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Part V

Department of Housing and Urban Development

Indian Housing Block Grant Program—Revised Notice of Transition Requirements; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–11]

RIN: 2577–AB74

Indian Housing Block Grant Program—Revised Notice of Transition Requirements

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

ACTION: Revised notice of transition requirements.

SUMMARY: On January 27, 1997 (62 FR 3972), HUD published for public comment a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) which requires HUD to establish the requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the provision of assistance in accordance with NAHASDA. The January 27, 1997 notice also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement NAHASDA, and requested nominations for membership on the negotiated rulemaking committee. This notice addresses the public comments received on the January 27, 1997 transition requirements, and provides additional transition guidance and requirements.

DATES: The revised transition requirements are effective upon publication.

IHP submission date: No earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998.

Effective date of NAHASDA section 701(c): November 3, 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.

Indian tribes or tribally designated housing entities with specific questions relating to the preparation of Indian Housing Plans as required by this notice may call their Area Office of Native American Programs for assistance in resolving their questions. The telephone numbers and addresses for these Offices appear in Question 7 of this notice.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26,1996) (NAHASDA) reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. Beginning on October 1, 1997, the first day of the 1998 fiscal year (FY), a single block grant program replaced assistance previously authorized under:

1. The United States Housing Act of 1937 (1937 Act);
2. The Indian Housing Child Development Program under Section 518 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701z-6 note);
3. The Youthbuild Program under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 *et seq.*);
4. The Public Housing Youth Sports Program under section 520 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a);
5. The HOME Investment Partnerships Program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 *et seq.*); and
6. Housing assistance for the homeless under title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 *et seq.*) and the Innovative Homeless Demonstration Program under section 2(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 11301 note).

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 tribal self-governance.

Section 106 of NAHASDA sets out the general procedure for the implementation of the new Indian housing block grant (IHBG) program. The procedure described is a two-step process. First, section 106(a) requires the publication of a notice in the **Federal Register** not later than 90 days from enactment of NAHASDA. The purpose of the notice is to establish any requirements necessary for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the 1937 Act and other related provisions of law to the provision of assistance in accordance with NAHASDA.

Secondly, section 106(b) requires that HUD issue final regulations implementing NAHASDA no later than September 1, 1997. Further, section 106(b)(2)(A) of NAHASDA provides that all regulations required under NAHASDA be issued in accordance with the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). Accordingly, the Secretary of HUD established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee to negotiate and develop a proposed rule implementing NAHASDA. This proposed rule was published on July 2, 1997 (62 FR 35718).

II. The January 27, 1997 Transition Notice and the July 2, 1997 Proposed Rule

On January 27, 1997 (62 FR 3972), HUD published the transition notice required by section 106(a) of NAHASDA. As directed by section 106(a), the January 27, 1997 notice requested public comment on the transition requirements and invited nominations for membership on the negotiated rulemaking committee. The January 27, 1997 notice described in detail the transition requirements and the establishment of the negotiated rulemaking committee.

The public comment period on the transition notice expired on February 27, 1997. Twelve comments were submitted on the transition requirements. Additionally, sixteen nominations for negotiated rulemaking committee membership were received. In several cases, the public comments raised issues more appropriately addressed in the proposed rule implementing NAHASDA, rather than in the transition requirements. Accordingly, the proposed rule addresses many of the public comments received on the January 27, 1997 transition notice.

Section III. of this notice presents a summary of the significant issues raised by the public commenters on the January 27, 1997 transition requirements and HUD's responses to these comments. Where appropriate, readers are referred to the provisions of the July 2, 1997 proposed rule that address the issue raised by the commenter.

The July 2, 1997 rule contains a detailed description of the proposed regulatory requirements and the negotiated rulemaking process. The public comment deadline on the proposed rule was August 18, 1997. All comments will be considered in the development of the final rule.

III. Discussion of Public Comments on the January 27, 1997 Transition Requirements

Indian Housing Plan Submission Date of June 1, 1997 Is Not Reasonable

Comment. Eight of the commenters objected to the June 1, 1997 IHP submission deadline established by the January 27, 1997 notice. The commenters believed that this date would not provide sufficient time for relevant tribal input in the development of the IHP. Specifically, it would not have allowed housing authorities (HAs) to adequately compile local and regional data and develop a quality, comprehensive housing plan.

Several of these commenters suggested alternate IHP submission dates. For example, five commenters objected to the submission of an IHP prior to the development of regulations implementing NAHASDA. Three of the commenters suggested that HUD extend the IHP submission deadline to August 1, 1997. This date is based on section 103 of NAHASDA, which provides HUD with a 60-day period to review an IHP submitted by a tribe or its TDHE. Since NAHASDA becomes effective on October 1, 1997, this alternate August date would provide HUD with a 60-day review period prior to the statute's effective date.

Response. HUD has addressed the concerns raised by these commenters. On February 24, 1997 (62 FR 8258), HUD published a notice in the **Federal Register** extending the IHP submission deadline to November 3, 1997. With the publication of the proposed rule, many commenters indicated that the deadline did not provide sufficient time to prepare an IHP. Also, it is not expected the regulations implementing NAHASDA will be effective by November 3, 1997. Therefore, it is unreasonable to expect a recipient to submit a plan prior to publication date of the program regulations.

Based on the above, this transition notice is establishing new IHP submission dates for Fiscal Year 1998 only. An IHP can be submitted no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. The July 1, 1998, date is necessary in order to provide for a 60-day review period by the Office of Native American Program (ONAP) field staff and reservation of funds prior to September 30, 1998. The final regulations will establish IHP submission dates for all future years.

October 1, 1997 Implementation Date is Premature

Section 107 of NAHASDA states that ''[e]xcept as otherwise expressly provided in this Act, this Act * * * shall take effect on October 1, 1997.'' Four of the commenters expressed concern about the short statutory deadline for the implementation of NAHASDA. The commenters believe that additional time is necessary for the successful implementation of this new program.

One of these commenters suggested that HUD use the waiver authority granted in section 101(b)(2) of NAHASDA to waive the requirement for an IHP submission in FY 1998, in order to permit HUD and affected Indian tribes adequate time to develop comprehensive final regulations implementing NAHASDA. This commenter also suggested that the Negotiated Rulemaking Committee develop interim regulations to put in place for FY 1998 to guide tribes in the administration of block grants during this interim period, rather than racing to complete regulations by October 1, 1997.

Response. The Negotiated Rulemaking Committee has developed a work schedule which it believes provides for the effective implementation of NAHASDA in a timely manner.

