



No. 2003-02
March 7, 2003

PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant

FOR: Area ONAP Administrators, Grants Evaluation Directors, and GE staff

R.B.A.

FROM: Rodger Boyd, Deputy Assistant Secretary, PN

TOPIC: Revised Procedures for Pursuing Enforcement Actions for Delinquent Annual Performance Reports

Purpose: Revise and simplify the process specified in Chapter 6 – Sanctions Process Guidelines in the GE Guidebook.

This Guidance incorporates the revised policy discussed in the memorandum dated June 27, 2002, from the then-Acting Deputy Assistant Secretary (attached), into the Grants Evaluation (GE) Guidebook. That memorandum implemented a streamlined process for imposing sanctions on Indian Housing Block Grant (IHBG) recipients for failure to submit an Annual Performance Report (APR).

Attached to this guidance are those pages in the Guidebook that have been affected by this change in policy. Also attached are revised sample letters to be used when following the enforcement process due to delinquent APRs.

Filing instructions are:

Remove	Insert
Chapter 2, APR Processing Guidelines, pages 2-1 through 2-4	Chapter 2, APR Processing Guidelines, pages 2-1 through 2-4
Chapter 2, APR Processing Guidelines, page 2-13	Chapter 2, APR Processing Guidelines, page 2-13
Chapter 6, Sanctions Process Guidelines, pages 6-1 through 6-17	Chapter 6, Sanctions Process Guidelines, pages 6-1 through 6-18

Remove	Insert
Appendix Chapter 2, Sample Past Due Notice/Letter of Warning, pages Appendix 2-4 and Appendix 2-5	None
Appendix Chapter 6, second page of NAHASDA Guidance 01-07 ONAP, page 6-7	Appendix Chapter 6, second page of NAHASDA Guidance 01-07 ONAP, and Sample Past Due Notice/Letter of Warning for Delinquent APRs, pages Appendix 6-7 through Appendix 6-9
Sample Notice of Intent – Delinquent APR and Sample Imposition of Sanctions, pages 6-8 through 6-12	Sample Notice of Intent for Delinquent APRs and Sample Imposition of Sanctions for Delinquent APRs, pages Appendix 6-10 through Appendix 6-14

The changes that have been made on the revised pages are indicated by a “star” in the left-hand column.

As indicated in the memorandum, these revised procedures only apply to those instances in which the delinquent APR is the only performance deficiency identified. Where other and/or several deficiencies have been identified, one of which may be a delinquent APR, Area ONAPs should continue to follow the process contained in Chapter 6 of the GE Guidebook.

If you have questions about these revised procedures or the sanctions process in general, please contact Vicki Schaefer, Grants Evaluation Specialist, at (303) 675-1622.

Attachments

U.S Department of Housing and Urban Development
Washington, D.C. 20410-5000



OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

June 27, 2002

MEMORANDUM FOR: Area Office of Native American Programs Administrators

A handwritten signature in black ink, appearing to read "Ted Key".

FROM: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, PN

SUBJECT: Revised policy for enforcement actions due to delinquent Annual
Performance Reports

This is to inform you that a Program Guidance is being developed that will revise the process for taking enforcement actions against recipients who fail to submit an Annual Performance Report (APR). The Program Guidance will provide you with more specific information on the revised process and with an updated version of Chapter 6 of the Grants Evaluation (GE) Guidebook. However, Area Offices may institute the revised policy immediately.

The main objective of this revision is to delegate to the Area Offices of Native American Programs (ONAPs) the authority to initiate enforcement actions without review by the Denver Program Office (DPO) and the Enforcement Center (EC) or my approval. This should shorten the time it now takes to impose sanctions for non-submittal of an APR. The "letter of warning" requirement contained in 24 C.F.R. §1000.530 and the "notice of intent" requirement contained in §1000.532 continue to apply. Sample standardized letters of warning and notices of intent revised for this modified procedure are attached. Under the new procedure, however, the DPO and EC would not be involved until the Area Office drafts the imposition of sanctions letter for my signature.

Please note that this process will only apply where the recipient fails to submit an APR, not if one was submitted and subsequently rejected. For those and other instances of noncompliance, the Area Offices will continue to follow the process currently in the GE Guidebook.

Any draft notices of intent that are presently in the DPO for review will be returned to the Area Offices for processing. If you have further questions, please contact Vicki Schaefer, GE Specialist, at (303) 675-1622.

Attachments

Chapter Two -- Annual Performance Report Processing Guidelines



This chapter provides ONAP staff with guidelines for processing Annual Performance Reports (APR) under the Indian Housing Block Grant (IHBG) Program.

It includes the following sections:

- Objectives and Overview of the Process -- 2.1
- Receive APR from Recipient -- 2.2
- Conduct APR Review -- 2.2.3 – 2.2.12
- Reviewing the Opening Grants of a Recipient -- 4.2


Tools and Templates



- APR reminder letter
- APR extension letter
- APR receipt letter
- APR receipt and information request letter
- APR Second Request for Information letter

(Background tools and templates are to be found in the Appendix of this Guidebook.)

Objectives
and
Overview



2.1 Objectives and Overview of the APR Process

NAHASDA states “For each fiscal year, each recipient shall—

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- (1) review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and
- (2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.”
(NAHASDA Section 404(a))

The objective of assessing how a recipient is managing its grants is to identify those recipients whose grants or projects have a higher risk of implementation problems or failure, and to determine if an audit or review is warranted as mandated in this statute.

In the Overall Performance Assessment process, the GE Division of ONAP uses a risk-based approach to its work. Accordingly, all grantees do not receive the same level of oversight. The purpose is to analyze data in order to identify problems and risks as described in 24 CFR §1000.520. Data that indicates greater risks supports a greater allocation of the GE Specialist’s time in the annual processing and subsequent monitoring.

“What are the purposes of HUD review?”

At least annually, HUD will review each recipient's performance to determine whether the recipient:

- a. *Has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objective of NAHASDA and with other applicable laws and has a continuing capacity to carry out those activities in a timely manner;*
- b. *Has complied with the IHP of the grant beneficiary; and*
- c. *Whether the performance reports of the recipient are accurate.”*
(24 CFR §1000.520)

The Overall Performance Assessment process is initiated by receipt of the APR for the NAHASDA program or the appropriate annual report, if the recipient does not participate in NAHASDA.

2.1.1 Reporting requirements

The report submitted to HUD is the Annual Performance Report (APR). Each grant recipient is to be sent an APR Reminder Letter 60 days prior to the recipient’s Program Year End. Once the APR is received ONAP has 60 days to review and provide comments on the APR in the form of an

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Overall Performance Assessment Report. ONAP may request additional information from the recipient during that 60-day review and comment period. Also, all IHBG recipients must submit, quarterly, the Federal Cash Transaction Reports (HUD 272-I).

