



No. 2007-06  
August 27, 2007

# PROGRAM GUIDANCE

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**PROGRAM:** Indian Housing Block Grant (IHBG)

**FOR:** Tribal Government Leaders and Tribally Designated Housing Entities

*T.D.H.E.*

**FROM:** Rodger J. Boyd, Deputy Assistant Secretary, PN

**TOPIC:** Sample Subrecipient Agreement

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**Purpose:** The purpose of this guidance is to provide tribes and tribally-designated housing entities (TDHE) with a sample Subrecipient Agreement that a recipient can follow when entering into agreements with other entities to administer all or a part of the recipient's Indian Housing Block Grant (IHBG) program.

**Background:** Under the IHBG regulations found at 24 CFR § 1000.26, recipients are to comply with certain sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", including Section 85.37, "Subgrants." As explained in 24 CFR § 1000.26, "grantee", as defined in 24 CFR Part 85, has the same meaning as "recipient." Following that explanation, "subgrantee" has the same meaning as "subrecipient".

Title 24 CFR §85.37(b) basically provides that subrecipients are to follow the same requirements in 24 CFR Part 85, the program requirements (the Native American Housing Assistance and Self-Determination Act, as amended and 24 CFR Part 1000), and all other applicable requirements, that the recipient must follow in administering the IHBG program.

In order for the subrecipient to know what its responsibilities are in administering the program and what the recipient's responsibilities are in providing funds or property to the subrecipient, as well as its oversight responsibilities, the two entities must enter into a "subrecipient agreement". To assist recipients in developing such an agreement, attached to this Program Guidance is a Sample Subrecipient Agreement and accompanying Instructions. A recipient can use this sample in developing Subrecipient Agreement(s) or develop its own. In either case, the Subrecipient Agreement must include the provisions outlined in 24 CFR § 85.27(b) and should be tailored to fit the specific needs of the recipient and its IHBG program.

It is important to note that under the Indian Community Development Block Grant (ICDBG) program, ICDBG grantees (usually, Indian tribes) have entered into similar agreements with tribal or other entities to administer their ICDBG funds. While 24 CFR § 85.37(b) also governs these “subgrants,” the sample agreement attached to this Guidance has terms specific to the IHBG Program and should not be used ‘as is’ for ICDBG purposes.

If you have questions about Subrecipient Agreements or other questions about the IHBG program, please contact your Area Office of Native American Programs.

Attachments

# **SAMPLE NAHASDA SUBRECIPIENT AGREEMENT**

## **INSTRUCTIONS**

**(To be used in completing Sample Subrecipient Agreement form)**

When a Recipient of the Native American Housing Assistance Self-Determination Act, as amended (NAHASDA), 25 USC 4101, et seq., subgrants a portion of its Indian Housing Block Grant (IHBG) to another entity, HUD requires that the Recipient follow certain provisions in 24 CFR Part 85, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These provisions are listed in the IHBG regulations at 24 CFR § 1000.26. Specifically, 24 CFR § 85.37(b) addresses subgrants and the provisions that are to be included in those subgrants. These provisions are applied through written agreements, referred to, under the IHBG program, as “subrecipient agreements.”

### What is a subgrant?

A subgrant is an award of financial assistance, usually in the form of money, that is made from funds that a grantee or Recipient originally received from a governmental entity, such as HUD. It is not the Recipient’s purchasing of goods or services. Subgrants need to be accompanied by written subrecipient agreements that not only award the funds, but also, at a minimum, pass on all of the requirements, restrictions, and obligations imposed on the Recipient that accompanied the money originally granted to the Recipient. A Subrecipient, in many ways, will perform in place of the Recipient.

The subgrant requirements ensure that:

1. Written subrecipient agreements include a provision requiring the Subrecipient to comply with selected portions of 24 CFR Part 85,
2. Written subrecipient agreements include other clauses required by federal statutes and Executive Orders and their implementing regulations,
3. Written subrecipient agreements include any additional requirements imposed by the Recipient, and
4. Subrecipients are made aware of all of these requirements.

In order to assist NAHASDA Recipients in complying with these requirements, HUD has developed a sample Subrecipient Agreement. Recipients may use this sample or prepare their own agreement(s), provided they comply with the requirements listed above.

