



No. 2003-03
April 11, 2003

PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: Area ONAP Administrators, Grants Evaluation (GE) Directors, and GE staff

R.B.A.

FROM: Rodger Boyd, Deputy Assistant Secretary, PN

TOPIC: Sanctions Process

Purpose: Revise the Denver Program Office's role in the sanctions process

Currently, the Denver Program Office (DPO) functions as the focal point for enforcement action processing. All enforcement actions are routed through the DPO, which:

- tracks the status of all enforcement actions;
- reviews the enforcement package for accuracy, clarity, and consistency;
- drafts or edits enforcement letters;
- acts as a liaison between the Area Office, the Area Counsel, Enforcement Center, ONAP's Program Counsel, and the Deputy Assistant Secretary (DAS);
- evaluates proposed actions for consistency between Area Offices; and
- establishes standard processes and procedures.

The basic enforcement process has been established and tested, reducing the need for the DPO to be as involved. In an effort to streamline processing of enforcement actions, the DPO's role is being reduced to:

- tracking the status of all enforcement actions;
- reviewing proposed actions to ensure consistency between Area Offices; and
- reviewing actions prior to approval by the DAS.

The Enforcement Center will work directly with the Area Office and their Counsel to address any issues that arise during the review process. The DPO's involvement will revert to normal Headquarters responsibilities of establishment of policy and procedures and oversight of the process.

Attached are:

- revised pages to Chapters 2 (APR Processing Guidelines) and 6 (Sanctions Process Guidelines) of the GE Guidebook that reflect the enforcement process changes

- three sets of sample letters developed for the revised process. The letters may be used when pursuing enforcement actions due to a recipient’s noncompliance with:
 - 24 CFR §1003.506 regarding the submission of the Annual Status and Evaluation Report required under the Indian Community Development Block Grant Program;
 - OMB Circular A-133 and 24 CFR §1000.544 regarding the submission of audits to the Federal Audit Clearinghouse; and
 - 24 CFR §1000.548 regarding the submission of audits with the Annual Performance Report.
- revised pages to Chapter 3 (Audit Review Process Guidelines) of the Guidebook needed to distinguish between the two separate audit submission requirements.

Filing instructions for the revised Guidebook attachments are:

Remove	Insert
Chapter 2, APR Processing Guidelines, pages 2-3 and 2-4	Chapter 2, APR Processing Guidelines, pages 2-3 and 2-4
Chapter 3, Audit Review Process Guidelines, pages 3-1 and 3-2	Chapter 3, Audit Review Process Guidelines, pages 3-1 and 3-2
Chapter 3, Audit Review Process Guidelines, pages 3-5 through 3-8	Chapter 3, Audit Review Process Guidelines, pages 3-5 through 3-8
Chapter 3, Audit Review Process Guidelines, pages 3-11 through 3-14	Chapter 3, Audit Review Process Guidelines, pages 3-11 through 3-14
Chapter 3, Audit Review Process Guidelines, pages 3-17 and 3-18	Chapter 3, Audit Review Process Guidelines, pages 3-17 and 3-18
Chapter 6, Sanctions Process Guidelines, pages 6-1 through 6-17	Chapter 6, Sanctions Process Guidelines, pages 6-1 through 6-20
None	Appendix Chapter 6, Sample letters for delinquent ASERs and Audits, pages Appendix 6-13 through 6-32

A “star” in the left-hand column indicates the changes that have been made on the revised pages.

If you have questions about these revised procedures or the sanctions process in general, please contact Vicki Schaefer, Grants Evaluation Specialist, at (303) 675-1622.

Attachments

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Overall Performance Assessment Report. ONAP may request additional information from the recipient during that 60-day review and comment period. Also, all IHBG recipients must submit quarterly the Federal Cash Transaction Reports (HUD 272-I).

2.1.2 Extension requests

If requested, the Area ONAP may grant one extension for a maximum period of 30 days when warranted by the circumstances of the delay. The APR Extension Request Letter format may be used and is included in the Appendix.

2.1.3 Recipient noncompliance

A recipient's failure to submit an APR becomes a sanctions issue, and the procedure to be followed is stated in Section 6.2.2 of the Sanctions Chapter of this Guidebook.

2.1.4 Interface between APR and IHP reviews

The review requirements for the APR are not as stringent as those for reviewing an IHP. The APR describes the recipient's progress in accomplishing the goals and objectives that are stated in their IHP. In contrast to the review of an IHP, the purpose of the APR review is not to establish recipient compliance with statutory requirements. The primary purpose of the APR is to provide ONAP with information regarding progress with implementation of the tribe's IHP.

Reviewers' responsibilities include:

- Determining if the report was submitted in a timely manner;
- Determining if it included all required information;

Tool: APR Extension Letter



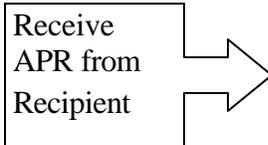
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- Providing recommendations on the recipient’s plans and on the APR to assist the recipient in improving affordable housing delivery; and,
- Providing comments to the recipient regarding its IHBG performance based on review of information in the report.

The GE Specialist has the flexibility to determine which steps of the review guidelines must be completed to support the reviewer’s conclusions and recommendations.

Interface with Overall Performance Assessment: The APR and any reviewer observations and comments made during the APR review serve as the foundation for the Overall Performance Assessment. Reviewing the APR and completing an Overall Performance Assessment should be accomplished within 60 days of receipt of the APR.

APR Review Guidelines: The APR Review Guidelines are divided into two stages, with slightly different objectives. The first stage is to determine if the APR is complete and accurate. The second stage is a detailed evaluation of the APR to (1) determine if the recipient is progressing towards meeting its affordable housing goals and (2) develop constructive suggestions to the recipient to improve its operations, IHP, and delivery of its affordable housing services.



