Narragansett Indian Tribe of Rhode Island, Oneida Nation of New York, Passamaquoddy Tribe at Indian Township of Maine, Passamaquoddy Tribe at Pleasant Point of Maine, Penobscot Indian Nation of Maine, Poarch Band of Creek Indians of Alabama, Saint Regis Mohawk Tribe of New York, Seminole Tribe of Florida, Seneca Nation of New York, Shinnecock Indian Nation of New York, Tunica-Biloxi Tribe of Louisiana, and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts.

program. Yet, in its report on the HIP for 2014, the Bureau acknowledges that it was only able to serve 99 out of 7,032 eligible applicants nationwide. In order to responsibly implement many changes in the proposed rule, USET urges the Bureau and this Administration to request a much more substantial appropriation for the HIP.

Categories of Assistance Funding Limit Increases

In concept, USET is highly in favor of the proposed increases to funding limitations for housing needs Categories A and B. We agree that the current monetary limits on these categories do not accurately reflect the average costs of repair and renovation. This is particularly true in BIA's Eastern Region, where the average cost of living, including costs related to housing renovation and construction, is higher than that of many other Regions. However, increasing the funding limits for these categories in the absence of significant additional appropriations is unwise. Unless the Administration and Congress work together to fund the HIP at meaningful level, increasing funding limits may serve to limit the number of approved HIP applications.

Category D

Similarly, USET supports the addition of Category D, which would provide for down payment assistance. This new category will further assist in serving the goals of the HIP—to provide adequate housing for eligible low-income American Indians and Alaska Natives (AI/AN). In its proposed form, however, Category D is lacking spending caps and other safeguards that current HIP assistance categories possess. For instance, the proposed category has no cap on the amount of funding that may be awarded. Without a cap, the limited appropriation that the HIP receives may be distributed to a much smaller number of recipients. In addition, while each of the other categories of assistance provide for payback agreements, should the recipient be foreclosed upon or sell the property, the new Category D does not. Finally, eligibility for Category D carries with it a 30 point value in Ranking Factor (factor #6: Applicants with an Approved Financing Package). This could lead to an approval bias toward Category D applications while needs related to the other three categories continue to go unmet.

Without some modest limitations, Category D has the potential to consume a large portion of the HIP appropriation, as well as facilitate the misuse of funds. In order to preserve the integrity of the HIP, USET urges the Bureau to incorporate award limits and payback agreements into the requirements for Category D. Award limits should reflect housing costs within a given Region, but balance this assistance with the need for funding for the other categories. Any funds that are received via payback agreements should be returned to the Tribe, Tribally Designated Housing Entity (TDHE), or Tribal organization directly operating the HIP Program or the BIA, so that they can serve other eligible applicants. The Bureau should further consider reducing the 30 point value for an approved financing application.

Payback Agreements and Self-Governance

The current procedures for payback agreements are not consistent with the principles of Tribal self-governance under the Indian Self-Determination and Education Assistance Act (ISDEAA) and the Native American Housing Assistance and Self-Determination Act (NAHASDA). In the event of home sale or foreclosure, HIP funds should be returned to the Tribe, TDHE, or Tribal organization directly operating the HIP Program or the BIA, rather than solely the BIA. This change would then allow for the HIP funding to stay directly within the community where it was originally invested, consistent with the intent of ISDEAA, NAHASDA, and the self-governance movement. Otherwise, a return of funding to the BIA could result in unnecessary delay, red-tape, and/or return to the Treasury and out of the realm of meeting Tribal housing needs.

Ranking Factor Rule Changes

Of the changes to the rules associated with the four current Ranking Factors, USET is strongly supportive of the increase in income guidelines. With the high cost of living in the Eastern Region comes an increase in income that currently prevents many low income AI/ANs from accessing the HIP. While the Federal Poverty Level (FPL)

standards may not be reflective of this nuance, many AI/AN in the Eastern Region at 150% of FPL are extremely needy.

USET is concerned about the change in age requirement from 55 to 62. As the BIA well knows, AI/AN people live sicker and die younger than other Americans. 60 years is the average age of death among the citizens of USET Tribes, with those under 45 years of age representing 22% of all deaths among USET Tribal members (compared to 8% nationwide). Aligning the HIP age requirement with the Social Security age of retirement does not reflect the realities Indian Country faces and will likely deny many AI/ANs, who are considered elders in their Tribe, access to HIP dollars.