2.1.2 Extension requests

If requested, the Area ONAP may grant one extension for a maximum period of 30 days when warranted by the circumstances of the delay. The APR Extension Request Letter format may be used and is included in the Appendix.

2.1.3 Recipient noncompliance

A recipient's failure to submit an APR becomes a sanctions issue, and the procedure to be followed is stated in the Sanctions Chapter of this Guidebook.

If an APR is not received within 3 days after its due date, the grant recipient is to be sent a *past due notice/letter of warning*. This notice gives the recipient 30 days to submit an APR. The *past due notice/letter of warning* notifies the recipient:

- that an edit has been added to the recipient's line of credit, requiring HUD review of drawdown requests before funds may be disbursed by the Line of Credit Control System (LOCCS).*
- that HUD may impose sanctions, as prescribed in 24 CFR §§1000.532 and/or 1000.538, if the APR is not received.

*LOCCS assists in planning, accounting, and evaluating HUD disbursements. It also can enforce program guidelines for document processing by automatically denying payment requests from grantees who do not comply with their reporting schedule.

If the APR is received and found to be complete and accurate, the GE Specialist is to release the edit control placed in LOCCS on the grant(s).

2.1.4 Interface between APR and IHP reviews

The review requirements for the APR are not as stringent as those for reviewing an IHP. The APR describes the recipient's progress in accomplishing the goals and objectives that are stated in their IHP. In contrast to the review of an IHP, the purpose of the APR review is not to

Tool: APR Extension Letter



**Tool: Past Due Notice/
Letter of Warning**

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establish recipient compliance with statutory requirements. The primary purpose of the APR is to provide ONAP with information regarding progress with implementation of the tribe's IHP.

Reviewers' responsibilities include:


- Determining if the report was submitted in a timely manner;
- Determining if it included all required information;
- Providing recommendations on the recipient's plans and on the APR to assist the recipient in improving affordable housing delivery; and,
- Providing comments to the recipient regarding its IHBG performance based on review of information in the report.

The GE Specialist has the flexibility to determine which steps of the review guidelines must be completed to support the reviewer's conclusions and recommendations.

Interface with Overall Performance Assessment: The APR and any reviewer observations and comments made during the APR review serve as the foundation for the Overall Performance Assessment. Reviewing the APR and completing an Overall Performance Assessment should be accomplished within 60 days of receipt of the APR.

APR Review Guidelines: The APR Review Guidelines are divided into two stages, with slightly different objectives. The first stage is to determine if the APR is complete and accurate. The second stage is a detailed evaluation of the APR to (1) determine if the recipient is progressing towards meeting its affordable housing goals and (2) develop constructive suggestions to the recipient to improve its operations, IHP, and delivery of its affordable housing services.

Receive
APR from
Recipient



2.2 Receive APR from Recipient

2.2.1 Log receipt of APR and Assignment to a GE Specialist

IHBG recipients may submit APRs in hard copy, on diskette, or by the Internet. The GE Director (or Team Leader) of each Area ONAP should

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recipient rehabilitates units and conducts subsequent unit inspections.

2.2.13 Outputs of the APR review process

The APR review process requires that the GE Specialist record comments on each recipient's performance deficiencies and best practices. Those comments will be incorporated in the *Overall Performance Assessment Report*.

Chapter Six -- Sanctions Process Guidelines

This chapter provides ONAP staff with procedures to follow in circumstances when recipients fail to take action to address noncompliance with HUD requirements. It includes the following sections:

- Objectives and overview of the sanctions process
- Enforcement actions
- “High Risk” designations pursuant to 24 C.F.R. §85.12
- Limited denial of participation (LDP) actions, debarments, and suspensions*

* Note: Section 6.4 includes a discussion of actions, which may be taken under the provisions of 24 CFR Part 24 -- Government Debarment and Suspension. However, since these actions (in other than very extraordinary circumstances) would be specifically directed at individuals for mal- or misfeasance and not at recipients of assistance (tribes, TDHEs), they are treated as a separate class of sanctions. Therefore, the discussion in this chapter other than in that section – unless specifically indicated – will only address policies and procedures for recipient failure to address identified areas of noncompliance.

Background, Tools and Templates

- November 12, 1999, Memorandum from DAS – Procedure for taking action under Section 401(a) of NAHASDA
- February 18, 2000, Enforcement Protocol, Addendum 1 (ONAP)
- January 18, 2001, NAHASDA Guidance No. 2001-07 – Use of 24 CFR Part 85.12 “High Risk” Determination
- Past Due Notice/Letter of Warning for delinquent APRs
- Notice of Intent/Offer of Informal Meeting for delinquent APRs
- Imposition of Sanctions Letter for delinquent APRs

(Background tools and templates are to be found in the Appendix of this Guidebook.)

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6.1 Objectives and Overview of the Process

The imposition of sanctions is the ultimate tool available to HUD to protect public trust. The principal objective of the sanctions process, with respect to exercising public trust responsibilities, is to address the willful failure of a recipient to correct noncompliance with statutory or regulatory requirements identified by HUD monitoring and oversight (see §1000.530 for the IHBG program and §1003.701 for the ICDBG program). It may, however, also be necessary and appropriate to take sanctions if the recipient is unable to address or correct noncompliance because it lacks the administrative capacity to do so. In other words, HUD may take sanctions if a recipient will not or cannot implement the corrective or remedial actions requested or recommended by ONAP (or other recipient identified acceptable actions) in a timely manner.

For the IHBG program, ONAP may impose those sanctions described in §1000.532 or §1000.538 depending on the nature of the noncompliance – non-substantial or substantial. As established in the November 12, 1999, memorandum from the ONAP DAS, the imposition (or removal) of the sanctions provided in §1000.532 and a declaration of substantial noncompliance and the imposition (or removal) of the sanctions provided in §1000.538 can only be made by the DAS.

For the ICDBG program, there is no definition in the program regulations for substantial noncompliance. The distinction made between the sanctions available at §1003.702 and §1003.703 is not related to the nature of the noncompliance but to which entity or person within HUD may take the action. The sanctions available in §1003.702 may be taken by the Area ONAP; the authority to take those in §1003.703 have been delegated by the Secretary to the DAS and have not been further delegated or redelegated. The ICDBG Program is not discussed in the November 12, 1999, memorandum.

For grant programs other than IHBG or ICDBG, e.g., Rural Housing and Economic Development, unless program regulations are developed which specifically address enforcement or sanctions, the provisions of 24 CFR §85.43 Enforcement, as referenced in the program grant agreement, will be implemented in a manner consistent with intent and following the process and procedures in the IHBG program regulations, i.e., part 1000, subpart F.