IHP Should Be Format Driven Rather Than Forms Driven

Comment. One commenter urged that HUD not implement the IHP requirement by prescribing a series of forms. The commenter believes that a forms driven approach will stifle innovation and increase administrative burden. This commenter fears that beneficial information might be omitted from the IHP if the tribe or its TDHE is unable to make it fit into a prescribed HUD form. Further, each planning innovation could potentially require an updated or new form. Accordingly, the commenter suggested that HUD maximize the flexibility available to tribes and their TDHEs by merely requiring that the IHP follow a certain format.

Response. The Negotiated Rulemaking Committee has considered this comment in the development of the proposed regulations. Interested readers should refer to the proposed requirements of 24 CFR part 1000, subpart C, which would govern IHP submission requirements.

Cooperation Agreement Requirement May Prevent the Receipt of Funding

Comment. The January 27, 1997 notice requires that the IHP include a certification that the tribe or its TDHE has entered into, or has begun negotiations to enter into, a local cooperation agreement with the governing body of the locality within which any affordable housing to be assisted with grant amounts will be situated (62 FR 3974). One commenter expressed concern that this requirement may prevent a tribe or its TDHE from receiving funding in situations where, through no fault of the housing entity or the affected tribal members, such an agreement cannot be negotiated before grant funds are needed to maintain existing housing. The commenter noted that the cooperation agreement requirement is set forth in NAHASDA section 101(b). The commenter supported amendments to NAHASDA which would permit HUD to waive the requirement for a cooperation agreement.

Response. The Negotiated Rulemaking Committee considered this public comment in the development of the proposed rule. Interested readers should consult the preamble to the July 2, 1997 proposed rule, which discusses the requirement for a local cooperation agreement and highlights this issue for public comment (See 62 FR 35728).

Concerns Regarding Tax Exemption and Reimbursement Requirements

Comment. The January 27, 1997 notice requires that the cooperation agreement discussed above provide that the tribe or its TDHE is exempt from all real or personal property taxes. The tribe or TDHE, however, must compensate the relevant political subdivision for the costs of providing governmental services (such as police and fire protection). Alternatively, if the tribe or its TDHE is not tax exempt, the cooperation agreement must provide for the reimbursement of the tribe or TDHE. The reimbursement amount will be equal to the difference between the tax amount and the costs of providing governmental services. (62 FR 3974.)

One commenter expressed reservations about this requirement. The commenter noted that a tribe or its TDHE may initiate a program to provide off-reservation housing within its area of operation. In these cases, a city council or board of supervisors may have to approve a cooperation agreement. The commenter wrote that under State law the council or board may lack the statutory authority to exempt a particular housing unit from real or personal property taxes imposed by state statute. If the combination of those taxes exceed the cost of providing governmental services, the affected city or county may be unable or unwilling to

remit the difference in cash or tax remission.

The commenter suggested that HUD address this concern by keeping the requirement for a cooperation agreement separate from the tax exemption requirement. The commenter wrote that NAHASDA treats the local cooperation agreement requirement and the tax exemption requirement in separate subsections (See NAHASDA sections 101(c) and (d).) The certification required in the January 27, 1997 notice folds these requirements together, making the tax exemption requirements the contents of the cooperation agreements. The commenter noted that a cooperation agreement could address subjects other than tax exemptions and a tribe could comply with the tax exemption requirements without necessarily having an agreement with a local jurisdiction.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the July 2, 1997 proposed rule. Interested readers should consult the preamble to the proposed rule, which discusses the tax exemption requirement and requests additional public comment on this issue (See 62 FR 35728).

Negotiated Rulemaking Committee Should Develop Budget Scenarios

Comment. Section 102 of NAHASDA requires that the IHP include an operating budget. One commenter questioned the ability of a tribe or its TDHE to develop a budget prior to FY 1998 appropriations. This commenter recommended that the Negotiated Rulemaking Committee develop budget information to assist tribes and their TDHEs in the preparation of the IHPs. The commenter noted that IHAs have an advantage in estimating probable allocation amounts based on historical allocations and awards. However, some tribes (especially those currently served by an umbrella housing authority) considering whether or not to submit an IHP may have very little to work from.

Response. The Negotiated Rulemaking Committee considered this issue in the development of the proposed rule. Interested readers should refer to the July 2, 1997 proposed regulatory requirements. Further, section 302(d) of NAHASDA speaks to funding levels under the Act.

Transition Notice Should Establish Streamlined IHP Requirements for Small Tribes and Small TDHEs

Comment. Section 102(f)(1) of NAHASDA permits the Secretary to ''waive any [IHP] requirements * * * that the Secretary determines are burdensome or unnecessary for'' small tribes and small TDHEs. One commenter questioned why the transition notice had not established such streamlined IHP requirements for these tribes and housing entities.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. The proposed rule provides that there are no separate IHP requirements for small Indian tribes. The IHP requirements set forth in proposed 24 CFR part 1000, subpart C are minimal. Further, HUD has general authority under section 101 of NAHASDA to waive IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101 provides flexibility to address the needs of every Indian tribe, including small Indian tribes.

Transition Requirements Should Reference Statutory Review Criteria

Comment. Section 103 of NAHASDA provides that the Secretary of HUD shall conduct a limited review of each Indian housing plan to ensure that the plan complies with the NAHASDA submission requirements for IHPs. One commenter believes that the January 27, 1997 notice should have provided an interpretation of the phrase ''limited review.'' Section 103 of NAHASDA also establishes a 60-day deadline for review of an IHP. Further, this section requires that the Secretary of HUD provide an explanation to the tribe or TDHE if the Secretary finds the IHP deficient. The commenter believes these statutory review requirements should also have been referenced in the January 27, 1997 notice.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. Interested readers should refer to proposed 24 CFR part 1000, subpart C, which would govern IHP submission procedures (including the process for HUD review of IHPs and IHP amendments).

Concerns Regarding TDHE Designation

Comment. Section 102 of NAHASDA provides that an IHP may be submitted by an Indian tribe or, if specifically empowered by the recognized tribal government, by the TDHE. The January 27, 1997 notice provided that if ''a tribe does not specifically authorize an entity to act as its tribally designated housing entity, the tribe's * * * HA under the United States Housing Act of 1937, if there is one on the date of NAHASDA's enactment, is the tribe's [default] TDHE'' (62 FR 3973).

