

Executive Director Training  
September 30, 2021  
11:00 AM-4:00 PM E.S.T.  
Part # 1B

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



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**Conflict of Interest In the Administration of Contracts**

The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.



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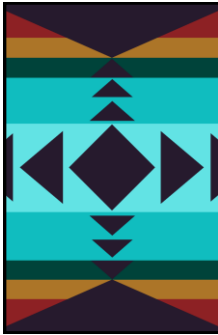
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### Program Guidance 2002-13 Review:

A recipient's compliance with conflict-of-interest requirements should be included in the tribe and/or TDHES, self-monitoring program. HUD will also review conflict of interest policies, procedures, and performance during its regular monitoring of a recipient compliance with program requirements.

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### Conflict Of Interest and Interest in any Project or Property & One Year Prohibition.

- During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he disclosed his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest.

- If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. **Any violation of the foregoing provisions of this section shall constitute misconduct in office.** This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board.

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### 2 CFR 200.318 (C) (1)

The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must 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.

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### 2 CFR 200.318 (C) (1)

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 must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.



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### Gifts, Entertainment and Gratuities

An employee shall not solicit or accept directly or indirectly any gift exceeding \$100.00 value, gratuity, favor, loan or any other thing of monetary value from a person or organization who has (in the past, or tends to seek to obtain) a contractual, business or financial relation with ATHA or who has interests which may be affected by the performance or nonperformance of the employee's official duty, except as allowed in paragraph 2 below.



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### Gifts, Entertainment and Gratuities

An employee may accept food or refreshments of nominal value on infrequent occasions in the ordinary course of a breakfast, luncheon or dinner meeting, or other meeting where an employee may properly be in attendance; or may accept unsolicited advertising materials such as pens, calendars or other items of a nominal value.



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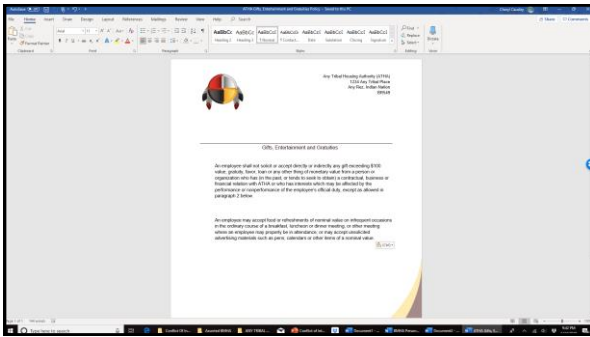
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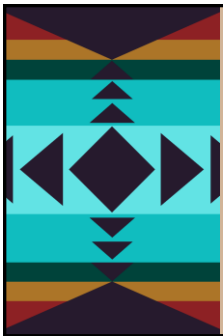
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## 2 CFR 200.318 (C) (1)

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.

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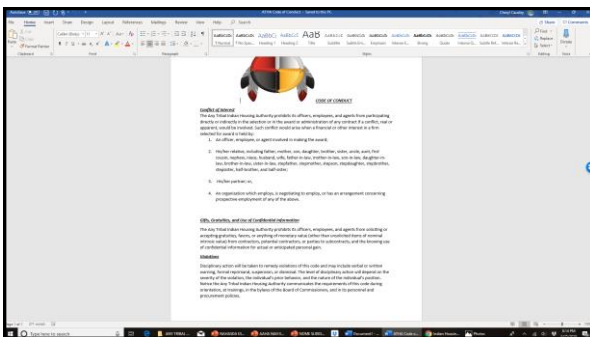
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### CODE OF CONDUCT

- **Conflict of Interest**
- The Any Tribal Indian Housing Authority prohibits its officers, employees, and agents from participating directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
  - An officer, employee, or agent involved in making the award;
  - His/her relative, including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, and half-sister;
  - His/her partner; or
  - An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

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### Gifts, Gratuities, and Use of Confidential Information

The Any Tribal Indian Housing Authority prohibits its officers, employees, and agents from soliciting or accepting gratuities, favors, or anything of monetary value (other than unsolicited items of nominal intrinsic value) from contractors, potential contractors, or parties to subcontracts, and the knowing use of confidential information for actual or anticipated personal gain.




