NAHASDA Regulations
24 CFR Part 1000

Regulation: Rules interpreting the statute, having legal force, issued by HUD. The NAHASDA regulations were written by tribes and HUD working together in negotiated rulemaking committees.

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
	Subpart A-General		
1000.1	What is the applicability and scope of these regulations?	Scope	R-8
1000.2	What are the guiding principles in the implementation of NAHASDA?	Principles	R-8
1000.4	What are the objectives of NAHASDA?	Objectives	R-9
1000.6	What is the nature of the IHBG program?	IHBG	R-9
1000.8	May provisions of these regulations be waived?	Waiver	R-10
1000.9	How is negotiated rulemaking conducted when promulgating NAHASDA regulations?	Negotiated Rulemaking	R-10
1000.10	What definitions apply in these regulations?	Definitions	R-10
1000.12	What nondiscrimination requirements are applicable?	Nondiscrimination	R-15
1000.14	What relocation and real property acquisition policies are applicable?	Relocation	R-136
1000.16	What labor standards are applicable?	Labor standards	R-15
1000.18	What environmental review requirements apply?	Environmental review	R-16
1000.20	Is an Indian tribe required to assume environmental review responsibilities?	Environmental review	R-16
1000.21	Under what circumstances are waivers of the environmental review procedures available to tribes?	Environmental review	R-17
1000.22	Are the costs of the environmental review eligible cost?	Environmental review	R-17
1000.24	If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?	Environmental review	R-17
1000.26	What are the administrative requirements under NAHASDA?	Administration	R-17
1000.28	May a self-governance Indian tribe be exempted exempted from the applicability of § 1000.26?	Self-governance tribe	R-18
1000.30	What prohibitions regarding conflict of interest are applicable?	Conflict of interest	R-19

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.32	May exceptions be made to the conflict of interest provisions?	Conflict of interest	R-19
1000.34	What factors must be considered in making an exception to the conflict of interest provisions?	Conflict of interest	R-19
1000.36	How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?	Conflict of interest	R-19
1000.38	What flood insurance requirements are applicable?	Flood insurance	R-20
1000.40	Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?	Lead-based paint	R-20
1000.42	Are requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?	Section 3	R-20
1000.44	What prohibitions on the use of debarred, suspended, or ineligible contractors apply?	Ineligible contractors	R-20
1000.46	Do drug-free workplace requirements apply?	Drug-free workplace	R-20
1000.48	Are Indian preference requirements applicable to IHBG activities?	Indian preference	R-21
1000.50	What Indian preference requirements apply to IHBG administration activities?	Indian preference	R-21
1000.52	What Indian preference requirements apply to IHBG procurement?	Indian preference	R-22
1000.54	What procedures apply to complaints arising out of any of the methods of providing for Indian preference?	Indian preference	R-23
1000.56	How are NAHASDA funds paid by HUD to recipients?	Payment of funds	R-24
1000.58	Are there limitations on the investment of IHBG funds	Investment	R-24
1000.60	Can HUD prevent improper expenditure of funds already disbursed to a recipient?	Improper expenditure	R-24
1000.62	What is considered program income and what restrictions are there on its use?	Considered program Income	R-25
1000.64	What are the permissible uses of program income?	Program Income	R-25

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
	Subpart B-Affordable Housing Activities		
1000.101	What is affordable housing?	Affordable housing	R-25
1000.102	What are eligible affordable housing activities?	Affordable housing	R-25
1000.103	How may IHBG funds be used for tenant-based or project-based rental assistance?	Rental assistance	R-25
1000.104	What families are eligible for affordable housing activities?	Eligible families	R-25
1000.106	What families receiving assistance under title II of NAHASDA require HUD approval?	Title II	R-26
1000.108	How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?	HUD Approval	R-26
1000.110	Under what conditions may non low-income Indian families participate in the program?	Non-low income Indian families	R-26
1000.112	How will HUD determine whether to approve model housing activities?	Model housing	R-27
1000.114	How long does HUD have to review and act on a proposal to provide assistance to non low-income Indian families or a model housing activity?	Non-low income Indian families Model housing	R-27
1000.116	What should HUD do before declining a proposal to provide assistance to non low-income Indian families or a model housing activity?	Non-low income Indian families Model housing	R-27
1000.118	What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non low-income Indian families or a model housing activity?	Appeal	R-27
1000.120	May a recipient use Indian preference or tribal preference in selecting families for housing assistance?	Indian preference	R-28
1000.122	May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any Federal or state program and still be considered an affordable housing activity?	Matching funds	R-28

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.124	What maximum and minimum rent or homebuyer payment can a recipient charge a low-income rental tenant or homebuyer residing in housing units assisted with NAHASDA grant amounts?	Rent Home payment	R-28
1000.126	May a recipient charge flat or income-adjusted rents?	Flat or income-adjusted rents	R-28
1000.128	Is income verification required for assistance under NAHASDA?	Income verification	R-28
1000.130	May a recipient charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income?	Non-low income family rent	R-29
1000.132	Are utilities considered a part of rent or homebuyer payments?	Utilities	R-29
1000.134	When may a recipient (or entity funded by a recipient) demolish or dispose of current assisted stock?	Demolition	R-29
1000.136	What insurance requirements apply to housing units assisted with NAHASDA grants?	Insurance	R-29
1000.138	What constitutes adequate insurance?	Insurance	R-30
1000.139	What are the standards for insurance entities owned and controlled by recipients?	Insurance	R-30
1000.140	May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?	Insurance	R-32
1000.141	What is "useful life" and how is it related to affordability?	Useful life	R-32
1000.142	What is the "useful life' during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?	Useful life	R-32
1000.143	How does a recipient implement its useful life requirements?	Useful Life	R-32
1000.144	What are binding commitments satisfactory to HUD?	Useful Life	R-32
1000.145	Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?	Mutual help Useful Life	R-32

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.146	Are binding commitments for the remaining useful life of property applicable to a family member or household member who subsequently takes ownership of a homeownership unit?	Mutual Help Useful Life	R-32
1000.147	When does housing qualify as affordable housing under NAHADA?	Affordable Housing	R-32
1000.150	How may Indian tribes and TDHE's receive criminal conviction information on applicants for employment and on adult applicants for housing assistance, or tenants?	Criminal background checks	R-33
1000.152	How is the recipient to use criminal conviction information?	Criminal background Checks	R-33
1000.154	How is the recipient to keep criminal conviction confidential?	Criminal background checks Confidentiality	R-33
1000.156	Is affordable housing developed, acquired, or assisted under the IHBG program subject to limitations on cost or design standards?	Affordable housing Design standards Cost limitations	R-33
1000.158	How will a NAHASDA grant recipient know that the housing assisted under the IHBG program meets the requirements of § 1000.156?	§ 1000.156 requirements	R-34
1000.160	Are non-dwelling structures developed, acquired or assisted under the IHBG program subject to limitations on cost or design standards?	Non-dwelling structures Design standards Cost limitations	R-35
1000.162	How will a recipient know that non-dwelling structures assisted under the IHBG program meet the requirements of § 1000.160?	Non-dwelling structures § 1000.160 requirements	R-35
	Subpart C-Indian Housing Plan (IHP)		
1000.201	How are funds made available under NAHASDA?	Availability of funds	R-35
1000.202	Who are eligible recipients?	Eligible recipients	R-35
1000.204	How does an Indian tribe designate itself as recipient of the grant?	Tribal designation as recipient	R-36
1000.206	How is a TDHE designated?	TDHE designation	R-36
1000.208	What happens if an Indian tribe had two IHA's as of September 39, 1996?	Multiple IHA's IHP	R-36

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.210	What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?	Existing 1937 Act units IHP	R-36
1000.212	Is submission of an IHP required?	IHP	R-36
1000.214	What is the deadline for submission of an IHP?	IHP deadline	R-36
1000.216	What happens if the recipient does not submit the IHP to the Area ONAP by no later than 75 days before the beginning of the tribal program year?	IHP deadline	R-36
1000.218	Who prepares and submits an IHP?	IHP	R-37
1000.220	What are the minimum requirements for the IHP?	IHP requirements	R-37
1000.222	Are there separate IHP requirements for small Indian tribes and small TDHE's?	IHP requirements	R-37
1000.224	Can any part of the IHP be waived?	IHP	R-37
1000.225	When may a waiver of the IHP submission deadline be requested?	IHP	R-37
1000.226	Can the certification requirements of section 102(c)(5) of NAHASDA be waived?	Certification requirements	R-37
1000.227	What shall HUD do upon receipt of an IHP submission deadline waiver request?	IHP	R-37
1000.228	If HUD changes its IHP format will Indian tribes be involved?	IHP format changes Tribal consultation	R-38
1000.230	What is the process for HUD review of IHP's and IHP amendments?	HUD IHP review IHP amendments	R-38
1000.232	Can an Indian tribe or TDHE amend its IHP?	IHP amendments	R-38
1000.234	Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?	Appeal IHP modification	R-39
1000.236	What are eligible administrative and planning expenses?	Administrative expenses Planning expenses	R-39
1000.238	What percentage of the IHBG funds can be used for administrative and planning expenses?	Administrative expenses Planning expenses	R-39
1000.239	May a recipient establish and maintain reserve accounts for administration and planning?	Administrative expenses Planning expenses	R-40

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.240	When is a local cooperation agreement required for affordable housing activities?	Cooperation agreement	R-40
1000.242	When does the requirement for exemption from taxation apply to affordable housing activities?	Exemption from taxation Requirement	R-40
1000.244	If the recipient has made a good-faith effort to negotiate a cooperation agreement and tax-exempt status but has been unsuccessful through no fault of its own, may the Secretary waive the requirement for a cooperation agreement and a tax exemption?	Cooperation Agreement	R-40
1000.246	How must HUD respond to a request for waiver of the requirement for a cooperation agreement and a tax exemption?	Cooperation Agreement	R-41
	Subpart D-Allocation Formula		
1000.301	What is the purpose of the IHBG formula?	IHBG formula	R-41
1000.302	What are the definitions applicable for the IHBG formula?	IHBG formula	R-41
1000.304	May the IHBG formula be modified?	IHBG formula	R-44
1000.306	How can the IHBG formula be modified?	IHBG formula	R-44
1000.308	Who can make modifications to the IHBG formula?	IHBG formula	R-44
1000.310	What are the components of the IHBG formula?	IHBG formula	R-45
1000.312	What is the current assisted stock?	IHBG formula Current assisted stock	R-45
1000.314	What is formula current assisted stock (FCAS)?	IHBG formula FCAS	R-45
1000.315	Is a recipient required to report changes to the Formula Current Assisted Stock (FCAS) on the Formula Response Form?	IHBG formula FCAS	R-45
1000.316	How is the Formula Current Assisted Stock (FCAS) Component developed?	FCAS	R-45
1000.317	Who is the recipient for funds for current assisted stock which is owned by state created Regional Native Housing Authorities in Alaska?	Alaska	R-46
1000.318	When do units under Formula Current Assisted Stock cease to be counted or expire from the Inventory used for the formula?	FCAS	R-46

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.319	What would happen if a recipient misreports or fails to correct Formula Current Assisted Stock (FCAS) information on the Formula Response Form?	FCAS	R-47
1000.320	How is Formula Current Assisted Stock adjusted for local area costs?	FCAS adjustment	R-47
1000.322	Are IHA financed units included in the determination of Formula Current Assisted Stock?	FCAS	R-48
1000.324	How is the need component developed?	Need component FCAS	R-48
1000.325	How is the need component adjusted for local area costs?	Need component	R-48
1000.326	What if a formula area is served by more than one Indian tribe?	Overlapping area	R-48
1000.327	What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the Unique circumstances in Alaska?	IHBG order of preference in Alaska	R-49
1000.328	What is the minimum amount that an Indian tribe may receive under the need component of the formula?	Need component	R-49
1000.329	What is the minimum total grant allocated to a tribe if there is carryover funds available?	Carryover funds	R-49
1000.330	What are the data resources for the need variables?	Need component	R-50
1000.331	How will the impacts from adoption of a new data source be minimized as the new data source is implemented?	Available data	R-50
1000.332	Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?	Available data	R-51
1000.334	May Indian tribes, TDHE's or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?	Census data	R-51
1000.336	How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?	Challenging formula determinations	R-51

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.340	What if an Indian tribe is allocated less funding under the IHBG formula than it received in Fiscal Year (FY) 1996 for operating subsidy and modernization?	IHBG compared to FY 1996 allocations	R-52
1000.342	Are undistributed IHBG funds a factor in the grant formula?	Noncompliance	R-52
	Subpart E-Federal Guarantees for Financing of Tribal Housing Activities		
1000.401	What terms are used throughout this subpart?	Terms used	R-53
1000.402	Are State recognized Indian tribes eligible for guarantees under title VI of NAHASDA	State recognized tribes Title VI	R-53
1000.404	What lenders are eligible for participation?	Eligible lenders	R-53
1000.406	What constitutes tribal approval to issue notes or or other obligations under title VI of NAHASDA?	Tribal approval	R-53
1000.410	What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?	HUD conditions and guarantee	R-53
1000.412	Can an issuer obtain a guarantee for more than one obligation at a time?	Number of guarantees	R-54
1000.414	How is an issuer's financial capacity demonstrated?	Demonstration of financial capacity	R-54
1000.416	What is a repayment contract in a form acceptable to HUD?	Repayment contract	R-54
1000.418	Can grant funds be used to pay costs incurred when issuing notes or other obligations?	Use of grant funds	R-54
1000.420	May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?	Use of grant funds	R-54
1000.422	What are the procedures for applying for loan guarantees under title VI of NAHASDA?	Loan guarantees Title VI	R-54
1000.424	What are the application requirements for guarantee assistance under title VI of NAHASDA?	Loan guarantees Title VI	R-55
1000.426	How does HUD review a guarantee application?	Loan guarantees	R-55
1000.428	For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?	Loan guarantees	R-55

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.430	When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?	Loan guarantees	R-56
1000.432	Can an amendment to an approved guarantee be made?	Loan guarantees	R-56
1000.434	How will HUD allocate the availability of loan guarantee assistance?	Loan guarantees	R-56
1000.436	How will HUD monitor the use of funds guaranteed under this subpart?	Loan guarantees	R-57
	Subpart F-Recipient Monitoring, Oversight and Accountability		
1000.501	Who is involved in monitoring activities under NAHASDA?	Monitoring	R-57
1000.502	What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?	Monitoring	R-57
1000.503	What is an appropriate extent of HUD monitoring	Monitoring	R-57
1000.506	If the TDHE is the recipient, must it submit its monitoring evaluation/results to the Indian tribe?	Monitoring	R-58
1000.508	If the recipient monitoring identifies programmatic concerns, what happens?	Monitoring	R-58
1000.510	What happens if tribal monitoring identifies compliance concerns?	Monitoring	R-59
1000.512	Are performance reports required?	Performance reports	R-59
1000.514	When must the annual performance report be submitted?	Performance reports	R-59
1000.516	What reporting period is covered by the annual performance report?	Performance reports	R-59
1000.518	When must a recipient obtain public comment on its annual performance report?	Performance reports	R-59
1000.520	What are the purposes of HUD review?	HUD review	R-60
1000.521	After the receipt of the recipient's performance report, how long does HUD have to make recommendations under section 404(c) of NAHASDA?	HUD review Performance reports	R-60

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.522	How will HUD give notice of on-site reviews?	On-site reviews	R-60
1000.524	What are HUD's performance measures for the review?	On-site reviews	R-60
1000.526	What information will HUD use for its review?	On-site reviews	R-60
1000.528	What are the procedures for the recipient to comment on the results of HUD's review when HUD issues a report under section 405(b) of NAHASDA?	On-site reviews	R-61
1000.530	What corrective and remedial actions will HUD request or recommend to address performance problems prior to taking action under § 1000.532 or § 1000.538?	HUD's corrective and remedial actions	R-61
1000.532	What are the remedial actions that HUD may take in the event of recipient's substantial noncompliance?	Noncompliance	R-62
1000.534	What constitutes substantial noncompliance?	Noncompliance	R-62
1000.536	What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under §1000.532?	Grant funds Effect of adjustment	R-63
1000.540	What hearing procedures will be used under NAHASDA?	Hearing procedures	R-63
1000.542	When may HUD require replacement of a recipient?	Replacement	R-63
1000.544	What audits are required?	Audits	R-63
1000.546	Are audit costs eligible program or administrative expenses?	Audit costs	R-63
1000.548	Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?	Audits	R-64
1000.550	If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?	Audits	R-64
1000.552	How long must the recipient maintain program records?	Records	R-64
1000.554	Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?	Records Agency access	R-64

INDEX PART ONE TO NAHASDA REGULATIONS BY SECTION
24 C.F.R. PART 1000
(§ 1000.1 TO § 1000.558 only)

Section	Title	General Topic	Starting at page
1000.556	Does the Freedom of Information Act (FOIA) apply to recipient records?	Records	R-64
1000.558	Does the Federal Privacy Act apply to recipient records?	Records	R-64

Appendix A to Part 1000-Indian Housing Block Grant Formula Mechanics R-65

Appendix B to Part 1000-IHBG Block Grant Formula Mechanisms R-68

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Adjusted Income	1000.10(a)
Adjustments to Grants	1000.532
Administration	1000.26
Administrative Expenses/Planning Expenses	1000.236, 1000.238, 1000.239
Affordable Housing	1000.2(a)(5), 1000.2(a)(6), 1000.6, 1000.10(a), 1000.101, 1000.102, 1000.104, 1000.142, 1000.146, 1000.147, 1000.156, 1000.312
Agency Access	1000.554
Alaska Native	1000.1, 1000.2(6), 1000.38(1), 1000.48(b)(1), 1000.302, 1000.306, 1000.317, 1000.327
Annual Contributions Contract	1000.10(a), 1000.312
Appeal	1000.14(e), 1000.54, 1000.118(c), 1000.234, 1000.336, 1000.532(b), 1000.540
Audit Costs	1000.546
Audits	1000.58, 1000.502, 1000.508(d), 1000.524(c), 1000.536(e), 1000.544, 1000.546, 1000. 548, 1000.550
Authorities/exceptions	1000.2, 1000.8, 1000.20, 1000.30, 1000.32, 1000.204, 1000.206, 1000.224, 1000.554, 1005.101
Availability of Funds	1000.201
Available Data	1000.332, 1000.331
Carryover Funds	1000.329

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Census Data	1000.302, 1000.326, 1000.327, 1000.330, 1000.334, 1000.336
Certification Requirements	1000.226
Challenging Formula Determinations	1000.336
Compliance Problems	1000.60, 1000.210, 1000.230, 1000.234, 1000.510, 1000.530, 1000.534, 1000.538, 1000.540, 1000.542, 1005.101
Confidentiality	1000.154
Conflict of Interest	1000.30, 1000.32, 1000.34, 1000.36
Considered Program Income	1000.62
Construction Standards/Costs	1000.40, 1000.156
Cooperation Agreement	1000.240
Criminal Background Checks	1000.150, 1000.152, 1000.154
Current Assisted Stock	1000.58(f), 1000.132, 1000.134, 1000.306, 1000.310, 1000.312, 1000.314, 1000.316, 1000.318, 1000.320, 1000.322, 1000.324
Data Challenges	1000.334, 1000.336
Debarred Contractors	1000.440
Definitions	1000.1, 1000.10, 1000.14(g), 1000.40(b), 1000.48(b), 1000.302, 1000.401
Demolition	1000.134
Demonstration of Financial Capacity	1000.414
Design Standards/Cost Limitations	1000.156, 1000.158, 1000.160, 1000.162
Disabilities	1000.10(b)

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Displacement	1000.14(b), 1000.14(g) (See also **Relocation**)
Drug-free Workplace	1000.10(a), 1000.46
Economic Self-Sufficiency	1000.2(a)(6), 1000.4(b), 1000.4(c)
Effect of Adjustment	1000.536
Elderly	1000.10(a)
Eligible families	1000.104
Eligible Lenders	1000.404
Eligible Recipients	1000.202
Environmental Review	1000.18,1000.20, 1000.20(c), 1000.21, 1000.22, 1000.24
Evidence of Efforts to Obtain Financing	1000.408
Exemption from Taxation Requirement	1000.242
Existing 1937 Act Units	1000.210
Expiration	1000.318
Failure to Connect	1000.319
Formula Area	1000.326
Formula Current Assisted Stock (FCAS)	1000.312, 1000.314, 1000.315, 1000.316, 1000.317, 1000.318, 1000.319, 1000.320, 1000.322, 1000.322, 1000.324
FCAS Adjustment	1000.320
Financial Reporting Requirements	1000.26(a)(14), 1000.26(b)
Flat or Income-Adjusted Rents	1000.126
Flood Insurance	1000.38

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Grant Funds	1000.201, 1000.536
Hearing Procedures	1000.540
Home Payment	1000.124
Housing Development	1000.4(a), 1000.4(d)
HUD Approval	1000.108
HUD Conditions and Guarantee	1000.410
HUD IHP review	1000.230
HUD Review	1000.520, 1000.521
HUD's Corrective and Remedial Actions	1000.530
Indian Housing Block Grants (IHBG)	1000.6
IHBG Compared to FY 1996 Allocations	1000.340
IHBG Formula	1000.301, 1000.302, 1000.304, 1000.306, 1000.308, 1000.310, 1000.312, 1000.314, 1000.315, 1000.332, 1000.334, 1000.336
IHBG Funds	1000.58, 1000.6, 1000.103
IHBG Order of Preference in Alaska	1000.327
Indian Housing Plan (IHP)	1000.208, 1000.210, 1000.212, 1000.214, 1000.216, 1000.218, 1000.220, 1000.222, 1000.224, 1000.225, 1000.226, 1000.227, 1000,228, 1000.230, 1000.232, 1000.234
IHP Amendments	1000.230, 1000.232
IHP Deadline	1000.214, 1000.216
IHP Format Changes	1000.228
IHP Modification	1000.234
IHP Requirements	1000.220, 1000.222

