

Act (chapter 75 of title 31, United States Code), including OMB Circular A-133, which require annual audits of recipients that expend federal funds equal to or in excess of an amount specified by the Office of Management and Budget (OMB), as set out in OMB Circular A-133, subpart B, section 200. If applicable, a certification that the recipient has not expended federal funds in excess of the audit threshold that is set by OMB shall be included in the recipient's Annual Performance Report.

[77 FR 71529, Dec. 3, 2012]

§ 1000.546 Are audit costs eligible program or administrative expenses?

Yes, audit costs are an eligible program or administrative expense. If the Indian tribe is the recipient then program funds can be used to pay a prorated share of the tribal audit or financial review cost that is attributable to NAHASDA funded activities. For a recipient not covered by the Single Audit Act, but which chooses to obtain a periodic financial review, the cost of such a review would be an eligible program expense.

§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

Yes. A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted to the appropriate HUD ONAP area office at the same time it is submitted to the Federal Audit Clearinghouse pursuant to OMB Circular A-133.

[77 FR 71530, Dec. 3, 2012]

§ 1000.550 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the audit report so that it can fully carry out its oversight responsibilities with NAHASDA.

§ 1000.552 How long must the recipient maintain program records?

(a) This section applies to all financial and programmatic records, supporting documents, and statistical

records of the recipient which are required to be maintained by the statute, regulation, or grant agreement.

(b) Except as otherwise provided herein, records must be retained for 3 years from the end of the tribal program year during which the funds were expended.

(c) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71530, Dec. 3, 2012]

§ 1000.554 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

(a) HUD and the Comptroller General of the United States, and any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of recipients which are pertinent to NAHASDA assistance, in order to make audits, examinations, excerpts, and transcripts.

(b) The right of access in this section lasts as long as the records are maintained.

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

§ 1000.558 Does the Federal Privacy Act apply to recipient records?

The Federal Privacy Act does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

APPENDIX A TO PART 1000—INDIAN HOUSING BLOCK GRANT FORMULA MECHANICS

This appendix shows the different components of the IHBG formula. The following

text explains how each component of the IHBG formula is calculated.

1. The Indian Housing Block Grant (IHBG) formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) (See §§1000.310 and 1000.312). FCAS funding is comprised of two components, Operating subsidy (§1000.316(a)) and Modernization (§1000.316(b)).

2. The operating subsidy component is calculated based on the national per unit subsidy (§1000.302 National Per Unit Subsidy) for operations for each of the following types of programs—Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8. A tribe's total count of units in each of the above categories is multiplied by the relevant national per unit subsidy. That amount is summed and multiplied by a local area cost adjustment factor for management.

3. The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR (See §1000.320).

4. The Modernization component is determined using two methods depending on the number of public housing units that a tribe's housing authority operated prior to NAHASDA.

(a) For Indian tribes with an Indian housing authority (IHA) that owned or operated 250 or more public housing units on October 1, 1997, the modernization allocation equals the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per-unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation (See §1000.316(b)(1)).

(b) For Indian tribes with an IHA that owned or operated fewer than 250 units on October 1, 1997, the modernization allocation equals the average amount of funds received under the assistance program authorized by section 14 of the 1937 Act (not including funds provided as emergency assistance) for FYs 1992 through 1997 (See §1000.316(b)(2)).

(c) The modernization amount is then multiplied times a local area cost adjustment factor for construction, the TDC. The construction adjustment factor is the TDC for the area divided by the weighted national average for TDC (weighted on the unadjusted allocation for modernization (See §1000.320)).

5. After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total

amount for FCAS is subtracted from the remaining available funds to determine the total amount to be allocated under the Need component of the IHBG formula.

6. The Need component of the IHBG formula is calculated using seven factors using data from sources defined in §1000.330 weighted as set forth in §1000.324 as follows: 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing and living in the Indian tribe's formula area, 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and/or without kitchen or plumbing living in their formula area, and so on. The current national totals for each of the need variables will be distributed annually by HUD with the Formula Response Form (See §1000.332). The national totals will change as tribes update information about their formula area and data for individual areas are challenged (See §§1000.334 and 1000.336). The Need component is then calculated by multiplying a tribe's share of housing need by a local area cost adjustment factor for construction (the TDC) (See §1000.338).

7. Tribes that receive less than \$200,000 under the FCAS component of the IHBG formula and that can demonstrate the presence of any households at or below 80 percent of median income are guaranteed to receive no less than a specified minimum under the Needs component of the formula. The specified minimum amount shall equal .007826 percent of the available appropriations for that FY after set asides. The increase in funding for the tribes receiving the minimum need amount is funded by a reallocation from other tribes whose needs allocation exceeds the minimum need amount. This is necessary in order to keep the total allocation within the appropriation level (See §1000.328).

