



NAHASDA Tribal Council Roles & Responsibilities

Day # 1

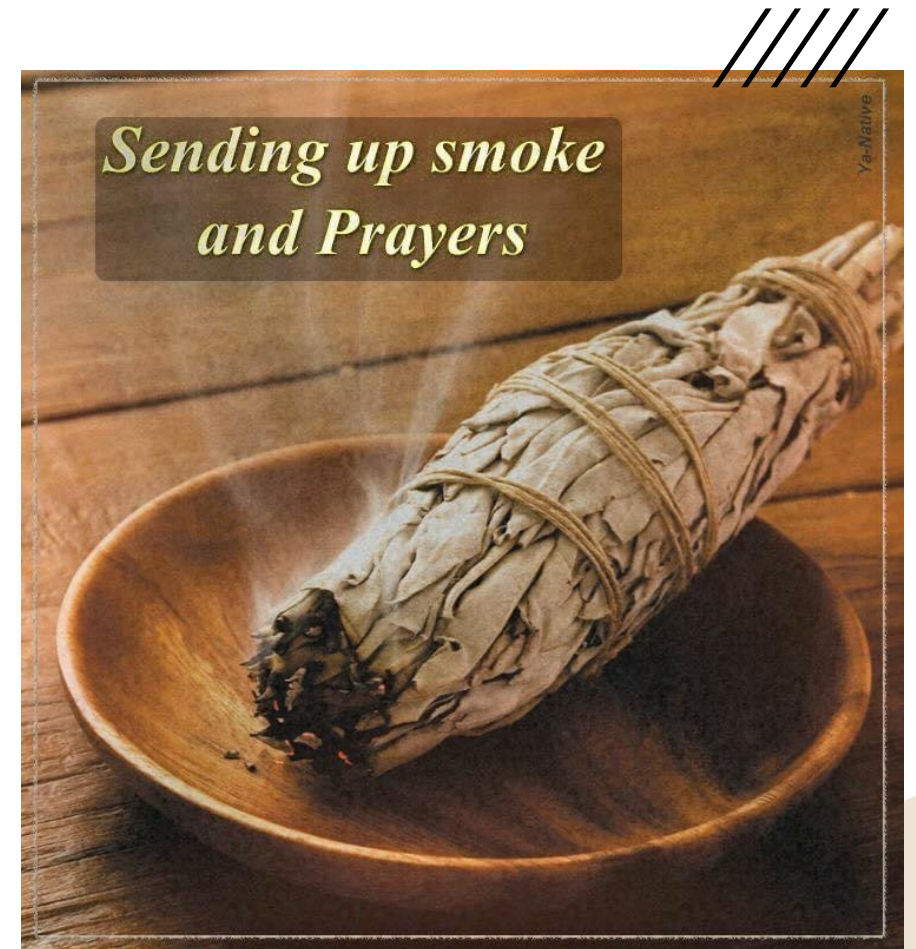
September 26-27, 2023

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Brought to you courtesy of the National American Indian Housing Council and the Office of Native American Programs



WELCOME &
GOOD
MORNING!



Getting to know the Instructor

Greetings my name is Cheryl Causley

My Anishinaabe name is Red Bird Woman. I am Loon Clan and I come from Gnoozhekaaning (Place of The Pike); Bay Mills (We are Ojibwe/Chippewa.) 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 also served as The Chairwoman of the Great Lakes Indian Housing Association for 7 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.

My duties included serving as the Co-Chair of the Economic, Finance & Community Development Committee for The National Congress of American Indians (NCAI) and the Housing Subcommittee Chair which committees of Jurisdiction included

- Economic Development
- Housing
- Telecommunications & Technology
- Transportation



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Course Description


This core training is being offered to aid Tribal Council Members understand the background and history of "NAHASDA" The Native American Housing Assistance and Self Determination Act. To develop their knowledge of the Federal Rules and Regulations that must be adhered to when accepting funding from the Department of Housing and Urban Development (HUD) for the Indian Housing Block Grant Program (IHBG).



Training Objectives:

Participants will learn of the many requirements they will need to ensure they have in place to run a successful Indian Housing Program and the role of the Tribal Council in this process.





Schedule

September 26-27, 2023

11:00- 4:00 EDT

11:00 A.M.-1:00 P.M. Welcome, Introductions, Class

1:00 -2:00 P.M. Lunch Break

2:00- 4:00 P.M. Class Resumes

Reference Materials

RM # 1 NAHASDA STATUTE

RM # 2 Regulations 24 CFR Part 1000

RM # 3 Uniform Administrative Requirements 2 CFR Part 200

RM # 4 PG 2003-04 Tribally Determined Wage Rates (TDW)

RM # 5 Program Guidance 2020-02 Useful Life

RM # 6 Program Guidance 2014-09 Useful Life

RM # 7 PG 2013-07 Tribal Employment & Contract Preference Laws

RM # 8 Procurement Policy Sample

RM # 9 PIH 2023-01 Changes to Federal Micro Purchase & Simplified Acquisition Threshold



Reference Materials

RM # 10 PG 2023-01 HUD Income Limits

RM # 11 PG 2013-05 Calculating Annual Income for Purposes of Eligibility

RM # 12 PIH 2014-02 Assisting Non-Low-Income Families

RM # 13 PG 2014-03 (R) Insurance Requirements under the IHBG Program

RM # 14 PIH 2022-16 Total Development Cost TDC for NAHASDA

RM # 15 PG 2002-13 Conflict of Interest in Admissions

RM # 16 PG 2018-02a Guidance on IHP/APR HUD form 2737

RM # 17 HUD IHBG Monitoring Plans Template Links





This webinar
is being
recorded.

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 your Housing Entity.

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 Entity 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, Tribal Council Officials facilitate the community housing goals and objectives and have the ultimate overall responsibility for NAHASDA compliance on behalf of your Tribe.

This course will hopefully help guide you on your important journey.

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MODULES

NAHASDA OVERVIEW

- Overview of NAHASDA Statute, Regulations & Other compliance Criteria
- NAHASDA Guidance Overview: Summary of Statute, Indian Housing Block Grant Regulations, Notices & Program Guidances

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MODULES

HOUSING PROGRAM STRUCTURE

NATIVE AMERICAN HOUSING ACTIVITIES SUBPART A

FEDERAL LABOR STANDARDS

- Davis Bacon Wage Rates & Other Labor Requirements
- Tribal Prevailing Wage Rates

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MODULES

OTHER FEDERAL REQUIREMENTS

- Part 58 Environmental Review
- Useful Life and Binding Commitments
- OTHER VARIOUS FEDERAL REQUIREMENTS
 - Uniform Relocation Assistance & Real Property Acquisition
 - Flood Insurance
 - Lead Based Paint

INDIAN AND TRIBAL PREFERENCE REQUIREMENTS

- Indian Preference
- Tribal Employment and Contract Preference Laws



MODULES

AFFORDABLE HOUSING ACTIVITIES SUBPART B

ELIGIBLE PARTICIPANTS AND PAYMENTS CHARGED

- Eligible Families
- Eligible Non-Low-Income Families
- Essential Families
- Law Enforcement Officers

PAYMENTS CHARGED

- Maximum & Minimum Payments
- Flat or Income Adjusted Rents
- Income Verification Requirements
- Utilities Are they part of the Rent or Homebuyer Payment?
- Insurance Requirements



MODULES

CONFLICT OF INTEREST

- In The Administration of Contracts
- In Admissions
- Written Code of Standards of Conduct
- Code of Ethics
- Ethical Standards of Conduct
- 7 Keys to Handling Conflicts of Interest

INDIAN HOUSING PLAN SUBPART C

The IHP/APR & Self Monitoring Requirements

- Indian Housing Plan
- Annual Performance Report
- Self-Monitoring Requirements



MODULES

ALLOCATION FORMULA SUBPART D

INDIAN HOUSING BLOCK GRANT (IHBG) FORMULA

- Purpose and Background
- The Formula Response Form
- Components of the Formula
- Reviewing FCAS Data

RECIPIENT MONITORING, OVERSIGHT AND ACCOUNTABILITY SUBPART F

Monitoring, Oversight And Accountability


- Monitoring Activities Under NAHASDA
- Organization & Structure (ONAP Monitoring Plan)

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MODULE

NAHASDA OVERVIEW

- Overview of NAHASDA Statute, Regulations & Other compliance Criteria
- NAHASDA Guidance Overview: Summary of Statute, Indian Housing Block Grant Regulations, Notices & Program Guidances

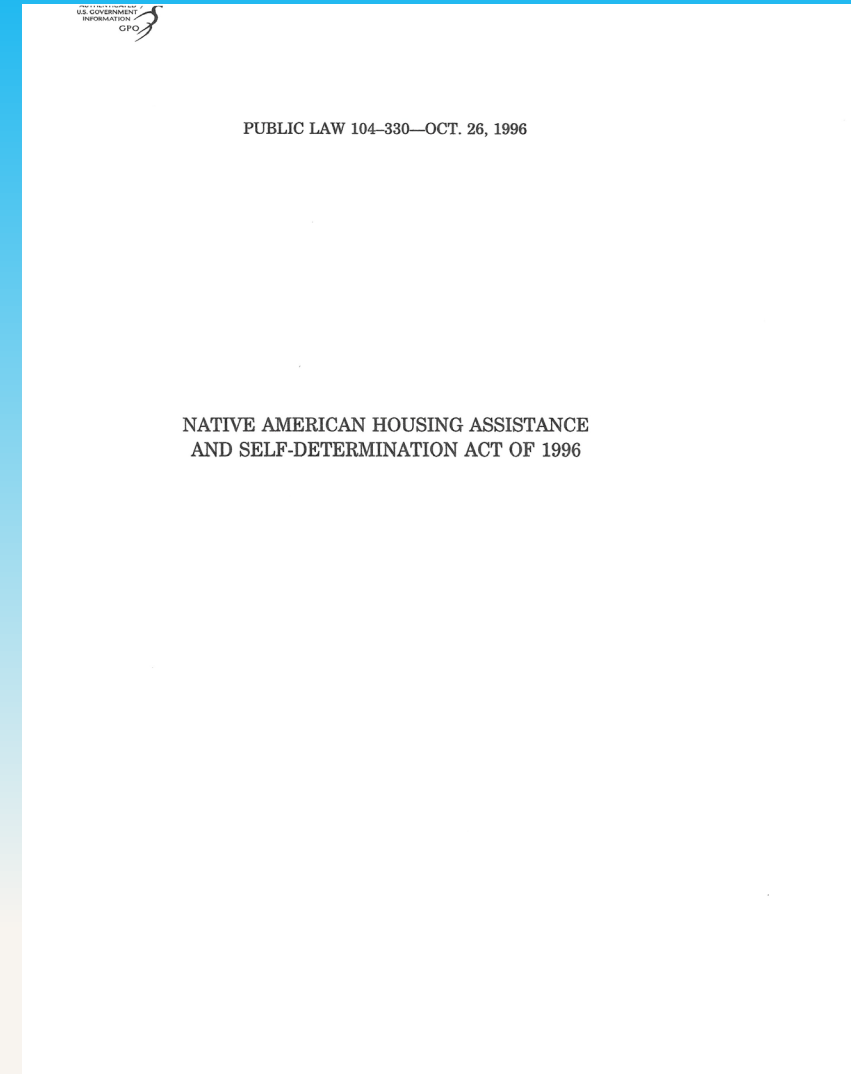


OVERVIEW Of NAHASDA STATUTE & REGULATIONS



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

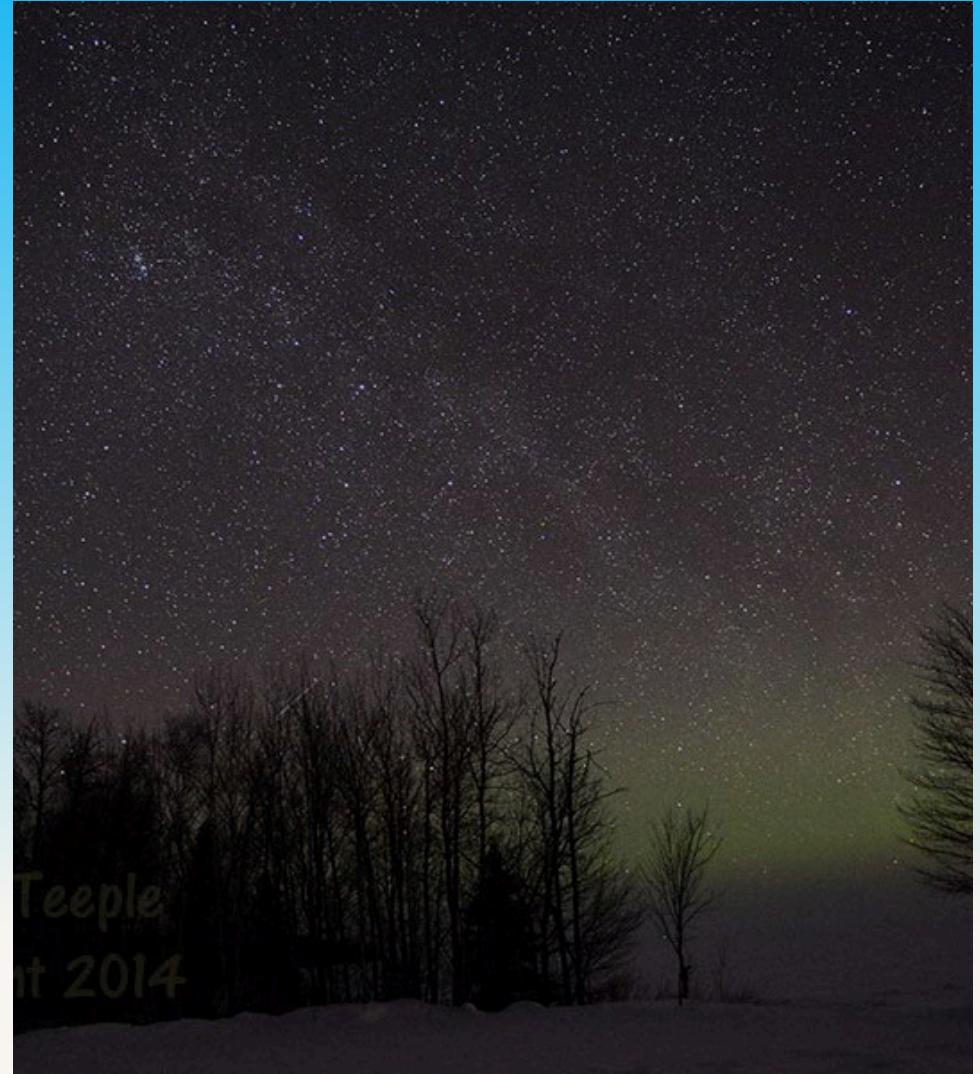
Title IV: Compliance, Audits & Reports

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!



[Home](#) / [Program Offices](#) / [Public and Indian Housing](#) / [Indian Housing's Office of Native American Programs \(ONAP\)](#) / [CodeTalk Home](#) / [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](#).

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

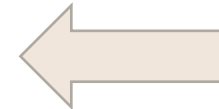
- [NAHASDA Final Rule - 24 CFR Part 1000 - December 3, 2012](#)
- [NAHASDA Indian Housing Block Grant Regulations - 24 CFR 1000 - Revised November 2016](#)
- [NAHASDA Statute](#)
- [NAHASDA Loan Guarantee Regulations - 24 CFR 1005](#)

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

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.

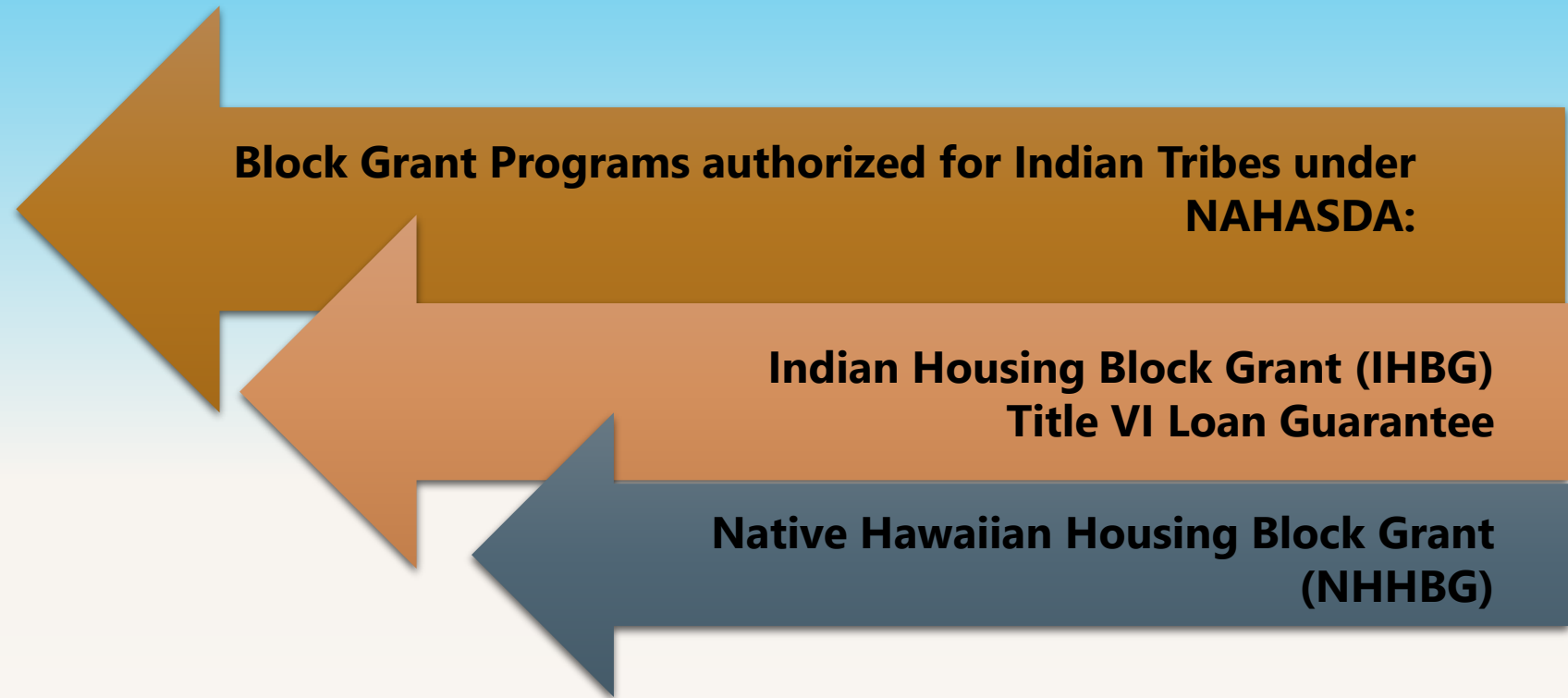
**Native American Housing Assistance and
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(P.L. 104-330 as amended by P.L. 105-276, P.L. 106-568, P.L. 107-292, and P.L. 108-393)**

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- 2008 Amendment [P.L. 110-411] is in ORANGE
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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*



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

Permits the tribe to set a maximum rent that does not exceed 30 percent of the monthly adjusted income.

- Requires the tribe to use the block grant to operate and maintain current housing units.
- Distributes the grant through an allocation formula developed under negotiated rule making.
- Authorizes a federal loan guarantee program
- Tribe can use, with the secretary's approval, a federal guarantee, to undertake affordable housing activities, that does not exceed 5 times the amount of the tribe's need portion of block grant.



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

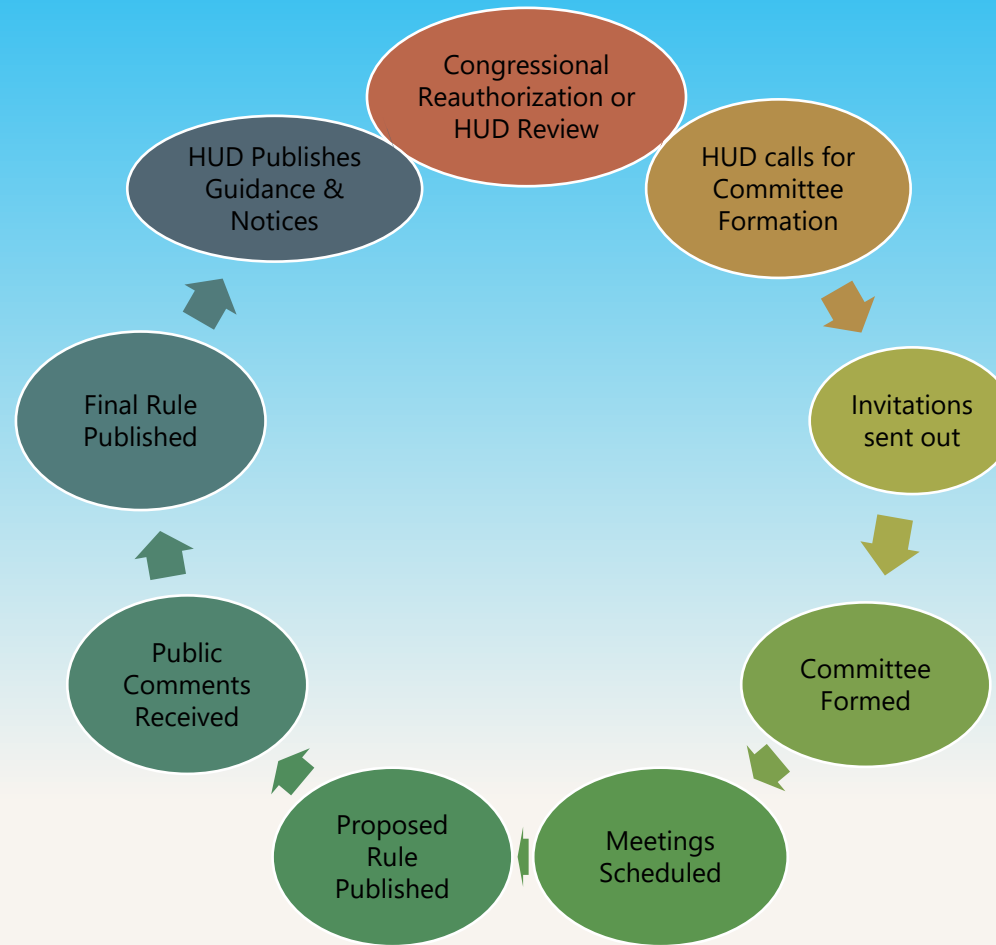
- The process of developing the Regulations (negotiated rulemaking) was mandated by Section 106(b) of the Statute
- Requires HUD to use negotiated rule-making when developing regulations and or altering the allocation formula
- Regulations developed by committee of Tribal and HUD representatives
- Approved 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
- 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



24 CFR Part 1000 – Native American Housing Activities

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



Key Regulations

§1000.101 – Affordable housing

§1000.102 – Eligible affordable housing activities

§1000.103 – Tenant/project-based rental assistance

§1000.104 – Eligible families

§1000.106-108 – Families requiring HUD approval

§1000.110 – Conditions for non-low-income Indian family's participation

§1000.120 – Tribal Indian preference or tribal preference in selecting families for housing



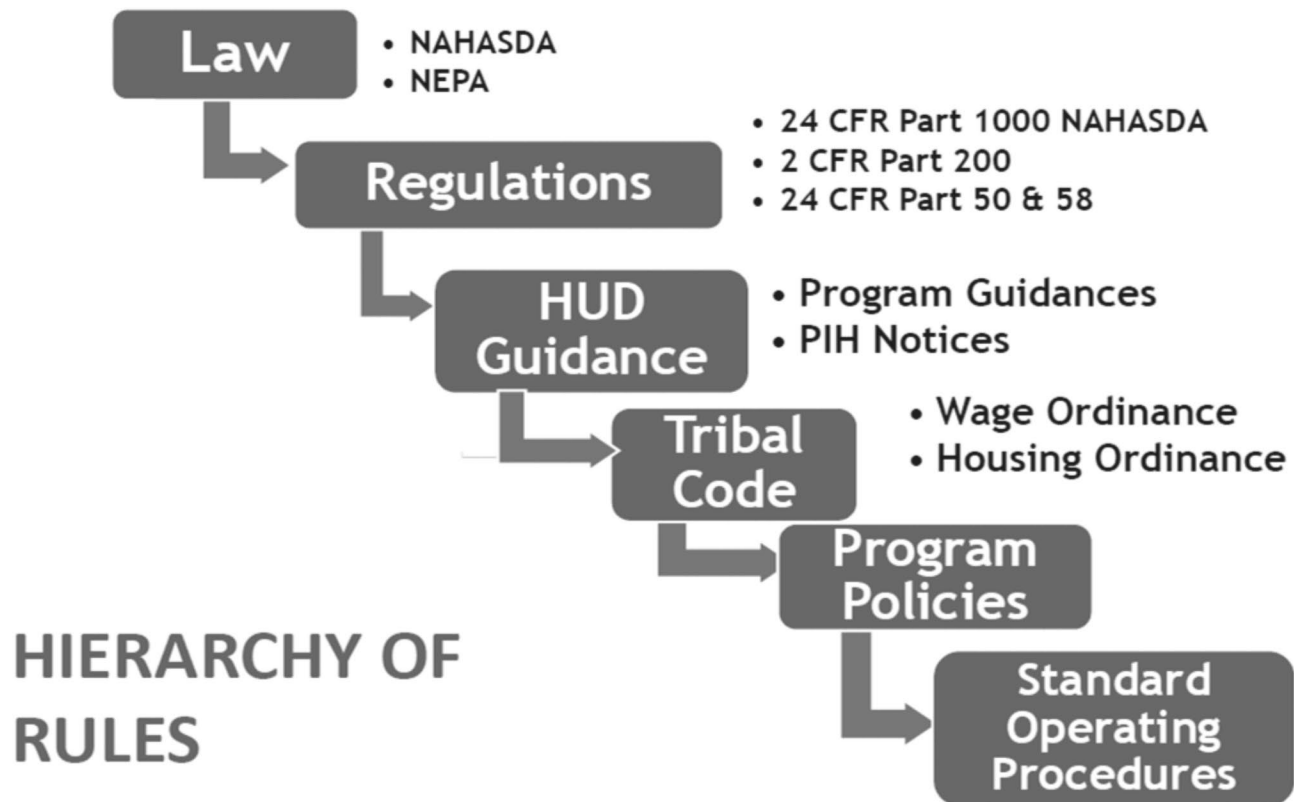
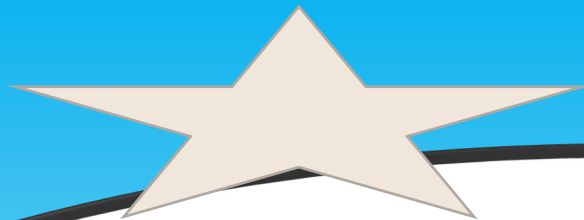
Other Laws, Regulations Impacting Our NAHASDA Programs

Uniform Administrative Requirements 2 CFR Part 200

American Disabilities Act

Generally Accepted Accounting Principals

Uniform Relocation Act





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) General Procurement Standards

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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 principles, 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 principles), and OMB Circular A-102 (Uniform Administrative Requirements codified for HUD programs in 24 CFR § 85).

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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.

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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

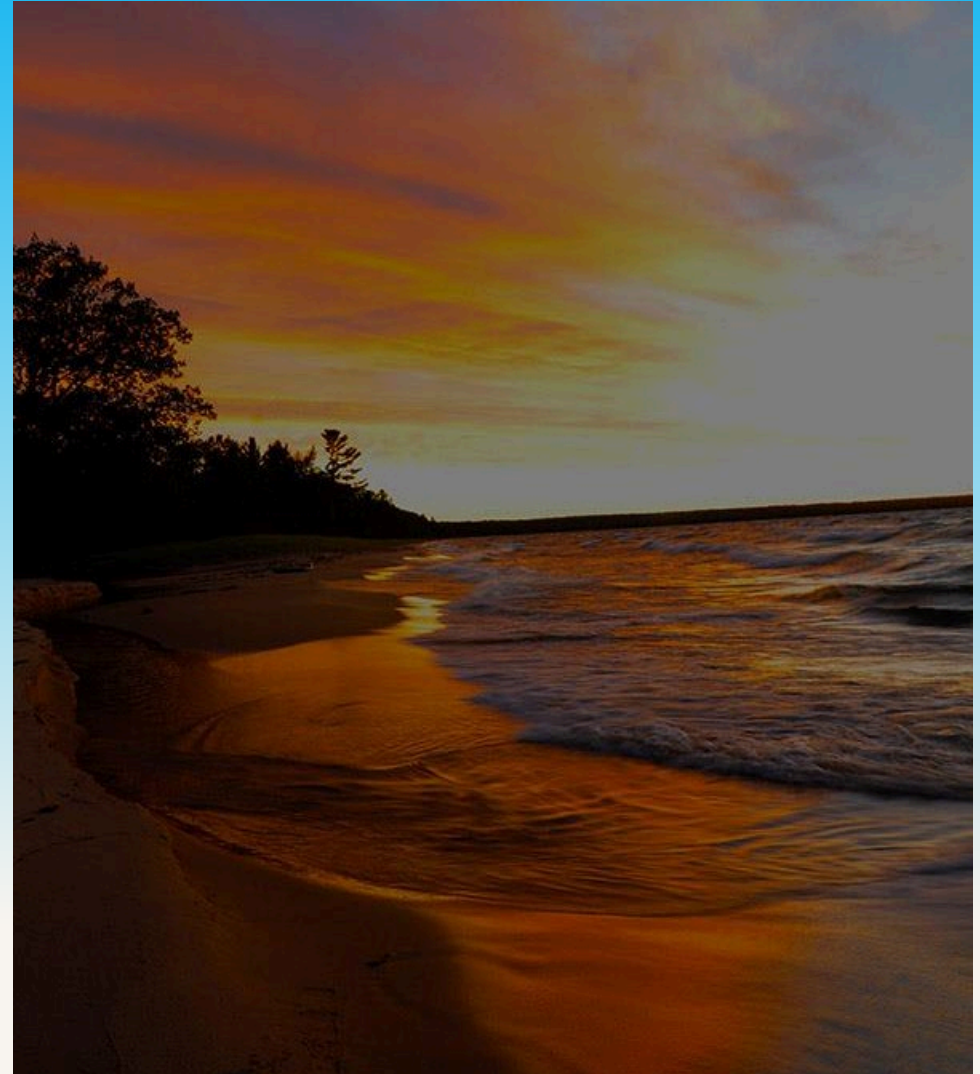
- Written policies
- Written procedures
- Insurance
- Drug-Free Workplace
- Procurement
- Reporting & Recordkeeping
- Conflict of Interest
- Audit
- Allowable, Unallowable costs
- Mandatory Disclosures



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	



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

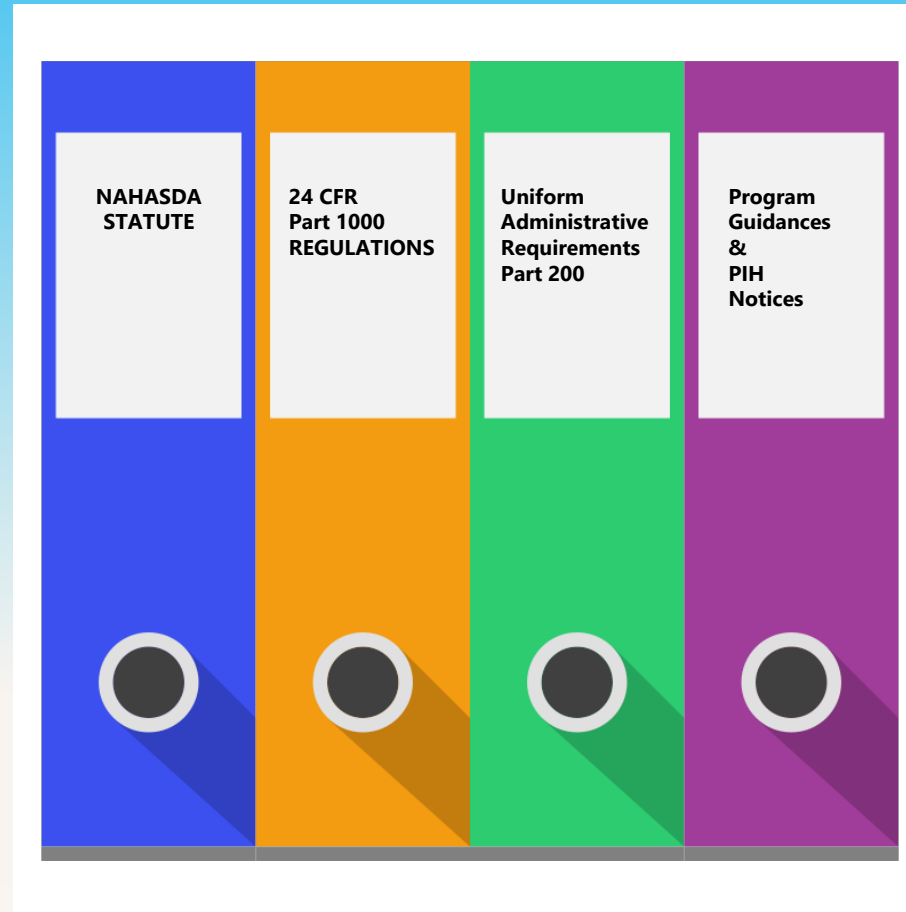
REMEMBER:

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.

