

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

Special Attention of: Notice PIH 2000-26 (THDEs)

Tribes;
Tribally Designated Housing
Entities; and, Area Offices of Native American
Programs

Issued: 7/26/2000
Expires: 7/31/2001

Cross References: 24 CFR 1000.524

SUBJECT: Native American Housing Assistance and Self-Determination Act
(NAHASDA) - Indian Housing Block Grant (IHBG) Program -
Performance Measure for the Obligation of Funds.

PURPOSE: This Notice provides tribes and tribally designated housing entities (TDHEs) with guidance regarding what constitutes an obligation of grant funds.

Background: The performance measure listed in 24 CFR 1000.524(a) requires that no less than 90% of IHBG Funds awarded under NAHASDA must be obligated within two years of grant award. A number of grant recipients have requested a definition of the term “obligated” as used in this section to assist them in program planning and self-monitoring. For the IHBG program, grants are considered awarded when the determination has been made that an Indian Housing Plan (IHP) is in compliance with statutory and regulatory requirements and the Area Administrator signs the grant agreement; therefore, the two year period begins on the day the IHBG agreement is executed by HUD.

The definition of obligation set forth in this Notice applies to all IHBG funds but does not apply to funds provided under the United States Housing Act of 1937, as amended, which were available for use by a recipient after October 1, 1997, the effective date of NAHASDA. Recipients report the obligation of grant funds in questions four and five of PART B of the Annual Performance Report (APR).

Basic Rule - *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.* The following circumstances are cited as general examples of the point where funds are obligated.

- Funds for contract labor, materials or services become obligated when the contract is signed by both parties;
- Funds for force account labor are considered obligated when the physical activity begins, provided that the activities proceed at a continuous and reasonable rate;

- Funds for normal operating activities such as administration and maintenance are considered obligated at the time they begin, provided these activities continue at a reasonable rate; and
- Funds to be used for the provision of assistance directly to a family or individual are considered obligated when the written agreement between the recipient and family or individual for such assistance, e.g., tenant based rental assistance, is executed by both parties

Effect of failure to meet the 90% obligation requirement within two years: This requirement is one of six factors that HUD will consider when it reviews a recipient's performance under NAHASDA. A recipient's failure to meet this, or any of the other performance measures specified under §1000.524, will result in the establishment of corrective or remedial actions as set forth in §1000.530. If the performance problems are not satisfactorily addressed by the recipient, sanctions authorized by the Act or program regulations will be imposed.

Relationship to investment of IHBG funds: Investment of IHBG funds is authorized under § 1000.58. PIH Notice 99-04 (TDHEs) provides guidance regarding the administrative requirements for investing these funds. If a recipient meets the administrative requirements of Notice 99-04 (TDHEs), it may draw funds from the Treasury in excess of its three-day needs and may invest these funds in approved instruments for a period of no longer than two years. Investments of the recipient are not considered obligated until the activity for which they are to be used meets obligation criteria listed above.

The table below provides examples for the point of obligation for circumstances which are likely to occur in the implementation of NAHASDA. It is not intended to cover all possible circumstances. Recipients and HUD staff should refer to the *Basic Rule* for guidance when questions arise.

Activity	Point of Obligation
<p>Formal contract (OMB Circular A-87, Attachment A, Paragraph B.8) a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.</p>	<p>The date the contract is executed by both parties.</p>
<p>Grants to subrecipients to develop and/or manage affordable housing.</p>	<p>The date the subrecipient begins work on an affordable housing activity. If the subrecipient is going to have the construction carried out via a third party contract, then this date is the date the subrecipient enters into a contract. If the subrecipient is going to do the work, this date is the date the subrecipient begins work on an affordable housing activity.</p>
<p>Loans or grants to individuals for down payment assistance.</p>	<p>The date the recipient and the individual execute an agreement.</p>
<p>Loans or grants to subrecipients for revolving loan programs.</p>	<p>The date the written agreement is executed by both parties.</p>
<p>Assistance from a recipient to an IHA for operating and maintaining 1937 Act housing.</p>	<p>The date the written agreement is executed by both parties.</p>
<p>Tenant based rental assistance</p>	<p>The date the written agreement is executed by the recipient and the tenant.</p>
<p>Land purchases for affordable housing</p>	<p>The date when all contingencies/conditions which would allow the buyer or seller to withdraw from the contract of sale are cleared (firm commitment to purchase).¹</p>

<p>Routine management costs associated with operating a housing program (staff salaries, employee benefits, utility costs, office rent, etc).</p> <p>Routine maintenance costs of operating owned housing.</p> <p>Planning and administration</p>	<p>Funds identified in the IHP for this purpose-are considered obligated when the grant agreement is signed by HUD and the recipient's program year begins. The one-year plan of the IHP will identify the amount which the recipient is to expend for routine management and maintenance costs, and planning and administration. Because the IHP defines how funds are to be expended on a year-to-year basis, any funds not spent during the identified program year² (residual funds³) lose their obligated designation at the end of such program year.</p>
<p>Force account labor</p>	<p>The date physical activity begins and costs are incurred, provided that the activities proceed at a continuous and reasonable rate.</p>
<p>Purchase of material in a force account project</p>	<p>The date the contract, purchase order, or similar document is executed.</p>
<p>Investment</p>	<p>Investment funds and operating reserves are not considered obligated until they are used in one or more of the planned activities described in this Notice.</p>
<p>Rental and Homeownership Operating Reserves, Mutual Help Equity Accounts under the Mutual Help Homeownership Opportunity Program, earned home payment accounts under the Turnkey III programs</p>	<p>This performance requirement is only applicable to grant funds. If these reserves (funds) are for programs for low-income housing under the United States Housing Act of 1937 and are in the possession of the IHA, per section 210 of NAHASDA, they are considered assistance under NAHASDA but they are not considered grant funds. Therefore, these reserves are not subject to this performance measure.</p>

/s/

Harold Lucas, Assistant Secretary for Public and Indian Housing

¹ To meet the requirement that “all conditions are cleared”, federal trust status need not be conferred upon property purchases.

² Program year is the period of time between the beginning and ending dates identified in a tribe’s or TDHE’s one-year IHP.

³ Residual funds are any unspent funds remaining after the ending date identified in a tribe’s or TDHE’s one-year IHP.