

**§ 1000.540**

**24 CFR Ch. IX (4-1-02 Edition)**

(4) In the case of noncompliance described in §1000.542, provide a replacement TDHE for the recipient.

(b) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(c) If HUD determines that the failure to comply substantially with the provisions of NAHASDA is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, HUD may 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.

(d) In lieu of, or in addition to, any action described in this section, if HUD has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA, HUD may refer the matter to the Attorney General of the United States, with a recommendation that appropriate civil action be instituted.

**§ 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 will-

ful noncompliance with the requirements of NAHASDA.

**§ 1000.544 What audits are required?**

The recipient must comply with the requirements of the Single Audit Act and OMB Circular A-133 which require annual audits of recipients that expend Federal funds equal to or in excess of an amount specified by the U.S. Office of Management and Budget, which is currently set at \$300,000.

**§ 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?**

Yes. A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted with the Annual Performance Report.

**§ 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 three years from the date the recipient

submits to HUD the annual performance report that covers the last expenditure of grant funds under a particular grant.

(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.

**§ 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 IHBG formula. The following text explains how each component of the IHBG formula works.

1. The Indian Housing Block Grant (IHBG) formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) (See §§ 1000.310 and 1000.312. FCAS funding is comprised of two components, operating subsidy

(§ 1000.316(a)) and modernization (§ 1000.316(b)). The operating subsidy component is calculated based on the national per unit subsidy provided in FY 1996 (adjusted to a 100 percent funding level) for each of the following types of programs—Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8. A tribe's total units in each of the above categories is multiplied times the relevant national per unit subsidy amount. That amount is summed and multiplied times a local area cost adjustment factor for management.

2. The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR (See § 1000.320).

3. The modernization component of FCAS is based on the national per unit modernization funding provided in FY 1996 to Indian Housing Authorities (IHAs). The per unit amount is determined by dividing the modernization funds by the total Low Rent, Mutual Help, and Turnkey III units operated by IHAs in 1996. A tribe's total Low Rent, Mutual Help, and Turnkey III units are multiplied times the per unit modernization amount. That amount is then multiplied times a local area cost adjustment factor for construction (e.g. the Total Development Cost) (See § 1000.320).

4. The construction adjustment factor is Total Development Cost (TDC) for the area divided by the weighted national average for TDC (weighted on the unadjusted allocation for modernization) (See § 1000.320).

5. After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total amount for FCAS is subtracted from the Fiscal Year appropriation to determine the total amount to be allocated under the Need component of the IHBG formula.

6. The Need component of the IHBG formula is calculated using seven factors weighted as set forth in § 1000.324 as follows: 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing living in the Indian tribe's formula area, 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and or without kitchen or plumbing living in their formula area, and so on. The current national totals for each of the need variables will be distributed annually by HUD with the