



OFFICE OF PUBLIC AND INDIAN HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

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**Special Attention of:**

All Tribal Government Leaders  
And Tribally Designated  
Housing Entities (TDHE)

**Notice: PIH 2017-15**

Issued: August 17, 2017

Expires: This Notice remains effective  
until Amended, Superseded or Rescinded

Cross Reference(s): PIH Notice 2017-14  
and PIH Notice 2017-16

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**SUBJECT:** Indian Housing Block Grant (IHBG) Formula Current Assisted Stock  
(FCAS) Data

**PURPOSE:** This Notice provides tribes and tribally designated housing entities (TDHE) with information related to changes affecting the FCAS data under the IHBG formula (§1000.316 and §1000.318(b) and (e)).

**BACKGROUND:** On November 22, 2016, HUD published the final rule revising the IHBG allocation formula authorized by section 302 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA). These regulations, which became effective on December 22, 2016, updated the regulations at 24 CFR part 1000. These regulations were developed through the Negotiated Rulemaking process, which included 24 representatives of tribal governments (or authorized designees of those tribal governments), and two HUD representatives. For additional information on the process and outcomes, please refer to the Final Rule (Native American Housing Assistance and Self-Determination Act; Revisions to the Indian Housing Block Grant Program Formula, 81 Fed. Reg. 83674 (Nov. 22, 2016)) and *PIH Notice 2017-14 "Indian Housing Block Grant Formula Needs Data,"* and *PIH Notice 2017-16 "Changes to the Indian Housing Block Grant Formula Regulations."*

The final rule adds a new §1000.316(c), which adds the existing unit conversion policy to the regulation. Before the final rule went into effect, tribes/TDHEs were only required to report the units converted before October 1, 1997. Under the new rule, beginning in Fiscal Year (FY) 2018, tribes/TDHEs are required to report all unit conversions on the Formula Response Form.

The final rule also amends §1000.318 by re-designating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding paragraphs (b) and (e). Under the new rule, §1000.318(b) provides a regulatory clarification of what "reasonable efforts" are to overcome impediments preventing conveyance of FCAS units.

The final rule adds a new §1000.318(e) to establish the eligibility criteria for FCAS units that are demolished and rebuilt.

The following questions and answers provide greater detail on how HUD will implement the revised formula provisions.

### **I. Converted FCAS Units**

**1) Do tribes/TDHEs report that an FCAS unit was converted from Mutual Help or Turnkey III (homeownership) to Low Rent (rental) and vice versa, including conversions that occurred after October 1, 1997?**

Yes. In accordance with §1000.316(c)(3), tribes/TDHEs must report FCAS conversions on the Formula Response Form and, for each conversion, and the conversion date. Tribes/TDHEs must report all units converted before *and* after October 1, 1997.

**2) If a tribe/TDHE converts an FCAS unit from a rental to a homeownership unit, and the converted homeownership unit is then conveyance-eligible, does the tribe/TDHE need to report this information?**

Yes. In accordance with §1000.316(c)(3), tribes/TDHEs shall report FCAS conversions on the Formula Response Form. Tribes/TDHEs must report all units converted prior to *and* after October 1, 1997. After FCAS rental units are converted to homeownership, they are subject to the eligibility requirements found in §1000.318(b).

**3) If a tribe/TDHE does not have the exact dates of conversions, should it still report this information?**

Yes, a tribe/TDHE must report all conversions. If the conversion date is unknown, the tribe/TDHE must report the following:

- If the FCAS unit was converted to homeownership, the tribe/TDHE must report the date and term of the existing Mutual Help and Occupancy Agreement (MHOA).
- If the FCAS unit was converted to rental, the tribe/TDHE must report the conversion date. If the conversion date is not available, HUD will assume that the unit converted after October 1, 1997 unless the tribe/TDHE proves otherwise. In accordance with § 1000.316(c), the unit will continue be counted as its pre-NAHASDA type (homeownership) in formula calculations, but when HUD evaluates the unit's continued eligibility as formula data under § 1000.318, it will be evaluated according to its converted typed (rental).

### **II. Conveyance of Homeownership Units**

**1) When is a homeownership FCAS unit that is eligible for conveyance by the terms of the lease-purchase agreement (Conveyance-Eligible or CE) no longer counted as FCAS?**

A homeownership unit that is CE no longer counts as formula data unless it could not be conveyed for reasons beyond the tribe/TDHE's control, meaning that after

reasonable efforts, there remained a legal impediment preventing conveyance.