NAHASDA GUIDANCE OVERVIEW



NAHASDA ADMINISTRATION REQUIRED DOCUMENT USE



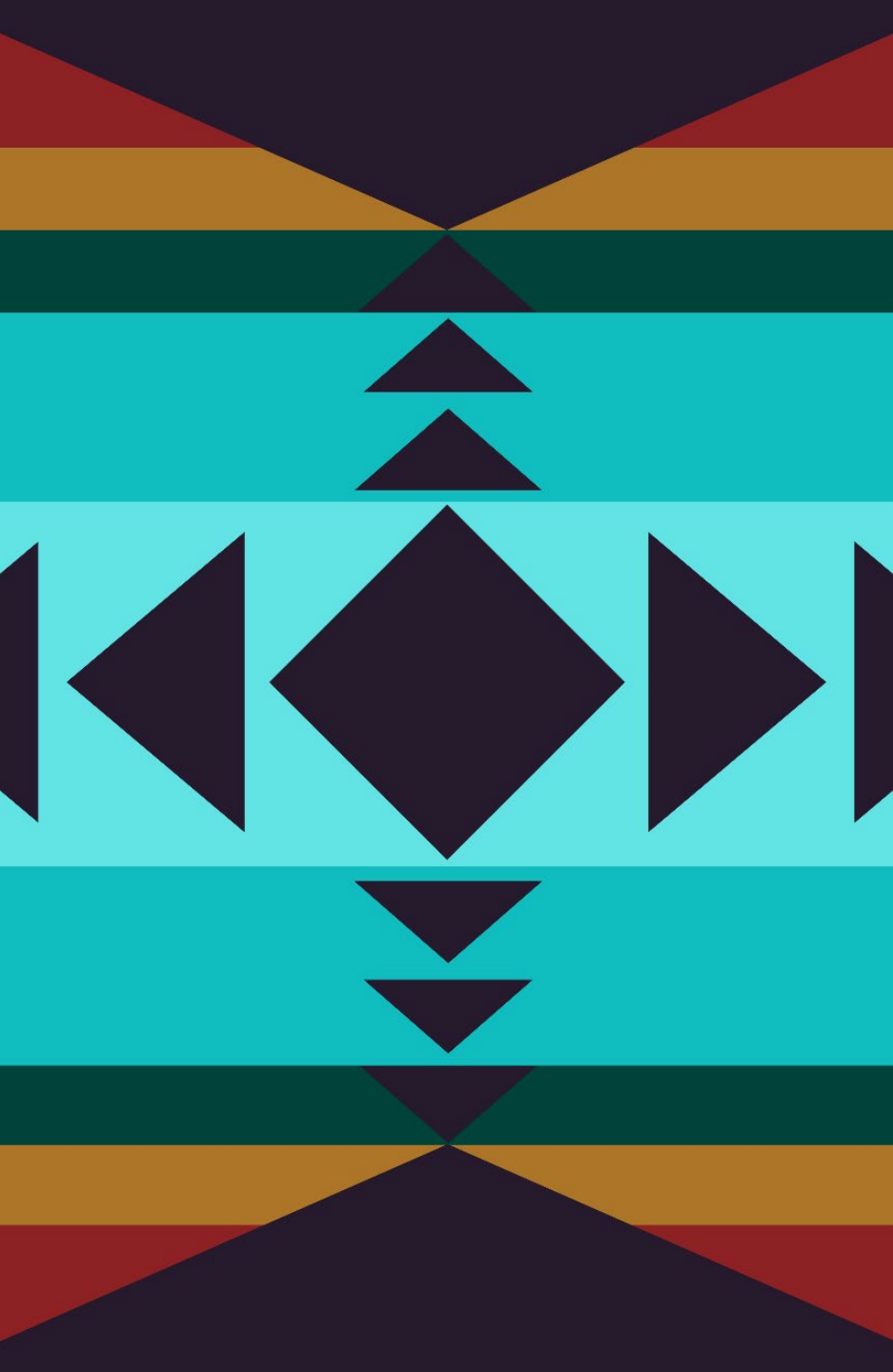
The Rules.....

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





NAHASDA STATUTE

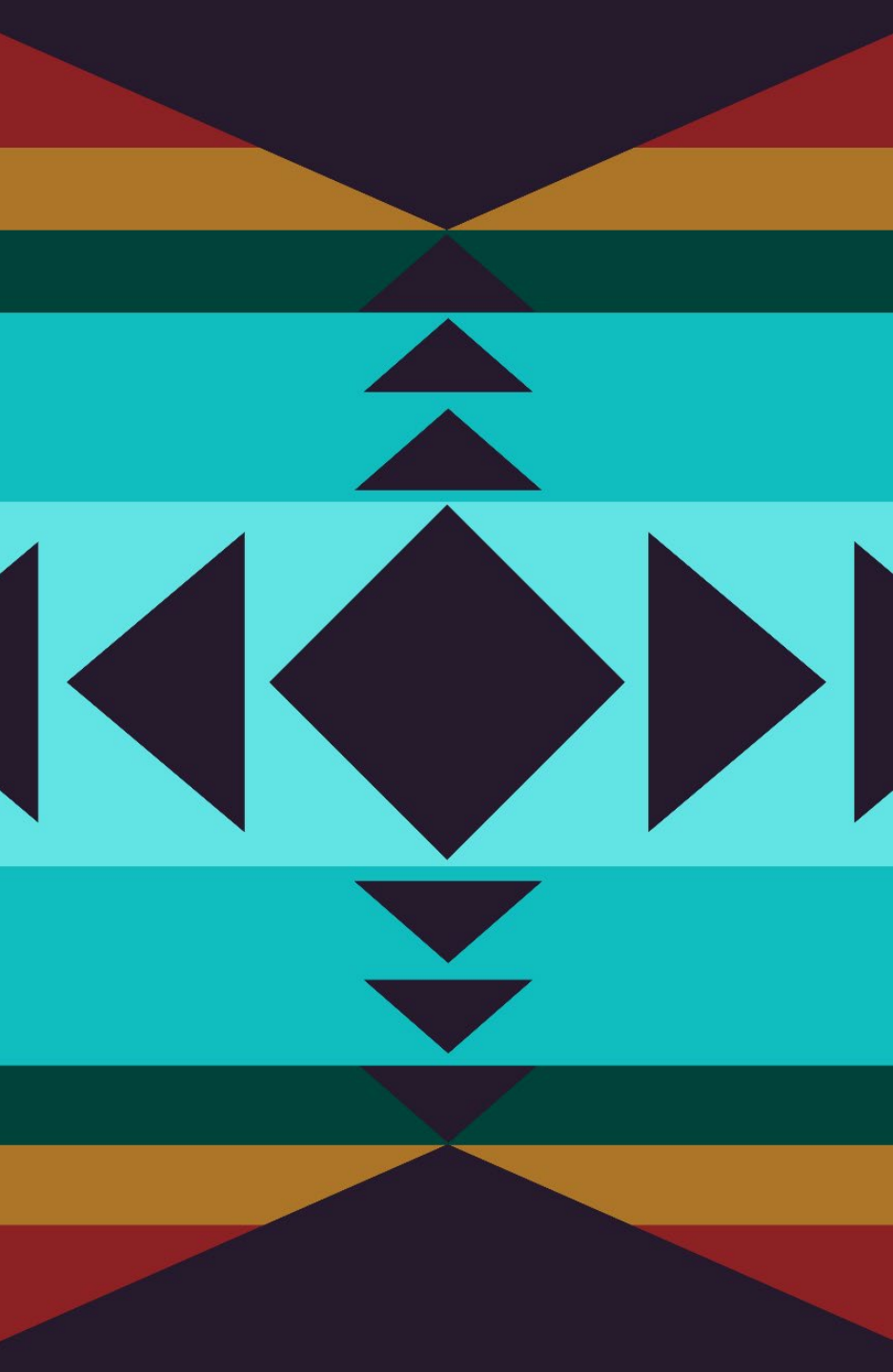
A decorative vertical strip on the left side of the slide. It features a series of horizontal bands in dark purple, red, orange, and teal. Overlaid on these bands are various geometric shapes, including triangles, diamonds, and chevrons, in dark purple and teal colors, creating a complex, symmetrical pattern.

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



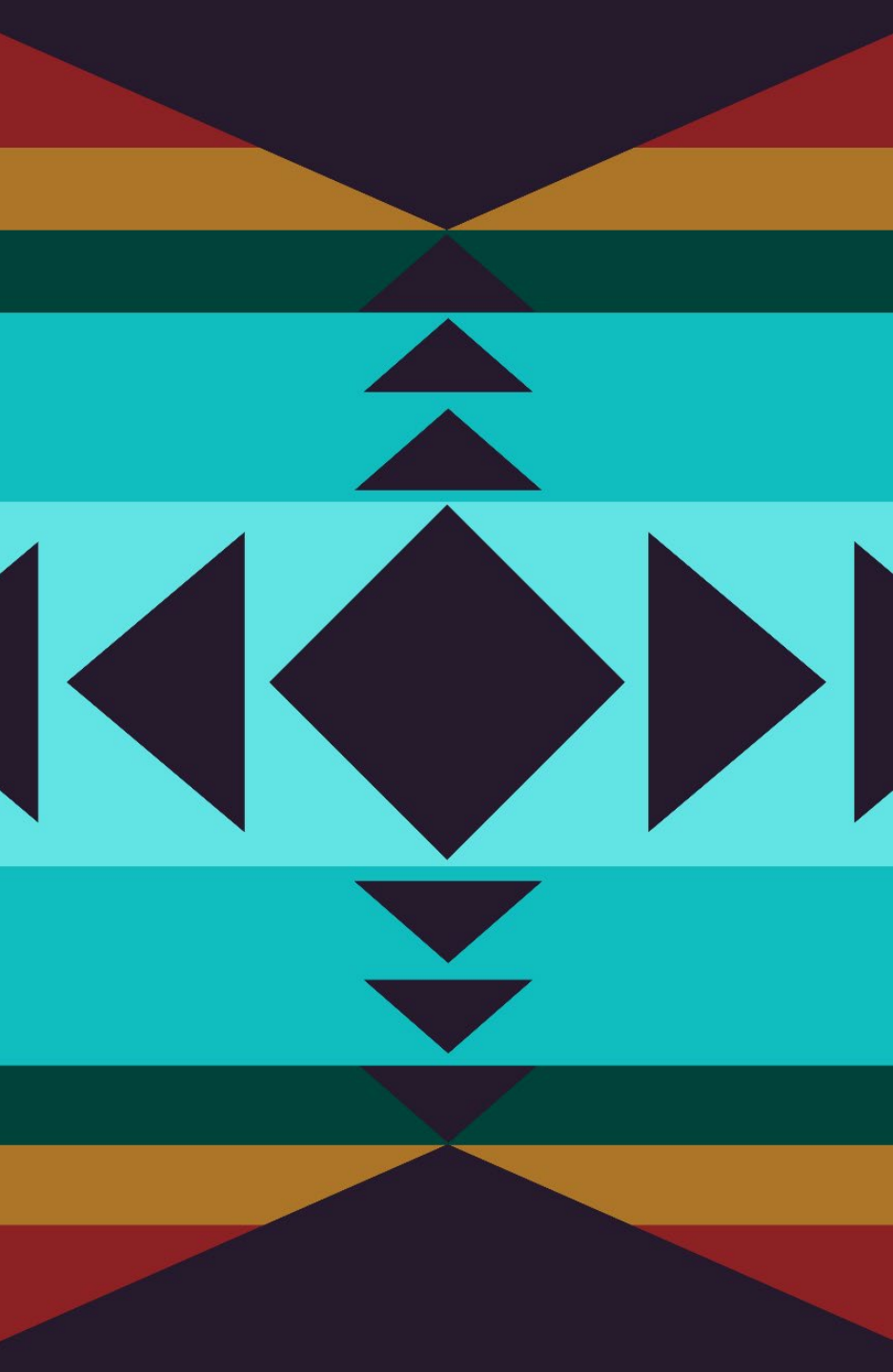
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What is the difference between the NAHASDA statute, the regulations and HUD guidance?

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.

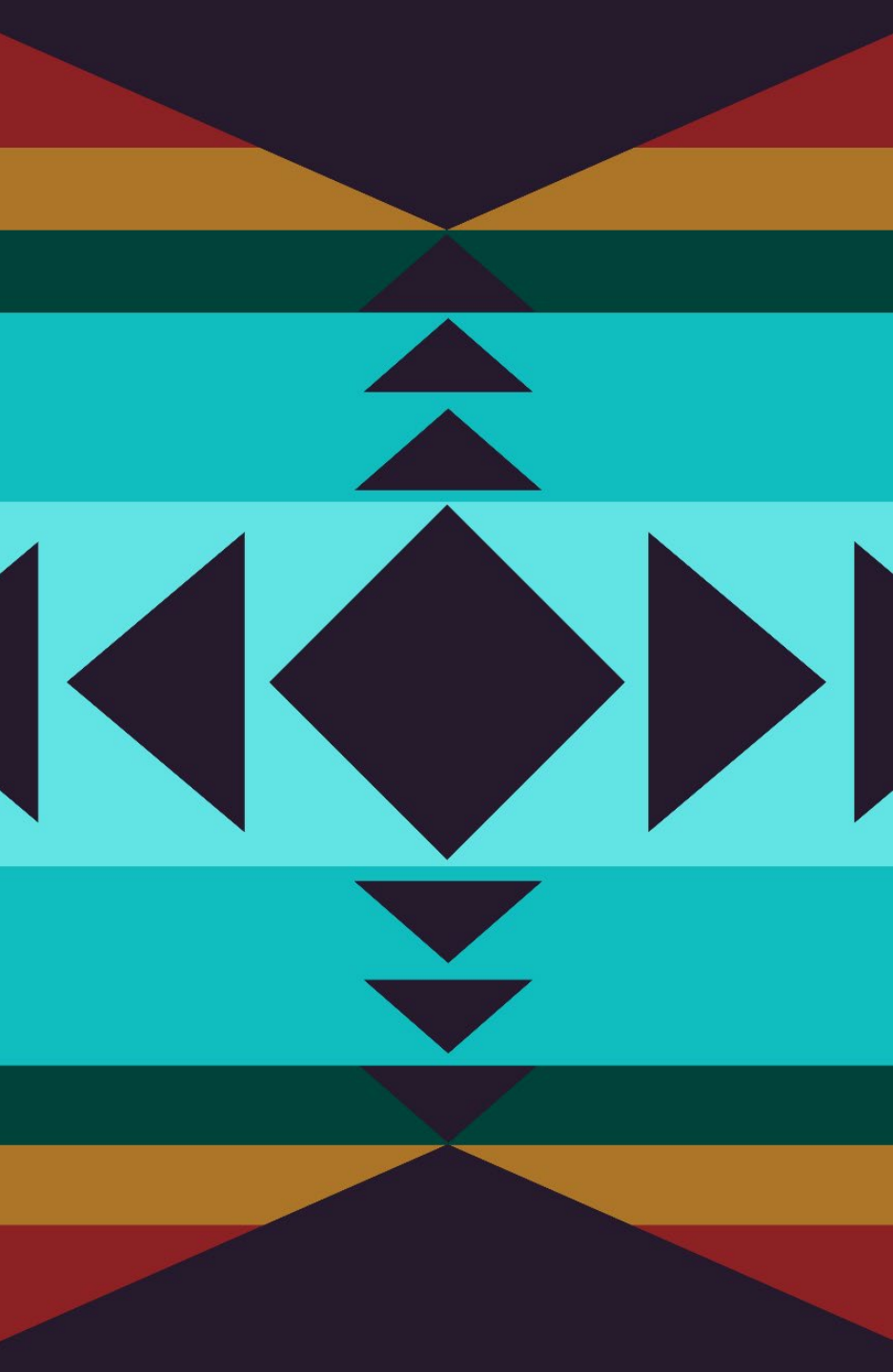
See IHBG regulation section 1000.8 for more information.

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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.

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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.

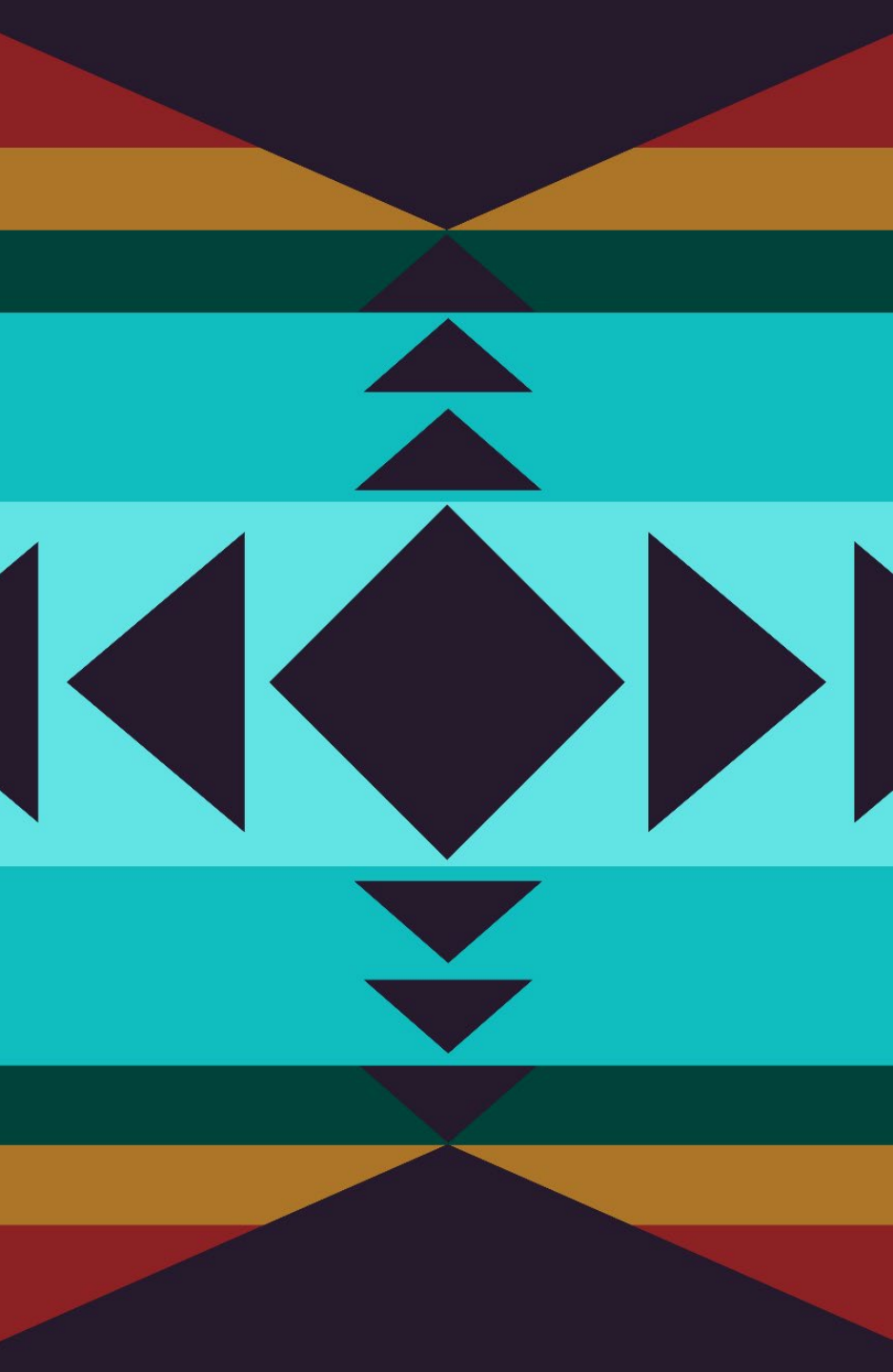
The IHBG regulations are written in a question/answer format to address the provisions of the statute necessary to implement NAHASDA.







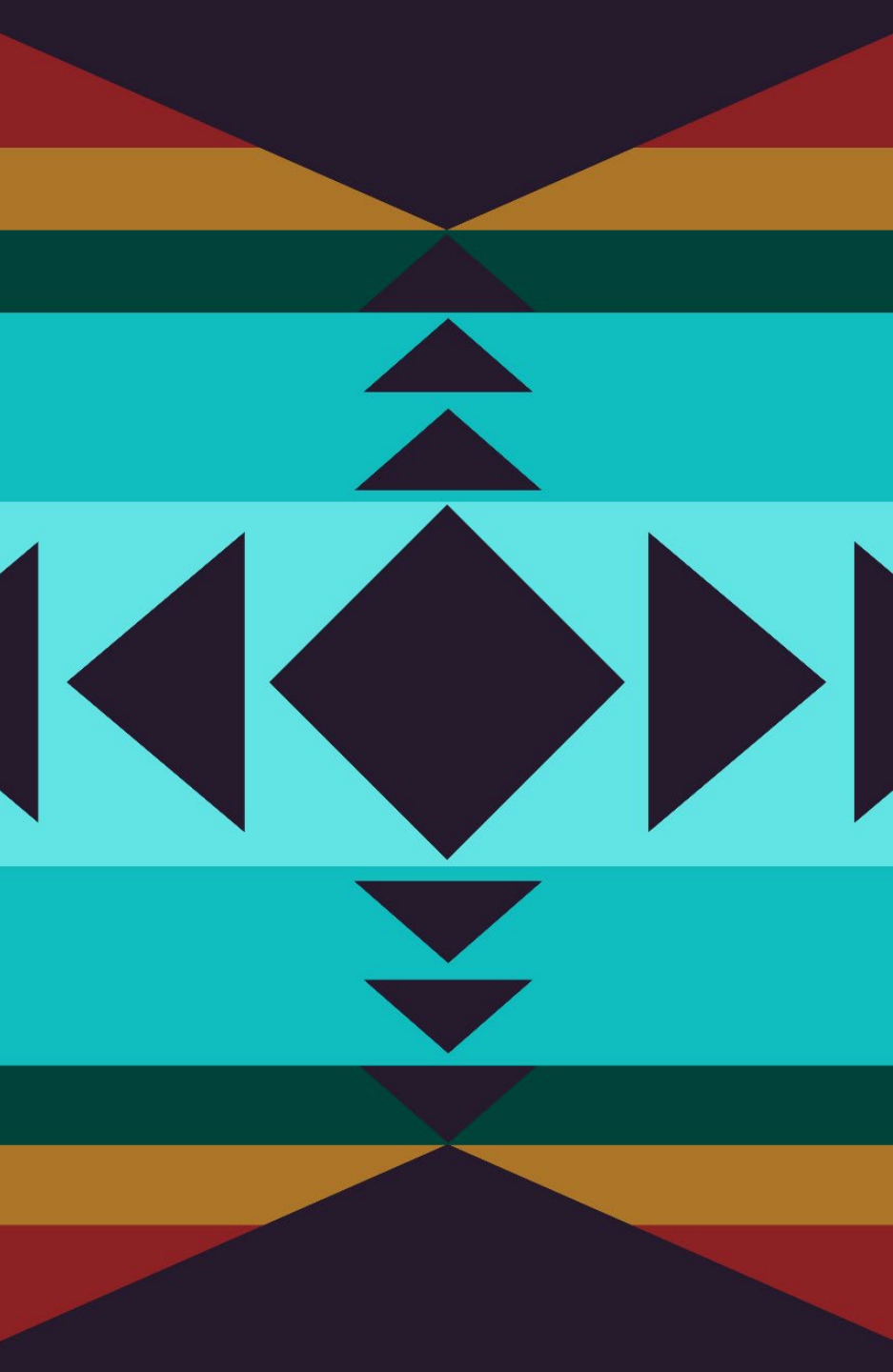
Guidances Bulletins & Notices

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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.

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

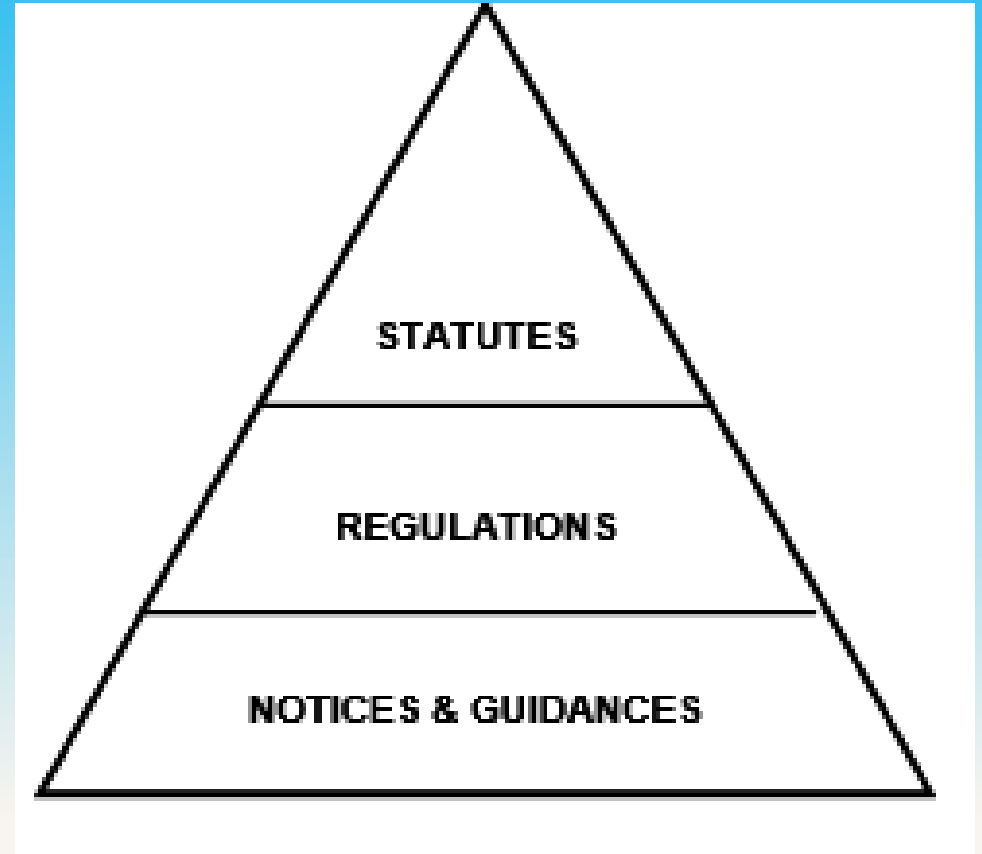
Guidance bulletins assist tribes to implement the IHBG program or provide tools for program management.

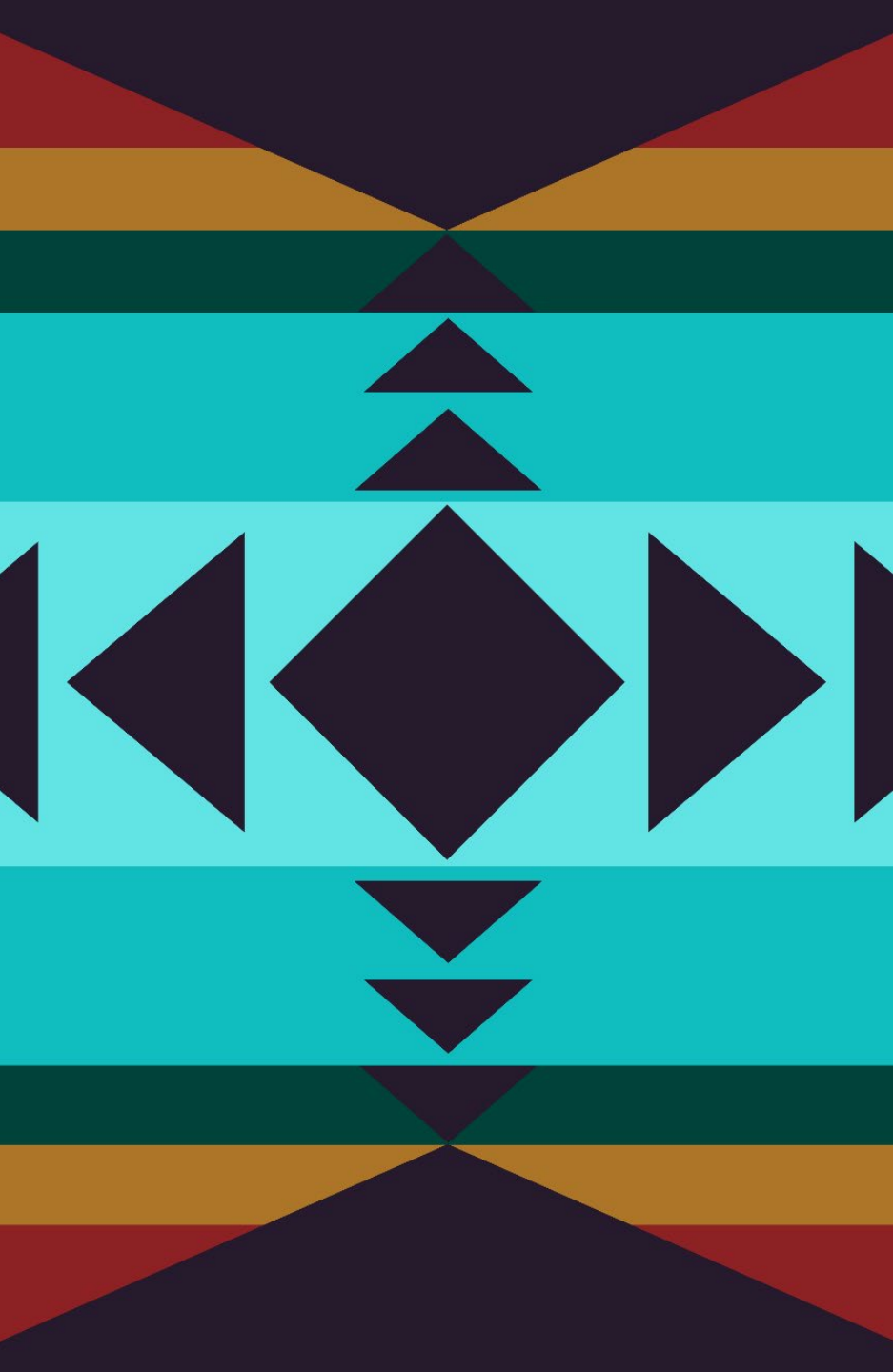
They also help clarify various technical topics. To the extent that guidance bulletins are advisory and designed to help tribes implement their programs, no waiver is needed.

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.



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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

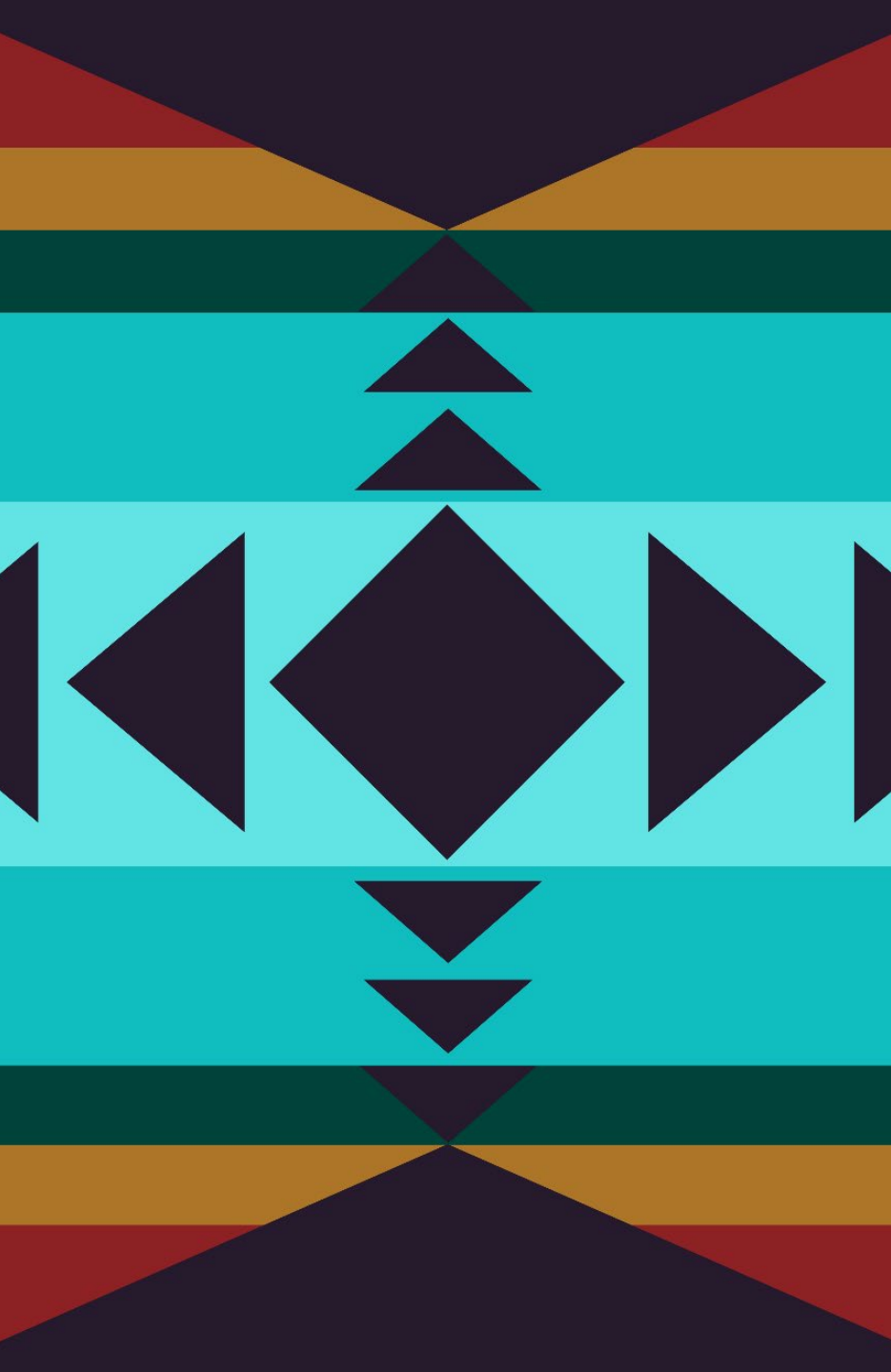
- PURPOSE:** This notice provides updated information to Indian tribes and tribally designated housing entities (TDHEs) on the process for requesting an advance on Indian Housing Block Grant (IHBG) formula funds, or interim funding, while under a Continuing Resolution (CR).

