



NAHASDA Tribal Council Roles and Responsibilities Day 1

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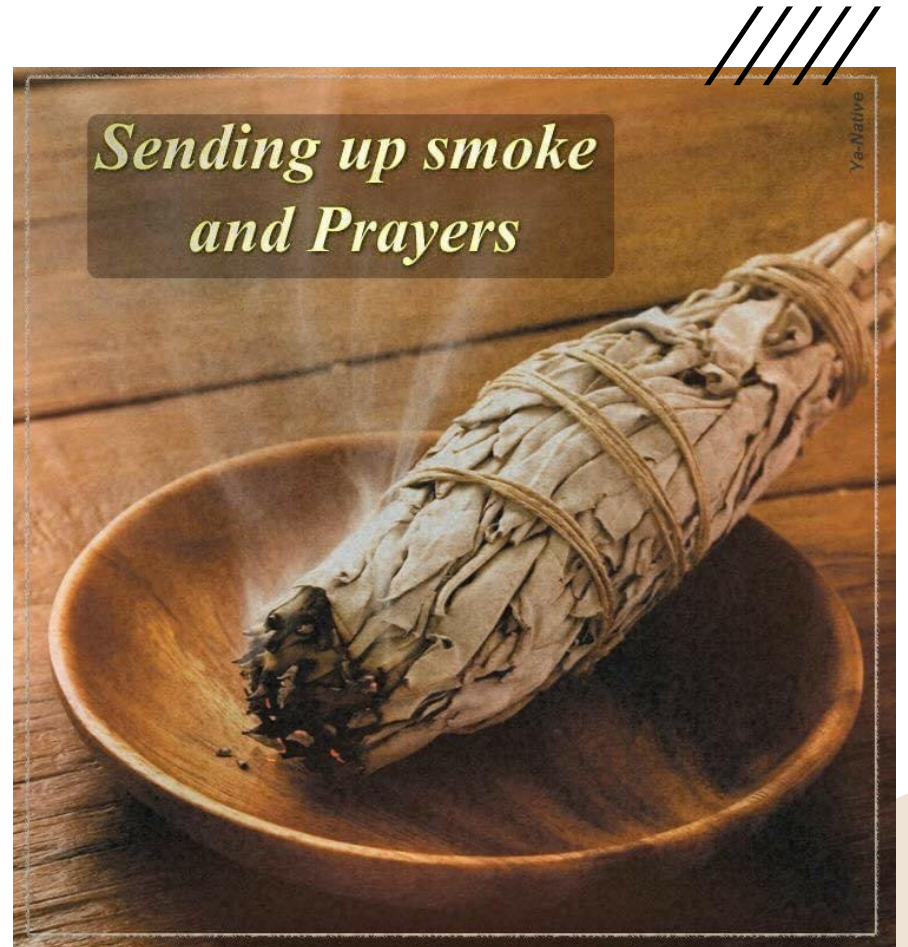


This training is being provided by the National American Indian Housing Council.



This webinar
is being
recorded.

WELCOME &
GOOD
MORNING!



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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



AGENDA DAY 1

11:00 -11:15 A.M.

ZOOM SIGN IN & ROOM ENTRY

11:15 – 4:00 P.M.

Welcome, Introductions

The History of Indian Housing

Understanding NAHASDA and its Implementing Regulations and Guidance

NAHASDA Statute & Objectives

NAHASDA REGULATIONS-24 CFR Part 1000

2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS

NAHASDA Guidance Overview

Block Grant Requirements

Affordable Housing Activities

Allocation Formula

Procurement Requirements

1:00 – 2:00 P.M.

LUNCH BREAK



Appendix Items

- Appendix # 1 NAHASDA STATUTE
- Appendix # 2 Regulations 24 CFR Part 1000
- Appendix # 3 Super Circular 2 CFR Part 200
- Appendix # 4 TRIBAL LEADERS' HANDBOOK ON HOMEOWNERSHIP
- Appendix # 5 Assisting Non-Low Income PIH Notice 2014-02
- Appendix # 6 Model Housing Ordinance
- Appendix # 7 Program Guidance 98-13 Board of Commissioners Stipends
- Appendix # 8 Program Guidance 2003-04 Tribal Wage Rates
- Appendix # 9 Program Guidance 2013-07 Indian Tribal Preference
- Appendix # 10 Program Guidance 2003-02 Local Cooperation Agreements
- Appendix # 11 Program Guidance 2014-05 R PII Protection
- Appendix # 12 Program Guidance 2020-02 Useful Life
- ~~Appendix # 13 Program Guidance 2014-09 Useful Life~~
- Appendix # 14 PIH 2014-02 Assisting Non-Low-Income Families
- Appendix # 15 HUD IHBG Monitoring Plans Template Links





Understanding The Complex Land Tenure System in Indian Country

From the TRIBAL LEADERS'
HANDBOOK ON
HOMEOWNERSHIP

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 347 federally recognized tribes within the contiguous 48 states and 227 federally recognized Tribal entities within the State of Alaska that comprise the 574 federally recognized Indian Tribe of the United States. 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 |

A decorative vertical border on the left side of the slide. It features a central horizontal band of light blue with a dark blue diamond and four triangles (two pointing left, two pointing right) arranged symmetrically. Above and below this band are horizontal stripes of dark green, gold, and red, with dark blue triangles pointing towards the center of the stripes.

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 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.



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.





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.

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:

Housing Development, which primarily funded staff salaries;

and the Housing Improvement Program (HIP) which gave grants to rehabilitate homes and for building homes for the very low income.

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!

DEPARTMENT
OF
HOUSING
AND
URBAN
DEVELOPMENT

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.***



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).





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

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.



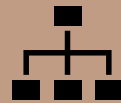
The Mutual Help contribution included at least one of the following:



(a) cash,



(b) labor,



(c) land where the unit will be located, and/or



(d) appropriate materials and equipment, such as appliances.

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.



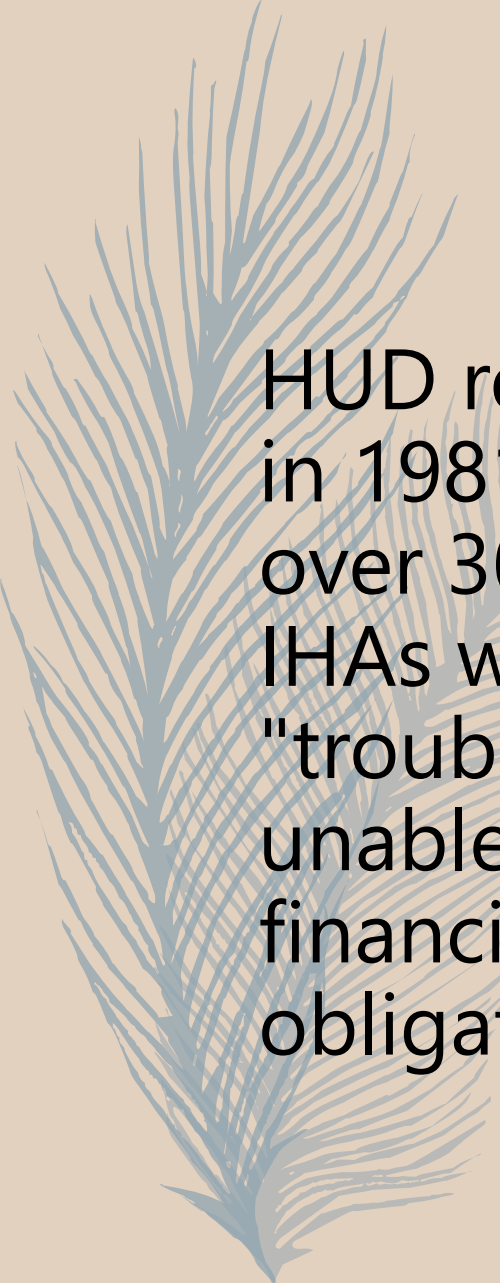
Turnkey III

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.

National American Indian Housing Council



"A Tradition of Native American Housing"

N A I H C

NAIHC

The NATIONAL AMERICAN INDIAN HOUSING COUNCIL established offices in Washington DC, began Advocacy "On the Hill"

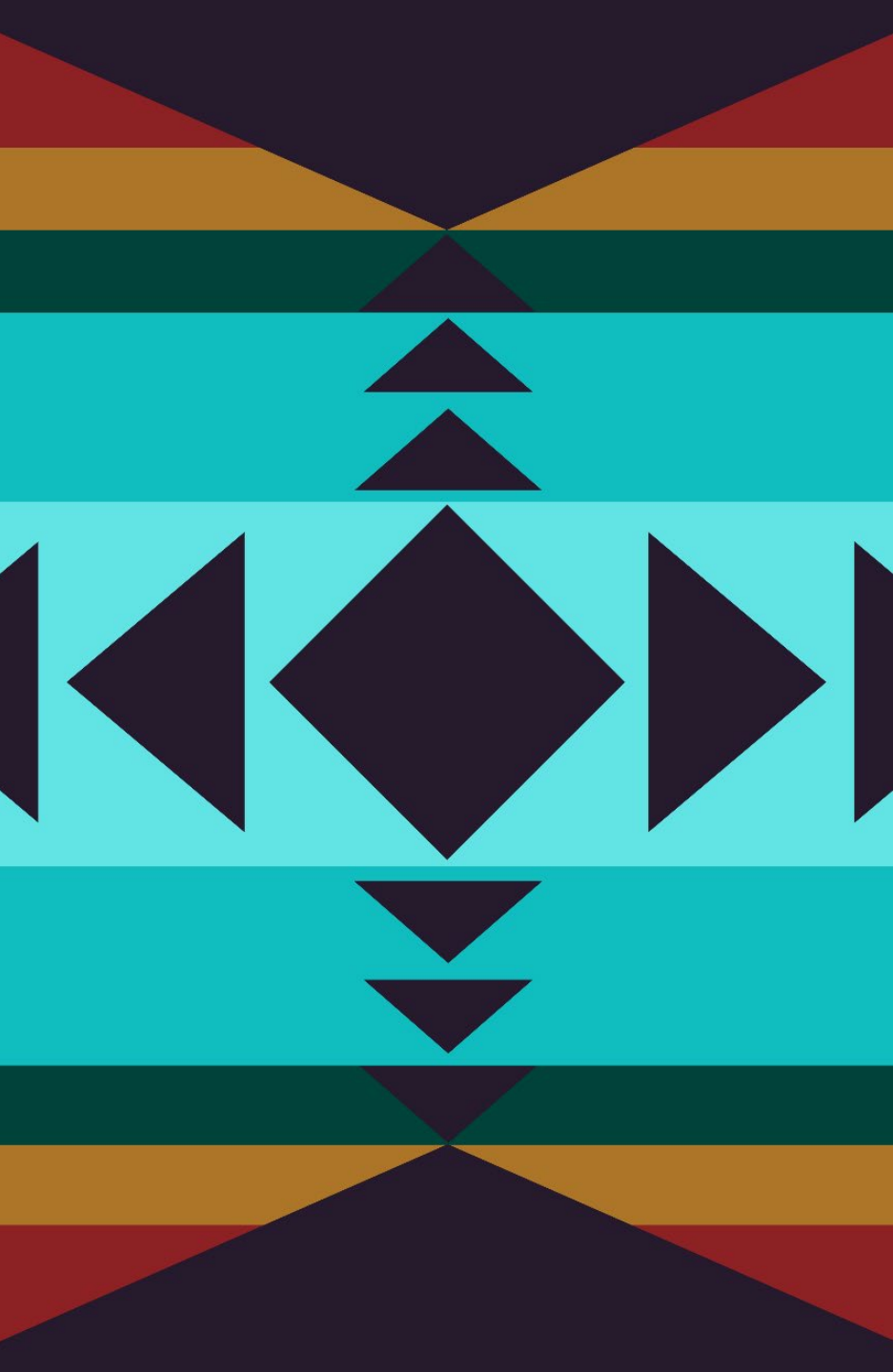


Amerind Risk Management was formed 1986

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.



Department of Housing & Urban Development Office of Native American Programs

Washington Office- Heidi Frechette-Deputy Assistant Secretary
Gary Cooper-Associate Deputy Assistant Sec.

Alaska Office- Anchorage Alaska

Northwest Office-Seattle Washington

Southwest Offices- Phoenix AZ & Albuquerque New Mexico

Northern Plains- Denver Colorado

Southern Plains-Oklahoma City Oklahoma

Eastern Woodlands-Chicago Illinois

Hawaii Office-Honolulu Hawaii



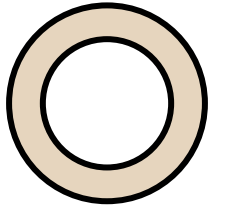
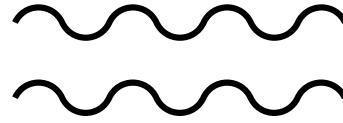
The Creation of NAHASDA

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.

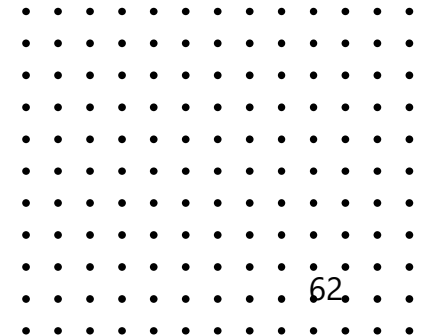


Much of the work that went into crafting NAHASDA was the result of the creation of a commission to evaluate the barriers to housing development in tribal communities. The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing ("the Commission") was established by Congress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



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,"





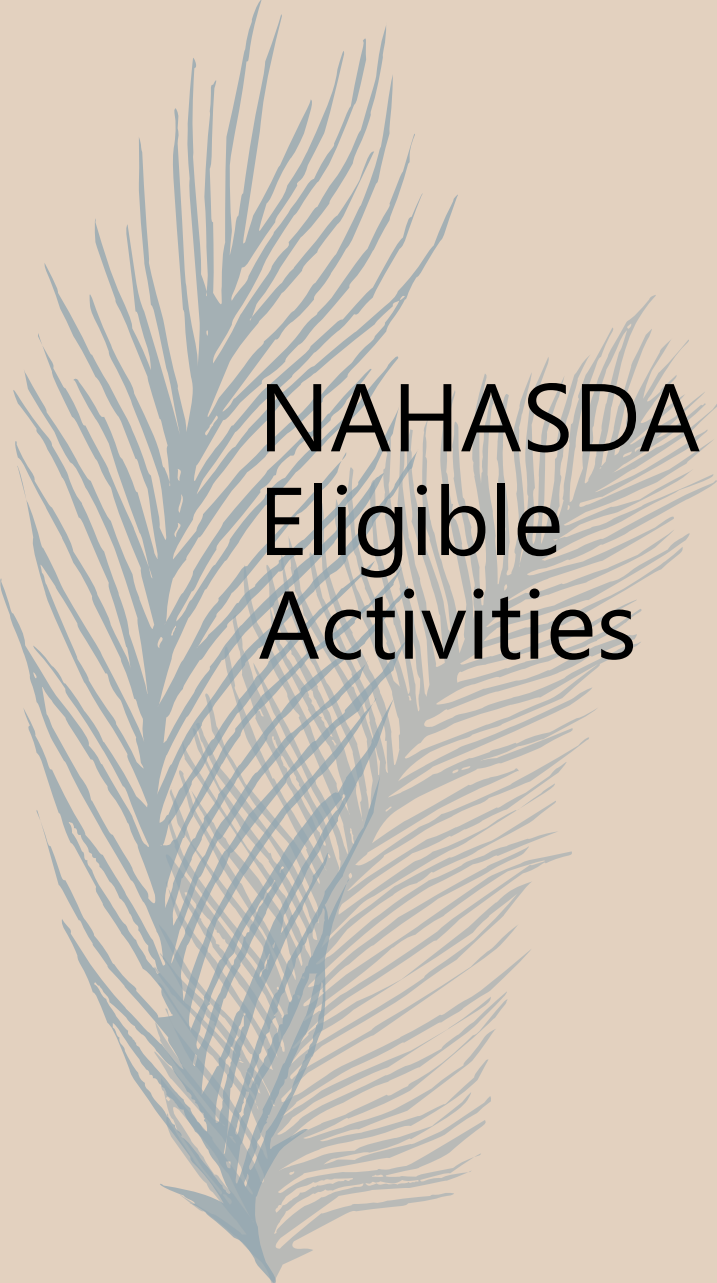
NAHASDA Was Signed into Law

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

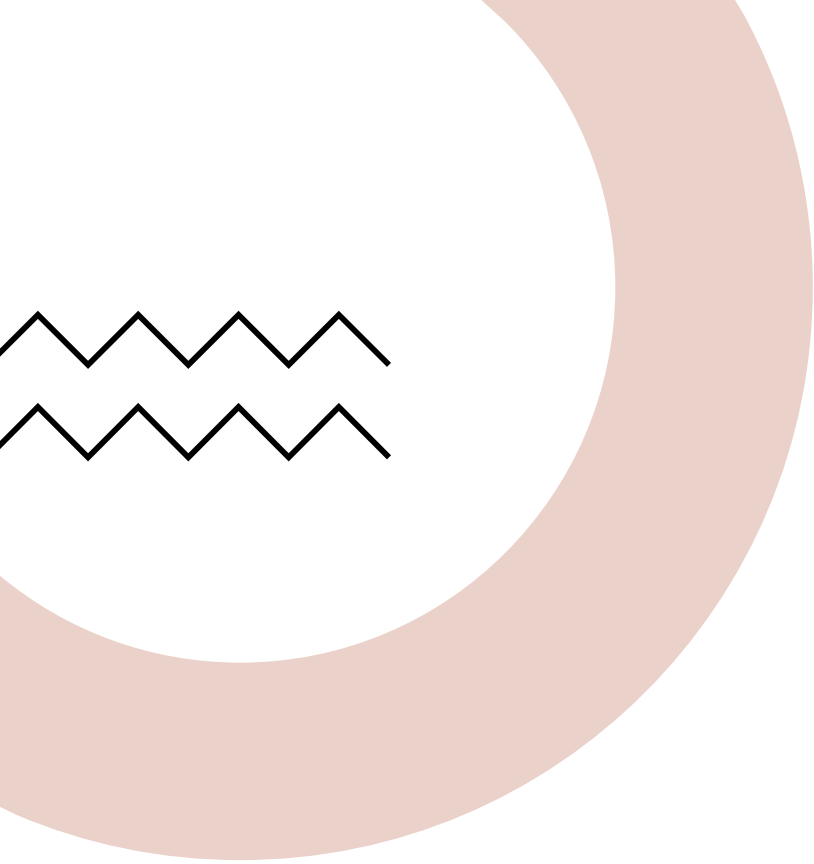
Some NAHASDA eligible activities would not have been eligible, under the 1937 Housing Act, including down-payment and other mortgage assistance programs, transitional housing, the construction of domestic abuse shelters, and creation of revolving loan funds. NAHASDA is not perfect, funding has not kept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



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.





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)

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.

When you go to Washington DC in your important leadership positions, please speak about the immense need that still exists to support and fund our programs. The NAIHC also has whitepapers to provide talking points.

NAHASDA Tribal Council Roles & Responsibilities



If your Housing program operates as a Housing Authority, it is a separate legal entity, its mission is mandated by the Tribal Ordinance creating the Authority and reaffirmed more specifically by a comprehensive housing assistance strategy. Functioning as the Tribe's principal housing agency (in HUD terms, Tribally Designated Housing Entity), they will focus upon community needs that require understanding, dedication, enthusiasm, vision, and experience. As a Board member, they serve as a principal advisor on housing issues facing your Tribal Members and as a policymaker for the HA.

If your Housing Program does not have a Board of Commissioners, the Tribal Council has ultimate responsibility for all aspects of compliance.

However, it must be recognized that the responsibility for making recommendations and decisions is not to be taken lightly. Due to the heavily regulated environment in which a Housing Authority operates, decisions are more responsive to legal considerations than to local policy. Failure to base policies and/or decisions according to applicable laws and regulations could result in legal action against the Housing Authority or even the Board.

Tribal officials as well as tribal staff have the added responsibility of serving the tribal community in an exemplary manner in addition to complying with the tribal and federal laws governing housing affairs. As positive role models, officials facilitate the community housing goals and objectives.

This course will hopefully help you on your important journey.

Understanding NAHASDA and Its Implementing Regulations & Guidance





Lesson Objectives

Identify key points of NAHASDA.

Explain NAHASDA objectives.

Illustrate hierarchy of law and policies.

Cite the section of the law requiring policies.

Explain how to research laws.



PUBLIC LAW 104-330—OCT. 26, 1996

NATIVE AMERICAN HOUSING ASSISTANCE
AND SELF-DETERMINATION ACT OF 1996

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

NAHASDA Objectives

- Assist and promote affordable housing
- Better access to mortgage markets
- Promote self-sufficiency
- Plan and integrate infrastructure
- To promote the private capital markets

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)

*One Hundred Fourth Congress
of the
United States of America
AT THE SECOND SESSION*

SEC 201. NATIONAL OBJECTIVE
1000.4 WHAT ARE THE OBJECTIVES OF NAHASDA?
THE PRIMARY OBJECTIVES OF NAHASDA ARE:

- A) TO ASSIST AND PROMOTE AFFORDABLE HOUSING ACTIVITIES TO DEVELOP,**
- (B) TO ENSURE BETTER ACCESS TO PRIVATE MORTGAGE MARKETS FOR INDIAN TRIBES AND THEIR MEMBERS**
- (C) TO COORDINATE ACTIVITIES TO PROVIDE HOUSING FOR INDIAN TRIBES AND THEIR MEMBERS AND TO PROMOTE SELF-SUFFICIENCY**
- (D) TO PLAN FOR AND INTEGRATE INFRASTRUCTURE**
- (E) TO PROMOTE THE DEVELOPMENT OF PRIVATE CAPITAL MARKETS IN INDIAN COUNTRY**

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;

[SEC. 2 - CONGRESSIONAL FINDINGS]

(2) THERE EXISTS A UNIQUE RELATIONSHIP BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENTS OF INDIAN TRIBES AND A UNIQUE FEDERAL RESPONSIBILITY TO INDIAN PEOPLE;

(3) THE CONSTITUTION OF THE UNITED STATES INVESTS THE CONGRESS WITH PLENARY POWER OVER THE FIELD OF INDIAN AFFAIRS, AND THROUGH TREATIES, STATUTES, AND HISTORICAL RELATIONS WITH INDIAN TRIBES, THE UNITED STATES HAS UNDERTAKEN A UNIQUE TRUST RESPONSIBILITY TO PROTECT AND SUPPORT INDIAN TRIBES AND INDIAN PEOPLE;

(4) THE CONGRESS, THROUGH TREATIES, STATUTES, AND THE GENERAL COURSE OF DEALING WITH INDIAN TRIBES, HAS ASSUMED A TRUST RESPONSIBILITY FOR THE PROTECTION AND PRESERVATION OF INDIAN TRIBES AND FOR WORKING WITH TRIBES AND THEIR MEMBERS TO IMPROVE THEIR HOUSING CONDITIONS AND SOCIOECONOMIC STATUS

[SEC. 2 - CONGRESSIONAL FINDINGS]

(5) PROVIDING AFFORDABLE HOMES IN SAFE AND HEALTHY ENVIRONMENTS IS AN ESSENTIAL ELEMENT IN THE SPECIAL ROLE OF THE UNITED STATES IN HELPING TRIBES AND THEIR MEMBERS TO IMPROVE THEIR HOUSING CONDITIONS AND SOCIOECONOMIC STATUS;

(6) THE NEED FOR AFFORDABLE HOMES IN SAFE AND HEALTHY ENVIRONMENTS ON INDIAN RESERVATIONS, IN INDIAN COMMUNITIES, AND IN NATIVE ALASKAN VILLAGES IS ACUTE AND THE FEDERAL GOVERNMENT SHALL WORK NOT ONLY TO PROVIDE HOUSING ASSISTANCE, BUT ALSO, TO THE EXTENT PRACTICABLE, TO ASSIST IN THE DEVELOPMENT OF PRIVATE HOUSING FINANCE MECHANISMS ON INDIAN LANDS

(7) FEDERAL ASSISTANCE TO MEET THESE RESPONSIBILITIES SHALL BE PROVIDED IN A MANNER THAT RECOGNIZES THE RIGHT OF INDIAN SELF-DETERMINATION AND TRIBAL SELF-GOVERNANCE BY MAKING SUCH ASSISTANCE AVAILABLE DIRECTLY TO THE INDIAN TRIBES OR TRIBALLY DESIGNATED ENTITIES UNDER AUTHORITIES SIMILAR TO THOSE ACCORDED INDIAN TRIBES IN PUBLIC LAW 93-638 (25 U.S.C. 450 ET SEQ.).

Overview of the NAHASDA Statute

Title I: Block Grant Requirements

Title II: Affordable Housing Activities

Title III: Allocation of Grant Amounts

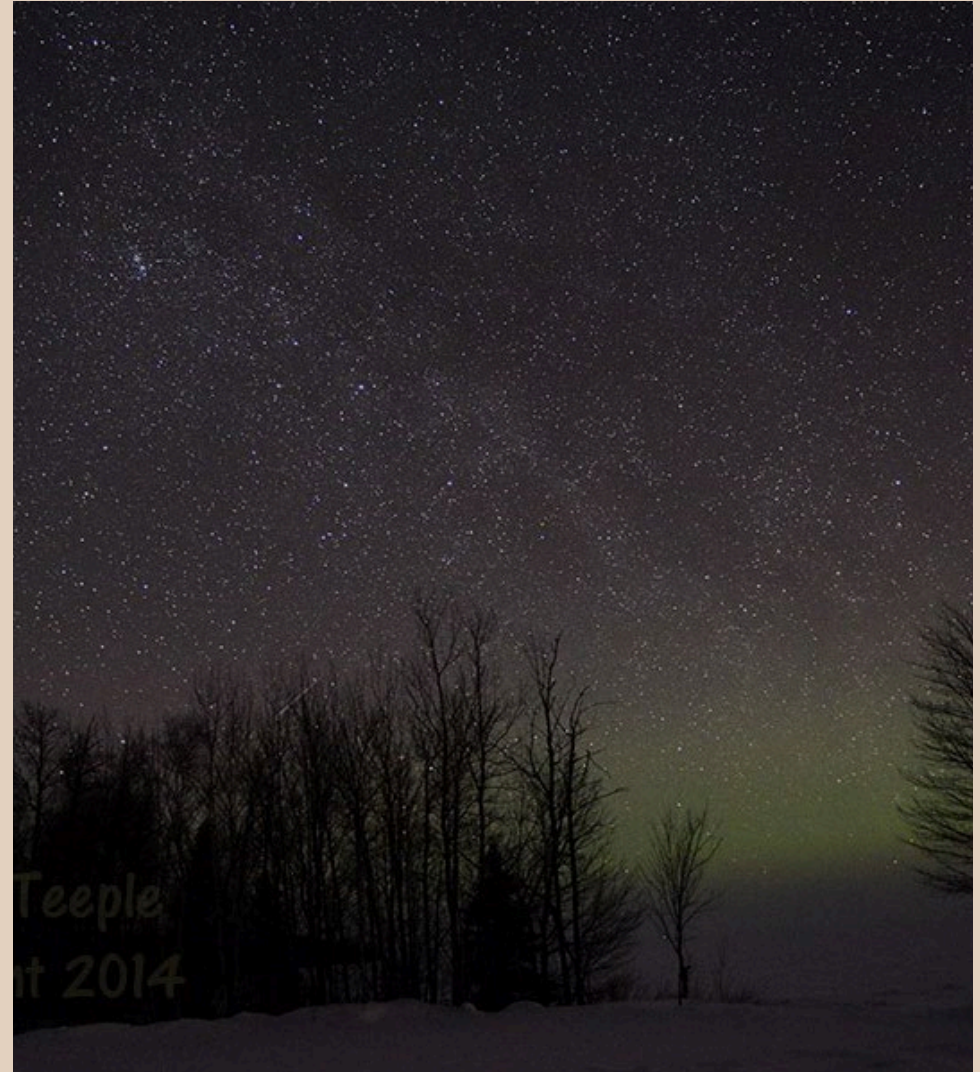
Title IV: Compliance, Audits & Reports

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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TO FIND THE NAHASDA STATUTE

https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda

The Statute has been revised several times make sure you are using the current one!



Note: On April 9, 2010, HUD announced the [end to hard copy mailing of PIH Notices](#) to Tribes and TDHEs. Notices will be available electronically only and posted on [this website](#).

What is NAHASDA?

The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development by eliminating several separate programs of assistance and replacing them with a block grant program. The two programs authorized for Indian tribes under NAHASDA are the Indian Housing Block Grant (IHBG) which is a formula based grant program and Title VI Loan Guarantee which provides financing guarantees to Indian tribes for private market loans to develop affordable housing. Regulations are published at 24 CFR Part 1000.

NAHASDA was amended in 2000 to add Title VIII-Housing Assistance for Native Hawaiians. The amendment to NAHASDA adds similar programs for Native Hawaiians who reside on Hawaiian Home Lands. Regulations for implementing Native Hawaiian Housing Block Grant (NHHBG) program are published at 24 CFR Part 1006.

Reference Materials

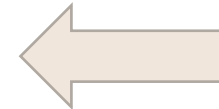
- [NAHASDA Final Rule - 24 CFR Part 1000 - December 3, 2012](#)
- [NAHASDA Indian Housing Block Grant Regulations - 24 CFR 1000 - Revised November 2016](#)
- [NAHASDA Statute](#)
- [NAHASDA Loan Guarantee Regulations - 24 CFR 1005](#)

What's New



Related Information

- ▶ [CodeTalk](#)
- ▶ [IHP and APR Forms](#)
- ▶ [Grants](#)
- ▶ [IHBG Formula](#)
- ▶ [Section 184-Loan Guarantees](#)
- ▶ [Indian Housing Block Grant](#)
- ▶ [Title VI Loan Guarantee](#)
- ▶ [NHHBG](#)
- ▶ [Section 184A-Native Hawaiian Loan Guarantees](#)



The Statute is color coded by Amendments

1 / 54 | - 100% + | [] ↻

1998 Amendments [P.L. 105-276] are in **RED**
2000 Amendments [P.L. 106-568] are in **BLUE (IHBG)** 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. 111-269] is in **LIGHT BLUE**

USC Cites are provided in brackets below for convenience but were not in the bill as enacted

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)

*One Hundred Fourth Congress
of the
United States of America
AT THE SECOND SESSION*

Begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six

An Act

To provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

[25 USC 4101 note]

- (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.
Sec. 102. Indian housing plans.

