

WHAT IF...

AN AGENCY LEVEL PRESENTATION ABOUT UNIQUE OCCURRENCES

TODAY'S PANEL

Panelists:

Sam Spergel, Chief Community Programs and Services Officer

Mark Liechty, Real Estate Attorney

Ray Binder, Director of Program Integrity

Topics:

1. Tell us often. Tell us early.
2. Legal Advice & Confidential Information
3. Subpoenas
4. Cars: Bought, Sold, & Donated
5. A-133 Required Financial Reporting
6. What if... you ask us

WHAT IF...

LEGAL ADVICE AND CONFIDENTIAL INFORMATION

Take our advice...don't.

☐ IHCD **cannot** provide you with legal advice.

- ✓ IHCD does provide guidelines and requirements intended to protect Personally Identifiable Information (“PII”) under IHCD programs.

☐ You should always seek your own legal advice.

Confidential Information, Generally

Basic IHCD A contract/grant requirements:

- ❑ "...all information, including but not limited to client information, received by Subrecipient or its subcontractors in administering the terms and provisions of this Agreement shall be received and maintained in a confidential manner commensurate with the conditions set forth in this Agreement and the requirements of all applicable state or federal laws, rules, and regulations, including, but not limited to, the release of Social Security number provisions in Ind. Code § 4-1-10, the notice of security breach provision in Ind. Code § 4-1-11, and the confidentiality provisions set forth in Attachment A."
- ❑ "Confidential information means any individually identifiable information, whether oral or written, about the participants who receive services and/or assistance from an IHCD A Program. Employees, agents, contractors or others who require access to confidential participant information must sign a confidentiality agreement commensurate with the conditions set forth in this Agreement."

Confidential information includes revealing anything about a person's IHCD A assistance, even if the individual requesting the information already knows the person's name, address, etc...

CoC-Specific Confidentiality Requirements

You must develop and implement written procedures to ensure:

- ☐ (1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;
- ☐ (2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and
- ☐ (3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the Subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality
- ☐ (4) The Subrecipient must adopt procedures to ensure that all participant information is handled and maintained in a confidential manner and in compliance with the requirements of all applicable state or federal laws, rules, and regulations...

HMIS-Specific Confidentiality Requirements

You must follow the requirements of:

☐ IHCD's:

- ☐ Agency Participation Agreement
- ☐ HMIS User Agreement
- ☐ Notice of Privacy Practices and Statement of Privacy Practices
- ☐ HMIS Standard Operating Procedure

☐ HUD's HMIS Data and Technical Standards Final Notice

**You've got mail - it's a
SUBPOENA**



What exactly is a subpoena?

- ❑ “Subpoena” means a document, however denominated, issued under authority of a court of record that requires a person to” testify at a deposition or produce documents, records, or other tangible things in your possession or allow inspection of premises under your control.

Burns Ind. Code Ann. § 34-44.5-1-5

- ❑ Some subpoenas require in-person appearance; some do not.
- ❑ Civil vs. law enforcement subpoenas may have different requirements.
- ❑ Can also come from different courts or agencies.
- ❑ Should always seek the advice of independent legal counsel.

Subpoena Example

STATE OF INDIANA)
COUNTY OF ALLEN) SS: IN THE ALLEN SUPERIOR COURT
CASE NO. [REDACTED]

[REDACTED]
Plaintiff.

vs.

SUBPOENA DUCES TECUM

[REDACTED]
Defendant.

DIRECTED TO: Indiana Housing and Community Development Authority
30 South Meridian Street Suite 900
Indianapolis, IN 46204

YOU ARE HEREBY COMMANDED to appear at a hearing in this matter on **December 5, 2023, at 11:00 a.m.** in the Allen Superior Small Claims Court, 1 W Superior St, Fort Wayne, IN 46802, and to bring the following documents with you: **All documents and correspondence related to the issuance of Indiana Emergency Rental Assistance payments made jointly to [REDACTED], including but not limited to the front and back of all checks.**

Pursuant Trial Rule 45, subpoenas may be issued by either the Clerk of the Court or Attorney of Record. In lieu of your personal appearance at said hearing, you may provide copies of the requested documents, with a completed Business Records Affidavit, to the office of Christopher C. Baumgartner, Indiana Legal Services, 110 W. Berry St., Suite 2007, Fort Wayne, IN 46802, prior to said hearing date.

10/31/2023
Date


Christopher C. Baumgartner
Atty. No. 27020-02
Indiana Legal Services, Inc.
110 W. Berry St., Suite 2007
Fort Wayne, IN 46802
(260) 424-9164
Attorney for Defendant [REDACTED]

Subpoena Example

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT
for the
Eastern District of Tennessee

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: [REDACTED]
Attn: [REDACTED]

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

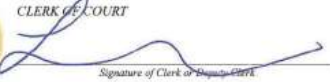
Place: The Howard H. Baker, Jr., U.S. Courthouse Building 800 Market Street Knoxville, TN 37902 (Please use entrance at corner of Main Street & Walnut Street)	Date and Time: [REDACTED]
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You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):
SEE ATTACHMENT.

