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PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

RJB

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

TOPIC: Useful Life and Binding Commitments

Background: Section 205(a)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), requires that housing units remain affordable for either (1) the remaining useful life of the property (as determined by the Secretary) or (2) for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purpose of the Act. The Act also requires that this affordability be secured through binding commitments satisfactory to the Secretary.

In either case, the statute gives the Secretary the authority to determine the housing units' useful life or other period of time during which the units must remain affordable. The Indian Housing Block Grant (IHBG) regulation at 24 CFR 1000.142, states that each IHBG recipient must describe in its Indian Housing Plan (IHP) its determination of the useful life of each assisted housing unit in each of its developments in accordance with the local conditions of the Indian area of the recipient. If a recipient wishes to assign some other period of affordability, that affordability period should be included in the recipient's IHP for HUD review. By finding the IHP to be in compliance with the statute, the Department would be determining the useful life to be in accordance with NAHASDA.

Purpose: The intent of this guidance is to give both IHBG recipients and Office of Native American Programs (ONAP) staff direction as to (1) what will be considered "satisfactory to the Secretary" if either option for the affordability period is selected and (2) what constitutes an acceptable binding commitment.

What is the purpose of establishing the affordability period for a housing unit? The first primary objective of NAHASDA, as stated in Section 201(a)(1), is: "...to develop, maintain, and operate affordable housing...for occupancy by low-income Indian families." With this in mind, every time IHBG funds are spent on a property it can be thought of as making an investment for the low-income families in the community. The return on that investment is the period of continued future use during which the property will be available for use by low-income families. That period of future use is the useful life for that property.

Every IHBG dollar that is invested in a unit (through development and/or rehabilitation) should be not only extending the physical life of the structure, but also buying a certain period of time that the property will remain available to low-income Indian families. Thus, a property should have a certain expected useful life upon completion of construction and any rehabilitation of that property should normally extend its useful life for an appropriate period of years. However, NAHASDA recognizes that there are cases in which it may be appropriate for the housing to remain affordable for some period of time not directly related to the useful life of the property. HUD will review these on a case-by-case basis.

How is the affordability period determined? As discussed above, NAHASDA gives recipients two general options by which they may determine the affordability period for a property. Option one is an estimate of how long the house will actually physically last. Option two is some other period of time that is the longest feasible period of time consistent with sound economics and the purposes of NAHASDA. In either case, an estimate of how long the physical improvements will last is a good place to start in determining the affordability period.

If the first option is chosen, the useful life should be based upon a physical inspection of the property by someone knowledgeable in construction and the conditions of the location.

There could be numerous ways of determining the affordability period under the second option, but there should still be some correlation between the actual life expectancy of the physical improvement and the term of the useful life assigned. That correlation need not be one-to-one, but it should provide for a reasonable return on investment for use by low-income families.

If choosing to use the second option (some period other than the actual physical life of the property), a recipient could use a tiered schedule similar to that used in the Department's HOME program to determine the affordability period. This would specify a number of years during which the housing must remain affordable, dependent upon the amount of IHBG funds being invested in the property per occurrence. For example:

<u>IHBG Funds Invested</u>	<u>Affordability Period*</u>
under \$5,000	6 months
\$5,000 to \$15,000	5 years
\$15,001 to \$40,000.....	10 years
over \$40,000	15 years
New construction or acquisition of newly constructed housing	20 years

* NOTE: For relatively minor investments, the designated affordability period can be some nominal period of time, but the Act requires that some period be designated. The dollar ranges and/or the corresponding number of years may differ from those shown above depending upon local conditions. The recipient may choose to assign a longer affordability period in order to ensure the availability of a larger continuing affordable housing supply for low-income families.

Under the second option, recipients may have approaches other than the tiered schedule suggested above that would be acceptable to HUD. If the recipient chooses to use some other method of assigning the affordability period, the IHP should describe how the method provides for an affordability period with appropriate consideration given to any unique local conditions. In using either option, a specific number of years should be given for the affordability period, not a range of years (e.g., 30 to 40 years) or a general statement. The number of years should also be without ambiguous qualification (e.g. “about,” “approximate,” “if properly maintained,” “planned,” “expected,” “estimated,” etc.). Similarly, the designated affordability period should in no way be contingent upon the continuation of HUD funding.

How should Useful Life be reported in the IHP? A description of the recipient’s plan or system for determining the useful life of the housing it assists with IHBG funds shall be provided in the IHP. This information should be provided in Section E - Other Submissions, 1 - Useful Life. A record of the current, specific useful life for each individual property assisted with IHBG funds should be maintained in the recipient’s files and available for review.

What properties and types of assistance does useful life apply to? The useful life provisions apply to all housing assisted with IHBG funds except for Mutual Help homes developed under the U.S. Housing Act of 1937 (see 24 CFR 1000.144). It is recommended that homeownership units that have been assisted with IHBG funds, whether they are contract-to-purchase or lease-to-purchase, should have a binding commitment in place that will ensure the continuation of the assigned useful life of the property upon possible transfer of ownership. The initial homebuyer, and any subsequent owners that purchase the property during the period of its useful life, need only qualify as low-income at the time of their purchase. In other words, if the initial owner seeks to sell the property while it is still has remaining useful life assigned to it, the new buyer must qualify as an eligible family at the time of their purchase under Section 201(b) of NAHASDA. Should the home be sold during its useful life period to a new purchaser that does not qualify as an eligible family and payback is not made to the recipient’s program in accordance with its useful life plan, the Secretary shall take appropriate action against the IHBG recipient in accordance with section 401(a) of NAHASDA.

Similarly, low-income owner/occupants of privately owned housing that receive IHBG funded assistance, whether in the form of a loan or a grant, for moderate or substantial rehabilitation, need only be low-income at the time the assistance is provided. However, there should be a binding agreement accompanying the assistance that guarantees an appropriate useful life period or remedies for the breach of such useful life provision upon transfer of ownership during the assigned useful life.

The useful life provisions also apply to the Title VI Loan Guarantee Program, but do not apply to Section 184 loans unless IHBG funds are involved in the purchase of the property.

What are acceptable Binding Commitments? NAHASDA, as referenced above, requires that there be “binding commitments” satisfactory to the Secretary in place to ensure that a housing unit will remain affordable for its “useful life.” In other words, when IHBG funds are provided, whether in the form of a grant or a loan, to purchase, construct, or rehabilitate a residence, there must be a written agreement in place between the IHBG recipient and the individual who is being assisted with the IHBG funds. These agreements must be enforceable contracts that include provisions for the IHBG recipient’s useful life restrictions as specified in its IHP. The provisions must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the useful life restrictions may terminate upon foreclosure by a lender (or transfer in lieu of foreclosure) as long as the action is not for the purpose of avoiding low-income affordability restrictions. The agreement may contain a schedule outlining a payback of a decreasing balance of assistance or percentage equity over the useful life that would have to be reimbursed to the recipient’s program if a subsequent occupant does not meet the IHBG eligibility requirements.

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