






This training is offered by the U.S. Department of Housing and Urban Development (HUD) and the Office of Native American Programs under a cooperative agreement with the National American Indian Housing Council.



This webinar is being recorded.

AGENDA DAY 1

11:00 - 11:15 A.M.	ZOOM SIGN IN & ROOM ENTRY
11:15 - 4:00 P.M.	<p>Welcome, Introductions</p> <p>Understanding the Complex Land Tenure Systems in Indian Country</p> <p>The History of Indian Housing</p> <p>Understanding NAHASDA and its Implementing Regulations and Guidance</p> <p>NAHASDA Key Program Elements</p> <p>NAHASDA Statute</p> <p>Review of The Formula Response form and other funding (Cares Act)</p> <p>NAHASDA REGULATIONS-24 CFR Part 1000</p> <p>2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS</p>
1:00 - 2:00 P.M.	LUNCH BREAK



WELCOME & GOOD MORNING!




Sending up smoke and Prayers

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Cheryl A. Causley and Associates Housing Consulting & Management Services

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 (906) 440-1007
 Skype:cherylacausley61



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Getting to know The Instructor

Greetings my name is Cheryl
 My Anishinaabe name is Red Bird Woman
 I am Loon Clan and I come from Gnoozhekaaning (Place of The Pike), Bay Mills
 Bay Mills is a Reservation located in the Upper Peninsula of Michigan, we are at the top and our waters border Canada
 I served as my Tribes Director of Housing for over 28 years
 I was honored to serve as the Chairwoman of the National American Indian Housing Council (NAIHC) for Four years and on the Board of Directors as Vice-Chair and Secretary for an additional 12 years
 I also served as The Chairwoman of the Great Lakes Indian Housing Association for 7 Years



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Poll: I work as a . .

- A. Executive Director
- B. Board Member
- C. Tribal Council Member
- D. Occupancy or Housing Manager
- E. Housing Counselor
- F. Maintenance/Construction
- G. Finance
- H. Consultant
- I. ONAP Rep
- J. I am not sure what my job is
- K. Other... But very Important!



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Poll: I want to learn about . . .

- A. Everything
- B. Development
- C. Needs Assessment
- D. Eligible Families
- E. My Boss made me
- F. When things are due
- G. Procurement
- H. My Board
- I. I don't know

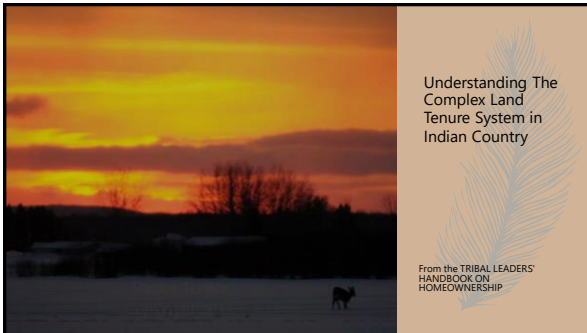


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Appendix Day # 1

- App # 1 NAHASDA STATUTE
- App # 2 Regulations 24 CFR Part 1000
- App # 3 Super Circular 2 CFR Part 200
- App # 4 TRIBAL LEADERS' HANDBOOK ON HOMEOWNERSHIP
- App # 5 Assisting Non-Low Income PIH Notice 2014-02





The General Allotment Act to the Indian Reorganization Act

Until the 1887 General Allotment Act (also known as the Dawes Act after the bill's sponsor, Sen. Henry Dawes), land on Indian reservations was held in common by all members of an Indian nation. Many believed that Indian people should take up agriculture, break away from their tightly knit families, and adopt the "civilized" lifestyle of white settlers. Many also believed that Indian nations occupied too much land, and they were eager to see those lands opened up for settlement, railroads, mining, or forestry.

The objectives of the General Allotment Act were straightforward: Abolish tribal and communal land rights of Indians, stimulate their assimilation into mainstream American society, and transfer vast areas of their land to white settlers. Individual ownership of land and subsistence farming were seen as an essential first step to both civilization and independence. To this end, reservation lands were divided into parcels, typically of 160 acres, and each tribal member was designated as owner of a parcel or "allotment." Individual Indian allotments were to be held in trust for a period of years, often 25 years, after which the land was to be transferred to fee simple ownership. Once in fee status, Indian land could be sold or mortgaged.

The General Allotment Act to the Indian Reorganization Act

Lands that were not allotted were declared "surplus to Indian needs." Tribes were forced to cede those lands to the federal government for a nominal payment, after which the government opened much of them to non-Indian homesteaders, sold it to railroads, or converted it to public lands. The "Oklahoma Land Rush," for example, was the direct result of the Dawes Act.

Between 1888 and 1934, about 90 million acres of land were transferred from Indian reservations to non-Indian and out-of-Indian management, leaving about 56 million acres and resulting in a reduction of about 60 percent of an already diminished land base. Centuries of tribal land ownership and social structure quickly unraveled. Most new allottees were unfamiliar with land ownership. Many received allotments that were too small or unsuitable for profitable farming or became the target of speculators, and they eventually lost their lands. For what remained of tribally held lands, the federal government delegated its authority over the management of the land and its assets to the BIA in the U.S. Department of the Interior.

The General Allotment Act to the Indian Reorganization Act

During the Great Depression, the federal government repudiated the allotment program in the Indian Reorganization Act of 1934. This "New Deal" legislation for American Indians renewed their rights to organize and form their own governments. It also stayed the trust period of allotted lands, but by then, the allotment process had drastically altered the land tenure status and configuration of Indian reservations.

What remained was a checkerboard pattern of Indian and non-Indian lands interspersed throughout the reservation, making it difficult to decipher jurisdiction over a particular plot of land. Moreover, the federal government impeded or made little provision for estate planning of allotted lands. Consequently, with each generation, the number of co-owners of a parcel increases while each heir's interest decreases, resulting in a highly fractionated ownership of many parcels that now makes it nearly impossible to govern or efficiently manage the use of these lands since a majority of owners must agree on it.

Indian Country Defined

- In 1948, Congress defined the term Indian Country to help clarify the territory over which tribes exercised their jurisdiction. Codified at 18 U.S.C. § 1151, Indian country includes:
- "All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
- All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

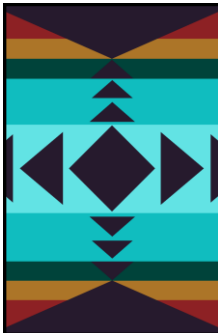
Indian Country Defined

Consistent with this statutory definition, as well as federal case law, lands held in trust for Indian tribes outside formal reservations also are considered Indian Country, such as in Oklahoma. Furthermore, even outside the formal contours of Indian Country, tribes in Alaska, for example, have considerable jurisdiction and authority to manage internal tribal affairs and protect tribal members

Understanding this complex land tenure system in Indian Country is essential to successful economic and community development activity; much depends on the status of the land. Today, about 60 million acres of Indian land are held in trust by the federal government and managed by the BIA on behalf of the Secretary of the Interior for the use and benefit of the 573 federally recognized tribes. Social and cultural connections to the land remain strong for the 5.2 million American Indian and Alaska Native peoples. A high percentage of this rapidly growing population (about 60 percent) lives on or near reservations, and Native Communities are looking for opportunities to unlock the economic potential of their lands.



The History Of Indian Housing |



Trust Responsibility

The United States has a trust responsibility to Native American tribes and to our people. This trust responsibility is based on sacred treaties with Indian tribes, federal statutes, court decisions, executive agreements, and through the course of other transactions and federal policy from the early 1800s. This trust responsibility extends to areas of health care, education, natural resources, public safety, and, of course, housing.

The 1937 Housing Act

After the Great Depression, federal programs were created in an effort to help America's poorest citizens. The United States Housing Act of 1937, one of many post-Depression New Deal programs, promised to provide "safe and sanitary" dwellings for America's poor. The 1937 Housing Act authorized local governments to organize public housing agencies and provided loan funds to these agencies for low-income housing projects. It also permitted the federal government to guarantee these loans and to make yearly payments.



The 1937 Housing Act

In 1949, Congress passed another housing bill that updated the '37 Act and addressed the post-World War II housing shortage. The bill renewed the federal commitment to provide safe and sanitary homes to the poor and expanded it to include a "decent home and suitable living environment for all American families." Regrettably, "all American families" did not include Indian Country families. The housing needs in Indian Country were not included in the '37 Housing Act.



This was probably due to the Federal government termination policy toward Indian tribes in the late 1940s and 1950s. Termination was a process designed to dissolve the Federal government-to-government relationship with tribes and assimilate Indian people into mainstream America. Tribes lacked the experience and influence in government and politics to assert their housing rights under existing federal and state law during this time period. Most tribes also lacked the financial capability to finance their own housing programs.



The Kennedy Vow

1960- John F. Kennedy visited The Pine Ridge Reservation, during his campaign for President of the of the United States. After viewing housing conditions, He vowed to bring Federal assistance to Native Americans if elected.

1961- After being elected, President Kennedy convened his Cabinet and asked how they could provide Federal assistance to Tribes.



Indian Tribes Eligibility


It was not until 1961 that Indian tribes became eligible for housing assistance under federal programs— assistance that the rest of the United States had accessed for 25 years. Still, in 1961, two major events forever changed Indian housing.

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Indian Housing Authorities

First, the Public Housing Administration, HUD's predecessor agency, recognized tribal governments as local governing bodies that could establish Indian Housing Authorities under tribal law by approving a tribal ordinance. This meant that Indians on reservation and trust lands became formally "eligible" through the IHAs for publicly assisted housing programs which the rest of the country had been accessing for the last 25 years.

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First Indian Housing Authority

With this ruling the first Indian Housing Authority was established when the Oglala Sioux tribe on the Pine Ridge reservation in South Dakota created an IHA under tribal law in August 1961.

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States Can Establish IHAs

Second, the Public Housing Administration also determined that states could establish IHAs in cases where a tribal government was not federally recognized but exercised the necessary administrative powers. States were required to pass a law that authorized the establishment of an IHA. This opened the programs to non-reservation federally recognized tribes, Alaska native villages, and a limited number of state-recognized tribes.



Pine Ridge Demonstration Project

By the end of 1962, the Pine Ridge demonstration project, helped convince the PHA legal counsel that more than low rent projects were needed, since 85 percent of Indian families needing homes earned \$2,000 or less per year.



Self-Help Programs

PHA's legal counsel had concluded that the '37 Housing Act contained the legal authority to create self-help programs. The self-help, or mutual help concept, was based on the idea that the homebuyer would contribute one of the following: land; materials; or labor ("sweat equity") toward the purchase of the home.

These contributions would give more low-income Indian families the chance to own single family homes, often at lower payments than the low rent program. Also, it was believed, pride of ownership would be inspired, and there would be more incentive to maintain the home and property.

The First Mutual Help Program

The PHA announced the first mutual help housing program in December 1962. The first mutual help program was inaugurated in Indian Country by the San Carlos Apache IHA in 1964. Indian homes were developed under this program (now known as "Old Mutual Help") until 1976.