One of the commenters believes that this provision violates the principle of tribal self-governance. First, the provision would delegate to the HA the authority to administer the block grant even if the tribe has not taken any affirmative step to designate the HA as its TDHE. Secondly, the January 27, 1997 notice fails to specify the timeframe in which a tribe would lose the important right to designate the TDHE. Further, the provision is unclear as to whether the IHP developed by an HA acting as the default TDHE must still be reviewed and approved by the tribe.

Response. HUD agrees with the commenter that the transition requirements must reflect the right of tribal self-governance and the unique relationship between the government of the United States and the governments of Indian tribes. This notice makes the appropriate revisions to the January 27, 1997 transition notice. The notice clarifies that NAHASDA section 102(d) requires that a tribe identify its TDHE, if any, in its IHP. Specifically, when an IHP is submitted on behalf of a tribe by its TDHE, the IHP must contain a certification by the recognized tribal government that either (1) the tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE, or (2) the tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe. This certification must be included in the IHP, even in those cases where the tribe's HA under the United States Housing Act of 1937 is serving as the tribe's default TDHE.

''Broad Discretion'' of Section 204 of NAHASDA Should Be Referenced

Comment. Section 204(a) of NAHASDA provides:

(a) Subject to * * * [program requirements] and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this Act; and

(2) the right to establish the terms of assistance.

One commenter interprets section 204(a) very broadly and recommended that the January 27, 1997 notice be amended to reference the ample discretion it believes this statutory provision grants to a tribe or its TDHE.

Specifically, the commenter requested that HUD clarify that grant recipients have the discretion to use grant amounts for affordable housing activities using the alternatives expressly set out in NAHASDA (e.g., equity investments, interest-bearing loans or advances, etc.). The commenter believes that only in the case of ''any other form of assistance'' not expressly enumerated in section 204 does NAHASDA authorize the Secretary to determine whether the assistance is consistent with the purposes of the Act.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the July 2, 1997 proposed rule. Interested readers should refer to proposed 24 CFR part 1000, subpart B, which would govern eligible affordable housing activities.

Exceptions to Low-Income Eligibility Requirements Should Be Identified

Comment. Section 201 of NAHASDA provides that, except under certain specified circumstances, ''eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas.'' One of the commenters suggested that the January 27, 1997 notice should be amended to identify the exceptions to this general rule.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed regulations. Interested readers are referred to proposed 24 CFR part 1000, subpart B, which would govern eligible affordable housing activities (including the provision of assistance to non low-income families).

Grant Agreement Process Should Be Identified

Comment. One commenter believes that the January 27, 1997 notice does not seem to anticipate or require the development of a grant agreement with the tribes. The commenter worried that the notice did not provide sufficient information regarding the grant agreements and the block grant process. For example, the IHP must contain goals and objectives to be accomplished during 1998. The commenter wondered whether these activities would be binding on the tribe through the grant agreement. The commenter recommended that HUD identify the grant agreement document or the process of developing the grant agreement as early as possible.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. Interested readers should consult the proposed regulatory requirements for additional detail.

IV. Revised Effective Date for Section 701(c) of NAHASDA

Section 701(c) of NAHASDA establishes a new requirement for the Indian Housing Loan Guarantee Program (also called the Section 184 Program) under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z–13a). Specifically, section 701(c) provides that Indian tribes wishing to participate in the Section 184 program must submit an IHP that provides for the use of Section 184 loan guarantees.

In order to prevent any interruption in the processing of Section 184 loan guarantees, HUD must establish an effective date for section 701(c) that takes into account the timeframes for submission and HUD review of IHPs. The January 27, 1997 transition notice established an effective date of October 1, 1997 for section 701(c), based on an IHP submission deadline of June 1, 1997. As described above, HUD is extending the IHP deadline date to no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. This notice conforms the effective date for section 701(c) to the IHP deadline extension. Specifically, this notice amends the January 27, 1997 notice by establishing an effective date of November 3, 1998 for purposes of NAHASDA section 701(c).

V. Technical Correction to the January 27, 1997 Notice

The January 27, 1997 notice incorrectly designated the paragraph listing the certifications as paragraph (d) of Question and Answer 3. The paragraph should have been designated as paragraph (e). This notice makes the necessary correction.

VI. Additional Transition Requirements

The January 27, 1997 notice stated that HUD may also issue a supplemental notice with additional transition guidance and requirements. Accordingly, additional guidance and requirements for the treatment of housing, activities and funding under programs repealed by NAHASDA are included in this notice. For the convenience of all parties involved with NAHASDA, this notice presents the requirements of the January 27, 1997 notice, amended as discussed in sections IV. and V. of this notice, above, and the additional transition requirements in a single, consolidated document. The additional requirements follow the same Question and Answer format established in the January 27, 1997 notice and begin with Question 10 in this notice. If there are any inconsistencies between the requirements in this notice and any final rule issued under NAHASDA, the requirements of the rule shall govern.

VII. 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.*

Regulatory Planning and Review

This notice has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the notice resulting from this review are 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.

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 establishes 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.

Transition Requirements for the Native American Housing Block Grant Program

Question 1. How is funding made available under NAHASDA?

Answer 1. Under NAHASDA, funding is made available for affordable housing activities on an annual basis, and is distributed each fiscal year according to an allocation formula on behalf of Indian tribes who submit an Indian Housing Plan (IHP) that is reviewed and approved by HUD. Unlike other programs, NAHASDA funds are not awarded on a competitive basis in which applications are given scores and are then funded in rank order so that only the highest scoring applications are funded. Every tribe, or entity designated by a tribe, that submits an IHP which complies with the necessary requirements is awarded a block grant which is a share of the available funds. The size of the share is determined by the allocation formula. The award is called a *block grant* because the recipient receives a single ''block'' of funds that may be used for any eligible affordable housing activities in accordance with the tribe's IHP.

Question 2. Who may submit an IHP to apply for a block grant?

Answer 2. An IHP may be submitted by an Indian tribe or, if specifically empowered by the recognized tribal government, by the tribally designated housing entity for the tribe. A tribally designated housing entity (TDHE) is an entity other than the tribal government which is authorized by the Indian tribe to receive the block grant amounts and provide assistance according to the requirements of NAHASDA.

NAHASDA section 102(d) requires that a tribe identify its TDHE, if any, in its IHP. Specifically, when an IHP is submitted on behalf of a tribe by its TDHE, the IHP must contain a certification by the recognized tribal government that either: (1) the tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE; or (2) the tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe. This certification must be included in the IHP, even in those cases where the tribe's HA under the United States Housing Act of 1937 is serving as the tribe's default TDHE.