2.2 Receive APR from Recipient

2.2.1 Log receipt of APR and Assignment to a GE Specialist

IHBG recipients may submit APRs in hard copy, on diskette, or by the Internet. The GE Director (or Team Leader) of each Area ONAP should

Chapter Three -- Audit Review Process Guidelines

This chapter provides ONAP staff with guidelines for reviewing independent public auditor (IPA) audits, and for tracking necessary corrective actions by HUD recipients in response to IPA audits and Office of the Inspector General (OIG) audits. It includes the following sections:

- Objectives and overview of the process – 3.1
- Track audit receipt – 3.2
- Conduct compliance review of IPA audit –3.3
- Review cognizant or oversight agency acceptance letter – 3.4
- Review OIG audit report – 3.5
- Outputs of the audit review process

Tools and Templates



- Audit tracking log
- OIG audit tracking log
- IPA audit review checklist
- CAP request letter
- CAP acceptance letter
- Federal agency acceptance letter checklist
- Management decision letter

(Background tools and templates are to be found in the Appendix of this Guidebook.)

3.1 Objectives and Overview of the Process

Reports prepared by auditors provide useful information about a recipient’s financial situation, use of its resources, internal controls, and compliance with HUD regulations. Findings identified in audit reports

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and the recipient's actions to resolve findings are important inputs for the consolidated annual review, including risk assessment, and monitoring processes.

The GE Specialist has two roles in the audit review process:

- Identify audit findings that require ONAP monitoring to ensure that the recipient takes necessary corrective actions and resolves findings
- Conduct a review of certain audits to ensure that the auditor has complied with OMB Circular A-133 requirements

3.1.1 Who must submit audits?

Any non-Federal entity that expends \$300,000 or more in a fiscal year in Federal funds must submit an annual audit that complies with Office of Management and Budget (OMB) Circular A-133. These are referred to as independent public accountant (IPA) audits.



Grant recipients are responsible for contracting for their required audits and submitting the audits to the Federal Audit Clearinghouse for a completeness review and dissemination to the appropriate Federal agencies. The Federal Audit Clearinghouse will only disseminate audit reports containing findings. Auditees may be a recipient, a subrecipient, or a vendor.

3.1.2 What types of audit reports will ONAP receive?

In general, HUD requires that recipients obtain a single audit that covers all grant funds, in compliance with the Single Audit Act (SAA). If a recipient elects to have multiple program-specific audits, then the recipient may not use grant funds for the additional audits. However, if a recipient is not subject to the SAA because of insufficient Federal fund expenditures and elects to have a periodic financial review, such a review would be an eligible program expenditure. The financial review should accompany the APR.

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Type of Audit	Responsible Agency	ONAP responsibility
HUD OIG		Transfer auditor's findings to the recipient <i>audit tracking log</i> , monitor progress on necessary corrective actions, and track findings through the Departmental Automated Audit Management System (DAAMS).



3.1.3 Audit report submission requirements

There are two separate requirements for submitting audit reports.

OMB Circular A-133 submission requirements (§.320(a) and (d))

An auditee must submit a complete reporting package to the Federal Audit Clearinghouse within 30 days after receipt of the auditor's report or 9 months after the end of the audit period, whichever is earliest. The cognizant or oversight agency may agree in advance to extend the submission period. A reporting package includes: Financial statements and schedules of Federal award expenditures, a summary schedule of prior audit findings, the auditor's report, and a corrective action plan.

Additionally, an auditee must submit an OMB data collection form (Form SF-SAC) and a report package for each Federal funding agency for which the audit report identifies findings or gives the status of previous audit findings.

The Federal Audit Clearinghouse will:

- Distribute audit reports
- Maintain a database of completed audits
- Provide appropriate information to Federal agencies
- Follow up with recipients that have not submitted the required data collection forms and reporting packages.

NAHASDA submission requirements (§1000.548)

The recipient must submit a copy of the latest audit required under the SAA with the APR. In order for a recipient to be in compliance with this submission requirement, the audit must be in compliance with A-133. In other words, it must have been submitted to the Federal Audit

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Clearinghouse and been accepted. This will mean that the audit that is submitted with the APR is over a year old.



3.1.4 Sanctions for noncompliance with audit requirements

The recipient is not in compliance with OMB Circular A-133 and NAHASDA §1000.544

A-133, §_225 indicates that in cases of continued inability or unwillingness to have an A-133 audit conducted, ONAP shall impose sanctions which may include:

- Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- Withholding or disallowing overhead costs;
- Suspending Federal awards until the audit is conducted; or
- Terminating the Federal award.

If a recipient does not submit an audit to the Federal Audit Clearinghouse within the time prescribed, the GE Specialist is to prepare a *Past Due Notice/Letter of Warning (not compliant with §1000.544)*. This notice gives the recipient 30 days to come into compliance with A-133. A recipient's noncompliance for failure to submit an audit to the Federal Audit Clearinghouse is a sanctions issue. The Area ONAP will follow Subpart F of the NAHASDA regulations and the procedures contained in the Sanctions Chapter of this Guidebook.

The recipient is not in compliance with NAHASDA §1000.548

If a recipient does not submit the latest audit, compliant with the SAA, to ONAP with the APR, the GE Specialist is to prepare a *Past Due Notice/Letter of Warning (not compliant with §1000.548)*. This letter gives the recipient 30 days to submit. A recipient's noncompliance for failure to submit an audit with the APR becomes a sanctions issue. The Area ONAP will follow Subpart F of the NAHASDA regulations and the procedures contained in the Sanctions Chapter of this Guidebook.

PLEASE NOTE: If a recipient has not submitted the audit either to the Federal Audit Clearinghouse or to ONAP (thereby, being in noncompliance with both A-133 and NAHADSA requirements), the GE Specialist should combine the *Past Due Notice/Letter of Warning* to reflect both areas of noncompliance.

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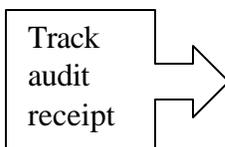
3.1.5 Reference documents on audit review

These documents may be found at the following Internet addresses:

- OMB Circular A-133 Compliance Supplement for current and past years: <http://www.whitehouse.gov/omb/grants/#circulars.html>
- PIH Notice 98-14:
<http://www.hud.gov/pih/publications/notices/pih98-14.pdf>
- Form SF-SAC, Data Collection Form for Reporting on Single Audits: <http://harvester.census.gov/fac/collect/formoptions.html>
- AICPA Illustrative OMB Circular Reports Examples:
<http://www.aicpa.org/belt/a133.htm>

3.1.6 Audit review, risk assessment, and monitoring

The audit review is the primary source of data on a recipient's financial and internal controls. This information is essential to rating recipient risk. Audit report findings will be entered in the *audit tracking log*, so the findings can be tracked on an ongoing basis. Audit report findings should be carefully considered in the design of the monitoring strategy for a recipient so that ONAP resources (staff time and travel) are allocated effectively.



