


PROGRAM GUIDANCE

PROGRAM: Tribal HUD-VA Supportive Housing (Tribal VASH) Program

FOR: Tribal/TDHE VASH Recipients

FROM: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, PN 

TOPIC: Rental Assistance Payment (RAP) Contract Requirements

Purpose: This notice provides guidance to participating tribes and Tribally Designated Housing Entities (TDHEs) on requirements for Rental Assistance Payment (RAP) contracts and residential leases under the Tribal HUD-VASH demonstration program.

Background: On October 21, 2015, HUD published a *Federal Register* notice on the *Implementation of the Tribal HUD-VA Supportive Housing Program* (80 Fed. Reg. 63822, October 21, 2015) (Implementation Notice). The Implementation Notice described the parameters of a demonstration program to provide rental assistance and supportive services to Native American Veterans who are homeless or at risk of homelessness.

Section V. *Application for Tribal HUD-VASH Program, Paragraph C.3, Tenant-Based Rental Assistance vs. Project-Based Rental Assistance* of the Notice states that under the demonstration program, tribes/TDHEs could use Tribal HUD-VASH funds to provide tenant-based rental assistance on behalf of homeless Veterans in privately owned or tribally owned or operated rental units. In addition, the Notice said that Tribal HUD-VASH funds could be used for project-based rental assistance in privately owned units, existing tribally owned or operated units, or newly constructed tribally owned and operated units.

Section VI. *Tribal HUD-VASH Program Requirements, Waivers, and Alternative Requirements, Paragraph J. Rental Assistance Payment Contracts* of the Implementation Notice requires participating tribes/TDHEs to enter into RAP contracts with the owner of rental housing units in which the Native American Veteran will reside. RAP contracts are not required when the Tribal HUD-VASH grantee owns the unit. The Implementation Notice states that HUD would be developing additional guidance on the required RAP contract terms. This guidance offers the additional detail referenced in the Implementation Notice. This document also provides guidance on what **should** be included in the residential lease between the landlord and the Tribal HUD-VASH tenant.

RAP Contract Requirements: RAP contracts are required when a tribe/TDHE will be providing Tribal HUD-VASH funds as a method of rental assistance payment for any rental unit not owned by the Tribal HUD-VASH grantee.

Some tribes/TDHEs participating in the Tribal HUD-VASH program may have RAP-like contracts for their tenant-based rental assistance programs under the Indian Housing Block Grant (IHBG) program. These contracts may be used for the Tribal HUD-VASH program if they are amended to include the RAP contract requirements listed below. However, the Housing Assistance Payment Contract (HAP Contract, form HUD-52641), which is used for the Housing Choice Voucher Program (Section 8 Tenant-Based Assistance), should not be used for Tribal HUD-VASH tenants because of the unique nature of the Tribal HUD-VASH and IHBG programs.

Tribal HUD-VASH RAP contracts are required for both tenant-based and project-based assistance, and must include:

Information about tenants, units, and responsible parties

- Veteran's full name and a listing of household members, including live-in aides, if applicable.
- Address of unit, including apartment number, if any.
- Signatures of responsible parties (tribe/TDHE and owner).
- The RAP contract must state that the owner must maintain the contract unit and premises in accordance with applicable housing quality standards. In addition, the contract must permit the tribe/TDHE to inspect the unit at reasonable times to ensure compliance with local housing codes and quality standards and any other applicable requirements. The tribe/TDHE must notify the owner of any defects or deficiencies that are identified.

Information about rent and how and when it will be paid

- The contract rent for the unit is the total charge for the unit, and includes the tenant's and the tribe's/TDHE's share. The contract must include the amount of the contract rent, including payment terms and instructions (mailing address, bank information for funds transfer, due date, late fees, etc.)
- The monthly RAP paid by the tribe/TDHE to the owner is the difference between the contract rent and the tenant's share of the contract rent. The total rent charged for the unit must comply with Section VI. *Tribal HUD-VASH Program Requirements, Waivers, and Alternative Requirements*, Paragraph H. *Rent* of the Implementation Notice. The tenant's portion of the rent cannot exceed 30 percent of the household monthly adjusted income. If the tenant's income goes down during the year, the tenant's share of the contract may be reduced and the tribe's/TDHE's share increased. Tribes/TDHEs must notify the tenant and the owner of any changes in the RAP amount. In addition, the contract must state the owner is entitled to the entire rent payment from the grantee, regardless of the tenant's actions or inactions. However, the owner is required to promptly notify the tribe/TDHE of these situations as they occur.