Under the new rules, §1000.318(b) provides a regulatory clarification of “reasonable efforts.” Reasonable efforts for timely conveyance means that, when the unit becomes conveyance eligible under the terms of the MHOA, the tribe/TDHE has taken all other steps necessary for conveyance, but cannot convey because a legal impediment prevents it. Thus, reasonable efforts may include taking preparatory measures in anticipation of pay-off dates, such as preparing documents, confirming land descriptions, or scheduling or obtaining board resolutions. The new rule also provides for a transition to the clarified standards for reasonable efforts for units that continued to qualify as formula data when the new §1000.318(b) took effect.

Accordingly, any FCAS homeownership unit that (1) was CE before the new §1000.318(b) took effect on December 22, 2016, and (2) had a legal impediment on December 22, 2016 after reasonable efforts to convey, will be deemed to have a new CE date of December 22, 2016, in accordance with the new §1000.318(b).

***For units that are thus deemed to have a new CE date of December 22, 2016, and for all units that become CE on or after December 22, 2016,*** HUD will determine whether these units continue to count as formula (FCAS) data after their CE date as follows:

- If the unit is conveyed *within* CE + 4 months, then the unit is considered FCAS up to and including the fiscal year in which it was conveyed, but only if the tribe/TDHE took all steps necessary for conveyance on the CE date, and all that remained was a legal impediment to conveyance. Otherwise it remains FCAS only up to and including the fiscal year in which it became CE.
- If the unit is conveyed *between* CE + 4 months and CE + 24 months, then the unit is considered FCAS up to and including the fiscal year of its conveyance date, but only if the tribe/TDHE demonstrates it took all steps necessary for conveyance on the CE date, and all that remained was a legal impediment. In addition, it must demonstrate that it reasonably carried out the written plan to overcome legal impediments to conveyance in a timely manner in accordance with the new 1000.318(b). Otherwise, the unit qualifies as FCAS data only up to and including the fiscal year in which the unit became CE.
- If the unit is conveyed *after* CE + 24 months, then the unit is considered FCAS up to and including the fiscal year of its conveyance date, but only if the tribe/TDHE demonstrates it took all steps necessary for conveyance on the CE date, and all that remained was a legal impediment. Also, the tribe/TDHE must demonstrate that it reasonably carried out the written plan to overcome legal impediments to conveyance in a timely manner in accordance with the new § 1000.318(b), AND provide third-party evidence that a legal impediment beyond the tribe/TDHE’s control continued beyond the 24 months. Otherwise, the unit qualifies as FCAS data *only* up to and including the fiscal year in which the unit became CE. Section 1000.318(b) provides that no unit may be counted in the formula after CE + 24 months absent third-party verification of a continuing legal impediment. Current third-party verification must be provided annually with each Formula Response Form.

All units that were conveyed or conveyance-eligible prior to December 22, 2016, and were not eligible for the December 22, 2016 CE date, ceased to qualify as FCAS data in accordance with the rules and procedures established prior to December 22, 2016.

**2) What are examples of legal impediments preventing timely conveyance of Homeownership units?**

To be considered a legal impediment, the cause of delayed conveyance must be action that legally prohibited conveyance, or failure by a third party (not the tribe or TDHE) to take action that is legally required for conveyance. Such a third-party action must be one that legally prohibits conveyance, while a relevant third-party inaction must be a failure to do an act that is legally required for conveyance. Examples of legal impediments may include delays in obtaining or the absence of title status reports, if required for conveyance; incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance; clouds on title due to probate or intestacy or other court proceedings; and/or other legal impediments.

**3) What are examples of conveyance delays that do not meet the criteria for FCAS formula data in accordance with §1000.318(b)?**

Any delay that is not caused by a legal impediment to conveyance. Accordingly, inaction by tribe or TDHE or delays arising from failure by the tribe/TDHE to enforce strict compliance by the homebuyer with the terms of the MHOA (for example, the accrual of tenant account receivables (TAR)), are examples of reasons for delayed conveyance that would not qualify as a legal impediment, and therefore, would not justify the continued eligibility of a CE unit beyond the CE date.

**4) How should tribes/TDHEs show reasonable efforts to overcome legal impediments?**

To demonstrate reasonable efforts to overcome legal impediments, within 4 months of CE, a tribe/TDHE must have a written plan of action that includes the description of and any applicable documentation supporting the specific legal impediments, as well as specific, ongoing, and appropriate actions for each applicable unit that will be taken to resolve the legal impediments and actually convey the unit within a 24-month period. The tribe/TDHE must also show that it carried out the written plan of action, and has documented the undertaking of the plan of action.

**5) When and where does this plan need to be submitted?**

As stated above, this plan must have been created within 4 months of a unit's CE date. The tribe/TDHE should have the written plan (as well as documentation demonstrating it has and is carrying out the plan) on file for HUD review. The written plan of action must be submitted to the IHBG Formula Customer Service Center (contact information is provided at the end of this Notice) on the first Formula Response Form after the date of conveyance or two years after the CE, whichever comes first.