3.2 Track audit receipt

3.2.1 Create audit tracking log

The GE Specialist will use the *audit tracking log* to record expected receipt dates of all audit reports for assigned recipients. This can be used by individual GE Specialists to prompt requests for delinquent audit reports and by the GE Division Director to help with scheduling and assignments.

3.2.2 Log audit receipt

The GE Program Assistant will record the date that all audit reports are received at the Area ONAP in the *audit tracking log*.

Unique audit identifier

The GE Specialist creates a unique identifier for each audit in the *audit tracking log*. Identifiers should allow for tracking of audits and their

Tool: audit tracking log



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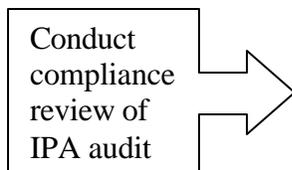
findings over a several-year period. One suggested method is to create a unique number by using the fiscal year as a prefix followed by a recipient number. For example, 98CA143 refers to the 1998 audit for the Karuk Tribe IHA. An additional alpha identifier can be used to denote additional audits commissioned by the recipient.

OIG audit reports

These audit reports will be addressed to the Action Official in the Area ONAP, who is usually the Administrator. An OIG audit may be received by regular mail or accessed on the OIG web page. The Action Official is the local official accountable for tracking required corrective actions and closing OIG findings. Usually, the GE Specialist will handle the day-to-day monitoring and recipient support activities required to resolve OIG findings.

An OIG audit report has a unique number assigned when it arrives at the Area ONAP. The Action Official and GE Specialist are required to use tools developed by the OIG to track and document progress on resolving findings. They also may choose to use the *OIG audit tracking log* to track their cases.

Tool: OIG audit tracking log



3.3 When HUD is the cognizant or oversight agency

The GE Division Director will determine who has responsibility for the A-133 compliance reviews for content of IPA audit reports. The audit reviews may be part of each GE Specialist's duties or may be assigned to selected individuals who have special knowledge.

3.3.1 Review IPA audit for completeness

The Federal Audit Clearinghouse will review the IPA audit report to determine if it is complete, containing the following components:

- Auditor's opinion on the presentation of financial statements and schedule of expenditures of Federal awards;
- Financial statements;
- Schedule of expenditures of Federal awards;
- Auditor's report on compliance;
- Auditor's report on internal controls;
- Schedule of findings and questioned costs;

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questionable items, balances, transactions, or procedures are appropriate and within program regulations and requirements. Discrepancies may occur in situations where an IPA is unfamiliar with HUD programs and may not report departures from regulations and requirements appropriately. If there are numerous discrepancies, the reviewer also should check to ensure that the IPA is (or works for) a certified public accountant or is (or works for) a public accountant licensed on or before December 31, 1970. Occasionally, program participants try to hide problems by engaging an unqualified IPA.

If the GE Specialist is concerned about the integrity of the auditor or auditing firm, then these issues should be discussed with the GE Division Director for possible actions, such as debarment or limited denial of participation.

If the GE Specialist believes that an additional audit should be conducted, then they should inform the GE Division Director who will inform the recipient. Recipient cost for commissioning an additional audit requested by ONAP is an allowable expense.

3.3.3 Evaluate recipient's corrective action plan

Recipients are required to submit a corrective action plan that will address all findings cited in the audit report (A-133, §.320(c)(4)). If the recipient did not agree with the audit findings or believes corrective action is not required, then the recipient's corrective action plan should cite reasons. The GE Specialist should review the recipient's corrective action plan to determine whether the corrective actions are appropriate and responsive to the audit findings.

3.3.4 Notify recipient of audit review results

Issue compliance letter

If the audit is in compliance and the corrective action plan is responsive to the findings, the GE Specialist prepares a letter for signature by the GE Division Director that confirms compliance and acknowledges acceptance of the plan. The GE Specialist may use the *CAP acceptance letter* template.

Request revised corrective action plan

If the recipient's corrective action plan is inadequate, then the GE Specialist should use the *CAP request letter* template to request a corrective action plan that is responsive to all findings. The GE Specialist

Tools: CAP acceptance letter, CAP request letter

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should refer to findings using the same identifiers and descriptions entered in the *audit tracking log* and provide suggestions for an acceptable corrective action plan. Recipients must submit a responsive corrective action plan within 30 days of receiving their *CAP request letter*. For this reason, the letter should be sent via certified mail.

Implement management decision

If the recipient fails to submit a responsive corrective action plan within the 30-day time period, ONAP will issue a management decision, which outlines corrective actions that the recipient must take. The GE Specialist uses the *management decision letter* template to list all audit findings (finding numbers and descriptions), identify required corrective actions, and supply target dates. The GE Division Director reviews, revises if necessary, and signs the letter. The GE Specialist should transfer the management decisions to the *audit tracking log*. The recipient has 1 year to close out all management decisions.

Recipient noncompliance

If the recipient fails to comment on the management decision within 45 days or fails to close out all management decisions within the 1-year timeframe, the GE Specialist should discuss the situation with the GE Division Director. If the GE Specialist and GE Division Director believe that the enforcement process should be initiated, the GE Specialist should prepare a *Letter of Warning* to the recipient in accordance with 24 CFR §1000.530 (or §1003.701 for ICDBG). All issues of apparent substantial noncompliance that represent a willful pattern are referred by the GE Division Director to the Enforcement Panel, which reviews the evidence of noncompliance and makes recommendations to the DAS. The procedure to be followed in taking enforcement actions is outlined in the Sanctions Chapter of this Guidebook.

Deficient administrative capacity

If the GE Specialist believes that the audit report reveals a serious problem with the recipient's administrative capacity, the Area ONAP management team should develop specific plans for intervention.