INDIAN HOUSING ENCOUNTERS PROBLEMS

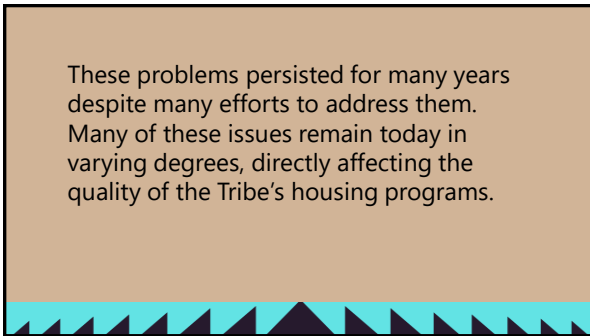
Problems which arose from the onset of these first initiatives still plague tribal housing programs and their federal funding agencies today. The PHA modeled both the low-rent and mutual-help delivery systems after its urban multi-family prototype. Unfortunately, this approach had a long list of unforeseen consequences for Indian housing.

Some Issues Include:

1. Indian preference for single family as opposed to multi-family dwellings
2. Trust status of Indian lands
3. Cultural considerations
4. IHA lack of training and professional expertise
5. Rural isolation of most reservations
6. Banks's reluctance to lend money on trust lands
7. Inefficient Federal inter-agency coordination
8. The high cost and slowness of the development process



These problems persisted for many years despite many efforts to address them. Many of these issues remain today in varying degrees, directly affecting the quality of the Tribe's housing programs.



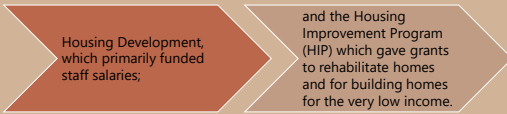
THE FEDERAL GOVERNMENT'S RESPONSE TO THE PROBLEMS

It soon became apparent that PHA and the Bureau of Indian Affairs had to work closely together in order to address the problems. In 1963, PHA and the BIA signed the first coordination agreement for mutual help projects. The agreement identified each agency's responsibilities in the mutual help development process. The BIA was already developing homes using construction supervisors so it was logical that it should provide the construction superintendent for mutual help projects. Consequently, the Bureau was designated the lead oversight agency for all development activities.

THE FEDERAL GOVERNMENT'S RESPONSE TO THE PROBLEMS

The PHA's role was to give technical assistance and facilitate projects. In 1965, a second coordination agreement was signed between the two agencies, this time to cover PHA low-rent projects. Both agencies' responsibilities remained the same under this agreement. Problems arose, however, as both agencies were severely criticized for vague and overlapping roles requiring a complexity of bureaucratic red tape that caused unnecessary and costly construction delays. Furthermore, it became apparent that the BIA's responsibilities were more than it could handle. In response, two major changes occurred in 1965.

First, the BIA established the Division of Housing Assistance with two programs:



Department of Housing and Urban Development Act

Also, in 1965, Congress passed the Department of Housing and Urban Development Act, creating HUD as a new federal, umbrella agency.

*80 Indian Housing Authorities are now formed by this date!

Six former federal agencies were merged under HUD

1. Public Housing Administration (PHA)
2. Federal Housing Administration (FHA)
3. Housing and Home Finance
4. Community Facilities Administration
5. Urban Renewal Administration, and
6. Federal National Mortgage Administration

Housing and Urban Development Act of 1968

The first formal reference to HUD's obligation to serve low-income Indian families was in the Housing and Urban Development Act of 1968, which included the modernization program, the Comprehensive Improvement Assistance Program (CIAP). CIAP was designed to fund major rehabilitation and repairs to low-income rental units. It was not until 1979, however, that Indian Housing Authorities became eligible for CIAP.

Logistical Challenges

The promise of the Indian housing programs established in the 1960s was under increasing pressure as the 1970s began. Federal programs administered by HUD, more fitted to an urban environment, made the development of effective housing programs even more difficult in Indian Country. There was considerable national interest in satisfying the recognized housing need; however, the logistical challenges of developing housing in Indian Country remained.

Developing Housing in Indian Country

Overwhelming construction delays were compounded by new projects from multiple programs and funding agencies going into production without adequate delivery system controls and virtually untrained local IHA staff. HUD issued various rules and regulations that continued a long history of federally established guidelines intended to better monitor and measure the effectiveness of Indian Housing programs. The guidelines and HUD directed housing programs did not work. HUD and the BIA quickly realized that the goal of eliminating substandard Indian housing conditions would not be completed by their self-imposed goal of 1974.



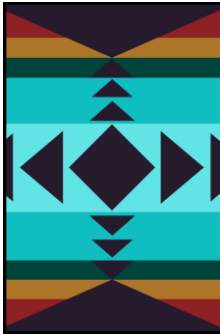
Government Accounting Office (GAO) Issued a Congressional Report on Indian Housing

In 1971, the Government Accounting Office (GAO) issued a congressional report on Indian housing that recommended a National Indian Housing Policy to stimulate agency coordination and accelerate the completion of projects.





1973
The First Alaska Housing Authority is established



HUD published the Interim Indian Housing Handbook (7440.1).

In March 1976, HUD published the Interim Indian Housing Handbook (7440.1). The handbook contained the regulations, their guidelines and procedures. The new regulations made it easier for centralized oversight of Indian programs and clarified federal agency roles. They also created a measuring device for monitoring the effectiveness of IHA management particularly in rent and homebuyer payment collections. Tenant Accounts Receivable or "TARs" became an industry buzzword as collection became directly tied to IHA management subsidy funds. In the regulations the mutual help program became "old" mutual help (OMH), superseded by the "new" mutual help program. The New Mutual Help (NMH) program had, among other things, fixed unit prices and fixed amortization schedules.

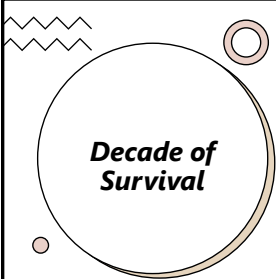
Developing Housing in Indian Country

In 1978 the General Accountability Office issued a report on Indian housing that found that 86,500 Indian families lived in substandard housing or needed new housing as compared to 63,000 documented in its 1971 publication. Housing construction starts had dropped dramatically and many of the long-standing problems still had not been addressed. Obviously, the federally-directed program delivery system had failed.



Lack Of Training

The failure of top-down administration was made even worse because local Indian Housing Authorities received no training in housing development and administration. NAIHC, established in 1974, reasoned with HUD and Congress that the goal of eliminating substandard housing conditions would not occur with Indian housing programs that were federally directed, and that training and other capacity building efforts should be tribal-specific. It would be 22 years until tribally directed housing would be authorized by law.



Decade of Survival


- 1980s was truly a decade of survival for tribal housing funding. Indian housing conditions worsened and the Presidential Budget Requests during this time proposed no funding for Indian housing programs. Throughout the decade, Congress allocated only limited resources that would create an average of 2,300 new units during the 80s, about half of the funding for previous years.

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TYPES OF IHA HOUSING PROGRAMS DEVELOPED AND MANAGED UNDER THE 1937 HOUSING ACT

HUD LOW-INCOME HOUSING PROGRAMS
Low-Income Rental

In the rental program low-income families typically are month-to-month lessees. Most rental programs include two or three primary types of structures such as single-family detached units and duplexes or triplexes. Elderly and handicapped projects may include congregate housing with common dining and other facilities. The homes are rented to low-income families and HUD subsidized their rental payments with payments to the IHA in the form of an "operating subsidy". HUD provided this assistance over a 40-year period. At the end of 40 years, the project's development costs were retired through provisions of the Annual Contributions Contract (the financing contract).




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HUD LOW-INCOME HOUSING PROGRAMS
Low-Income Rental

Tenants paid according to their income which means that if a tenant's income decreased, their rent also decreased (and there was no minimum payment required). The rent also increased if the tenant's income increased. The IHA was responsible for maintenance and repairs for damage not caused by tenants.



TYPES OF IHA HOUSING PROGRAMS DEVELOPED AND MANAGED UNDER THE 1937 HOUSING ACT





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Mutual Help Homeownership

This program was for low-income Indian families to own their homes rather than to rent. Before construction began the Mutual Help, homebuyer entered into a Mutual Help and Occupancy Agreement (MHOA) with the IHA. Among the terms and conditions, the family agreed to contribute at least \$1500 to the project before moving in.



The Mutual Help contribution included at least one of the following:

-  (a) cash,
-  (b) labor,
-  (c) land where the unit will be located, and/or
-  (d) appropriate materials and equipment, such as appliances.

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The MHOA (Mutual Help and Occupancy Agreement)

The MHOA specifies the type and amount of the contribution. Credit was given to the homebuyer for the contribution when the initial purchase price of the home was determined. HUD gave financial assistance to the IHA for the cost of the project. The government helps the homebuyers pay off the purchase price annually through the ACC. Mutual Help homebuyers were also responsible for paying their own utilities and for maintaining the home. In addition, they paid the IHA a monthly administrative charge. As income permitted, they also made additional monthly payments toward the purchase of the home.



The MHOA (Mutual Help and Occupancy Agreement)

Homes in the mutual help homeownership program that were built between 1962 and 1976 are called "Old Mutual Help"; homes built after 1976 are called "New Mutual Help". The Old Mutual Help program is very similar to the New Mutual Help program. The main difference is in the accounting process and the Mutual Help and Occupancy Agreement.



Turnkey III

This was a homebuyer program that was used prior to March 9, 1976 to provide homes for low-income families who had the potential to be homebuyers. In Turnkey III projects participants did not play a role in the construction of the house. The participant purchased a completed home under terms similar to those in the Mutual Help Homeownership Program.



Section 8

The Section 8 Leased Housing Assistance Payments Program gave assistance to low-income families who lived in or preferred to find housing in the private housing market. HUD provided a subsidy to help meet the costs for operating the program and the IHA paid that portion of the rent that the tenant is unable to pay because their income was too low. Section 8 was and still is widely used in public housing but was only minimally used (some 3,602 units nationally) by tribes before the passing of the Native American Indian Housing Assistance Act (NAHASDA) of 1996.



HUD reported in 1981 that over 30% of all IHAs were "troubled" or unable to meet financial obligations.

By the end of 1980, mutual help homes comprised about 61% of IHA housing. HUD reported in 1981 that over 30% of all IHAs were "troubled" or unable to meet financial obligations. The following reasons were given:

- IHA failure to collect TARs
- Over-budget expenditures
- Lack of cooperation between the IHAs and tribes/states/regional corporations
- Lack of good management resources
- Tribal government instability, and
- Poor tribal economies

Indian Housing Act of 1988

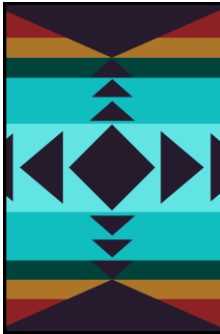
In 1984, HUD established an Office of Indian Housing that separated Indian housing programs from public housing programs for the first time. Indian housing was legislatively separated from public housing when Congress passed the Indian Housing Act of 1988.

Amerind Risk Management was formed 1986

AMERIND RISK MANAGEMENT CORPORATION for Indian Housing Authorities, and other Non-Indian Risk Pools for Public Housing Authorities are formed when HUD no longer is able to obtain private insurance for Housing Authorities




AMERIND Risk MANAGEMENT CORPORATION



Office of Native American Programs ("ONAP")


The Act created a separate title II of the U.S. Housing Act of 1937 that was directly and specifically applicable to Indian Housing.

