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# Tribal Council Roles and Responsibilities

July 29-30, 2020



# Overview

**Day 1: Understanding the basics of NAHASDA & other applicable Federal laws**

**Day 2: Role of Tribal Council & relationship to Board of Commissioners & Executive Director**

**Module 1**

**Module 2**

**Module 3**

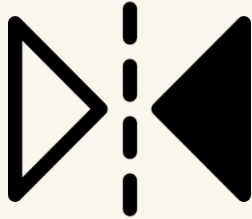
**Module 4**

**Day 1: Key requirements of the IHBG Program & Uniform Administrative requirements & Cost Principles (2 CFR 200)**

**Day 2: Understanding Role of HUD & NAHASDA Compliance, Reporting & Audits**

# Module 1:

## Understanding the Basics of NAHASDA & other applicable Federal laws



Reflect on Indian  
Housing past and  
present



NAHASDA  
Guiding  
Principles &  
Objectives



Statutory  
Overview of  
NAHASDA & Other  
Federal Laws

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# Indian Housing *PAST* - Housing Act of 1937

- Required **establishment of Housing Authorities (HA) and Board of Commissioners (BOC)**
- **HUD published** sample **Ordinance with BOC powers and authority**
- **BOC By-Laws governed** roles and meetings
- **HAs managed** subsidized Low-Income Rental & Mutual Help Homeownership Programs
- **HAs competed** for new construction & modernization (CIAP & CGP) grant funds



# Indian Housing *Present* - NAHASDA of 1996

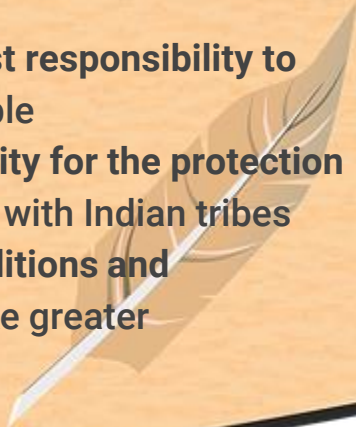
## Native American Housing Assistance and Self- Determination Act

- 1996; Public Law 104-330, as amended
- Last Reauthorized in October 2008 (until 2013); not reauthorized to-date
- Indian Housing Block Grant (IHBG) funds are allocated to Tribes based on formula with two primary components - Current Assisted Stock \$ and Need \$
- Tribe is Grant Beneficiary
- Tribe determines Grant Recipient: Tribe or Tribally Designated Housing Entity (TDHE)
- Tribal Council or Housing Committee: Oversight for Board of Commissioners
- IHBG funds only used for eligible housing activities per NAHASDA as contained in the Tribe's annual Indian Housing Plan (IHP)
- Annual Performance Reports submitted to HUD each year on accomplishments and related funds expenditures



# NAHASDA GUIDING PRINCIPLES

[Sec. 2 - Congressional Findings]

1. The Federal government has a responsibility to promote the general welfare of the Nation.
  2. There exists a unique relationship between the U.S. Government and the governments of Indian tribes and a unique Federal responsibility to Indian people
  3. The United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people
  4. The Congress has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with Indian tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition
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# NAHASDA GUIDING PRINCIPLES

[continued]

5. Providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping Indian tribes and their members to improve their housing conditions and socioeconomic status.

6. The need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities and Native Alaskan villages is acute and the Federal government should work not only to provide housing assistance but also to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for Indian tribes and their members.

