



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

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Special Attention of:

Notice: PIH-2010 – 35 (TDHEs)

Tribes, Tribally Designated  
Housing Entities, Indian  
Housing Authorities, ONAP  
Administrators

Issued: August 17, 2010

Expires: August 31, 2011

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Cross Reference: 24 CFR 1000

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**SUBJECT:** Demonstration Program – Self-Determined Housing Activities for Tribal Governments.

- 1. PURPOSE:** The purpose of this Notice is to establish the requirements for tribes and tribally designated housing entities (TDHE) to participate in the Indian Housing Block Grant (IHBG) Demonstration Program authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), as amended.
- 2. BACKGROUND:** On October 14, 2008, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Public Law 110-411) (NRA) became law. The NRA created a new Subtitle B under Title II of NAHASDA, titled “Self Determined Housing Activities for Tribal Communities.”

This new demonstration program is authorized under Subtitle B of title II of NAHASDA for Fiscal Years (FY) 2009 through 2013. The purpose of this Subtitle is to establish a program for self-determined housing activities for the tribal communities to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 101 of NAHASDA for the Indian tribes in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure relating to housing activities or housing that will benefit the community served by the Indian tribe.

**3. DEFINITIONS:**

- a. Qualifying Indian Tribe -** A qualifying Indian tribe means, with respect to a FY, an Indian tribe or TDHE to or on behalf of which a grant is made under section 101 of NAHASDA; that has complied with the Indian Housing Plan (IHP) submission requirement described in this Notice; and that, during the preceding three (3) fiscal year period, has no unresolved significant and material audit findings or exceptions, as demonstrated in (A) the annual audits of that period completed under Chapter 75 of title 31 (the Single Audit Act); or (B) an independent financial audit prepared in accordance with generally accepted government auditing standards.

- b. Unresolved Significant and Material Audit Findings - For purposes of this Notice, an unresolved significant or material finding is one that (1) identifies a material weakness in financial or accounting controls; or (2) a finding of substantial financial mismanagement or misapplication of funds that has not been resolved.
- 4. ELIGIBLE HOUSING ACTIVITIES:** Pursuant to section 233 of NAHASDA, funds under this Demonstration Program shall be used only for housing activities, as selected at the discretion of the recipient and described in the IHP, for construction, acquisition, or rehabilitation of housing or infrastructure in accordance with section 202 of NAHASDA (Eligible Affordable Housing Activities). Those activities must provide a benefit to eligible families described in section 201(b)(1) of NAHASDA.
- 5. AMOUNTS:** For each of the FYs 2009 through 2013, a recipient cannot exceed the lesser of (1) an amount equal to 20 percent of the total grant amount for the recipient for that fiscal year; and (2) \$2,000,000 for this Demonstration Program.
- 6. PROCEDURE:** In order to participate in the Demonstration Program, a recipient must be a Qualifying Indian Tribe as defined in this Notice. A recipient cannot have any unresolved significant and material audit findings for the preceding three (3) FYs. In addition, the recipient must submit an Indian Housing Plan (IHP) that indicates at a minimum, the housing to be constructed, acquired or rehabilitated under this program, the amount of funds to be expended under this Program, and certification that there are no unresolved significant or material audit findings.

If the recipient has submitted the audits to the Federal Audit Clearinghouse (FAC) and the FAC has accepted the audits (there are no missing documents or missing components), the Area Office of Native American Programs (ONAP) may be able to download the audits either from the FAC website or the Audit Resolution and Corrective Action Tracking System (ARCATS). If the Area ONAP cannot obtain the audits from the FAC or ARCATS, the recipient will be contacted and will be required to submit to the Area ONAP the preceding 3 years of audits of the recipient together with evidence that the cognizant audit agency (if other than HUD) reviewed and accepted the Single Audit Act reports. ONAP must also be provided with a status of the Single Audit Act findings controlled by the cognizant agency (if other than HUD). These audits must be current in accordance with the Single Audit Act requirements.

If an independent financial audit was conducted in place of an annual audit or in addition to an annual audit, a copy of this financial audit must be submitted. Based on the information provided, the Area ONAP will determine if there are any unresolved significant and/or material audit findings.

## 7. PROCESSING REQUESTS:

- a. A recipient requesting to expend IHBG funds in accordance with the Demonstration Program must submit the IHP and audits (if necessary) as outlined above to the Area ONAP prior to expending funds on the activities planned under the Demonstration Program. The Area ONAP will review the audit reports for the last 3 FYs to determine if there are any significant and material audit findings.
- b. The documentation will be reviewed within the 60-day statutory timeframe and the compliance letter will provide information on whether the recipient meets the requirements of a “Qualifying Tribe” as defined in the Act and this Notice. The compliance letter will also indicate the amount of funds available to the recipient under the Demonstration Program.
- c. If the tribe is not determined to be a Qualifying Tribe, the request to expend funds for the Demonstration Program will be denied. The recipient can appeal the decision in accordance with the regulatory procedures of 24 CFR 1000.234.

## 8. APPLICABLE PROVISIONS: Except as otherwise specifically provided in NAHASDA, title I, subtitle A of title II, and titles III through VIII of NAHASDA do not apply to this Demonstration Program. Only the following provisions of titles I through VIII shall apply to this Demonstration Program:

- (1) Section 101(c) (relating to local cooperation agreements)
- (2) Subsections (d) and (e) of section 101 (relating to tax exemption)
- (3) Section 101(j) (relating to Federal supply sources)
- (4) Section 101(k) (relating to tribal preference in employment and contracting)
- (5) Section 102(b)(4) (relating to certification of compliance)
- (6) Section 104 (relating to treatment of program income and labor standards)
- (7) Section 105 (relating to environmental review)
- (8) Section 201(b) (relating to eligible families)
- (9) Section 203(c) (relating to insurance coverage)
- (10) Section 203(g) (relating to a de minimis exemption for procurement of goods and services)
- (11) Section 209 (relating to noncompliance with affordable housing requirement).
- (12) Section 401 (relating to remedies for noncompliance).
- (13) Section 408 (relating to public availability of information).
- (14) Section 702 (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).

## 9. REVIEW AND REPORTING REQUIREMENTS: Recipients participating in this Demonstration Program will be required to submit to the Secretary of HUD, as the Secretary may

request (in addition to the annual performance report (APR)), any information, in sufficient detail and in a timely manner sufficient to review the results achieved by this program to determine:

- (1) the housing constructed, acquired or rehabilitated under the program;
- (2) the effects of the housing described in paragraph (1) on costs to low-income families of affordable housing;
- (3) the effectiveness of each recipient in achieving the results intended to be achieved, as described in the Indian housing plan for the Indian tribe; and
- (4) the need for, and effectiveness of, extending the duration of the program and increasing the amount of grants under section 101 that may be used under this program.

The Secretary will then submit to Congress a report describing the information in (1), (2), (3), (4), and including any conclusions and recommendations of the demonstration program.

- 10. PAPERWORK REDUCTION ACT:** The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-35200 and assigned OMB control number 2577-0218 (Exp. 05/31/2013)). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.
- 11. ENVIRONMENTAL IMPACT:** A Finding of No Significant Impact with respect to the environment has been made for this Notice, in accordance with HUD regulations at 24 CFR part 50 that implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8:00 a.m. and 5:00 p.m. eastern time, Monday through Friday, except federal holidays, in the Office of General Counsel, Regulations Division, HUD, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202)708-3055 (this is not a toll-free number).
- 12. CONTACTS:** Should you need additional information, please contact your Area Office of Native American Programs.

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