



NATIONAL AMERICAN INDIAN HOUSING COUNCIL WHITE PAPER Unexpended Indian Housing Block Grant Funds

Question: Why should Congress consider an increase in funding for the Indian Housing Block Grant (IHBG) program when there is a balance of unexpended funds in the IHBG account?

Answer: The IHBG account balance is a result of a variety of factors. It is not indicative of a lack of need for housing and related infrastructure in Indian Country, nor is it indicative of poor program performance on the part of grant recipients. The IHBG program is one of the most successful programs carried out by the federal government as part of its Constitution-based trust responsibility to tribes.

Background: Housing and infrastructure development and maintenance in Indian Country differ greatly from anywhere else in the country. Because of the unique historical relationship between tribes and the United States government, tribes face unique challenges in providing the most basic of services to their members, including housing. Based on the authority given to Congress in the Constitution regarding Indian tribes and in accordance with Congress' unique trust obligation to the nation's federally recognized tribes, most tribal land is held in trust for tribes and individual Indians by the United States. Protecting the tribal land base is part of the federal government's trust responsibility. Therefore, tribes may not freely alienate or encumber their lands without the federal government's consent. This, among other factors, complicates housing development in Indian Country. Further, tribal housing authorities are not like other public housing authorities. In many cases, IHBG funds are the only funds a tribe receives to operate a housing authority – an entity that faces burdens and responsibilities far beyond overseeing construction of new homes. IHBG grant funds are often the sole source of operating funds, rehabilitation and repair funds, development, construction, infrastructure, crime prevention activities and emergency funding for housing authorities. See Appendix A.

Given the complex land title status issues in Indian Country and the challenges detailed below, tribes have been quite successful in developing, managing, and enhancing their housing programs, and they are adept, by necessity, at leveraging limited housing and infrastructure resources.

In most cases, the Line of Credit Control System (LOCCS) is referenced when identifying unexpended funds available to a tribal housing entity. To have a more

accurate representation of the spend-out rate for a particular tribal housing program, however, obligated funding can also be considered.

According to Notice PIH 2000-26 (THDEs) issued on July 26, 2000, and most recently referenced in a NAHASDA Program Guidance issued in May 2011-03, the following basic rule is outlined regarding obligated funds.

Basic Rule. The point of obligation is the time when a commitment is made to pay a particular sum of money for contract labor, supplies, materials or services. The following circumstances are cited as general examples of the point where funds are obligated.

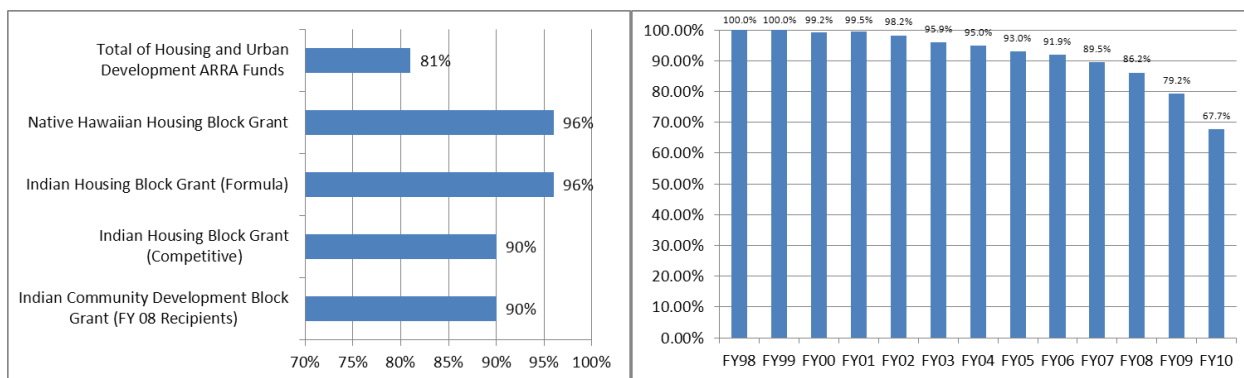
- Funds for contract labor, materials or services become obligated when the contract is signed by both parties;
- Funds for force account labor are considered obligated when the physical activity begins, provided that the activities proceed at a continuous and reasonable rate;
- Funds for normal operating activities such as administration and maintenance are considered obligated at the time they begin, provided these activities continue at a reasonable rate; and
- Funds to be used for the provision of assistance directly to a family or individual are considered obligated when the written agreement between the recipient and family or individual for such assistance, e.g., tenant based rental assistance, is executed by both parties

The LOCCS refers to undisbursed grant totals and does not include funds that have been contracted out for a project and sometimes referred to as obligated funds. Expended funds include the amount the tribal housing entity has spent and has been subtracted from the grant total. Finally, the LOCCS report changes on a daily basis as tribal housing entities draw down available funds. The LOCCS report will also show very high available amounts immediately after Congress appropriates funds.