Under the very limited circumstances described below in Section 6.3, a High Risk determination or designation under the provisions of

***Tool:11/12/99 Memo from
DAS***

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24 CFR §85.12 may be made and imposition of risk-specific conditions or restrictions on future grants may be done. This may be the most appropriate sanction procedure to use for an IHBG or ICDBG recipient which fails to take appropriate and timely action to address a finding of noncompliance. An Area ONAP Administrator may take these actions without DAS approval.

The key to effectively imposing sanctions is timely, thorough, and accurate documentation by the GE Specialist. In general, grants evaluation processes are intended to help GE Specialists detect and document deficiencies early so that recipients have ample opportunities to correct them. However, if recipients fail to take appropriate corrective actions in a timely manner, ONAP will rely on its documentation to explain and justify its sanctions, and to support legal actions (if necessary).

6.1.1 Various Roles in the Sanctions Process

The role of the GE Specialist

As explained above, timely, thorough, and accurate documentation is required to explain and justify any sanctions, and to support legal actions (if necessary). In coordination with the GE Division Director, the GE Specialist makes the recommendation of actions required to address recipient failure to take corrective actions, including engaging the Enforcement Center.

The role of the Enforcement Panel

The role of the Enforcement Panel is to:

- review the facts surrounding the finding(s) of noncompliance and review actions taken by the GE Division to effect compliance
- review actions, if any, taken by the recipient to address the identified noncompliance
- review the cause(s) of the noncompliance identified by the GE Division
- affirm the recommendation of the GE Specialist or identify additional actions to be taken by the Area ONAP to remedy or otherwise address the recipient's failure to address the noncompliance.

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(The Enforcement Panel is representative of both Area ONAP Divisions (see 6.1.2 below) and it must concur in or affirm recommendations for all proposed sanction actions including High Risk designations, LDPs, debarments and suspensions).

A sanction is a serious matter that can have significant impact on the recipient, the beneficiary tribe (if a TDHE is the recipient), its constituents, and the resources of the ONAP. Recommended actions by the Area ONAP must be consistent with those taken in similar situations within the ONAP's jurisdiction. Before such an action is taken, it is essential that both the GE and GM Divisions and the Administrator provide input to the decision and are aware of written and/or verbal commitments Area ONAP staff may have made, i.e., providing technical assistance.

If the Enforcement Panel verifies that the finding of noncompliance was not addressed or was insufficiently addressed by the recipient, it may recommend a specific sanction for consideration and final determination by the Area ONAP or DAS, as appropriate, or it may direct the Area ONAP to take additional actions, which if unsuccessful, will lead to a recommendation of a sanction.



The role of the Office of Regional Counsel

The local Office of Counsel will serve as support to the Area ONAP in initiating enforcement actions.

The role of the Denver Program Office - Office of Grants Evaluation

The Denver Program Office - Office of Grants Evaluation, is assigned the responsibility for coordinating enforcement actions (those listed under §§1000.532 and 538 for IHBG; §1003.703 for ICDBG; and §85.43 for other grant programs) with the Area ONAP, the Enforcement Center, the Office of General Counsel (OGC), and the DAS. Included in this responsibility is the obligation to review all proposed enforcement actions for consistency between ONAPs, tracking of enforcement actions through imposition, reporting on status of imposed sanctions, and communication with and between all parties.

As noted above, under the IHBG program, authority to declare a substantial noncompliance under §1000.534 or to impose and to remove sanctions under §1000.532 or §1000.538 has been reserved by the DAS. Also as noted above, the DAS has retained the authority to impose

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sanctions under §1003.703 for the ICDBG program and those under §85.43 for other grant programs.

The role of the HUD Enforcement Center

Tool: Enforcement Protocol

The HUD Enforcement Center supports all Area ONAPs by providing advice and guidance on enforcement strategies. These guidelines are based on the Enforcement Protocol developed by ONAP and the HUD Enforcement Center, which outlines the roles and responsibilities of the Enforcement Center in assisting ONAP to resolve instances of failure by a recipient to address findings of noncompliance involving IHBG and ICDBG funds. The Protocol, dated February 18, 2000, is very similar to that used by ONAP in the past for handling enforcement actions.

The Enforcement Center serves as HUD counsel for hearings under 24 CFR Part 26 and when it is necessary to refer potential civil actions to the Attorney General for filing in Federal courts. Since any enforcement action may result in litigation, counsel for the Enforcement Center reviews all relevant documents and correspondence with the recipient before a substantial noncompliance under IHBG is declared or before any sanctions are imposed upon a recipient's grant programs under §1000.532 or 538 (IHBG), §1003.703 (ICDBG) or §85.43 (other grant programs). (As noted above, for purposes of implementing sanctions listed in the IHBG regulations, a declaration of substantial noncompliance is required only if the sanctions sought are those listed in §1000.538).

Substantial noncompliance exists if there is:

- **material effect on recipient meeting goals and objectives**
- **material pattern or practice of willful noncompliance**
- **material amount of NAHASDA funds obligated or expended;**
- **substantial risk of fraud, waste, or abuse**

The Area ONAP and/or the Denver Program Office may utilize the Enforcement Center's expertise throughout the sanctions process.

6.1.2 Responsibilities

GE Division Director

The GE Division Director convenes an Enforcement Panel and serves as the Panel facilitator. The GE Director also ensures that there is consistency between the enforcement actions taken between recipients.



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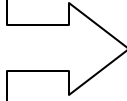
However, the Administrator makes the final decision on the disposition of the case within the Area ONAP based upon input from the entire Panel.

GE Specialist

The GE Specialist assembles all available documentation that supports the assessment of failure on the part of a recipient to address findings of noncompliance in a timely manner for review by members of the Panel. Documentation should include, as appropriate, correspondence, internal memoranda and notes, monitoring reports, responses from the recipient, overall performance assessments, audits and audit reviews, annual performance reports and reviews, corrective action plans, management decisions, environmental reviews, and third-party observations. In addition, the GE Specialist will prepare recommendations of sanctions to be taken for consideration by the Panel. For IHBG, if the recommended sanctions include those listed in §1000.538, the GE Specialist must also provide evidence or documentation that the noncompliance that has not been addressed meets the regulatory requirements for substantial noncompliance (§1000.534). The GE Specialist will ensure that copies of all documents are prepared for each member of the Panel.

