

U. S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:
ONAP Administrators;
Grants Evaluation
Supervisors and Staff

Notice PIH 99-32 (TDHEs)

Issued: July 29, 1999

Expires: July 31, 2000

Cross Reference: 24 CFR Part 1000

SUBJECT: Determination of recipient administrative capacity to undertake the Indian Housing Block Grant (IHBG) program

PURPOSE: This Notice establishes the basis upon which the Department will determine if a recipient of Indian Housing Block Grant (IHBG) funds, authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104-330), has the administrative capacity to undertake Indian Housing Block Grant (IHBG) program activities in accordance with the program regulations at 24 CFR Part 1000.

BACKGROUND: Evaluation of a recipient's administrative capacity in the IHBG program is part of the Office of Native American Program's (ONAP) oversight responsibilities under the NAHASDA and program regulations at 24 CFR Part 1000. This oversight responsibility generally arises in three ways. Section 1000.6 provides that IHBG recipients must have the administrative capacity to undertake the affordable housing activities proposed. This capacity includes the existence of adequate systems of internal control necessary to administer these activities effectively without waste, fraud, or mismanagement. Pursuant to section 405 of NAHASDA and §1000.520, ONAP also reviews the performances of each recipient at least annually, including the recipient's continuing capacity to carry out eligible activities in a timely manner. In addition, a recipient must demonstrate, pursuant to §1000.58, that it has the administrative capacity and controls to responsibly manage the investment of IHBG funds. This Notice addresses the first two situations. Determinations of administrative capacity which deal with the investment of IHBG funds in accordance with §1000.58 are addressed in a separate Notice PIH 99-4 (TDHEs), Administrative Requirements for Investing Indian Housing Block Grant Funds.

DEFINITION AND STANDARDS: Administrative capacity measures a recipient's ability to effectively undertake the affordable housing activities in its Indian Housing Plan (IHP) in accordance with the requirements of NAHASDA and 24 CFR Part 1000. Administrative capacity can be demonstrated by: a history of satisfactory performance, financial stability, management systems which meet the requirements of Part 85, policies and procedures that meet the requirements of Part 1000, compliance with previous awards, experienced employees and the existence of an organizational structure, development and operating policies and systems, and experience which minimize the potential for fraud, waste, and mismanagement,. In general, the following basic requirements of §1000.26 and related systems will be evaluated in making a determination regarding a recipient's administrative capacity to undertake the IHBG program:

- History of satisfactory performance - The recipient has a proven record of acceptable compliance and performance in implementing prior ONAP, other Federal, tribal, and other programs of a similar nature and scope to those activities proposed in its IHP. In addition to other areas noted within this Notice, the following compliance areas are of particular importance in the IHBG program:
 - Indian Preference (§1000.48-.54)
 - Labor standards (§1000.16)
 - Environmental clearance (§1000.18-.24, 24 CFR Part 58)
 - Lead based paint (§1000.40, Section 302 of the Lead based Paint Poisoning Prevention Act)
 - Accessibility (§1000.12, 24 CFR Part 8, Section 504 of the Rehabilitation Act of 1973)
 - Flood Insurance (§1000.38)

- Financially stable - Previous programs have been administered in an effective manner which has maintained the financial stability of the recipient to undertake the proposed IHBG program activities. If the recipient is an Indian Housing Authority the amount and trends in the recipient's operating reserves may be evaluated in relationship to the anticipated IHBG amount.

- Acceptable management systems (§85.20) - At a minimum, financial management systems are in place which meet the following standards.
 - Financial reporting (§§85.20, 85.41)
 - Accounting records (§§85.20, 85.32, 85.33)
 - Internal control (§85.20)
 - Allowable costs (§§85.20, 85.22, OMB Circular A-87)
 - Source documentation (§85.20)
 - Cash management (§§85.12, 85.20, 85.21)
 - Records retention (§1000.552)
 - Budget control

- Development and Operating policies - Managerial and operational systems are in place which meet the following standards of the IHBG program.
 - Admissions and Occupancy (§§1000.104-.110, 1000.120, 1000.124-.156, NAHASDA §102(c)(5)(c))
 - Management/Personnel (OMB Circular A-87)
 - Maintenance (NAHASDA Sec. 102 (c)(5)(e) and 203 (e))
 - Travel (OMB Circular A-87)
 - Procurement (§§85.36, 85.35, 1000.26)
 - Real property acquisition (§1000.14, 49 CFR Part 24)
 - Relocation (§1000.14, 49 CFR Part 24)
 - Conflict of interest (§1000.30-.36)

- Audit (OMB Circular A-133, §§85.26, 1000.544-550) - Independent audits of the recipient's financial statements, program compliance, and internal controls have been obtained in a timely manner and any findings have been resolved in accordance with established timeframes, as applicable.

