

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4170-N-17]

RIN 2577-AB74

## Indian Housing Block Grant Program—Notice of Additional Transition Requirements—Advance Funding

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

**ACTION:** Notice of additional transition requirements—advance funding.

**SUMMARY:** This notice provides instructions to tribes, tribally designated housing entities (TDHEs), and Area Offices of Native American Programs (AONAPs) to request and process an advance of Indian Housing Block Grant (IHBG) funds to ensure uninterrupted delivery of operating expenses for housing owned by an IHA for the second quarter, third quarter and possibly the fourth quarter of Federal Fiscal Year (FFY) 1998. Eligible operating expenses are those that were previously subsidized, such as salaries, benefits, taxes, insurance, travel, training, and maintenance. Until an Indian Housing Plan (IHP) is approved for a tribe, advance IHBG funds may only be used for operating expenses of units formerly assisted under the United States Housing Act of 1937 and renewal of tenant-based rental assistance where required, and may not be used for any other housing activities.

**DATES:** These additional transition requirements are effective April 15, 1998.

**FOR FURTHER INFORMATION CONTACT:** Deborah Lalancette, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675-1600 (this is not a toll-free number). 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

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et. seq.*) (NAHASDA) was enacted on October 26, 1996, and took effect on October 1, 1997. NAHASDA requires HUD to make grants on behalf of Indian tribes to carry out affordable housing activities.

Section 502 of NAHASDA states that after September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937

(1937 Act), unless such assistance is provided from amounts made available for Fiscal Year (FY) 1997 and pursuant to a commitment entered into before September 30, 1997. This section also states that after September 30, 1997, any housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority (IHA) pursuant to the USHA shall not be subject to any provision of such Act or any Annual Contributions Contract (ACC).

Under NAHASDA, funds provided for affordable housing programs are made in the form of an Indian Housing Block Grant (IHBG), which will be distributed annually to tribes and/or tribally designated housing entities (TDHEs) based upon a formula-driven calculation. The tribe/TDHE is required by section 203(b) of NAHASDA to use IHBG funds in an amount necessary to provide for the continued maintenance and operation of the 1937 Act units. IHBG funds cannot be distributed until a tribe or its TDHE submits an IHP and HUD determines that the IHP is in compliance with NAHASDA requirements.

A final rule to implement NAHASDA was published on March 12, 1998, (63 FR 12334), with an effective date of April 13, 1998. Because NAHASDA cannot be fully implemented at this time, the distribution of IHBG funds is delayed, with a resulting adverse effect on recipients. There is immediate concern for any IHA that had a Fiscal Year End (FYE) of December 31, 1997, March 31, 1998, or June 30, 1998, and that does not have sufficient operating reserves to continue to pay administrative expenses for the continuation of housing services. Accordingly, pursuant to section 101(b)(2) of NAHASDA, HUD is waiving the IHP requirement in order to advance funds for the sole purpose of funding operating expenses and renewal of tenant-based rental assistance for those IHAs.

#### II. Purpose of this Notice

This notice provides instructions to tribes/TDHEs and Area Offices of Native American Programs (AONAPs) to request and process an advance of IHBG funds to ensure uninterrupted delivery of operating expenses for housing owned by an IHA for the second quarter, third quarter and possibly the fourth quarter of Federal Fiscal Year (FFY) 1998. Eligible operating expenses are those that were previously subsidized, such as salaries, benefits, taxes, insurance, travel, training, and maintenance. Until an IHP is approved, advance IHBG funds may only be used

for operating expenses of units assisted under the 1937 Act and renewal of tenant-based rental assistance where required, and may not be used for any other housing activities such as modernization, development, etc.

#### III. Eligibility

Tribes/TDHEs are eligible if their IHA has a FYE of December 31, 1997, March 31, 1998, or June 30, 1998, and received operating subsidy appropriated with FFY 1997 funds under the 1937 Act. Tribes/TDHEs whose IHA had a 12/31 FYE may be eligible for up to three fiscal quarters; tribes/TDHEs whose IHA had a FYE of 3/31 may be eligible for two fiscal quarters; and tribes/TDHEs whose IHA had a FYE of 6/30 may be eligible for one fiscal quarter.