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Improper Expenditure	1000.6
Income Verification	1000.128
Indian Preference	1000.48, 1000.50, 1000.52, 1000.54, 1000.120
Ineligible Contractors	1000.44
Infrastructure	1000.4(d)
Initiation of Negotiations	1000.14(h)
Insurance	1000.136, 1000.138, 1000.139, 1000.140
Investment	1000.58
Labor Standards	1000.16, 1000.44
Lead-based Paint Poisoning	1000.40
Legal Action/Suspension	1000.60, 1000.530(b), 1000.538
Lender	1000.402, 1000.404, 1005.104, 1005.112
Loan Guarantees	1000.491, 1000.404, 1000.408, 1000.410, 1000.412, 1000.414, 1000.416, 1000.422, 1000.424, 1000.426, 1000.428, 1000.430, 1000.432, 1000.434, 1000.436, 1005.101, 1005.103, 1005.104, 1005.105, 1005.107, 1005.109, 1005.111, 1005.112, 1005.113
Local Cooperation Agreement	1000.240, 1000.244, 1000.246
Low-Income Status	1000.4(a), 1000.10(a), 1000.104(a), 1000.110(e), 1000.126, 1000.134(c), 1000.146
Matching Funds	1000.122
Misreporting	1000.319

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Model Housing	1000.10(a), 1000.112, 1000.114, 1000.116, 1000.118
Modernization	1000.316(b), 1000.320(b), 1000.340
Monitoring	1000.24, 1000.26(a)(13), 1000.436, 1000.501, 1000.502, 1000.503, 1000.506, 1000.508, 1000.510, 1000.512, 1000.514, 1000.516, 1000.518, 1000.520, 1000.521, 1000.522, 1000.524, 1000.526(d), 1000.528, 1000.530
Mortgage	1000.2(a)(6), 1000.4(b), 1000.4(c)
Multiple IHAs	1000.208
Mutual Help	1000.144, 1000.312, 1000.314, 1000.318
Near-Elderly	1000.10(a),
Need Component	1000.310, 1000.324, 1000.325, 1000.327, 1000.328, 1000.330
Negotiated Rulemaking	1000.900
Noncompliance	1000.342, 1000.532, 1000.534, 1000.536, 1000.540
Nondiscrimination	1000.12
Non-Dwelling Structures	1000.160, 1000.162
Non-Low-income Family	1000.13, 1000.104(c), 1000.106(b), 1000.108, 1000.110, 1000.518
Non-Low-income Indian Families	1000.104(b), 1000.106(a), 1000.108, 1000.110, 1000.114, 1000.116, 1000.118, 1000.128, 1000.130
Nonprofit	1000.10(a)

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Note Issuance	1000.408, 1000.410, 1000.412, 1000.414, 1000.416, 1000.418, 1000.420
Number of Guarantees	1000.412
Objectives	1000.4
On-Site Reviews	1000.522, 1000.524, 1000.526, 1000.528, 1000.530
Operating Subsidy	1000.316(a), 1000.326(a), 1000.340
Overlapping Area	1000.326
Payment of Funds	1000.56
Performance Objectives	1000.504
Performance Reports	1000.512, 1000.514, 1000.516, 1000.518, 1000.520, 1000.521
Preferences	1000.12, 1000.48, 1000.50, 1000.52, 1000.54, 1000.120, 1000.327
Principles	1000.2
Procurement/Contracts	1000.26(a)(11), 1000.42, 1000.44, 1000.48, 1000.52
Program Income	1000.62, 1000.64
Property Acquisition	1000.14
Records	1000.36, 1000.552, 1000.554, 1000.556, 1000.558
Relocation	1000.14
Rent	1000.14(g), 1000.106, 1000.110(e)(1), 1000.124, 1000.126, 1000.130, 1000.132, 1000.302, 1000.320
Rental Assistance	1000.103

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Repayment Contract	1000.416
Replacement of a Recipient	1000.542
Safe and Healthy Environments	1000.2(a)(1)(i), 1000.2(a)(5), 1000.4(a)
Scope	1000.1
Section 3	1000.42, 1000.302, 1000.306, 1000.314, 1000.316, 1000.318
Self-governance Tribe	1000.28
State Recognized Tribes	1000.402
Subsidy	1000.316, 1000.320, 1000.340
Taxes	1000.242
Terms Used	1000.401
Title II	1000.106
Title VI	1000.402, 1000.422, 1000.424
Training	1000.24, 1000.42, 1000.48, 1000.502(d), 1000.508
Tribal Approval	1000.406
Tribal Consultation	1000.228
Tribal Designation as Recipient	1000.204
Tribally Designated Housing Entities (TDHE) Designation	1000.2(a)(7), 1000.10(a), 1000.206
Turnkey III	1000.312, 1000.316, 1000.318
U.S. Government - Trust Responsibilities	1000.2(b)
Use as Matching Funds	1000.122

INDEX PART TWO TO NAHASDA REGULATIONS BY TOPIC
24 C.F.R. PART 1000 (Sections 1000.1 to 1000.558 only)

TOPIC	CITATION
Use of Grant Funds	1000.22, 1000.58, 1000.60, 1000.236, 1000.238, 1000.418, 1000.420, 1000.546
Useful Life	1000.141, 1000.142, 1000.143, 1000.144, 1000.145, 1000.146
Utilities	1000.132
Wages	1000.16(a), 1000.16(b), 1000.16(c)
Waiver	1000.8

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PART 1000 — NATIVE AMERICAN HOUSING ACTIVITIES

SUBPART A — GENERAL

Sec.

1000.1 What is the applicability and scope of these regulations?

1000.2 What are the guiding principles in the implementation of NAHASDA?

1000.4 What are the objectives of NAHASDA?

1000.6 What is the nature of the IHBG program?

1000.8 May provisions of these regulations be waived?

1000.9 How is negotiated rulemaking conducted when promulgating NAHASDA regulations?

1000.10 What definitions apply in these regulations?

1000.12 What nondiscrimination requirements are applicable?

1000.14 What relocation and real property acquisition policies are applicable?

1000.16 What labor standards are applicable?

1000.18 What environmental review requirements apply?

1000.20 Is an Indian tribe required to assume environmental review responsibilities?

1000.21 Under what circumstances are waivers of the environmental review procedures available to tribes?

1000.22 Are the costs of the environmental review an eligible cost?

1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

1000.26 What are the administrative requirements under NAHASDA?

1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?

1000.30 What prohibitions regarding conflict of interest are applicable?

1000.32 May exceptions be made to the conflict of interest provisions?

1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

1000.38 What flood insurance requirements are applicable?

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

1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

1000.44. What prohibitions on the use of debarred, suspended, or ineligible contractors apply?

1000.46 Do drug-free workplace requirements apply?

1000.48 Are Indian or tribal preference requirements applicable to IHBG activities?

1000.50 What tribal or Indian preference requirements apply to IHBG administration activities?

1000.52 What tribal or Indian preference requirements apply to IHBG procurement?

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

1000.56 How are NAHASDA funds paid by HUD to recipients?

1000.58 Are there limitations on the investment of IHBG funds?

1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?

1000.62 What is considered program income?

1000.64 What are the permissible uses of program income?

SUBPART B — AFFORDABLE HOUSING ACTIVITIES

1000.101 What is affordable housing?

1000.102 What are eligible affordable housing activities?

1000.103 How may IHBG funds be used for tenant-based or project-based rental assistance?

1000.104 What families are eligible for affordable housing activities?

1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?

1000.108 How is HUD approval obtained by a recipient for housing for non-low-income families and model activities?

1000.110 Under what conditions may non-low-income Indian families participate in the program?

1000.112 How will HUD determine whether to approve model housing activities?

1000.104 How long does HUD have to review and act on a proposal to provide assistance to non-low-income families or a model housing activity?

1000.116 What should HUD do before declining a proposal to provide assistance to non low-income families or a model housing activity?

1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non-low-income families or a model housing activity?

1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?

1000.122 May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any Federal or state program and still be considered an affordable housing activity?

1000.124 What maximum and minimum rent or homebuyer payment can a recipient charge a low-income rental tenant or homebuyer residing in housing units assisted with NAHASDA grant amounts?

1000.126 May a recipient charge flat or income-adjusted rents?

1000.1128 Is income verification required for assistance under NAHASDA?

1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income?

1000.132 Are utilities considered a part of rent or homebuyer payments?

1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of current assisted stock?

1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?

1000.138 What constitutes adequate insurance?

1000.139 What are the standards for insurance entities owned and controlled by recipients?

1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?

1000.141 What is "useful life" and how is it related to affordability?

1000.142 How does a recipient determine the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?

1000.143 How does a recipient implement its useful life requirements?

1000.144 What are binding commitments satisfactory to HUD?

1000.145 Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?

1000.146 Are binding commitments for the remaining useful life of property applicable to a family member or household member who subsequently takes ownership of a homeownership unit?

1000.147 When does housing qualify as affordable housing under NAHASDA?

1000.150 How may Indian tribes and TDHEs receive criminal conviction information on applicants for employment and on adult applicants for housing assistance, or tenants?

1000.152 How is the recipient to use criminal conviction information?

1000.154 How is the recipient to keep criminal conviction information confidential?

1000.156 Is affordable housing developed, acquired, or assisted under the IHBG program subject to limitations on cost or design standards?

1000.158 How will a NAHASDA grant recipient know that the housing assisted under the IHBG program meets the requirements of § 1000.156?

1000.160 Are non-dwelling structures developed, acquired or assisted under the IHBG program subject to limitations on cost or design standards?

1000.162 How will a recipient know that non-dwelling structures assisted under the IHBG program meet the requirements of 1000.160?

SUBPART C — INDIAN HOUSING PLAN (IHP)

1000.201 How are funds made available under NAHASDA?

1000.202 Who are eligible recipients?

1000.204 How does an Indian tribe designate itself as recipient of the grant?

1000.206 How is a TDHE designated?

1000.208 What happens if an Indian tribe had two IHAs as of September 30, 1996?

1000.210 What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?

1000.212 Is submission of an IHP required?

1000.214 What is the deadline for submission of an IHP?

1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by no later than 75 days before the beginning of the tribal program year?

1000.218 Who prepares and submits an IHP?

1000.220 What are the requirements for the IHP?

1000.222 Are there separate IHP requirements for small Indian tribes and small TDHEs?

1000.224 Can any part of the IHP be waived?

1000.225 When may a waiver of the IHP submission deadline be requested?

1000.226 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?

1000.227 What shall HUD do upon receipt of an IHP submission deadline waiver request?

1000.228 If HUD changes its IHP format will Indian tribes be involved?

1000.230 What is the process for HUD review of IHPs and IHP amendments?

1000.232 Can an Indian tribe or TDHE amend its IHP?

1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

1000.236 What are eligible administrative and planning expenses?

1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

1000.239 May a recipient establish and maintain reserve accounts for administration and planning?

1000.240 When is a local cooperation agreement required for affordable housing activities?

1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

1000.244 If the recipient has made a good-faith effort to negotiate a cooperation agreement and tax-exempt status but has been unsuccessful through no fault of its own, may the Secretary waive the requirement for a cooperation agreement and a tax exemption?

1000.246 How must HUD respond to a request for waiver of the requirement for a cooperation agreement and a tax exemption?

SUBPART D — ALLOCATION FORMULA

1000.301 What is the purpose of the IHBG formula?

1000.302 What are the definitions applicable for the IHBG formula?

1000.304 May the IHBG formula be modified?

1000.306 How can the IHBG formula be modified?

1000.308 Who can make modifications to the IHBG formula?

1000.310 What are the components of the IHBG formula?

1000.312 What is current assisted stock?

1000.314 What is formula current assisted stock?

1000.315 Is a recipient required to report changes to the Formula Current Assisted Stock (FCAS) on the Formula Response Form?

1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

1000.317 Who is the recipient for funds for current assisted stock which is owned by state-created Regional Native Housing Authorities in Alaska?

1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory used for the formula?

1000.319 What would happen if a recipient misreports or fails to correct Formula Current Assisted Stock (FCAS) information on the Formula Response Form?

1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

1000.322 Are IHA financed units included in the determination of Formula Current Assisted Stock?

1000.324 How is the need component developed?

1000.325 How is the need component adjusted for local area costs?

1000.326 What if a formula area is served by more than one Indian tribe?

1000.327 What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the unique circumstances in Alaska?

1000.328 What is the minimum amount that an Indian tribe may receive under the need component of the formula?

1000.329 What is the minimum total grant allocated to a tribe if there is carryover funds available?

1000.330 What are the data sources for the need variables?

1000.331 How will the impacts from adoption of a new data source be minimized as the new data source is implemented?

1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's

formula allocation be provided to the Indian tribe or TDHE before the allocation?

1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?

1000.340 What if an Indian tribe is allocated less funding under the IHBG Formula than it received in Fiscal Year (FY) 1996 for operating subsidy and modernization?

1000.342 Are undisbursed IHBG funds a factor in the grant formula?

SUBPART E — FEDERAL GUARANTEES FOR FINANCING OF TRIBAL HOUSING ACTIVITIES

1000.401 What terms are used throughout this subpart?

1000.402 Are State recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

1000.404 What lenders are eligible for participation?

1000.406 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

1000.410 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

1000.412 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

1000.414 How is an issuer's financial capacity demonstrated?

1000.416 What is a repayment contract in a form acceptable to HUD?

1000.418 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

1000.420 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

1000.422 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

1000.426 How does HUD review a guarantee application?

1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

1000.430 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

1000.432 Can an amendment to an approved guarantee be made?

1000.434 How will HUD allocate the availability of loan guarantee assistance?

1000.436 How will HUD monitor the use of funds guaranteed under this subpart?

SUBPART F — RECIPIENT MONITORING, OVERSIGHT AND ACCOUNTABILITY

1000.501 Who is involved in monitoring activities under NAHASDA?

1000.502 What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?

1000.503 What is an appropriate extent of HUD monitoring?

1000.506 If the TDHE is the recipient, must it submit its monitoring evaluation/results to the Indian tribe?

1000.508 If the recipient monitoring identifies programmatic concerns, what happens?

1000.510 What happens if tribal monitoring identifies compliance concerns?

1000.512 Are performance reports required?

1000.514 When must the annual performance report be submitted?

1000.516 What reporting period is covered by the annual performance report?

1000.518 When must a recipient obtain public comment on its annual performance report?

1000.520 What are the purposes of HUD's review of the Annual Performance Report?

1000.521 After the receipt of the recipient's performance report, how long does HUD have to make recommendations under section 404(c) of NAHASDA?

1000.522 How will HUD give notice of on-site reviews?

1000.524 What are HUD's performance measures for the review?

1000.526 What information will HUD use for its review?

1000.528 What are the procedures for the recipient to comment on the result of HUD's review when HUD issues a report under section 405(b) of NAHASDA?

1000.530 What corrective and remedial actions will HUD request or recommend to address performance problems prior to taking action under § 1000.532?

1000.532 What are the remedial actions that HUD may take in the event of recipient's substantial noncompliance?

1000.534 What constitutes substantial noncompliance?

1000.536 What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under § 1000.532?

1000.540 What hearing procedures will be used under NAHASDA?

1000.542 When may HUD require replacement of a recipient?

1000.544 What audits are required?

1000.546 Are audit costs eligible program or administrative expenses?

1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

1000.550 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

1000.552 How long must the recipient maintain program records?

1000.554 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

1000.558 Does the Federal Privacy Act apply to recipient records?

Appendix A to Part 1000 – Indian Housing Block Grant Formula Mechanics

Appendix B to Part 1000 – IHBG Block Grant Formula Mechanisms

Authority: 25 U.S.C. 4101 et seq.; 42 U.S.C. 3535(d).
Source: 63 FR 12349, Mar. 12, 1998, unless otherwise noted.

SUBPART A — GENERAL

§ 1000.1 What is the applicability and scope of these regulations?

Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) the Department of Housing and Urban Development (HUD) provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low-income housing in Indian areas. The policies and procedures described in this part apply to grants to eligible recipients under the Indian Housing Block Grant (IHBG) program for Indian tribes and Alaska Native villages. This part also applies to loan guarantee assistance under title VI of NAHASDA. The regulations in this part supplement the statutory requirements set forth in NAHASDA. This part, as much as practicable, does not repeat statutory language.

§ 1000.2 What are the guiding principles in the implementation of NAHASDA?

(a) The Secretary shall use the following Congressional findings set forth in section 2 of NAHASDA as the guiding principles in the implementation of NAHASDA:

(1) The Federal government has a responsibility to promote the general welfare of the Nation:

(i) 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;

(ii) By working to ensure a thriving national economy and a strong private housing market; and

(iii) 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.

(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 Indian tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition.

(5) Providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping Indian 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 to achieve the goals of economic self-sufficiency and self-determination for Indian tribes and their members.

(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.*).

(b) Nothing in this section shall be construed as releasing the United States government from any responsibility arising under its trust responsibilities towards Indians or any treaty or treaties with an Indian tribe or nation.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71521, Dec. 3, 2012]

§ 1000.4 What are the objectives of NAHASDA?

The primary objectives of NAHASDA are:

(a) To assist and promote affordable housing activities to develop, maintain and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(b) To ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(c) To coordinate activities to provide housing for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(d) To plan for and integrate infrastructure resources for Indian tribes with housing development for Indian tribes; and

(e) To promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

§ 1000.6 What is the nature of the IHBG program?

The IHBG program is formula driven whereby eligible recipients of funding receive an equitable share of appropriations made by the Congress, based upon formula components specified under subpart D of this part. IHBG recipients must have the administrative capacity to undertake the affordable housing activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 1000.8 May provisions of these regulations be waived?

Yes. Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

§ 1000.9 How is negotiated rulemaking conducted when promulgating NAHASDA regulations?

The negotiated rulemaking procedures and requirements set out in section 106(b) of NAHASDA shall be conducted as follows:

(a) *Committee membership.* In forming a negotiated rulemaking committee, HUD shall appoint as committee members representatives of the Federal Government and representatives of diverse tribes and program recipients.

(b) *Initiation of rulemaking.* HUD shall initiate a negotiated rulemaking not later than 90 days after the enactment of any act to reauthorize or significantly amend NAHASDA.

(c) *Work groups.* Negotiated rulemaking committees may form workgroups made up of committee members and other interested parties to meet during committee sessions and between sessions to develop specific rulemaking proposals for committee consideration.

(d) *Further review.* Negotiated rulemaking committees shall provide recommended rules to HUD. Once rules are proposed by HUD, they shall be published for comment in the Federal Register. Any comments will be further reviewed by the committee and HUD before HUD determines if the rule or rules will be adopted.

[77 FR 71521, Dec. 3, 2012]

§ 1000.10 What definitions apply in these regulations?

Except as noted in a particular subpart, the following definitions apply in this part:

(a) The terms "*Adjusted income*," "*Affordable housing*," "*Drug-related criminal activity*," "*Elderly families and near-elderly families*," "*Elderly person*," "*Grant beneficiary*," "*Indian*," "*Indian housing plan (IHP)*," "*Indian tribe*," "*Low-income family*," "*Near-elderly persons*," "*Nonprofit*," "*Recipient*," "*Secretary*," "*State*," and "*Tribally designated housing entity (TDHE)*" are defined in section 4 of NAHASDA.

(b) In addition to the definitions set forth in paragraph (a) of this section, the following definitions apply to this part: *Affordable housing activities* are those activities identified in section 202 of NAHASDA.

Annual Contributions Contract (ACC) means a contract under the 1937 Act between HUD and an IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families.

Annual income has one of the following meanings, as determined by the Indian tribe:

(1) "Annual income" as defined for HUD's Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family assets); or

(2) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Department or HUD means the Department of Housing and Urban Development.

Family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the Indian tribe.

Homebuyer payment means the payment of a family purchasing a home pursuant to a lease purchase agreement.

Homeless family means a family who is without safe, sanitary and affordable housing even though it may have temporary shelter provided by the community, or a family who is homeless as determined by the Indian tribe.

Housing related activities, for purposes of program income, means any facility, community building, infrastructure, business, program, or activity, including any community development or economic development activity, that:

(1) Is determined by the recipient to be beneficial to the provision of housing in an Indian area; and

(2) Would meet at least one of the following conditions:

(i) Would help an Indian tribe or its tribally designated housing entity to reduce the cost of construction of Indian housing;

(ii) Would make housing more affordable, energy efficient, accessible, or practicable in an Indian area;

(iii) Would otherwise advance the purposes of NAHASDA.

Housing related community development:

(1) Means any facility, community building, business, activity, or infrastructure that:

(i) Is owned by an Indian tribe or a tribally designated housing entity;

(ii) Is necessary to the provision of housing in an Indian area; and

(iii)(A) Would help an Indian tribe or tribally designated housing entity reduce the cost of construction of Indian housing;

(B) Would make housing more affordable, energy efficient, accessible, or practicable in an Indian area; or

(C) Would otherwise advance the purposes of NAHASDA.