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### Violations

Disciplinary action will be taken to remedy violations of this code and may include verbal or written warning, formal reprimand, suspension, or dismissal. The level of disciplinary action will depend on the severity of the violation, the individual's prior behavior, and the nature of the individual's position. Notice the Any Tribal Indian Housing Authority communicates the requirements of this code during orientation, at trainings, in the bylaws of the Board of Commissioners, and in its personnel and procurement policies.




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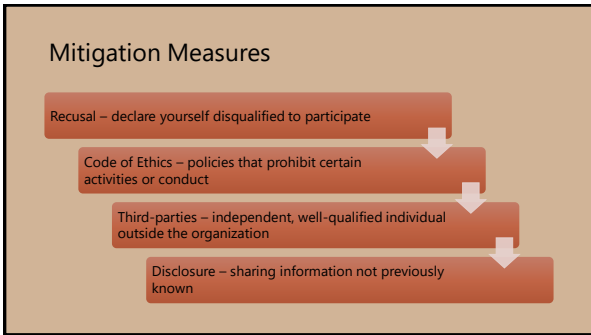
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### 7. Tribal or Indian preference

This may be incorporated into the procurement policy or may be a separate policy. IHBG recipients are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act and Section 5 of the Indian Financing Act of 1974, in accordance with §1000.48. Section 1000.52 (a) (1) requires recipients to have policies that are consistent with the sections cited above. In addition, §1000.54 on Indian Preference complaint procedures requires tribal policies that meet or exceed the requirements listed under this citation.

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### Indian Preference

You should have the following Documents in place regarding Indian Preference:

- Your Indian Preference Policy
- Your Indian Preference Qualification Application
- Your Indian Preference Determination Letter
- Your Indian Preference Complaint Procedure

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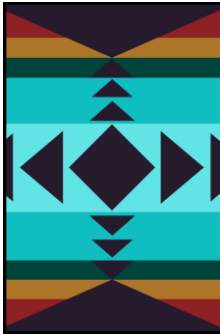
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### Indian Preference Complaint Procedure

*ATHA shall not issue a notice to proceed until all complaints and appeals have been resolved.*

The following procedures are applicable to complaints arising out of any methods of providing Indian preference:  
*The burden of proof shall be on the complainant to demonstrate a violation of the policy(ies) or procedure(s).*

1. Each complaint shall be in writing, signed, dated, and filed with the ATHA.
2. A complaint must be filed with the ATHA no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.
3. Upon receipt of a complaint, the ATHA shall stamp the date and time of receipt upon the complaint.
4. Within 20 calendar days of receipt of a complaint, the ATHA Executive Director or their designees, shall either meet, or communicate by mail, e-mail, or telephone, with the complainant in an effort to resolve the matter.
5. The ATHA Executive Director shall make a determination on the complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the Executive Director. The decision of the Executive Director shall constitute final administrative action on the complaint.

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### 8. Real property acquisition and relocation

IHBG recipients are subject to real property acquisition and relocation policies at §1000.14 and 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.

The regulations at §24.103 (a) and (d), respectively, require grantees to develop minimum standards for appraisals, as well as criteria for determining the minimum qualifications of appraisers.




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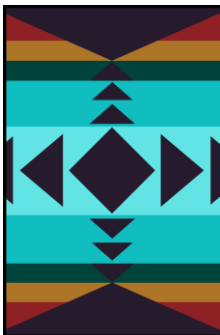
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### Real Property Acquisition and Relocation

The tribe shall follow the relocation and real property acquisition regulations set out in 24 C.F.R. 1000.14 in relocating tenants and homebuyers and acquiring real property. Under section 702 of NAHASDA no lease of restricted allotments or town site lands shall exceed 50 years.

You will still need to develop minimum standards for appraisals, as well as criteria for determining the minimum qualifications of appraisers.

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### 9. Section 3

Recipients are required to comply with Section 3 of the Housing and Urban Development Act of 1968. Section 3 addresses job training, employment, and contracting opportunities for low-income individuals. This may be addressed in the personnel and procurement policies. This requirement is found at §1000.42.

On Oct 23, 2020, a Dear Tribal Leader letter was issued.

