AUDIT REPORT

Nationwide Audit of

IMPLEMENTATION OF THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

2001-SE-107-0002

AUGUST 2, 2001

OFFICE OF AUDIT, NORTHWEST/ALASKA
SEATTLE, WASHINGTON

audit report

Issue Date
August 2, 2001
Audit Case Number
2001-SE-107-0002

MEMORANDUM FOR: Mr. Ted Key, Acting Deputy Assistant Secretary for
Public and Indian Housing, Office of Native American Programs, PN

(ORIGINAL SIGNED)
FROM: Frank E. Baca, District Inspector General for Audit, 0AGA

SUBJECT: Final report of Nationwide Audit of
Implementation of the Native American
Housing Assistance and Self-Determination Act of 1996

We performed a nationwide audit to evaluate the Native American Housing Assistance and Self-Determination Act of 1996 program implementation. The report contains nine findings requiring follow-up actions by HUD.

Within 60 days, please provide us for each recommendation in this report, a status on: (1) corrective action taken; (2) the proposed corrective action and expected completion date; or (3) why action is not considered necessary. Also, please furnish us with copies of any issued correspondence or directives related to the audit.

Should your staff have any questions, please contact Ron Jilg, Senior Auditor or me at (206) 220-5360.

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Executive Summary

We performed a nationwide audit of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) program implementation. The purpose of the audit was to determine if NAHASDA recipient performance is consistent with the Indian Housing Plan and if the Housing Entities[1] efficiently, effectively, and economically provide affordable housing. Specifically, the audit objective was to determine if the Housing Entities:

- Have implemented and/or accomplished planned activities outlined in their Indian Housing Plan (IHP).
- Have a history of satisfactory performance.
- Are financially stable.
- Have acceptable management systems.
- Obtained required Single Audit Act reports.
- Developed and implemented operating policies.

We performed on-site visits at 17 Housing Entities within four of the six Office of Native American Programs (ONAP) regions. Our objective was not to audit the tribes but to assess NAHASDA program performance as a whole.

Overall, tribes have successfully implemented NAHASDA

Our audit disclosed NAHASDA grant recipients have generally implemented their Indian Housing Plans (IHP).

Our review results indicated that 15 of the 17 Housing Entities included in our review had the administrative capacity needed to carry out their programs under NAHASDA.

However, the audit disclosed significant concerns that HUD needs to address

Ensuring an accurate allocation of NAHASDA Indian Housing Block Grant funds. Office of Native American Programs' Indian Housing Block Grant (IHBG) allocation formula inputs include housing units that do not qualify as Formula Current Assisted Stock (FCAS). As a result of FCAS inaccuracy, HUD over funded some Housing Entities and under funded others.

ONAP needs to audit all Housing Entities' FCAS, remove ineligible units from FCAS, recover over funding from Housing Entities that had inflated FCAS and reallocate the recovery to recipients that were under funded. Also, HUD needs to institute control procedures to ensure FCAS accuracy for future years.

[1] Unless otherwise specified, we refer to tribal organizations that implement NAHASDA activities as "Housing Entities."

Resolving incompatible federal admission requirements. Combining NAHASDA and other federal housing program assistance may result in incompatible program admission requirements relating to fair housing. The audit identified three affordable housing projects with NAHASDA assistance totaling about $15 million that may not qualify as affordable housing. We recommend that ONAP seek clarification of this matter from the HUD Office of General Counsel.

Determining if umbrella member tribes should benefit equally from their NAHASDA Indian Housing Block Grant. One of the two umbrella organizations reviewed did not always treat all member tribes equally. The umbrella's principal tribe gave preferences to its own employees and tribal members. As a result, the member tribes did not receive affordable housing benefits commensurate with their Indian Housing Block Grant. We recommend ONAP determine if umbrella Housing Entities are required to ensure that benefits are commensurate with the member tribes' Indian Housing Block Grant.

Assisting Housing Entities in becoming familiar with new requirements under NAHASDA. Not all Housing Entities (i) used Indian Housing Block Grant funds for only eligible activities, (ii) developed and implemented policies and procedures to meet NAHASDA requirements, (iii) had administrative capacity to successfully implement their affordable housing activities, and (iv) accounted for program income or controlled increases in tenant accounts receivables adequately. Thus, ONAP cannot be assured that tribal members receive fair and maximum benefit from the tribe's Indian Housing Block Grant. The NAHASDA program had only been operational about two years at the time of our audit, and within that time Housing Entities had not obtained the knowledge needed to meet their obligation to operate the program in accordance with grant requirements.

ONAP needs to (i) advise Housing Entities to adopt the necessary control procedures to ensure compliance with NAHASDA requirements, (ii) verify Housing Entities' compliance with program requirements and their own policies during all on-site monitoring visits, and (iii) take appropriate enforcement actions for program noncompliances.

Ensuring that Housing Entities obtain timely Single Audit Act reports and implement uniform accounting standards. Ten of the sixteen Housing Entities required to submit Single Audit Act reports had not submitted reports in a timely manner. As a result, HUD and the Housing Entities lack the assurances audits are intended to provide regarding financial condition, internal control system effectiveness, and compliance with federal program requirements. In addition, HUD has no standards for evaluating the financial condition of Housing Entities because they do not prepare financial statements based on uniform accounting standards. We recommend ONAP (i) determine if non-submittal of Single Audit Act reports represents substantial noncompliance under NAHASDA and (ii) revise NAHASDA regulations to require Housing Entities that submit Single Audit Act reports to comply fully with Generally Accepted Accounting Principles.

We obtained feedback from the tribes and ONAP

We discussed the audit issues relating to specific Housing Entities with each of the seventeen grant recipients during the course of our audit and/or at exit conferences. We also provided and continue to provide audit memoranda to the grant recipients and the cognizant ONAP offices.

On May 17, 2001, we provided ONAP Headquarters with the draft audit report. We met with the Deputy Assistant Secretary, Office of Native American Programs on June 6, 2001, for an exit conference. ONAP officials responded in writing to the draft report on June 12, 2001.

ONAP partially agreed with the draft audit report

In its overall comments ONAP states, "The report presents a reasonable status of the NAHASDA program and will be of value to the Department in development of the Program." Since the audit was conducted after only two to three years of tribal NAHASDA experience, programmatic issues would be expected in the transition process. Additionally, ONAP believes there is a profound difference between HUD and OIG's perception of ONAP's role in program implementation, accountability and compliance. ONAP asserts that the NAHASDA block grant program places accountability on the Indian tribes. ONAP's role is one of monitoring, and where appropriate, imposing remedies authorized by NAHASDA for noncompliance. Consequently, ONAP disagrees with draft recommendations that involve working with Housing Entities on specific items or telling Housing Entities "how

to" implement and comply with NAHASDA. ONAP perceives those actions as "paternalistic" and "could easily be interpreted as transferring accountability to [HUD]."

ONAP monitoring and guidance still needed

Our audit disclosed numerous instances where Housing Entities are noncompliant with the NAHASDA regulations. Also, two Housing Entities lacked the capacity to administer the NAHASDA program. In most cases, ONAP was not aware of the cited noncompliances and management deficiencies because either (i) ONAP has not performed on-site monitoring at the selected locations or (ii) its monitoring visits did not disclose the issues. Additionally, contrary to ONAP's self-established monitoring and enforcement role, the audit noted few, if any, ONAP enforcement actions when it becomes aware of noncompliances. Despite three years of NAHASDA program experience, guidance on certain areas of NAHASDA regulations is still necessary and we recommend ONAP continue to provide Housing Entities the necessary guidance.

Table of Contents

Appendices

Abbreviations

ACC	Annual Contributions Contract
APR	Annual Performance Report
CFR	Code of Federal Regulations
FCAS	Formula Current Assisted Stock
FHA	Federal Housing Administration
GAAP	Generally Accepted Accounting Principles
GSA	U.S. General Services Administration
HOME	Home Investment Partnerships
HUD	U.S. Department of Housing and Urban Development
IHBG	Indian Housing Block Grant
IHA	Indian Housing Authority
IHP	Indian Housing Plan
MHOA	Mutual Help and Occupancy Agreement
NAHASDA	Native American Housing Assistance and Self-Determination Act of 1996
OIG	HUD, Office of Inspector General
OGC	HUD, Office of General Counsel
OMB	U.S. Office of Management and Budget
ONAP	HUD, Office of Native American Programs
PIH	Public and Indian Housing
TAR	Tenant Accounts Receivable
TDHE	Tribally Designated Housing Entity
USDA	U.S. Department of Agriculture

Introduction

Background

In 1961, the United States government began to make public housing money available to Indian tribes pursuant to the U.S. Housing Act of 1937. To participate in this program, tribes and Alaska Native communities had to create Indian housing authorities. Federal funds were restricted to federally prescribed programs supervised by the U.S. Department of Housing and Urban Development.

In October 1996, Congress repealed those parts of the 1937 Act related to Indian housing and enacted Public Law 104-330, the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). NAHASDA provides federal assistance to Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. One of the primary objectives of NAHASDA is to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and other Indian areas for occupancy by low-income Native American families. NAHASDA eliminates several separate programs of assistance and replaces them with a single block grant.

The Office of Native American Programs. The Office of Native American Programs (ONAP), a division of the Office of Public and Indian Housing, is the HUD organization charged with administering and overseeing NAHASDA funding and activities. ONAP is headquartered in Washington D.C. The Denver National Program Office is out stationed from ONAP's Headquarters. There are six Area ONAP Offices:

Eastern/Woodlands (Chicago)
Northern Plains (Denver)
Southern Plains (Oklahoma City)
Southwest (Phoenix)
Northwest (Seattle)
Alaska (Anchorage)

NAHASDA and 1937 Act funding. NAHASDA repealed the 1937 Act funding method and replaced it with an allocation formula. Under NAHASDA, HUD allocates Indian Housing Block Grant (IHBG) funds based on a two-component formula: Formula Current Assisted Stock (FCAS) and need. The FCAS addresses the need to

provide operating subsidy and modernization funding for the tribe's housing stock developed under the 1937 Act. The need component consists of seven criteria, and recognizes issues such as current household income and living conditions.

Organizational structure of NAHASDA recipients. A principle of NAHASDA is to provide assistance for Native American tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance. This gives the tribes options on how they implement and manage their NAHASDA program. Some tribes elected to establish a housing division within the tribal organization while others delegated the housing responsibility to a separate Tribally Designated Housing Entity (TDHE). In doing so, the TDHE becomes the legal grant recipient in place of the tribe. Other forms of Housing Entity include tribal subrecipients, which are similar to subcontractors, and consortiums (umbrellas) where a TDHE manages housing programs for multiple tribes. In this report, unless otherwise specified, we refer to tribal organizations that implement NAHASDA activities as "Housing Entities."

Indian Housing Plans. The Indian Housing Plan (IHP) is used by Housing Entities and ONAP for planning and measuring NAHASDA funded activities. The IHP documents the tribes' assessment of housing needs and their planned housing activities. The comprehensive IHP covers planned activities for a one-year period, and overall strategies for a five-year period. Additionally, the IHP contains a mission statement, goals, objectives and policies of tribes to meet the housing needs of low-income families in their jurisdictions.

Audit Objective, Scope and Methodology

Audit Objective: The purpose of the audit was to determine if NAHASDA recipient performance is consistent with the Indian Housing Plan and if the Housing Entities efficiently, effectively and economically provide affordable housing. Specifically, the audit objective was to determine if the Housing Entities:

- Have implemented and/or accomplished planned activities outlined in the Indian Housing Plan.
- Have a history of satisfactory performance.
- Are financially stable.
- Have acceptable management systems.
- Obtained Single Audit Act reports.

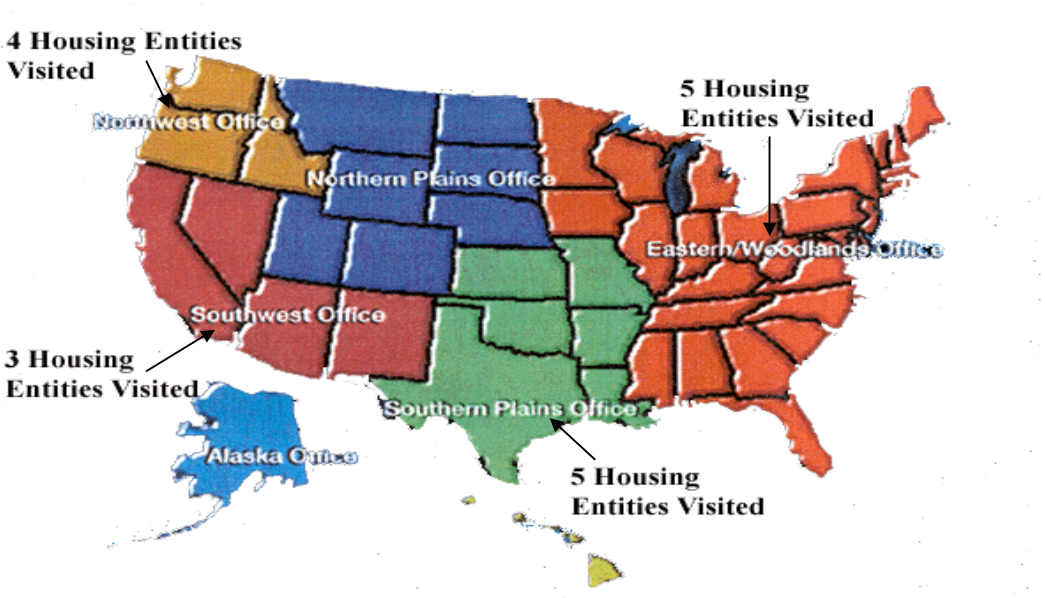
- Developed and implemented adequate operating policies.

Our objective was not to audit the tribes but to assess NAHASDA program performance as a whole. The audit included identifying weaknesses and strengths at the federal regulation and tribal policy levels in order to identify the barriers and common factors to program success. In particular, we reviewed the selected Housing Entities' administrative capacity and its effect on their ability to meet members' housing needs and program requirements. In addition, we tested the accuracy of HUD's FCAS data to determine if the Housing Entities received correct funding.

This is the first of two NAHASDA audits. This audit focuses on tribes' implementation of NAHASDA, whereas the next NAHASDA audit will review ONAP's oversight and administration of the NAHASDA program.

Audit Scope. We performed on-site visits at seventeen Housing Entities within four of the six ONAP regions:

Figure 1: Tribes visited by ONAP Region



In selecting Housing Entities, we considered the amount of Indian Housing Block Grant funds the tribes received, the organizational structure of the Housing Entity in relation to the tribe, housing management experience level, and geographic location. We also obtained ONAP's input on successful and struggling performers and umbrella organizations with the intention of covering as wide a spectrum as possible. The selected tribes include six of ONAP's nominees: two umbrella organizations, one "successful" performer, and three "struggling" performers.

HUD awarded Indian Housing Block Grants to 575 recipients during fiscal year 1999. The 17 Housing Entities[2] we visited received annual Indian Housing Block Grants ranging from the minimum $50,000 to over $80 million.

Table 1: Housing Entities visited by annual IHBG funding

IHBG Annual Funding Amount (Based on FY 1998 and 1999 data)	Housing Entities Visited
More than $80 Million	1
Between $10 - $80 million	1
Between $6 - $10 million	1
Between $3 - $6 million	3
Between $1 - $3 million	6
Between $100,000 and $1 million	4
Less than $100,000	1

Furthermore, these 17 Housing Entities account for 22.9 percent and 22.6 percent of the total Indian Housing Block Grant funded by HUD in fiscal years 1998 and 1999, respectively.

Table 2: IHBG Audit Coverage

Fiscal Year	Total Audit Coverage	Total IHBG Funded by HUD	Audit Coverage of Total IHBG
1998	$135,031,101	$589,995,978	22.9%
1999	$138,806,340	$613,900,878	22.6%

We performed on-site visits at the Housing Entities that are responsible for implementing the selected tribes' NAHASDA program. The Housing Entities were divisions

[2] Since our intent was not to audit the tribes, but rather the NAHASDA program implementation, this report does not refer to the 17 Housing Entities by name. Instead, we are providing general data on the 17 tribes.

of tribes, Tribally Designated Housing Entities, or subrecipients.

Table 3: Housing Entity structure in relation to the tribe

Housing Entity Structure	Number
Division of the tribe	6
TDHE of a tribe	8
TDHE umbrella organization	2
Subrecipient	1

Methodology: In conducting the audit, we:

- Researched the NAHASDA legislative and regulatory requirements.
- Researched the applicable Office of Management and Budget (OMB) Circulars.
- Reviewed HUD Public and Indian Housing Notices and other HUD guidance on the NAHASDA program.
- Met with representatives from the four ONAP regions visited (see Figure 1) to obtain their perspectives on (i) whether NAHASDA efficiently, effectively and economically provides affordable housing and (ii) selected Housing Entities' performance under NAHASDA.
- Obtained the Office of Native American Program's input on successful and struggling Housing Entities.
- Selected 17 Indian Housing Block Grant Housing Entities to review their implementation of NAHASDA.
- Conducted on-site visits to interview tribal and Housing Entity representatives, tour NAHASDA housing projects, and review financial and housing records. We performed limited transaction testing of financial and management systems.

