



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:
Administrators, Offices
of Native American Programs;
Tribes; Tribally Designated
Housing Entities (TDHEs); Indian
Housing Authorities

NOTICE PIH 2019-07

Issued: June 17, 2019

This Notice is in effect until amended,
suspended or rescinded.

Cross References:

Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (NAHASDA)

24 CFR Part 1000, "Native American Housing Activities"

2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

SUBJECT: Determining and Using Program Income Under NAHASDA

1. PURPOSE

This notice replaces PIH Notice 2000-18 and provides guidance for determining and using program income generated by the use or disbursement of Indian Housing Block Grant (IHBG) funds.

2. BACKGROUND

On January 3, 2013, the following regulatory changes became effective which directly affect the retention and use of program income.

- A new definition of *housing related activities* was added to 24 CFR 1000.10. In 2002, section 104 of NAHASDA was amended to provide that program income must be used for housing related activities. The definition of housing related activities in 24 CFR 1000.10 clarifies what activities can be carried out using program income. Other conforming changes were made throughout 24 CFR Part 1000;
- The IHBG administrative requirements, as described at 24 CFR 1000.26(a)(3), were revised to clarify that a recipient is not required to expend retained program income first before drawing down or expending IHBG grant funds;
- A new regulatory section, 24 CFR 1000.64, was added that addresses the permissible uses of program income.

This notice provides additional guidance to IHBG recipients on program income requirements.

3. DEFINITIONS

Program Income: Any income realized (generated) from the disbursement or use of IHBG funds. It must be income received by the recipient or its sub-recipient or received by a contractor on behalf of the recipient or sub-recipient. Costs incident to the generation of program income paid for with the income generated may be deducted from gross income when determining program income.

Housing Related Activities: For purposes of program income, means any facility, community building, infrastructure, business, program or activity, including any community development or economic development activity that is determined by the recipient to be beneficial to the provision of housing in an Indian area and meets at least one of the criteria identified in 24 CFR 1000.10, *Housing related activities* (2)(i)-(iii).

Affordable Housing: This is housing that complies with the requirements for affordable housing under Title II of NAHASDA.

Eligible Affordable Housing Activities: These are activities identified in Section 202 of NAHASDA and are generally limited to the provision of assistance to low-income families.

Low-Income Families: These are families whose income does not exceed 80 percent of the median income for the area or the national median income, whichever is greater.

Non-Low Income Families: These are families whose incomes exceed 80 percent of the median income for the area or the national median income, whichever is greater.

4. USE OF PROGRAM INCOME

The IHBG regulations at 24 CFR 1000.64 require recipients to use program income to carry out housing or housing related activities. In addition, so long as program income is spent on housing related activities, the use of program income is not subject to other Federal requirements. Recipients must ensure compliance with all other administrative requirements related to the IHBG program, including recording, reporting, financial management, and other requirements discussed in this notice.

IHBG funds must not be used for ineligible purposes with the intention of reimbursing those costs later using program or non-program income. Additionally, program income **may not** be used to pay for the costs of prosecuting claims against the Federal government, including appeals of final Federal agency decisions. Such costs are not housing related activities.

The IHBG regulations at 24 CFR 1000.26(a)(3) provide an exception to the general requirement in 2 CFR 200.305(b)(5) (Payment) that grantees must spend their retained program income before drawing down additional grant funds. IHBG recipients are not required to expend retained program income before drawing IHBG funds from the Line of Credit Control System (LOCCS) or

expending IHBG funds. A recipient may retain any program income provided the program income will be used to carry out housing or housing related activities in accordance with Section 104(a)(1) of NAHASDA.

5. INTEREST EARNED ON INVESTMENTS USING IHBG FUNDS

Pursuant to Section 204(b) of NAHASDA and 24 CFR 1000.58(a), recipients that are approved to do so may invest IHBG funds, but only “for the purposes of carrying out affordable housing activities.” Therefore, interest earned on IHBG investments is not subject to the general rules governing program income. Notably, interest earned from the investment of IHBG funds must be used to carry out “affordable housing activities,” as that term is defined in Section 202 of NAHASDA, as opposed to “housing-related activities,” as that term is defined in used in Section 104 of NAHASDA or 24 CFR 1000.10. Interest earned from the investment of IHBG funds remains subject to all Federal requirements applicable to the IHBG program.