- Documents:
- #1 Dear Tribal Leader-Section 3 Oct 23, 2020
- #2 Section 3 Final Rule Sept 29, 2020



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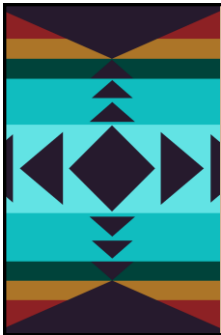
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### 9. Section 3.

On September 29, 2020, the U.S. Department of Housing and Urban Development (HUD) published a final rule entitled "Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses" (Section 3 Final Rule) in the Federal Register (FR) at 85 FR 61524.

As you know, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires that recipients of certain HUD funds make economic opportunities available for low- and very low-income individuals, especially recipients of government assistance for housing, living in the areas where HUD funds are spent.

The Section 3 Final Rule makes changes to the Section 3 regulations, now codified in 24 CFR Part 75 and effective on November 30, 2020, designed to focus on economic opportunity outcomes while simultaneously reducing regulatory burden. These changes improve the effectiveness of Section 3, streamline some processes that have not yielded significant benefits, and encourage HUD grantees to focus on sustained employment for low- and very low-income individuals.



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### 9. Section 3

The Section 3 Final Rule does impact our Native American programs in important ways that I wanted to share with you. The Final Rule provides that "contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of" 24 CFR Part 75.



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### 9. Section 3

Accordingly, beginning on November 30, 2020, the effective date of the Section 3 Final Rule, Tribes and Tribally Designated Housing Entities (TDHEs) will no longer be required to comply with Section 3 requirements. Additionally, the Final Rule makes conforming technical changes to the Indian Housing Block Grant (IHBG) regulations at 24 CFR 1000.42 clarifying that IHBG recipients are no longer subject to Section 3 requirements.



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### 10. Cash Management

The regulations at 2 CFR 200.302 require all grant recipients to establish cash management procedures. Cash management is the process of managing the cash flow to optimize the use of funds.



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### 11. Travel

The regulations at 24 CFR § 1000.26 state that recipients shall comply with the requirements and standards of 2 CFR § 200.474. The regulations at 2 CFR 200.474(d) require that grantees must use Federal travel standards in the absence of a local governmental unit travel policy.



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### 12. Drug-free workplace

One of the certifications required before a recipient's IHP is determined to be "in compliance" is the Certification for a Drug-Free Workplace. This certification is required by the regulations at 24 CFR §24.600. The required form for certification, form HUD-50070, requires the recipient to certify that it has: 1) published a statement notifying employees of the drug-free workplace requirements, and 2) provided each employee engaged in the performance of work under IHBG a copy of the written statement.

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### Drug-free workplace

As described in the Drug-Free Workplace Act, it is the policy of the Authority to provide a drug-free workplace and for all employees to abide by this policy. Accordingly, an employee of the Authority is prohibited from engaging in the unlawful manufacture, distribution, dispersion, possession, or use of a controlled substance in the workplace. Violations of this or other prohibitions on drug use by Authority employees may result in disciplinary action, to include dismissal.



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### Drug-Free Workplace Written Statement

- **In effect:** \_\_\_\_\_ (Date) until further notice
- I have read and been informed about the content, requirements, and expectations of the Drug and Alcohol-Free Workplace Policy for employees of Any Tribal Indian Housing Authority, I have received a copy of the policy and agree to abide by the policy guidelines as a condition of my employment and my continuing employment at ATIA.
- I understand that if I have questions, at any time, regarding the Drug and Alcohol-Free Workplace Policy, I will consult with the Executive Director, my immediate supervisor, or Tribal Human Resources staff members.
- Please read the Drug and Alcohol-Free Workplace Policy carefully to ensure that you understand the policy before signing this document.
- \_\_\_\_\_
- \_\_\_\_\_
- Employee Signature: \_\_\_\_\_
- Employee Printed Name: \_\_\_\_\_
- Receipt By: \_\_\_\_\_
- Date: \_\_\_\_\_

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Additional policies, procedures, or standards are also required under certain circumstances. These are as follows:



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### Investment and Internal Control

Recipients that seek approval to invest IHBG funds must comply with the regulations at 24 CFR 1000.58 and Notice PIH 2015-08. The Notice requires recipients to have an Internal Control Policy and an Investment Policy.