#### IV. Processing Steps

##### (a) *Determine Eligibility of Tribes/TDHEs for Subsidy.*

(1) Tribes/TDHEs are eligible for an advance of IHBG funds only if, for the fiscal periods from January 1 through December 31, 1997, April 1, 1997 through March 31, 1998, or July 1, 1997 through June 30, 1998, their IHA received operating subsidy for Low Rent, Mutual Help and/or Turnkey III units determined in the current assisted stock (CAS) calculation; and the IHA had an FYE of December 31, 1997, March 31, 1998 or June 30, 1998.

(2) Where the IHA had a FYE of September 30, 1998, the tribe shall not be eligible for an advance of IHBG funds. These IHAs will receive operating subsidy under the FFY 1997 appropriation. The operating subsidy will be provided through September 30, 1998; therefore, it is not necessary to advance IHBG funds.

##### (b) *Tribe or TDHE Determines if Operating Reserves are sufficient.*

(1) In order to expedite the process, AONAPs shall make a telephone call to tribes/TDHEs whose IHAs had a FYE of 12/31, 3/31, and 6/30 (giving priority to those with a 12/31 or 3/31 FYE date), informing them of their potential eligibility to receive advance IHBG funds. AONAPs shall maintain a log that consists of the date, time, and person contacted.

(2) All assisted housing programs are eligible for interim funding, which include the Low Rent, Mutual Help, Turnkey III and Section 8 programs. To determine the eligibility amount for each program:

(i) *Low Rent:* Use the subsidy eligibility for the most recent fiscal period received by the IHA, and use the amount on Line 32 of the Calculation of Performance Funding System, form HUD-52723.

(ii) *Mutual Help*: Use the HUD-approved amount for counseling and training for the prior fiscal period. Tribes/TDHEs shall not include unusual circumstances or collection losses into the request.

(iii) *Turnkey III*: Use the HUD-authorized amount approved for the deficit requested by the IHA for the most recent fiscal period. Do not request funding to reimburse equity.

(iv) *Section 8 Vouchers, Certificates and Moderate Rehabilitation*: To determine the amount of IHBG funds needed to continue providing tenant-based assistance for those contracts which expire after September 30, 1997, (when the tribe will continue to manage the assistance in a manner similar to the Section 8 Program), divide the total annual contributions approved (Form HUD-52673, Line 29) for the most recent fiscal period by the total number of unit months (Form HUD 52673, Line 8) to determine the average per unit cost. Multiply the average per unit cost by the number of expired unit months for the period October 1, 1997 to September 30, 1998.

(3) Where there are umbrella IHAs or TDHEs, the amount of operating subsidy eligibility shall be adjusted for the number of CAS units belonging to each tribe. The tribes shall then divide the adjusted subsidy eligibility by four to determine quarterly amounts.

(4) Once a quarterly amount is determined by the tribe, the tribe/TDHE shall compare the amount of the adjusted subsidy eligibility to its operating reserves to determine if reserves are sufficient to fund administrative operations for the interim period beginning January 1 through September 30, 1998 (for 12/31), April 1 through September 30, 1998 (for 3/31), and July 1, through September 30, 1998 (for 6/30). Proceeds of sale funds should be considered as part of the available reserves if they are not obligated for another purpose.