HUD's Office of Native American Programs ("ONAP"), as it currently operates, was created by Section 902 of the Housing and Community Development Act of 1992.



CREATION OF THE OFFICE OF NATIVE AMERICAN PROGRAMS (ONAP) OFFICE


On October 1, 1993, the HUD Office of Indian Housing (OIH) at HUD Headquarters in Washington, DC, and the Regional Offices of Indian Programs (OIPs) became the Office of Native American Programs (ONAP). For the first time, all Regional ONAP field offices came under the direction of the central ONAP office of HUD. These changes improved uniformity between regions and provided IHAs with direct assistance from the HUD central office in addition to assistance provided through the regional ONAP offices.



The Creation of NAHASDA

The 1990s started the process that culminated in passage of the Native American Housing Assistance and Self-Determination Act ("NAHASDA") of 1996.


An extraordinary amount of thought and work preceded the passage of NAHASDA. Tribes, IHAs, and NAIHC were closely involved with representatives from Congressional and Administration staff to craft legislation that would address the long-neglected housing needs in tribal communities.



"The Commission"

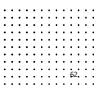
Much of the work that went into crafting NAHASDA was the result of the creation of a commission to evaluate the barriers to housing development in tribal communities. The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing ("the Commission") was established by Congress in 1990 to evaluate the factors that were impeding the development of safe and affordable housing for Native Americans.

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The Commission also considered alternative strategies for the development, management, and modernization of housing for Native Americans. The Commission's report, "Building the Future: A Blueprint for change," was submitted to Congress in 1992.

"Building the Future: A Blueprint for change,"





NAHASDA Was Signed into Law

NAHASDA was signed into law on October 26, 1996. While not perfect, this legislation represented a vast improvement over previous programs for Native Americans. NAHASDA was intended to enhance tribal capacity to address the substandard housing and infrastructure conditions so prevalent in our tribal communities. NAHASDA encouraged greater self-management of housing programs and emphasized the need to include private sector financing to complement scarce Indian Housing Block Grant ("IHBG") dollars.

The Annual IHBG was Formula Driven

The annual IHBG was formula driven and awarded to eligible Indian tribes, or their designated tribal housing entity—what HUD calls (“TDHES”) for a range of affordable housing activities that primarily benefit low-income Indian families living on Indian reservations or in other Indian areas. The amount of each grant was based on a formula that considers need and the amount of existing housing stock. We know the formula was not perfect, however, most would agree it is a great improvement over the previous funding methods based on competitive housing grants more suited to public housing.



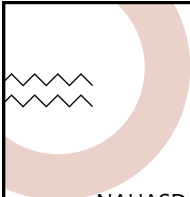
NAHASDA Eligible Activities



Some NAHASDA eligible activities would not have been eligible, under the 1937 Housing Act, including down-payment and other mortgage assistance programs, transitional housing, the construction of domestic abuse shelters, and creation of revolving loan funds. NAHASDA is not perfect, funding has not kept pace with housing needs in our tribal communities, and we have been continuously underfunded.

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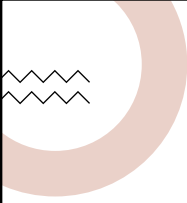
NAHASDA Recognizes the Right of Tribal Self-Governance



Many of the recommendations from the Commission's "Building the Future: A Blueprint for Change" were taken into account when NAHASDA was in the development process. NAHASDA recognizes the right of tribal self-governance and the unique relationship between the Federal Government and the governments of Indian tribes that have been established by long-standing treaties, court decisions, statutes, Executive Orders, and the United States Constitution.

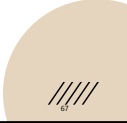


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NAHASDA changed the way that HUD provides housing assistance to Native Americans in other ways too. Its implementation in 1998 eliminated a number of separate assistance programs and replaced them with the IHBG program and Title VI Tribal Housing Loan Guarantee program. The regulations governing the IHBG, and Title VI programs were established in a final rule dated March 12, 1998

The Final Rule




Repealed Programs

The following programs were replaced by NAHASDA:	Traditional Indian Housing Development Program	Comprehensive Grant and Comprehensive Improvement Modernization Programs	Indian HOME
Youthbuild;	Youthsports; and	Homeless programs, including ESG (Emergency Shelter Grants)	

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Self-Determination is the Hallmark of NAHASDA

NAHASDA is a definite departure from the top-down process of previous Indian housing rules and regulations. NAHASDA recognizes the right of Indian self-determination and tribal self-governance by making assistance available directly to the Indian tribes or TDHE, under authorities similar to those accorded Indian tribes in Public Law 93-638. Self-Determination was, and continues to be, the hallmark of NAHASDA



The Importance of Funding for our Programs

NAIHC Staff & Board members, tribal leaders, tribal housing professionals and other allies strive to continually educate Congress, especially those on the House and Senate Appropriations Committees, to the importance of funding for our programs and the destructive impact any reduction in funding would have in tribal communities.

Without sufficient funding, proper training and technical assistance, progress regarding tribal housing will not only cease; but years of hard work will be reversed, as many tribes will lack the funds to maintain and operate existing housing units, much less provide new ones.

Building, Strong, Vibrant Communities

We must work together to ensure that Indian housing programs are funded sufficiently to address the immense need we know still exists in our communities. Too many of our families live in over-crowded and substandard homes. This is unacceptable. It is through our shared passion to provide safe and healthy homes that we strengthen our native people and our communities. We need to support each other, as together we continue the important work of building, not just homes but strong, vibrant communities and nations for generations to come.

Break Time

NO ZOOM FATIGUE ALLOWED!



Understanding NAHASDA and Its Implementing Regulations & Guidance

What Is NAHASDA?
Native American Housing Assistance & Self-Determination Act of 1996

CONGRESSIONAL FINDINGS] SET FORTH IN SECTION 2 OF NAHASDA (GUIDING PRINCIPLES) 1000.2

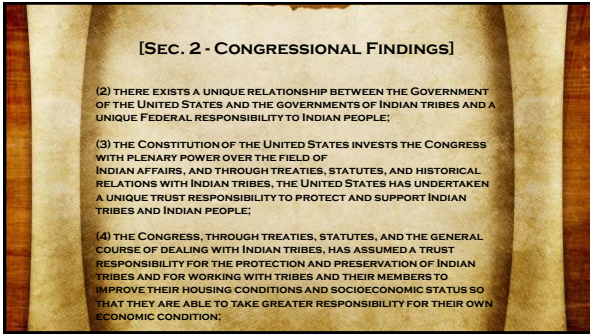
THE CONGRESS FINDS THAT-

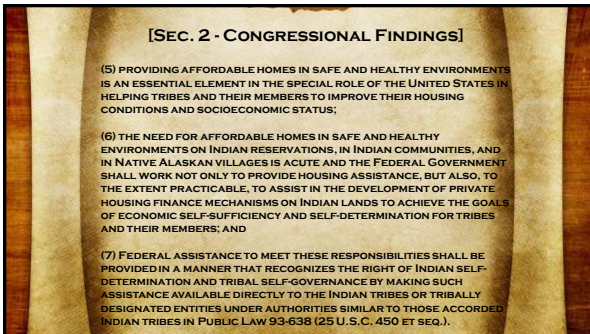
(1) THE FEDERAL GOVERNMENT HAS A RESPONSIBILITY TO PROMOTE THE GENERAL WELFARE OF THE NATION-

(A) BY USING FEDERAL RESOURCES TO AID FAMILIES AND INDIVIDUALS SEEKING AFFORDABLE HOMES IN SAFE AND HEALTHY ENVIRONMENTS AND, IN PARTICULAR, ASSISTING RESPONSIBLE, DESERVING CITIZENS WHO CANNOT PROVIDE FULLY FOR THEMSELVES BECAUSE OF TEMPORARY CIRCUMSTANCES OR FACTORS BEYOND THEIR CONTROL;

(B) BY WORKING TO ENSURE A THRIVING NATIONAL ECONOMY AND A STRONG PRIVATE HOUSING MARKET; AND


(C) BY DEVELOPING EFFECTIVE PARTNERSHIPS AMONG THE FEDERAL GOVERNMENT, STATE, TRIBAL, AND LOCAL GOVERNMENTS, AND PRIVATE ENTITIES THAT ALLOW GOVERNMENT TO ACCEPT RESPONSIBILITY FOR FOSTERING THE DEVELOPMENT OF A HEALTHY MARKETPLACE AND ALLOW FAMILIES TO PROSPER WITHOUT GOVERNMENT INVOLVEMENT IN THEIR DAY-TO-DAY ACTIVITIES;





NAHASDA Key Points

- Separates Indian Housing from Public Housing
- Provides a Block Grant to Tribes or TDHE
- Defines TDHE as the existing (IHA) Indian Housing Authority for the Tribe
- Tribes can also establish other entities through Self-Governance powers or by State Laws
- Permits the Tribe to set a maximum rent that does not exceed 30% of the monthly adjusted income
- Encourages private-sector investment in Indian Country through HUD Loan Guarantees
- Extended the Lease Term on trust or restricted lands



NAHASDA Key Points

Authorizes a federal guarantee program:

- Tribe can use, with the secretary's approval, a federal guarantee, to undertake affordable housing activities, that does not exceed 5 times the amount of the Tribe's Block Grant (Title Six)
- Re-authorizes the Indian Housing Loan Guarantee Program (184 Program)
- Extends Leasehold Interest in trust or restricted land to 50 years
- Conflict-of-Interest provisions
- Expands affordable housing opportunities
- Specifically addresses families who are above low-income
- HUD monitors for non-compliance and will take steps when compliance does not occur

NAHASDA Key Points

Block Grant used to operate and maintain current housing units

Block Grant used for development, rehabilitation, acquisitions, housing support services, such as counseling or loan processing, and to initiate model housing programs

Distributes Block Grant through an Allocation Formula developed under Negotiated Rule-Making

What is: Negotiated Rule-Making

In order to interpret and implement NAHASDA, Regulations were developed using Negotiated Rule-Making (Negotiated Rule-Making Committee of 58 members, which included Tribal Leaders from across the country, as well as HUD staff)

The process of developing the Regulations was mandated by Section 106(b) of the Statute

This unusual way of writing Regulations is significant because it was the first step in implementing the "Self-Determination" intention of NAHASDA

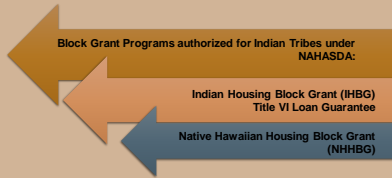
The IHBG Regulations:
 Replaced the U.S. Housing Act of 1937 (1937 Act)
 Set forth the necessary policies and procedures for the administration

Areas of Change

- Guiding Principals Investments
- Definitions Qualifying as Affordable Housing
- Program Income Non-Low-Income Families
- Administrative & Planning Cooperation Agreements
- IHP & APR Preference
- HUD Monitoring

NAHASDA Overview

Reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development (HUD) by eliminating several separate programs of assistance and replacing them with a Block Grant Programs.