Enforcement Panel

Composition of
Enforcement
Panel



Members of the Enforcement Panel must include the Administrator, Area ONAP counsel, GE Division Director, and GM Division Director and may include, as appropriate, Area ONAP staff, representatives from the Denver Program Office, and Office of Inspector General (OIG). The Panel reviews the evidence to determine if the actions taken by the Area ONAP: were appropriate given the substance of the noncompliance identified; were taken in compliance with the procedural requirements of the regulations, specifically §1000.528 (which by ONAP policy applies to ICDBG and other grant programs in addition to IHBG); and, included, if appropriate, provision or offer of technical assistance. The GE Specialist may be asked to collect additional documentation before the Panel makes its decision. While additional evidence is being gathered, the Panel may discuss other findings where sufficient documentation already exists.

The Panel will review any information provided by the recipient to determine if it has adequately addressed the noncompliance by taking the corrective or remedial action requested by the Area ONAP. The Panel could also determine that even though an action taken by a recipient to address the noncompliance is not that which was recommended, it may be adequate. If it is determined that the recipient has taken adequate actions,

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the Panel will recommend that the GE Division Director transmit a determination of compliance to the recipient. If the Panel does not make such a determination, the Panel will proceed to the next step.

For the IHBG program, the Panel will review the documentation assembled by the GE Specialist to determine if the performance problem, which has not been adequately addressed, would meet the regulatory requirements for substantial noncompliance (§1000.534). If such a finding can be made, the Panel will prepare a recommendation (that will accompany any proposed sanction recommendations) for the DAS that a declaration of substantial noncompliance be made.

In order to recommend the appropriate action to be taken to address the recipient's failure to adequately address a finding of noncompliance, the Panel will review the documentation gathered by the GE Specialist and interview the specialist in an attempt to ascertain the cause or causes. It may be determined that the most appropriate step to be taken would be the recommendation of additional corrective actions rather than sanctions.

If it is determined that failure to adequately address a compliance problem is due to ineffective administrative capacity of the recipient, it is possible that the most appropriate action is the provision of technical assistance by ONAP or a third party rather than the imposition of a sanction. However, if a recipient's ineffective administrative capacity exposes HUD funds to substantial risk of fraud, waste or abuse, the Panel should recommend a sanction.

Measurements of administrative capacity:

- *history of satisfactory performance*
- *financial stability*
- *acceptable management systems*
- *acceptable policies and procedures*
- *compliance with previous awards*
- *experienced employees*

The Panel will recommend to the Administrator the sanctions determined to be appropriate for the noncompliance issues.

The GE Division Director shall prepare, or cause to prepare, a summary of the decisions and recommendations made by the Panel.

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NOTE: In cases where the recipient noncompliance represents a possible criminal violation, the GE Division Director must consult the local Office of the Inspector General (OIG) and Office of Regional Counsel (ORC). If representatives of these offices participate in Panel deliberations, then no additional consultation is needed.



The Office of Regional Counsel

The local Office of Counsel is responsible for providing legal advice to the Area ONAPs on enforcement actions. This Office may also assist the Area ONAP in drafting the enforcement letters.

Denver Program Office

The Denver Program Office is responsible for facilitating the review of the recommendations with the Enforcement Center and the OGC, including the Area ONAP in all relevant discussions. When the document package is received from the Area ONAP recommending actions to be taken, the Denver Program Office - Office of Grants Evaluation will review the documents to assure the package is complete and will provide copies to the Enforcement Center and the Headquarters Program Counsel (OGC) for review and action.



The Denver Program Office is also responsible for tracking the progress of the enforcement action through the review and approval process and for assuring the Area ONAP is regularly informed of the status. Once the draft *Notice of Intent/Offer of Informal Meeting* is concurred on by the Enforcement Center, the Denver Program Office will obtain the approval of the DAS to go forward with the letter. (For delinquent APRs, see 6.2.3.)

The Denver Program Office will notify other Area ONAPs of impending enforcement actions and other impending sanctions. The purpose is to guide other Area ONAPs in processing enforcement actions with similar circumstances of noncompliance.

Enforcement Center

The primary function of the Enforcement Center in enforcement actions is to represent ONAP and to ensure the actions taken by ONAP are legally supportable and appropriately documented. If, in the opinion of the Enforcement Center Counsel, the actions proposed or the documentation developed would not be upheld in an administrative or judicial review, the Enforcement Center Counsel will provide advice and assistance to the

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Area ONAP and the Denver Program Office as to what actions are appropriate.

If the Enforcement Center Counsel believes the actions proposed are appropriate and the documentation adequate, the counsel will provide the Denver Program Office with the approved draft *Notice of Intent/Offer of Informal Meeting*, with any revisions made. From the time the letter of intent to take action is sent by the Area ONAP to the recipient until the recipient's hearing rights are completed, the Enforcement Center Counsel assumes the lead role in the review of documents sent by the ONAP or received from the recipient and is responsible for representing the Department in administrative or judicial review proceedings. (For delinquent APRs, see 6.3.2.)



Program regulations at §§1000.538(d) and 1003.703(b) authorize HUD to refer issues of noncompliance to the U.S. Attorney General with a recommendation that an appropriate civil action be instituted.

6.2 Enforcement Actions

The provisions of subpart F of part 1000 are consistent with and reflect the government-to-government relationship established by NAHASDA and should be used to address IHBG recipient performance deficiencies unless the limited circumstances under section 6.3, High Risk Designations, apply. For more detailed information on the IHBG enforcement process, consult 24 CFR §§1000.522-28, 1000.532, and 1000.538.

Under the IHBG program in 24 CFR §§1000.532 and 1000.538, the sanctions include:

- Adjust, reduce or withdraw future grant amounts (Note: P.L. 106-569 amended these sanctions to include only the adjustment of future grant amounts – the regulations will be rewritten to reflect the change.)
- Terminate payments to the recipient
- Reduce payments under an existing grant
- Limit the availability of payments for existing grants
- Provide a replacement TDHE
- Refer the matter to the Attorney General

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- Other appropriate actions in accordance with reviews and audits (Note: This option was deleted in P.L. 106-569 and the regulations will be changed to reflect this.)

Note: To implement an action listed under §1000.538, it is necessary that a declaration of substantial noncompliance be made.

Under the ICDBG program, under §1003.702 the Area ONAP may reduce or withdraw grants; under §1003.703, the DAS may terminate grants, reduce grants by an amount which was not expended in accordance with part 1003, limit availability of funds to project or activities not affected by failure to comply with part 1003, or, if appropriate, refer the matter to the Attorney General.

Under grant programs other than IHBG or ICDBG, under §85.43, the Area ONAP may temporarily withhold cash payments, disallow all or part of the cost of the activity, wholly or partly suspend or terminate the current grant award, withhold further awards, or take other remedies that may be legally available.