- Is otherwise responsible - Any other relevant information which is pertinent to the capacity of the recipient to manage its IHBG program in an effective manner in accordance with the program requirements may be evaluated as part of the overall assessment of capacity.

Determinations of administrative capacity are a vital management tool and an integral part of ONAP's oversight responsibilities and efforts to promote excellence in the management of the IHBG program in partnership with Indian Country. In addition to minimizing the potential for fraud, waste and mismanagement, ONAP's goal in evaluating administrative capacity is to establish a framework within which to initiate proactive technical assistance and capacity building efforts. These initiatives include the development of capacity building strategies, targeting of technical assistance contacts, allocation of ONAP resources, provision of technical assistance, partnering with other recipients to improve capacity.

PROCEDURES: The assessment of administrative capacity is an ongoing process based on a number of remote and onsite indicators of capacity and performance. It will be completed at least annually in accordance with §1000.520. However, an assessment may be completed or updated at any time based on the availability of new information. Determinations of administrative capacity will be based on ONAP's cumulative knowledge of a recipient's capacity, performance, and compliance with the IHBG program requirements; however, an Indian Housing Authority's past designation as "high risk" for the 1937 Act programs cannot be used to determine administrative capacity of new recipients. Current audit reports or other information concerning financial management systems could provide a basis for determination of administrative capacity. In general, the following information will be evaluated in making these determinations:

- A-133 audit reports,
- ONAP or other agency monitoring reviews,
- OIG audits/investigations
- Recipient internal reviews,
- Annual Performance Reports (APRs),
- ONAP's risk assessments,
- LOCCS reports and activity,
- Indian Housing Plans (IHPs)

In general, new recipients with which ONAP has no prior performance history or experience will be assumed to have administrative capacity. However, ONAP will utilize any available performance information about the recipient which is applicable to the new recipient's capacity to effectively manage the IHBG program. For example, an A-133 audit report of the recipient may indicate the lack of adequate financial management systems and internal controls. ONAP can use this information in assessing the recipient's administrative capacity to manage the IHBG program. In addition, any concerns about the capacity of a new recipient can be addressed by requesting information about the recipient's organizational structure, operating policies and systems, and experience. In accordance with §1000.28, new recipients which are self-governance tribes may certify that they have the requisite administrative requirements, standards, and systems of §1000.26. However, based on an annual review or other available information, ONAP may impose grant conditions or exercise other administrative remedies for self-governance tribes. If a determination is made that a new recipient lacks administrative capacity, appropriate special conditions or restrictions may be imposed on the award of a grant in accordance with §85.12 and as highlighted in this Notice (see "Pre-award Grant Conditions" below).

IMPLICATIONS - If a determination is made that a recipient lacks administrative capacity to manage its IHBG program in compliance with the program requirements, ONAP will undertake appropriate actions to address the problem in coordination with the recipient. ONAP's ongoing oversight of a recipient's implementation of its IHBG programs is undertaken through a combination of remote and on-site monitoring, including the processing of A-133 audit reports. These oversight activities may identify information which adequately documents that a recipient lacks administrative capacity to undertake its IHBG program. Under these circumstances, the procedures and remedies

set forth in 24 CFR Part 1000, Subpart F, Recipient Monitoring, Oversight, and Accountability, will be used to address the identified deficiencies. In general, these procedures provide for the use of progressive corrective and remedial actions based on the nature and magnitude of the problems encountered. Upon identification of a potential problem, ONAP will prepare a report in accordance with the procedures at §1000.528 which provide for recipient input into a draft report prior to issuance of a final document. If appropriate, the final report may also serve the purposes of a “letter of warning” in accordance with §1000.530(a)(1) by identifying at, a minimum, the :

- performance problems identified
- recommended corrective actions, including as appropriate
 - development of progress schedules for completion of projects or compliance actions,
 - suspension or discontinuation of incurring cost on affected activities,
 - reprogramming of funds from affected to other eligible activities,
 - reimbursement of unallowable costs to the recipient’s program account,
 - acquisition of appropriate technical and capacity building assistance, etc.
- target dates for completing the corrective actions, and
- notification that progressively severe actions may be taken if the performance problems are not corrected.

