

Executive Director Training - *Module 4*

September 2-3, 2020

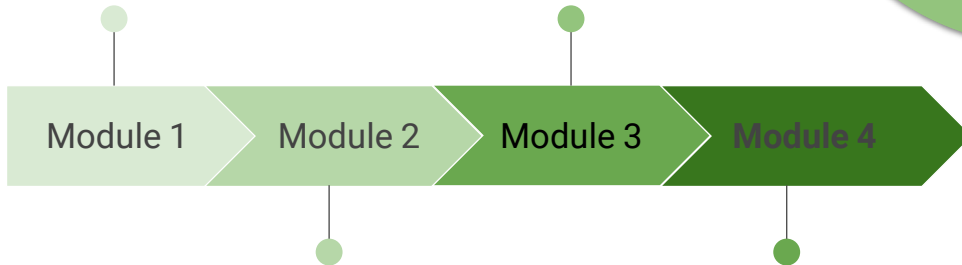


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Overview

Understanding the basics of NAHASDA & other applicable Federal laws

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



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

Understanding NAHASDA Compliance, HUD Role, Reporting & Audits

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Module 4:

Understanding Role of HUD, NAHASDA Compliance, Reporting and Audits



NAHASDA
COMPLIANCE



HUD ROLE



REPORTS &
AUDITS

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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



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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

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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.

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HUD Role: Monitoring Responsibilities

- **Monitors** 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
- **Provides** Technical Assistance (TA) & Training to Tribes/TDHEs
- **Determines** Grant Beneficiary compliance with IHP
- **Determines** if the Annual Performance Report (APR) is accurate



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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
- **Issue** 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

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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 time frames
- ✘ 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

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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**

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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

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Some examples of Noncompliance

- A. 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?**
- B. 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?**
- C. An audit revealed that a TDHE spend IHBG \$ for ineligible activities in amount of \$250,000. **What are remedies to resolve improper expenditure?**

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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**
- **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

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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
- **Ensure** Tribe receives HUD reports, APR, & Audit Reports

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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



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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

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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 must be sent to the Federal Audit Clearinghouse (FAC), HUD, and the Tribe

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Q & A Session

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