6.2.1 Referral to the Denver Program Office – Office of Grants Evaluation



The following process applies for all enforcement actions, except those involving delinquent APRs (see 6.2.3). If the Enforcement Panel recommends imposing sanctions under §§1000.532/538, 1000.703, or 85.43, the GE Specialist prepares a compilation of documents supporting the recommendation for submission to the Denver Program Office. Only one package is necessary to be submitted, which includes the following documents:

- a chronology of pertinent actions/documents;
- copies of all communication with the recipient regarding or related to the findings;
- recommendations for enforcement actions to be imposed (summary of Enforcement Panel recommendations);
- recommendation that a determination of substantial noncompliance be made if sanctions under §1000.538 are recommended;
- the *monitoring log*, if appropriate (found in the Appendix to this Guidebook);

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- the *audit tracking log*, if appropriate (found in the Appendix to this Guidebook); and,
- a draft *Notice of Intent to Impose Sanctions/Offer for Informal Meeting* to the recipient (per §1000.532(b)).

The Area ONAP GE staff is encouraged to discuss the pending referral to the Headquarters Office with the Denver Program Office while the documents package is being compiled to assure the package is complete and that the Denver Program Office is fully aware of the circumstances of the case.



6.2.2 Process for Imposing Enforcement Action Sanctions

The process for imposing such sanctions under the IHBG program (§1000.532 or 538) is summarized below. The process for imposing sanctions for delinquent APRs is explained in 6.2.3. Sanctions under §1000.538 affect current grants. With the exception of those sanctions available to the Area ONAP under §1003.702 for the ICDBG program, similar processes will be followed for ONAP's other grant programs. The specific modifications to these procedures, e.g., formats for notices, for non-IHBG programs will be provided by the Denver Program Office as needed by the Area ONAPs.



***Tool: Notice of Intent to
Impose Sanctions***

Notify the recipient of actions HUD intends to take and offer an informal meeting – *Notice of Intent/Offer of Informal Meeting*. In most cases, this letter will be drafted by the GE Specialist. However, it will be left up to the Area ONAP's discretion, based on the circumstances and/or relationship with the Area ONAP counsel, whether to utilize the Area ONAP counsel's assistance in drafting this document. Except for delinquent APRs, the draft will then be reviewed and concurred with by the Denver Program Office, the Enforcement Center, and the OGC; approved by the DAS; and then signed and issued by the Area ONAP. Section 1000.532(b) provides for the opportunity for an informal meeting between the recipient and the Area ONAP to resolve the deficiency(s) before the imposition of sanctions. Section 1000.538 does not require that HUD provide the opportunity for such an informal meeting. However, to remain consistent with the process under §1000.532 and because it is reasonable to provide the opportunity to resolve issues in an informal setting, the informal meeting is included as ONAP policy under this process. The regulation does not specify a time for the informal meeting, but a 30 calendar-day period to request the meeting from the date of the notice of intent is reasonable under most circumstances. The informal

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meeting should be scheduled for a time acceptable to both the recipient and the Area ONAP.

At the conclusion of the informal meeting, if one is held, the GE Specialist may summarize the discussions of the informal meeting in a letter to the recipient. Also, the Area ONAP prepares a memorandum to the Denver Program Office, detailing the discussions and results of the meeting and its recommendations on the next steps to be taken. The Denver Program Office will convene a telephone conference with the Area ONAP, the Enforcement Center, and the OGC, if appropriate, to discuss the appropriate steps to be taken.

If the Area ONAP believes that the informal meeting resulted or concluded with an identification of the actions to be taken and a commitment to take the actions to resolve the deficiencies, the Area ONAP, through the Denver Program Office, may recommend a suspension of proposed enforcement actions to the DAS. If the DAS agrees, the GE Division Director will track the recipient's progress in taking the agreed-upon actions and will provide the Denver Program Office with quarterly status reports until all identified deficiencies are resolved (*monitoring findings log and/or audit tracking log*).

If the recipient does not ask for an informal meeting or the informal meeting fails to resolve the deficiency, a letter is sent to the recipient which states the actions HUD is taking and provides notification of the formal hearing rights under §1000.540 (see 6.2.4). For §1000.532 sanctions, the HUD action is effective the date of the notification. Whereas under §1000.538, the HUD action is not effective until after the hearing, or until 30 days after the date of the notification, whichever is later. However, HUD can suspend payments to the recipient pending a hearing and final decision. (**NOTE:** P.L. 106-569 amends this to state that HUD can limit the availability of payments to programs, projects, or activities not affected by the noncompliance prior to conducting a hearing if the noncompliance would result in a continued unlawful expenditure of funds. The regulations will be changed to reflect this.) This letter is drafted by the Area ONAP; reviewed and concurred with by the Denver Program Office and Enforcement Center; and signed and issued by the DAS.



If there is a request for a hearing before an Administrative Law Judge, the Enforcement Center manages the process with the assistance of the Area ONAP and Denver Program Office. Under §1000.532, reallocation of funds withdrawn from the recipient cannot be accomplished until 15 days

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after the hearing. If there is no request for a hearing, the sanctions are imposed and the management is retained by the Area ONAP.

If it is determined that the recipient must take corrective actions in order to resolve the deficiency(s), it is important that the corrective actions be appropriate for the performance problem identified. This will require that the GE Specialist, with the Enforcement Panel's concurrence, determine the most appropriate way to address the deficiency and what documentation would need to be submitted by the recipient in order to verify that the action had been taken, thus, enabling the sanction to be removed.



6.2.3 Process for Imposing Enforcement Action Sanctions for Delinquent APRs

Just in those instances where the delinquent APR is the only performance deficiency identified, the following streamlined procedures are to be followed. Where other and/or several deficiencies have been identified, one of which may be a delinquent APR, Area ONAPs should continue to follow the process outlined above in 6.2.2.

***Tool: Past Due
Notice/Letter of Warning***

***Tool: Notice of Intent to
Impose Sanctions***

***Tool: Imposition of
Sanctions Letter***

If a recipient fails to submit an APR, the Area ONAP is required to issue a letter of warning (LOW) in accordance with 24 C.F.R. §1000.530 and allow the recipient time to respond. If the recipient does not respond within the time allowed, the Area ONAP will prepare and transmit a notice of intent (NOI) to the recipient, in accordance with §1000.532(b). The Area Administrators will be authorized to sign the NOI and will not be required to submit the NOI through the Denver Program Office (DPO) for review and on to the Enforcement Center for concurrence.

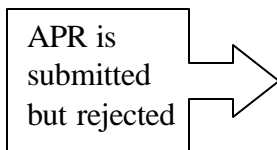
If there are funds remaining in a recipient's current grant(s), ONAP will propose to limit the availability of those funds under §1000.538(a)(3). However, if no funds remain, ONAP will propose to condition the next grant until an acceptable APR is submitted, as allowed under the authority in §1000.532(a). Both of these sanctions are equivalent to determining that the recipient is "high risk" under 24 C.F.R. §85.12 and placing the special condition on its grant(s) outlined in §85.12(b)(2), "withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period".

