

HANDOUT 2



U.S. Department of Housing and Urban Development Office of Public and Indian Housing

Special Attention of:

Administrators, Offices of Native American Programs;
Tribes, Tribally Designated Housing Entities (TDHEs)

Notice PIH 2014-02

Issued: January 24, 2014

Expires: Effective until amended,
revoked or superseded

Cross References: 24 CFR §§
1000.104 - 1000.118
PIH Notice 1999-6

1. SUBJECT: Providing Assistance to Non-Low-Income Families under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

2. PURPOSE: This Notice provides guidance on the requirements of Section 201(b) of NAHASDA, the recent revisions to the Indian Housing Block Grant (IHBG) regulations that became effective on January 3, 2013, and replaces PIH Notice 1999-6. It describes how non-low-income families (families with incomes over 80 percent of the HUD median income limits) may receive assistance under NAHASDA, and provides details on exceptions for essential families and law enforcement officials. This Notice also explains the process for documenting these determinations and how to request HUD approval to assist non-low-income families.

3. BACKGROUND: One of the national objectives of NAHASDA is to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income families on Indian reservations and in other Indian areas. Generally, assistance under NAHASDA is limited to low-income Indian families on Indian reservations and other Indian areas. Section 201(b) provides some exceptions to this requirement.

4. TYPES OF ELIGIBLE NON-LOW-INCOME FAMILIES: IHBG recipients may provide non-low-income families with IHBG assistance as defined below:

Ten Percent Non-Low-Income. Recipients may use up to 10 percent of the amount planned for the tribal program year for families with incomes that fall between 80 percent and 100 percent of the median income without HUD approval if the recipient determines that the need for housing for such families cannot be met without such IHBG assistance. For purposes of the Notice, this exception to the low-income requirement is called the “10 percent authority”.

Non-low-income families assisted under this provision may receive the same **type** of benefits as low-income families; however the dollar amount of benefits and assistance will be altered. Non-

low-income families will pay more or receive less assistance for benefits such as rent or down payment assistance or other benefit. The calculation of the reduced benefit is covered in section

Essential Families. A non-low-income family may receive IHBG assistance if the recipient determines that the presence of the family is essential to the well-being of Indian families and the need for housing for such family cannot be met without such IHBG assistance. Families assisted under this provision can receive the same amount of benefits as low-income families, as provided in 24 CFR § 1000.110(e), and they do not count as non-low-income families for the purposes of the 10 percent authority even though HUD approval is not required. Guidance on documenting these determinations is covered further in this Notice.

To be considered an essential family, an IHBG recipient must first determine a family is essential to the well-being of the Indian families residing in the Indian area, and determine that the need for housing the family cannot be reasonably met without IHBG assistance. The criteria and rationale for determining if a family is essential should be clearly described in the recipient's policy, and documentation must be maintained that clearly supports the determination. The recipient must make a determination about each essential family and document its determination even in cases when HUD approval is not required. The recipient may use the guidance in this Notice when determining if there is a need for housing for the family that cannot be reasonably met without IHBG assistance.

Law Enforcement Families. The recipient may provide housing or housing assistance for law enforcement officers on an Indian reservation or other Indian areas without HUD approval. The following three criteria must be met:

- The officer must be employed on a full-time basis by the Federal Government or a state, county, or other unit of local government, or lawfully recognized tribal government;
- The officer, in implementing such full-time employment, must be sworn to uphold, and make arrests for, violations of Federal, state, county, or tribal law; and
- The recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

Law enforcement officers assisted under this provision can receive the same amount of benefits as low-income families and they do not count toward the 10 percent authority.

Continued Occupancy. If a rental or homeownership family was low-income at the time it entered the program (as described in 24 CFR § 1000.147), and subsequently becomes non-low-income, it may continue to participate in the program if the recipient's admission and occupancy policies authorize such families to continue to receive assistance (including a determination that there is a need for housing for each family that cannot reasonably be met without such assistance). This includes a family member or household member who subsequently takes ownership of a homeownership unit, by inheriting a homeownership unit.

Whether a family can receive the same benefit as low-income families is also subject to the recipient's admission and occupancy policies, which may include the limitation on receiving the

same level of benefits as low-income families by applying the “Calculating Benefits for Non-Low-Income Families” provision (#5 below). Such families do not count toward the 10 percent authority for the non-low-income persons that may be served.

