

2 CFR PART 200, APPENDIX XI

COMPLIANCE SUPPLEMENT



JUNE 2019

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CFDA 14.867 INDIAN HOUSING BLOCK GRANTS

I. PROGRAM OBJECTIVES

The primary objectives of the Indian Housing Block Grants (IHBG) program are (1) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families; (2) to coordinate activities to provide housing for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members; and (3) to plan for and integrate infrastructure resources for Indian tribes with housing development for Indian tribes (24 CFR section 1000.4).

II. PROGRAM PROCEDURES

The IHBG program is formula driven, based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities. To access funds, Indian tribal governments (or tribally designated housing entities (TDHEs)) must submit an Indian Housing Plan (IHP) to the Department of Housing and Urban Development (HUD), and HUD must find that the IHP meets the requirements of Section 102 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). IHBG funds awarded to a recipient may only be used for affordable housing activities that are consistent with its IHP (24 CFR section 1000.6).

Source of Governing Requirements

This program is authorized by NAHASDA, codified at 25 USC 4101 through 4212. Implementing regulations are in 24 CFR part 1000.

Availability of Other Program Information

Additional information about the IHBG program is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/grants/ihbg.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the Federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in**

the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	Y	N	Y	N	Y

A. Activities Allowed or Unallowed

1. The following activities to develop, operate, maintain, or support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing are allowable:
 - a. *Indian Housing Assistance* – The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority, including such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing (25 USC 4132(1) and 4133(b)).
 - b. *Development* – The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, and other related activities (25 USC 4132(2)).
 - c. *Housing Services* – The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or home-ownership 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 pursuant to this section (25 USC 4132(3)).

- 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; the costs of operation and maintenance of units developed with funds provided under NAHASDA; and management of affordable housing projects (25 USC 4132(4)).
 - 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 (25 USC 4132(5)).
 - f. *Model Activities* – Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by the Secretary of Housing and Urban Development as appropriate for such purpose (25 USC 4132(6)).
 - g. *Reserve Accounts* - The deposit of amounts, including grant amounts, in a reserve account only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities. These amounts may be invested. Interest earned on reserves is not program income and may not be included in calculating the maximum amount of reserves. The maximum amount of reserves, whether in one or more accounts, that a recipient may have available at any one time is calculated by determining the 5-year average of administration and planning amounts, not including reserve amounts, expended in a tribal program year and establishing one-fourth of that amount for the total eligible reserve (25 USC 4132(9); 24 CFR section 1000.239).
2. Unless the conditions specified in 25 USC 4111(d) (regarding tax exemption for real and personal property taxes and user fees) are met, grant funds may not be used for affordable housing activities for rental or lease-purchase dwelling units developed
 - a. under the United States Housing Act of 1937 (42 USC 1437 et seq.), or
 - b. with amounts provided under 25 USC Chapter 43 that are owned by the recipient for the tribe.

B. Allowable Cost/Cost Principles

1. All items of cost listed in 2 CFR part 200, subpart E, that require prior Federal agency approval are allowable without prior approval, except for the following:
 - a. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.

- b. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees, require prior HUD approval.
2. Fines, penalties, damages, and other settlements are unallowable.
3. No person providing consultant services in an employer-employee type of relationship may receive more than a reasonable rate of compensation. Such compensation must not exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule (currently \$161,900). The Executive Pay Schedule may be obtained at <https://www.opm.gov/policy-data-over-sight/pay-leave/salaries-wages> (24 CFR section 1000.26(b)).

E. Eligibility

1. Eligibility for Individuals

Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant funds (25 USC 4133(d)). The following families are eligible for affordable housing activities (25 USC 4131(b)):

- a. Low-income Indian families on a reservation or Indian area (Section 201(b)(1) of NAHASDA (25 USC 4131(b)(1))).
- b. A non-low-income family may receive housing assistance if HUD approves that housing assistance due to a need that cannot reasonably be met without the assistance (Section 201(b)(2) of NAHASDA (25 USC 4131(b)(2))). A family that was low-income at the times described in 24 CFR section 1000.147 but subsequently becomes a non-low-income family due to an increase in income may continue to participate in the program in accordance with the recipient's admission and occupancy policies. This includes a family member or household member who takes ownership of a homeownership unit. Non-low-income families cannot receive the same benefits that are provided to low-income families, as benefits are limited by 24 CFR section 1000.110(d) and must be based on the recipient's admission and occupancy policies (24 CFR section 1000.110).
- c. A family may receive housing assistance on a reservation or Indian area if the family's housing needs cannot be reasonably met without such assistance, and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families. Assistance for essential families does not require HUD approval, but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of

Indian families and the family's housing needs cannot be reasonably met without such assistance (Section 201(b)(3) of NAHASDA (25 USC 4131(b)(3))).