In addition, investment policies and procedures are required by Notice PIH 1996-33 for 1937 Housing Act investments from the following programs: Low Rent, Turnkey III, and Mutual Help.



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### Housing Standards

NAHASDA regulations regarding Revisions to Cost Limits for Native American Housing at §1000.158 require that grant recipients either "adopt written standards for its affordable housing programs that reflect the requirements of §1000.156" or comply with the Total Development Cost limits published periodically by HUD.

More information regarding these requirements can be found in Notice PIH 2010-47, Total Development Costs (TDC) for Affordable Housing under (NAHASDA). ONAP Guidance 2004-02 outlines these policy requirements.



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**SOME MORE SPECIFICITY:**

- NAHASDA Sec. 102(b)(2)(D) – required Certifications of Compliance
- Eligibility, admissions, and occupancy - NAHASDA, Section 203(d)
- Rents charged and methods of calculation - NAHASDA, Sec. 203(a)
- Management and maintenance of assisted housing - NAHASDA, Sec. 203(b) and (c)
- 2 CFR 200.318(a) – Procurement Procedures
- 2 CFR 200.318(c) – Conflicts of Interest in Procurement
- 2 CFR 200.318(k) – Settlement of any Procurement Contractual/Administrative Issues

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**SOME MORE SPECIFICITY:**

- 2 CFR 200.474.(d) – Travel
- 24 CFR 1000.14 – Relocation and Property Acquisition
- 24 CFR 1000.26 – Overarching Administrative Requirements
- 24 CFR 1000.42 – Section 3 – See Appendix 1-2
- 24 CFR 1000.46 – Drug-Free Requirements
- 24 CFR 1000.158 – Moderate Housing Standards and (c) = Total Development Costs
- 24 CFR 1000.30, 32, 34 and 36 - Conflicts of Interest:
- 24 CFR 1000.54 – Complaints/Issues stemming from Indian Preference

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**INDIAN OR TRIBAL PREFERENCE REFERENCES:**

Section 101 (k) of NAHASDA allows a tribe to adopt tribal preference in employment and contracting. The tribal employment and contract preference laws (including regulations and tribal ordinances) must be adopted by the Indian tribe that receives the preference.

**NOTE:** Indian and tribal preference requirements should be referenced in both the procurement policy and personnel policy.




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**INDIAN OR TRIBAL PREFERENCE  
REFERENCES:**

- 24 CFR 1000.48 – Indian or Tribal Preference applicable to IHBG-assisted activities
- 24 CFR 1000.50 - Indian or Tribal Preference applicable to IHBG-assisted administrative activities
- 24 CFR 1000.52 - Indian or Tribal Preference applicable to IHBG-assisted procurement activities
- PG 2013-07 – Preference 2013-07: Indian and Tribal Preference in Employment and Contracting in IHBG

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**INDIAN OR TRIBAL PREFERENCE  
REFERENCES:**

Tribal Preference – A Tribe may adopt a tribal preference law in housing assistance, employment and contracting, that tribal preference will be given to, and 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.

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**OTHER GUIDANCES:**

- ❖ PG 2002-11 (Recipient) - Required Policies and Statements Under NAHASDA (Everything Listed Here)
- ❖ PG 2002-13 (Recipient) - Conflict of Interest in IHBG Housing Admissions
- ❖ PG 2014-03: Insurance Requirements
- ❖ PG 2020-02: Useful Life and Binding Commitments

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### Other Items you should Include:

#### SEVERABILITY CLAUSE

If any portion of this agreement shall be found to be void or unenforceable, it shall in no way effect the validity and enforceability of any other provision hereof. If any portion of this Lease Agreement shall be found to be in conflict with any of the provisions of the ATIHA policies as they now exist or as they may hereafter be revised or added to by the ATIHA, the provisions of the ATIHA policies shall prevail.



