



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of:

Tribes; Tribally
Designated Housing Entities;
ONAP Administrators

Notice: PIH-2004-17

Issued: August 18, 2004

Expired: August 31, 2005

Cross Reference: 24 CFR Part 1000

Subject: Recipient Inspection of Housing Units Assisted Under the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) and those Assisted Under the 1937 Housing Act.

Purpose: This notice serves to clarify the requirements for recipient inspection of housing assisted under NAHASDA (the Act) and those assisted under the 1937 Housing Act. Questions have been received by HUD concerning the applicability of inspection requirements found in Section 403(b) of the Act to the various types or categories of housing assistance provided and the required frequency of such inspections.

Summary: After review of the relevant statutory provisions and consultation with tribal governments and, where applicable, their tribally designated housing entities (TDHEs), the following has been affirmed or determined.

Initial inspections by the recipient must be performed on all units constructed, acquired, and/or rehabilitated with Indian Housing Block Grant (IHBG) funds subsequent to the provision of such assistance, during the provision of such assistance and prior to occupancy by the beneficiary household or, in the instance of existing owner-occupied housing, upon completion of the rehabilitation work. The purpose of these inspections is to ensure that work performed and/or condition of the housing unit meets the recipient's performance standards.

Recurring recipient inspection requirements:

- apply to all units constructed, acquired, and/or rehabilitated with NAHASDA funds owned by the recipient and those assisted units not owned by the recipient but for which the recipient has an ongoing responsibility to provide maintenance;
- apply to all units constructed, acquired, and/or rehabilitated with NAHASDA funds covered by a lease-purchase agreement (under the conditions described below) to ensure that maintenance is being

- provided by the occupant/purchaser;
- apply to rental and homeownership units (under conditions described below) that were constructed, acquired and/or rehabilitated with funds provided under the 1937 Housing Act. Under the provisions of Section 502(b) of the Act these units shall be considered and maintained as affordable housing for purposes of NAHASDA.
- do not apply to owner occupied units that receive NAHASDA assistance for rehabilitation or units that are being purchased by a family with NAHASDA based financing or mortgage assistance. However, like all other assisted units, these units must receive initial inspections by the recipient prior to occupancy by the beneficiary household; and,
- may be conducted more or less frequently than annually.

The results of these recurring inspections provide information that will help a recipient evaluate the effectiveness of its program and must be included in a recipient's Annual Performance Report (Form HUD 52735AS) in Part II, Section A.II.

Background: NAHASDA (Section 403(b)) requires recipients to conduct on-site inspection of housing assisted under the Act to determine compliance with applicable requirements that include maintenance of assisted housing (Section 203(e)).

Section 403(b)
 PERIODIC MONITORING - Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this Act to assess compliance with the requirements of this Act. *Such review shall include on-site inspection of housing to determine compliance with applicable requirements.* [emphasis added] The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 404 and made available to the public.

Discussion: Recurring Unit Inspections: The Act is not specific regarding at what frequency each unit must be inspected. It is clear, however, that evaluating the condition of covered assisted housing stock is an integral part of a recipient's self assessment responsibilities under Section 403(b). It is incumbent upon a recipient to include the inspection of such units on a reasonable schedule in its policies governing the management and maintenance of assisted housing (Section 203(e)). Periodic, scheduled inspections will allow a recipient to adequately assess the on-going compliance of such units with the requirements of the Act.

In developing its policy governing inspection of units, a recipient must consider the underlying reasons for and benefits of performing such regular inspections. Although the fact that they are required by the Act is reason enough to perform the inspections, it must be acknowledged that a tribe's investment in affordable housing represents a significant asset of the tribe and tribal members. To protect that investment, a regular program of inspection and maintenance is needed. The policy must adequately identify maintenance issues before they become crises that affect the viability of the assisted housing. While

annual inspections are a generally accepted standard, in some situations the policy may include inspecting units on a more or less frequent basis. An effective policy should, at a minimum, include or address frequency of inspections, standard inspection forms, standards for completing maintenance concerns identified during inspections, procedures for charging tenants for damages (as appropriate), and maintenance of records.

Types or Categories of Housing Assistance Covered by the Initial and Recurring Inspection Requirements:

Initial inspections apply to all units constructed, acquired, and/or rehabilitated with NAHASDA funds. These units must be inspected by a recipient subsequent to, during the provision of such assistance and prior to occupancy by the beneficiary household or, in the instance of owner occupied housing, upon completion of rehabilitation work.

Recurring recipient inspection requirements apply to NAHASDA assisted housing units when the recipient owns the units; has an ongoing responsibility to provide maintenance of the unit; or, to ensure that maintenance is provided by the purchaser/occupant. Examples of units for which a recipient has recurring inspection responsibilities are:

- rental and homeownership units developed with United States Housing Act of 1937 funds (Section 502(b) of the NAHASDA);
- rental units constructed, acquired, and/or rehabilitated with NAHASDA funding and owned and operated or managed by the recipient;
- rental units constructed, acquired, and/or rehabilitated with NAHASDA funding and owned by the recipient but operated or managed by another entity;
- rental units constructed, acquired, and/or rehabilitated with NAHASDA funding that are owned by another entity but operated or managed by the recipient as affordable housing under the Act;
- units constructed, acquired, and/or rehabilitated with NAHASDA funds and operated or managed by the recipient but maintained by the occupant/purchaser under a lease-purchase agreement (such as mutual help type programs).

Term or Period of Recurring Inspection Responsibilities: The recurring recipient inspection requirement ends when the housing unit is no longer required to remain as affordable housing. For rental housing, the requirement expires when the unit exceeds its “useful life” as defined under 24 CFR Part 1000.142. For mutual help homes developed under Sec. 202 of the United States Housing Act of 1937 and lease purchase housing developed with NAHASDA funds, the requirement expires when unit ownership is conveyed to the homebuyer/purchaser or when unit ownership should have been conveyed to the homebuyer/purchaser, whichever is sooner or when the unit is financed/refinanced.

As noted above, recurring recipient inspections are not required for owner occupied units

that receive rehabilitation assistance or units that are being purchased by a family with NAHASDA based financing or mortgage assistance since the recipient has no ongoing interest in these units. These units would, however, be subject to inspection prior to and during the period of rehabilitation or prior to purchase and occupancy by the beneficiary household to ensure recipient standards for quality are met.

Effect on Annual Performance Report (Form HUD 52735 AS) Requirements. This Notice removes the requirement for recipients to:

- enter data in Column (b), rows 2 (b) (c) (d) and (e) when completing **Table III – Inspection of Assisted Housing**. As noted above, recipients do not have recurring inspection responsibilities for these NAHASDA assisted units that they do not own, operate or manage.
- respond to narrative question Number 3 to **Table III** since it requests recipients to describe the process used to inspect housing units that they do not own or manage that were assisted with NAHASDA funds.

Consultation with Indian Tribes: On June 20, 2002, draft language on which this Notice is based was sent to all Indian tribal governments and tribally designated housing entities. Two comments were received. One commentor fully supported the draft language and content. The second commentor expressed concern that funds were not provided to inspect housing units developed with NAHASDA funds nor were funds provided under the formula to manage and maintain such units. The formula block grant program authorized by NAHASDA consolidated a number of categorical grant programs and their associated activities, including funding for operation of housing programs. Formula funding provides maximum flexibility to Indian tribes to design and implement programs to address their affordable housing needs. Operating assistance for NAHASDA developed units may be approved as a model activity under sec. 202(6).

Contacts: Should you need additional information, please contact your Area Office of Native American Programs.

/s/
Assistant Secretary for Public
and Indian Housing