We discussed the audit results relating to specific Housing Entities with representatives from each Housing Entity and the cognizant ONAP office during the audit and/or at exit conferences. In addition, we have or will issue separate memoranda to the cognizant ONAP offices regarding audit issues and concerns, and recommendations specific to each Housing Entity. These memoranda are referred to in this audit report.

The audit fieldwork covered the period April 2000 through November 2000. Our review generally covered fiscal years 1998 and 1999 Indian Housing Block Grant, and was extended as necessary to fully accomplish our objectives.

We conducted the audit in accordance with generally accepted government auditing standards.

ONAP Has Not Accurately Allocated NAHASDA Indian Housing Block Grant Funds Since Inception of the NAHASDA Program

The Office of Native American Programs used information on Indian housing developed under the United States Housing Act of 1937 (as Amended) without adjusting for all units that did not qualify as Formula Current Assisted Stock for its funding allocation formula. As a result of this Formula Current Assisted Stock inaccuracy, HUD over funded some Housing Entities and under funded others. This occurred because HUD (i) did not verify the accuracy of the data used and (ii) relied on Housing Entities to notify HUD of current assisted stock changes and accuracy. Furthermore, there was no financial incentive for Housing Entities to notify HUD of decreases in their current assisted stock.

Paid off homes should not be included in Formula Current Assisted Stock

NAHASDA regulations state (italics added):

> "Current assisted stock consists of housing units owned or operated pursuant to an ACC *(Annual Contributions Contract)*. This includes all Low Rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the Formula Response Form." (24 CFR 1000.312)
>
> "…units shall no longer be considered Formula Current Assisted Stock when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit,…provided that conveyance of each Mutual Help or Turnkey III unit occurs as soon as practicable after a unit becomes eligible for conveyance by the terms of the MHOA *(Mutual Help and Occupancy Agreement)*…and…the Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and conditions of the MHOA, including requirements for full and timely payment." (24 CFR 1000.318)

NAHASDA fund allocations based in part on FCAS

The Formula Current Assisted Stock (FCAS) is a factor in determining the amount of operational and modernization subsidy each tribe's Housing Entity receives. Since HUD provides a fixed Indian Housing Block Grant (IHBG) amount nationwide each fiscal year, an inflated FCAS at one Housing Entity means less allocated funding for all other tribes. Conversely, understated FCAS at a Housing Entity results in other tribes receiving extra IHBG allocated funding.

HUD relies on tribe's voluntary input in determining FCAS

At NAHASDA implementation, HUD obtained the Formula Current Assisted Stock data from its Integrated Business System. ONAP Denver National Program Office stated that each Area ONAP Office had reviewed the FCAS data that would be used in the formula for accuracy verification. As its control on FCAS accuracy, HUD annually sends out Formula Response Forms to all Housing Entities requesting them to report changes to their Formula Current Assisted Stock and other formula related information before each year's allocation. However, the Housing Entities are not required by law or regulations to report formula input changes. Additionally, there is little incentive for Housing Entities to report a reduction in the FCAS because it reduces the grant received by the Housing Entity.

Four of five Housing Entities reviewed had FCAS discrepancies

We evaluated HUD's Formula Current Assisted Stock accuracy at five of the seventeen selected Housing Entities and found that the FCAS at four Housing Entities were either overstated or contained discrepancies. At one location, the FCAS was overstated by 633 paid-off Mutual Help units. According to that Housing Entity's records, the 633 units were paid off between 1970 and 1999. Since the units were paid off, the Housing Entity no longer has the legal right to own, operate, or maintain those units and the 633 homes should be removed from HUD's FCAS.

For another Housing Entity, HUD included in its FCAS 20 houses that are Indian Housing Authority (IHA) financed. The IHA financing involves the IHA holding a note like a bank as in a regular mortgage. Once the promissory note is issued, the Mutual Help and Occupancy Agreement is no longer in effect and therefore, the house should not be counted in the current assisted housing stock.

The review also disclosed two Housing Entities with discrepancies between the FCAS, units reported in the Indian Housing Plans, and the actual number the Housing Entity had under management. In each case the FCAS was higher and HUD did not determine which figure was correct.

Review of HUD database also indicates FCAS discrepancies

We also evaluated HUD's fiscal year 2001 Formula Current Assisted Stock database published on the HUD Code Talk web page. The analysis disclosed HUD's 2001 FCAS data includes 3,448 Mutual Help and Turnkey III program units that were available for occupancy before

October 1, 1975. Since Mutual Help and Turnkey III programs generally do not exceed 25-years, one can reasonably expect that some of these units should be paid-off, and the Housing Entities would no longer have the legal right to own, operate, or maintain these units. Moreover, in comparison to the overstated FCAS at the four Housing Entities above, the use of the occupancy data in the FCAS database appears to be a conservative approach. The occupancy data understates the number of units that should be excluded as paid-off. For the four Housing Entities discussed above, the number of units that should have been excluded per HUD's database was less than our audit results as follows:

Table 4: Comparison of audit identified FCAS overstatement and estimated paid off units from HUD's FCAS Database

Housing Entity	Audit Identified FCAS Overstatement	HUD's FCAS Database
1	633	447
2	20	0
3	3	0
4	7-9*	0

* The Housing Entity records had conflicting information on the number of units that should be excluded from the FCAS.

We alerted the National ONAP office of the Formula Current Assisted Stock inaccuracy problem. A National ONAP representative stated it was not feasible to verify FCAS database accuracy due to time constraints at NAHASDA implementation. On September 11, 2000, ONAP issued memos to all Housing Entities requesting them to review their FCAS accuracy. In addition, ONAP is developing procedures to identify all units that should have been conveyed by all Indian Housing Block Grant recipients.

Auditee Comments

ONAP generally acknowledged that the Formula Current Assisted Stock contains inaccurate information. However, ONAP takes exception to the characterization that the Indian Housing Block Grant allocation has been inaccurate since NAHASDA implementation. ONAP noted that the audit finding contains information for only one percent of the entities receiving grants and that action has been taken to correct inaccurate information. Those actions included obtaining input from the Area ONAP Offices on the original information used in the system and requesting

corrections from the tribes. Additionally, ONAP questioned the usefulness of the indicators of errors cited in the finding. Specifically, ONAP questioned the usefulness of the IHPs reported units under management and the use of the normal program length to evaluate the potential for errors. ONAP stated that at best the IHP is an indication that review is needed (timing differences cited) and that there are situations where the tribe continues to own and operate units after the normal program length is exceeded.

In response to our recommendations for this finding, ONAP stated that the actions it has taken resolve all audit recommendations. The FCAS monitoring has been incorporated into ONAP's on-site monitoring. As FCAS errors are detected, action is taken to recover any overpayments. ONAP states that control procedures are in place to review FCAS accuracy but existing resources are inadequate to perform on-site visits for all grant recipients. ONAP asserts that an on-site visit is the only way to verify all FCAS information.

ONAP supplied a listing of guidance provided to ONAP staff and tribes. Furthermore, ONAP noted that the IHBG allocation formula would be evaluated at the negotiated rule making committee meeting this fiscal year.

OIG Evaluation

The nature of the formula allocation is such that one error impacts the IHBG allocations to all tribes. Even though we only looked at FCAS for five Housing Entities, the fact that we found discrepancies at four of the five indicates there is likely a significant problem nationwide. Additionally, ONAP's actions to correct the FCAS are heavily dependent on the tribes voluntarily advising ONAP that their FCAS is overstated. This effectively results in tribes asking for a smaller grant amount and making eligibility determinations that are inherently HUD decisions. Finally, ONAP basically agrees that the IHP and program length data can be used as an indicator but does not believe it can be used in the absence of resources for on-site follow-up. Alternatives to an on-site follow-up exist and include requesting information on units:

- under management,
- that have been paid off and not conveyed with a basis for delay, and
- modernized or occupied by subsequent homebuyers.

Resolution of recommendations involves a management decision and OIG's concurrence on that decision. This is normally addressed subsequent to issuance of the final audit report. Additionally, the response does not provide sufficient information to show that actions have been taken to resolve the recommendations. Accordingly, the recommendations remain open.

Recommendations:

We recommend you:

1A. Audit the Formula Current Assisted Stock for all Housing Entities and remove ineligible units from HUD's Formula Current Assisted Stock.

1B. Recover over funding from Housing Entities that had inflated Formula Current Assisted Stock and reallocate the recovery to recipients that were under funded for current and prior NAHASDA funding years.

1C. Implement control procedures to ensure Formula Current Assisted Stock accuracy for future years.

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Incompatible Federal Admission Requirements

Combining NAHASDA and other federal housing program assistance may result in incompatible program admission requirements relating to fair housing. The audit identified three affordable housing projects with NAHASDA assistance totaling about $15 million that may not qualify as affordable housing. This occurred because HUD officials believed that the NAHASDA requirements supersede other federal program requirements. In addition, a Housing Entity receives assistance for projects from HUD programs (Section 8) that are ineligible for NAHASDA funded projects.

Conflicting admission requirements for projects assisted by multiple programs

Admission to the NAHASDA affordable housing program is restricted to low-income Indian families, non-low-income Indian families meeting specified requirements, and non-Indian families meeting specified requirements. However, admission requirements for other federal programs that were combined with the NAHASDA program prohibit discrimination based on race in accordance with the Fair Housing Act.

At one large Housing Entity, three NAHASDA funded projects also received assistance from non-NAHASDA federal programs. The requirements for these other programs conflicted with NAHASDA requirements in that NAHASDA does not follow Fair Housing Act provisions, whereas the other programs do.

NAHASDA regulations do not include Fair Housing Act provisions. NAHASDA regulations (24 CFR 1000.104) state the following families are eligible for affordable housing activities:

- Low-income Indian families on a reservation or Indian area.

- A non-low-income Indian family may receive housing assistance in accordance with 24 CFR 1000.110, which requires:

  - a documented determination that there is a need for housing each family which cannot reasonable be met without such assistance,

  - that without HUD approval, no more than 10 percent of its annual grant amount be used to assist families whose income falls within 80 to 100 percent of the median income, and

- that non-low-income Indian families cannot receive the same benefits provided low-income Indian families.

- A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well being of Indian families.

Other federal programs require adherence to the Fair Housing Act. The U.S. Department of Agriculture (USDA) Guaranteed Rural Rental Housing Program (7 CFR 3565.8) states that "Any action related to the sale, rental or advertising of dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance, must be in accordance with the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap."

Federal Home Loan Bank Affordable Housing Program Grants (12 CFR 960.5) states the project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969.

HUD's Federal Housing Administration (FHA) Insured Mortgage (Multifamily Rental Housing for Moderate-Income Families 221(d)(3) market rate) and Section 8 Loan Management Set Aside programs require compliance with 24 CFR 5.105. The regulations at 24 CFR 5.105 state certain federal requirements apply as noted in the respective program regulations including the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR Part 100.

Three NAHASDA assisted projects have conflicting Fair Housing requirements

The 1998 and 1999 Indian Housing Plans for a Housing Entity included three projects that combined NAHASDA and other federal housing program assistance. Two of the projects combined NAHASDA, USDA Guaranteed Rural Rental Housing Program, and Federal Home Loan Bank Affordable Housing Program Grant assistance. The third

project combined NAHASDA, FHA Insured Mortgage (Multifamily Rental Housing for Moderate-Income Families 221(d)(3) market rate), and Section 8 Loan Management Set Aside program assistance.

The NAHASDA admission requirements addressing race differ from other federal programs involved. The NAHASDA admission requirements may not be compatible with the Fair Housing Act requirements applicable to the other federal housing programs that prohibit discrimination on the basis of race.

If the projects are required to comply with the Fair Housing Act they would not qualify as affordable housing for NAHASDA purposes and about $15 million of NAHASDA assistance would have to be returned to the Housing Entities program. The projects would not qualify because the admission requirements of NAHASDA could not be followed.

HUD officials involved with approval of the Indian Housing Plan advised that NAHASDA requirements supersede other federal program requirements. Accordingly, the compatibility of NAHASDA and other federal housing program assistance was not questioned. However, the Director of ONAP's National Office of Grants Management told us the recipient is responsible for ensuring there are no conflicting requirements imposed by multiple funding sources. The Director also told us that ONAP evaluates projects on a prorata basis meaning that NAHASDA rules are applied to the units that NAHASDA would have completely funded.

Unallowable Section 8 housing assistance for NAHASDA assisted housing

Two NAHASDA projects at a Housing Entity also receive Section 8 tenant based payments and Section 8 Loan Management Set Aside assistance. It is our understanding that Section 8 assistance entered into after September 30, 1997, is not allowed on NAHASDA funded projects. We have referred this matter to the HUD-OIG Pacific/Hawaii District for additional audit work.

Auditee Comments

In response to our draft recommendations, ONAP obtained an opinion from the HUD Office of General Counsel (OGC) addressing the permissibility of limiting housing to Indian families or tribal members if the housing is funded solely under NAHASDA or funded under NAHASDA and other sources. The OGC legal opinion, dated June 4, 2001,

from the Deputy General Counsel for Housing Finance and Operations is included as Attachment 3 to ONAP's response. Based on the OGC legal opinion ONAP believes the audit recommendations should be resolved with no further action required.

OIG Evaluation

Our review of ONAP's position that the legal opinion resolved the recommendations included in the draft finding raised four questions that we need clarified. Accordingly, we retained the recommendation for appropriate action based on the OGC opinion and requested clarification from the OGC on how:

- leveraging pre-existing federal assistance with prohibitions on discrimination impacts an Indian tribe's ability to do affordable housing activities in accordance with the requirements of NAHASDA.
- the combination of NAHASDA funding and other federal program funds (other than Home Investment Partnerships (HOME) and Community Development Block Grant funds) with prohibitions on discrimination would limit an Indian tribe's ability to do affordable housing activities in accordance with the requirements of NAHASDA.
- a tribe's sovereignty/civil jurisdiction over the HOME statute can be extended to other statutory requirements and how they can be distinguished.
- federal programs, including HUD and USDA programs, with prohibitions against discrimination can assist new projects in areas where prohibitions against discrimination and associated program requirements are controlled by the Indian tribe as described in the legal opinion.

The recommendation will be addressed during the audit resolution process and clarification from the OGC will be considered when received.

Recommendation:

2A. If appropriate, based on the Office of General Counsel opinion and clarification, we recommend you identify all NAHASDA assistance combined with other federal housing assistance and take action to resolve incompatible admission requirements through withdrawal of NAHASDA assistance or the elimination of other federal assistance and its Fair Housing Act requirements.

Umbrella Member Tribes Do Not Always Benefit Equally From Their NAHASDA Indian Housing Block Grant

One of the two umbrella organizations reviewed did not always treat all member tribes equally and fairly. The umbrella organization gave preferences to its own employees and the principal tribal members. As a result, the member tribes did not receive affordable housing benefits commensurate with their Indian Housing Block Grant. This occurred because the tribes did not receive information on expenditures by member tribe, and the umbrella did not follow its published policies.

Umbrella organization

One grant recipient reviewed is a Tribally Designated Housing Entity (TDHE) of its tribe (principal tribe) and two other neighboring tribes. These other two tribes passed resolutions designating the principal tribe's TDHE as their own TDHE and responsible for managing their housing programs.

In accordance with NAHASDA regulations (24 CFR 1000.212), the umbrella TDHE elected to submit a single Indian Housing Plan covering all three-member tribes. As a recipient, the umbrella TDHE is responsible for meeting the reporting requirement (such as annual performance reports) for all three tribes.

Umbrella pools separate tribes' funds

NAHASDA's Indian Housing Block Grant (IHBG) allocation formula computes the funding for each tribe independently. The tribes are entitled to their IHBG regardless of whether they operate their own Housing Entity or belong to an umbrella organization. In this case the umbrella TDHE is the grant recipient for all three tribes' IHBG because the two member tribes designated the principal tribe's TDHE as their own. The umbrella TDHE pools the IHBG funds of all three-member tribes into a "general fund" and there is no identification of dollars spent on each tribe.

Under this pooling of funds method, a member tribe could possibly not receive all the benefits of its own IHBG or it might receive subsidies from the other member tribes' IHBG. A tribe may not receive full benefit of its IHBG if its member applicants are low on the waiting list. Conversely, another member tribe could receive benefits greater than its IHBG if its member applicants are high on the waiting list.

