
Tribal Council Roles and Responsibilities

July 29-30, 2020



Overview

Understanding the basics of NAHASDA & other applicable Federal laws

Role of Tribal Council & relationship to Board of Commissioners & Executive Director

Module 1

Module 2

Module 3

Module 4

Key requirements of the IHBG Program (24 CFR 1000) and Uniform Administrative Requirements (2 CFR 200)

Understanding Role of HUD & NAHASDA Compliance, Reporting & Audits

Module 4:

Understanding Role of HUD, NAHASDA Compliance, Reporting and Audits



**NAHASDA
COMPLIANCE**



HUD ROLE



**REPORTS &
AUDITS**

NAHASDA COMPLIANCE - *the Law*

NAHASDA Statute

Title IV - Compliance, Audits and Reports

- **Sec. 401 Remedies for Noncompliance**
- **Sec. 402 Replacement of Recipient**
- **Sec. 403 Monitoring of Compliance**
- **Sec. 404 Performance Reports**
- **Sec. 405 Review and Audit**
- **Sec. 406 GAO Audits**
- **Sec. 407 Reports to Congress**
- **Sec. 408 Public Availability of Information**

NAHASDA COMPLIANCE - *the Regs*

Implementing Regulations @ 24 CFR Part 1000.501-558:

Subpart F - Monitoring, Oversight & Accountability

- HUD Role and Monitoring Responsibilities
- Grant Beneficiary and Grant Recipient Monitoring Responsibilities
- Recipient Performance Objectives
- Annual Performance Report & Public Comment Requirements
- Noncompliance and Substantial Noncompliance
- Remedies for Noncompliance
- Independent Audits

Performance Measurement Tools

- Annual Performance Report (APR)
- Annual Compliance Assessment (Self-Monitoring Assessment)
 - Must include inspection of assisted units
 - To determine compliance with the law and regulations
 - Develop Performance Improvement Plans, if applicable from self-monitoring assessment
- Audit: Required when a Recipient expends \$750,000 or more in federal funds in a fiscal year and must be completed within 9 months of program year end & sent to FAC, HUD & Tribe.



HUD Role: Monitoring Responsibilities

- Monitor Grant Recipient's performance by conducting on-site or off-site (or remote) review of records, reports and audits.
- Conducts reviews to determine if Recipient has carried out eligible activities in timely manner and to identify any areas of concern or noncompliance
- Provide Technical Assistance (TA) & Training to Tribes/TDHEs
- Determine Grant Beneficiary compliance with IHP
- Determine if the Annual Performance Report (APR) is accurate

HUD Monitoring Reports

- Conduct on-site and off-site monitoring review of Tribe/TDHE
- Provide 30-day notice of on-site visit to Tribe/TDHE
- Issue draft HUD report within 30 days of the on-site review
- TDHE/Grant recipient has 30 days to review and comment or can request additional 30 day time extension for comment
- Issues Monitoring Report that determines if Recipient has carried out eligible activities in timely manner and to identify any areas of concern or noncompliance
- Determine compliance with IHP and if APR is accurate

HUD Determinations of Noncompliance and Performance Agreements

Noncompliance:

- Monitoring report stipulates areas of program violations and requires Tribe/TDHE to submit a Corrective Action Plan (CAP) with timeframes
- Additional training or TA may be required for remedial action
- Enter into a Performance Agreement for corrective action
- Failure to address performance problem may elevate to substantial noncompliance

Substantial Noncompliance:

- Letter of Warning issued to Recipient
- Request Recipient to submit progress schedules for compliance actions
- Recommend Recipient to suspend, discontinue or not incur further costs
- Recommend Recipient redirect funds from affected activities to other activities
- Recommend Recipient reimburse IHBG account of improper expenditures
- Recommend TA using IHBG funds

Substantial Noncompliance: Two Step Process

HUD reviews circumstances on case-by-case basis to determine if performance problem is substantial:

1. Must be a noncompliance with NAHASDA
2. Noncompliance must be substantial, if it:
 - a. Has a material effect on the Recipient meeting its IHP goals
 - b. Represents a material pattern or practice of activities constituting willful noncompliance
 - c. Involves the obligation or expenditure of a material amount
 - d. Places the IHBG program at substantial risk of fraud, waste or abuse

Remedies for Substantial Noncompliance

- Terminate IHBG payments to Recipient
- Reduce payments by amount equal to amount not expended in accordance with NAHASDA
- Limit availability of payments to programs, projects or activities not affected by failure to comply
- Replace TDHE for the Recipient (pattern or willful noncompliance)
- Opportunity for administrative hearing procedures per 24 CFR 26 shall be used.
- HUD may refer to US Attorney General for civil action.