This notice supersedes PIH Notice 2013-29.

- 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.



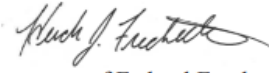
NAHASDA

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

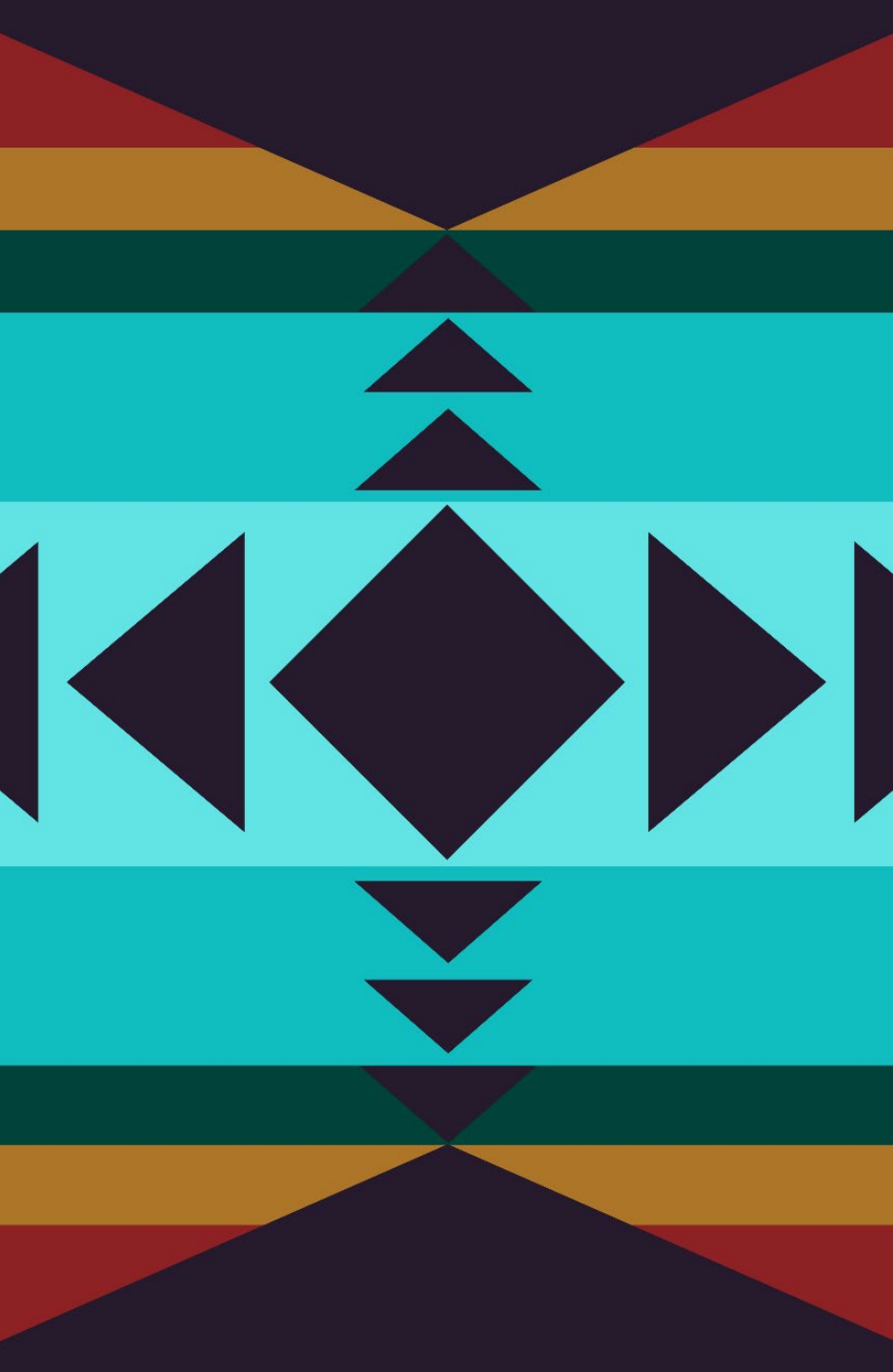
PURPOSE: The purpose of this guidance is to inform tribes and tribally designated housing entities (TDHE) that the Federal Government no longer accepts checks, wire transfers, or credit cards for repayment of Federal debt; instead, any repayment of Federal funds must be made through Pay.gov — a secure, 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.

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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 \(HUD\)](#)



ONAP PROGRAM GUIDANCE

[ONAP Program Guidance Archives](#)

Guidance Number	Description
2023-01	Income Limits for the IHBG program under NAHASDA for FY 2023
2023-01 (NHHBG)	Income Limits for the NHHBG program under NAHASDA for FY 2023
2022-01	Income Limits under NAHASDA for FY 2022
2021-01	Income Limits under NAHASDA for FY 2021
2020-02	Useful Life and Binding Commitments (replaces 2014-09)
2020-01	Income Limits under NAHASDA for FY 2020 (replaces 2019-02)
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
2019-02	Income Limits under NAHASDA for FY 2019
2019-01	Repayment Process of Federal Funds
2018-05	Fiscal Year 2018 Notice of Funding Availability for the Indian Community Development Block Grant Program

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

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 \(HUD\)](#)

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 PIH notices from 1996 onwards.

Filter by Keyword, Year or Notice Number

Related Information

- [Archived Notices Related to ONAP](#)

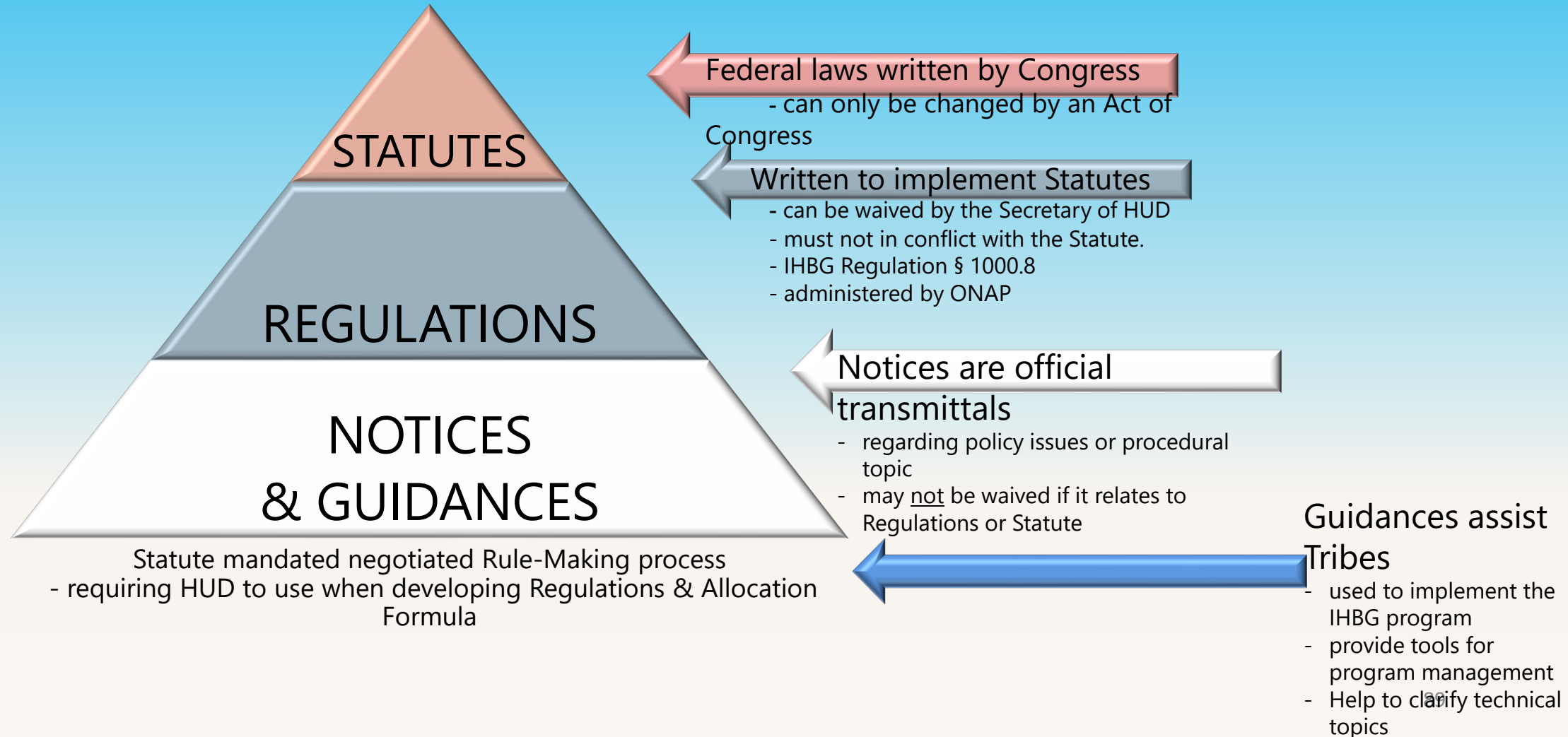
Notice	Issued/Expired	Subject/Purpose
PIH 2023-11 <ul style="list-style-type: none">• Sample Tribal Resolution• HUD-5980<ul style="list-style-type: none">◦ LPR Instructions	Issued: May 5, 2023 Expires: This notice remains in effect until amended, superseded, or rescinded.	Procedural Guidance for Tribal Housing and Urban Development-Veterans Affairs Supportive Housing (Tribal HUD-VASH) FY 2023 Renewal Grant Application - This notice announces renewal requirements for the original 26 Tribal HUDVASH recipients awarded in 2015, and 8 Tribal HUD-VASH Expansion recipients awarded in 2021 and 2022.
PIH 2023-02	Issued: Jan 27, 2023 Expires: This notice remains in effect until amended, superseded, or rescinded.	Closeout Instructions for the Tribal Housing and Urban Development-Veteran Affairs Supportive Housing (Tribal HUD-VASH) Grant Program - This Notice provides the Tribal HUD-VASH closeout procedures. Grant closeout occurs when HUD

For Applying Guidance

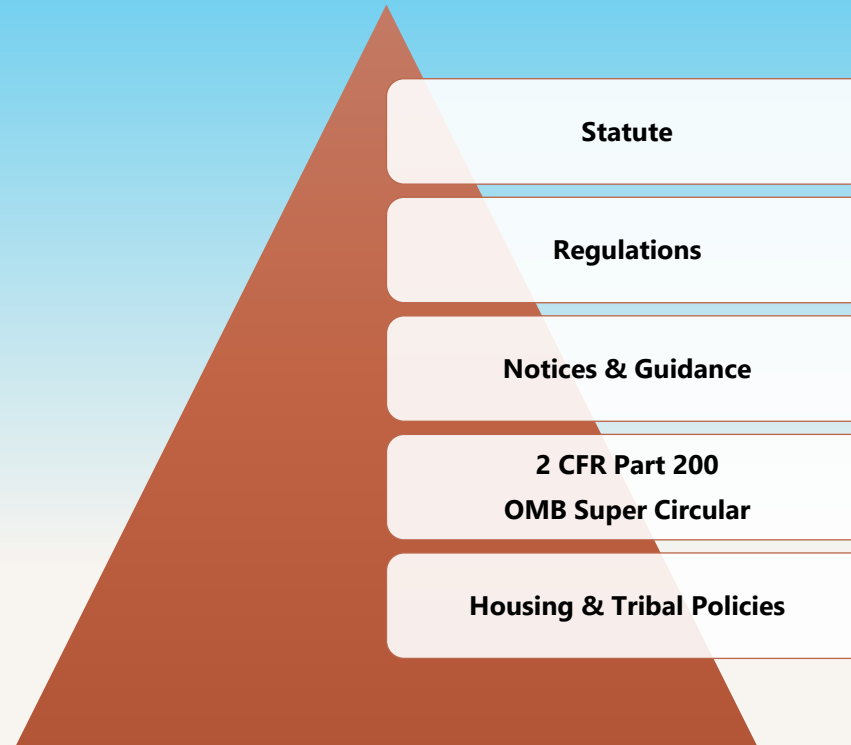
1. Program specific requirements are followed when provided.
2. Uniform Guidance is followed when Program specific requirements are not provided and in accordance with 24 CFR 1000.26
3. To understand program requirements, research the Statute, Regulations, PIH Notices, Program Notices and the Uniform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



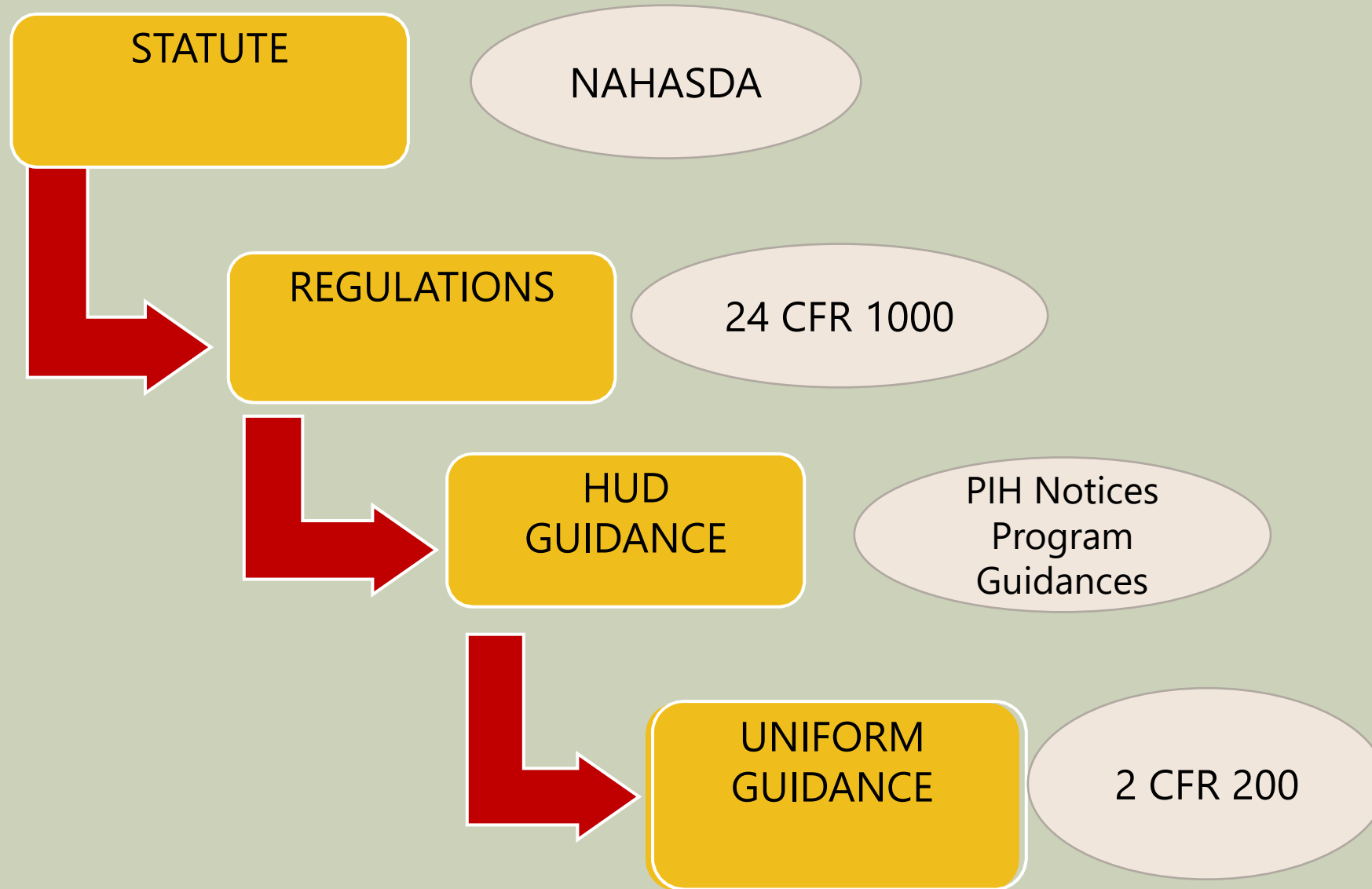
NAHASDA Administration Flow



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



Hierarchy of Guidance Applicability



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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 Principles, And Audit Requirements for Federal Awards)

The Reference material is not duplicative!

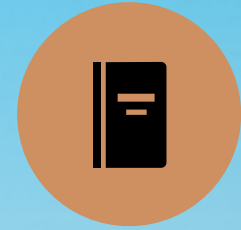
Other HUD.Gov Resources



HUDCLIPS
[HTTPS://WWW.HUD.GOV/P
ROGRAM_OFFICES/ADMINI
STRATION/HUDCLIPS](https://www.hud.gov/program_offices/administration/ HUDCLIPS)



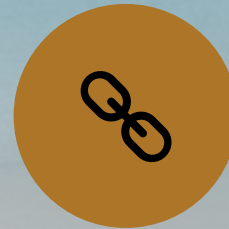
CASE STUDIES



HANDBOOKS/GUIDEBOOKS



PAST TRAINING MATERIAL



VALUABLE LINKS



POLICIES

HOUSING PROGRAM STRUCTURE



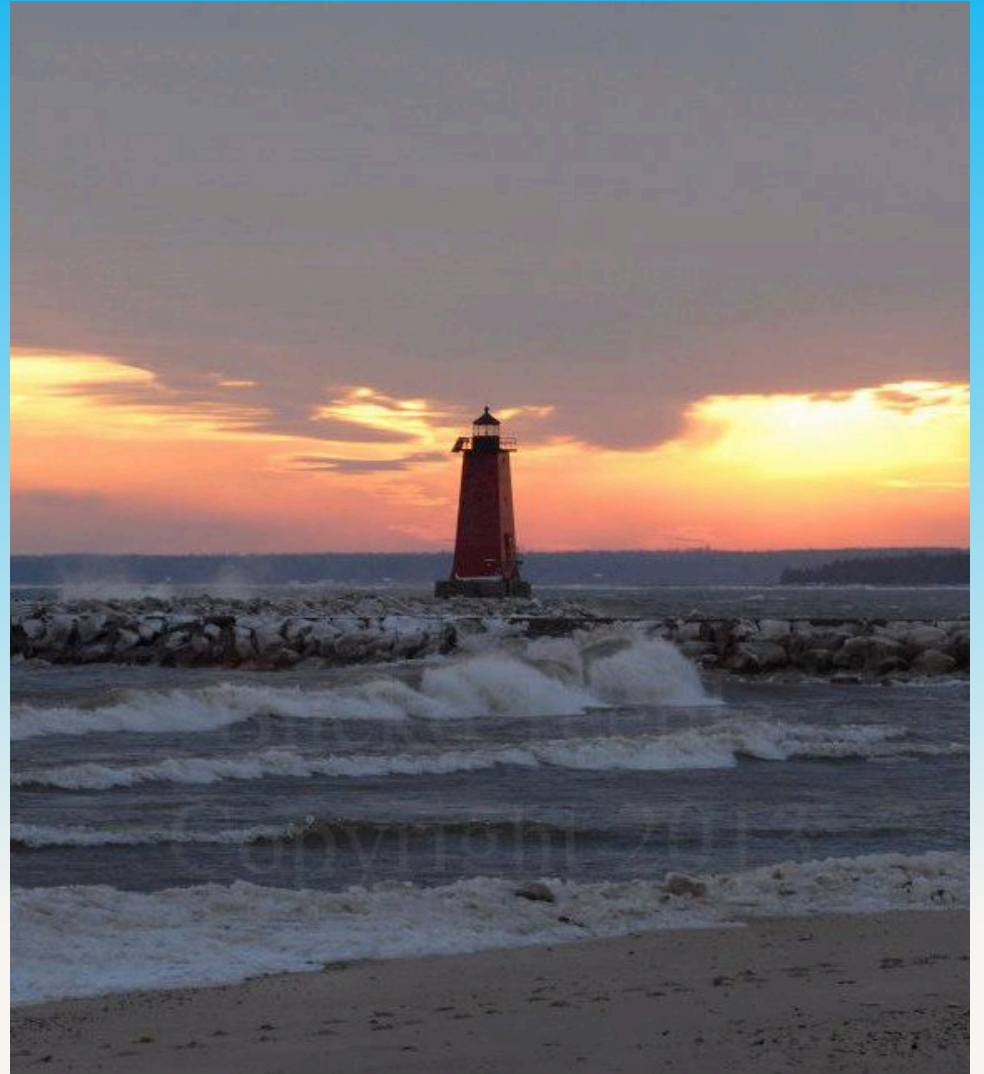
Housing Board/Committee/Tribal Council

Board members should not be considered for employment within the program except under extremely unusual circumstances, which must be fully documented. These steps help to avoid conflicts of interest (See Section 1000.30 and 32 of NAHASDA).



Housing Board/Committee/Tribal Council

Since Housing is directly overseen by the Board or Council, it is critical to the success of the housing program that members be people with sincere interests in the tribal housing program.



Housing Board/Committee/Tribal Council



It is the responsibility of the Housing Director, as the recognized housing professional, to ensure that the Board and/or Council members are adequately trained in their roles and responsibilities related to housing. In addition, the Director must ensure that the Board or Council is provided the information needed to make sound decisions.

HUD offers training for Board of Commissioners periodically throughout the country, or you can request a T & TA provider to come to your reservation to provide training to your Board (Free of Charge). Or it can be provided virtually if requested.

The Board should engage in the following activities:

- Short-/long-term planning for affordable housing
- Outreach to families in need of housing
- Establishing relationships with governmental agencies
- Designing and developing decent, safe, sanitary, and affordable housing



The Board should engage in the following activities:

- Professional management of the program
- Coordinating and obtaining social services for residents
- Providing training and employment opportunities for residents and staff
- Identifying ways to leverage IHBG and other eligible HUD funds with other funds (e.g., Tax Credits, USDA – Rural Development, etc.) to achieve goals and objectives



Housing Staff

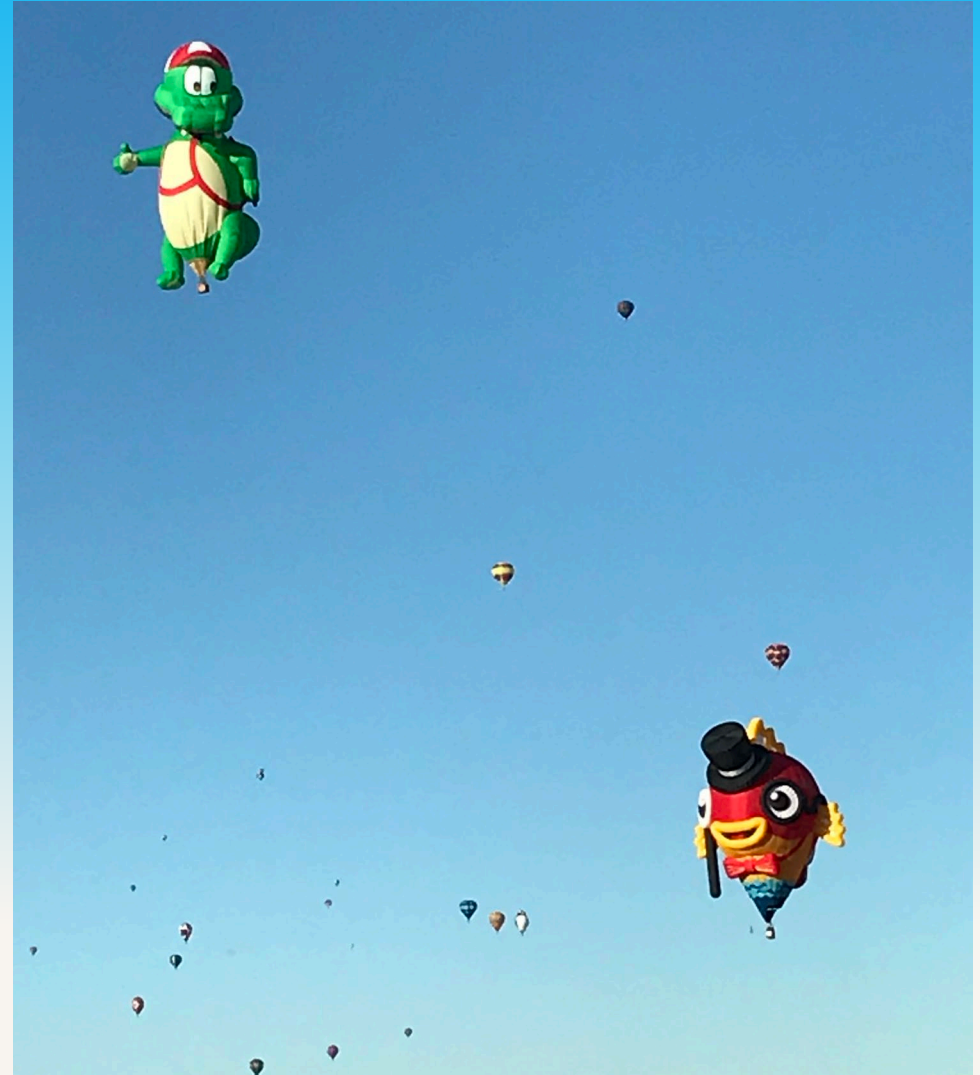
The housing employees are responsible to the members of the Tribe for carrying out the activities outlined in the Indian Housing Plan (IHP). The staff must follow all federal laws, regulations and policies to provide assurance and build public trust in the program.

In order to do this, employees should have the authority to:



Housing Staff

- Manage the day-to-day operations of the housing program
- Ensure funds are well managed
- Represent the Housing program within the community
- Ensure compliance with federal laws, regulations, and local policies
- Develop and administer various programs
- Plan the use of resources, and organizing those resources to do their jobs
- Ensure that work is of high quality, delivered on time, and benefits those most in need



Housing Staff

- Put participants first within the constraints of the program
- Possess or obtain skills needed to effectively perform their jobs
- Treat everyone fairly and equally
- Create an environment that assures quality services
- Carry out the goals and objectives in the IHP



Housing Staff

The success of the program also hinges on the quality of the employees. They should have effective communication skills that help them work with participants, other staff members, and supervisors. Careful and thoughtful consideration should be given to the hiring process. The best person for any job is the one who possesses the skills necessary to perform the duties required of the position.



Participants/Residents/ Applicants

- As the primary beneficiaries of the Housing programs, renters and homebuyers also have responsibilities. These responsibilities are detailed in the lease or agreement signed by the family before the time of occupancy of the home.
- Should your participants not want to adhere to the terms of the Lease they should be replaced with another willing Tribal Member Family.



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MODULE

Federal Labor Standards

- Davis Bacon Wage Rates & Other Labor Requirements
- Tribal Prevailing Wage Rates

NATIVE AMERICAN HOUSING ACTIVITIES SUBPART A

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LABOR STANDARDS

This Module will provide guidance on Federal Labor Standards and the provisions and requirements we must implement when spending more than \$2000.00 of NAHASDA funds on Construction Contracts and the required payment of a "prevailing wage" which is the combination of the basic hourly rate and any fringe benefits.

The second segment will provide information on Tribal Prevailing Wage Rates which a Tribe may create and adopt, and Davis Bacon would no longer apply to NAHASDA funded contracts. This is another area of Housing where a Tribal Governance action would be required.



Davis Bacon Act

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Davis-Bacon and Other Labor Laws

The Davis-Bacon Act applies to each federal government or District of Columbia contract in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are Davis-Bacon "Related Acts." The "Related Acts" include provisions that apply Davis-Bacon labor standards to most federally assisted construction. Examples of "Related Acts" include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

DBRA requires payment of prevailing wages on federally funded or assisted construction projects.

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DBRA

Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U. S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.

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Davis Bacon Related Acts

DBRA Are laws that Govern Specific Federal Programs

DBRA THAT COVER HUD PROGRAMS

- U.S. Housing Act of 1937
- Native American Housing and Self Determination Act
- National Housing Act of 1949
- Housing and Community Development Act of 1974
- National Affordable Housing Act of 1990
- Housing and Economic Recovery Act of 2008
- American Recovery and Reinvestment Act of 2009 (ARRA)
- Frank-Dodd Financial Reform Act of 2010



Basic Provisions/Requirements

Contractors and subcontractors must pay laborers and mechanics employed directly upon the site of the work at least the locally prevailing wages (including fringe benefits), listed in the Davis-Bacon wage determination in the contract, for the work performed. Davis-Bacon labor standards clauses must be included in covered contracts.

The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination. The contractor's obligation to pay at least the prevailing wage listed in the contract wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid on all hours worked on the site of the work.

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Basic Provisions/Requirements

Apprentices or trainees may be employed at less than the rates listed in the contract wage determination only when they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department.

Contractors and subcontractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency. They are also required to post the applicable Davis-Bacon wage determination with the Davis-Bacon poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by the workers.

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Davis-Bacon Wage Determinations

Davis-Bacon wage determinations are published on the System for Award Management (SAM) website at <https://sam.gov/content/wage-determinations> for contracting agencies to incorporate them into covered contracts. The “prevailing wages” are determined based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area. Guidance on determining the type of construction is provided in All Agency Memoranda Nos. 130, 131 and 236.



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
- Prevents contractors from bidding below an area's prevailing wages.



You have reached SAM.gov, an official website of the U.S. government. There is no cost to use this site.

The unique entity identifier used in SAM.gov has changed.

On **April 4, 2022**, the unique entity identifier used across the federal government changed from the DUNS Number to the Unique Entity ID (generated by SAM.gov).

- The Unique Entity ID is a 12-character alphanumeric ID assigned to an entity by SAM.gov.
- As part of this transition, the DUNS Number has been removed from SAM.gov.
- Entity registration, searching, and data entry in SAM.gov now require use of the new Unique Entity ID.
- Existing registered entities can find their Unique Entity ID by following the steps [here](#).
- New entities can get their Unique Entity ID at SAM.gov and, if required, complete an entity registration.

I manage an entity. What do I need to do?

For more information about this transition, visit [SAM.gov](#) or the Federal Service Desk, [FSD.gov](#). You can search for help at [FSD](#) any time or request help from an FSD agent Monday–Friday 8 a.m. to 8 p.m. ET.

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Wage Determinations
(was wdol.gov)

Federal Hierarchy
Departments and Subtiers

Assistance Listings
(was cfda.gov)

Entity Information
Entities, Disaster Response Registry, and Exclusions

Entity Reporting
SCR and Bio-Preferred Reporting


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Register your entity or get a Unique Entity ID to get started doing business with the federal government.

Get Started


Renew Entity

 Check Registration Status


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e.g. 1606N020Q02



Announcements


Entity validation was updated 

If you are registering, renewing an entity registration, or getting a Unique Entity ID, we have updated our entity validation process to make things easier to

Aug 9

Have Questions about SAM.gov?

VIDEO TRAINING:
Get a Unique Entity ID (SAM)


UNIQUE ENTITY ID (SAM)

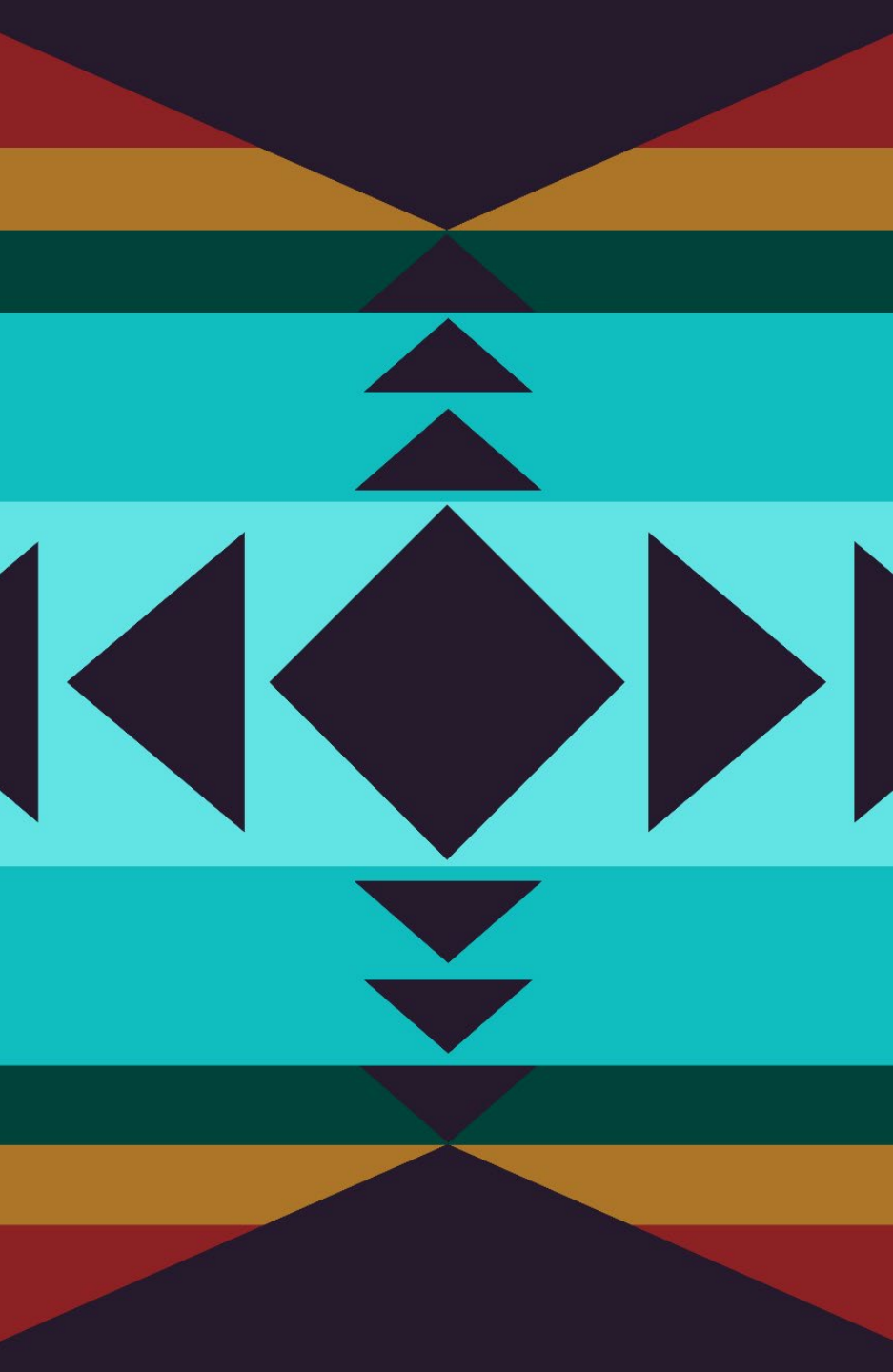


Relation to State, Local, and Other Federal Laws

The Copeland "Anti-Kickback" Act prohibits contractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment and requires contractors to submit a weekly statement of the wages paid to each employee performing DBRA covered work.

Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wage and overtime pay requirements under State (and local) laws. Also, overtime work pay requirements under CWHSSA) and the Fair Labor Standards Act may apply.

Under Reorganization Plan No. 14 of 1950, (5 U.S.C.A. Appendix), the federal contracting or assistance-administering agencies have day-to-day responsibility for administration and enforcement of the Davis-Bacon labor standards provisions and, in order to promote consistent and effective enforcement, the Department of Labor has regulatory and oversight authority, including the authority to investigate compliance.



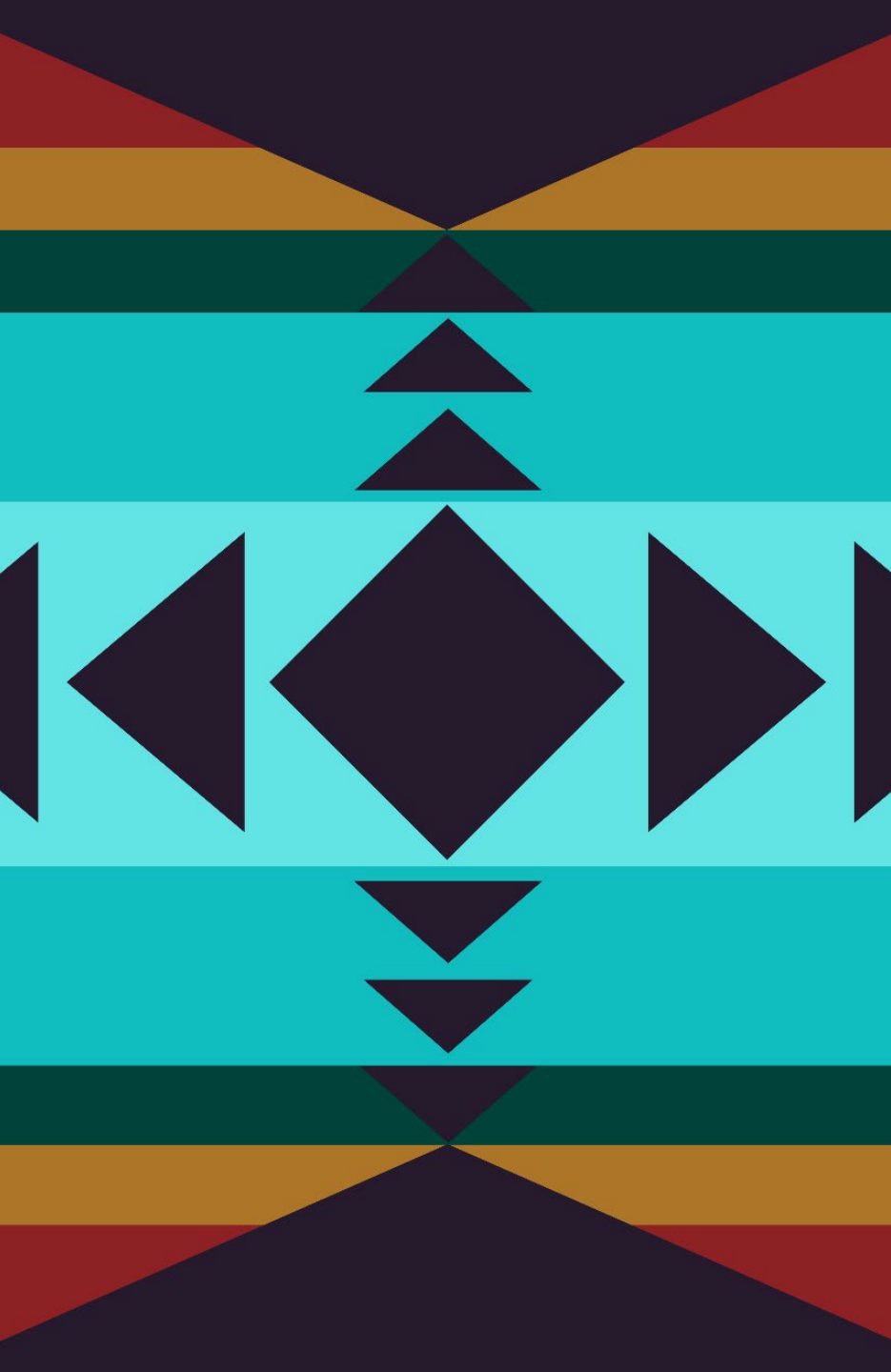
§ 1000.16 What labor standards are applicable?

(a) *Davis-Bacon wage rates.*

(1) *As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141-44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.*

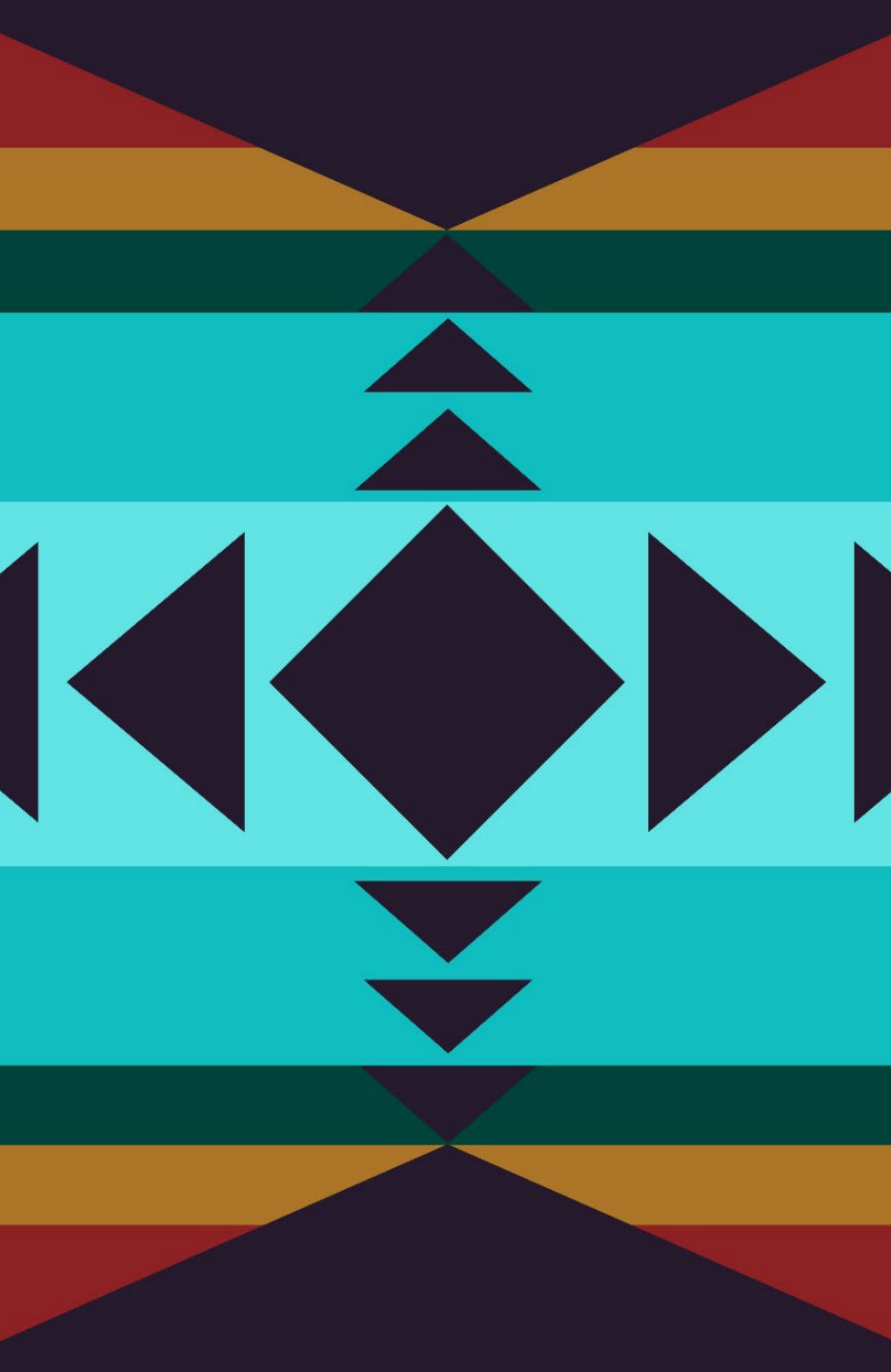
(2) *When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.*

(3) *Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.*

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§ 1000.16 What labor standards are applicable?

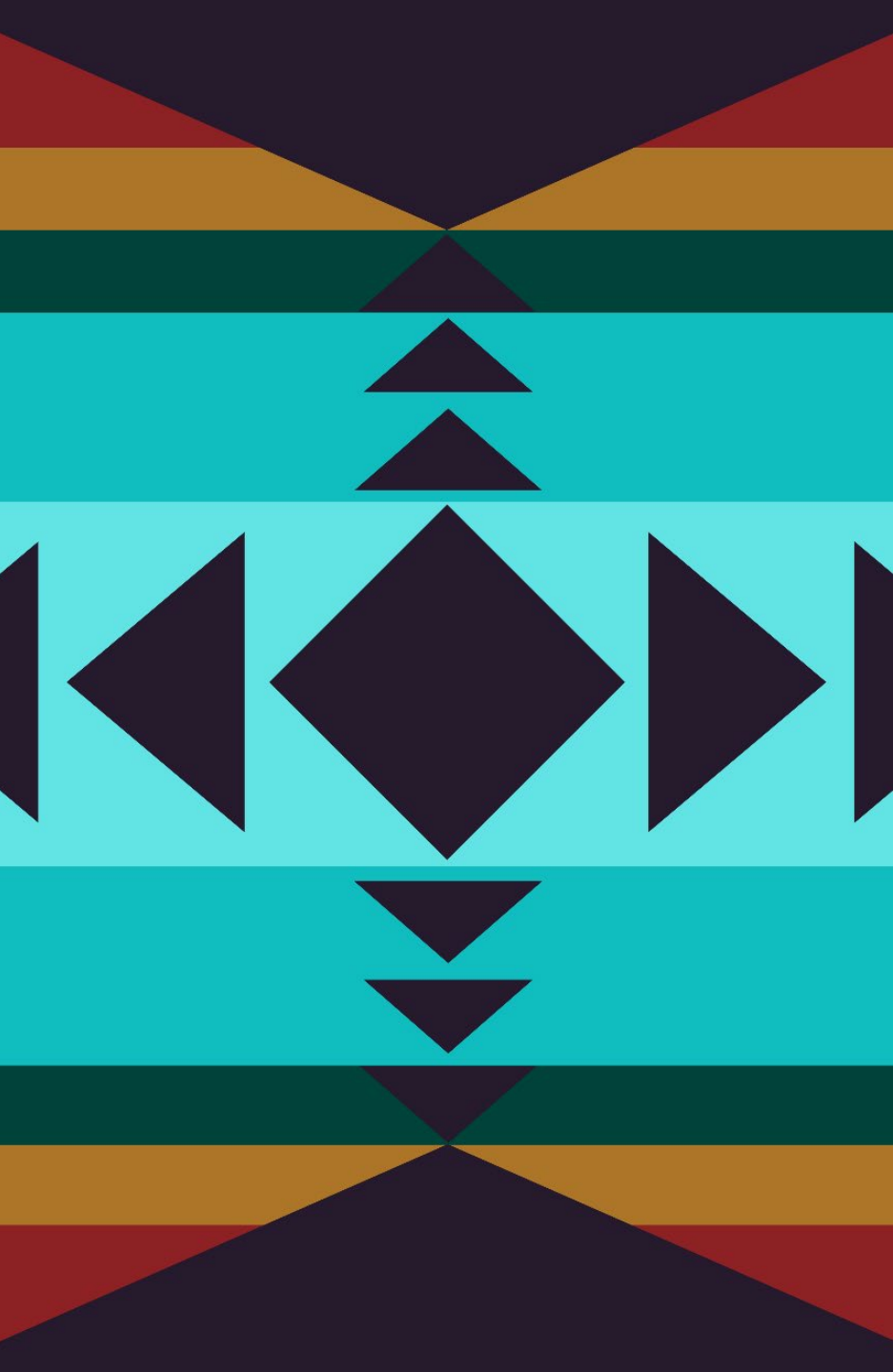
- (b) *HUD-determined wage rates.* Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.
- (c) ***Contract Work Hours and Safety Standards Act.*** Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).



§ 1000.16 What labor standards are applicable?

- (d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.
- (e) Paragraphs (a) through (d) of this section shall not apply to any contract or agreement for assistance, sale, or lease pursuant to NAHASDA, or to any contract for construction, development, operations, or maintenance thereunder, if such contract or agreement for assistance, sale, or lease is otherwise ***covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.** Paragraphs (a) through (d) of this section shall also not apply to work performed directly by tribal or TDHE employees under a contract or agreement for assistance, sale, or lease, that is covered by one or more such laws or regulations adopted by an Indian tribe.

*Tribal Prevailing Wage Rate

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§ 1000.16 What labor standards are applicable?

(f) *Other laws and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

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



Contract Work Hours and Safety Standards Act (CWHSSA)

(40 USC §3701 et seq.; 29 CFR Part 5)

The Contract Work Hours and Safety Standards Act (CWHSSA) is administered by the Wage and Hour Division (WHD). CWHSSA applies to contractors and subcontractors on certain contracts with the federal government or the District of Columbia that require or involve the employment of laborers or mechanics (including guards and watchmen), including federal service contracts and federal construction contracts over \$150,000. Covered contracts include those entered into by the federal government, any agency or instrumentality of the federal government, any territory of the U.S., or the District of Columbia.

Basic Provisions/Requirements

The Contract Work Hours and Safety Standards Act (CWHSSA) requires contractors and subcontractors to pay laborers and mechanics, including watchmen and guards, employed in the performance of covered contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.



Copeland Act

(18 USC §874 and 40 USC §3145; 29 CFR Part 3)

Who is Covered

The "Anti-Kickback" provision of the Copeland Act applies to contractors and subcontractors that perform work on contracts for the construction, prosecution, repair, or completion of public buildings, public works, or works which are financed in whole or in part by loans or grants from the United States. This provision applies even where no labor standards statute covers the contract but does not apply to contracts for which the only federal assistance is a loan guarantee.

The Copeland Act provisions pertaining to payroll deductions, the submission of weekly payroll reports, and the method by which contractors and subcontractors must pay their employees apply to contracts in excess of \$2,000 for the construction, prosecution, repair, or completion of public buildings, public works, or works which are supported by the United States, including buildings or works for which the federal assistance granted is in the form of loan guarantees or insurance.

A public building or public work is a building or work for whose construction, prosecution, completion, or repair a federal agency is a contracting party, regardless of whether title thereof is in a federal agency.



Copeland Act

(18 USC §874 and 40 USC §3145; 29 CFR Part 3)

Basic Provisions/Requirements

The Copeland Act's Anti-Kickback provision prohibits contractors and subcontractors performing work on covered contracts from in any way inducing an employee to give up any part of the compensation to which he or she is entitled. The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand and to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period. Additionally, the Act's regulations at 29 CFR §3.5 and §3.6 list payroll deductions that are permissible without the approval of DOL and those deductions that require consent of DOL and prohibit all other payroll deductions.



Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) is the backbone of federal labor law. Covering topics such as employee classification, minimum wage, overtime, child labor, and more. It is critical that employers understand the FLSA in and out.

The Fair Labor Standards Act (FLSA) provides guidance across areas such as employee classification, federal minimum wage, overtime, the definition of hours worked, recordkeeping requirements, posting requirements, pay schedules, final pay, and provisions regarding child labor.

The FLSA is enforced by the Wage and Hour Division of the Department of Labor (DOL), whose duty is to recover back wages and assess penalties. These penalties can be up to \$1,000 per violation.

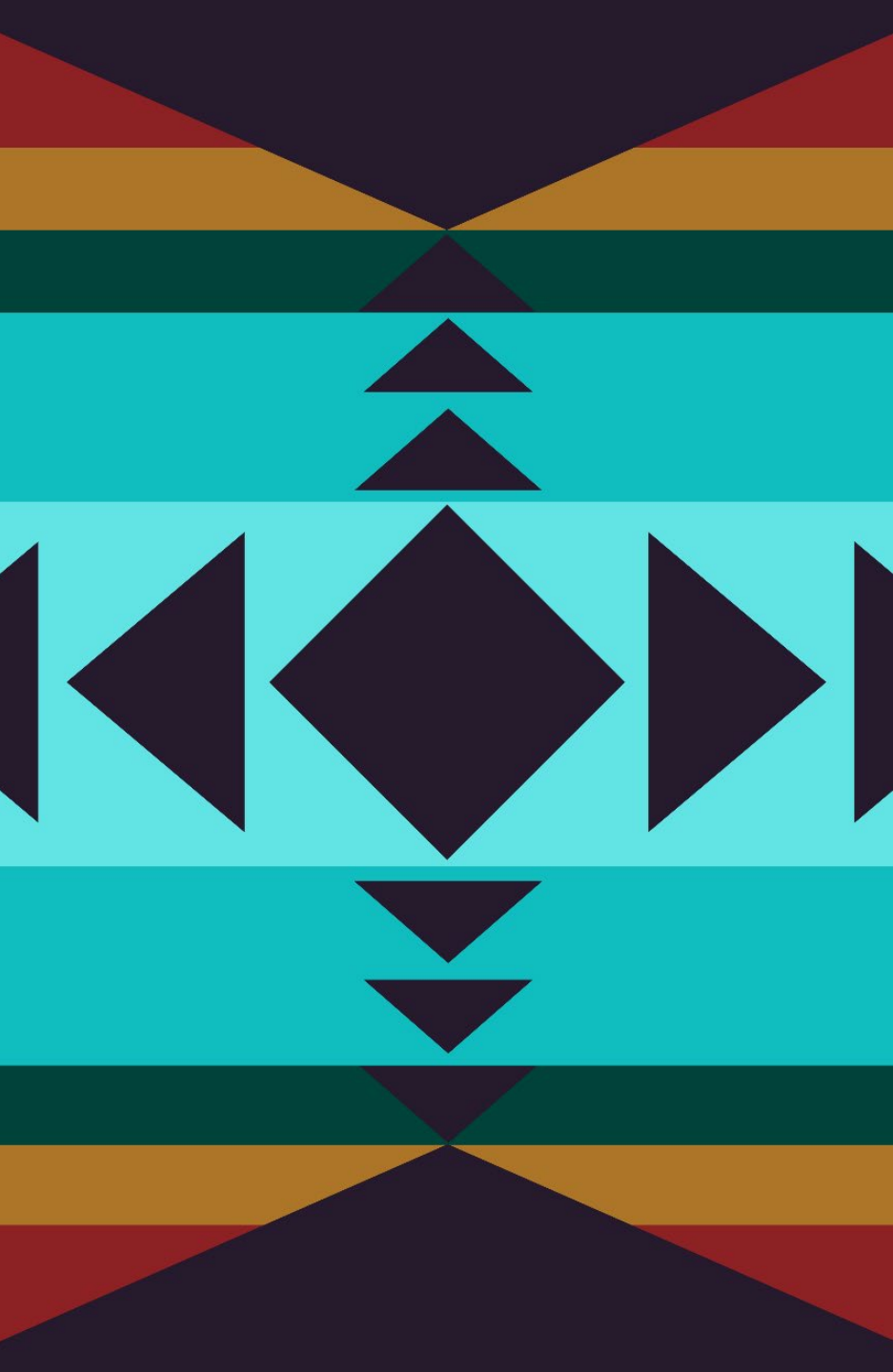
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Federal Labor Standards

Purpose is to ensure proper payment of Prevailing Wage Rates

Summary of Requirements

- Unauthorized deductions are prohibited
- Wages paid on a weekly basis
- Premium pay for overtime

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Grant recipient responsibility for Davis Bacon & Other Labor Requirements

Grant recipient responsibility for Administration and Enforcement of Davis Bacon & Other Labor Requirements include:

- Providing required information upfront to Contractors
- Designating a Labor Standards Compliance Officer (Often the Contracting Officer)
- Enforcing Labor Standards compliance from the General Contractor

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Grant recipient responsibility for compliance

1. Designate appropriate staff for enforcement
2. Ensure *bid documents, contracts, and subcontracts* contain Federal labor provisions and applicable wage decisions
3. Conduct contractor wage inquiries
4. Review certified payroll reports and confirm any discrepancies through interviews
5. Submit enforcement reports
6. Maintain all documentation



Tribal Prevailing Wage Rates

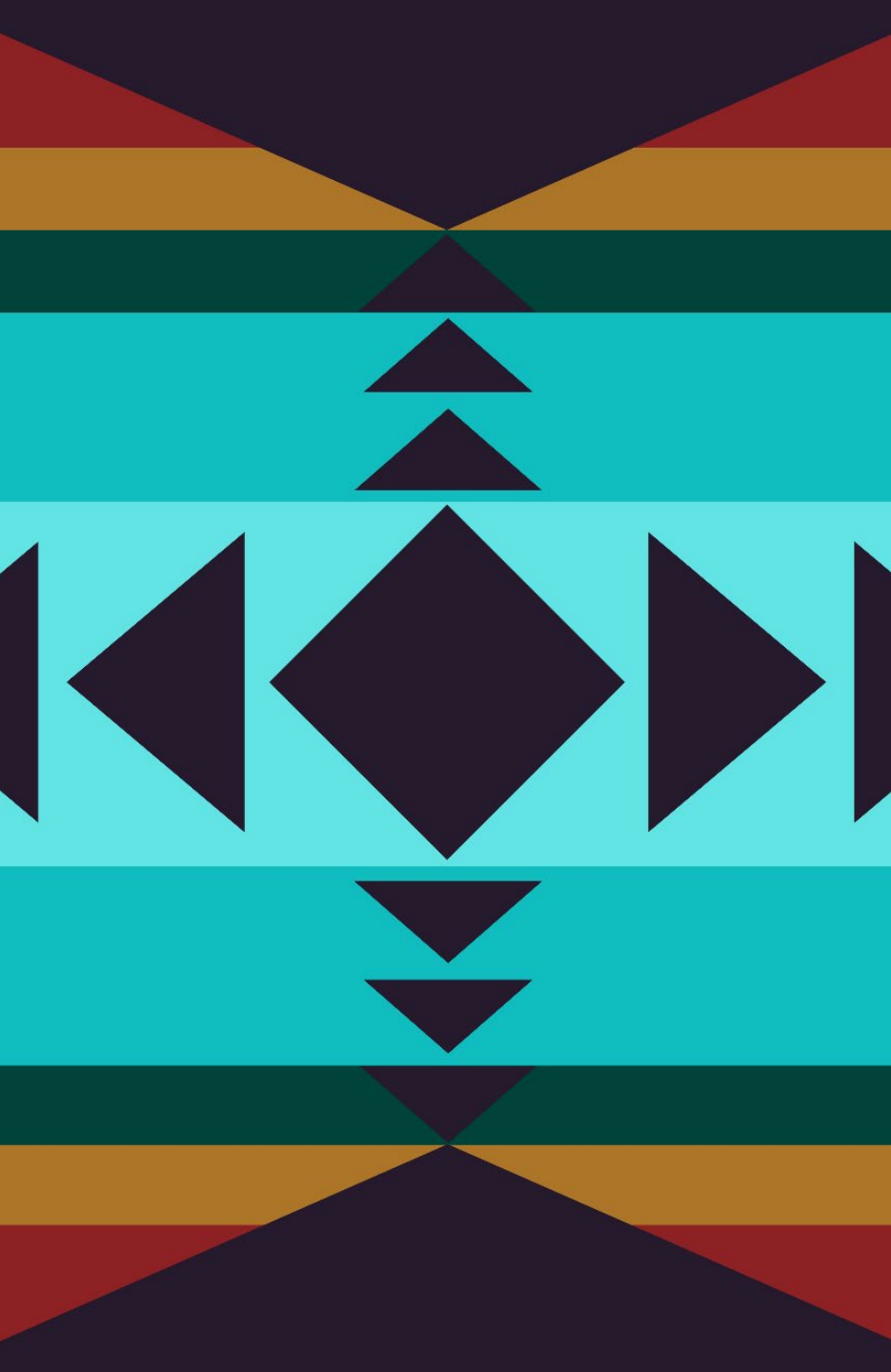
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NAHASDA Section 104 (b)

Requires that prevailing wage rates determined by the Secretary of Labor (Davis-Bacon wage rates) be applied to NAHASDA projects

- 24 CFR 1000.16
- 29 CFR 1.2
- Guidance No. 2003-04

Are the other relevant Guidance Documents

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NAHASDA was amended, in part, by P.L. 105-568 the Omnibus Indian Advancement Act

Which added paragraph (3) to section 104 (b), which allows tribes to determine and apply their own prevailing Wage Rates in place of Davis-Bacon and/or maintenance wage rates.

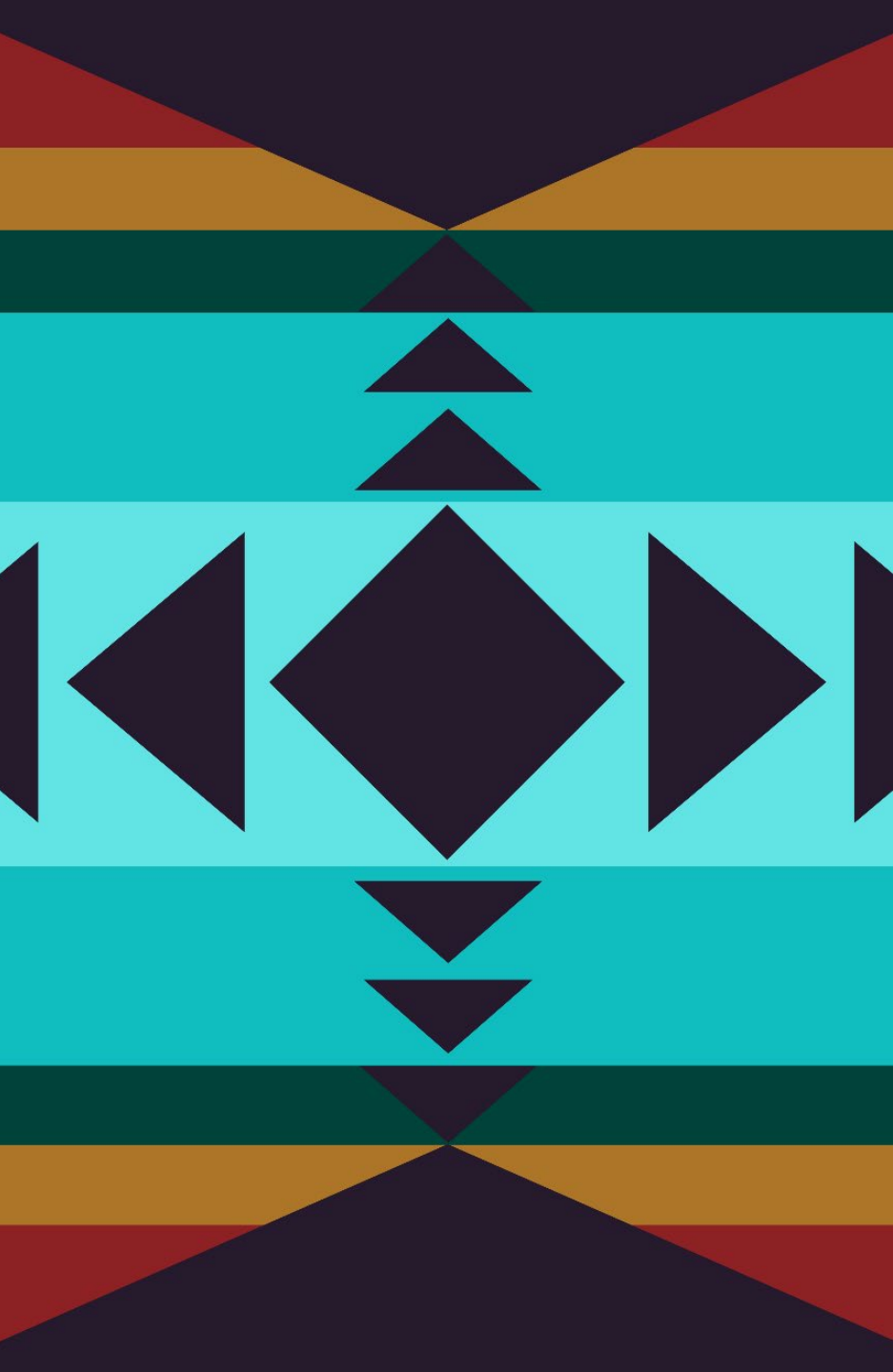
*Tribes are still required to COMPLY with DAVIS -BACON

For other HUD programs and if NAHASDA dollars are mixed with other covered programs. NAHASDA alone is what permits the use of a Tribally Determined Wage Rate.

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Statutory Language

(3) APPLICATION OF TRIBAL LAWS- Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

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Steps to Implement a Tribally Determined Wage Rate (TDW)

- The Tribe must pass a tribal law or regulation to apply its TDW, and
- The Tribal Law must require the payment of not less than prevailing wages as determined by the Tribe.
- You must define Prevailing and identify a mechanism for Tribe to make determination of Prevailing Wages.
- Design your monitoring and enforcement mechanisms to ensure compliance.
- Design method and frequency of Wage Survey

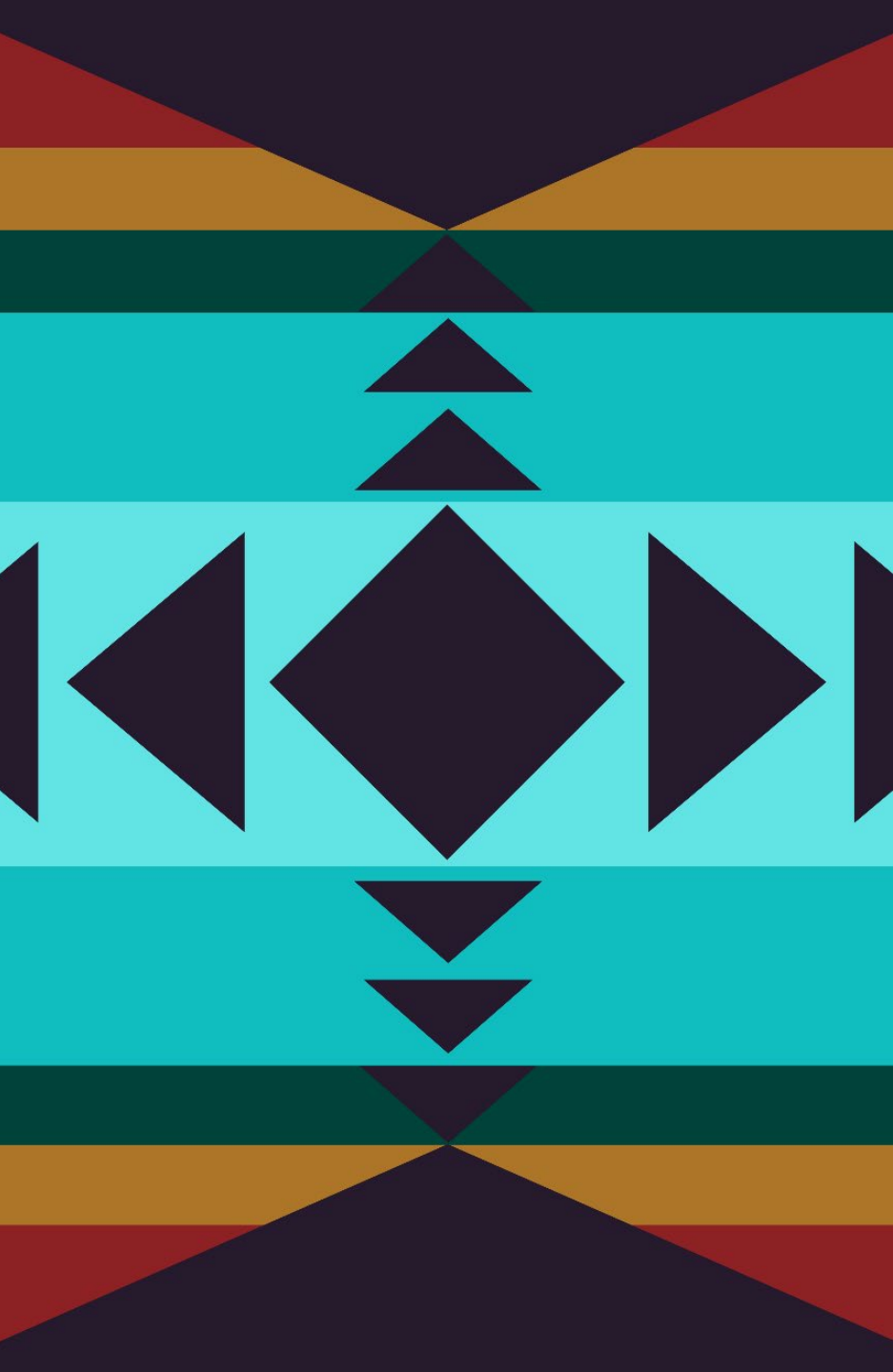
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29 CFR 1.2 Department of Labor definition for prevailing wages

(a)(1) The prevailing wage shall be the wage paid to the majority (More than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

*Tribes do not need to use this definition, but you must decide on a definition for prevailing.