Umbrella TDHE gives its own members preference

NAHASDA allows tribes to have preferences (Title II, Sec. 201(b)(4)), although tribes must disclose conflicts of interest to HUD and the public (discussed in Finding 6). The review disclosed that the umbrella TDHE gives its housing employees and principal tribal members preferences. As a result of the umbrella TDHE's practices, these two groups of individuals were always at the top of the waiting list. Furthermore, the umbrella TDHE provides no accountability to ensure all member tribes receive an equitable benefit from their IHBG. This occurred because the umbrella organization does not account for expenditures by member tribes.

Auditee Comments

ONAP's response notes that an OGC opinion was requested as recommended and also notes that there are no statutory or regulatory requirements for umbrella TDHE's to ensure that benefits provided are commensurate with the member tribes' Indian Housing Block Grant (IHBG). Also, ONAP noted that umbrella member tribes' have been advised numerous times that they have the authority to determine how the IHBG funds will be used and the responsibility to monitor TDHE performance and no additional advisement is needed. Finally, ONAP notes that their staff evaluates the effectiveness of recipient's self-monitoring. Monitoring reports in the last several years have contained findings on the absence of or the inadequacy of tribal self-monitoring. As such, ONAP considered one recommendation to have action pending and the other to be resolved with no further action required.

OIG Evaluation

We agree with ONAP's position that action is pending on the recommendation that an OGC opinion be obtained. Accordingly, that recommendation remains in the report and will be resolved as part of the finding resolution process.

We do not agree with ONAP's position that it is not necessary to provide tribe's additional advisement on monitoring TDHE programmatic and compliance requirements. Self-monitoring is conducted by the TDHE under NAHASDA regulations and ONAP guidance. The tribe is then responsible for monitoring programmatic and compliance requirements by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports. These required reports can easily omit information needed by the tribes to evaluate the fair distribution of benefits to tribal members.

Accordingly, we believe the tribes need to obtain additional information to assess benefits provided to their members. We have retained the recommendation that additional advisement be provided to the tribes.

Recommendations:

We recommend you:

3A. Obtain an opinion from the Office of General Counsel as to whether umbrella Housing Entities are required to ensure that benefits provided are commensurate with the member tribe's Indian Housing Block Grant. If appropriate, based on General Counsel's opinion issue appropriate guidance to Housing Entities.

3B. Advise member tribes of umbrella Housing Entities to monitor tribal affiliation of new program participants to ensure appropriate distribution of benefits.

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Housing Entities Struggle Because of Unfamiliarity With New Requirements Under NAHASDA

Because of their unfamiliarity with NAHASDA grant requirements, Housing Entities did not (i) use all Indian Housing Block Grant funds for eligible activities, (ii) develop and implement policies and procedures to meet NAHASDA requirements, (iii) have the administrative capacity to successfully implement their affordable housing activities, (iv) adequately account for program income or control increases in tenant accounts receivables, and/or (v) submit timely Single Audit Act reports or have uniform accounting standards. Thus, HUD cannot be assured that tribal members receive fair and maximum benefit from the tribe's Indian Housing Block Grant. The NAHASDA program had only been operational about two years at the time of our audit, and within that time Housing Entities had not obtained the knowledge needed to meet their obligation to operate the program in accordance with grant requirements.

Housing Entities not meeting NAHASDA requirements

This report discusses numerous instances of Housing Entities' noncompliance with NAHASDA requirements. Many of these noncompliances resulted from Housing Entities' lack of understanding of how the new NAHASDA requirements differ from requirements under the 1937 Act. As such, tribal members may not receive fair and maximum benefit from the tribe's IHBG. The following highlights areas of noncompliance, while the referenced findings discuss these issues in more detail:

- Housing Entities used Indian Housing Block Grant funds for ineligible activities, charged the NAHASDA program overstated indirect rates, and incurred excessive administrative and planning expenses. Moreover, Housing Entities' systems did not accurately track labor charges when multiple sources of federal program funding were received and did not always determine if contractors were eligible for federally funded contracts (see Finding 5).

- NAHASDA Housing Entities generally had not developed and implemented policies and procedures to meet the requirement of NAHASDA, and some were noncompliant with their established policies. The audit found undisclosed conflicts of interest and preferential treatment, monthly payment overcharges, and lack of or untimely income verifications (see Finding 6).

- Two of the seventeen Housing Entities included in our review lacked the administrative capacity to effectively

undertake the program. As a result, these two Housing Entities have not used the available NAHASDA funds to provide affordable housing to low-income Native American families. Both Housing Entities took over questionable programs from tribal housing authorities created to operate 1937 Act programs (see Finding 7).

- Housing Entities do not adequately account for program income generated from mixed funding sources. Also, Housing Entities experienced an increase in uncollected tenant accounts receivables. The lack of accountability for program income generated from mixed funding sources may affect the Housing Entities cash availability, while increased tenants accounts receivables reduce available cash to meet members' housing needs (see Finding 8).

- Ten Housing Entities did not submit timely Single Audit Act reports. Consequently, HUD and the Housing Entities lack the assurances audits are intended to provide regarding financial condition, internal control system effectiveness, or compliance with federal program requirements. This occurred for a number of reasons, all controllable by the Housing Entities. In addition, HUD has no basis for evaluating the financial condition of Housing Entities because NAHASDA grant recipients are not required to prepare financial statements based on uniform accounting standards (see Finding 9).

Housing Entities still unfamiliar with NAHASDA requirements

A problem faced by Housing Entities in implementing NAHASDA was the regulation changes from the 1937 Act to NAHASDA. Representatives from six of the seventeen Housing Entities visited stated they initially lacked the necessary knowledge on the NAHASDA rules and regulations to implement the program. Additionally, Tribal leaders were not well versed with NAHASDA requirements so sometimes their involvement had a negative impact on the Housing Entities' progress and organizational structure.

As discussed in Findings 5 to 9, the Housing Entities are still not meeting NAHASDA requirements largely because they were unfamiliar with the requirements. In response to our audit findings, the Executive Director of a large Housing Entity who is also an official of a national Native American professional housing organization wrote:

> "It is obvious that the awareness of the inclusion of grant administrative requirements found in 24 CFR Part A-85 and OMB Circular A-87 to NAHASDA is new... [we urge] your office to make the HUD staff aware that the Indian tribes are not aware of some administrative requirements and its impact on Indian housing program."

Auditee Comments

ONAP disagrees with the finding and recommendations. ONAP's position is that NAHASDA requirements are generally the same as the 1937 Act program and where there are differences, guidance has been provided to the tribes. ONAP considers the amount of guidance provided significant and noted that only 2 of the 17 Housing Entities reviewed lacked the administrative capacity to operate their NAHASDA program. Additionally, ONAP noted that it employs a risk-based methodology for monitoring that not only determines which recipients should be monitored, but also what areas of operations should be monitored. Accordingly, ONAP considered the recommendations resolved with no further action required.

OIG Evaluation

We agree with ONAP that the requirements for NAHASDA are generally the same as those for the 1937 Act program and that guidance has been provided. However, there are significant differences and they can be subtle such as bad debt, conflicts of interest, monthly payment overcharges, program income, and income verification. The bad debt requirements under OMB Circular A-87 apply to both programs. However, the NAHASDA and 1937 Act regulations differ. The NAHASDA regulations do not address the allowability of bad debts making them ineligible costs under OMB Circular A-87 while the 1937 Act program regulations allow bad debts making them eligible costs under A-87. Additionally, as noted in the finding, Housing Entity officials expressed a desire for additional information on the differences. Accordingly, we do not agree with ONAP's position that additional advice is unnecessary.

In our opinion, the provision of information to help Housing Entities succeed should be an ongoing effort and the results of the monitoring noted by ONAP in its response should be used to identify areas for further clarification.

Resolution of recommendations involves a management decision and OIG's concurrence on that decision. This is normally addressed subsequent to issuance of the final audit report. Accordingly, the recommendations in our draft report have been retained, although based on ONAP's actions and comments we deleted one recommendation and revised another.

Recommendations:

We recommend you:

4A. Identify and advise Housing Entities of the changes in requirements between the 1937 Act and NAHASDA.

4B. Advise the Housing Entities to adopt the necessary policies, systems, and control procedures to comply with all NAHASDA requirements, particularly those changed by NAHASDA.

4C. Verify the Housing Entities compliance with changes in requirements between the 1937 Act and NAHASDA during all on-site monitoring visits, and impose remedies, as appropriate, for consistent noncompliance.

Housing Entities Lack Adequate Management Systems to Effectively Administer the NAHASDA Indian Housing Block Grant

Housing Entities used Indian Housing Block Grant funds for ineligible activities, charged the NAHASDA program overstated indirect rates, and incurred excessive administrative and planning expenses. Furthermore, Housing Entities' systems did not accurately track labor charges when multiple sources of federal program funding were received and did not always determine if contractors were eligible for federally funded contracts. As a result, HUD lacks assurance that (i) tribal members receive the maximum benefit from the Indian Housing Block Grant, and (ii) program requirements were met. This occurred because Housing Entities were not familiar with NAHASDA program requirements applicable to cost eligibility, indirect rates, labor tracking, and contractor eligibility.

NAHASDA requires costs to be necessary and reasonable

NAHASDA regulations on administrative requirements state that recipients shall comply with the requirements and standards of OMB Circular No. A-87 (24 CFR 1000.26(a)). Attachment A of OMB Circular A-87 states that costs must "...be necessary and reasonable for proper and efficient performance and administration of Federal awards." A cost is defined as reasonable if "...it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost." In addition, (C)(3)(a) states that "A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable…to such cost objective in accordance with relative benefits received."

Ineligible activities funded

Eight Housing Entities used IHBG funds for ineligible NAHASDA activities such as bad debt expense, personal use of equipment purchased with government funds, and a disproportionate share of cost allocation. As a result, HUD has no assurance that the maximum available Indian Housing Block Grant funds are planned for and spent on eligible affordable housing activities.

Ineligible bad debt expense. Five Housing Entities used IHBG funds to offset collection losses. This is unallowable under OMB Circular A-87, which states:

> "Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations." (Attachment B, Section 7)

Under the 1937 Act, bad debt was allowed as a program cost. Under the Mutual Help Homeownership Opportunity Program, included under the 1937 Act, there were provisions for subsidizing bad debts when units were vacated. However, under NAHASDA bad debt is not allowed as a program cost. Four Housing Entities were unaware of the change regarding bad debts from the 1937 Act to NAHASDA, and the fifth Housing Entity did not know the 1937 Act reserves are subject to the same NAHASDA requirement.

In addition, a sixth Housing Entity proposed writing off $64,598 in receivables relating to 49 tenants. The decision is pending approval by the Tribal Council and Housing Board of Commissioners. Seven of the proposed write-offs pertain to deceased former tenants and the remaining 42 are for vacated tenants. One of the proposed vacated tenant write-offs is an employee of the Housing Entity.

Personal use of government purchased equipment. A Housing Entity's policy allows employees to use its vehicles purchased with government funds, including IHBG, for personal use. It also uses IHBG funds to pay for unallowable expenses associated with this practice. The Executive Director stated he was not aware of government restrictions on equipment purchased with government funds. Moreover, it could not provide documentation to demonstrate these are necessary and reasonable costs for carrying out the NAHASDA program.

Costs for non-NAHASDA activities. Attachment B, Section 13 of Office of Management and Budget Circular A-87 states that: "Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable."

The Executive Director of a Housing Entity is an official of the National American Indian Housing Council (Housing Council). The Housing Entity pays 100 percent of his salary with Indian Housing Block Grant funds even though the Executive Director stated that approximately 30-40 percent of his time is spent on Housing Council activities, which is not an eligible affordable housing activity.

Furthermore, the Housing Entity uses IHBG funds to pay for the Executive Director's Housing Council-related travel expenses, and subsequently requests reimbursement from the Housing Council. However, the Housing Entity has not obtained timely reimbursements from the Housing Council. As of November 2000, the Housing Entity had not obtained reimbursement for travel expenses incurred after March 1999 totaling $21,044. As such, NAHASDA funds were effectively loaned to the Housing Council for ineligible activities. This occurred because the Housing Entity's management believes the Housing Council is an eligible affordable housing activity.

Ineligible and unsupported project costs. A Housing Entity used $638,194 of its 1999 Indian Housing Block Grant for non-NAHASDA projects, such as a wellness center, courthouse, and fitness center. Additionally, the Housing Entity could not account for labor costs on these projects. The Housing Entity was reimbursed $314,000 from non-HUD sources for these projects; however, this still results in $324,194 of unallowable expenditures and unaccounted force account labor costs.

Personal and improperly allocated costs. A Housing Entity used IHBG funds to pay for an employee's personal cell phone charges totaling approximately $3,300. In addition, the Housing Entity is charging NAHASDA funds for a disproportionate amount of the computer network system. The tribe was installing a computer network system that costs $265,807, of which the Housing Entity is supposed to pay $161,633 (61 percent). As of July 20, 2000, the Housing Entity has paid $60,606 for the network using NAHASDA funds. The network includes enough licenses to accommodate 216 users. Currently there are approximately 125 users, of which only four (3.2 percent) are housing employees. As such, the Housing Entity is paying 61 percent of the network costs when its staff only represents 3.2 percent of the current network users.

Tribal indirect rates are overstated

The indirect rates that the tribes charge their Housing Entities are often miscalculated. These miscalculations occur because either the tribe does not renegotiate a new rate with Department of Interior, Office of the Inspector General (DOI-OIG) to include the NAHASDA program, or the tribe includes unallowable costs in the indirect expenses. Consequently, HUD has no assurance that the

NAHASDA program reimburses the Housing Entities the correct overhead expense amount.

Seven of the seventeen tribes reviewed are entitled to charge their Housing Entities overhead expenses by applying their DOI-OIG negotiated indirect rate. However, only four of the seven tribes reviewed elected to charge an indirect rate. The audit found that the indirect rates used by all four tribes are overstated.

One tribe used a rate that was developed before it withdrew from a TDHE umbrella, established its own Housing Entity, and changed its organizational structure. The tribe continued to use the old negotiated rate instead of renegotiating with DOI-OIG as required. Section II(C) of U.S. Department of the Interior, Office of the Inspector General Indirect Cost Negotiation Agreement requires tribes to obtain approval for changes that may affect indirect rates, including changes in organizational structure or changes in accounting methods.

One tribe included the cost of the National Council Legislative and Executive branches (general cost of government) in its total indirect cost when developing the negotiated indirect rate. Attachment B, Section 23(a) of OMB Circular A-87 does not allow general costs of government. The remaining two tribes excluded the NAHASDA program from their direct cost base when calculating their indirect cost rates, which effectively overstated the rates.

Housing Entities exceed limit on administrative and planning expenses

NAHASDA regulations allow recipients to use 20 percent of their IHBG for administrative and planning costs:

> "The recipient can use up to 20 percent of its annual grant amount for administration and planning. The recipient shall identify the percentage of grant funds, which will be used in the IHP. HUD approval is required if a higher percentage is requested by the recipient." (24 CFR 1000.238)

> "Eligible administrative and planning expenses of the IHBG program include, but are not limited to….Preparation of the IHP including data collection and transition costs; Preparation

> of the annual performance report…." (24 CFR 1000.236(a))

The regulations also allow Housing Entities the discretion to charge staff and overhead cost as either direct or as administration and planning:

> "Staff and overhead cost directly related to carrying out affordable housing activities can be determined to be eligible costs of the affordable housing activity or considered administration or planning at the discretion of the recipient." (24 CFR 1000.236(b))

Four Housing Entities exceeded the 20 percent IHBG administrative and planning ceiling without HUD approval. In addition, three Housing Entities' administrative and planning expenses could not be determined because of inadequate records. Excess administrative and planning costs result in less funding for direct eligible affordable housing activities.

Housing Entity charges administrative and planning costs as direct expenses. One tribe entered into a memorandum of agreement with a subrecipient Housing Entity to have it implement and administer almost all of the tribe's Indian Housing Plan activities. The subrecipient representatives stated it incurs administrative and planning costs to run the housing program. In addition to implementing the IHP activities, the employees prepare the IHPs, annual performance reports (APR), and progress reports for the tribe. However, the subrecipient does not classify and charge these costs as administration and planning because the memorandum of agreement between the tribe and the subrecipient specified that:

> "…costs incurred by the [subrecipient]…shall be deemed to be 'costs directly related to carrying out affordable housing activities' and not administrative or planning costs."

Instead, the subrecipient allocates all its "administrative and planning" costs to the various housing activities even though NAHASDA specifically defines IHP and APR preparation as administrative and planning functions.

