

Special Attention of:
Indian Housing Authorities;
Administrators, Offices of
Native American Programs

NOTICE PIH 96-25(IHA)
Issued: May 7, 1996
Expires: May 31, 1997

Indian Housing Homeownership Programs - Loan
Forgiveness, Establishment of Replacement Reserves
and Use of Excess Residual Receipts, Operating
Reserves and Proceeds from the Sale of Homeownership
Units

1. Purpose. The procedures and guidance for the implementation of Loan Forgiveness were contained in the Indian Housing Financial Management Guidebook, 7470.1 REV-1. A transmittal issued on January 13, 1995 cancelled this handbook. This Notice provides procedures to implement Loan Forgiveness as it pertains to the Mutual Self Help Program (Old Mutual Help), the Mutual Help Homeownership Opportunity Program (New Mutual Help) and the Turnkey III Homeownership Opportunity Program (Turnkey III). It also provides guidance to the Offices of Native American Programs (ONAP) and Indian Housing Authorities (IHA) on how to establish a Replacement Reserve, how to retain or obtain a refund of Excess Residual Receipts, Operating Reserves and/or Proceeds from the Sale of Homeownership Units and the eligible uses of these funds.
2. Background. This Notice implements the provisions of Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985, (the Amendments) P.L. 99-272 (April 7, 1986), which amends Section 4 of the United States Housing Act of 1937 (the 1937 Act). The amendments authorized the Secretary of HUD to forgive outstanding principal and interest on loans made by the Secretary to Public Housing Agencies and Indian Housing Authorities (IHAs) and to cancel the terms of any contract with respect to repayment. Loan forgiveness permitted under the amendments shall not apply to any loan for which the repayment was not to be made using debt service annual contributions or to any loan for which all or part of the proceeds are due an IHA from contractors or others.

This Notice also amends the Low-Rent Accounting Guidebook 7510.1, to facilitate the implementation of loan forgiveness through revised and new accounting procedures (See Appendix A)

3. Definitions.

- A. ACC Use Amendment : An amendment to the Annual Contribution Contract (ACC) which revises an IHA's contractual obligation under existing ACCs to permit specified uses of and/or the transfer of Excess Residual Receipts, Operating Reserves, and Proceeds from the Sale of Homeownership Units between ACCs.
- B. Administrative Use Agreement : A contractual agreement, in lieu of an ACC, between the Department of Housing and Urban Development (HUD) and an IHA that describes how Proceeds from the Sale of Homeownership Units shall be used.
- C. Consolidated Annual Contributions Contract - (Form HUD-53012A and 53012B) : A new streamlined annual contribution contract that is intended to replace the most recent ACC(s) and any amendments to the ACC executed between HUD and the IHAs with respect to low-rent and homeownership projects.
- D. Cumulative Residual Receipts (Old Mutual Help) : The cumulative amount of operating receipts that exceeds operating expenditures which would in the absence of a Replacement Reserve be used for the payment of operating expenditures in a subsequent fiscal year, or in the absence of a Consolidated ACC, be remitted to HUD for the application to debt retirement as provided in the contract with HUD. Note: The Indian Housing Program's Final Rule issued April 10, 1995, eliminated maximum operating reserves and the requirement to remit residual receipts to HUD.
- E. Excess Residual Receipts (Turnkey III) : The amount of residual receipts from operations in excess of the amount needed for the payment of operating expenditures which would, in the absence of a Replacement Reserve, increase the Operating Reserve account. Note: The Indian Housing Program's Final Rule issued April 10,

1995, eliminated maximum operating reserves and the requirement to remit residual receipts to HUD.