(2) Does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*)

IHBG means Indian Housing Block Grant.

Income means annual income as defined in this subpart.

Indian area means the area within which an Indian tribe operates affordable housing programs or the area in which a TDHE, as authorized by one or more Indian tribes, operates affordable housing programs. Whenever the term "jurisdiction" is used in NAHASDA, it shall mean "Indian Area," except where specific reference is made to the jurisdiction of a court.

Indian Housing Authority (IHA) means an entity that:

(1) Is authorized to engage or assist in the development or operation of low-income housing for Indians under the 1937 Act; and

(2) Is established:

(i) By exercise of the power of self government of an Indian tribe independent of state law; or

(ii) By operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Median income for an Indian area is the greater of:

(1) The median income for the counties, previous counties, or their equivalent in which the Indian area is located; or

(2) The median income for the United States.

NAHASDA means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).*1937 Act* means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Office of Native American Programs (ONAP) means the office of HUD which has been delegated authority to administer programs under this part. An "Area ONAP" is an ONAP field office.

Outcomes are the intended results or consequences important to program beneficiaries, the IHBG recipient, and the tribe generally from carrying out the housing or housing-related activity as determined by the tribe (and/or its TDHE).

Person with Disabilities means a person who—

(1) Has a disability as defined in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act;

(3) Has a physical, mental, or emotional impairment which-

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(4) The term "person with disabilities" includes persons who have the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agent for acquired immunodeficiency syndrome.

(5) Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this part, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with Indian tribes and appropriate Federal agencies to implement this paragraph.

(6) For purposes of this definition, the term "*physical, mental or emotional impairment*" includes, but is not limited to:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological condition, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term "*physical, mental, or emotional impairment*" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, and emotional illness.

Tribal program year means the fiscal year of the IHBG recipient.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012]

§ 1000.12 What nondiscrimination requirements are applicable?

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and HUD's implementing regulations in 24 CFR part 146.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8 apply.

(c) The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301-1303), applies to Federally recognized Indian tribes that exercise powers of self-government.

(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. The Title VI and Title VIII requirements do not apply to actions under NAHASDA by federally recognized Indian tribes and their TDHEs. State-recognized Indian tribes and their TDHEs may provide preference for tribal members and other Indian families pursuant to NAHASDA sections 201(b) and 101(k) (relating to tribal preference in employment and contracting).

(e) The equal access to HUD-assisted or -insured housing requirements in 24 CFR 5.105(a)(2).

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012; 81 FR 80993, Nov. 17, 2016]

§ 1000.14 What relocation and real property acquisition policies are applicable?

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

(a) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.

(b) *Minimize displacement.* Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(c) *Temporary relocation.* The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the project. Such residential tenants and homebuyers shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (c)(1) of this section.

(d) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(e) *Appeals to the recipient.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient.

(f) *Responsibility of recipient.*

(1) The recipient shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The recipient shall ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with the provisions in this section.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the recipient from any other source.

(3) The recipient shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Definition of displaced person.*

(1) For purposes of this section, the term "displaced person" means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term "displaced person" includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (g)(1)(i) of this section, that the recipient determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the agreement between the recipient and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily

occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project.

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

§ 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.

(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).

(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.

(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).

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012]

§ 1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. An environmental review does not have to be completed prior to HUD approval of an IHP.

§ 1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will be subject to the availability of resources. A HUD environmental review must be completed for any NAHASDA assisted activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such NAHASDA assisted activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under

paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 1000.21 Under what circumstances are waivers of the environmental review procedures available to tribes?

A tribe or recipient may request that the Secretary waive the requirements under section 105 of NAHASDA. The Secretary may grant the waiver if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section:

(a) Will not frustrate the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) or any other provision of law that furthers the goals of that Act;

(b) Does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(c) Is a result of inadvertent error, including an incorrect or incomplete certification provided under section 105(c)(1) of NAHASDA; and

(d) May be corrected through the sole action of the recipient.

[77 FR 71522, Dec. 3, 2012]

§ 1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible.

§ 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards", except for the following sections:

(1) Section 200.113 applies, except that, in lieu of the remedies described in § 200.338, HUD shall be authorized to seek remedies under subpart F of this part.

(2) Section 200.302(a), "Financial management."

(3) Section 200.305, "Payment," applies, except that HUD shall not require a recipient to expend retained program income before drawing down or expending IHBG funds.

(4) Section 200.306, "Cost sharing or matching."

(5) Section 200.307, "Program income."

(6) Section 200.308, "Revision of budget and program plans."

(7) Section 200.311, "Real property," except as provided in 24 CFR 5.109.

(8) Section 200.313, "Equipment," applies, except that in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 200.314, "Supplies," applies, except in all cases in which the supplies are sold, the proceeds shall be program income.

(10) Section 200.317, "Procurement by states."

(11) Sections 200.318 through 200.326 apply, as modified in this paragraph (a)(11):

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

(ii) *Utilizing Federal supply sources in procurement.* In accordance with Section 101(j) of NAHASDA, recipients may use Federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

(12) Section 200.325, "Bonding requirements," applies. There may be circumstances under which the bonding requirements of 2 CFR 200.325 are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(iii) Letter of credit for 10 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(13) Section 200.328(b) through (d) and (f), "Monitoring and reporting program performance."

(14) Section 200.333, "Retention requirements for records."

(15) Section 200.338, "Remedies for noncompliance."

(16) Section 200.343, "Closeout."

(b)(1) With respect to the applicability of cost principles, all items of cost listed in 2 CFR part 200, subpart E, which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this part, except for the following:

(i) Depreciation method for fixed assets shall not be changed without the approval of the Federal cognizant agency.

(ii) Penalties, damages, fines and other settlements are unallowable costs to the IHBG program.

(iii) Costs of housing (*e.g.,* depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees (2 CFR 200.445) requires HUD prior approval.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71523, Dec. 3, 2012; 80 FR 75943, Dec. 7, 2015]

§ 1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?

Yes. A self-governance Indian tribe shall certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of § 1000.26. For

purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 2 CFR 200.318 shall apply. In all cases not governed by 2 CFR 200.318, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

[63 FR 12349, Mar. 12, 1998, as amended at 80 FR 75944, Dec. 7, 2015]

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in § 1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementation of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§ 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

In determining whether or not to make an exception to the conflict of interest provisions, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.

§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§ 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:

(a) 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

(b) 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.

§ 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).

[64 FR 50230, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000]

§ 1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)), or employment and contract preference laws adopted by the recipient's tribe in accordance with Section 101(k) of NAHASDA.

[85 FR 61568, Sept. 29, 2020]

§ 1000.44 What prohibitions on the use of debarred, suspended, or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors apply.

[72 FR 73497, Dec. 27, 2007]

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 2 CFR part 2429 apply.

[77 FR 45168, July 28, 2011]

§ 1000.48 Are Indian or tribal preference requirements applicable to IHBG activities?

Grants under this part are subject to Indian preference under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) or, if applicable under section 101(k) of NAHASDA, tribal preference in employment and contracting.

(a)(1) Section 7(b) provides that any contract, subcontract, grant, or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(i) Preference and opportunities for training and employment shall be given to Indians; and

(ii) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(2) The following definitions apply:

(i) The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) In section 3 of the Indian Financing Act of 1974, "economic enterprise" is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(b) If tribal employment and contract preference laws have not been adopted by the Indian tribe, section 7(b) Indian preference provisions shall apply.

(c) Exception for de minimis procurements. 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.

[77 FR 71523, Dec. 3, 2012]

§ 1000.50 What tribal or Indian preference requirements apply to IHBG administration activities?

(a) 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.

(b) In the absence of tribal employment and contract preference laws, a recipient must, to the greatest extent feasible, give preference and opportunities for training and employment in connection with the administration of grants awarded under this part to Indians in accordance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

[77 FR 71523, Dec. 3, 2012]

§ 1000.52 What tribal or Indian preference requirements apply to IHBG procurement?

(a) 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.

(b) 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)).

(c) The following provisions apply to the application of Indian preference under paragraph (b) of this section:

(1) In applying Indian preference, each recipient shall:

(i) Certify to HUD that the policies and procedures adopted by the recipient will provide preference in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (An Indian preference policy that was previously approved by HUD for a recipient will meet the requirements of this section); or

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

(iii) Use a two-stage preference procedure, as follows:

(A) *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.

(B) *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.

(2) If the recipient selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the recipient shall:

(i) Readvertise the contract, using any of the methods described in paragraph (c)(1) of this section; or

(ii) Readvertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 2 CFR 200.318 through 200.326, in order to award the contract to the single bidder or offeror.

(3) 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.

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

(5) 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:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) 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

(iii) 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.

(6) 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:

(i) 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:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) 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.

(iv) 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.

(d) 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.

[77 FR 71523, Dec. 3, 2012, as amended at 80 FR 75944, Dec. 7, 2015]

§ 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.

§ 1000.56 How are NAHASDA funds paid by HUD to recipients?

(a) Each year funds shall be paid directly to a recipient in a manner that recognizes the right of Indian self-determination and tribal self-governance and the trust responsibility of the Federal government to Indian tribes consistent with NAHASDA.

(b) Payments shall be made as expeditiously as practicable.

§ 1000.58 Are there limitations on the investment of IHBG funds?

(a) A recipient may invest IHBG funds for the purposes of carrying out affordable housing activities in investment securities and other obligations as provided in this section.

(b) The recipient may invest IHBG funds so long as it demonstrates to HUD:

(1) That there are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and

(2) That it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

(c) Recipients shall invest IHBG funds only in:

(1) Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) Accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.

(d) IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to an agreement in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under § 1000.60.

(e) Expenditure of funds for affordable housing activities under section 204(a) of NAHASDA shall not be considered investment.

(f) A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount.

(g) Investments under this section may be for a period no longer than 5 years.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71524, Dec. 3, 2012]

§ 1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?

Yes. In accordance with the standards and remedies contained in § 1000.532 relating to substantial noncompliance, HUD will use its powers under a depository agreement and take such other actions as may be legally necessary to suspend funds disbursed to the recipient until the substantial noncompliance has been remedied. In taking this action, HUD shall comply with all appropriate procedures, appeals, and hearing rights prescribed elsewhere in this part.

[77 FR 71524, Dec. 3, 2012]

§ 1000.62 What is considered program income?

(a) Program income is defined as any income that is realized from the disbursement of grant amounts. Program income does not include any amounts generated from the operation of 1937 Act units unless the units are assisted with grant amounts and the income is attributable to such assistance. Program income includes income from fees for services performed from the use of real or rental of real or personal property acquired with grant funds, from the sale of commodities or items developed, acquired, etc. with grant funds, and from payments of principal and interest earned on grant funds prior to disbursement.

(b) If the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or treated as program income.

(c) If program income is realized from an eligible activity funded with both grant funds as well as other funds (i.e., funds that are not grant funds), then the amount of program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income.

(d) Costs incident to the generation of program income shall be deducted from gross income to determine program income.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71524, Dec. 3, 2012]

§ 1000.64 What are the permissible uses of program income?

Program income may be used for any housing or housing related activity and is not subject to other federal requirements.

[77 FR 71524, Dec. 3, 2012]

SUBPART B — AFFORDABLE HOUSING ACTIVITIES

§ 1000.101 What is affordable housing?
Eligible affordable housing is defined in section 4(2) of NAHASDA and is described in title II of NAHASDA.

§ 1000.102 What are eligible affordable housing activities?

Eligible affordable housing activities are those described in section 202 of NAHASDA.

§ 1000.103 How may IHBG funds be used for tenant-based or project-based rental assistance?

(a) IHBG funds may be used for project-based or tenant-based rental assistance.

(b) IHBG funds may be used for project-based or tenant-based rental assistance that is provided in a manner consistent with section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) IHBG funds used for project-based or tenant-based rental assistance must comply with the requirements of NAHASDA and this part.

[72 FR 59004, Oct. 18, 2007]

§ 1000.104 What families are eligible for affordable housing activities?

The following families are eligible for affordable housing activities:

(a) Low income Indian families on a reservation or Indian area.

(b) A non-low-income family may receive housing assistance in accordance with § 1000.110.

(c) A family may receive housing assistance on a reservation or Indian area if the family's housing needs cannot be

reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families.

(d) A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under NAHASDA for a law enforcement officer on an Indian reservation or other Indian area, if:

(1) The officer:

(i) Is employed on a full-time basis by the federal government or a state, county, or other unit of local government, or lawfully recognized tribal government; and

(ii) In implementing such full-time employment, is sworn to uphold, and make arrests for, violations of federal, state, county, or tribal law; and

(2) The recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71524, Dec. 3, 2012]

§ 1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?

(a) Housing assistance for non-low-income families requires HUD approval only as required in §§ 1000.108 and 1000.110.

(b) Assistance for essential families under section 201(b)(3) of NAHASDA does not require HUD approval but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and that the family's housing needs cannot be reasonably met without such assistance.

[77 FR 71525, Dec. 3, 2012]

§ 1000.108 How is HUD approval obtained by a recipient for housing for non-low-income families and model activities?

Recipients are required to submit proposals to operate model housing activities as defined in section 202(6) of NAHASDA and to provide assistance to non-low-income families in accordance with section 201(b)(2) of NAHASDA. Assistance to non-low-income families must be in accordance with § 1000.110. Proposals may be submitted in the recipient's IHP or at any time by amendment of the IHP, or by special request to HUD at any time. HUD may approve the remainder of an IHP, notwithstanding disapproval of a model activity or assistance to non-low-income families.

[77 FR 71525, Dec. 3, 2012]

§ 1000.110 Under what conditions may non-low-income Indian families participate in the program?

(a) A family that was low-income at the times described in § 1000.147 but subsequently becomes a non-low-income family due to an increase in income may continue to participate in the program in accordance with the recipient's admission and occupancy policies. The 10 percent limitation in paragraph (c) of this section shall not apply to such families. Such families may be made subject to the additional requirements in paragraph (d) of this section based on those policies. This includes a family member or household member who takes ownership of a homeownership unit under § 1000.146.

(b) A recipient must determine and document that there is a need for housing for each family that cannot reasonably be met without such assistance.

(c) A recipient may use up to 10 percent of the amount planned for the tribal program year for families whose income falls within 80

to 100 percent of the median income without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of the amount planned for the tribal program year for such assistance or to provide housing for families with income over 100 percent of median income.

(d) Non-low-income families cannot receive the same benefits provided low-income Indian families. The amount of assistance non-low-income families may receive will be determined as follows:

(1) The rent (including homebuyer payments under a lease purchase agreement) to be paid by a non-low-income family cannot be less than: (Income of non-low-income family/Income of family at 80 percent of median income) × (Rental payment of family at 80 percent of median income), but need not exceed the fair market rent or value of the unit.

(2) Other assistance, including down payment assistance, to non-low-income families, cannot exceed: (Income of family at 80 percent of median income/Income of non-low-income family) × (Present value of the assistance provided to family at 80 percent of median income).

(e) The requirements set forth in paragraphs (c) and (d) of this section do not apply to non-low-income families that the recipient has determined to be essential under § 1000.106(b).

[77 FR 71525, Dec. 3, 2012]

§ 1000.112 How will HUD determine whether to approve model housing activities?

HUD will review all proposals with the goal of approving the activities and encouraging the flexibility, discretion, and self-determination granted to Indian tribes under NAHASDA to formulate and operate innovative housing programs that meet the intent of NAHASDA.

§ 1000.114 How long does HUD have to review and act on a proposal to provide assistance to non-low-income families or a model housing activity?

Whether submitted in the IHP or at any other time, HUD will have 60 calendar days after receiving the proposal to notify the recipient in writing that the proposal to provide assistance to non-low-income families or for model activities is approved or disapproved. If no decision is made by HUD within 60 calendar days of receiving the proposal, the proposal is deemed to have been approved by HUD.

[77 FR 71525, Dec. 3, 2012]

§ 1000.116 What should HUD do before declining a proposal to provide assistance to non low-income families or a model housing activity?

HUD shall consult with a recipient regarding the recipient's proposal to provide assistance to non-low-income families or a model housing activity. To the extent that resources are available, HUD shall provide technical assistance to the recipient in amending and modifying the proposal, if necessary. In case of a denial, HUD shall give the specific reasons for the denial.

[77 FR 71525, Dec. 3, 2012]

§ 1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non-low-income families or a model housing activity?

(a) Within 30 calendar days of receiving HUD's denial of a proposal to provide assistance to non-low-income families or a model housing activity, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration.

(b) Within twenty calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reasons for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action. If the decision was made at a lower level, then paragraphs (c) and (d) of this section will apply.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within twenty calendar days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and set forth justification for the reconsideration.

(d) Within twenty calendar days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, setting forth the reasons for the decision.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71525, Dec. 3, 2012]

§ 1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?

Yes. The IHP may set out a preference for the provision of housing assistance to Indian families who are members of the Indian tribe or to other Indian families if the recipient has adopted the preference in its admissions policy. The recipient shall ensure that housing activities funded under NAHASDA are subject to the preference.

§ 1000.122 May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any Federal or state program and still be considered an affordable housing activity?

There is no prohibition in NAHASDA against using grant funds as matching funds.

§ 1000.124 What maximum and minimum rent or homebuyer payment can a recipient charge a low-income rental tenant or homebuyer residing in housing units assisted with NAHASDA grant amounts?

A recipient can charge a low-income rental tenant or homebuyer rent or homebuyer payments not to exceed 30 percent of the adjusted income of the family. The recipient may also decide to compute its rental and homebuyer payments on any lesser percentage of adjusted income of the family. This requirement applies only to units assisted with NAHASDA grant amounts. NAHASDA does not set minimum rents or homebuyer payments; however, a recipient may do so.

§ 1000.126 May a recipient charge flat or income-adjusted rents?

Yes, providing the rental or homebuyer payment of the low-income family does not exceed 30 percent of the family's adjusted income.

§ 1000.128 Is income verification required for assistance under NAHASDA?

(a) Yes, the recipient must verify that the family is income eligible based on anticipated annual income. The family is required to provide documentation to verify this determination. The recipient is required to maintain the documentation on which the determination of eligibility is based.

(b) The recipient may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by the recipient.

§ 1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income?

Yes. A recipient may charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income.

§ 1000.132 Are utilities considered a part of rent or homebuyer payments?

Utilities may be considered a part of rent or homebuyer payments if a recipient decides to define rent or homebuyer payments to include utilities in its written policies on rents and homebuyer payments required by section 203(a)(1) of NAHASDA. A recipient may define rents and homebuyer payments to exclude utilities.

§ 1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of current assisted stock?

(a) A recipient (or entity funded by a recipient) may undertake a planned demolition or disposal of current assisted stock owned by the recipient or an entity funded by the recipient when:

(1) A financial analysis demonstrates that it is more cost-effective or housing program-effective for the recipient to demolish or dispose of the unit than to continue to operate or own it; or

(2) The housing unit has been condemned by the government which has authority over the unit; or

(3) The housing unit is an imminent threat to the health and safety of housing residents; or

(4) Continued habitation of a housing unit is inadvisable due to cultural or historical considerations.

(b) No action to demolish or dispose of the property other than performing the analysis cited in paragraph (a) of this section can be taken until HUD has been notified in writing of the recipient's intent to demolish or dispose of the housing units consistent with section 102(c)(4)(H) of NAHASDA. The written notification must set out the analysis used to arrive at the decision to demolish or dispose of the property and may be set out in a recipient's IHP or in a separate submission to HUD.

(c) In any disposition sale of a housing unit, a sale process designed to maximize the sale price will be used. However, where the sale is to a low-income Indian family, the home may be disposed of without maximizing the sale price so long as such price is consistent with a recipient's IHP. The sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used in accordance with the requirements of NAHASDA and these regulations.

§ 1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?

(a) The recipient shall provide adequate insurance either by purchasing insurance or by indemnification against casualty loss by providing insurance in adequate amounts to indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient.

(b) The recipients shall not require insurance on units assisted by grants to families for privately owned housing if there is no risk of loss or exposure to the recipient or if the assistance is in an amount less than $5000, but will require insurance when repayment of all or part of the assistance is part of the assistance agreement.

(c) The recipient shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the recipient in the contract.

(d) These requirements are in addition to applicable flood insurance requirements under § 1000.38.

§ 1000.138 What constitutes adequate insurance?

Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount that will protect the financial stability of the recipient's IHBG program. Recipients may purchase the required insurance without regard to competitive selection procedures from nonprofit insurance entities which are owned and controlled by recipients and which have been approved by HUD.

§ 1000.139 What are the standards for insurance entities owned and controlled by recipients?

(a) *General.* A recipient may provide insurance coverage required by section 203(c) of NAHASDA and §§ 1000.136 and 1000.138 through a self-insurance plan, approved by HUD in accordance with this section, provided by a nonprofit insurance entity that is wholly owned and controlled by IHBG recipients.

(b) *Self-insurance plan.* An Indian housing self-insurance plan must be shown to meet the requirements of paragraph (c) of this section.

