

(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 devel-

oping 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;

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- (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 that fiscal year an IHP in accordance with § 1000.220 to carry out affordable housing activities.

**§ 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

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(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.