GRANT BENEFICIARY & GRANT RECIPIENT Monitoring Responsibilities

GRANT BENEFICIARY (Tribe)

- Monitor IHP programmatic and compliance requirements
- Require TDHE to prepare periodic progress reports and annual compliance assessment
- Review APR & audit reports
- Require corrective action
- If no TDHE, the Tribal Housing department completes the TDHE requirements & prepares APR & ensures Audit is done timely

GRANT RECIPIENT (Tribe or TDHE)

- Implement & monitor IHP activities and performance goals
- Ensure NAHASDA compliance and all federal requirements, as applicable
- Prepare Annual Compliance Assessment (self-monitoring report)
- Prepare the APR
- Undergo Audit and complete timely
- Ensures Tribe receives HUD reports, APR & Audit Reports

Annual Performance Report (APR)

The Grant Recipient must prepare the APR at the end of the performance year and submit to HUD:

- New revised standard form combined with IHP/APR (form HUD-52737)
- Report progress (what got done and what did not & dollars spent) for the year
- Describes why objectives were not met & why funds not & or exceed budget
- Due within 90 days of program year end to HUD
- Make available to public for comment and include a summary of any comments received and include in the APR
- If prepared by the TDHE, submit to Tribe for review and approval
- Submit to HUD and HUD has 60 days to review and determine compliance

ANNUAL COMPLIANCE ASSESSMENT (Areas of Self-Monitoring Assessments)

- IHP/APR Plan & Report
- Self-Monitoring Plan
- Financial Management & Internal Control
- Organization & Administration
- Procurement & Contract Management
- Environmental Compliance
- Eligibility, Admissions & Occupancy
- Relocation Assistance & Real Property Acquisition
- Section 504 (Accessibility)
- Maintenance & Inspection
- Labor Standards
- Lead-based Paint



Helpful Resource: NAHASDA Self-Monitoring Guidebook available at www.hud.gov/codetalk

Audit Requirements

- Effective 12/26/2014, if recipient expends \$750,000 or more in federal funds in a fiscal year, an audit is required (the threshold was \$500,000 previously)
- If recipient expends less than \$750,000, then an audit is not required but records and files should be available for review at anytime by HUD and GAO.
- Audit must be completed within 9 months of end of program year and
- Final Audit report to be sent to the Federal Audit Clearinghouse (FAC), HUD, and the Tribe



Some helpful points to avoid Noncompliance

- Tribe/TDHE should ensure all Policies are consistent with current NAHASDA statutes/regs, other related federal laws & regs, and applicable HUD notices and guidances;
- Tribe/TDHE should have standard operating procedures for such policies to allow for uniform implementation and documentation by housing staff
- Ensure Tribe/TDHE & new staff attend Ethics & Conduct Policy training
- Conduct self-assessment prior to year end in order to monitor adherence to policies and laws. Develop Performance Improve Plans with timeframes for self correction.
- Tribe/Board of Commissioners/TDHE should attend HUD/NAIHC T&TA training as needed
- Maintain close relationship with TDHE in monitoring IHP goals & progress with periodic reports made by Exec. Director

Some examples of Noncompliance

- A development site that did not have a complete environmental review record for 30 lots and TDHE spent IHBG \$ to build 30 single family homes. What are possible ramifications?
- Utility infrastructure was installed and paid by IHBG \$ to serve 50 homes in a development site and actually served 10 non-low income families. What are possible consequences of noncompliance?
- An audit revealed that a TDHE spend IHBG \$ for ineligible activities in amount of \$250,000. What are remedies to resolve improper expenditure?

Q & A Session