As a convenience to you, should you so choose, you may comply with this subpoena by turning over the aforementioned records to Special Agent [REDACTED], FBI, 1501 Dowell Springs Blvd, Knoxville, TN; telephone: [REDACTED]; e-mail at [REDACTED]@fbi.gov. If you choose to deliver the records to Special Agent [REDACTED], your personal appearance before the grand jury will not be necessary and a proper return of the subpoena to the grand jury noting your compliance will be made.

THIS SUBPOENA PERTAINS TO AN ONGOING CRIMINAL INVESTIGATION. PLEASE DO NOT NOTIFY THE SUBJECT OF THIS REQUEST FOR RECORDS OR OF THE INVESTIGATION.

Date: [REDACTED]

 CLERK OF COURT

Signature of Clerk of Court

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:
[REDACTED] Asst. United States Attorney
800 Market Street, Suite 211
Knoxville, TN 37902

ihcda   
Indiana Housing & Community Development Authority

People want information...

- ☐ If a party in a case informally asks you for information about an individual, have them formally subpoena you before providing the information.
- ☐ PII can be provided only to the extent necessary to accomplish the purpose of a request for information that is compliant with the law. If you are releasing information in response to a subpoena:
 - ☐ Release only what is required for the subpoena. Redact or exclude non-required PII.
 - ☐ Provide documents instead of testimony when possible.
 - ☐ Do not reveal client PII in a court case or to any outside party unless there has been a properly issued subpoena.
 - ☐ If you must disclose records containing PII, a protective order may be appropriate to keep information confidential.

HMIS Data Requests

IHCDA owns the data in the HMIS and is responsible for its safekeeping. You must follow HMIS agreement terms.

- ! If you receive a subpoena or other request for HMIS data, **please notify IHCDA as soon as possible**. IHCDA will review for compliance with IHCDA/HUD/HMIS policies. You should seek your own legal advice to address other concerns, including if the data requested is subject to other requirements (e.g., HIPAA). IHCDA will work with your agency to determine what may be disclosed.

Questions?



WHAT IF...

CARS & EQUIPMENT: PURCHASED, DONATED, OR
SOLD

BUYING A VEHICLE



(2 CFR 200.313)

- ☐ Equipment is defined as:
 - ☐ tangible personal property
 - ☐ having a useful life of more than one year
 - ☐ per unit cost of \$10,000 or more
- ☐ Purchasing a vehicle in excess of \$10,000 is classified as an equipment purchase
- ☐ Prior written approval is required from the Federal awarding agency or pass-through entity (IHCDA)
- ☐ Purchases must follow procurement standards including obtaining quotes for purchases above the micro threshold limit
 - ☐ \$10,000 for awards from October 1, 2024
 - ☐ \$15,000 for awards on or after October 1, 2025
- ☐ IHCDA or the Federal agency must be listed as a lien holder
 - ☐ Federal regs
 - ☐ Contract incorporates all relevant Federal regs

BUYING A VEHICLE (2 CFR 200.313)

- ☐ When acquiring a new or used vehicle with Federal grant funds when IHCD is the pass-through entity:
 - ☐ IHCD must be listed as a lien holder unless you elect to list the Federal agency
 - ☐ The subrecipient (your agency) must be listed as the owner
 - ☐ All original titles must be mailed to the IHCD Department of Program Integrity
 - ☐ c/o Michelle Bowling
 - ☐ Please mail with tracking- these are title docs
- ☐ IHCD or the Federal agency should be listed as the lien holder even if the vehicle is purchased out-right with Federal funds
- ☐ IHCD is engaged in a project to clean-up our vehicle title files
 - ☐ Please respond to any requests for information from Michelle Bowling or Jonathan (JJ) Andreoni
 - ☐ Questions concerning the status of a current title may be sent to Michelle Bowling at mibowling@ihcda.in.gov

A VEHICLE WAS DONATED (2 CFR 200.434)

- ☐ The value of the property (in-kind donation) may not be charged to the Federal award as a direct or indirect cost
- ☐ The value of the donated vehicle may be used as cost sharing or matching IF the donation meets the following criteria:
 - ☐ Necessary & reasonable to accomplish project goals
 - ☐ Verifiable with the organization's records
 - ☐ Cannot be used as cost sharing for any other Federal award
- ☐ Value of the vehicle claimed for cost sharing purposes must not exceed the Fair Market Value
 - ☐ Value must be determined in accordance with recipient's standard accounting practices
 - ☐ Value must be documented and supported
- ☐ Title to the vehicle is held by the recipient
- ☐ IHCDCA does not need to hold a lien as no Federal funds were used for the purchase

A VEHICLE WAS DONATED (2 CFR 200.434)

- ☐ If the vehicle is not used for cost sharing the recipient can charge depreciation on the donated vehicle
 - ☐ Must select match **OR** depreciation
 - ☐ 2 CFR 200.436
- ☐ Donation Checklist
 - ☐ Verify it is a donation and not a sale
 - ☐ Document Fair Market Value
 - ☐ Match or Depreciation
 - ☐ Record in asset management system
 - ☐ Follow 2 CFR 200.313 for final disposition



