

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

Special Attention of: NOTICE PIH 99-6 (TDHE)

Administrators, Offices
of Native American Programs;
Tribes; Tribally Designated
Housing Entities; Indian
Housing Authorities

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Cross References:

SUBJECT: Providing Assistance to Non Low-Income Indian families under the Native American Housing Assistance and Self-Determination Act of 1996

1. **PURPOSE:** This notice describes the exception to the low-income requirement whereby non low-income Indian families may receive assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and under the Notice of Transition Requirements from the United States Housing Act of 1937 to NAHASDA. This notice also describes the method for determining and documenting when housing need cannot reasonably be met without NAHASDA assistance. The process for recipients to request HUD approval to assist non low-income Indian families is also described.
2. **BACKGROUND:** One of the national objectives of NAHASDA is to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by *low-income Indian families*.

Section 201(b)(1) of NAHASDA, Eligible Families, states that except as provided under paragraph (2), assistance under eligible NAHASDA housing activities shall be limited to low-income Indian families on Indian reservations and other Indian areas.

Paragraph (2) of section 201(b) describes the exception to the low-income requirement. It states that a recipient may provide assistance for homeownership activities under section 202(2) (development activities), model activities under section 202(6), or loan guarantee activities under

title VI to Indian families who are not low-income families, to the extent that the Secretary approves the activities pursuant to such section or title because there is a need for housing for such families that cannot reasonably be met without such assistance. (A recipient is defined in NAHASDA as an Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under NAHASDA on behalf of the tribe or tribes.)

The NAHASDA regulations establish limits and criteria governing assistance to non low-income Indian families. 24 CFR §1000.110 describes the conditions under which non low-income Indian families can receive benefits under the Indian Housing Block Grant (IHBG) Program. The regulation states that a recipient may provide the following types of assistance, under certain circumstances (described later), to non low-income Indian families:

- a. Homeownership activities under section 202(2) of NAHASDA, which may include assistance in conjunction with loan guarantees under the Section 184 program (24 CFR part 1005);
- b. Model activities under section 202(6) of NAHASDA; and
- c. Loan guarantee activities under title VI of NAHASDA.

3. **CONDITIONS**: In order to provide assistance to non low-income Indian families, certain conditions must be met. In all cases, a recipient must determine and document that there is a need for housing for each family which cannot reasonably be met without assistance.

A recipient may use up to 10 percent of its annual grant amount to assist Indian families with incomes that fall within 80 to 100 percent of the median income without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of its annual grant amount for such assistance or when a recipient plans to provide assistance to families with incomes over 100 percent of median income.

Additionally, a non low-income Indian family cannot receive the same benefits provided to a low-income Indian family unless the recipient determines the family to be essential to the well-being of the Indian families residing in the housing area.

(The housing area is defined as the Indian area. The Indian area is the area within which an Indian tribe operates affordable housing programs or the area in which a tribally

designated housing entity (TDHE) is authorized by one or more Indian tribes to operate affordable housing programs.)

Recipients determine whether a family is essential to the well-being of the Indian families residing in the Indian area. The criteria and rationale for determining whether a family is essential should be clearly described in the recipient's policy. Additionally, documentation must be maintained which clearly supports determinations.

Examples of the amount of assistance that can be provided to nonessential, non low-income Indian families are provided as an attachment to this notice.

4. **DETERMINING AND DOCUMENTING WHEN HOUSING NEED CANNOT REASONABLY BE MET WITHOUT IHBG ASSISTANCE:** As previously mentioned, in order to provide assistance to a non low-income Indian family, the recipient must determine and document that there is a need for housing which cannot reasonably be met without IHBG assistance. The recipient must make a determination and document its determination even in cases where HUD approval is not required. When a recipient is considering providing assistance to a non low-income Indian family, it is helpful to break down the determination process into two parts: First, it must be determined that there is a legitimate housing need. Second, it must be determined that the housing need cannot reasonably be met without IHBG assistance from the recipient.

A. **Determining Housing Need** - To determine whether a housing need exists, recipients should consider the following situations that constitute housing need. (This guidance is not all-inclusive and there may be other situations which constitute housing need.)

- Inadequate housing - A housing need exists if a family resides in inadequate housing. Inadequate housing includes substandard and overcrowded housing, and for the purposes of this notice, inadequate housing is defined as housing that:
 - is not safe, is not in a physically sound condition with all systems performing their intended design functions, or
 - does not provide adequate space and privacy for all intended household members.

- Temporary housing and homelessness - Families living in temporary housing such as emergency shelters or transitional housing, or in a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings have a housing need.
- Cost burden - When a family pays over 50 percent of their gross income for housing (including utilities) due to the lack of more affordable housing, it can be determined that there is a housing need or a need for housing that is more affordable.