8. A tribe's preliminary grant is calculated by summing the FCAS and Need allocations. This amount is subject to two final adjustments:

(a) If an Indian tribe with an IHA that owned or operated fewer than 250 units on October 1, 1997, is allocated less funding under the averaging method (§1000.316(b)(2)) than the calculation of the number of Low Rent, Mutual Help, and Turnkey III FCAS multiplied by the national per-unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation, the Indian tribe's modernization allocation is calculated under §1000.316(b)(1). The grants of all other tribes are proportionately adjusted to keep the allocation within available appropriations.

(b) Next, this preliminary grant is compared to how much a tribe received in FY

1996 for operating subsidy and modernization. If a tribe received more in FY 1996 for operating subsidy and modernization than it does under the IHBG formula allocation, its grant is adjusted up to the FY 1996 level (See §1000.340(b)). Indian tribes receiving more under the IHBG formula than in FY 1996 “pay” for the upward adjustment for the other tribes by having their own grants adjusted downward. Because many more Indian tribes have grant amounts above the FY 1996 level than those with grants below the FY 1996 level, each tribe contributes very little, relative to their total grant, to fund the adjustment.

[72 FR 20026, Apr. 20, 2007]

APPENDIX B TO PART 1000—IHBG BLOCK GRANT FORMULA MECHANISMS

1. The Indian Housing Block Grant (IHBG) formula consists of two components, the Formula Current Assisted Stock (FCAS) and Need. Therefore, the formula allocation before adjusting for the statutory requirement that a tribe’s minimum grant will not be less than the tribe’s Fiscal Year (FY) 1996 Operating Subsidy and Modernization funding, can be represented by:

$$\text{unadjGRANT} = \text{FCAS} + \text{NEED}.$$

2. NAHASDA requires that the FCAS be provided for before allocating funds based on need. Therefore, FCAS must be calculated first. FCAS consists of two components, Operating Subsidy (OPSUB) and Modernization (MOD), such that:

$$\text{FCAS} = \text{OPSUB} + \text{MOD}.$$

3. OPSUB consists of three main parts: number of Low-Rent units; number of Section 8 units; and number of Mutual Help and Turnkey III units. Each of these main parts are adjusted by the national per unit subsidy (§1000.302 National Per Unit Subsidy) and local area costs as reflected by the greater of the AEL factor or FMR factor. The AEL factor is defined in §1000.302 as the relative difference between a local area Allowable Expense Level (AEL) and the national weighted average for AEL (NAEL). The FMR factor is also defined in §1000.302 as the relative difference between a local area Fair Market Rent (FMR) and the national weighted average for FMR.

$$\text{OPSUB} = [\text{LR} * \text{LRSUB} + (\text{MH} + \text{TK}) * \text{HOSUB} + \text{S8} * \text{S8SUB}] * \text{AELFMR}$$

Where:

- LR = number of Low-Rent units.
- LRSUB = national per unit subsidy for Low-Rent units (\$2,440*INF).
- MH+TK = number of Mutual Help and Turnkey III units.
- HOSUB = national per unit subsidy for Homeownership units (\$528*INF).
- S8 = number of Section 8 units.

S8SUB = national per unit subsidy for Section 8 units = (\$3,625*INF).

AELFMR = greater of AEL Factor or FMR Factor weighted by national average of AEL Factor and FRM Factor.

AEL FACTOR = AEL/NAEL.

AEL = local Allowable Expense Level.

NAEL = national weighted average for AEL.

FMR FACTOR = FMR/NFMR.

FMR = local Fair Market Rent.

NFMR = national weighted average for FMR.

NAELFMR = national weighted average for greater of AEL Factor or FMR factor.

Where:

INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

4. The modernization component, MOD, is calculated by two different methods, depending on whether the tribe had an Indian housing authority (IHA) that owned or operated more than 250 public housing units on October 1, 1997.

a. MOD1996 is calculated for all tribes and considers the number of Low-Rent, and Mutual Help and Turnkey III FCAS units. Each of these is adjusted by the national per-unit modernization amount in 1996 adjusted for inflation.

$$\text{MOD1996} = [\text{LR} + \text{MH} + \text{TK}] * \text{MODPU} * \text{INF}.$$

Where:

LR = number of Low-Rent units.

MH = number of Mutual Help units.

TK = number of Turnkey III units.

MODPU = national per-unit amount for modernization in 1996 (\$1,974).

INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

b. MODAVG is calculated only for tribes that had an IHA that owned or operated fewer than 250 public housing units on October 1, 1997, as the annual average amount they received for FYs 1992 through 1997 under the assistance program authorized by section 14 of the 1937 Act (not including emergency assistance).

$$\text{MODAVG} = \text{Average (FY 1992 to FY 1997) amount received by Section 14 of the 1937 Act}.$$

c. For Indian tribes with an IHA that owned or operated 250 or more public housing units on October 1, 1997, the modernization calculation is based on MOD1996, adjusted for local area costs:

$$\text{MOD} = \text{MOD1996} * \text{TDC} / \text{NTDC}.$$

Where:

TDC = Local Total Development Costs defined in §1000.302.

NTDC = weighted national average for TDC of tribes with CAS.

d. For Indian tribes with an IHA that owned or operated fewer than 250 units on