Most tribes and tribal housing authorities are spending their IHBG allocations in a reasonable amount of time. By and large, tribes and tribal housing authorities expend their housing block grant funds in a sufficient and expeditious manner. Since the Native American Housing Assistance and Self-Determination Act (NAHASDA) was passed in 1996 and funded in 1998, overall spend out rates average almost 92%. See graph below based on HUD-ONAP LOCCS report dated 10-01-2011.

American Recovery and Reinvestment Act
(ARRA), PL111-5, Status of Funds Report –
HUD

FY1998-FY2010 IHBG HUD
Line Of Credit Control System Data



Further, as was seen with the American Recovery and Reinvestment Act (ARRA), when tribes are awarded funds that they would not ordinarily have access to for infrastructure and similar projects, they are quite capable of spending them in an efficient and expeditious manner. ARRA was different from other funding programs in that the purpose was immediate stimulation of the economy. As such, HUD was required to disburse the funds very quickly and tribes, in turn, were required to obligate and spend them quickly. HUD and the tribes and tribal housing authorities met the challenge. See graph above.

THE REASONS FOR DELAYS

Where there are delays, there are a variety of reasons for them.

Lack of funds for infrastructure development. Housing development in Indian Country is hampered by inadequate infrastructure. States and counties are not required to and do not provide necessary infrastructure in tribal communities, such as water systems, sewer systems, gas and electrical systems, roads, and other necessities. Tribes must install and maintain the infrastructure necessary to support housing and other development. Sufficient resources to accomplish these activities simply aren't available and, unfortunately, HUD does not collect data regarding how much of tribes' IHBG funding is used to support infrastructure development.¹ This is one of the gaps in NAHASDA that may be supplemented by Indian Community Development Block Grant funds (ICDBG) – a source that always has more demand than supply and is regularly threatened during the appropriations process. Without adequate resources to invest in infrastructure, plans for housing expansion and improvement are frequently delayed. Until a tribe can find or save sufficient funds to make the infrastructure investment, its hands are tied.

Perennial delays in the way federal funds are appropriated, distributed, and managed. The federal process is ripe with layers of bureaucracy that cause delays at each step of the IHBG appropriations process. In recent years, Congress has failed to follow the usual appropriations process, and federally funded programs have been forced to operate under Continuing Resolutions (CRs). This fact, in the first instance, causes delays for tribes and tribal housing authorities. Then, when an appropriation is made, there is another delay so that Members of Congress have an opportunity to

¹ <http://www.gao.gov/new.items/d10326.pdf>.

notify tribes before the Department of Housing and Urban Development (HUD) can disburse funds. It is not uncommon for a tribe or housing authority to receive access to its housing funds in July or August of a funding year that began on October 1 of the previous year. Finally, the IHBG program operates on a reimbursement basis rather than disbursing funds in one fell swoop. Tribes do not borrow funds and contribute to the nation's deficit; they pay as they go. Until recently, tribes were not allowed to maintain reserve accounts for any purpose. Additionally, HUD has the ability to "carry-over" a certain percentage of IHBG funds for administrative purposes. All of these factors, which are out of the tribes' control, contribute to delays in the expenditure of IHBG funds.

Delays in the homesite leasing process because of the backlog at the Department of the Interior. As afore-mentioned, land title status complicates real property transactions in Indian Country. Most tribes do not have the legal authority to simply approve a long-term lease for housing development purposes. Whether it is for a single homesite or development of a subdivision, most tribes must submit homesite leases to the Secretary of the Department of the Interior (DoI) for approval. Leases are reviewed and processed through DoI's Bureau of Indian Affairs (BIA) field offices – a process that can take anywhere from three months to three years to complete, and the tribe has no control over the speed or efficiency of the process. Unfortunately, many BIA offices have a backlog of leases to review and approve. The reasons for the delays at DoI are irrelevant: the results are unavoidable delays for tribes and tribal housing authorities.

Lack of access to alternate funding sources. Federal funding for housing development and maintenance is often the only funding that a tribe receives to carry out such activities. Tribes do not have a tax base similar to states and counties. Unemployment rates on reservations average 49% and, on some reservations, are close to 80%. Due to the remote locations of many tribal communities, economic development opportunities are difficult to identify and pursue. Therefore, tribes are heavily reliant on federal resources to operate their housing programs. They already function on shoestring budgets. For many smaller housing authorities, cuts to the IHBG program would mean, in many cases, closing their doors. There simply are no alternate sources of funds.

