



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

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:
Offices of Native American
Programs, Indian Tribes, and
Tribally Designated Housing Entities

NOTICE PIH 2020-27

Issued: September 30, 2020

Expires: This Notice remains in effect
until amended, superseded, or rescinded.

Cross References: PIH 2020-13; 24 CFR
Part 1000

SUBJECT: Waiver of Undisbursed Funds Factor Requirements Under the Indian
Housing Block Grant Program for Fiscal Year 2021

1. PURPOSE

The purpose of this Notice is to notify Indian Tribes and Tribally Designated Housing Entities (TDHEs) that, due to the ongoing COVID-19 National Emergency, the U.S. Department of Housing and Urban Development (HUD) is waiving the Undisbursed Funds Factor (UDFF) at 24 CFR § 1000.342 with respect to the fiscal year (FY) 2021 Indian Housing Block Grant (IHBG) program allocation formula. The waiver provided in this Notice only affects the FY 2021 IHBG formula allocations and does not apply to IHBG formula allocations in years beyond FY 2021.

2. BACKGROUND

In accordance with HUD regulation at 24 CFR § 1000.342, if an Indian Tribe/TDHE's initial IHBG allocation calculation is \$5 million or more and there is undisbursed IHBG funds held as of October 1st of the fiscal year for which the allocation is made in an amount that is greater than the sum of the prior three (3) years' initial allocation calculations, the Tribe/TDHE's grant allocation will be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior three (3) years' initial allocation calculations, or its 1996 Minimum (the amount a Tribe is allocated pursuant to section 302(d) of the Native American Housing Assistance and Self-Determination Act).

The COVID-19 National Emergency has presented, and continues to present, significant challenges to IHBG recipients' ability to fully implement their IHBG programs. Local directives to stop the spread of COVID-19, such as closing reservation boundaries, stay at home orders, and curfews, have all impacted housing activities and projects that were planned prior to the National Emergency. Many Tribes and TDHEs continue to operate at reduced administrative capacity, as staff continue to work remotely and with limited

resources. Additionally, even in areas where IHBG recipients have been able to engage in such activities as affordable housing construction, they have shared with HUD that their construction crews often experience interruptions when crew members test positive for COVID-19, and crews, as a result, have to reduce the number of crew members that can work at the same time on any given construction site. Further, IHBG recipients have also shared with HUD that supply chains for necessary construction materials, such as lumber, have been disrupted, which has caused substantial backlogs and delays in procuring these materials to carry out necessary projects funded under the IHBG program.

Moreover, Tribal/TDHE housing staff have been forced to refocus their efforts on preventing, preparing for, and responding to COVID-19 during the national pandemic. Many of these staff have redirected their efforts to applying for and administering two new grant programs designed to address the National Emergency under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136) – the IHBG-CARES (PIH Notice 2020-06) and ICDBG-CARES (PIH Notice 2020-11) programs. Altogether, the pandemic circumstances have made it difficult to implement previously approved Indian Housing Plans and expend IHBG funds in a timely fashion, thus impacting the amount of undisbursed IHBG funds an IHBG recipient may have.

3. **WAIVER**

The CARES Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the use of amounts made available under the IHBG-CARES program, upon a finding by the Secretary that any such waivers or alternative requirements are necessary to expedite or facilitate the use of such amounts to prevent, prepare for, and respond to coronavirus.

Due to the pandemic, IHBG recipients are facing significant impediments to administering their IHBG programs, including for the following reasons:

- The ongoing COVID-19 National Emergency has presented, and continues to present, significant barriers to IHBG recipients' ability to carry out in a timely manner regular IHBG activities that were planned and described in their previously approved Indian Housing Plans prior to the current pandemic.
- Locally-determined stay at home orders, reservation closures, and similar public health directives have delayed previously planned IHBG activities, programs, and projects.
- Since March of 2020, many Tribes and TDHEs have operated at limited administrative capacity with many staff working from home with limited resources and only essential workers carrying out certain functions.
- Infections amongst construction crew members have disrupted and delayed ongoing IHBG construction projects causing a delay in the expenditure of IHBG funds.

- IHBG recipients have reported delays in procuring necessary construction materials as a result of the pandemic, which has resulted in continued delays in the expenditure of IHBG funds.

Given these significant impediments, HUD has determined that a waiver of the UDFP under 24 CFR § 1000.342 for the FY 2021 IHBG formula allocations is necessary to expedite and facilitate the use of IHBG-CARES funds for the following reasons:

- Tribes and TDHEs, with support from HUD, have prioritized their response to the COVID-19 National Emergency, and have devoted limited staff resources over the past few months planning, applying for, and carrying out their IHBG-CARES and ICDBG-CARES programs to address the immediate needs of their communities to prevent, prepare for, and respond to COVID-19.
- A reduction in a recipient's FY21 IHBG formula allocation will decrease available resources to Tribal communities at a time when affordable housing resources are imminently needed to help address distressed housing conditions – particularly severe overcrowding in multigenerational households, homelessness, lack of running water, and related risk factors – which have contributed to the spread of the coronavirus in certain Native American communities at disproportionate rates.
- Any reduction in a Tribe/TDHE's FY 2021 IHBG formula allocation might offset any benefits derived from that Tribe/TDHE's IHBG-CARES grant funding, which would undermine the purposes of the CARES Act to help Tribal communities prevent, prepare for, and respond to COVID-19.
- A waiver of the UDFP will allow impacted Tribes and TDHEs to remain focused on addressing their most urgent needs, and expending all IHBG resources without having to divert staff resources and efforts towards managing funding sources in less efficient ways to avoid triggering the UDFP.
- This waiver relief is also consistent with other regulatory relief provided by the Department to grantees under certain other block grant programs with similar expenditure requirements.

Accordingly, HUD is waiving 24 CFR §1000.342 in its entirety and will not take into consideration Indian Tribes'/TDHEs' undisbursed IHBG funds when computing their FY 2021 IHBG formula allocations.

HUD emphasizes that this relief is being provided on a one-time basis given the current National Emergency and current extraordinary circumstances. HUD does not anticipate issuing a similar waiver of this regulation in future years and strongly advises all Tribes and TDHEs to continue to work diligently to spend their available IHBG resources as expeditiously as possible given the affordable housing needs in Indian Country.

4. PERIOD OF AVAILABILITY

This waiver relief is available only for IHBG funding that will be allocated under the FY 2021 IHBG allocation formula and will not apply beyond the FY 2021 IHBG allocation formula.

5. GRANT CONDITIONS

A Tribe or TDHE that receives relief under this waiver will be subject to additional grant conditions that will be placed on its FY 2021 IHBG formula grant. Any grant conditions will be developed by HUD at a later time. Such conditions may require an expenditure plan to ensure that Tribes and TDHEs will spend their IHBG funds in a timely manner in FY 2021, may require that certain milestones that will be met, and may include any other related and appropriate conditions, as determined by HUD.

6. FURTHER INFORMATION

If you have questions about this Notice, please contact your Office of Native American Programs Area Office.

_____/s/
R. Hunter Kurtz
Assistant Secretary for Public
and Indian Housing