If the recipient does not respond to the NOI or does not resolve the deficiency after the opportunity for an informal meeting, the Area ONAP will prepare the draft Imposition of Sanctions (IOS) letter and a

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chronology to send to the DPO. This chronology should list all actions taken by the Area ONAP and the recipient in regards to the delinquent APR. The Area ONAP will not have to submit the supporting documentation (reminder letter, LOW, NOI, and other correspondence) unless and until the enforcement action proceeds to an administrative hearing. Once these documents are sent to the DPO, the process will be the same as what is outlined in 6.2.2 above, e.g., the IOS is reviewed by the DPO, concurred on by the Enforcement Center, and signed by the Deputy Assistant Secretary.

After imposing sanctions, the GE Specialist should remain in contact with the recipient to encourage submission of the APR. If the recipient has not submitted the APR after 6 months, the Area ONAP should begin enforcement actions to impose additional, more severe sanctions, for lacking the administrative capacity to administer their program and not substantially complying with the requirements of 24 C.F.R. Part 1000. By following this procedure, it should eliminate the prospect of amending an IOS due to a subsequent year's APR being delinquent.



If the recipient submits the APR prior to issuance of the IOS and the Area ONAP determines that it is incomplete and rejects it, the Area ONAP will, at that point, follow the process outlined in 6.2.2. When the Area ONAP submits the draft letter (whether it is the NOI or the IOS) to the DPO for review, it must also submit a copy of the APR and the letter rejecting the APR.



6.2.4 Recipient Hearing Process

A recipient may request a hearing under the provisions of §1000.540 within 30 days of the date of the notification letter of a pending enforcement action.

A hearing is presided over by an administrative law judge under procedures specified in 24 CFR Part 26. ONAP staff should expect to devote a substantial amount of their time to briefings and coordination with the Enforcement Center during a hearing process. Typical cases last for several months. The Enforcement Center counsel represents ONAP in the hearing process.



6.2.5 Confirm recipient compliance with required corrective actions/removal of sanctions

Certain of the sanctions imposed may provide that the sanctions will be removed if the recipient takes identified corrective actions within a specified timeframe. In such situations, once the actions are taken, the GE Specialist will prepare a letter for the DAS' signature that confirms compliance with corrective actions and removes the sanction. The letter will be routed through the GE Division Director, the Denver Program Office, the OGC (if appropriate) and the Enforcement Center for concurrence. The GE Specialist updates the *monitoring log and or audit-tracking log* with regular status reports and when compliance is confirmed and sanction removed. **Note:** for sanctions imposed by the Area ONAP for ICDBG recipients under §1003.702, the Administrator would sign the letter.

6.3 High Risk Designations

The authority of §85.12 may only be invoked when the Area ONAP believes a recipient's deficient performance meets the requirements of §85.12 (a) and the performance problems:

- have only recently been discovered and the timely issuance of a grant award precludes the use of part 1000, subpart F process and procedures; or
- have been identified in a draft or final report but the recipient has not had adequate opportunity to implement corrective or remedial actions prior to the timely issuance of a grant award.

The use of the process and procedures discussed under Section 6.2 is the preferred approach.

Special conditions and/or restrictions can only be placed on future grants and usually should not be repeated for subsequent grants. These guidelines govern the IHBG and ICDBG programs. The Area ONAP may determine a recipient is high risk (and remove such designation) without the prior concurrence of the DAS or review by the Enforcement Center; however, such action may only

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be taken with the concurrence of the Area ONAP Enforcement Panel.

Not all of the possible special conditions listed in §85.12 (b) are available and some are only available with restrictions. Specifically, it is not possible to include a special condition which would withhold authority for a recipient to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period; the use of such a condition would conflict with the provisions of Section 401(a)(1)(C) of NAHASDA.

The special conditions and/or restrictions that the Area ONAP may impose must be risk-specific and are limited to:

- payment on a reimbursement basis – this condition would include pre-review of supporting documentation before HUD approval of a Treasury draw through LOCCS.
- requiring additional, more detailed financial reports – given potential conflict with Section 401(a)(1)(C) of NAHASDA, for IHBG, cannot be linked with availability of payments. Also more detailed reports could be requested but if not provided, subpart F procedures would be followed to enforce.
- additional project monitoring.
- requiring the recipient to obtain technical or management assistance – given potential conflict with Section 401(a)(1)(C) of NAHASDA, for IHBG, cannot be linked with availability of payments. Technical or management assistance could be recommended but if recipient failed to follow the recommendation, subpart F procedures would be followed to enforce.
- establishing additional prior approvals – given potential conflict with Section 401(a)(1)(C) of NAHASDA, for IHBG, cannot be linked with availability of payments. Additional approvals could be established but if the recipient failed to comply, subpart F procedures would be followed to enforce.

6.3.1 Responsibilities

GE Specialist

Prior to awarding a new grant, the GE Specialist will gather all relevant information and, in coordination with the GE Division

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Director, make the recommendation to the Enforcement Panel of a high-risk designation and the actions required to bring a recipient into compliance and to remove the high-risk designation. The special conditions and/or restrictions must correspond to the high-risk condition and be included in the award. This will require that the GE Specialist, with the Enforcement Panel's concurrence, determine the most appropriate way to address the deficiency and what documentation would need to be submitted by the recipient in order to verify that the action had been taken, thus, enabling the high risk designation to be removed.

The GE Specialist is responsible for keeping the appropriate GM Specialist informed throughout the process of the intended action. The GE Specialist must notify the recipient in writing, as early as possible, of the high risk designation and impending actions.

Enforcement Panel

The Enforcement Panel must review the recommended high-risk designation, the actions recommended by the GE Specialist to address the conditions, which support such a designation, and it must concur in these matters or provide viable options for the Area ONAP to pursue.

GE Director

The GE Director is responsible for ensuring that all high-risk designations meet the statutory requirements of Section 401 and that the conditions imposed under 24 CFR §85.12 do not conflict with those requirements.



6.4 Limited Denials of Participation, Debarments and Suspensions (24 CFR part 24 sanctions)

A "Limited Denial of Participation" (LDP) is an action that immediately excludes or restricts a person from participating in HUD program(s) within a defined geographic area. A "Debarment" is an action taken to exclude a person from participating in covered transactions. A "Suspension" is an action taken that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceeding as may ensue.

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6.4.1 Responsibilities

Prior to initiating an LDP, debarment, or suspension, the GE Specialist should consult with its local counsel to ensure that the action is appropriate and that the proper procedures are followed.