Recipients are reminded that any interest earned on IHBG funds invested in violation of IHBG program requirements, including the 5-year maximum investment period, is unlawfully earned and must be remitted to HUD for return to the US Treasury.

6. HOUSING RELATED ACTIVITIES

In addition to the direct provision of housing, program income may be used for housing related activities as defined at 24 CFR 1000.10, *Housing related activities*. Housing related activities, for the purposes of program income, include facilities, community buildings, infrastructure, businesses, programs or activities, including any community development or economic development activities that the recipient has determined will be beneficial to the provision of housing in a tribal area and that would meet at least one of the following conditions:

- Help a tribe or TDHE to reduce the cost of constructing Indian housing;
- Make housing more affordable, energy efficient, accessible or practicable in a tribal area; or
- Otherwise advance the purposes of NAHASDA.

7. EXAMPLES OF HOUSING RELATED ACTIVITIES

The following are some examples of housing related activities that may be carried out using IHBG program income:

- Assisting families to obtain housing.
- Development or support of a tribally-owned housing manufacturing business if this business would reduce the cost of constructing Indian housing and/or make housing more affordable, energy efficient, accessible or practicable in the Indian area to be served. Conversely, a tribally-owned business that does not have any direct tie to the provision of housing such as a restaurant, convenience store or gaming establishment may not be funded with program income.

- Construction of a community center that will house various services and/or resources aimed at advancing the economic conditions of affordable housing residents, such as career counseling, training and/or job placement. This activity would otherwise advance the purposes of NAHASDA related to self-sufficiency.
- Retrofitting of a community center ---accessible architectural features such as ramps, walkways, entrances, parking, signage, grab bars, bathroom and kitchen fixtures, and environmental controls; retrofitting existing residences to replace inaccessible features with accessible ones; and reasonable modifications suited to the functional needs of individuals with disabilities.
- New construction, rehabilitation, acquisition, or subsidized rental or purchase of housing intended to decrease the isolation and increase the integration of individuals with disabilities.
- Off-site infrastructure related to housing development.
- Providing housing services to resident families, including crime prevention and safety for residents.

8. REPORTING PROGRAM INCOME

It is the responsibility of the recipient to ensure proper recording of the receipt and use of program income (see Section 102(b)(2)(C) of NAHASDA and 2 CFR 200.302(b)(3) and 2 CFR 200.327). To satisfy these requirements, the receipt and expenditure of program income must be identified in both the IHP/APR as well as on the Federal Financial Report (FFR) SF-425 regardless of whether the program income will be or has been used for housing related activities. Instructions related to how program income should be reported are contained in the following ONAP program guidance documents: “Federal Financial Report – Standard Form 425: Instructions and Guidance for the IHBG Program” (No. 2014-07) and “Guidance for Completing the Indian Housing Plan/Annual Performance Report (form HUD-52737)” (No. 2018-02a).

To ensure proper recording of program income, a recipient may use either a separate program income “fund” or use separate expense accounts for tracking purposes. In addition, accumulated program income, should be reported as a “restricted asset” on the financial statements.

9. ADDITIONAL INFORMATION

- Appendix A contains questions and answers that further explain various aspects of the generation and use of program income under NAHASDA.
- Appendix B contains a detailed description of the program income calculation.
- Appendix C contains the Schedule of Maximum Allowable Dwelling Construction and Equipment Costs Per Unit as of October 1, 1997.

- Appendix D contains a listing of Allowable Expense Levels (AEL) and 46 percent of AEL by Tribe.

For further information, please contact your Area Office of Native American Programs.

/s/

R. Hunter Kurtz
Principal Deputy Assistant Secretary for Public and
Indian Housing

Attachments