

## § 1000.319

unit that have been taken and will be taken to resolve the legal impediments within a 24-month period; and

(ii) The tribe, TDHE, or IHA has carried out or is carrying out the written plan of action; and

(iii) The tribe, TDHE, or IHA has documented undertaking the plan of action.

(2) No Mutual Help or Turnkey III unit will be considered FCAS 24 months after the date the unit became eligible for conveyance, unless the tribe, TDHE, or IHA provides evidence from a third party, such as a court or state or federal government agency, documenting that a legal impediment continues to prevent conveyance. FCAS units that have not been conveyed due to legal impediments on December 22, 2016 shall be treated as having become eligible for conveyance on December 22, 2016.

(c) Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA.

(d) Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

(e) A unit that is demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, after demolition is completed, the unit is rebuilt within one year. Demolition is completed when the site of the demolished unit is ready for rebuilding. If the unit cannot be rebuilt within one year because of relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity, the Indian tribe, TDHE or IHA may request approval for a one-time, one-year extension. Requests must be submitted in writing and include a justification for the request.

[63 FR 12349, Mar. 12, 1998, as amended at 81 FR 83680, Nov. 22, 2016]

## 24 CFR Ch. IX (4-1-22 Edition)

### § 1000.319 What would happen if a recipient misreports or fails to correct Formula Current Assisted Stock (FCAS) information on the Formula Response Form?

(a) A recipient is responsible for verifying and reporting changes to their Formula Current Assisted Stock (FCAS) on the Formula Response Form to ensure that data used for the IHBG Formula are accurate (see § 1000.315). Reporting shall be completed in accordance with requirements in this Subpart D and the Formula Response Form.

(b) If a recipient receives an overpayment of funds because it failed to report such changes on the Formula Response Form in a timely manner, the recipient shall be required to repay the funds within 5 fiscal years. HUD shall subsequently distribute the funds to all Indian tribes in accordance with the next IHBG Formula allocation.

(c) A recipient will not be provided back funding for any units that the recipient failed to report on the Formula Response Form in a timely manner.

(d) HUD shall have 3 years from the date a Formula Response Form is sent out to take action against any recipient that fails to correct or make appropriate changes on that Formula Response Form. Review of FCAS will be accomplished by HUD as a component of A-133 audits, routine monitoring, FCAS target monitoring, or other reviews.

[72 FR 20025, Apr. 20, 2007]

### § 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the Current Assisted Stock portion of the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR); and

(b) Modernization as adjusted by TDC.

### § 1000.322 Are IHA financed units included in the determination of Formula Current Assisted Stock?

No. If these units are not owned or operated at the time (September 30, 1997) pursuant to an ACC then they are

not included in the determination of Formula Current Assisted Stock.

**§ 1000.324 How is the need component developed?**

After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:

(a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50 percent of formula annual income weighted at 22 percent;

(b) AIAN Households which are overcrowded or without kitchen or plumbing weighted at 25 percent;

(c) Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80 percent of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA weighted at 15 percent;

(d) AIAN households with annual income less than or equal to 30 percent of formula median income weighted at 13 percent;

(e) AIAN households with annual income between 30 percent and 50 percent of formula median income weighted at 7 percent;

(f) AIAN households with annual income between 50 percent and 80 percent of formula median income weighted at 7 percent;

(g) AIAN persons weighted at 11 percent.

**§ 1000.325 How is the need component adjusted for local area costs?**

The need component is adjusted by the TDC.

**§ 1000.326 What if a formula area is served by more than one Indian tribe?**

(a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:

(1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(3) In cases where a State recognized tribe's formula area overlaps with the formula area of a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the formula area up to its population cap, and the State recognized tribe receives the balance of the overlapping area (if any) up to its population cap.

(b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, the U.S. Census, Indian Health Service User Data, and Bureau of Indian Affairs data.

(c) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in paragraph (2)(ii) of the definition of "Formula area" in § 1000.302.

(d) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.

[63 FR 12349, Mar. 12, 1998, as amended at 72 FR 20025, Apr. 20, 2007; 81 FR 83681, Nov. 22, 2016]

**§ 1000.327 What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the unique circumstances in Alaska?**

(a) Data in areas without reservations. The data on population and housing within an Alaska Native Village is credited to the Alaska Native Village. Accordingly, the village corporation for the Alaska Native Village has no needs data and no formula allocation. The data on population and housing outside the Alaska Native Village is credited to the regional Indian tribe, and if there is no regional Indian tribe, the data will be credited to the regional corporation.

(b) Deadline for notification on whether an IHP will be submitted. By