



United States Department of the Interior


BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

May 5, 2021

IN REPLY REFER TO:
Office of Indian Services

Memorandum

To: Principal Deputy Assistant Secretary – Indian Affairs

From: Director, Bureau of Indian Affairs 

Subject: Request for Waiver – Housing Improvement Program – American Rescue Plan

I. Introduction

On March 11, 2021, the Congress enacted the American Rescue Plan (ARP) Act which appropriated \$100,000,000 to the Bureau of Indian Affairs (BIA) for the Housing Improvement Program (HIP). In an effort to provide maximum flexibility to Tribal governments and individual Indians as they continue to navigate the coronavirus pandemic, the BIA requests a waiver of the HIP regulations outlined below. Such a waiver would apply only to the expenditure of ARP HIP funds and would remain effective until December 31, 2023.

II. Authority

The Assistant Secretary – Indian Affairs (AS-IA) is authorized¹ to waive any regulation in 25 C.F.R. Chapter 1 when a waiver is permitted by law and he finds that such waiver is in the best interest of the Indians.² While the regulation is silent as to the process for making a determination as to the best interest of the Indians, the AS-IA has generally determined that a waiver is in the best interest of the Indians where such waiver is applied consistently across Indian Country and is consistent with the principle of Tribal self-governance. Further, evidence that Indian Affairs' policy goals would be achieved by waiving a particular regulation supports a determination that such waiver is in the best interest of the Indians.³

III. Proposed Waiver

Waiver of the following regulations will allow BIA and Tribal governments to exercise greater flexibility in program execution and provision of services in response to the COVID-19 pandemic:

Citation	[Subject] Language	Effect of Waiver
25 C.F.R. § 256.6(b)	[Eligibility] You live in an approved tribal service area;	Residency would not be required for eligibility for ARP funds used for HIP activities in addressing

¹ The Secretary's authority to waive regulations under 25 C.F.R. § 1.2 is delegated to the Assistant Secretary – Indian Affairs under 209 DM 8.1 (April 21, 2003).

² 25 C.F.R. § 1.2.

³ See Letter from Kevin K. Washburn, Assistant Secretary – Indian Affairs, to Mr. Ronald Trahan, Tribal Council Chairman, Confederated Salish and Kootenai Tribes (May 28, 2014).

		coronavirus concerns.
25 C.F.R. § 256.6(c)	[Eligibility] Your annual income is 150 percent or less of the Department of Health and Human Services poverty income guidelines, which are available from your servicing housing office or the Department of the Interior Web site at www.bia.gov ;	Household income would not be considered in determining eligibility for ARP funds used for HIP activities in addressing coronavirus concerns.
25 C.F.R. § 256.6(f)	[Eligibility] You have no other resource for housing assistance;	Beneficiaries would not be required to seek alternative resources before becoming eligible for ARP funds used for HIP activities in addressing coronavirus concerns.
25 C.F.R. § 256.6(h)	[Eligibility] You did not acquire your present housing through past participation in a Federal government-sponsored housing program over the previous 20 year period.	Homes acquired under other Federal government-sponsored housing programs would become eligible for ARP funds used for HIP activities in addressing coronavirus concerns.
25 C.F.R. § 256.23(b)(2)	[Participant Liabilities] Paying all costs associated with vacating and living away from the house;	Beneficiaries receiving assistance from ARP HIP funds would not be responsible for paying for costs associated with vacating or living away from the home during the project period.

The BIA asserts that waiver is permitted by law and is in the best interest of the Indians as required under the secretarial waiver authority at 25 C.F.R. § 1.2. Additionally, the BIA asserts that waiver is consistent with the intent and purpose of both HIP and ARP. Upon approval of this request, the BIA will initiate appropriate guidance to its Regions and Tribal governments regarding the waiver.

If you have any questions, please contact Jeanette Hanna, Deputy Bureau Director, Indian Services, BIA, at (202) 208-2874.

Approve Disapprove



 Bryan Newland
 Principal Deputy Assistant Secretary – Indian Affairs

MAY 07 2021

 Date