(5) If there are sufficient funds in the operating reserve account, the AONAP shall instruct the tribe/TDHE to use operating reserves to fund operating expenses for the period. Choose the applicable situation from the three identified below:

(i) Where there are insufficient operating reserves and the TDHE is the IHA and serves only one tribe, the AONAP shall comply with the guidance as set forth in section IV.(c) of this notice, below; or

(ii) Where there are insufficient operating reserve funds and an umbrella IHA or TDHE administers housing programs for multiple tribes, that entity shall determine the percentage of IHBG

funds each tribe will receive. This percentage shall be based upon the amount of CAS for each tribe. Once completed, the AONAP shall continue with guidance set forth in section IV.(c) of this notice, below; or

(iii) Where a tribe is no longer part of an umbrella IHA and will be administering its own program, the tribe shall determine the amount of the IHBG funds to be advanced based upon the CAS amount as established in the estimated formula amount which was distributed by National ONAP. In such cases, there may be no operating reserves from which to draw funds if umbrella IHAs have not distributed operating reserves to the new recipient. Once completed, the tribe shall notify the AONAP of the amount of the advance and then the AONAP shall comply with the guidance as set forth in section IV.(c) of this notice, below.

(c) *Determine the Amount of Subsidy Needed.*

(1) *Operating Subsidy.*

(i) Where the tribe or TDHE determines that reserves are insufficient, the amount of the deficit may be requested in writing by the tribe with a tribal resolution and certification that operating reserves are insufficient. A tribe may choose not to request an advance of its IHBG funds if funds will be provided from alternative resources.

(ii) AONAPs shall compare requested amounts and limit requests to not more than 1/4 of the CAS estimated formula amount (for each quarterly period). Formula amounts were distributed to tribes by letter dated October 15, 1997. AONAPs shall then notify the National ONAP of the total amount of funding needed for their office for tribes whose IHAs are adversely impacted by the 12/31/97, 3/31/98 and 6/30/98 FYEs.

(iii) The National ONAP shall request the advance of IHBG funds from the Office of Budget and Finance.

(iv) AONAPs will receive a Fund Assignment, form HUD-185, for their office.

(2) *Section 8*. The amount of IHBG funds determined to be necessary, based on the calculation in IV.(b)(2)(iv) of this notice, above, will be the amount provided for the Section 8 program or another similar program operated by the tribe.

(d) *Letters-of-Intent.*

(1) After receipt of Fund Assignment, AONAPs shall send out Letters-of-Intent (LOI) and a copy of the Funding Approval/Agreement, with the "special condition," Form HUD-52734, to eligible recipients. The AONAPs shall check box 7b. of form HUD-52734-B and use the following language in the attachment: "The funds may only be

used to pay operating expenses and renewal tenant-based assistance of the Indian Housing Authority."

(2) In the case of multiple tribes under an umbrella IHA or TDHE, each tribe is required to execute its own grant agreement and provide a tribal resolution acknowledging the action.

(3) Each eligible tribe shall complete Items 1, 2, and 3 of the Funding Approval/Agreement, form HUD-52734, sign the form and return it to the AONAP.

(4) AONAP staff shall complete Items 4 through 10 of the Funding Approval/Agreement, form HUD-52734. AONAP Administrators shall sign the form. A copy of the form HUD-52734 and LOI shall be sent to Field Accounting Divisions (FADs) to be recorded in the Project Accounting System (PAS) and in the Line of Credit Control System (LOCCS).

(5) Advance IHBG funds may be drawn down through the LOCCS accounting system and the recipient shall comply with 24 CFR 85.21. This provision requires that recipients minimize the time elapsing between the draw down and disbursement of funds. HUD has established the maximum time to be generally three working days.

(6) Once LOCCS accounts are established, AONAP staff shall verify grant data and ensure that edit thresholds have been established by the Office of Finance and Accounting (OFA). This can be verified by viewing the Q46, Program Area Threshold Query screen in LOCCS. The AONAP staff shall then perform the Budget Line Item spread to Account 1500.

(e) *Complete LOCCS forms.*

(1) AONAP staff shall ensure that LOCCS documents have been completed and submitted by recipients.

(2) All tribes must complete the form HUD-27054 (even if they have previously had LOCCS access) because they will be adding the category of "IHBG" in the LOCCS Program Area. The following original forms shall then be returned to the AONAP:

(i) *Direct Deposit Form, SF 1199A*. On this form, the recipient identifies its Tax Identification Number (TIN) and grant number.