An IHP submitted by a TDHE may cover more than one Indian tribe, but only if the IHP contains the certification described in the paragraph above from each tribe covered by the IHP. This option provides additional flexibility by permitting several tribes to agree to have their affordable housing activities administered by a single TDHE for reasons of greater economy or increased efficiency, or for any other reason.

Question 3. What information must be included in an IHP?

Answer 3. Each IHP shall be in a form prescribed by HUD and every IHP consists of two parts, a 5-year plan and a 1-year plan, each of which is discussed separately below. The NAHASDA final rule may also contain additional plan requirements.

The 5-year plan must contain the following information for the 5-year period beginning with the fiscal year (FY) for which the plan is submitted (for the first IHP submission under the transition requirements of this notice, the five fiscal years covered are 1998, 1999, 2000, 2001 and 2002):

(a) *Mission Statement*—A general statement of the mission of the Indian tribe to serve the housing needs of the low-income families in the jurisdiction of the Indian tribe during the 5-year period.

(b) *Goals and Objectives*—A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in the Mission Statement during the 5-year period.

(c) *Activities Plan*—An overview of the housing activities, including the NAHASDA-eligible affordable housing activities, planned during the 5-year period with an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

The 1-year plan must contain the following information relating to the upcoming fiscal year (FY 1998 for purposes of the first IHP submission under the transition requirements of this notice):

(a) *Goals and Objectives*—A statement of the goals and objectives to be accomplished during FY 1998, including the NAHASDA-eligible affordable housing activities.

(b) *Statement of Needs*—A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe and the means by which such needs will be addressed during FY 1998, including:

(1) A description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(2) A description of the estimated housing needs for all Indian families in the jurisdiction.

(c) *Financial Resources*—An operating budget for the recipient that includes:

(1) An identification and a description of the financial resources reasonably available to the recipient to carry out the NAHASDA-eligible affordable housing activities described in the IHP, including an explanation of the manner in which amounts made available will leverage additional resources; and

(2) The uses to which such resources will be committed, including eligible affordable housing activities and administrative expenses. (Section 101(h) of NAHASDA requires HUD, by regulation, to authorize each recipient to use a percentage of any grant amounts received for any reasonable administrative and planning expenses of the recipient relating to carrying out NAHASDA and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts and expenses of preparing an IHP. This regulation will be developed by the negotiated rulemaking committee who will be proposing to HUD the percentage of grant amounts to be used for planning and administrative expenses.

(d) *Affordable Housing Resources*—A statement of the affordable housing resources currently available and to be made available during FY 1998, including:

(1) A description of the significant characteristics of the housing market in the tribe's jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts for rental assistance, production of new units, acquisition of existing units, or rehabilitation of units;

(2) A description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 184 of the Housing and Community Development Act of 1992, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;

(3) A description of the manner in which the plan will address the needs

identified in the Statement of Needs in the 1-year plan required by paragraph (b), above;

(4) A description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between HUD and an Indian housing authority pursuant to the United States Housing Act of 1937;

(5) A description of any existing and anticipated homeownership programs and rental programs to be carried out during FY 1998, and the requirements and assistance available under such programs;

(6) A description of any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during FY 1998, and the requirements and assistance available under such programs;

(7) A description of all other existing or anticipated housing assistance provided by the recipient during FY 1998, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;

(8) A description of any housing to be demolished or disposed of, and a timetable for such demolition or disposition;

(9) A description of the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(10) A description of the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and

(11) A description of the entity that will carry out the activities under the IHP, including the organizational capacity and key personnel of the entity.

(e) *Certifications of compliance*—The IHP must include the following certifications:

(1) A certification that the recipient will comply with title II of the Civil Rights Act of 1968 in carrying out activities funded by NAHASDA, to the extent that such title is applicable, and other applicable Federal statutes, including Section 504 of the Rehabilitation Act of 1973;

(2) A certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts;

(3) A certification that policies are in effect and are available for review by HUD and the public governing:

(i) The eligibility, admission, and occupancy of families for housing assisted with grant amounts;

(ii) Rents charged, including the methods by which rents or homebuyer payments are determined, for housing assisted with grant amounts;

(iii) The management and maintenance of housing assisted with grant amounts provided under this Act;

(4) If an IHP is submitted on behalf of a tribe by its tribally designated housing entity (TDHE), the IHP must contain a certification by the recognized tribal government that either:

(i) The tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE, or

(ii) The tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe;

(5) If an IHP that covers more than one Indian tribe is submitted by a TDHE, each tribe covered by the IHP must submit as part of the IHP the certification described in paragraph (4), immediately above;

(6) A certification that the governing body of the locality within which any affordable housing to be assisted with the grant amounts will be situated has entered into, or has begun negotiations, which must be completed before any award of NAHASDA funds can be made, to enter into, a local cooperation agreement with the recipient for the tribe providing that:

(i) The affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under NAHASDA) is exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(ii) The recipient makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of $150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as:

(A) Is prescribed by State, tribal, or local law;

(B) Is agreed to by the local governing body in the local cooperation agreement; or

(C) The recipient and the local governing body agree in the local cooperation agreement that such user fees or payments in lieu of taxes shall not be made; or

(iii) If the affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under NAHASDA) is not exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision, that the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in section (6)(ii) of the 1-year plan requirements, above.

Question 4. What are the affordable housing activities that are eligible for funding under NAHASDA?

Answer 4. Affordable housing activities are activities to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, for the benefit of low-income Indian families on Indian reservations and other Indian areas. In the case of a low-income family residing in a dwelling unit assisted with NAHASDA grant amounts, affordable housing is housing for which the monthly rent or homebuyer payment (as applicable) does not exceed 30 percent of the family's monthly adjusted income. Eligible affordable housing activities are described below in sections (a) through (k) of this answer:

(a) *Indian Housing Assistance*—The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between HUD and an Indian housing authority.

(b) *Development*—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities. Affordable housing includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(c) *Housing Services*—The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted with grant amounts.

(d) *Housing Management Services*—The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(e) *Crime Prevention and Safety Activities*—The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(f) *Rental Assistance*—The provision of tenant-based rental assistance.

(g) *Model Activities*—Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by HUD as appropriate for such purpose.

(h) *Administrative Expenses*—A percent of grant amounts, to be determined in the final rule, may be used for any reasonable administrative and planning expenses of a recipient relating to carrying out NAHASDA and activities assisted with such amounts, including costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts and the expenses of preparing an IHP.

