

**POKAGON BAND OF POTAWATOMI INDIANS
FIXTURE, APPLIANCE, DOWN PAYMENT, AND REHABILITATION
PROGRAM POLICY**

1. PURPOSE

- (a) The Tribal Council has a duty to promote and protect the peace, health, safety, and general welfare of the Band, including Citizens.
- (b) The Tribal Council has determined that it is in the best interests of the Band to establish the Program to promote the general welfare of Citizens, including by assisting with Fixture and/or Appliance and/or Down Payment and/or Rehabilitation needs in a manner that is not lavish or extravagant under the circumstances.
- (c) The Tribal Council developed the Program with the intention that Assistance to Citizens provided under this Program is an “Indian general welfare benefit” as provided by 26 U.S.C. 139E(a) and therefore excluded from gross income and not subject to tax withholding or reporting under the Tribal General Welfare Exclusion Act, 26 U.S.C. 139E and IRS Revenue Procedure 2014-35.
- (d) This Policy establishes written guidelines under which Citizens, Non-Citizen Parents, and Guardians may qualify for Assistance.
- (e) This Policy shall be liberally interpreted and construed in order to support the determinations of Tribal Council and accomplish the purpose of this Policy.

2. SCOPE

- (a) The Program shall be governed by this Policy.

3. DEFINITIONS

- (a) “Adult” means a person who is:
 - (i) at least eighteen (18) years of age or older, or
 - (ii) under eighteen (18) years of age and emancipated by operation of applicable law.
- (b) “Applicant” means any person who submits an application for Assistance to the Department.
- (c) “Appliances” means any or all of the following for a Home:
 - (i) a portable air conditioner;
 - (ii) a portable generator;

- (iii) a freezer;
- (iv) a refrigerator;
- (v) a kitchen stove (including range, oven, or cooktop) or wall oven;
- (vi) a microwave oven;
- (vii) a dishwasher;
- (viii) an indoor residential rated space heater;
- (ix) a washing machine;
- (x) a dryer; and
- (xi) any other appliance approved to be added to this Policy upon the recommendation of the Director and approval of the Tribal Council by resolution.

- (d) “Assistance” means the financial assistance grants provided under this Program and is limited to:
- (i) the cost of the repair, replacement, and/or installation of a Fixture and/or Appliance(s) for the Applicant’s Home, and/or
 - (ii) Down Payment for the purchase of the Applicant’s Home (excluding any apartment), and/or
 - (iii) Rehabilitation for the Applicant’s Home (excluding any apartment),

which shall not exceed \$7,500 per Household.

- (e) “Band” means the Pokagon Band of Potawatomi Indians.
- (f) “Citizen” means an enrolled member of the Band.
- (g) “Department” means the Band’s Department of Housing.
- (h) “Director” means the Director of the Department.
- (i) “Down Payment” means funds for or towards the purchase of a Home (excluding any apartment), including closing costs, by a Citizen, not a Minor, or by a Non-Citizen Parent, which is, or will after purchase be, such Citizen’s or Non-Citizen Parent’s Principal Residence.
- (j) “Fixture” means any or all of the following that are permanently affixed to a Home:
- (i) a furnace system, whether conventional gas, electric, oil, pellet, or wood fuel;
 - (ii) an air conditioning system;
 - (iii) a hot water heater, including tank or tankless, gas or electric; and
 - (iv) a generator.

- (k) “General Welfare Exclusion” means the IRS doctrine under which certain payments made under legislatively provided social benefit programs for the promotion of the general welfare, and not as compensation for services, are excludable from gross income.
- (l) “Guardian” means a Non-Citizen who is the current court appointed legal guardian of an Adult Citizen who resides with such guardian in the guardian's Home.
- (m) “Home” means a house or apartment that is:
 - (i) the Applicant’s Principal Residence; and
 - (ii) includes a conventional stick built, brick, or cement block home, manufactured home, mobile home, or condominium; and
 - (iii) for purposes of Fixtures, the house or apartment must be owned in whole or in part by the Applicant.