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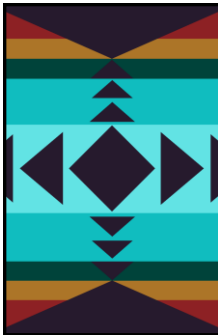
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- (1) In accordance with applicable statutes, the recipient certifies that: It will comply with title II of the Civil Rights Act of 1968 in carrying out this Act, to the extent that such title is applicable, and other applicable federal statutes.
- (2) In accordance with 24 CFR 1000.328, the recipient receiving less than \$200,000 under FCAS certifies that: There are households within its jurisdiction at or below 80 percent of median income.
- (3) The following certifications will only apply where applicable based on program activities.
  - a. The recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under NAHASDA, in compliance with such requirements as may be established by HUD.
  - b. Policies are in effect and are available for review by HUD and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA.
  - c. Policies are in effect and are available for review by HUD and the public governing rents charged, including the methods by which such rents or homebuyers payments are determined, for housing assisted with grant amounts provided under NAHASDA; and
  - d. Policies are in effect and are available for review by HUD and the public governing the management and maintenance of housing assisted with grant amounts provided under NAHASDA.

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### NAHASDA Other Federal Law Requirements

#### Non-Discrimination Laws:

- ❖ Age Discrimination Act of 1975
- ❖ Section 504 of the Rehabilitation Act of 1973 (option for use with American with Disabilities Act of 1990)
- ❖ Indian Civil Rights Act of 1968
- ❖ Title VI & VIII of the Civil Rights Act of 1968



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### Other Federal Requirements

Uniform Relocation Assistance & Real Property Acquisition Act of 1970 - assures fair compensation for displacement of families

Davis-Bacon Act of 1931 - Prevailing wages (Tribal prevailing wages can preempt Davis-Bacon if adopted by Tribe)

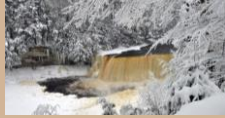
• National Environmental Policy Act (NEPA) of 1969

• Flood Disaster Protection Act of 1973

• Lead-based Paint Poisoning Prevention Act of 1973

• Section 3 of the Housing and Urban Development Act of 1968 - training & employment opportunities for low-income persons-DNA After 11/30/2020

• Uniform Administrative Act (2 CFR Part 200) — Consolidation of all former OMB Guidance for Uniform Administrative requirements, Cost Principles, and Audit Requirements for Federal Awards



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### Some of the major requirements include but are not limited to:

❖ National Environmental Policy Act (NEPA – 42 USC 4321) NEPA requires that you determine, prior to the expenditure of any funds, that the activity will have no harmful effects on the environment. Tribes may accept the responsibility for conducting environmental reviews (under 24 CFR Part 58) or may choose to have HUD complete the review for them (under 24 CFR Part 50).

❖ Davis Bacon Act (DBRA) The Davis Bacon Act (46 Stat 1494; 40 USC Chapter 3 Section 276 and all subsections) requires workers be paid no less than a determined wage for projects over \$2,000. The tribe can adopt its own prevailing wage rates that supersede Davis Bacon.

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### Some of the major requirements include but are not limited to:

❖ Indian Civil Rights Act (ICRA) The Indian Civil Rights Act (925 USC 1301 - 1303) requires that the tribe and subordinate entities provide due process.

❖ Indian Self-Determination and Education Assistance Act The Indian Self-Determination and Education Assistance Act (25 USC 450 e (b)) requires preference for Indians in employment when using federal funds under certain circumstances.

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Poll Question # 1

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NAHASDA Guidance Overview



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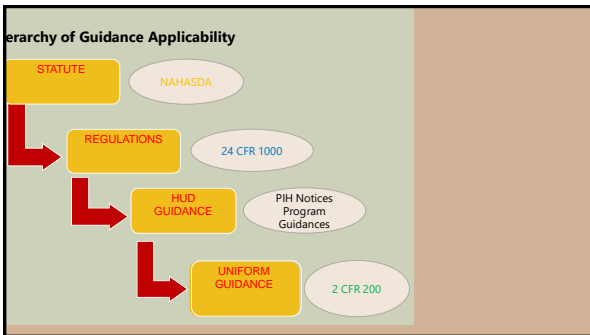
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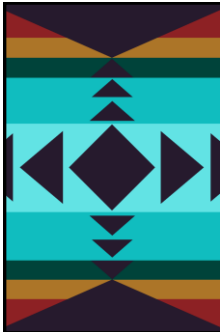
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### BASIC CONCEPTS