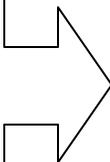
3.3.5 Monitor recipient's progress and update overall risk rating

The GE Specialist should transfer all findings, corrective actions, management decisions, and target dates to the *audit tracking log*. The GE

Tool: management decision letter



The Area ONAP management team is comprised of the GE & GM Division Directors and the Administrator



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Specialist should monitor and document the recipient's progress in taking corrective actions and keep the GM staff informed in case technical assistance is needed to close findings. The GE Division should update the *audit tracking log* and *risk assessment workbook* with status updates and finding closure dates.

On occasion, circumstances or events occur that may delay the completion of the corrective action plan. See Audits Management System Handbook, HUD Handbook 2000.06 Rev-3, for procedures to address this issue.



***Tool: Federal Agency
acceptance letter checklist***

3.4 When HUD is not the cognizant or oversight agency

3.4.1 Document receipt of acceptance letter

The GE Specialist uses the *Federal agency acceptance letter checklist* to verify that the recipient submitted all normal components of the audit.

Assign unique identifier to each finding

Each audit finding should be assigned a unique identifier. The finding identifier can follow the format described for IPA audit findings in section 3.3.2 of this Chapter. The GE Specialist must transfer the findings, action plans, and target dates to the *audit tracking log*.

3.4.2 Evaluate recipient's corrective action plan

The GE Specialist is responsible for tracking findings cited in the cognizant or oversight acceptance letter and corrective actions taken by the recipient. Follow procedures outlined in section 3.3.3 of this Chapter.

Request revised corrective action plan

If the recipient's corrective action plan is inadequate, then the GE Specialist should use the *CAP request letter* template to request a corrective action plan that is responsive to all findings. The GE Specialist should refer to findings using the same identifiers and descriptions entered in the *audit tracking log*. Recipients must submit a responsive corrective action plan within 30 days of receiving their *CAP request letter*. For this reason, the letter should be sent certified mail.

Implement management decision

If the recipient fails to submit a responsive corrective action plan within the 30-day time period, ONAP will issue a management decision, which outlines corrective actions that the recipient must take. The GE Specialist

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uses the *management decision letter* template to list all audit findings (finding numbers and descriptions), identify required corrective actions, and supply target dates. The GE Division Director reviews, revises if necessary, and signs the letter. The GE Specialist should transfer the management decisions to the *audit tracking log*. The recipient has 1 year to close out all management decisions.



Recipient noncompliance

If the recipient fails to comment on the management decision within 45 days or fails to close out all management decisions within the 1-year timeframe, the GE Specialist should discuss the situation with the GE Division Director. If the GE Specialist and GE Division Director believe that the enforcement process should be initiated, the GE Specialist should prepare a *Letter of Warning* to the recipient in accordance with 24 CFR §1000.530 (or §1003.701 for ICDBG). All issues of apparent substantial noncompliance that represent a willful pattern are referred by the GE Division Director to the Enforcement Panel, which reviews the evidence of noncompliance and makes recommendations to the DAS. The procedure to be followed in taking enforcement actions is outlined in the Sanctions Chapter of this Guidebook.

Deficient administrative capacity

If the GE Specialist believes that the audit report reveals a serious problem with the recipient's administrative capacity, the Area ONAP management team should develop specific plans for intervention.

3.4.3 Monitor recipient's progress and update overall risk rating

The GE Specialist should transfer all findings, corrective actions, and target dates to the *audit tracking log*. The GE Specialist should monitor and document the recipient's progress in taking corrective actions and keep the GM staff informed in case technical assistance is needed to close findings. The GE Specialist should update the *audit tracking log* and *risk assessment workbook* with status updates and finding closure dates.

On occasion, circumstances or events occur that may delay the completion of the corrective action plan. See HUD Handbook 2000.06 Rev-3 for procedures to address this issue.



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- Description of the report's findings and recommendations
- Classification of each recommendation made by the report
- Due date for each required management decision
- Cost data for each recommendation

3.5.5 Track corrective actions and communications

The GE Specialist should track and document all recipient corrective actions outlined in the management decision using the *OIG audit tracking log*. Corrective actions should be completed not more than 1 year from the date the management decision was made. DAAMS should be updated as needed with all applicable actions and dates.

3.5.6 Close audit findings

When a corrective action is completed, the GE Specialist will prepare the certification package for the Action Official. The certification package consists of a Final Action Certification, a copy of the management decisions, and appropriate back-up documents to support closing the finding(s). Copies of the forms can be found in HUD Handbook 2000.06 Rev 3, Appendix A. The Action Official sends the certification package with accompanying memo to the Primary Audit Liaison Officer in the appropriate region.

For audits issued to recipients located west of the Mississippi River (regions 6, 7, 8, 9, and 10), the address is:

Western Primary Audit Liaison Officer
U.S. Department of Housing and Urban Development
P.O. Box 2905
1600 Throckmorton Street
Fort Worth, TX 76113-2905

For audits issued to recipients located east of the Mississippi River (regions 1, 2, 3, 4, and 5), the address is:

Eastern Primary Audit Liaison Officer
U.S. Department of Housing and Urban Development
Pennsylvania State Office
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3380

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3.5.7 Recipient Noncompliance

If the recipient does not satisfactorily address the audit findings within the 1-year timeframe, the GE Specialist should prepare a *Letter of Warning* to the recipient in accordance with 24 CFR §1000.530 (or §1003.701 for ICDBG). All issues of apparent substantial noncompliance that represent a willful pattern are referred by the GE Division Director to the Enforcement Panel, which reviews the evidence of noncompliance and makes recommendations to the DAS. The procedure to be followed in taking enforcement actions is outlined in the Sanctions Chapter of this Guidebook.