- F. Loan Forgiveness ACC Amendment : An amendment to the ACC that revises an IHA's contractual obligations under existing ACCs to return Excess Residual Receipts, Operating Reserves, and Proceeds from the Sale of Homeownership Units to HUD. Execution of the Consolidated ACC, form HUD-53012A and form HUD-53012B dated July 1995, by the IHA will eliminate the need for execution of loan forgiveness ACC amendments form HUD-53010-R and 53010-S.
 - G. Operating Reserve : The cumulative amount of operating receipts which exceed operating expenditures. For purposes of this Chapter, the term "Operating Reserve" includes the balance of residual receipts (Account 2815) for Old Mutual Help. Operating Reserves, for any homeownership program, are not eligible for retention in a Replacement Reserve until all homeownership units in an ACC are conveyed.
 - H. Proceeds from the Sale of Homeownership Units : Amounts paid by a homebuyer family to the IHA for acquiring ownership of a unit.
 - I. Replacement Reserve : An account consisting of Residual Receipts, Operating Reserves or Proceeds from the Sale of Homeownership Units. Funds from the Replacement Reserve may be used in accordance with the ACC Use Amendment or an Administrative Use Agreement.
 - J. Residual Receipts : The amount by which the aggregate operating receipts of all projects for the fiscal year exceed the aggregate operating expenditures. Note: The Indian Housing Programs's Final Rule issued April 19, 1995, eliminated maximum operating reserves and the requirement to remit residual receipts to HUD.
 - K. Use Plan : A plan proposed by an IHA for use of Residual Receipts, Operating Reserves and/or Proceeds from the Sale of Homeownership Units. The Use Plan must be submitted with any request for an ACC Use Amendment and/or Administrative Use Agreement.
4. Procedures to Implement Loan Forgiveness .
- A. Determine Loans Eligible for Loan Forgiveness .

1. Forgiveness is limited to loans held by HUD that were to be repaid after April 7, 1986, using annual contributions. Forgiveness does not extend to loans financed through the sale of bonds, notes

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sold to the Federal Financing Bank, IHA notes to HUD (e.g., preliminary loans, administrative loans, excess financing and any interest associated with these loans) or the portion of loans held by HUD which were to be repaid using equity due to an IHA from a homebuyer.

2. The Department will systemically implement loan forgiveness for homeownership projects based on the amount of the loan to be repaid with annual contributions and the amount of the loan payable with equity received from the homebuyer. The amount of systematic loan forgiveness for each homeownership project will be determined annually.
3. Homeownership developments where conveyance is not based on the use of an amortization schedule (e.g. Old Mutual Help and Old Turnkey III), require a current status of loan forgiveness to determine the appropriate date of conveyance. The Headquarters ONAP has provided current Annual Contribution Worksheets to the ONAPs. IHAs in need of a worksheet should contact their local ONAP.

B. Funds Made Eligible for Retention by the Execution of the Consolidated ACC or the Loan Forgiveness ACC Amendment.

1. Funds eligible for retention are: Excess Residual Receipts, Operating Reserves and Proceeds from the Sale of Homeownership Units, which were due to HUD from April 7, 1986 through the present for repayment of loans eligible for loan forgiveness.
2. The existing ACCs, prior to the Indian Housing Program's Final Rule issued June 10, 1995, which eliminated the maximum operating reserve for rental, Mutual Help and Turnkey III programs and the requirement to remit residual receipts to HUD, require Excess Residual Receipts, Operating Reserves and Proceeds from Sale of Homeownership Units to be returned to HUD. IHAs must execute a

Loan Forgiveness ACC Amendment or Consolidated ACC in order to implement loan forgiveness and authorize the IHA to retain Excess Residual Receipts, Operating Reserves and Proceeds from Sale of Homeownership Units in a Replacement Reserve.

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3. An IHA must execute a Consolidated ACC or make written request to the ONAP for execution of a Loan Forgiveness ACC Amendment. The IHA must receive the fully executed Loan Forgiveness ACC Amendment or Consolidated ACC prior to retention of funds eligible for loan forgiveness. When requesting execution of the Loan Forgiveness ACC Amendment an IHA must provide certification that the executed and audited ADCCs are on file with the Office of Finance and Accounting (OFA). If an IHA has requested Loan Forgiveness for any development that does not have such ADCCs on file with OFA, the request will not be approved.
4. The ONAP Administrator has the authority to prepare and execute the Loan Forgiveness ACC Amendment or execute the Consolidated ACC submitted by the IHA. Upon receipt of the IHA's request to execute the Loan Forgiveness ACC Amendment, the ONAP Administrator will:
 - a. prepare four original sets of the Loan Forgiveness ACC Amendment (with the concurrence of the Chief Counsel) and remit them to the IHA for execution.
 - b. the IHA will execute the four original sets of Loan Forgiveness ACC Amendments and return all of them to the ONAP.
 - c. Upon receipt of the Loan Forgiveness ACC Amendment signed by the IHA, the ONAP Administrator shall execute the Loan Forgiveness ACC Amendment, retain one original and distribute one original to each of the following:

- 1) the Office of Chief Counsel;
- 2) the Office of Native American Programs,
and
- 3) the IHA initiating the loan forgiveness
request.