If the recipient determines that a family seeking IHBG assistance does not have a legitimate housing need, the family should be notified, in writing, why they are not eligible to receive assistance.

B. Determining When Housing Need Cannot Reasonably Be Met Without IHBG Assistance - Once the need for housing is established, the next step is to determine whether the need can reasonably be met without IHBG assistance. The following information should be considered when making a determination whether the non low-income family could secure adequate housing without IHBG assistance:

- Rental and homeowner housing - In cases where a family is living in inadequate rental housing, the recipient should determine if the family could find adequate rental housing without requiring IHBG assistance before other options, such as homeownership, are considered. If a family can afford adequate rental housing without assistance, the recipient may not want to consider providing IHBG assistance for homeownership.
- Income and assets - It should be determined if the family has sufficient income and/or assets that would enable them to obtain adequate housing (which may mean rental housing) without IHBG assistance.
- Private and governmental programs - In cases involving homeownership, the recipient should determine whether the family could qualify for a conventional or government backed mortgage, e.g., Section 184, FHA, VA, or RDA. Are there any local

or state programs available to the family? For a family who could qualify for a mortgage, but was rejected due to credit problems, the recipient should consider whether the family would be able to meet program requirements including repayment, if applicable.

- Housing market conditions - What is the current availability of housing, both rental and homeownership units? Is there a sufficient number of affordable units on the market that would allow the family to find an adequate unit without IHBG assistance?
- Housing location - For a family who lives outside of the boundaries of the reservation/Indian area and does not have adequate housing, could the family secure adequate housing outside the reservation/Indian area without assistance? If so, assistance should not be provided. For families who reside within the reservation/Indian area and would not consider moving from the reservation/Indian area, the recipient need only consider the availability of housing on the reservation/Indian area when determining if the housing need can be met without IHBG assistance.
- Overcrowded conditions - In cases of overcrowded conditions, the recipient should determine if the situation exists due to choice or necessity. Does the family or families have adequate resources to alleviate the overcrowded conditions without IHBG assistance?

C. **Documenting Housing Need And The Need For IHBG**

Assistance - Recipients must carefully document their determination of housing need and the reasons why the housing need cannot reasonably be met without IHBG assistance. Because housing need and the inability to secure housing without IHBG assistance can occur due to a variety of different circumstances, the type of documentation required will vary depending on the situation. The recipient should consider the documentation listed below and determine, based on the circumstances of the non low-income family, the type(s) of documentation that would best support its determinations.

Documentation supporting the determination of housing need and a determination that the need cannot reasonably be met without IHBG assistance could include, but is not limited to, the following:

- Property inspections (completed by the recipient or other reliable sources); code violation letters from a local government citing unsafe conditions; family information including size and the number, age, and sex of children living in the home.
- A statement from a temporary housing facility stating that the family has been residing at the facility because they have no other reasonable alternative. For homeless families, the lack of any information indicating that the family has adequate housing along with an explanation from the family stating why they do not have adequate housing would be sufficient documentation.
- A statement signed by the head of household explaining why the family has a housing need that cannot be met without assistance. The statement should be specific regarding the reasons why a housing need exists and the steps that the family has taken to secure housing without assistance. The family should provide the recipient with verification to support its statement.
- Copies of tax returns, payroll stubs, rent receipts, utility receipts or canceled checks, etc. Third party verifications can be used to confirm information provided by the family.
- Rejection letters from financial institutions or landlords.
- Letters from state, local or federal agencies stating that the family does not qualify for housing programs or that there are no programs available.
- Notes including names and phone numbers of persons the family has contacted in an attempt to secure housing.

If HUD approval is required before a family can obtain assistance (as explained in section 3 of this notice), a

copy of the recipient's documentation and request for HUD approval is to be sent to the Area Office of Native American Programs (ONAP). If HUD approval is not required, the recipient's documentation should be kept on-site and be available for HUD review. Recipients should remember that a determination and supporting documentation must be completed on a case-by-case basis for each family seeking assistance.

Recipient's policies and procedures for assisting non low-income Indian families, including information to be provided by the family, the types of documentation required, recipient verification procedures, etc. must be developed prior to assistance being provided.

As part of its policy, recipients may allow a non low-income Indian family to appeal the recipient's decision and permit the family to provide additional information which might cause the recipient to change its determination.