3.6 Outputs of the Audit Review Process

The audit review process should generate the following outputs that will be used as inputs to the risk assessment and monitoring processes and other office functions:

- Letters to recipients
- Corrective action plans
- Management decisions

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Chapter Six -- Sanctions Process Guidelines

This chapter provides ONAP staff with procedures to follow in circumstances when recipients fail to take action to address noncompliance with HUD requirements. It includes the following sections:

- Objectives and overview of the sanctions process
- Enforcement actions
- “High risk” designations pursuant to 24 C.F.R. §85.12
- Limited denial of participation (LDP) actions, debarments, and suspensions*

* Note: Section 6.4 includes a discussion of action which may be taken under the provisions of 24 CFR Part 24 -- Government Debarment and Suspension. However, since these actions (in other than very extraordinary circumstances) would be specifically directed at individuals for mal- or misfeasance and not at recipients of assistance (tribes, TDHEs), they are treated as a separate class of sanctions. Therefore, other than in that section, the discussion in this chapter, unless specifically indicated, will only address policies and procedures for recipient failure to address identified areas of noncompliance.

Background, Tools and Templates

- November 12, 1999, Memorandum from DAS – Procedure for taking action under Section 401(a) of NAHASDA
- February 18, 2000, Enforcement Protocol, Addendum 1 (ONAP)
- January 18, 2001, NAHASDA Guidance No. 2001-07 – Use of 24 CFR Part 85.12 “High Risk” Determination
- Past Due Notice/Letter of Warning for delinquent APRs
- Notice of Intent/Offer of Informal Meeting for delinquent APRs
- Imposition of Sanctions Letter for delinquent APRs
- Past Due Notice/Letter of Warning for delinquent audits (not compliant with §1000.544)



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- ☆ ➤ Notice of Intent/Offer of Informal Meeting for delinquent audits (not compliant with §1000.544)
- ☆ ➤ Imposition of Sanctions Letter for delinquent audits (not compliant with §1000.544)
- ☆ ➤ Past Due Notice/Letter of Warning for delinquent audits (not compliant with §1000.548)
- ☆ ➤ Notice of Intent/Offer of Informal Meeting for delinquent audits (not compliant with §1000.548)
- ☆ ➤ Imposition of Sanctions Letter for delinquent audits (not compliant with §1000.548)
- ☆ ➤ Past Due Notice/Letter of Warning for delinquent ASERs
- ☆ ➤ Notice of Intent/Offer of Informal Meeting for delinquent ASERs
- ☆ ➤ Imposition of Sanctions Letter for delinquent ASERs

(Background tools and templates are to be found in the Appendix of this Guidebook.)

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6.1 Objectives and Overview of the Process

The imposition of sanctions is the ultimate tool available to HUD to protect against fraud, waste, and mismanagement. There are two basic reasons for imposing sanctions:

- to address the willful failure of a recipient to correct noncompliance with statutory or regulatory requirements identified by HUD monitoring and oversight (see §1000.530 for the IHBG program and §1003.701 for the ICDBG program)
- if the recipient is unable to address or correct noncompliance because it lacks the administrative capacity to do so.

Measurements of administrative capacity:

- ◆ *history of satisfactory performance*
- ◆ *financial stability*
- ◆ *acceptable management systems*
- ◆ *acceptable policies and procedures*
- ◆ *compliance with previous awards*
- ◆ *experienced employees*

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*Tool:11/12/99 Memo from
DAS*



In other words, HUD may take sanctions if a recipient will not or cannot implement the corrective or remedial actions requested or recommended by ONAP (or other recipient identified acceptable actions) in a timely manner.

For the IHBG program, ONAP may impose those sanctions described in §1000.532 or §1000.538, depending on the nature of the noncompliance – non-substantial or substantial. As established in the November 12, 1999, memorandum from the ONAP DAS, the imposition (or removal) of the sanctions provided in §1000.532 and a declaration of substantial noncompliance and the imposition (or removal) of the sanctions provided in §1000.538 can only be made by the DAS. See Section 6.2, below, for further discussion on substantial noncompliance.

For the ICDBG program, there is no definition in the program regulations for substantial noncompliance. There are two distinctions made between the sanctions available at §1003.702 and §1003.703:

- The sanctions available in §1003.702 may be taken by the Area ONAP; the authority to take those in §1003.703 have been delegated by the Secretary to the DAS and have not been further delegated or redelegated. The ICDBG Program is not discussed in the November 12, 1999, memorandum.
- Sanctions under §1003.702 can only be taken when based upon the review of the grantee’s performance, as opposed to other performance problems, such as noncompliance with reporting requirements.

For grant programs other than IHBG or ICDBG, e.g., Rural Housing and Economic Development, unless program regulations are developed which specifically address enforcement or sanctions, the provisions of 24 CFR §85.43 Enforcement, as referenced in the program grant agreement, will be implemented in a manner consistent with intent. Area ONAPs are to follow the process and procedures in the IHBG program regulations, i.e., part 1000, subpart F.

Under the very limited circumstances described below in Section 6.3, a “high risk” determination or designation under the provisions of 24 CFR §85.12 may be made and imposition of risk-specific conditions or restrictions on future grants may be done. This may be the most appropriate sanction procedure to use for an IHBG or ICDBG recipient which fails to take appropriate and timely action to address a finding of

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noncompliance. An Area ONAP Administrator may take these actions without DAS approval.

The key to effectively imposing sanctions is timely, thorough, and accurate documentation by the GE Specialist. In general, grants evaluation processes are intended to help GE Specialists detect and document deficiencies early so that recipients have ample opportunities to correct them. However, if recipients fail to take appropriate corrective actions in a timely manner, ONAP will rely on its documentation to explain and justify its sanctions, and to support legal actions (if necessary).

6.1.1 Various Roles in the Sanctions Process

The role of the GE Specialist

As explained above, timely, thorough, and accurate documentation is required to explain and justify any sanctions, and to support legal actions (if necessary). In coordination with the GE Division Director, the GE Specialist makes the recommendation of actions required to address recipient failure to take corrective actions, including engaging the Enforcement Center.

The role of the Enforcement Panel



The role of the Enforcement Panel is to:

- review the facts surrounding the finding(s) of noncompliance and review the actions taken to date by the GE Division to achieve compliance
- review actions, if any, taken by the recipient to address the identified noncompliance
- review the cause(s) of the noncompliance identified by the GE Division
- affirm the recommendation of the GE Specialist or identify additional actions to be taken by the Area ONAP to remedy or otherwise address the recipient's failure to address the noncompliance.

