

## **Text of Class 2 Amendments to NAHASDA Regulations**

*[Unaffected portions of amended regulations may be omitted by ellipses]*

### **Statutory Amendment:**

P.L. 110-411 (2008). Amends Section 2 to provide that HUD “shall,” rather than “should,” assist tribes achieve economic self-sufficiency and recognize tribal self-determination.

### **Rulemaking Change Required:**

Amend 24 C.F.R. §§1000.2(a)(6)-(7) to read:

(6)...the Federal government shall 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 Indian tribes and their members.

(7) Federal assistance to meet these responsibilities shall be provided in a manner that recognizes the right of Indian self determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated housing entities under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 *et seq.*).

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### **Statutory Amendment**

P.L. 106-568 (2000). This amendment changed the required showing for waiving IHP filing requirements.

### **Rulemaking Change Required:**

Amend 24 C.F.R. §1000.224 to read:

**§224. Can any part of the IHP be waived?**

Yes. HUD has general authority under section 101(b)(2) of NAHASDA to waive any IHP requirements for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the applicant...

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**Statutory Amendment :**

*P.L. 110-411 (2008).* This amendment changes the IHP review cycle from fiscal year to tribal program year.

**Rulemaking Change Required:**

Amend 24 C.F.R. §1000.201 to read:

Every fiscal year HUD will make grants under the IHBG program to recipients who have submitted to HUD an IHP covering an Indian program year in accordance with §1000.220 to carry out affordable housing activities.

Amend 24 C.F.R. §1000.214 to read:

IHPs must be initially sent by the recipient to the Area ONAP office no later 75 days before the commencement of an Indian program year. Grant funds for a fiscal year cannot be provided until the plan due under this section during that fiscal year is submitted and determined to be in compliance with section 102 of NAHASDA and funds are available.

Amend 24 C.F.R. §1000.216 to read:

**§1000.216. What happens if the recipient does not submit the IHP to the Area ONAP no later than 75 days before commencement of the Indian program year?**

If the IHP is not initially sent at least 75 days before commencement of the Indian program year, the recipient will not be eligible for IHBG funds for the fiscal year in which initial submission of that IHP was due under §1000.214...

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**Statutory Amendment:**

*P.L. 100-411 (2008).* The 2008 amendments created Subtitle B, but inserted cross references regarding Subtitle B that don't exist. As a result, a corrective regulations is necessary:

Create a new §1000.230(f) to read:

Notwithstanding any provision of this section or Section 103 of NAHASDA,

HUD:

- (1) shall review the information included in an Indian housing plan pursuant to Section 233(a) of NAHASDA only to determine whether the information is included for the purposes of compliance with the requirement under sections 232 and 233 of NAHASDA; and
- (2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities or results included pursuant to Section 233(a) of NAHASDA.

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**Statutory Amendment:**

*P.L. 110-411 (2008).* This change exempted regular developers' fees from the definition of program income.

**Rulemaking Change Required:**

Amend §1000.62(a) to add a new sentence at the end thereof to read:

...Notwithstanding any provision of this subsection, program income does not include regular developer's fees earned in connection with projects assisted by the Low Income Housing Tax Credit program under Section 42 of the Internal Revenue Code.

\* \* \*

**Statutory Amendment:**

*P.L. 106-569 (2000).* This amendment allows the use of tribal wage rates instead of Davis-Bacon and HUD-established prevailing wage rates.

**Rulemaking Change Required:**

Amend 24 C.F.R. §1000.16(e) to read:

(e) *Implementing regulations and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in subsections (a)-(d) of this section and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

Amend 24 C.F.R. §1000.16 by adding new subsections to read:

(f) *Other labor standards.* Recipients, contractors, subcontractors, and other participants must comply with other applicable Federal laws and regulations pertaining to labor standards.

(g) *Tribally-determined wage rates.* Subsections (a)-(e) of this section do not apply to any contract or agreement for assistance, sale or lease pursuant to

NAHASDA, including construction and development contracts, if that contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires payment of not less than prevailing wages, as determined by the Indian tribe.

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**Statutory Amendment :**

*P.L. 110-411 (2008)*. This amendment created the Title VI loan guarantee demonstration project for economic development activities.

**Rulemaking Change Required:**

Repeal 24 C.F.R. §1000.408.

Amend 24 C.F.R. §1000.412(a) to read:

(a) Except for guarantees issued under section 606 of NAHASDA, the issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no longer owed on existing notes or other obligations.

Amend 24 C.F.R. §1000.424(a) to read:

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies: (1) as an affordable housing activity as defined in section 202 of NAHASDA; or (2) for guarantees issued under section 606 of NAHASDA, as an eligible activity under section 606(a)(1) of NAHASDA.

Amend 24 C.F.R. §1000.424(d)(1) to read:

(1) Except for guarantees issued under section 606 of NAHASDA, the borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602 of NAHASDA.

Repeal 24 C.F.R. §1000.424(d)(2).

Add a new subsection to 24 C.F.R. §1000.424 to read:

(e) For guarantees applied for under section 606 of NAHASDA, a certification that not less than 70 percent of the aggregate amount received by the Indian tribe or TDHE as a result of guarantee under that section shall be used for the support of activities that benefit low-income families on Indian reservations or other Indian areas.