- d. A law enforcement officer on an Indian reservation or other Indian area may receive housing assistance, if:
 - (1) The officer is 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;
 - (2) In implementing such full-time employment, the officer is sworn to uphold, and make arrests for violations of Federal, State, county, or tribal law; and
 - (3) The recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime (Section 201(b)(4) of NAHASDA (25 USC 2531(b)(4))).

2. Eligibility for Group of Individuals or Area of Service Delivery

Not Applicable

3. Eligibility for Subrecipients

Not Applicable

I. Procurement and Suspension and Debarment

1. For the IHBG program, funds used are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e(b)) or, if applicable, tribal preference in contracting under 25 USC 4111(k), which means that a recipient is to apply employment and contract preference laws (including regulations and tribal ordinances) that it has adopted; or, in absence of such laws, to the greatest extent feasible, a recipient is to give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises (24 CFR section 1000.52).
2. A recipient is not required to comply with the procurement requirements under 24 CFR sections 200.318 through 200.326 or the Indian preference requirements with respect to any procurement of goods and services using IHBG funds with a value of less than \$5,000 (25 USC 4133(g)).
3. A recipient may use Federal supply sources made available by the General Services Administration under 40 USC 501 (Section 101(j) of NAHASDA; 24 CFR section 1000.26(a)(11)(ii)).

L. Reporting

1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Applicable

2. Performance Reporting

- a. HUD-52737, *Indian Housing Plan/Annual Performance Report (OMB No. 2577-0218)* – Recipients may complete the Annual Performance Report component of the form using either HUD's online EPIC system or the Excel version that is submitted by paper or electronically as an email attachment to the Area Office of Native American Programs (ONAP) within 90 days of the end of the recipient's program year. To access EPIC, log into this site: https://portalapps.hud.gov/app_epic/. User IDs and passwords are required to log into EPIC. The user must be registered in HUD's Secure Systems to have a valid ID and password for EPIC. Secure Systems registration: https://hudapps.hud.gov/public/wass/public/pha/phareg_page.jsp. If the user already has registered with Secure Systems, the user must contact an Area Office of Native American Programs to complete the EPIC registration process.

HUD-52737 Key Line Items – The following line items contain critical information:

1. Section 3, Line 1.9 – *Planned and Actual Outputs for 12-Month Program Year*.
 2. Section 5, Line 1 – *Sources of Funds* – columns G and K.
 3. Section 5, Line 2 – *Uses of Funds* – columns O through Q.
 4. Section 11, Line 1 – *Inspections of Units*, Columns C through F
 5. Section 14, Lines 1 and 2 – *Jobs Supported by NAHASDA*.
- b. SF-425, *Federal Financial Report*. Review SF-425s submitted during the audit period to determine their completeness, accuracy, and timeliness of submissions. Review Box 12 (or attachment) of the form for the reasonableness of the investment status explanation.

- c. HUD-60002, *Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons (OMB No. 2529-0043)* – Each recipient that does not meet the provisions of 24 CFR section 1000.42(c) and administers covered housing and community development assistance in excess of \$200,000 in a program year must submit HUD 60002 information using the automated Section 3 Performance Evaluation and Registry System (SPEARS) (24 CFR sections 135.3(a)(1) and 135.90). Information on the automated system is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3/spears. The system was launched on August 24, 2015. The due date for submission of 2013 and 2014 reports was extended to December 15, 2015. SPEARS pre-populates Form HUD 60002 with recipient name and address along with disbursement data for program funding covered by Section 3. Users have the flexibility of selecting the 12-month reporting period, typically to coincide with their respective fiscal cycle.