In addition to the subrecipient's administrative and planning costs, the tribe also incurs administrative and planning costs. In a letter dated July 18, 2000, the tribal controller states:

> "The tribe administers the NAHASDA program, not the [subrecipient]. Under 24 CFR, the tribe, as TDHE, is allowed 20% of the annual funding for purposes of administration of the grant. The tribe utilizes the 20% allowable for funding of the three oversight offices."

As a result, HUD has no assurance that (i) the tribe's total administrative and planning costs accurately represent costs incurred for administrative and planning activities, and (ii) it does not exceed the 20 percent limit on administrative and planning expenses. We attribute this in large part to NAHASDA's unclear definition of administrative and planning expenses, and the confusion in allowing some costs to be charged as direct or as administrative and planning.

Repetitively applying the 20 percent computation to the same funds. Another Housing Entity budgeted its 1999 administrative and planning expenses by computing 20 percent of its 1999 IHBG plus the unexpended 1998 funds carried forward. Since the Housing Entity had already incurred the maximum allowable administrative and planning costs for the full 1998 IHBG, the effect of this practice is to charge the 1998 IHBG more than 20 percent for administration and planning. ONAP became aware of this practice during the 1999 Indian Housing Plan review but took no action.

Inadequate system for tracking expenses. A third Housing Entity did not have an adequate labor charging system or support to demonstrate that all of its administrative costs were related to carrying out affordable housing activities, or that it charges specific administrative functions consistently as direct or indirect costs. As a result, the Housing Entity could not demonstrate that it stayed within the 20 percent ceiling.

Administration and planning limit difficult for smaller Housing Entities. One Housing Entity received the minimum $50,000 IHBG in 1998 and approximately $77,000 in 1999. The management of the tribe's relatively

small Housing Entity said it was unaware of the need to obtain HUD approval for exceeding the 20 percent ceiling. Given that all Housing Entities are required to perform the same administrative and planning activities, such as preparing the Indian Housing Plan and Annual Performance Report, smaller Housing Entities struggle to stay within the 20 percent administrative and planning ceiling. After our site visit, this Housing Entity requested and obtained HUD's approval for a 40 percent administrative and planning ceiling.

Labor charges may not accurately reflect actual performance

Eleven Housing Entities did not have an adequate system for recording labor costs on government grants. Three Housing Entities have no systems, three charge labor costs using budget estimates, nine Housing Entities have no policies addressing labor distribution when employees simultaneously work on multiple grants, and another Housing Entity's timesheet does not require employees to track time by projects when working on multiple grants. As a result, HUD has no assurance that the recorded labor costs accurately reflect time spent on NAHASDA activities. Also, labor distribution reports are not useful to the Housing Entities as a tool for measuring performance or planning future activities.

Office of Management and Budget Circular A-87 (Attachment B, 11.h.(5)) provides that (i) personnel activity reports must reflect an after-the-fact distribution of the actual activity of each employee, and (ii) budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to federal awards. Also, because these Housing Entities charge labor by budget, they cannot accurately compare budget estimates with actual costs as required by 24 CFR 85.20, Standards for Financial Management Systems, which states:

> "Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement."

The importance of an accurate labor charging system increases when a Housing Entity receives funding from multiple sources in order to ensure that NAHASDA only pays for labor used for affordable housing activities. All nine Housing Entities received financial assistance from non-HUD sources.

No assurance contractors are eligible

Some Housing Entities do not ensure prospective contractors are eligible by checking the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration (GSA). Thus, HUD has no assurance that Housing Entities are procuring supplies or services from eligible contractors.

Grantee administrative requirements (24 CFR Part 85.35) state that:

> "Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs…."

Three of the Housing Entities reviewed do not check the List of Parties Excluded from Federal Procurement and Non-procurement Programs before awarding contracts. Two of these Housing Entities' procurement policies require this verification, but procurement representatives stated they do not check the excluded contractor listing because they use the same contractors repeatedly and would be aware if the contractor was to be excluded. The third Housing Entity had no policy and/or control procedures to comply with the above requirement and had not compared contractors to the excluded list.

The audit found one case where a Housing Entity awarded a major subcontract to a party on the excluded list.

Auditee Comments

ONAP's comments on the finding were limited to the description of bad debt subsidized under the 1937 Act. ONAP stated that the report statement "Under the 1937 Act, bad debt was allowed and subsidized…" was incorrect. ONAP then noted that no bad debt was subsidized in the 1937 Act Low Rent program and that

limited subsidy was provided in the Mutual Help program when a unit was vacated.

In response to our recommendations ONAP provided additional comments. Concerning our recommendation on indirect rate agreements, ONAP noted that it relies on the A-133 audits and the cognizant/oversight agency to identify inappropriate charges. However, ONAP agreed to review the risk associated with charges under indirect rate agreements and appropriately address indirect charges during on-site monitoring. In response to our recommendations on administrative and planning costs, ONAP's position was that no action is needed because the costs are defined and provide the flexibility needed. Finally, in response to our recommendation on parties excluded from federal programs, ONAP noted that a review of contractor eligibility is an integral part of on-site monitoring and that widespread noncompliance has not been identified. Accordingly, ONAP considered the recommendations resolved with no further action required.

OIG Evaluation

To ensure there were no misunderstandings, we clarified the statements in the report concerning the allowability of bad debts as a program cost under the 1937 Act.

We agree with ONAP that an appropriate approach to charges under an indirect rate agreement is to evaluate the risk associated with such charges and plan on-site monitoring accordingly. Therefore, we revised our recommendation to reflect this approach. Similarly, in response to ONAP's comments on administrative and planning costs we have revised our recommendation to reflect a risk based approach. We do not agree that the requirements for administrative and planning costs are as clear as they could be based on the inconsistencies disclosed in our finding. However, a risk analysis as proposed by ONAP for indirect rate agreements should provide ONAP the information needed to evaluate the adequacy of the administrative and planning requirements and take action as appropriate. Finally, we agree with ONAP's position on our recommendation addressing parties excluded from federal programs and have eliminated the recommendation. However, we did not eliminate the results from the finding and the recommendations under Finding 4 appropriately address the issue.

Resolution of recommendations involves a management decision and OIG's concurrence on that decision. This is normally addressed subsequent to issuance of the final audit report. Accordingly, we have retained recommendations where ONAP has agreed to take action.

Recommendations (see also recommendations in Finding 4):

We recommend you:

5A. Conduct a review of the risk associated with program charges under negotiated indirect rate agreements and provide for appropriate coverage during on-site monitoring reviews.

5B. Seek regulatory change to better define "administrative and planning" expense and the proper charging practice.

5C. Conduct a review of the risk associated with program charges for administrative and planning expense and provide for appropriate coverage during on-site monitoring reviews.

Housing Entities Have Not Developed or Complied With All Policies and Procedures

NAHASDA Housing Entities generally had not developed and implemented all policies and procedures to meet the requirements of NAHASDA, and some were noncompliant with their established policies. Specifically, the audit found undisclosed conflicts of interest and preferential treatment, monthly payment overcharges, and lack of or untimely income verifications. As a result, HUD has no assurance Housing Entities treat tribal members fairly, or charge program participants the appropriate monthly payment. Housing Entities did not develop policies and procedures because they were not familiar with the changes in requirements from the 1937 Act. Further, Housing Entities could not explain why they did not adhere to existing policies, although the audit found that the Housing Entities did not have controls to alert management that actions were needed.

Conflict of interest requirements

NAHASDA regulation (24 CFR 1000.30) states:

> "(b) Conflicts prohibited. No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities...Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties.
>
> (c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person."

Undisclosed conflicts of interest and preferential treatment

Fifteen of the Housing Entities reviewed do not have a process to ensure that they adhere to conflict of interest admission and disclosure requirements for families admitted to their housing programs. Additionally, Housing Entities have not made the required conflict of interest disclosures to the public and HUD. As such, HUD has no assurance that Housing Entities admitted eligible families in their housing programs or that all members of the tribes are treated fairly.

Housing Entities have no process to ensure compliance with the conflict of interest provisions. For example, their assisted housing application does not ask applicants to disclose any relations to the Housing Entity and/or the member tribal representatives who participate in the decision process, nor does it have a listing of persons having immediate family or business ties to decision makers.

The review disclosed instances where participants in the decision-making process and relatives of decision makers received housing assistance without making required public disclosure and notifying ONAP. The following are examples of persons receiving assistance who should have been but were not disclosed to the public or HUD as required:

- Deputy Executive Director
- Brother of a Deputy Executive Director
- Director of Construction and Modernization
- Daughter of the Chairman of the Housing Board of Commissioners
- Daughter of an Executive Director
- Cousin of a Vice-Chairman of the Housing Board of Directors

In addition, one recipient is a Tribally Designated Housing Entity (TDHE) for its tribe and two other neighboring tribes. Contrary to its written admission and occupancy policies, the Executive Director informed us the TDHE gives its housing employees and its own tribal members preferences over the other two tribes despite the fact that the TDHE pools together all funds. Additionally, the TDHE does not maintain waiting lists to support selection of program applicants.

Family income not always verified

NAHASDA regulations (24 CFR 1000.128(b)) state:

> "The recipient may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by the recipient."

Nine Housing Entities did not always re-verify family income as required by their admission and occupancy policies and program requirements. As a result, HUD has no assurances that the Housing Entities charge the participants the appropriate monthly payment or that participants are treated equitably. This occurred because Housing Entities lack management controls to ensure compliance with their policies.

Low-income participants charged more than affordable rent

The NAHASDA Act states that rent charged to low-income families may not exceed 30 percent of family's monthly adjusted income (Title II, Sec. 203(a)(2)). The audit found that three Housing Entities charged monthly rental in excess of 30 percent of the family's adjusted monthly income. In all these situations, the Housing Entity established a minimum program payment regardless of the participants' adjusted income. We found that Housing Entity management was not well versed with the NAHASDA regulations and program requirements. Therefore, HUD is assisting units that are not affordable housing units.

When the Housing Entities charge more than the maximum allowable rents the units are no longer low-income units. These units should be excluded from their Formula Current Assisted Stock (FCAS).

> "Rental units shall continue to be included for formula purposes as long as they continue to be operated as low-income rental units by the Indian tribe, TDHE, or IHA." (24 CFR 1000.318(b))

Consequently, the Housing Entities need to consider the impact of this practice on the recipients' Formula Current

Assisted Stock or comply with NAHASDA's 30 percent maximum rent requirement.

Operating policies and control procedures need to be updated and followed

All seventeen Housing Entities have policies and procedures that are inadequate and need to be updated. Specifically, the audit found instances where (i) actual practices are inconsistent and not always compliant with written policies, (ii) policies are outdated and incomplete, and (iii) policies to comply with NAHASDA regulations are lacking.

Written policies are an important aspect of internal control and provide Housing Entities' management assurance that activities are carried out as intended by government regulations. According to 24 CFR 85.20(b)(3):

> "Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes."

The review disclosed Housing Entities lack policies and control procedures to implement the following NAHASDA requirements:

Table 5: Areas where Housing Entities lack policies and control procedures

Policy Area	NAHASDA Requirements
Safeguarding and tracking assets	24 CFR 1000.26 and 24 CFR 85.20
Cost allowability	24 CFR 1000.26, 24 CFR 85.22, and OMB Circular A-87
Cash management	24 CFR 85.20 and 85.21
Admissions and Occupancy	24 CFR 1000.104-110, 1000.120, 1000.124-.156; 1996 NAHASDA §102(c)(5)(c)
Management and personnel/Timekeeping and labor charging	24 CFR 1000.26 and OMB Circular A-87
Maintenance of housing units	NAHASDA §102(c)(5)(e) and §203(e)
Travel	24 CFR 1000.26 and OMB Circular A-87
Procurement	24 CFR 85.35, 24 CFR 85.36, and 24 CFR 1000.26
Record retention	24 CFR 1000.552
Real property acquisition	24 CFR 1000.14
Conflict of interest	24 CFR 1000.30-.36

Auditee Comments

In response to the audit recommendation, ONAP states it does not agree with the Inspector General that a conflict of interest policy is required under NAHASDA. "However, general guidance to recipients, along with a sample policy, could be of benefit to recipients in their efforts to comply with the program requirement. ONAP…will initiate appropriate actions to improve compliance with conflict of interest provisions of the program." Accordingly, ONAP considered the recommendation resolved with no further action required.

OIG Evaluation

In our opinion, formal conflict of interest review process and control procedures are necessary for Housing Entities to ensure compliance with NAHASDA's conflict of interest requirements. Our audit disclosed numerous instances where participants in the decision-making process and relatives of decision makers received housing assistance without the Housing Entity making the required disclosure. This is a high-risk area and absent necessary control procedures, it makes the NAHASDA program more susceptible to potential abuse and media attention.

Resolution of recommendations involves a management decision and OIG's concurrence on that decision. This is normally addressed subsequent to issuance of the final audit report. Accordingly, we have retained the recommendation where ONAP has agreed to take action.

Recommendation (see also recommendations in Finding 4):

6A. We recommend you request Housing Entities to identify any conflict of interest for participants previously admitted under NAHASDA and ONAP take appropriate enforcement action against Housing Entities for ineligible participants.

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Some Housing Entities Have Not Successfully Carried Out Their Affordable Housing Activities

Two of the seventeen Housing Entities included in our review do not have the administrative capacity to effectively implement their NAHASDA program. As such, these two Housing Entities have not used the available NAHASDA funds to provide affordable housing to low-income Native American families. Both Housing Entities took over questionable programs from tribal housing authorities created to operate 1937 Act programs.

HUD standards for administrative capacity

HUD Notice PIH 99-32, *Determination of recipient administrative capacity to undertake the Indian Housing Block Grant (IHBG) program* states:

> "Administrative capacity measures a recipient's ability to effectively undertake the affordable housing activities in its Indian Housing Plan (IHP) in accordance with the requirements of NAHASDA and 24 CFR Part 1000. Administrative capacity can be demonstrated by: a history of satisfactory performance, financial stability, management systems which meet the requirements of Part 85, policies and procedures that meet the requirements of Part 1000, compliance with previous awards, experienced employees and the existence of an organizational structure, development and operating policies and systems, and experience which minimize the potential for fraud, waste, and mismanagement."

Two Housing Entities lack administrative capacity

In our opinion, two of the seventeen Housing Entities reviewed did not have the administrative capacity to carry out their NAHASDA activities.

One of the Housing Entities is not meeting its 1998 and 1999 Indian Housing Plan objectives. During our site visit 13 of its 27 Low Rent homes were vacant even though there were 74 families on the Low Rent program waiting list. The Housing Entity planned activities and budgeted for all of its 1998 and 1999 Indian Housing Block Grant. However, as of June 14, 2000, it had spent only 51.2 percent of its 1998 IHBG and none of its 1999 IHBG. Furthermore, this entity has not defined its organizational structure, does not have an effective accounting system, lacks an adequate internal control system, and has not had

an audit since 1996. The Housing Entity's inability to implement and administer its NAHASDA program resulted in delayed renovation and rehabilitation of boarded-up and abandoned Mutual Help homes, and Low Rent apartments" (see pictures below).

Boarded up abandoned Mutual Help house.

Boarded up abandoned Mutual Help house.

Vacant Low Rent unit. According to Housing Entity representatives the last tenant kicked a hole in the wall and caused other damages. Cockroaches and other bugs covered the corner where the refrigerator used to be.

Vacant Low Rent unit. According to the Housing Entity representatives the last tenant kicked the door apart (currently taped together), tore the baseboards off, and caused other damages to the flooring.

This Housing Entity was also the victim of employee theft and fraud because of its lack of adequate accounting and internal control systems. The Tribe recently took over the troubled housing operations from the Tribal Housing

Authority, and ONAP is working with them to establish a capable program.

The second Housing Entity, a division of the tribe, has not planned and budgeted housing activities for all its 1998 and 1999 Indian Housing Block Grants. Its HUD approved Indian Housing Plan only accounts for 53 percent and 58 percent of its 1998 and 1999 IHBG, respectively. The 1999 Annual Performance Report showed no progress on the 1999 planned activities and minimal accomplishment on its 1998 planned activities. The lack of progress meant that tribal members did not obtain needed assistance. There were 200 families on the Mutual Help waiting list and 45 families on the Low Rent waiting list. The Housing Entity also lacks effective management and internal control systems to ensure compliance with program and government requirements, and tenant compliance with housing policies. This resulted in inappropriate practices such as the Housing Entity drawing down IHBG funds based on estimated cash needs instead of actual disbursements. It also incurred excessive administrative and planning costs. The Housing Entity's last audit was for fiscal year 1998. The Tribe took over the housing activities from the Tribal Housing Authority in 1998 but has been slow to correct deficiencies and propose new activities.