- The RAP contract must specify all costs included in the contract rent, including which utilities and appliances are to be provided or paid for by the owner.

Information on the term of the contract

- The RAP contract term must begin on the first day of the initial term of the residential lease between the Native American Veteran and the owner, and terminate after 12 monthly rental assistance payments have been made on the tenant's behalf, unless HUD has approved a shorter rental period. The lease may include a provision that permits the Tribal HUD-VASH grantee to extend the contract in the event that future appropriations are available.
- The contract between the Tribal HUD-VASH grantee and the owner must terminate automatically if the residential lease is terminated at any time by either the owner or the tenant. The tribe/TDHE may also specify other circumstances in the contract where the RAP contract may be terminated.
- The RAP contract must state that the owner may not assign the RAP contract to a new owner without the prior written consent of the tribe/TDHE.

Additional RAP Contract Provisions For Project-Based Assistance: When Tribal HUD-VASH funds are being used to finance or for securing financing for the construction of new or rehabilitated project-based units, then the RAP contract must include the clauses listed below in addition to the clauses above. If a tribe/TDHE will own the new units, then the following requirements will still apply; however, they must be documented separately from the RAP contract, since a RAP contract is not required when the Tribal HUD-VASH grantee owns the unit.

- Useful Life Restriction. Units must remain affordable and available to low-income Native American Veterans and their families for a minimum period of 15 years from the time of initial lease-up.
- Occupancy of Unit by a Non-Veteran. The RAP contract must stipulate that if a tribe/TDHE no longer has a need to house Native American Veterans who are homeless or at risk of homelessness before the affordability period has ended due to changed circumstances, a tribe/TDHE must request HUD's prior approval to house low-income Indian families in such units. HUD will approve such requests if the tribe/TDHE can demonstrate that there are no eligible homeless Native American Veterans to occupy these units.
- Unoccupied Units. The RAP contract must include a provision that says that Tribal HUD-VASH funds will not be paid to the owner if the unit is unoccupied.
- Contract Renewal. The RAP contract must include a provision that requires the owner of the unit to renew the contract if Congress appropriates additional funding for the program.

Alternative Provisions for Grantee-Owned or Operated Housing: As mentioned above, Tribal HUD-VASH assistance may be used to house homeless Native American Veterans in existing rental units owned or operated by a Tribal HUD-VASH grantee. A RAP contract is not required for units owned and operated by the Tribal HUD-VASH grantee. Instead, grantee must draw down Tribal HUD-VASH grant funds equal to the rental assistance payment from the Line of Credit Control

System (LOCCS) on a monthly basis or when tenant rent payments are due. Supporting documentation must be maintained for all such drawdowns. Housing that qualifies as Formula Current Assisted Stock under the IHBG program is not eligible for Tribal HUD-VASH funding.

Residential Lease Requirements: All Native American Veterans participating in the Tribal HUD-VASH demonstration program must have a signed lease agreement between the Veteran and the unit owner. These owner-tenant leases must incorporate the lease requirements in Section 207 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA), which follows:

“(a) LEASES- Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this Act, the owner or manager of the housing shall utilize leases that—

- (1) do not contain unreasonable terms and conditions;*
 - (2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;*
 - (3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;*
 - (4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;*
 - (5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and*
 - (6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—*
 - (A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;*
 - (B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or*
 - (C) is criminal activity (including drug-related criminal activity) on or off the premises.”*
- The lease must be for a period of one year. The tribe/TDHE may approve a shorter initial lease term only upon finding that a shorter term would improve housing opportunities for the Native American Veteran, or that such shorter term is the prevailing local market practice. During the period of the RAP contract and residential lease, the rent may not be increased.
 - The tribe/TDHE may establish any other terms and conditions in the residential lease if such terms and conditions are consistent with NAHASDA and the Implementation Notice.

For Further Information. Contact your Grants Management Specialist if you need additional information.