The term “Home” does not include:

- (i) any dorm or camper; or
- (ii) any storage shed, garage, commercial building, or similar structure not intended for residential living.

For purposes of illustration only and subject to the requirements of this Policy, the following tables summarize the generally available Assistance for the different types of Fixtures and Appliances where the Applicant owns his or her Home or rents his or her Home. Nothing in the following tables does or is intended to or shall amend, limit, expand, or contract anything in this Policy.

Fixture	Generally Possible for Owner to Receive Assistance	Generally Possible for Renter to Receive Assistance
A furnace system	Yes	No
An air conditioning system	Yes	No
A hot water heater	Yes	No
A generator	Yes	No

Appliance	Generally Possible for Owner to Receive Assistance	Generally Possible for Renter to Receive Assistance
A portable air conditioner	Yes	Yes
A portable generator	Yes	Yes
A freezer	Yes	Yes
A refrigerator	Yes	Yes
A kitchen stove	Yes	Yes

(including range, oven, or cooktop) or wall oven		
A microwave oven	Yes	Yes
A dishwasher	Yes	Yes
An indoor residential rated space heater	Yes	Yes
A washing machine	Yes	Yes
A dryer	Yes	Yes

- (n) “Household” means all persons, including the Applicant, who reside in a Home intended for Assistance through this Program.
- (o) “IRS” means the Internal Revenue Service, the United States government agency responsible for federal tax collection and enforcement.
- (p) “Minor” means a Citizen who is less than 18 years of age and not an Adult.
- (q) “Need” means a need for:
- (i) A Fixture and/or an Appliance for the Applicant’s Home, including a repair, replacement, and/or installation of a Fixture and/or an Appliance for the Applicant’s Home, and/or
 - (ii) a Down Payment for a Citizen’s or Non-Citizen Parent’s Home (excluding any apartment), and/or
 - (iii) Rehabilitation for a Citizen’s or Non-Citizen Parent’s Home (excluding any apartment).
- (r) “Non-Citizen Parent” means a person who:
- (i) is not a Citizen;
 - (ii) is the biological or adoptive parent, step-parent, or legal guardian of a Minor; and
 - (iii) has sole or joint custody (both legal and physical) of the Minor.

- (s) “Policy” means this Fixture, Appliance, Down Payment, and Rehabilitation Program Policy.
- (t) “Principal Residence” means a Home that is the Applicant’s true, fixed, and permanent Home, occupied by the Applicant on a full-time basis a majority of the calendar year and which, whenever absent, the Applicant intends to return.
- (u) “Program” means the Fixture, Appliance, Down Payment, and Rehabilitation Program, a legislatively provided social benefit program for the promotion of the general welfare, established by the Tribal Council under this Policy.
- (v) “Rehabilitation” means repairs to a Home (excluding any apartment) owned by a Citizen or Non-Citizen Parent that are necessary for the health and safety of the Household, including weatherization of the Home (excluding any apartment).
- (w) “RTM” means a Citizen who is a Resident Tribal Member under the Tax Agreement.
- (x) “Tax Agreement” means the agreement between the Band and the State of Michigan entered into on December 20, 2002, as amended, which includes a sales and use tax exemption for materials, including Appliances, that are affixed to the principal residence of a RTM located within the specified “Agreement Area” under a contract for the construction, renovation, or improvement of such principal residence of the RTM and there is no contractual entitlement for removal of the Appliances that are affixed.
- (y) “Tribal Council” means the governing body of the Band as set forth in Article IX of the Band’s Constitution.
- (z) “Vendor” means one of the following retailers with whom the Band has an account:
 - (i) Lowes; and
 - (ii) Home Depot.

4. DURATION

- (a) The Program shall accept applications through 5:00 pm, November 1, 2024, and the Program shall automatically expire upon the earlier of 5:00 pm, December 10, 2024 or when funding for the Program is no longer available.
- (b) The Program shall be subject to available funding. The Band retains the right to amend this Policy, including to end the Program at any time.