(c) *Application.* For a self-insurance plan to be approved by HUD, an application and supporting materials must be submitted containing the information specified in paragraphs (c)(1) through (c)(9) of this section. Any material changes made to these documents after initial approval must be submitted to HUD. Adverse material changes may cause HUD to revoke its approval of a self-insurance entity. The application submitted to HUD must show that:

(1) The plan is organized as an insurance entity, tribal self-insurance plan, tribal risk retention group, or Indian housing self-insurance risk pool;

(2) The plan limits participation to IHBG recipients;

(3) The plan operates on a nonprofit basis;

(4)(i) The plan employs or contracts with a third party to provide competent underwriting and management staff;

(A) The underwriting staff must be composed of insurance professionals with an average of at least five years of experience in large risk commercial underwriting exceeding $100,000 in annual premiums or at least five years of experience in underwriting risks for public entity plans of self-insurance;

(B) The management staff must have at least one senior manager who has a minimum of five years of insurance experience at the level of vice president of a property or casualty insurance entity; as a senior branch manager of a branch office with annual property or casualty premiums exceeding five million dollars; or as a senior manager of a public entity self-insurance risk pool;

(ii) Satisfaction of this requirement may be demonstrated by evidence such as résumés and employment history of the underwriting staff for the plan and of the key management staff with day-to-day operational oversight of the plan;

(5) The plan maintains internal controls and cost containment measures, as shown by the annual budget;

(6) The plan maintains sound investments consistent with its articles of incorporation, charter, bylaws, risk pool agreement, or other applicable organizational document or agreement concerning investments;

(7) The plan maintains adequate surplus and reserves, as determined by HUD, for undischarged liabilities of all types, as shown by a current audited financial statement and an actuarial review conducted

in accordance with paragraph (e) of this section;

(8) The plan has proper organizational documentation, as shown by copies of the articles of incorporation, charter, bylaws, subscription agreement, business plan, contracts with third-party administrators, and other organizational documents; and

(9) A plan's first successful application for approval under this section must also include an opinion from the plan's legal counsel that the plan is properly chartered, incorporated, or otherwise formed under applicable law.

(d) *HUD consideration of plan.* HUD will consider an application for approval of a self-insurance plan submitted under this section and approve or disapprove that application no later than 90 days from the date of receipt of a complete application. If an application is disapproved, HUD shall notify the applicant of the reasons for disapproval and may offer technical assistance to a recipient to help the recipient correct the deficiencies in the application. The recipient may then resubmit the application under this section.

(e) *Annual reporting.* An approved plan must undergo an audit and actuarial review annually. In addition, an evaluation of the plan's management must be performed by an insurance professional every three years. These audits, actuarial reviews, and management reviews must be submitted to HUD within 90 days after the end of the insuring entity's fiscal year and be prepared in accordance with the following standards:

(1) The annual financial statement must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent auditor in accordance with generally accepted government auditing standards. The independent auditor shall state in writing an opinion on whether the plan's financial statement is presented fairly, in accordance with GAAP;

(2) The actuarial review of the plan shall be done consistently with requirements established by the Association of Governmental Risk Pools and conducted by an independent property or casualty actuary who is a member of a recognized professional actuarial organization, such as the American Academy of Actuaries. The report issued and submitted to HUD must include the actuary's written opinion on any over- or under-reserving and the adequacy of the reserve maintained for open claims and for incurred but unreported claims;

(3) The management review must be prepared by an independent insurance consultant who has received the professional designation of a chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), and must cover the following:

(i) The efficiency of the management or third-party administrator of the plan;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance or excess insurance coverage.

(f) *Revocation of approval.* HUD may revoke its approval of a plan under this section when the plan no longer meets the requirements of this section. The plan's management will be notified in writing of the proposed revocation of its approval and of the manner and time in which to request a hearing to challenge the determination, in accordance with the dispute resolution procedures set forth in this part for model housing activities (§ 1000.118).

(g) *Preemption.* In order that tribally owned Indian housing insurance entities that provide insurance for IHBG-assisted housing will not be subject to conflicting state laws and widely varying and costly requirements, any self-insurance plan under this section that meets the requirements of this section and that has been approved by HUD shall be governed by the regulations of this subpart in its provision of insurance for IHBG-assisted housing.

[72 FR 29740, May 29, 2007]

§ 1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?

Yes. All purchases of insurance must be in accordance with §§ 1000.136 and 1000.138.

§ 1000.141 What is "useful life" and how is it related to affordability?

Useful life is the time period during which an assisted property must remain affordable, as defined in section 205(a) of NAHASDA.

[77 FR 71525, Dec. 3, 2012]

§ 1000.142 How does a recipient determine the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?

To the extent required in the IHP, each 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 approving the plan, HUD determines the useful life in accordance with section 205(a)(2) of NAHASDA and for purposes of section 209.

[77 FR 71525, Dec. 3, 2012]

§ 1000.143 How does a recipient implement its useful life requirements?

A recipient implements its useful life requirements by placing a binding commitment, satisfactory to HUD, on the assisted property.

[77 FR 71526, Dec. 3, 2012]

§ 1000.144 What are binding commitments satisfactory to HUD?

A binding commitment satisfactory to HUD is a written use restriction agreement, developed by the recipient, and placed on an assisted property for the period of its useful life.

[77 FR 71526, Dec. 3, 2012]

§ 1000.145 Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?

No.

[63 FR 12349, Mar. 12, 1998. Redesignated at 77 FR 71526, Dec. 3, 2012]

§ 1000.146 Are binding commitments for the remaining useful life of property applicable to a family member or household member who subsequently takes ownership of a homeownership unit?

No. 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. 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 under a binding commitment.

[77 FR 71526, Dec. 3, 2012]

§ 1000.147 When does housing qualify as affordable housing under NAHASDA?

(a) Housing qualifies as affordable housing, provided that the family occupying the unit is low-income at the following times:

(1) In the case of rental housing, at the time of the family's initial occupancy of such unit;

(2) In the case of a contract to purchase existing housing, at the time of purchase;

(3) In the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; and

(4) In the case of a contract to purchase housing to be constructed, at the time the contract is signed.

(b) Families that are not low-income as described in this section may be eligible under § 1000.104 or § 1000.110.

[63 FR 12349, Mar. 12, 1998. Redesignated at 77 FR 71526, Dec. 3, 2012]

§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on applicants for employment and on adult applicants for housing assistance, or tenants?

(a) As required by section 208 of NAHASDA, the National Crime Information Center, police departments, and other law enforcement agencies shall provide criminal conviction information to Indian tribes and TDHEs upon request. Information regarding juveniles shall only be released to the extent such release is authorized by the law of the applicable state, Indian tribe or locality.

(b) For purposes of this section, the term "*tenants*" includes homebuyers who are purchasing a home pursuant to a lease purchase agreement.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71526, Dec. 3, 2012]

§ 1000.152 How is the recipient to use criminal conviction information?

(a) With regard to adult tenants and applicants for housing assistance, the recipient shall use the criminal conviction information described in § 1000.150 only for applicant screening, lease enforcement, and eviction actions.

(b) With regard to applicants for employment, the recipient shall use the criminal conviction information described in § 1000.150 for the purposes set out in section 208 of NAHASDA.

(c) The criminal conviction information described in § 1000.150 may be disclosed only to any person who has a job-related need for the information and who is an authorized officer, employee, or representative of the recipient or the owner of housing assisted under NAHASDA.

[77 FR 71526, Dec. 3, 2012]

§ 1000.154 How is the recipient to keep criminal conviction information confidential?

(a) The recipient will keep all the criminal conviction record information it receives from the official law enforcement agencies listed in § 1000.150 in files separate from all other housing records.

(b) These criminal conviction records will be kept under lock and key and be under the custody and control of the recipient's housing executive director/lead official and/or his designee for such records.

(c) These criminal conviction records may only be accessed with the written permission of the Indian tribe's or TDHE's housing executive director/lead official and/or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and these regulations.

§ 1000.156 Is affordable housing developed, acquired, or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Affordable housing must be of moderate design. For these purposes, moderate design is defined as housing that is of a size and with amenities consistent with

unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income. The local determination of moderate design applies to all housing assisted under an affordable housing activity, including development activities (*e.g.,* acquisition, new construction, reconstruction, moderate or substantial rehabilitation of affordable housing and homebuyer assistance) and model activities. Acquisition includes assistance to a family to buy housing. Units with the same number of bedrooms must be comparable with respect to size, cost and amenities.

[66 FR 49790, Sept. 28, 2001]

§ 1000.158 How will a NAHASDA grant recipient know that the housing assisted under the IHBG program meets the requirements of § 1000.156?

(a) A recipient must use one of the methods specified in paragraph (b) or (c) of this section to determine if an assisted housing project meets the moderate design requirements of § 1000.156. For purposes of this requirement, a project is one or more housing units, of comparable size, cost, amenities and design, developed with assistance provided by the Act.

(b) The recipient may adopt written standards for its affordable housing programs that reflect the requirement specified in § 1000.156. The standards must describe the type of housing, explain the basis for the standards, and use similar housing in the Indian tribe's general geographic area. For each affordable housing project, the recipient must maintain documentation substantiating compliance with the adopted housing standards. The standards and documentation substantiating compliance for each activity must be available for review by the general public and, upon request, by HUD. Prior to awarding a contract for the construction of housing or beginning construction using its own workforce, the recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC discussed in paragraph (c) of this section and may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the project. In developing standards under this paragraph, the recipient must establish, maintain, and follow policies that determine a local definition of moderate design which considers:

(1) Gross area;

(2) Total cost to provide the housing;

(3) Environmental concerns and mitigations;

(4) Climate;

(5) Comparable housing in geographical area;

(6) Local codes, ordinances and standards;

(7) Cultural relevance in design;

(8) Design and construction features that are reasonable, and necessary to provide decent, safe, sanitary and affordable housing; and

(9) Design and construction features that are accessible to persons with a variety of disabilities.

(c) If the recipient has not adopted housing standards specified in paragraph (b) of this section, Total Development Cost (TDC) limits published periodically by HUD establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC and may not, without prior HUD approval, exceed the TDC maximum cost for the project.

[66 FR 49790, Sept. 28, 2001]

§ 1000.160 Are non-dwelling structures developed, acquired or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Non-dwelling structures must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the structures. The purpose of a non-dwelling structure must be to support an affordable housing activity, as defined by the Act.

[66 FR 49790, Sept. 28, 2001]

§ 1000.162 How will a recipient know that non-dwelling structures assisted under the IHBG program meet the requirements of 1000.160?

(a) The recipient must use one of the methods described in paragraph (b) or (c) of this section to determine if a non-dwelling structure meets the limitation requirements of § 1000.160. If the recipient develops, acquires, or rehabilitates a non-dwelling structure with funds from NAHASDA and other sources, then the cost limit standard established under these regulations applies to the entire structure. If funds are used from two different sources, the standards of the funding source with the more restrictive rules apply.

(b)(1) The recipient may adopt written standards for non-dwelling structures. The standards must describe the type of structures and must clearly describe the criteria to be used to guide the cost, size, design, features, amenities, performance or other factors. The standards for such structures must be able to support the reasonableness and necessity for these factors and to clearly identify the affordable housing activity that is being provided.

(2) When the recipient applies a standard to particular structures, it must document the following:

(i) Identification of targeted population to benefit from the structures;

(ii) Identification of need or problem to be solved;

(iii) Affordable housing activity provided or supported by the structures;

(iv) Alternatives considered;

(v) Provision for future growth and change;

(vi) Cultural relevance of design;

(vii) Size and scope supported by population and need;

(viii) Design and construction features that are accessible to persons with a variety of disabilities;

(ix) Cost; and

(x) Compatibility with community infrastructure and services.

(c) If the recipient has not adopted program standards specified in paragraph (b) of this section, then it must demonstrate and document that the non-dwelling structure is of a cost, size, design and with amenities consistent with similarly designed and constructed structures in the recipient's general geographic area.

[66 FR 49790, Sept. 28, 2001]

SUBPART C — INDIAN HOUSING PLAN (IHP)

§ 1000.201 How are funds made available under NAHASDA?

Every fiscal year HUD will make grants under the IHBG program to recipients who have submitted to HUD for a tribal program year an IHP in accordance with § 1000.220 to carry out affordable housing activities.

[77 FR 71526, Dec. 3, 2012]

§ 1000.202 Who are eligible recipients?

Eligible recipients are Indian tribes, or TDHEs when authorized by one or more Indian tribes.

§ 1000.204 How does an Indian tribe designate itself as recipient of the grant?

(a) By resolution of the Indian tribe; or

(b) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

§ 1000.206 How is a TDHE designated?

(a)(1) By resolution of the Indian tribe or Indian tribes to be served; or

(2) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

(b) In the absence of a designation by the Indian tribe, the default designation as provided in section 4(21) of NAHASDA shall apply.

§ 1000.208 What happens if an Indian tribe had two IHAs as of September 30, 1996?

Indian tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to an Indian tribe under the formula.

§ 1000.210 What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?

NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an Indian housing authority, Indian tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by an Indian tribe or is determined to be out of compliance by HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, Federal, or private market support may have to be sought to maintain and operate those 1937 Act units.

§ 1000.212 Is submission of an IHP required?

Yes. An Indian tribe or, with the consent of its Indian tribe(s), the TDHE, must submit an IHP to HUD to receive funding under NAHASDA, except as provided in section 101(b)(2) of NAHASDA. If a TDHE has been designated by more than one Indian tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP based on the requirements of § 1000.220 with the approval of the Indian tribes.

§ 1000.214. What is the deadline for submission of an IHP?

IHPs must be initially sent by the recipient to the Area ONAP no later than 75 days before the beginning of a tribal program year. Grant funds cannot be provided until the plan due under this section is determined to be in compliance with section 102 of NAHASDA and funds are available.

[77 FR 71526, Dec. 3, 2012]

§ 1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by no later than 75 days before the beginning of the tribal program year?

If the IHP is not initially sent by at least 75 days before the beginning of the tribal program year, the recipient will not be eligible for IHBG funds for that fiscal year. Any funds not obligated because an IHP was not received before this deadline has passed

shall be distributed by formula in the following year.

[77 FR 71526, Dec. 3, 2012]

§ 1000.218 Who prepares and submits an IHP?

An Indian tribe, or with the authorization of a Indian tribe, in accordance with section 102(d) of NAHASDA a TDHE may prepare and submit a plan to HUD.

§ 1000.220 What are the requirements for the IHP?

The IHP requirements are set forth in section 102(b) of NAHASDA. In addition, §§ 1000.56, 1000.108, 1000.120, 1000.134, 1000.142, 1000.238, 1000.302, and 1000.328 require or permit additional items to be set forth in the IHP for HUD determinations required by those sections. Recipients are only required to provide IHPs that contain these elements in a form prescribed by HUD. If a TDHE is submitting a single IHP that covers two or more Indian tribes, the IHP must contain a separate certification in accordance with section 102(d) of NAHASDA and IHP Tables for each Indian tribe when requested by such Indian tribes. However, Indian tribes are encouraged to perform comprehensive housing needs assessments and develop comprehensive IHPs and not limit their planning process to only those housing efforts funded by NAHASDA. An IHP should be locally driven.

[77 FR 71526, Dec. 3, 2012]

§ 1000.222 Are there separate IHP requirements for small Indian tribes and small TDHEs?

No. HUD requirements for IHPs are reasonable.

§ 1000.224 Can any part of the IHP be waived?

Yes. HUD has general authority under section 101(b)(2) of NAHASDA to waive any IHP requirements when an Indian tribe cannot comply with IHP requirements due to exigent circumstances beyond its control, for a period of not more than 90 days. The waiver authority under section 101(b)(2) of NAHASDA provides flexibility to address the needs of every Indian tribe, including small Indian tribes. The waiver may be requested by the Indian tribe or its TDHE (if such authority is delegated by the Indian tribe), and such waiver shall not be unreasonably withheld.

[77 FR 71526, Dec. 3, 2012]

§ 1000.225 When may a waiver of the IHP submission deadline be requested?

A recipient may request a waiver for a period of not more than 90 days beyond the IHP submission due date.

[77 FR 71526, Dec. 3, 2012]

§ 1000.226 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?

Yes. HUD may waive these certification requirements as provided in section 101(b)(2) of NAHASDA.

§ 1000.227 What shall HUD do upon receipt of an IHP submission deadline waiver request?

The waiver shall be decided upon by HUD within 45 days of receipt of the waiver request. HUD shall notify the recipient in writing within 45 days of receipt of the waiver request whether the request is approved or denied.

[77 FR 71526, Dec. 3, 2012]

§ 1000.228 If HUD changes its IHP format will Indian tribes be involved?

Yes. HUD will first consult with Indian tribes before making any substantial changes to HUD's IHP format.

§ 1000.230 What is the process for HUD review of IHPs and IHP amendments?

HUD will conduct the IHP review in the following manner:

(a) HUD will conduct a limited review of the IHP to ensure that its contents:

(1) Comply with the requirements of section 102 of NAHASDA, which outlines the IHP submission requirements; however, the recipient may use either the HUD-estimated IHBG amount or the IHBG amount from their most recent compliant IHP;

(2) Are consistent with information and data available to HUD;

(3) Are not prohibited by or inconsistent with any provision of NAHASDA or other applicable law; and

(4) Include the appropriate certifications.

(b) If the IHP complies with the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section, HUD will notify the recipient of IHP compliance within 60 days after receiving the IHP. If HUD fails to notify the recipient, the IHP shall be considered to be in compliance with the requirements of section 102 of NAHASDA and the IHP is approved.

(c) If the submitted IHP does not comply with the provisions of paragraphs (a)(1), and (a)(3) of this section, HUD will notify the recipient of the determination of non-compliance. HUD will provide this notice no later than 60 days after receiving the IHP. This notice will set forth:

(1) The reasons for noncompliance;

(2) The modifications necessary for the IHP to meet the submission requirements; and

(3) The date by which the revised IHP must be submitted.

(d) If the recipient does not submit a revised IHP by the date indicated in the notice provided under paragraph (c) of this section, the IHP will be determined by HUD to be in non-compliance unless a waiver is requested and approved under section 101(b)(2) of NAHASDA. If the IHP is determined by HUD to be in non-compliance and no waiver is granted, the recipient may appeal this determination following the appeal process in § 1000.234.

(e)(1) If the IHP does not contain the certifications identified in paragraph (a)(4) of this section, the recipient will be notified within 60 days of submission of the IHP that the plan is incomplete. The notification will include a date by which the certification must be submitted.

(2) If the recipient has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe(s), within the timeframe established, the recipient can request a waiver in accordance with section 101(b)(2) of NAHASDA. If the waiver is approved, the recipient is eligible to receive its grant in accordance with any conditions of the waiver.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71527, Dec. 3, 2012]

§ 1000.232 Can an Indian tribe or TDHE amend its IHP?

Yes. Section 103(c) of NAHASDA specifically provides that a recipient may submit modifications or revisions of its IHP to HUD. Unless the initial IHP certification provided by an Indian tribe allowed for the submission of IHP amendments without further tribal certifications, a tribal certification must accompany submission of IHP amendments by a TDHE to HUD. HUD's review of an amendment and determination of compliance will be limited to modifications

of an IHP which adds new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of housing assisted under the 1937 Act. HUD will consider these modifications to the IHP in accordance with § 1000.230. HUD will act on amended IHPs within 30 days.

§ 1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

(a) Yes. Within 30 days of receiving HUD's disapproval of an IHP or of a modification to an IHP, the recipient may submit a written request for reconsideration of the determination. The request shall include the justification for the reconsideration.

(b) Within 21 days of receiving the request, HUD shall reconsider its initial determination and provide the recipient with written notice of its decision to affirm, modify, or reverse its initial determination. This notice will also contain the reasons for HUD's decision.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within 21 days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and include justification for the reconsideration.

(d) Within 21 days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal. The Assistant Secretary will provide written notice to the recipient setting forth the reasons for the decision. The Assistant Secretary's decision constitutes final agency action.

§ 1000.236 What are eligible administrative and planning expenses?

(a) Eligible administrative and planning expenses of the IHBG program include, but are not limited to:

(1) Costs of overall program and/or administrative management;

(2) Coordination monitoring and evaluation;

(3) Preparation of the IHP including data collection and transition costs;

(4) Preparation of the annual performance report;

(5) Challenge to and collection of data for purposes of challenging the formula; and

(6) Administrative and planning expenses associated with expenditure of non-IHBG funds on affordable housing activities if the source of the non-IHBG funds limits expenditure of its funds on such administrative expenses.

(b) Staff and overhead costs directly related to carrying out affordable housing activities or comprehensive and community development planning activities can be determined to be eligible costs of the affordable housing activity or considered as administration or planning at the discretion of the recipient.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71527, Dec. 3, 2012]

§ 1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

Recipients receiving in excess of $500,000 may use up to 20 percent of their annual expenditures of grant funds or may use up to 20 percent of their annual grant amount, whichever is greater. Recipients receiving $500,000 or less may use up to 30 percent of their annual expenditures of grant funds or up to 30 percent of their annual grant amount, whichever is greater. When a recipient is receiving grant funds on behalf of one or more grant beneficiaries, the recipient may use up to 30 percent of the annual expenditure of grant funds or up to 30 percent of the annual grant amount, whichever is greater, of each grant beneficiary whose allocation is $500,000 or

less, and up to 20 percent of the annual expenditure of grant funds or up to 20 percent of the annual grant amount, whichever is greater, of each grant beneficiary whose allocation is greater than $500,000. HUD approval is required if a higher percentage is requested by the recipient. Recipients combining grant funds with other funding may request HUD approval to use a higher percentage based on its total expenditure of funds from all sources for that year. When HUD approval is required, HUD must take into consideration any cost of preparing the IHP, challenges to and collection of data, the recipient's grant amount, approved cost allocation plans, and any other relevant information with special consideration given to the circumstances of recipients receiving minimal funding.

