

§ 1000.412

(c) The repayment period may exceed 20 years, and the length of the repayment period cannot be the sole basis for HUD disapproval;

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

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

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.412 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

Yes. To obtain multiple guarantees, the issuer shall demonstrate that:

(a) The issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no longer owed on existing notes or other obligations; and

(b) Issuance of additional notes or other obligations is within the financial capacity of the issuer.

§ 1000.414 How is an issuer's financial capacity demonstrated?

An issuer must demonstrate its financial capacity to:

(a) Meet its obligations; and

(b) Protect and maintain the viability of housing developed or operated pursuant to the 1937 Act.

§ 1000.416 What is a repayment contract in a form acceptable to HUD?

(a) The Secretary's signature on a contract shall signify HUD's acceptance of the form, terms and conditions of the contract.

(b) In loans under title VI of NAHASDA, involving a contract between an issuer and a lender other than HUD, HUD's approval of the loan documents and guarantee of the loan shall be deemed to be HUD's acceptance of the sufficiency of the security furnished. No other security can or will be required by HUD at a later date.

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

§ 1000.418 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations.

§ 1000.420 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations, not to exceed 30 percent of the net interest cost.

§ 1000.422 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

(a) The borrower applies to the lender for a loan using a guarantee application form prescribed by HUD.

(b) The lender provides the loan application to HUD to determine if funds are available for the guarantee. HUD will reserve these funds for a period of 90 days if the funds are available and the applicant is otherwise eligible under this subpart. HUD may extend this reservation period for an extra 90 days if additional documentation is necessary.

(c) The borrower and lender negotiate the terms and conditions of the loan in consultation with HUD.

(d) The borrower and lender execute documents.

(e) The lender formally applies for the guarantee.

(f) HUD reviews and provides a written decision on the guarantee.

§ 1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

The application for a guarantee must include the following:

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies:

(1) As an affordable housing activity as defined in section 202 of NAHASDA; or

(2) As a housing related community development activity under section 601(a) of NAHASDA.

(b) A schedule for the repayment of the notes or other obligations to be guaranteed that identifies the sources of repayment, together with a statement identifying the entity that will act as the borrower.

(c) A copy of the executed loan documents, if applicable, including, but not limited to, any contract or agreement between the borrower and the lender.

(d) Certifications by the borrower that:

(1) The borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602(a)(2) of NAHASDA.

(2) It possesses the legal authority to borrow or issue obligations and to use the guaranteed funds in accordance with the requirements of this subpart.

(3) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action that:

(i) Identifies the official representative of the borrower, and directs and authorizes that person to provide such additional information as may be required; and

(ii) Authorizes such official representative to issue the obligation or to execute the loan or other documents, as applicable.

(4) The borrower has complied with section 602(a) of NAHASDA.

(5) The borrower will comply with the requirements described in subpart A of this part and other applicable laws.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71528, Dec. 3, 2012]

§ 1000.426 How does HUD review a guarantee application?

The procedure for review of a guarantee application includes the following steps:

(a) HUD will review the application for compliance with title VI of NAHASDA and these implementing regulations.

(b) HUD will accept the certifications submitted with the application. HUD may, however, consider relevant information that challenges the certifications and require additional information or assurances from the applicant as warranted by such information.

§ 1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

HUD may disapprove an application or approve a lesser amount for any of the following reasons:

(a) HUD determines that the guarantee constitutes an unacceptable risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(1) The ratio of the expected annual debt service requirements to the expected available annual grant amount, taking into consideration the obligations of the borrower under the provisions of section 203(b) of NAHASDA;

(2) Evidence that the borrower will not continue to receive grant assistance under this part during the proposed repayment period;

(3) The borrower's inability to furnish adequate security pursuant to section 602(a) of NAHASDA; and

(4) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan or other obligations.

(b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(c) or section 605(d) of NAHASDA.

(c) Funds are not available in the amount requested.

(d) Evidence that the performance of the borrower under this part has been determined to be unacceptable pursuant to the requirements of subpart F of this part, and that the borrower has failed to take reasonable steps to correct performance.

(e) The activities to be undertaken are not eligible under either:

- (1) Section 202 of NAHASDA; or
- (2) Section 601(a) of NAHASDA.