Auditee Comments

In response to our draft recommendation, ONAP states, "The standard for the IHBG program is that all recipients must have the administrative capacity to carry out NAHASDA activities (24 CFR 1000.6). ONAP is working with a number of recipients who have been identified through on-site monitoring as having administrative performance deficiencies. The Housing Entities identified by the Inspector General will be included in ONAP's work plans for on-site monitoring, identification of performance problems, technical assistance (where available), and/or enforcement action, whatever is appropriate under the individual circumstances." Accordingly, ONAP considered the recommendation resolved with no further action required.

OIG Evaluation

Resolution of recommendations involves a management decision and OIG's concurrence on that decision. This is normally addressed subsequent to issuance of the final audit report. Accordingly, we have retained the recommendation where ONAP has agreed to take action.

Recommendation (see also recommendations in Finding 4):

7A. We recommend you take appropriate action to ensure the two troubled Housing Entities attain administrative capacity to carry out NAHASDA activities, including following up on our audit memorandums sent to Area ONAP Offices detailing our concerns regarding these Housing Entities.

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Inadequate Accounting for Program Income and Uncollected Rents

Housing Entities do not adequately account for program income generated from mixed funding sources. Also, Housing Entities experienced an increase in tenant accounts receivables. A lack of accountability of program income generated from mixed funding sources may affect the Housing Entities cash availability, while an increase in uncollected rents reduces available cash to meet members' housing needs. This occurred because Housing Entities were not familiar with NAHASDA program requirements for accounting for program income and bad debt expense.

Inadequate accounting for program income

Under NAHASDA regulations, income over $25,000 realized from the NAHASDA funded activities is program income and must be used for affordable housing activities. Further, if an eligible activity includes a mixture of NAHASDA and 1937 Act or other funds, then the amount of program income realized will be proportional to the amount of NAHASDA funding (24 CFR 1000.62):

> "(a) Program income is defined as any income that is realized from the disbursement of grant amounts. Program income does not include any amounts generated from the operation of 1937 Act units unless the units are assisted with grant amounts and the income is attributable to such assistance."
>
> "(b) Any program income can be retained by a recipient provided it is used for affordable housing activities in accordance with section 202 of NAHASDA. If the amount…does not exceed $25,000, such funds may be retained but will not be considered to be or treated as program income."
>
> "(c) If program income is realized from an eligible activity funded with both grant funds as well as other funds (i.e. funds that are not grant funds), then the amount of program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income."

Seven of the nine Housing Entities that have program income totaling more than $25,000 have not developed a policy or system for allocating income between units

assisted by both the 1937 Act and NAHASDA funding sources[3]. The Housing Entities used NAHASDA funds to rehabilitate and modernize units developed under the 1937 Act. However, the Housing Entities do not allocate the total income based on the proportional share of NAHASDA funding for these units. Consequently, the Housing Entities may be losing the opportunity to use the 1937 Act share of total program income for activities outside of NAHASDA Section 202.

In addition, Housing Entities must use program income for eligible housing activities before drawing down NAHASDA funds. According to 24 CFR 85.21(f)(2):

> "…grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments."

The review disclosed six instances where Housing Entities either (i) did not know they were supposed to consider program income before drawing down IHBG, (ii) did not perform program income computations, and/or (iii) did not consider program income when drawing down funds.

Increase in uncollected rents

Six Housing Entities experienced increases in tenant account receivables (TAR) of Low Rent and Mutual Help units under the NAHASDA program. All six Housing Entities stated they review the receivables monthly, but their monitoring and collection efforts have not been successful in collecting back tenant payments. The increasing receivables balance reduces the cash available for NAHASDA activities. If a Housing Entity uses IHBG to cover collection losses, it must reimburse the NAHASDA program since bad debts are not an allowable NAHASDA expense. The following table summarizes receivable increases at the six Housing Entities in both dollars and percentages for a given period:

[3] As outlined in HUD's Public and Indian Notice 2000-18, "Accounting for Program Income Under the Native American Housing Assistance and Self-Determination Act."

Table 6: Examples of increases in tenant account receivables

Housing Entity	Period	TAR Dollar (percent) Increase During Period
1	8/31/97 to 4/30/00	$67,834 (2301%)
2	7/31/00 to 1/19/01	$11,043 (25%)
3	9/30/98 to 10/1/00	$36,296 (459%)
4	12/31/97 to 4/30/00	$23,444 (73%)
5	9/30/98 to 6/30/00	$26,259 (56%)
6	4/30/98 to 4/30/00	$9,653 (41%)

Auditee Comments

ONAP provided no written comments on the audit finding. However, in response to our recommendations ONAP stated the guidance on program income was provided in PIH Notice 2000-18, dated April 20, 2001, which was extended by PIH Notice 2001-14, dated April 23, 2001. Furthermore, ONAP noted that under the IHBG program there is no longer a requirement to work with the Housing Entities to help them improve collections. The Housing Entities are required to develop policies and procedures to implement the requirements of NAHASDA. Accordingly, ONAP considered the recommendations resolved with no further action required.

OIG Evaluation

Notwithstanding ONAP's guidance on program income, our audit still disclosed instances where Housing Entities either (i) did not know they were supposed to consider program income before drawing down IHBG, (ii) did not perform program income computations, and/or (iii) did not consider program income when drawing down funds. Consequently, we believe additional guidance appears necessary. This could include clarifying PIH Notice 2000-18 (extended by PIH Notice 2001-14) to make it more understandable.

We acknowledge ONAP's comments on tenant accounts receivables. We agree that the Housing Entities are responsible to enforce their policies. Consequently, we revised the draft recommendations.

Resolution of recommendations involves a management decision and OIG's concurrence on that decision. This is normally addressed subsequent to issuance of the final audit report. Accordingly, we have retained the

recommendations in our draft report or modified them as noted above.

Recommendations (see also recommendations in Finding 4):

We recommend you:

8A. Advise all Housing Entities that in the absence of a system to allocate income between 1937 Act and NAHASDA program, all program income from units receiving funding from both programs must be used for NAHASDA eligible affordable housing purpose.

8B. Remind all Housing Entities that program income must be used before requesting additional Indian Housing Block Grant funds.

8C. Ensure compliance with tribal policies on collections during all on-site monitoring visits and implement appropriate enforcement actions for noncompliances.

Housing Entities Need Timely Single Audit Act Reports and Uniform Accounting Standards

Ten of the sixteen Housing Entities required to submit Single Audit Act reports had not submitted reports in a timely manner. As a result, HUD and the Housing Entities lack the assurances audits are intended to provide regarding financial condition, internal control system effectiveness, and compliance with federal program requirements. This occurred for a number of reasons, all controllable by the Housing Entities. In addition, HUD has no standards for evaluating the financial condition of Housing Entities because they do not prepare financial statements based on uniform accounting standards.

Housing Entities need to submit timely Single Audit Act reports

NAHASDA regulations state:

> "The recipient is responsible for monitoring grant activities, ensuring compliance with applicable Federal requirements and monitoring performance goals under the IHP. The recipient is responsible for preparing at least annually…an audit in accordance with the Single Audit Act, as applicable." (24 CFR 1000.502(a))
>
> "HUD has the authority to develop performance measures which the recipient must meet as a condition for compliance under NAHASDA. The performance measures are….
>
> (c) Fiscal audits have been conducted on a timely basis and in accordance with the requirements of the Single Audit Act, as applicable. Any deficiencies identified in audit reports have been addressed within the prescribed time period." (24 CFR 1000.524)

The review disclosed that ten of the sixteen Housing Entities spend $300,000 or more in federal awards annually and are required to submit a Single Audit Act report. Five Housing Entities have not been audited for two or more years, and the remaining five submitted the audit report three months to a year late.

One Housing Entity has not had an audit since 1996 because it lacks an accounting system; as such, there is incomplete financial data and no financial statements to audit. Because of the accounting disarray when the Tribe

took over the troubled Housing Entity and designated it a division of the Tribe, the Tribe elected not to consolidate the Housing Entity's accounting into the Tribe's accounting system.

Four other Housing Entities have not had an audit since 1997/1998. Two of the Housing Entities cited the auditor's bad health as the reason for not having the audit completed. The Housing Entities indicated they preferred to maintain long-term professional relationships with the auditor rather than hire another auditor. In our opinion, a Housing Entity's relationship with its auditor should not override its obligation to comply with federal requirements or jeopardize the success of its NAHASDA program.

Five other Housing Entities submitted their audit reports three months to a year late, but no explanations were provided.

ONAP has not taken enforcement action on any of the above situations where reports are not timely submitted even though the Single Audit Act reports are an integral oversight source when performing a risk assessment. The audits take on added importance since ONAP has not performed on-site visits at many tribes and relies on the audit results for independent and objective information on performance. Consequently, HUD lacks assurance about the Housing Entities' financial condition, internal control system effectiveness, and compliance with federal program requirements.

Housing Entities need uniform accounting standards

Housing Entities do not prepare financial statements based on uniform accounting standards for all financial statement elements. As a result, external auditors present financial statements based on differing standards, and HUD has no basis for evaluating and comparing the financial condition of Housing Entities.

Additionally, under NAHASDA, Indian Housing Block Grant recipients are not required by statute or regulation to adhere to the Uniform Annual Financial Reporting Standards. HUD's Uniform Annual Financial Reporting Standards (24 CFR 5.801) require public housing agencies to comply with Generally Accepted Accounting Principles (GAAP).

The NAHASDA regulations do not require GAAP compliance for revenues, balance sheet items, or financial reporting. However, the regulations at 24 CFR 1000.26 require grant recipients' costs to conform with GAAP as outlined in OMB Circulars A-87 and A-133:

> "… To be allowable under Federal awards, costs must…be determined in accordance with generally accepted accounting principles." (OMB Circular A-87, Attachment A(C)(1)(g))

> "... The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles…" (OMB Circular A-133, Subpart E, §.500(b))

The audited financial statements HUD receives are not comparable among Housing Entities. We found six Housing Entities prepared financial statements based on HUD's 1937 Act accounting practices (not required under NAHASDA), ten Housing Entities used the modified accrual basis, while another had no financial statements.

Auditee Comments

In response to the draft audit recommendations ONAP acknowledged that timely receipt of Housing Entities Single Audit Act reports is a critical factor in the evaluation of recipient's risk. ONAP stated the incidence of delinquent audit submissions where HUD is the oversight agency is not believed to be statistically significant. However, ONAP noted it will initiate actions to evaluate the effectiveness of internal tracking of audit submission and processing and will take appropriate actions to ensure acceptable audit reports are submitted in a timely manner or appropriate remedies are applied. Additionally, ONAP stated that the current guidance from the HUD Office of General Counsel (OGC) indicates that GAAP is not a requirement under NAHASDA. Accordingly, ONAP considered the recommendations resolved with no further action required.

OIG Evaluation

We recognize that the 17 selected Housing Entities do not represent a statistical sample; as such, we do not project the results to the Housing Entity population. Nevertheless, the audit disclosed a nearly 63 percent audit report submission delinquency rate. We asked ONAP for its definition of "statistical significance." ONAP responded that its

tracking system shows 7.2 percent nonsubmittal rate for FY 1999 TDHE Indian Housing Block Grant recipients. OIG believes ONAP's audit report tracking system is incomplete since it excludes all non-TDHE recipients. Furthermore, Single Audit Act reports are required for entities that expend more than $300,000 in federal awards annually, not just HUD grants. Accordingly, we have retained the recommendation from our draft audit report. In relation to OGC's guidance on GAAP we note that NAHASDA does not prohibit the use of GAAP and continue to recommend regulatory change requiring GAAP for the reasons set out in the finding.

Recommendations:

We recommend you:

9A. Determine if the lack of an audit represents substantial noncompliance under the NAHASDA regulations (24 CFR 1000.534) and take appropriate actions specified for such instances for all Housing Entities that have outstanding audits.

9B. Take action to revise NAHASDA regulations to require Housing Entities that submit Single Audit Act reports to comply with Generally Accepted Accounting Principles.

Management Controls

In planning and performing our audit, we considered HUD's management controls relating specifically to our objective of testing the accuracy of HUD's Formula Current Assisted Stock (FCAS) data to determine if the Housing Entities received correct Indian Housing Block Grant funding. As part of our audit we also reviewed the selected Housing Entities internal controls and management systems, and the audit results are detailed in Findings 5 and 6. As such, this Management Control section discussion will be limited to HUD's management controls associated with FCAS data.

Management controls over program operations include the policies and procedures that management has implemented to reasonably ensure that a program meets its objectives. The components of internal control are interrelated and include integrity, ethical values, competence, and the control environment which includes establishing objectives, risk assessment, information systems, control procedures, communication, managing change, and monitoring. HUD management is responsible for establishing and maintaining adequate systems of management controls.

Relevant controls	For the purpose of our review, we determined the management controls not addressed in our findings, but relevant to our objective, were HUD's policies, procedures and practices relative to assessing its FCAS accuracy.
Scope of work	We evaluated the management control categories listed above by assessing control design, implementation, and effectiveness. A significant control weakness exists if the controls do not give reasonable assurance that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports. Based on our review, we believe HUD's control system for the FCAS possess significant weaknesses.
Significant weaknesses	As discussed in Finding 1, we identified the following significant weaknesses in HUD's management controls: • HUD relies on Housing Entities to identify FCAS inaccuracies instead of consistently conducting its own evaluation through on-site monitoring and remote location reviews.

- HUD does not analyze housing stock databases or review other available sources of housing data to perform FCAS risk assessments.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0050

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

June 11, 2001

MEMORANDUM FOR: Frank E. Baca, District Inspector General for Audit, 0AGA

(ORIGINAL SIGNED)
FROM: Jacqueline Johnson, Deputy Assistant Secretary for Native American Programs, PN

SUBJECT: 60-Day Response
Draft report on Nationwide Audit of Implementation of the Native American Housing Assistance and Self-Determination Act of 1996

This is in response to your memorandum of May 17, 2001, regarding the draft report on Nationwide Audit of Implementation of the Native American Housing and Self-Determination Act of 1996 (NAHASDA). The report presents a reasonable status of the NAHASDA program and will be of value to the Department in development of the Program. I would like to emphasize several factors that should be understood by anyone reviewing the report:

- The audit was conducted after only 2 to 3 years of tribal experience into a profound and fundamental program change. Thus, some programmatic issues would be expected in the normal process of the transition and anticipated learning curve.
- The number of grant recipients reviewed constitutes a very small percentage of all program recipients and may not accurately capture the strengths and weaknesses of the program.
- There appears to be a slight but profound difference between how the Office of Native American Programs (ONAP) and your office perceive the roll of HUD in the accountability for program implementation and compliance with Federal requirements. NAHASDA is a block grant program to Indian tribes "…in a manner that recognizes the right of Indian self-determination and tribal self-governance….". The block grant approach to funding, and particularly the NAHASDA block grant, places accountability on the shoulders of Indian tribes. The role of the Department has become one of monitoring the performance of Indian tribes and, where appropriate, imposing remedies authorized by the Act. Blended throughout the report are recommendations that could easily be interpreted as transferring accountability to the Department (i.e. tenant accounts receivable, differences between 1937 Act and NAHASDA requirements).

As you requested as a result of our meeting of January 6, 2001, we are providing you with our comments on the findings as well as a status of each recommendation.

Introduction

- NAHASDA stands for Native American Housing **"Assistance"** and Self-Determination Act of 1996
- Background – ONAP is headquartered in Washington, DC. The Denver Program Office is outstationed from Headquarters.
- Audit Objective, Scope and Methodology – The report states that "the audit included identifying weaknesses and strengths…". No strengths were noted in the report.
- Audit Scope – The audit states that HUD awarded Indian Housing Block Grants to 575 recipients during Fiscal Year 1999. The definition of "recipient" in NAHASDA is "an Indian tribe or the entity for one or more Indian tribes that is authorized to received grant amounts under this Act on behalf of the tribe or tribes". The number of recipients in Fiscal Years 1998 and 1999 was 373 and 352 respectively. These recipients represented 552 tribes in 1998 and 522 tribes in 1999.

Finding 1 ONAP has not accurately allocated NAHASDA Indian Housing Block Grant Funds since Inception of the NAHASDA Program.

- Voluntary Input – The audit states "HUD did not verify the accuracy of the database prior to using the information in determining grant amounts". This is not an accurate statement. Each Area ONAP was provided with the information on development projects, which would be used in the formula. This information is contained in e:mails dated 6/17 and 6/18/97. A follow-up e:mail from Todd Richardson to the Administrators dated 8/18/97 verifies that corrections were indeed made. Mr. Richardson states "thank you all for your hard work at identifying corrections that were needed".
- The audit states that of the 17 housing entities selected for the audit, FCAS was evaluated at only 5 of the entities. Although four of the five entities had discrepancies, the sample from a field of approximately 360 is slightly over 1 percent. The finding that ONAP has not accurately allocated NAHASDA Indian Housing Block Grant Funds since inception of the NAHASDA Program is highly misleading based on the sample.
- In several places it states that units are paid off so the Housing Entity no longer has the right to own, operate, or maintain. One statement indicates that "Since Mutual Help and Turnkey III are no more than 25-year programs, one can reasonably expect that these units should be paid-off and the Housing Entities would no longer have the legal right to own, operate or maintain these units." There are several situations where the tribe would continue to own, operate and maintain the units after 25 years. Examples include, conveyance being delayed because of lease or title issues, modernization which increased the term or purchase price of the unit, and a subsequent homebuyer.