[77 FR 71527, Dec. 2012]

§ 1000.239 May a recipient establish and maintain reserve accounts for administration and planning?

Yes. In addition to the amounts established for planning and administrative expenses under §§ 1000.236 and 1000.238, a recipient may establish and maintain separate reserve accounts only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities. These amounts may be invested in accordance with § 1000.58(c). Interest earned on reserves is not program income and shall not be included in calculating the maximum amount of reserves. The maximum amount of reserves, whether in one or more accounts, that a recipient may have available at any one time is calculated as follows:

(a) Determine the 5-year average of administration and planning amounts, not including reserve amounts, expended in a tribal program year.

(b) Establish 1/4 of that amount for the total eligible reserve.

[77 FR 71527, Dec. 3, 2012]

§ 1000.240 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

§ 1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

§ 1000.244 If the recipient has made a good-faith effort to negotiate a cooperation agreement and tax-exempt status but has been unsuccessful through no fault of its own, may the Secretary waive the requirement for a cooperation agreement and a tax exemption?

Yes. Recipients must submit a written request for waiver to the recipient's Area ONAP. The request must detail a good faith effort by the recipient, identify the housing units involved, and include all pertinent background information about the housing units. The recipient must further demonstrate that it has pursued and exhausted all reasonable channels available to it to reach an agreement to obtain tax-exempt status, and that failure to obtain the required agreement and tax-exempt status has been through no fault of its own. The Area ONAP will forward the request, its recommendation, comments, and any additional relevant documentation to the Deputy Assistant

Secretary for Native American Programs for processing to the Assistant Secretary.

[77 FR 71527, Dec. 3, 2012]

§ 1000.246 How must HUD respond to a request for waiver of the requirement for a cooperation agreement and a tax exemption?

(a) HUD shall make a determination to such request for a waiver within 30 days of receipt or provide a reason to the requestor for the delay, identify all additional documentation necessary, and provide a timeline within which a determination will be made.

(b) If the waiver is granted, HUD shall notify the recipient of the waiver in writing and inform the recipient of any special condition or deadlines with which it must comply. Such waiver shall remain effective until revoked by the Secretary.

(c) If the waiver is denied, HUD shall notify the recipient of the denial and the reason for the denial in writing. If the request is denied, IHBG funds may not be spent on the housing units. If IHBG funds have been spent on the housing units prior to the denial, the recipient must reimburse the grant for all IHBG funds expended.

[77 FR 71527, Dec. 3, 2012]

SUBPART D — ALLOCATION FORMULA

§ 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

§ 1000.302 What are the definitions applicable for the IHBG formula?

Allowable Expense Level (AEL) factor. In rental projects, AEL is the per-unit per-month dollar amount of expenses which was used to compute the amount of operating subsidy used prior to October 1, 1997 for the Low Rent units developed under the 1937 Act. The "AEL factor" is the relative difference between a local area AEL and the national weighted average for AEL.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include shelter rent plus the cost of all utilities, except telephones. HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 non-metropolitan county FMR areas. The "FMR factor" is the relative difference between a local area FMR and the national weighted average for FMR.

Formula Annual Income. For purposes of the IHBG formula, annual income is a household's total income as currently defined by the U.S. Census Bureau.

Formula area.

(1) Formula areas are:

(i) Reservations for federally recognized Indian tribes, as defined by the U.S. Census;

(ii) Trust lands;

(iii) Department of the Interior Near-Reservation Service Areas;

(iv) Former Indian Reservation Areas in Oklahoma Indian Areas, as defined by the U.S. Census as Oklahoma Tribal Statistical Areas (OTSAs);

(v) Congressionally Mandated Service Areas;

(vi) State Tribal Areas as defined by the U.S. Census as State Designated American Indian Statistical Areas (SDAISAs);

(vii) Tribal Designated Statistical Areas (TDSAs);

(viii) California Tribal Jurisdictional Areas established or reestablished by federal court judgment; and

(ix) Alaska formula areas described in paragraph (4) of this definition.

(2)(i) For a geographic area not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, including those identified in paragraph (1) of this definition, the Indian tribe must submit, on a form agreed to by HUD, information about the geographic area it wishes to include in its Formula Area, including proof that the Indian tribe, where applicable, has agreed to provide housing services pursuant to a Memorandum of Agreement (MOA) with the tribal and public governing entity or entities of the area, or has attempted to establish such an MOA, and is providing substantial housing services and will continue to expend or obligate funds for substantial housing services, as reflected in its Indian Housing Plan and Annual Performance Report for this purpose.

(ii) Upon receiving a request for recognition of a geographic area not identified in paragraph (1) of this definition, HUD shall make a preliminary determination. HUD shall notify all potentially affected Indian tribes of the basis for its preliminary determination by certified mail and provide the Indian tribes with the opportunity to comment for a period of not less than 90 days. After consideration of the comments, HUD shall announce its final determination through Federal Register notice.

(iii) No Indian tribe may expand or redefine its Formula Area without complying with the requirements of paragraphs (2)(i) and (ii) of this definition, notwithstanding any changes recognized by the U.S. Census Bureau.

(iv) The geographic area into which an Indian tribe may expand under this paragraph (2) shall be the smallest U.S. Census unit or units encompassing the physical location where substantial housing services have been provided by the Indian tribe.

(3) Subject to a challenge by an Indian tribe with a Formula Area described under paragraph (1)(iv) of this definition, any federally recognized Indian tribe assigned Formula Area geography in Fiscal Year 2003 not identified in paragraphs (1) and (2) of this definition, shall continue to be assigned such Formula Area in subsequent fiscal years, provided that the Indian tribe continues to provide an appropriate level of housing services within the Formula Area as monitored by HUD using the definition of substantial housing services contained in this section as a guideline but not as a requirement.

(4) Notwithstanding paragraphs (1), (2), and (3) of this definition, Alaska needs data shall be credited as set forth in § 1000.327 to the Alaska Native Village (ANV), the regional Indian tribe, or to the regional corporation established pursuant to the Alaska Native Claims Settlement Act (33 U.S.C. 1601 *et seq.*) (ANCSA). For purposes of § 1000.327 and this definition:

(i) The formula area of the ANV shall be the geographic area of the village or that area delineated by the TDSA established for the ANV for purposes of the 1990 U.S. Census or the Alaska Native Village Statistical Area (ANVSA) established for the ANV. To the extent that the area encompassed by such designation may substantially exceed the actual geographic area of the village, such designation is subject to challenge pursuant to § 1000.336. If the ANVSA or the TDSA is determined pursuant to such challenge to substantially exceed the actual area of the village, then the geographic formula area of the ANV for purposes of § 1000.327 shall be such U.S. Census designation as most closely approximates the actual geographic area of the village.

(ii) The geographic formula area of the regional corporation shall be the area

established for the corporation by the ANCSA.

(iii) An Indian tribe may seek to expand its Alaska formula area within its ANCSA region pursuant to the procedures set out in paragraph (2) of this definition. Formula Area added in this way shall be treated as overlapping pursuant to § 1000.326, unless the Indian tribe's members in the expanded area are less than 50 percent of the AIAN population. In cases where the Indian tribe is not treated as overlapping, the Indian tribe shall be credited with population and housing data only for its own tribal member residents within the new or added area. All other population and housing data for the area shall remain with the Indian tribe or tribes previously credited with such data.

(5) In some cases the population data for an Indian tribe within its Formula Area is greater than its tribal enrollment. In general, to maintain fairness for all Indian tribes, the tribe's population data will not be allowed to exceed twice an Indian tribe's enrolled population. However, an Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing housing assistance to substantially more non-member Indians and Alaska Natives who are members of another federally recognized Indian tribe than it is to members. For state-recognized Indian tribes, the population data and formula allocation shall be limited to their tribal enrollment figures as determined under enrollment criteria in effect in 1996.

(6) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives to whom the Indian tribe is providing housing assistance (on July 30 of the year before funding is sought) divided by the number of members to whom the Indian tribe is providing housing assistance. For example, an Indian tribe that provides housing to 300 Indians and Alaska Natives, of which 100 are members, the Indian tribe would then be able to receive an allocation for up to three times its tribal enrollment if the Indian and Alaska Native population in the area is three or more times the tribal enrollment.

Formula Median Income. For purposes of the formula median income is determined in accordance with section 567 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437a note).

Formula Response Form is the form recipients use to report changes to their Formula Current Assisted stock, formula area, and other formula related information before each year's formula allocation.

Indian Housing Authority (IHA) financed means a homeownership program where title rests with the homebuyer and a security interest rests with the IHA.

Mutual Help Occupancy Agreement (MHOA) means a lease with option to purchase contract between an IHA and a homebuyer under the 1937 Act.

National per unit subsidy is the Fiscal Year 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation.

Overcrowded means households with more than 1.01 persons per room as defined by the U.S. Decennial Census.

Section 8 means the making of housing assistance payments to eligible families leasing existing housing pursuant to the provisions of the 1937 Act.

Section 8 unit means the contract annualized housing assistance payments (certificates, vouchers, and project based) under the Section 8 program.

Substantial housing services are:

(1) Affordable housing activities funded from any source provided to AIAN households with incomes 80 percent of the median income as defined in NAHASDA (25 U.S.C. 4103 (14)) or lower, equivalent to 100 percent or more of the increase in the IHBG formula allocation that the Indian tribe would

receive as a result of adding the proposed geography; or

(2) Affordable housing activities funded with IHBG funds provided to AIAN households with incomes 80 percent of the median income as defined in NAHASDA (25 U.S.C. 4104(14)) or lower, equivalent to 51 percent or more of the Indian tribe's current total IHBG grant; and either:

(i) Fifty-one percent or more of the Indian tribe's official enrollment resides within the geographic area; or

(ii) The Indian tribe's official enrollment constitutes 51 percent or more of the total AIAN persons within the geography.

(3) HUD shall require that the Indian tribe annually provide written verification, in its Indian Housing Plan and Annual Performance Report, that the affordable housing activities it is providing meet the definition of substantial housing services.

Total Development Cost (TDC) is the sum of all costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including payment of carrying charges) and for otherwise carrying out the development of the project, excluding off site water and sewer. Total Development Cost amounts will be based on a moderately designed house and will be determined by averaging the current construction costs as listed in not less than two nationally recognized residential construction cost indices.

Without kitchen or plumbing means, as defined by the U.S. Decennial Census, an occupied house without one or more of the following items:

(1) Hot and cold piped water;
(2) A flush toilet;
(3) A bathtub or shower;
(4) A sink with piped water;
(5) A range or cookstove; or
(6) A refrigerator.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 20023, Apr. 20, 2007; 77 FR 71527, Dec. 3, 2012; 81 FR 83680, Nov. 22, 2016]

§ 1000.304 May the IHBG formula be modified?

Yes, as long as any modification does not conflict with the requirements of NAHASDA.

§ 1000.306 How can the IHBG formula be modified?

(a) The IHBG formula can be modified upon development of a set of measurable and verifiable data directly related to Indian and Alaska Native housing need. Any data set developed shall be compiled with the consultation and involvement of Indian tribes and examined and/or implemented not later than 5 years from the date of issuance of these regulations and periodically thereafter.

(b) The IHBG Formula shall be reviewed not later than May 21, 2012 to determine if a subsidy is needed to operate and maintain NAHASDA units or if any other changes are needed in respect to funding under the Formula Current Assisted Stock component of the formula.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 20024, Apr. 20, 2007; 81 FR 83680, Nov. 22, 2016]

§ 1000.308 Who can make modifications to the IHBG formula?

HUD can make modifications in accordance with § 1000.304 and § 1000.306 provided that any changes proposed by HUD are published and made available for public comment in accordance with applicable law before their implementation.

§ 1000.310 What are the components of the IHBG formula?

The IHBG formula consists of four components:

(a) Formula Current Assisted Stock (FCAS) (§ 1000.316);

(b) Need (§ 1000.324);

(c) 1996 Minimum (§ 1000.340); and

(d) Undisbursed IHBG funds factor (§ 1000.342).

[81 FR 83680, Nov. 22, 2016]

§ 1000.312 What is current assisted stock?

Current assisted stock consists of housing units owned or operated pursuant to an ACC. This includes all low rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the Formula Response Form.

§ 1000.314 What is formula current assisted stock?

Formula current assisted stock is current assisted stock as described in § 1000.312 plus 1937 Act units in the development pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form. Formula current assisted stock also includes Section 8 units when their current contract expires and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 program, as reported on the Formula Response Form.

§ 1000.315 Is a recipient required to report changes to the Formula Current Assisted Stock (FCAS) on the Formula Response Form?

(a) A recipient shall report changes to information related to the IHBG formula on the Formula Response Form, including corrections to the number of Formula Current Assisted Stock (FCAS), during the time period required by HUD. This time period shall be not less than 60 days from the date of the HUD letter transmitting the form to the recipient.

(b) The Formula Response Form is the only mechanism that a recipient shall use to report changes to the number of FCAS.

[72 FR 20025, Apr. 20, 2007]

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

The Formula Current Assisted Stock component consists of two elements. They are:

(a) *Operating subsidy.* The operating subsidy consists of three variables which are:

(1) The number of low-rent FCAS units multiplied by the national per unit subsidy;

(2) The number of Section 8 units whose contract has expired but had been under contract on September 30, 1997, multiplied by the FY 1996 national per unit subsidy; and

(3) The number of Mutual Help and Turnkey III FCAS units multiplied by the national per unit subsidy.

(b) *Modernization allocation.*

(1) For Indian tribes with an Indian Housing Authority that owned or operated 250 or more public housing units on October 1, 1997, the modernization allocation equals the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per-unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

(2) For Indian tribes with an Indian Housing Authority that owned or operated fewer than 250 public housing units on October 1, 1997, the modernization allocation equals the average amount of funds received under the assistance

program authorized by section 14 of the 1937 Act (not including funds provided as emergency assistance) for FYs 1992 through 1997.

(c) *Conversion.* Conversion of FCAS units from homeownership (Mutual Help or Turnkey III) to low-rent or from low-rent to a home ownership program.

(1) If units were converted before October 1, 1997, as evidenced by an amended ACC, then those units will be counted for formula funding and eligibility purposes as the type of unit to which they were converted.

(2) If units were converted on or after October 1, 1997, the following applies:

(i) *Funding type.* Units that converted after October 1, 1997 will be funded as the type of unit specified on the original ACC in effect on September 30, 1997.

(ii) *Continued FCAS eligibility.* Whether or not it is the first conversion, a unit converted after October 1, 1997, will be considered as the type converted to when determining continuing FCAS eligibility. A unit that is converted to low-rent will be treated as a low-rent unit for purposes of determining continuing FCAS eligibility. A unit that is converted to homeownership will be treated as a homeownership unit for purposes of determining continuing FCAS eligibility.

(3) The Indian tribe, TDHE, or IHA shall report conversions on the Formula Response Form.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 20025, Apr. 20, 2007; 81 FR 83680, Nov. 22, 2016]

§ 1000.317 Who is the recipient for funds for current assisted stock which is owned by state-created Regional Native Housing Authorities in Alaska?

If housing units developed under the 1937 Act are owned by a state-created Regional Native Housing Authority in Alaska, and are not located on an Indian reservation, then the recipient for funds allocated for the current assisted stock portion of NAHASDA funds for the units is the regional Indian tribe.

§ 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory used for the formula?

(a) Mutual Help and Turnkey III units shall no longer be considered Formula Current Assisted Stock when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise, provided that:

(1) Conveyance of each Mutual Help or Turnkey III unit occurs as soon as practicable after a unit becomes eligible for conveyance by the terms of the MHOA; and

(2) The Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and conditions of the MHOA, including the requirements for full and timely payment.

(b)(1) A Mutual Help or Turnkey III unit not conveyed after the unit becomes eligible for conveyance by the terms of the MHOA may continue to be considered Formula Current Assisted Stock only if a legal impediment prevented conveyance; the legal impediment continues to exist; the tribe, TDHE, or IHA has taken all other steps necessary for conveyance and all that remains for conveyance is a resolution of the legal impediment; and the tribe, TDHE, or IHA made the following reasonable efforts to overcome the impediments:

(i) No later than four months after the unit becomes eligible for conveyance, the tribe, TDHE, or IHA creates a written plan of action, which includes a description of specific legal impediments as well as specific, ongoing, and appropriate actions for each applicable unit that have been taken

and will be taken to resolve the legal impediments within a 24-month period; and

(ii) The tribe, TDHE, or IHA has carried out or is carrying out the written plan of action; and

(iii) The tribe, TDHE, or IHA has documented undertaking the plan of action.

(2) No Mutual Help or Turnkey III unit will be considered FCAS 24 months after the date the unit became eligible for conveyance, unless the tribe, TDHE, or IHA provides evidence from a third party, such as a court or state or federal government agency, documenting that a legal impediment continues to prevent conveyance. FCAS units that have not been conveyed due to legal impediments on December 22, 2016 shall be treated as having become eligible for conveyance on December 22, 2016.

(c) Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA.

(d) Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

(e) A unit that is demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, after demolition is completed, the unit is rebuilt within one year. Demolition is completed when the site of the demolished unit is ready for rebuilding. If the unit cannot be rebuilt within one year because of relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity, the Indian tribe, TDHE or IHA may request approval for a one-time, one-year extension. Requests must be submitted in writing and include a justification for the request.

[63 FR 12349, Mar. 12, 1998, as amended at 81 FR 83680, Nov. 22, 2016]

§ 1000.319 What would happen if a recipient misreports or fails to correct Formula Current Assisted Stock (FCAS) information on the Formula Response Form?

(a) A recipient is responsible for verifying and reporting changes to their Formula Current Assisted Stock (FCAS) on the Formula Response Form to ensure that data used for the IHBG Formula are accurate (see § 1000.315). Reporting shall be completed in accordance with requirements in this Subpart D and the Formula Response Form.

(b) If a recipient receives an overpayment of funds because it failed to report such changes on the Formula Response Form in a timely manner, the recipient shall be required to repay the funds within 5 fiscal years. HUD shall subsequently distribute the funds to all Indian tribes in accordance with the next IHBG Formula allocation.

(c) A recipient will not be provided back funding for any units that the recipient failed to report on the Formula Response Form in a timely manner.

(d) HUD shall have 3 years from the date a Formula Response Form is sent out to take action against any recipient that fails to correct or make appropriate changes on that Formula Response Form. Review of FCAS will be accomplished by HUD as a component of A-133 audits, routine monitoring, FCAS target monitoring, or other reviews.

[72 FR 20025, Apr. 20, 2007]

§ 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the

Current Assisted Stock portion of the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR); and

(b) Modernization as adjusted by TDC.

§ 1000.322 Are IHA financed units included in the determination of Formula Current Assisted Stock?

No. If these units are not owned or operated at the time (September 30, 1997) pursuant to an ACC then they are not included in the determination of Formula Current Assisted Stock.

§ 1000.324 How is the need component developed?

After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:

(a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50 percent of formula annual income weighted at 22 percent;

(b) AIAN Households which are overcrowded or without kitchen or plumbing weighted at 25 percent;

(c) Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80 percent of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA weighted at 15 percent;

(d) AIAN households with annual income less than or equal to 30 percent of formula median income weighted at 13 percent;

(e) AIAN households with annual income between 30 percent and 50 percent of formula median income weighted at 7 percent;

(f) AIAN households with annual income between 50 percent and 80 percent of formula median income weighted at 7 percent;

(g) AIAN persons weighted at 11 percent.

§ 1000.325 How is the need component adjusted for local area costs?

The need component is adjusted by the TDC.

§ 1000.326 What if a formula area is served by more than one Indian tribe?

(a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:

(1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(3) In cases where a State recognized tribe's formula area overlaps with the formula area of a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the formula area up to its population cap, and the State recognized tribe receives the balance of the overlapping area (if any) up to its population cap.

(b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, the U.S. Census, Indian Health Service User Data, and Bureau of Indian Affairs data.

(c) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in paragraph

(2)(ii) of the definition of "Formula area" in § 1000.302.

(d) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 20025, Apr. 20, 2007; 81 FR 83681, Nov. 22, 2016]

§ 1000.327 What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the unique circumstances in Alaska?

(a) Data in areas without reservations. The data on population and housing within an Alaska Native Village is credited to the Alaska Native Village. Accordingly, the village corporation for the Alaska Native Village has no needs data and no formula allocation. The data on population and housing outside the Alaska Native Village is credited to the regional Indian tribe, and if there is no regional Indian tribe, the data will be credited to the regional corporation.

(b) Deadline for notification on whether an IHP will be submitted. By September 15 of each year, each Indian tribe in Alaska not located on a reservation, including each Alaska Native village, regional Indian tribe, and regional corporation, or its TDHE must notify HUD in writing whether it or its TDHE intends to submit an IHP. If an Alaska Native village notifies HUD that it does not intend either to submit an IHP or to designate a TDHE to do so, or if HUD receives no response from the Alaska Native village or its TDHE, the formula data which would have been credited to the Alaska Native village will be credited to the regional Indian tribe, or if there is no regional Indian tribe, to the regional corporation.

§ 1000.328 What is the minimum amount that an Indian tribe may receive under the need component of the formula?