7. Federal assistance to meet these responsibility should be provided in a manner that recognizes the right of Indian self determination and tribal self governance by making such assistance available directly to the Indian tribes under authorities similar to those accorded Indian tribes in P.L. 93-



# NAHASDA OBJECTIVES

[Sec. 201]

- Assist & promote affordable housing activities that develop, maintain, and operate affordable housing **for occupancy by low income Indian families**
- Ensure better access to **private mortgage markets** for Tribes and individual tribal members
- Coordinate activities to provide housing with **economic and community development**
- To plan for and integrate **infrastructure resources** with housing development
- Promote the development of **private capital markets** in Indian Country





# Overview: NAHASDA Statute

- **Title I - Block Grant Requirements**
- **Title II - Affordable Housing Activities**
- **Title III - Allocation of Grant Amounts**
- **Title IV - Compliance, Audits & Reports**
- **Title V - Termination of Assistance Under Incorporated Programs**
- **Title VI - Federal Guarantees for Financing Tribal Housing Activities**
- **Title VII - Other Housing Assistance**
- **Title VIII - Housing Assistance for Native Hawaiians**



# TITLE I: Block Grant Requirements

- Sec. 101. Block Grants** → Annual IHBG grant funding to Tribes/TDHEs
- Sec. 102. Indian Housing Plans** → Tribes/TDHEs required to submit to HUD
- Sec. 103. Review of Plans** → HUD conducts IHP compliance review
- Sec. 104. Treatment of Program** → Uses of income derived from use of IHBG  
Income and Labor Standards funds and use of prevailing wages
- Sec. 105. Environmental Review** → HUD clearance required before any \$ spent
- Sec. 106. Regulations** → Amendments through negotiated rulemaking
- Sec. 107. Effective Date** → October 1, 1997
- Sec. 108. Authorization of Appropriations**



# Indian Housing Block Grant (IHBG)

U.S. Congress appropriates IHBG funds each year for all Tribes (Grant Beneficiaries)



HUD allocates IHBG funds\* to Grant Recipients based on a mathematical formula



Recipient draws down funds from U.S. Department of Treasury Line of Credit Control System (LOCCS) to pay for **eligible housing activity expenses**



**Grant Beneficiary:**  
Federal or State recognized Tribe



**Grant Recipient:**  
Tribal Housing Department or Tribally Designated Housing Entity (TDHE) as determined by Tribe

\*IHBG funds to be used only for eligible housing activities

# **Title I:**

## ***Sec. 102 and 103. Indian Housing Plan (IHP)***

- **Statement of Housing Needs**
- **Planned Activity(s) Descriptions**
  - Estimated Amount of Planned Expenditure
  - Planned Outputs
  - Expected Outcomes & Goals
- **Financial Sources and Uses of Funding including Leveraged Resources**
- **Certification of Compliance**
- **Tribal Certification Statements**
- **IHP Submitted 75 days before beginning of Recipient's fiscal year**
- **HUD reviews IHP within 60 days to determine compliance**

# Title I:

## *Sec. 105 Environmental Reviews - Highlights*

- Must comply with National Environmental Policy Act (NEPA) of 1969
- 24 CFR Part 50: Tribe can request HUD to complete the environmental responsibilities
- 24 CFR Part 58: Tribe can assume responsibilities and certify compliance
- Part 58: Tribe determines Responsible Entity and Certifying Officer
- Before any IHBG funds (or other \$, if part of the overall cost) are spent, environmental determinations must be completed
- Tribes must secure HUD Environmental Release of Funds as applicable

# TITLE II: Affordable Housing Activities

- **Sec. 201 National Objectives and Eligible Families**
- **Sec. 202 Eligible affordable housing activities**
- **Sec. 203 Program Requirements**
- Sec. 204 Types of investments
- Sec. 205 Low-income requirement and income targeting
- Sec. 206 Treatment of funds
- **Sec. 207 Lease requirements and tenant selection**
- Sec. 208 Availability of records
- Sec 209 Noncompliance with affordable housing requirements
- Sec. 210 Continued use of amounts for affordable housing



