§ 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 three years from the date the recipient submits to HUD the annual performance report that covers the last expenditure of grant funds under a particular grant.

(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.

§ 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.

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

§ 1000.558 Does the Federal Privacy Act apply to recipient records?

The Federal Privacy Act does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

APPENDIX A TO PART 1000—INDIAN HOUSING BLOCK GRANT FORMULA MECHANICS

This appendix shows the different components of the IHBG formula. The following text explains how each component of the IHBG formula works.

1. The Indian Housing Block Grant (IHBG) formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) (See §§ 1000.310 and 1000.312. FCAS funding is comprised of two components, operating subsidy (§ 1000.316(a)) and modernization (§ 1000.316(b)). The operating subsidy component is calculated based on the national per unit subsidy provided in FY 1996 (adjusted to a 100 percent funding level) for each of the following types of programs—Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8. A tribe's total units in each of the above categories is multiplied times the relevant national per unit subsidy amount. That amount is summed and multiplied times a local area cost adjustment factor for management.

2. The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR (See § 1000.320).

3. The modernization component of FCAS is based on the national per unit modernization funding provided in FY 1996 to Indian Housing Authorities (IHAs). The per unit amount is determined by dividing the modernization funds by the total Low Rent, Mutual Help, and Turnkey III units operated by IHAs in 1996. A tribe's total Low Rent, Mutual Help, and Turnkey III units are multiplied times the per unit modernization amount. That amount is then multiplied times a local area cost adjustment factor for construction (e.g. the Total Development Cost) (See § 1000.320).

4. The construction adjustment factor is Total Development Cost (TDC) for the area divided by the weighted national average for

TDC (weighted on the unadjusted allocation for modernization) (See § 1000.320).

5. After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total amount for FCAS is subtracted from the Fiscal Year appropriation to determine the total amount to be allocated under the Need component of the IHBG formula.

6. The Need component of the IHBG formula is calculated using seven factors weighted as set forth in § 1000.324 as follows: 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing living in the Indian tribe's formula area, 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and or without kitchen or plumbing living in their formula area, and so on. The current national totals for each of the need variables will be distributed annually by HUD with the Formula Response Form (See § 1000.332). The national totals will change as tribes update information about their formula area and data for individual areas are challenged (See §§ 1000.334 and 1000.336). The Need component is then calculated by multiplying a tribe's share of housing need by a local area cost adjustment factor for construction (the Total Development Cost) (See § 1000.338).

7. No tribe in its first year of funding will receive less than $50,000 under the Need component of the formula. In subsequent allocations to a tribe, it will receive no less than $25,000 under the Need component of the formula. This increase in funding for the tribes receiving the minimum Need allocation is funded by a reallocation from all tribes receiving more than $50,000 under their Need component. This is necessary in order to keep the total allocation within the appropriation level. Such minimum Need allocations will only continue through FY 2002 (See § 1000.328).

8. A tribe's total grant is calculated by summing the FCAS and Need allocations. This preliminary grant is compared to how much a tribe received in FY 1996 for operating subsidy and modernization. If a tribe received more in FY 1996 for operating subsidy and modernization than they do under the IHBG formula, their grant is adjusted up to the FY 1996 level (See § 1000.340). Indian tribes receiving more under the IHBG formula than in FY 1996 ''pay'' for the upward adjustment for the other tribes by having their grants adjusted downward. Because many more Indian tribes have grant amounts above the FY 1996 level than those with grants below the FY 1996 level, each tribe contributes very little relative to their total grant to fund the adjustment.

[63 FR 12373, Mar. 12, 1998; 63 FR 13105, Mar. 17, 1998]

APPENDIX B TO PART 1000—IHBG BLOCK GRANT FORMULA MECHANISMS

1. The Indian Housing Block Grant Formula consists of two components, the Formula Current Assisted Stock (FCAS) and Need. Therefore, the formula allocation before adjusting for the statutory requirement that a tribe's minimum grant will not be less than the tribe's FY 1996 Operating Subsidy and Modernization funding, can be represented by:

unadjGRANT = FCAS + NEED.