(a) Subject to the eligibility criteria described in paragraph (b) of this section, the minimum allocation in any fiscal year to an Indian tribe under the need component of the IHBG Formula shall equal 0.007826 percent of the available appropriations for that fiscal year after set asides.

(b) To be eligible for the minimum allocation described in paragraph (a) of this section, an Indian tribe must:

(1) Receive less than $200,000 under the FCAS component of the IHBG Formula for the fiscal year; and

(2) Certify in its Indian Housing Plan the presence of any households at or below 80 percent of median income.

[72 FR 20025, Apr. 20, 2007, as amended at 77 FR 71527, Dec. 3, 2012]

§ 1000.329 What is the minimum total grant allocated to a tribe if there is carryover funds available?

(a) If in any given year there are carryover funds, then HUD will hold the lesser amount of $3 million or available carryover funds for additional allocations to tribes with grant allocations of less than 0.011547 percent of that year's appropriations. All tribes eligible under this section shall receive a grant allocation equal to 0.011547 percent of that year's appropriations.

(b)(1) If the set-aside carryover funds are insufficient to fund all eligible tribes at 0.011547 percent of that year's appropriations, the minimum total grant shall be reduced to an amount which can be fully funded with the available set-aside carryover funds.

(2) If less than $3 million is necessary to fully fund tribes under paragraph (a) of this section, any remaining carryover amounts of

the set aside shall be carried forward to the next year's formula.

(c) To be eligible, an Indian tribe must certify in its Indian Housing Plan the presence of any households at or below 80 percent of median income.

(d) For purposes of this section, carryover funds means grant funds voluntarily returned to the formula or not accepted by tribes in a fiscal year.

[81 FR 83681, Nov. 22, 2016]

§ 1000.330 What are the data sources for the need variables?

(a) The sources of data for the need variables shall be data that are available and collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Until fiscal year 2018, the data used are 2000 U.S. Decennial Census data and any HUD-accepted Census challenges. The 2000 U.S. Decennial Census data shall be adjusted annually using IHS projections based upon birth and death rate data provided by the National Center for Health Statistics.

(b)(1) Beginning fiscal year 2018, the data source used to determine the AIAN persons variable described in § 1000.324(g) shall be the most recent U.S. Decennial Census data adjusted for any statistically significant undercount for AIAN population confirmed by the U.S. Census Bureau and updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans. For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands, unless the U.S. Census Bureau includes Remote Alaska in their Census Coverage Measurement or comparable study. The data under this paragraph (b) shall be updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans.

(2) Beginning fiscal year 2018, the data source used to determine the variables described in paragraphs (a) through (f) of § 1000.324 shall initially be the American Community Survey (ACS) 5-year Estimates.

(c) Indian tribes may challenge the data described in this section pursuant to § 1000.336.

[81 FR 83681, Nov. 22, 2016]

§ 1000.331 How will the impacts from adoption of a new data source be minimized as the new data source is implemented?

(a) To minimize the impact of funding changes based on the introduction of a new data source under § 1000.330, in fiscal year 2018 and each year thereafter, if, solely as a direct result of the introduction of a new data source, an Indian tribe's allocation under the need component of the formula is less than 90 percent of the amount it received under the need component in the immediate previous fiscal year, the Indian tribe's need allocation shall be adjusted up to an amount equal to 90 percent of the previous year's need allocation.

(b) Nothing in this section shall impact other adjustments under this part, including minimum funding, census challenges, formula area changes, or an increase in the total amount of funds available under the need component.

(c) In the event of a decrease in the total amount of funds available under the need component, an Indian tribe's adjusted allocation under paragraph (a) of this section shall be reduced by an amount proportionate to the reduced amount available for distribution under the need component of the formula.

(d) Adjustments under paragraph (b) or (c) of this section shall be made to a tribe's

need allocation after adjusting that allocation under paragraph (a) of this section.

[81 FR 83681, Nov. 22, 2016]

§ 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide the Indian tribe or TDHE notice of the data to be used for the formula and projected allocation amount by June 1.

[77 FR 71528, Dec. 3, 2012]

§ 1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

Yes. Provided that the data are gathered, evaluated, and presented in a manner acceptable to HUD and that the standards for acceptability are consistently applied throughout the Country.

§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG Formula and HUD formula determinations regarding:

(1) U.S. Census data;

(2) Tribal enrollment;

(3) Formula area;

(4) Formula Current Assisted Stock (FCAS);

(5) Total Development Cost (TDC);

(6) Fair Market Rents (FMRs);

(7) Indian Health Service projections based upon birth and death rate data provided by the National Center for Health Statistics; and

(8) The undisbursed funds factor.

(b) An Indian tribe or TDHE may not challenge data or HUD formula determinations regarding Allowable Expense Level (AEL) and the inflation factor.

(c) The challenge and the collection of data and the appeal of HUD formula determinations is an allowable cost for IHBG funds.

(d) An Indian tribe or TDHE that seeks to appeal data or a HUD formula determination, and has data in its possession that are acceptable to HUD, shall submit the challenge or appeal in writing with data and proper documentation to HUD. An Indian tribe or TDHE may appeal the undisbursed funds factor no later than 30 days after the receipt of the formula determination. Data used to challenge data contained in the U.S. Census must meet the requirements described in § 1000.330(a). Further, in order for a census challenge to be considered for the upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) HUD shall respond to all challenges or appeals no later than 45 days after receipt and either approve or deny the appeal in writing, setting forth the reasons for its decision.

(1) If HUD challenges the validity of the submitted data HUD and the Indian tribe or TDHE shall attempt in good faith to resolve any discrepancies so that such data may be included in the formula allocation.

(2) If HUD denies a challenge or appeal, the Indian tribe or TDHE may request reconsideration of HUD's denial within 30 calendar days of receipt of HUD's denial. The request shall be in writing and set forth justification for reconsideration.

(3) HUD shall in writing affirm or deny the Indian tribe's or TDHE's request for reconsideration, setting forth HUD's reasons for the decision, within 20 calendar days of receiving the request. HUD's denial of a request for reconsideration shall constitute final agency action.

(4) If HUD approves the Indian tribe or TDHE's appeal, HUD will adjust to the Indian tribe's or TDHE's subsequent fiscal year allocation to include only the disputed fiscal year(s).

(f) In the event HUD questions whether the data contained in the formula accurately represents the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and, if applicable, to provide a commitment to serve the population indicated in the geographic area.

[72 FR 20025, Apr. 20, 2007, as amended at 81 FR 83681, Nov. 22, 2016]

§ 1000.340 What if an Indian tribe is allocated less funding under the IHBG Formula than it received in Fiscal Year (FY) 1996 for operating subsidy and modernization?

(a) If an Indian tribe is allocated less funding under the modernization allocation of the formula pursuant to § 1000.316(b)(2) than the calculation of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per-unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation, the Indian tribe's modernization allocation is calculated under § 1000.316(b)(1). The remaining grants are adjusted to keep the allocation within available appropriations.

(b) If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in FY 1996 for operating subsidy and modernization, its grant is increased to the amount received in FY 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

[72 FR 20026, Apr. 20, 2007]

§ 1000.342 Are undisbursed IHBG funds a factor in the grant formula?

Yes, beginning fiscal year 2018. After calculating the initial allocation calculation for the current fiscal year by calculating FCAS, need, the 1996 Minimum, and repayments or additions for past over- or under-funding for each Indian tribe, the undisbursed funds factor shall be applied as follows:

(a) The undisbursed funds factor applies if an Indian tribe's initial allocation calculation is $5 million or more and the Indian tribe has undisbursed IHBG funds in an amount that is greater than the sum of the prior 3 years' initial allocation calculations.

(b) If subject to paragraph (a) of this section, the Indian tribe's grant allocation shall be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its 1996 Minimum.

(c) For purposes of this section, "undisbursed IHBG funds" means the amount of IHBG funds allocated to an Indian tribe in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made. For Indian tribes under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), if the Indian tribe's initial allocation calculation is $5 million or more, its undisbursed IHBG funds is the amount calculated by multiplying the umbrella TDHE's total balance in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made by a percentage based on the Indian tribe's proportional share of the initial allocation calculation of all tribes under the umbrella.

(d) Amounts subtracted from an initial allocation calculation under this section shall be redistributed under the need component among all Indian tribes not subject to paragraph (a) of this section (while also retaining the 1996 Minimum).

[81 FR 83682, Nov. 22, 2016]

SUBPART E — FEDERAL GUARANTEES FOR FINANCING OF TRIBAL HOUSING ACTIVITIES

§ 1000.401 What terms are used throughout this subpart?

As used throughout title VI of NAHASDA and in this subpart:

Applicant means the entity that requests a HUD guarantee under the provisions of this subpart.

Borrower means an Indian tribe or TDHE that receives funds in the form of a loan with the obligation to repay in full, with interest, and has executed notes or other obligations that evidence that transaction.

Issuer means an Indian tribe or TDHE that issues or executes notes or other obligations. An issuer can also be a borrower.

§ 1000.402 Are State recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

Those State recognized Indian tribes that meet the definition set forth in section 4(12)(C) of NAHASDA are eligible for guarantees under title VI of NAHASDA.

§ 1000.404 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this subpart:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code, are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any agency of the United States; and

(e) Any other lender approved by the Secretary.

§ 1000.406 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

Tribal approval is evidenced by a written tribal resolution that authorizes the issuance of notes or obligations by the Indian tribe or a TDHE on behalf of the Indian tribe.

§ 1000.410 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

HUD shall provide that:

(a) Any loan, note or other obligation guaranteed under title VI of NAHASDA may be sold or assigned by the lender to any financial institution that is subject to examination and supervision by an agency of the Federal government, any State, or the District of Columbia without destroying or otherwise negatively affecting the guarantee; and

(b) Indian tribes and housing entities are encouraged to explore creative financing mechanisms and in so doing shall not be limited in obtaining a guarantee. These creative financing mechanisms include but are not limited to:

(1) Borrowing from private or public sources or partnerships;

(2) Issuing tax exempt and taxable bonds where permitted; and

(3) Establishing consortiums or trusts for borrowing or lending, or for pooling loans.

(c) The repayment period may exceed 20 years, and the length of the repayment period cannot be the sole basis for HUD disapproval;

(d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws; and

(e) A guarantee made under Title VI of NAHASDA shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.412 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

Yes. To obtain multiple guarantees, the issuer shall demonstrate that:

(a) The issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no longer owed on existing notes or other obligations; and

(b) Issuance of additional notes or other obligations is within the financial capacity of the issuer.

§ 1000.414 How is an issuer's financial capacity demonstrated?

An issuer must demonstrate its financial capacity to:

(a) Meet its obligations; and

(b) Protect and maintain the viability of housing developed or operated pursuant to the 1937 Act.

§ 1000.416 What is a repayment contract in a form acceptable to HUD?

(a) The Secretary's signature on a contract shall signify HUD's acceptance of the form, terms and conditions of the contract.

(b) In loans under title VI of NAHASDA, involving a contract between an issuer and a lender other than HUD, HUD's approval of the loan documents and guarantee of the loan shall be deemed to be HUD's acceptance of the sufficiency of the security furnished. No other security can or will be required by HUD at a later date.

§ 1000.418 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations.

§ 1000.420 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations, not to exceed 30 percent of the net interest cost.

§ 1000.422 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

(a) The borrower applies to the lender for a loan using a guarantee application form prescribed by HUD.

(b) The lender provides the loan application to HUD to determine if funds are available for the guarantee. HUD will reserve these funds for a period of 90 days if the funds are available and the applicant is otherwise eligible under this subpart. HUD may extend this reservation period for an

extra 90 days if additional documentation is necessary.

(c) The borrower and lender negotiate the terms and conditions of the loan in consultation with HUD.

(d) The borrower and lender execute documents.

(e) The lender formally applies for the guarantee.

(f) HUD reviews and provides a written decision on the guarantee.

§ 1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

The application for a guarantee must include the following:

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies:

(1) As an affordable housing activity as defined in section 202 of NAHASDA; or

(2) As a housing related community development activity under section 601(a) of NAHASDA.

(b) A schedule for the repayment of the notes or other obligations to be guaranteed that identifies the sources of repayment, together with a statement identifying the entity that will act as the borrower.

(c) A copy of the executed loan documents, if applicable, including, but not limited to, any contract or agreement between the borrower and the lender.

(d) Certifications by the borrower that:

(1) The borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602(a)(2) of NAHASDA.

(2) It possesses the legal authority to borrow or issue obligations and to use the guaranteed funds in accordance with the requirements of this subpart.

(3) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action that:

(i) Identifies the official representative of the borrower, and directs and authorizes that person to provide such additional information as may be required; and

(ii) Authorizes such official representative to issue the obligation or to execute the loan or other documents, as applicable.

(4) The borrower has complied with section 602(a) of NAHASDA.

(5) The borrower will comply with the requirements described in subpart A of this part and other applicable laws.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.426 How does HUD review a guarantee application?

The procedure for review of a guarantee application includes the following steps:

(a) HUD will review the application for compliance with title VI of NAHASDA and these implementing regulations.

(b) HUD will accept the certifications submitted with the application. HUD may, however, consider relevant information that challenges the certifications and require additional information or assurances from the applicant as warranted by such information.

§ 1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

HUD may disapprove an application or approve a lesser amount for any of the following reasons:

(a) HUD determines that the guarantee constitutes an unacceptable risk. Factors that will be considered in assessing financial

risk shall include, but not be limited to, the following:

(1) The ratio of the expected annual debt service requirements to the expected available annual grant amount, taking into consideration the obligations of the borrower under the provisions of section 203(b) of NAHASDA;

(2) Evidence that the borrower will not continue to receive grant assistance under this part during the proposed repayment period;

(3) The borrower's inability to furnish adequate security pursuant to section 602(a) of NAHASDA; and

(4) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan or other obligations.

(b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(c) or section 605(d) of NAHASDA.

(c) Funds are not available in the amount requested.

(d) Evidence that the performance of the borrower under this part has been determined to be unacceptable pursuant to the requirements of subpart F of this part, and that the borrower has failed to take reasonable steps to correct performance.

(e) The activities to be undertaken are not eligible under either:

(1) Section 202 of NAHASDA; or

(2) Section 601(a) of NAHASDA.

(f) The loan or other obligation documents for which a guarantee is requested do not meet the requirements of this subpart.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.430 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

(a) HUD shall make every effort to approve a guarantee within 30 days of receipt of a completed application including executed documents and, if unable to do so, will notify the applicant within the 30 day timeframe of the need for additional time and/or if additional information is required.

(b) HUD shall notify the applicant in writing that the guarantee has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the applicant will be informed of the specific reasons for reduction or disapproval.

(c) HUD shall issue a certificate to guarantee the debt obligation of the issuer subject to compliance with NAHASDA including but not limited to sections 105, 601(a), and 602(c) of NAHASDA, and such other reasonable conditions as HUD may specify in the commitment documents in a particular case.

§ 1000.432 Can an amendment to an approved guarantee be made?

(a) Yes. An amendment to an approved guarantee can occur if an applicant wishes to allow a borrower/issuer to carry out an activity not described in the loan or other obligation documents, or substantially to change the purpose, scope, location, or beneficiaries of an activity.(b) Any changes to an approved guarantee must be approved by HUD.

§ 1000.434 How will HUD allocate the availability of loan guarantee assistance?

(a) Each fiscal year HUD may allocate a percentage of the total available loan guarantee assistance to each Area ONAP equal to the percentage of the total NAHASDA grant funds allocated to the Indian tribes in the geographic area of operation of that office.

(b) These allocated amounts shall remain exclusively available for loan guarantee assistance for Indian tribes or TDHEs in the

area of operation of that office until committed by HUD for loan guarantees or until the end of the second quarter of the fiscal year. At the beginning of the third quarter of the fiscal year, any residual loan guarantee commitment amount shall be made available to guarantee loans for Indian tribes or TDHEs regardless of their location. Applications for residual loan guarantee money must be submitted on or after April 1.

(c) In approving applications for loan guarantee assistance, HUD shall seek to maximize the availability of such assistance to all interested Indian tribes or TDHEs. HUD may limit the proportional share approved to any one Indian tribe or TDHE to its proportional share of the block grant allocation based upon the annual plan submitted by the Indian tribe or TDHE indicating intent to participate in the loan guarantee allocation process.

§ 1000.436 How will HUD monitor the use of funds guaranteed under this subpart?

HUD will monitor the use of funds guaranteed under this subpart as set forth in section 403 of NAHASDA, and the lender is responsible for monitoring performance with the documents.

SUBPART F — RECIPIENT MONITORING, OVERSIGHT AND ACCOUNTABILITY

§ 1000.501 Who is involved in monitoring activities under NAHASDA?

The recipient, the grant beneficiary and HUD are involved in monitoring activities under NAHASDA.

§ 1000.502 What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?

(a) The recipient is responsible for monitoring grant activities, ensuring compliance with applicable Federal requirements and monitoring performance goals under the IHP. The recipient is responsible for preparing at least annually: a compliance assessment in accordance with section 403(b) of NAHASDA; a performance report covering the assessment of program progress and goal attainment under the IHP; and an audit in accordance with the Single Audit Act, as applicable. The recipient's monitoring should also include an evaluation of the recipient's performance in accordance with performance objectives and measures. At the request of a recipient, other Indian tribes and/or TDHEs may provide assistance to aid the recipient in meeting its performance goals or compliance requirements under NAHASDA.

(b) Where the recipient is a TDHE, the grant beneficiary (Indian tribe) is responsible for monitoring programmatic and compliance requirements of the IHP and NAHASDA by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports.

(c) HUD is responsible for reviewing the recipient as set forth in § 1000.520.(d) HUD monitoring will consist of on-site as well as off-site review of records, reports and audits. To the extent funding is available, HUD or its designee will provide technical assistance and training, or funds to the recipient to obtain technical assistance and training. In the absence of funds, HUD shall make best efforts to provide technical assistance and training.

§ 1000.503 What is an appropriate extent of HUD monitoring?

(a) Subject to any conflicting or supplementary requirement of specific legislation, and upon the effective date of this regulation, the frequency of HUD monitoring of a particular recipient will be determined by application of the HUD standard risk

assessment factors, provided that when a recipient requests to be monitored, HUD shall conduct such monitoring as soon as practicable. The HUD standard risk assessment factors may be but are not limited to the following:

(1) Annual grant amount;

(2) Disbursed amounts—all open grants;

(3) Months since last on-site monitoring;

(4) Delinquent audits under 2 CFR part 200, subpart F;

(5) Open 2 CFR part 200, subpart F, or Inspector General audit findings;

(6) Conclusions of 2 CFR part 200, subpart F, auditor;

(7) Open monitoring findings;

(8) Delinquent Annual Performance Reports or Annual Status and Evaluation Reports;

(9) Status of Corrective Action Plan (CAP) or Performance Agreement (PA);

(10) Recipient Self-Monitoring;

(11) Inspection of 1937 Act units;

(12) Preservation of 1937 Act units; and

(13) Any other additional factors that may be determined by HUD, consistent with HUD's Tribal Consultation Policy, by which HUD will send written notification and provide a comment period. Such additional factors shall be provided by program guidance.

(b) If monitoring indicates noncompliance, HUD may undertake additional sampling and review to determine the extent of such noncompliance. The level of HUD monitoring of a recipient once that recipient has been selected for HUD monitoring is as follows:

(1) Review recipient program compliance for the current program year and the 2 prior program years;

(2) On-site inspection of no more than 10 dwelling units or no more than 10 percent of total dwelling units, whichever is greater;

(3) Review of no more than 10 client files or no more than 10 percent of client files, whichever is greater.

(c) Notwithstanding paragraph (b) of this section, HUD may at any time undertake additional sampling and review of prior program years, subject to the records retention limitations of § 1000.552, if HUD has credible information suggesting noncompliance. HUD will share this information with the recipient as appropriate.

(d) A recipient may request ONAP to enter into Self-Monitoring Mutual Agreements or other self-monitoring arrangements with recipients. ONAP will monitor the recipient only in accordance with such agreement or arrangement, unless ONAP finds reasonable evidence of fraud, a pattern of noncompliance, or the significant unlawful expenditure of IHBG funds.

[77 FR 71528, Dec. 3, 2012, as amended at 80 FR 75944, Dec. 7, 2015]

§ 1000.506 If the TDHE is the recipient, must it submit its monitoring evaluation/results to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the monitoring evaluation/results so that it can fully carry out its oversight responsibilities under NAHASDA.

§ 1000.508 If the recipient monitoring identifies programmatic concerns, what happens?

If the recipient's monitoring activities identify areas of concerns, the recipient will take corrective actions which may include but are not limited to one or more of the following actions:

(a) Depending upon the nature of the concern, the recipient may obtain additional training or technical assistance from HUD, other Indian tribes or TDHEs, or other entities.

(b) The recipient may develop and/or revise policies, or ensure that existing policies are better enforced.

(c) The recipient may take appropriate administrative action to remedy the situation.

(d) The recipient may refer the concern to an auditor or to HUD for additional corrective action.

§ 1000.510 What happens if tribal monitoring identifies compliance concerns?

The Indian tribe shall have the responsibility to ensure that appropriate corrective action is taken.

§ 1000.512 Are performance reports required?