If an LDP is issued, a sanctioned party has a right to informal consultation with ONAP and a right to a hearing. The GE Director must refer suspensions and debarments through the Regional Counsel's Office to the Enforcement Center for action. The causes for LDPs, debarments, and suspensions are listed at 24 CFR Part 24. The GE Director should also advise the Program Office – Office of Grants Evaluation of any such actions taken.

The Denver Program Office will notify other Area ONAPs of impending LDPs, debarments, and suspensions. The purpose is to alert the Area ONAPs of potential spillover effects among their recipients. For example, a recipient staff member issued a LDP by an Area ONAP may attempt to join the staff of a recipient in a different office's jurisdiction.

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- have been identified in a draft or final report (§§1000.528/530) but the recipient has not had adequate opportunity to implement corrective or remedial actions prior to the timely issuance of a grant award.

Given these restrictions on its use, it would be unusual if a recipient is repeatedly determined “high risk” under §85.12.

As I have indicated above, the use of the authority provided by §85.12 for those grant programs other than IHBG shall be consistent with that established for IHBG. In practice this means that for these programs, the authority provided under §85.12 should only be used in the circumstances described above. In other circumstances, if the program regulations address the requirements for actions and procedures to be taken regarding deficient recipient performance, e.g., ICDBG at §§1003.701-703, these requirements should be followed. Regarding other grant programs, e.g., Rural Housing and Economic Development, if program regulations do not exist or do not address these requirements, the requirements of 24 CFR 85.43 Enforcement as referenced in the program grant agreement shall be implemented following the process and procedures in part 1000, subpart F.

It is not my intent to inhibit an Area ONAP’s ability to protect the Federal interest in the administration of its programs. Rather, I want to emphasize the importance of using the appropriate authorities in light of the special relationship we have with Indian tribes. It is expected that Area ONAPs will: provide timely notice of performance problems; work with recipients (to the extent possible) to address these problems; and implement appropriate remedial actions when a recipient fails to address them .

Please note that although my concurrence in imposing grant conditions will no longer be required, I continue to be interested in knowing which recipients are experiencing administrative capacity difficulties. To keep me informed, a listing of recipients designated “high risk” under §85.12 is to be included on the monthly Significant Issues Listing already being provided by each Area ONAP.

If there are any questions or if an Area ONAP is having difficulty implementing this policy, additional guidance can be obtained through the Program Office - Office of Grants Evaluation.

FILING: File a copy of this Guidance in the Grants Evaluation Guidebook, Enforcement Chapter Appendices.

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SAMPLE PAST DUE NOTICE/LETTER OF WARNING for Delinquent APRs

[Insert Recipient Name & Address]

Dear *[insert recipient name]* :

SUBJECT: Past Due Notice/Letter of Warning
Annual Performance Report
Indian Housing Block Grant(s) # _____

This is to notify you that an Annual Performance Report (APR) covering the reporting period *[insert reporting period]* for the subject Indian Housing Block Grant(s) (IHBG) is delinquent. In our letter dated *[insert date of Reminder Letter]*, we notified you that an APR was due to the *[insert ONAP Office]* on or before *[insert due date]* for the subject IHBG(s). As of this date, we have not received the APR as required by the regulation at 24 CFR §1000.514. This constitutes a formal letter of warning pursuant to §1000.530(a)(1).

The APR provides critical information regarding the recipient's activities, as described in 24 CFR §1000.512. Since this information has not been provided, it will be necessary for HUD to review your payment requests through the Line of Credit Control System (LOCCS) before funds can be disbursed. Therefore, before requesting funds from LOCCS, you must submit to this Office the LOCCS Payment Voucher, form HUD-50080-IHBG, with supporting documentation for the disbursement. Fax transmissions will be accepted unless indicated otherwise. Examples of supporting documentation may include:

- contracts or contract register,
- invoices or check register, and
- payrolls.

This will enable us to verify that the IHBG funds you are requesting will be used for eligible activities to implement the goals and objectives of your Indian Housing Plan and that the activities you are conducting are in compliance with statutory and regulatory

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requirements. The requirement will be discontinued when your APR is received and is found to be complete and accurate.

As a grant recipient, you are responsible for ensuring compliance with all NAHASDA requirements. In accordance with 24 CFR §1000.530, if you fail to address this identified problem, HUD may impose sanctions as prescribed in §§1000.532 and/or 1000.538. Section 1000.532 authorizes HUD to adjust your future grant funds. Upon HUD's determination that you failed to comply substantially with any provision of NAHASDA, §1000.538 authorizes HUD to terminate, reduce, or limit your grant payments, or replace the recipient.

If we do not receive a complete and accurate APR for the reporting period [*insert reporting period*] within 30 days from the date of this letter, we will consider taking the necessary actions pursuant to §§1000.532 and/or 1000.538 to enforce this statutory requirement. In accordance with these regulatory provisions, you will be provided with an opportunity for an informal meeting, and if the issue remains unresolved, you will be provided with the opportunity for a hearing.

We look forward to receipt of your APR and hope that you are able to respond to this matter as soon as possible. If we may provide you with any assistance or you have questions on this matter, please contact [*insert GES name*], Grants Evaluation Specialist, at _____.

Sincerely,

[*insert GE Director's name*]
Director
Grants Evaluation Division

[*insert if Tribe is not the recipient:*
"cc:
_____ Tribe"]

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SAMPLE NOTICE OF INTENT for Delinquent APRs

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear [insert recipient name]:

SUBJECT: Indian Housing Block Grant Program
Letter of Intent/Offer of Informal Meeting
Notice of Administrative Actions

This is to notify you that HUD intends to impose sanctions under the Indian Housing Block Grant (IHBG) Program as authorized at 24 CFR §§1000.532 and 1000.538 because the [insert recipient name] failed to submit the Annual Performance Report (APR) for its IHBG(s) for the reporting period [insert reporting period].

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), under section 404, requires grant recipients to annually review their performance and to submit a report to HUD describing the conclusions of the review. The IHBG program regulations at 24 CFR §1000.514 require submission of the report within 60 days of the end of the recipient's program year. This report is referred to as the APR.

The [insert recipient name] received [insert #] grants under NAHASDA, [insert grant numbers], for which an APR was due on [insert due date]. [Insert if extension granted: "The Tribe (or TDHE) requested and this Office approved a 30-day extension on _____; however, the APR was never submitted."] Pursuant to 24 CFR §1000.530(a)(1), on [insert date of Letter of Warning], HUD issued a letter of warning that notified you that the APR was past due and that future payment requests through the Line of Credit Control System (LOCCS) would require you to submit the LOCCS Payment Voucher, Form HUD-50080-IHBG, with detailed supporting documentation, each time you made a payment request. Also, you were advised that if the APR was not received within 30 days of the date of that letter, HUD would consider taking the necessary actions to enforce this statutory requirement. As of this date, the APR has not been received in this Office.