2. NAHASDA requires the current assisted stock be provided for before allocating funds based on need. Therefore, FCAS must be calculated first. FCAS consists to two components, Operating Subsidy (OPSUB) and Modernization (MOD) such that:

FCAS = OPSUB + MOD.

3. OPSUB consists of three main parts: Number of Low-Rent units; Number of Section 8 units; and Number of Mutual Help and Turnkey III units. Each of these main parts are adjusted by the FY 1996 national per unit subsidy, an inflation factor, and local area costs as reflected by the greater of the AEL factor or FMR factor. The AEL factor as defined in § 1000.302 as the difference between a local area Allowable Expense Level (AEL) and the national weighted average for AEL. The FMR factor is also defined in § 1000.302 as the difference between a local area Fair Market Rent (FMR) and the national weighted average for FMR. So, expanding OPSUB gives:

OPSUB = [LR * LRSUB + (MH+TK) * HOSUB + S8 * S8SUB] * INF * AELFMR

Where:

LR = number of Low-Rent units.
LRSUB = FY 1996 national per unit average subsidy for Low-Rent units = $2,440.
MH+TK = number of Mutual Help and Turnkey III units.
HOSUB = FY 1996 national per unit average subsidy for Homeownership units = $528.
S8 = number of Section 8 units.
S8SUB = FY 1996 national per unit average subsidy for Section 8 units = $3,625.
INF = inflation adjustment determined by the Consumer Price Index for housing.
AELFMR = greater of AEL Factor or FMR Factor weighted by national average of AEL Factor and FRM Factor.
AEL FACTOR = AEL/NAAEL.
AEL = local Allowable Expense Level.
NAAEL = national weighted average for AEL.
FMR FACTOR = FMR/NAFMR.
FMR = local Fair Market Rent.

NAFMR = national weighted average for FMR.

NAAELFMR = national weighted average for greater of AEL Factor or FMR factor.

For estimating FY 1998 allocations:

NAAEL = 240.224.
NAFMR = 459.437.
NAAELFMR = 1.144.

4. MOD considers only the number of Low-Rent, and Mutual Help and Turnkey III units. Each of these are adjusted by the FY 1996 national per unit subsidy for modernization, an inflation factor and the local Total Development Costs relative to the weighted national average for TDC. So, expanding MOD gives us:

MOD = [LR + (MH+TK)] * SUB * INF * TDC/NATDC.

Where:

LR = number of Low-Rent units.

MH+TK = number of Mutual Help and Turnkey III units.

SUB = FY 1996 national per unit average subsidy for modernization.

INF = inflation adjustment determined by the Consumer Price Index for housing.

TDC = Local Total Development Costs defined in § 1000.302.

NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

SUB = $1,974.
NATDC = $103,828.

5. Now that calculation for FCAS is complete, we can determine how many funds will be available to allocate over the NEED component of the formula by calculating:

NEED FUNDS = APPROPRIATION—NATCAS.

Where:

APPROPRIATION = dollars provided by Congress for distribution by the IHBG formula.

NATCAS = summation of CAS allocations for all tribes.

For estimating FY 1998 allocations:

APPROPRIATION = $590 million.
NATCAS = $236,147,110.

6. Two iterations are necessary to compute the final Need allocation. The first iteration consists of seven weighted criteria that allocate need funds based on a tribe's population and housing data. This allocation is then adjusted for local area cost differences based on TDC relative to the national weighted average. This can be represented by:

NEED1 = [(0.11 * PER / NPER) + (0.13 * HHLE30 / NHHLE30)
+ (0.07 * HH30T50 / NHH30T50) + (0.07 * HH50T80 / NHH50T80)
+ (0.25 * OCRPR / NOCRPR) + (0.22 * SCBTOT / NSCBTOT)
+ (0.15 * HOUSHOR / NHOUSHOR)] * NEED FUNDS * (TDC/NATDC).