DISPOSING OF A VEHICLE (2 CFR 200.313)

- ☐ When equipment is no longer needed for the original program or project, or other activities supported by the Federal Agency that provided the funds... AND
- ☐ The value of the equipment or vehicle is \$10,000 or less
 - ☐ Valuation must be based on Fair Market Value (FMV)
- ☐ May be sold, retained, disposed of with no further obligation to the Federal agency
 - ☐ Please advise IHCD
 - ☐ IHCD will release its lien
- ☐ When the value of the vehicle or equipment is over \$10,000
 - ☐ Recipient must request instructions/ approval from IHCD
- ☐ The following must be documented BEFORE disposition is approved:
 - ☐ Nature of disposition
 - ☐ Public Sale
 - ☐ Trade-in
 - ☐ Transfer of Title
 - ☐ Fair Market Value
 - ☐ Process for determining nature of disposition and FMV
 - ☐ Release of Lien
 - ☐ Signature from E.D. of subrecipient

DISPOSING OF A VEHICLE (2 CFR 200.313)

- ☐ Vehicle with a FMV in excess of \$10,000 may be retained or sold
- ☐ Federal agency is entitled to funds in the amount calculated by multiplying the percentage of the Federal contribution against the current market value or sale proceeds
 - ☐ Vehicle with FMV \$20,000
 - ☐ Federal agency contribution of 85% of purchase price
 - ☐ \$17,000 is due to the Federal agency
 - ☐ If all proceeds are due to the Federal agency or pass through the subrecipient may be allowed to retain \$1,000 associated with the cost of the sale
- ☐ Title may be transferred to the Federal Agency or an eligible third party
- ☐ When a recipient fails to take proper action in disposing of a vehicle the Federal Agency or IHCDA may direct disposition
 - ☐ Recipient must request instructions/ approval from IHCDA
- ☐ When included in the Federal award terms the recipient may be permitted to retain equipment with no further Federal obligation

WHERE TO FIND FAIR MARKET VALUE

- ☐ FMR is the Fair Market Value for a vehicle or asset
- ☐ FMR for a vehicle may be determined through several reputable online sources
- ☐ Kelley Blue Book: <https://www.kbb.com/whats-my-car-worth/>
- ☐ Edmunds: <https://www.edmunds.com/tmv.html>
- ☐ Carfax: <https://www.carfax.com/value/>
- ☐ To determine FMR you will need:
 - ☐ Vin or
 - ☐ License Plate or
 - ☐ Make and Model
 - ☐ Mileage
 - ☐ Features
 - ☐ Vehicle Condition
- ☐ All three sites provide FREE valuations
- ☐ You may elect a third-party appraisal

Questions?



WHAT IF...
MY SINGLE AUDIT WILL BE LATE

A-133: SINGLE AUDIT OR IRS FORM 990

- ☐ 2 CFR 200.74
- ☐ IHCDCA meets the definition of a pass-through entity
- ☐ Those that receive Federal funds from IHCDCA are required to meet certain reporting obligations including financial reporting
- ☐ Any non-federal entity that expends more than \$1,000,000.00 in Federal funds during the entity's fiscal year shall have a single audit in accordance with 2 CFR 200.514 conducted for that year
- ☐ Any non-federal entity that spends less than \$1,000,000.00 shall submit IRS Form 990
- ☐ IHCDCA is required to obtain and review an entities single audit or IRS Form 990
- ☐ IHCDCA reviews the audit report to determine if it has findings that impact the funds passed-through IHCDCA

A-133: SINGLE AUDIT OR IRS FORM 990

- ☐ Financial reports are due thirty (30) days after receipt of the report OR nine months after the end of the entity's fiscal year
 - ☐ Whichever is **EARLIER**
- ☐ Sophie Chen with IHCD A receives a full list of awards from each department
- ☐ Sophia Chen will send a reminder email to each party concerning their reporting obligation
- ☐ Sophia cannot advise is an entity needs a single audit or 990
- ☐ IHCD A does not know if an entity receives other Federal funds
 - ☐ An entity that receives less than \$1,000,000.00 in Federal fund from IHCD A could be obligated to provide a single audit due to receipt of funds during the same year from another funding source
- ☐ Sophia may only provide a **TOTAL** of 60 days extension to any entity

A-133: EXTENSIONS OF TIME TO SUBMIT FINANCIAL REPORTING

- ☐ If you need additional time to submit financial reporting, Sophie can authorize a maximum 60 (sixty) day extension of time to submit reporting
- ☐ Extension requests should be submitted BEFORE the due date and state why the extension is needed
- ☐ Any extensions requesting more than sixty (60) days or subsequent extensions of time after the sixty (60) have elapsed will need approval from program staff
- ☐ Please reach out to A133@ihcda.in.gov if:
 - ☐ You have questions about past reporting
 - ☐ You have questions concerning your reporting deadline
 - ☐ You will need an extension
 - ☐ You believe you may be missing prior years reporting