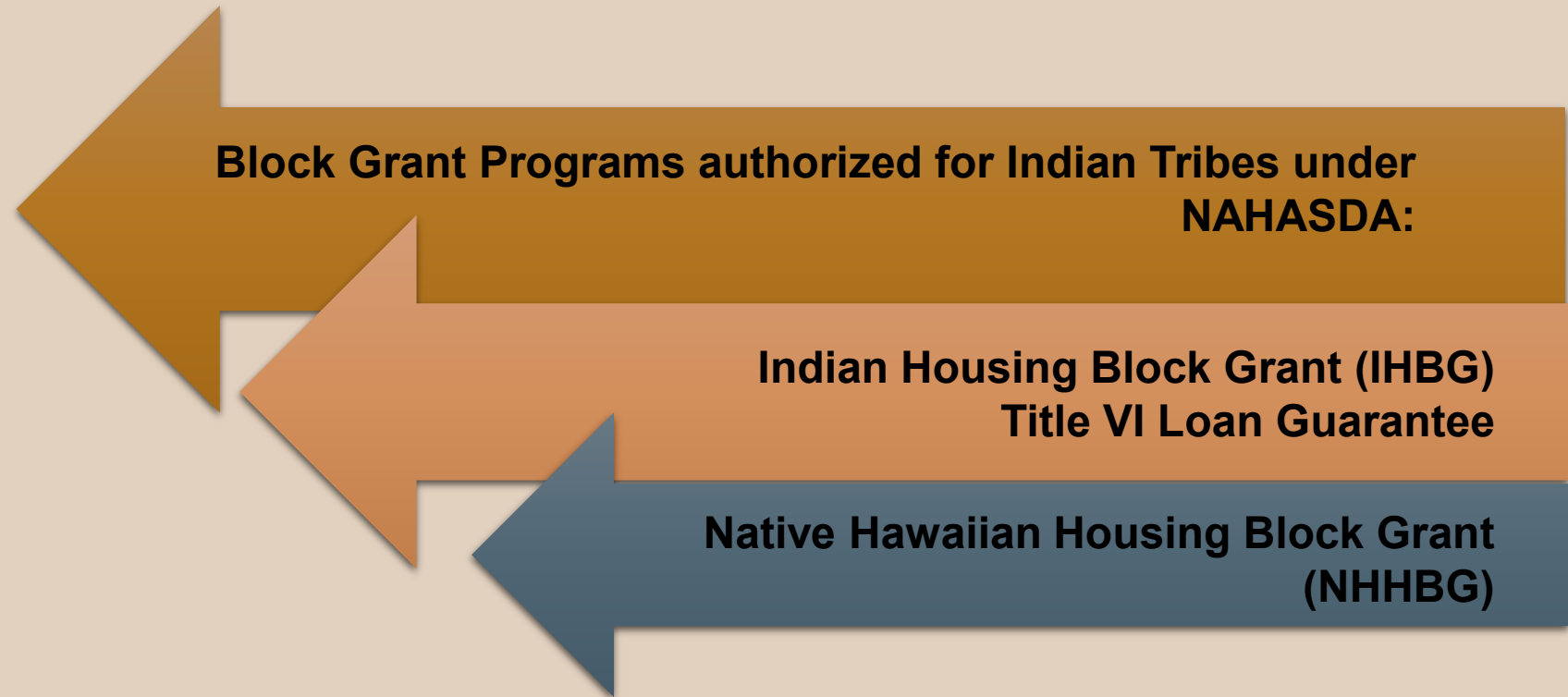
**Native American Housing Assistance and
Self-Determination Act of 1996**
(P.L. 104-330 as amended by P.L. 105-276, P.L. 106-568, P.L. 107-292, and P.L. 108-393)

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- 2002 Amendments [P.L. 107-292] are in GREEN
- 2004 Amendment [P.L. 108-393] is in PURPLE
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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

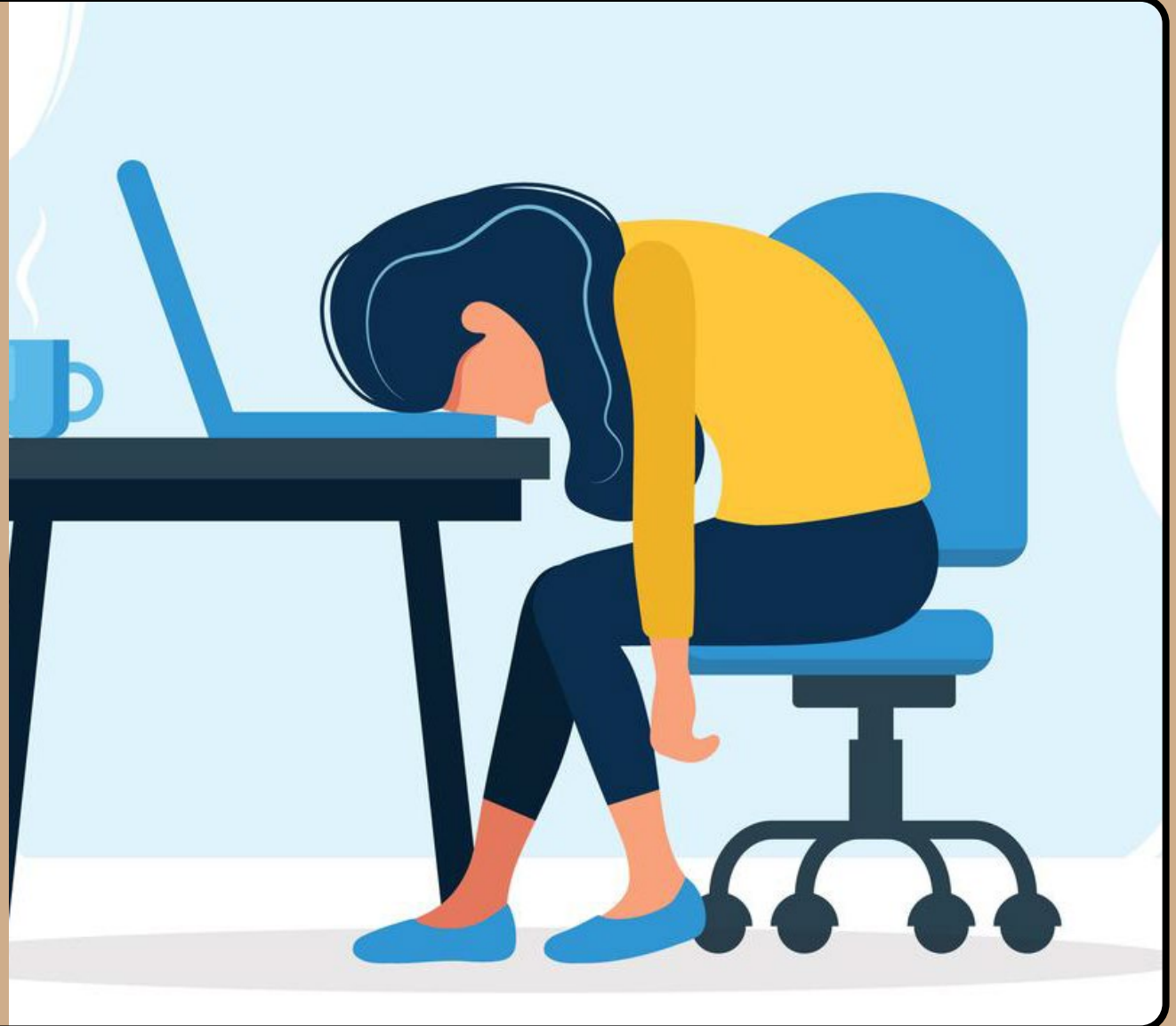
- provides financing guarantees to Indian Tribes for private market loans to develop affordable housing

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*

Break Time

NO
ZOOM FATIGUE
ALLOWED!





KEY POINTS



NAHASDA Key Points

- Signed into law October 1996
- Provides a block grant to tribes or their tribally designated housing entity (TDHE) that is used for activities defined in an annual "Indian Housing Plan" which the tribe and TDHE will write and submit to HUD for review.
- Defines TDHE as the existing IHA which was established "for the purposes of the U.S. Housing Act of 1937...(and)...is acting...as the Indian Housing Authority for the tribe...(and) is not an Indian Tribe."
- Tribes can also establish other entities through self-governance powers or by state law.



NAHASDA Key Points

- Reauthorizes the Indian Housing Loan Guarantee Program.
- Extends leasehold interest in trust or restricted land for housing purposes to 50 years.
- Expands affordable housing opportunities.
- Specifically addresses families who are above low-income.
- Requires HUD to monitor for non-compliance and to 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

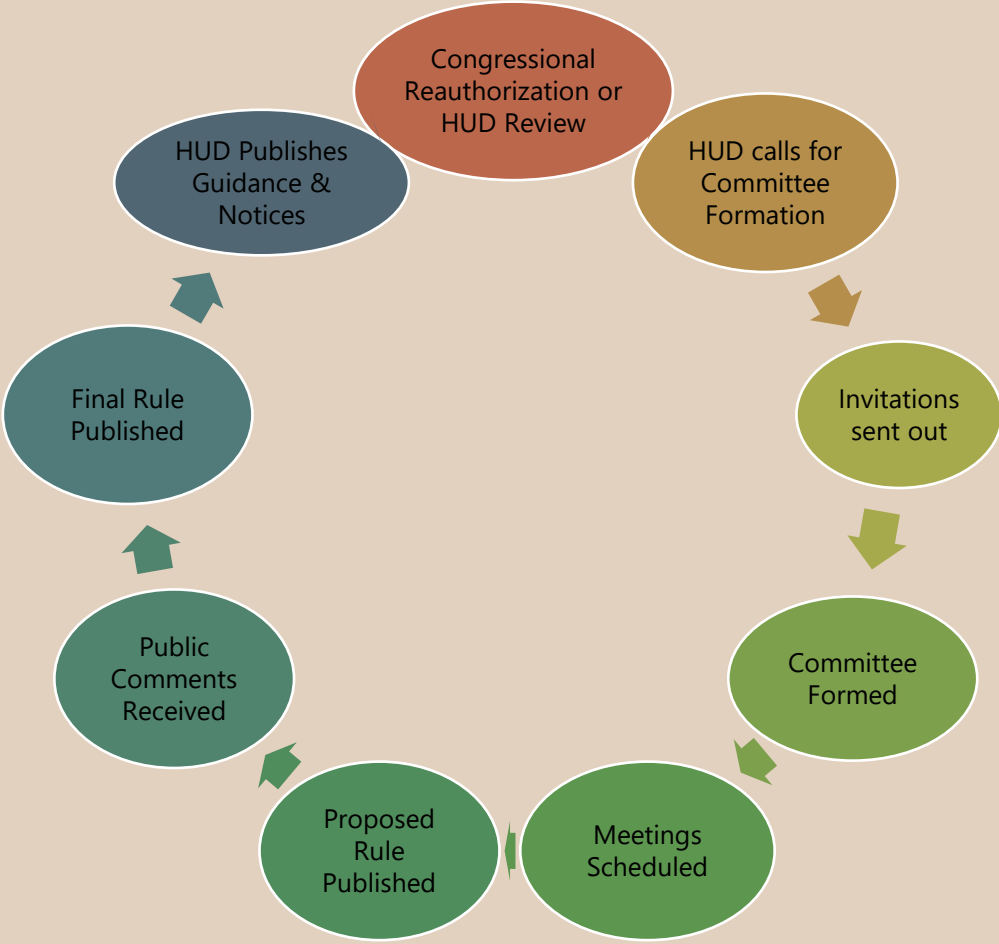
- The process of developing the Regulations (negotiated rulemaking) was mandated by Section 106(b) of the Statute
- Requires HUD to use negotiated rule-making when developing regulations and or altering the allocation formula
- Regulations developed by committee of Tribal and HUD representatives
- Approved documents from each Session as well as documents produced by work groups may be found at <http://ihbgrulemaking.org/index.php>
- 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



Negotiated Rulemaking Process



Reauthorization History

Originally implemented and funded in FY 1999

- From 1999 to 2008, NAHASDA was funded without reauthorization.
- Reauthorization Act of 2008 resulted in Negotiated Rulemaking (6 meetings) and publication of Final Rule in 2010
- HUD Review of Formula Allocation resulted in Negotiated Rulemaking (9 meetings) and publication of Final Rule in 2016.
- Currently there are ongoing attempts by Congress to permanently authorize NAHASDA.



NAHASDA REGULATIONS-24 CFR Part 1000



Regulations: 24 CFR 1000

- Amended multiple times
- Last Version 3/12/98
- Keep the most updated versions of the Statute, Regulations and 2 CFR 200
- Printed & Computer Versions



NAHASDA Regulatory Sections (24 CFR 1000)

- ▶ Subpart A: General Objectives
- ▶ Subpart B: Affordable Housing Activities
- ▶ Subpart C: IHP
- ▶ Subpart D: Allocation Formula
- ▶ Subpart E: Federal Guarantees for Financing of Tribal Housing Guarantees
- ▶ Subpart F: Recipient Monitoring Compliance, Oversight, & Accountability



6 Subparts of Regulation

Subpart A - NAHASDA's Primary Objectives:

- Legal authority of the regulation;
- Federal laws that impact NAHASDA;
- Conflict-of-interest IHBG program provisions that apply;
- Key terms used in the regulations.

Subpart B- Affordable Housing Activities:

- Regulations & Amendments to implement affordable housing activities;
- Eligible activities;
- Eligible beneficiaries;
- Cost and Payment Limits; and
- Existing housing stock.

Subpart C- Indian Housing Plan (IHP):

- Preparation, submission and review of a tribe's IHP.
- NAHASDA requires that a tribe submit an IHP prior to the receipt of IHBG funds.

Subpart D- Allocation Formula:

- Establishes the formula for allocating amounts available for a fiscal year.

Subpart E- Federal Guarantees for Financing of Tribal Housing Activities:

- Terms and conditions by which HUD will guarantee the obligations issued by a recipient for the purposes of financing eligible affordable housing activities.

Subpart F- Recipient Monitoring, Oversight, and Accountability:

- Monitoring of compliance, performance reports, HUD and tribal review, audits, and remedies for non-compliance.

Key Regulations

§1000.10 – Definitions

§1000.12 – Nondiscrimination

§1000.14 – Relocation & Real Property
acquisition

§1000.18 – Environmental review requirements

§1000.26 – Administrative requirements

§1000.30-34 - Conflict of Interest

§1000.36 – Records retention



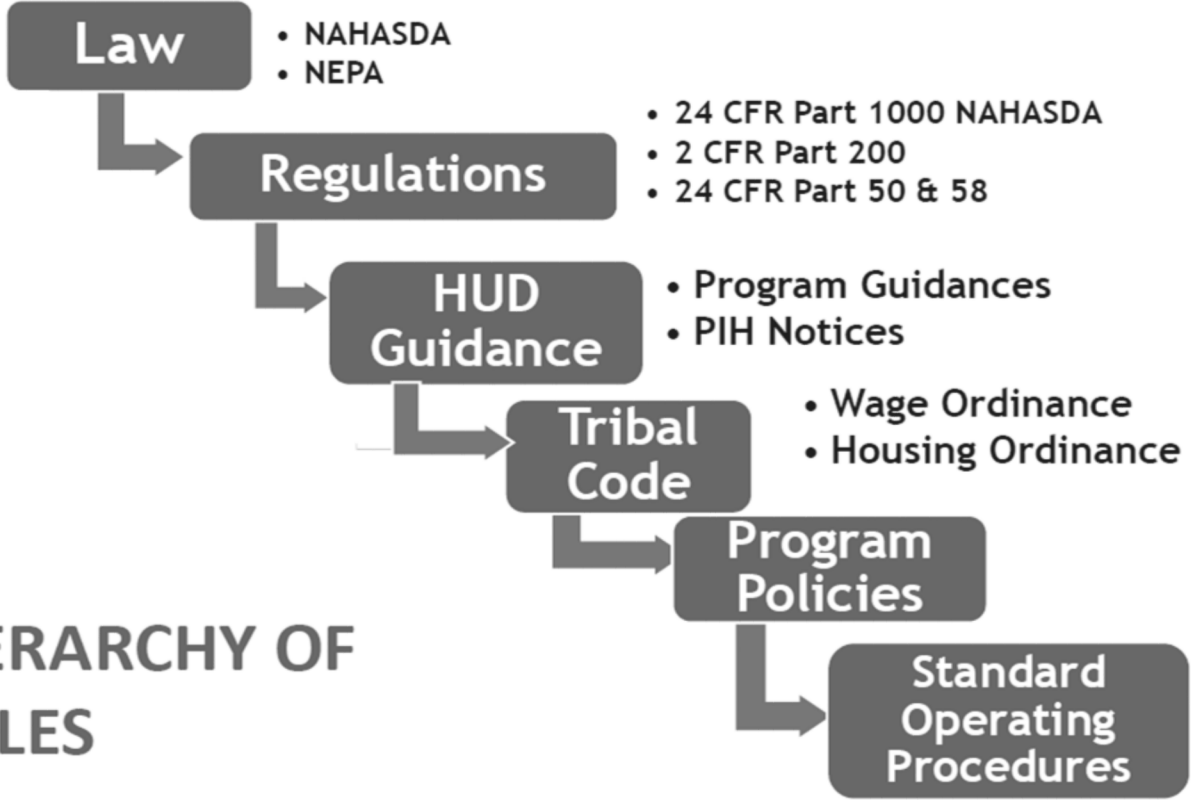
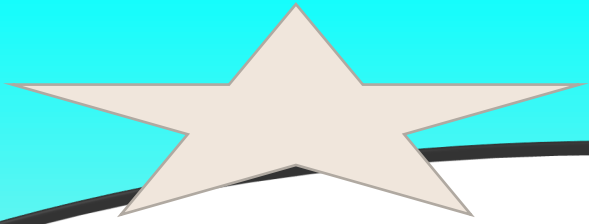
Other Laws, Regulations Impacting Our NAHASDA Programs

Uniform Administrative Requirements 2 CFR Part 200

American Disabilities Act

Generally Accepted Accounting Principals

Uniform Relocation Act



HIERARCHY OF RULES



Compliance Criteria

- Admissions and Occupancy (24 CFR §§1000.104-.110, 1000.120, 1000.124-.156, NAHASDA Sec. 203(a)(1))
- Management/Personnel (2 CFR Part 200)
- Maintenance (NAHASDA Sec. 203 (b) and 203 (e))
- Travel (2 CFR §200.474)
- Procurement (2 CFR §§200.317-326, 24 CFR §1000.26)
- Real Property Acquisition (24 CFR §1000.14, 49 CFR Part 24)
- Relocation (24 CFR §1000.14, 49 CFR Part 24)
- Conflict of Interest (24 CFR §§1000.30-36)
- (2 CFR Part 200.318)



Compliance Criteria

- Indian Preference (24 CFR §§1000.48-.54)
- Labor standards (24 CFR §§1000.16)
- Environmental clearance (24 CFR §§1000.18-.24,
 24 CFR Part 58)
- Lead based paint (24 CFR §1000.40, Section 302 of the
Lead based Paint Poisoning Prevention Act)
Units built after 1978 DPA-Rehab
- Accessibility (24 CFR §1000.12, 24 CFR Part 8,
 Section 504 of the Rehabilitation Act of 1973)
- Flood Insurance (24 CFR §1000.38)

2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS



2 CFR Part 200

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

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



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.



2 CFR Part 200

These OMB uniform administrative requirements and cost principles represent standards entities must meet and implement by their respective administrative or management systems.

From these standards, we can deduct and organize the core management systems in the following categories:

- Accounting
- Property Management
- Procurement Management
- Personnel and Travel Management; and
- Records Management

Uniform Administrative Requirements 2 CFR Part 200

Management systems

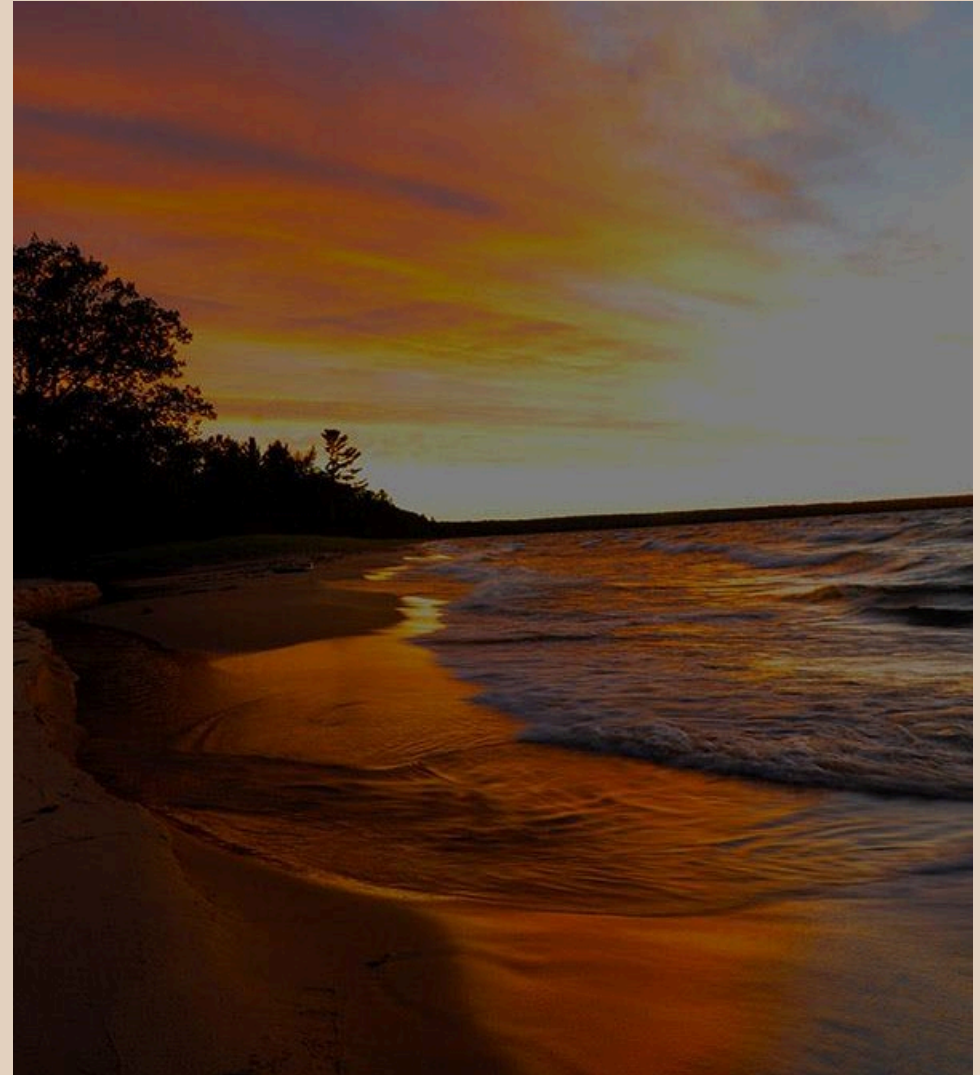
- Written policies
- Written procedures
- Insurance
- Drug-Free Workplace
- Procurement
- Reporting & Recordkeeping
- Conflict of interest
- Audit
- Allowable, unallowable costs
- Mandatory Disclosures



2 CFR Part 200

The OMB uniform administrative requirements and cost principles do not provide specific procedural requirements or required components for our management systems but instead issue broad basic standards. The IHBG recipient, as a non-federal entity, is responsible for creating the details (e.g., policies, people, operational procedures, forms and/or documentation) of an adequate management system.

Defining, designing, installing and implementing adequate 'management systems' therefore becomes the essential work of the executive director and management.



SUBPARTS AT A GLANCE

Subpart A (200.0-99)	➤ Acronyms and Definitions
Subpart B (200.100-113)	➤ General Provisions
Subpart C (200.200-213)	➤ Pre-Federal Award Requirements & Contents of Awards
Subpart D (200.300-345)	➤ Post Federal Award Requirements
Subpart E (200.400-475)	➤ Cost Principals
Subpart F (200.500-521)	➤ Audit Requirements
12 Appendices-I through XII	

NAHASDA Guidance Overview



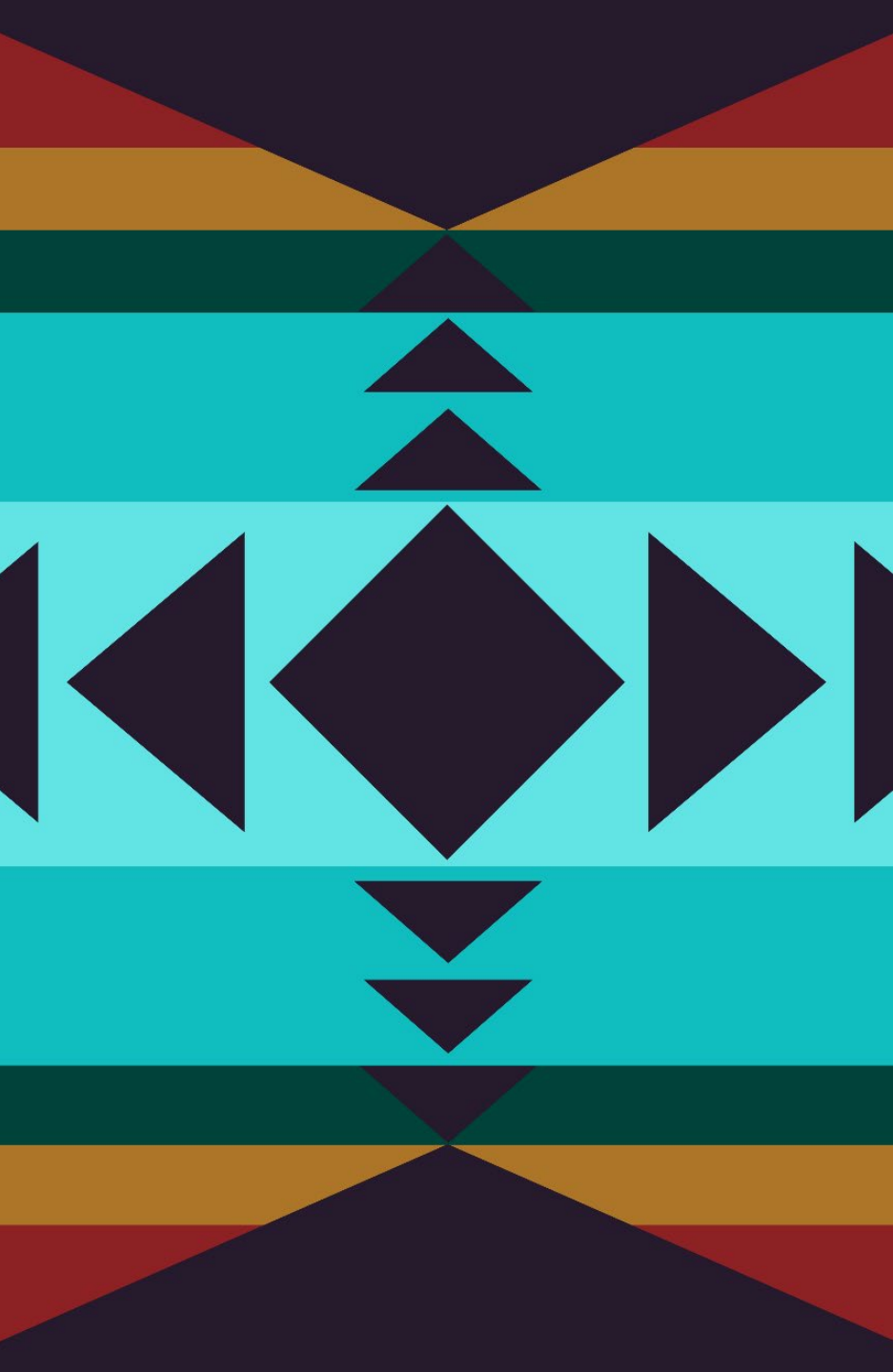
The Rules.....

To understand program requirements,
You must understand how to research
the NAHASDA Statute, Regulations-24
CFR Part 1000, PIH Notices, Program
Notices and 2 CFR PART 200 Uniform
Guidance.