Definitions:

1. **Grant:** IHBG funds received by a Recipient. See *also* 24 CFR § 85.3.
2. **Recipient:** the Tribe or Tribally-Designated Housing Entity (TDHE) receiving and administering IHBG funds. See *also* 25 USC 4103(18).
3. **Subgrant:** a portion of IHBG funds given by the Recipient under written agreement to the Subrecipient. See *also* 24 CFR § 85.3.
4. **Subrecipient:** the entity receiving and administering the subgrant under written agreement with the Recipient. See *also* 24 CFR § 85.3.

Following is an explanation on the sections contained in the Sample Subrecipient Agreement:

- Section 1.** Describes the purpose of the subgrant.
- Section 2.** Indicates the amount of the subgrant and method of disbursement. Disbursements under the subgrant may be scheduled at regular intervals (weekly, monthly, quarterly, etc.) or upon the completion and acceptance of major pieces of the subgrant activities. This section also references that disbursements may be conditioned on the Subrecipient providing timely reports and information to the Recipient about management of the subgrant. Such reporting should include any information that the Recipient is required to keep and report to HUD in the course of administering IHBG funds. The specific reports to be provided by the Subrecipient should be detailed in Section 8.
- Section 3.** Allows the Recipient to attach additional special requirements in addendum form. The addendum should be attached at the time the Agreement is executed.
- Section 4.** Administrative and Planning Expenditures. Pursuant to 24 CFR § 1000.238, a Recipient may spend up to 20 percent of its IHBG funds for administration and planning expenses. Any subgrant funds spent by the Subrecipient for administration and planning will apply against the Recipient's 20 percent cap and should be reported on their quarterly Form HUD 272-I reports to HUD. Therefore, if the Subrecipient has been allowed under the Agreement to expend funds for these purposes, those expenditures must be recorded and accounted for by both the Subrecipient and the Recipient. In such cases, the Subrecipient should also be required to provide reports on any such amounts; and these reporting requirements should be detailed in Section 8.
- Section 5.** Allows the Recipient to impose additional conditions on the Subrecipient, which could include compliance with the Recipient's own policies. Along with other requirements that the Recipient wants to impose, the Recipient must list here any

requirements regarding patent rights, copyrights, and rights in data. Any additional Recipient-imposed requirements cannot conflict with the federal requirements.

- Section 6.** Contains references to both NAHASDA statutory and regulatory requirements; the references provide summaries and examples to help the Subrecipient understand what federal requirements must be complied with and are not intended to be a definitive compilation of all such requirements. Some requirements may apply only to certain types of activities.
- Section 7.** Lists HUD's administrative requirements.
- Section 8.** Requires the Recipient to specify reporting requirements. This includes, but is not limited to, any that may be required under Section 4. The Recipient should specify under what time period reports are due (weekly, monthly, quarterly, annually, etc.)
- Section 9.** Provides sample language related to indemnification and hold harmless.
- Section 10.** Provides sample language regarding kickbacks and bribes.
- Section 11.** Provides sample language regarding monitoring and records.
- Section 12.** Indicates specific laws and courts that will be used to enforce the Agreement. If the Subrecipient is a tribal entity with sovereign immunity, the Recipient should address and resolve the issue of whether or not it wants the Subrecipient to waive its sovereign immunity so the Recipient may legally enforce the Subrecipient Agreement. If so, an express waiver should be placed in the Agreement.
- Section 13.** Provides sample language regarding the prohibition of further subgranting without written approval from the Recipient.
- Section 14.** Identifies primary contacts regarding the Agreement. The primary contact should ideally be a person who is knowledgeable about the subgrant activities. If the Subrecipient's contact information changes, they should be required to notify the Recipient of the changes.
- Section 15.** Provides sample language explaining the term and duration of the Subrecipient Agreement, as well as the Subrecipient's obligation to understand all Subrecipient Agreement requirements and restrictions.
- Section 16.** Provides sample language regarding prohibition of assignments without written approval.
- Section 17.** Provides sample language regarding modification and amendment of the Agreement.
- Section 18.** Provides sample language regarding termination of the Agreement.
- Section 19.** Provides sample severability language assuring that if one portion of the agreement is ruled invalid by a court, that the other provisions of the agreement remain in full force and effect.

