

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 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

(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

§ 1000.210

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 July 1. Grant funds cannot be provided until the plan is submitted and determined to be in compliance with section 102 of NAHASDA and funds are available.

§ 1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by July 1?

If the IHP is not initially sent by July 1, the recipient will not be eligible for IHBG funds for that fiscal year. Any funds not obligated because an IHP was not received before the deadline has passed shall be distributed by formula in the following year.

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§ 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 minimum requirements for the IHP?

The minimum IHP requirements are set forth in sections 102(b) and 102(c) of NAHASDA. In addition, §§ 1000.56, 1000.108, 1000.120, 1000.134, 1000.142, 1000.238, 1000.328, and 1000.504 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 minimum 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.

§ 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 circumstances beyond its control. 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).