Question 5. How may grant amounts be used to carry out eligible activities?

Answer 5. In addition to being used to directly pay for eligible activities, grant amounts may be used for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that HUD determines to be consistent with the purposes of NAHASDA. This answer is provided from section 204—''Types of Investments''—of NAHASDA. Guidance on the types of investments permissible under section 204 of NAHASDA will be provided in the final regulations.

Question 6. When must the IHP required by these transition requirements be submitted?

Answer 6. An IHP must be received by HUD no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998 in order to be considered for FY 1998 funding. Question 53, below, also addresses this issue.

Question 7. Where must an IHP be submitted?

Answer 7. All IHPs must be submitted to the local Area Office of Native American Programs as follows:

Tribes and IHAs located	ONAP address
East of the Mississippi River (including all of Minnesota) and Iowa.	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TTY Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and Texas except for Yseleta del Sur.	Southern Plains Office of Native American Programs, 6.IPI, 500 West Main Street, Suite 400, Oklahoma City, Oklahoma 73012, (405) 553–7520, 553–7480.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TTY Number: 303–844–6158.
Arizona, California, New Mexico, Nevada, and Yseleta del Sur in Texas.	Southwest Office of Native American Programs, 9EPI, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TTY Number: 602–379–4461, or Albuquerque Division of Native American Programs, 9EPIQ, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TTY Number: None.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5270, TTY Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TTY Number: (907) 271–4328.

Question 8. May an IHA continue to remain subject to the 1937 Act, and convert to a PHA?

Answer 8. No, because the purpose and result of NAHASDA is the exclusion of IHAs from the definition of a PHA as of September 30, 1997. After September 30, 1997, there may be IHAs that want to remain subject to the 1937 Act, but the consequence of NAHASDA section 501 is to make it impossible, after September 30, 1997, for an IHA to be considered a PHA. Further, section 502(b) provides that any IHA housing developed or operated under the 1937 Act must be considered and maintained as affordable housing for purposes of NAHASDA, and precludes the continued application of title I of the 1937 Act to IHAs after September 30, 1997. Question 30, below, also addresses this issue.

Question 9. What happens to grants already made under the homeless, Youthbuild and Indian HOME programs?

Answer 9. These grants continue to be governed by the statutes authorizing the programs as those statutes read on September 30, 1997 and by the grant agreements. After completion of the funded activities, the grants will be closed out in accordance with their program requirements and grant agreements. Questions 37 and 38, below, also address this issue.

General Impact on Housing and Funding

Question 10. On October 1, 1997, the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) legislation becomes effective. How does this impact the provision of housing assistance to Native Americans?

Answer 10. NAHASDA terminates provision of housing assistance under the United States Housing Act of 1937, as amended, (1937 Act) and creates a new program of grants made directly to Indian tribes. The new Indian Housing Block Grant (IHBG) is intended to provide greater flexibility to tribes in determining how to address their housing needs for low-income individuals within their jurisdiction.

Tribes assume a responsibility to maintain current housing stocks developed under the 1937 Act.

Question 11. Does the change in governing legislation affect who owns housing developed or assets and funds held by IHAs?

Answer 11. No. While IHA funds and assets become subject to the requirements of NAHASDA on October 1, 1997, the ownership of the housing funds and assets are not affected. Grants made to IHAs and the assets of IHAs continue to belong to the IHA. IHAs that are created by tribal ordinance are subject to the authority of the tribe. Tribes must review their existing ordinances and other documents affecting the organization and legal commitments of the tribe and its IHA to determine how to transfer funds and assets of the IHA to the tribe or its newly established tribally designated housing entity (TDHE).

Effect on 1937 Act Housing

Question 12. What happens to public housing units owned and operated by IHAs?

Answer 12. All units owned by IHAs become ineligible for assistance under the 1937 Act as of October 1, 1997. Public housing units owned and operated by IHAs are considered Indian housing units and become subject to NAHASDA on October 1, 1997.

Question 13. What happens to existing 1937 Act units if tribes in those jurisdictions do not or cannot submit an IHP?

Answer 13. NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an IHA, tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by a tribe or is determined to be out of compliance by HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, federal or private market support may have to be sought to maintain and operate those 1937 Act units.

Question 14. Should the public housing stock owned by IHAs be reflected in the current assisted stock element of the IHBG formula under NAHASDA?

Answer 14. Yes.

Question 15. Will the housing units in the current development pipeline be allowed to increase the 1937 Act count for NAHASDA formula purposes?

Answer 15. Yes. Upon completion of housing units currently in the development pipeline, HUD should be notified to adjust the information reflected in the formula for existing 1937 Act units operated by the IHA or recipient. The notification should take the same form as the current notification for Date of Full Availability under the Indian Housing program.

Question 16. What process would a tribe or TDHE follow in order to admit over-income families to a vacant unit developed under the 1937 Act or for new units developed under the 1937 Act which will be counted as Current Assisted Stock under the IHBG Formula?

Answer 16. Since the 1937 Act no longer applies to these units and the NAHASDA final rule will only address the procedures for admitting over-income families when using the recipient's annual grant amount, there is a need to develop procedures for these units.

For units to be developed after September 30, 1997, with funds provided under the 1937 Act, a recipient may use up to 10% of its funds available from 1937 Act programs to admit families whose income fall within 80 to 100% of median income without HUD approval. HUD approval is required if a recipient plans to use more than 10% of its 1937 Act funds for such assistance or to provide housing for families over 100% of median income.

For vacancies in homeownership programs where the units were under management as of September 30, 1997, occupancy by families whose income falls within 80 to 100% of median income may not exceed 10% of the dwelling units in the project or 5 dwelling units, whichever is greater, without HUD approval. HUD approval is required if a recipient plans to admit more than this amount in a project or to provide housing for families over 100% of median income.

Question 17. Can an IHA or recipient develop additional units with funds provided through the 1937 Act and have the extra units included in the IHBG formula?

Answer 17. No. While developing the maximum number of affordable housing units is encouraged, housing units over the number specified in the original grant approval will not be included in the total number of units developed with 1937 Act funds.

Question 18. Can an IHA be a NAHASDA sub-grantee of the tribe or TDHE for the purpose of maintaining housing developed under the 1937 Act?

Answer 18. Yes. Additionally, an IHA could be a sub-grantee for the purpose of developing and managing housing with NAHASDA funds.

Effect on 1937 Act Funding

Question 19. Must an IHA (or its successor entity) use grant funds provided under the 1937 Act for the original purpose after October 1, 1997?

