

REGISTER. Any comments will be further reviewed by the committee and HUD before HUD determines if the rule or rules will be adopted.

[77 FR 71521, Dec. 3, 2012]

**§ 1000.10 What definitions apply in these regulations?**

Except as noted in a particular subpart, the following definitions apply in this part:

(a) The terms “*Adjusted income*,” “*Affordable housing*,” “*Drug-related criminal activity*,” “*Elderly families and near-elderly families*,” “*Elderly person*,” “*Grant beneficiary*,” “*Indian*,” “*Indian housing plan (IHP)*,” “*Indian tribe*,” “*Low-income family*,” “*Near-elderly persons*,” “*Nonprofit*,” “*Recipient*,” “*Secretary*,” “*State*,” and “*Tribally designated housing entity (TDHE)*” are defined in section 4 of NAHASDA.

(b) In addition to the definitions set forth in paragraph (a) of this section, the following definitions apply to this part:

*Affordable housing activities* are those activities identified in section 202 of NAHASDA.

*Annual Contributions Contract (ACC)* means a contract under the 1937 Act between HUD and an IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families.

*Annual income* has one of the following meanings, as determined by the Indian tribe:

(1) “Annual income” as defined for HUD’s Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner’s principal residence may be excluded from the calculation of Net Family assets); or

(2) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

- (i) Wages, salaries, tips, commissions, etc.;
- (ii) Self-employment income;
- (iii) Farm self-employment income;
- (iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans’ (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

*Assistant Secretary* means the Assistant Secretary for Public and Indian Housing.

*Department or HUD* means the Department of Housing and Urban Development.

*Family* includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the Indian tribe.

*Homebuyer payment* means the payment of a family purchasing a home pursuant to a lease purchase agreement.

*Homeless family* means a family who is without safe, sanitary and affordable housing even though it may have temporary shelter provided by the community, or a family who is homeless as determined by the Indian tribe.

*Housing related activities*, for purposes of program income, means any facility, community building, infrastructure, business, program, or activity, including any community development or economic development activity, that:

(1) Is determined by the recipient to be beneficial to the provision of housing in an Indian area; and

(2) Would meet at least one of the following conditions:

(i) Would help an Indian tribe or its tribally designated housing entity to reduce the cost of construction of Indian housing;

(ii) Would make housing more affordable, energy efficient, accessible, or practicable in an Indian area;

(iii) Would otherwise advance the purposes of NAHASDA.

*Housing related community development:*

(1) Means any facility, community building, business, activity, or infrastructure that:

(i) Is owned by an Indian tribe or a tribally designated housing entity;

(ii) Is necessary to the provision of housing in an Indian area; and

(iii)(A) Would help an Indian tribe or tribally designated housing entity reduce the cost of construction of Indian housing;

(B) Would make housing more affordable, energy efficient, accessible, or practicable in an Indian area; or

(C) Would otherwise advance the purposes of NAHASDA.

(2) Does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*)

*IHBG* means Indian Housing Block Grant.

*Income* means annual income as defined in this subpart.

*Indian area* means the area within which an Indian tribe operates affordable housing programs or the area in which a TDHE, as authorized by one or more Indian tribes, operates affordable housing programs. Whenever the term “jurisdiction” is used in NAHASDA, it shall mean “Indian Area,” except where specific reference is made to the jurisdiction of a court.

*Indian Housing Authority (IHA)* means an entity that:

(1) Is authorized to engage or assist in the development or operation of low-income housing for Indians under the 1937 Act; and

(2) Is established:

(i) By exercise of the power of self government of an Indian tribe independent of state law; or

(ii) By operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

*Median income* for an Indian area is the greater of:

(1) The median income for the counties, previous counties, or their equivalent in which the Indian area is located; or

(2) The median income for the United States.

*NAHASDA* means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

*1937 Act* means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

*Office of Native American Programs (ONAP)* means the office of HUD which has been delegated authority to administer programs under this part. An “Area ONAP” is an ONAP field office.

*Outcomes* are the intended results or consequences important to program beneficiaries, the IHBG recipient, and the tribe generally from carrying out the housing or housing-related activity as determined by the tribe (and/or its TDHE).

*Person with Disabilities* means a person who—

(1) Has a disability as defined in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act;

(3) Has a physical, mental, or emotional impairment which—

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(4) The term “person with disabilities” includes persons who have the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agent for acquired immunodeficiency syndrome.

(5) Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this part, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with Indian tribes and appropriate Federal agencies to implement this paragraph.

(6) For purposes of this definition, the term “*physical, mental or emotional impairment*” includes, but is not limited to:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of

the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological condition, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term “*physical, mental, or emotional impairment*” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, and emotional illness.

*Tribal program year* means the fiscal year of the IHBG recipient.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012]

#### **§ 1000.12 What nondiscrimination requirements are applicable?**

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD’s implementing regulations in 24 CFR part 146.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD’s regulations at 24 CFR part 8 apply.

(c) The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303), applies to Federally recognized Indian tribes that exercise powers of self-government.

(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. The Title VI and Title VIII requirements do not apply to actions under NAHASDA by federally recognized Indian tribes and their TDHES. State-recognized Indian tribes and their TDHES may provide preference for tribal members and other Indian families pursuant to NAHASDA sections 201(b) and 101(k) (relating to tribal preference in employment and contracting).

(e) The equal access to HUD-assisted or -insured housing requirements in 24 CFR 5.105(a)(2).

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71522, Dec. 3, 2012; 81 FR 80993, Nov. 17, 2016]

#### **§ 1000.14 What relocation and real property acquisition policies are applicable?**

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

(a) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.

(b) *Minimize displacement.* Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(c) *Temporary relocation.* The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the