

§ 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).

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

(a) *General.* Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.

(b) *Threshold requirement.* The requirements of section 3 apply only to those section 3 covered projects or activities for which the amount of assistance exceeds \$200,000.

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

In addition to any tribal requirements, the prohibitions in 24 CFR part 24 on the use of debarred, suspended or ineligible contractors apply.

§ 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 24 CFR part 24 apply.

§ 1000.48 Are Indian preference requirements applicable to IHBG activities?

(a) *Applicability.* Grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or

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for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) 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).

(b) *Definitions.*

(1) 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.

(2) 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.

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

To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

§ 1000.52 What Indian preference requirements apply to IHBG procurement?

To the greatest extent feasible, recipients shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(a) Each recipient shall:

(1) 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 which was previously approved by HUD for a recipient will meet the requirements of this section); or

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

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

(i) *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.

(ii) *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.

(b) 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:

(1) Re-advertise the contract, using any of the methods described in paragraph (a) of this section; or

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

(3) 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 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(c) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (a) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a recipient's small purchase procurement shall, to the