Perpetual underfunding of the IHBG program. While tribes are appreciative of the funding that has been awarded to them through the IHBG program, the program has never been fully funded. Every year, tribes make difficult decisions regarding where to expend their limited resources. For some tribes, this perpetual underfunding has necessitated "strategic saving," or saving funds from multiple IHBG grant years to carry out a single meaningful housing project. See Appendix B. A report commissioned by the Government Accountability Office (GAO) acknowledges the fact that many smaller tribal housing authorities face unique challenges.² In particular, they simply do not receive sufficient funds to carry out housing development activities. They must focus their resources on smaller ticket items, such as rental assistance, home repairs, and like services.

² Id.

Higher construction costs and limited construction seasons. Most tribes are located in rural and often remote areas. In fact, American Indians have been referred to as the “United States’ most rural minority.”³ The costs to construct housing in such areas are much higher than in urban areas because of transportation, materials, and other related costs. Further, in places like Alaska and the Northern Plains, which are home to many tribes and tribal housing authorities, construction opportunities are seasonal, limited, and extraordinarily expensive.

Administrative burdens in spending older IHBG grant funds. Recent amendments to NAHASDA addressed some of the administrative difficulties tribes and tribal housing authorities have in drawing down and spending their funds. However, the amendments do not resolve the issues for earlier IHBG grant years. Revising a decade-old Indian Housing Plan (IHP) and properly drawing down the oldest grant funds can be an administrative nightmare.

Unforeseeable maintenance/repair costs. Indian Housing Plans (IHPs) are based on the needs and costs that tribes know they have at the beginning of the grant year. When something unexpected happens, a tribe has to adjust and make funds available to address the problem. A good example is a methamphetamine affected property. If a property has been used in the production of methamphetamine, it can cost thousands of dollars to remediate the property and ensure that it is safe for future occupants. This is an issue that tribes cannot predict and for which they, again, do not have alternate funds. Housing in tribal communities is so scarce that tribes have to do what they can to rehabilitate every property and make it available for occupancy.

Additionally, an unforeseeable natural disaster can necessitate the expenditure of funds to remedy an emergency situation, such as a flood or a blizzard. An unanticipated infrastructure repair, such as to a sewer system, can cost tens of thousands of dollars.

Each and every time a tribe has to expend funds for an unplanned purpose, their housing plans are impacted and they may not have sufficient resources left to complete the tasks outlined in their IHPs. Further scrimping and saving to cover the unanticipated funding shortfalls is necessary and may result in some funds not being expended within the timeline previously allocated.

In the Event of a Problem, NAIHC Is Available and Ready to Offer Assistance

A small number of tribes may have a difficult time expending their IHBG funds in a timely manner. If and when a tribe has a problem with its housing program, NAIHC is the capacity-building organization that can provide the training and technical assistance necessary to get the tribe back on track. Whatever the reason for the delay, it is not lack of need. It is more likely an issue of capacity. The solution is not to reduce funding for a program that, overall, has been tremendously successful. It is incumbent on the tribes themselves, HUD, and NAIHC to identify tribes and tribal housing

