

TITLE III--ALLOCATION OF GRANT AMOUNTS

Sec. 301. Annual allocation.

HUD allocates IHBG grant to Tribes in accordance with established formula each fiscal year

Sec. 302. Allocation formula.

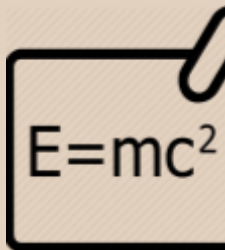


Sec. 302. Allocation Formula



IHBG Formula

The IHBG formula is used to allocate grant funding to Indian tribes and TDHEs. Tribes and TDHEs play an important role in reviewing, reporting, and verifying information. Formula data allows ONAP to allocate IHBG funds equitably and fairly to eligible recipients.



Statutory & Regulatory Requirements



Statutory requirements for the formula allocation are found in Title III of the NAHASDA Act of 1996



Regulatory requirements that implement the formula are found in Subpart D, Allocation Formula, §§ 1000.301-1000.340

Formula Purpose and Background

Allocates IHBG funds

Developed as part of Negotiated Rulemaking

Intent: Make equitable distribution of annual appropriation

Allocation is basis of your annual budget

Key Dates

Formula Response Form (FRF):

- Sent each year around June 1
- Includes data to be used in formula and the estimated allocation amount for the coming FY
- Corrections due 60 days after date of FRF
- Census challenge deadlines for following FY specified in FRF
- Corrections must be submitted to the IHBG Formula Customer Service Center on FRF Appendices A-D

Final Allocations: Completed after the budget is appropriated



Final Allocations

Final allocations can vary from estimate based on many reasons; different final allocation amount than what was used in the estimate, tribe's data changed, other tribe's data changed.



IHBG is distributed through a formula. This formula is calculated annually, depending upon the annual IHBG appropriation from Congress.

The first annual IHBG formula run produces estimated allocations that are sent to both tribes and TDHs and is completed on June 1. Final allocations are completed after appropriations are announced and prior year carry-over is determined.

The date of the final formula run varies each year depending on when the President signs the appropriations into law.

- ◆ The formula contains four key components:
 - (1) Current Assisted Stock (CAS)
 - (2) Need
 - (3) 1996 Minimum
 - (4) NEW - Undisbursed IHBG Funds Factor (UDFF) [1000.310 and 342]



Undisbursed IHBG Funds Factor (UDFF)

Undisbursed IHBG Funds: Applies to Tribes/TDHs with:

- 1) Amount of initial allocation of \geq \$5M
- 2) With funds in eLOCCS. Does not apply to Tribes/TDHs with approved investments.
- 3) Undisbursed amount = Amount in excess of the sum of the prior 3 years initial allocation calculations or its 1996 Minimum.



Component 1: FCAS

1. FCAS is Housing developed under the 1937 Act (before NAHASDA) called Current Assisted Stock (CAS):
 - Low Rent
 - Mutual Help
 - Turnkey III
 - Section 8
2. 1937 units in the development pipeline (after NAHASDA)
3. Section 8 – expired but still managed like Sec 8 program



FCAS

Two elements of FCAS in formula

- Operating subsidy
- Modernization allocation

FCAS adjusted by

- FY96 national averages for Operating subsidy and Modernization allocation
- Local costs and inflation adjustments

Demolished Units 1000.318(e)

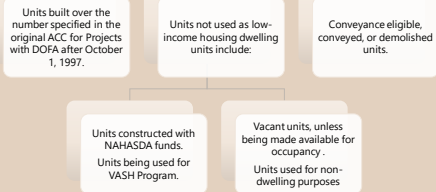
A unit that is demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, the unit is rebuilt within one year.

If the unit cannot be rebuilt within one year because of relative administrative capacities and other challenges faced by the recipient, a one-time, one-year extension may be requested.

Requests must be submitted in writing and include a justification for the request.



Units Not Eligible as FCAS



Section 302(b)(1)(A)

Section 302(b)(1)(A) makes it clear that units should not remain under subsidy forever.



Reviewing FCAS Data

Review the Formula Response Form. Report any corrections to unit counts, unit types, and actual/expected Date of Full Availability (DOFA) for occupancy.