[Insert Recipient name]

**Subrecipient Agreement**

This Subrecipient Agreement (hereinafter “Agreement”) is entered into by \_\_\_\_\_ (hereinafter “Recipient”) of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (hereinafter “Subrecipient<sup>1</sup>”) of \_\_\_\_\_. Some or all of the funds or property provided under this Agreement come from the Indian Housing Block Grant (hereafter “IHBG”) program, as authorized by the Native American Housing Assistance and Self-Determination Act (hereinafter “NAHASDA”). The U.S. Department of Housing and Urban Development (hereinafter referred to as “HUD”) is the original grantor of the IHBG funds.

**1. PURPOSE.** The Recipient is subgranting funds or property to the Subrecipient to be used for the purpose(s) described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. AMOUNT OF SUBGRANT AND METHOD OF DISBURSEMENT.** The funds or the property being subgranted and the schedule and manner of the disbursements are described as follows. The Recipient may condition the disbursement of any funds or the provision of any property and services under this Agreement on the timely receipt of proper reports and other documentation from the Subrecipient. (Check one or more of the following):

The total amount of funds to be subgranted under this Agreement is \$\_\_\_\_\_. This amount shall be disbursed to the Subrecipient on the following schedule and in the following manner: \_\_\_\_\_

The property or services to be provided under this Agreement are: \_\_\_\_\_  
\_\_\_\_\_. These items will be provided on the following schedule and in the following manner: \_\_\_\_\_

<sup>1</sup> The terms “subrecipient” and “subgrantee” are equivalent. The term Subrecipient is used throughout this Agreement.

3. **SPECIAL TERMS.**  If this box is checked, an Addendum has been made and attached to this Agreement. This Addendum may contain an additional description or scope of activity, as well as additional terms and conditions. If any of what is contained in the Addendum conflicts with the other terms of the Agreement, the terms of the Agreement shall supersede the terms of the Addendum.

4. **ADMINISTRATIVE AND PLANNING EXPENDITURES.** NAHASDA regulations place a cap on how much a Recipient, along with all of its Subrecipients, can, without getting special approval from HUD, expend on administrative and planning expenses when using IHBG funds. Therefore, the Subrecipient, under this Subrecipient Agreement, is (check one of the following):

- prohibited from spending any of these subgranted funds on administrative and planning expenses or,
- limited to expending no more than \_\_\_\_\_% (percent) equivalent to \$ \_\_\_\_\_ of these subgranted funds on administrative and planning expenses.

If, in the election above, this Agreement authorizes the Subrecipient to expend a portion of subgranted funds on administrative and planning expenses, the Subrecipient is minimally required to report to the Recipient, in writing, on a(n) **[insert time period]** \_\_\_\_\_ basis the amount spent on such expenses, total expenses, and the percentage of administrative and planning expenses to total expenses.

5. **RECIPIENT REQUIREMENTS.** The Subrecipient must comply with the following Recipient policies and requirements, as well as any tribal and local laws, including, but not limited to, those listed below (if any): \_\_\_\_\_

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6. **FEDERAL SUBRECIPIENT REQUIREMENTS.** The Subrecipient hereby agrees to comply with all requirements under NAHASDA (25 USC 4101, *et.seq.*) and its implementing regulations (24 CFR Part 1000) and other applicable federal laws and regulations.

NAHASDA and 24 CFR Part 1000 require that IHBG funds can only be used for affordable housing activities that assist low-income members of federally-recognized tribes, members of certain state-recognized tribes, and members of groups or communities of Indians and Alaska Natives that are eligible for programs and services pursuant to the Indian Self-Determination and Education Assistance Act. The Subrecipient, in carrying out this Agreement and related activities, shall conform to these federal requirements.

The following is a **partial** list of NAHASDA statutory requirements that may be pertinent to activities carried out pursuant to this Agreement. The NAHASDA statute can be accessed at <http://www.hud.gov/offices/pih/ih/codetalk/onap/nahasdaref.cfm>.