(The Enforcement Panel is representative of both Area ONAP Divisions (see 6.1.2 below) and it must concur in or affirm recommendations for all proposed sanction actions, including "high risk" designations, LDPs, debarments, and suspensions).

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A sanction is a serious matter that can have significant impact on the recipient, the beneficiary tribe (if a TDHE is the recipient), its constituents, and the resources of the ONAP. Recommended actions by the Area ONAP must be consistent with those taken in similar situations within the ONAP's jurisdiction. Before such an action is taken, it is essential that both the GE and GM Divisions and the Administrator provide input to the decision and are aware of written and/or verbal commitments Area ONAP staff may have made, i.e., a commitment to provide technical assistance.



If the Enforcement Panel verifies that the finding of noncompliance was not addressed or was insufficiently addressed by the recipient, it may recommend a specific sanction for consideration and final determination by the Area ONAP or DAS, as appropriate, or it may direct the Area ONAP to take additional actions, which if unsuccessful, will lead to a recommendation of a sanction.



The role of the Office of Regional Counsel

The local Office of Counsel will serve as support to the Area ONAP in initiating enforcement actions. Counsel staff will also have direct contact with the Enforcement Center during the process.



The role of the Denver Program Office - Office of Grants Evaluation

The role of the Denver Program Office - Office of Grants Evaluation (DPO) is to establish policy and procedures and to oversee the sanctions process. The DPO is responsible for reviewing all proposed enforcement actions for consistency between ONAPs, tracking the status of all enforcement actions, and reviewing final actions prior to approval by the DAS.

As noted above, under the IHBG program, authority to declare a substantial noncompliance under §1000.534 or to impose and to remove sanctions under §1000.532 or §1000.538 has been reserved by the DAS. Also as noted above, the DAS has retained the authority to impose sanctions under §1003.703 for the ICDBG program and those under §85.43 for other grant programs.

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**Tool: Enforcement
Protocol**

The role of the HUD Enforcement Center

The HUD Enforcement Center supports all Area ONAPs by providing advice and guidance on enforcement strategies. These guidelines are based on the *Enforcement Protocol* developed by ONAP and the HUD Enforcement Center. This document outlines the roles and responsibilities of the Enforcement Center in assisting ONAP to resolve instances of failure by a recipient to address findings of noncompliance involving IHBG and ICDBG funds. The Protocol, dated February 18, 2000, is very similar to that used by ONAP in the past for handling enforcement actions.

The Enforcement Center serves as HUD counsel for hearings under 24 CFR Part 26 and when it is necessary to refer potential civil actions to the Attorney General for filing in Federal courts. Since any enforcement action may result in litigation, counsel for the Enforcement Center reviews all relevant documents and correspondence before a substantial noncompliance under IHBG is declared or before any sanctions are imposed upon a recipient's grant programs under §1000.532 or .538 (IHBG), §1003.703 (ICDBG), or §85.43 (other grant programs).



The Area ONAP and/or the Area Counsel may utilize the Enforcement Center's expertise throughout the sanctions process.

6.1.2 Responsibilities

GE Division Director

The GE Division Director convenes an Enforcement Panel and serves as the Panel facilitator. The GE Division Director shall prepare, or cause to prepare, a summary of the decisions and recommendations made by the Panel. The GE Director should also ensure that there is consistency between the enforcement actions taken between recipients. However, the Administrator makes the final decision on the disposition of the case within the Area ONAP based upon input from the entire Panel.

GE Specialist



The GE Specialist assembles all available documentation that supports a recipient's area(s) of noncompliance for review by members of the Enforcement Panel. Documentation should include, as appropriate, correspondence, internal memoranda and notes, monitoring reports, responses from the recipient, overall performance assessments, audits and audit reviews, APRs (and/or ASERs) and reviews of those reports, corrective action plans, management decisions, environmental reviews,



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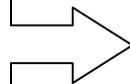
and third-party observations. In addition, the GE Specialist will prepare recommendations of sanctions to be taken for consideration by the Panel. For IHBG, if the recommended sanctions include those listed in §1000.538, the GE Specialist must also provide evidence or documentation that the noncompliance that has not been addressed meets the regulatory requirements for substantial noncompliance (§1000.534). The GE Specialist will provide copies of all pertinent documents for each member of the Panel.



Once the draft *Notice of Intent/offer of Informal Meeting* is concurred on by the Enforcement Center and approved by the DAS, the GE Specialist is responsible for obtaining all Area ONAP concurrences and the Administrator's signature and for mail distribution.

Enforcement Panel

Composition of
Enforcement
Panel



Members of the Enforcement Panel must include the Administrator, Area ONAP Counsel, GE Division Director, and GM Division Director and may include, as appropriate, Area ONAP staff, representatives from the Denver Program Office, and Office of Inspector General (OIG). The Panel reviews the evidence to determine if the actions taken by the Area ONAP: were appropriate, given the substance of the noncompliance identified; were taken in compliance with the procedural requirements of the regulations, specifically §1000.528 (which, by ONAP policy, also applies to ICDBG and other grant programs); and included, if appropriate, provision or offer of technical assistance. The GE Specialist may be asked to collect additional documentation before the Panel makes its decision. While additional evidence is being gathered, the Panel may discuss other findings where sufficient documentation already exists.

The Panel will review any information provided by the recipient to determine if it has adequately addressed the noncompliance by taking the corrective or remedial action requested by the Area ONAP. The Panel could also determine that even though an action taken by a recipient to address the noncompliance is not that which was recommended, it may be adequate. If it is determined that the recipient has taken adequate actions, the Panel will recommend that the GE Division Director transmit a determination of compliance to the recipient. If the Panel does not make such a determination, the Panel will proceed to the next step.

For the IHBG program, the Panel will review the documentation assembled by the GE Specialist to determine if the performance problem, which has not been adequately addressed, would meet the regulatory

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requirements for substantial noncompliance (§1000.534) (see section 6.2, below).

In order to recommend the appropriate action to be taken to address the recipient's failure to adequately address a finding of noncompliance, the Panel will review the documentation gathered by the GE Specialist and interview the Specialist in an attempt to ascertain the cause or causes. It may be determined that the most appropriate step to be taken would be the recommendation of additional corrective actions rather than sanctions.