**Prevailing Wages are not defined by HUD or NAHASDA

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When TDWs are utilized, the following Labor Laws Do Not Apply to NAHASDA grants:

- Department of Labor Laws related to Davis-Bacon
- Overtime provisions of the Contract Work Hours and Safety Standards Act.
- Certified payroll reports of the Copeland "Anti-Kickback" Act.

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MODULE

Other Federal Requirements

- Environmental Reviews
- Useful Life and Binding Commitments
- Other Various Federal Requirements
 - Uniform Relocation Assistance & Real Property Acquisition
 - Flood Insurance
 - Lead Based Paint

OTHER FEDERAL REQUIREMENTS

If your Housing program is large, you might have in house staff to perform important duties such as Environmental Reviews, and other vital roles to assure your compliance with the various multiple Federal Requirements.

If not as a Tribal Leader, this is one area where you can aid your Housing Program by allowing the utilization of existing Tribal staff such as Environmental Review staff, Biologist or other Tribal expertise to provide your Housing Staff with additional resources to help assure compliance.



Part 58 Environmental Review Process



Bucko Teeple
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What is an Environmental Review?

An environmental review is a process of reviewing a project and its potential environmental impacts to determine whether it complies with federal, state and local standards.

All HUD assisted projects are required to undergo an environmental review to evaluate how the proposed project can affect the environment and how the environment can affect the project, site and the end users.

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What is an Environmental Review?

The environmental review:

- Analyzes the impact of a project on the surrounding environment and of the surrounding environment on the project
- Ensures that HUD-funded projects provide decent, safe, and sanitary housing and livable communities
- Demonstrates compliance with the National Environmental Policy Act (NEPA) and related Federal laws and authorities
- Must be conducted BEFORE any funds are committed

HUD'S Environmental regulations are available at
24 CFR 58



NEPA

The National Environmental Policy Act of 1969 (NEPA) was passed by Congress In January 1970, in response to national consensus that federal agencies should take the lead in providing greater protection for the environment.

NEPA requires federal agencies to consider the environmental impact of proposed actions early in the planning and decision-making process. This process is designed to encourage public participation, so all documents developed and used in the environmental review process should be available to the public.

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Part 50 vs Part 58

HUD responded to NEPA by developing 24 CFR Part 50, Protection and Enhancement of Environmental Quality ("Part 50"), and 24 CFR Part 58, Environmental Responsibilities ("Part 58"). Parts 50 and 58 outline the environmental review procedures to follow to ensure that HUD projects comply with NEPA.

The first step in the environmental review process is determining whether the HUD assistance falls under a Part 50 or Part 58 environmental review. This is usually specified in the Notice of Funding Availability, program regulations, or legislation.

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Part 50 vs Part 58

PART 50

- Applies to programs where HUD performs the environmental reviews

PART 58

- Applies to programs that allow a Responsible Entity to perform environmental reviews.



Part 58

HUD regulations at 24 CFR Part 58 allow a Responsible Entity to assume authority to perform environmental reviews. An RE must be a unit of local government such as a Tribe. The RE is responsible for the scope and content of the review and making all findings. **The RE's Certifying Officer (CO), usually the Tribal Chairman** or their designee, signs and takes legal responsibility for the review.

Part 58 applies when program legislation allows local governments to assume authority. Many HUD programs, particularly those under Public & Indian Housing and Community Planning and Development divisions, authorize RE's to assume HUD'S environmental review responsibilities under 24 CFR Part 58. For a current list of programs, see 24 CFR 58.1 (b)

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Who Conducts the Review?

For programs where the recipient of HUD funds is a unit of local government, such as a tribe, that entity is the RE. (Responsible Entity)

See 58.2(a)(7) and program regulations for more information.



Requirements for All Projects

Part 58 environmental reviews must demonstrate compliance with number of environmental laws and authorities in addition to NEPA.

All Part 58 environmental reviews, including those that are Exempt and Categorically Excluded Not Subject to 58.5, must comply with the related laws and authorities listed in 24 CFR Part 58.6:

1. Airport Hazards-Notification requirements for the purchase or sale of existing property in Runway Clear Zone or Clear Zone-24 CFR Part 51.303(a)(3)
2. Coastal Barrier Resources- Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990
3. Flood Insurance- Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994



Requirements for Higher Levels of Review

Only reviews that require a higher level of review (e.g., Categorically Excluded Subject to 58.5, Environmental Assessments, and Environmental Impact Statements) must address the additional laws and authorities listed in 24 CFR 58.5:

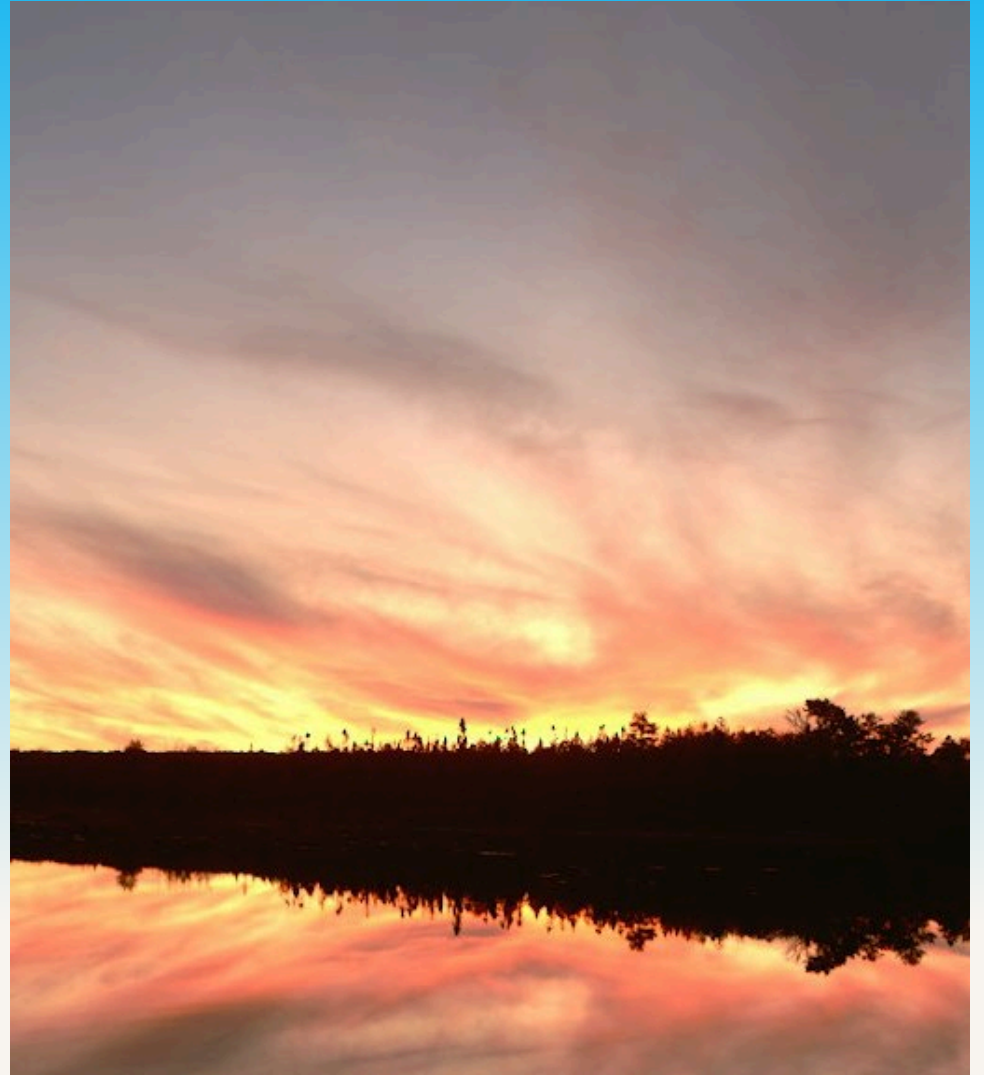
4. Air Quality-Clean Air Act, as amended
5. Coastal Zone Management Act
6. Contamination and Toxic Substances 24 CFR 50.3 (i) & 58.5(i)(2)
7. Endangered Species Act of 1973
8. Explosive and Flammable Hazards-24 CFR Part 51 Subpart C
9. Farmlands Protection-Farmland Protection Policy



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The Environmental Review Process



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Timing

The environmental review process should begin in the project planning's earliest phase to maximize the consideration of alternatives and opportunities to improve a project's design. It is very important that the review is completed prior to any commitment of funds.

HUD's regulations at 24 CFR 58.22 prohibits grant recipients and their partners from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review and if applicable, after receipt of the Authority to Use Grant Funds.

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Timing

The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.

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Environmental Review Record

The ERR is unique for each project: it contains a description of all activities that are part of the project and evaluates the appropriateness of the site. The ERR will document compliance with the applicable environmental requirements. It will be the record of determinations and finding and contain various source documents and relevant data. The ERR must be made available for public review.

If the project name or environmental review contains information that can be considered sensitive, such as location of a domestic violence shelter, sacred site, or endangered species habitat, the RE should omit that information from the publicly reviewable environmental review record.

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Environmental Review Record

The environmental review process is a series of actions that are documented in an Environmental Review Record (ERR). These actions include:

- **Define the project**-what the project is, the purpose of the project, the benefits to be achieved, and the impact of the community/market
- **Determine level of review**- from the project activities description determine which of the four review types is required
- **Perform the environmental review analysis and document compliance**-in accordance with the requirements for that level of review

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Environmental Review Record

- **Finalize the** review-get signatures and approvals as appropriate
- **Expend project funds**-complete the task
- **Post-review consideration**-confirm required mitigation measures were implemented, monitor environmental compliance on the completed project, request and receive HUD approval as needed (or if applicable)

Defining the Project



Defining the Project

The project description is the foundation of the environmental review; decisions are made based on the information provided in the description. To start an environmental review, the RE must ask “What is the project?” The test of a good project description is that someone with no familiarity with the project or HUD program should be able to read the description and fully understand what the project will do and be.

The project description will be used throughout the environmental review process—for example when advertising for public comment. This description should provide location specific information and geographic boundaries, as well as a delineation of all physical activities included in the overall scope of the project.



Defining the Project

- Purpose of the proposed project
- Location
- Size of the parcel and buildings
- Existing conditions
- Trends-economic, demographics
- Scope of work to be performed
- Changes that will be made to the structure/land
- Beneficiaries-numbers, types
- Benefits of and impact to the community
- Funding sources
- HUD funded amount and total project cost



Defining the Project: Project Description Tips

Project descriptions should contain a narrative, site plan and visual aids. The narrative should be brief and contain all the basics: size of parcel and building(s), functions, clients, etc. Think the basics of reports- Who, What, Where, When How & Why. Housing project descriptions should clearly state the number and type of units as well as fully describe any non-dwelling space.



Defining the Project: Project Description Tips

The project description should:

- Include all contemplated actions that are a composite part of the project. (This will be covered on the Aggregation slide in this section)
- Capture the maximum scope of the proposal, not just a single activity that the federal money is funding
- Not to be tied directly to budget line items



Aggregation, 24 CFR 58.32

Aggregation is looking at the project as a whole, NOT just the part funded by federal dollars.

Is this activity part of a larger project?

Is the site just one phase of a larger development?

Have additional phases of the project applied for funding?

Do the activities take place in a target area where a whole range of varying activities are planned?

If the answer to any of these questions is yes, then the project should be aggregated.



Aggregation, 24 CFR 58.32

The RE must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or both, or are logical parts of contemplated actions.

- **Geographical**-Objective is to complete a single environmental review considering all related activities for a project at a specific location, regardless of the source of funding.
- **Functional**-Activities must be similar in nature with similar types of environmental impacts

For example, federal funds will be used for rehabilitation of a gymnasium which is part of a larger project that included new construction of a youth community center that will be assisted with local funds.



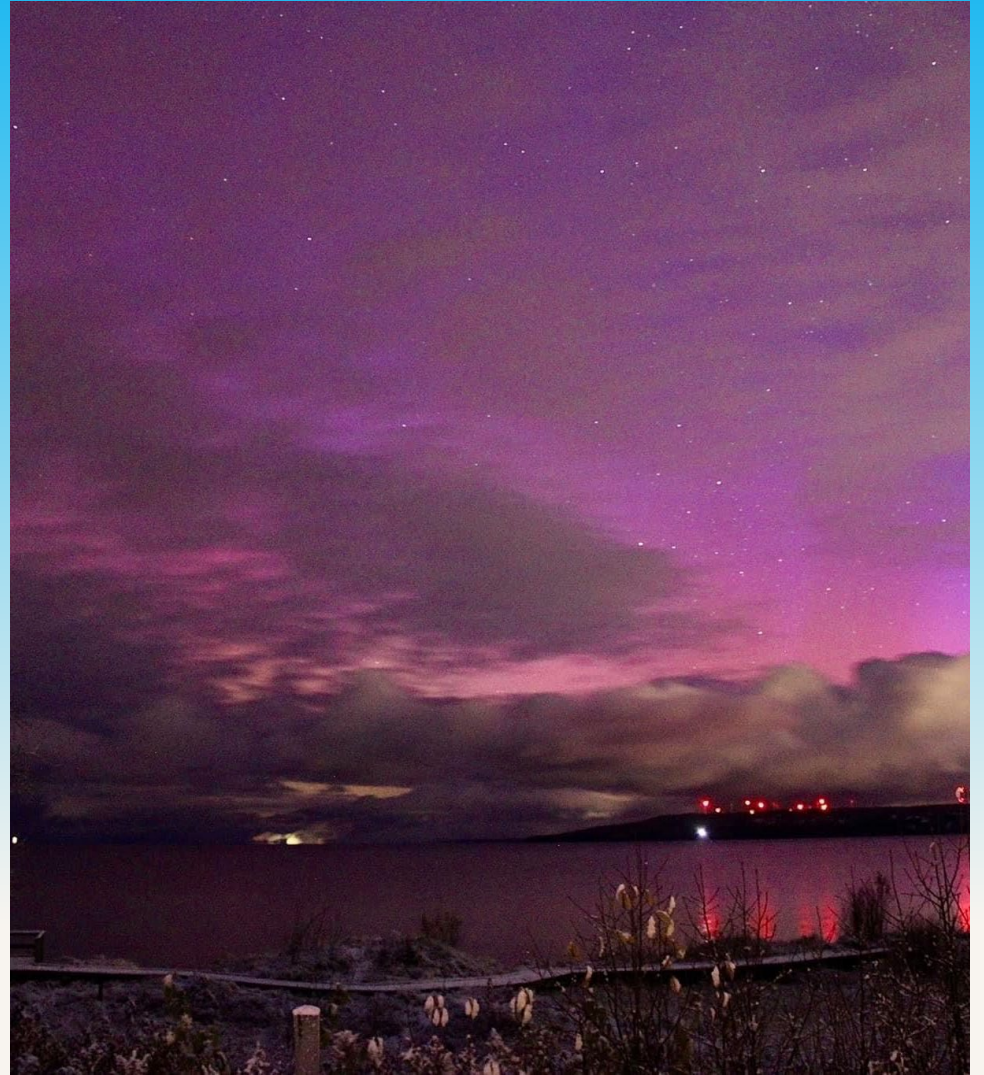
Determining the Level of Review-Part 58

Based on the project description, the RE determines the level of environmental review required.

The amount of work and documentation that the RE will need for the Environmental Review Record will depend upon the level of environmental review.



Levels of Review



Levels of Review

Under Part 58, there are 4 levels of review:

- Exempt/Categorically Excluded from NEPA, Not Subject to the Related Laws and Authorities at 58.5 (CENST)
- Categorically Excluded from NEPA, Subject to the Related Laws and Authorities at 58.5 (CEST)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)



Exempt Activities

The exempt activities set forth at 24 CFR 58.34 are actions that do not have a physical component. They are generally planning activities and services and include:

- Environmental, planning & design costs
- Information & Financial services
- Administrative & management activities
- Public services (no physical impact)
- Inspections
- Purchase of tools & insurance
- Technical assistance & training
- Payment of principal and interest
- [Most types of temporary assistance for disaster or imminent threats](#)
- Engineering or design costs



Categorically Excluded Not Subject to 58.35 (b) (CENST)

These activities have been determined by HUD that they would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in 58.5. For projects found to fit into one of these categories, the RE only has to document compliance with the requirements of 58.6 and does not have to undertake any environmental assessment, consultation or other action under NEPA or related laws and authorities in 58.5



Categorically Excluded Not Subject to 58.35 (b) (CENST)

CENST activities listed in 24 CFR 58.35(b) are similar to exempt activities-they are generally activities that will not have physical impacts on the environment. Activities in this category include:

- Tenant-based rental assistance
- Supportive services (healthcare, housing placement)
- Operating costs (utilities, supplies)
- Economic development costs (not associated with construction or expansion)
- Some types of homebuyer assistance
- Affordable housing pre-development costs
- Maintenance
- Supplemental assistance to previously approved activities



Compliance for Exempt and CENST Reviews

Though CENST and Exempt activities fall under different levels of review and are described in separate sections, the compliance procedure and requirements are the same.

However, for an Exempt or CENST activity, the RE is required to make a written, signed and dated determination that the activity is Exempt or CENST.

This determination must be made before the expenditure of HUD funds.



Compliance

Document in ERR that the activity complies with the requirements listed in 24 CFR 58.6:

- Airport Clear Zones (purchase or sale of land)
- Coastal Barrier Resources
- Flood Insurance

Even though Exempt and CENST activities do not require compliance with 58.5 or NEPA, the RE must still establish an ERR and document compliance with the requirements in 58.6 REs may use the EXEMPT/CENST environmental review format to document compliance with the requirements in 58.6.



Categorically Excluded Subject to 58.5 (CEST)

Activities that are categorized as CEST will usually have physical impacts. They are more specifically defined in 24 CFR 58.35 (a) and include:

- Acquisition, leasing, or disposition of vacant land or existing buildings with no change in land use and includes project based rental assistance.
- Acquisition or leasing of public facilities with no change in land use.
- Removal of barriers that restrict mobility and accessibility to elderly and handicapped.
- Rehabilitation, repair, and improvement of buildings as described at 24 CFR Part 58.35 (a)(3)(i)(iii)



Categorically Excluded Subject to 58.5 (CEST)

Projects that are CEST under Part 58.35(a) must comply with the related federal laws and authorities listed in 58.5 and 58.6.

The 13 laws and authorities under 58.5 and the three requirements under 58.6 was formally referred to as the "Statutory Checklist".

The RE must ensure that the project complies with each of these laws and authorities. Each compliance determination must be supported by documentation in the ERR.



Compliance requirements for CEST reviews

- Complete compliance with 58.5 and 58.6
- Obtain the necessary signatures to complete the review
- Publish or post a Notice of Intent to Request a Release of Funds and Certification (NOI-RROF/C) if applicable*
- As required, wait for the applicable 7-day comment period to elapse (10-Days if posted); respond accordingly to any comments received.
- If applicable, submit the Request for Release of Funds and Certification (HUD form 7015.15) to HUD
- HUD will approve the release of funds with an Authority to Use Grant Funds (HUD form 7015.16) after the HUD 15-day public comment period if no valid objections exist.



Extraordinary Circumstances, 24 CFR 58.35 (c)

Extraordinary circumstances are situations where an EA or EIS would not normally be required, but unusual conditions necessitate increasing a project's level of review. Some examples include:

- Unique or unprecedented actions
- Actions that are substantially similar to those that normally require an EA or EIS
- Actions that may alter existing HUD policy or mandates, or
- Locations where unusual physical conditions may have a significant impact, either because the project may significantly impact the environment or because the environment could have a significant impact on residents or users of a facility



Environmental Assessment



Environmental Assessment

Under NEPA, Environmental Assessments determine whether a project will have a significant impact on the human environment. If it will not, the review concludes with a Finding of No Significant Impact (FONSI); however, if the RE makes a Finding of Significant Impact, then an Environmental Impact Statement (EIS) is required.



Environmental Assessment

If no categorical exclusion or exemption applies and the project does not require an EIS under 58.37, it is EA by default.

Generally, these projects would include new construction, demolition, major repairs or rehabilitation, or any activity involving a change in land use. EAs may also be required when extraordinary circumstances exist that elevate the level of review for an otherwise categorically excluded project.



Environmental Assessment

If a project cannot be categorized as exempt or categorically excluded as previously described, then an Environmental Assessment (EA) must be prepared.



EA Factors

In addition to compliance with the related laws and authorities at 24 CFR 58.5 and Other Requirements at 58.6, EAs must consider the potential impacts of the project on the environment. This includes an analysis of the project's direct, indirect, and cumulative impacts on land development, socioeconomic factors, community facilities and services, and natural features, referred to as the Environmental Assessment Factors.



Compliance requirements for EA

- Complete compliance with 58.5 and 58.6
- Determine the Impact of each Environmental Assessment Factor
- Perform an Impact Analysis
- For project as a whole, make a determination Finding of No Significant Impact/Finding of Significant Impact
- Publish Public FONSI notice and Notice of Intent to Request Release of Funds
- Wait for the applicable 15-day (or 30-day if controversial) comment period to elapse; respond accordingly to any comments received
- Submit the Request for Release of Funds and Certification (HUD form-7015.15) to HUD



Environmental Review Analysis

Please refer to the specific WISER Curriculum Modules available through the U.S. Department of Housing and Urban Development: Office of Environment and Energy, for instruction on how to determine compliance with each environmental law and authority and how to complete the EA analysis:

- Floodplain Management
- Flood Insurance
- Wetlands Protection
- Coastal Barrier Resources
- Coastal Zone Management
- Sole Source Aquifers
- Airport Hazards
- Environmental Justice



Environmental Review Analysis

Please refer to the specific WISER Curriculum Modules available through the U.S. Department of Housing and Urban Development: Office of Environment and Energy, for instruction on how to determine compliance with each environmental law and authority and how to complete the EA analysis:

- Endangered Species
- Explosive and Flammable Facilities
- Wild & Scenic Rivers
- Farmland
- Noise Abatement and Control
- Air Quality
- Historic Preservation
- Site Contamination
- Environmental Assessment Factors



Environmental Impact Statements

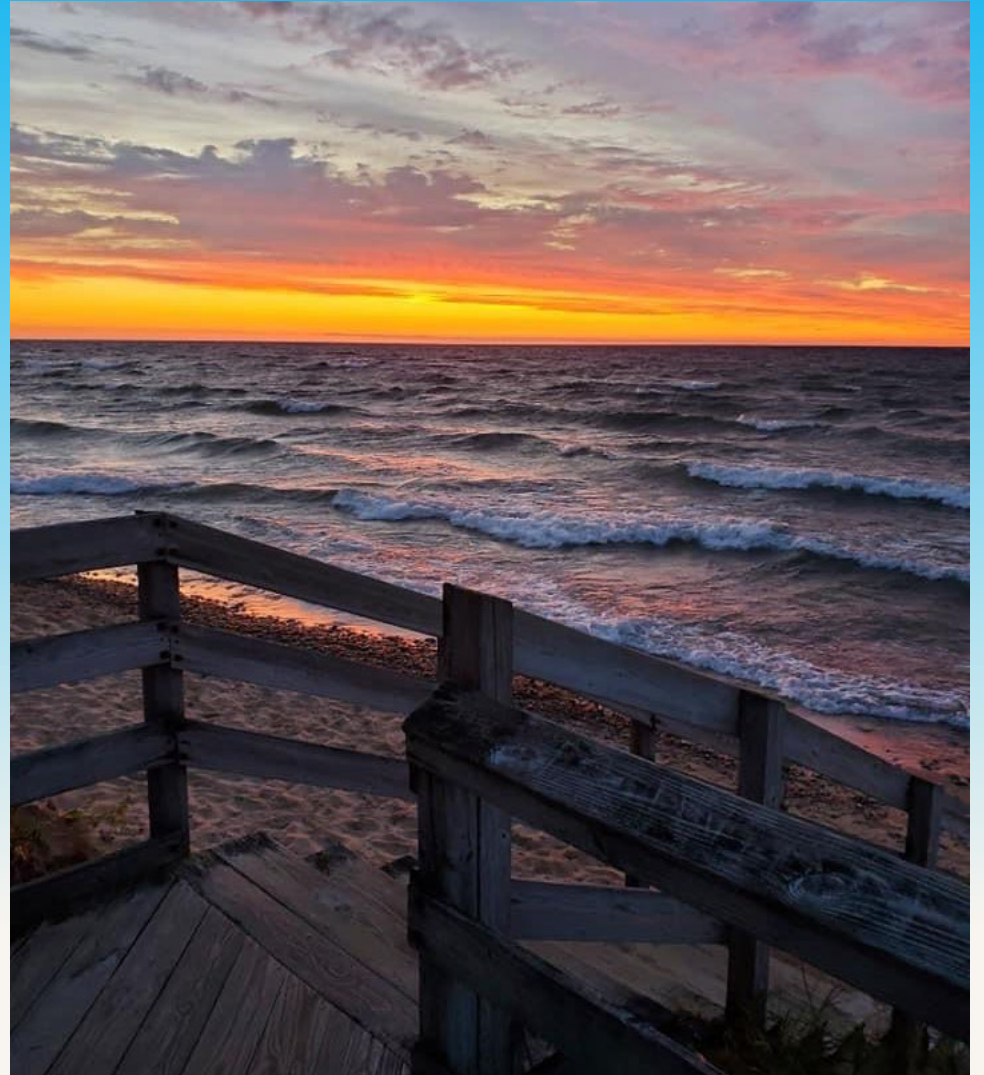
Environmental Impact Statements 24 CFR Part 58.37 are required when:

- An EA concludes in a finding of Significant Impact
- The complexity of the project exceeds the scope of an EA
- Extraordinary circumstances exist and elevate the level of review
- Projects involve 2,500 or more housing units or beds (see 24 CFR Part 58.37)

The RE must use the EIS format recommended by the Council on Environmental Quality (CEQ) regulations 40 CFR 1502.10, unless a determination is made on a particular project that there is a compelling reason to do otherwise. If a project may require an EIS, contact the Field or Regional Environmental Officer as soon as possible for assistance.



Finalizing the Review



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Finalizing the Review

Once the environmental review preparer has determined and documented compliance with all the required environmental factors, they can begin finalizing the review. Depending on the level of review, there are different measures that must be taken in order to complete the review. If the review is Exempt/CENST, the environmental review preparer can simply document their findings, gather applicable signatures, and place the ERR in the project file. However, if the review is CEST, EA or EIS, then the RE must submit a Request for Release of Funds and Certification (HUD form 7015.15) to HUD. The environmental review process for these levels of review is not officially complete until the RE receives the Authority to use Grant Funds (HUD form 7015.16).

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Exempt and CENST Reviews

The first step in completing the environmental review process is to package the Environmental Review Record (ERR). This includes making sure all compliance requirements and determinations are made. For Exempt/CENST reviews, the preparer must document their project meets one or more of the categories of activities listed at 24 CFR 58.34 or 58.35 (b) and 24 CFR 58.6. Since Exempt and CENST reviews do not require a Request for Release of Funds and Certification, the environmental review preparer can simply obtain any necessary signatures and place the ERR in the project file or wherever the RE stores its environmental records.

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CEST Reviews

After completing compliance with the laws and authorities listed at 58.5 and requirements at 58.6, the environmental review preparer must consider whether any mitigation or compliance measures are required. If there are no circumstances which require compliance with the laws and authorities in 58.5 (e.g., not in floodplain, no mitigation required, no conditions on the project, etc.) the review can convert to exempt."

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CEST Reviews

If the environmental review converts to exempt, after the RE documents the conversion to exempt determination in the ERR and the ERR is signed and dated, the project may be undertaken. The RE does not have to follow the public notice and comment procedures or submit a RROF to HUD.

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CEST Reviews

However, if one or more compliance determinations is triggered, then the environmental review cannot convert to exempt. The RE must publish the Notice of Intent to Request Release of Funds and Certification (NOI/RROF/C), allow the public to review and comment on the ERR, and submit a Request for Release of Funds and Certification (form 7015.15) to HUD. For these reviews, the environmental review is not complete until the RE receives an Authority to Use Grant Funds (form 7015.16) back from HUD.



Environmental Assessments

After completion of the compliance with 58.5 and 58.6 and EA analysis, the RE must:

- Make the Finding: either a Finding of No Significant Impact (FONSI) or finding of Significant Impact.
 - If there is a Finding of Significant Impact, then the RE must proceed with an EIS.
 - If there is a FONSI, the RE may finalize the review by following the steps below.
- Obtain all applicable signatures
 - Preparer Signature
 - Certifying Officer Signature

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Environmental Assessments

- Publish the notice of availability of the FONSI and Notice of Intent to Request Release of Funds and Certification (HUD form 7015.15)
- Read and respond to any public comments
- Submit the Request for Release of Funds and Certification (HUD form 7015.15) to HUD
- Wait for HUD's Authority to Use Grant Funds (HUD form 7015.16)

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Public Notices and Comment Period

CEST, EA and EIS reviews require the RE to inform the public of their intent to submit a Request for Release of Funds and Certification (HUD form 7015.15) and provide the public with an opportunity to comment on the environmental review. This is called the Notice of Intent to Request Release of Funds and Certification, or NOI-RROF/C. CEST reviews that convert to exempt are not required to give public notice.

The RE must post or publish the NOI-RROF/C in a manner where the public can easily find it. This could mean publishing in a local newspaper or posting in a public building such as a public library or Tribal Offices.

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Public Notices and Comment Period

The notice must include a brief project description, any findings, and the address of the office where the public can submit comments regarding the project.

In addition to the NOI-RROF/C, EAs also require a Notice of FONSI, which may be combined with the NOI-RROF/C.

HUD templates for all public notices can be found at [Environmental Review - HUD Exchange](#)

Length of Comment Periods

The following chart shows the minimum public comment periods for the various types of Notices (NOI-RROF/C, FONSI, and combined NOI-RROF/C and FONSI). In exceptional circumstances, the FONSI comment period should be extended to 30 days (see 58.46).

Type of Notice	Level of Review	Length of Comment Period
Notice of Intent to Request for Release of Funds and Certification (NOI-RROF/C) <u>Sample Notice of Intent to Request Release of Funds</u>	CEST, EA, and EIS	7 days when published or 10 days when mailing and posting
Notice of Finding of No Significant Impact (FONSI)	EA only	15 days when published or 18 days when mailing and posting
Concurrent or combined notices <u>Sample Combined Notice (FONSI/RROF/C)</u>	EA only	15 days when published or 18 days when mailing and posting

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Public Comments

The RE must consider and respond to comments and modify the environmental review or the project, if appropriate, in response to comments before submitting the RROF/C to HUD.

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Dissemination of FONSI Notices

In addition to publishing or posting the notices, the RE must also disseminate the FONSI notice to any governmental agencies with expertise in any identified issues, any members of the public known to be interested or affected by the action, the local news media, the EPA Regional Office, and the HUD Field Office. Many REs develop a standard distribution list for their HUD funded projects.

Submitting the Request for Release of Funds and Certification – HUD form 7015.15

After the NOI-RROF/C public comment period has ended, the RE must complete RROF/C (HUD form 7015.5).

There are **three** parts to RROF/C (HUD form 7015.15)

You must click on each to continue.

Part 1

Part 2

Part 3

Request for Release of Funds and Certification

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB No. 2506-0087
(exp. 07/31/2017)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s)	2. HUD/State Identification Number	3. Recipient Identification Number (optional)
4. OMB Catalog Number(s)	5. Name and address of responsible entity	
6. For information about this request, contact (name & phone number)		
8. HUD or State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)	
The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following		
9. Program Activity(ies)/Project Name(s)	10. Location (Street address, city, county, State)	
11. Program Activity/Project Description		

Program Description

In this section, the RE must provide project information on the activities that make up the particular project.

Submitting the Request for Release of Funds and Certification – HUD form 7015.15

After the NOI-RROF/C public comment period has ended, the RE must complete RROF/C (HUD form 7015.5).

There are **three** parts to RROF/C (HUD form 7015.15)

You must click on each to continue.

Part 1

Part 2

Part 3

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. The responsible entity has assumed responsibility for and complied with and will continue to comply with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian tribes and Native Hawaiian organizations, and the public.
4. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did ☐ did not ☐ require the preparation and dissemination of an environmental impact statement.
5. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
6. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
7. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

8. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
9. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity

Title of Certifying Officer

Date signed

X

Address of Certifying Officer

Environmental Certification

In this section, the RE certifies that all responsibilities for the environmental review have been fully carried out. The RE must also certify that the proposal did or did not require the preparation and dissemination of an environmental impact statement.

The Certifying Officer signs this section, and must do so *after* the public comment period has closed.

Submitting the Request for Release of Funds and Certification – HUD form 7015.15

After the NOI-RROF/C public comment period has ended, the RE must complete RROF/C (HUD form 7015.5).

There are **three** parts to RROF/C (HUD form 7015.15)

You must click on each to continue.

Part 1


Part 2

Part 3

When the Recipient of Program Funds is not the Responsible Entity

This part of the form should be completed only when the recipient of program funds is not the RE. This is most common when the recipient is a Public Housing Authority or nonprofit.

The Recipient's Authorized Officer signs this section to certify that the recipient agrees to abide by all special conditions, procedures, and requirements of the environmental review, and to advise the RE of any proposed change in the scope of the project or any change in environmental.



