

Board of Commissioners

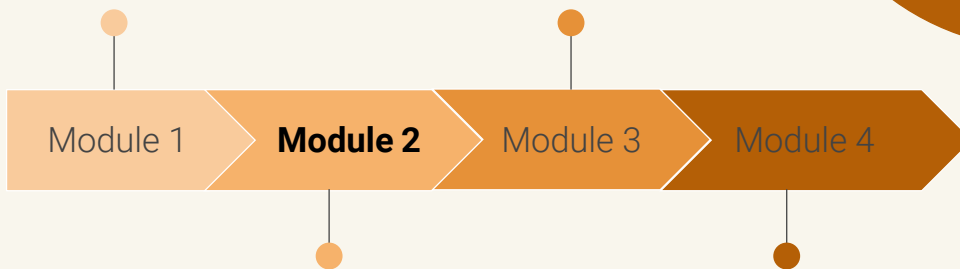
April 8-9, 2021



Overview

Understanding the basics of NAHASDA & other applicable Federal laws

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



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

Understanding Role of HUD & NAHASDA Compliance, Reporting & Audits

Module 2:

Key Requirements of the IHBG Program and Uniform Administrative Requirements



IHBG Regulations and
Required Policies



Indian Housing
Plan




2 CFR 200
Uniform Administrative
Requirements

24 CFR Part 1000 Implementing Regulations (Issued 03/12/98)

- Subpart A: General
- Subpart B: Affordable Housing Activities**
- Subpart C: Indian Housing Plan**
- Subpart D: Allocation Formula**
- Subpart E: Federal Guarantees for Financing Activities
- Subpart F: Monitoring, Oversight & Accountability

Note: Regulatory amendments conducted through Negotiated Rulemaking between HUD & Tribes.

IHBG Program Required Policies

- Eligibility, Admission, and Occupancy policies in place
- Tenant and homebuyer selection policy, including waiting list policies and notification of rejection
- Rents & homebuyer payments policy, including collections
- Insurance Policy Coverage – owned, operated, assisted by Tribe or TDHE
- Management policies (e.g., personnel, grievance, travel, etc.)
- Maintenance policy– Manage & maintain 1937 and NAHASDA housing units (include disposition and demolition, inventory, etc.) 

IHBG Program Required Policies (continued)

- Procurement Policy– Purchase of goods & services (2 CFR 200)
- Financial Management Policy (2 CFR 200)
- Tribal and Indian Preference policy
- Relocation Assistance and Real property acquisition policy
- Self-monitoring policy - annual self assessment for compliance
- Drug Free Workplace policy
- Section 3 policy (job training, employment and contracting opportunities for low-income individuals)
- Housing Standards and Total Development Cost policy statements
- Investment and Internal Controls (2 CFR 200)
- Others as may be applicable



IMPORTANCE OF POLICIES

- Policies are approved by governing oversight body(s) (e.g., Tribal Council, Housing Committee and/or Housing Board of Commissioners)
- Policies outline courses of action to comply with complex laws and rules
- Policies are useful to guide in decision-making process
- Policies ensure consistent and uniform application of standard procedures and processes by organizational staff
- Policies can be amended to reflect changes in applicable statutes, regulations or tribal ordinances as applicable
- Formal record of approved policies should be maintained orderly
- All policies should be made public and copies provided upon request.

Conflict of Interest (1000.30-36; 200.112)

- In 2001, HUD Office of Inspector General (OIG) conducted nationwide NAHASDA audit and found undisclosed conflicts of interest and preferential treatment in Admissions for housing assistance. Over half of TDHEs had **no process** to ensure adherence to this required provision. ***ONAP Program Guidance 2002-13 was issued to assist Tribes/TDHEs.***
- Applies to anyone who participates in IHBG decision-making or who gains inside IHBG information which includes housing staff, tribal officials and board members & immediate family members including business associates in cases of housing assistance, employment or procurement.
- **Recipients should have a Conflict of Interest policy or procedures for determining when a conflict exists and for reporting it to HUD and disclosing to the public as required per NAHASDA.**
- Public disclosure of the conflict must be made with a determination that exception considerations would not violate tribal or federal law and copy of disclosure sent to local ONAP **before** the assistance is provided.

Tribal and Indian Preference

(1000.48-52; 1000.120)

- **Tribal Preference** - When a Tribe adopts a tribal preference law in housing assistance, employment and contracting, that tribal preference will allow preferential treatment of tribal members over other Indians not members of the tribe. Tribal preference laws may also specify any preferences in workforce reductions or layoffs. **See ONAP Program Guidance 2013-07.**
- **Indian Preference** - Section 7(b) of the Indian Self-Determination and Education Assistance Act allows preference to Indians for housing assistance, employment and training and to Indian organizations and Indian-owned economic enterprises in the award of contracts and subcontracts under the IHBG program.