Submitted corrections will be reviewed and HUD will inform the tribe of the corrected unit counts.



Component 2: Need

After determining the FCAS allocation, remaining funds are allocated by need component

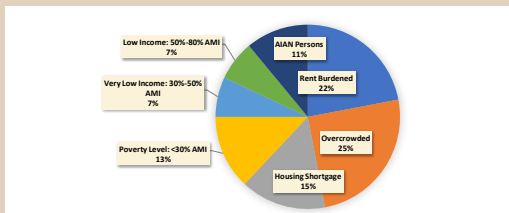
The need component consists of Seven criteria

Based on Decennial Census and American Community Survey (ACS) 5-year data

Adjusted for local Development Cost



Need Component Weights [\$1000.324]



Formula Area

Geographic area providing substantial housing services

Formula area and Indian area are different!



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.



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

- (3) In cases where a State recognized Indian tribe's formula area overlaps with a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the overlapping area.
- (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) 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.



Population Cap

Control to maintain fairness

Only if AIAN persons > 2x enrollment

Challenge process available

Component 3: 1996 Hold Harmless

A tribe's IHBG funding is never reduced below its FY 1996 funding level.

This is the amount the tribe's IHA received in FY 1996 for operating and modernization subsidy.

IHBG funding is adjusted to the amount received in FY 1996. This is a statutory requirement.

Component 4: Undisbursed IHBG Funds Factor (§1000.342)



New formula factor



Provides adjustments for tribes with

Initial allocation of \$5 million or more
Have undisbursed IHBG funds greater than the sum of their prior 3 years' initial allocation



Initial allocation will be reduced, and any amounts recovered will be redistributed

Formula Response Form & Other Funding

The CARES Act appropriated \$8 billion for tribal governments to cover expenditures incurred with respect to the COVID-19 pandemic. Congress directed Treasury Secretary Steven Mnuchin to disburse these funds within 30 days.

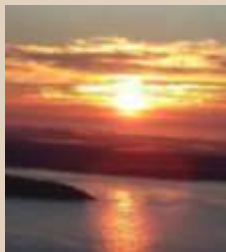
The act specified that the amount paid to each tribe "shall be the amount the Secretary [of the Treasury] shall determine ... that is based on increased expenditures of each such Tribal government ... and determined in such manner as the Secretary determines appropriate." [2]

The Treasury Department decided that 60% of the \$8 billion would be distributed immediately based on population, while the remaining 40% would be distributed later based on employment and expenditures data.

The department sought enrollment data from all 574 federally recognized tribes. In response, the Shawnee Tribe certified that it had 3,021 enrolled members. But the department did not use the tribe-supplied enrollment numbers to distribute the 60% portion of the funds.

Rather, it relied on population data used in connection with the Indian Housing Block Grant program. This data estimates a tribe's population in a geographical formula area based on the number of individuals who consider themselves American Indian or Alaska Native on census forms.

Formula Response Form & Other Funding



Formula Response Form & Other Funding

Because the IHBG data does not reflect actual enrollment, federal regulations recognize that a tribe's IHBG population sometimes exceeds its actual enrollment numbers.

The opposite happened with the Shawnee Tribe; the IHBG data reported that the tribe had a formula area population of zero. So, although the tribe had over \$6.6 million in expenditures in 2019, and although it incurred significant expenses in responding to the pandemic, it received just \$100,000 — the minimum payment for tribes with a population of fewer than 37 members.

Twenty-four other tribes also had formula area populations of zero, including the Miccosukee Tribe, which has 605 enrolled members.

The Shawnee Tribe filed suit, contending that it was arbitrary and capricious for the department to use population as a proxy for increased expenditures, to select the IHBG population data rather than other available data, and to refuse to adjust what the tribe deemed errors in the IHBG data.

So, you might want to put this form under more eyes within the Tribe to ensure the information is correct.



IHBG Formula Customer Service Center

- Calculates formula allocations
- Provides TA to recipients on formula
- Receives and process corrections and challenges
- 1-800-410-8808



TITLE IV--COMPLIANCE, AUDITS, AND REPORTS

Sec. 401. Remedies for noncompliance.
Sec. 402. Replacement of recipient.
Sec. 403. Monitoring of compliance.
Sec. 404. Performance reports.
Sec. 405. Review and audit by Secretary.
Sec. 406. GAO audits.
Sec. 407. Reports to Congress.
Sec. 408. Public availability of information.