NAHASDA Overview

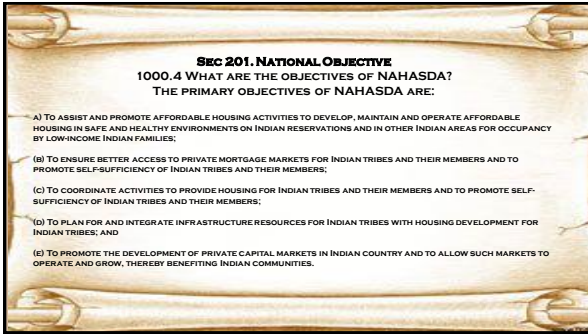
• Regulations are published at 24 CFR Part 1000

Indian Housing Block Grant (IHBG)
- a formula-based grant program

Title VI Loan Guarantee
- provides financing guarantees to Indian Tribes for private market loans to develop affordable housing

Amended in 2000 to add Title VIII-Housing Assistance for Native Hawaiians. **Native Hawaiian Housing Block Grant (NHHBG)**

• Regulations are published at 24 CFR Part 1006



NAHASDA: Eligible Affordable Housing Activities

Areas of Eligible Affordable Housing Activities are:

- 1) Indian Housing Assistance
- 2) Development
- 3) Housing Services
- 4) Housing Management Services
- 5) Crime Prevention & Safety Activities
- 6) Model Activities

NAHASDA: Eligible Affordable Housing Activities

1) Indian Housing Assistance:

- The provision of modernization, or operating assistance, for housing previously developed or operated in accordance with a contract between the Secretary of HUD and an IHA or TDHE.



NAHASDA: Eligible Affordable Housing Activities

2) **Development:**
 The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include:

- Real property acquisition
- Site improvement
- Development of utilities & utility services
- Conversion
- Demolition
- Financing
- Administration & Planning
- Other related activities



NAHASDA: Eligible Affordable Housing Activities



3) **Housing Services:**

- Housing Counseling in connection with rental or homeownership assistance
- Establishment & Support of resident organizations & resident management corporations
- Energy Auditing
- Activities related to Self-Sufficiency & other services
- Services related to assisting owners, tenants, contractors, & other entities, participating or seeking to participate in other housing assisted activities

NAHASDA: Eligible Affordable Housing Activities

4) **Housing Management Services:**

- Preparation of work specifications
- Loan processing
- Inspections
- Tenant selection
- Management of tenant-based rental assistance
- Management of affordable housing projects

NAHASDA: Eligible Affordable Housing Activities

5) Crime Prevention & Safety Activities:

• safety, security & law enforcement measures including activities appropriate to protect residents of affordable housing from crime.

5) Model Activities:

• Housing activities under model programs that are designed to carry out the purposes of NAHASDA

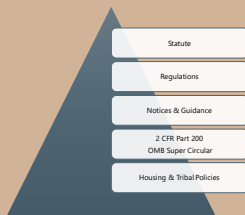



INDIAN HOUSING BLOCK GRANT (IHBG)

1. Congress appropriates funds each year for **(Grant Beneficiaries)** = FEDERAL OR STATE RECOGNIZED TRIBES
2. HUD Allocates IHBG funds to **(Grant Recipients)**– TRIBAL DESIGNATED HOUSING ENTITY (TDHE) or TRIBAL HOUSING DEPARTMENT as determined by Tribe
3. Grant Recipients draw down funds from the U.S. Department of Treasury utilizing **(LOCCS)**= Line of Credit Control System



PYRAMID OF REQUIREMENTS






Nahasda Statute
Appendix # 1



NOTICES



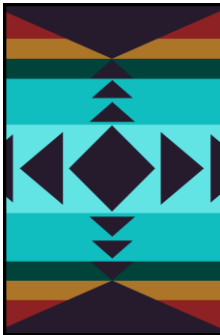
Program
GUIDANCE

What is the difference between the NAHASDA statute, the regulations and HUD guidance?

Statutes are Federal laws written by Congress.

Statutes can only be changed by an Act of Congress.

The statute cannot be waived since it is a law instituted by Congress.



What is the difference between the NAHASDA statute, the regulations and HUD guidance?

Regulations are written to implement statutes.

Regulations can be waived by a Departmental Secretary (the Secretary of HUD) so long as this waiver is not in conflict with the statute.

See IHBG regulation section 1000.8 for more information.

What is the difference between the NAHASDA statute, the regulations and HUD guidance?

Regulations are usually administered by the Federal agency that is designated in the statute to oversee the new program.

In the case of NAHASDA, it is the U.S. Department of Housing and Urban Development (HUD) and more specifically HUD's Office of Native American Programs (ONAP) that is the designated Federal agency.

What is the difference between the NAHASDA statute, the regulations and HUD guidance?

Guidance bulletins and notices are issued by HUD periodically and are available electronically

See ONAP Program Guidance No. 2010-08 for more information. TOPIC: Electronic Posting of Guidance Documents

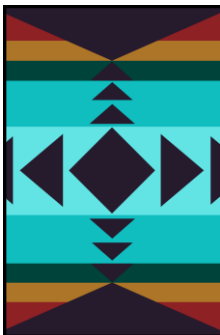
What is the difference between the NAHASDA statute, the regulations and HUD guidance?



HUD notices are official transmittals to recipients, typically regarding policy issues or procedural topics.



Typically, information in HUD notices may be waived by the Assistant Secretary for Native American Programs, unless it relates to the regulations or statute.




What is the difference between the NAHASDA statute, the regulations and HUD guidance?

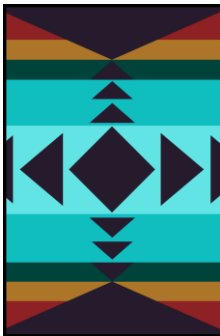
Guidance bulletins assist tribes to implement the IHBG program or provide tools for program management.

They also help clarify various technical topics. To the extent that guidance bulletins are advisory and designed to help tribes implement their programs, no waiver is needed.

What is the difference between the NAHASDA statute, the regulations and HUD guidance?

When guidance bulletins further explain the regulations or statute, the waiver provisions regarding these documents holds true.







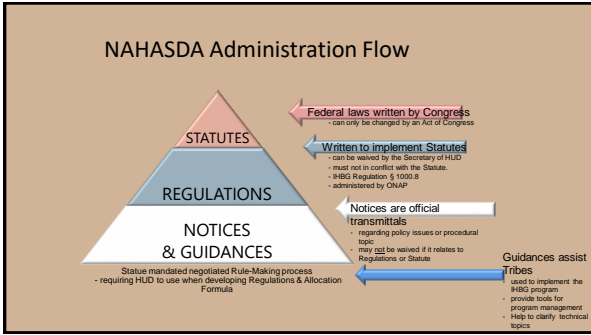
What is the difference between the NAHASDA statute, the regulations and HUD guidance?

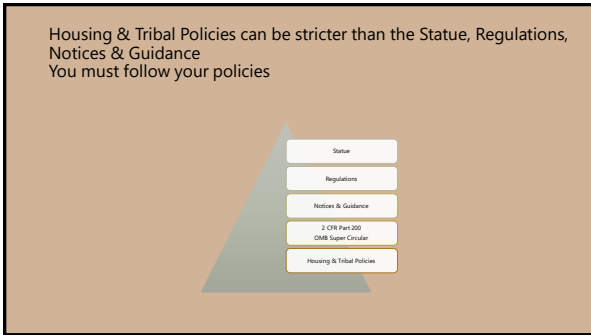
The statute, regulations, notices and guidance bulletins work together to provide the full picture of each grant recipient's opportunities and responsibilities.

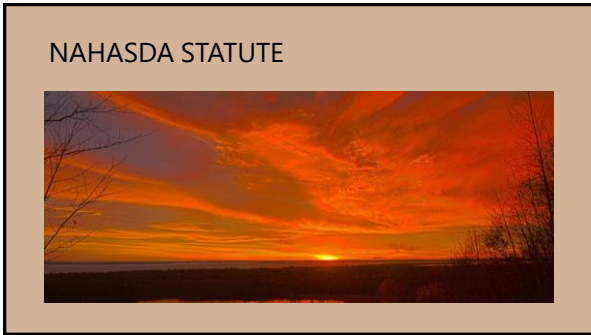
What is the difference between the NAHASDA statute, the regulations and HUD guidance?

 The negotiated rulemaking committee charged with drafting the regulations decided not to restate information that was already stated in the statute, unless the statute was not clear.

 Thus, one must be able to refer to both the statute and the regulations simultaneously to have a complete understanding of NAHASDA.







Overview of the 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



Native American Housing Assistance and Self-Determination Act of 1996
(P.L. 104-330 as amended by P.L. 105-276, P.L. 106-568, P.L. 107-292, and P.L. 108-393)

The Statute is color coded by Amendments

- 1998 Amendments (P.L. 105-276) are in RED
- 2000 Amendments (P.L. 106-568) are in BLUE (HBC) and (P.L. 106-569) in NAVY (Title VIII for Native Hawaiians)
- 2002 Amendments (P.L. 107-292) are in GREEN
- 2004 Amendment (P.L. 108-393) is in PURPLE
- 2005 Amendment (P.L. 109-136) is in PINK, 2005 Amendment (P.L. 109-58) is in BROWN
- 2008 Amendment (P.L. 110-411) is in ORANGE
- 2010 Amendment (P.L. 111-209) is in LIGHT BLUE

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

(a) SHORT TITLE- This Act may be cited as the 'Native American Housing Assistance and Self-Determination Act of 1996'.

(b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Congressional findings.

Sec. 3. Administration through Office of Native American Programs.

Sec. 4. Definitions.

TITLE I--BLOCK GRANTS AND GRANT REQUIREMENTS

Sec. 101. Block grants *Annual IHBG funding to Tribes and TDHE's

Sec. 102. Indian housing plans *Tribes and TDHE's are required to submit to HUD annually

Sec. 103. Review of plans *HUD will review IHP for compliance

Sec. 104. Treatment of program income and labor standards *Income from use of IHBG funds & Prevailing wage rates (DB)

Sec. 105. Environmental review *Requires HUD clearance before any funds are spent

Sec. 106. Regulations *Amendments to act through Negotiated Rulemaking

Sec. 107. Effective date *October 1, 1997

Sec. 108. Authorization of appropriations

TITLE I-Sec. 102 and 103 Indian Housing Plan (IHP)

Sec. 102. Indian Housing plans *Tribes and TDHE's are required to submit to HUD annually

Sec. 103. Review of plans *HUD will review IHP for compliance

- Cover Page
- Housing Needs
- Program Descriptions
- MAINTAINING 1937 ACT UNITS; DEMOLITION AND DISPOSITION
- Budgets
- Other Submission Items
- Indian Housing Plan Certificate of Compliance
- IHP Tribal Certification
- Tribal wage Rate Certification
- Self-Monitoring
- Inspections
- Audits
- Public Availability
- Jobs supported by NAHASDA
- IHP Waiver Request
- IHP Amendments

TITLE I- Sec. 105 Environmental Reviews

- Must comply with National Environmental Policy Act (NEPA) of 1969
- 24 CFR Part 50: Tribe can request HUD to complete the environmental responsibilities (delay)
- 24 CFR Part 58: Tribe can assume environmental responsibilities and certify compliance
- Part 58: Tribe determines responsible entity and certifying officer
- Environmental determinations must be completed before **ANY MONEY** is spent.
- Tribe must receive Environmental Release of funds from HUD

Environmental Assessments and Reviews



- Who does them?
- Importance of timely completion
- HUD Forms to Request Release of Funds
- Consequences

Environmental Requirements 24 CFR 1000.18

- ❖ HUD may complete the reviews as Certifying Officer under Part 50
- ❖ If tribe chooses to be responsible for environmental reviews, the Certifying Officer follows Part 58

Environmental Review Categories

Exempt	Exclusions (not subject to 58.5)	Categorical Exclusions (subject to 58.5)	Environmental Assessments
Administrative	Rental assistance	Utility upgrades	All projects not exempt or categorically excluded
Engineering	Operating cost	Accessibility modifications	
Feasibility study	Down payment assistance	Rehab 1-4-unit structures (with restrictions)	
		Rehab larger structures (with restrictions)	

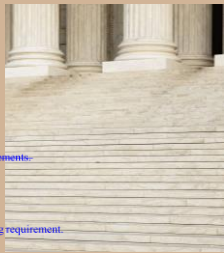
Federal Environmental Requirements

- ❖ No HUD funds can be expended or obligated without the appropriate level of environmental review
- ❖ National Environmental Policy Act (NEPA)
- ❖ Proper documentation must be filed



TITLE II--AFFORDABLE HOUSING ACTIVITIES

- Subtitle A--General Block Grant Program
- 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. Certification of compliance with subsidy-layering requirements.
- Sec. 206. Treatment of funds.
- Sec. 207. Lease requirements and tenant selection.
- Sec. 208. Availability of records.
- Sec. 209. Repayment-209. Noncompliance with affordable housing requirement.
- Sec. 210. Continued use of amounts for affordable housing



What is "Median" Income?