NAHASDA STATUTE

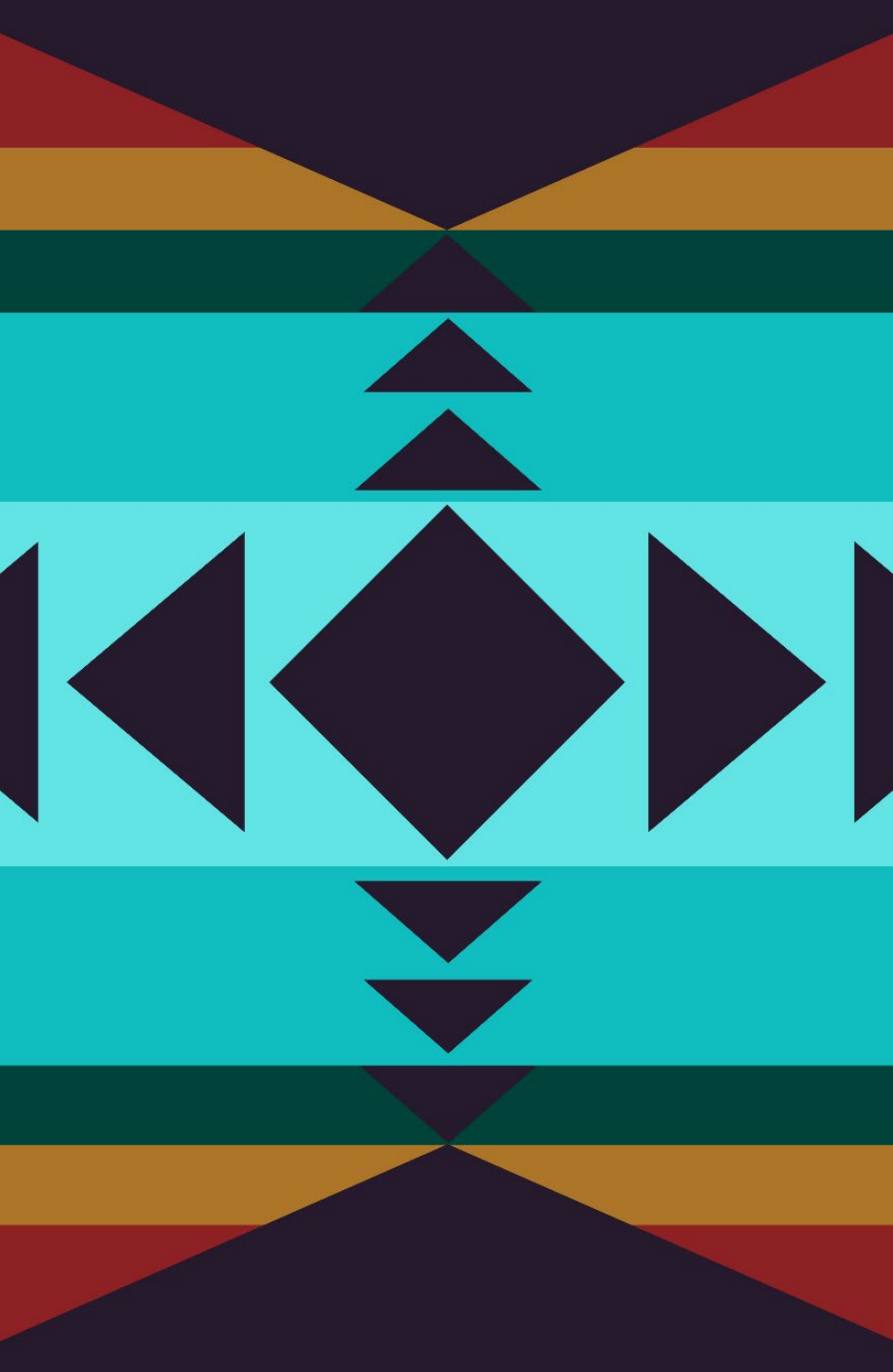
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What is the difference between the NAHASDA statute, the regulations and HUD guidance?

- 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.

REGULATIONS
CFR TITLE 24
Part 1000



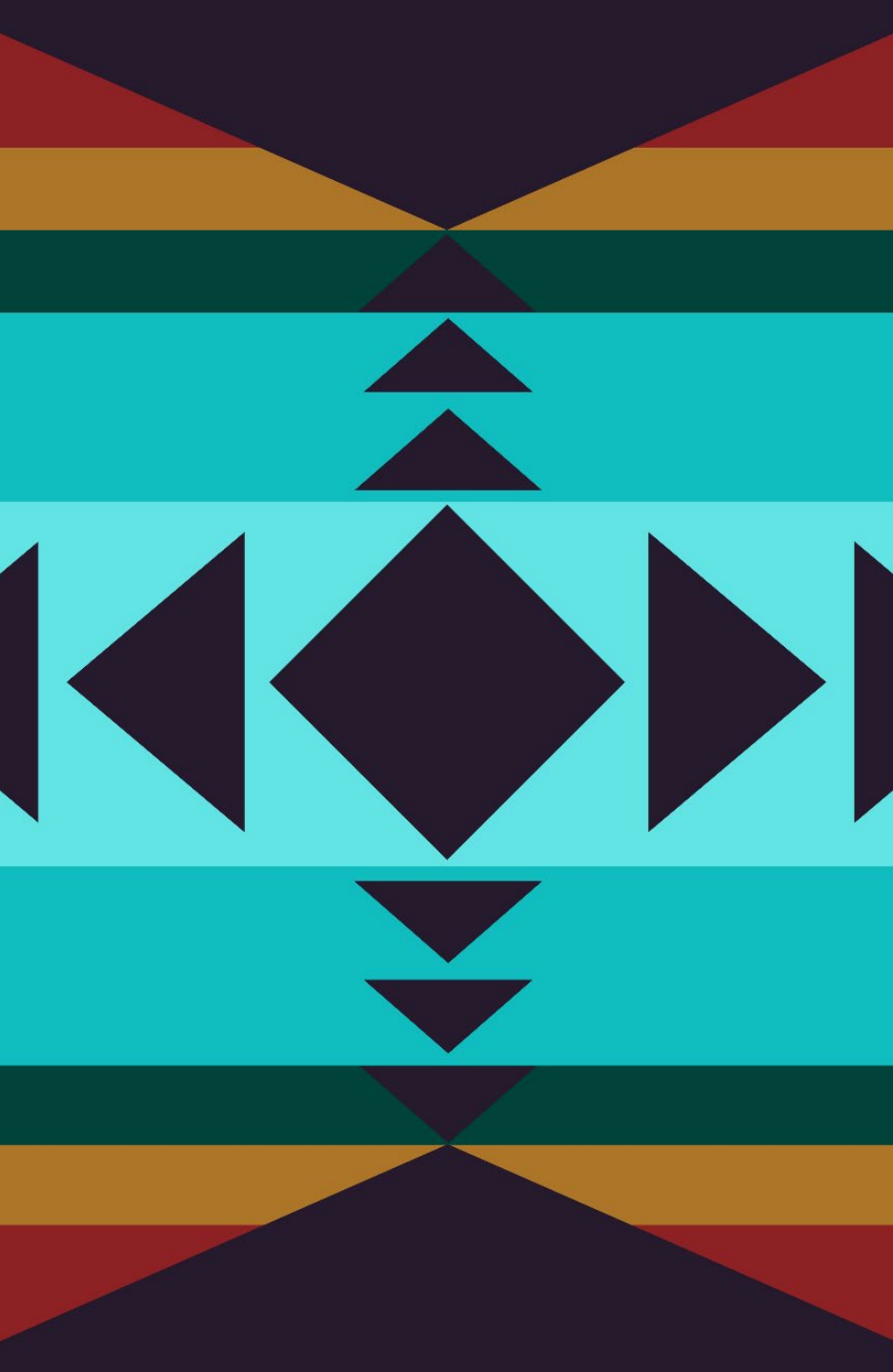


What is the difference between the NAHASDA statute, the regulations and HUD guidance?

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.

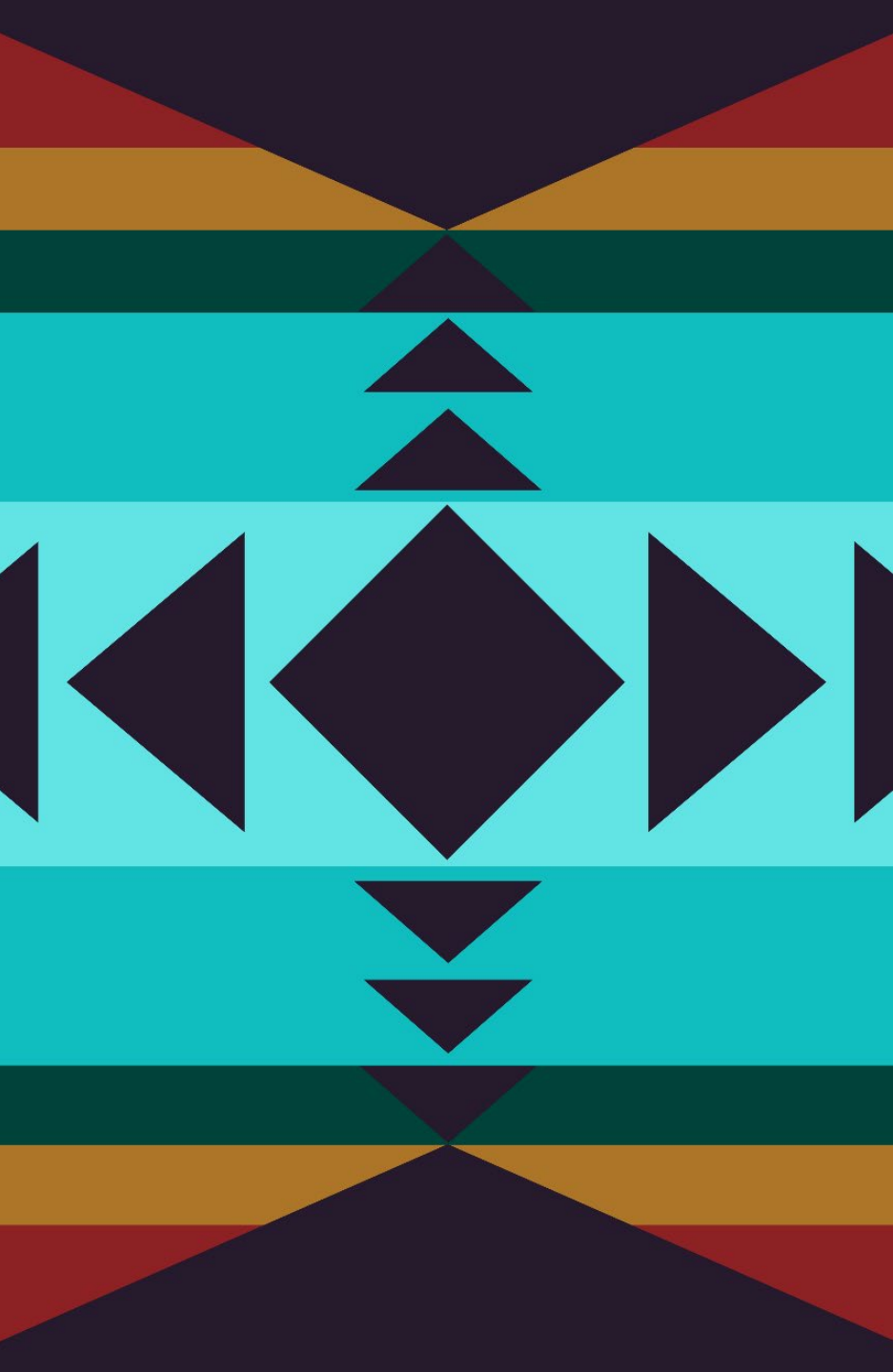
See IHBG regulation section 1000.8 for more information.



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?

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.

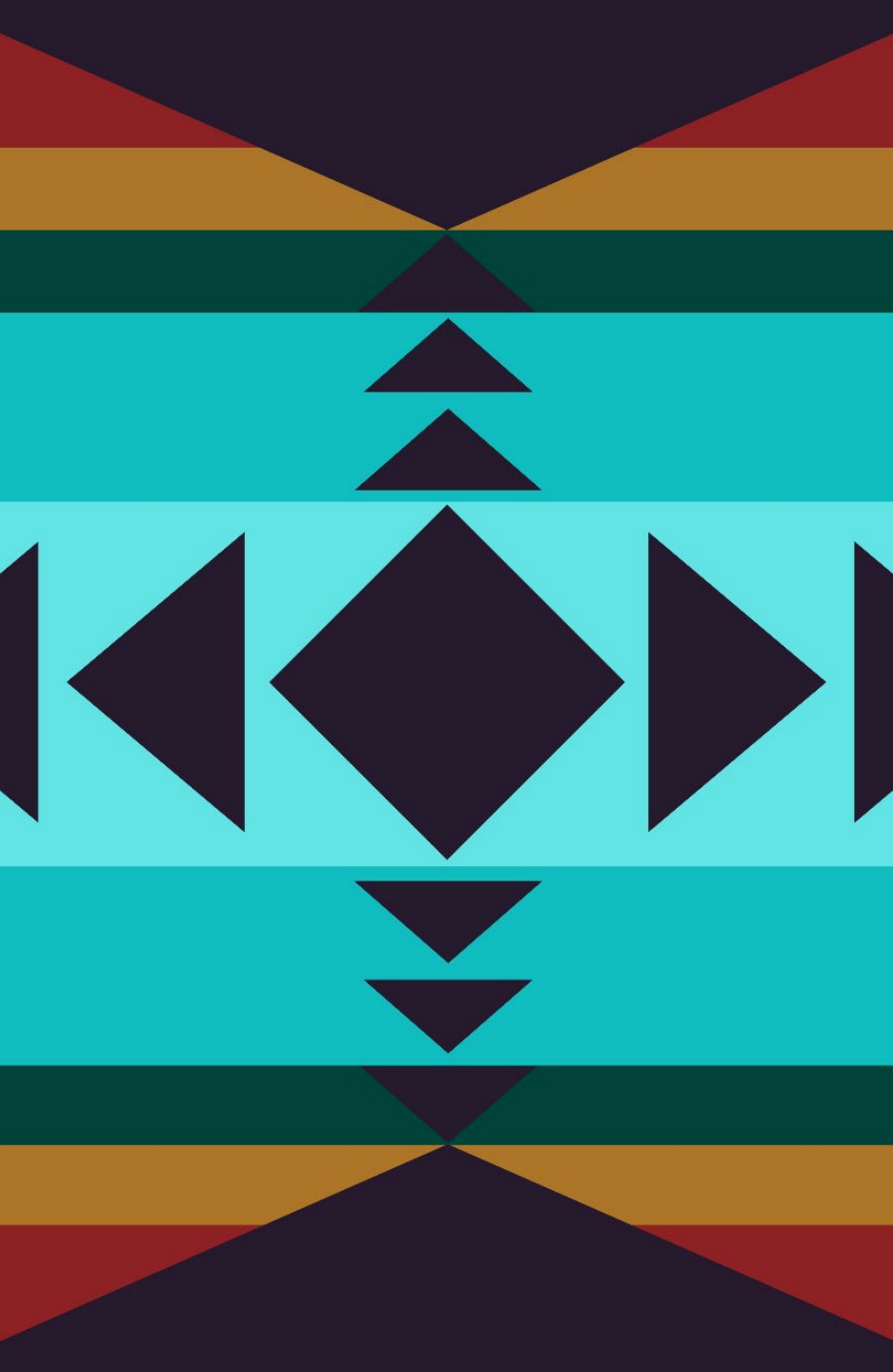
Thus, one must be able to refer to both the statute and the regulations simultaneously to have a complete understanding of NAHASDA.

The IHBG regulations are written in a question/answer format to address the provisions of the statute necessary to implement NAHASDA.





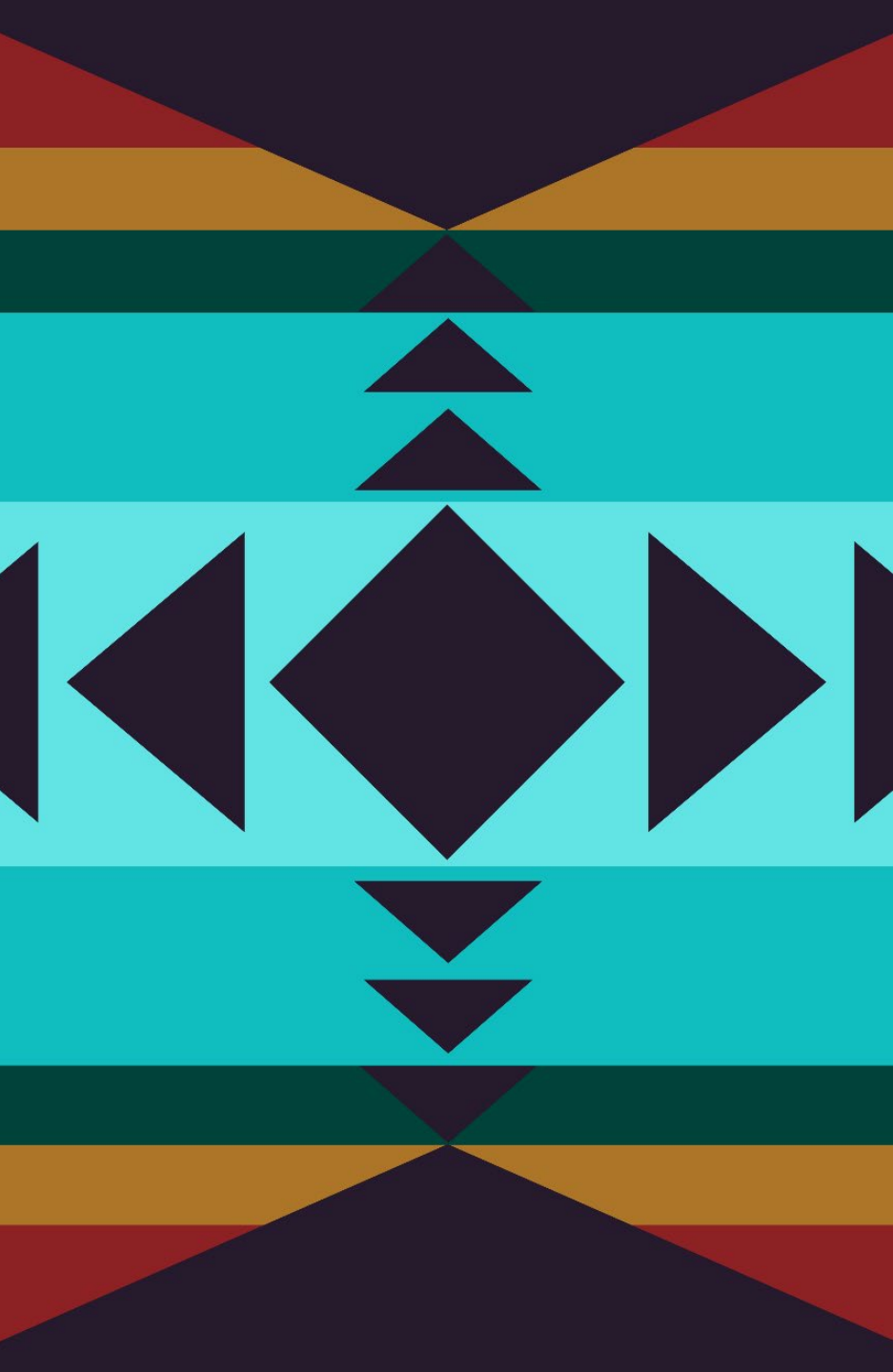
Guidances Bulletins & Notices

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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?

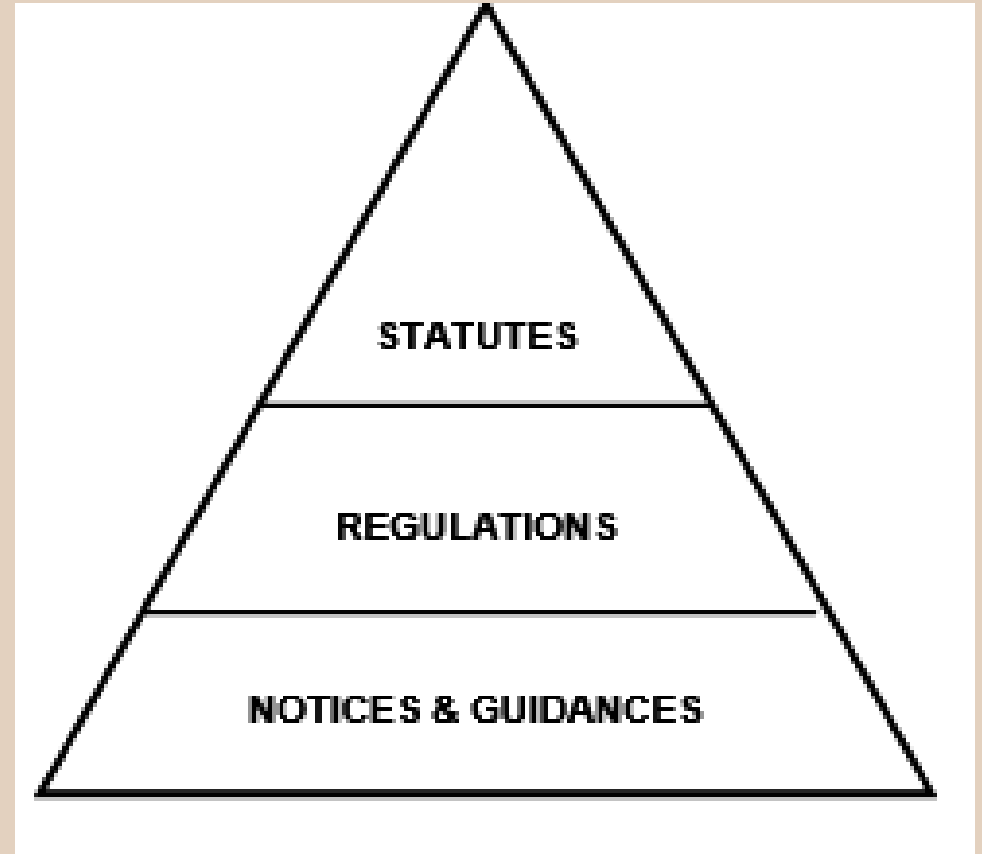
Guidance bulletins assist tribes to implement the IHBG program or provide tools for program management.

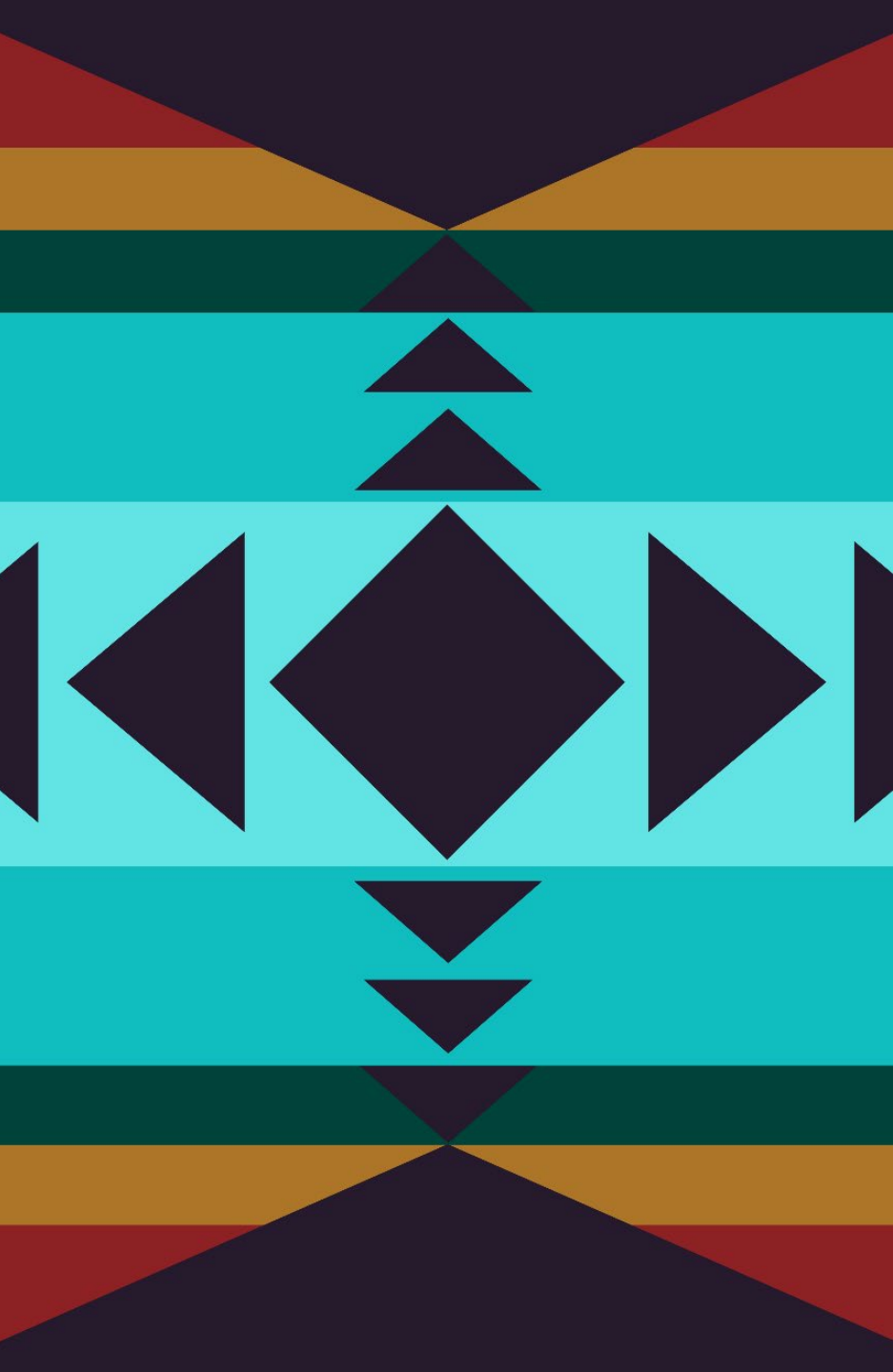
They also help clarify various technical topics. To the extent that guidance bulletins are advisory and designed to help tribes implement their programs, no waiver is needed.

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

The guidance bulletins and notices help to illustrate both the statute and the regulations.

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?

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.



ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

Special Attention of:
Administrators, Offices of Native American
Programs; and Tribes; Tribally
Designated Housing Entities

Notice PIH 2021-28

Issued: October 6, 2021

This notice remains in effect until
amended, superseded, or rescinded

Cross Reference:
24 CFR Part 1000
OMB APPROVAL NUMBER
2577-0218 (IHP/APR)
PIH Notice 2002-24
PIH Notice 2012-49
PIH Notice 2013-29

SUBJECT: Providing Interim Funding to Recipients of Indian Housing Block Grants

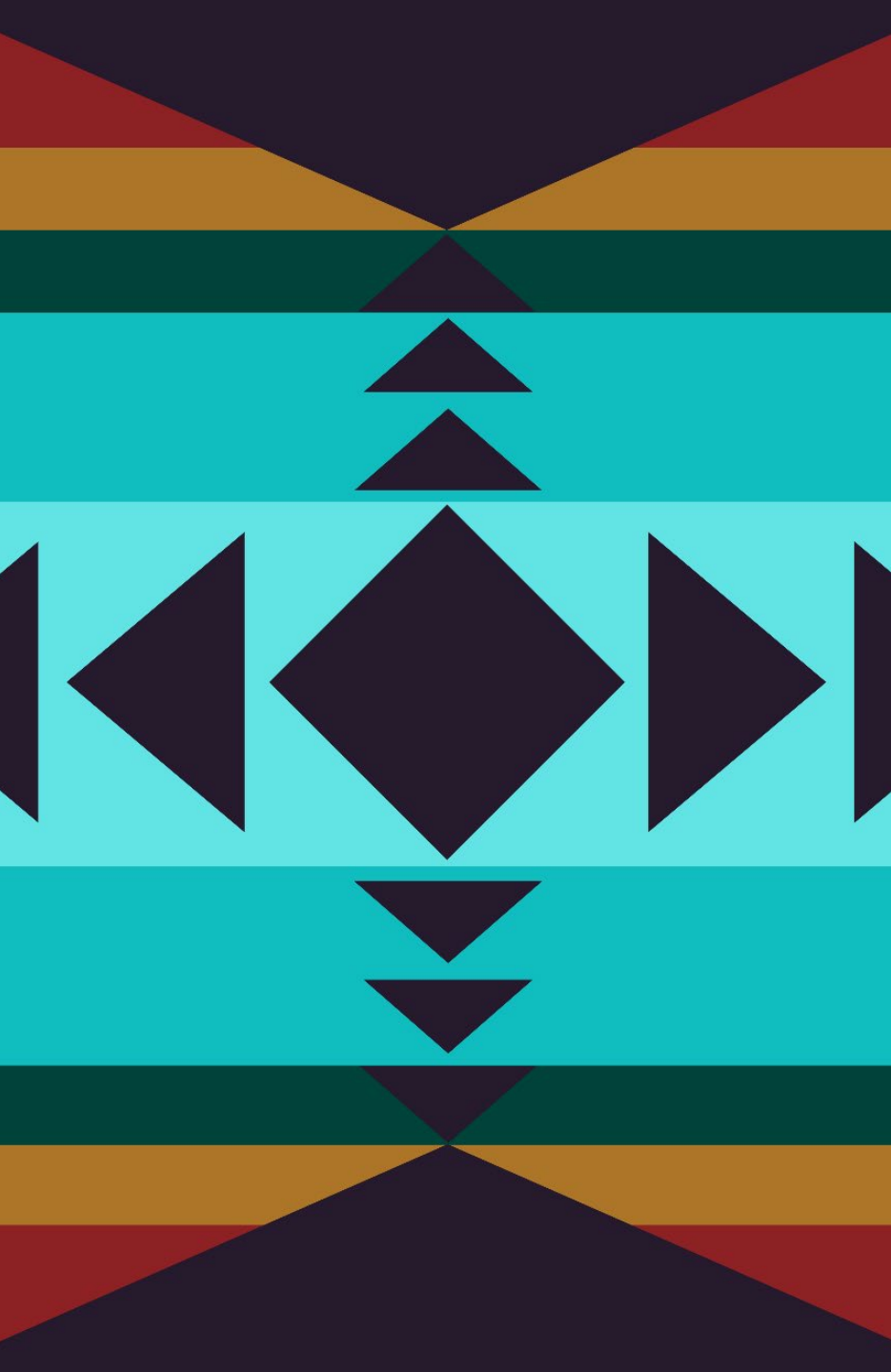
- 1. PURPOSE:** This notice provides updated information to Indian tribes and tribally designated housing entities (TDHEs) on the process for requesting an advance on Indian Housing Block Grant (IHBG) formula funds, or interim funding, while under a Continuing Resolution (CR).

This notice supersedes PIH Notice 2013-29.