Subpart C: The Indian Housing Plan (IHP)

The Grant Recipient must prepare the annual IHP and submit to HUD each year in order to receive IHBG funding:

- The IHP is a One-Year Plan of planned affordable housing activities with related IHBG expenditures to be accomplished within 12-months of the performance period;
- Recipients must use the combined IHP/Annual Performance Report (APR) form HUD-52737 using online submittal (EPIC). Link: <https://hud.gov/pih/codetalk>
- IHP is due to HUD within 75 days of the fiscal year beginning date for Tribe/TDHE
- HUD has 60-day review period of IHP to determine compliance
- U.S. Treasury electronic Line of Credit Control System (eLOCCS) is used to draw down funds to pay for IHP planned expenditures. Recipient must disburse payments within 3 days of receipt of IHBG funds into bank account.

Contents of an IHP

1. Cover page
2. Housing Needs Description
3. Program Activity Descriptions
4. Maintaining 1937 Act Units, Demolition and Disposition (if any)
5. Budgets (Sources and Uses)
6. Other Submission Items
7. IHP Certification of Compliance
8. IHP Tribal Certifications
9. Self-Monitoring (APR)
10. Inspections (APR)
11. Audits (APR)
12. Public Availability
13. Jobs Supported by NAHASDA
14. IHP Waiver Requests
15. IHP Amendments



IHP: Housing Needs Description

- Tribes/TDHEs need to describe their housing needs for their tribal members
- Typically, a housing needs assessment is required in order for Tribes to know their housing needs for number of new housing needed, number of major/minor repair of existing housing and get hands on perspective of the type of families that need assistance (e.g., elderly, veteran, disabled, college students, etc.); type of housing (e.g., elderly multiplex, independent living centers, single family, apartments, etc.) and other data such as annual income, number household members (overcrowded), whether existing homes have adequate plumbing, electricity or other state of utility needed, etc.
- Such assessment can then guide the Tribe/TDHE to develop short- and long-range strategy plans, adopt new/revised housing policies and tactical plans that systematically address needs in prioritized manner.



IHP: Program Activity Descriptions

- Modernization of 1937 Act Units
- Operation of 1937 Act Units
- Acquisition of Existing Housing
- Construction of New Housing
- Rehabilitation of Rental Housing
- Acquisition of Land for Housing (acres)
- Development of Emergency Shelters (HH)
- Conversion of Structures to Housing
- Down Payment/Closing Cost Assist
- Lending Subsidy for homebuyers
- Other Homebuyer Assistance
- Rehab Assistance to Existing Homes
- Tenant-based Rental Assistance
- Housing Management Services
- Other Housing Services
- O&M of NAHASDA-Assisted Units
- Crime prevention & safety (\$)
- Model Activities (\$)
- Infrastructure to support housing (\$)
- Reserve Accounts
- Planning & Administration

Other IHP Submission Items

- Useful Life/Affordability Periods - Recipient must describe “useful life” of housing units assisted with IHBG funds which must remain “affordable” to low-income families/persons. The “affordability period” is the remaining useful life of the unit/property as approved by HUD. For example:

IHBG Resources Invested:	Affordability Period
Under \$5,000	6 months
\$5,000 to \$15,000	5 years
\$15,001 to \$40,000	10 years
Over \$40,000	15 years
New construction or acquisition of new housing units	20 years



Other IHP Submission Items (continued)

- Tribal and Indian Preference:
Recipients must describe its Preference policy given to tribal members and/or other Indian families for housing assistance, employment and contracting to Indian organizations or Indian-owned enterprises.
- Model & Over-Income Activities:
 - If a model activity is proposed for funding, the Recipient must describe the undertaking and type households to be served.
 - If non-low (over-income) households to be served, describe number for 80-100 (over 10%) or over 100% for HUD approval.

IHP Tribal Certifications

- **Recipient Certification of Compliance**
 - Comply with Title II of the Civil Rights Act, Section 504 of Rehab Act of 1973, Age Discrimination Act of 1975 and other federal laws as applicable to Tribe/TDHE
 - If Recipient receives less than \$200,000 under FCAS, certifies that there are 80% or below AMI households
 - Recipient maintains adequate Insurance coverage for housing units owned/operated by Recipient
 - Recipient has Eligibility, Admission and Occupancy policies in place
 - Recipient has Rents and Homebuyers payments policies in place
- **Tribal Wage Rate Certification** - Recipient certify use of Davis-Bacon or Tribal Wage rates for IHBG-assisted construction or maintenance activities
- **Tribal IHP Certification** - Tribal Official signs the IHP and certifies:
 - It had an opportunity to review the IHP/Amendment & authorized its submittal **OR**
 - It allows the TDHE to submit the IHP/Amendment without prior review by Tribe.