MEDIAN INCOME-
 ... means, with respect to an area that is an Indian area, the greater of--
 (A) the median income for the Indian area, which the Secretary shall determine; OR
 (B) the median income for the United States.

Families eligible for services under NAHASDA include low-income Indian families on Indian Reservations and other Indian areas. The definition of Indian area is where the TDHE or TDHE is authorized to provide services under NAHASDA. Some tribes limit services to low-income Indian families within their reservations or jurisdictions, others provide services to qualifying families outside their jurisdictions. For purposes of NAHASDA, low-income has been determined to be 80% of the median income for the area in which the housing entity provides services or the United States (whichever is higher). For example, if the median income for Big House County is \$40,000 (80% of which is \$32,000) and the United States median income is \$48,000 (80% of which is \$48,000), the tribe would use the United States median income and Indian families could make up to \$48,000 and be considered eligible for the programs paid for with IHBC funds.

2020 MFI	78,500							
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
80%	\$ 43,960	\$ 50,240	\$ 56,520	\$ 62,800	\$ 67,824	\$ 72,848	\$ 77,872	\$ 82,896
100%	\$ 54,950	\$ 62,800	\$ 70,650	\$ 78,500	\$ 84,780	\$ 91,060	\$ 97,340	\$103,620

2020 HUD National Adjusted Median Income Limits

Median Income

Note: These numbers change so make sure your staff is using the most current numbers available and published annually (usually in early Spring) by HUD. ONAP Program Guidance No. 2020-01 Published July 30, 2020 provides the most current income limits by family size under the Native American Housing Assistance and Self-Determination Act of 1996.

It can be further complicated if a reservation has lands in more than one county. The tribe normally would have to look at the median income for each county. However, to simplify the matter the tribe can use the county with the highest median income, compare it against the national median, and then use the higher of the two.

An Indian is defined (by NAHASDA) as a person who is a member of a federally recognized tribe or a state recognized tribe of which the tribe has met certain conditions to receive funds under the 1937 U.S. Housing Act. Indian tribes determine their own membership criteria and eligibility.

SEC. 201. ELIGIBLE FAMILIES

Except as provided under paragraphs (2) and (4), and except with respect to loan guarantees under the demonstration program under title VI, assistance under eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas.

(2) EXCEPTION TO LOW-INCOME REQUIREMENT- (A) EXCEPTION TO REQUIREMENT- Notwithstanding paragraph (1), a recipient may provide housing or housing assistance through affordable housing activities for which a grant is provided under this Act to any family that is not a low-income family, to the extent that the Secretary approves the activities due to a need for housing for those families that cannot reasonably be met without that assistance.

(B) LIMITS- The Secretary shall establish limits on the amount of assistance that may be provided under this Act for activities for families who are not low-income families.



SEC. 201. ELIGIBLE FAMILIES

(3) ESSENTIAL FAMILIES- Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this Act for a family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) LAW ENFORCEMENT OFFICERS- A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this Act for a law enforcement officer on an Indian reservation or other Indian area, if-- (A) the officer-- (i) is employed on a full-time basis by the Federal Government or a State, county, or other unit of local government, or lawfully recognized tribal government; and (ii) in implementing such full-time employment, is sworn to uphold, and make arrests for, violations of Federal, State, county, or tribal law; and (B) the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

ELIGIBLE FAMILIES

Assistance for eligible housing activities under NAHASDA are generally limited to low-income Indian families on Indian reservations and other Indian areas. NAHASDA specifically identifies four types of families that may be assisted:



Non-low-income family



A non-low-income family is one whose income exceeds 80% and is less than 100% of the applicable median income limits AND has a need that cannot reasonably be met without IHG assistance. Housing assistance for non-low-income families requires HUD approval as required in §§ 1000.106, 1000.108 and 1000.110. If the Recipient plans to: (1) use more than 10 percent of the amount planned for the tribal program year for such assistance or (2) provide housing for families with income over 100 percent of the median income. In cases in which HUD approval is not required, the Recipient must still determine and document when there is a housing need for non-low-income families and that this need cannot reasonably be met without IHG assistance.

Essential family

Essential families may receive assistance if the family's housing need cannot be met without IHBG assistance and the Recipient determines that the non-low-income family's presence is essential to the well-being of the Indian families living on the reservation or in the Indian area.



Low-Income Family



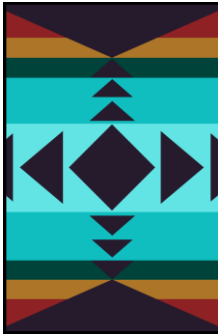
A "low-income family" means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for the purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

The term "median income" means, with respect to an area that is an Indian area, the greater of—
the median income for the Indian area, which the Secretary shall determine; or
the median income for the United States.

Law enforcement officers



Section 201(b)(4) of NAHASDA specifically addresses the provision of housing or housing assistance for a law enforcement officer on an Indian reservation or Indian area. The officer must be employed full-time by the Federal, state, county, tribal, or other unit of local government and sworn to uphold and make arrests for violations of Federal, state, county, or tribal law. In addition, the program must determine that the presence of the law enforcement officer may deter crime.



SEC. 201. ELIGIBLE FAMILIES

- (5) PREFERENCE FOR TRIBAL MEMBERS AND OTHER INDIAN FAMILIES- The Indian housing plan for an Indian tribe may require preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this Act on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families. In any case in which the applicable Indian housing plan for an Indian tribe provides for preference under this paragraph, the recipient for the tribe shall ensure that housing activities that are assisted with grant amounts under this Act for such tribe are subject to such preference.
- (6) EXEMPTION- Title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 shall not apply to actions by federally recognized tribes and the tribally designated housing entities of those tribes under this Act.

TRIBAL PREFERENCE IN SELECTION

The IHBG regulation at 24 CFR § 1000.120 permits Recipients to provide preference to Indian families who are members of the Indian tribe or to other Indian families. If the Recipient has adopted the preference in the admissions and occupancy policy, the recipient shall ensure that housing activities funded under NAHASDA are subject to the preference.

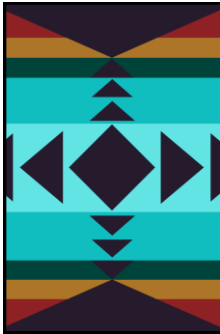


SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES

Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop, operate, maintain, or support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

- (1) INDIAN HOUSING ASSISTANCE- The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.
- (2) DEVELOPMENT- The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development and rehabilitation of utilities, necessary infrastructure, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, mold remediation, and other related activities.





SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES

(3) HOUSING SERVICES- The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) HOUSING MANAGEMENT SERVICES- The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, the costs of operation and maintenance of units developed with funds provided under this Act, and management of affordable housing projects.

SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES



(5) CRIME PREVENTION AND SAFETY ACTIVITIES- The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(6) MODEL ACTIVITIES- Housing activities under model programs that are designed to carry out the purposes of this Act and are specifically approved by the Secretary as appropriate for such purpose.

(7) COMMUNITY DEVELOPMENT DEMONSTRATION PROJECT.


(8) SELF-DETERMINATION ACT DEMONSTRATION PROJECT.

SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES

(9) RESERVE ACCOUNTS-

(A) IN GENERAL- Subject to subparagraph (B), the deposit of amounts, including grant amounts under section 101, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities under this section, in accordance with the Indian housing plan of the Indian tribe. 19

(B) MAXIMUM AMOUNT- A reserve account established under subparagraph (A) shall consist of not more than an amount equal to 1/4 of the 5-year average of the annual amount used by a recipient for administration and planning under paragraph (2).



SEC. 203. PROGRAM REQUIREMENTS.

(a) RENTS-

(1) ESTABLISHMENT- Subject to paragraph (2), each recipient shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this Act, including the methods by which such rents and homebuyer payments are determined.

(2) MAXIMUM RENT- In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this Act, the monthly rent or homebuyer payment (as applicable) for such dwelling unit may not exceed 30 percent of the monthly adjusted income of such family.

(b) MAINTENANCE AND EFFICIENT OPERATION- Each recipient who owns or operates (or is responsible for funding any entity that owns or operates) housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 shall, using amounts of any grants received under this Act, reserve and use for operating assistance under section 202(1) such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing. This subsection may not be construed to prevent any recipient (or entity funded by a recipient) from demolishing or disposing of Indian housing referred to in this subsection, pursuant to regulations established by the Secretary.

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SEC. 203. PROGRAM REQUIREMENTS.

(c) INSURANCE COVERAGE- Each recipient shall maintain adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this Act.

(d) ELIGIBILITY FOR ADMISSION- Each recipient shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this Act.

(e) MANAGEMENT AND MAINTENANCE- Each recipient shall develop policies governing the management and maintenance of housing assisted with grant amounts under this Act.

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SEC. 203. PROGRAM REQUIREMENTS.

(f) USE OF GRANT AMOUNTS OVER EXTENDED PERIODS-

(1) IN GENERAL- To the extent that the Indian housing plan for an Indian tribe provides for the use of amounts of a grant under section 101 for a period of more than 1 fiscal year, or for affordable housing activities for which the amounts will be committed for use or expended during a subsequent fiscal year, the Secretary shall not require those amounts to be used or committed for use at any time earlier than otherwise provided for in the Indian housing plan.

(2) CARRYOVER- Any amount of a grant provided to an Indian tribe under section 101 for a fiscal year that is not used by the Indian tribe during that fiscal year may be used by the Indian tribe during any subsequent fiscal year.