- 2. BACKGROUND:** The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) was enacted on October 26, 1996, and became effective on October 1, 1997. Under NAHASDA, grants are provided to Indian tribes to carry out affordable housing activities. Every year, when the full-year appropriation is enacted, the Office of Native American Programs (ONAP) awards funding based on the final appropriated amount and the IHBG formula.

A full-year appropriation for the Department of Housing and Urban Development (HUD) is often not enacted by the start of the Federal fiscal year (October 1st). Under a CR, HUD programs receive limited funding, so there are delays in allocating to recipients that fiscal year's IHBG funds. To provide relief, IHBG formula grant recipients may request interim funding, as outlined below.

Note: HUD reserves the right to revise any terms of eligibility for interim funding based on any special terms of a future CR, including the availability of funding.



NAHASDA


Note: On April 9, 2010, HUD announced the [end to hard copy mailing of PIH Notices](#) to Tribes and TDHEs. Notices will be available electronically only and posted on [this website](#).

PROGRAM GUIDANCE

PROGRAM: All Programs of the Office of Native American Programs

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

FROM: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, PN



TOPIC: Process for Repayment of Federal Funds

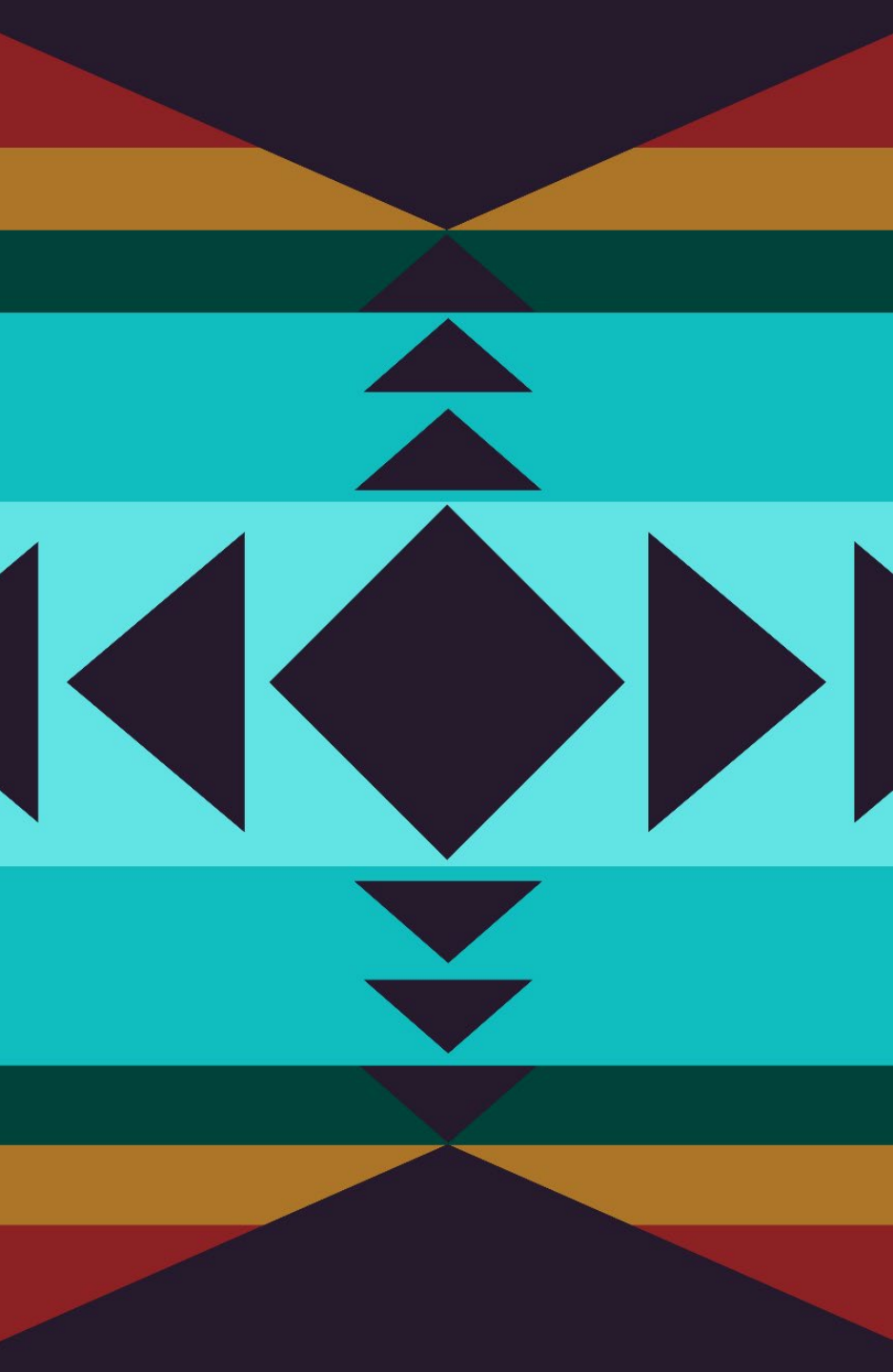
PURPOSE: The purpose of this guidance is to inform tribes and tribally designated housing entities (TDHE) that the Federal Government no longer accepts checks, wire transfers, or credit cards for repayment of Federal debt; instead, any repayment of Federal funds must be made through Pay.gov — a secure, online system operated by the U.S. Treasury. This guidance provides the step-by-step procedure for making a repayment to the U.S. Treasury and replaces Program Guidance 2010-03.

BACKGROUND: The repayment of funds back to HUD may be for a variety of reasons, including but not limited to questioned costs, the over-allocation of grant funds, unallowed use of program income, the return of unexpended grant funds, grant termination, excess Line of Credit Control System withdrawals, Indian Housing Block Grant (IHBG) funds invested for more than 5 years plus interest earned, or due to an enforcement action. Pay.gov repayments can be made to HUD using a U.S.-held bank account (through ACH Debit), a debit card, or with a digital wallet, such as PayPal or Amazon Pay.

Pay.gov accepts repayment of IHBG, IHBG Competitive, Indian Community Development Block Grant (ICDBG), ICDBG Imminent Threat, ICDBG Mold, or Tribal HUD-VASH funds to the Federal Government using the Internet. If the internet is not available, the recipient should contact its Area Office of Native American Programs (Area ONAP) for assistance.

REPAYMENT PROCEDURE: The following process must be used for repayment of funds.

If making a one-time repayment, a recipient has the option of setting up a Pay.gov account or may proceed without a registered account. However, it is recommended that a recipient with a repayment plan set up an account in order to streamline and simplify future repayments. Instructions for creating an account are provided below.

A decorative vertical panel on the left side of the slide. It features a central horizontal band of light blue with a dark blue diamond shape in the middle. Above and below this band are horizontal stripes of dark blue, teal, and gold. The top and bottom corners are filled with dark blue and red triangles pointing towards the center.

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.

Link for Program Guidance

[NAHASDA | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)



[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](#)

PIH NOTICES AND NAHASDA GUIDANCE

PIH Notices-(Issued By Assistant Secretary for Public & Indian Housing)

Program Guidance-(Issued By Deputy Assistant Secretary for Native American Programs)

Sources:

- <https://www.hud.gov/codetalk> [Indian Housing - HUD's Office of Native American Programs \(ONAP\) | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)
- and click on either "PIH Notices" or "Program Guidance"

Link for IHBG Notices & Guidances

The screenshot shows the HUD.GOV website interface. At the top left is the HUD.GOV logo. The top navigation bar includes links for SECRETARY OF HUD, WHAT WE DO, HUMANS OF HUD, FIND SHELTER, and CORONAVIRUS RESOURCES. A secondary navigation bar lists categories like PIH HOME, ABOUT PIH, PIH ONE-STOP TOOL, PUBLIC HOUSING, OPERATING FUND, CAPFUND, INDIAN HOUSING, and MORE. The main content area features a breadcrumb trail: Home / Indian Housing's Office of Native American Programs (ONAP). Below this is the OFFICE OF NATIVE AMERICAN PROGRAMS (ONAP) header with a house icon. To the right is a 'Contact' section with links for Twitter, email (Codetalk@hud.gov), Tribal Directory, and a mailing list subscription. The 'ONAP PROGRAMS' section lists various programs, with 'COVID-19 Recovery Programs' circled in red. Below that is the 'QUICK LINKS' section, where 'PIH Notices' and 'Program Guidance' are circled in red. At the bottom right, there is a section for 'ONAP Offices and Tribal Contacts' with a map of the United States.

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 CAPFUND INDIAN HOUSING MORE

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

OFFICE OF NATIVE AMERICAN PROGRAMS (ONAP)

Contact

- Twitter.com/HUD ONAP
- Codetalk@hud.gov
- Tribal Directory
- Subscribe/Unsubscribe from Codetalk mailing list

ONAP PROGRAMS

- COVID-19 Recovery Programs
- Indian Housing Block Grant Competitive
- Indian Housing Block Grant
- Indian Community Development Block Grant
- Section 184 Home Loan Guarantee
- Title VI Leveraging
- Tribal HUD-VASH
- Hawaiian Programs

QUICK LINKS

- EnVision Centers
- NAHASDA
- Dear Tribal Leader Letters
- Environmental
- Forms
- Homeownership
- PIH Notices
- Program Guidance

ONAP Offices and Tribal Contacts

Link for PIH Notices

[Public and Indian Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

[PIH Notices Related to Native American Programs - Policy and Regulations - Indian Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)



Home / Program Offices / Public and Indian Housing / Indian Housing's Office of Native American Programs (ONAP) / Policy and Regulations - Indian Housing / PIH Notices Related to Indian Programs - Policy and Regulations - Indian Housing

PIH NOTICES APPLICABLE TO NATIVE AMERICAN PROGRAMS

Below are notices relating to Native American programs. See the [PIH Notices page](#) for a complete list of all notices from 1996 onwards. For a listing of Program Guidance by topic area, please [Click Here](#).

Related Information

- ▶ [All PIH Notices](#)
- ▶ [HUDClips](#)

2021 Notices

Notice	Issued/Expires	Subject/Purpose
H 2021-06	<p>Issued: January 15, 2021</p> <p>Expires: This Notice remains in effect until amended, superseded, or rescinded.</p>	<p>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) Imminent Threat (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."</p>

2020 Notices

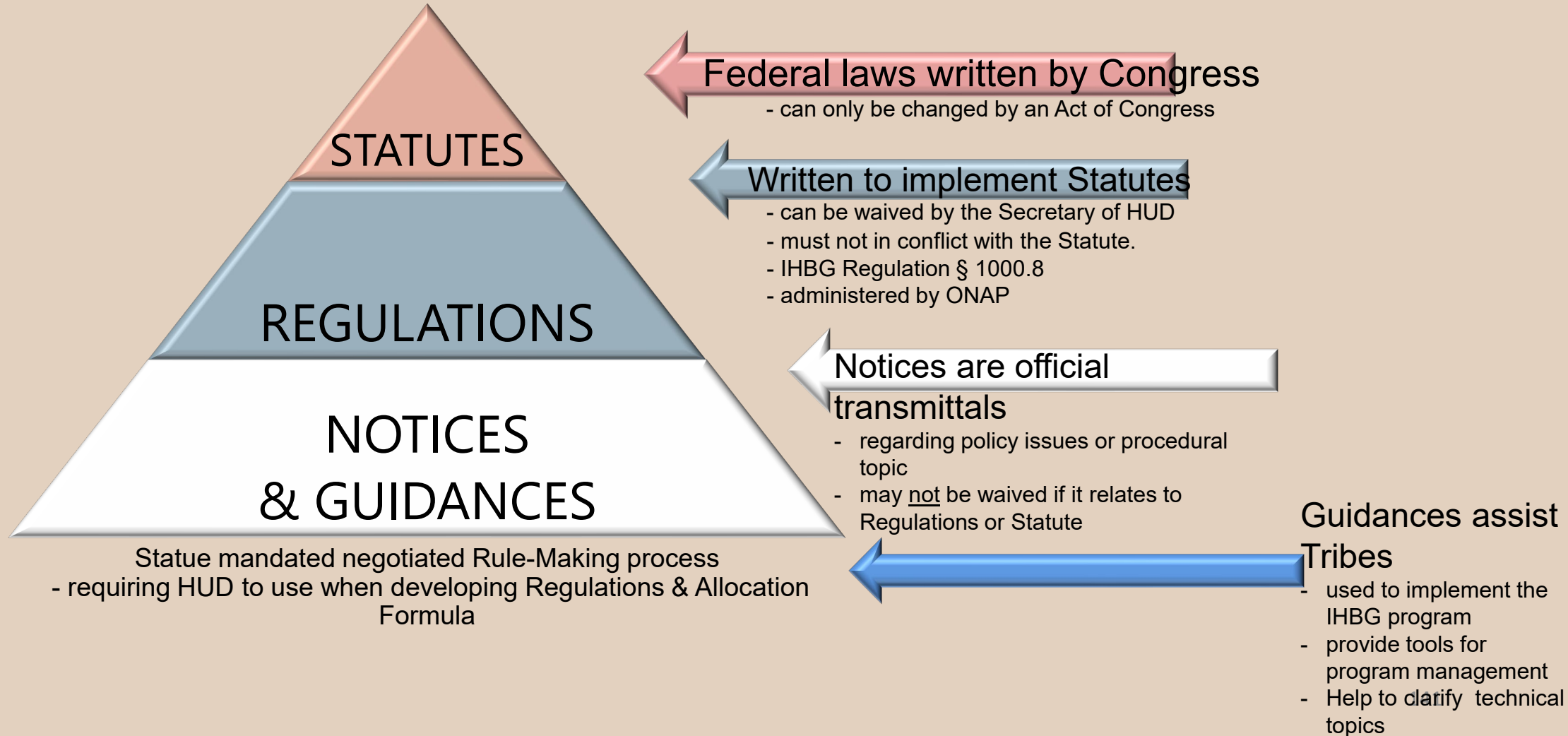
Notice	Issued/Expires	Subject/Purpose
H 2020-27	<p>Issued: September 29, 2020</p> <p>Expires: This Notice remains in</p>	<p>Waiver of Undisbursed Funds Factor Requirements Under the Indian Housing Block Grant Program for Fiscal Year 2021 - The</p>

For Applying Guidance

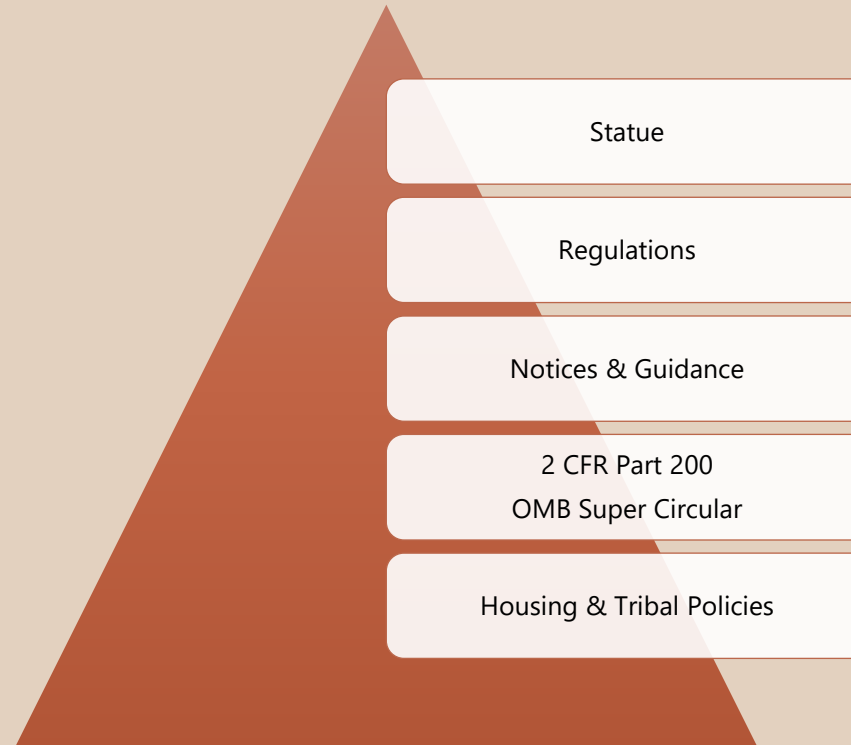
1. Program specific requirements are followed when provided.
2. Uniform Guidance is followed when Program specific requirements are not provided and in accordance with 24 CFR 1000.26
3. To understand program requirements, research the Statute, Regulations, PIH Notices, Program Notices and the Uniform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



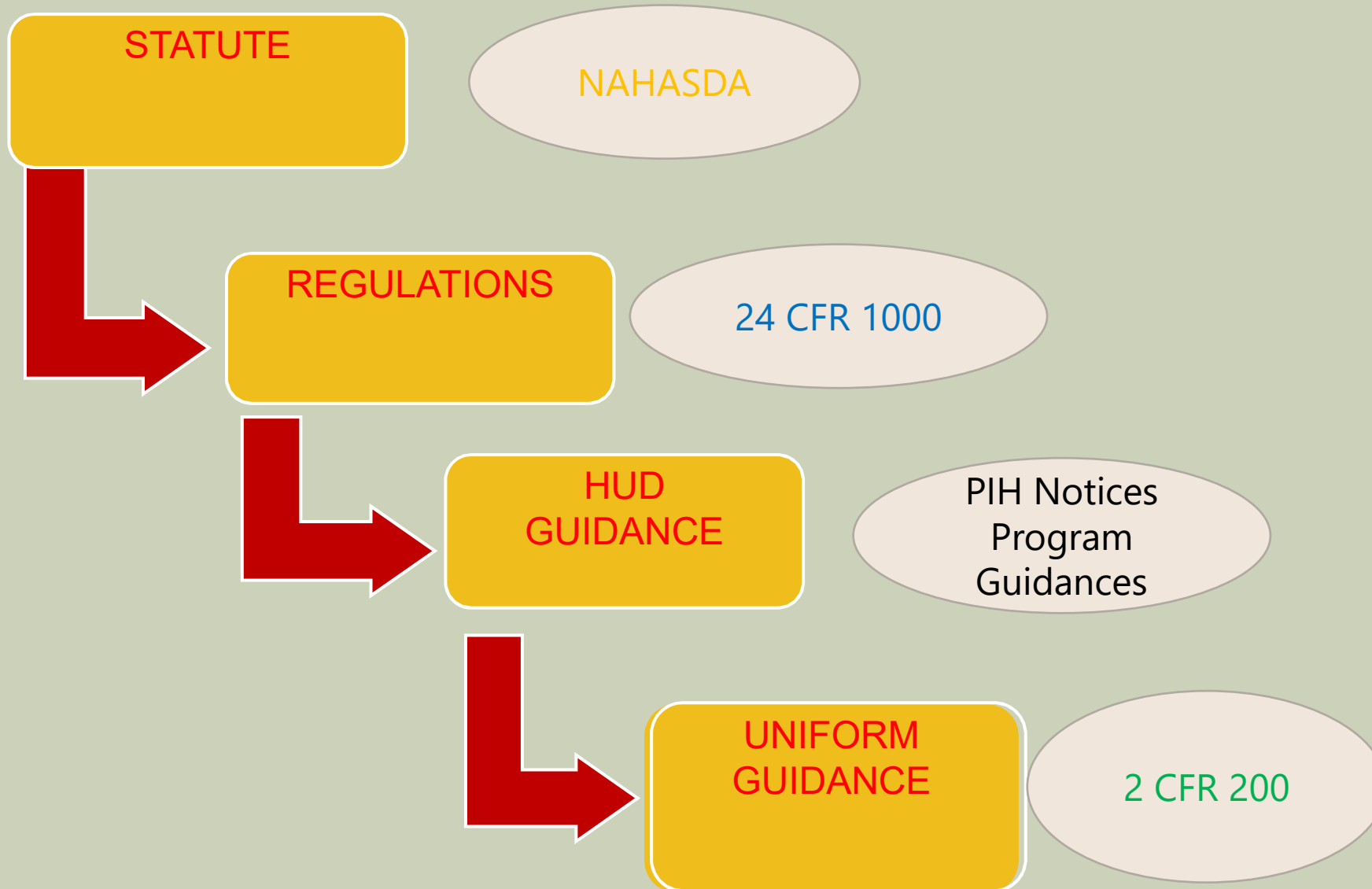
NAHASDA Administration Flow



Housing & Tribal Policies can be stricter than the Statue, Regulations,
Notices & Guidance
You must follow your policies



Hierarchy of Guidance Applicability





YOUR TOOLS!

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:

NAHASDA Statute (54 Pages) Is color coded by Amendments

NAHASDA Regulations eCFR Title 24 Part 1000 Native American Housing Activities

PIH Notices (see website-sample is provided)

ONAP Program Guidance (see website-sample is provided)

Uniform Guidance (Part 200-Uniform Administrative Requirements, Cost Principals, And Audit Requirements for Federal Awards)

- The Reference material is not duplicative

Other HUD.gov Resources

HUDCLIPS

https://www.hud.gov/program_offices/administration/hudclips

Case Studies

Handbooks/Guidebooks

Past training material

Valuable links

Policies

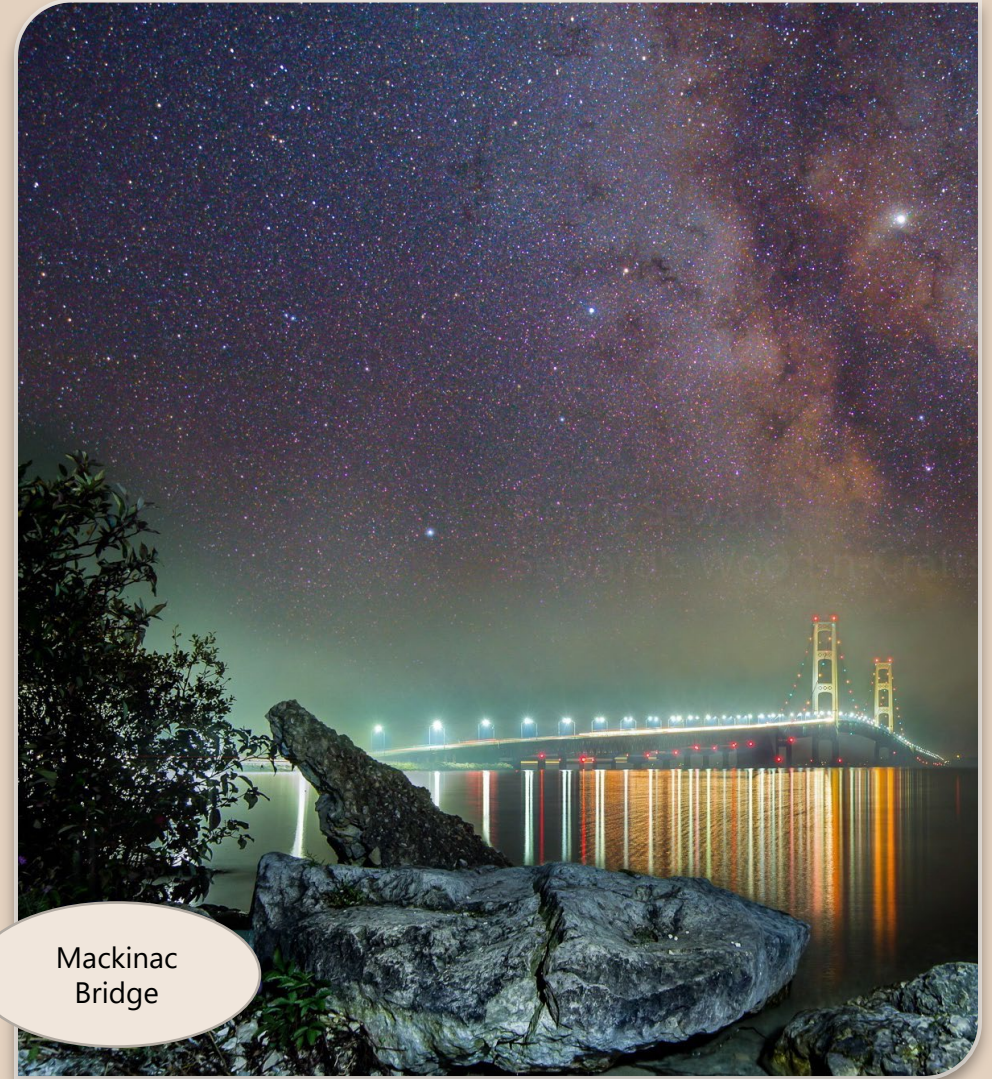
NAHASDA: Guiding Principles

- **Statutory & Regulatory change “should” to “shall”**
 - The federal government “shall” work to provide housing assistance and to assist development of private financing mechanisms, and that federal assistance “shall” be provided in a manner that recognizes Indian self-determination and self-governance



They Made Statutory & Regulatory Changes

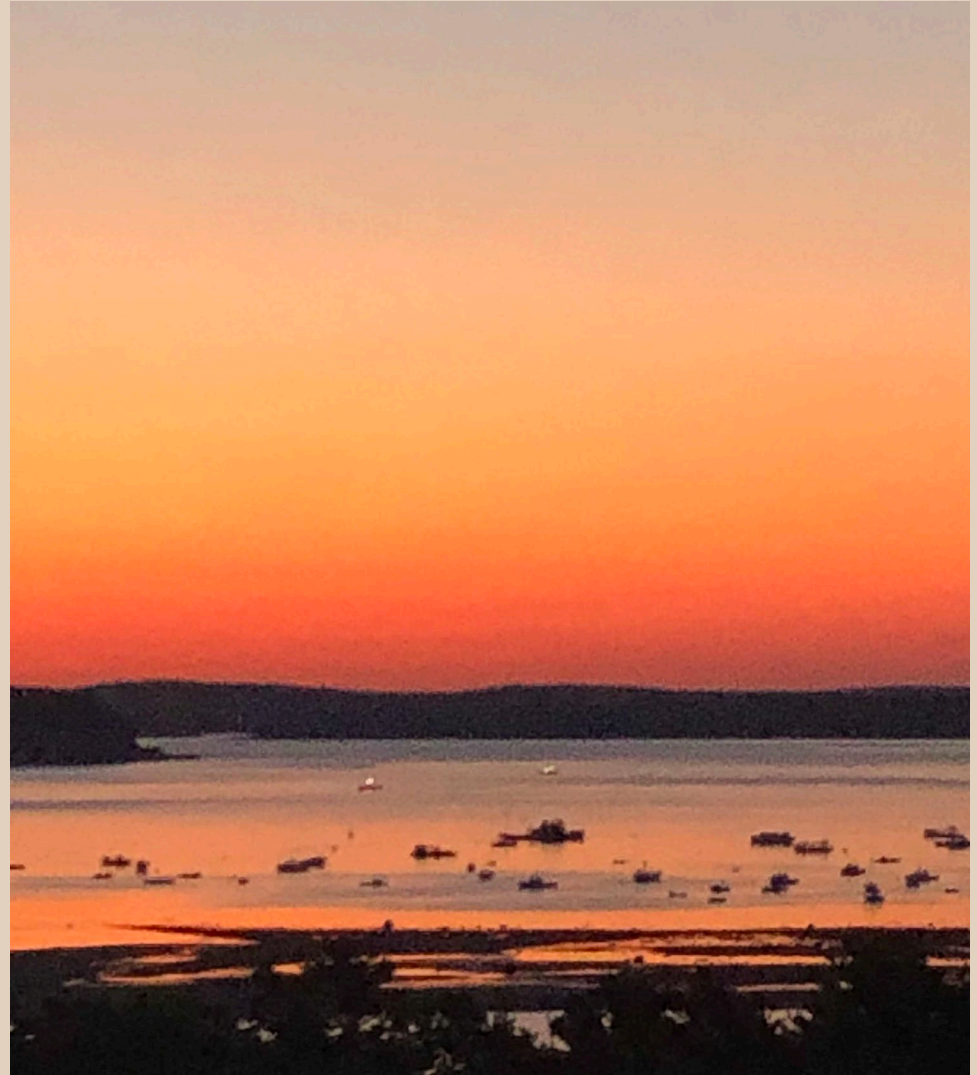
That can be found in the 37-page PIH notice 2009-50 and uses the language NRA which is the NAHASDA Reauthorization ACT.



Mackinac
Bridge

NAHASDA Program Implementation

- Requires submission of a 1-year housing plan, for the upcoming fiscal year
- Indian Housing Plan (IHP) details activities such as: development, rehabilitation, acquisition, or credit counseling



Statutory Areas of Change

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



Regulatory Areas of Change

- Subpart A
- Definitions
- Labor Standards
- Environmental Procedures
- Indian preference
- Investments
- Program Income
- Subpart B
- Eligible Families
- Useful Life
- Criminal Conviction Records
- Subpart C
- Tribal program year
- IHP/APR
- Administrative & Planning Caps
- Reserves
- Cooperation Agreements
- Exemption from taxation



Regulatory Areas of Change

Subpart D

- Formula information to be included in the IHP/APR
- Date HUD provides data used for formula & projected allocation to recipient

Subpart E

- Financing guarantees

Subpart F

- HUD monitoring
- APRs, APR review
- HUD performance measures
- Remedial actions due to substantial noncompliance
- Audit reports, and
- Records retention

History of NAHASDA

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
Drug Elimination

Homeless programs,
including ESG.