5. ELIGIBILITY AND APPLICATION

- (a) To qualify for Assistance under the Program, a person must:
 - (i) be a Citizen, Non-Citizen Parent, or Guardian;
 - (ii) be an Adult;
 - (iii) have a Need;
 - (iv) fully complete and return to the Department an application supplied by the Department.

- (b) Subsection 5(a) notwithstanding, no person who is a Guardian shall be eligible, based on such status, for any Assistance that includes a Down Payment or Rehabilitation.

- (c) Assistance shall be limited to the actual costs and shall not exceed \$7,500 per Household, including all Household members for Fixtures, Appliances, Down Payment, and Rehabilitation.

- (d) Assistance shall not be provided to an Applicant or any member of the Applicant's Household on more than one occasion for the same category of Fixture, Appliance, or Rehabilitation. This limitation shall also include the same category across both Fixtures and Appliances. For purposes of illustration and not limitation, if the Band paid Assistance for a Fixture that is an air conditioning system, the Band shall not pay Assistance for an Appliance that is a portable air conditioner.

- (e) Eligible Applicants shall be limited to a Citizen, Non-Citizen Parent, or Guardian that is an Adult with a Need for the Applicant's Home for which the Assistance will be utilized, except as provided in Subsection 5(b) for a Down Payment and Rehabilitation.

- (f) Assistance shall only be available to Applicants who satisfy all requirements of this Policy.

- (g) The Applicant shall have the burden of proving eligibility under the Program.

- (h) Assistance shall only be available to Applicants who meet all requirements of this Program and shall:
 - (i) be awarded to any Applicant who meets the requirements of this Program; and
 - (ii) not discriminate in favor of members of the Tribal Council.

- (i) All applications for Assistance shall require the Applicant to provide, at a minimum, the following information:

- (i) the Applicant's name, address, telephone number, and date of birth, or if the Applicant is a Non-Citizen Parent or Guardian, a copy of a current photo identification;
 - (ii) if the Applicant is a Citizen, the Applicant's Band enrollment number, or if the Applicant is a Non-Citizen Parent, the name, date of birth, and Band enrollment number of each Minor, or if the Applicant is a Guardian, the name, date of birth, and Band enrollment number of the Citizen for whom the Applicant is a Guardian;
 - (iii) the name(s) of all persons who reside at the Applicant's Home;
 - (iv) a description of the Need, including without limitation, the amount of Assistance requested;
 - (v) If the Need involves Fixtures and/or Appliances, a description of such Fixtures and/or Appliances that are part of such Need;
 - (vi) If the Need involves a Down Payment, an identification of the Home, the purchase price, the seller, lender/mortgage company, loan number, the loan amount, and the closing/title company;
 - (vii) If the Need involves Rehabilitation, an identification of the Home and proof of ownership, and a description of the health and safety or weatherization involved;
 - (viii) If the need involves a Fixture, Appliance, or Rehabilitation, whether the Assistance will be paid as a reimbursement or a pre-authorized purchase from a Vendor; and
 - (ix) all documentation deemed necessary by the Department to evaluate the application, including without limitation, to demonstrate eligibility for Assistance under this Program.
- (j) All applications for Assistance shall be signed by the Applicant and shall include, without limitation, an attestation and certification that:
- (i) the Applicant has read the Program in effect at the time the application is submitted and is eligible to receive Assistance under the Program;
 - (ii) the Assistance shall be utilized solely for the Applicant's Home, which is the Applicant's Principal Residence (or if the Assistance is for Down Payment, which shall be the Applicant's Principal Residence);
 - (iii) to the best of the Applicant's information, knowledge, and belief all information provided is true, accurate, and complete;
 - (iii) the Applicant acknowledges and understands that Assistance shall not be used for or include expenses that have been or will be reimbursed under any federal program or any other Band program;
 - (iv) the Applicant acknowledges and understands that if the Applicant is a Citizen, then although the Band has structured the Program with the intent that the Assistance be non-taxable, that if the IRS deems the Assistance, or any part of the Assistance, to be taxable, the Citizen (and not the Band) shall be solely