<input checked="" type="checkbox"/> Address of Certifying Officer	
<div></div>	
Part 3. To be completed when the Recipient is not the Responsible Entity	
The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).	
Signature of Authorized Officer of the Recipient	Title of Authorized Officer
<div></div>	<div></div>
	Date signed
	<div></div>
<input checked="" type="checkbox"/>	
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)	
<div></div>	
Previous editions are obsolete	
Form HUD-7015.15 (1/99)	



Preparing the Package for the HUD Program Office

If using HEROS, the package will be submitted electronically. If not using HEROS, when the form HUD 7015.15 is complete, the RE should prepare a package to send to the HUD Program Office.

This package should include the following:

- Copy of Notices (NOI-RROF/ C, FONSI, or combined FONSI/NOI-RROF /C) and floodplain management notices, as appropriate
- Proof of publication or posting for all Notices
- Copies of comments received and the responses to comments.
- Signed, original Request for Release of Funds and Certification (HUD form 7015.15)

The RE should not send the entire Environmental Review

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Rejection of RROF/C

The RROF/C may be rejected if any of the following conditions apply:

- HUD has knowledge that the RE did not properly conduct the environmental review
- HUD finds inaccuracies in the Certification or RROF/C
- HUD receives valid public objections attesting to the inaccuracy or non-compliance of the environmental review

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Authority to Use Grant Funds- HUD FORM 7016

If HUD receives no valid objections to the RROF/C, HUD will prepare the Authority to Use Grant Funds (HUD form 7015.16). The RE may begin spending and committing funds for the project ONLY when it receives this form from HUD.

Post Review Considerations



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Revisiting the Review

Environmental Review Records are living documents until completion of the project and implementation of all mitigation, and they may need to be updated even after the environmental review has been completed. The three major reasons for revisiting a review are to:

1. Record mitigation measures
2. Reevaluate the project, or
3. Add another source of funding

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Mitigation Measures and Conditions

Mitigation measures or conditions for approval are sometimes necessary for a project to be in compliance. Mitigation measures are steps taken to avoid or minimize any possible adverse effects of the action and must be included in the project implementation. These measures are often implemented after the environmental review is complete and the project is underway. Documentation demonstrating that the mitigation measures have been completed should be included in the ERR.

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Reevaluation

After the environmental review is completed and while the project is still underway, a reevaluation of a project will be necessary under the following circumstances (24 CFR Part 58.47):

- The recipient proposes substantial changes in the nature, magnitude or extent of the project (e.g., adding new activities not anticipated in the original scope of the project or proposing selection of an alternative not considered in the original review); or
- There are new circumstances or environmental conditions which may affect the project or have a bearing on its impact (e.g., unexpected conditions discovered during the implementation of the project).

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Reevaluation

The ERR should be updated, and the RE should confirm whether the original findings are still valid. If the original findings are no longer valid, a new environmental assessment must be prepared.

Note that if the environmental review is completed and the project is completed, then any proposed change in the scope reviewed requires a separate ER.

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Supplemental Assistance

Additional HUD funding sources are sometimes added to a project after the environmental review has been completed. For these new sources a CENST environmental review can be performed, if the original environmental review and the additional sources of funding all fall under Part 58 and the same RE is performing the review (see 24 CFR Part 58.35(b)(7)).

If new funding sources are added prior to the completion of the environmental review, and all of the funding sources are under the same part (50 or 58), then the new funding can be included in the existing environmental review.



Useful Life and Binding Commitments





No. 2020-02
September 9, 2020

PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

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

TOPIC: Useful Life and Binding Commitments

Purpose: The intent of this guidance is to give IHBG recipients information about maintaining IHBG-assisted housing and non-housing projects for the useful life of the property. It will clarify (1) what will be considered “satisfactory to the Secretary”; and (2) what constitutes an acceptable binding commitment. This Program Guidance has been updated to include a [FHA Loan Rider to NAHASDA](#) and replaces Program Guidance 2014-09.

Background: Section 205(a)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), requires that housing units remain affordable for either (1) the remaining useful life of the property (as determined by the Secretary) or (2) for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purpose of NAHASDA. Useful life is the time period during which an assisted property must remain affordable.

NAHASDA gives the Secretary the authority to determine the housing units’ useful life or other period of time during which the units must remain affordable. The IHBG regulation at 24 CFR § 1000.142, states that to the extent required in the Indian Housing Plan (IHP), each IHBG recipient shall describe its determination of the useful life of the assisted housing units in its developments in accordance with the local conditions of the Indian area of the recipient. By finding the IHP to be in compliance with the statute, the Department would be determining the useful life to be in accordance with NAHASDA.

TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Purpose: The intent of this guidance is to give IHBG recipients information about maintaining IHBG-assisted housing and non-housing projects for the useful life of the property. It will clarify (1) what will be considered "satisfactory to the Secretary"; and (2) what constitutes an acceptable binding commitment. This Program Guidance has been updated to include an FHA Loan Rider to NAHASDA and replaces Program Guidance 2014-09.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Background: Section 205(a)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), requires that housing units remain affordable for either (1) the remaining useful life of the property (as determined by the Secretary) or (2) for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purpose of NAHASDA. Useful life is the time period during which an assisted property must remain affordable.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

NAHASDA gives the Secretary the authority to determine the housing units' useful life or other period of time during which the units must remain affordable. The IHBG regulation at 24 CFR § 1000.142, states that to the extent required in the Indian Housing Plan (IHP), each IHBG recipient shall describe its determination of the useful life of the assisted housing units in its developments in accordance with the local conditions of the Indian area of the recipient. By finding the IHP to be in compliance with the statute, the Department would be determining the useful life to be in accordance with NAHASDA.



TOPIC: Useful Life and Binding Commitments No. 2020-02

September 9, 2020

The NAHASDA statute and regulations also require that this affordability period be secured through binding commitments satisfactory to the Secretary. The purpose and intent of requiring binding commitments is to guarantee that the housing will remain affordable for its useful life (affordability period). The binding commitment requirement under NAHASDA not only applies to the parties, but it also applies to the property. The purpose and intent of requiring binding commitments is to guarantee that the housing will remain affordable for its useful life regardless of who may have entered into a contractual agreement or who may be in possession. The binding commitment required cannot be satisfied solely with a contract between the parties. Pursuant to 24 CFR § 1000.144, in order for it to be satisfactory to HUD, a written use restriction that is placed on the assisted property and must run with the land; hence, binding commitments must be recorded.

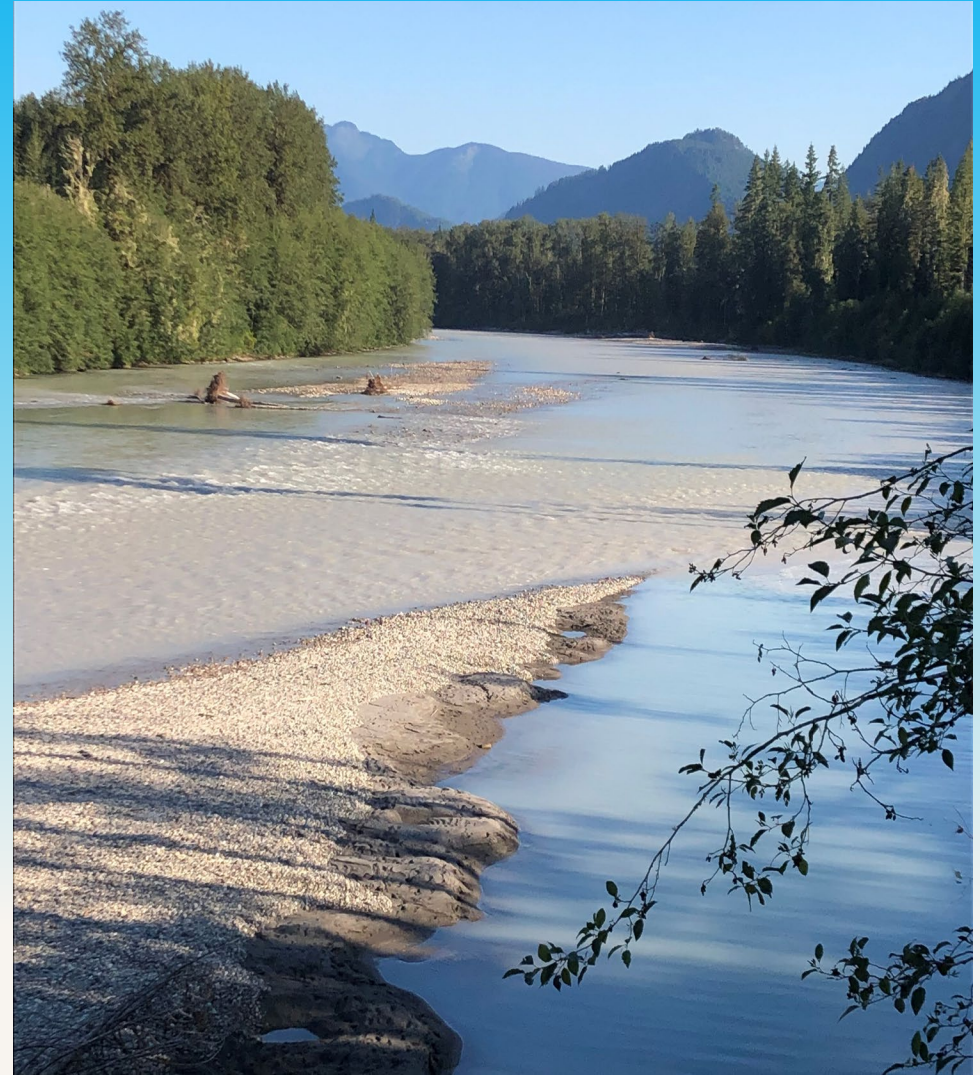


TOPIC: Useful Life and Binding Commitments No. 2020-02

September 9, 2020

Affordability Period: The first primary objective of NAHASDA, as stated in Section 201(a)(1), is: "...to develop, maintain, and operate affordable housing...for occupancy by low-income Indian families." Every time IHBG funds are spent on a property, an investment is made in low-income families in the community. The return on that investment is the period of continued future use during which the property will be available for use by low-income families. That period of future use is the affordability period or useful life for that property.

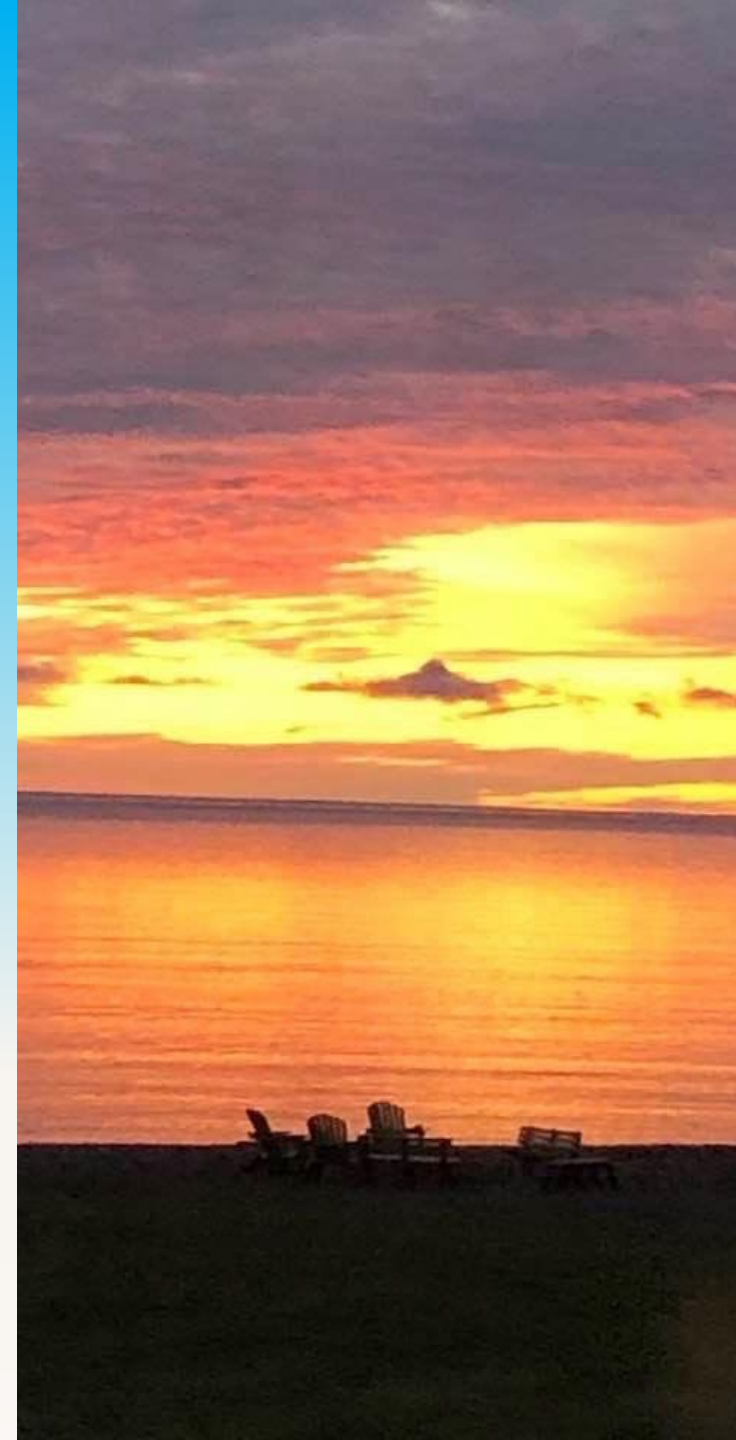
Housing units that are constructed, developed, and/or rehabilitated using IHBG funds must establish a useful life to ensure the property will remain available to low-income families.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Determination of Affordability Period: Generally, the affordability period is the period of time during which the property will be available for use by low-income families. It should be the remaining useful life of the property, as approved by HUD, or the longest feasible period of time consistent with sound economics and the purposes of NAHASDA, as approved by HUD.

In determining a property's affordability period or useful life, a recipient could use a tiered schedule similar to that used in the Department's HOME program to determine the affordability period. This would specify a number of years during which the housing must remain affordable, dependent upon the amount of IHBG funds being invested in the property per occurrence. For example:



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

IHBG Funds Invested Affordability Period*

Under \$5,000	6 months
\$5,000 to \$15,000.....	5 years
\$15,001 to \$40,000	10 years
Over \$40,000	15 years
New construction or acquisition of newly constructed housing	20 years



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NOTE: For relatively minor investments, the designated affordability period can be some nominal period of time, but NAHASDA requires that some period be designated, and that it be secured with a binding commitment. Additionally, if the reasonable affordability period is less than one year, a binding commitment is required; however, it is not necessary to record the written use restriction for purposes of complying with NAHASDA. It is good business practice,

However, to record the written use restriction for purposes of giving notice to subsequent purchasers. The dollar ranges and/or the corresponding number of years may differ from those shown depending upon local conditions. The recipient may choose to assign a longer affordability period in order to ensure the availability of a larger continuing affordable housing supply for low-income families.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

If the recipient chooses to use some other method of assigning the affordability period, the IHP should describe how the method provides for an affordability period with appropriate consideration given to any unique local conditions. In setting a useful life, a specific number of years should be given for the affordability period, not a range of years (e.g., 30 to 40 years) or a general statement. The number of years should also be without ambiguous qualification (e.g., "about," "approximate," "if properly maintained," "planned," "expected," "estimated," etc.). Similarly, the designated affordability period should in no way be contingent upon the continuation of IHBG funding.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Reporting Useful Life: A description of the recipient's plan or system for determining the useful life of the housing it assists with IHBG funds must be provided in the IHP. A record of the current, specific useful life for housing units assisted with IHBG funds should be maintained in the recipient's files and be available for review.

Types of Properties and Assistance Covered: The useful life provisions apply to all housing units and non-housing units assisted with IHBG funds except for Mutual Help homes developed under the U.S. Housing Act of 1937 (see 24 CFR § 1000.145).



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Housing Units: The initial homebuyer, and any subsequent owners that purchase the property during the period of its useful life, need only qualify as low-income at the time of their purchase. In other words, if the initial owner seeks to sell the property while it still has a remaining useful life or affordability period assigned to it, the new buyer must qualify as an eligible family at the time of his or her purchase; however, the transfer of a homeownership unit to a family member or household member is not subject to a binding commitment for the remaining useful life of the property. Thus, if a homeownership unit has been transferred to a family member or household member, then the written use restriction will not terminate, even though it will not apply.



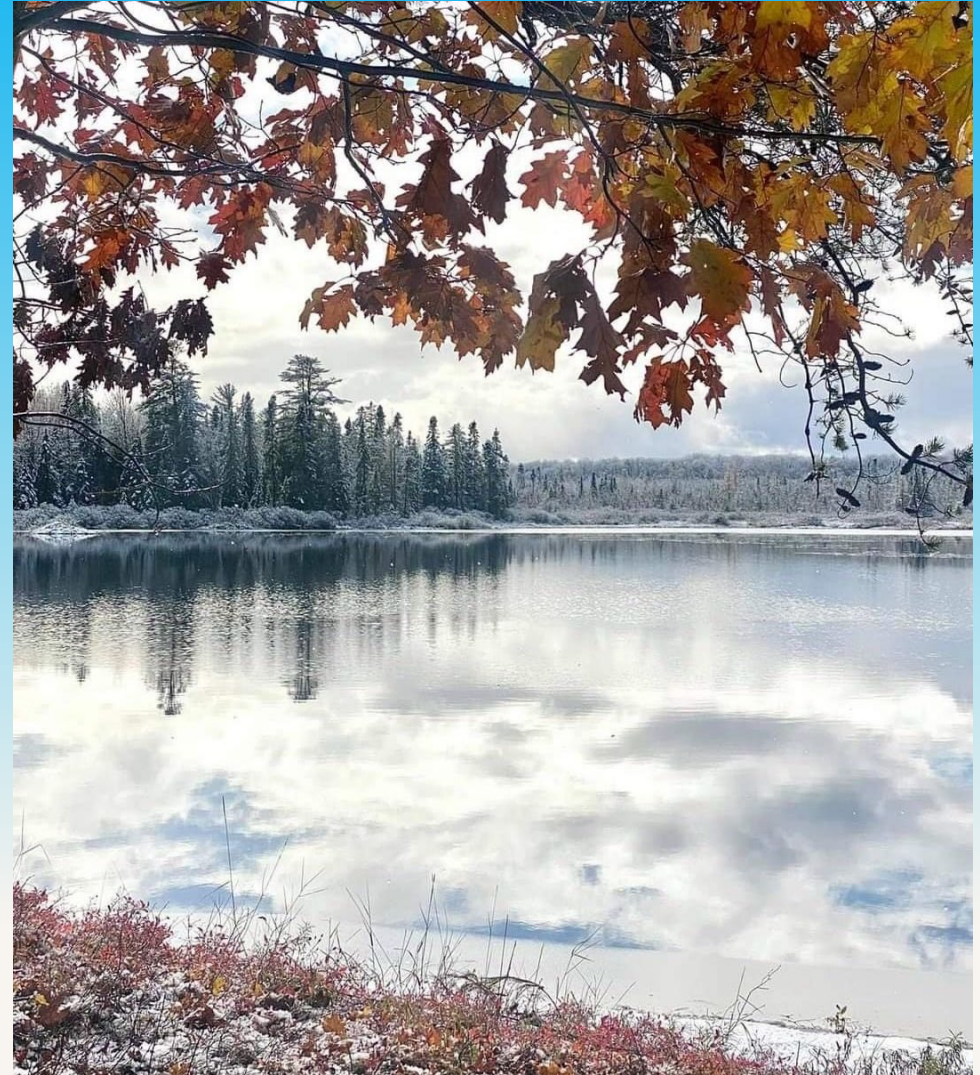
TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Housing Units: However, any subsequent transfer by the family member or household member to a third party (not a family member or household member) is subject to any remaining useful life or affordability period under a recorded binding commitment. Should the home be sold during its useful life period to a new purchaser that does not qualify as a family member, household member, or an eligible family and funds are not repaid to the recipient's IHBG program in accordance with its useful life plan, the Secretary will take appropriate action against the IHBG recipient in accordance with section 401(a) of NAHASDA.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Housing Units: Similarly, low-income owner/occupants of privately owned housing that receive IHBG funded assistance, whether in the form of a loan or a grant, for moderate or substantial rehabilitation, need only be low-income at the time the assistance is provided. However, there should be a binding commitment accompanying the assistance that guarantees an appropriate useful life or affordability period and provides for remedies for the breach of such useful life provision upon transfer of ownership during the assigned useful life. The useful life and binding commitment requirements apply to all housing units assisted with IHBG funds, including units developed through NAHASDA's Title VI Loan Guarantee program.



TOPIC: Useful Life and Binding Commitments No. 2020-02

September 9, 2020

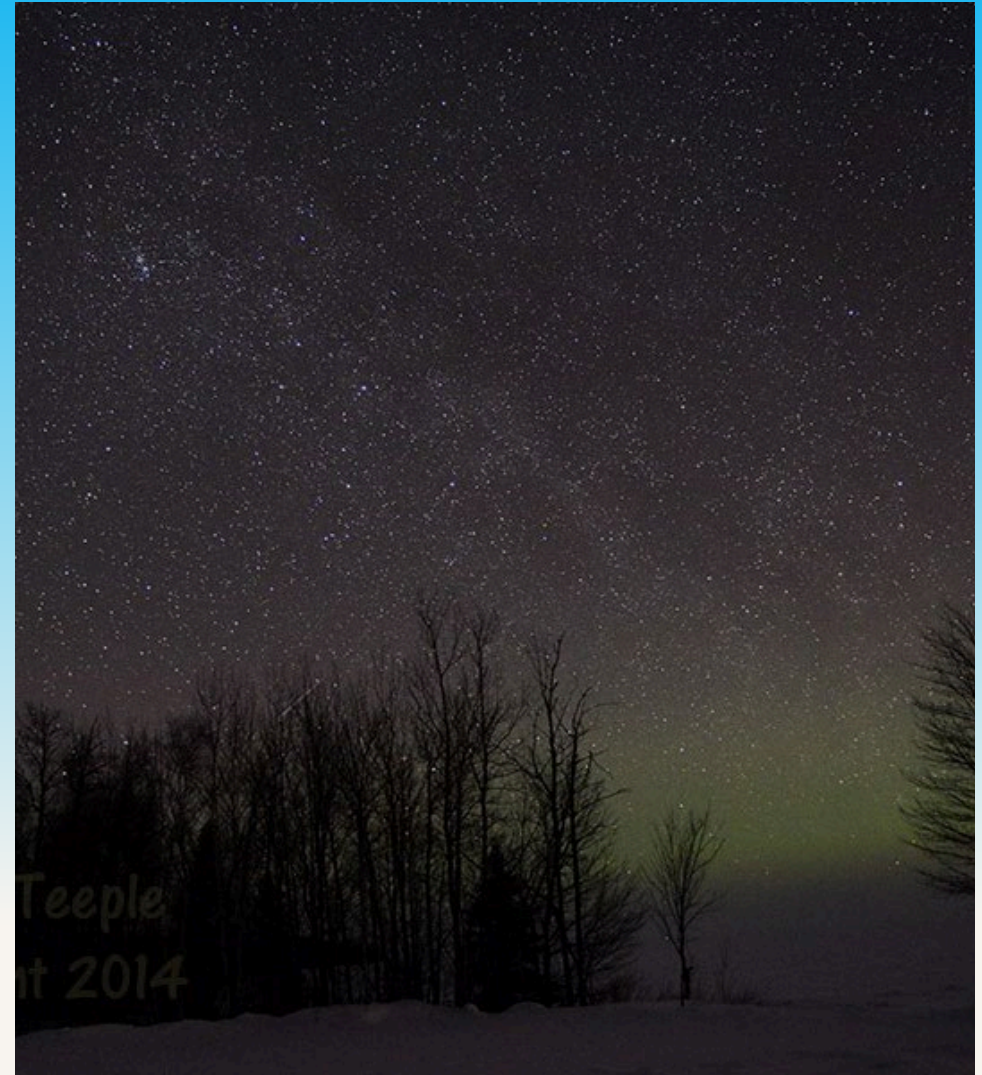
2. Model Activities/Non-housing: The useful life provisions apply to all model activities and non-housing projects constructed, developed, or acquired with IHBG funds to ensure the remaining useful life of the property will be maintained for affordable housing activities. Non-housing projects include community centers and model activities established to provide affordable housing activities.

Record of Use Restrictions: Records must be kept for all use restrictions. There is a sample Record of Use Restrictions form with the guidance that can be used by recipients to record both NAHASDA and other affordability or use restrictions. Restrictions can vary both in how they are imposed, and model reporting form is designed to be the registry of all of the various use restrictions that are placed on recipient properties.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Acceptable Binding Commitments: As mentioned earlier, NAHASDA requires that there be binding commitments satisfactory to the Secretary in place to ensure that a housing unit will remain affordable for its useful life. When IHBG funds are used, either in the form of a grant or a loan, to purchase, construct, or rehabilitate a residence, there must be a written agreement in place between the IHBG recipient and the individual who is being assisted with the IHBG funds. These written use agreements must include provisions for the IHBG recipient's useful life or affordability period restrictions as specified in its IHP.



TOPIC: Useful Life and Binding Commitments No. 2020-02

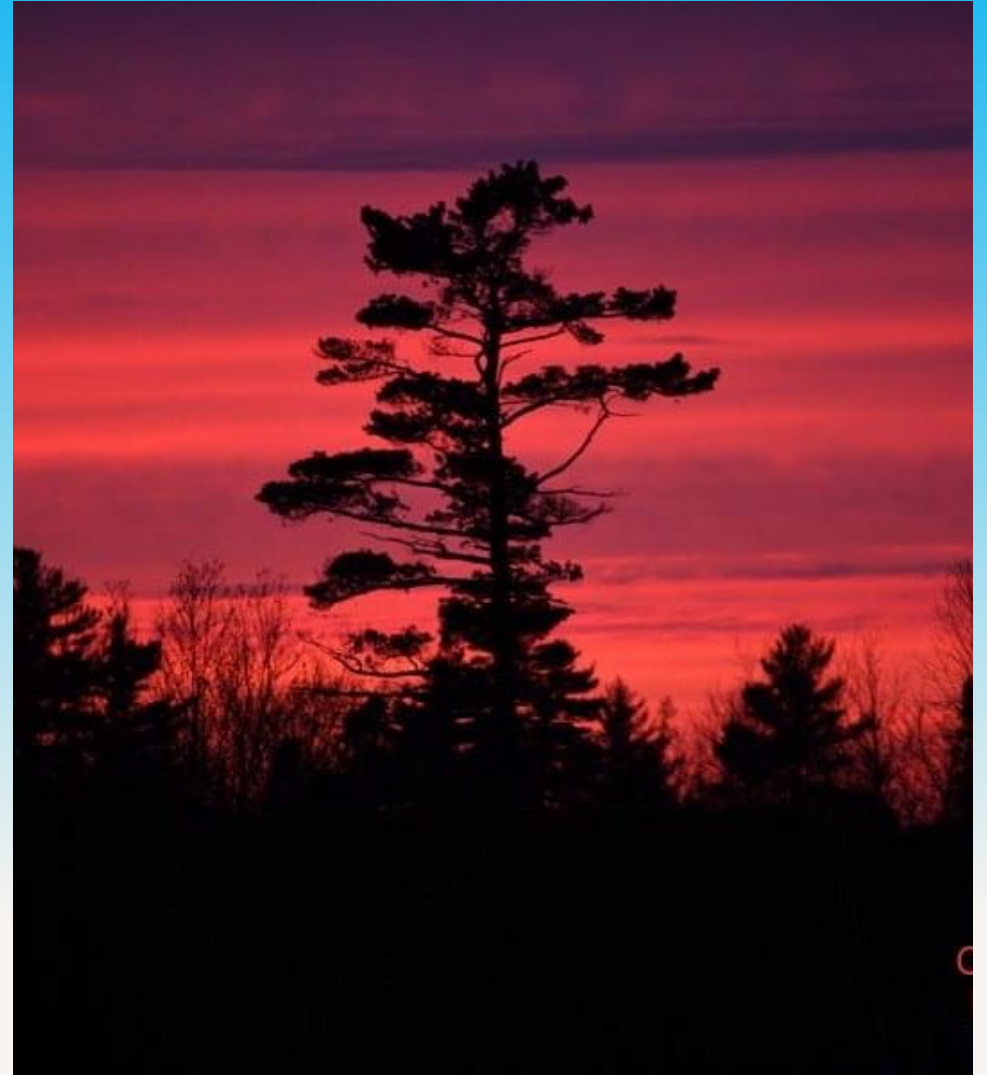
September 9, 2020

Acceptable Binding Commitments: The provisions must be imposed by recorded deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the useful life restrictions may terminate upon foreclosure by a lender (or transfer in lieu of foreclosure), as long as the action is not for the purpose of avoiding low-income affordability restrictions. The written use agreement may contain a schedule outlining a payback of a decreasing balance of assistance or percentage equity over the useful life or affordability period that would have to be reimbursed to the recipient's program if a subsequent occupant does not meet the IHBG eligibility requirements.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Types of Binding Commitments: There are a number of different ways to place both NAHASDA and other affordability or use restrictions on assisted properties. The six attached samples of Useful Life/Use Restriction Agreements (two for fee land, two for trust land, one for model activities/non-housing projects and one for FHA insured loans) can be used for this purpose. Any form used must be properly recorded with the appropriate land records offices. Additional use restrictions may be imposed on such properties as long as they do not contradict the NAHASDA useful life restrictions.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Useful Life/Use Restriction Agreements for Use on Fee Land: When a restriction is placed on fee land, a covenant running with the land is imposed on the property to enforce the restriction:

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION USEFUL LIFE/USE RESTRICTION (Indian Housing on Fee Land with Single Recovery Amount). This covenant requires that the full amount of NAHASDA funds invested in the property be refunded in all cases of default.



TOPIC: Useful Life and Binding
Commitments No. 2020-02
September 9, 2020

Useful Life/Use Restriction Agreements for Use on Fee Land: When a restriction is placed on fee land, a covenant running with the land is imposed on the property to enforce the restriction:

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION USEFUL LIFE/USE RESTRICTION (Indian Housing on Fee Land with Prorated Recovery Amount). This covenant requires that the amount of NAHASDA funds invested in the property be prorated over the life of the restriction. In the event of a default, only the current prorated amount must be refunded.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Useful Life/Use Restriction Agreements for Use on Trust Land:
When restrictions are placed on trust land, a lease amendment or addendum to the lease is used to enforce the restriction:

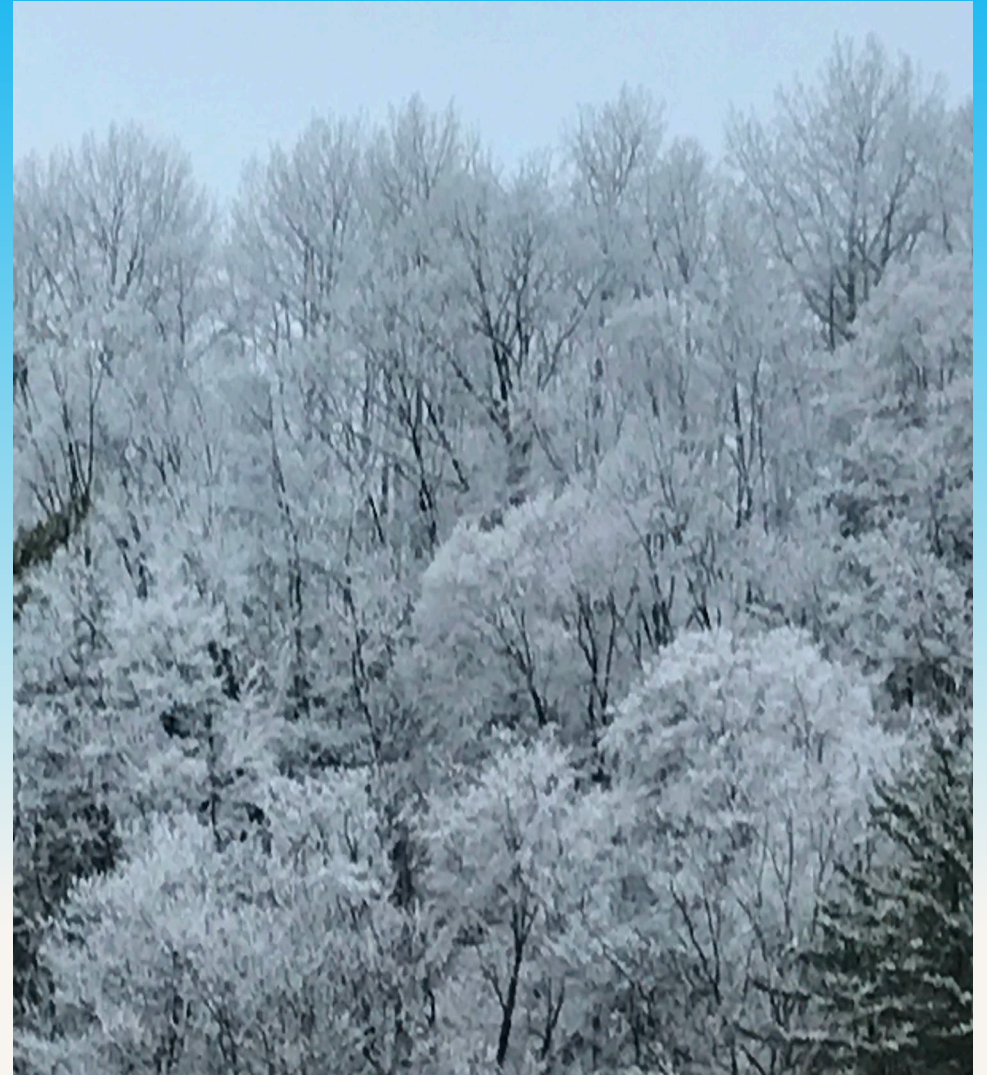
NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION USEFUL LIFE/USE RESTRICTION LEASE ADDENDUM/AMENDMENT (Trust Land with Single Recovery Amount). This lease document requires in all cases of default that the full amount of NAHASDA funds invested in the property be refunded.



