



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

Special Attention of:
Administrators; Offices
of Native American Programs;
Tribes, Tribally Designated
Housing Entities

Notice PIH 2010- 47 (TDHEs)

Issued: November 19, 2010

Expires: November 30, 2011

Cross Reference: 24 CFR Part 1000
PIH 2009-27 (TDHE)

SUBJECT: Total Development Costs (TDC) for Affordable Housing under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

PURPOSE: This Notice supersedes Notice PIH 2009-27 (TDHEs), same subject, dated August 10, 2009. This Notice transmits the updated schedule for the maximum amount of funds that may be used for affordable housing under NAHASDA. The requirement for the development and implementation of these limits is found at 24 CFR 1000.156 through 1000.162 of the Indian Housing Block Grant (IHBG) regulations published in the Federal Register on September 28, 2001, and effective October 29, 2001.

BACKGROUND: Under the United States Housing Act of 1937 (“1937 Act”) (42 U.S.C. 1437 et seq.), the construction cost limits were called Total Development Cost (TDC) limits. These limits covered the total cost of development, including both soft and hard costs of construction. Under NAHASDA (25 U.S.C. 4101 et seq.), the regulations provided for a new system of construction cost limits called Dwelling Construction and Equipment (DC& E) costs. In response to concerns expressed by tribes and tribally designated housing entities (TDHE), the Department revised the program regulations on September 28, 2001, returning to TDC limits to define moderately designed housing.

APPLICABILITY: TDCs apply to:

- a. All affordable housing assisted with IHBG funds after October 29, 2001, the effective date of the regulation cited above.
- b. Funds initially provided under the 1937 Act that were not obligated as of October 29, 2001.

RESPONSIBILITY: The tribe/TDHE is responsible for ensuring that the amount of funds from **all** sources used to construct each unit does not exceed the TDC limits. The tribe/TDHE must maintain records showing that housing was developed in accordance with these limits and other applicable NAHASDA requirements. Units that improperly exceed TDC limits without appropriate HUD approval will not be deemed to be “affordable housing” and all IHBG funds expended on such units will be disallowed.

TDC: A TDC is published for each tribe and covers the tribally recognized land base. It specifies five dwelling sizes, ranging from one to five bedrooms, and can be applied to a multi-family building up to a four-plex.

TDC amounts are based on a moderately designed house, and are determined by averaging the current construction costs as listed in two nationally recognized residential construction cost indices (Marshall & Swift/Boeckh. LLC and RSMeans Residential 2009 Cost Data) for publicly bid construction of a good and sound quality, as follows:

Base Cost -- A base cost is developed for each of the 1-5 bedroom dwelling sizes, and adjusted for construction features for Standard, Severe and Hostile climate zones. The Base Cost includes the dwelling unit construction costs and associated site grading and utilities within 5' from the structure.

Local Cost Multiplier -- A local multiplier, based on an average of local multipliers in the two cost estimating indices, is then applied against the Base Cost to provide dwelling construction costs that are specific to each tribe's geographic location.

Total Development Cost (TDC) Multiplier -- A second multiplier (1.75) is then added to account for activities related to developing affordable housing of moderate design. This TDC multiplier is intended to include all costs necessary for administration, planning, site acquisition, financing (including payment of carrying charges), and on-site demolition, construction or equipment, and for otherwise carrying out the development of the project. The TDC multiplier includes site and infrastructure costs that are 5' from the structure to the boundaries of a housing site.

Note: 24 CFR 1000 does not limit the cost of infrastructure outside the boundaries of a housing site, and off-site costs such as water, sewer, roads, etc., are excluded from TDC limits.

Since the published TDCs only cover the tribally recognized land base, tribes who are constructing or renovating affordable housing outside of their tribally recognized land base but within their Indian Area, as defined in their Indian Housing Plan, must request TDCs from the Area Office of Native American Programs (AONAP) on a project-by-project basis for those locations. Indian Area is defined in 24 CFR 1000.10 as the area within which an Indian tribe or TDHE operates affordable housing programs or the area in which a TDHE is authorized by one or more tribes to operate affordable housing programs.

