

proposed action. The hearing shall be held in accordance with §1000.540. The amount in question shall not be reallocated under the provisions of §1000.536, until 15 days after the hearing has been conducted and HUD has rendered a final decision.

(c) Notwithstanding paragraphs (a) and (b) of this section, if HUD makes a determination that the failure of a recipient to comply substantially with any material provision of NAHASDA or these regulations is resulting, and would continue to result, in a continuing expenditure of funds provided under NAHASDA in a manner that is not authorized by law, HUD may, in accordance with section 401(a)(4) of NAHASDA, take action under paragraph (a)(3) of this section prior to conducting a hearing under paragraph (b) of this section. HUD shall provide notice to the recipient at the time that HUD takes that action and conducts a hearing, in accordance with section 401(a)(4)(B) of NAHASDA, within 60 days of such notice.

(d) Notwithstanding paragraph (a) of this section, if HUD determines that the failure to comply substantially with the provisions of NAHASDA or these regulations is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, if the recipient requests, HUD shall provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA. A recipient's eligibility for technical assistance under this subsection is contingent on the recipient's execution of, and compliance with, a performance agreement pursuant to Section 401(b) of NAHASDA.

(e) In lieu of, or in addition to, any action described in this section, if the Secretary has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA or these regulations, HUD may refer the matter to the Attorney General of the United States, with a

recommendation that appropriate civil action be instituted.

[77 FR 71529, Dec. 3, 2012]

§ 1000.534 What constitutes substantial noncompliance?

HUD will review the circumstances of each noncompliance with NAHASDA and the regulations on a case-by-case basis to determine if the noncompliance is substantial. This review is a two step process. First, there must be a noncompliance with NAHASDA or these regulations. Second, the noncompliance must be substantial. A noncompliance is substantial if:

(a) The noncompliance has a material effect on the recipient meeting its planned activities as described in its Indian Housing Plan;

(b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;

(c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or

(d) The noncompliance places the housing program at substantial risk of fraud, waste or abuse.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71529, Dec. 3, 2012]

§ 1000.536 What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under § 1000.532?

Such NAHASDA grant funds shall be distributed by HUD in accordance with the next NAHASDA formula allocation.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71529, Dec. 3, 2012]

§ 1000.540 What hearing procedures will be used under NAHASDA?

The hearing procedures in 24 CFR part 26 shall be used.

§ 1000.542 When may HUD require replacement of a recipient?

(a) In accordance with section 402 of NAHASDA, as a condition of HUD