Definition of Indian	Eligible Affordable Activities
Definition of Low Income	Eligible Family
Definition of Indian Tribe	Tribal and Indian Preferences
Local Cooperation Agreement	Exemption from Civil Rights Act
Administrative and Planning Expenses	Insurance
Certificates of Compliance	Lease and Tenant Selection
Regulations	Record Keeping
Labor Standards	Remedies for Noncompliance
Environmental Reviews	30% Rental Rate Rule

The following is a **partial** list of the IHBG regulations that may be pertinent to activities carried out pursuant to this Agreement. The IHBG regulations can be accessed at <http://www.hud.gov/offices/pih/ih/codetalk/onap/nahasdaref.cfm>.

Procurement	30% Rental Rate Rule
Indian Preference	Audit
Environmental Reviews	Flood Insurance
Debarment	Improper Expenditure of Funds
Drug Free Workplace	Lead-Based Paint
Labor Standards	Relocation and Acquisition
Program Income	Useful Life/Use Restrictions
Record Keeping	

The following is a **partial** list of applicable HUD Administrative Requirements referenced in 24 CFR § 1000.26 that may be pertinent to activities carried out pursuant to this Agreement. The HUD Administrative Requirements can be accessed at <http://www.hud.gov/offices/pih/ih/codetalk/onap/nahasdaref.cfm>.

Competitive Procurement	Section 3 Preference
Competitive Procurement Exceptions	Contract Provisions
Allowable Costs	Sub Grants
Non-Federal Audit	Monitoring
Debarment and Suspension	Financial Reporting
Bonding	Termination for Convenience
Disallowance and Adjustment	

The following is a **partial** list of other applicable federal laws, which can be accessed at <http://www.gpoaccess.gov/uscode/index.html>

HUD Reform Act of 1989 [12 USC 1701(u)]	Indian Self-Determination and Educational Assistance Act of 1975 [24 USC 450, et seq.]
Title II of Civil Rights Act of 1968 [25 USC 1301-1303]	Indian Financing Act [25 USC 1452]
Sec. 504 of Rehabilitation Act of 1973 [29 USC 794]	Davis-Bacon Act [40 USC 276a]
Contract Work Hours & Safety Standards Act [40 USC 327]	Drug Free Workplace Act [41 USC 701]
Age Discrimination Act of 1975 [42 USC 6101-6107]	Title VI of Civil Rights Act of 1964 [42 USC 2000d]
Title VIII of the Civil Rights Act of 1968 [42 USC 3601]	Uniform Relocation Assistance Act [42 USC 4601-4655]
National Environmental Policy Act [42 USC 4321]	Flood Disaster Protection Act [42 USC 4001-4128]
Lead Based Paint Poisoning Prevention Act [42 USC 4822]	

**7. EXPLICIT PROVISIONS THAT MUST BE INCORPORATED IN ALL SUBRECIPIENT CONTRACTS.** Title 24 CFR § 85.36(i) of HUD’s Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments requires that certain provisions be contained in all contracts that relate to this Agreement and Subrecipient activities. These requirements are:

- Termination for cause for convenience (only for contracts in excess of \$10,000);
- Compliance with Executive Order 11246, entitled Equal Employment Opportunity;
- Compliance with Copeland Anti-Kickback Act (only for construction or repair contracts);
- Compliance with Davis Bacon Act, as modified by NAHASDA statute (only for construction contracts in excess of \$2,000);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (only for construction contracts in excess of \$2,000);
- Awarding agency requirements regarding reporting, patent right, copyrights, and rights;
- Access by Recipient, Subrecipient, and HUD Comptroller General to records pertaining to the contract;
- Retention of records for 3 years;
- Compliance with Section 306 of the Clean Air Act, Executive Order 11738 and Environmental Protection Agency regulations (only for contracts in excess of \$100,000); and
- Certain energy efficiency provisions issued in state Energy Conservation Plans issued pursuant to the Energy Policy and Conservation Act (where the state has jurisdiction).

**8. REPORTING REQUIREMENTS.** The Subrecipient shall comply with the following reporting requirements: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. INDEMNIFICATION.** The Subrecipient, its assignees, successors, and heirs indemnify and hold harmless the Recipient against any losses, damages, claims, expenses, and liabilities (if any) arising out of either this Agreement or any use by the Subrecipient or any other party of these subgranted funds or property.