If it is determined that failure to adequately address a compliance problem is due to ineffective administrative capacity of the recipient, it is possible that the most appropriate action is the provision of technical assistance by ONAP or a third party rather than the imposition of a sanction. (See section 6.1, above, which further explains administrative capacity.)



However, if a recipient's ineffective administrative capacity exposes HUD funds to substantial risk of fraud, waste, or abuse, the Panel should recommend a sanction.



The Panel will recommend to the Administrator the sanctions determined to be appropriate for the noncompliance issues.

NOTE: In cases where the recipient noncompliance represents a possible criminal violation, the GE Division Director must consult the local Office of the Inspector General (OIG) and Office of Regional Counsel (ORC). If representatives of these offices participate in Panel deliberations, then no additional consultation is needed.



The Office of Regional Counsel

The local Office of Counsel is responsible for providing legal advice to the Area ONAPs on enforcement actions. This Office may also assist the Area ONAP in drafting the enforcement letters. Area Counsel should be in direct contact with the Enforcement Center for clarification of the issues.



Denver Program Office

The DPO is responsible for ensuring consistency on enforcement actions between the Area ONAPs and within each Area ONAP.

The DPO is also responsible for tracking the progress of the enforcement action through the review and approval process and maintaining a Sanctions Tracking Log. The log will be distributed to the Area ONAPs

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on a monthly basis in order to guide other Area ONAPs in processing enforcement actions with similar circumstances of noncompliance.

The DPO will obtain the appropriate concurrences and/or signatures on the draft *Notice of Intent/Offer of Informal Meeting* and *Imposition of Sanctions* letters. Once the DAS signs the *Imposition of Sanctions* letter, the DPO will mail the original letter and distribute the copies.

Enforcement Center

The primary function of the Enforcement Center in enforcement actions is to represent ONAP and to ensure the actions taken by ONAP are legally supportable and appropriately documented. If, in the opinion of the Enforcement Center Counsel, the actions proposed or the documentation developed would not be upheld in an administrative or judicial review, the Enforcement Center Counsel will provide advice and assistance to the Area ONAP and its Counsel as to what actions are appropriate.



If the Enforcement Center Counsel believes the actions proposed are appropriate and the documentation adequate, the Counsel will provide the DPO with the approved draft *Notice of Intent/Offer of Informal Meeting*, with any revisions made. From the time the draft *Notice of Intent/Offer of Informal Meeting* is transferred to the Enforcement Center by the Area ONAP until the recipient's hearing rights are completed, the Enforcement Center Counsel assumes the lead role in the review of documents sent by the ONAP or received from the recipient and is responsible for representing the Department in administrative or judicial review proceedings. (For delinquent APRs, see 6.2.2.)

Program regulations at §§1000.538(d) and 1003.703(b) authorize HUD to refer issues of noncompliance to the U.S. Attorney General with a recommendation that an appropriate civil action be instituted.



6.1.3 Letter of Warning

Tool: Letter of Warning

Both the IHBG and ICDBG Program regulations are very specific on the steps that must be taken before imposing sanctions. (See 24 CFR §§1000.530 and 1003.701 for further guidance.)

Once the Area ONAP has identified the area(s) of noncompliance, either based on a monitoring review conducted, delinquent report(s), or other means, the GE Specialist is to prepare a *Letter of Warning* which:

- advises the recipient of the deficiency(s),

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- describes the corrective actions to be taken,
- establishes a date for corrective actions, and
- notifies the recipient that more serious actions may be taken if the deficiency(s) is not corrected or is repeated.

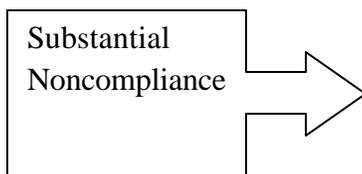
The GE Division Director may sign this letter.

6.2 Enforcement Actions

The provisions of subpart F of part 1000 are consistent with and reflect the government-to-government relationship established by NAHASDA and should be used to address IHBG recipient performance deficiencies unless the limited circumstances under section 6.3, “high risk” designations, apply. For more detailed information on the IHBG enforcement process, consult 24 CFR §§1000.522-28, 1000.532, and 1000.538.

Under the IHBG program in 24 CFR §§1000.532 and 1000.538, the sanctions include:

- Adjust, reduce or withdraw future grant amounts (Note: P.L. 106-569 amended these sanctions to include only the adjustment of future grant amounts – the regulations will be rewritten to reflect the change.)
- Terminate payments to the recipient
- Reduce payments under an existing grant
- Limit the availability of payments for existing grants
- Provide a replacement TDHE
- Refer the matter to the Attorney General
- Other appropriate actions in accordance with reviews and audits (Note: This option was deleted in P.L. 106-569 and the regulations will be changed to reflect this.)



To implement an action listed under §1000.538, it is necessary that a declaration of substantial noncompliance be made.

Substantial noncompliance exists if there is:

- **material effect on recipient meetings goals and objectives**
- **material pattern or practice of willful noncompliance**
- **material amount of NAHASDA funds obligated or expended;**

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➤ **substantial risk of fraud, waste, or abuse**



Sanctions under §1000.532 affect a recipient's future year's grant; whereas, §1000.538 sanctions affect current grants. For §1000.532 sanctions, the HUD action is effective the date of the notification. Whereas under §1000.538, the HUD action is not effective until after the hearing, or until 30 days after the date of the notification, whichever is later. However, HUD can suspend payments to the recipient pending a hearing and final decision. (**NOTE:** P.L. 106-569 amends this to state that HUD can limit the availability of payments to programs, projects, or activities not affected by the noncompliance prior to conducting a hearing if the noncompliance would result in a continued unlawful expenditure of funds. The regulations will be changed to reflect this.)

Under the ICDBG program in §1003.702, the Area ONAP may reduce or withdraw grants; under §1003.703, the DAS may terminate grants, reduce grants by an amount which was not expended in accordance with part 1003, limit availability of funds to project or activities not affected by failure to comply with part 1003, or, if appropriate, refer the matter to the Attorney General.