Key Program Elements

- Formula
- Eligible Families
- Eligible Activities
- Program Administration
- Financial Management
- Reporting and Recordkeeping



Overview of the NAHASDA Statute

Title, I Block Grant Requirements

Title II Affordable Housing Activities

Title III Allocation of Grant Amounts

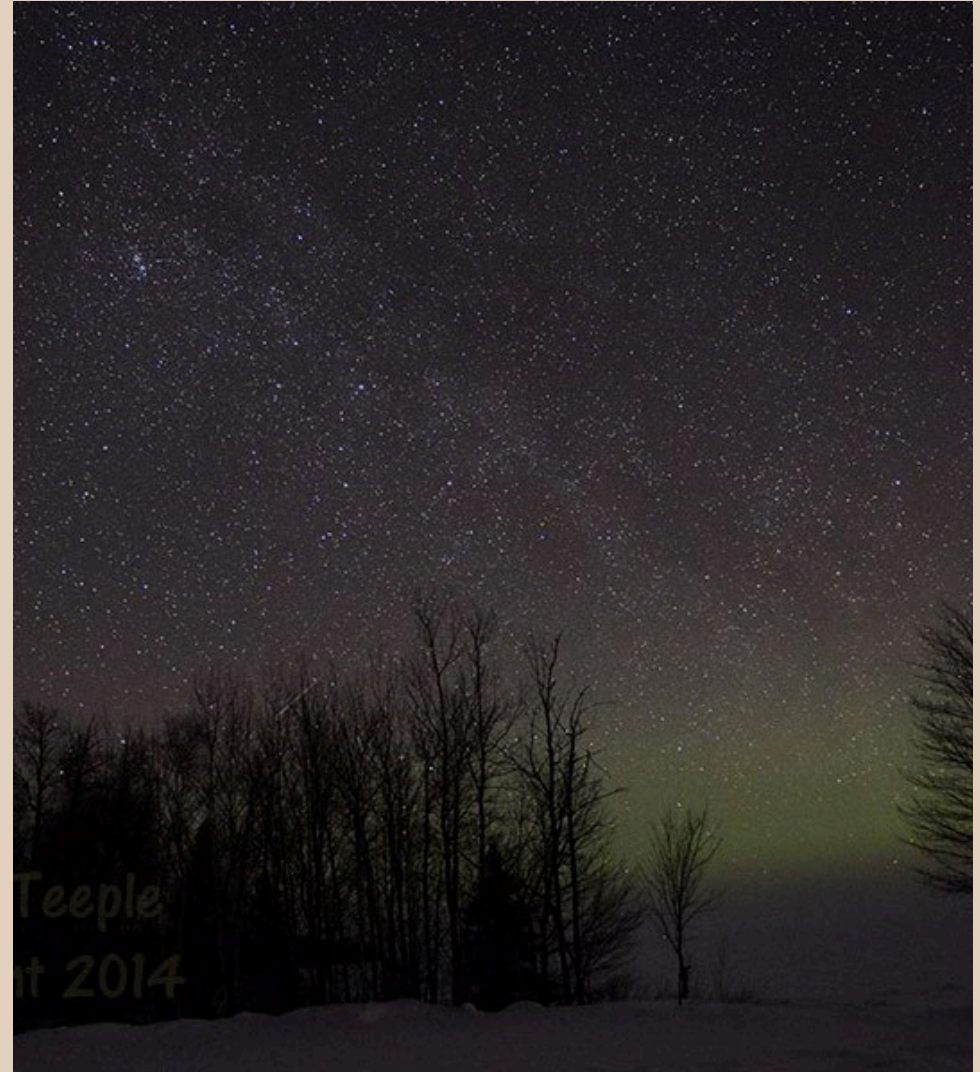
Title IV Compliance, Audits & Reports

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



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

TERMS AND CONDITIONS

Environmental Review

All grant awards are conditioned on successful completion of an environmental review in accordance with the requirements of 24 CFR 1000.18-1000.24, and an environmental review must be completed before funds are released.



Environmental Determination

- Before any IHBG funds (Or other funds should it be part of the overall cost) are spent, one of the following environmental determinations must be completed:
 - Exempt
 - Categorically Excluded
 - Either subject to laws and authorities, or not
 - Environmental Assessment
 - Environmental Impact Statement



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
-
- As Tribal Officials you can help your Housing Department succeed by offering the assistance of Tribal Legal Staff, and Personnel to help with or provide services as a Certifying Officer for Environmental Reviews

HUD ENVIRONMENTAL REVIEW PROCESS

24 CFR Part 50/Part 58

- ◆ **Part 58 and Responsible Entity (RE) Tribes**

RE Tribes assume legal responsibility for the environmental review

- ◆ **Part 58 and HUD**

HUD has very limited responsibilities



PART 58 – COMPLIANCE REQUIREMENTS

- ◆ **24 CFR §58.5** - Federal Laws & Authorities
- ◆ **24 CFR §58.22** - Limitations on Activities Pending Environmental Review Clearance
- ◆ **Subpart D** - Review Process, including Categorical Exclusions
- ◆ **Subpart E** – Environmental Assessments – Notice and Comment
- ◆ **Subpart H** – Review certification and Release of Funds



RESPONSIBLE ENTITIES

RE assumes responsibility for:

- Environmental review
- Environmental decision-making
- Environmental action

The RE must have the technical and administrative capability to conduct the environmental review



HUD ENVIRONMENTAL REVIEW PROCESS

24 CFR Part 50/Part 58

Resources:

- **WISER** – online training modules
- **HEROS** – online environmental review system
- **ONAP** environmental trainings
- **Sample documents, worksheets, checklists, guidance, and more!**



RESPONSIBLE ENTITIES

CERTIFYING OFFICERS

- ◆ ONAP Program Guidance on Certifying Officers:
[https://www.hud.gov/sites/documents/2017-03CERTIFYING OFFICERS.PDF](https://www.hud.gov/sites/documents/2017-03CERTIFYING_OFFICERS.PDF)
- ◆ Must be from Responsible Entity Tribe
- ◆ Must have the authority to represent the Tribe and agree to be subject to the jurisdiction of federal courts
- ◆ An employee of TDHE cannot be a Certifying Officer



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





LUNCH |
1:00 To 2:00 EST

Overview of the NAHASDA Statute

Title, I Block Grant Requirements

Title II Affordable Housing Activities

Title III Allocation of Grant Amounts

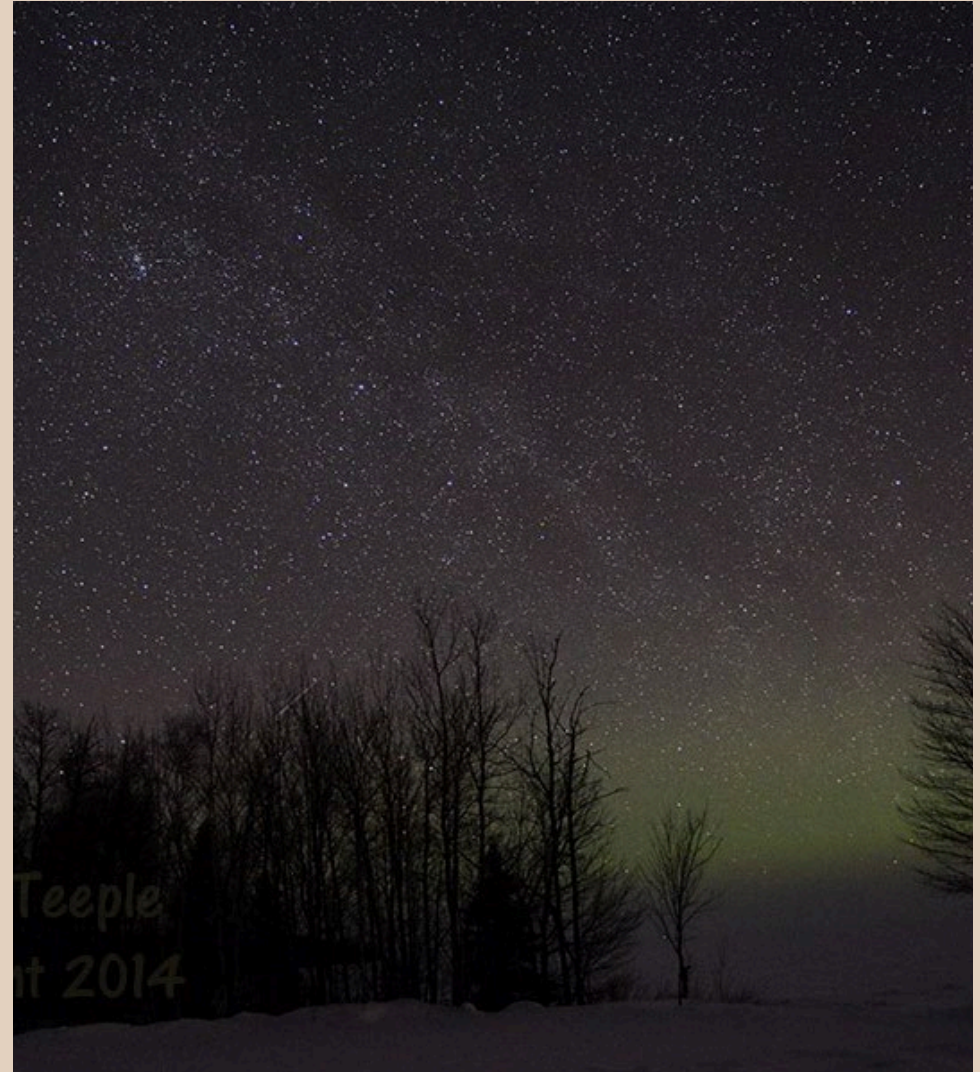
Title IV Compliance, Audits & Reports

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



TITLE II--AFFORDABLE HOUSING ACTIVITIES

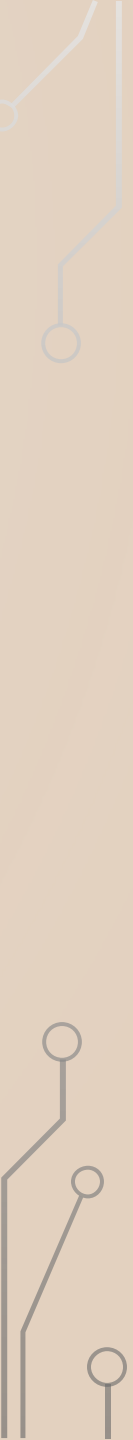
- **Subtitle A—General Block Grant Program**

- 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





Program Recipient's Eligible Families



Eligibility Requirements

Mandated NAHASDA Eligibility Requirements

Gross income must be within HUD defined income limits (special exceptions apply)

Must be a Native American family (special exception applies)

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 \$40,000 (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 IHBG funds.



U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT
PUBLIC & INDIAN HOUSING

PROGRAM GUIDANCE 2021-01

	2021 U.S. Median Family Income 79,900							
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
80%	\$ 44,744	\$ 51,136	\$57,528	\$ 63,920	\$ 69,034	\$ 74,147	\$ 79,261	\$ 84,374
100%	\$ 55,930	\$ 63,920	\$ 71,910	\$ 79,900	\$ 86,292	\$ 92,684	\$ 99,076	\$ 105,468

2021 U.S. Median Family Income Limits

To calculate the United States adjusted income limit for families with more than eight members, add eight percent of the four-person base to the eight-person income limit for each additional person. For example, the nine-person, 80 percent limit equals 89,488 ($84,374 + [63,920 * .08]$). Please note that in keeping with HUD policy, the MFI is rounded to the nearest \$100.



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. 2021-01 Published June 22, 2021, 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 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.



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of:
Administrators, Offices of Native American Programs;
Tribes, Tribally Designated Housing Entities (TDHEs)

Notice PIH 2014-02

Issued: January 24, 2014

Expires: Effective until amended,
revoked or superseded

Cross References: 24 CFR §§
1000.104 - 1000.118
PIH Notice 1999-6

1. SUBJECT: Providing Assistance to Non-Low-Income Families under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

2. PURPOSE: This Notice provides guidance on the requirements of Section 201(b) of NAHASDA, the recent revisions to the Indian Housing Block Grant (IHBG) regulations that became effective on January 3, 2013, and replaces PIH Notice 1999-6. It describes how non-low-income families (families with incomes over 80 percent of the HUD median income limits) may receive assistance under NAHASDA, and provides details on exceptions for essential families and law enforcement officials. This Notice also explains the process for documenting these determinations and how to request HUD approval to assist non-low-income families.

3. BACKGROUND: One of the national objectives of NAHASDA is to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income families on Indian reservations and in other Indian areas. Generally, assistance under NAHASDA is limited to low-income Indian families on Indian reservations and other Indian areas. Section 201(b) provides some exceptions to this requirement.

4. TYPES OF ELIGIBLE NON-LOW-INCOME FAMILIES: IHBG recipients may provide non-low-income families with IHBG assistance as defined below:

Ten Percent Non-Low-Income. Recipients may use up to 10 percent of the amount planned for the tribal program year for families with incomes that fall between 80 percent and 100 percent of the median income without HUD approval if the recipient determines that the need for housing for such families cannot be met without such IHBG assistance. For purposes of the Notice, this exception to the low-income requirement is called the "10 percent authority".

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.

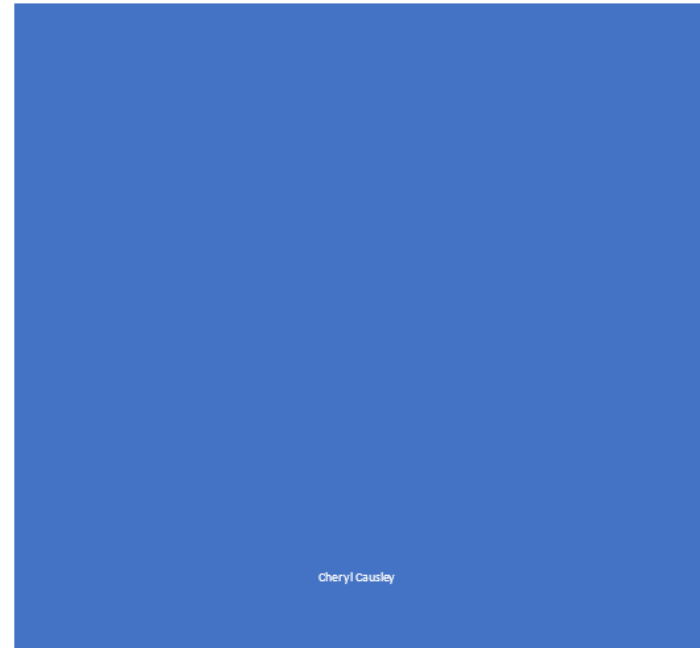


PIH Notice 2014-02 Essential Families

PIH Notice 2014-02 Essential Families. A non-low-income family may receive IHBG assistance if the recipient determines that the presence of the family is essential to the well-being of Native & Alaskan families and the need for housing for such family cannot be met without such IHBG assistance. Families assisted under this provision can receive the same amount of benefits as low-income families, as provided in 24 CFR § 1000.110(e), and they do not count as non-low-income families for the purposes of the 10 percent authority even though HUD approval is not required. Guidance on documenting these determinations is covered further in this Notice. To be considered an essential family, an IHBG recipient must first determine a family is essential to the well-being of the Indian families residing in the Indian area and determine that the need for housing the family cannot be reasonably met without IHBG assistance. The criteria and rationale for determining if a family is essential should be clearly described in the recipient's policy, and documentation must be maintained that clearly supports the determination. The recipient must make a determination about each essential family and document its determination even in cases when HUD approval is not required. The recipient may use the guidance in this Notice when determining if there is a need for housing for the family that cannot be reasonably met without IHBG assistance.



ESSENTIAL FAMILY POLICY



Cheryl Causley

ESSENTIAL FAMILY POLICY

PURPOSE: ATIHA may provide housing or housing assistance to Essential Families in our Indian area under the following conditions:

- The ATIHA determines that the presence of the family on the Indian area is essential to the well-being of Indian families, and
- The family demonstrates a need for housing that cannot reasonably be met without IHBG assistance that can be independently verified and documented by ATIHA staff.
- Housing is available to accommodate the essential family.

In accordance with PIH Notice 2014-02, Providing Assistance to Non-Low-Income Families under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), the ATIHA shall provide a rationale for making its determination using at least the following criteria:

I. DETERMINATION OF NEED

A) Inadequate Housing

- Lacks Energy Efficiency
- Overcrowded
- Poor Plumbing
- Electrical Deficiencies
- Inadequate Drain field
- Structurally Unsound
- Pest Infested
- Fire Hazard
- Inadequate Heating and/or Cooling
- No Heating
- Inadequate Cooling
- Lack of Water Pressure
- No Insulation
- Single Wide Trailer
- Not Code Compliant
- No Child Safety Measures
- Incomplete Kitchen
- Incomplete Bathroom

B) Temporary Housing

- Living with Relatives
- Motels/Hotels
- Transitional Shelter

C) Homeless

D) Rent cost Burden (Housing costs exceed 50% of AGI including utilities)

E) Inaccessibility to Financing

II. DETERMINATION THAT HOUSING NEED CANNOT REASONABLY BE MET

- Rental Housing not available in area
- Affordability
- Income & Assets Insufficient
- Housing Stock Insufficient
- Conventional Mortgages not available on trust land
- Section 8 waiting list is too long
- Inadequate Housing Stock in Area
- Family Desires Residence in immediate area near family

III. DOCUMENTATION

- Property Inspection
- Code Violation Letters
- Family Size and Unit Size
- Statement from a Temporary Housing Landlord
- Affidavit from Family
- Payroll Stubs
- Rent Receipt
- Rejection Letters
- Denial Letters

The ATIHA shall make a determination about each essential family and document its determination even in cases when HUD approval is not required.

IV. MIHA REQUIREMENTS

Examples of Required Documentation

Property inspections

Evidence of living in temporary housing

Verification of family income

Rejection letters from lender or landlord

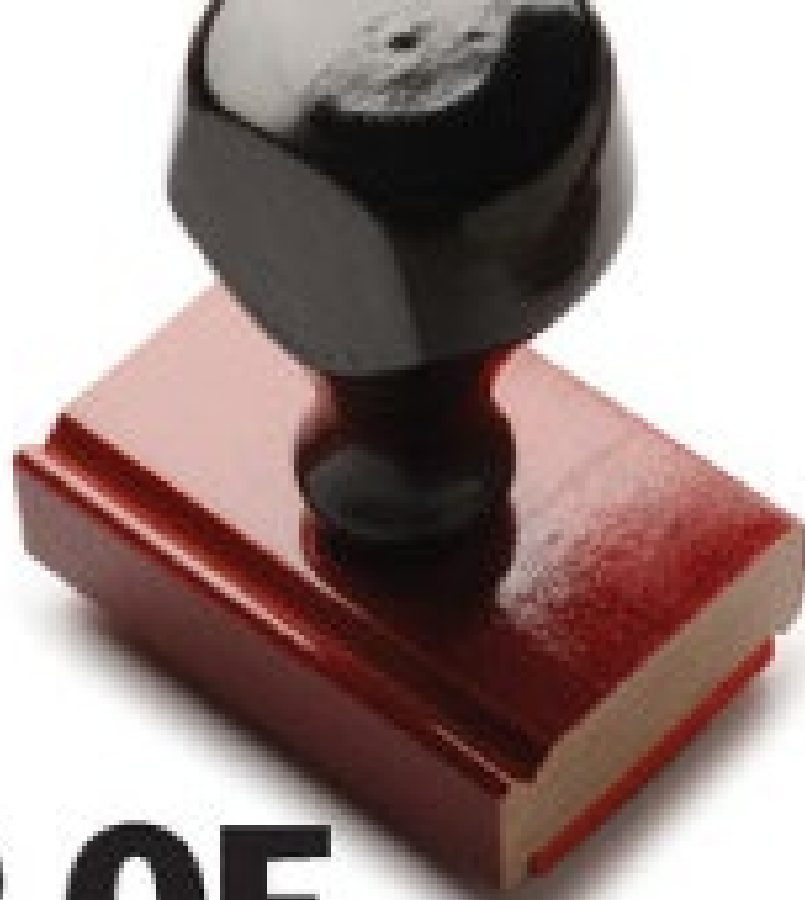
Letters stating family does not qualify for other federal, state, or local housing programs

I. Determination of Need	
<input type="checkbox"/>	A. Inadequate Housing
	Lacks Energy Efficiency
	Over Crowded
	Poor Plumbing
	Electrical Deficiencies
	Inadequate Drain field
	Structurally Unsound
	Pest Infested
	Fire Hazard
	Inadequate Heating and/or Cooling
	No Heating
	Inadequate Cooling
	Lack of Water Pressure
	No Insulation
	Single Wide Trailer
	Not Code Compliant
	No Child Safety Measures
	Incomplete Kitchen
	Incomplete Bathroom

MODERATE INCOME CHECKLIST

<input type="checkbox"/>	B. Temporary Housing
	Living with Relatives
	Motels/Hotels
	Transitional Shelter
<input type="checkbox"/>	C. Homeless
<input type="checkbox"/>	D. Cost Burden (Housing costs exceed 50% of AGI including utilities)
<input type="checkbox"/>	E. Inaccessibility to Financing
II. Determination that Housing Need cannot Reasonably Be Met	
	Rental Housing not available in area
	Affordability
	Income & Assets Insufficient
	Housing Stock Insufficient
	Conventional Mortgages not available on trust land
	State Housing Finance Programs not available
	Section 8 waiting list is too long
	Inadequate Housing Stock in Area
	Family Desires Residence on Reservation or in Village

III. Documentation	
	Property Inspection
	Code Violation Letters
	Family Size and Unit Size
	Statement from a Temporary Housing Landlord
	Affidavit from Family
	Payroll Stubs
	Rent Receipt
	Rejection Letters
	Denial Letters



STAMP OF

APPROVAL

Obtaining HUD Approval

Submit proposal to provide assistance to non-low-income families as part of Indian Housing Plan (IHP) Request proposal as amendment to IHP

Submit special request to HUD

How Many Non-Low-Income Families?

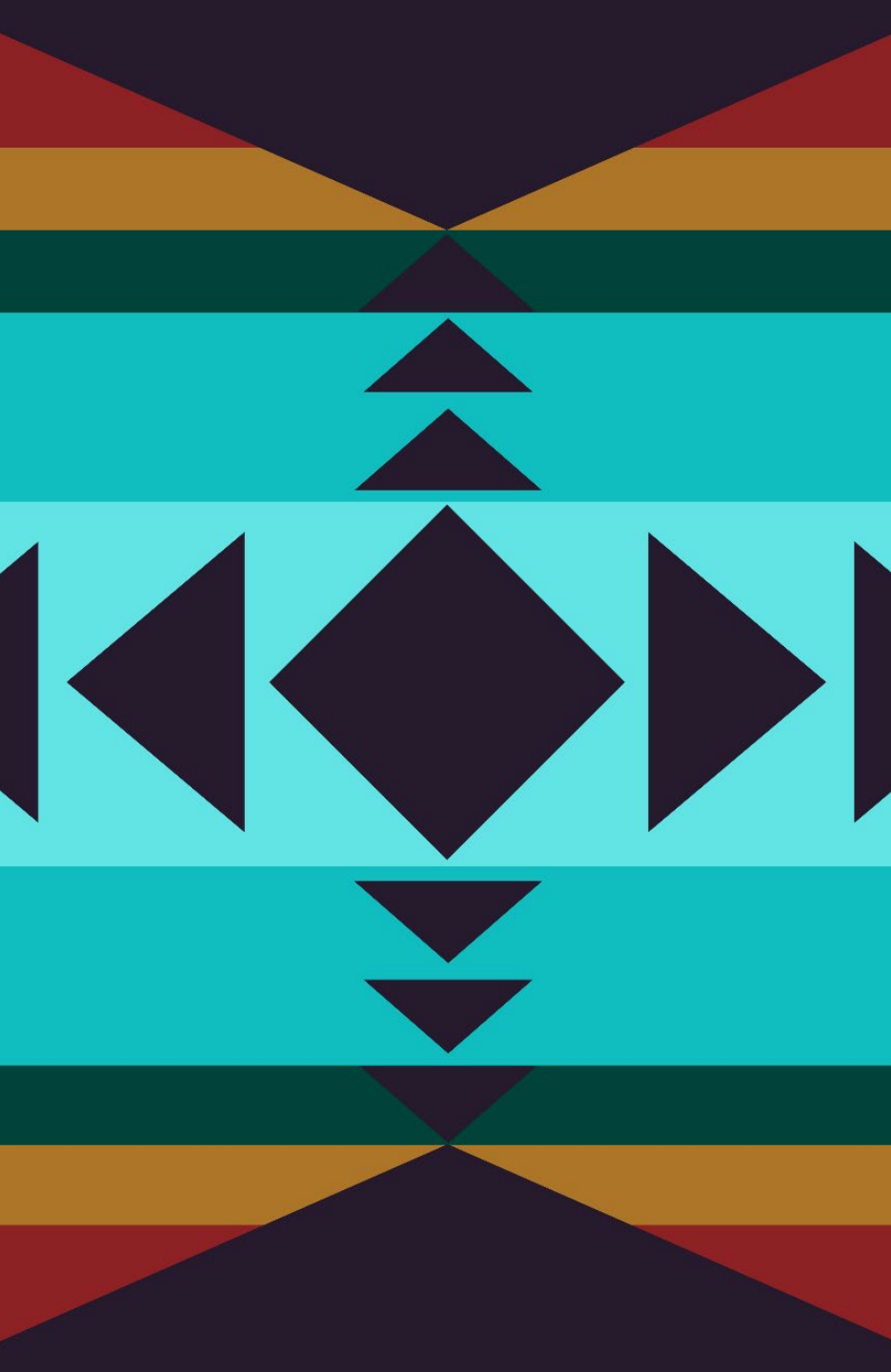
Up to 10% of grant for 80% to 100% of median

If more than 10% = HUD approval

If family income greater than 100% of median = HUD approval

Non-low-income family in housing assisted under 1937 Act for continued occupancy.

10% cap on assistance to families 80-100% of median income does not include families that are initially low-income but later experience an increase in income.



A NAHASDA Recipient can only use 10% of Annual IHBG funds in this scenario \$365,000. This is the method for calculating the use of their 10% Authority amount.

****Someone needs to be tracking your 10% CAP***

EXAMPLE 1: The recipient is assisting a non-low-income Indian family with rental assistance. The tribe has decided to use the monthly Fair Market Rent (FMR) of 698 as the rental value for assistance. $\$698 \text{ FMR value} \times 12 \text{ months} = \$8,376$ of NAHASDA Assistance.

EXAMPLE 2: The recipient is assisting a non-low Indian family with homeownership assistance. The monthly value of the homebuyer unit is \$850. $\$850 \text{ value} \times 12 \text{ months} = \$10,200$ of NAHASDA assistance.

EXAMPLE 3: The recipient is assisting a non-low-income Indian family with down payment assistance. Amount of assistance being provided to non-low-income Indian family is \$7,400

$10\% \text{ of } \$365,000 = \$36,500 - (8,376 - 10,200 - 7,400) = \$25,976$

Leaves \$10,524 of NAHASDA funds eligible for use

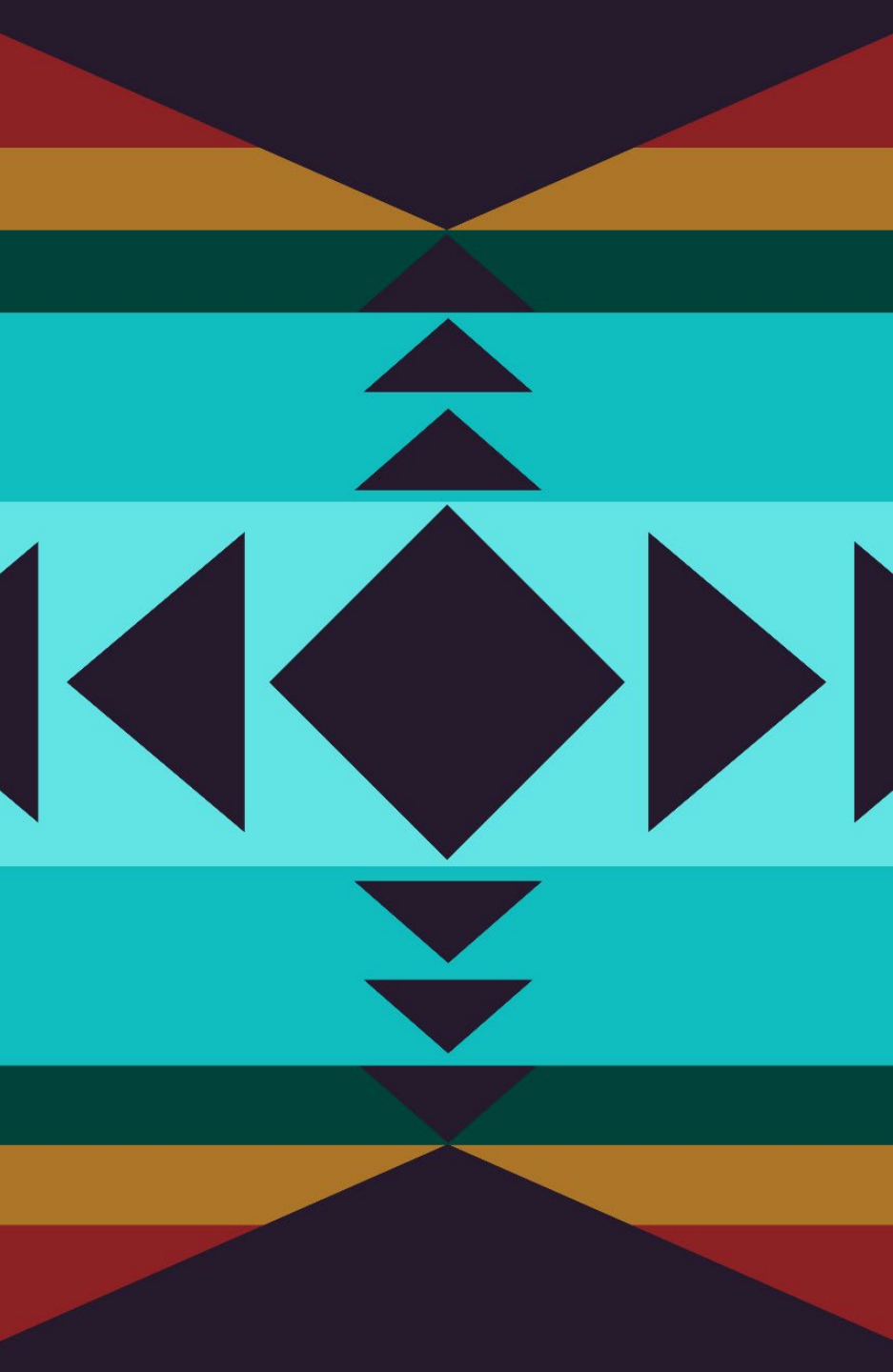
Policy Language-(language might read)

- The 10% cap on assistance to families 80-100% of median income does not include families that are initially low-income but later experience an increase in income if you address it in your policy.
- Families who are initially low income but later experience an increase in income will not be included in the 10% cap on assistance to families and will continue to be allowed to participate in Housing Program.