- 6) If a unit becomes CE but legal impediments prevented conveyance, AND the tribe/TDHE has created a written plan of action within 4 months of the unit becoming CE, AND the tribe/TDHE is carrying out the written plan of action, AND has documented undertaking the plan of action, is this unit still eligible as FCAS?**

Yes, but this cannot be determined until actual conveyance. Therefore, a unit's CE may be removed from HUD's FCAS data when the unit becomes CE. If a legal impediment prevented the conveyance, the tribe/TDHE needs to make reasonable efforts to overcome the legal impediment as required on §1000.318(b). Then, when the unit is conveyed, the tribe/TDHE needs to report this to the IHBG Formula Customer Service Center. As stated in the answer to question 5 above, it is the tribe's/TDHE's responsibility to report to the IHBG Formula Customer Service Center when the unit is conveyed or when the 2-year timeframe is up, and to provide all necessary documentation for HUD to re-evaluate the unit to see if it remained eligible as FCAS beyond the CE date. After the tribe/TDHE has demonstrated it made reasonable efforts to convey in the face of a legal impediment, as required by §1000.318(b), then HUD will revise the FCAS data for the preceding years and calculate the appropriate adjustment pursuant to the formula at §1000.319.

- 7) What if, despite continuing reasonable efforts to convey, a legal impediment still prevents conveyance after 24 months?**

Section 1000.318(b) provides that no homeownership unit may be counted in the formula after CE + 24 months unless the tribe/TDHE provides evidence from a third party, such as a court or state or federal government agency, documenting that a legal impediment continues to prevent conveyance, and assuming that the tribe/TDHE made reasonable efforts to overcome any existing legal impediments during the preceding 24 months in accordance with §1000.318(b) (see question 1, above). Because no such unit may be counted absent evidence of a continuing impediment, it will be removed from FCAS data for the fiscal year after a tribe/TDHE provides third-party evidence, and the tribe/TDHE would need to provide current third-party evidence to HUD with the subsequent year's Formula Response Form if a legal impediment continued to prevent conveyance.

### **III. Demolition and Rebuilding of FCAS Units**

- 1) Does a unit that is demolished and rebuilt remain eligible as FCAS?**

Yes, in certain cases. In accordance with §1000.318(e), a unit demolished pursuant to a planned demolition may be considered eligible as an FCAS unit if, after demolition is completed, the unit is rebuilt within one year from completed demolition or, alternatively, within 2 years when HUD has approved a recipient's written request for a one-time, one-year extension because the unit could not be rebuilt within one year based on conditions set out in section 302(c)(1) of NAHASDA.

- 2) When is a unit considered demolished?**

In accordance with §1000.318(e), a planned demolition is considered “completed when the site of the demolished unit is ready for rebuilding.” A planned demolition is a voluntary demolition, and is not caused by fire, natural disasters, etc. For a unit that is damaged due to an unplanned demolition (for example, fire), during the time it is not considered a dwelling unit as required by 302(b) of NAHASDA nor ready for rebuilding pursuant to a planned demolition, it will not be eligible as FCAS. Once the damaged unit undergoes planned demolition, the unit will be subject to the demolition requirements in §1000.318(e). If the unit is rebuilt within the timeframe set out in §1000.318(e), it may be eligible as FCAS from the time of the planned demolition.

**3) How can tribes/TDHEs report demolished and rebuilt FCAS units?**

Tribes/TDHEs can report demolished and rebuilt FCAS units on the Formula Response Form.

**4) When must the one-time, one-year extension request be made, and how is this information submitted?**

Requests for the one-time, one-year extension must be submitted in writing to the IHBG Formula Customer Service Center, and include a justification for the request. Requests for extension made after 24 months from completed demolition cannot be granted.

**5) What are examples of justifications for the request for a one-time, one-year extension request?**

In accordance with §1000.318(e) and section 302(c)(1) of NAHASDA, reasons for extension requests include “relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity.”

**6) If a tribe/TDHE’s extension request was denied, can it appeal this decision?**

Yes, a tribe/TDHE can appeal in accordance with §1000.336.

Should you have any questions, please contact the IHBG Formula Customer Service Center at:

1025 Connecticut Avenue, NW, Suite 214  
Washington, DC 20036  
Phone: 800-410-8808  
Fax: 202-393-6411  
E-Mail: [IHBGformula@firstpic.org](mailto:IHBGformula@firstpic.org)

Individuals with speech or hearing impairments may access the above telephone number via TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

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Dominique Blom, General Deputy Assistant Secretary  
for Public and Indian Housing