(g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES- Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this Act, of goods and services the value of which is less than \$5,000. (No Competitive Procurement or Indian Preference)



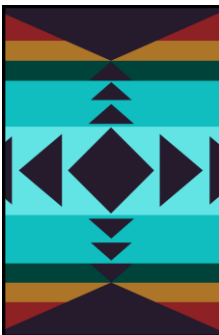
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SEC. 204. TYPES OF INVESTMENTS.

- (a) IN GENERAL- Subject to section 203 and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—
 - (1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this Act; and
 - (2) the right to establish the terms of assistance.
- (b) INVESTMENTS- A recipient may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary.



LUNCH |
1:00 To 2:00 EST |



SEC. 205. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

- (a) IN GENERAL- Housing shall qualify as affordable housing for purposes of this Act only if--
 - (1) each dwelling unit in the housing--
 - (A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit; and
 - (B) in the case of a contract to purchase existing housing, is made available for purchase only by a family that is a low-income family at the time of purchase;
 - (C) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, is made available for lease-purchase only by a family that is a low-income family at the time the agreement is entered into; and
 - (D) in the case of a contract to purchase housing to be constructed, is made available for purchase only by a family that is a low-income family at the time the contract is entered into; and

When Must a Family be Low-Income

AT THE TIME SERVICES ARE PROVIDED:

- Rental Housing Program * Lease signed with family
- Homeownership Program * Mortgage signed with family
- Rehab Program * Agreement signed with family
- Rental Assistance Program * Agreement signed with landlord



Non-Low-Income Indian Families

- ❖ Refer to the Appendix Guidance and review for non-low-income. If under 10% no HUD approval required
- ❖ If over 10%, HUD approval required
- ❖ If assistance provided to family over 100% of median income, HUD approval required in Advance...
- ❖ Must show housing need that cannot be reasonably met without IHBG assistance
- ❖ Refer to Assisting Non-Low Income PIH Notice 2014-02



Summary of Requirements for serving Non-Low-Income Indian Families

APPLICABILITY	HUD APPROVAL REQUIRED	RENT/HOMEBUYER PAYMENT DIFFERENTIAL REQUIRED BY HUD	COUNTS AGAINST 10% AUTHORITY
Essential Family	No	No	No
Law Enforcement	No	No	No
Continued Occupancy	No	Determined by Tribe/DHE Occupancy Policy	No
Non-Low-Income Families (10% Authority) Between 80-100% of Median Income	No	Yes	Yes
Secretary Approved: Exceeding 10% Authority To serve Indian Families At 80-100% of Median Income	Yes	Yes	By Definition these Families Exceed the 10% CAP
Secretary Approved: Indian Family over 100% of Median Income	Yes	Yes	No

SEC. 205. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

(2) except for housing assisted under section 202 of the United States Housing Act of 1937 (as in effect before the date of the effectiveness of this Act), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action--

- (A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure; and
- (B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

SEC. 205. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

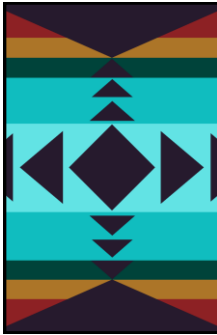
- (b) EXCEPTION- Notwithstanding subsection (a), housing assisted pursuant to section 201(b)(2) shall be considered affordable housing for purposes of this Act.
- (c) APPLICABILITY- The provisions of paragraph (2) of subsection (a) regarding binding commitments for the remaining useful life of property shall not apply to a family or household member who subsequently takes ownership of a homeownership unit.

*Sec 206 Certification of Compliance with Subsidy Layering Requirements -No longer Applies.



SEC. 207. LEASE REQUIREMENTS AND TENANT SELECTION

- (a) LEASES- Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this Act, the owner or manager of the housing shall utilize leases that—
 - (1) do not contain unreasonable terms and conditions;
 - (2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;
 - (3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;
 - (4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;



SEC. 207. LEASE REQUIREMENTS AND TENANT SELECTION

(5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and

(6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that-

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

SEC. 207. LEASE REQUIREMENTS AND TENANT SELECTION

(b) TENANT AND HOMEBUYER SELECTION- The owner or manager of affordable rental housing assisted with grant amounts provided under this Act shall adopt and utilize written tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and

(B) the prompt notification in writing to any rejected applicant of that rejection and the grounds for that rejection.

SEC. 208. AVAILABILITY OF RECORDS

(a) PROVISION OF INFORMATION- Notwithstanding any other provision of law, except as provided in subsection (b), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of applicants for employment, and of adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this Act for purposes of applicant screening, lease enforcement, and eviction.

(b) EXCEPTION- A law enforcement agency described in subsection (a) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

SEC. 208. AVAILABILITY OF RECORDS

(c) CONFIDENTIALITY- An Indian tribe or tribally designated housing entity receiving information under this section may use such information only for the purposes provided in this section and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the tribe or entity or the owner of housing assisted under this Act, and who has a job related need to have access to the information for the purposes under this section. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this section to any tribe or entity is used, and confidentiality is maintained, as required under this section.

SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING REQUIREMENT

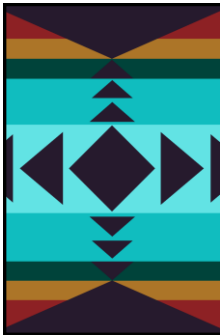
If a recipient uses grant amounts to provide affordable housing under this title, and at any time during the useful life of the housing the recipient does not comply with the requirement under section 205(a)(2), the Secretary shall take appropriate action under section 401(a).

We will discuss useful life tomorrow.



SEC. 210. CONTINUED USE OF AMOUNTS FOR AFFORDABLE HOUSING

Any funds for programs for low-income housing under the United States Housing Act of 1937 that, on the date of the applicability of this Act to an Indian tribe, are owned by, or in the possession or under the control of, the Indian housing authority for the tribe, including all reserves not otherwise obligated, shall be considered assistance under this Act and subject to the provisions of this Act relating to use of such assistance.



TITLE III--ALLOCATION OF GRANT AMOUNTS

Sec. 301. Annual allocation.
HUD allocates IHBG grant to Tribes in accordance with established formula each fiscal year
Sec. 302. Allocation formula.

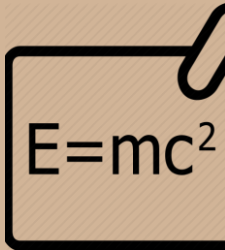


Sec. 302. Allocation Formula



IHBG Formula

The IHBG formula is used to allocate grant funding to Indian tribes and TDHEs. Tribes and TDHEs play an important role in reviewing, reporting, and verifying information. Formula data allows ONAP to allocate IHBG funds equitably and fairly to eligible recipients.



Statutory & Regulatory Requirements



Statutory requirements for the formula allocation are found in Title III of the NAHASDA Act of 1996



Regulatory requirements that implement the formula are found in Subpart D, Allocation Formula, §§ 1000.301-1000.340

Formula Purpose and Background

- Allocates IHBG funds
- Developed as part of Negotiated Rulemaking
- Intent: Make equitable distribution of annual appropriation
- Allocation is basis of your annual budget

Key Dates

- Formula Response Form (FRF):**
- Sent each year around June 1
 - Includes data to be used in formula and the estimated allocation amount for the coming FY
 - Corrections due 60 days after date of FRF
 - Census challenge deadlines for following FY specified in FRF
 - Corrections must be submitted to the IHBG Formula Customer Service Center on FRF Appendices A-D
- Final Allocations: Completed after the budget is appropriated**



Final Allocations

Final allocations can vary from estimate based on many reasons: different final allocation amount than what was used in the estimate, tribe's data changed, other tribe's data changed.



IHBG is distributed through a formula. This formula is calculated annually, depending upon the annual IHBG appropriation from Congress.

The first annual IHBG formula run produces estimated allocations that are sent to both tribes and TDHES and is completed on June 1. Final allocations are completed after appropriations are announced and prior year carry-over is determined.

The date of the final formula run varies each year depending on when the President signs the appropriations into law.

- ◆ The formula contains four key components:
 - (1) Current Assisted Stock (CAS)
 - (2) Need
 - (3) 1996 Minimum
 - (4) NEW -Undisbursed IHBG Funds Factor (UDFF) [§1000.310 and 342]



Undisbursed IHBG Funds Factor (UDFF)

Undisbursed IHBG Funds: Applies to Tribes/TDHES with:

- 1) Amount of initial allocation of => \$5M
- 2) With funds in eLOCCS. Does not apply to Tribes/TDHES with approved investments.
- 3) Undisbursed amount = Amount in excess of the sum of the prior 3 years initial allocation calculations or its 1996 Minimum.



Component 1: FCAS

1. FCAS is Housing developed under the 1937 Act (before NAHASDA) called Current Assisted Stock (CAS):
 - Low Rent
 - Mutual Help
 - Turnkey III
 - Section 8
2. 1937 units in the development pipeline (after NAHASDA)
3. Section 8 – expired but still managed like Sec 8 program



FCAS

Two elements of FCAS in formula

- Operating subsidy
- Modernization allocation

FCAS adjusted by

- FY96 national averages for Operating subsidy and Modernization allocation
- Local costs and inflation adjustments

Demolished Units 1000.318(e)

A unit that is demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if the unit is rebuilt within one year.

If the unit cannot be rebuilt within one year because of relative administrative capacities and other challenges faced by the recipient, a one-time, one-year extension may be requested.

Requests must be submitted in writing and include a justification for the request.



Units Not Eligible as FCAS

Units built over the number specified in the original ACC for Projects with DOFA after October 1, 1997.

Units not used as low-income housing dwelling units include:

Conveyance eligible, conveyed, or demolished units.

Units constructed with NAHASDA funds. Units being used for VASH Program.

Vacant units, unless being made available for occupancy. Units used for non-dwelling purposes

Section 302(b)(1)(A)

Section 302(b)(1)(A) makes it clear that units should not remain under subsidy forever.



Reviewing FCAS Data

Review the Formula Response Form. Report any corrections to unit counts, unit types, and actual/expected Date of Full Availability (DOFA) for occupancy. Submitted corrections will be reviewed and HUD will inform the tribe of the corrected unit counts.

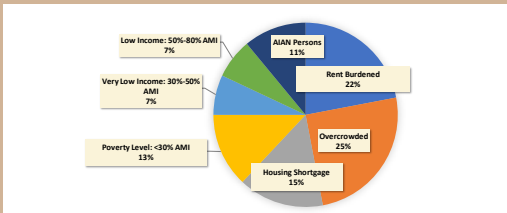


Component 2: Need

After determining the FCAS allocation, remaining funds are allocated by need component
The need component consists of Seven criteria
Based on Decennial Census and American Community Survey (ACS) 5-year data
Adjusted for local Development Cost



Need Component Weights [\$1000.324]



Formula Area

Geographic area providing substantial housing services
Formula area and Indian area are different!



What if a formula area is served by more than one Indian tribe?

- (a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:
 - (1) The Indian tribe's proportional share of the population in the overlapping geographic area; and
 - (2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.



What if a formula area is served by more than one Indian tribe?

- (3) In cases where a State recognized Indian tribe's formula area overlaps with a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the overlapping area.
- (b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, the U.S. Census, Indian Health Service User Data, and Bureau of Indian Affairs data.
- (c) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.



Population Cap

Control to maintain fairness

Only if AIAN persons > 2x enrollment

Challenge process available

Component 3: 1996 Hold Harmless

A tribe's IHBG funding is never reduced below its FY 1996 funding level.