- The audit finding states that there were discrepancies between FCAS, units reported in the Indian Housing Plans and actual. The data used in the Indian Housing Plan is not used for formula purposes. At best, it could be an indication to Area ONAP staff to review, however, the time frames for the IHP and the formula to not agree and therefore it is not only difficult to make any comparison but there was no intent to make the comparison.
- It would be helpful if the finding outlined all other efforts of ONAP on FCAS accuracy. These are provided as a response to the recommendations.

Finding 4 Housing Entities Struggle Because of Unfamiliarity with New Requirements Under NAHASDA

- Background – In the first two bullets it discusses areas of noncompliance and attributes them to the new program. However, many of the requirements listed were the same for the 1937 Act (i.e. determine if contractors were eligible for federally funded contracts, monthly payment overcharges, conflict of interest, income verifications. A-87 and Part 85).
- We note that only 2 of 17 housing entities (approximately 12%) lacked administrative capacity.
- The audit states that "A problem faced by Housing Entities in implementing NAHASDA was the regulation changes from the 1937 Act to NAHASDA" and that "ONAP provided limited guidance…" Following is a just a sample of the information provided to tribes during the initial implementation period.
  - ONAP together with our contractor, ICF Kaiser, conducted several sessions titled "Indian Housing Plans: Keys to Success. Each training seminar covered the key steps in putting a plan together, including tips on writing an effective plan, methods of collecting and analyzing data; preliminary review of the Indian housing plan format; and using your plan to guide funding decisions. The number of participants varied with some reaching 150 participants and others averaging 100. Following is a list of the sessions: July 16-17, 1997 (Denver, CO); August 5-6, 1997 (Seattle, WA); August 11-12, 1997 (Oklahoma City, OK); August 14-15, 1997 (Phoenix, AZ); August 20-21, 1997 (Chicago, IL); August 26-27, 1997 (Anchorage, AK); March 25-26, 1998 (Sacramento, CA); April 23-24, 1998 (Albuquerque, NM); May 27-28, 1998(Anchorage, AK-Satellite Broadcast); January 28-29, 1999 (Kinder, Louisiana); February 17-18, 1999 (Tampa Bay, Florida); and October 5-7, 1999 (Anchorage, AK).
  - Bruce Knott and Deb Lalancette conducted conference calls or held meetings with the following people to discuss the transition notice requirements: September 26, 1997 (Neg-Reg Full Committee); October 9, 1997 (Northern Plains ONAP);October 24, 1997 and November 6, 1997 (Alaska ONAP); October 30, 1997 (Eastern/Woodlands ONAP); October 30, 1997 (Seattle ONAP); November 19, 1997 (Phoenix ONAP); November 25, 1997 (Southern Plains ONAP); December 1, 1997 (Albuquerque ONAP); December 3, 1997 (Northwest Indian Association Training); December 9, 1997 (Nev-Cal Hsg. Association Training)

- Six Transition Notices published in the Federal Register
- Over 12 Public and Indian Housing Notices
- NAHASDA Side-By-Side Guidebook
- NAHASDA Development Models

Finding 5 Housing Entities Lacked Adequate Manangement Systems to Effectively Administer the NAHASDA Indian Housing Block Grant

- "Under the 1937 Act, bad debt was allowed and subsidized…". This statement is incorrect. No "bad debt" was subsidized in the 1937 Act rental program. Subsidy provided under the Performance Funding System was based on a 97 percent collection rate. Limited subsidy was provided in the Mutual Help Program when a unit was vacated. But this was only provided after the housing authority documented that all collection efforts were exhausted and for a limited period of time.

Finding 7 Some Housing Entities Have Not Successfully Carried Out Their Affordable Housing Activities.

- It appears that much of the information outlined in this finding has already been stated in Finding 4.
- The discussion cites HUD Notice PIH 99-32 which expired on July 31, 2000. You may wish to review the Grants Evaluation Guidebook which incorporates the content of the Notice in an appendix to chapter 3.

Following is our response to the recommendations:

Recommendation 1A: *Audit the Formula Current Assisted Stock for all Housing Entities and remove ineligible units from HUD's Formula Current Assisted Stock.*

Corrective Action Taken: The ONAP has taken several actions to ensure that tribes are reporting accurate information on Formula Current Assisted Stock (FCAS). A copy of our actions to date is included as Attachment 1. This includes guidances to both tribes and Area ONAP staff, the annual Formula Response Form and a letter to tribal leaders. We have incorporated the monitoring of FCAS in our on-site monitoring. However, resources are not adequate to provide on-site monitoring to each grantee. We will also be convening a Negotiated Rulemaking Committee to evaluate the formula this fiscal year and next and will be discussing this issue with the tribes.

Status: Recommendation is closed.

Recommendation 1B: *Recover over funding from Housing Entities that had inflated Formula Current Assisted Stock and reallocate the recovery to recipients that were under funded for current and prior NAHASDA funding years.*

Corrective Action Taken: When the ONAP becomes aware that a tribe has been over funded for FCAS, action is taken immediately to receive repayment of the over funding. In most cases, funds are recovered in the next fiscal year. If the repayment is substantial, the tribe is given a repayment period of no longer than five years. In accordance with the regulations, recovered funds are reallocated to tribes in the formula for the next fiscal year. A copy of the current repayment log is included as Attachment 2.

Status: Recommendation is closed.

Recommendation 1C: *Implement control procedures to ensure Formula Current Assisted Stock accuracy for future years.*

Corrective Action Taken: ONAP does have controls in place to review FCAS. However, the only way to verify each and every case would be to conduct on-site visits and this is not feasible based on existing resources. We will continue to inform tribes of the importance of reporting FCAS accurately. We will also be sending letters to every tribe where it appears that the FCAS should be conveyed. Repayment will be requested if the tribe cannot adequately document that there are circumstances beyond its control, which prevent conveyance from occurring.

Status: Recommendation is closed.

Recommendation 2A: *Obtain an opinion from the HUD Office of General Counsel addressing the issue of conflicting admission requirements of NAHASDA assisted projects that also receive from other federal programs with Fair Housing Act prohibitions on discrimination based on race.*

Corrective Action Taken: Attachment 3 is the legal opinion dated June 4, 2001 from George L. Weidenfeller, Deputy General Counsel for Housing Finance and Operations.

Status: Management decision has been made. This recommendation is closed - no further action is required.

Recommendation 2B: *If appropriate, based on the Office of General Counsel opinion, identify all NAHSDA assistance combined with other federal housing assistance and take action to resolve incompatible admission requirements through withdrawal of NAHASDA assistance or the elimination of other federal assistance and its Fair Housing Act requirements.*

Corrective Action Taken: Based upon the attached legal opinion, no violation of law has occurred.

Status: Management decision has been made. This recommendation is closed - no further action is required.

Recommendation 3A: *We recommend you obtain an opinion from the Office of General Counsel as to whether umbrella Housing Entities are required to ensure that benefits provided are commensurate with the member tribe's Indian Housing Block Grant. If appropriate, based on General Counsel's opinion issue appropriate guidance to Housing Entities.*

Corrective Action Taken: There is no statutory or regulatory requirement that would require that umbrella housing entities are required to ensure that benefits provided are commensurate with the member tribes' Indian Housing Block Grant. If a tribe did not feel that it was been adequately served by its housing entity, the tribe can administer its own housing program. Also, each tribe that is a member of an umbrella housing entity must provide a certification with the Indian Housing Plan. Therefore, the authority to determine how the IHBG funds are allocated and spent remains with the tribe. However, the Office of Native American Programs has requested the legal opinion that you have requested in your recommendation. As of the date of this memorandum it has not been received.

Status: Pending.

Recommendation 3B: *Advise member tribes of umbrella Housing Entities to monitor the umbrella's programmatic and compliance requirements of the IHP and NAHASDA.*

Corrective Action Taken: During the development of the program regulations for the IHBG, tribal representatives asserted that the primary responsibility for compliance with program requirements rested with the grant recipient and, where a TDHE administers the program, that tribal government(s) has a responsibility to monitor the TDHE. The language contained in §1000.502(a) and (b) was developed by tribal representatives and reflects this belief. Tribal oversight responsibility is clearly stated in §1000.502(b).

> **Where the recipient is a TDHE, the grant beneficiary (Indian tribe) is responsible for monitoring programmatic and compliance requirements of the IHP and NAHASDA by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports.**

The Annual Performance Report (APR) is prepared by the recipient and, if the recipient is a TDHE, approved by the tribe. The APR contains a section dedicated to reporting on self-monitoring by the tribe and TDHE, where applicable. The instructions for preparing the APR contains the following language: *"...if you are the TDHE, the tribe is responsible for monitoring your programmatic performance for compliance with the IHP, its stated goals and objectives, and the NAHASDA statute and its implementing regulations."* A part of the ONAP Grants Evaluation Business Process is responding to APR information provided by recipients, including the potential effectiveness of their self-monitoring program. A copy of the APR review letter for TDHEs is provided to the authorizing tribe(s).

ONAP developed and presented at the Sixth Native American Housing Summit (May 1-3, 2000) a training session for tribes and TDHEs covering the basics of self-monitoring. The Guidebook for this training was reproduced and mailed to all tribes and TDHEs, including tribes who have their housing program administered by an umbrella TDHE. ONAP is in the final stages of contracting for six additional training sessions to be conducted around the country for those tribes and TDHEs who were unable to participate in the initial training session.

Six ONAP provided IHP/APR training sessions are scheduled during calendar year 2001; one session is scheduled for each Area ONAP jurisdiction. In the IHP/APR training, the duties and responsibilities of both the grant recipient and grant beneficiary are emphasized as they pertain to monitoring and self-monitoring. Attendees at the IHP/APR training are provided with a copy of the Self-Monitoring Guidebook to assist in developing, implementing, and/or executing a monitoring program.

Finally, for those tribes that have not listened to the information being disseminated regarding tribal self-monitoring responsibilities, depending on the risk factors identified during HUD's monitoring strategy development ONAP staff evaluate the effectiveness of recipient (and authorizing tribe, if applicable) self-monitoring. A number of monitoring reports in the last several years have contained findings about the absence of or the inadequacy of self-monitoring programs.

All these actions represent a significant level of advisement to all tribes, including those that are members of umbrella TDHEs, of their responsibility to monitor programmatic and compliance requirements of the IHP and NAHASDA.

Status: Management decision has been made. This recommendation is closed - no further action is required.

Recommendation 4A: *Identify and advise Housing Entities of the changes in program and administrative requirements between the 1937 Act and NAHASDA.*

Corrective Action Taken: The regulations outline the administrative requirements, policies, systems, etc. that are required under NAHASDA. We have developed a number of tools to assist tribes understand the requirements of NAHASDA. They include:

- The ONAP Training Institute provided the following courses:
  - NAHASDA Basic Requirements
  - Internal Controls
  - Procurement
  - Developing Goals and Objectives
  - Policy Development
  - Board Member and Tribal Officers' Roles and Responsibilities under NAHASDA
  - Fiscal management

- ONAP's on-line training covers topics such as:
  - Procurement
  - Financial Management
  - Eligible Affordable Housing Activities

ONAP has also issues a series of notices and guidances to tribes. These are posted on codetalk. A list of guidances both for tribes and ONAP staff is included as Attachment 4. ONAP does not feel that it is necessary to provide additional information which specifically outlines the differences between the 1937 Act Program and NAHASDA. In most cases, the administrative requirements are the same. In situations where there is a new program requirement, such as program income, guidelines have been provided.

Status: Management decision has been made. This recommendation is closed - no further action is required.

Recommendation 4B: *Advise the Housing Entities to adopt the necessary policies, systems, and control procedures to comply with all NAHASDA requirements, particularly those changed by NAHASDA.*

Corrective Action Taken: See response to 4A.

Status:

Recommendation 4C: *Verify the Housing Entities compliance with changes in program and administrative requirements between the 1937 Act and NAHASDA during all on-site monitoring visits.*

Corrective Action Taken: ONAP has issued the following in-house guidance related to this recommendation:

- 08/10/99; NAHASDA Guidance 99-04, *Monitoring Responsibilities Under NAHASDA*
- 12/03/99; Grants Evaluation Guidebook
- 12/20/99; NAHASDA Guidance 2000-04; Grants Evaluation Guidebook update: updated the monitoring checklists which are an appendix to Chapter 5
- 02/16/00; NAHASDA Guidance 2000-10; Grants Evaluation Guidebook update: added appendix for monitoring IHP certifications
- 08/07/00; Grants Evaluation Guidebook update: updated the monitoring checklist to include program income
- 09/07/00; NAHASDA Guidance 00-14; *Monitoring Reports Content and Considerations*
- NAHASDA Guidance 01-04, *Recipient Monitoring Guidelines and Strategies*

In addition, the Department's Monitoring Desk Guide is used as an integral part of recipient monitoring strategy development. ONAP employs a risk-based methodology for not only determining which recipients should be monitored but also what areas of their

operations should be monitored. Compliance with program and administrative requirements is a fundamental purpose of the Department and ONAP's monitoring function.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 5A: *Determine compliance with the negotiated indirect rate agreements during all on-site monitoring visits.*

Corrective Action Taken: To date, ONAP has relied upon the A-133 audits and the cognizant/oversight agency review of such audits to identify inappropriate charges under indirect rate agreements. A review will be conducted of the risk associated with program charges under indirect rate agreements and appropriate attention will be placed during on-site monitoring of recipients on compliance with the indirect rate.

The monitoring checklist in the Grants Evaluation Guidebook includes questions on the proper allocation of costs between various funding sources and indirect cost agreements. Upon completion of the risk review mentioned in the above paragraph, the monitoring checklist will also be reviewed and modified, as needed.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 5B: *Seek regulatory change to better define "administrative and planning" expense and the proper charging practice.*

Corrective Action Taken: The current regulations outline both how administrative and planning expenses can be charged and how approval can be obtained if there is a need to exceed the 20% limit on administration and planning expenses. Therefore, ONAP does not agree that a regulatory change is needed and request that both the 5B and 5C recommendation be deleted or closed. This will be a topic of tribal consultation in July, however, and if the tribes feel that a change is needed, ONAP will consider either a regulatory change or additional program guidance.

Status: No additional action is required.

Recommendation 5C: *Seek regulatory change for a more flexible administrative and planning expense ceiling (e.g., sliding scale depending on grant amount).*

Corrective Action Taken: See 5B above.

Status: No additional action is required.

Recommendation 5D: *Request Housing Entities to determine if any current contractors are on the List of Parties Excluded from Federal procurement and Non-procurement Programs. Take appropriate actions if any current contractors are on the list.*

Corrective Action Taken: Review of compliance with eligible contractors is an integral part of reviewing compliance with procurement requirements during on-site monitoring reviews. Widespread noncompliance has not been identified so it has not been elevated as a critical element of risk in the development of monitoring strategies. ONAP will review this recommendation with the individual audit issues reports issued by the Inspector General and our own monitoring results and determine the appropriate actions to be taken to minimize the frequency of occurrence of this noncompliance.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 6A: *We recommend you request Housing Entities to identify any conflict of interest for participants previously admitted under NAHASDA and take appropriate action.*

Corrective Action Taken:

ONAP does not agree with the Inspector General that a conflict of interest policy is required under NAHASDA. However, general guidance to recipients, along with a sample policy, could be of benefit to recipients in their efforts to comply with the program requirement. ONAP will review this recommendations and initiate appropriate actions to improve compliance with conflict of interest provisions of the program.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 7A: *Take appropriate action to ensure the two troubled Housing Entities attain administrative capacity to carry out NAHASDA activities, including following up on our audit memorandum sent to Area ONAP offices detailing our concerns regarding these Housing Entities.*

Corrective Action Taken: The standard for the IHBG program is that all recipients must have the administrative capacity to carry out NAHASDA activities (24 CFR 1000.6). ONAP is working with a number of recipients who have been identified through on-site monitoring as having administrative performance deficiencies. The Housing Entities identified by the Inspector General will be included in ONAP's work plans for on-site monitoring, identification of performance problems, technical assistance (where available), and/or enforcement action, whatever is appropriate under the individual circumstances.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 8A: *Advise all housing Entities that in the absence of a system to allocate income between 1937 Act and NAHASADA program, all program income from units receiving funding from both programs must be used for NAHASDA eligible affordable housing purposes.*

Corrective Action Taken: The information requested in recommendation 8A is included in the Program Income Notice, PIH 2000-18 (TDHEs) dated April 20, 2001, which has been extended by PIH Notice PIH 2001-14 dated April 23, 2001, and in the Questions and Answers included with this Notice.