Yes. An annual report shall be submitted by the recipient to HUD and the Indian tribe being served in a format acceptable by HUD. Annual performance reports shall contain:

(a) The information required by sections 403(b) and 404(b) of NAHASDA;

(b) Brief information on the following:

(1) A comparison of actual accomplishments to the planned activities established for the period;

(2) The reasons for slippage if established planned activities were not met; and

(3) Analysis and explanation of cost overruns or high unit costs;

(c) Any information regarding the recipient's performance in accordance with HUD's performance measures, as set forth in section § 1000.524; and

(d) Annual performance data to reflect the accomplishments of the recipient to include, as specified in the IHP:

(1) Permanent and temporary jobs supported with IHBG funds;

(2) Outputs by eligible activity, including:

(i) Units completed or assisted, and

(ii) Families assisted; and

(3) Outcomes by eligible activity.

(e) As applicable, items required under §§ 1000.302 and 1000.544.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 90 days of the end of the recipient's program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the annual performance report.

[72 FR 41213, July 26, 2007]

§ 1000.516 What reporting period is covered by the annual performance report?

For the first annual performance report to be submitted under NAHASDA, the period to be covered is October 1, 1997, through September 30, 1998. This first report must be submitted by January 31, 1999. Subsequent annual performance reports must cover the period that coincides with the recipient's program year.

[64 FR 3015, Jan. 20, 1999]

§ 1000.518 When must a recipient obtain public comment on its annual performance report?

The recipient must make its report publicly available to tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area, in sufficient time to permit comment before submission of the report to HUD. The recipient determines the manner and times for making the report available.

The recipient shall include a summary of any comments received by the grant

beneficiary or recipient from tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area.

§ 1000.520 What are the purposes of HUD's review of the Annual Performance Report?

HUD will review each recipient's Annual Performance Report when submitted to determine whether the recipient:

(a) Has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objective of NAHASDA and with other applicable laws and has a continuing capacity to carry out those activities in a timely manner;

(b) Has complied with the IHP of the grant beneficiary; and

(c) Whether the Annual Performance Report of the recipient is accurate.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.521 After the receipt of the recipient's performance report, how long does HUD have to make recommendations under section 404(c) of NAHASDA?

60 days.

§ 1000.522 How will HUD give notice of on-site reviews?

HUD shall generally provide a 30 day written notice of an impending on-site review to the Indian tribe and TDHE. Prior written notice will not be required in emergency situations. All notices shall state the general nature of the review

§ 1000.524 What are HUD's performance measures for the review?

HUD has the authority to develop performance measures which the recipient must meet as a condition for compliance under NAHASDA. The performance measures are:

(a) The recipient has complied with the required certifications in its IHP and all policies and the IHP have been made available to the public.

(b) Fiscal audits have been conducted on a timely basis and in accordance with the requirements of the Single Audit Act, as applicable. Any deficiencies identified in audit reports have been addressed within the prescribed time period.

(c) Accurate annual performance reports were submitted to HUD in accordance with § 1000.514.

(d) The recipient has met the IHP-planned activities in the one-year plan.

(e) The recipient has substantially complied with the requirements of 24 CFR part 1000 and all other applicable Federal statutes and regulations.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 41213, July 26, 2007; 77 FR 71529, Dec. 3, 2012]

§ 1000.526 What information will HUD use for its review?

In reviewing each recipient's performance, HUD may consider the following:

(a) The approved IHP and any amendments thereto;

(b) Reports prepared by the recipient;

(c) Records maintained by the recipient;

(d) Results of HUD's monitoring of the recipient's performance, including on-site evaluation of the quality of the work performed;

(e) Audit reports;

(f) Records of drawdown(s) of grant funds;

(g) Records of comments and complaints by citizens and organizations within the Indian area;

(h) Litigation; and

(i) Any other reliable relevant information which relates to the performance measures under § 1000.524.

§ 1000.528 What are the procedures for the recipient to comment on the result of HUD's review when HUD issues a report under section 405(b) of NAHASDA?

HUD will issue a draft report to the recipient and Indian tribe within 60 days of the completion of HUD's review. The recipient will have at least 60 days to review and comment on the draft report, as well as provide any additional information relating to the draft report. Upon written notification to HUD, the recipient may exercise the right to take an additional 30 days to complete its review and comment to the draft report. Additional extensions of time for the recipient to complete review and comment may be mutually agreed upon in writing by HUD and the recipient. HUD shall consider the comments and any additional information provided by the recipient. HUD may also revise the draft report based on the comments and any additional information provided by the recipient. HUD shall make the recipient's comments and a final report readily available to the recipient, grant beneficiary, and the public not later than 30 days after receipt of the recipient's comments and additional information.

[77 FR 71529, Dec. 3, 2012]

§ 1000.530 What corrective and remedial actions will HUD request or recommend to address performance problems prior to taking action under § 1000.532?

(a) The following actions are designed, first, to prevent the continuance of the performance problem(s); second, to mitigate any adverse effects or consequences of the performance problem(s); and third, to prevent a recurrence of the same or similar performance problem. The following actions, at least one of which must be taken prior to a sanction under paragraph (b), may be taken by HUD singly or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the recipient of the performance problem(s), describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the recipient that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the recipient to submit progress schedules for completing activities or complying with the requirements of this part;

(3) Recommend that the recipient suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the recipient redirect funds from affected activities to other eligible activities;

(5) Recommend that the recipient reimburse the recipient's program account in the amount improperly expended; and

(6) Recommend that the recipient obtain appropriate technical assistance using existing grant funds or other available resources to overcome the performance problem(s).

(b) Failure of a recipient to address performance problems specified in paragraph (a) of this section may result in the imposition of sanctions as prescribed in § 1000.532.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71529, Dec. 3, 2012]

§ 1000.532 What are the remedial actions that HUD may take in the event of recipient's substantial noncompliance?

(a) If HUD finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of NAHASDA or the regulations in this part, HUD shall carry out any of the following actions with respect to the recipient's current or future grants, as appropriate:

(1) Terminate payments under NAHASDA to the recipient;

(2) Reduce payments under NAHASDA to the recipient by an amount equal to the amount of such payments that were not expended in accordance with NAHASDA or these regulations;

(3) Limit the availability of payments under NAHASDA to programs, projects, or activities not affected by the failure to comply; or

(4) In the case of noncompliance described in § 1000.542, provide a replacement TDHE for the recipient.

(b) Before undertaking any action in accordance with paragraph (a) of this section, HUD will notify the recipient in writing of the action it intends to take and provide the recipient an opportunity for an informal meeting to resolve the deficiency. Before taking any action under paragraph (a) of this section, HUD shall provide the recipient with the opportunity for a hearing no less than 30 days prior to taking the proposed action. The hearing shall be held in accordance with § 1000.540. The amount in question shall not be reallocated under the provisions of § 1000.536, until 15 days after the hearing has been conducted and HUD has rendered a final decision.

(c) Notwithstanding paragraphs (a) and (b) of this section, if HUD makes a determination that the failure of a recipient to comply substantially with any material provision of NAHASDA or these regulations is resulting, and would continue to result, in a continuing expenditure of funds provided under NAHASDA in a manner that is not authorized by law, HUD may, in accordance with section 401(a)(4) of NAHASDA, take action under paragraph (a)(3) of this section prior to conducting a hearing under paragraph (b) of this section. HUD shall provide notice to the recipient at the time that HUD takes that action and conducts a hearing, in accordance with section 401(a)(4)(B) of NAHASDA, within 60 days of such notice.

(d) Notwithstanding paragraph (a) of this section, if HUD determines that the failure to comply substantially with the provisions of NAHASDA or these regulations is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, if the recipient requests, HUD shall provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA. A recipient's eligibility for technical assistance under this subsection is contingent on the recipient's execution of, and compliance with, a performance agreement pursuant to Section 401(b) of NAHASDA.

(e) In lieu of, or in addition to, any action described in this section, if the Secretary has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA or these regulations, HUD may refer the matter to the Attorney General of the United States, with a recommendation that appropriate civil action be instituted.

[77 FR 71529, Dec. 3, 2012]

§ 1000.534 What constitutes substantial noncompliance?

HUD will review the circumstances of each noncompliance with NAHASDA and the regulations on a case-by-case basis to

determine if the noncompliance is substantial. This review is a two step process. First, there must be a noncompliance with NAHASDA or these regulations. Second, the noncompliance must be substantial. A noncompliance is substantial if:

(a) The noncompliance has a material effect on the recipient meeting its planned activities as described in its Indian Housing Plan;

(b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;

(c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or

(d) The noncompliance places the housing program at substantial risk of fraud, waste or abuse.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71529, Dec. 3, 2012]

§ 1000.536 What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under § 1000.532?

Such NAHASDA grant funds shall be distributed by HUD in accordance with the next NAHASDA formula allocation.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71529, Dec. 3, 2012]

§ 1000.540 What hearing procedures will be used under NAHASDA?

The hearing procedures in 24 CFR part 26 shall be used.

§ 1000.542 When may HUD require replacement of a recipient?

(a) In accordance with section 402 of NAHASDA, as a condition of HUD making a grant on behalf of an Indian tribe, the Indian tribe shall agree that, notwithstanding any other provisions of law, HUD may, only in the circumstances discussed below, require that a replacement TDHE serve as the recipient for the Indian tribe.

(b) HUD may require a replacement TDHE for an Indian tribe only upon a determination by HUD on the record after opportunity for hearing that the recipient for the Indian tribe has engaged in a pattern or practice of activities that constitute substantial or willful noncompliance with the requirements of NAHASDA.

§ 1000.544 What audits are required?

Pursuant to NAHASDA section 405(a), the recipient must comply with the requirements of the Single Audit Act (chapter 75 of title 31, United States Code), implemented by 2 CFR part 200, subpart F, which require annual audits of recipients that expend federal funds equal to or in excess of an amount specified by the Office of Management and Budget (OMB), as set out in 2 CFR 200.501. If applicable, a certification that the recipient has not expended federal funds in excess of the audit threshold that is set by OMB shall be included in the recipient's Annual Performance Report.

[77 FR 71529, Dec. 3, 2012, as amended at 80 FR 75944, Dec. 7, 2015]

§ 1000.546 Are audit costs eligible program or administrative expenses?

Yes, audit costs are an eligible program or administrative expense. If the Indian tribe is the recipient then program funds can be used to pay a prorated share of the tribal audit or financial review cost that is attributable to NAHASDA funded activities. For a recipient not covered by the Single

Audit Act, but which chooses to obtain a periodic financial review, the cost of such a review would be an eligible program expense.

§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

No. A copy of the recipient audit under the Single Audit Act relating to NAHASDA activities is only required to be submitted to the Federal Audit Clearinghouse pursuant to 2 CFR part 200, subpart F.

[80 FR 75944, Dec. 7, 2015]

§ 1000.550 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the audit report so that it can fully carry out its oversight responsibilities with NAHASDA.

§ 1000.552 How long must the recipient maintain program records?

(a) This section applies to all financial and programmatic records, supporting documents, and statistical records of the recipient which are required to be maintained by the statute, regulation, or grant agreement.

(b) Except as otherwise provided herein, records must be retained for 3 years from the end of the tribal program year during which the funds were expended.

(c) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71530, Dec. 3, 2012]

§ 1000.554 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

(a) HUD and the Comptroller General of the United States, and any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of recipients which are pertinent to NAHASDA assistance, in order to make audits, examinations, excerpts, and transcripts.

(b) The right of access in this section lasts as long as the records are maintained.

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

§ 1000.558 Does the Federal Privacy Act apply to recipient records?

The Federal Privacy Act does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

APPENDIX A to PART 1000 — INDIAN HOUSING BLOCK GRANT FORMULA MECHANICS

This appendix shows the different components of the Indian Housing Block Grant (IHBG) formula. The following text explains how each component of the IHBG formula is calculated.

1. The first step in running the IHBG formula is to determine the amount available for allocation in the Fiscal Year (FY). It is the sum of:

(a) The FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

(b) The net amount, if any, made available as a result of corrections for over- or under-allocations in prior FYs.

(c) The amount, if any, made available pursuant to § 1000.536.

(d) The amounts, if any, made available because tribes voluntarily returned, or did not accept, the amounts allocated to them in prior FYs, defined as "carryover" (see § 1000.329).

2. If there is carryover as defined in § 1000.329, the amount of carryover up to $3 million, is then held aside for allocation under the minimum total grant provisions of the formula (see 11 below).

3. The IHBG formula first calculates the amount each tribe is allocated under the Formula Current Assisted Stock (FCAS) component (See §§ 1000.310 through 1000.322). The FCAS component is comprised of two parts, Operating Subsidy (§ 1000.316(a)) and Modernization (§ 1000.316(b)).

(a) The Operating Subsidy component is calculated in two steps, as follows:

(i) Each tribe's counts of Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8 units are multiplied by the National Per Unit Subsidy for operations for that category of unit, which is a 1996 index for the type of unit that is adjusted for inflation (see § 1000.302 defining National Per Unit Subsidy). The amounts are summed to create an initial calculation of the operating subsidy component.

(ii) The initial operating subsidy component amount is then adjusted for local area costs, using an adjustment factor called the AELFMR. The AELFMR factor is calculated for each tribe in three steps. First, an Allowable Expense Level (AEL) factor is calculated by dividing the tribe's AEL, a historic per-unit measure of operating cost, by the national weighted average AEL (see § 1000.302 defining Allowable Expense Level). Second, a Fair Market Rent (FMR) factor is calculated by dividing the tribe's FMR amount, an area-specific index published annually by HUD (see § 1000.302 Fair Market Rent factor), by the national weighted average FMR. Third, an AELFMR factor is created by assigning each tribe the greater of its AEL or FMR factor, and dividing that figure by the national weighted average AELFMR. In all cases, when the national average figure is calculated, tribes are weighted by the amount of their initial operating subsidy as calculated in 3(a)(i). (See § 1000.320).

(b) The Modernization component is determined using two methods depending on the number of public housing units that a tribe's housing authority operated prior to the Native American Housing and Self-Determination Act.

(i) For all tribes, the number of Low Rent, Mutual Help, and Turnkey III units are multiplied by the National Per Unit Subsidy for modernization from 1996 adjusted for inflation (see § 1000.302 defining National Per Unit Subsidy).

(ii) For Indian tribes with an Indian Housing Authority (IHA) that owned or

operated fewer than 250 units on October 1, 1997, an alternative modernization component is calculated from the amount of funds the IHA received under the assistance program authorized by Section 14 of the 1937 Act (not including funds provided as emergency assistance) for FYs 1992 through 1997 (see § 1000.316(b)(2)). If this alternative calculation is greater than the amount calculated in paragraph (a) above, it is used to calculate the tribe's modernization component.

(iii) The Modernization component is then multiplied by a local area cost adjustment factor based on the Total Development Cost (TDC) for the tribe (see § 1000.302) divided by the national weighted average of all TDCs weighted by each tribe's pre-adjustment Modernization calculation in paragraph (b)(i) or (ii) above as applicable.

4. The total amounts calculated under the FCAS component for each tribe are then added together to determine the national total amount allocated under the FCAS component. That total is subtracted from the funds available for allocation less the carryover amount held aside for allocation under the minimum total grant provision in § 1000.329. The remainder is the total amount available for allocation under the need component of the IHBG formula.

5. The first step in calculating need component is identifying weighted needs variables and adjusting for local area cost differences.

(a) Need is first calculated using seven factors, where each factor is a tribe's share of the national totals for each of seven variables. The data used for the seven variables is described in § 1000.330. The person count variable is adjusted for statistically significant undercounts for reservations, trust lands and remote Alaska and for growth in population since the latest Decennial Census. The Population Cap provision in § 1000.302 Formula Area (5) is then applied. Needs data are capped if the American Indian and Alaska Native (AIAN) population counts exceed twice tribal enrollment unless a tribe can demonstrate that it serves more than twice as many non-tribal members as tribal members, in which case the cap is adjusted upward.

The factors are weighted as set forth in § 1000.324, as follows:

(i) 22 percent of the amount available for allocation under the needs component are allocated by the share of the total AIAN households paying more than 50 percent of their income for housing and living in each tribe's Formula Area (see § 1000.302);

(ii) 25 percent are allocated by the share of the total AIAN households living in overcrowded housing and/or without kitchen or plumbing in each tribe's Formula Area;

(iii) 15 percent are allocated by the share of the total AIAN households with an annual income less than or equal to 80 percent of Formula Median Income (see § 1000.302) living in each tribe's Formula Area less the tribe's number of FCAS.

(iv) 13 percent are allocated by the share of AIAN households with annual income less than or equal to 30 percent of Formula Median Income living in each tribe's Formula Area;

(v) 7 percent are allocated by the share of AIAN households with annual income between 30 percent and 50 percent of Formula Median Income living in each tribe's Formula Area;

(vi) 7 percent are allocated by the share of AIAN households with annual income between 50 percent and 80 percent of Formula Median Income living in each tribe's Formula Area;

(vii) 11 percent are allocated by the share of AIAN persons living in each tribe's Formula Area.

(b) The result of these calculations for each tribe is then multiplied by a local area cost adjustment based on the Total Development Cost for the tribe (see

§ 1000.302) divided by the national weighted average of TDCs weighted by each tribe's pre-adjustment need calculation. (See § 1000.325).

6. Each tribe's initial need allocation amount is then adjusted under the minimum need allocation provision of § 1000.328. Tribes that are allocated less than $200,000 under the FCAS component of the IHBG formula and that certify the presence of any households at or below 80 percent of median income in their Indian Housing Plans will be allocated no less than a specified minimum under the needs component of the formula. The specified minimum amount shall equal 0.007826 percent of the appropriation for that FY after set-asides. The increase in funding for the tribes allocated the minimum need amount is funded by a reallocation from other tribes whose needs allocation exceeds the minimum need amount. This is necessary in order to keep the total allocation within the appropriation level (See § 1000.328).

7. Whenever a new Data Source is first introduced, provision is made to moderate extreme impacts through phase down adjustments. For purposes of these adjustments, new data sources (see § 1000.331) include the initial introduction of the American Community Survey and 2010 Decennial Census in 2018, and the initial introduction of the 2020 Decennial Census when it becomes available. Tribes whose allocation under the need component decrease by more than ten percent in the first year of introduction will have that decrease moderated by subsequent adjustments, as required to prevent a drop of more than ten percent per year in the tribes' needs allocation attributable solely to the introduction of the New Data Source. After allocation adjustments are made under § 1000.331 for a FY, the needs allocation of an Indian tribe whose needs allocation increased as a result of the introduction of a New Data Source under § 1000.331 shall be adjusted downward proportionate to its share of the total increase in funding resulting from the introduction of a New Data Source to keep the overall needs allocation within available appropriations.

8. A tribe's preliminary total allocation for a grant is calculated by summing the amounts calculated under the FCAS and need components. This amount is compared to how much a tribe received in FY 1996 for operating subsidy and modernization under the 1937 Housing Act. If a tribe received more in FY 1996 for operating subsidy and modernization than it does under the IHBG formula allocation, its preliminary total allocation is adjusted up to the FY 1996 amount (See § 1000.340(b)). Indian tribes receiving more under the IHBG formula than in FY 1996 have their grant allocations adjusted downward to offset the upward adjustments for the other tribes.

9. The initial allocation amount for the current FY is calculated by adding any adjustments for over- or under-funding occurring in prior FYs to the allocation calculated in the previous step. These adjustments typically result from late reporting of FCAS changes, or conveyances which occur in a timely manner following the removal of units from eligibility due to conveyance eligibility.

10. The Undisbursed Funds Factor component is calculated based on the initial allocation amounts calculated above. Tribes with an initial allocation of $5 million or more and undisbursed IHBG grant amounts (the amount available to the tribe in HUD's line of credit control on October 1 of the FY for which the allocation is being made) in an amount greater than the sum of the prior 3 years' initial allocation calculations will have their initial allocation amount adjusted down by the difference between the tribe's undisbursed grant amounts and the sum of

its prior 3 years' initial allocation calculations. If this adjustment would bring the tribe below its FY 1996 minimum (see § 1000.340(b)), then the tribe will be allocated its FY 1996 minimum. The sum of the adjustments will be reallocated among the other tribes proportionally under the need component.

11. A final adjustment is made under § 1000.329 which allocates available carryover amounts up to $3 million to achieve minimum total allocations. Tribes that certify in their Indian Housing Plans the presence of any eligible households at or below 80 percent of median income and whose current FY formula allocation after the Undisbursed Funds Factor adjustment determined in the preceding step is less than 0.011547 percent of the FY appropriation after set-asides, will have their allocation adjusted upwards to 0.011547 percent of the FY appropriation after set-asides, or to a lesser percentage which can be achieved for all eligible tribes with available carryover held for this adjustment (see 2 above).

[81 FR 83682, Nov. 22, 2016]

APPENDIX B to PART 1000 — IHBG BLOCK GRANT FORMULA MECHANISMS

1. The first step in running the Indian Housing Block Grant (IHBG) formula is to determine the total amount available for allocation in the current Fiscal Year (FY).

ALLOCAMT = APPROP + ADJ1 + ADJ2 + CARRYOVER.

Where:
ALLOCAMT = amount available for allocation under the formula.
APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.
ADJ1= net amount, if any, made available as a result of corrections for over-or under allocations in prior FYs.
ADJ2 = amount, if any, made available under § 1000.536.
CARRYOVER = amounts, if any, made available because tribes voluntarily returned, or did not accept, the amounts allocated to them in prior FYs.

