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RECIPIENT GUIDANCE

PROGRAM: Indian Housing Block Grant

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

R.J.B.

FROM: Roger J. Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Insurance Requirements under the IHBG Program

Background: Section 203(c) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), requires that each recipient maintain adequate insurance coverage for housing units that are owned, operated, or assisted with grant amounts provided under the Act. This section of NAHASDA is implemented by the Indian Housing Block Grant (IHBG) regulations at 24 CFR §§1000.136 through 140. Recipients are required to obtain insurance in an amount that will protect the financial stability of the recipient's IHBG program. The insurance requirements under NAHASDA as outlined are in addition to applicable flood insurance requirements under 24 CFR §1000.38. This guidance replaces Program Guidance 1998-10t.

In addition, 2 CFR Part 225 (formerly OMB Circular A-87), Appendix B, sections 18(c) and 22 provide that the use of grant funds for required or approved insurance under a grant program is an allowable cost. Recipients should maintain permissible insurance in accordance with their policies and sound business practice. Any actual losses that could have been covered by permissible insurance are generally unallowable, unless expressly provided for in the Federal award. One provision where losses not covered by insurance are allowable under 2 CFR Part 225, is for costs incurred because of losses not covered under nominal deductible insurance coverage and minor losses for spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations.

Note: OMB recently published Guidance for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which would supersede the Circulars listed here. HUD is implementing regulations in accordance with the guidance and expects the new regulations will become effective December 26, 2014, or later. FY 2014 grantees will be required to comply with the HUD implementing regulations when they become effective, but should not use them before the effective date.

Purpose: The intent of this guidance is to provide IHBG recipients with direction on the following: (1) When is insurance required? (2) What insurance requirements apply, and when is insurance adequate? (3) What insurance requirements apply to contractors and subcontractors? And, (4) What are other insurance requirements under NAHASDA?

When is insurance required and in what amount? Insurance coverage is required for housing units that are owned, operated, or assisted with IHBG funds. Adequate insurance is insurance in an amount that will protect the financial stability of the recipient's IHBG program. This means that the recipient's housing units and privately owned housing units that are assisted with IHBG funds must be adequately insured for one of the two time periods listed below, whichever is longer:

- the useful life (affordability period) of recipient or privately owned units, or
- the term of a repayment or forgiveness agreement for all or part of the IHBG assistance for privately owned housing units.

Housing units assisted with IHBG funds must remain affordable for their useful life as determined by the recipient (affordability period), and recipients must have a means of insuring their investment during this period. Therefore, as long as the useful life (affordability period) has not expired, IHBG-assisted housing units owned or operated by the recipient must be covered by adequate insurance.

Insurance for housing may be either a purchased insurance policy from an insurance provider or a plan of self-insurance. Recipients may not require insurance on privately owned housing assisted with IHBG funds, if there is no risk of loss or exposure to the recipient, or if the assistance is in an amount less than \$5,000, unless repayment of all or a portion of the assistance is part of the assistance agreement. If private homeowners are unable to provide proof of insurance during the useful life (affordability period) of the assisted properties, the recipient must take steps to insure the units in order to protect its IHBG investment. This protection can be provided in a number of ways including:

- Purchase insurance for housing units that are owned, operated, or assisted with IHBG funds in an amount that is adequate to provide replacement cost to protect the IHBG investment.
- Have IHBG-assisted, private homeowners provide proof of replacement insurance for the useful life (affordability period) of the assistance received.
- Purchase insurance for privately owned housing units in the amount of the outstanding balance of the IHBG assistance provided.

For example: If a fire destroyed all or part of some housing units that were subject to a useful life (affordability period), and those housing units were not insured, then there is a risk of loss or exposure to the recipient's IHBG program because the housing units did not serve the low-income Indian families for the period of time intended and for which the IHBG funds were provided. Uninsured damage would represent a loss of the IHBG funds that the recipient originally used to construct, rehabilitate, maintain, finance, or otherwise assist the housing units. Failure to ensure that assisted units remain available for occupancy by eligible families during the affordability period may result in repayment of the IHBG assistance to HUD.

To assist the recipient in determining when insurance is required, two examples are provided as follows:

Example 1: When do housing units not have to be insured? If a recipient provides \$3,500 in emergency assistance to a private homeowner and the assistance is not subject to a repayment agreement of any kind, then no insurance requirements apply.

Example 2: When must housing units be insured in accordance with a recipient's useful life (affordability period)? If a recipient provides \$25,000 in down payment assistance to a private homeowner that includes a mandatory 10-year useful life (affordability period) for the property and a 5-year repayment clause, then the insurance requirements described above will apply for 10 years from the date that assistance is provided.

Insurance Requirements: Recipients must provide adequate insurance either through direct purchase or by self-indemnification to protect against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient.

There are many different methods by which an insurance company may calculate the amount it will pay a recipient for a casualty loss against loss from fire, weather, and liability claims. It is good business practice to purchase insurance in an amount that will cover the full cost to replace housing units that are owned, operated, or assisted with IHBG funds. A stated value or cash value policy might result in a reduced premium, but if a loss occurs, the payment made under the stated value or cash value policy may not be enough to rebuild or repair the housing unit.

Recipients must also ensure that privately owned housing units assisted with IHBG funds are insured. If the insurance requirement is being satisfied by private owners purchasing adequate insurance coverage themselves, it is good business practice to have the recipient named as an additional insured in order to protect the recipient's IHBG investment. In cases when the private owner is required to purchase adequate insurance, it remains the recipient's responsibility to ensure compliance with all NAHASDA requirements.