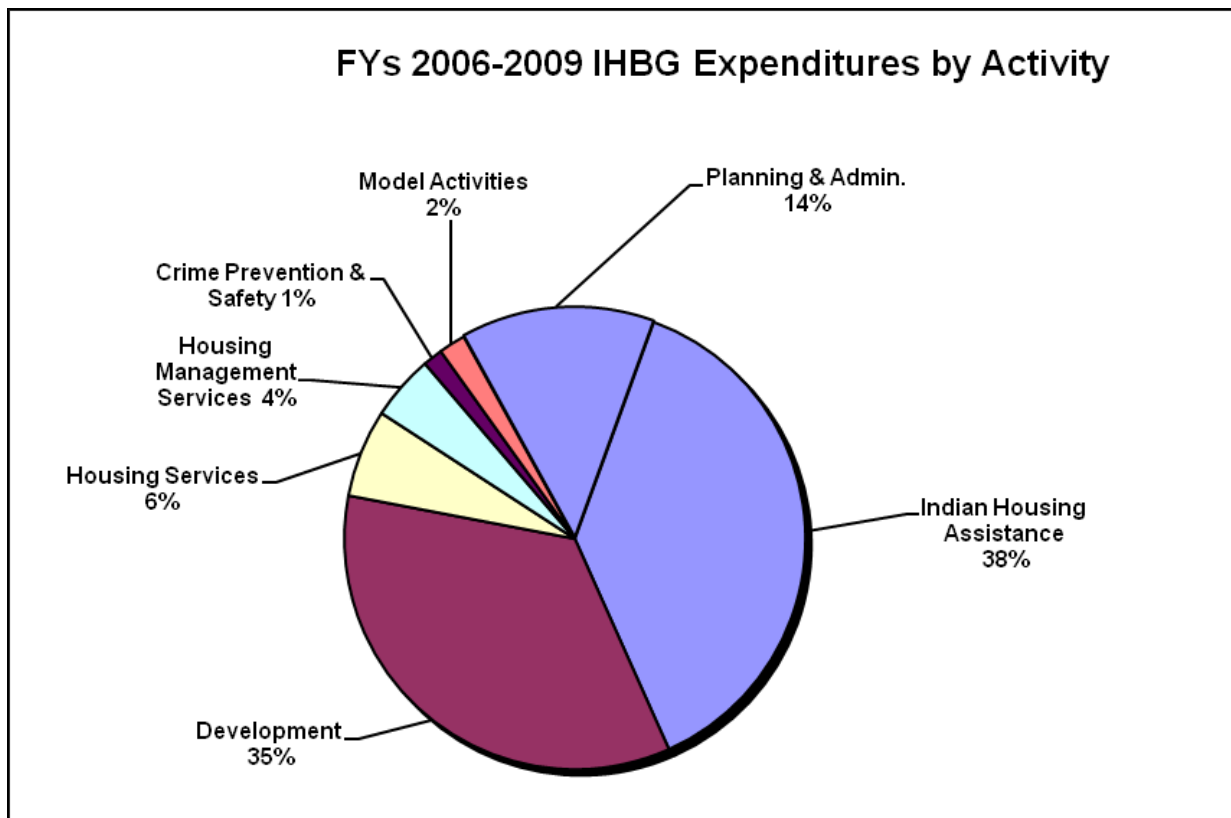
³ Leichenko, Robin M., *Is Rural Location to Blame? Accounting for Lower Income Levels in Tribal Areas*, *Measuring Rural Diversity*, Volume 2, Issue 1 (March 2005). In 2000, approximately 2.4 million people defined themselves as members of the American Indian race alone. Of that population, just over 1 million, or 42 percent live in nonmetropolitan counties. This compares to a figure for the U.S. population as a whole of less than 20 percent living in nonmetropolitan counties.

authorities that have administrative and housing development delays, and to provide the resources to address and remedy the situations as soon as possible.

Appendix A: How NAHASDA Funds are Spent

Generally, there are six different activities that may be conducted using NAHASDA funds. The six general areas are: Indian Housing Assistance, Development, Housing Services, Housing Management Services, Crime Prevention and Safety, and Model Activities. Additionally, under Section 101(h), some administrative expenses may be authorized.

It is important to realize that tribal housing authorities do not constitute a part of the housing solution in Indian Country: they are IT. In terms of scope, depth, and breadth of services, tribes face burdens far beyond those faced by a typical non-Indian public housing authority.



As a specific example, the Lumbee Tribe of North Carolina's NAHASDA budget for fiscal year 2008/2009 was \$10,965,087; their total tribal housing budget was \$12,259,643. Of that amount, \$3,236,944.52 was spent on new construction and \$4,726,866 on improvements. Lumbee housing data indicates that with FY 2008-2009 funds, the tribe was able to rehabilitate 295 homes, construct 10 new homes, provide down payment assistance to 58 new homeowners obtaining conventional loans, and provide mortgage assistance to 76 tribal members. Further, the tribe used \$500,000 toward the construction of a new tribal housing complex and \$200,000 for the construction of facilities to house Boys & Girls Clubs.

Appendix B: Example

Pooling allocations to perform a single project: The Chukchansi tribe of California is, for the most part, a landless tribe. They have approximately 1000 members, many of whom are dependent on the tribe for housing assistance, and many of their elderly citizens are in need of new homes. Some tribal members are living in 30 or 40 year old mobile homes that have mold issues and present other health hazards. To try to meet their need, the Chukchansi cut their housing authority staff in half and began saving to buy property for a housing development for the elderly. Because of the very limited amount of trust land under control of the tribe and its rural location, the land available to purchase is often ranch land governed by the Williamson Act (California law). Buying ranch land and converting it into trust land is a challenge that California tribes confront that only adds to the complexity and delays involved in development. The tribe has been setting aside funds in four IHBG grant years. Finally, this year, the tribe plans to purchase a parcel on the open real estate market in California for the purpose of building housing for their elders. Note that even if the tribe is able to buy the land this year, the project will only come to fruition slowly. The tribe will have to continue to save funds to build out the infrastructure for the project and to actually begin constructing the homes. In the meantime, the housing authority is constantly repairing homes that are a health hazard for their occupants because they have no alternative. A roof repair for the low income and elderly Chukchansi community can often mean putting a tarp on it.