IHP: Planning & Administration Costs

- **Planning & Administrative (P&A) costs cannot exceed:**

Annual IHBG Grant	P&A Spending Cap
Greater than \$500,000	20%
Less than \$500,000	30%

- **Eligible P&A costs:**
 - Preparation of IHP and APR
 - Staff & overhead costs directly related to carrying out IHP activities
 - Challenging the formula funding amount
 - Overall program cost for administrative management
 - Other P&A costs as considered at discretion of Recipient

Grant Recipient Post-IHBG Award Activity: *First Step: Environmental Review Records (ERR)*

- Tribe/TDHE executes IHBG Grant Agreement with HUD
- Under 24 CFR Part 58: Recipient determines & documents environmental determinations (exempt, CatEx, EA w/ FONSI) for all IHP planned activities
- Recipient advertise FONSI for 2 weeks and then submit to form HUD- 7015.15, Request for Release of Funds w/ supporting ERR data
- HUD has 15 days to approve request and issues HUD 7015.16, Authority to Use Grant funds (EROF)
- Once HUD EROF received, Tribes can commence construction activity for proposed undertaking
- Recipient starts work on IHP planned activities and report progress periodically to BOC or Tribal Council
- Recipient submits APR at end of program year to report outcomes.

2 CFR 200 Uniform Administrative Requirements For Federal Awards

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



2 CFR 200 Subpart B - General *Highlights*

- ONAP Program Guidance 2014-12, Consolidation of OMB Circulars. Office of Management & Budget (OMB) previously issued Circular notices for uniform requirements which were then Codified and made effective December 26, 2014.
- The purpose of this part is to establish uniform administrative requirements, cost principles and audit requirements for Federal awards to non-Federal entities by Federal awarding agencies;
- This part provides basis for systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to OMB.
- This part 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.



2 CFR 200 Subpart C- Pre-Award Requirements *Highlights*

- In accordance with the Federal Grant and Cooperative Agreement Act, Federal award agencies must identify the appropriate instrument for the federal award to the non-federal entity - ***For NAHASDA, HUD uses a Grant Agreement to award IHBG funds to Tribes/TDHEs.***
- ***Suspension and Debarment*** - Non federal 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-Award Requirements *Highlights*

- **Financial Management System (200.302)**
 - Investment
 - Cash management
 - Accounting system
- **Internal controls (200.303)**
- **Equipment, Property Inventory Control and Disposition System (200.313)**
- **Procurement Standards System (200.318)**
- **Records Retention - 3 years (200.333)**



PROCUREMENT STANDARDS (200.317-326)

- **Procurement Policy and procedures that:**
 - Provide for open and fair competition
 - Use only responsible contractors
 - Maintain records detailing history of all procurements
 - Perform cost or price analysis for every procurement
- **Methods of Procurement**
 - De Minimis Exception (<\$5,000) [NAHASDA Sec. 203(g)], no competition
 - Micro-purchase (\leq \$10,000), Small purchase (\leq \$150,000), written quotes required
 - Competitive Sealed Bids (>\$150,000), formal advertising
 - Competitive Proposals (> \$150,000), formal advertising
 - Non-Competitive Proposals (single source entity, emergency, or receipt of only one single bid/proposal that needs HUD approval)




PROCUREMENT STANDARDS (continued)


- **Indian Preference (1000.48-52)**
 - Training, employment, contracts
 - Limit bids or proposals to Indians, or Can Use two-stage process
 - Publicly announced in advertised Solicitations (for contracts greater than \$150,000)
 - Include 7(b) clause in all contracts for Indian organizations or Indian-owned enterprises
- **Contracting with small and minority businesses, women's business and labor surplus area firms (200.321)**
- **Contract cost and price analysis (200.323)**
- **Bonding Requirements (200.325)**
 - Bid Bond/Guarantee, Performance and Payment Bonds
 - Bonding through Acceptable Surety bonds approved by federal government
- **Contract provisions (200.326)**



2 CFR 200 Subpart E - Cost Principles *Highlights*

- **Reasonable Costs** - when a cost does not exceed that which would be incurred by a prudent person at time of decision to incur cost. Market prices for comparable good or services in area
- **Allocable Costs** - when a cost objective for goods and services are chargeable or assignable to that Federal award in accordance with relative benefits received.
- **Allowable Costs** - Those listed in Select items of Costs deemed allowable.
- **Unallowable Costs** - Those listed in Select items of Costs deemed unallowable
- **Audit services** - A reasonably proportionate share of audit costs required by the Single Audit Amendments of 1996. are allowable. 