Non-Low-Income Rental Payment Requirements

The rents (including homebuyer payments under a lease purchase agreement) to be paid by a non-low-income family cannot be less than (income of family at 80 percent of median income) X (rental payment of family at 80 percent of median income) **but need not exceed the fair market rent or value of the unit.**





Non-Low-Income Family Payments

- To calculate rental payment for non-low-income family, divide their income by 80% of median income
- Multiply that number by amount of monthly rent for low-income family
- This amount is minimum monthly payment.
- These procedures should be addressed in policies.

Calculating Rent for Non-Low-Income

- Eighty percent of the median income for a family of four in Seattle is \$75,040
- Rental Payment for a family at 80 percent of median income is \$1200 per month
- FMR 3-bedroom = \$1,793 per month
- A non-low-income Native family of four earns \$88,000




Calculating Rent for Non-Low-Income

Eighty percent of the median income for a family of four in Seattle is \$75,040.



Rental payment for a family at eighty percent of median income is \$1,200 per month



FMR 3-bedroom = \$1,793 per month

Rent Payment for Non-Low-Income Families



Non-Low-Income Rental Payment Requirements

The rent (including homebuyer payments under a lease purchase agreement) to be paid by a non-low-income family cannot be less than $[\text{income of non-low-income family} / \text{income of family at 80 percent of median income}] \times [\text{rental payment of family at 80 percent of median income}]$ but need not exceed the fair market rent or value of the unit.

Other assistance, including down payment assistance, to non-low-income families, cannot exceed $[\text{income of family at 80 percent of median income} / \text{income of non-low-income family}] \times [\text{present value of the assistance provided to family at 80 percent of median income}]$.



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

NAHASDA Eligible Affordable Housing Activities



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.

- (1937 Act CAS)&1996 NAHASDA



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:

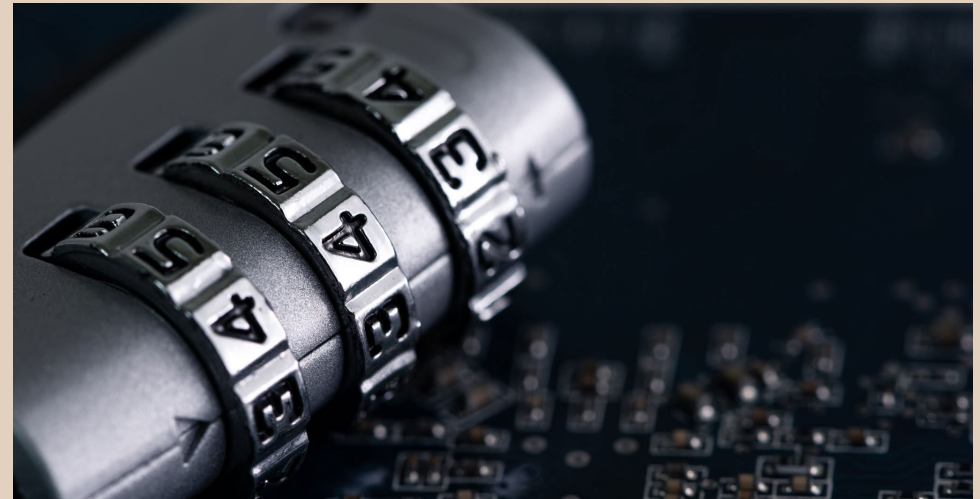
- safety, security & law enforcement measures including activities appropriate to protect residents of affordable housing from crime.

6) Model Activities:

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

(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.



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.

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.



When Must a Family be Low-Income

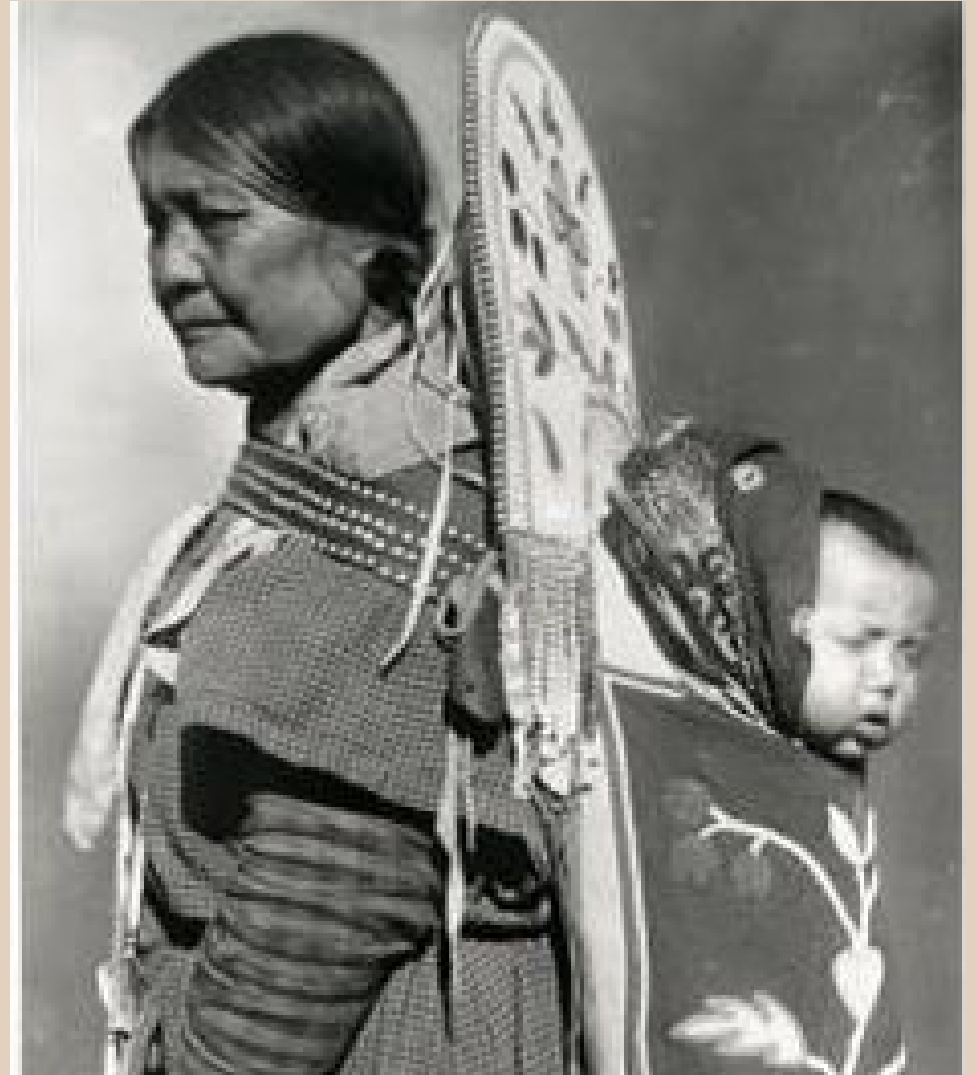
AT THE TIME SERVICES ARE PROVIDED:

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/TDHE 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.

- (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

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.

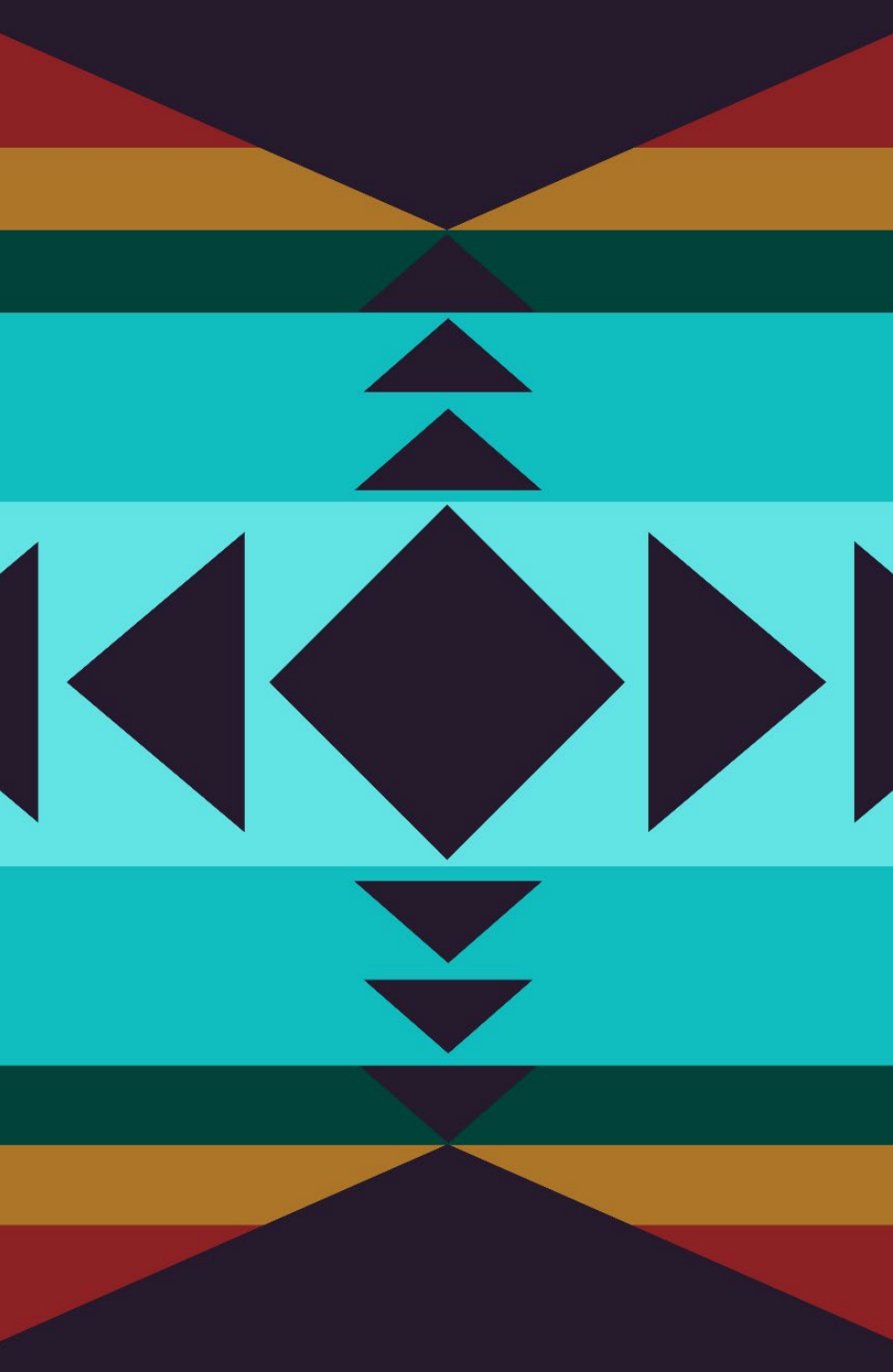
SEC. 208. AVAILABILITY OF RECORDS

(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.



PG 2014-05 Describes procedures for protecting personal information when sharing data with HUD's Office of Native American Programs (ONAP).

Recipient Responsibilities. Protecting personally identifiable information starts with the recipient. Prior to sending documents to ONAP, it is strongly recommended that the recipient carefully review the documentation that ONAP requests to determine if it contains personal information. If the documentation does contain personal information, the recipient should determine whether ONAP needs the personal information. ONAP is available to assist a recipient in making this determination.

If ONAP does not need to see the personal information the recipient must redact or hide all information that could identify a person. This can be done with a black marker or correction fluid.

When ONAP requires personal information to address a specific performance or compliance issue (for example, the recipient may be requested to submit tenant information so that ONAP can verify participant eligibility) the personal information cannot be redacted. Documents containing personal information must be sent to ONAP in a manner that protects the personal information.




No. 2014-05(R)
June 05, 2014

PROGRAM GUIDANCE

PROGRAM: All Grant Programs

FOR: Tribal Government Leaders, Tribally Designated Housing Entities, and the Department of Hawaiian Home Lands

FROM: For  Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Protecting Personal Information

PURPOSE: The purpose of this guidance is to provide procedures for protecting personal information when sharing data with HUD's Office of Native American Programs (ONAP).

BACKGROUND: If an individual can be identified through personal information in a document or collection of documents, privacy protection actions should be implemented. Federal employees are responsible for respecting and protecting personally identifiable information. The Privacy Act of 1974 (5 USC § 552a) and the E-Government Act of 2002 (44 USC § 101) govern how Federal agencies gather use, maintain, and disseminate personal information.

This guidance complements Notice PIH 2014-10, which describes HUD's procedures for protecting sensitive personal information. The Notice is available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices.

There are instances when ONAP requires information from recipients of HUD grants to assess and verify compliance with pertinent statutes and regulations. Some of this information may contain personal data such as full names, Social Security numbers, street addresses, internet addresses, telephone numbers, photographs, vehicle registration ID numbers, driver's license numbers, and the like. Documentation that may contain personally identifiable information include payroll journals, checks, check registers, contracts or contract registers, invoices, tenant files, etc.

Not all personal information is considered sensitive because many people share the same trait. This includes information such as first or last name (if common), country, state, or city of residence, age (especially if non-specific), gender or race, names of schools attended, and work place, pay grade, salary, or job position.

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.

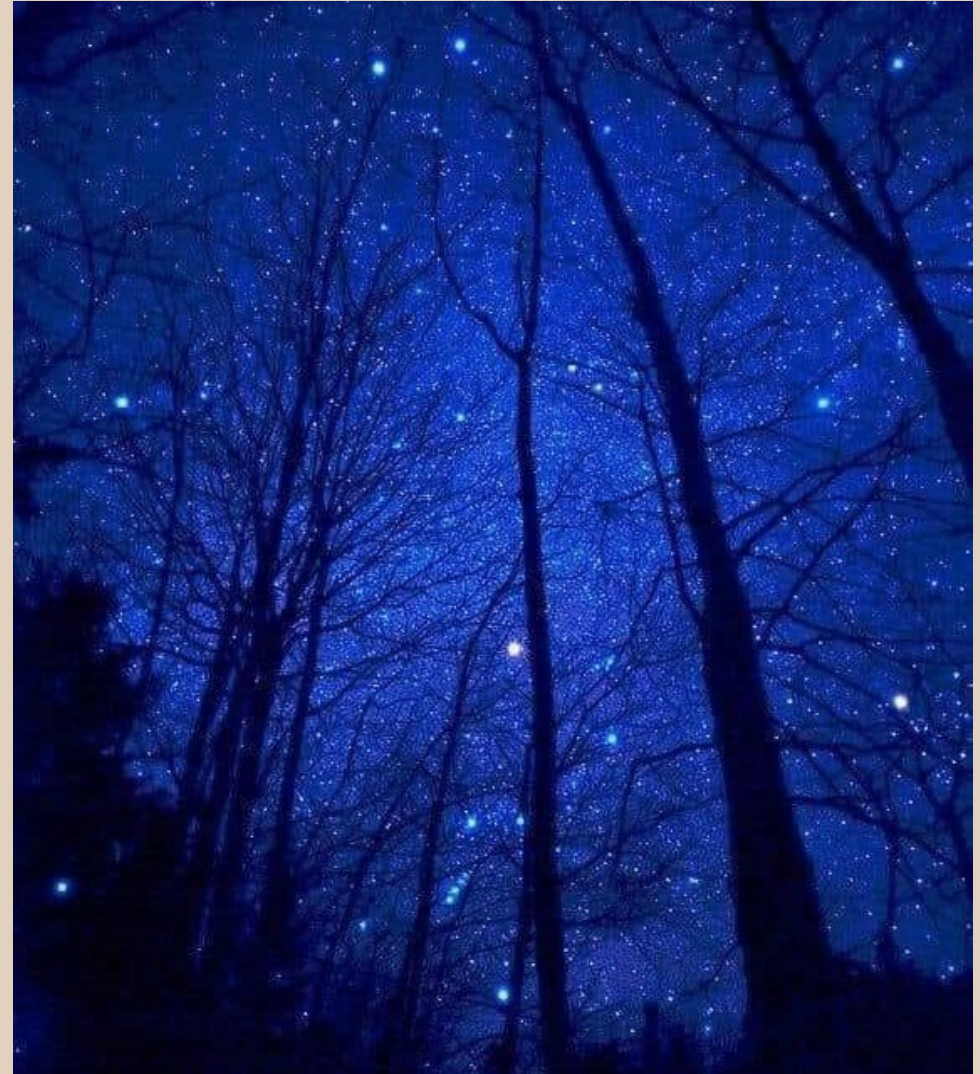
HUD allocates IHBG grant to Tribes in accordance with established formula each fiscal year

Sec. 302. Allocation formula.



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



Overview of the NAHASDA Statute

Title, I Block Grant Requirements

Title II Affordable Housing Activities

Title III Allocation of Grant Amounts

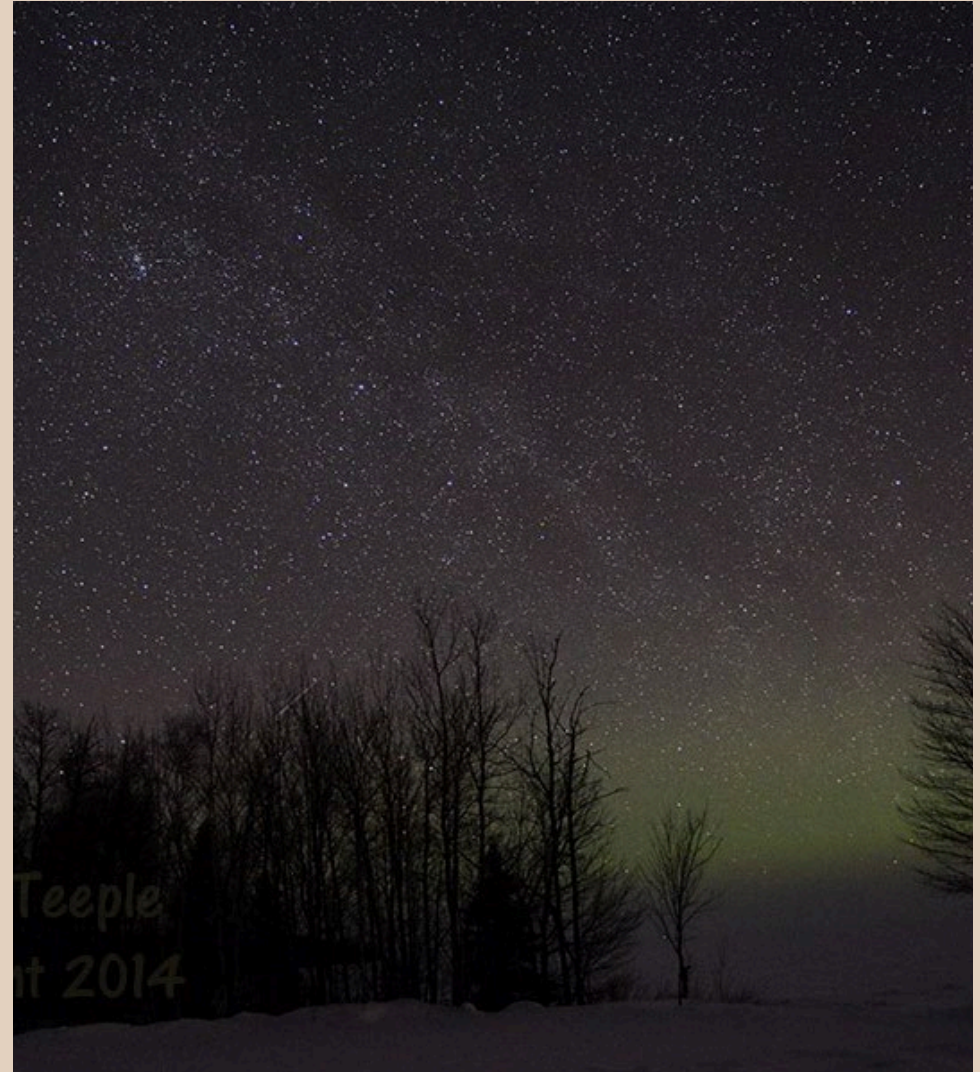
Title IV Compliance, Audits & Reports

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



Sec. 302. Allocation Formula



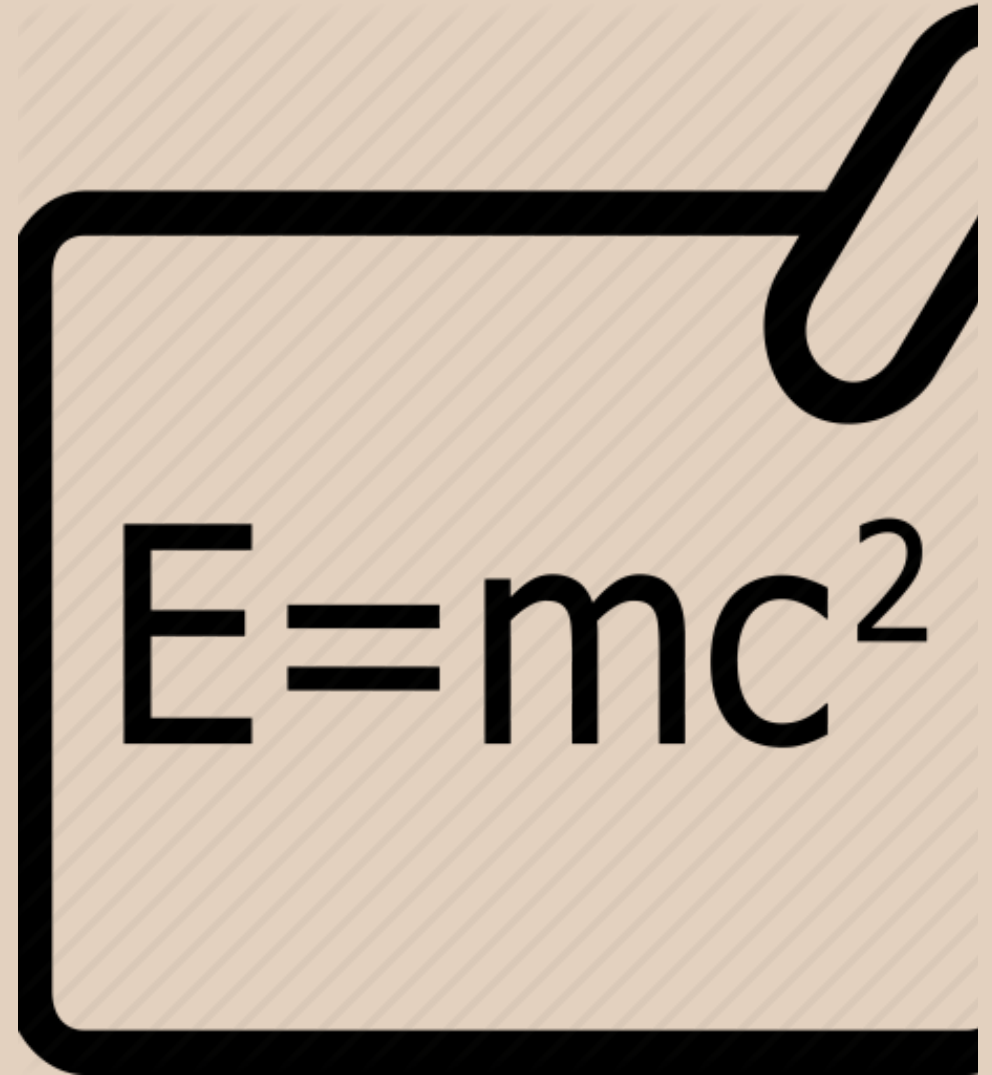


FY 2022 Indian Housing Block Grant Formula Allocation Estimates

This Dear Tribal Leader letter informs Tribes and Tribally Designated Housing Entities (TDHE) of their Indian Housing Block Grant (IHBG) formula allocation estimate for Fiscal Year (FY) 2022 and transmits the forms required for correcting the FY 2022 IHBG formula data and the FY 2023 IHBG Needs data. In the past, the U.S. Dept. of Housing and Urban Development (HUD) would mail this information. However, due to the COVID-19 pandemic, HUD has posted following information on-line at: <https://ihbgformula.com/fy2022/>. **REMINDER!** Census Challenges for the FY 2023 IHBG Needs data must be submitted no later than March 30, 2022, for consideration for the FY 2023 IHBG formula allocation estimates.

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.

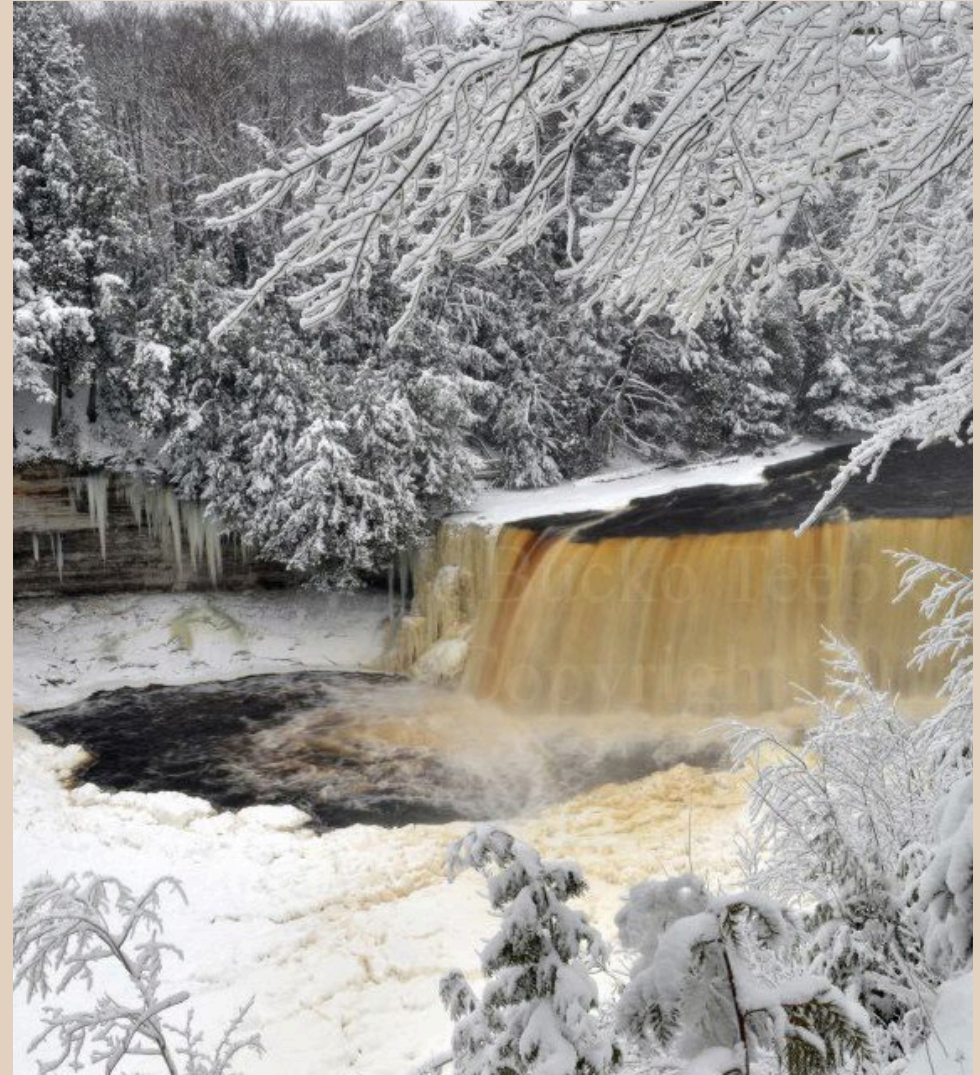
- ❖ The formula contains four key components:
 - (1) Current Assisted Stock (CAS)
 - (2) Need
 - (3) 1996 Minimum
 - (4) *NEW* -Undisbursed IHBG Funds Factor (UDFF)[§1000.310 and 342]



Undisbursed IHBG Funds Factor (UDFF)

Undisbursed IHBG Funds: Applies to Tribes/TDHEs with:

- 1) Amount of initial allocation of \geq \$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 Section 8 program**