5. **NON-DISCRIMINATION REQUIREMENTS:** In making the case-by-case determinations outlined in this notice, recipients must comply with the applicable non-discrimination requirements at 24 CFR §1000.12. The Indian Civil Rights Act (ICRA), which is Title II of the Civil Rights Act of 1968, applies to Federally recognized Indian tribes that exercise powers of self-government. This Act provides that no Indian tribe, in exercising powers of self-government, should deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. Section 504 of the U.S. Rehabilitation Act of 1973 (See 24 CFR 8) and the Age Discrimination Act of 1975 (See 24 CFR 146) are applicable in their entirety. Recipients must document the rationale for determinations to demonstrate consistency and non-discrimination.

6. **VACANT 1937 HOUSING ACT UNITS AND NEW UNITS DEVELOPED WITH 1937 HOUSING ACT FUNDS WHERE IHBG FUNDS HAVE NOT BEEN USED:** The Notice of Transition Requirements from the United States Housing Act of 1937 to NAHASDA as published in the Federal Register on January 27, 1998, will govern the following two situations:

- a. Admission of over-income families to vacant units developed under the 1937 Housing Act which is counted as Current Assisted Stock under the IHBG Formula, but for which IHBG funds have not been used.
- b. Admission of over-income families to new units

developed under the 1937 Housing Act which will be counted as Current Assisted Stock under the IHBG Formula, but for which IHBG funds will not be used.

Question and Answer number 16 in the Notice of Transition Requirements from the United States Housing Act of 1937 to NAHASDA explains that since the 1937 Act no longer applies to these units and the NAHASDA final rule will only address the procedures for admitting over-income families when using the recipient's annual grant amount, there is a need to develop procedures for these units.

For units to be developed after September 30, 1997, with funds provided under the 1937 Act, a recipient may use up to 10 percent of its funds available from 1937 Act programs to admit families whose income falls within 80 to 100 percent of median income without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of its 1937 Act funds for such assistance or to provide housing for families over 100 percent of median income.

For vacancies in homeownership programs where the units were under management as of September 30, 1997, occupancy by families whose income falls within 80 to 100 percent of median income may not exceed 10 percent of the dwelling units in the project or 5 dwelling units, whichever is greater, without HUD approval. HUD approval is required if a recipient plans to admit more than this amount in a project or to provide housing for families over 100 percent of median income.

In both instances, the recipient must determine and document that there is a need for housing for each family which cannot reasonably be met without assistance. The same guidance provided above for determining and documenting that there is a need for housing for each family which cannot reasonably be met without assistance should be applied here.

7. RECIPIENT REQUEST TO ASSIST NON LOW-INCOME INDIAN FAMILIES:

In cases where HUD approval is required prior to providing assistance to non low-income Indian families, the recipient will submit its request including supporting documentation to its Area ONAP. The Area ONAP will review the request and supporting documentation to determine if the information provided is complete and adequate. Upon determining the information is sufficient, the Area ONAP will forward the request to the National ONAP with their recommendation for approval. The National ONAP will review the information and forward it to the Deputy Assistant Secretary for Native American Programs for approval.

If the Area ONAP determines that the information provided by the recipient is incomplete or inadequate, the Area ONAP will deny the request and notify the recipient of specific reasons why it cannot forward the request to the National ONAP. To the extent resources are available, the Area ONAP will provide technical assistance to the recipient in amending and modifying its request.

8. **RECIPIENT APPEAL OF HUD DENIAL TO ASSIST NON LOW-INCOME INDIAN FAMILIES:** When the Area ONAP denies a recipient's request to provide assistance to a non low-income Indian family, the recipient may request reconsideration of the denial in writing. The request must be made within thirty calendar days of receiving HUD's denial and must include justification for the reconsideration. Within twenty calendar days of receiving the request, the Area ONAP shall reconsider the recipient's request and will either affirm or reverse its initial decision in writing, setting forth its reasons for the decision.

The recipient may appeal any denial by the Area ONAP to the Assistant Secretary for Public and Indian Housing within twenty calendar days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and set forth justification for the reconsideration. Within twenty calendar days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, setting forth the reasons for the decision. Any decision made by the Assistant Secretary constitutes final agency action.

9. **ADDITIONAL INFORMATION:** If you have any questions or require further information, please contact your Area ONAP.

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

Attachment

ATTACHMENT

CALCULATION OF RENTAL/HOMEBUYER PAYMENTS AND OTHER ASSISTANCE FOR NONESSENTIAL, NON LOW-INCOME INDIAN FAMILIES

A non low-income Indian family that is not determined to be essential to the well-being of the Indian families residing in the Indian area, cannot receive the same benefits as a low-income Indian family. This means that a non low-income Indian family will pay a higher rental/homebuyer payment than a low-income Indian family and that a non low-income Indian family will receive a lesser amount of other assistance than a low-income family. Examples 1 and 2 below illustrate how to calculate minimum rental/homebuyer payments. Example 3 shows how to calculate the maximum amount of other assistance that can be provided to a non low-income Indian family.