- responsible for any taxes, interest and penalties owed from the Applicant's receipt of any Assistance;
- (v) the Applicant acknowledges and understands that if the Applicant is a Non-Citizen Parent or Guardian, then the Band will treat the Assistance as taxable, and the Non-Citizen Parent or Guardian (and not the Band) shall be solely responsible for any taxes, interest and penalties owed from the Applicant's receipt of any Assistance; and
 - (vi) the Applicant acknowledges and understands that providing any false information may subject the Applicant to legal action, including without limitation, criminal prosecution.
- (k) All applications for Assistance shall require the Applicant agree that the Band shall not be responsible for any property conditions, warranty, performance, or other issues, including any malfunctions, losses, damages (including personal injury, death, or damage to any property), etc., arising from, or in any way related to, any Fixture and/or Appliance reimbursed, purchased, repaired, or installed with Assistance under the Program, or any Home purchased with Assistance under this Program, or any Rehabilitation to any Home under this Program, or any Assistance provided under this Program and that the Applicant waives all such claims against the Band.
- (l) All applications shall be delivered to the Department by any of the following methods:
- (i) personal or private courier delivery;
 - (ii) U.S. mail; or
 - (iv) electronically, including without limitation, e-mail, fax or text (to a number or account designated by the Department for receipt).
- (m) No applications will be accepted after 5:00 pm, November 1, 2024.
- (n) No more than one (1) Household member may receive Assistance under the Program at the same time, regardless of whether more than one (1) Household member is eligible for Assistance under the Program.

6. ELECTRONIC APPLICATION

- (a) An application or a signature on an application relating to the Program shall not be denied legal effect or enforceability solely because it is in electronic form, and an application shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

- (b) An electronic record of an application or electronic signature on an application shall be attributable to a person if it is the act of the person, which may be shown in any manner (including a showing of the efficacy of any security procedures applied to determine the person to which the electronic record or electronic signature was attributable), and the effect of an electronic record of an application or electronic signature on an application attributed to a person shall be determined from the context and surrounding circumstances at the time of its creation, execution, or adoption.
- (c) The Band IT Department, giving due consideration to security and in consultation with the Department, may specify any of the following as appropriate for the submission of an electronic record of an application or electronic signature on an application:
 - (i) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for such purposes;
 - (ii) if an electronic record is required to be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature is to be affixed to the electronic record;
 - (iii) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
 - (iv) any other require attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

7. HOME OWNERSHIP FOR ASSISTANCE

- (a) Any Home for which an Applicant seeks Assistance under this Program for Fixtures or Rehabilitation must:
 - (i) be the Applicant's Principal Residence;
 - (ii) be owned by the Applicant, either in whole or in part;
 - (A) The Home may be owned outright, subject to a mortgage, or owned or held by a land contract.
 - (B) If the Home is owned or held by land contract, the land contract must be a legally binding, written instrument, which has been recorded in the appropriate government office.
 - (C) The Home may be owned by a living trust, provided the Applicant and/or the Applicant's spouse placed the Home in the living trust and the

Applicant and/or the Applicant's spouse are the current beneficiaries of such trust.

- (iii) be insured against casualties;
 - (iv) not be subject to any sales agreement or currently listed for sale;
 - (v) not be subject to any foreclosure proceedings; and
 - (vi) not have any delinquent property taxes.
- (b) If the Home is owned or held by a land contract, the Department may request a copy of the land contract for review to determine whether such land contract meets the requirements of this Policy. The Department may deny Assistance if it determines such land contract does not meet the requirements of this Policy.
- (c) If the Home is owned by a living trust, the Department may request a copy of the trust for review to determine whether such trust meets the requirements of this Policy. The Department may deny Assistance if it determines such trust does not meet the requirements of this Policy.