Answer 19. No. Funds provided to an IHA under the 1937 Act can be used for any activity eligible under NAHASDA. An IHA (or its successor entity) must honor existing contracts the IHA has entered into with others prior to NAHASDA; however, an IHA may reprogram the use of funds for eligible activities subject to written notification to HUD.

Question 20. Will Indian housing authorities (IHA), tribes or tribally designated housing entities (TDHE) be eligible to apply for assistance under any programs covered by the 1937 Act?

Answer 20. No. Section 501 of NAHASDA repealed Title II of the 1937 Act and made Titles I and III inapplicable to Indian housing after September 30, 1997. Therefore, as of October 1, 1997, IHAs and tribes are ineligible for funding for the following programs:

—New development
—Modernization (both the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program including the disaster/emergency reserve)
—Operating subsidy
—HOPE for Public and Indian Housing Homeownership
—Indian Housing Childhood Development
—Section 8

Question 21. Will any operating subsidy be provided to IHAs after October 1, 1997?

Answer 21. Yes. The Fiscal Year (FY) 1997 appropriation for operating subsidy under Section 9 of the 1937 Act covers IHAs fiscal years beginning (FYB) January 1, 1997 and ending December 31, 1997; FYB April 1, 1997 and ending March 31, 1998; FYB July 1, 1997 and ending June 30, 1998; and FYB October 1, 1997 and ending September 30, 1998. IHAs are eligible for funds appropriated prior to FY 98, and therefore, operating subsidy will be provided for the time periods stated in this paragraph.

After September 30, 1997, financial assistance may not be provided under the 1937 Act unless such assistance is provided from amounts made available for FY 97 and pursuant to a commitment entered into before September 30, 1997, therefore, all operating budgets for these periods must have been approved prior to September 30, 1997 in order to be eligible for funding. Operating budget adjustments or revisions after October 1, 1997, cannot be processed.

Question 22. If an IHA has unobligated or unexpended funds in any of the programs listed in Answer 19, how are they handled?

Answer 22. Any unobligated/unexpended funds which were approved for new development, modernization, operations or HOPE can now be used for any eligible NAHASDA activity. Section 8 contracts remain in effect and the program is still governed by the 1937 Act and the existing contract provisions.

Question 23. What is the definition of ''obligated'' as it relates to the development and modernization programs?

Answer 23. Obligated means the cumulative amount of modernization or development commitments entered into by the housing authority; i.e., contract execution for contract labor, materials or services; start and continuation of physical work by force account labor; and start and continuation of administrative expenses. Contract execution means execution of the contract by both the housing authority and the contractor. For force account work, all funds for a group of sequentially-related physical work items are considered obligated when the first work item is started, such as kitchen cabinet replacement followed by kitchen floor replacement, but only where funds continue to be expended at a reasonable rate. Where one force account physical work item is started and is not sequentially related to other physical work items, such as site improvements and kitchen remodeling, then only the funds for the one physical work item started are considered obligated.

Question 24. Does an IHA need to enter into a new grant agreement with HUD covering the use of existing 1937 Act grant funds?

Answer 24. In most instances, the requirement limiting use of grant funds to eligible NAHASDA activities is self-implementing and does not require a new grant agreement between HUD and the IHA. However, in instances where a grant was never placed under annual contributions contract or where a tribe or other organization becomes the successor entity to an IHA, a grant agreement is required to obligate funds to the IHA or to establish the tribe or other organization as the successor entity to access IHA funds held by HUD.

Question 25. What Federal requirements apply after September 30, 1997 to funds provided under the 1937 Act?

Answer 25. Funds are subject to applicable Federal requirements which include but are not limited to:

- procurement requirements as listed under 24 CFR part 85 or as specified in the grantee's HUD approved procurement policy;
- environmental requirements as listed under 24 CFR part 58;
- labor requirements of Sec. 104(b) of NAHASDA;
- tenant or homebuyer selection requirements contained in the grantee's HUD approved admissions policy or which comply with Sections 203, 205 and 207(b) of NAHASDA;
- financial controls requirements specified at 24 CFR Part 85.

Question 26. Do the Federal requirements listed in Question 25 apply to IHAs if they are not designated as a TDHE?

Answer 26. Yes.

Question 27. Are there any reporting requirements after September 30, 1997 for grant funds provided under the 1937 Act?

Answer 27. Yes. When a recipient includes funds provided to an IHA in its IHP, reporting is included in the Annual Report and fiscal audit requirements under NAHASDA.

When funds provided to an IHA are not included in a recipient's IHP, reporting requirements in effect on September 30, 1997, continue to apply until the close-out of the grant activity or until the IHA notifies HUD and HUD acknowledges that the grant funds have been reprogrammed for eligible activities which support the regular operation of the IHA. This requirement applies only to categorical grants provided for specific purposes such as development or modernization grants and not to regular operating activities of the IHA. Please note that the modernization reporting requirements have been simplified and guidance has been provided to tribes, TDHEs, IHAs and Area ONAPs.

Question 28. What audit requirements apply to grants funded under the 1937 Act?

Answer 28. IHAs (or their successor entities) are responsible for providing HUD with audits of program activities in accordance with OMB Circulars A–128 and A–133 for any period prior to October 1, 1997, the effective date of NAHASDA. Notice PIH 97–30 (HA) provides the compliance supplement for annual audits of Indian housing authorities. This requirement includes any overdue audits. Additionally, any grant not included by the recipient in its IHP is subject to these audit requirements for the grant activity until all grant activities are completed and the grant is closed.

Question 29. What process does an IHA (or its successor entity) follow to close grants originally funded with 1937 Act monies?

Answer 29. Where grant activities are essentially completed and the IHA and HUD are in the process of closing the grant, the procedures for establishing actual grant costs in effect as of September 30, 1997, for the grant program are to be followed. This includes the requirement for audit verification of expenditures and final financial settlement between the IHA and HUD. Upon completion of the final financial settlement, HUD will adjust its financial records to reflect the actual cost of the grant.

Where grant activities are not completed, final settlement procedures are dependent upon whether the NAHASDA recipient assumes control of the grant funding. If the recipient does not assume responsibility for funds provided by the 1937 Act, procedures for closing grants are the same as stated in the above paragraph. Where the NAHASDA recipient assumes control of the grant funding, close-out procedures established for NAHASDA grants are to be followed even if a significant portion of the grant activities are completed prior to October 1, 1997.