FCAS

Two elements of FCAS in formula

- Operating subsidy
- Modernization allocation

FCAS adjusted by

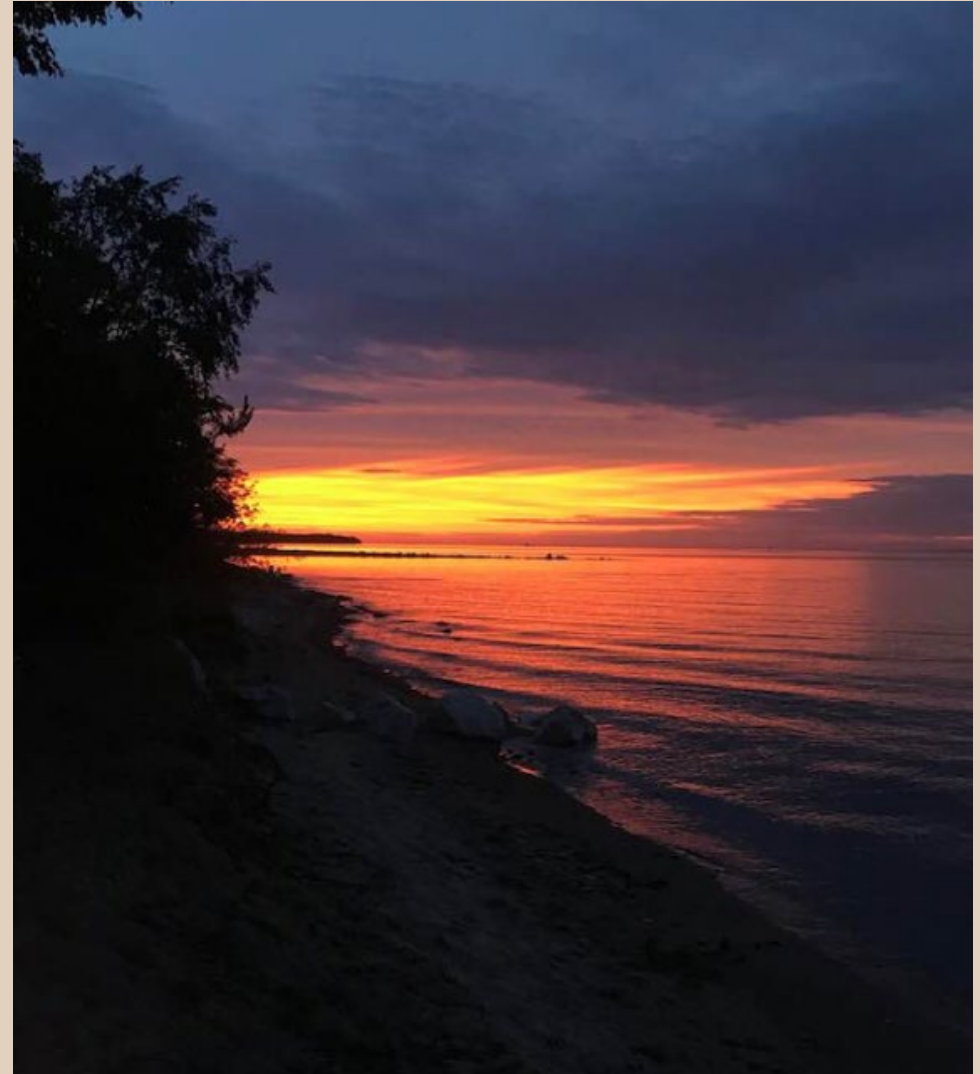
- FY96 national averages for Operating subsidy and Modernization allocation
- Local costs and inflation adjustments

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:

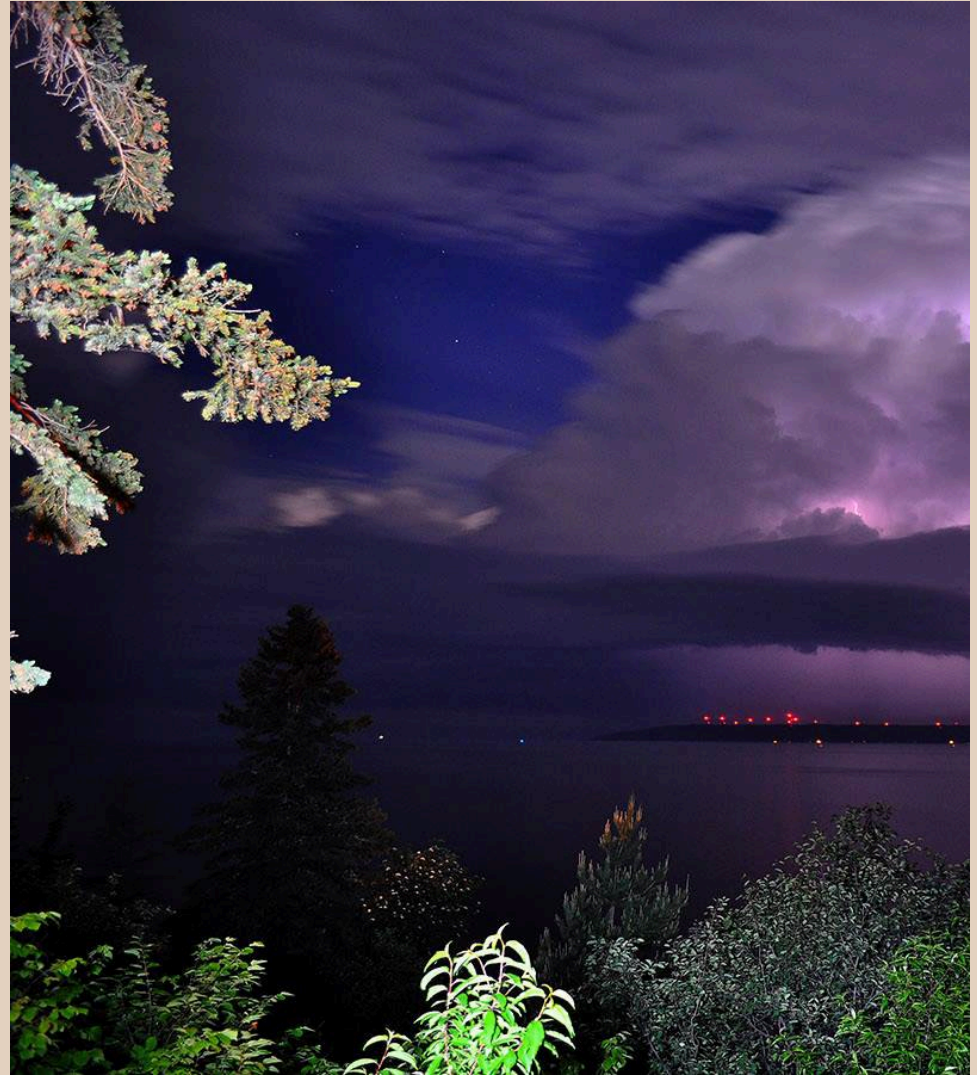
Conveyance eligible, conveyed, or demolished units.

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.



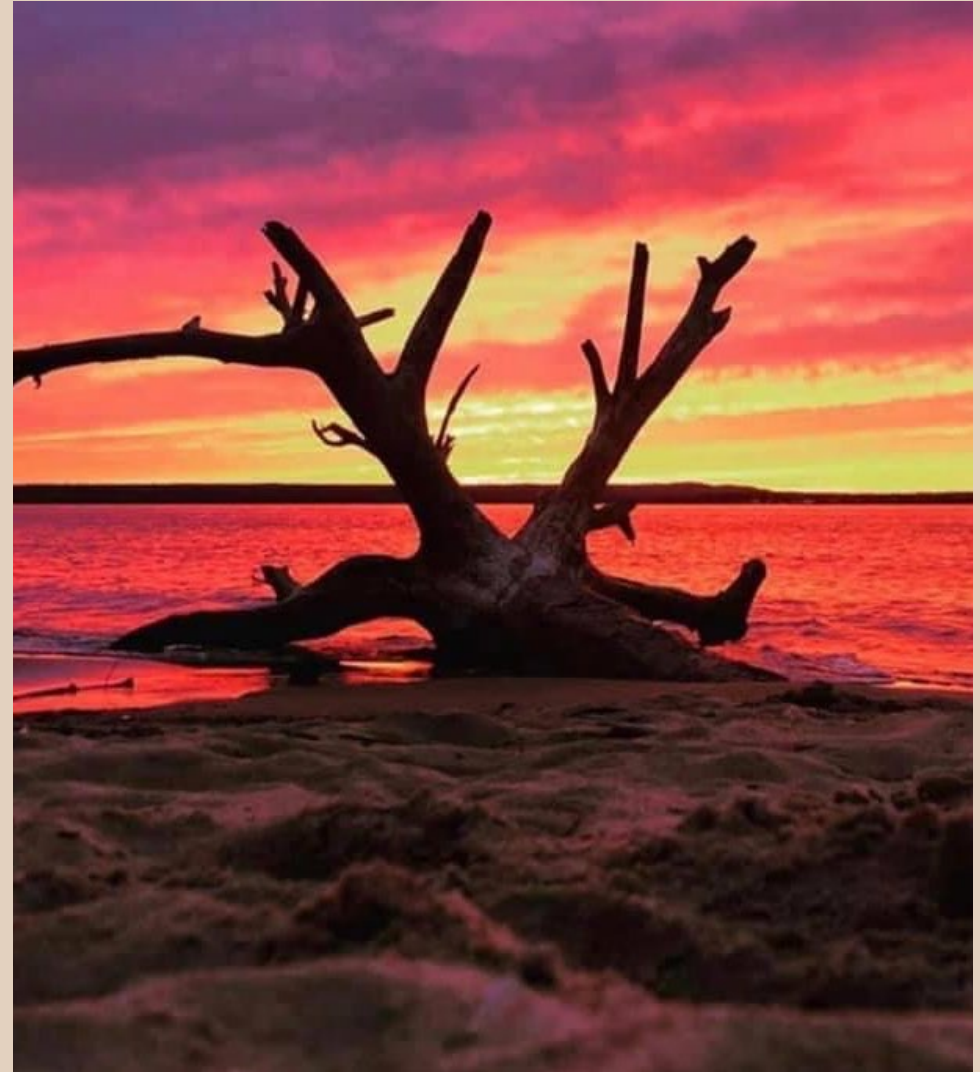
Component 2: Need

After determining the FCAS allocation, remaining funds are allocated by need component

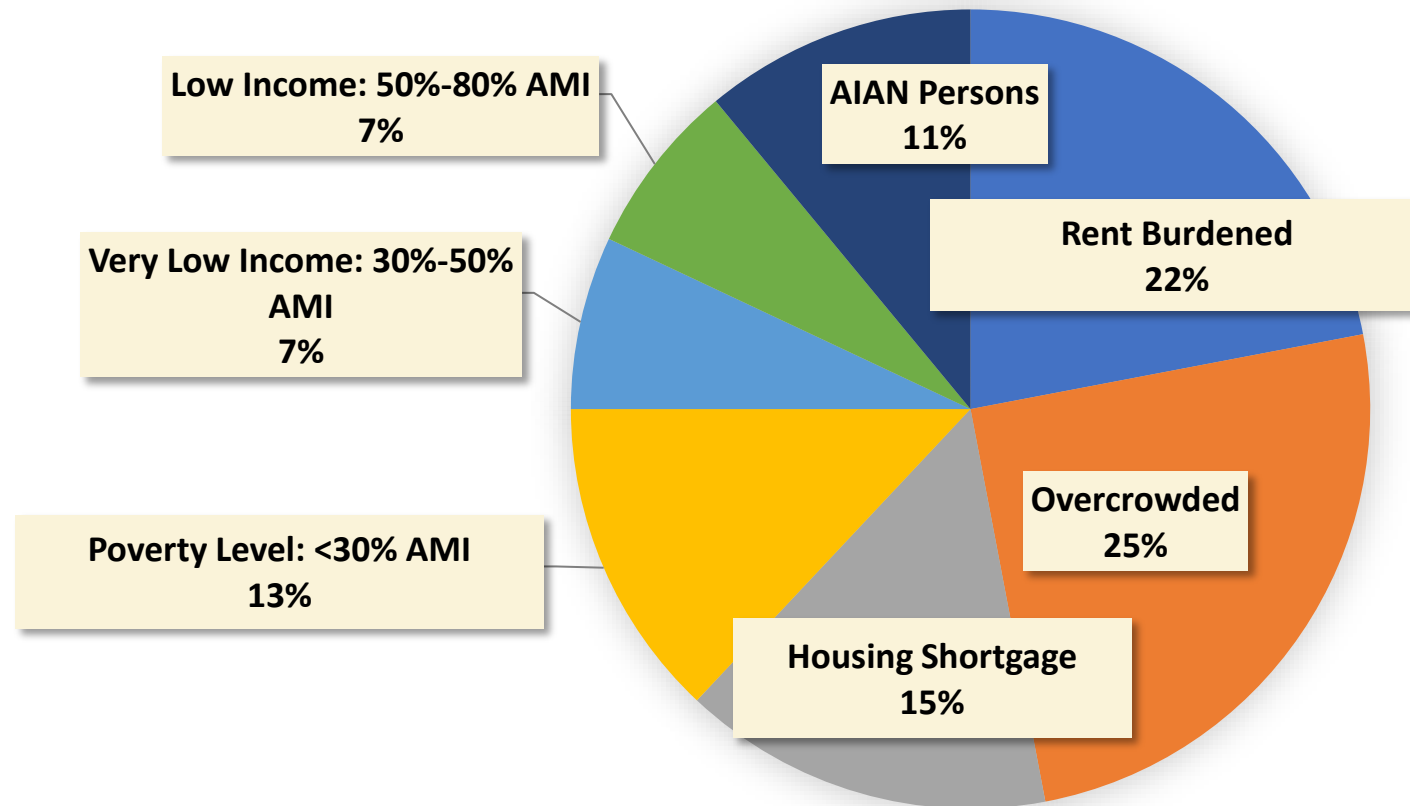
The need component consists of Seven criteria

Based on Decennial Census and American Community Survey (ACS) 5-year data

Adjusted for local Development Cost



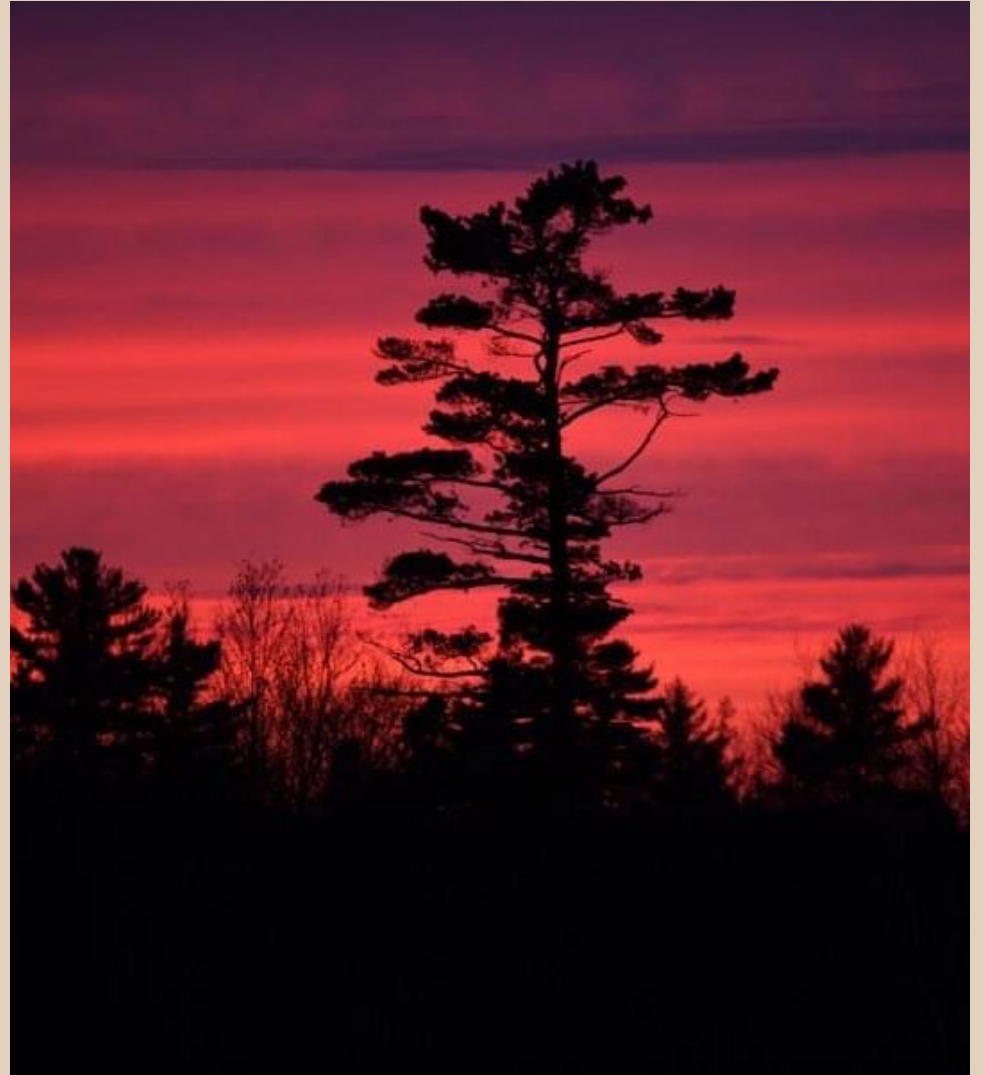
Need Component Weights [§1000.324]



Formula Area

Geographic area providing substantial
housing services

Formula area and Indian area are different!



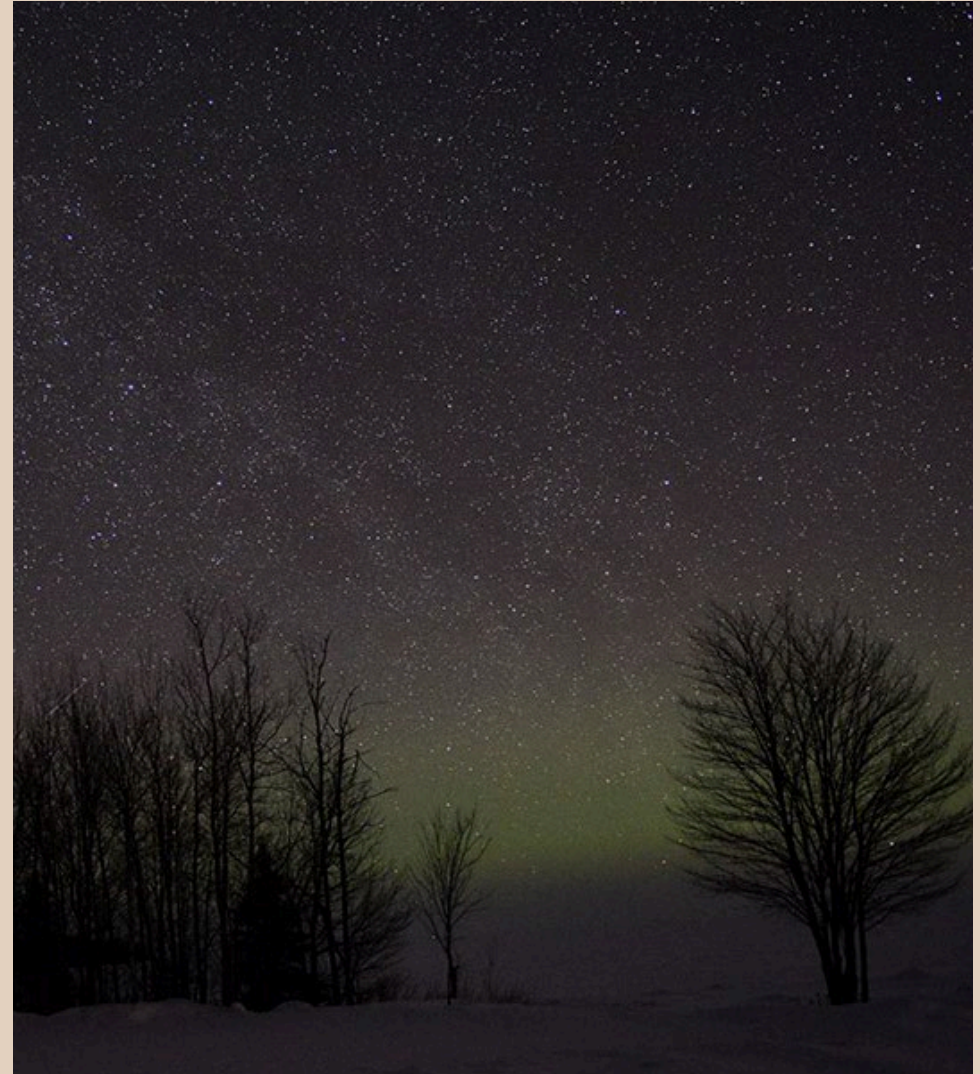
What if a formula area is served by more than one Indian tribe?

- (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]

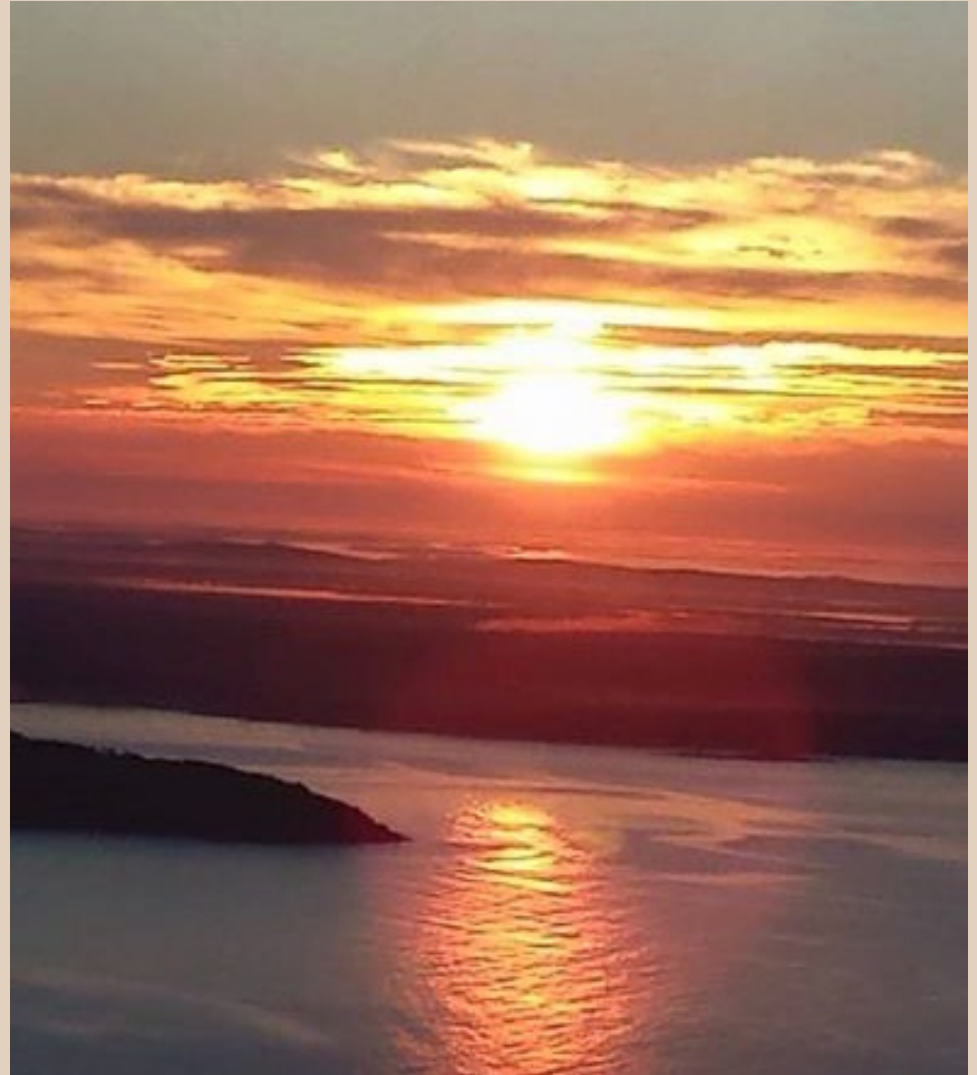
The Treasury Department decided that 60% of the \$8 billion would be distributed immediately based on population, while the remaining 40% would be distributed later based on employment and expenditures data.

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
- IHBGformula@firstpic.org



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



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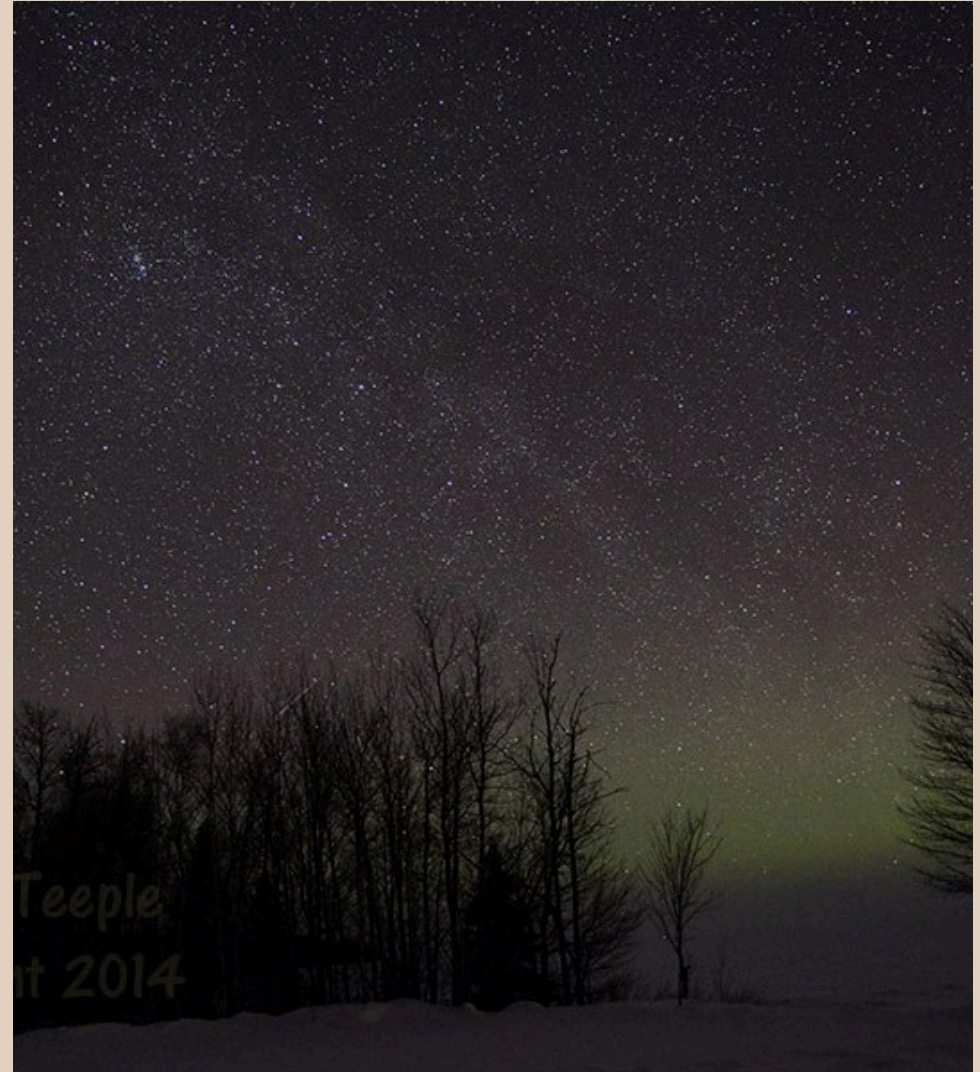
Title IV Compliance, Audits & Reports

Title V Termination of Assistance Under Incorporated Programs

Title VI Federal Guarantees for Financing Tribal Housing Activities

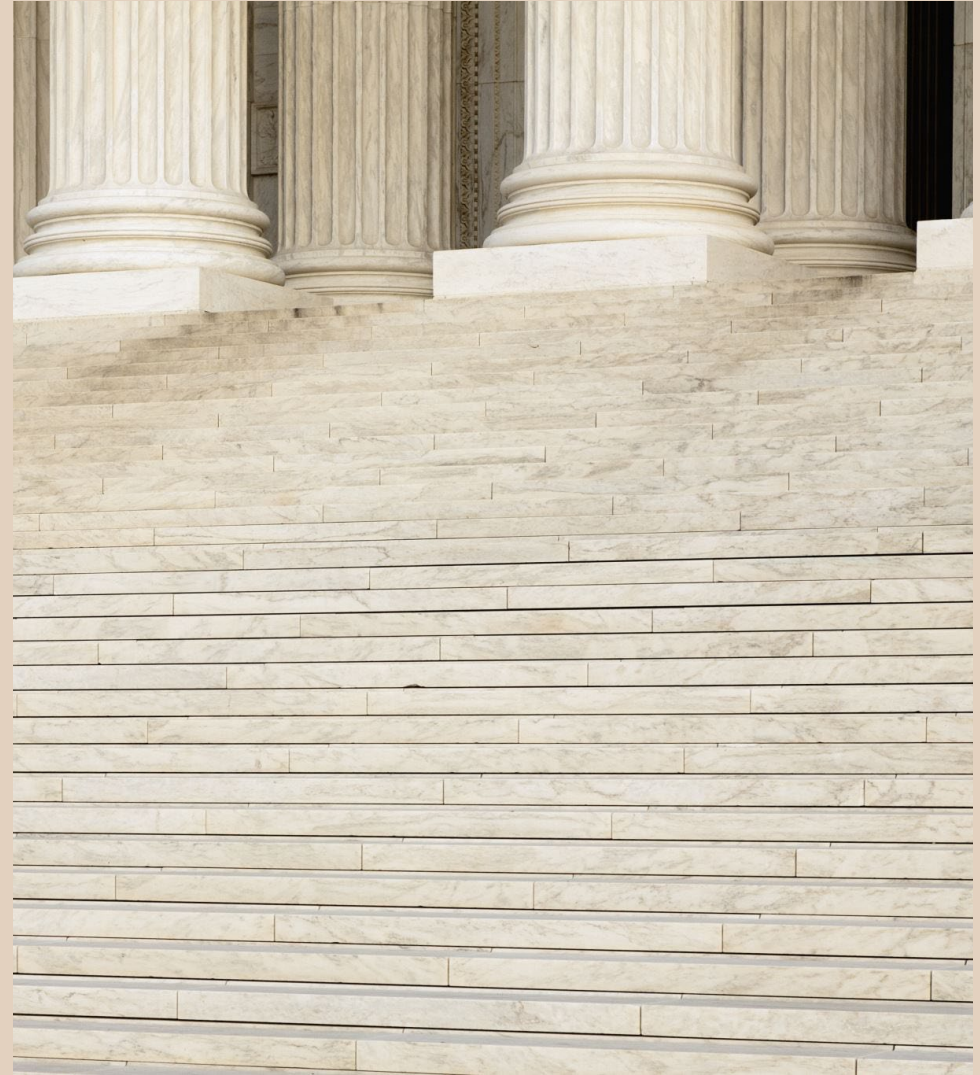
Title VII Other Housing Assistance

Title VIII Housing Assistance for Native Hawaiians



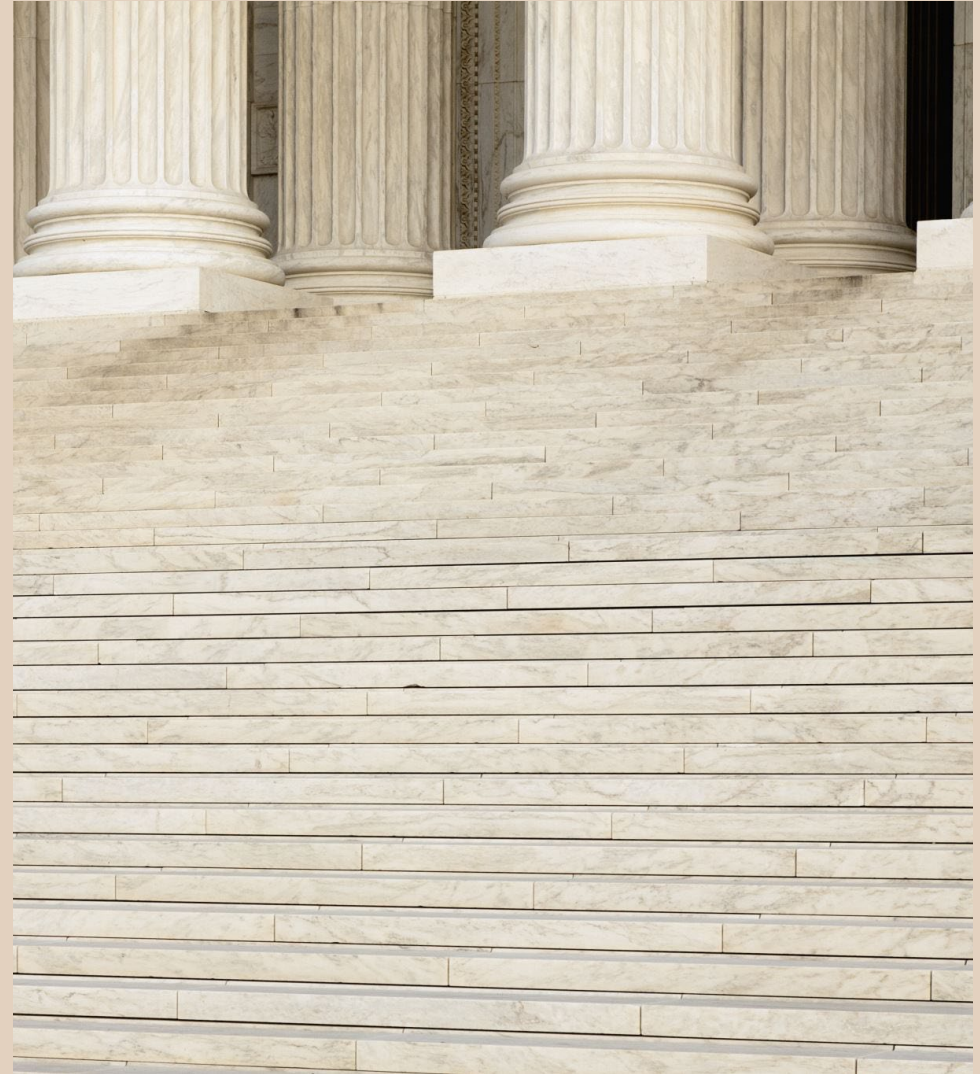
TITLE IV--COMPLIANCE, AUDITS, AND REPORTS

- 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.