This is the amount the tribe's IHA received in FY 1996 for operating and modernization subsidy.

IHBG funding is adjusted to the amount received in FY 1996. This is a statutory requirement.

Component 4: Undisbursed IHBG Funds Factor (§1000.342)

+ New formula factor

₿ Provides adjustments for tribes with Initial allocation of \$5 million or more
Have undisbursed IHBG funds greater than the sum of their prior 3 years' initial allocation

🗳️ Initial allocation will be reduced, and any amounts recovered will be redistributed

Formula Response Form & Other Funding

The CARES Act appropriated \$8 billion for tribal governments to cover expenditures incurred with respect to the COVID-19 pandemic. Congress directed Treasury Secretary Steven Mnuchin to disburse these funds within 30 days.

The act specified that the amount paid to each tribe "shall be the amount the Secretary [of the Treasury] shall determine ... that is based on increased expenditures of each such Tribal government ... and determined in such manner as the Secretary determines appropriate." [2]

The Treasury Department decided that 60% of the \$8 billion would be distributed immediately based on population, while the remaining 40% would be distributed later based on employment and expenditures data.

The department sought enrollment data from all 574 federally recognized tribes. In response, the Shawnee Tribe certified that it had 3,021 enrolled members. But the department did not use the tribe-supplied enrollment numbers to distribute the 60% portion of the funds.

Rather, it relied on population data used in connection with the Indian Housing Block Grant program. This data estimates a tribe's population in a geographical formula area based on the number of individuals who consider themselves American Indian or Alaska Native on census forms.

Formula Response Form & Other Funding



Formula Response Form & Other Funding

Because the IHBG data does not reflect actual enrollment, federal regulations recognize that a tribe's IHBG population sometimes exceeds its actual enrollment numbers.

The opposite happened with the Shawnee Tribe; the IHBG data reported that the tribe had a formula area population of zero. So, although the tribe had over \$6.6 million in expenditures in 2019, and although it incurred significant expenses in responding to the pandemic, it received just \$100,000 — the minimum payment for tribes with a population of fewer than 37 members.

Twenty-four other tribes also had formula area populations of zero, including the Miccosukee Tribe, which has 605 enrolled members.

The Shawnee Tribe filed suit, contending that it was arbitrary and capricious for the department to use population as a proxy for increased expenditures, to select the IHBG population data rather than other available data, and to refuse to adjust what the tribe deemed errors in the IHBG data.

So, you might want to put this form under more eyes within the Tribe to ensure the information is correct.

IHBG Formula Customer Service Center



- Calculates formula allocations
- Provides TA to recipients on formula
- Receives and process corrections and challenges
- 1-800-410-8808



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 by Secretary.
- Sec. 406. GAO audits.
- Sec. 407. Reports to Congress.
- Sec. 408. Public availability of information.



TITLE V--TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

- Sec. 501. Repeal of provisions relating to Indian housing assistance under United States Housing Act of 1937.
- Sec. 502. Termination of Indian housing assistance under United States Housing Act of 1937.
- Sec. 503. Termination of new commitments for rental assistance.
- Sec. 504. Termination of Youthbuild program assistance.
- Sec. 505. Termination of HOME program assistance.
- Sec. 506. Termination of housing assistance for the homeless.
- Sec. 507. Savings provision.
- Sec. 508. Effective date.
- Sec. 509. Effect on HOME Investment Partnerships Act.



TITLE VI--FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

- Sec. 601. Authority and requirements.
- Sec. 602. Security and repayment.
- Sec. 603. Payment of interest.
- Sec. 604. Training and information.
- Sec. 605. Limitations on amount of guarantees.
- Sec. 606. Effective date.
- Sec. 606. Demonstration program for guaranteed loans to finance tribal community and economic development activities.



TITLE VII--OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

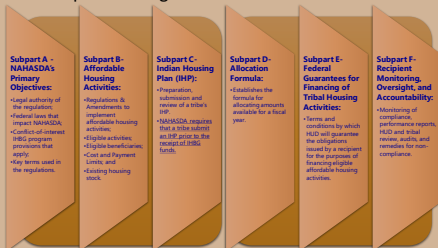
- Sec. 701. Loan guarantees for Indian housing.
- Sec. 702. 50-year leasehold interest in trust or restricted lands for housing purposes.
- Sec. 703. Training and technical assistance.
- Sec. 704. Public and Assisted Housing Drug Elimination Act of 1990.
- Sec. 705. Effective date.



NAHASDA REGULATIONS-24 CFR Part 1000



24 CFR Part 1000 – Native American Housing Activities
6 Subparts of Regulation

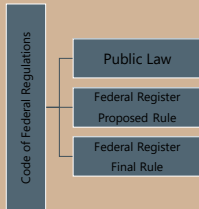


ELECTRONIC CODE OF FEDERAL REGULATIONS e-CFR data is current as of March 13, 2020 Title 24 → Subtitle B → Chapter IX → Part 1000 Title 24: Housing and Urban Development

Replaces 24 CFR 950 Final Published 3/12/98

Amended:
3/17/98
1/20/99
9/28/01
6/24/03
6/17/04
1/27/05
4/20/07
10/18/07
4/1/08
1/2/13

Federal regulations result from the public law to the proposed rule, the final rule, and codification in the CFR



CFR Numbering System

The CFR has a uniform numbering system.

- ❖ Most of the 50 titles conform to the system
- ❖ The section is the basic unit of the CFR
- ❖ Cite the CFR by title and section: 12 CFR 303.1
- ❖ Text is divided into descending levels of units

Six Levels of Paragraphs

Paragraph	Designations	Cite Paragraph as
Level 1	(a), (b), (c), etc.	§ 303.1(a)
Level 2	(1), (2), (3), etc.	§ 303.1(a)(1)
Level 3	(i), (ii), (iii), etc.	§ 303.1(a)(1)(i)
Level 4	(A), (B), (C), etc.	§ 303.1(a)(1)(i)(A)
Level 5	(1), (2), (3), etc.	§ 303.1(a)(1)(i)(A)(1)
Level 6	(i), (ii), (iii), etc.	§ 303.1(a)(1)(i)(A)(1)(i)

What is the difference between statutes, regulations, and HUD guidance

It's important to understand the difference between statutes, regulations, and HUD guidance, as these terms will be used throughout your involvement with ONAP. These terms are often confusing for new grantees. Statutes, regulations, HUD Notices and guidance bulletins are different from one another. Statutes are Federal laws written by Congress. HUD must implement its programs in accordance with statutory requirements. The only way a statute can be changed is by an Act of Congress. Thus, statutory requirements cannot be waived unless the statute specifically gives this power to the administering Federal agency.



What is the difference between statutes, regulations, and HUD guidance

Regulations are written to implement statutes. Program regulations provide detail on the intent of the laws and specify the parameters of how the laws should be carried out. They can be waived by a Departmental Secretary, such as the Secretary of HUD, so long as this waiver is not in conflict with the statute.

Regulations are administered by the Federal agency that is designated in the statute to oversee the program. Under NAHASDA, it is HUD, and more specifically ONAP (The Office of Native American Programs) that is the designated Federal agency.



What is the difference between statutes, regulations, and HUD guidance

HUD Notices are official transmittals to recipients regarding policy issues or procedural topics. The information in HUD Notices may be waived by ONAP's Deputy Assistant Secretary unless it conflicts with the regulations or statute. PIH Notices are specific to the programs and activities performed by PIH. (Office of Public and Indian Housing)

Guidance Bulletins assist tribes in implementing HUD programs and provide tools for program management. They help clarify various technical topics. Though most guidance bulletins are advisory, some guidance bulletins further explain the regulations or the statute. Guidance bulletins that further explain the regulations can be waived by the Secretary of HUD, however guidance bulletins that further explain the statute cannot be waived.



What is the difference between statutes, regulations, and HUD guidance

To the extent that guidance bulletins are advisory and designed to help tribes implement their programs, no waiver is needed.

You can download Guidance Bulletins and PIH Notices from ONAP's website. All PIH Notices include the name and description of the notice, as well as the date it was issued and the date it will expire.



The statute, regulations, notices, and guidance bulletins work together to provide the full picture of each grant recipient's opportunities and responsibilities.

What is the difference between statutes, regulations, and HUD guidance

The negotiated rulemaking committee charged with drafting the regulations decided not to re-state information that was already stated in the statute unless the statute was not clear.

Thus, a program administrator must be able to refer to both the statute and the regulations simultaneously to have a complete understanding of how the program must be administered.

For example, if you need to know more about the Indian Community Development Block Grant program, also known as ICDBG, you would refer to the Native American Housing Assistance and Self-Determination Act of 1996, which is the statute. You would also refer to 24 CFR Part 1003 Community Development Block Grant for Indian Tribes and Alaska Native Villages, which is the ICDBG Regulations.



What is the difference between statutes, regulations, and HUD guidance

The guidance bulletins and notices can provide you with clarification on the statute and the regulations. For example, if you needed clarification on financial audit requirements for the ICDBG program, you could refer to PIH Notice 2006-20. This Notice provides specific guidance on financial audit requirements for ICDBG and other HUD programs available to Native American grant recipients.



Let's Take 10 or 15 Minutes....



2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS



Uniform Administrative Act (2 CFR Part 200)

To ensure the accountability of all federal funding, the Office of Management and Budget (OMB) establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

The regulations implementing NAHASDA (24 CFR § 1000) include a variety of general administrative requirements that must be followed by recipients of the Indian Housing Block Grant funds. Prior to December 26, 2014, the NAHASDA regulations addressing administrative requirements at 24 CFR § 1000.26 cited two former OMB regulatory documents: OMB Circular A-87 (cost principles), and OMB Circular A-102 (Uniform Administrative Requirements codified for HUD programs in 24 CFR § 85).



Uniform Administrative Act (2 CFR Part 200)

The OMB has streamlined the Federal government's guidance from eight existing OMB circulars (which includes A-87, A-102, and A-133) into one consolidated set of guidance in the code of Federal regulations (2 CFR § 200) and is titled the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the 'Uniform Guidance').

This consolidation is aimed at eliminating duplicative or almost duplicative language in order to clarify where policy is substantively different across types of entities, and where it is not.

OMB issued the final rule on December 26, 2013. The final rule became effective for grantees on December 26, 2014. When a recipient accepts IHBG funds, it agrees to comply with these administrative requirements.



Uniform Administrative Act (2 CFR Part 200)

- Subpart A** – Acronyms and Definitions
- Subpart B** – General Provisions
- Subpart C** – Pre-Federal Award Requirements & Formula Allocation
- Subpart D** – Post-Federal Award Requirements
- Subpart E** – Cost Principles
- Subpart F** – Audit Requirements



2 CFR 200 Subpart B: General Provisions

The Office of Management & Budget (OMB) previously issued Circular notices for uniform requirements which were then Codified and made effective December 26, 2014. Please see ONAP Program Guidance 2014-12, Consolidation of OMB Circulars.

The purpose of this Subpart is to establish uniform administrative requirements, cost principles and audit requirements for Federal awards to non-Federal entities by Federal awarding agencies;

This Subpart provides basis for systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to OMB.

This Subpart prescribes the manner in which GSA, OMB and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act.