(ii) LOCCS VRS Access Authorization, form HUD-27054 for VRS draw down privileges for a given TIN and HUD program area.

(3) Project numbers shall be established by the AONAPs and disseminated to recipients in the LOIs. An example follows:

Example project number: 98IH0212340

98 = two digit FY indicator

IH = Indian Housing Block Grant Program

02 = two digit state indicator

1234 = four digit tribal code

0 = one digit project sequence number

(4) Upon receipt of the forms from the recipients, AONAPs shall review the forms SF1199A and HUD-27054 to ensure that the information is complete and accurate. Forms shall then be forwarded to the following address: Security Administrator, FBSM, Room 3143, 451 Seventh St, SW, Washington, D.C. 20410

(f) *Reporting Requirements.*

(1) Recipients shall comply with the following requirements and standards:

(i) OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments;"

(ii) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations;" and

(iii) 24 CFR part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(2) 24 CFR part 85.41 requires recipients to provide a Federal Cash Transactions Report, SF 272, to the Federal agency making the grant on a quarterly basis. The cash report is due within 30 days after the end of the fiscal quarter and shall be submitted to the AONAP.

(g) *Additional Requirements.*

(1) In order to receive an advance of IHBG funds, tribes are required to submit a Tribal Resolution and certification that will identify the recipient and ensure that if a TDHE is to receive the money, it is authorized to do so by the tribe.

(2) If a tribe, or the TDHE of a tribe, fails to submit an IHP which is in compliance with NAHASDA requirements in FY 1998, the tribe or TDHE, as applicable, will be required to repay all IHBG funds advanced. Repayment shall occur as an offset of any NAHASDA funds which the tribe or TDHE is eligible to receive in FY 1998 or, if no such funds are available, in the next FY in which such funds become available, or through direct repayment from the tribe or TDHE to the Department, or any combination thereof.

(3) If a recipient is requesting funds for expiring Section 8 contracts, it must certify that it will continue to operate a tenant-based assistance program.

## V. Summary of Processing Steps

(a) AONAP notifies tribes of potential eligibility.

(b) *Tribe:*

(1) Determines need; and

(2) Notifies AONAP of desired amount of IHBG advance.

(c) *AONAP:*

(1) Verifies amount requested (limited to 1/4 of CAS);

(2) Notifies National ONAP of amount requested;

(3) Receives fund assignments; and

(4) Sends the following document to recipient:

(i) Letter-of-Intent (1 per tribe);

(ii) Blank form HUD-52734 (1 per tribe);

(iii) Blank form SF1199a (1 per TDHE); and

(iv) Blank form HUD-27054 (1 per recipient with access to LOCCS).

(d) *Tribe:*

(1) Completes and returns forms sent by AONAP:

(i) Executed resolution (each tribe);

(ii) Form SF-1199a; and

(iii) Form HUD-27054; and

(2) Returns forms to AONAP.

(e) *AONAP:*

(1) Completes and executes agreement, form HUD-52734;

(2) Forwards all HUD-27054s to LOCCS Administrator;

(3) Sends copies of SF-1199a, LOI and HUD-52734 to FAD; and

(4) Verifies funds have been correctly entered into LOCCS.

(f) *Tribe or TDHE:*

(1) Draws down funds via LOCCS/VRS; and

(2) Submits quarterly cash reports, SF 272, to AONAP within 30 days after FY period covered.

## VI. Sample Letter-of-Intent

(Strictly for use to reserve IHBG funds for tribes/TDHEs whose IHA had a FYE date of 12/31/97, 3/31/98, or 6/30/98 and who received subsidy for units previously covered by an ACC in FFY 97.)