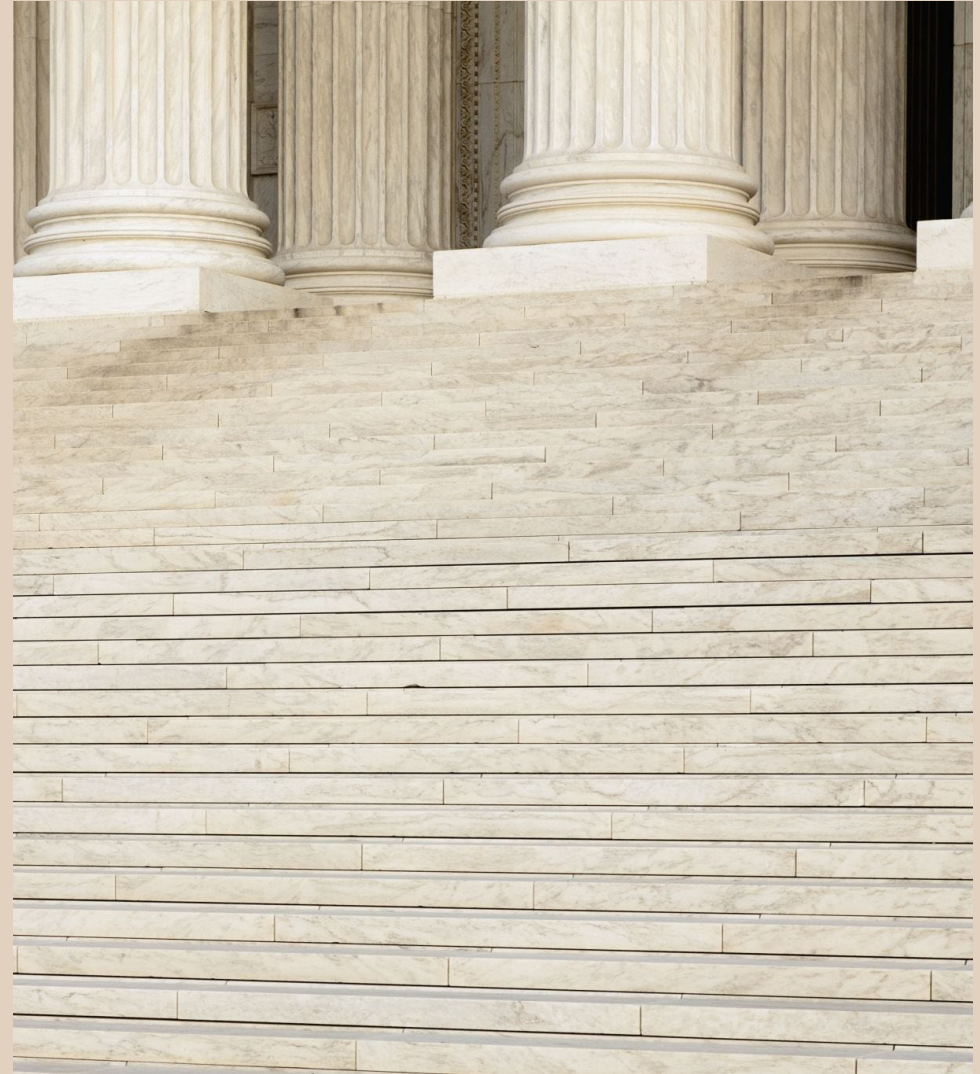
TITLE V--TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

- 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.



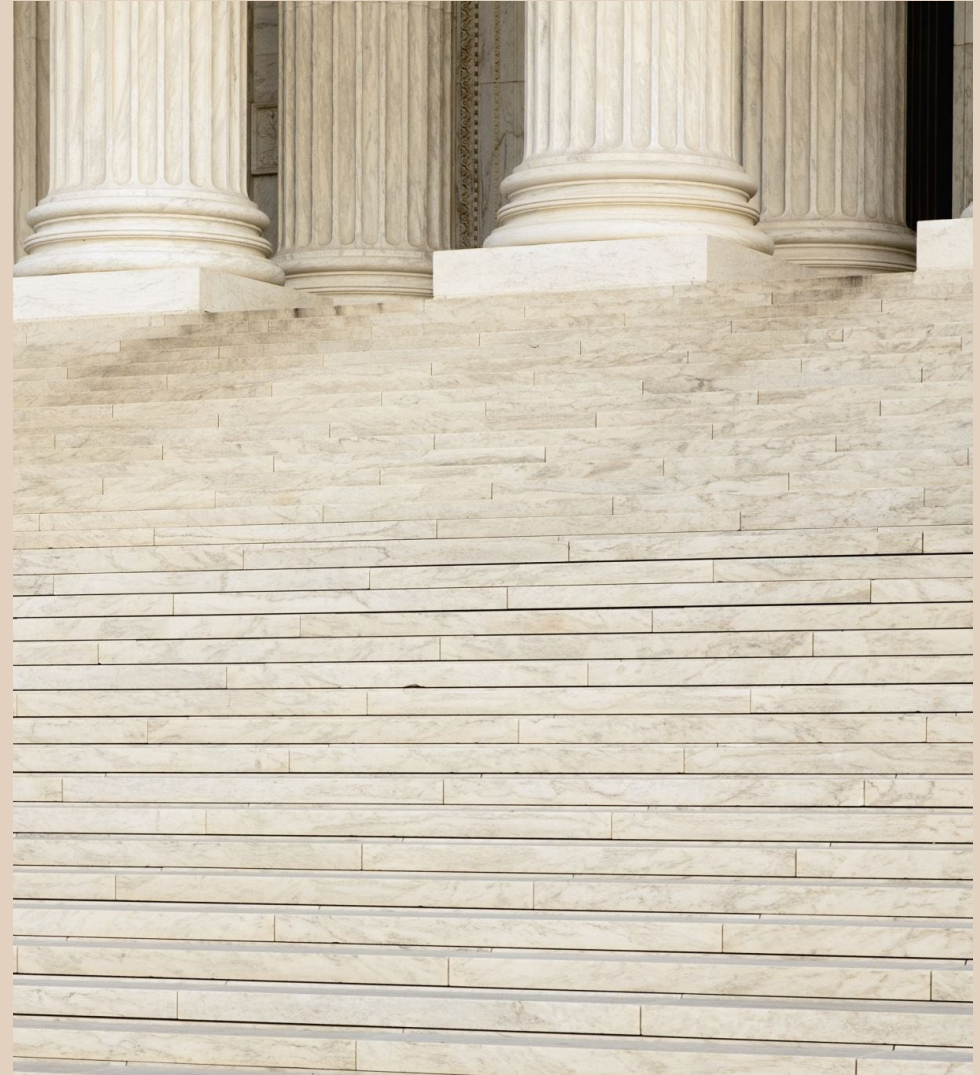
TITLE VI--FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

- 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.



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.





Debarred Contractors

24 CFR Part 24
– prohibitions
on debarred,
suspended, and
ineligible
contractors

Suspension and Debarment

- Suspension
 - A temporary measure; there is a 12-month limit
 - Usually used pending the completion of investigation or legal proceedings
 - Based upon adequate evidence, usually an indictment
- Debarment
 - Usually, 3 years in length
 - Based upon a preponderance of the evidence, usually a conviction

In accordance with 24 CFR §1000.44, in addition to any tribal requirements, the prohibitions described in 2 CFR Part 2424 on the use of debarred, suspended or ineligible contractors apply.



Debarment

A debarment is an exclusion from participation in all federal-funded programs for a reasonable, specified period of time commensurate with the seriousness of a violation of or failure to perform on other contracts. Such action is taken pending the elimination of the circumstances for which debarment was imposed. Debarment may be imposed for violation of contract clauses, including equal employment opportunity provisions, acceptance of contingent fees, any of the Secretary of Labor regulations such as the Davis-Bacon Act, or other serious contract violations. The Secretary of Labor may, independently of HUD, debar a firm based on violations of the labor standards.



Suspension

A suspension means a disqualification from all federal-assisted programs for a temporary period of time because of adequate evidence that the firm engaged in criminal, fraudulent, or seriously improper conduct. A contractor is suspended pending investigation and appropriate action by the federal government. All suspensions are for a temporary period pending the completion of an investigation and such legal proceedings as may ensue.



Identifying Excluded Firms

The Exclusions area within the Performance Information functional area of the System for Awards Management (SAM), formerly the Excluded Parties List System (EPLS), identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and nonfinancial assistance and benefits. As Exclusion Records are publicly available, SAM keeps the user community aware of administrative and statutory exclusions across the entire government and individuals barred from entering the United States. The more commonly used terms of 'suspensions' and 'debarments' reflect exclusions.



How can I check to see whether an entity is excluded from receiving federal awards?

The following information is taken from SAM Exclusions Extract User Guide.pdf.

Use the following steps to see if an entity is subject to any active exclusions (e.g., suspensions, debarments) imposed by a federal agency:

1. Go to <http://sam.gov>
2. On the Home Page or the Search Records tab, type the Entity's name or DUNS number in the search bar and click on the Search icon.
(IMPORTANT NOTE: Individuals are not assigned DUNS numbers. If you are checking for an exclusion for an individual, search by typing in the name.)
3. If no exclusion record is found for the entity, the entity does not have an active exclusion submitted in SAM by a federal agency.
4. If an exclusion record is found, it will display in a box marked **"Exclusion" in purple**; check the status in the top-right corner of the box. If the status indicates "Active", there is an active exclusion for that entity.



How can I check to see whether an entity is excluded from receiving federal awards?

PLEASE NOTE: JUST SEEING THAT AN ENTITY HAS AN ACTIVE EXCLUSION IS NOT SUFFICIENT. AS AN AWARDING OFFICIAL, YOU MUST CONTINUE TO THE NEXT STEPS.

If you are viewing an exclusion record (as indicated by a purple box marked “Exclusion” in the upper-left corner of the search result), click “View Details” to open the exclusion record and see additional information.

If you are viewing an entity management record (as indicated by a green box marked “Entity” in the upper left corner of the search result), click “View Details” to view entity’s dashboard for more information. Use the navigation links on the left side of the screen to review the entity’s specific exclusion. Click on the “Active Exclusions” link to view all current exclusions. Click on “View Exclusion” to view the data in the specific exclusion record. Scroll through the exclusion record to review details.

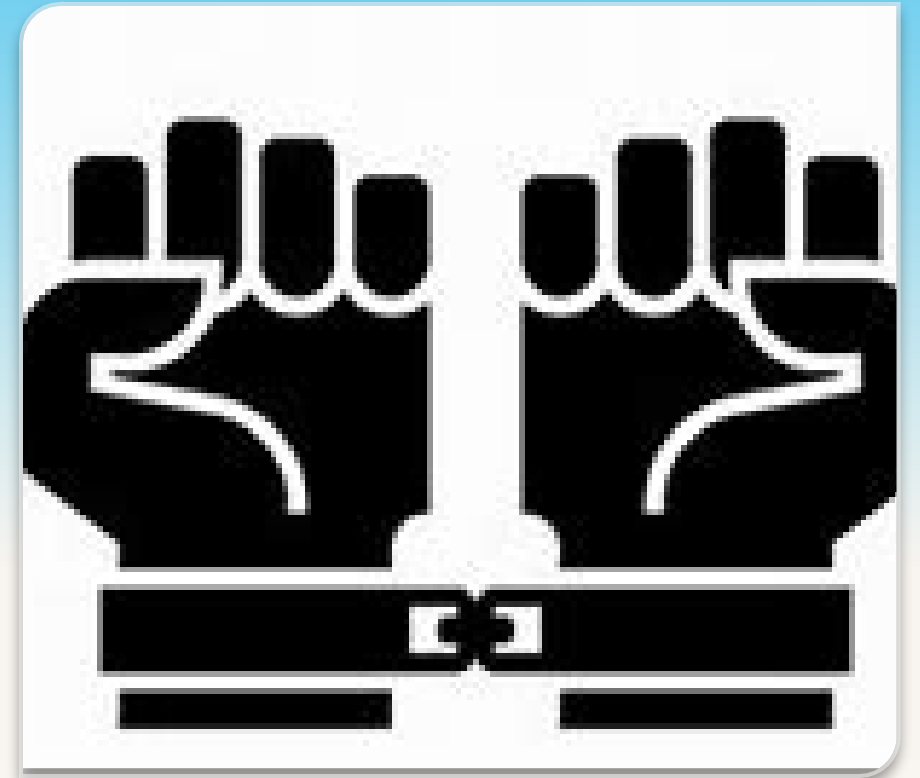
For more information, refer to the System for Award Management (SAM) at www.sam.gov.



Debarred Contractors

24 CFR 1000.44

- Check
 - Contractors
 - Subcontractors
 - Lower-tier contractors
 - Subrecipients



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 Reward 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

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.

200.317-326 PROCUREMENT STANDARDS

§200.318 General procurement standards

(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.

Standards of Conduct





Standards of Conduct

Since the awarding of contracts by housing recipients involves the expenditure of Federal funds, employees and contractors are held to a higher standard of conduct than those who work with private contracts.

To maintain confidence that the housing recipient's procurement process is fair, it is essential that standards of conduct are maintained at all times.

Employees and Board Members must carry out their duties impartially to assure fairness. They should conduct themselves in a manner as to promote confidence in the integrity of the organization. Any attempt by an employee or Board Member to realize personal gain by conduct inconsistent with proper procurement procedures should be a breach of the Housing Standards of Conduct.



Use of Confidential Information.

Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information shall be a breach of the ethical standards.

Confidential information includes but is not necessarily limited to the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award);

.

Use of Confidential Information

IHA generated information related to a procurement (including IHA cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process.

It is a breach of ethical conduct for any current or former employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person





Action Upon Discovery of Conflict

Upon discovery of any actual or potential conflict of interest, an employee, officer, commissioner or agent must promptly file a written statement of disqualification and must withdraw from further participation in the transaction involved.

Prohibition against Selling to the Recipient

Even though it is no longer prohibited it is still a good practice not to allow a present or former employee or Board Member of the recipient to engage in selling or attempting to sell supplies, construction, or other services to the recipient for one year following the date employment ended.



One Year Prohibition



Conflict Of Interest and 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.

Conflict Of Interest and One Year Prohibition

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.

Conflict Of Interest and One Year Prohibition

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 .

PROCUREMENT



Procurement "Claw" (Sections 200.317-326)



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.

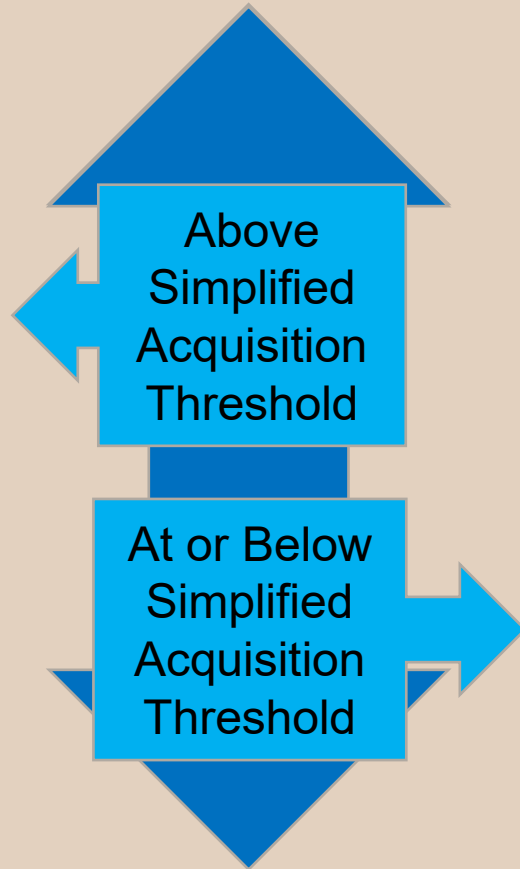
Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations 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).

Native Preference

In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA.

In the absence of tribal employment and contract preference laws, a recipient must, to the greatest extent feasible, give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of the Indian Self- Determination and Education Assistance Act (25 U.S.C. 450e(b)).



Davis-Bacon Requirements

Davis-Bacon labor standards are applicable to NAHASDA programs (§1000.16)

- Tribe may adopt prevailing wage rates
- Prevailing wage rates as determined by D.O.L must be paid for laborers and mechanics for all construction and rehab



Davis-Bacon Requirements

With homebuyer assistance, applies when prior agreement to use NAHASDA to buy newly constructed unit

Applies to all rental, non-maintenance activities

Does not apply when prime contract is less than \$2k

Other Labor Requirements

Contracts over \$150k are subject to Contract Work Hours and Safety Standards Act

Copeland Act (40 USC 276c) - allowable paycheck deductions

Fair Labor Standards Act of 1938 - minimum wage and overtime requirements

Indian Preference

Grants are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act

Training and employment opportunities given to Indians (§1000.50) and preference in award of contracts (§1000.52)

INDIAN PREFERENCE REQUIREMENTS



A decorative vertical border on the left side of the slide. It features a central cyan band with a large dark blue diamond shape. Above and below this band are horizontal stripes of dark green, gold, and red, with dark blue triangles pointing towards the center. The top and bottom corners are dark blue triangles pointing outwards.

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

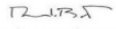
The Final Rule amended 24 CFR Sections 1000.48, 1000.50, and 1000.52 to provide for tribal preference in employment and contracting.

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

The image shows the cover page of a guidance document. On the left side, the words "RECIPIENT GUIDANCE" are printed vertically in a large, bold, black font. At the top left is the logo for the Office of Native American Programs, Office of Public & Indian Housing. At the top right, the document is identified as "No. 2013-07 (R)" and dated "July 11, 2013". The main body of the page contains the following information:

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: All Tribal Government Leaders and Tribally Designated Housing Entities

FROM: 
Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PH

TOPIC: Indian and Tribal Preferences in Employment and Contracting in IHBG

Purpose: The purpose of this guidance is to provide tribes and tribally designated housing entities (TDHEs) with updated information on implementing regulatory changes relating to tribal preference in employment and contracting in the IHBG program. The guidance also addresses the distinction between Indian preference and tribal preference, and addresses requirements under Section 3 of the Housing and Urban Development Act of 1968 relating to economic opportunities for low- and very low-income persons.

Background: Section 101(k) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), authorizes tribal preferences in employment and contracting when using IHBG funds. The NAHASDA final rule, published on December 3, 2012, amended 24 CFR Sections 1000.48, 1000.50, and 1000.52 to provide for tribal preference in employment and contracting. This guidance provides tribes and TDHEs with additional information on administering these revisions.

Indian Preference: IHBG regulations require tribes and TDHEs to comply with Section 7(b) of the Indian Self-Determination and Education Assistance Act (U.S.C. 450e(b)) and, to the greatest extent feasible, give preference in the award of contracts for projects funded under the IHBG program to Indian organizations and Indian-owned economic enterprises. The law requires Indian preference in training and employment and in the award of contracts and subcontracts.

Tribal Preference: When an Indian tribe has adopted a tribal preference law, regulation, or ordinance governing preferences in employment and contracting, that tribal preference law will govern any preferences in employment and contracting under the IHBG program. Such laws may, for instance, provide tribal members with preferential treatment over other Indians that are not members of the tribe in employment and contracting carried out under an IHBG grant. Tribal preference laws may also specify any preferences in reductions in workforce and layoffs.

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

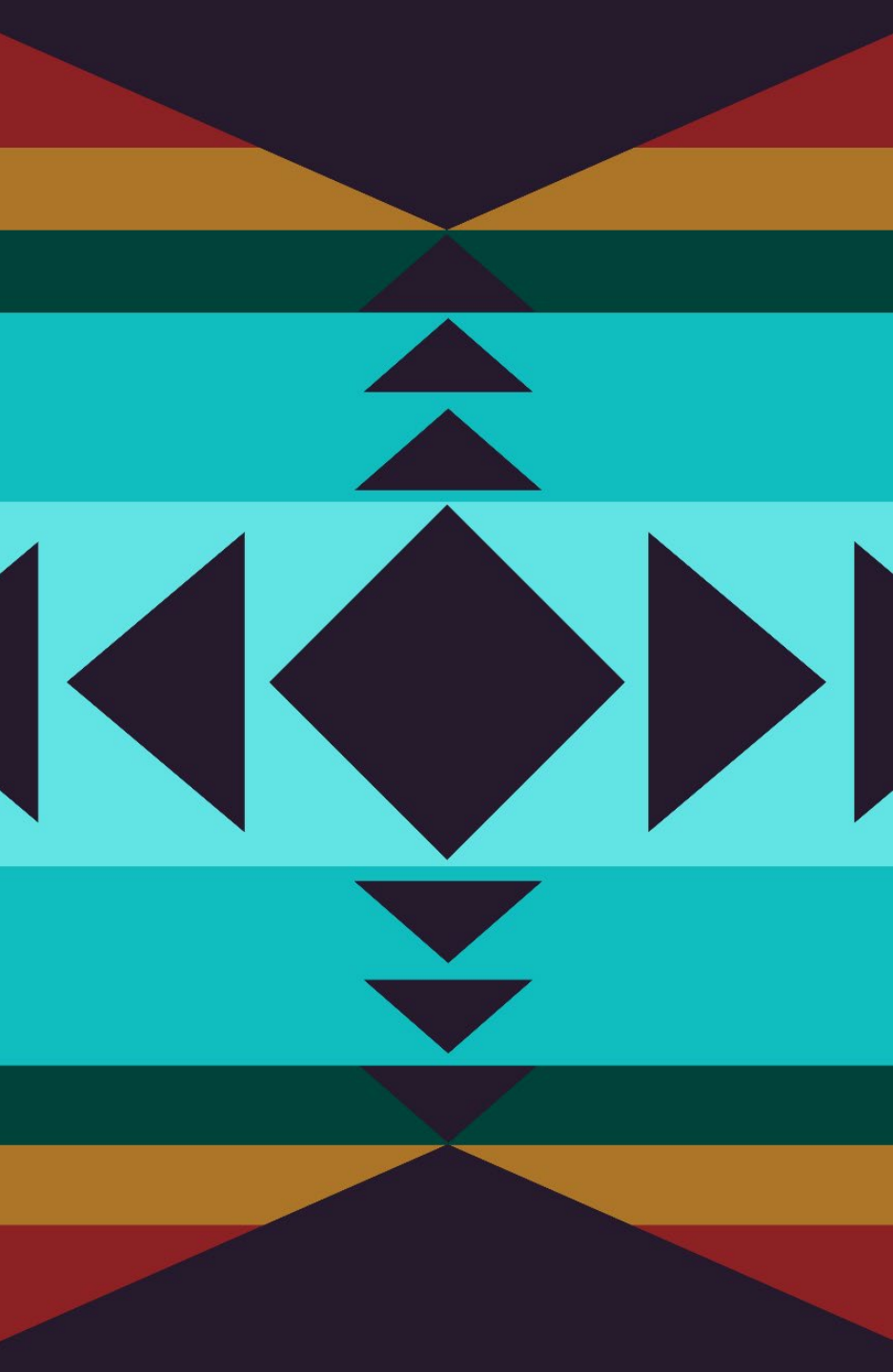


Qualifying Bidders, Proposers, Vendors



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

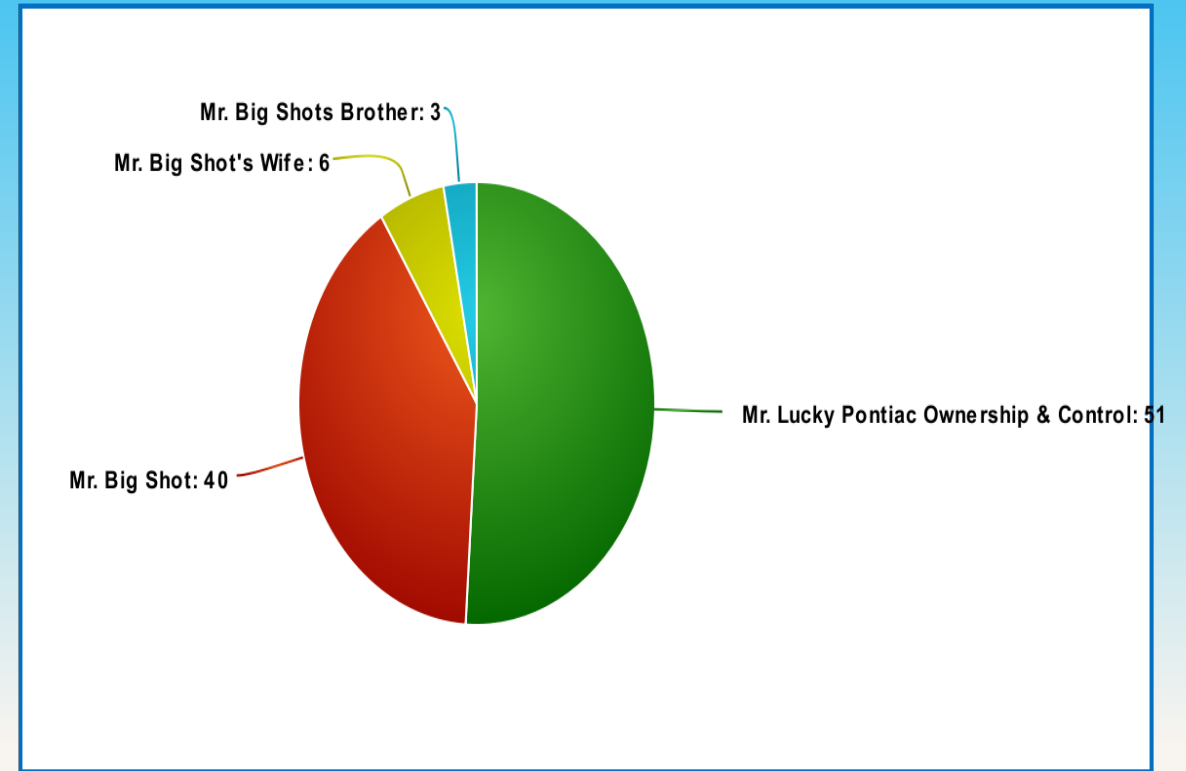
Federally recognized tribes

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.



■ Mr. Lucky Pontiac Ownership & Control ■ Mr. Big Shot ■ Mr. Big Shot's Wife
■ Mr. Big Shots Brother

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 1000.52. Under this method, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive, responsible bid is:	X = lesser of:
Less than \$100,000	10% of that bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$32,000
At least \$500,000, but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000, but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000, but less than \$4,000,000	3% of that bid, or \$80,000



QUESTIONS



See you at 11:00
AM EST



THANK YOU!
&
IF YOU SHOULD
EVER NEED
ANYTHING ELSE!

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