Additionally, we support increases to the limits in the Family Size Ranking Factor. Within the Eastern Region, the single parent family constituency is growing. These families are in need of stable housing, as well, and are currently having difficulties achieving approved HIP applications. It is also important to note that elders are often living with these single-parent families, so the increase in access for this constituency is likely to serve two constituencies.

Finally, USET agrees with the addition of ranking factors for homelessness, overcrowding, and dilapidated housing conditions.

Four-Year Application Period

USET is in favor of the proposal to place each HIP application in the application pool for four years. The annual reapplication process almost certainly deters applicants who have not yet been approved from reapplying. This change will provide for an increased number of applications to the HIP and promotes the approval of outstanding applications.

Square Footage Limits

As with our comments on other increases above, USET is conceptually in favor of increases to square footage limits. However, we must again note that appropriations to the HIP are unlikely to increase dramatically in the near future. Without additional appropriations, many of these increases will serve to inhibit the HIP from reaching a greater number of people and may actually reduce the number served.

NEPA Typo and Categorical Exclusions

The language in section 256.19(a) referring to NEPA has a typo and is otherwise inaccurate. NEPA is the "National Environmental Policy Act."

Section 256.19(a) currently reads:

Sec. 256.19 How are work plans prepared?

- (a) First, a trained and qualified representative of your servicing housing office will visit your house to identify what renovation and or replacement will be done under the HIP. The representative will ensure that flood, National Environmental Protection Act (NEPA) and earthquake requirements are met.

All of the specific actions that would be authorized by the HIP program would, we think, fit within established categorical exclusions (CATEX) of NEPA. The HIP Proposed Rule at §256.19 should therefore be revised to read: "The representative will ensure that flood, NEPA, and earthquake requirements are met, including the determination that the renovation or replacement is appropriately treated as a categorical exclusion (CATEX) for NEPA purposes."

Need BIA Outreach to DOE and FEMA

The BIA needs to conduct specific outreach to Tribes, TDHEs, and Tribal organizations on the Federal Emergency Management Agency (FEMA) flood insurance program. FEMA has made new efforts to provide Tribes, TDHEs, and Tribal organizations with greater autonomy, such as with the capacity to make disaster declarations and define how FEMA programs impact, or fund, efforts on tribal lands. However, the mapping necessary, at the community level, to determine how the FEMA flood hazards determination is implemented is behind actual need.

The BIA should also conduct outreach with the Department of Energy (DOE) to be certain that the HIP program is well-suited to allow for leveraging of DOE funding for energy efficiency and access to solar and other green-building incentives. Nothing in the consultation history of the Proposed Rule indicates that this has been done, and we are aware that the DOE has made a point, in recent years, that the implementation of these programs should not solely be limited to wealthier homeowners/occupants, but also to needier residents, since these improvements can drastically reduce the carrying costs (heating, electricity, etc.) for a resident.

HIP Funding Formula Methodology

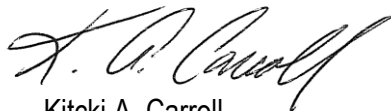
As the Bureau seeks to improve the HIP, USET requests that it also take the opportunity to examine the efficacy of the program's funding formula methodology. In 2014, 6 of 165 eligible applicants in the BIA Eastern Region were served under the HIP. According to the Bureau, this was 2.3% of need for the Region. However, the number of applications received currently plays an important role in determining need. For a variety of reasons, including current income limits and limits on Categories A and B, Tribes in the Eastern Region report difficulty in achieving approved HIP applications. As a result, many are not currently submitting applications and our Region's need is reflected as much lower than actual need. In addition, the Eastern Region Office of the BIA continues to receive a set percentage of funding for HIP despite demonstrating an increased need for safe, sanitary housing in the Region. Though some of the issues with the funding methodology could likely be remedied with the combination of the proposed changes to category limits and ranking factors, and significant additional appropriations, these developments are unlikely to fully change the methodology. With this in mind, USET calls for Tribal consultation on the current formula funding methodology.

USET appreciates the opportunity to provide comments on the Proposed Rule and looks forward to the opportunity to provide additional input as rulemaking proceeds. Should you have questions or require additional information please do not hesitate to contact Ms. Liz Malerba, USET Director of Policy and Legislative Affairs, at (202)-624-3550 or by e-mail at Lmalerba@usetinc.org.

Sincerely,



Brian Patterson
President



Kitcki A. Carroll
Executive Director

CC: USET member Tribes
Wanda Janes, USET Deputy Director
Liz Malerba, USET Director of Policy and Legislative Affairs
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"Because there is strength in Unity"