Question 30. If an IHA wants to remain subject to the 1937 Act after October 1, 1997, can it be converted to a PHA?

Answer 30. No. To be eligible for Indian Housing under the 1937 Act, tribal and state enabling legislation allowed for the creation of housing authorities for the express benefit of Indians. IHAs that were created for the benefit of Indians are ineligible for funding under the 1937 Act after October 1, 1997. They cannot choose to be converted to PHAs.

Effect on ACCs

Question 31. Does the repeal of the 1937 Act terminate existing Annual Contributions Contracts (ACCs)?

Answer 31. Section 502(b) of NAHASDA states that Indian housing developed pursuant to an ACC ''shall not be subject to any provision of [the 1937 Act] or any [ACC] or other agreement pursuant to such Act.'' Based on this language, existing ACCs are terminated with two exceptions (bond financed projects and Section 8) which are explained below in Questions 32 and 33.

Question 32. Can HUD continue funding for bond-financed projects in which the bonds were secured by ACCs?

Answer 32. Section 507 of NAHASDA addresses bond-financed projects. Annual contributions can be made by HUD, consistent with Section 507, to continue payments to trustees on behalf

of holders of bonds issued, and outstanding, in connection with the development of Indian housing projects.

Section 8

Question 33. Are Section 8 ACCs terminated?

Answer 33. No. Section 503 of NAHASDA governs the provision of Section 8 rental assistance for units for which a contract was entered into before October 1, 1997. This section states that after September 30, 1997, financial assistance for rental housing assistance may not be provided to an IHA or TDHE, unless such assistance is provided pursuant to a contract for such assistance before October 1, 1997. Any such assistance shall be governed by the provisions of the 1937 Act and the provisions of such contract.

In other words, if an existing Section 8 contract does not expire until after October 1, 1997, funding will continue to be provided until the expiration date of the contract. This may be as late as fiscal year (FY) 2000. The program is to be operated in accordance with the existing ACC and HAP contract.

Question 34. What will happen to any remaining Section 8 operating reserves after the Section 8 contracts expire?

Answer 34. Section 8 operating reserves will remain with the entity administering the Section 8 program. Once the contract expires, the reserves shall be used for eligible activities under NAHASDA.

Question 35. What will happen to any remaining Section 8 program or project reserves?

Answer 35. Section 8 program or project reserves are those funds held by HUD to fund monthly housing assistance payments. When the contract expires, any remaining funds will remain with the Department.

Question 36. If a Tribe or TDHE chooses not to continue a Section 8 program after the current contract expires, is there a requirement to notify program participants of its intent to discontinue the program?

Answer 36. Yes, IHAs administering Section 8 rental certificates and rental voucher programs for which the ACC term will expire after September 30, 1997, must immediately notify Section 8 participants (including families that have exercised the portability provisions of the Section 8 program and have not been absorbed by the receiving housing authority) that their Section 8 assistance will end upon expiration of the ACC in accordance with the Housing Assistance Payment (HAP) contract, part B, Subpart 6, Paragraph iv.

Owners of Section 8 moderate rehabilitation units must also be notified that after September 30, 1997, HAP contracts will not be renewed upon the expiration of their current HAP contracts. Owners should be advised that they must provide written notice of the impending HAP contract expiration to each Section 8 family 180 days before the contract expires. A copy of the written notice must also be sent to the appropriate housing authority in accordance with Section 8(c)(9) of the 1937 Act, as amended. See PIH Notice 97–50, ''Expiration of Section 8 Annual Contributions Contracts between the Department of Housing and Urban Development and Indian housing authorities'' dated September 19, 1997, for further guidance.

Programs Under the Cranston-Gonzalez National Affordable Housing Act or the Stewart B. McKinney Homeless Assistance Act

Question 37. Will IHAs or tribes be eligible for programs funded under the Cranston-Gonzalez National Affordable Housing Act or the Stewart B. McKinney Homeless Assistance Act?

Answer 37. No. As of October 1, 1997, IHAs or tribes are no longer eligible for the following programs:

—Youth Sports
—Youthbuild
—HOME (Although tribes or IHAs are not eligible as direct grantees for HOME funds, States may choose to fund them if the needs of the tribes are reflected in the State's Consolidated Plan.)
—Housing Assistance for the Homeless which includes: Comprehensive Homeless Assistance Plan; Emergency Shelter Grants; Supportive Housing Programs; Safe Havens for Homeless Individuals Demonstration Program; Shelter Plus Care; Rural Homeless Housing Assistance; and Innovative Homeless Demonstration.

Question 38. If an IHA or tribe has unobligated or unexpended funds in any of the programs listed in Question 37, how are they handled?

Answer 38. Youth Sports, Youthbuild, HOME and the Housing Assistance for the Homeless Programs continue to be governed by the provisions of the statutes in effect at the time of funding. The program shall continue to be operated under existing program provisions. After completion of the funded activities, the grants will be closed out in accordance with their program requirements and grant agreements.

Question 39. What will happen to the Drug Elimination Program?

Answer 39. Section 704 of NAHASDA amends the Public and Assisted Housing Drug Elimination Act of 1990 to exclude IHAs as eligible applicants. However, TDHEs are now eligible applicants. The language in NAHASDA does not include tribes as eligible applicants.

Other Programs and Funds

Question 40. Will tribes be eligible for the Economic Development and Supportive Services (EDSS) Program?

Answer 40. The EDSS program is created by annual appropriations. The appropriation language currently makes IHAs and public housing agencies eligible for this program. Continued eligibility for IHAs will depend on future appropriation language. The language will need to be changed to include tribes and TDHEs. For those with existing EDSS grants, the program should continue to be operated under existing program provisions.

Question 41. Is the same true for the Tenant Opportunity Program (TOP) as for the EDSS Program under Question 40?

Answer 41. Yes.

Question 42. What happens to rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, earned home payment accounts under the Turnkey III programs and proceeds from the sale of homeownership units?

Answer 42. These funds can now be used for any eligible NAHASDA activity subject to any conditions imposed by the contract or agreement between the IHA and the homebuyer.

Question 43. Do tenant leases and homeownership agreements for the Mutual Help and Turnkey III Programs remain in effect?

Answer 43. Yes. For the rental program, leases remain in effect until the lease term expires. At that time, the tribe, TDHE, or IHA operate the units under the regulations governing NAHASDA. For homeownership programs, the agreements remain in effect until the contract term expires or modifications may be made to the agreement if these changes are acceptable to both parties. Modifications to the agreement must be in accordance with NAHASDA.