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We have determined under 24 CFR §1000.530(b) that [*insert recipient name*] failed to address this performance problem. The sanctions HUD intends to impose are:

- Under the authority of §1000.538(a)(3), HUD will limit the availability of payments to the [*insert recipient name*] on current grants [*if applicable*]. A grant condition will be imposed that will not allow funds to be drawn down until an acceptable APR is received by this Office; and/or
- Under the authority of §1000.532(a), HUD will limit the availability of payments to the [*insert recipient name*] on its next grant. A grant condition will be imposed that will not allow funds to be drawn down until an acceptable APR is received by this office.

These sanctions will remain in effect until the complete and accurate APR for the reporting period [*insert reporting period*] is received in this Office. Please be warned that if the [*insert recipient name*] fails to submit the APR, HUD is also authorized under §1000.532 to adjust future IHBGs and to terminate payments (i.e., terminate existing grants) under §1000.538 to terminate the grant(s).

It is our strongest desire not to impose these sanctions. As an effort to resolve this deficiency and in accordance with the provisions at §1000.532(b), you are hereby provided the opportunity to request, within 30 days of the date of this letter, an informal meeting with us to discuss the issue.

If you have questions regarding this letter, please contact [*insert GES name*], Grants Evaluation Specialist, at [*insert phone number*].

Sincerely,

[*insert Administrator's name*]
Administrator

[*Note: insert if Tribe is not recipient:*
“cc:
_____ Tribe”]

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SAMPLE IMPOSITION OF SANCTIONS for Delinquent APRs

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[*Recipient Name & Address*]

Dear [*insert recipient name*] :

We are regretfully notifying you that HUD is imposing sanctions on [*insert grant #s*] because you failed to submit the Annual Performance Report (APR) for the period [*insert reporting period*]. Sanctions are authorized in the Indian Housing Block Grant (IHBG) Program by 24 CFR §§1000.532 and 1000.538. You have a right to request a hearing. [*Insert if funds are still available in current grants: “We are also immediately suspending payments under your IHBG(s).”*]

Grant recipients are required by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), Section 404, to annually review their progress on their Indian Housing Plan and report the review results to the Office of Native American Programs (ONAP). The format for this report is the APR and is due within 60 days of the end of your program year.

Your program year ended [*insert program year end*]; therefore, the APR was due on [*insert date due*], for all open grants. [*Insert if appropriate: “On [insert date extension granted], you requested and were granted an extension on submission of the APR until [insert new date APR due].”*] On [*insert Past Due Notice/Letter of Warning date*], you were notified by letter that your APR was delinquent and you needed to submit documentation for all payment requests from your Line of Credit and that if a complete and accurate APR was not received within 30 days, ONAP would begin sanctions for your noncompliance with this statutory and regulatory requirement.

The letter from [*insert FONAP Administrator’s name*] dated [*insert date of Notice of Intent/Offer of Informal Meeting*], notified you of our intent to impose sanctions and offered you an opportunity for an informal meeting before we imposed sanctions.

[*Insert additional information, including information on correspondence to/from recipient specific to recipient.*]

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The IHBG recipient, [i.e., the Indian tribe or the tribally designated housing entity (TDHE)], bears the responsibility for program compliance. See §1000.502(a).

The importance of the submission of an APR to HUD cannot be overstated. First, submission of the report is a statutory and regulatory requirement. NAHASDA, Section 404, 25 U.S.C. 4164; §1000.512. Second, the APR assists HUD in evaluating a recipient's performance and in identifying technical assistance needs of the recipient. The APR is also important to a tribe because it reports on the progress made towards meeting tribal housing objectives and objectives from tribal members and other interested parties. Given its importance, the timely submission of an accurate APR is included as one of the performance measures that the recipient must meet as a condition for compliance with NAHASDA. See §1000.524.

The failure to submit an APR also strongly suggests that a recipient may not have the required administrative capacity to properly administer its IHBG program. See §1000.6. The APR, therefore, not only provides HUD with insight into the recipient's past performance but also may inform HUD whether the recipient has the continuing capacity to carry out its activities in a timely manner. In short, the APR can provide important information with regard to a recipient's past and future performance.

Therefore, HUD has determined that [*insert recipient name*]'s failure to submit its APR constitutes substantial noncompliance as defined in §1000.534(d).

The failure to submit an APR also indicates that [*insert recipient name*] does not have the continuing capacity to carry out its activities in a timely manner, as provided at §1000.6.

[Use the following paragraph if funds are still available in current grants:]

Accordingly, as authorized by §1000.538(a)(3), HUD will limit the availability of payments under NAHASDA to the [*insert recipient name*]. Because your failure to submit an APR affects all NAHASDA projects, programs and activities, all IHBG funds will be limited. A grant condition will be imposed that will not allow funds to be requisitioned. This sanction will continue until a complete and accurate APR for the program year ending [*insert program year ending*], is received. HUD is also suspending payments under your grant(s), effective immediately, under the authority of §1000.538(b).

[OR, Use the following paragraph if there are no funds available:]



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Under the authority of §1000.532(a), HUD will limit the availability of payments to the [*insert recipient name*] on its next (Fiscal Year [*insert year of next grant*]) IHBG grant. A grant condition will be imposed that will not allow funds to be requisitioned. The program regulations at §1000.6 specify that IHBG recipients must have the administrative capacity to undertake affordable housing activities. By virtue of the above determination of substantial noncompliance with NAHASDA, HUD has determined that [*insert recipient name*] does not have the required administrative capacity. This sanction will continue until a complete and accurate APR is received.

Please be warned that if the [*insert recipient name*] does not submit a complete and accurate APR within a reasonable time, HUD is authorized under §1000.532 to adjust future IHBGs and to terminate payments (i.e., terminate existing grants) under §1000.538.

If you disagree with HUD's determination that you have failed to substantially comply with this program requirement, then you have a right to a hearing before an Administrative Law Judge. The hearing would be conducted in accordance with §1000.540 and Part 26, Subpart B. If you want a hearing, you must submit a request within 30 days of the date of this letter. You must submit an original and two copies of your request for a hearing to the Docket Clerk, HUD, Departmental Enforcement Center, Portals Building, 1250 Maryland Ave., S.W., Suite 200, Washington, D.C. 20024.

If you have any questions, please direct them to [*insert name of ONAP Administrator*], Administrator for the [*insert Area ONAP*] Office of Native American Programs, at [*insert Administrator's phone number*].

Very sincerely yours,

[*insert name of DAS*]
Deputy Assistant Secretary
for Native American Programs

[*Note: add if Tribe is not recipient:*

cc:

_____ *Tribe*]