- 1. RENTAL AND HOMEBUYER PAYMENTS:** The rent payment or homebuyer payment under a lease purchase agreement to be paid by a non low-income family cannot be less than: (The income of the non low-income family divided by the income of a family at 80 percent of median income) multiplied by the rental (homebuyer) payment of the family at 80 percent of median income. However, at the recipient's discretion, the rent or homebuyer payment need not exceed the fair market rent or value of the unit.

The "income of family at 80 percent of median income" referred to above means the dollar amount representing 80 percent of median income adjusted by family size.

Median income is the greater of the median income for the counties, previous counties, or their equivalent in which the Indian area is located; or the median income for the United States.

Fair market rent means the fair market rent for the Section 8 Housing Assistance Payments Program. Fair market rents are published annually in the Federal Register.

RENTAL PAYMENTS

The following example illustrates how a rental payment is calculated for a nonessential, non low-income Indian family.

Example 1:

- A non low-income Indian family of four has an income of \$60,000.

- Eighty percent of the median income for a family of four is \$30,000.
- The rental payment for a family at 80 percent of median income is \$500 a month.
- The fair market rent is \$700.

Step one:

Divide the income of the non low-income family by 80 percent of the median income adjusted by family size.

$$\begin{array}{rcl} \text{Income of now low-income family} & = & \underline{\$60,000} \\ \text{Eighty percent of median income} & = & \underline{\$30,000} \end{array} = 2$$

Step two:

Multiply the rental payment of the family at 80 percent of median income by the answer from step one.

$$\begin{array}{rcl} \text{Rental payment} & & \\ \text{of family at 80 percent of median} & = & \$500 \\ \\ \text{Answer from step one} & = & \underline{\quad 2} \\ & & \mathbf{\$1,000} \end{array}$$

Step three:

At the discretion of the recipient, the answer in step two may be compared to the fair market rent. The recipient may charge the non low-income Indian family a rental payment of \$1,000 or it may limit the payment to the fair market rent of \$700. Remember that the calculated amount of \$1,000 as well as the fair market rent of \$700 represent a minimum payment, the recipient may charge more. The recipient's procedures for determining rental payments must be included in its admissions and occupancy policies.

HOMEOWNER PAYMENTS

Following is an example illustrating how a homebuyer payment is calculated for a nonessential, non low-income Indian family.

Example 2: Homebuyer Payment

- A non low-income Indian family of four has an income of \$60,000.

- Eighty percent of the median income for a family of four is \$30,000.
- The homeowner payment for a family at 80 percent of median income is \$500 a month.
- The value of the homeowner unit (converted to a monthly value) is \$900.

Step one:

Divide the income of the non low-income family by 80 percent of the median income adjusted by family size.

$$\begin{array}{rcl} \text{Income of non low-income family} & = & \$60,000 \\ \text{Eighty percent of median income} & = & \underline{\$30,000} \end{array} = 2$$

Step two:

Multiply the homeowner payment of the family at 80 percent of median income by the answer from step one.

$$\begin{array}{rcl} \text{Homeowner payment} & & \\ \text{of family at 80 percent of median} & = & \$500 \\ \\ \text{Answer from step one} & = & \times 2 \\ & & \mathbf{\$1,000} \end{array}$$

Step three:

At the discretion of the recipient, the answer in step two may be compared to the monthly value of the unit. The recipient may charge the non low-income Indian family a homebuyer payment of \$1,000 or it may limit the payment to \$900 (the monthly value of the unit). Remember that the calculated amount of \$1,000 as well as the monthly value of the unit of \$900 represent a minimum payment, the recipient may charge more. The recipient's procedures for determining rental payments must be included in its admissions and occupancy policies.

The recipient is responsible for determining the value of the unit. The value of the unit can be determined by obtaining an appraisal, by using the dwelling construction and equipment amounts, or by using another reliable method. Once the value is determined, a monthly payment (principal and interest) is calculated based on the value of the unit. Recipients may wish to consult with local lending institutions to determine the correct monthly payment. The monthly payment should be calculated using the industry standard for first-time homebuyers which is a 30-year term and a current market fixed interest rate.

The value of the unit only needs to be established when the recipient chooses to cap the homebuyer payment at the value of the unit rather than charging the homebuyer the amount calculated using the formula in example 2 above.

The answer from step two, \$5,000, is the maximum amount of other assistance that can be provided to a nonessential, non low-income Indian family.