**10. KICKBACKS ARE PROHIBITED.** The Subrecipient states that it has not, and furthermore agrees that it shall not, give, receive, or in any way participate in any kickback or bribe that involves these subgranted funds or property. The Subrecipient also agrees to comply with the Copeland Anti-Kickback Act and its federal regulations, as supplemented in Department of Labor regulations, which are currently at 19 CFR Part 3.

**11. RECIPIENT MONITORING AND RECORDS.** The Recipient and Subrecipient agrees that the Recipient has the responsibility and right, at any time, with or without notice, to inspect projects, activities, or uses assisted by this Agreement. The Subrecipient shall also fully cooperate and assist in this and any other monitoring of the Subrecipient and any Subrecipient’s funds and property contained in this Agreement when requested by the Recipient.

The Subrecipient shall furthermore provide access to the Recipient, HUD, the Comptroller General of the United States, the Government Accountability Office, and their duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to the execution of this Agreement and activities for the purposes of making audit, examination,

excerpts, and transactions. Pursuant to 24 CFR § 1000.552, the Recipient is required to retain all required records for three (3) years after submission of the Annual Performance Report that covers the last expenditure of grant funds under a particular grant to HUD. The Subrecipient shall also retain records for the same three (3) year period.

**12. APPLICABLE LAWS AND JURISDICTION.** The laws of \_\_\_\_\_ shall govern this Agreement. Also, if the \_\_\_\_\_ Court has jurisdiction, the parties agree that this Court shall be the forum for all legal actions.

**13. FURTHER SUBGRANTING PROHIBITED.** The Subrecipient may not further subgrant these funds or property without first obtaining written approval from the Recipient. If further subgranting is approved, the Subrecipient must use a written subrecipient agreement that is approved by the Recipient.

**14. CONTACT PERSONS.** The Recipient and Subrecipient identify the following individuals as their primary contacts regarding this Agreement. Either party may, from time to time, appoint another person as their contact; and when doing so, they shall notify the other party in writing:

Recipient:	_____	Subrecipient:	_____
Organization:	_____	Organization:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Address:	_____	Address:	_____
Telephone:	_____	Telephone:	_____
Fax:	_____	Fax:	_____
E:mail:	_____	E:mail:	_____

**15. TERM OR DURATION OF OBLIGATIONS.** The Subrecipient agrees to acquaint itself with and conform to (a) NAHASDA and other federal statutes and regulations identified in this Agreement, (b) applicable tribal and state statutes and regulations, and (c) additional Recipient requirements imposed under this Agreement. The term for compliance with these requirements varies; and when there is no expressly stated duration for compliance, the Subrecipient's compliance shall continue for one (1) full year after the last of the subgrant funds have been expended by the Subrecipient.

**16. ASSIGNMENTS PROHIBITION.** This Agreement and the rights and obligations of the Subrecipient may not be assigned by the Subrecipient without written approval from the Recipient.

**17. MODIFICATION AND AMENDMENT.** This Agreement is the entire agreement between these two parties. Furthermore, any subsequent changes or modifications must be mutually agreed upon and set out in writing as a formal amendment to this Agreement.

**18. TERMINATION.** Any breach of this Agreement by the Subrecipient shall entitle the Recipient to cease advancing funds or property, terminate the remainder of the Recipient's obligations, recover funds or property that has not yet been expended, and be compensated for

any money or property that has been improperly used or expended. A thirty (30) day notice shall be provided by the Recipient prior to taking any actions, other than ceasing advancement of funds or property, to permit the Subrecipient to cure a breach, but only if the Recipient has determined in its own discretion that the breach can be cured.

If this Agreement is in excess of \$10,000, the Recipient may also terminate this Agreement for convenience with a thirty (30) day notice. If this particular right is exercised, the Subrecipient shall be reasonably compensated as determined by the Recipient.

**19. SEVERABILITY.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Recipient and the Subrecipient execute this Agreement on the dates shown below:

**Recipient:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Subrecipient:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment: Addendum [*if one is called for in Section 2*]