- d. Upon receipt of the IHA's request to execute a Consolidated ACC, the ONAP Administrator will follow the procedures outlined in Notice PIH 95-44, Consolidated Annual Contributions Contract, Form HUD-53012A and Form HUD-53012B.
5. Upon receipt of the fully executed Loan Forgiveness ACC Amendment or the Consolidated ACC, the IHA may implement accounting procedures for the establishment of Replacement Reserves. However, use of funds will not be authorized without execution of either an ACC Use Amendment and/or Administrative Use Agreement. (See Establishment of Replacement Reserves Section 7)
6. If an IHA elects not to execute a Loan Forgiveness ACC Amendment, HUD unilaterally has the authority to cancel the loan. If the IHA does not execute a Loan Forgiveness ACC Amendment or Consolidated ACC, the IHA will remain bound under the provisions of the existing ACCs to return Excess Residual Receipts, Operating Reserves, and Proceeds from the Sale of Homeownership Units to HUD. Note: The Indian Housing Program's Final Rule issued June 10, 1995, eliminated the maximum operating reserve for the rental and Turnkey III programs and the requirement to remit residual receipts to HUD.
7. Whether or not an IHA elects to execute a Loan Forgiveness ACC Amendment or the Consolidated ACC, the cancellation of principal and interest payment will not effect any other terms of conditions of the ACC, which will remain in effect as if cancellation had not occurred, whether or not operating subsidies are received.

C. Refund Requests .

1. Funds eligible for retention which were remitted to HUD from April 7, 1986, through the present are eligible for refund. To request a refund, the IHAs must make a written request to the local ONAP accompanied by the following:

a. certification that the IHA has received a fully executed Loan Forgiveness ACC Amendment or Consolidated ACC;

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b. an applicable fiscal year end Statement of Operating Receipts and Expenditures, Form HUD-52599, which reflects the amount submitted to HUD; and

c. a copy of the proof of payment such as a copy of the front and back of the canceled check or wire transfer payment documentation.

2. Within 30 days from receipt of the refund request the ONAP will review and verify all refund requests and for all verified and approved requests, submit the material outlined in Section 4(C)(1) to Headquarters, Director, Office of Headquarters Operations, Office of Native American Programs, Department of Housing and Urban Development. The Office of Native American Programs will forward all verified and approved refund requests to the OFA.

3. OFA will review the request and if acceptable, forward a refund directly to the IHA within 45 days from the day of receipt of the verified and approved refund request from the ONAP. Use of funds is not authorized without execution of either an ACC Use Amendment and/or Administrative Use Agreement. (See Section 4(E)(F))

4. Notification of the refund will also be sent to the ONAP for their records.

5. Any refund request which cannot be verified by the ONAP or is unacceptable to OFA will be returned to the IHA with a statement of deficiency.

D. Resident and Local or Tribal Government Consultation .

1. IHAs implementing loan forgiveness and requesting fund use under an ACC Use Amendment or Administrative Use Agreement shall consult with

their residents and any resident organizations regarding use of retained funds and/or refunded funds.

2. IHAs implementing loan forgiveness and requesting fund use under an Administrative Use Agreement also shall consult with their local or Tribal government regarding the use of retained and/or refunded funds.

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3. The IHA may choose the type of method for consultation with the residents and local or Tribal Government, such as:
 - a. including the item on the agenda of the regular meeting of the Board of Commissioners with notification to the residents and local or Tribal government if applicable;
 - b. calling a special meeting of the Board of Commissioners for resident consultation and local or Tribal government, or
 - c. house to house canvassing of the developments for resident consultation.