It also requires the following:

2 CFR 200 Subpart B: General Provisions

§200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment.—(See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[80 FR 43308, July 22, 2015]

EXCEPTION— Per 24 CFR 1000.26 (a) (1), 200.113 applies, except that, in lieu of the remedies described in § 200.338, HUD shall be authorized to seek remedies under subpart F.

What is SAM

System for Award Management (SAM)
The System for Award Management (SAM) is a Federal Government owned and operated free web site that consolidates the capabilities in Central Contractor Registration (CCR)/Fed Reg. Online Representations and Certifications Applications (ORCA) and the Excluded Parties List System (EPLS).

I dont know what happened, but this eagle is about to ask to speak to a manager.



2CFR 200 Subpart C: Pre-Federal Award Requirements and Contents of Federal Awards

- In accordance with the Federal Grant and Cooperative Agreement Act, Federal award agencies must identify the appropriate instrument for the federal award to the nonfederal entity - For NAHASDA, HUD uses a Grant Agreement to award IHBG funds to Tribes/TDHEs.
- Suspension and Debarment - Nonfederal entities are subject to non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689 and 2 CFR Part 180.
- These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

2 CFR 200 Subpart D: Post Federal Award Requirements

The non-Federal entity is responsible for complying with all requirements of the Federal award. These include:

- \$200.302 Financial management. Investment, Cash Management, Accounting System
 - \$200.303 Internal controls.
 - \$200.313 Equipment, Property Inventory, Control & Disposition System
 - \$200.333 Retention requirements for records, (3 Years)
- The financial management system of each non-Federal entity must provide for the following:
- \$200.334 Requests for transfer of records
 - \$200.335 Methods for collection, transmission and storage of information
 - \$200.336 Access to records
 - \$200.337 Restrictions on public access to records

Uniform Guidance Sessions

The methods of Procurement are listed in the Super Circular at 2 CFR Part 200.320

HUD has an excellent 9-part series titled "OMB NEW UNIFORM Guidance Sessions" Available to watch using YouTube.

I would recommend it as the uniform guidance is a major piece of the puzzle in assuring your procurement is done properly.

https://www.hud.gov/program_offices/public_indian_housing/ih/regs/resources

2 CFR PART 200 UNIFORM GUIDANCE WEBCAST SERIES AND RESOURCES

REMEMBER:

When reading the uniform guidance, They are very precise in using the terms "should and must" **Should** means best practices or recommended approaches and **Must** means it is required.

2 CFR 200 Procurement

- .317 – States
- .318 – Procurement Standards
- .319 – Competition
- .320 – Methods of Procurement to Be Followed
- .321 – Contracting with small and minority firms, women’s business enterprise and labor surplus area firms.
- .323 – Contract Cost and Price
- .324 – Awarding Agency Review
- .325 – Bonding (1000.26(a)(11) provides acceptable methods when inconsistencies exist)
- .326 – Contract Provisions

General Statement

- **EXCEPTION** – Per 24 CFR 1000.26 (a) (10), §200.317 “Procurement by states” does not apply
- **(j) De minimis procurement. A recipient shall not be required to comply with 2 CFR 200.318 through 200.326 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.**
- **EXCEPTION** – Per 24 CFR 1000.26 (a) (11), Sections § 200.318 through 200.326 apply, as modified in this paragraph:
 - i. **Utilizing Federal supply sources in procurement.** In accordance with Section 101(j) of NAHASDA, recipients may use Federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

200.317-326 PROCUREMENT STANDARDS

§200.318 General procurement standards

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 - (c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. **The standards of conduct must provide for disciplinary actions to be applied for violations** of such standards by officers, employees, or agents of the non-Federal entity.



200.317-326 PROCUREMENT STANDARDS

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

EXCEPTION per 24 CFR 1000.26 (a) 11 (i) De minimus procurement. A recipient shall not be required to comply with 2 CFR 200.318 through 200.326 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.

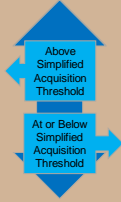
Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

200.317-326 PROCUREMENT STANDARDS

Methods Of Procurement:

- **Micro-purchases** – if price is considered reasonable, no competitive solicitation required if price does not exceed:
 - \$2,000 for procurement subject to Davis-Bacon Act
 - \$10,000 for all other procurement using federal funds (or less if stated in Policy 11/26/2019)
- **Small purchases** – not more than Simplified Acquisition Threshold, currently \$250,000
- **Sealed bids** (formal advertising)
- **Competitive proposals** (Request For Proposals) RFP
- **Non-competitive proposals: Single Sole/Source** Emergency or Only 1 bid received. **change – must request in writing if** seeking permission from Awarding Agency/HUD Approval

§ 200.323: Contract cost and price



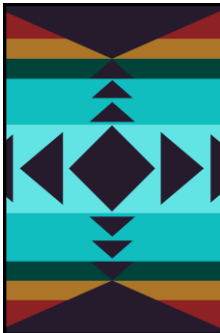
- Cost or Price Analysis is **REQUIRED** (**cost includes contract amount plus change orders**).
- Cost or Price Analysis is **NOT REQUIRED** (however price must be reasonable, and estimate is necessary to determine if procurement falls into this category).

INDIAN PREFERENCE REQUIREMENTS



The Indian Self-Determination and Education Assistance Act

The Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638) authorized the Secretary of the Interior, the Secretary of Health, Education, and Welfare, and some other government agencies to enter into contracts with, and make grants directly to, federally recognized Indian tribes. The tribes would have authority for how they administered the funds, which gave them greater control over their welfare.



Section 7(b) of The Indian Self-Determination and Education Assistance Act



Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974.

Indian Preference Final Rule

The Final Rule amended 24 CFR Sections 1000.48, 1000.50, and 1000.52 to provide for tribal preference in employment and contracting.

Program Guidance 2013-07 (R) dated July 11, 2013, provides additional information on administering these revisions.



Tribal Action

- ❖ Tribe passes adopts law, code, or regulations regarding Tribal Preference.
- ❖ IHA adopts policies (personnel, procurement, etc.) regarding preference.
- ❖ Such law or policy may provide preferential treatment
 - Over other Indians that are not members of the tribe in employment and Contracting.
 - In reductions in workforce and layoffs.

Implementing Indian Preference

Certify policies and procedures (§1000.52)
Preference clauses must be incorporated into contracts
Include Indian Preference reference in notices and advertisements



Importance of Indian Preference

Provides special opportunities for Indian contractors in selection
Mandates additional preference that contractors must offer Indian laborers, subcontractors, and suppliers
Economic opportunities for Indians, tribes, recipients, and your communities
NOT required to hire an Indian individual / firm

Preference in Solicitation Process



Required by Federal (and often tribal) law
Clarify preference standards in your procurement policy
Clarify preference standards from the outset

Where Indian Preference Is Applied

- In selection of contractors or vendors
- In the contractor's selection of subcontractors and suppliers
- During employment and training by contractors



Qualifying Bidders, Proposers, Vendors

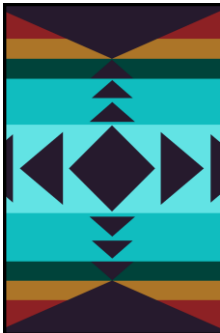


Specifically determine if the individuals and entities are qualified to receive Indian preference.

Do not rely on determinations and certifications made by others.

Who is Eligible for Indian Preference?

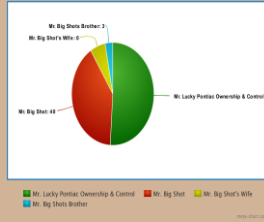
- Members of federally recognized tribes
- Federally recognized tribes
- Entities at least 51% owned AND controlled by such members or tribes



51% Ownership AND 51% Control

Control includes voting rights, management, decision making, and allocation of profits.

Entity owned by a tribe or a tribal member must show evidence of 51% ownership AND 51% control.



Preference Must Be Requested



Advise all bidders, proposers, and vendors Indian preference is required in contract awards

Parties seeking preference must request preference

When feasible, provide interested parties with an Indian Preference Qualification Application

Various Ways to Determine Eligibility

There is a variety of approaches based on the size, regularity, and nature of the procurement

The more thorough the process, the better

On large procurements, make the determination prior to the submission of the bid or proposal (pre-qualify firms)

Shall include a determination that bidder is a responsible contractor



When Feasible...

- Use Indian Preference Qualification Application and require supporting documentation
- Establish panel of at least three staff or Board members to evaluate and decide eligibility
- Make independent verification and inquiry



Common "Fronting" Practices



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Disguise how little profit tribe or member receives

Indian tribe or member appears on paper as 51% owner, but management/control are with non-Indian

Less than truthful in explaining resources that each owner brings to entity

Document, Document, Document

Carefully record decision in writing

Make a brief decision in writing

Be prepared to provide further explanation to anyone you disqualify

Explain to any disqualified party that they may still submit a bid or proposal



Reserve the Right to Reconsider

Reserve the right to disqualify anyone (even if you have already qualified them) right up until the award of the contract in case you become aware of new information and/or the entity's structure changes

Add contract provisions for termination if the entity loses its Indian ownership or control during the contract period

Applying Indian Preference

24 CFR 1000.52(a)

TDHE certifies that they have policy that will afford Indian preference that is consistent with ISDEA 25 USC 450e(b) (The Indian Self-Determination and Education Assistance Act)

OR solicit bids from Indian owned & controlled entities only

OR use two-stage method (more...)

The Two-Stage Method

1 – Solicit **statements of intent** from Indian owned & controlled entities

2 – If two or more are received from qualified entities, then solicit bids/proposals from Indian owned & controlled entities only

– Otherwise, solicit bids/proposals from all entities using your established method of applying Indian preference

Applying Indian Preference

If any method of Indian preference results in only one bid or proposal being received, then
 Re-advertise using any approved method of Indian preference under (a), OR
 Re-advertise to all entities using X-factor or other points for preference, OR
 Ask HUD-ONAP for approval (remember, you must justify in writing)

Using the X-Factor

Attachment A
Using the X-Factor for Indian Preference (Optional)

The following is an optional method that may be utilized in implementing the Native Preference requirements of 24 CFR 100.32. Under this method, award shall be made under contract or subcontracts to the lowest responsible bid from qualified Indian-owned or controlled enterprises or organizations when the enterprise and contract price combination for the specific project or activity being solicited is the lowest or next-lowest. To qualify for the specified price of the lowest responsible bid from any qualified bidder, the bidder "X" is determined as follows:

When the lowest responsible, responsible bid is:	X = lowest of:
Low Bid \$100,000	80% of bid bid, or \$0.00
Indian \$100,000, but low Bid \$100,000	80% of bid bid, or \$10,000
Indian \$200,000, but low Bid \$100,000	70% of bid bid, or \$11,000
Indian \$300,000, but low Bid \$100,000	70% of bid bid, or \$24,000
Indian \$400,000, but low Bid \$100,000	60% of bid bid, or \$12,000
Indian \$500,000, but low Bid \$100,000	70% of bid bid, or \$40,000
Indian \$1,000,000, but low Bid \$100,000	60% of bid bid, or \$40,000
Indian \$2,000,000, but low Bid \$100,000	60% of bid bid, or \$60,000
Indian \$2,000,000, but low Bid \$1,000,000	60% of bid bid, or \$80,000



QUESTIONS