AFFORDABLE HOUSING/MODERATE DESIGN: As specified in §1000.156, affordable housing must be of moderate design. For these purposes, moderate design is defined as "housing that is of a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income." The local determination of moderate design applies to all housing assisted under an affordable housing activity, including development activities (e.g., acquisition, new construction, reconstruction, moderate or substantial rehabilitation of affordable housing and homebuyer assistance) and model activities. Acquisition includes assistance to a family to purchase housing, such as down payment, closing costs or loan assistance. Units with the same number of bedrooms within a project must be comparable with respect to size, cost, and amenities.

RECIPIENT DEVELOPMENT OF STANDARDS FOR HOUSING OF MODERATE

DESIGN: A recipient must either use the TDC limits published by HUD or the recipient may adopt written standards for its affordable housing programs that reflect the requirement specified in §1000.156. The standards must describe the type of housing, explain the basis for the standards, and use similar housing in the Indian Tribe's general geographic area. For each affordable housing project, the recipient must maintain documentation substantiating compliance with the adopted housing standards. For purposes of this requirement, a project is one or more housing units, of comparable size and design, developed with assistance provided by IHBG funds.

Note: §1000.158 specifies that a recipient who develops standards for its affordable housing programs may not exceed 10% of the published TDC limits without prior HUD approval.

VARIANCE: If a tribe/TDHE determines that the published TDC amounts are not representative of construction costs in its area, it may provide the AONAP with relevant information and request a variance. Variances may be requested for an individual project or for adjustments to current cost limits. The AONAP Administrator has authority to approve variances above the published TDC.

Relevant information to support a variance can include, but is not limited to, documentation demonstrating:

- Material costs have significantly increased since last publication of TDCs;
- Unusual site acquisition costs;
- Transportation costs of materials have increased since the last publication of TDCs;
- Natural disasters occurring after the last TDC publication date have caused an increase in material, labor and other construction costs;
- Special local conditions exist that result in higher construction costs as verified by historical cost data for building affordable housing in their community and;
- Significant additional costs for incorporating green building, energy efficiency or other innovative practices, such as Indian Energy Resource regulation compliance; and
- Evidence the tribe/TDHE has worked with the AONAP to lower the costs of the project, etc.

Note: Construction bids for projects that exceed the published TDC limits cannot be the sole justification for a variance.

Special Request 1: If a tribe/TDHE chooses to fund the development of housing outside of its tribally recognized land base, thereby rendering the published TDCs for that tribe inapplicable for that specific housing, it shall request TDCs that are appropriate for that location and housing.

Special Request 2: If a tribe/TDHE decides to fund the development of housing of a construction type that is not covered by these TDCs, including multi-family buildings of more than four units, it shall request HUD to provide TDC costs specific to the type of housing it is developing. These special requests shall be sent to the AONAP for evaluation.

TDCs FOR ALASKA: TDCs for remote areas of Alaska reflect revised limits to adjust the general construction cost data of the nationally recognized residential construction cost indices. This means that TDC amounts accommodate increased construction and transportation costs of building materials previously recognized in published TDC cost limits. Additionally, this Notice constitutes HUD approval for a 2% increase above the attached TDCs for construction projects in Alaska to meet Building Energy Efficiency Standards (BEES) requirements. BEES are only required when funds provided by the State of Alaska are used in conjunction with HUD funds. A Tribe/TDHE can contact the Alaska AONAP for applicability of BEES requirements.

TIME ADJUSTMENTS: Data used for the calculation of the TDCs have been adjusted for time to coincide with the publication. No additional adjustments to the published TDCs are authorized. A Tribe/TDHE can use these new limits for current construction contracts if needed to accommodate change orders to cover increased housing costs since the last TDCs were published.

REPORTING REQUIREMENTS: The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0238. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

ADDITIONAL INFORMATION: Please contact your AONAP for additional information regarding TDC requirements.

/s/
Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

Attachment