Part V

Department of Housing and Urban Development

Indian Housing Block Grant Program—Notice of Additional Transition Requirements—Advance Funding; Notice
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 (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 IHA's.

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 approved for counseling and training for the prior fiscal period. Tribes/TDHs 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 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.

(i) Where there are umbrella IHA’s 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.

(ii) Where there is a tribe or TDHE that 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.

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

(iv) The National ONAP will request the National ONAP on the calculation in IV.(b)(2)(iv) 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). Formulas were distributed to tribes by letter dated October 15, 1997. AONAPs shall notify the National ONAP of the total amount of funding needed for their office for tribes whose IHA’s 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 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. HHD 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.

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

(iii) 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
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 ¼ 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 SF 1199a (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.

(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.

VI. Sample Letter-of-Intent

(Strictly for use to reserve IHBG funds for tribes/TDHEs whose IHA had a FY 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: ____________

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).
VII. Example of Tribal Resolution and Certification

Whereas, the Tribe (herein known as the Tribe) was formerly served by __________________________ as the 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 Tribe, 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, it is hereby 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 5027-0128. 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 Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

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