E. Use of Funds Eligible for Retention by Loan Forgiveness - ACC Use Amendment.

1. The Secretary has determined, under authority of Section 6(e) of the Housing Act of 1937, that Excess Residual Receipts and Operating Reserves must be used specifically for modernization purposes of IHA low-income developments. The IHA does not have to incorporate the funds into a Comprehensive Improvement Assistance Program (CIAP) budget and/or Comprehensive Grant Program plan to comply with this requirement. They can incorporate the use of the funds in their operating budget for purposes which will reduce the need for modernization funds.
2. Excess Residual Receipts and/or Operating Reserves may be used for modernization purposes in any existing ACC, however, funds derived from

Operating Reserves may not be used until all homeownership units in the ACC have been conveyed.

3. Proceeds from the Sale of Homeownership Units may be used for any programmatic operating expense in any existing ACC. Funds derived from this source may be used immediately upon execution of the Loan Forgiveness ACC Amendment or Consolidated ACC and the ACC Use Amendment.
4. Prior to fund use in accordance with this Section 4(B), an IHA must have received a fully executed Loan Forgiveness ACC Amendment or Consolidated ACC and received a fully executed ACC Use Amendment.

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When requesting the execution of an ACC Use Amendment, an IHA must provide the following:

- a. Use Plan for the funds;
- b. documentation supporting the use of funds described in the Use Plan, including estimates of the cost of the modernization program's revised operating budgets, Comprehensive Improvement Assistance Program (CIAP) budgets and/or Comprehensive Grant Program plan reflecting fund use, etc.; and
- c. evidence that the IHA has consulted with its residents regarding fund use.

F. Use of Funds Eligible for Retention by Loan Forgiveness - Administrative Use Agreement .

1. Proceeds from the Sale of Homeownership Units can be used for any low-income housing approved by HUD, including locally sponsored and directed homeownership projects. An Administrative Use Agreement for Proceeds of Sales of Homeownership Projects must be executed for such purposes. HUD will not be obligated to provide any financial or other assistance on housing developed or operated pursuant to a local plan.
2. Prior to fund use in accordance with this Section 4(BF), an IHA must have received a fully executed Loan Forgiveness ACC Amendment or Consolidated ACC and requested and received a fully executed

Administrative Use Agreement. When requesting the execution of an Administrative Use Agreement, an IHA must provide the following:

- a. Use Plan for the funds, in the format provided in Part II of the HUD-53010-T, Administrative Use Agreement;
- b. documentation supporting the use of funds described in the Use Plan, including estimates of the cost of the proposed use plan, original or revised operating budgets, modernization program budgets reflecting fund use, etc.;

- c. all of the information necessary to complete Part I of the HUD-53010-T, Administrative Use Agreement; and
 - d. evidence that the IHA has consulted with its residents and local or tribal government regarding fund use.
 - 3. IHAs implementing loan forgiveness and requesting fund use as outlined in an Administrative Use Agreement must consult with their residents and local or Tribal government regarding fund use. The consultation should consist of the same criteria as outlined in Section D, Resident and Local or Tribal Government Consultation.
- 5. Approval of Loan Forgiveness Contractual Documents .
 - A. ACC Use Amendment and/or Administrative Use Agreement Preparation .
 - 1. The ONAP Administrator has the authority to prepare and execute the ACC Use Amendments and Administrative Use Agreements.
 - 2. Within 45 calendar days of the date of HUD's receipt of the IHA's request to execute an ACC Use Amendment and/or Administrative Use Agreement, the ONAP will review and approve or disapprove the request. Upon approving the request, the ONAP will prepare the necessary contractual documents providing four original sets of all forms to be executed. The ONAP Administrator will issue a letter informing the IHA of the approval of the ACC Use Amendment and/or Administrative Use Agreement request and Use Plan contained there in. The approval letter should:
 - a. identify all pertinent information regarding the fund use approval, e.g., identify the type of development (Old Mutual Help, New Mutual Help, Turnkey III), the development numbers and the type of funds to be retained and used;
 - b. state that the IHA's plan for use of Excess

Residual Receipts, Operating Reserves and/or Proceeds from Sale of Homeownership Units meets program standards for HUD approval; and