Secretary Approved Non-Low-Income Families. HUD approval is required if the IHBG recipient plans to: (1) use more than 10 percent of the amount planned for the tribal program year for assistance to non-low income families (2) provide housing for families with income over 100 percent of the median income. The standard for HUD approval is that the family’s housing needs cannot be met without IHBG assistance. The request for approval must be submitted as outlined in 24 CFR § 1000.108 and in this Notice. In cases under (1) above, such assistance is not prohibited by the 10 percent authority cap. It is irrelevant to cases in (2) involving families with incomes over 100% of mean. These non-low-income families will be required to pay more or receive less assistance for benefits such as rent or down payment assistance.

See ATTACHMENT A for the methods a recipient may use to track its use of the 10 percent authority for its tribal program year.

The table below summarizes the circumstances when non-low-income families can be assisted and the requirements for those families.

**Summary of Requirements
For Serving Non-Low-Income Families**

Applicability	HUD Approval Required	Rent/Homebuyer Payment differential Required by HUD	Counts Against 10% Authority
Essential Family	No	No	No
Law Enforcement	No	No	No
Continued Occupancy	No	Determined by Tribe/TDHE Occupancy Policy	No
Non-Low- Income Families (10% Authority) between 80-100% of median income	No	Yes	Yes
Secretary Approved: Exceeding 10% Authority to serve Indian families at 80 – 100% of median income	Yes	Yes	By definition these families exceed the 10% cap.
Secretary Approved: Indian family over 100% of median income	Yes	Yes	No

5. CALCULATING BENEFITS FOR NON-LOW-INCOME FAMILIES: As specified in 24 CFR § 1000.110(d), the following formulas apply for determining the amount of assistance that may be provided to Secretary approved non-low-income Indian families and ten percent non-low-income families:

- The rent (including homebuyer payments under a lease purchase agreement) to be paid by a non-low-income family cannot be less than [income of non-low-income family/income of

family at 80 percent of median income] × [rental payment of family at 80 percent of median income], but need not exceed the fair market rent or value of the unit.

- Other assistance, including down payment assistance, to non-low-income families, cannot exceed [income of family at 80 percent of median income/income of non-low-income family] × [present value of the assistance provided to family at 80 percent of median income].

See ATTACHMENT B for more information about calculating non-low-income benefits.

6. DETERMINING HOUSING NEED FOR NON-LOW-INCOME FAMILIES: A recipient must make a determination and document the determination of housing need for non-low-income families. The following guidance is not all inclusive. A recipient may identify other methods of assessing need.

To determine if a housing need exists, recipients should consider the following factors.

- **Inadequate housing.** Such housing includes substandard and overcrowded housing. For the purposes of this Notice, inadequate housing is defined as housing that: (1) is not safe; (2) is not in a physically sound condition with all systems performing the intended design functions; or, (3) does not provide adequate space and privacy for all intended household members.
- **Temporary housing and homelessness.** Families living in temporary housing such as emergency shelters or transitional housing, or in a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.
- **Cost burden.** When a family pays over 50 percent of its gross income for housing (including utilities) due to the lack of more affordable housing, it can be determined that there is a housing need or a need for housing that is more affordable.

Determining Need for IHBG Assistance: Once the need for housing is established, the next step is to determine if the non-low-income family could secure adequate housing without IHBG assistance:

The following information should be considered when making this determination.

- **Rental and homeowner housing.** In cases where a family is living in inadequate rental housing, the recipient should determine if the family could find adequate rental housing without requiring IHBG assistance.
- **Income and assets.** It should be determined if the family has sufficient income and/or assets that would enable it to obtain adequate housing (which may mean rental housing) without IHBG assistance.
- **Private and governmental programs.** In cases involving homeownership, the recipient should determine if the family could qualify for a conventional or government backed mortgage, (for example, HUD's Section 184 Loan Guarantees for Indian Housing

program, Federal Housing Administration, Veterans Administration, U.S. Department of Agriculture, Rural Development, or local or state programs). For a family who could qualify for a mortgage, but was rejected due to credit problems, the recipient should consider if the family would be able to meet program requirements including repayment, if applicable.

- **Housing market/location conditions.** It should be determined whether there are sufficient number of affordable units on the market that would allow the family to find an adequate unit without IHBG assistance. The recipient may consider the availability of housing and the location when determining if the housing need can be met without IHBG assistance.
- **Overcrowded conditions.** In cases of overcrowded conditions, the recipient should review the overcrowded conditions and consider if the family or families have adequate resources to alleviate the overcrowded conditions without IHBG assistance.

If the recipient determines that a family seeking IHBG assistance does not have a legitimate housing need, the recipient should notify the family in writing of the reasons the family is not eligible to receive assistance.