Key Line Items – The following line items contain critical information:

1. Number of new hires that meet the definition of a Section 3 resident
2. Total dollar amount of construction contracts awarded during the reporting period
3. Dollar amount of construction contracts awarded to Section 3 businesses during the reporting period
4. Number of Section 3 businesses receiving the construction contracts
5. Total dollar amount of non-construction contracts awarded during the reporting period
6. Dollar amount of non-construction contracts awarded to Section 3 businesses during the reporting period
7. Number of Section 3 businesses receiving the non-construction contracts

3. Special Reporting

Not Applicable

N. Special Tests and Provisions

1. Wage Rate Requirements

Compliance Requirements NAHASDA imposes the Wage Rate Requirements on contracts and agreements for assistance, sale, or lease for payments to laborers and mechanics employed in the development of affordable housing. NAHASDA provides that the Wage Rate Requirements and HUD-determined rates shall not apply to a contract or agreement if the contract or agreement is otherwise covered by a law or regulation adopted by an Indian tribe that provides for the payment of not less than prevailing wages as determined by the tribe. This requires the Indian tribe to pass a tribal law or regulation and ensure that the law requires the payment of not less than those wage rates the tribe determines to be prevailing (Section 104(b) of NAHASDA (25 USC 4114(b)); 24 CFR section 1000.16)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

2. Environmental Review

Compliance Requirements Program regulations provide that a tribe may assume responsibilities for environmental review and decision making under the requirements of 24 CFR part 58 or it may allow HUD to retain these responsibilities. The tribe is the responsible entity, whether or not a TDHE is authorized to receive IHBG grant amounts on behalf of the tribe (24 CFR section 58.2(a)(7)(ii)). If HUD retains the responsibilities, HUD will do reviews under the provisions of 24 CFR part 50 (24 CFR section 1000.20). A HUD environmental review must be completed for any activities not excluded before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds (24 CFR section 1000.20(a)).

If the tribe assumes these responsibilities, the following applies: An environmental review must be prepared for each project or activity. Funds may not be committed to a grant activity or project before the completion of the environmental review and approval of the Request for Release of Funds (RROF) and environmental certification. If the responsible entity tribe determines that it met a criterion specified in the regulations that would qualify the project as exempt or qualify the project for certain categorical exclusions, the RROF and environmental certification requirements do not apply (24 CFR sections 58.34 and 58.35, 24 CFR section 1000.20(b)(3)).

Audit Objectives Determine whether (1) the required environmental reviews have been performed and (2) program funds were not obligated or expended prior to completion of the environmental review process.

Suggested Audit Procedures

Select a sample of projects for which expenditures were made and verify that:
Environmental Reviews

- a. Environmental determinations were made for each project or activity.
- b. Environmental determinations were supported by an environmental review, including supporting documentation for each applicable law and authority.
- c. For any project where an RROF and environmental certification was not submitted, the environmental review includes a written determination that the project or activity is exempt under a criterion of 24 CFR section 58.34 or is categorically excluded under a criterion of 24 CFR section 58.35(b), and meets the conditions specified for such exemption or categorical exclusion, with supporting documentation.

Requests for Release of Funds

- a. Examine HUD's approval of the RROF and environmental certification and note receipt dates.
- b. Review the expenditure and related records and determine the dates the funds were obligated or expended.
- c. Determine that funds were obligated or expended subsequent to RROF and environmental certification approval by HUD.

Availability of Other Information

Additional information on environmental review requirements can be found at https://www.hud.gov/program_offices/comm_planning/environment/

3. Investment of IHBG Funds

Compliance Requirements A recipient may invest IHBG funds for purposes of carrying out IHBG activities in investment securities if approved by HUD (25 USC 4134). Under IHBG, investments may be for a period not to exceed 5 years and only in those accounts or instruments identified in 24 CFR section 1000.58(c). A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Stock component of the formula.

Audit Objectives Determine whether the investment of IHBG funds by the recipient meets the requirements of 24 CFR section 1000.58.

Suggested Audit Procedures

If IHBG funds have been invested during the audit period:

- a. Ascertain that prior written HUD approval had been obtained, and any conditions or restrictions on the approval.

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- b. Verify that the funds were invested only in those allowable accounts or instruments and within any conditions or restriction on the approval.
 - c. Verify that each of these accounts are separate from other funds of the recipient and subject to an agreement in a form prescribed by HUD (i.e., HUD-52736-A for bank accounts or HUD-52736-B for brokers and dealers).
 - d. Ensure these agreements are fully executed and maintained by the recipient in an accessible place.