2. If there is carryover as defined in § 1000.329, the amount of carryover up to $3 million, is then held aside for allocation under the minimum total grant provisions of the formula (see Step 10), then:
MGHOLD = amount set-aside for allocation under minimum total grant provision.
If CARRYOVER = 0, MGHOLD = 0.
If CARRYOVER > 0 and CARRYOVER < = $3 million, MGHOLD = CARRYOVER.
If CARRYOVER > $3 million, MGHOLD = $3 million.

3. The FCAS component is calculated first. FCAS consists of two parts, Operating Subsidy (OPSUB) and Modernization (MOD), such that: FCAS = OPSUB + MOD.

a. OPSUB is calculated in two steps, as follows:

(i) First, the number of Low-Rent, Section 8 and homeownership units are multiplied by the applicable national per unit subsidy (§ 1000.302 National Per Unit Subsidy). The amounts are summed to create an initial calculation of the Operating Subsidy component.

OPSUB1 = [LR * LRSUB] + [(MH + TK) * HOSUB] + [S8 * S8SUB].
Where:
OPSUB1 = initial calculation of Operating Subsidy component.
LR = number of Low-Rent units.
LRSUB = national per unit subsidy for Low-Rent units ($2,440 * INF).

INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.
MH + TK = number of Mutual Help and Turnkey III units.
HOSUB = national per unit subsidy for Homeownership units ($528 * INF).
S8 = number of Section 8 units.
S8SUB = national per unit subsidy for Section 8 units = ($3,625 * INF).

(ii) The initial Operating Subsidy component amount is then adjusted for local area costs, using an adjustment factor called the AELFMR. The AELFMR factor is calculated for each tribe in three steps. First, an AEL factor is calculated by dividing the tribe's Allowable Expense Level (AEL), a historic per-unit measure of operating cost, by the national weighted average AEL (see § 1000.302 defining Allowable Expense Level)

AEL FACTOR = AEL/NAEL.
Where:
AEL = local Allowable Expense Level.
NAEL = national weighted average for AEL, where the weight is a tribe's initial calculation of operating subsidy.

Second, an FMR factor is calculated by dividing the tribe's Fair Market Rent amount (FMR), an area-specific index published annually by HUD (see § 1000.302 Fair Market Rent factor), by the national weighted average FMR.

FMR FACTOR = FMR/NFMR.
Where:
FMR= local Fair Market Rent.
NFMR = national weighted average for FMR, where the weight is a tribe's initial calculation of operating subsidy.

Third, an AELFMR factor is created by assigning each tribe the greater of its AEL or FMR factor, and dividing that figure by the national weighted average AELFMR. In all cases, when the national average figure is calculated, tribes are weighted by the amount of their initial operating subsidy as calculated in 3(a)(i) above. (See § 1000.320).

AELFMRFACTOR = final local area cost adjustment factor (AELFACTOR or FMRFACTOR)/NAELFMR.
Where:
NAELFMR = national weighted average for greater of AEL Factor or FMR factor, where weight is a tribe's initial calculation of operating subsidy

Finally, the AELFMR factor is used to adjust the initial operating subsidy calculation for differences in local area costs.

OPSUB = OPSUB1 * AELFMRFACTOR.
Where:
OPSUB = Operating Subsidy component after adjustment for local cost differences.

b. The modernization component, MOD, is calculated by two different methods, depending on whether the tribe had an Indian housing authority (IHA) that owned or operated more than 250 public housing units on October 1, 1997.

(i) MOD1 is calculated for all tribes and considers the number of Low-Rent, and Mutual Help and Turnkey III FCAS units. Each of these is adjusted by the national per-unit modernization subsidy
MOD1 = [LR + MH + TK] * MODPU.
Where:
LR = number of Low-Rent units.
MH = number of Mutual Help units.
TK = number of Turnkey III units.
MODPU = national per-unit amount for modernization in 1996 adjusted for inflation ($1,974 * INF).
INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

(ii) MODAVG is calculated only for tribes that had an IHA that owned or operated fewer than 250 public housing units on October 1, 1997, as the annual average amount they received for FYs 1992 through 1997 under the assistance program authorized by section 14 of the 1937 Act (not including emergency assistance). If this alternative calculation is greater than the amount calculated in (i), it is used to calculate the tribe's modernization component.
MODAVG = Average (FY 1992 to FY 1997) amount received by Section 14 of the 1937 Act.

If MODAVG > MOD1, MOD1 = MODAVG.

c. The modernization calculation is adjusted for local area costs:
MOD = MOD1 * (TDC/NTDC).
Where:
TDC = Local Total Development Costs defined in § 1000.302.
NTDC = weighted national average for TDC, where the weight is the initial calculation of modernization amount of tribe with CAS.

4. Now that calculation for FCAS is complete, the amount allocated using the need component of the formula can be determined:

NEEDALLOCAMT = ALLOCAMT − MGHOLD − NATCAS.
Where:
NEEDALLOCAMT = amount allocated using the need component of the formula.
ALLOCAMT = amount available for allocation under the formula.
MGHOLD = amount held for allocation under minimum total grant provision.
NATCAS = national summation of FCAS allocation for all tribes.

5. The first step in calculating needs is identifying weighted needs variables and adjusting for local area cost differences.

a. The basic needs calculation uses seven weighted criteria based on population and housing data in a tribe's Formula Area or share of Formula Area if Formula Areas overlap (see § 1000.302 Formula Area and § 1000.326) to allocate the funds available for the needs component. The person count variable is adjusted for statistically significant undercounts for reservations, trust lands and remote Alaska and for changes in population since the latest Decennial Census.
PERADJ = PER * UCFACTOR * POPCHGFACTOR.
Where:
PER = American Indian and Alaskan Native (AIAN) persons as reported in the most recent Decennial Census.
UCFACTOR= 1+ the percentage undercount identified by the Census by type of land (in 2010 1.0488 for reservation and trust lands only and assumed also to apply to remote Alaska).
POPCHGFACTOR = the ratio of the most recent AIAN Census population estimate for county to the AIAN count for county from the Decennial Census.

The Population Cap provision in § 1000.302 Formula Area (5) is then applied. Needs data are capped if AIAN population counts exceed twice tribal enrollment unless a tribe can demonstrate that it serves more than twice as many non-tribal members as tribal members, in which case the cap is adjusted upward.

POPCAPTEST=1 if PERADJ > TEmultiplier * TE
If POPCAPTEST=1, (tribes subject to Population Cap) then:
PER = TEmultiplier * TE
POPCAPADJF = PER/PERADJ

For tribes NOT subject to Population Cap, PER = PERADJ and POPCAPADJF = 1.
Where:
POPCAPTEST = an indicator showing

whether a tribe's needs data must be adjusted downward because its Formula Area population is disproportionally large relative to tribe's enrollment,

TEmultiplier = 2, or a larger factor if justified by tribe on annual basis.

TE = Tribal enrollment.

POPCAPADJF = factor used to adjust household needs variables.

An initial calculation of the needs component is then calculated by determining each tribe's share of national totals on each variable, and applying weights to the variables as specified in regulation.

BASENEED = [(0.11 * (PER)/NPER) + (0.13 * HHLE30/NHHLE30) + (0.07 * HH30T50/NHH30T50) + (0.07 * HH50T80/NHH50T80) + (0.25 * OCRPR/NOCRPR) + (0.22 * SCBTOT/NSCBTOT) + (0.15 * HOUSHOR/NHOUSHOR)] * NEEDALLOCAMT.

Where:

PER = count of AIAN persons after adjustments.

NPER = national total of PER.HHLE30 = count of AIAN households less than 30% of formula median income multiplied by POPCAPADJF.

NHHLE30 = national total of HHLE30.

HH30T50 = count of AIAN households 30% to 50% of formula median income multiplied by POPCAPADJF.

NHH30T50 = national total of HH30T50.HH50T80 = count of AIAN households 50% to 80% of formula median income multiplied by POPCAPADJF.

NHH50T80 = national total of HH50T80.OCRPR = count of AIAN households crowded or without complete kitchen or plumbing multiplied by POPCAPADJF.

NOCRPR = national total of OCRPR.

SCBTOT = count of AIAN households paying more than 50% of their income for housing multiplied by POPCAPADJF.NSCBTOT = national total SCBTOT.

HOUSHOR = a measure of housing shortage calculated as (HHLE30 + HH30T50 + HH50T80)—(LR + MH + TKIII)

NHOUSHOR = national total of HOUSHOR.

NEEDALLOCAMT = amount allocated using the need component of the formula.

b. The basic needs calculation is adjusted to reflect differences in local area costs.

NEED = BASENEED * (TDC/NATDC).

Where:

TDC = Local Total Development Costs defined in § 1000.302.

NATDC = average for TDC for all tribes weighted using BASENEED.

6. The need allocation computed above is adjusted to take into account the minimum needs provision. Tribes allocated less than $200,000 under the FCAS component of the IHBG formula and that certify the presence of any households at or below 80 percent of median income in their Indian Housing Plan are allocated an additional amount so their needs allocation equals 0.007826 percent of the available appropriations for that FY after set-asides.

MINNEED = APPROP * 0.00007826.

Where:

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

If in the first need computation, a qualified tribe is allocated less than the minimum needs funding level, its need allocation will go up. Other tribes whose needs allocations are greater than the minimum needs amount will have their allocations adjusted downward to keep the total allocation within available funds:

If NEED < MINNEED and FCAS < $200,000 and income-based need has been identified in a tribe's IHP, then NEED1 = MINNEED.

If NEED > = MINNEED, then NEED1 = NEED1 − {UNDERMIN$ * [(NEED1 − MINNEED)/OVERMIN$]}.

Where:

MINNEED = minimum needs amount.

UNDERMIN$ = for all tribes qualifying for an increase under the minimum needs provision, sum of the differences between MINNEED and NEED1.

OVERMIN$ = for all tribes with needs allocations larger than the minimum needs amount, the sum of the difference between NEED1 and MINNEED.

7. Whenever a new data source (see § 1000.331) is first introduced, provision is made to moderate extreme impacts through phase down adjustments. Tribes whose allocation under the need component decrease by more than ten percent in the first year of introduction will have that decrease moderated by subsequent adjustments, as required to prevent a drop of more than ten percent per year in the tribes' needs allocation attributable solely to the introduction of the new data source. A phase down adjustment schedule is calculated, containing adjustment amounts ($PDADJ_n$) for the first and all subsequent FYs, based on the amount allocated to a tribe under the need component in the FY prior to the introduction of the new data source using the old data source. That is,

If NEED1NewDS < 0.9 * NEED1OldDS, then a tribe qualifies for a phase down adjustment (PDADJ) (see § 1000.331(c)).

$PDADJ_n$ = (((0.9 ^{n}) * NEED1OldDS)—NEED1NewDS), where n = 1 to ∞ provided

$PDADJ_n$ > 0 for at least one tribe.

Where:

NEED1NewDS = the amount the tribe would have received in the FY prior to the introduction of the new data source had the new data source been used to determine their need component in that FY.

NEED1OldDS = the amount a tribe actually received in the FY prior to the introduction of the new data source based on the old data source.

$PDADJ_n$ = the size of the adjustment that qualifying tribes will receive in each year n, where the n represents the number of years elapsed since the introduction of the new data source and is equal to one in the first year.

After allocation adjustments are made under § 1000.331 for a FY, the needs allocation of an Indian tribe whose needs allocation increased as a result of the introduction of a new data source shall be adjusted downward proportionate to its share of the total increase in funding resulting from the introduction of a new data source to keep the overall need component within available appropriations. For each tribe which benefitted from the introduction of the new data source, their share of the total gain is calculated and that share is used to determine the amount of contribution they will make in each year following the introduction of the new data source to allow the phase down adjustments to be made without exceeding the amount available for allocation.

If NEED1NewDS > NEED1OldDS, then tribe gained from the introduction of the new data source and contributes a portion of their gain to offset the phase down adjustments.

GAINSHR = (NEED1NewDS - NEED1OldDS)/TOTGAINYR1.

$CONTRIB_n$ = GAINSHR * $TOTPDADJ_n$,

Where:

NEEDd1NewDS = the amount the tribe would have received in the FY prior to the of introduction of the new data source had

the new data source been used to determine their needs funding in that FY.

NEED1OldDS = the amount a tribe actually received in the FY prior to the introduction the new data source based on the old data source.

GAINSHR = a tribe's share of the total gains realized by all tribes that benefitted from the introduction of the new data source.

TOTGAINYR1 = the sum of the amounts that tribes gain from the introduction of the new data source in year one.

$CONTRIB_n$ = the size of the contribution that non-qualifying tribes give in each year n, where the n represents the number of years elapsed since the introduction of the new data source and equal to one in the first year.

$TOTPDADJ_n$ = the total amount in each year n required to cover the cost of phase down adjustments in that year, i.e. S $PDADJ_n$.

The initial needs allocation for each tribe is adjusted based on the phase down adjustments and contribution amounts in the phase down schedule.

$NEED1PD = NEED1 + _PDADJ_n - CONTRIB_n$.

Where:

NEED1PD = a tribe's allocation under the need component after applying the phase down adjustment schedule.

NEED1 = the initial calculation of need in the current FY from step 6 above.

$PDADJ_n$ = the size of the adjustment that qualifying tribes will receive in each year n, where the n represents the number of years elapsed since the introduction of the new data source and is equal to one in the first year.

$CONTRIB_n$ = the size of the contribution that non-qualifying tribes give in each year n, where the n represents the number of years elapsed since the introduction of the new data source and equal to one in the first year.

$PDADJ_n$ and $CONTRIB_n$ as calculated in the initial phase down adjustment schedule may have to be adjusted downward in subsequent FYs if the total amount available for allocation under the needs Component (*i.e.* NEEDALLOCAMT in Step 4) is lower than the amount available for that purpose in the FY prior to the introduction of the new data source. If so, both $PDADJ_n$ and $CONTRIB_n$ will be reduced by a factor which is the ratio of NEEDALLOCAMT in current FY to NEEDALLOCAMT in the year prior to the introduction of the new data source.

Furthermore, when the 2020 Decennial Census or other new data source is introduced, a new phase down adjustment schedule will be calculated in a similar manner as that was calculated for FY 2018.

8. A tribe's preliminary total allocation is calculated by summing the amounts calculated under the FCAS and need components that will serve as the basis for further adjustments in accordance with § 1000.340.

GRANT1 = FCAS + NEED1PD.

Where:

GRANT1 = preliminary total allocation before applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8), Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

FCAS = Formula Current Assisted Stock component equal to OPSUB + MOD.

NEED1PD = the Tribe's needs allocation after applying the phase down adjustment schedule.

GRANT1 is compared to how much a tribe received in FY 1996 for operating subsidy and modernization under the 1937 Housing Act. If a tribe received more in FY 1996 for operating subsidy and modernization than its IHBG formula allocation, its preliminary total allocation is adjusted up to the FY 1996 amount

(See § 1000.340(b)).

Indian tribes receiving more under the IHBG formula than in FY 1996 have their grant allocations adjusted downward to offset the upward adjustment for the other tribes.

TEST = GRANT1 − OPMOD96.If TEST is < = than 0, then GRANT2 = OPMOD96.
If TEST is greater than 0 and GRANT1 > MINNEED, then:
GRANT2 = GRANT1 − [UNDER1996 * (TEST/OVER1996)].
Where:
TEST = variable to decide whether tribes qualify for adjustments under 1996 minimum funding.
GRANT1 = preliminary total allocation before applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8), Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).
OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization.
MINNEED = minimum needs amount.
UNDER1996 = for all tribes with TEST less than 0, sum of the absolute value of TEST.
OVER1996 = for all tribes with TEST greater than 0, sum of TEST.
GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

9. The initial allocation amount for the current FY is calculated by adding any adjustments for over- or under-funding occurring in prior FYs to the allocation calculated in the previous step. These adjustments typically result from late reporting of FCAS changes, or conveyances.

REPGRANT = GRANT2 + ADJUST1.
Where:
REPGRANT = Initial Allocation Amount in current FY (see § 1000.342).
GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).
ADJUST1 = adjustments for over- or under-funding occurring in prior FYs.

10. The Undisbursed Funds Factor is determined by subtracting the sum of each tribe's Initial Allocation Amount for the prior three FYs from the IHBG amounts in HUD's Line of Credit Control System (LOCCS) on October 1 of the FY for which the new allocation is being determined. If the undisbursed funds factor is > $0 and the tribe's initial allocation for the FY exceeds $5 million, its final allocation will be the initial allocation minus the Undisbursed Funds Factor or its 1996 minimum, whichever is greater. Reductions to the initial allocation amounts due to the Undisbursed Funds Factor are summed and redistributed to other tribes in proportion to their initial needs allocation, NEED1PD, calculated above.

If REPGRANT > = $5 MILLION and UNDISB$ > (REPGRANTYR1 + REPGRANTYR2 + REPGRANTYR3), then UDFFtest = 1.
Where:
REPGRANT = Initial Allocation Amount in current FY.
REPGRANTYR1 = Initial Allocation Amount in one year prior to current FY.
REPGRANTYR2 = Initial Allocation Amount in two years prior to current FY.
REPGRANTYR3 = Initial Allocation Amount in three years prior to current FY.
UDFFTest = is an indicator as to whether the tribe will give up a portion of its needs

allocation due to an excessive amount of undisbursed funds.

For tribes whose UDFFtest = 1, a reduction will occur as follows:

REPGRANTaftUDFF = (GRANT2 − (UNDISB$ − (REPGRANTYR1 + REPGRANTYR2 + REPGRANTYR3))

Except if, OPMOD96 > (GRANT2 − (UNDISB$ − (REPGRANTYR + REPGRANTYR2 + REPGRANTYR3)) then, REPGRANTaftUDFF = OPMOD96.

Where:

REPGRANTaftUDFF = Initial Allocation Amount in current FY adjusted for the Undisbursed Funds Factor.

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

UNDISB$ = amount in HUD's LOCCS on October 1 of the FY.

REPGRANTYR1 = Initial Allocation Amount in one year prior to current FY.

REPGRANTYR2 = Initial Allocation Amount in two years prior to current FY.

REPGRANTYR3 = Initial Allocation Amount in three years prior to current FY.

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization.

So the UDFFadj = REPGRANTaftUDFF − GRANT2 and UDFFadjTOT= Absolute value of the sum of UDFF adjustments for tribes subject to reduction.

If UDFFtest is not equal to 1, tribes receive a portion of the funds recovered under the UDFF provision based on their share of total needs excluding any tribes with UDFFtest = 1. For these tribes, then:

UDFFadj = (NEED1PD/ S Need1PD) * UDFFadjTOT).

REPGRANTaftUDFF = REPGRANT + UDFFadj.

Where:

UDFFadj = amount of the Undisbursed Fund Factor adjustments. Negative amount represents excess undisbursed funds. Positive represents amounts being transferred to other tribes without excess undisbursed funds.

NEED1PD = the Tribe's needs allocation after applying the phase down adjustment schedule.

UDFFadjTOT = absolute value of the sum of Undisbursed Fund Factor adjustments for tribes that meet the criteria for reduction and is equal to the sum available for redistribution among other tribes based on their initial needs allocation.

REPGRANTaftUDFF = Initial Allocation Amount in current FY adjusted for the Undisbursed Funds Factor.

REPGRANT = Initial Allocation Amount in current FY.

11. A final adjustment is made under § 1000.329 which allocates available carryover amounts up to $3 million to achieve minimum total allocations. Tribes that certify in their Indian Housing Plans the presence of any eligible households at or below 80 percent of median income and whose total allocation determined in the preceding step is less than 0.011547 percent of the FY appropriation after set-asides, will have their allocation adjusted upwards to 0.011547 percent of the FY appropriation after set-asides, or to a lesser percentage which can be achieved for all eligible tribes with available carryover funds set-aside for this purpose.

MINGRANT = APPROP * 0.0001547.

Where:

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula

allocation.

If (GRANT2 + UDFFADJ) < MINGRANT and income-based need has been identified in a tribe's IHP, then tribe qualifies for MINGRANTADJ. For Tribes that qualify, calculate:
MINGRTADJTEST = MINGRANT—(GRANT2 + UDFFADJ).

If the Sum for all tribes of MINGRTADJTEST < MGHOLD, then:
MINGRANTADJ = MINGRTADJTEST.

If the Sum for all tribes of MINGRANTADJTEST > MGHOLD, then:
MINGRANTADJ = MINGRANTADJTEST * (MGHOLD/ S MINGRANTADJ)

Where:

GRANT2 is the approximate grant allocation in any given year for any given tribe.

UDFFADJ = amount of UDFF adjustment.

MINGRANT = Minimum total allocation established in § 1000.329.

MINGRANTADJTEST = amount required to bring all qualifying tribes' allocations up to the minimum total allocation amount. This amount can then be compared.

MGHOLD = amount set-aside for allocation under minimum total grant provision (see Step 2).

MINGRANTADJ = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

12. A tribe's final allocation consists of the initial current FY formula allocation with three adjustments.

FINALALLOCATION = GRANT2 + ADJUST1 + UDFFadj + MINGRANTADJ

Where:

FINALALLOCATION = total amount a tribe is eligible to receive as a grant in the current FY.

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

ADJUST1 = adjustments for over- or under-funding occurring in prior FYs.

UDFFadj = amount of the Undisbursed Fund Factor adjustments. Negative amount represents excess undisbursed funds. Positive represents amounts being transferred to other tribes without excess undisbursed funds.

MINGRANTADJ = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

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