8. AMOUNT AND PAYMENT

- (a) Assistance shall not be used for or include expenses that:
- (i) have been or will be reimbursed under any federal program or any other Band program; or
 - (ii) for damages covered by insurance.
- (b) Regarding Assistance for any Fixture or Rehabilitation, if the Applicant or the Applicant's spouse is an RTM, the Assistance shall not include Michigan sales or use tax, and the Applicant must fully cooperate with the Band to ensure that the Vendor does not charge the Michigan sales or use tax on the purchase of any Fixture or any Rehabilitation, which may include completing and submitting to the Band's Accounting Department an application for a certificate of exemption and providing the Vendor with the certificate of exemption. The Assistance shall include sales or use tax when the Applicant or the Applicant's spouse is not an RTM.
- (c) Payment of Assistance for Fixtures, Appliances, and Rehabilitation shall be limited to the following methods:
- (i) reimbursement paid directly to the Applicant; and/or
 - (ii) via a Band pre-authorized purchase paid directly by the Band to a Vendor on behalf of the Applicant.
- (d) Payment of Assistance via reimbursement shall require the following:

- (i) The Rehabilitation, or applicable repair, replacement, and/or installation for the Fixture(s) and/or Appliances must be paid in full by the Applicant or a Household member of the Applicant;
 - (ii) The applicable Rehabilitation, repair, replacement, and/or installation expense for the Fixture(s) and/or Appliance(s) must have been incurred by the Applicant for the Home no earlier than March 3, 2021;
 - (iii) If the reimbursement includes the replacement or installation of a Fixture or an Appliance, such must be new and if not new, must still be under warranty; and
 - (iv) In addition to the above requirements in this Subsection 8(d), for any Fixture or Rehabilitation:
 - (A) The installation or repair or Rehabilitation must have been completed by a third party who holds all applicable licenses to perform such work and is not debarred from federal contracting; and
 - (B) The installation or repair or Rehabilitation must be complete and in compliance with all applicable legal requirements, including passing any required inspections.
- (e) Payment of Assistance via pre-authorized purchase paid directly by the Band to a Vendor on behalf of an Applicant shall require the following:
- (i) the Applicant shall shop at a local Vendor for the Fixture(s) and/or Appliance(s) and/or Rehabilitation for which Assistance is desired;
 - (ii) the Applicant shall obtain a comprehensive sales order between the Applicant and the Vendor for the purchase and installation of the Fixture(s) and/or Appliance(s) and/or Rehabilitation for which Assistance is desired, which sales order shall include all items necessary to complete the applicable Rehabilitation, installation of the relevant Fixture(s) and/or Appliance(s), all fees, and any separate payment to the installers, and for any Fixture or Rehabilitation, shall not include the Michigan sales or use tax if the Applicant or the Applicant's spouse is an RTM;
 - (iii) the Applicant must include the sales order with the Applicant's application for Assistance;
 - (iv) if the Department approves the Applicant's application for Assistance, the Band shall contact the Vendor to approve the Applicant's sales order;
 - (v) the Applicant shall be responsible for all aspects of implementing the sales order, including scheduling and coordinating installation and any necessary inspections;
 - (vi) the Applicant shall contact the Department, via email or telephone, and inform the Department of the complete and as applicable, Rehabilitation, and/or delivery and installation of the Fixture(s) and/or Appliance(s). Such contact shall be not later than two (2) business days of such completion; and
 - (vii) the Vendor shall invoice the Band and the Band shall pay such invoice, subject to the limitations of the Program and this Policy.

- (f) Payment of Assistance for a Down Payment shall be limited to payment directly by the Band to:
 - (i) the seller of the Home,
 - (ii) the Applicant's mortgage company, or
 - (iii) the closing or title company conducting the closing on the Applicant's purchase of the Home.

- (g) Payment of Assistance for a Down Payment that is retroactive:
 - (i) the closing on the purchase of the Applicant's Home must have occurred no earlier than March 3, 2021, and
 - (ii) shall be paid solely to the Applicant's mortgage company.

9. DECISION

- (a) The Department shall be responsible for the implementation and administration of the Policy and the Program.

- (b) If an application for Assistance is approved, the Department shall cause written or electronic notice to be provided to the Applicant and shall, at a minimum, include the amount of Assistance.