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- c. provide instructions to the IHA on the execution of the ACC Use Amendment and/or the Administrative Use Agreement. These documents are to be executed in four originals sets and returned to the ONAP.
 3. The Chief Counsel shall concur on all amendments to the ACC and the Administrative Use Agreement.
 4. Upon receipt of the signed Amendment(s) and/or Agreement from the IHA, the ONAP Administrator shall execute the Amendment(s) and/or Agreement, retain one original and distribute one original to each of the following:
 - a. the Office of Chief Counsel;
 - b. the Office of Native American Programs, and
 - c. the IHA initiating the loan forgiveness request.
6. Changes and Additions to the Use Plan.
 - A. Any change in the work to be accomplished in the Use Plan or in an increased amount of funds to be used for the Use Plan must be submitted to the ONAP with a request for review and approval prior to performing the additional work. Upon approval by the ONAP, an amendment to the ACC Use Amendment and/or Administrative Use Agreement will be executed to include the requested Use Plan change or increased fund use. Section 4 (E)(F) provides procedures for requesting execution of an ACC Use Amendment and/or an amendment to the Administrative Use Agreement.
 - B. Upon receipt of the IHA's request for approval of change(s) or addition(s) to the ACC Use Amendment and/or Administrative Use Agreement, the ONAP will use the approval of loan forgiveness contractual documents procedures provided in Section 5.

7. Establishment of Replacement Reserves .

- A. Eligibility to establish a Replacement Reserve from funds derived from Excess Residual Receipts, Operating Reserves, and/or Proceeds from the Sale of

Homeownership Units is limited to those IHAs that are not receiving debt service annual contributions and have received a fully executed Loan Forgiveness ACC Amendment or Consolidated ACC.

- B. Accounting instructions for the establishment of Replacement Reserves are attached as Appendix A.

8. Loan Forgiveness Contractual Forms and Their Use .

- A. In order to implement loan forgiveness, the applicable Loan Forgiveness ACC Amendment or Consolidated ACC must be executed. In addition, depending on the proposed use of the funds, one of the ACC Use Amendments or the Administrative Use Agreement will be required to be executed. The contractual forms listed below are the documents to be executed as part of the loan forgiveness process.

1. The Mutual Help Loan Forgiveness ACC Amendment (HUD-53010-R) . This form amends the Mutual Help ACC to permit IHAs to, among other things, retain Excess Residual Receipts, Operating Reserves and Proceeds from the Sale of Homeownership Units. It also allows the IHA to deposit proceeds from the sale of homeownership units into a replacement reserve.
2. The Turnkey III Loan Forgiveness ACC Amendment (HUD-53010-S) . This form amends the Consolidated ACC to permit IHAs to, among other things, retain residual receipts, operating reserves and proceeds from the sale of homeownership units. It also allows the IHA to deposit proceeds from the sale of homeownership units into a replacement reserve.
3. The Consolidated ACC (HUD-53012A and 53012B) . This form streamlines the ACC and is intended to replace the most recent Consolidated ACC. Loan Forgiveness provisions are automatically implemented upon execution of this form.
4. The ACC Use Amendment for Modernization (HUD-53010-U) . This form amends the Consolidated or Mutual Help ACCs to permit funds in the

replacement reserve to be used in the originating ACC or transferred to another existing ACC for modernization purposes.

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5. The ACC Use Amendment for Proceeds of Sale (HUD-53010-V). This form amends the Consolidated or Mutual Help ACCs to permit use of Proceeds from the Sale of Homeownership Units for operating costs associated with developments in the existing ACC or to transfer the funds to another existing ACC for operating costs associated with development funds.

6. The Administrative Use Agreement (HUD-53010-T). This form authorizes an IHA to use Proceeds from the Sale of Homeownership Units deposited in the replacement reserve for specific purposes outlined in the IHA's Use Plan, which is incorporated into this Agreement. Part I of the Agreement sets forth the minimum requirements for the use of the funds. Part II of the Agreement consists of the IHA's Use Plan. The Use Plan (Part II) must be reviewed for compliance with the boilerplate requirements in Part I.

Note: The HUD Forms, 53010 and 53012 series, may be obtained from the local ONAP.

9. Grant Funded Projects. Projects funded by grants are not subject to the loan forgiveness provisions. IHAs are not required to execute any of the ACC Amendments to retain residual receipts, operating reserves and/or proceeds from the sale of homeownership units. However, the establishment of a Replacement Reserve for the proceeds and use of proceeds is governed by the requirements and procedures in this notice.

_____/s/_____

Kevin Emanuel Marchman
Deputy Assistant Secretary for
Distressed and Troubled
Housing Recovery