

## **Appendix : Summary of Tribal Consultation Comments and Responses:**

The Office of Native American Programs appreciates all comments received during the tribal consultation process. Fifteen (15) comments were received.

### **Date of grant award:**

One commenter suggested that the start date for the two-year period should be the date that the recipient is notified by phone, e-mail, fax, or in writing, when they can access the funds in the LOCCS system or the date that they first draw down the funds. Another commenter noted that the standard procedure is for HUD to sign the grant agreement after the funds have been obligated and forward three copies to the recipient for signature. There have been delays of up to six months in getting signed grant agreements from recipients. A third commenter stated that since HUD administrators sign HUD form 52734-B (grant agreements) on different days, the statement, “This two-year period begins when the IHBG agreement is signed by the grant recipient and HUD” is inexact and ripe for confusion and/or dispute.

Response: The regulations (24 CFR §1000.524(a)) specify, “within 2 years of grant award”. This Notice was changed to reflect that a grant is awarded to a recipient at the time the Administrator of an Area ONAP signs a grant agreement.

### **Land purchases for affordable housing:**

Five comments were received regarding the point of obligation of funds for land purchases. Two comments requested clarification of the provision of “when all conditions are cleared.” One comment questioned whether it meant the time of the executed purchase and sale, or the date that all permitting (*i.e. issuance of permits*), and other conditions of the purchase and sale are met or whether it meant when the actual transfer of title occurred. Four comments received questioned if all conditions included the conferrence of trust status by the Department of Interior. Three comments were made regarding when funds for land purchases should be considered obligated. They felt that funds for land purchases should be considered obligated when a tribe or TDHE enters into a binding contract even if all contingencies or conditions have not been satisfied. If the escrow fails to close, because a condition cannot be satisfied, the funds should be considered obligated. One of the commenters felt that funds should be considered obligated as long as the recipient seeks another site and proceeds at a continuous and reasonable rate to find and to purchase the alternative site. In this case, contingencies and conditions which are beyond the control of the recipient are to be taken into consideration.

Response: HUD does not require that property purchased with IHBG funds be placed into trust status. The language provided in the table attempts to define a point in the sale process where both parties are legally obligated to consummate the sale. This occurs only after all contingencies on the sale are cleared or removed.

In response to several comments, small tribes with inadequate lands for housing are not required to have purchased land, completed an environmental review and entered into a construction contract within a two-year period to meet this performance measure, under the IHBG program. Instead, tribes may structure their project so that it can be accomplished over a number of years with multiple year grant funds. For example, a one-year goal of a tribe's IHP may be to acquire an adequate amount of property for a housing project. The IHP should also include the amount of funds needed for this one sub-task of an entire housing development project. The second year or perhaps the second and third year goal of the IHP might be to have federal trust status conferred upon the property by the U.S. Department of Interior. The fourth year goal of this tribe's IHP might be to construct a specific number of homes upon this property. If necessary, the purchase of land for housing may be divided between several years' grants. An earnest money payment may be made with one year's grant and the completion of the purchase with another year's grant.

#### **Grants or loans to subrecipients:**

One comment questioned whether or not a grant or loan awarded to a subrecipient constitutes an obligation. It was suggested that a subrecipient should be held to the same standard as the recipient. Instead of an agreement between a subrecipient and grantee constituting an obligation, the point of obligation in this case is the date a subrecipient signs a third party contract or, in those cases where the subrecipient is going to perform the work, the date when the subrecipient begins the work on an affordable housing activity.

A similar comment questioned whether a signed written agreement between the recipient and the subrecipient should be considered an obligation of IHBG funds while the obligation requirement for other eligible activities was that the activities had to have begun. The concern was that a recipient may transfer funds to subrecipients in an effort to meet or circumvent the two-year timeframe.

Response: If IHBG funds are provided to a subrecipient, it is not required that the selection of that entity be made in accordance with procurement regulations at 85.36. In these cases, a budget is provided to the subrecipient and the subrecipient must comply with grant administrative requirements of Part 85, A-87 or A-122. The point of obligation in this case is the date the subrecipient begins work on an affordable housing activity.

#### **Assistance from a recipient to an IHA for operating and maintaining 1937 Act housing:**

Three commenters questioned whether HUD intends to apply the performance measure in 24 CFR § 1000.524(a) to pipeline or residual funds from the United States Housing Act of 1937.

Response: Neither the NAHASDA statute or regulations provides for applying the performance measure of 24 CFR § 1000.524(a) to funds awarded under the U.S. Housing Act of 1937.

#### **Carryover funds from a previous year:**

One comment received stated that currently the BIA and IHS P.L. 93-638 contracts permit grantees to utilize carryover funds from a previous year provided the scope of work of the contract is the same. This person questioned whether a tribe or a TDHE would be permitted continued access to carryover funds of the previous period.

Response: A grantee's access to IHBG funds which lose their obligation designation at the end of a program year is not lost. These funds may be utilized for any eligible activity in the grantee's IHP.

#### **General maintenance and salaries:**

One commenter questioned the obligation of funds for general maintenance and salaries. One concern was that the generation of these costs begin on the first day of the fiscal year regardless of the date the grant agreement is signed. A second concern was that if funds were not made available until a week prior to the end of the fiscal year were they then unobligated at the end of the year.

Response: While the general maintenance and salary costs may begin to accrue the first day of a tribe's or TDHE's fiscal year, HUD does not provide a commitment to pay these costs until an IHP is found in compliance and a grant agreement is signed by HUD. As stated in the table, the one-year plan of the IHP will contain the amount which the recipient is to expend for routine management and maintenance costs, and planning and administration for a specific program year of the recipient. Because the IHP defines how funds are to be expended on a year-to-year basis, any funds not spent during the identified program year (residual funds) lose their obligated designation at the end of such program year.

A question was raised by a commenter as to whether daily maintenance supplies such as nuts, washers, fuel, etc. which are usually purchased through petty cash, as needed, rather than by a purchase order, are considered routine maintenance costs.

Response: For clarity these activities are included as routine maintenance costs, and purchase orders are not required.

A related question posed by this commenter is, “What about tribes who elect to do routine maintenance on private homes on the reservation?”

Response: Routine maintenance on private homes is not an eligible activity in section 202 of NAHASDA. Rehabilitation is eligible and most maintenance does not amount to rehabilitation. For example, a tune-up of a furnace is maintenance; replacement of a furnace is rehabilitation.

**Activities utilizing force account labor:**

One commenter felt that for force account projects, funds should be considered obligated when the cost estimates, environmental requirements, plans and specifications are complete and the physical activity begins for a specific project. All funds estimated to complete the project should be considered obligated, not just the labor.

Response: As stated in the background section of this Notice, a point of obligation is the time when a commitment is made to pay a particular sum of money for contract labor, supplies, materials or services. Cost estimates do not constitute a commitment of funds.

**Investment:**

One comment received requested clarification of the phrase, “underlying activity started”.

Response: For clarity, this language was changed in the Notice.