Status: Management decision has been made. This finding is closed – no additional action is required.

Recommendation 8B: *Remind all Housing Entities that program income must be used before requesting additional Indian Housing Block Grant funds.*

Corrective Action Taken: See corrective action for 8A.

Status: Management decision has been made. This finding is closed – no additional action is required.

Recommendation 8C: *Identify Housing Entities with increasing tenant account receivables and work with the Housing Entities to help them improve collections.*

Corrective Action Taken: We request that this recommendation be deleted. Under the IHBG Program, ONAP's role no longer includes working with the housing entities to help them improve collections. Tribes are required to develop policies and procedures to implement the requirements of NAHASDA. Although rent collection is not required, if contained in a policy, a tribe is required to follow that policy. Failure to follow policies is one factor in the determination of administrative capacity and the review by ONAP to determine if administrative sanctions are needed. While ONAP provides technical assistance when possible, it is no longer a requirement of ONAPs to help improve collections.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 9A: *Determine if the lack of an audit represents substantial noncompliance under the NAHASDA regulations (24 CFR 1000.534) and take appropriate actions specified for such instances for all Housing Entities that have outstanding audits.*

Corrective Action Taken: The requirements for securing a financial system audit are made clear through OMB Circular A-133. The incidence of delinquent audit submissions where HUD is the oversight agency is not believed to be statistically significant. However, ONAP believes that timely submission of acceptable audit reports is a critical factor in the evaluation of recipient risk. An entire chapter in the Grants Evaluation Guidebook is dedicated to audit submission and processing. Additionally, timely submission of audits and prompt resolution of identified performance problems is one of the elements in ONAP's risk assessment of recipients. ONAP will initiate actions to evaluate the effectiveness of internal tracking of audit submission and processing and will take appropriate actions to assure acceptable audit reports are submitted in a timely manner or appropriate remedies are applied.

Status: Management decision has been made. This finding is closed - no additional action is required.

Recommendation 9B: *Take action to revise NAHASDA regulations to require Housing Entities that submit Single Audit Act reports to comply with Generally Accepted Accounting Principles.*

Corrective Action Taken: Current guidance from the Office of General Counsel indicates that GAAP is not a requirement under NAHASDA. However, we are working with tribes to encourage them to comply with GAAP. In the next 6 months, we will be conducting a series of 10 sessions across the country on GAAP conversion. This will also be discussed with tribes during the upcoming Housing summit, which includes tribal consultation to determine if a regulatory change is required.

Status: Management decision has been made. This finding is closed – no additional action is required.

Attachment 1
Recommendation 1A Formula Current Assisted Stock

March 12, 1998
IHBG Regulations

September 11, 1998
NAHASDA Guidance 98-19 Tribe/TDHE

October 30, 1998
NAHASDA Guidance 98-12 ONAP
FORMULA CURRENT ASSISTED STOCK (FCAS)

July 21, 1999
FY 2000 Formula Response Form

August 11, 2000
NAHASDA Guidance 2000-11 ONAPs

July 26, 2000
FY 2001 Formula Response Form

September 11, 2000 (see attached)
Letter to Tribal Leaders

October 20, 2000 (see attached)
ONAP Circular Newsletter ONAP 2001-01
Northwest Office of Native American Programs

Conveyance Over-funding

Tribe	Year Affected	Year Recouped	Amount
Akwesasne	1998	2001	$10,943
Akwesasne	1999	2001	$13,623
Akwesasne	2000	2001	$16,597
Bering Straits	2000	2001	$10,062
Cherokee	1998	2001	$186,567
Cherokee	1999	2001	$321,063
Cherokee	2000	2001	$462,645
Chippewa Cree	1998	2001	
Chippewa Cree	1999	2001	
Chippewa Cree	2000	2001	$48,398
Colville	1998	2001	$9,296
Colville	1999	2001	$4,676
Colville	2000	2001	$19,930
Delaware (Eastern)	1999	2001	
Delaware (Eastern)	2000	2001	$25,593
Fallon Paiute-Shoshone	1999	2001	
Fallon Paiute-Shoshone	2000	2001	$5,000
Lac du Flambeau	1999	2001	
Lac du Flambeau	2000	2001	$51,083
Omaha	2000	2001	$6,065
Sac and Fox	2000	2001	$31,582
Chitimacha	1998	2002	$1,628
Chitimacha	1999	2002	$3,426
Chitimacha	2000	2002	$5,411
Chitimacha	2001	2002	$16,761
Nez Perce	1998	2002	$23,421
Nez Perce	1999	2002	$43,321
Nez Perce	2000	2002	$64,127
Nez Perce	2001	2002	$81,785
Quinault	1998	2002	$5,455
Quinault	1999	2002	$4,948
Quinault	2000	2002	$12,821
Quinault	2001	2002	$31,784
Turtle Mountain	1999	2002	$26,960
Turtle Mountain	2000	2002	$48,377
Turtle Mountain	2001	2002	$49,618
Total			**$1,642,966**

OIG Draft Report on NAHASDA Attachment 2

06/11/2001 1:54 PM

Multi-Year Repayment Log

	Tribe	Reason for Repayment	ONAP Rep	How Discovered	HUD Notified	Total Amount Due	Amount Due	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
	Citizen Potawatomi	Formula Over-allocation	Everett Schlesenbeck	SPONAP	01/05/00	$797,468	$439,038			$358,430	**$87,808**	$87,808	$87,808	$87,807	$87,807
	Iowa Tribe of KS & OK	Formula Over-allocation	Diana McDonnell	Tribe	03/23/00	$234,177	$146,860			$87,317	**$36,715**	$36,715	$36,715	$36,715	
	Otoe-Missouri	Formula Over-allocation	Diana McDonnell	SPONAP Monitoring Visit 5/10/00	05/19/00	$351,343	$91,470	$45,734	$45,734	$168,405	**$45,735**	$45,735			
	Kickapoo of Kansas	Formula Over-allocation		SPONAP Monitoring Visit 5/17/00	07/25/00	$0	$0								
	Bishop Paiute	Formula Over-allocation	Leticia Rodriguez	Letter from Owens Valley	08/15/00	$354,008	$354,008								
	Shingle Springs	Formula Over-allocation	Mark Sison	Letter from Stillaguamish	09/22/00	$111,369	$111,369								
Closed	**Lummi**	Formula Over-allocation		OIG	06/21/00	$1,279,748	$0	$489,142	$395,303	$395,303	**$39,825**				
	Callista	Formula Over-allocation		Callista	08/10/00	$1,340,126	$1,340,126				**$81,591.60**	$81,591.60	$81,591.60	$81,591.60	$81,591.60
Closed	**Kalispel**	Formula Over-allocation	Betty Timm	Kalispel		$39,825	$0				**$301,184**				
	Yavapai-Apache	Formula Over-allocation	Erica Navarro	Yavapai-Apache	10/05/00	$407,958	$407,958				**$95,900**	$95,900	$95,900		
Closed	**Yerington Paiute**	Formula Over-allocation	Leticia Rodriguez			$301,184	$0				**$208,099**				
	Menominee	Formula Over-allocation	Mark Golden	Menominne	10/20/00	$287,700	$287,700								
Closed	**Puyallup**	Formula Over-allocation	Ray Engle	NWONAP	11/16/01	$208,099	$0								

Highlighted means collected
Bolded means ONAP corrected
FY2001-Cochiti HIP not submitted yet
FY2001-Iowa KS & OK IHP not submitted yet

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

June 4, 2001

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM FOR: Jacqueline Johnson, Deputy Assistant Secretary for Native American Programs, PN

FROM: George L. Weidenfeller, Deputy General Counsel for Housing Finance and Operations, CA

SUBJECT: Limiting housing to Indian families or tribal members

This memorandum responds to your question regarding housing funded under the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA) (25 U.S.C. 4101 et seq.). Specifically, you want to know the permissibility of limiting housing to Indian families or tribal members if the housing is funded solely under NAHASDA or funded under NAHASDA and other sources. This memorandum first discusses the sovereignty of Indian tribes, then addresses the issues under NAHASDA and other sources of funds for housing.

Tribal Sovereignty

As dependent domestic nations, Indian tribes' sovereignty has been limited by the United States. However, Indian tribes have sovereignty and exercise jurisdiction over their territory and their members. Montana v. United States, 450 U.S. 544 (1981). This memorandum addresses housing and accordingly, the focus is the land over which the tribe has the power of sovereignty/civil jurisdiction. Although the Federal Government has reserved lands for Indian tribes, the term "reservation" is not sufficiently precise because due to the Federal Government's past policies regarding Indian tribes and Indians, many reservations are "checker-boarded" with tribal trust land, individual trust land, and fee lands. While case law is not clear on the full reach of tribal sovereignty/civil jurisdiction over land, we generally read the cases to recognize tribal sovereignty/civil jurisdiction over tribal trust land within the reservation, other tribal trust land, individual trust land, and fee land owned (reacquired) by the Indian tribe within the boundaries of the reservation. Montana v. United States, 450 U.S. 544 (1981); Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983); Bugenig v. Hoopa Valley Tribe, 28 Indian L. Rep. 2006 (9th Cir., Oct. 3, 2000) See Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998). Because the circumstances of other fee land vary, this memorandum cannot and does not conclude whether a tribe has sovereignty/civil jurisdiction over other fee lands in particular instances. Where the tribe has sovereignty/civil jurisdiction over the land, it has the power to limit the housing to Indian families or tribal members.

Rule of Statutory Construction

Rules of statutory construction provide that federal statues are to be construed liberally in favor of Native Americans, with ambiguous provisions interpreted to their benefit. Ramah Navajo Chapter v. Lujan, 112 F.3d 1455, 1461 (10th Cir. 1997) and cases cited therein. However, the utility of this rule is clearly diminished when one possible interpretation favors low-income Indian families while the other possible interpretation favors Indian tribes. When this is the case, this memorandum supports the interpretation protecting the rights of low-income Indian families.

ATTACHMENT 3

Native American Housing Assistance And Self-Determination Act Of 1996, As Amended (NAHASDA)

NAHASDA authorizes annual formula block grants for Indian tribes for affordable housing activities which primarily benefit low-income Indian families. The housing must meet the affordable housing requirements of title II of NAHASDA, e.g., the monthly rent for rental housing cannot exceed 30% of the low-income Indian family's monthly adjusted income.

Families Eligible For Assistance

The first stated national objective of NAHASDA (section 201(a)(1)) is "to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families." This objective is achieved through the program requirement of section 201(b)(1) of NAHASDA which requires: "Except as provided under paragraph (2), assistance under eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas." Thus, the statute expressly limits assistance to low-income Indian families. Assistance to others (Indian families who are not low-income, non-Indian families, and law enforcement officers) is permissible only under the limited conditions set forth in paragraphs (b)(2)-(4) of this section.

In addition, section 201(b)(5) expressly permits a preference for tribal members. It provides: "The Indian housing plan for an Indian tribe may require preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this Act on behalf of such tribe, to be given (to the extent practicable) to Indian families who are members of such tribe, or to other Indian families."

Section 201(b)(6) provides that Title VI and the Fair Housing Act "shall not apply to actions by federally recognized tribes and the tribally designated housing entities of those tribes under this Act." Because the exemption from Title VI and the Fair Housing Act is in the subsection of NAHASDA (201(b)) which governs eligible families, we construe this paragraph to mean limiting assistance to low-income Indian families and preferring tribal members over other Indian families. This interpretation means that recipients that would otherwise be fully subject to Title VI and the Fair Housing Act, e.g., regional and village corporations defined in or established pursuant to the Alaska Native Claims Settlement Act and their tribally designated housing entities, must limit assistance in accordance with section 201(b) of NAHASDA. Although paragraph 201(b)(6) does not mention State-recognized Indian tribes, because paragraph (b)(1) requires the assistance to be limited to Indian families, the five State-recognized tribes that receive grants under NAHASDA also do not violate Title VI or the Fair Housing Act when following the mandate of (b)(1) or the preference permitted by (b)(5).

Location Of Housing Funded With Indian Housing Block Grant Funds Under NAHASDA

NAHASDA authorizes affordable housing activities on Indian reservations and other Indian areas. Section 201(b)(1) of NAHASDA states: "Except as provided under paragraph (2), assistance under eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas."

Section 4(10) of NAHASDA defines "Indian area" to mean "the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this Act for affordable housing." Although this definition is circular, NAHASDA is clear that the assistance is not limited to Indian reservations. Essentially, an "Indian area" under NAHASDA is anywhere a tribe undertakes affordable housing activities.

When the tribe or tribally designated housing entity undertakes actions limiting assistance

to low income Indian families, the affordable housing funded under NAHASDA may be located either on an Indian reservation or on other Indian areas and will be exempt from Title VI and the Fair Housing Act. If the affordable housing is located on land subject to State or local law, the requirements of section 201(b) pre-empt any State or local fair housing law which would prohibit limiting the housing to Indian families.

Ownership of housing assisted under NAHASDA

NAHASDA encourages the involvement of the private sector in affordable housing activities. Section 101(j) of NAHASDA requires each recipient to make all reasonable efforts, consistent with the purposes of NAHASDA, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the approved Indian housing plan. The Indian housing plan must include a description of the involvement of private, public, and nonprofit organizations and institutions.

Notwithstanding the involvement of the private sector in affordable housing activities, the requirements of NAHASDA for affordable housing, including the requirement in section 201(b) limiting the eligible families to low-income Indian families (with the exceptions noted above) is applicable to all housing activities assisted with funds under NAHASDA. In addition, if the preference permitted under section 201(b) for tribal members is established by the Indian tribe, it is applicable to affordable housing assisted under NAHASDA, whether owned by the Indian tribe, its tribally designated housing entity or a private owner. If the Indian housing plan for the Indian tribe establishes the preference, the recipient for the tribe must ensure that affordable housing activities that are assisted with grant amounts under NAHASDA for the tribe are subject to the preference. (Section 201(b)(5).)

Housing Funded With Indian Housing Block Grant Funds Under NAHASDA And Other Funds: Leveraged Funds, CDBG & HOME Funds, and "Combined" Funds

Leveraged Funds

NAHASDA contemplates and encourages using the block grant funds with other funds for affordable housing activities. The Congressional findings for the program include a recognition that "the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members" (NAHASDA section 2(6).) In addition, the national objectives of NAHASDA (section 201(a)) are specific goals based on bringing together other resources with funds under NAHASDA in order to provide housing and community development for the benefit of Indian tribes and their members.

NAHASDA requires each tribe to have an Indian housing plan before it can receive the annual grant. (Section 102.) The plan must include an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of NAHASDA, including an explanation of the manner in which amounts made available will leverage additional resources; and the uses to which such resources will be committed, including eligible and required affordable housing activities under title II of NAHASDA. (Section 102(c)(3).) Paragraph (c)(4) requires a description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, and the use of loan guarantees under the Section 184 program, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance.

We construe "leverage" in the context of section 102(c)(3) to mean additional resources used with NAHASDA funds in accordance with the requirements of the NAHASDA. If the Indian tribes do not have the ability to do affordable housing activities which are funded with grant funds under NAHASDA and other funds in accordance with the requirements of NAHASDA (including limiting the housing to low-income Indian families and choosing to have a tribal preference), the other funds would not be leveraged. We also construe the language of section 201(b)(6) to extend to leveraged funds so that all housing assistance must be limited to low-income Indian families in accordance with section 201(b)(1) and a tribal preference is permitted under section 201(b)(5).

CDBG and HOME Funds

Even though funds leveraged with NAHASDA are exempt from Title VI and the Fair Housing Act, two HUD program statutes contain their own nondiscrimination requirements that specifically prohibit nondiscrimination in the use of the program funds. Section 109 of the Community Development Block Grant (CDBG) program statute (Title I of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5309) provides that no person in the United States shall on the ground of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by Title I of the Housing and Community Development Act of 1974. In addition, section 109 provides that the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 shall apply to the program or activity. Section 282 of the HOME Investment Partnership program statute (Title II of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §12832) contains language identical to section 109 for any program or activity funded in whole or in part with funds under Title II of the Cranston-Gonzalez National Affordable Housing Act.

Section 106 of the CDBG statute sets aside one percent of the funds for competitive grants to Indian tribes and the remainder is allocated by formula to States and local governments. CDBG funds awarded to States and local governments could, in some circumstances, be used with funds under NAHASDA. Section 107 authorizes special purpose grants. Section 107(e)(2) of the CDBG statute expressly authorizes HUD to waive the applicability of section 109 in connection with grants to Indian tribes.