TOPIC: Useful Life and Binding Commitments No. 2020-02 September 9, 2020

Useful Life/Use Restriction Agreements for Use on Trust Land: When restrictions are placed on trust land, a lease amendment or addendum to the lease is used to enforce the restriction:

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION USEFUL LIFE/USE RESTRICTION LEASE ADDENDUM/AMENDMENT (Trust Land with Prorated Recovery Amount). This lease document requires that the amount of NAHASDA funds invested in the property be prorated over the life of the restriction. In the event of a default, only the current prorated amount must be refunded.

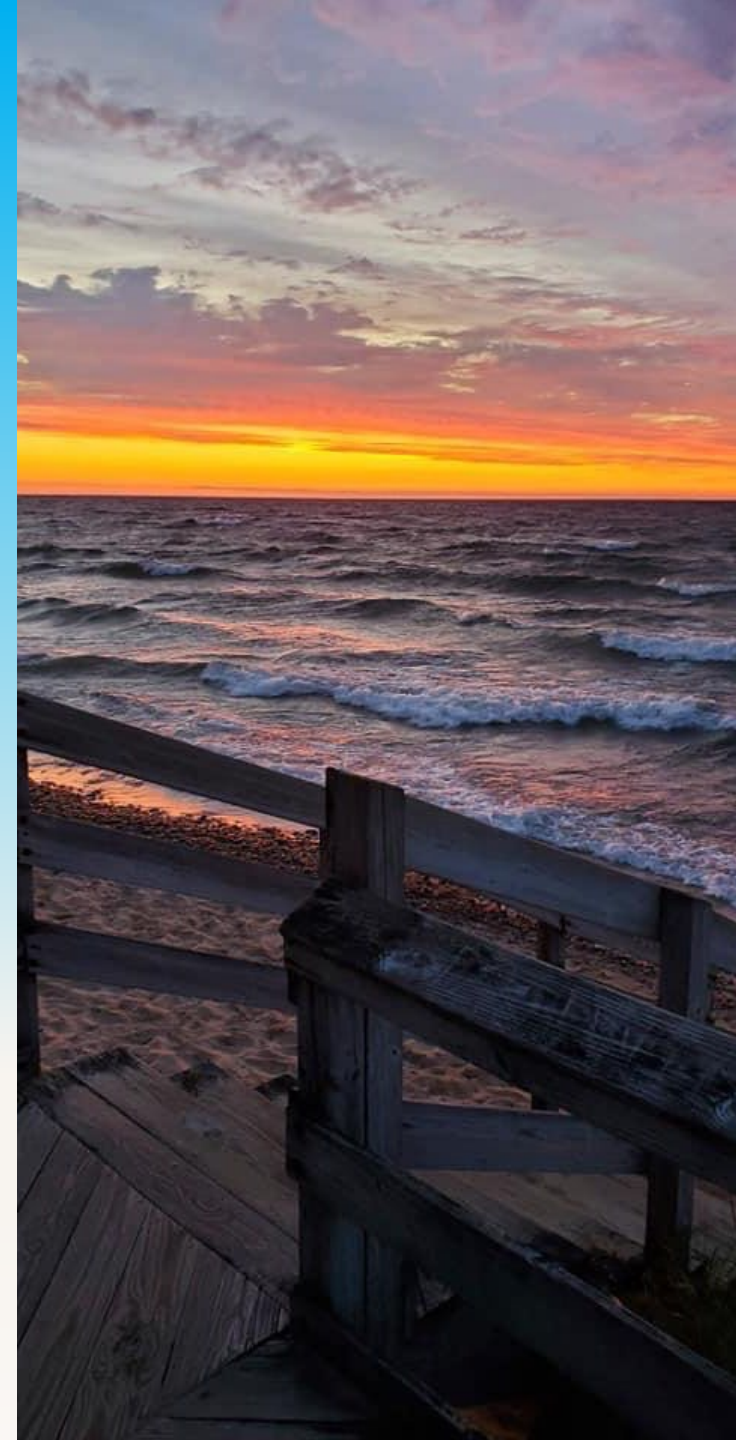


TOPIC: Useful Life and Binding Commitments No. 2020-02

September 9, 2020

FHA Loan Rider to NAHASDA Useful Life/Use Restriction

Some grantees use their IHBG funds to provide down payment assistance to low-income Native American borrowers who receive a loan insured by FHA. Because of FHA requirements under 24 CFR 203.41 the sample useful life restrictions contain language that limits transfer of the property in the event of foreclosure. The FHA Loan Rider addresses the FHA requirements and should be used when NAHASDA funds are invested in the property.



Break Time





Other Various Federal Requirements

Other Federal Requirements

- Uniform Relocation Assistance & Real Property Acquisition Act of 1970 -assures fair compensation for displacement of families
- Davis-Bacon Act of 1931 -Prevailing wages (Tribal prevailing wages can preempt Davis-Bacon if adopted by Tribe)
- National Environmental Policy Act (NEPA) of 1969
- Flood Disaster Protection Act of 1973
- Lead-based Paint Poisoning Prevention Act of 1973
- Uniform Administrative Act (2 CFR Part 200) — Consolidation of all former OMB Guidance for Uniform Administrative requirements, Cost Principles, and Audit Requirements for Federal Awards



NAHASDA

Other Federal Law Requirements

Non-Discrimination Laws:

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



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

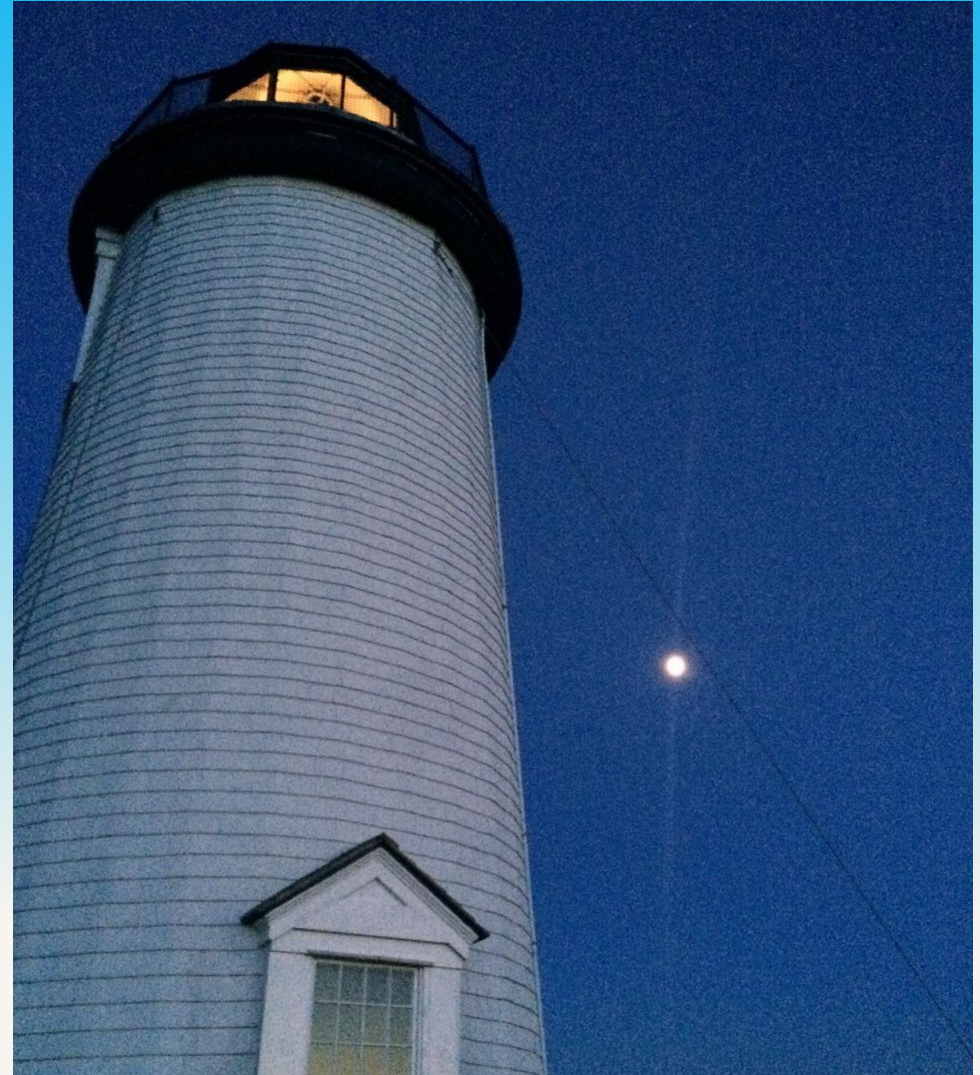
- National Environmental Policy Act (NEPA – 42 USC 4321) NEPA requires that you determine, prior to the expenditure of any funds, that the activity will have no harmful effects on the environment. Tribes may accept the responsibility for conducting environmental reviews (under 24 CFR Part 58) or may choose to have HUD complete the review for them (under 24 CFR Part 50).
- Davis Bacon Act (DBRA) The Davis Bacon Act (46 Stat 1494: 40 USC Chapter 3 Section 276 and all subsections) requires workers be paid no less than a determined wage for projects over \$2,000. The tribe can adopt its own prevailing wage rates that supersede Davis Bacon.

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

- Indian Civil Rights Act (ICRA) The Indian Civil Rights Act (925 USC 1301-1303) requires that the tribe and subordinate entities provide due process.
- Indian Self-Determination and Education Assistance Act The Indian Self-Determination and Education Assistance Act [25 USC 450 e (b)] requires preference for Indians in employment when using federal funds under certain circumstances.

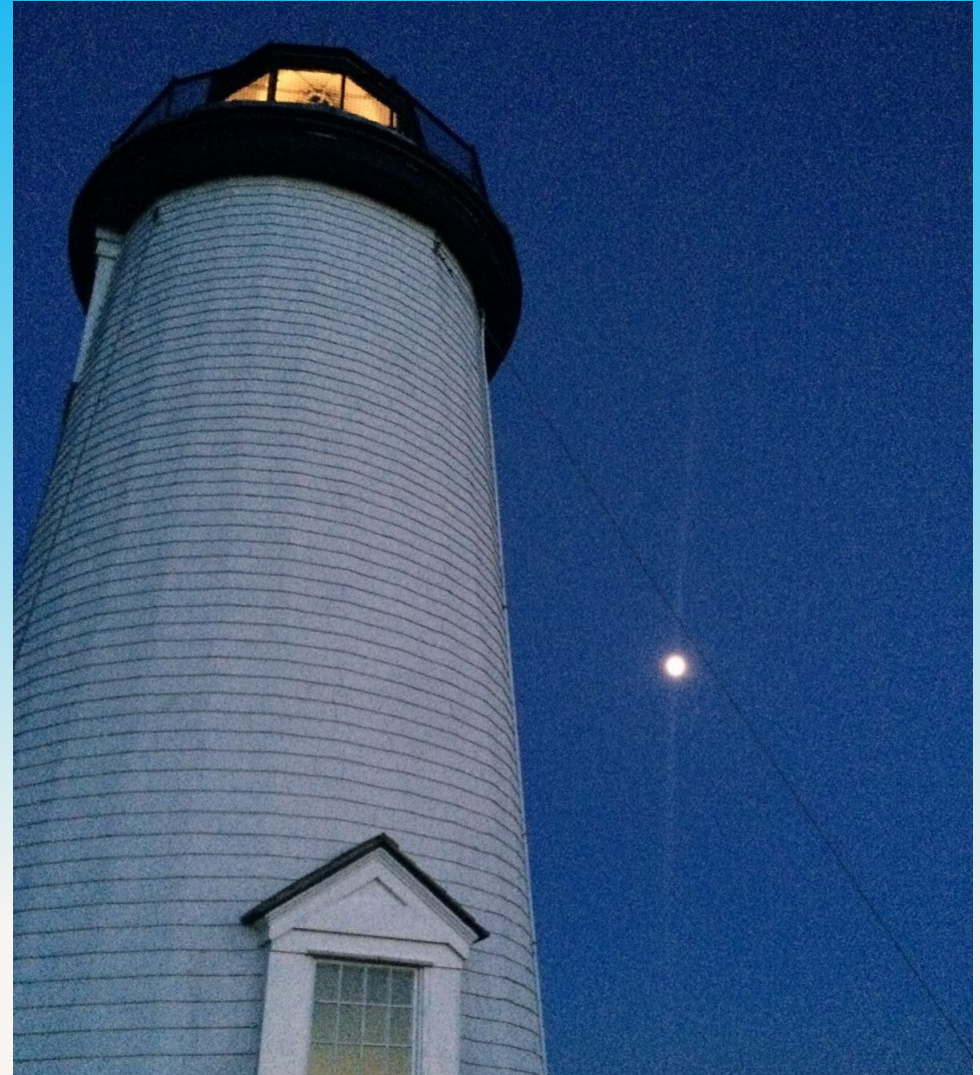
Certifications

- (1) In accordance with applicable statutes, the recipient certifies that: It will comply with title II of the Civil Rights Act of 1968 in carrying out this Act, to the extent that such title is applicable, and other applicable federal statutes.
- (2) In accordance with 24 CFR 1000.328, the recipient receiving less than \$200,000 under FCAS certifies that: There are households within its jurisdiction at or below 80 percent of median income.



(3) The following certifications will only apply where applicable based on program activities.

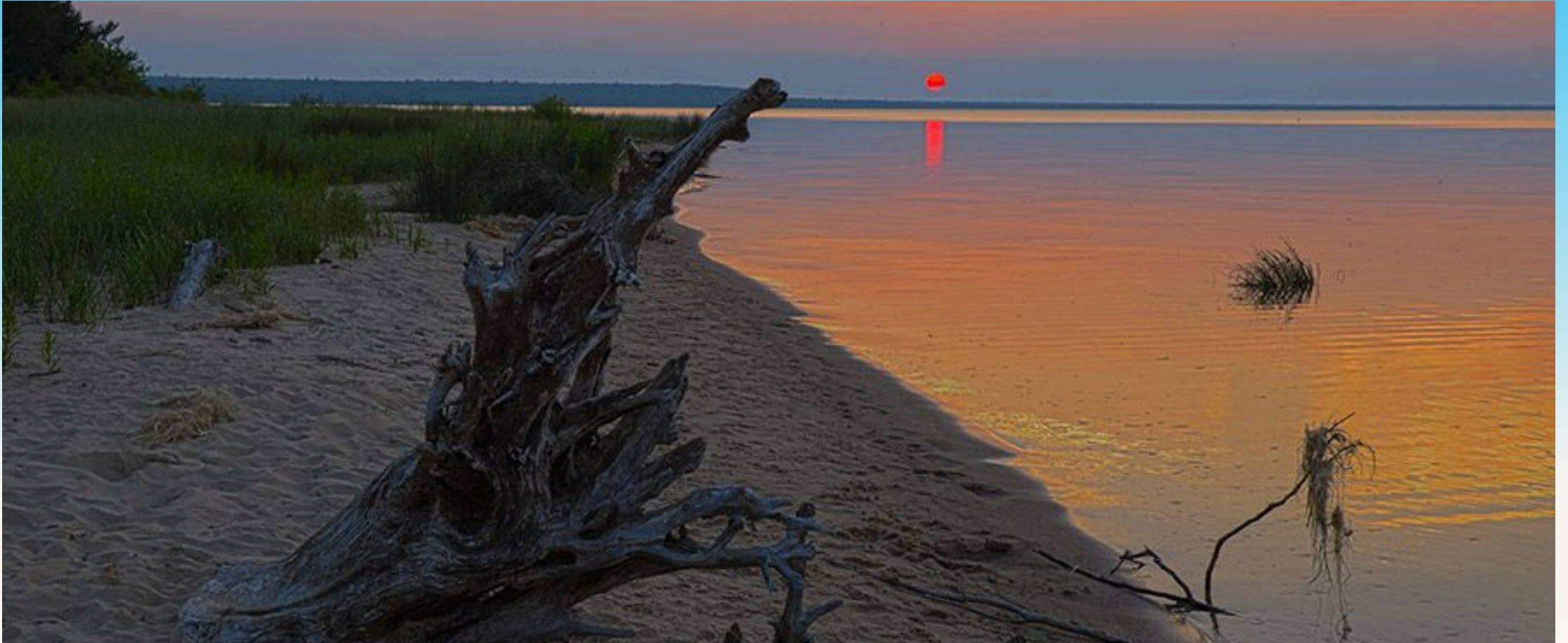
- a. The recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under NAHASDA, in compliance with such requirements as may be established by HUD;
- b. *Policies are in effect and are available for review by HUD and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under NAHASDA;*
- c. Policies are in effect and are available for review by HUD and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under NAHASDA; and
- d. *Policies are in effect and are available for review by HUD and the public governing the management and maintenance of housing assisted with grant amounts provided under NAHASDA.*



OTHER FEDERAL LAWS



Uniform Relocation Assistance & Real Property Acquisition



Relocation and Acquisition



Must comply with Uniform
Relocation Act (URA) (§1000.14)



Maintain records to demonstrate
compliance

Relocation and Acquisition



Notify relocating families, individuals, businesses, and other affected parties



Paying temporary relocation and displacement benefits

The cost of relocation assistance is an eligible project cost and may be paid from tribal, TDHE, or other funding source



Real Property NAHASDA Specific Requirements §1000.14 Relocation and Real Property Acquisition

Applicable Relocation and Real Property acquisition policies applicable to the NAHASDA program shall include/cover the following (§1000.14):

- a) Real property acquisition requirements (subject to 49 CFR Part 24, Subpart B):
 - 1. Must be based on appraisal value (can accept donated property or purchase property as less than FMV).
 - 2. Requires HUD approval if purchase price exceeds FMV.
- b) Minimize displacement – Must take all reasonable steps to minimize the displacements of persons (households, businesses, nonprofit orgs).
- c) Temporary relocation – Covers tenants and homebuyers relocation costs and adequate advance notice.

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Relocation and Acquisition

Acquisition is subject to 49 CFR part 24, subpart B

- Negotiating fair market value when voluntary transaction
- Follow involuntary procedures when required by URA

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Real Property NAHASDA Specific Requirements §1000.14 Relocation and Real Property Acquisition

- Relocation assistance for displaced persons (permanent relocation) must comply with the URA and Real Property Acquisition Act of 1970, as amended, and implementing regulations at 49 CFR Part 24.
- Appeals to the recipient – Allows written appeal by persons to the recipient.

Responsibility of recipient:

- Must certify it will comply with the URA (Uniform Relocation Act), the regulations at 49 CFR Part 24, and provisions of §1000.14
- The cost of the required relocation assistance is an eligible NAHASDA cost, and such assistance may also be paid with funds available to the recipient from other funding sources.
- The Recipient shall maintain records in sufficient detail to demonstrate compliance with §1000.14.



Real Property NAHASDA Specific Requirements §1000.156 & §1000.158

- Affordable Housing developed, acquired, or assisted under the IHBG program is subject to limitations on cost or design standards (§1000.156):
- Must be of moderate design defined as “housing that is of a size and with amenities consistent with unassisted housing offered for sale in the Tribe’s general geographic area to buyers who are at or below the area median income.
- Applies to all housing assisted such as:
- Development activities, acquisition, new construction, moderate or substantial rehabilitation of affordable housing or homebuyer assistance and model activities.

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Real Property NAHASDA Specific Requirements Non-Dwelling Cost/Design Standards §1000.60 & §1000.62

Standards must be able to support the reasonableness and necessity for the factors used in the activity.

Must document need or problem to be solved, how it supports the affordable housing activities, etc., as required in §1000.62(b)(2).

Real Property

NAHASDA Specific Requirements §1000.156 & §1000.158

Per §1000.158, the ways in which a recipient demonstrates meeting the moderate design requirements described in §1000.156 must use either:

- a. The TDC limits published by HUD [PIH 2022-16], or
- b. Adopt a written standards for its affordable housing programs that reflect the requirements specified in §1000.156 (must be of moderate design), and must describe the type of housing, explain the basis of the standards, and use similar housing in the Tribe's general geographic area.
 - Must be made available for review by the public and upon request by HUD.
 - Must complete a comparison of the cost using its housing standards and the TDC for the area.
 - Does not require HUD approval if cost does not exceed 10% of the TDC maximum cost of the project.



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Real Property NAHASDA Specific Requirements Non-Dwelling Cost/Design Standards §1000.60 & §1000.62

Non-dwelling structures must support an affordable housing activity and design, size and features and amenities must be reasonable. **[§1000.60]**

If funds from two different sources are used to develop, the standards of the funding source with the more restrictive rules apply.

The recipient may adopt written standards for non-dwelling structures, describe criteria to be used for the cost, size, design, etc.

FLOOD INSURANCE



Flood Insurance

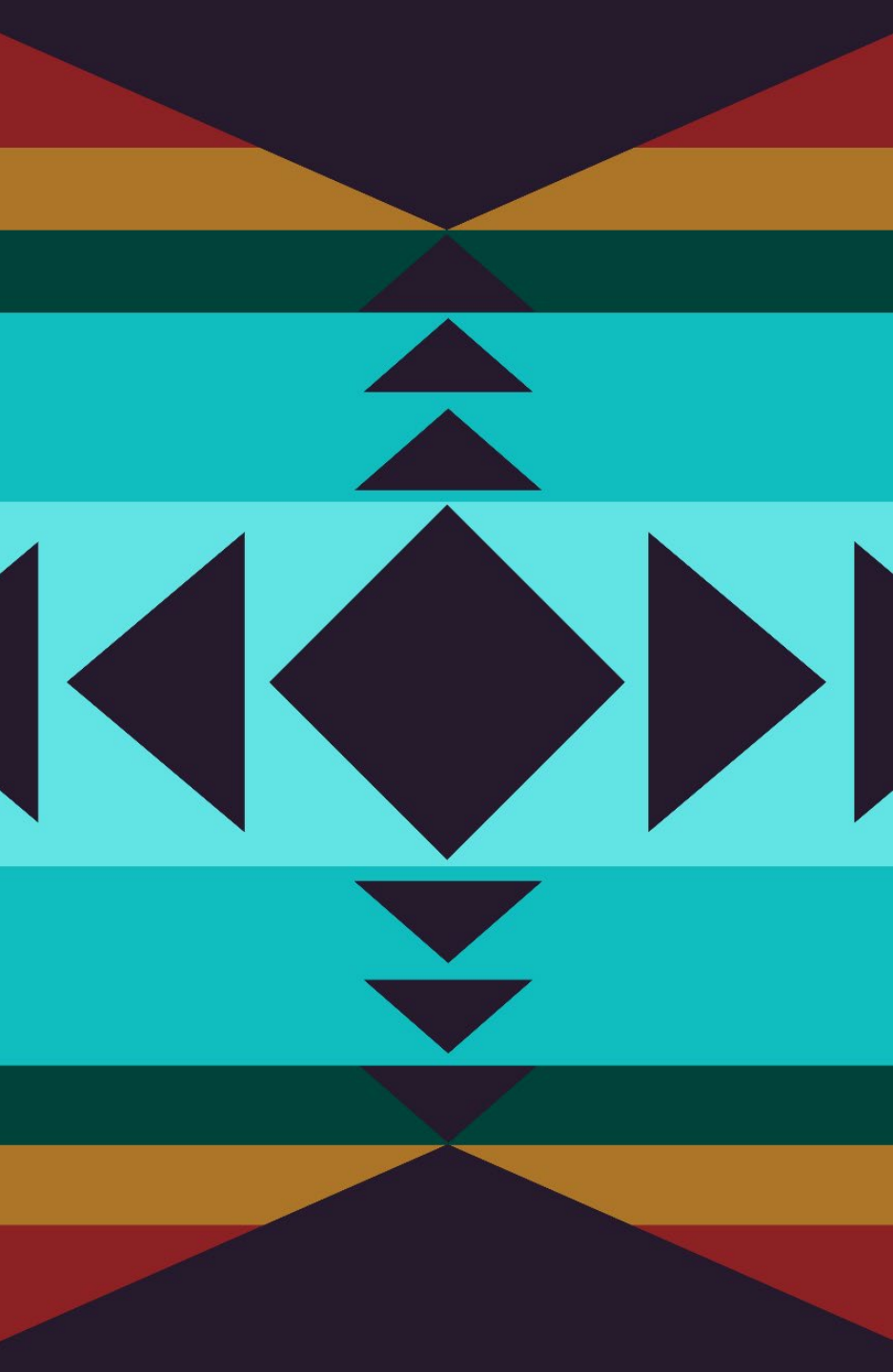


If in FEMA identified special flood hazard area requires either

**Participation in National Flood Insurance Program or
Private flood insurance**



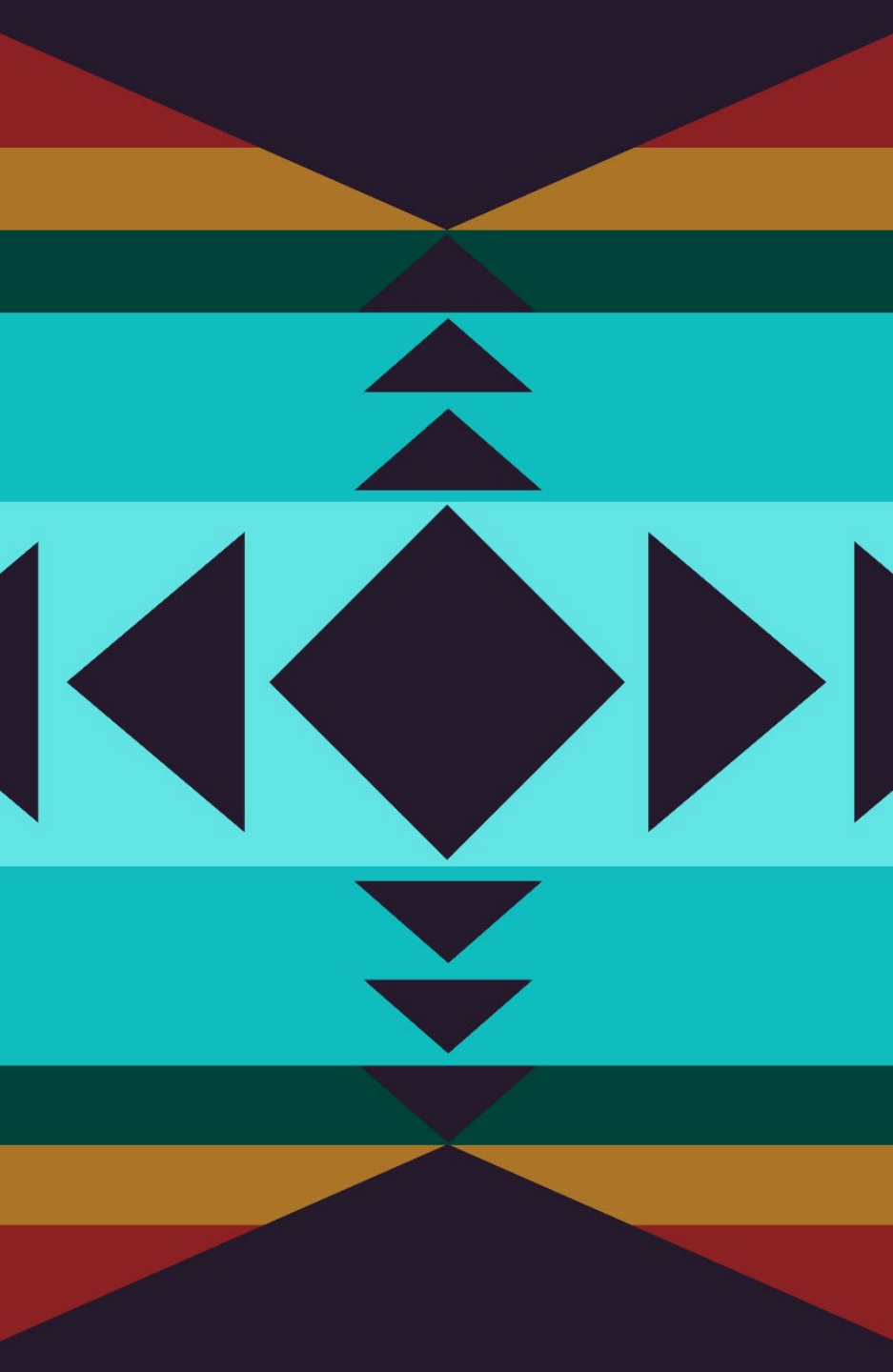
Many reservations have not been mapped by FEMA



§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the “community” is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

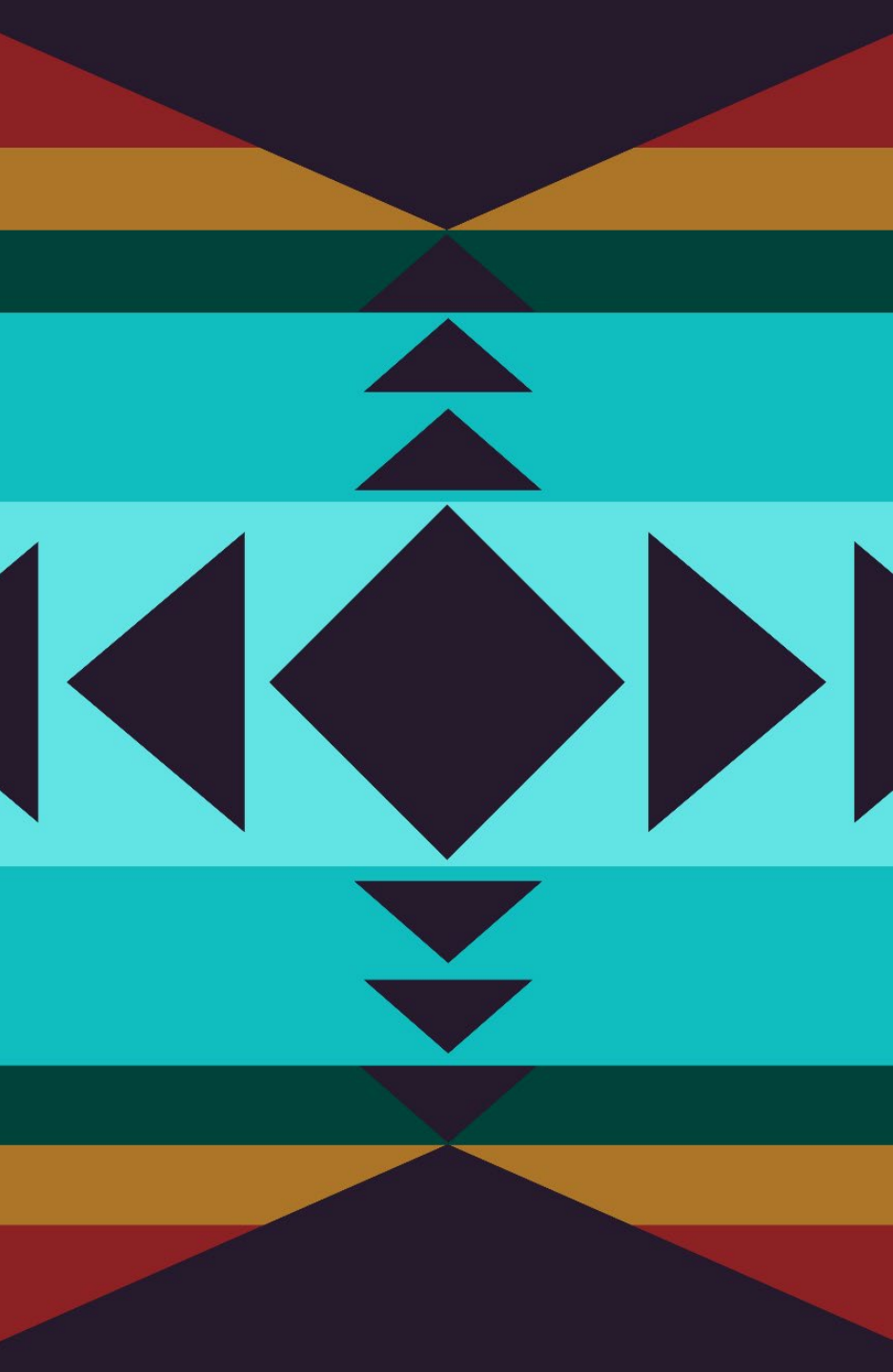
A decorative vertical strip on the left side of the slide. It features a series of horizontal bands in dark purple, red, orange, and teal. Overlaid on these bands are various geometric shapes, including triangles and diamonds, in dark purple and teal, creating a symmetrical, abstract design.

§ 1000.38 What flood insurance requirements are applicable?

Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.



LEAD BASED
PAINT

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§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856).

Lead-Based Paint



Lead regulation - 24 CFR part 35

Took effect 9/15/2000



For more information

https://www.hud.gov/program_offices/healthy_homes/healthyhomes/lead



Include on standardized tenant/homeowner file checklist



If your properties were built after 1978 make sure your checklist contains statement regarding age of units

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MODULE

Indian and Tribal Preference Requirements

- Indian Preference
- Tribal Employment and Contract Preference Laws

Indian and Tribal Preference Requirements

Tribes and Tribally Designated Housing Entities (TDHE) that adopt a Tribal Preference law must comply with that Tribal law in lieu of Indian Preference requirements that would otherwise apply under Section 7(b) of the Indian Self-Determination and Education Assistance Act.

If a TDHE is the IHBG recipient, it must comply with the tribal preference laws of the beneficiary tribe. If the TDHE is authorized to issue regulations or ordinances under tribal law, any regulations or ordinances issued by the TDHE that provide for tribal preferences in employment and contracting will govern under the IHBG program.



Indian Preference

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)

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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


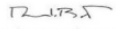


Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974.

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.

