

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

## § 1000.544

making a grant on behalf of an Indian tribe, the Indian tribe shall agree that, notwithstanding any other provisions of law, HUD may, only in the circumstances discussed below, require that a replacement TDHE serve as the recipient for the Indian tribe.

(b) HUD may require a replacement TDHE for an Indian tribe only upon a determination by HUD on the record after opportunity for hearing that the recipient for the Indian tribe has engaged in a pattern or practice of activities that constitute substantial or willful noncompliance with the requirements of NAHASDA.

### § 1000.544 What audits are required?

Pursuant to NAHASDA section 405(a), the recipient must comply with the requirements of the Single Audit Act (chapter 75 of title 31, United States Code), implemented by 2 CFR part 200, subpart F, 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 2 CFR 200.501. 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, as amended at 80 FR 75944, Dec. 7, 2015]

### § 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?

No. A copy of the recipient audit under the Single Audit Act relating to NAHASDA activities is only required

## 24 CFR Ch. IX (4–1–22 Edition)

to be submitted to the Federal Audit Clearinghouse pursuant to 2 CFR part 200, subpart F.

[80 FR 75944, Dec. 7, 2015]

### § 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.