Name \_\_\_\_\_

Title \_\_\_\_\_

Tribe or TDHE \_\_\_\_\_

Address \_\_\_\_\_

Dear \_\_\_\_\_

*Subject:* Letter-of-Intent to Advance Indian Housing Block Grant Funds (IHBG) for Operating Expenses to an Indian Housing Authority (IHA) with a Fiscal Year End (FYE) date of December 31, 1997; March 31, 1998 or June 30, 1998.

Appropriation Symbol: 86X0313

PAS Code: NHB

LOCCS Project No.: \_\_\_\_\_

TIN: \_\_\_\_\_

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) was enacted on October 26, 1996, and this Act and the amendments made by this Act took effect on October 1, 1997. NAHASDA requires HUD to make grants on behalf of Indian tribes to carry out affordable housing activities (to the extent amounts are made available to carry out this Act).

Section 502 of the NAHASDA states that after September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937 (1937 Act), unless such assistance is provided from amounts made available for Fiscal Year (FY) 1997 and pursuant to a commitment entered into before September 30, 1997. This Section also states that after September 30, 1997, any housing developed or operated pursuant to a contract between the Secretary and an IHA pursuant to the 1937 Act shall not be subject to any provision of such Act or any Annual Contributions Contract (ACC).

As a result, funds provided for affordable housing programs are made in the form of an IHBG, which will be distributed annually to tribes and or tribally designated housing entities (TDHE) based upon a formula-driven calculation. The tribe/TDHE is required by section 203(b) of NAHASDA to use IHBG funds in an amount necessary to provide for the continued operation and maintenance of the 1937 Act units. The IHBG cannot be distributed until HUD determines that an Indian housing Plan (IHP) is in compliance with NAHASDA requirements.

Due to delays in publishing a Final Rule, NAHASDA cannot be fully implemented at this time. The publishing delay will ultimately delay the distribution of IHBG funds and therefore have an adverse effect on recipients. There is immediate concern where an IHA had a Fiscal Year End (FYE) of December 31, 1997, March 31, 1998, or June 30, 1998, and does not have sufficient operating reserves to continue to pay operating expenses for the continuation of housing services. Accordingly, pursuant to section 101(b)(2) of NAHASDA, HUD is waiving the IHP requirement in order to advance funds for the sole purpose of funding operating expenses and renewal of tenant-based rental assistance for those IHAs.

This Letter-of-Intent and the enclosed Funding Approval/ Agreement, Form HUD-52734, obligates \$\_\_\_\_\_ as an advance on your FY 1998 grant amount, which represents a distribution of funding for the period of time beginning January 1, 1998 through September 30, 1998, or April 1, 1998 through September 30, 1998, or July 1, 1998 through September 30, 1998, as applicable. The amount obligated herein is based upon your FY 1997 adjusted subsidy eligibility, divided by four to arrive at the quarterly estimate. This is an advance of your FY 1998 IHBG amount. The remainder of the grant funds will be provided after publication of the Final Rule and approval of your IHP. If a tribe, or the TDHE of a tribe, fails to submit an IHP which is in compliance with NAHASDA requirements in FY 1998, the tribe or TDHE, as applicable, will be required to repay all IHBG funds advanced.

Repayment shall occur as an offset of any NAHASDA funds which the tribe or TDHE is eligible to receive in FY 1998, or if no such funds are available, in the next FY in which such funds become available, or through direct repayment from the tribe or TDHE to the Department, or any combination thereof.

Funds may be drawn down after a Line of Credit Control System (LOCCS) account is established by the Department. The LOCCS is a computerized cash management and

disbursement system that uses electronic wire-transfer payments and is accessed by telephone using a Voice Response System (VRS).

Enclosed are several forms that must be completed and returned to your Area Office of Native American Programs (AONAP) in order to gain access to LOCCS.

The required LOCCS forms are as follows:  
I. Direct Deposit Form, SF 1199A. On this form, the recipient identifies its Tax Identification Number (TIN) and grant number. This form must be completed even if you currently have a LOCCS account as this action will add the IHBG account.

Additionally, you must attach a copy of a voided check.