2 CFR 200 Subpart F - Audit Requirements *Highlights*

- **Audit required** - A non-federal entity that expends **\$750,000 or more** during the fiscal year in Federal awards must have a single or program-specific audit conducted for that year.
- **Exemption when Federal awards expended are less than \$750,000** - A non-federal entity that expends less than \$750,000 during the fiscal year in Federal awards is *exempt* from Federal audit requirements for that year but records must be available for review or audit by appropriate official so the Federal agency and GAO.
- **Financial Statements** - The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets and cash flows for the fiscal year audited.
- **Audit Report Submission**- Auditees must complete and send report to Federal Audit Clearinghouse no later than 9 months after end of fiscal year period. 

Subpart C: Formula Allocation Highlights

- Based on mathematical formula (Appendix A & B)
Previously, two formula components: (1) Formula Current Assisted Stock (FCAS) and (2) Need:
(1) FCAS - \$ for operating and maintaining 1937 Act units including modernization (use of Allowable Expense level per unit basis as of 09/30/96). Requires inventory count each year for # 1937 rental and mutual help units.
(2) Need - based on HUD need study adjusted for cost indexes as of September 30, 1996
- *Effective 12/22/16*, there are four formula components per the 2016 Formula Negotiated Rulemaking Final Rule. The added two formula factors are:
(3) 1996 Minimum (1000.340); and
(4) Undisbursed IHBG funds factor (1000.342)



IHBG Formula: FCAS Conversions and Demolitions Highlights

- Tribes/TDHEs are required to not only report FCAS conversions before 10/1/97 but also all conversions ***after*** 10/1/97 in the Formula Response form to HUD each year before the final IHBG allocation is made to Tribe;
- Efforts to convey paid off Conveyance Eligible (CE) units will be afforded consideration to remain as an FCAS unit if the Tribe has a legal impediment preventing its conveyance with conveyance plan submitted to HUD
- Units slated for demo and rebuild can only be considered in the FCAS count if activity is completed within one year or ***with a one-time, one year extension approved by HUD***
- ***Refer to PIH Notices 2017-15 and 2017-16 for complete overview.***

IHBG Formula: 1996 Minimum Funds Factor *Highlights*

- A new minimum allocation amount provision was established
 - Carryover funds, under this section, means grant funds voluntarily returned to the formula or not accepted by tribes in a fiscal year
 - If there are carryover funds in a given year, HUD will hold the lesser of \$3 million or available carryover funds for additional allocations to tribes with grants allocations of less than 0.011547 % of that year's appropriations.
 - All tribes eligible under this section shall receive a grant allocation equal to 0.011547% of that year's appropriations.
 - For example, if in a given fiscal year, the IHBG appropriations is \$650,000,000, then 0.011547 % is \$75,055. So any tribe whose formula allocation is less than \$75,055 is eligible to receive additional allocation to equal to \$75,055 as carryover funds are available.
- ***Refer to PIH Notice 2017- 14, 2017-15 and 2017-16 for detailed overview.***

IHBG Formula: Undisbursed Funds Factor *Highlights*

- The undisbursed funds factor applies if a Tribe's initial allocation is \$5 million or more and the Tribe has undisbursed (unspent) IHBG funds greater than the sum of the prior year 3 years' initial allocations
- If this factor applies to a Tribe, it's initial allocation shall be the greater of the initial allocation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations
- Undisbursed IHBG funds is the amount of IHBG funds allocated to a Tribe in HUD's LOCCS on October 1 of the fiscal year in which the allocation is made
- Amounts subtracted from an initial allocation shall be redistributed under the Need component among ***all*** Indian tribes not subject to this factor.
- ***Please refer to PIH Notice 2017-14, 2017-15 & 2017-16 for more detailed information.***

Valuable Helpful Resources:

- NAHASDA statute and implementing regulations including ICDBG, Section 184 Mortgage Loan Guarantee Program, Title VI Loan Guarantee Program including PIH Notices and ONAP Program Guidance can be found at:
 - Link: www.hud.gov/codetalk
- NAIHC Training and Technical Assistance for model policies & other critical Indian housing management documents can be found at:
 - Link: www.naihc.net/elearning
- Other resources are through local HUD ONAP offices and network system with other Tribes/TDHEs

Q & A Session