TITLE V--TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

Sec. 501. Repeal of provisions relating to Indian housing assistance under United States Housing Act of 1937.
Sec. 502. Termination of Indian housing assistance under United States Housing Act of 1937.
Sec. 503. Termination of new commitments for rental assistance.
Sec. 504. Termination of Youthbuild program assistance.
Sec. 505. Termination of HOME program assistance.
Sec. 506. Termination of housing assistance for the homeless.
Sec. 507. Savings provision.
Sec. 508. Effective date.
Sec. 509. Effect on HOME Investment Partnerships Act.



TITLE VI--FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

Sec. 601. Authority and requirements.
Sec. 602. Security and repayment.
Sec. 603. Payment of interest.
Sec. 604. Training and information.
Sec. 605. Limitations on amount of guarantees.
Sec. 606. Effective date.
Sec. 606. Demonstration program for guaranteed loans to finance tribal community and economic development activities.



TITLE VII--OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

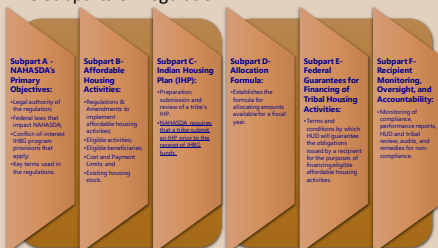
- Sec. 701. Loan guarantees for Indian housing.
Sec. 702. 50-year leasehold interest in trust or restricted lands for housing purposes.
Sec. 703. Training and technical assistance.
Sec. 704. Public and Assisted Housing Drug Elimination Act of 1990.
Sec. 705. Effective date.



NAHASDA REGULATIONS-24 CFR Part 1000

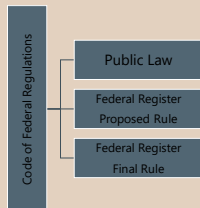


24 CFR Part 1000 – Native American Housing Activities 6 Subparts of Regulation



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Federal regulations result from the public law to the proposed rule, the final rule, and codification in the CFR



CFR Numbering System

The CFR has a uniform numbering system.

- ❖ Most of the 50 titles conform to the system
- ❖ The section is the basic unit of the CFR
- ❖ Cite the CFR by title and section: 12 CFR 303.1
- ❖ Text is divided into descending levels of units

Six Levels of Paragraphs

Paragraph	Designations	Cite Paragraph as
Level 1	(a), (b), (c), etc.	§ 303.1(a)
Level 2	(1), (2), (3), etc.	§ 303.1(a)(1)
Level 3	(i), (ii), (iii), etc.	§ 303.1(a)(1)(i)
Level 4	(A), (B), (C), etc.	§ 303.1(a)(1)(i)(A)
Level 5	(1), (2), (3), etc.	§ 303.1(a)(1)(i)(A)(1)
Level 6	(i), (ii), (iii), etc.	§ 303.1(a)(1)(i)(A)(1)(i)

2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS



Uniform Administrative Act (2 CFR Part 200)

To ensure the accountability of all federal funding, the Office of Management and Budget (OMB) establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

The regulations implementing NAHASDA (24 CFR § 1000) include a variety of general administrative requirements that must be followed by recipients of the Indian Housing Block Grant funds. Prior to December 26, 2014, the NAHASDA regulations addressing administrative requirements at 24 CFR § 1000.25 cited two former OMB regulatory documents: OMB Circular A-87 (cost principles), and OMB Circular A-102 (Uniform Administrative Requirements codified for HUD programs in 24 CFR § 85).



Uniform Administrative Act (2 CFR Part 200)

The OMB has streamlined the Federal government's guidance from eight existing OMB circulars (which includes A-87, A-102, and A-133) into one consolidated set of guidance in the code of Federal regulations (2 CFR §200) and is titled the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the 'Uniform Guidance').