II. LOCCS VRS Access Authorization, for form HUD-27054, for VRS draw down privileges for a given TIN and HUD program area, with original signatures.

Other items required:

1. Funding Approval/Agreement, form HUD-52734. Complete Items 1, 2, and 3.

2. A Tribal Resolution which:

a. Identifies and authorizes the TDHE to receive and administer the IHBG funds, if applicable;

b. Certifies that operating reserves are insufficient;

c. Certifies that funds will be used solely for operating expenses that were previously subsidized;

d. Identifies the specific amount of the advance requested;

e. Certifies that the tribe will be responsible to repay any advanced IHBG funds if the tribe or TDHE fails to submit an IHP which is in compliance with NAHASDA requirements; and

f. certifies that the recipient will continue to operate a tenant-based rental assistance program, if applicable.

If you have any questions regarding this program, please call (insert AONAP telephone number).

Very sincerely yours,

#### Administrator

Enclosures:

Form SF-1199A

Form HUD-27054

Form HUD-52734

Tribal Resolution

#### VII. Example of Tribal Resolution and Certification

Whereas, the \_\_\_\_\_ Tribe (herein known as the Tribe) was formerly served by

\_\_\_\_\_ Housing Authority (herein known as the \_\_\_\_\_ HA); and

Whereas, the Tribe designated \_\_\_\_\_ as the Tribally

Designated Housing Entity (herein known as TDHE) and as such, the TDHE is authorized to receive Indian Housing Block Grant (herein known as IHBG) funds to administer affordable housing programs on behalf of the Tribe; and

Whereas, the \_\_\_\_\_ HA had a Fiscal Year End (FYE) date of December 31, 1997, March 31, 1998 or June 30, 1998; and

Whereas, it has been determined, and is hereby certified by the Tribe, that there are insufficient operating reserves available to continue funding operating expenses for housing units formerly covered under an Annual Contributions Contract (ACC) between the Department and the \_\_\_\_\_ HA; and

Whereas, the Tribe determined to take an advance of its IHBG funds (as authorized by the Native American Housing Assistance and Self-Determination Act of 1996) in order to continue to fund operating expenses for tenant-based rental assistance and/or for the continued operation and maintenance of the current assisted housing stock; and

Whereas, once an Indian Housing Plan (IHP) is determined to be in compliance with NAHASDA and IHBG funds are approved in FY 1998, the total formula amount will be reduced by the amount of IHBG funds advanced; and

Whereas, the Tribe certifies that the IHBG funds advanced will be used solely for operating expenses or tenant-based rental assistance that was previously provided; and

Whereas, the Tribe or TDHE certifies that it will continue to operate a tenant-based rental assistance program, if applicable; and

Whereas, the Tribe certifies that it will be responsible to repay all IHBG funds advanced if the Tribe, or the TDHE of the Tribe, fails to submit or get HUD approval of the IHP.

Therefore, be it resolved that the Tribe requests an advance of IHBG funds in the amount of \$ \_\_\_\_\_ for the period beginning: (Select the applicable interim period.) \_\_\_\_\_ January 1, 1998 through September 30, 1998 \_\_\_\_\_ April 1, 1998 through September 30, 1998 \_\_\_\_\_ July 1, 1998 through September 30, 1998

#### VIII. Findings and Certifications

##### *Paperwork Reduction Act Statement*

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 and assigned control number 2577-0218. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

##### *Executive Order 12612, Federalism*

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The notice only provides for temporary transition requirements for the initial participation by Indian tribes in a new statutory program.

##### *Environmental Review*

A Finding of No Significant Impact with respect to the environment was made at the time of development of the January 27, 1997 notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding of No Significant Impact remains applicable to this notice and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in 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.

**Authority:** 25 U.S.C. 4116(a).

Dated: April 8, 1998.

**Deborah Vincent,**

*Acting Assistant Secretary for Public and Indian Housing.*

[FR Doc. 98-10016 Filed 4-14-98; 8:45 am]

BILLING CODE 4210-33-P