7. DOCUMENTING NEED: Documentation demonstrating need must be maintained by recipients at all times while families are receiving assistance.

Recipients must carefully document their determination of housing need for non-low income families and the reasons the housing need cannot reasonably be met without IHBG assistance must also be documented. Because housing need and the inability to secure housing without IHBG assistance can occur due to a variety of different circumstances, the type of documentation required will vary depending on the situation. The recipient should consider the documentation listed below and determine, based on the circumstances of the non-low-income family, the type(s) of documentation that would best support its determinations.

- Property inspections (completed by the recipient or other reliable sources); code violation letters from a local government citing unsafe conditions; family information including size and the number, age, and gender of children living in the home.
- A statement from a temporary housing facility stating that the family has been residing at the facility because they have no other reasonable alternative. For homeless families, the lack of any information indicating that the family has adequate housing along with an explanation from the family stating why they do not have adequate housing would be sufficient documentation.
- A statement signed by the head of household explaining why the family has a housing need that cannot be met without assistance. The statement should specify the reasons why a housing need exists and the steps that the family has taken to secure housing without assistance. The family should provide the recipient with verification to support its statement.

- Copies of tax returns, payroll stubs, rent receipts, utility receipts or canceled checks, etc. Third party verifications can be used to confirm information provided by the family.
- Rejection letters from financial institutions or landlords.
- Letters from state, local, or federal agencies stating that the family does not qualify for housing programs or that there are no programs available.
- Notes including names and phone numbers of persons the family has contacted in an attempt to secure housing.

If HUD approval is required before a family can obtain assistance, a copy of the recipient's documentation and request for HUD approval should be sent to the Area Office of Native American Programs (ONAP). If HUD approval is not required, the recipient's documentation should be kept on-site and HUD may review these documents on-site or request copies at any time and that, if HUD disagrees with the recipient's determination in any particular case, it may impose a specified remedy, using the procedures at 24 C.F.R. § 1000.532. A determination and supporting documentation must be completed on a case-by-case basis for each family seeking assistance.

Recipients' policies and procedures for assisting non-low-income families, including information to be provided by the family, the types of documentation required, recipient verification procedures, etc., must be developed and adopted prior to assistance being provided.

As part of its policy, a recipient may allow a non-low-income family to appeal the recipient's decision and permit the family to provide additional information that might cause the recipient to change its determination.

8. REQUEST TO HUD TO ASSIST NON-LOW-INCOME FAMILIES: In cases when HUD approval is required prior to providing assistance to non-low-income families, the recipient should submit its request, including supporting documentation, to its Area ONAP. The Area ONAP will be consulting with the applicant during the review process. If the Area ONAP determines that the information provided by the recipient is incomplete or inadequate, the Area ONAP will deny the request and notify the recipient of specific reasons why the request cannot be approved. The recipient may appeal the request to provide assistance to a non-low income family as outlined below in Section 9.

If the Area ONAP determines the information provided is complete and adequate, the Area ONAP will forward the request to the ONAP Office of Grants Management (OGM) in headquarters with its recommendation for approval. OGM will review the information and forward it to the Deputy Assistant Secretary for Native American Programs for approval.

HUD has 60 calendar days after receiving the request to notify the recipient in writing that the request to provide assistance to non-low-income Indian families is approved or disapproved. If

no decision is made by HUD within 60 calendar days of receiving the proposal, the proposal is deemed to have been approved by HUD.

9. APPEAL OF HUD DENIAL TO ASSIST NON-LOW-INCOME FAMILIES: When the Area ONAP notifies a recipient that their request to provide assistance to a non-low-income Indian family, the recipient may request reconsideration of the denial in writing. The request must be made within 30 calendar days of receipt of HUD's denial and must include justification for the reconsideration. Within 20 calendar days of receiving the request, the Area ONAP, the Office of Grants Management or the Deputy Assistant Secretary of ONAP shall reconsider the recipient's request and will either affirm or reverse its initial decision in writing, setting forth its reasons for the decision.

The recipient may appeal any denial by the Area ONAP, the Office of Grants Management or the Deputy Assistant Secretary of ONAP to the Assistant Secretary for Public and Indian Housing within 20 calendar days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and submit justification for the reconsideration. Within 20 calendar days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, stating the reasons for the decision. Any decision made by the Assistant Secretary constitutes final agency action.