- (c) If an application for Assistance is denied, the Department shall cause written or electronic notice to be provided to the Applicant and such notice shall, at a minimum, include the following information:
 - (i) the specific reason(s) for the denial of Assistance;
 - (ii) a statement informing the Applicant of the right to appeal the decision to deny Assistance, unless the denial was due to a lack of funding;
 - (iii) a description of the appeal procedure or a copy or link to this Policy; and
 - (iv) a statement informing the Applicant of the ability to reapply for Assistance if the relevant circumstances change.

- (d) Any Applicant who is denied Assistance may appeal such decision by filing a written or electronic request with the Director, provided there shall be no right to appeal if the denial was due to a lack of adequate funding. The request must:
 - (i) be signed and dated by the Applicant;
 - (ii) include a statement explaining why the decision to deny Assistance was in error; and
 - (iii) include a copy of the notice of denial and all relevant documents the Applicant would like to the Director to consider.

- (e) The written or electronic request must be received by the Director no later than fourteen (14) calendar days after the date of the notice of denial. Any such request not received by such time shall result in the Applicant being deemed to have waived all rights to appeal.
- (f) The Director shall issue a decision on the appeal no later than twenty-five (25) business days of the Director's receipt of the request.
- (g) The Director's decision shall be final and not subject to review or appeal, including without limitation, pursuant to the Band's Grievance Policy.

10. MISCELLANEOUS

- (a) Any questions regarding this Policy shall be directed to the Department at (269) 783-0443. Department hours are Monday through Friday, 8:00 am to 5:00 pm (in the Eastern Time Zone), excluding Band holidays.
- (b) Any refunds or credit as a result of any returns of any Fixtures or Appliances or pursuant to any Rehabilitation shall be refunded or credited to the Band and not the Applicant.
- (c) If any provision of this Policy is held to be invalid or unenforceable, such holding shall affect or impair any other provision of this Policy.
- (d) This Policy shall be interpreted in a manner consistent with applicable law, including Band law, but if any provision of this Policy conflicts with applicable law, then such applicable law shall control.
- (e) If any provision of any application required under this Policy conflicts with this Policy, this Policy shall control.
- (f) While this Program is structured with the intent that the Assistance be non-taxable to Band Citizens under the Tribal General Welfare Exclusion Act and IRS Revenue Procedure 2014-35, if the Internal Revenue Service deems the Assistance, or any portion of the Assistance, to be taxable, then the Citizen (and not the Band) shall be solely responsible for any taxes, interest and penalties owed from receipt of the Assistance. Citizens are encouraged to contact a tax advisor with any tax questions relating to the Assistance.
- (g) Band funds for Assistance shall remain the assets of the Band until distributed.
- (h) Assistance shall not be subject to anticipation, alienation, assignment (either at law or in equity), pledge, encumbrance, attachment, garnishment, levy, or execution.

- (o) The Band shall not be responsible for any property conditions, warranty, performance, or other issues, including any malfunctions, losses, damages (including personal injury, death, or damage to any property), etc., arising from or in any way related to any Appliance, Fixture and/or Home reimbursed, purchased, repaired, or installed with Assistance under this Program, or any Home purchased with Assistance under this Program, or any Rehabilitation to any Home under this Program, as applicable. To the fullest extent permitted by applicable law, an Applicant's participation in the Program shall be deemed a waiver of all such claims by the Applicant against the Band.
- (i) Nothing contained in this Policy shall be construed to vest in any person any right or interest in any Band revenues or assets.
- (j) Nothing in this Program shall:
 - (i) create any obligation that is legally enforceable against the Band; or
 - (ii) waive the sovereign immunity of the Band or any of its officials or employees.

HISTORY

Approved on January 13, 2022, by Tribal Council Resolution 22-01-13-01; Amended on February 3, 2022, by Tribal Council Resolution 22-02-03-02, including to expand the scope of Fixtures, to include down payment assistance and Rehabilitation, and to rename the Policy, the Fixture, Appliance, Down Payment, and Rehabilitation Program Policy; Amended on February ___, 2022, by Tribal Council Resolution 22-02-__-__ to remove the prohibition for eligibility for Assistance if the Applicant or anyone in the Applicant's Household owed a delinquent debt to the Band .