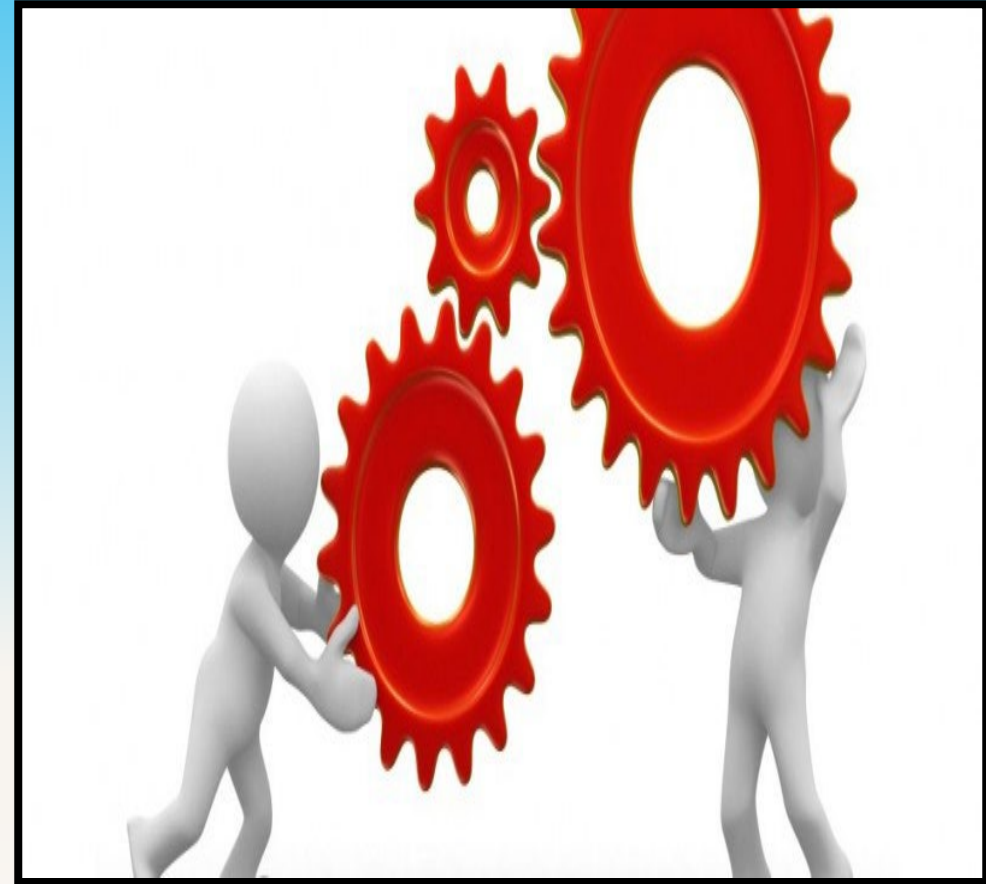
RECIPIENT GUIDANCE		Office of Native American Programs <small>Office of Public & Indian Housing</small>	No. 2013-07 (R) July 11, 2013
	<hr/>		
	PROGRAM: Indian Housing Block Grant (IHBG)		
	FOR:	All Tribal Government Leaders and Tribally Designated Housing Entities	
	FROM:	 Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PH	
TOPIC:	Indian and Tribal Preferences in Employment and Contracting in IHBG		
<hr/>			
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.			

Implementing Indian Preference

Certify policies and procedures
(\$1000.52)

Preference clauses must be
incorporated into contracts

Include Indian Preference reference
in notices and advertisements



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.

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

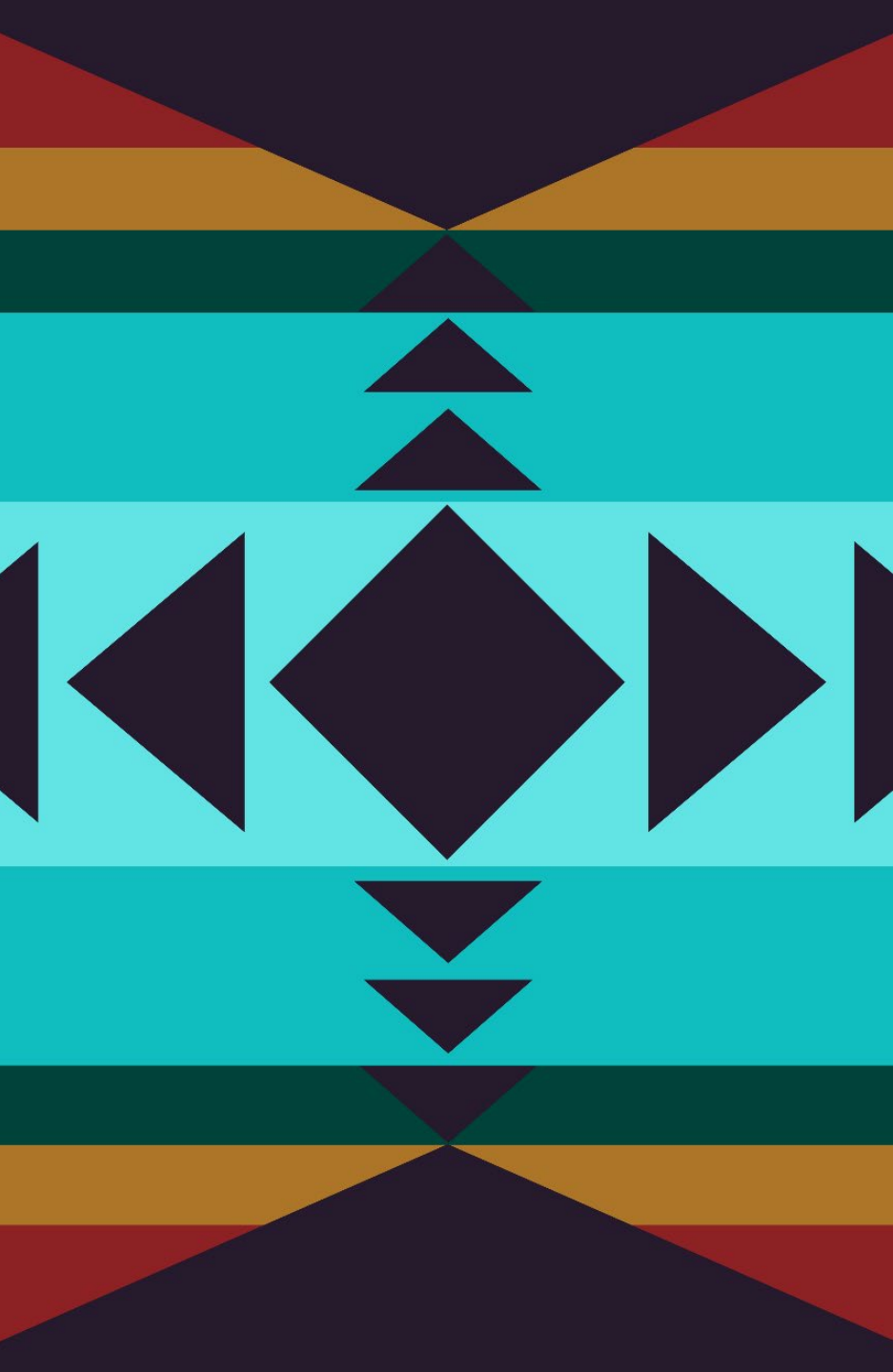


Qualifying Bidders, Proposers, Vendors



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

Do not rely on determinations and certifications made by others.

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Who is Eligible for Indian Preference?

Members of federally recognized tribes

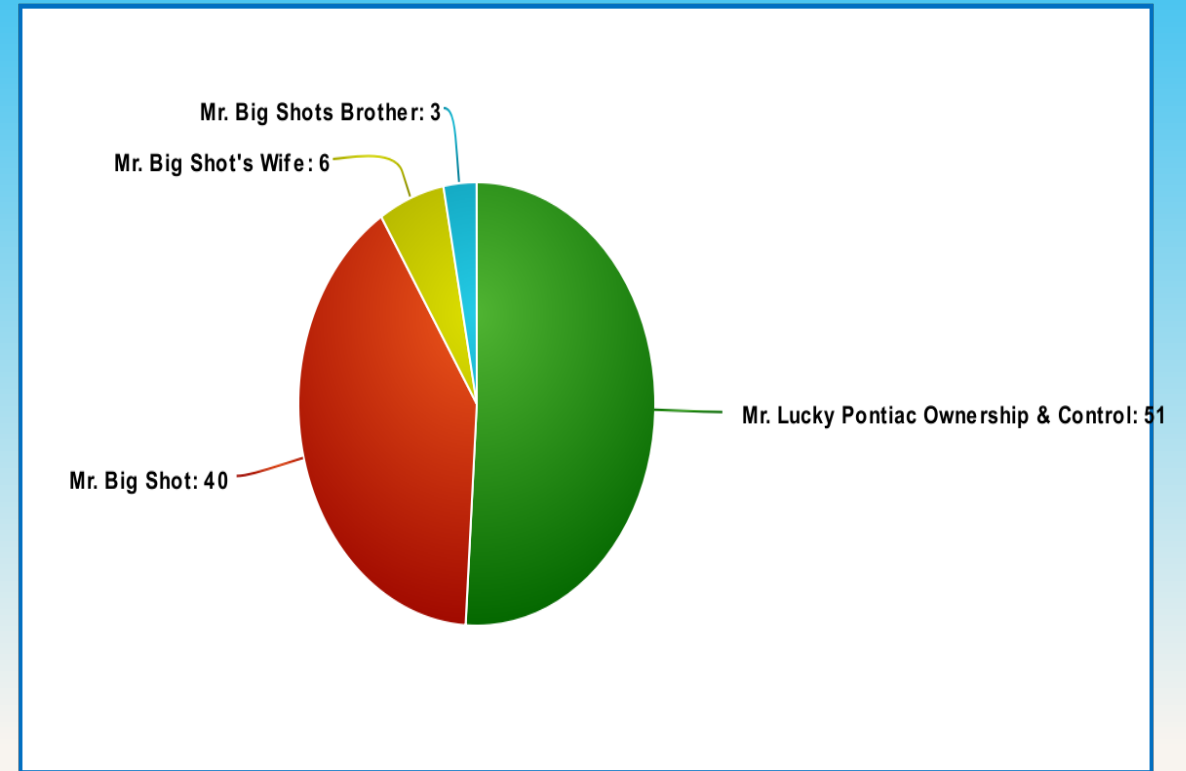
Federally recognized tribes

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

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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



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
- Document your 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

Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

Use a two-stage preference procedure, as follows:

- Stage 1 – Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.
- Stage 2 – If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises.

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) request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 2 CFR 200.318 through 200.326,

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

A decorative vertical strip on the left side of the slide. It features a series of horizontal bands in dark purple, red, gold, and teal. Overlaid on these bands are various geometric shapes, including triangles and diamonds, in a lighter teal color. The pattern is symmetrical and has a traditional, possibly Native American, aesthetic.

Small Purchase and Indian Preference

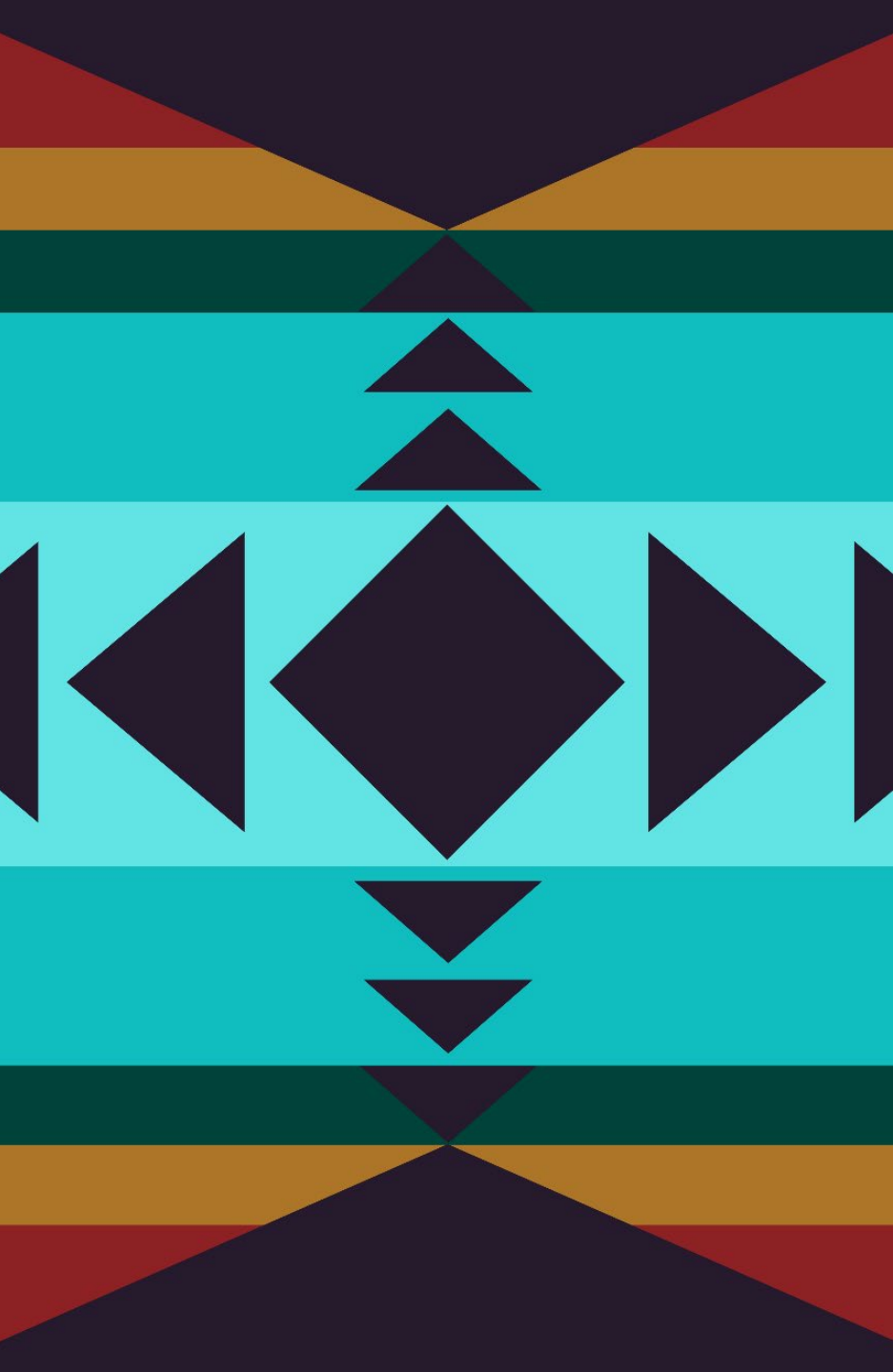
Procurements that are within the dollar limitations established for small purchases under 2 CFR 200.320 need not follow the formal bid or proposal procedures of since these procurements are governed by the small purchase procedures of 2 CFR 200.320. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

A recipient, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises.

Recipients may require prospective contractors to provide the following information before submitting a bid or proposal, or at the time of submission.

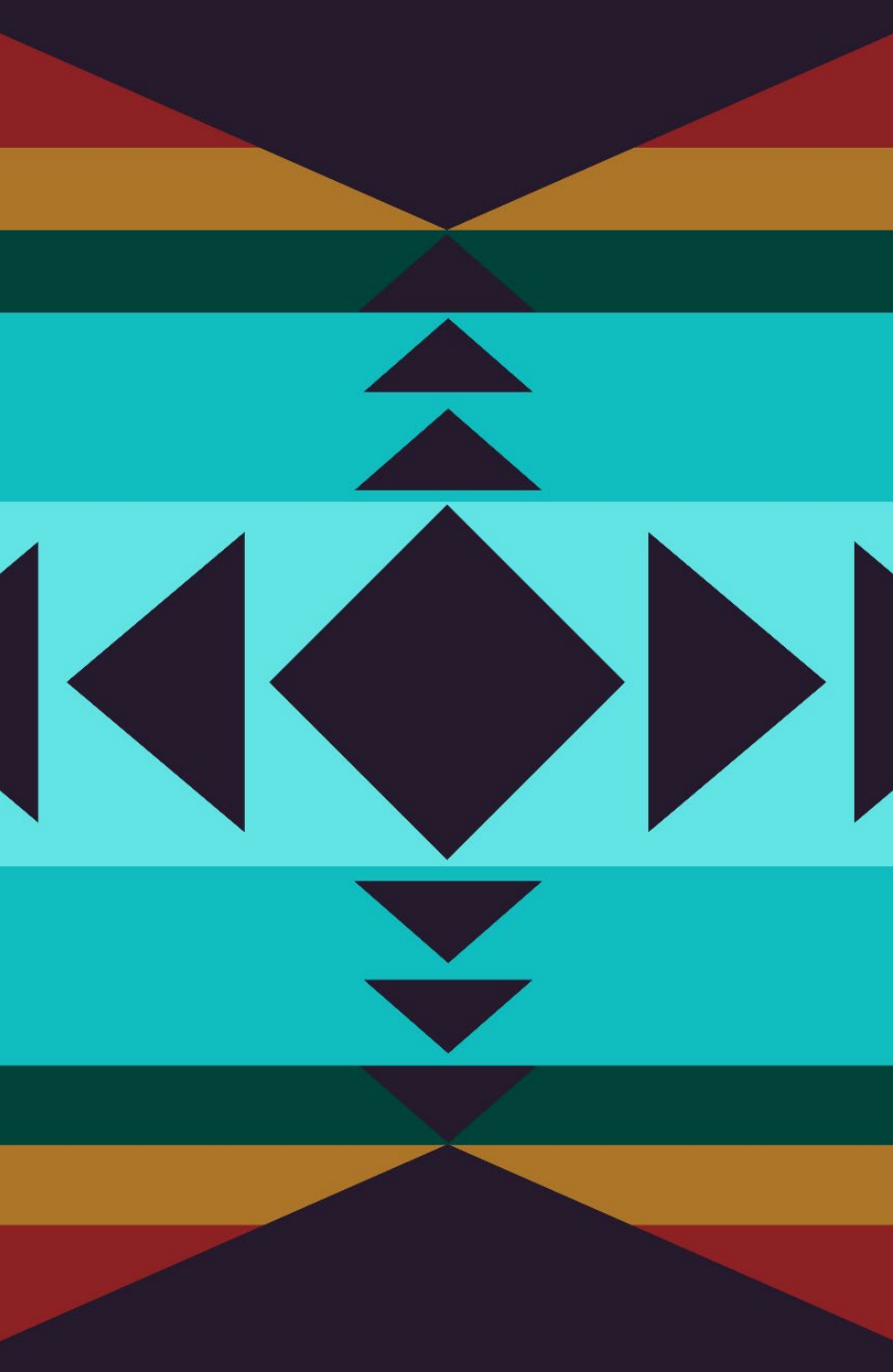
- Evidence showing fully the extent of Indian ownership and interest;
- Evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and
- Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

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The recipient shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that, to the greatest extent feasible:

- Preferences and opportunities for training and employment shall be given to Indians; and
- Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.
- The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

A decorative vertical band on the left side of the slide. It features a series of horizontal stripes in dark purple, red, orange, and teal. Overlaid on these stripes are various geometric shapes: triangles pointing up and down, and a central diamond shape. The colors are vibrant and the shapes are solid, creating a bold, tribal-inspired aesthetic.

The recipient shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

- In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
- The contractor shall include this section 7(b) clause in every subcontract in connection with the project; shall require subcontractors at each level to include this section 7(b) clause in every subcontract they execute in connection with the project; and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

A recipient shall not be required to apply Indian preference requirements under Section 7(b) of the Indian Self-Determination and Education Assistance Act with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value less than \$5,000.

Indian Preference

01

Certify policies and procedures or tribal code/regulations are in place

02

Preference clauses must be incorporated into contracts

03

Program Guidance 2013-07
Indian and Tribal Preferences in
Employment and Contracting in
IHBG acknowledges tribal
regulations for Indian
preference in procurement.

INDIAN PREFERENCE REQUIRED DOCUMENTS

INDIAN PREFERENCE POLICY

INDIAN PREFERENCE QUALIFICATION APPLICATION

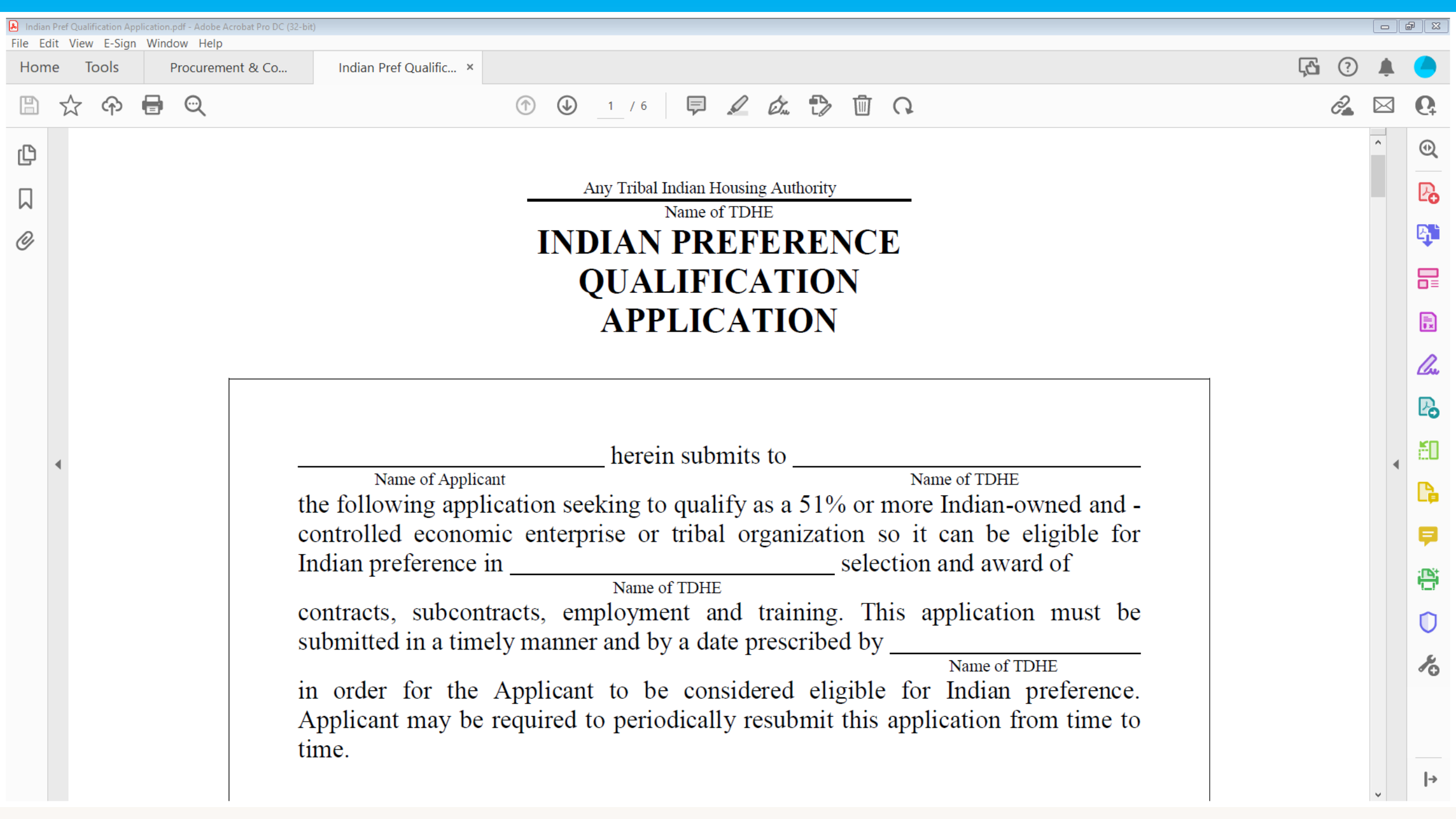
INDIAN PREFERENCE DETERMINATION LETTER

COMPLAINTS POLICY FROM METHODS OF PROVIDING
FOR INDIAN PREFERENCE



Indian Preference Policy

1. Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)), which provides for Indian preference, shall apply to all procurement in excess of the micro-purchase threshold funded in with NAHASDA funds. 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, the TDHE/Tribe shall, to the greatest extent feasible, give preference in the award of all contracts and subcontracts, and in training and employment to Indian organizations and Indian owned economic enterprises.
2. All preferences shall be publicly announced in the IFB and RFP and the bidding or proposal documents. Efforts to provide Indian preference must be documented. If Indian preference is not feasible, TDHE/Tribe shall document in writing the basis of its finding of infeasibility and maintain the documentation in its files for three (3) years after the end of the program year during which the funds were expended.
3. Contractors applying for eligibility for Indian preference shall submit the following:
 - a. Evidence showing that the majority ownership of the firm consists of one or more persons who are members of a federally recognized Indian tribe. A certificate of Indian blood or census card from each owner will suffice.
 - b. Evidence showing that the owners claiming tribal membership are actively involved in the management of the firm and participate proportionately in the profits. A statement from the owners will suffice.
 - c. Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest.
4. If the TDHE/Tribe or its prime contractor determines an applicant ineligible for Indian preference, the TDHE/Tribe or prime contractor shall notify the applicant in writing before contract award.



Any Tribal Indian Housing Authority

Name of TDHE

INDIAN PREFERENCE QUALIFICATION APPLICATION

_____ herein submits to _____
Name of Applicant Name of TDHE

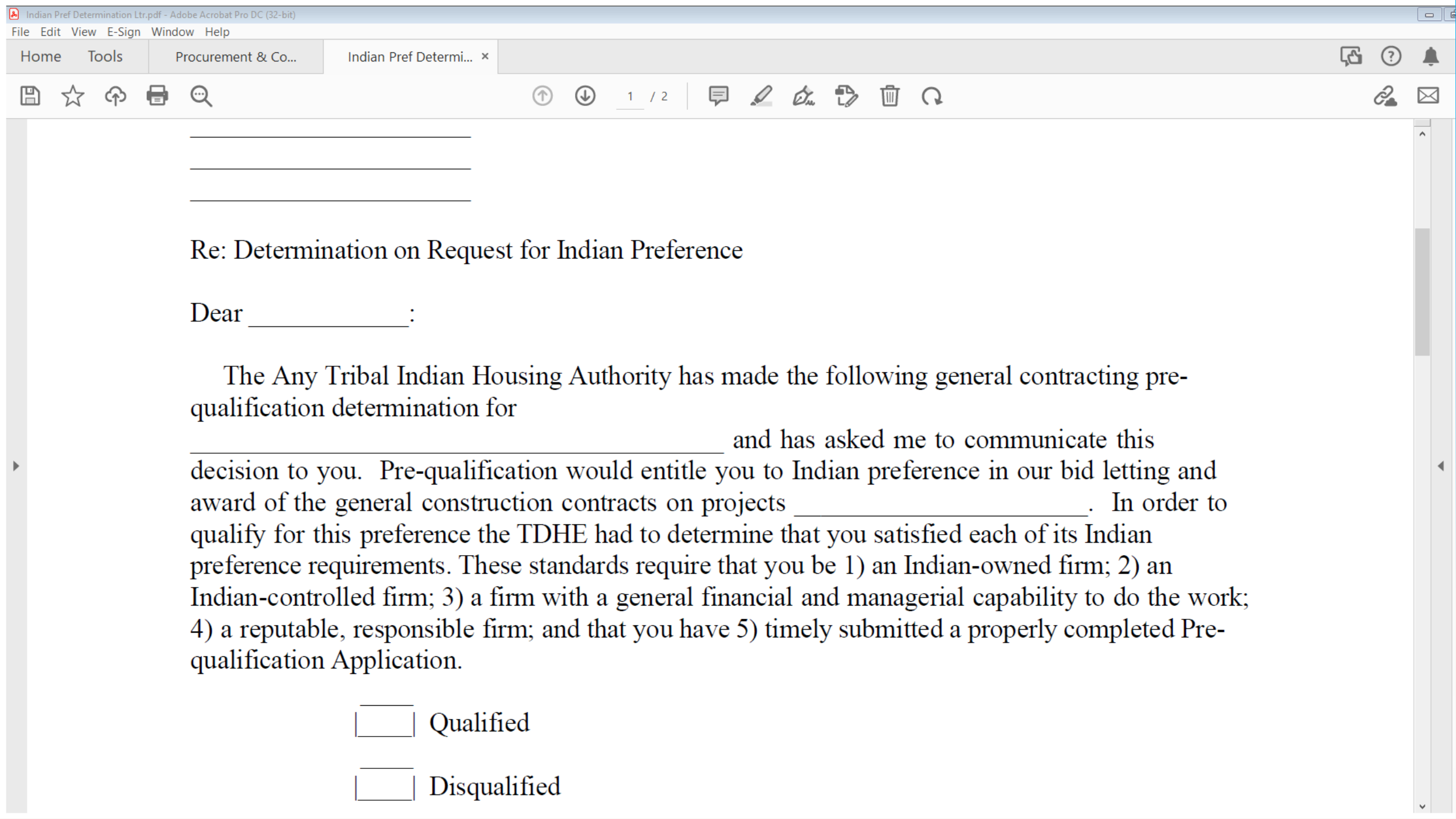
the following application seeking to qualify as a 51% or more Indian-owned and -controlled economic enterprise or tribal organization so it can be eligible for Indian preference in _____ selection and award of

Name of TDHE

contracts, subcontracts, employment and training. This application must be submitted in a timely manner and by a date prescribed by _____

Name of TDHE

in order for the Applicant to be considered eligible for Indian preference. Applicant may be required to periodically resubmit this application from time to time.



Re: Determination on Request for Indian Preference

Dear _____:

The Any Tribal Indian Housing Authority has made the following general contracting pre-qualification determination for

_____ and has asked me to communicate this decision to you. Pre-qualification would entitle you to Indian preference in our bid letting and award of the general construction contracts on projects _____. In order to qualify for this preference the TDHE had to determine that you satisfied each of its Indian preference requirements. These standards require that you be 1) an Indian-owned firm; 2) an Indian-controlled firm; 3) a firm with a general financial and managerial capability to do the work; 4) a reputable, responsible firm; and that you have 5) timely submitted a properly completed Pre-qualification Application.

☐ Qualified

☐ Disqualified

Indian Preference Complaint Procedure

1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference

The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods. Tribal policies that meet or exceed the requirements of this section shall apply.

- (a) Each complaint shall be in writing, signed, and filed with the recipient.
- (b) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.
- (c) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.
- (d) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.





Tribal Employment and Contract Preference Laws

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)).



Native Preference

Section 7(b) provides that any contract, subcontract, grant or sub-grant entered for the benefit of Native Americans/Alaska Natives shall require that, to the greatest extent feasible:

- Preferences and opportunities for training and employment in connection with the administration of such contracts, or subcontracts, be given to Native Americans/Alaska Natives.
- Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Native-owned economic enterprises, as defined in Section 3 of the Indian Financing Act of 1974.



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)

Tribal Action

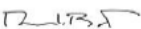
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 - ❖ Over other Indians that are not members of the tribe in employment and Contracting.
 - ❖ In reductions in workforce and layoffs.



No. 2013-07 (R)
July 11, 2013

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, PN

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.

PROGRAM GUIDANCE 2013- 07 (RECIP)

Tribes and TDHEs that adopt a tribal preference law must comply with that tribal law in lieu of Indian preference requirements that would otherwise apply under Section 7(b) of the Indian Self-Determination and Education Assistance Act.

If a TDHE is the IHBG recipient, it must comply with the tribal preference laws of the beneficiary tribe. If the TDHE is authorized to issue regulations or ordinances under tribal law, any regulations or ordinances issued by the TDHE that provide for tribal preferences in employment and contracting will govern under the IHBG program.

Applicability of Other Requirements:

- a. **Small Purchase Procurement:** Procurements that are less than the simplified acquisition threshold, recently increased to \$150,000, but equal to or greater than \$5,000, are considered small purchases under 24 CFR §85.36(d)(1). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Recipients carrying out small purchase procurement must still comply with Indian preference or tribal preference requirements that are applicable.
- b. **De Minimis Exception:** Procurements with a value less than \$5,000, known as "De Minimis procurement" or "Micro-Purchasing," are not subject to Indian preference requirements pursuant to 24 CFR §§1000.48(c) and 1000.52(d). Recipients are also exempt from complying with the general procurement requirements in 24 CFR §85.36 when carrying out De Minimis procurement. See the PIH Notice on *Micro-Purchasing* for additional information.
- c. **Federal Supply Sources:** In accordance with Section 101(j) of NAHASDA, recipients may use federal supply sources made available by the General Services Administration (GSA), pursuant to 40 U.S.C. 501. Recipients must still comply with any Indian preference or tribal preference requirements that may be applicable when procuring goods and services through GSA's supply sources. See Program Guidance 2010-09 for additional information.
- d. **Section 3:** Generally, if an IHBG recipient has projects or activities that exceed \$200,000 or more in HUD financial assistance, the recipient is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR Part 135. Section 3 regulations require recipients to provide certain preferences in job training, employment, and contracting to low-income individuals.

HUD will be launching a new online Section 3 reporting system (60002) for the 2013 reporting period. The new system will resolve some of the technical issues encountered with the current system, will reduce user errors, and will decrease recipient burden. A series of trainings on the new 60002 reporting system will be offered in the coming weeks, and will be posted on the Section 3 webpage at www.hud.gov/section3. This site will also provide assistance if you are having technical difficulties.

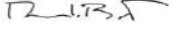


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MIIGWECH

Thank You for your commitment and service
to providing Housing for your Community
and our people.



*"It's all about lifting other's
spirits, the good medicine
we all have within us."*



QUESTIONS





**SEE YOU TOMORROW AT
11:00 AM**

If you should need anything Else!

Cheryl A. Causley and Associates

Housing Consulting & Management Services

2836 S. Red Pine Lane
Brimley, Michigan 49715

Tel: (906) 440-1007
cherylacausley@hotmail.com

Cheryl A. Causley
Principal