If the administrative capacity problems persist and are not being addressed in a timely manner, ONAP will pursue the next level of corrective and remedial action by providing the recipient with appropriate notification and administrative hearings for substantial noncompliance in accordance with §§1000.532(c) and 1000.540. At this stage, consideration can be given to the imposition of the following remedies, as appropriate:

- terminate grant payments,
- reduce grant payments,
- limit the availability of grant payments,
- provide a replacement TDHE.

Based on the nature and magnitude of the performance problems encountered and in accordance with §1000.538(b), ONAP may immediately suspend grant payments following due notice and issuance of the opportunity for hearing, but prior to completion of the administrative hearings procedures. This expedited process will only be pursued in situations which demand swift action to prevent the continuation of serious instances of

fraud, waste and mismanagement; and to maintain ONAP's appropriate public trust, oversight, and accountability responsibilities.

Based on the existence of objective documentation of administrative deficiencies that directly impact a recipient's ability to manage its IHBG program, ONAP may also use the provisions of §85.12 to impose appropriate grant conditions or restrictions in the award of a grant. The provisions of §85.12 (a) indicate that one of the following conditions must exist in order to impose grant conditions or restrictions:

- A history of unsatisfactory performance;
- Financially unstable;
- Management systems that do not meet the standards set forth in 24 CFR Part 85;
- Non-compliance with the terms and conditions of previous awards; or
- Is otherwise not responsible.

If documentation or objective information is available to ONAP which verify the existence of serious deficiencies as noted above, one or more of the following special conditions or restrictions may be imposed on the award of a grant to a recipient as set forth in §85.12 (b):

- Payment of grant funds on a reimbursement basis;
- Withhold authority to proceed to the next phase of a project or program pending receipt of evidence of acceptable performance;
- Submission of additional or more detailed financial reports;
- Additional project monitoring;
- Require the grantee or sub-grantee to obtain technical or management assistance; or
- Establish additional prior approvals.

If any special conditions or restrictions are imposed, written notification must be provided to the recipient as soon as possible. The advance notification will provide recipients a reasonable time period within which to respond to the proposed special grant conditions

and/or restrictions prior to their actual imposition. The written notification will contain the following information:

- The nature of the special conditions or restrictions;
- Reason(s) for imposing them;
- The corrective actions which must be taken before the conditions or restrictions will be removed and the time allowed for completing the corrective actions, and
- The method of requesting reconsideration of the conditions or restrictions imposed.

EMPHASIS - The imposition of corrective actions and/or grant conditions based on the lack of adequate administrative capability is designed to be proactive and place an emphasis on the prevention and remedy of deficiencies by:

- Avoiding the occurrence of performance problems,
- Preventing the continuation of the performance problems,
- Mitigating any adverse affects of the performance problems, and
- Preventing a recurrence of the same or similar performance problems.

Within this context, corrective actions and/or grant conditions are not intended to be punitive or unnecessarily restrict the ability of a recipient to implement its program within the flexibility of NAHASDA. It is ONAP's desire to undertake its public trust and oversight responsibilities by focusing on both the prevention and cure of performance problems through proactive capacity building initiatives in partnership with Indian Country. Therefore, corrective actions and/or grant conditions will only be imposed based on the availability of objective documentation on a recipient's administrative capacity. In addition, the nature of the corrective actions and/or grant conditions will be tailored to address the specific administrative capacity problem and designed to promote the

establishment of effective management and financial systems. However, in situations of willful and/or persistent noncompliance, and unallowable costs; ONAP will actively pursue the remedies available at §1000.538 and §1000.542, as well as other available administrative and legal remedies.

/s/ Deborah Vincent for
Harold Lucas, Assistant Secretary
for Public and Indian Housing