10. NON-DISCRIMINATION REQUIREMENTS: In making the case-by-case determinations outlined in this Notice, recipients must comply with the applicable non-discrimination requirements in 24 CFR § 1000.12. The Indian Civil Rights Act (ICRA), which is Title II of the Civil Rights Act of 1968, applies to federally recognized, Indian tribes that exercise powers of self-government. This Act provides that no Indian tribe, in exercising powers of self-government, should deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. Section 504 of the U.S. Rehabilitation Act of 1973 (See 24 CFR 8) and the Age Discrimination Act of 1975 (See 24 CFR 146) are applicable in their entirety. Recipients must document the rationale for determinations to demonstrate consistency and non-discrimination. Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 (commonly known as the Fair Housing Act) requirements do not apply to actions under NAHASDA by federally recognized Indian tribes and their TDHEs.

11. ADDITIONAL INFORMATION: If you have any questions or require further information, please contact your Area ONAP. Persons with hearing or speech impairments may access their Area Office of Native American Programs via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/
Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

Attachments

ATTACHMENT A

Tracking Percent Authority

There are various methods that can be used to determine the amount of IHBG assistance provided to non-low-income families. Therefore, it is important that the recipient document in its policies the method that it will use to determine the assistance that can be provided to non-low-income families in its respective areas.

The following method may be used by a recipient to track assistance provided within the 10 percent authority amount planned for the tribal program year. Note that recipients should include the calculation methods they plan to use in their respective occupancy policies.

<u>Program Year Period:</u>	10/1/2012 through 9/30/2013
<u>Program Year Planned Expenditures:</u> <u>(from Line 1, Column D of the Sources of Funding Table from IHP)</u>	\$356,000
<u>10% Authority Amount:</u>	\$35,600

Example 1: The recipient is assisting a non-low income Indian family with rental assistance. The tribe has decided to use the monthly Fair Market Rent (FMR) of \$698 as the rental value for assistance.

\$698 FMR value x 12 months = \$8,376 of NAHASDA assistance.

Example 2: The recipient is assisting a non-low-income Indian family with homeownership assistance. The monthly value of the homebuyer unit is \$850.

\$850 value x 12 months = \$10,200 of NAHASDA assistance.

Example 3: The recipient is assisting a non-low-income Indian family with down payment assistance. Amount of assistance being provided to non-low-income Indian family is \$7,400.

Participant	Amount of Assistance Provided	Balance of 10% Authority
10% of planned PY Expenditures		\$35,600
Rental Assistance- Example 1	\$8,376	\$27,224
Homeownership Assistance – Example 2	\$10,200	\$17,024
Down payment Assistance – Example 3	\$7,400	\$9,624

ATTACHMENT B

Calculation of Rental/Homebuyer Payments and Other Assistance for Non-Low Income Families

RENTAL AND HOMEBUYER PAYMENTS: The rent payment or homebuyer payment to be paid by a non-low-income Indian family cannot be less than:

[Income of the non-low-income family at 80 percent of median income limit] X
[Rental or homebuyer payment of the family at 80 percent of median income], but
need not exceed the fair market rent or value of the unit.

The “income of family at 80 percent of median income” referred to above, means the dollar amount representing 80 percent of the HUD median income limits adjusted by family size.

Eligibility and rents should be determined in accordance with the recipients’ policies, and when determining the rental or homebuyer payment of the family at 80 percent of median income, ensure that the adjusted income deductions of the low-income family is comparable to the adjusted income deductions that the non-low-income Indian family would use. In other words, the adjusted income of the low-income family at 80 percent of median income should be based on the same family size and adjusted income deductions (such as \$480 for each family member under 18, \$400 for an elderly family, overall rent cap for the unit, etc.) that the non-low-income Indian family would use.

HUD Median Income Limits are established at national (U.S.), county and metropolitan area levels, and are updated annually. Tribes/TDHEs must use the higher income limits for their Indian Area. For instance, if the median income limits for a county located within an Indian area is greater than the U.S. median income limits, then the tribe/TDHE must use the county median income limits rather than the U.S. median income limits.

FMR are gross rent estimates, which are established by HUD and published annually in the *Federal Register*. FMRs are used to determine rent payment standards for a number of HUD-funded programs.

OTHER ASSISTANCE: Other assistance is assistance other than rental and homebuyer benefits, such as down payment assistance, provided to non-low-income Indian families.

The amount of other assistance provided to a non-low-income Indian family cannot exceed [income of family at 80 percent of median income/Income of non-low-income Indian family] X [Present value of the assistance provided to family at 80 percent of median income].

The present value of the assistance is the current value of the assistance at the time it is provided.