This consolidation is aimed at eliminating duplicative or almost duplicative language in order to clarify where policy is substantively different across types of entities, and where it is not.

OMB issued the final rule on December 26, 2013. The final rule became effective for grantees on December 26, 2014. When a recipient accepts IHBG funds, it agrees to comply with these administrative requirements.



Uniform Administrative Act (2 CFR Part 200)

Subpart A – Acronyms and Definitions

Subpart B – General Provisions

Subpart C – Pre-Federal Award Requirements & Formula Allocation

Subpart D – Post-Federal Award Requirements

Subpart E – Cost Principles

Subpart F – Audit Requirements



2 CFR 200 Subpart B: General Provisions

The Office of Management & Budget (OMB) previously issued Circular notices for uniform requirements which were then Codified and made effective December 26, 2014. Please see ONAP Program Guidance 2014-12, Consolidation of OMB Circulars.

The purpose of this Subpart is to establish uniform administrative requirements, cost principles and audit requirements for Federal awards to non-Federal entities by Federal awarding agencies;

This Subpart provides basis for systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to OMB.

This Subpart prescribes the manner in which GSA, OMB and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act.

It also requires the following:

2 CFR 200 Subpart B: General Provisions

§200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters **are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment.** (See also 2 CFR part 190, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[80 FR 43308, July 22, 2015]

EXCEPTION—Per 24 CFR 1000.26 (a) (1), 200.113 applies, except that, in lieu of the remedies described in § 200.338, HUD shall be authorized to seek remedies under subpart F.

What is SAM

System for Award Management (SAM)
The System for Award Management (SAM) is a Federal Government owned and operated free web site that consolidates the capabilities in Central Contractor Registration (CCR)/Fed Reg. Online Representations and Certifications Applications (ORCA) and the Excluded Parties List System (EPLS).



2CFR 200 Subpart C: Pre-Federal Award Requirements and Contents of Federal Awards

- In accordance with the Federal Grant and Cooperative Agreement Act, Federal award agencies must identify the appropriate instrument for the federal award to the nonfederal entity - For NAHASDA, HUD uses a Grant Agreement to award IHBG funds to Tribes/TDHEs.
- Suspension and Debarment - Nonfederal entities are subject to non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689 and 2 CFR Part 180.
- These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

2 CFR 200 Subpart D: Post Federal Award Requirements

The non-Federal entity is responsible for complying with all requirements of the Federal award. These include:

§200.302 Financial management.

Investment, Cash Management, Accounting System

§200.303 Internal controls.

§200.313 Equipment, Property Inventory, Control & Disposition System

§200.333 Retention requirements for records, (3 Years)

The financial management system of each non-Federal entity must provide for the following:

§200.334 Requests for transfer of records

§200.335 Methods for collection, transmission and storage of information

§200.336 Access to records

§200.337 Restrictions on public access to records

2 CFR 200 Procurement

- .317 – States
- .318 – Procurement Standards
- .319 – Competition
- .320 – Methods of Procurement to Be Followed
- .321 – Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
- .323 – Contract Cost and Price
- .324 – Awarding Agency Review
- .325 – Bonding (1000.26(a)(11) provides acceptable methods when inconsistencies exist)
- .326 – Contract Provisions

Uniform Guidance Sessions

The methods of Procurement are listed in the Super Circular at 2 CFR Part 200.320

HUD has an excellent 9-part series titled "OMB NEW UNIFORM Guidance Sessions" Available to watch using YouTube.

I would recommend it as the uniform guidance is a major piece of the puzzle in assuring your procurement is done properly.

https://www.hud.gov/program_offices/public_indian_housing/fih/regis/resources

2 CFR PART 200 UNIFORM GUIDANCE WEBCAST SERIES AND RESOURCES

REMEMBER:

When reading the uniform guidance, They are very precise in using the terms "should and must" **Should** means best practices or recommended approaches and **Must** means it is required.

This presentation has been edited for time allocation:

The remainder of this presentation is normally on the required Policies because of time constraints this will be available at a different venue.

Questions



HOPEFULLY WE
CAN DO THIS
IN PERSON
SOON!



THANK YOU!
&
IF YOU SHOULD
EVER NEED
ANYTHING ELSE!