

# Executive Director Training - *Module 1*

September 2-3, 2020

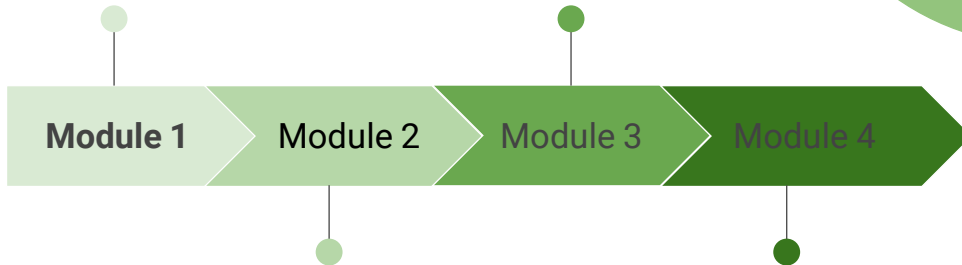


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Understanding the basics of NAHASDA & other applicable Federal laws

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

## Overview



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

Understanding Role of HUD & NAHASDA Compliance, Reporting & Audits

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## 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



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# 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



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## 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. 93-638.

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**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

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## 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



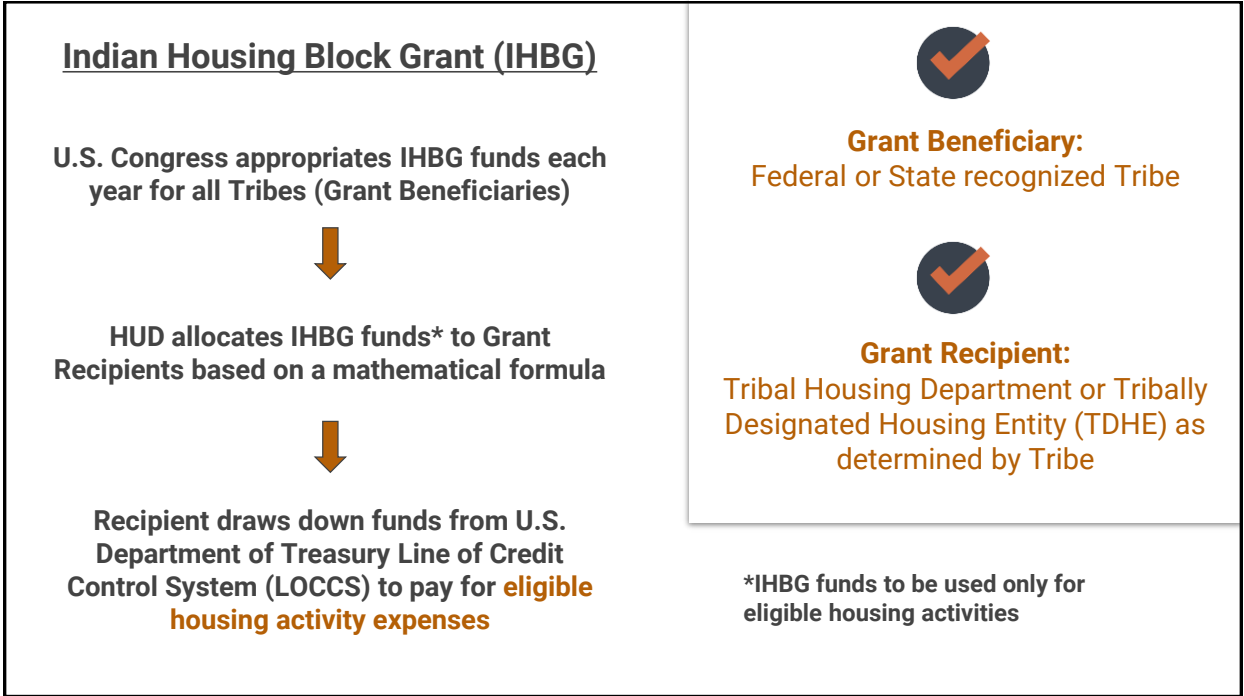
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## TITLE I: Block Grant Requirements