NAHASDA is a Self-Determination Program  
 IHBG recipients have maximum flexibility in defining their program within the established requirements

Guidelines for NAHASDA are constructed in the following four references:

- Statute \* Appendix # 1
- Regulations \* Appendix # 2
- PIH Notices (Available on website)
- ONAP Program Guidance (Available on website)
- Uniform Guidance \* Appendix # 3

- The Reference material is not duplicative

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### For Applying Guidance

1. Program specific requirements are followed when provided.
2. Uniform Guidance is followed when Program specific requirements are not provided and in accordance with 24 CFR 1000.26
3. To understand program requirements, research the Statute, Regulations, PIH Notices, Program Notices and the Uniform Guidance is necessary.
4. For the Indian Housing Block Grant (IHBG) program specific requirements are generally not duplicated.




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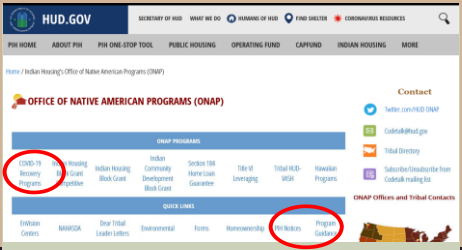
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### Link for IHBG Notices & Guidances



HUD.GOV

SECRETARY OF HUD WHAT WE DO HOUSING OF HUD FUND SHELTER ECONOMIC RESOURCES

PIH HOME ABOUT PIH PIH ONE STOP TOOL PUBLIC HOUSING OPERATING FUND CAPREID INDIAN HOUSING MORE

Home / Indian Housing / Office of Native American Programs (ONAP)

#### OFFICE OF NATIVE AMERICAN PROGRAMS (ONAP)

Contact

- Letter: ONAP/IED ONAP
- Guides@hud.gov
- Tribal Directory
- Subordinate/Coordinator Form
- Guides/mailing list

ONAP PROGRAMS

ONAP-18 Recovery Programs	Indian Housing Block Grant	Indian Community Development Block Grant	Indian Section 8 Home Loan Guarantee	Title VI Loaning	Tribal HUD-2808	Trustee Programs
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ONAP LINKS

- Enrollment Centers
- NAHASDA
- One Tribal Leader Letters
- Environmental
- Forms
- Homeownership
- PIH Notices
- Program Guides

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### Link for PIH Notices

[Public and Indian Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda/guidance)

[PIH Notices Related to Native American Programs – Policy and Regulations - Indian Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda/guidance)

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The screenshot shows the HUD.GOV website with a navigation menu including HOME, ABOUT PIH, PIH ONE-STOP TOOL, PUBLIC HOUSING, OPERATING FUND, CAPFUND, INDIAN HOUSING, and MORE. The main content area is titled "PIH NOTICES APPLICABLE TO NATIVE AMERICAN PROGRAMS". It includes a sub-section for "1 Notices" with a table listing notices. The first notice is dated 2021-06 and is titled "Process for Amending ICDBG-CARES Grant". The table has columns for "Date", "Issued/Expires", and "Subject/Purpose".

Date	Issued/Expires	Subject/Purpose
2021-06	Issued: January 15, 2021 Expires: This Notice remains in effect until amended, superseded, or rescinded.	Process for Amending ICDBG-CARES Grant - The purpose of this Notice is to provide ICDBG-CARES grantees with instructions on how to amend the use of existing Indian Community Development Block Grant (ICDBG) Investment Therapeutic (IT) funds provided under the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) (CARES Act). This Notice will be referred to as the "ICDBG-CARES Grant Amendment Notice."

Below the table, there is a section for "0 Notices" with a similar table structure.