Question 44. What happens to tenant accounts receivables?

Answer 44. Since the terms of the rental leases and homeownership agreements remain in effect, the tenant accounts receivable are still due based on current program requirements. New policies regarding payment requirements for units developed under NAHASDA can be adopted by the tribe or TDHE.

Other Pre-NAHASDA Requirements

Question 45. What happens to the current regulations governing the Indian housing program, 24 CFR 950?

Answer 45. As of October 1, 1997, the regulations are cancelled.

Question 46. What cash management and investment policies and procedures are in effect as of October 1, 1997?

Answer 46. Current procedures outlined in PIH Notice 96–33 (HA), extended by Notice 97–41 (HA) dated July 21, 1997, titled ''Required HA Cash Management and Investment Policies and Procedures'' will continue to apply until the effective date of the NAHASDA final regulation.

Question 47. Are IHAs responsible for resolving audit findings which were issued pursuant to activities prior to October 1, 1997?

Answer 47. Yes. Audit findings are open until closed. Findings that are based on operating policies or procedures can be resolved between an IHA (or its successor entity) and HUD by identifying such findings and agreeing that the correction of deficiencies is no longer required by statute or regulation. Findings that are not based on operating policies or procedures such as instances of fraud, criminal activities or ineligible program activities including repayment of any outstanding amounts due the Department, must be resolved between the IHA (or its successor entity) and HUD before the audit finding can be closed.

Question 48. Will financial statements be required when the IHA's FY ends?

Answer 48. The requirement to submit financial statements ended on September 30, 1997.

Question 49. Will the tribe or TDHE be required to submit the Multifamily Tenant Characteristic Reports, HUD 50058, as of 10–1–97?

Answer 49. As of October 1, 1997, the HUD 50058 does not need to be submitted for the rental and homeownership programs. The form is still required for the Section 8 program until the contract term expires.

Question 50. Will LOCCS access to funds be changed for IHAs on October 1, 1997?

Answer 50. No. LOCCS access to funds will be modified only if a recipient assumes responsibility for a grant. At that time, HUD must be notified of the change in responsibility so that access to the grant funds can be provided to the recipient.

LOCCS provides for the disbursement of funds by certain line items contained in program budgets. Since budgets are no longer required, the Area ONAP will enter the entire grant amount under account 1500 when they establish a project in LOCCS. This will obviate the need to provide budget information to the Area ONAP. For grants already established in LOCCS, the grantee can request the Area ONAP to transfer funds to line 1500 to enable access to the funds. The request to transfer funds can be in writing or by telephone.

Question 51. If an IHA is declared ''high risk'' under the provisions of 24 CFR 950.135, will this designation continue as of October 1, 1997?

Answer 51. No. There is no basis or authority for allowing the designation of ''high risk'' to continue because this designation was based on failure to comply with the 1937 Act, implementing regulations or the ACC. Regulations are being developed under NAHASDA which will outline corrective action under the new program.

Question 52. Are cooperation agreements transferable to a successor agency without requiring any action on the agreement by the local government or the successor agency?

Answer 52. Cooperation agreements may be transferable to a successor agency by their terms. However, it is also possible that the agreement is not transferable in which case a new agreement would have to be negotiated. Generally, if the current IHA becomes the TDHE, a new agreement is not needed because the designation of the IHA as a TDHE does not create a new legal entity. However, an IHA's cooperation agreement does not automatically become the Tribe's.

New Program Under NAHASDA

Question 53. What is the IHP submission deadline?

Answer 53. On January 27, 1997, a transition notice was published in the **Federal Register** which established the original IHP deadline submission date of June 1, 1997. Based on public comment, this date was later amended to extend the deadline to November 3, 1997. With the publication of the proposed rule, many commenters indicated that the deadline did not provide sufficient time to prepare an IHP. Therefore, it is unreasonable to expect a recipient to submit a plan prior to publication date of the program regulations.

Based on the above, this transition notice is establishing new IHP submission dates for Fiscal Year 1998 only. An IHP can be submitted no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. The July 1, 1998, date is necessary in order to provide for a 60-day review period by Office of Native American Program (ONAP) field staff and reservation of funds prior to September 30, 1998. The final regulations will establish IHP submission dates for all future years.

Question 54. Will ONAP develop a model IHP as an example or guide for tribes or TDHEs? Is so, will it be available in a diskette format?

Answer 54. A draft IHP format has been developed and submitted to the Office of Management and Budget (OMB) for approval. This form was also mailed to all tribes and IHAs in August 1997.

To assist with the submission of the IHP, the Department is offering three ways in which to submit the IHP. The first is via the Internet. It is anticipated that this will be the easiest method and it will also provide you with on-line resources such as reviewing plan status. You may also develop your plan using a diskette which contains a template of the IHP in a Microsoft Word 6.0 format. Once completed, this diskette is submitted to the Area ONAP. The diskette and internet instructions were sent to all eligible recipients on July 24, 1997. Of course, a hard copy of the plan will also be accepted for the first several years of the program.

Question 55. Are costs incurred prior to the receipt of a FY 1998 Indian Housing Block Grant (IHBG) which are related to the development and preparation of an IHP (including the challenge of data) eligible for reimbursement from an IHBG?

Answer 55. Yes. Under the provisions of paragraph 32 of OMB Circular A–87, pre-award planning and administrative costs incurred by a recipient which are directly related to the development and preparation of its IHP (including the challenge of data) will be considered eligible IHBG expenditures under the following conditions:

(a) The costs would have been allowable if they had been incurred after the date of the award of the IHBG; and,

(b) The costs do not exceed more than 20% of the recipient's anticipated FY 1998 IHBG (or such other amounts approved in the IHP).

Question 56. Can an IHA which currently represents more than one tribe be designated by more than one tribe as their TDHE?

Answer 56. Yes.

Question 57. If a TDHE represents more than one tribe, do individual IHPs need to be submitted?

Answer 57. If a TDHE has been designated by more than one Indian

tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP that covers two or more tribes. However, the IHP must contain a separate certification in accordance with Section 102(d) of NAHASDA and the IHP Tables when requested by such tribes.

Question 58. What happens if a tribe had two IHAs as of September 30, 1996?

Answer 58. Tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to a tribe under the formula.

Question 59. Who is considered as a tribe in Alaska?

Answer 59. The definition of Federally recognized tribe in NAHASDA reads: ''The term 'federally recognized tribe' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975.''

Authority: Section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

Dated: January 15, 1998.

Kevin Emanuel Marchman,

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