|  |   |
|--|---|
| <b>Sec. 101. Block Grants</b>                                    | → Annual IHBG grant funding to Tribes/TDHEs                                 |
| <b>Sec. 102. Indian Housing Plans</b>                            | → Tribes/TDHEs required to submit to HUD                                    |
| <b>Sec. 103. Review of Plans</b>                                 | → HUD conducts IHP compliance review  |
| <b>Sec. 104. Treatment of Program Income and Labor Standards</b> | → Uses of income derived from use of IHBG funds and use of prevailing wages |
| <b>Sec. 105. Environmental Review</b>                            | → HUD clearance required before any \$ spent                                |
| <b>Sec. 106. Regulations</b>                                     | → Amendments through negotiated rulemaking                                  |
| <b>Sec. 107. Effective Date</b>                                  | → October 1, 1997   |
| <b>Sec. 108. Authorization of Appropriations</b>                 | → 2009-2013   |



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## 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

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## 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

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## 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



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## 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

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## 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 Income Limits to Tribes/TDHEs each year;
- ONAP Program Guidance 2020-01 has the median family income at \$78,500:

|      | 1-Person | 2-Person | 3-Person | 4-Person | 5-Person | 6-Person | 7-Person | 8-Person  |
|------|----------|----------|----------|----------|----------|----------|----------|-----------|
| 80%  | \$43,960 | \$50,240 | \$56,520 | \$62,800 | \$67,824 | \$72,848 | \$77,872 | \$82,896  |
| 100% | \$54,950 | \$62,800 | \$79,650 | \$78,500 | \$84,780 | \$91,060 | \$97,340 | \$103,620 |

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## 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

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## 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.



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## 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
  - Expending IHBG funds for model activities without prior HUD approval

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## 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 nor Indian preference)



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## 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) 

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## Title IV: Compliance, Audits & Reports (Highlights)

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>● <b>Sec. 401 Remedies for Noncompliance</b> <ul style="list-style-type: none"> <li>- Terminate IHBG payments</li> <li>- Reduce IHBG payments</li> <li>- Limit availability of IHBG payments</li> <li>- Replace Grant recipient or TDHE</li> </ul> </li> <li>● <b>Sec. 402 Replace of recipient</b> <ul style="list-style-type: none"> <li>- Opportunity for hearing</li> </ul> </li> <li>● <b>Sec. 403 Monitoring of compliance</b> <ul style="list-style-type: none"> <li>- Enforceable agreements</li> <li>- Periodic monitoring</li> <li>- Performance measures</li> </ul> </li> <li>● <b>Sec. 404 Performance Reports - APR</b></li> </ul> | <ul style="list-style-type: none"> <li>● <b>Sec. 405 Review and audit by Secretary</b> <ul style="list-style-type: none"> <li>- Monitoring audit or review of Recipient</li> <li>- Verify accuracy of APRs</li> <li>- On-site visits</li> <li>- Public availability of Review reports</li> </ul> </li> <li>● <b>Sec. 406 GAO audits</b> <ul style="list-style-type: none"> <li>- Government Accounting Office shall have full access of Recipients records &amp; files</li> </ul> </li> <li>● <b>Sec. 407 Reports to Congress</b> <ul style="list-style-type: none"> <li>- HUD reports NAHASDA progress annually</li> </ul> </li> <li>● <b>Sec. 408 Public availability of information</b></li> </ul> |
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## Title VI: Federal Guarantees for Financing Tribal Housing Activities (Highlights)

**Sec. 601: Authority & Requirements**

Loan terms & limits

**Sec. 602: Security & Payment**

Borrower capacity, repayment pledge of U.S. & 95% loan limit

**Sec. 603: Payment of Interest**

HUD guarantees payment of principal & interest

**Sec. 604: Training & Information**

HUD provides T6 training

**Sec. 605: Limitation on Amount of Guarantees**

FY aggregate limit

**Sec. 606: Effective Date**

October 1st, 1997

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## 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

**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.)

- 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.

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## 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

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## 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

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# Q & A Session