The HOME program provides annual housing block grants to States and local governments. Before the enactment of NAHASDA, the HOME program statute authorized competitive grants to Indian tribes, but that authority was terminated by section 505 of NAHASDA. States and local governments may use HOME funds with funds under NAHASDA for housing located within their boundaries. The HOME program regulation at 24 CFR §92.201(b)(5) expressly authorizes States to use HOME funds for housing on Indian reservations. The HOME program statute never contained a provision like section 107(e)(2) of the CDBG statute.

Section 107(e)(2) authorizes HUD to waive the applicability of section 109 to grants to Indian tribes and accordingly HUD has construed this authority so that housing (or any other eligible activity) assisted with Indian CDBG funds may be limited to Indian families. Because section 107(e)(2) does not authorize HUD to waive the applicability of section 109 to grants to State and local governments (or other grantees funded under the CDBG statute), grants to grantees other than Indian tribes remain subject to the nondiscrimination requirements of section 109. However, in applying the prohibitions under section 109 of the CDBG statute and section 282 of the HOME statute, we conclude that in limiting assistance to Indian families or tribal member there is no violation if the assisted housing is located on land over which the Indian

tribal has sovereignty/civil jurisdiction.

If housing is funded with either CDBG funds or HOME funds and is located on land over which the tribe has sovereignty/civil jurisdiction, the housing may be limited to Indian families or tribal members. If the housing is funded under NAHASDA along with either CDBG funds or HOME funds and is not located on land over which the tribe has sovereignty/civil jurisdiction, to resolve the conflict in the program statutes, the number of units funded by each program must be determined and the CDBG and HOME program units cannot be limited to Indian families or tribal members. If the housing units are all comparable in terms of size, features, and number of bedrooms, the number of units funded by each program source can be determined by pro-ration. The Office of Community Planning and Development has issued guidance on determining the number of units funded by the HOME program. The Office of Native American Programs will need to provide guidance on this issue for NAHASDA.

"Combined" funds

If other funds are combined with NAHASDA funds, but are not used for eligible affordable housing activities for low-income Indian families in accordance with the requirements of NAHASDA, the "combined" funds do not come within the exemption language of section 201(b)(6). The housing units funded with NAHASDA funds must be determined so that they meet the requirements of NAHASDA, including the limitations for eligible Indian families.

The housing units funded with the "combined" funds are not assisted with funds under NAHASDA and are not subject to the requirement of section 201(b)(1) to limit the housing assistance to low-income families and do not receive the exemption in section 201(b)(6) from Title VI and the Fair Housing Act. However, for the reasons discussed above regarding tribal sovereignty, if the housing units are located on land over which the Indian tribe has sovereignty/civil jurisdiction, the housing may be limited to Indian families or tribal members and there is no violation of Title VI (if the "combined" funds are federal financial assistance) or the Fair Housing Act.

Last Revised: 3/2/01

ONAP NAHASDA GUIDANCE INDEX

ONAPs

Guidance Number	Topic: Subject	Originator	Issue Date	Status
	FY 2001			
01-09	**ICBG:** Procedures to be used to Implement 24CFR 1003, Subpart E, Imminent Threat Grants	Gallegos	2/27/01	Posted to e:library
01-08	**Monitoring:** Report and Transmittal Letter Formats	Barth	2/12/01	signed by Jackie J Posted to e:library
01-07	**High Risk Determination:** Use of 24 CFR Part 85.12 "High Risk" Determination	Barth	1/18/01	signed by Jackie J Posted to e:library
01-06	**Responding to Complaints:** Transmitt of ONAP Policies and Procedures for Handling Complaints and Complaint Intake Form	Gallegos	1/2/01	Posted to e:library
01-05	**Grants Evaluation Guidebook:** Revisions to Grants Evaluation Guidebook	Murphy	1/26/01	received signed copy Posted to e:library
01-04	**Monitoring:** Recipient Monitoring Guidelines and Strategies	Barth	12/5/00	Posted to e:library
01-03	**Reporting:** Submission Deadlines for Internal Reports	Giarrusso	11/3/00	Posted to e:library
01-02	**IHBG Fund Tracking:** Revision of NAHASDA Guidance 00-01A	Giarrusso	10/12/00	Posted to e:library
01-01	**Total Development Costs:** Guidelines for Variances on Total Development Costs	Giarrusso		Not yet issued. On hold pending reg change to TDC
	FY 2000			
00-14	**Monitoring:** Monitoring Reports Content and Considerations	Knott	9/7/00	mailed Posted to e:library
00-13	**HA Bonds:** Reclassification of Bond or FFB Indebtedness (*3 attachments*)	Jacobsen	8/31/00	mailed Posted to e:library
00-12	*No Guidance was issued for this*	-	-	

Last Revised: 3/2/01

	number.			
00-11	**GM:** Role of AONAP's in reviewing IHBG Formula Data	Kruszek	8/11/00	Posted to e:library
00-10	**Grants Evaluation Guidebook:** Revisions to GE Guidebook	Murphy	8/7/00	mailed Posted to e:library
00-09	**IHBG:** Grant Closeout Procedures	Kruszek	8/4/00	mailed; Posted to e:library
00-08A	**Form HUD 272-I:** Review of the Federal Cash Transactions Report, form HUD 272-I	Quinlan	11/1/00	posted on e:library
00-08	**HUD 272-I:** Review of Fed Trans Rpt	Quinlan	8/4/00	posted on e:library
00-07	**IHBG Funds:** Processing adjustments, reductions, withdrawals, or terminations	Quinlan	6/20/00	posted on e:library
00-06	**Electronic Submissions of IHPs and APRs:** Pending IHP/APR On-Line Registrations	Petrunich	4/7/00	posted on e-library
00-05	**IHBG:** Investment Log	Giarrusso	3/13/00	mailed; Posted to e:library
00-04	**GE:** Grants Evaluation Guidebook Revisions	Knott	2/16/00	Re-posted to the e:library with attachments 3/2/2001
00-03	**Monitoring:** Overdue Monitoring Reports	Johnson, W.	3/1/00	mailed Posted to e:library
00-02	**APRs:** IHBG Program Notification of Submission Requirements and Actions to be Taken for Delinquent APRs.	Quinlan	3/6/00	mailed Posted to e:library
00-1A	**IHBG Fund Tracking:** Revision of 00-01; IHBG Funding Log	Jacobsen	1/13/00	mailed Posted to e:library
00-01	**IHBG Fund Tracking:** IHBG Funding Log	Jacobsen	12/2/99	mailed Posted to e:library
	FY 1999			
99-04	**NAHASDA:** Monitoring Responsibilities under NAHASDA	Quinlan	8/10/99	mailed Posted to e:library
99-03	**Implementation of NAHASDA:** Filing System	Quinlan	9/27/99	mailed Posted to e:library
99-02	**IHBG:** Procedures for Area ONAPs to track IHBG financial data	Jorgensen	12/9/98	e:mailed to administrators; Posted to e:library
99-01	**APR:** Review of the APR	Quinlan	11/12/98	Posted to e:library
	FY 1998			
98-12	**IHBG Formula Policies:** ONAP Policies for Administering the IHBG Formula	Kruszek	9/30/98	mailed Posted to e:library

Last Revised: 3/2/01

98-11	*No Guidance was issued for this number.*	-	-	Guidance cancelled
98-10	**Allowable Costs:** Eligibility and Application of Indirect Costs and Indirect Cost Rates Under IHBG	Petrunich	9/16/98	mailed Posted to e:library
98-09	**IHP:** Processing 1999 IHPs	Jorgensen	8/17/98	mailed Posted to e:library
98-08	**Section 8 Certificates and Voucher Program:** Year End Statement	Jacobsen	8/21/98	mailed Posted to e:library
98-07	**Environmental Review - Part 50:** Guidance for Area ONAP Staff Who Perform Environmental Reviews for Those Tribes Who Decline to Assume Environmental Responsibilities for NAHASDA Programs.	Johnson	8/24/98	mailed Posted to e:library
98-06	**Environmental Review - Part 58 Process:** Guidance for TDHEs who assume the status of a Federal Official under the Natl' Environmental Policy Act of 1969 & the provisions of Law listed in 24 CFR 58.59	Johnson	8/10/98	mailed Posted to e:library
98-05	**Line of Credit Control System:** Addition of Program Code for IHBG for AONAP staff	Quinlan	12/5/97	mailed Posted to e:library
98-04	**Electronic Submission of Indian Housing Plans:** Verification of Registration	Petrunich	5/22/98	mailed Posted to e:library
98-03B	**Grant Processing:** Certification for Drug Free Workplace	Quinlan	11/9/98	Posted to e:library
98-03A	**Grant Processing:** Expansion of Procedures to Establish a Recipient in LOCCS for Access to IHBG funds	Quinlan	6/2/98	mailed Posted to e:library
98-03	**Grant Processing:** Procedures to Establish a Recipient under NAHASDA to access IHBG in LOCCS	Quinlan	4/13/98	mailed Posted to e:library
98-02	**Reporting:** Recipient Reporting Requirements	Quinlan	4/13/98	mailed Posted to e:library
98-01	**Line of Credit Control System:** FY 97 Projects not in PAS/LOCCS	Quinlan	11/13/97	mailed Posted to e:library

Last Revised: May 24, 2001

RECIPIENT NAHASDA GUIDANCE INDEX

Tribes/TDHEs

Guidance Number	SUBJECT	Originator	Issue Date	Status
	FY 2001			
01-12 (IHBG)	**APR:** Calculation of Obligation of Funds	Murphy	05/24/01	
01-11 (ROSS)	**Technical correction** to Super NOFA	Quinlan	05/24/01	
01-10T	**Insurance:** Adequate Insurance Coverage for Risk of Loss or Exposure	Petrunich		
01-09T	**Income Limits:** Income Limits Under NAHASDA	Jacobsen	04/17/01	Mailed
01-08T	**Replacement Reserves:** Status of Notice on Obligating Funds for Replacement Reserves under NAHASDA	Gallegos	03/23/01	Mailed
01-07T	**FY 2001 Super Notice of Funding Availability (SuperNOFA):** Eligible Programs for Tribes and TDHEs	Giarrusso	03/07/01	Signed.
01-06T	**ICDBG:** Revision to the Application Process for ICDBG for Indian Tribes and Alaskan Native Villages.	Gallegos	11/07/00	Signed
01-05T	**Lead-Based Paint:** New HUD Regulations: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule.	Petrunich	10/27/00	Mailed
01-04T	**Reporting Requirements:** Reporting Requirements for Programs Administered by ONAP	Quinlan	1/9/.01	Mailed
01-03T	**Accounting for Program Income:** Frequently Asked Questions regarding Accounting for Program Income under the Indian Housing Block Grant (IHBG) Program	Kruszek	10/11/00	Mailed.
01-02T	**NAHASDA Eligible Activities:** Eligible Affordable Housing Activities & Administrative Expenses	Jacobsen	11/20/00	Mailed.
01-01T	**FBI Criminal History Record Information:** Revision of NAHASDA Guidance 98-18	Jacobsen	10/04/00	Mailed.
	FY 2000			
00-11T	*This number was not used. This Guidance was not signed until after the start of FY 2001 and was issued under number 01-05T.*	Petrunich		Faxed to DC for signature 9/26/00
00-10T	**Performance Measure:** Clarification of Performance Measures and Their Uses.	Murphy	9/11/00	Mailed
00-09T	**Maintenance of 1937 Housing Act Units:** Regulatory and statutory requirements for	Gallegos	8/15/00	Mailed

Last Revised: May 24, 2001

	maintenance of 1937 Housing Act units			
00-08t	**Screening for Eligibility for the IHBG Program under the NAHASDA and the BIA's HIP:** Coordination between HUD and the BIA in Providing New Housing in Indian Areas.	BIA???	7/10/00	mailed
00-07t	**IHDEP FY 2000 Funding:** Amendment	Outlaw	6/13/00	mailed
00-06t	**IHBG Program Income:** Accounting for Program Income under NAHASDA	Kruszek	5/11/00	mailed
00-05t	**Indian Housing Drug Elimination Program (IHDEP):** FY 2000 Funding & Application Process	Outlaw	5/11/00	mailed.
00-04t	**NAHASDA:** Income limits	Jacobsen	5/11/00	
00-03t	**APR:** Submittal of APRs for FFY 98 & 99	Quinlan	3/22/00	mailed
00-02t	**APR:** Past due APRs	Quinlan	3/23/00	mailed
00-01t	**AUDITS:** Combining audits	Knott	5/15/00	
	FY 1999			
99-12t	**Annual Performance Report:** Second Year Submittal of the Annual Performance Report (APR)	Quinlan	8/20/99	e:mailed 8/20/99
99-11t	*No guidance issued for this number*	-	-	-
99-10t	**LOCCS:** Toll Free Numbers for Grantees	Giarrusso	9/9/99	mailed
99-09t	**Public and Indian Housing Drug Elimination Grant Program (PIHDEP):** Formula Allocation for FY 1999	Outlaw	3/3/99	Mailed
99-08t	*No guidance issued for this number*	-	-	-
99-07t (not to be put on Code talk)	**Section 8 Funding:** Notice of Funding Availability for the Welfare-to-Work Section 8 Tenant-Based Assistance Program for Fiscal Year 1999	Jacobsen	2/11/99	Mailed (not to be on web)
99-06t	**Cost Limits:** DC&E's	Walls	6/15/99	Mailed
99-05t	**Investment of IHBG funds:** Administrative Requirements	Jorgensen	2/9/99	Mailed
99-04t	**Income Limits:** Income Limits for FY 99	Jacobsen	2/11/99	Mailed
99-03t	**NAHASDA:** Legislation Amended October 21, 1998	Petrunich	12/16/98	Mailed 1/8
99-02t	**Annual Income:** Calculating Annual Income under NAHASDA	Jacobsen	12/15/98	Sent to administrators 1/8
99-01t	**Indian Housing Plan:** Goals, Objectives and Performance Objectives in the 1-year Plan Section of the IHP	Jorgensen	12/15/98	e-mailed. Mailed 1/8
	FY 1998			
98-19t	**Reviewing Formula Current Assisted Stock (FCAS):** Regulatory requirements regarding FCAS as Listed on a Tribe's Formula Response Form	Kruszek	9/30/98	mailed
98-18t	**Accessing Information:** Instructions for Obtaining FBI Criminal History Record Information	Jacobsen	9/24/98	mailed
98-17t	**Wage Standards:** Guidance in Fulfilling Statutory and Regulatory Labor Standards	Johnson	9/2/98	mailed
98-16t	**Indian Housing Plan:** IHP Submission Date for Indian Housing Plans for Federal Fiscal Year 1999 and Thereafter	Jorgensen	8/13/98	mailed
98-15t	**Section 184 Loan Guarantee Program:** Section 184 Indian Loan Guarantee and Down Payment Assistance under NAHASDA	Cummins	7/1/98	mailed

Last Revised: May 24, 2001

98-14t	**Income Limits:** Income Limits under NAHASDA	Jacobsen	6/22/98	mailed
98-13t	**Allowable Costs:** Board of Commissioners Stipends	Jacobsen	6/18/98	mailed
98-12t	**NAHASDA:** Important Dates to Remember	Garner-Wing	3/12/98	mailed
98-11t	**Indian Housing Plan:** Updated Correction to Download the IHP from the Internet (correction to 98-08)	Jorgensen	1/30/98	mailed
98-10t	**Insurance:** Transition Guidelines for Insurance Requirements	Jorgensen	12/5/97	mailed
98-09t	**Reporting:** Revision to PIH 97-60 (HA), dated 12/4/97; Responsibility for Completion of form HUD-50058, Family Report	Jacobsen	1/21/98	mailed
98-08t	**Indian Housing Plan:** Preparation and Submission of 1st IHP	Jorgensen	1/23/98	mailed
98-07t	**Line of Credit Control System:** Accessing the IHBG Funds in LOCCS	Quinlan	2/27/98	mailed
98-06t	**Line of Credit Control System:** Process for Setting up a New Recipient Accessing the Funds and Assets Held by an Umbrella IHA	Quinlan	12/11/97	mailed
98-05t	**Line of Credit Control System:** Process for Setting up a New Grantee Accessing the Funds & Assets Held by a Former IHA in LOCCS	Quinlan	12/11/97	mailed
98-04t	**Reporting:** Reporting Requirements for IHBG & USHA Funds	Quinlan	3/6/98	mailed
98-03t	**Line of Credit Control System:** Requirements for Drawdowns of Program Funds	Quinlan	12/8/97	mailed
98-02t	**Modernization:** Revised Requirements for Modernization Reporting	Manion	12/8/97	mailed
98-01t	**Indian Housing Plan:** Extension of Submission Deadline for IHP	Jorgensen	12/8/97	mailed

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