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### Link for Program Guidance

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/codetalk/nahasda/guidance](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda/guidance)

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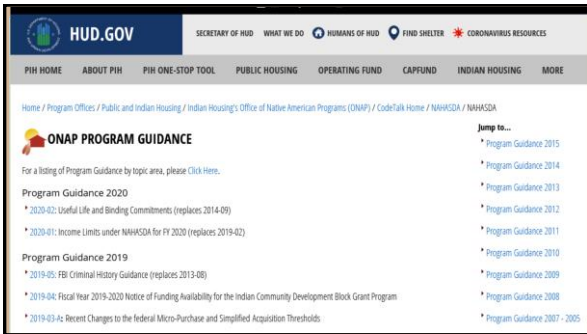
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HUD.GOV SECRETARY OF HUD WHAT WE DO HUMANS OF HUD FIND SHELTER CORONAVIRUS RESOURCES

PIH HOME ABOUT PIH PIH ONE-STOP TOOL PUBLIC HOUSING OPERATING FUND CAPFLUND INDIAN HOUSING MORE

Home / Program Offices / Public and Indian Housing / Indian Housing's Office of Native American Programs (ONAP) / CodeTalk Home / NAHASDA / NAHASDA

### ONAP PROGRAM GUIDANCE

For a listing of Program Guidance by topic area, please [Click Here](#).

**Program Guidance 2020**

- \* 2020-02: Useful Life and Binding Commitments (replaces 2014-09)
- \* 2020-01: Income Limits under NAHASDA for FY 2020 (replaces 2019-02)

**Program Guidance 2019**

- \* 2019-05: FBI Criminal History Guidance (replaces 2013-08)
- \* 2019-04: Fiscal Year 2019-2020 Notice of Funding Availability for the Indian Community Development Block Grant Program
- \* 2019-03-A: Recent Changes to the Federal Micro-Purchase and Simplified Acquisition Thresholds

**Jump to...**

- \* Program Guidance 2015
- \* Program Guidance 2014
- \* Program Guidance 2013
- \* Program Guidance 2012
- \* Program Guidance 2011
- \* Program Guidance 2010
- \* Program Guidance 2009
- \* Program Guidance 2008
- \* Program Guidance 2007 - 2005

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## NAHASDA STATUTE




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## 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




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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 (IHBC) 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

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## 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.

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## 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	

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

Sec. 102. Indian Housing plans \*Tribes and TDHEs 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

NAHASDA Statute

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### 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

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### Environmental Assessments and Reviews



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

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## 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

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## 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)	

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## 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




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**TITLE II--AFFORDABLE HOUSING ACTIVITIES**  
**NAHASDA Statute**

- 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

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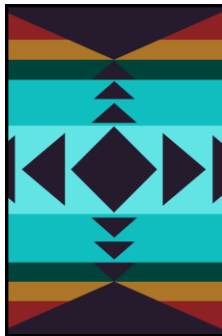
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**What is "Median" Income?**

**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 Tribe 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 \$48,000 (80% of which is \$32,000) and the United States median income is \$60,000 (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.

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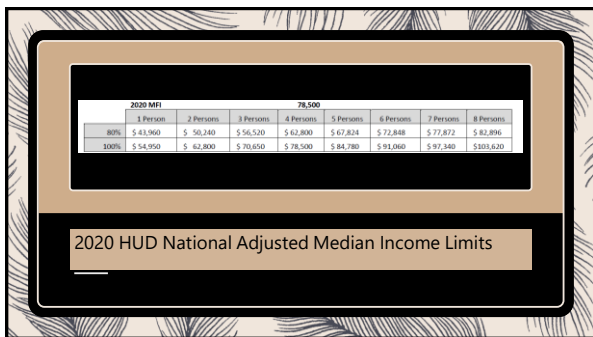
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2020 MFI		78,500							
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons	
80%	\$ 43,960	\$ 56,240	\$ 56,520	\$ 62,800	\$ 67,824	\$ 72,848	\$ 77,872	\$ 82,896	
100%	\$ 54,950	\$ 62,800	\$ 70,650	\$ 78,500	\$ 84,780	\$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

**2020 HUD National Adjusted Median Income Limits**

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### 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.

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### 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.



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### 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.



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### 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:



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### 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 IHBG 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 IHBG assistance.

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### 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.



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**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.

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**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.

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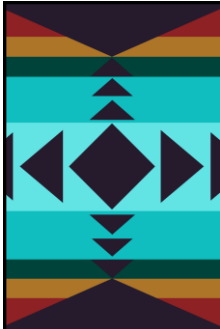
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**SEC. 201. ELIGIBLE FAMILIES**



(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.

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### 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.



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LUNCH TIME  
1 To 2 PM EST



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