# Title II:

## Sec. 201 Eligible Families - Highlights

- Assistance limited to low-income Indian families or persons (80% of area median income) – income must be verified
  - 80% Income Limits: Issued annually by HUD
  - House payments not to exceed 30% of adjusted monthly income
- Preference for:
  - Tribal Members
  - Other Indian Families
  - Other Preferences are made part of policies (Elderly, Disabled, Veteran, etc.) as Tribe/TDHE determines
- Exceptions – Non-Low Income (80-100% AMI)
  - Limited to certain activities. Cannot receive same level of benefits as low-income families
  - No more than 10% of the grant in the Indian Housing Plan (IHP)
- More than 100% AMI requires HUD approval with required documentation
- Exceptions to Income-based eligibility:
  - Essential Families as determined by Tribe
  - Law Enforcement Officers

# Illustration of Income Eligibility: HUD Income Limits

- Median income for an Indian area is the greater of:
  - (1) The median income for the counties, previous counties; or their equivalent in which the Indian area is located; or
  - (2) The median income for the United States.
- HUD publishes Annual Income Limits to Tribes/TDHEs in HUD PIH Notices
- Using PIH Notice 2019-02, the 2019 U.S. median family income of \$75,500:

	1-Person	2-Person	3-Person	4-Person	5-Person	6-Person	7-Person	8-Person
80%	\$42,280	\$48,320	\$54,360	\$60,400	\$65,232	\$70,064	\$74,896	\$79,728
100%	\$52,850	\$60,400	\$67,950	\$75,500	\$81,540	\$87,580	\$93,620	\$99,600



# Title II:

## *Sec. 202 Eligible Housing Activities*

- **Indian Housing Assistance**: Operation, maintenance & modernization of 1937 Act Units (also known as Current Assisted Stock (CAS) units)
- **Development**: New construction, reconstruction, moderate or substantial rehabilitation, real property acquisition, site improvement, development and improved infrastructure & utility services, conversions, demolition, energy efficiency, mold remediation and other related activities
- **Housing Services**: Housing counseling, establishment and support of resident organizations and resident management corporations, energy audits, resident self-sufficiency and other related services
- **Housing Management Services**: Rental/homeownership application processing, tenant/homebuyer selection, unit inspections, operation and maintenance of NAHASDA-developed units



# Title II:

## *Sec. 202 Eligible Housing Activities (cont'd)*

**Crime Prevention & Safety Activities:** Safety, security and law enforcement activities appropriate to protect residents of affordable housing from crime.

**Model Activities:** Housing activities under model programs (e.g., day care center, college student housing, new warehouse building, etc). Such activities require HUD approval.

**Reserve Accounts:** Deposit of grant amount for purpose of accumulating planning and administration funds relating to affordable housing activities.



# Review of NAHASDA Activities:

## Eligible Activities

- **Development & Housing Services**
  - Financing acquisition of affordable house by homebuyers
  - Down payment/closing costs/direct lending assistance or other financial assistance
  - Provision of self-sufficiency for residents
  - Childcare/transport subsidies, job training
- **Housing Management Services**
  - Tenant selection, inspection, loan processing
- **Crime Prevention & Safety**
  - Fencing, security lights, speed humps
- **Model Activities**
  - New office building, warehouse facility, day care center, community building, student housing, etc.

## Ineligible Activities

- **Development & Housing Services**
  - Serving non-low income families without HUD approval
- **Housing Management Services**
  - Selection of participants without using the Waitlist Policy
- **Crime Prevention & Safety**
  - Procuring police vehicles and weapons for tribal police department
- **Model Activities**
  - Using IHBG for the development of a tribal casino

## Title II:

# Sec. 203 NAHASDA Program Requirements

- Rents & homebuyer payment policies that do not exceed 30% of monthly adjusted income of families
- Maintenance policy for efficient operation of 1937 Act units and management of NAHASDA housing units (include inventory, disposition & demolition)
- Maintain adequate insurance Coverage – for housing owned, operated, assisted by HA or Tribal housing department
- Eligibility, admission and occupancy policy for families assisted
- Management policies for TDHE or Tribal housing department (e.g., Personnel, Grievance, Procurement, Travel, etc.)
- Use of IHBG grant funds over extended periods (carryover)
- De Minimus exemption for purchase of goods and services under \$5,000 (no competitive procurement)