Where:

PER = American Indian and Alaskan Native (AIAN) persons.

NPER = national total of PER.

HHLE30 = AIAN households less than 30% of median income.

NHHLE30 = national total of HHLE30.

HH30T50 = AIAN households 30% to 50% of median income.

NHH30T50 = national total of HH30T50.

HH50T80 = AIAN households 50% to 80% of median income.

NHH50TO80 = national total of HH50T80.

OCRPR = AIAN households crowded or without complete kitchen or plumbing.

NOCRPR = national total of OCRPR.

SCBTOT = AIAN households paying more than 50% of their income for housing.

NSCBTOT = national total SCBTOT.

HOUSHOR = AIAN households with an annual income less than or equal to 80% of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA.

NHOUSHOR = national total of HOUSHOR.

TDC = Local Total Development Costs defined in § 1000.302.

NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

NPER = 953,254.
NHHLE30 = 78,496.
NHH30T50 = 52,514.
NHH50T80 = 59,793.
NOCPR = 80,581.
NSCBTOT = 34,080.
NHOUSHOR = 23,840.
NEEDFUNDS = $353,852,890.
NATDC = $104,956.

7. The second iteration in computing Need allocation consists of adjusting the Need allocation computed above to take into account the $50,000 baseline funding for the first year only and then $25,000 per year for each year thereafter through FY 2002. So, if in the first Need computation you have less than the minimum Needs funding level, your Need allocation will go up. But, if you have more than the minimum Needs funding level, your Need allocation will go down to adjust for the other Need allocations going up. We can represent this by:

If NEED1 is less than MINFUNDING, then NEED = MINFUNDING.

If NEED1 is greater than or equal to MINFUNDING, then NEED = NEED1—{UNDERMIN$ * [(NEED1—MINFUNDING) / OVERMIN$]}.

Where:

MINFUNDING = minimum needs funding level.

UNDERMIN$ = for all tribes with NEED1 less than MINFUNDING, sum of the differences between MINFUNDING and NEED1.

OVERMIN$ = for all tribes with NEED1 greater than or equal to
MINFUNDING, sum of the difference between NEED1 and MINFUNDING.

For estimating FY 1998 allocations:

MINFUNDING = $50,000.
UNDERMIN$ = $4,919,224.
OVERMIN$ = $335,022,114.

8. Now we have computed values for FCAS and NEED. This final step in computing the grant allocation is to adjust the sum of FCAS and NEED to reflect the statutory requirement that a tribe's minimum grant will not be less than that tribe's FY 1996 Operating Subsidy and Modernization funding. So, before adjusting for the minimum grant compute:

unadjGRANT = FCAS + NEED

where both FCAS and NEED are calculated above.

9. Now, apply test to determine if the GRANT (unadjusted for FY 1996) levels is greater than or equal to FY 1996 Operating Subsidy and Modernization funding.

Let TEST = unadjGRANT—OPMOD96 .
If TEST is less than 0, then GRANT = OPMOD96.
If TEST is greater than or equal to 0, then GRANT = unadjGRANT—[UNDER1996 * (TEST / OVER1996)].

Where:

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization
UNDER1996 = for all tribes with TEST less than 0, sum of the absolute value of TEST.
OVER1996 = for all tribes with TEST greater than or equal to 0, sum of TEST.

For estimating FY 1998 allocations:

UNDER1996 = $5,378,558.
OVER1996 = $326,095,837.
GRANT is the approximate grant amount in any given year for any given tribe.

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PARTS 1001–1002 [RESERVED]

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

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Sec.

Subpart B—Allocation of Funds

Subpart C—Eligible Activities

Subpart D—Single Purpose Grant Application and Selection Process

Subpart E—Imminent Threat Grants

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