Insurance Requirements for Contractors and Subcontractors: Pursuant to 24 CFR §1000.136(c), recipients shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the recipient in the contract. If contractors and subcontractors provide insurance such as a builder's risk insurance policy to cover their activities, it is good business practice to have the recipient named as an additional insured to protect the recipient's IHBG investment.

If recipients are contracting through force account work, the recipient must provide insurance covering the force account activities in order to protect the financial stability of the recipient's IHBG program. **NOTE:** If contractors and subcontractors provide insurance such as a builder's risk insurance policy to cover their activities, it is good business practice to have the recipient named as an additional insured to protect the recipient's IHBG investment.

Additional Types of Insurance Required or Recommended: The following is a listing of other types of insurance coverage that is either required by regulation or advisable.

2 CFR Part 225 (formerly OMB Circular A-87), Appendix B, Sections 18 and 22 provide that the use of grant funds for required or approved insurance under a grant program is an allowable cost. Recipients should maintain permissible insurance in accordance with its policies and sound business practice. Any actual losses that could have been covered by permissible insurance are generally unallowable, unless expressly provided for in the Federal award. One provision where losses not covered by insurance are allowable under 2 CFR Part 225, is for costs incurred because of losses not covered under nominal deductible insurance coverage and minor losses for spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations. The provisions of 2 CFR Part 225 apply to losses related to non-dwelling units or other property assisted under NAHASDA including model activities approved in accordance with section 202(6) of the Act, vehicles leased or purchased with NAHASDA funds and/or certain non-expendable equipment/assets.

If multiple funding sources are used by the recipient, it is important to understand the insurance requirements of each source. Not all insurance policies and plans are the same and any policy obtained by the recipient should be reviewed carefully.

Flood Insurance: In accordance with 24 CFR § 1000.38, IHBG-assisted properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazard areas must be insured through the National Flood Insurance Program.

Business or Commercial Property Insurance: Business or commercial property insurance policies protect the recipient's owned and leased property, as well as inventory or assets, against loss or damage caused by theft, accident, or other means. This insurance should cover housing offices, community buildings, childcare facilities, or other facilities owned and operated by the recipient and funded through the IHBG program. Most business or commercial property insurance policies protect the recipient's personal property, even if it is not at the business location when it is damaged or lost. Business or commercial property insurance generally covers the recipient's costs to replace or repair the property and, in some instances, may compensate the recipient for items that cannot be replaced.

Automobile and Other Liability Insurance: Automobile liability insurance policies cover injuries that arise out of the use of automobiles owned by the recipient. This coverage can protect the recipient against claims of bodily injury, property damage, or death. Automobile and other liability insurance policies should be evaluated by the recipient to ensure it has purchased adequate insurance coverage for its activities and assets. The recipient must maintain automobile and other liability insurance in accordance with its policies and sound business practice to protect its IHBG program and investment.

Workers' Compensation and Employers' Liability Insurance: Workers' Compensation and Employer's Liability coverage may be obtained by a recipient. Workers' Compensation coverage is a compromise between employers and employees in which injured employees relinquish the right to sue their employers for employment-related injuries in return for a statutory imposed mechanism providing specific scheduled benefits, which are funded for the most part by insurance. Workers' compensation insurance is generally the most effective method available to an employer for compensation of employees and their families for work-related injuries or diseases. *Workers' compensation coverage is not an employee benefit. It is a casualty insurance coverage.*

General Liability Insurance: General liability insurance is also sometimes referred to as business or commercial general liability insurance and it protects the recipient from common liabilities. It is good business practice to purchase general liability insurance as it covers claims of bodily injury or other physical injury or property damage. It is frequently offered in a package with property insurance to protect against incidents that may occur on the recipient's premises or at other covered locations where the recipient normally conducts business. General liability insurance enables the recipient to continue operations while it faces real or fraudulent claims of certain types of negligence or wrongdoing, including bodily injury, property damage, personal injury (including slander or libel), and advertising injuries. Additionally, a general liability insurance policy usually covers the cost to defend or settle claims, even if the claims are fraudulent.

Employee Dishonesty (Fidelity Bond) and Theft, Disappearance, and Destruction Insurance: Employee dishonesty (sometimes referred to as Fidelity Bonds) and theft, disappearance, and destruction insurance are policies that can be purchased to cover the loss of money, securities, or other property which the recipient may sustain due to fraudulent or dishonest acts committed by any of its principals or employees. This type of insurance coverage is not usually limited to loss of money and may include coverage for the loss of merchandise or property which a principal or employee might steal. It is good business practice for recipients to purchase employee dishonesty insurance (fidelity bonds) and theft, disappearance, and destruction insurance policies for its officers, directors, agents, and employees, particularly those handling cash or authorized to sign checks or certify payment vouchers. Directors and officers are not typically covered under an employee dishonesty insurance policy or Fidelity Bond. There are no standardized policies for this type of coverage, but it is recommended that recipients obtain coverage for wrongful or dishonest acts committed by the recipient's directors and officers as well as its principals and employees.

Neither the U.S. Department of Housing and Urban Development nor ONAP should be named as an additional insured for any insurance requirement or type of insurance policy or coverage listed above.

If you have any questions, please contact your Area ONAP.