# TITLE III: Allocation of Grant Amounts

## *Highlights*

- **Section 301. Annual Allocation**
  - HUD allocates IHBG grant to Tribes in accordance with established formula each fiscal year
- **Section 302. Allocation Formula**
  - Funding to Tribes based on formula
  - Factors for determination of Need
    - # of 1937 Act Rental units
    - # of 1937 Act Homeownership units not conveyed
    - Need study data
  - Other factors
  - Funding for operation & maintenance for 1937 Act units (based on 1996 AEL)



# *Highlights*

## **Title IV: Compliance, Audits & Reports**

- Sec. 401 Remedies for Noncompliance
  - Terminate IHBG payments
  - Reduce IHBG payments
  - Limit availability of IHBG payments
  - Replace Grant recipient or TDHE
- Sec. 402 Replace of recipient
  - Opportunity for hearing
- Sec. 403 Monitoring of compliance
  - Enforceable agreements
  - Periodic monitoring
  - Performance measures
- Sec. 404 Performance Reports - APR
- Sec. 405 Review and audit by Secretary
  - Monitoring audit or review of Recipient
  - Verify accuracy of APRs
  - On-site visits
  - Public availability of Review reports
- Sec. 406 GAO audits
  - Government Accounting Office shall have full access of Recipients records & files
- Sec. 407 Reports to Congress
  - HUD reports NAHASDA progress annually
- Sec. 408 Public availability of information

# Title VI: Federal Guarantees for Financing Tribal Housing Activities - *Highlights*

- Sec. 601 Authority and Requirements
  - Loan terms and limits
- Sec. 602 Security and repayment
  - Borrower capacity, repayment pledge of U.S. & 95% loan limit
- Sec. 603 Payment of Interest
  - HUD guarantees payment of principal and interest
- Sec. 604 Training and information
  - HUD provide T6 training
- Sec. 605 Limitation on Guarantees
  - FY aggregate limit
- Sec. 606 Effective date
  - October 1, 1997



# HUD Title VI Loan Guarantee Program and Other Leveraged Funding Sources

## HUD Title VI Loan Guarantee Program

- Up to 5X a Tribe's Need component
- 95% of loan guarantee by HUD
- Max. 20 years loan term
- Tribe can pledge repayment from IHBG
- Qualified Title VI Lenders

- Must meet Compliance rules from other funding sources
- The stricter compliance requirement applies when leveraging IHBG with other non-HUD funds.
- Other funding sources may also impact the housing services provisions.
- Pro-rating is an option.

## Other Leveraged Sources of Funding

- HUD Section 184 Mortgage Loan Guarantee Program
- U.S. Treasury IRS - Low Income Housing Tax Credit Program
- USDA Rural Development / State Infrastructure Agencies
- Indian Health Service (Water & Sewer)
- Other/Private: (bond financing, etc.)



# NAHASDA - Other Federal Law Requirements

- **Non-Discrimination Laws:**

- Age Discrimination Act of 1975

- Section 504 of the Rehabilitation Act of 1973 (option for use of - American with Disabilities Act of 1990)


- Indian Civil Rights Act of 1968

- Title VI & VIII of the Civil Rights Act of 1968

- **Uniform Relocation Assistance & Real Property Acquisition Act of 1970** - assures fair compensation for displacement of families



# Other Federal Law Requirements (cont'd)

- **Davis-Bacon Act of 1931** - Prevailing wages (Tribal prevailing wages can preempt Davis-Bacon if adopted by Tribe)
- **National Environmental Policy Act (NEPA)** of 1969
- **Flood Disaster Protection Act of 1973**
- **Lead-based Paint Poisoning Prevention Act of 1973**
- **Section 3 of the Housing and Urban Development Act of 1968** - training & employment opportunities for low-income persons
- **Uniform Administrative Act (2 CFR Part 200)** — Consolidation of all former OMB Guidance for Uniform Administrative requirements, Cost Principles, and Audit Requirements for Federal Awards 

# Q & A Session