Amend 24 C.F.R. §1000.428(a)(3) to read:

(3) The borrower's inability to furnish adequate security pursuant to section 602(a) or section 606(f)(1)(C) of NAHASDA.

Amend 24 C.F.R. §1000.428(b) to read:

(b) The loan or other obligation for which the guarantee is requested exceeds: (1) in the case of guarantees issued pursuant to Sections 601-605, any of the limitations specified in sections 601(d), section 605(d); or, in the case of guarantees issued pursuant to Section 606, any of the limitations in section 606(e) or section 606(h)(4)(B) of NAHASDA.

Amend 24 C.F.R. §1000.428(e) to read:

(e) The activities to be undertaken are not eligible under: (1) section 202 of NAHASDA; or, (2) for guarantees applied for under section 606 of NAHASDA, under 606(a)(1) of NAHASDA.

Amend 24 C.F.R. §1000.434 by adding a new subsection to read:

(d) Notwithstanding any provision of this section to the contrary, HUD shall make a separate allocation of available loan guarantee assistance under Section 606 of NAHASDA to each Area ONAP equal to the percentage of the total NAHASDA grant funds allocated to the Indian tribes in the geographic area of operation of that office. Each Area ONAP shall select the four Indian tribes or TDHE's to participate in the Section 606 demonstration program for a fiscal year, under guidelines developed by each Area ONAP in consultation with tribes in that region. The guidelines shall be consistent with the purpose and limitations of Section 606 of NAHASDA, and shall, to the extent practicable, seek to equitably allocate available loan guarantee assistance to that region over the course of the demonstration project program. Any loan guarantee assistance remaining available for a region after the annual fiscal year allocation shall be carried forward and available for use exclusively in that region in the following fiscal year.

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**Statutory Amendment:**

P.L. 110-411 amended § 106(b)(2), clarifying the negotiated rulemaking procedure.

**Rulemaking Change Required:**

Add a new section at 24 C.F.R. § 1000.7 to read:

**§ 1000.7 What is the procedure for issuing regulations under NAHASDA?**

(a) All regulations required under NAHASDA, including any regulations that may be required pursuant to amendments to NAHASDA, shall be issued according to a

negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code.

(b) Not later than 90 days after the date of enactment of any Act to reauthorize NAHASDA, HUD shall initiate a negotiated rulemaking by publishing in the Federal Register a notice describing the issues subject to the negotiated rulemaking.

(c) Not later than 180 days after the date of enactment of any Act to reauthorize NAHASDA, HUD shall establish a negotiated rulemaking committee for the development of proposed regulations that may be required pursuant to amendments to NAHASDA.

(d) Not later than 2 years after the date of enactment of any Act to reauthorize NAHASDA, HUD shall promulgate regulations pursuant to Section 106(b)(2) of NAHASDA and the Negotiated Rulemaking Act (subchapter III of chapter 5 of title 5, United States Code).

(e) In establishing the negotiated rulemaking committee, HUD shall adapt the procedures under the Negotiated Rulemaking Act to the unique government-to-government relationship between the Indian tribes and the United States and shall ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes. HUD shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(f) Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to Section 106 of NAHASDA that are in effect on the date on which the review is conducted.

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**Statutory Amendment:**

P.L. 110-411 added § 203(f), which permits recipients to use NAHASDA funds over an extended period of time as provided in each recipient's Indian Housing Plan.

**Rulemaking Change Required:**



Repeal 24 C.F.R. § 1000.58(g).

Repeal 24 C.F.R. § 1000.524(a) and renumber the remaining subsections accordingly.

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**Statutory Amendment:**

P.L. 110-411 amended § 208(a), which provides tribes and TDHEs access criminal history information for job applicants.

**Rulemaking Change Required:**

Amend 24 C.F.R. § 1000.150 to read:

**§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on adult applicants for NAHASDA-assisted housing, tenants, and applicants for employment?**

Amend 24 C.F.R. § 1000.152 to read:

(a) With regard to tenants and applicants for NAHASDA-assisted housing, the recipient shall use the criminal conviction information described in §1000.150 only for applicant screening, lease enforcement and eviction actions.

(b) With regard to applicants for employment, the recipient shall use the criminal conviction information described in §1000.150 only for applicant screening.

(c) The criminal conviction information described in §1000.150 may be disclosed only to any person who has a job related need for the information and who is an authorized officer, employee, or representative of the recipient or the owner of housing assisted under NAHASDA.

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**Statutory Amendment:**

P.L. 105-276 added § 408, which makes any housing plan, policy, or annual report prepared by a NAHASDA recipient available to the general public.

**Rulemaking Change Required:**

Add a new section at 24 C.F.R. § 1000.557 to read:

**§ 1000.557 What information must Tribes and TDHEs make available to the general public?**

Each recipient shall make any housing plan, policy, or annual report it prepares available to the general public.

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**Statutory Amendment:**

P.L. 108-393 added § 602(d), which provides that a guarantee made under the Title VI shall guarantee repayment of 95% of the unpaid principal and interest due.

**Rulemaking Change Required:**

Amend 24 C.F.R. § 1000.410(c) to read:

(c) The repayment period may exceed twenty years and the length of the repayment period cannot be the sole basis for HUD disapproval;

Amend 24 C.F.R. § 1000.410(d) to read:

(d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws; and

Add a new subsection to 24 C.F.R. § 1000.410 to read:

(e) A guarantee made under Title VI of NAHASDA shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.