Under grant programs other than IHBG or ICDBG, under §85.43, the Area ONAP may temporarily withhold cash payments, disallow all or part of the cost of the activity, wholly or partly suspend or terminate the current grant award, withhold further awards, or take other remedies that may be legally available.



6.2.1 Process for Imposing Enforcement Action Sanctions

The process for imposing sanctions for most areas of noncompliance under the IHBG program (§1000.532 or 538) is summarized below. Similar processes will be followed for ONAP's other grant programs. The specific modifications to these procedures, e.g., formats for notices, for non-IHBG programs will be provided by the DPO as needed by the Area ONAPs. The process for imposing sanctions for delinquent APRs is explained in section 6.2.2.



Notification of intent to impose sanctions

If the recipient does not adequately respond to the *Letter of Warning* and the Enforcement Panel recommends imposing sanctions under §§1000.532/538, 1003.702/703, or 85.43, the GE Specialist will draft a *Notice of Intent/Offer of Informal Meeting*. This letter will notify the recipient of the actions HUD intends to take and offer them an opportunity

Tool: Notice of Intent/Offer of Informal Meeting

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to discuss the deficiency(s) during an informal meeting. The GE Specialist should seek the assistance of the Area Counsel in drafting the letter.

If a recipient's ineffective administrative capacity exposes HUD funds to substantial risk of fraud, waste, or abuse, the *Notice of Intent/Offer for Informal Meeting* should indicate that the deficiencies suggest that the recipient may not have the required administrative capacity to properly administer its IHBG program. It is recommended that the GE Specialist include all areas of noncompliance in this letter (provided that a *Letter of Warning*, in accordance with §1000.530(a)(1), has been previously sent to the recipient covering each of the areas). This will provide more convincing evidence that a lack of administrative capacity exists.



Referral to the Enforcement Center

The following process applies for all enforcement actions, except those involving delinquent APRs (see 6.2.2). Once the draft *Notice of Intent/Offer for Informal Meeting* is completed, the GE Specialist prepares a compilation of documents supporting the recommendation for submission to the Enforcement Center. Only one package is necessary to be submitted, which includes the following documents:

- a chronology of pertinent actions/documents;
- copies of all communication with the recipient regarding or related to the findings;
- a list of training or technical assistance provided to the recipient in regards to the findings;
- recommendations for enforcement actions to be imposed (summary of Enforcement Panel recommendations);
- recommendation that a determination of substantial noncompliance be made if sanctions under §1000.538 are recommended;
- the *monitoring log*, if appropriate (found in the Appendix to this Guidebook);
- the *audit tracking log*, if appropriate (found in the Appendix to this Guidebook); and
- a draft *Notice of Intent/Offer for Informal Meeting* to the recipient (per §1000.532(b)).

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At the same time the GE Specialist sends the above package to the Enforcement Center, he/she should send a copy of the draft *Notice of Intent/Offer for Informal Meeting* to the DPO.

The Area ONAP GE staff is encouraged to discuss the proposed enforcement actions with the DPO while the documents package is being compiled to ensure the package is complete and is consistent with actions taken against other recipients. Also, the Area Counsel should be in contact with the Enforcement Center during this time to ensure that the Enforcement Center is fully aware of the circumstances of the case.

Upon completion of its review, the Enforcement Center provides the DPO with an electronic version of the final draft *Notice of Intent/Offer of Informal Meeting*. Once the DPO has obtained the concurrence of the DAS, the DPO will send the letter to the Area ONAP for signature by the Administrator.



Informal Meeting

Sections 1000.532(b) and 1003.702(a) provide for the opportunity for an informal meeting between the recipient and the Area ONAP to resolve the deficiency(s) before the imposition of sanctions; whereas, §§1000.538, 1003.701, and 85.43 do not require that HUD provide the opportunity for such an informal meeting. However, to remain consistent with the process and because it is reasonable to provide the opportunity to resolve issues in an informal setting, the informal meeting is included as ONAP policy under this process.

The regulations do not specify when the informal meeting is to be held. However, 30 calendar days from the date of the *Notice of Intent* is a reasonable time period to allow a recipient to request the meeting, under most circumstances. The informal meeting should be scheduled for a time acceptable to both the recipient and the Area ONAP.

At the conclusion of the informal meeting, if one is held, the GE Specialist should meet with the Area Counsel to determine what steps should be taken next. If it is agreed that the informal meeting resulted or concluded with an identification of the actions to be taken and a commitment to take the actions to resolve the deficiencies, the Area ONAP may recommend a suspension of proposed enforcement actions to the Enforcement Center. If the Enforcement Center Counsel agrees, the GE Specialist should prepare a letter for the Administrator's signature informing the recipient of the suspension. Copies of the letter should be sent to the Enforcement Center

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and the DPO. The GE Division Director should track the recipient's progress in taking the agreed-upon actions.



Tool: Imposition of Sanctions

Notification of imposition of sanctions

If the recipient does not request an informal meeting or the informal meeting fails to resolve the deficiency(s), the GE Specialist, with its Area Counsel's assistance, will prepare a draft *Imposition of Sanctions* letter. This letter states the actions HUD is taking and provides notification of the formal hearing rights under §1000.540 (see section 6.2.3).

If it is determined that the recipient must take corrective actions in order to resolve the deficiency(s), it is important that the corrective actions be appropriate for the performance problem identified. This will require that the GE Specialist, with the Enforcement Panel's concurrence, determine the most appropriate way to address the deficiency and what documentation would need to be submitted by the recipient in order to verify that the action had been taken, thus, enabling the sanction to be removed.

Once the draft is completed, the GE Specialist is to send it to the Enforcement Center, along with a copy of the signed and dated *Notice of Intent/Offer of Informal Meeting*, any correspondence that has occurred subsequent to the *Notice of Intent* being issued, and the results of the informal meeting, if one was held. The GE Specialist, at the same time, will provide the DPO with a copy of the signed *Notice of Intent* and a copy of the draft *Imposition of Sanctions* letter.



6.2.2 Process for Imposing Enforcement Action Sanctions for Delinquent APRs

Just in those instances where the delinquent APR is the only performance deficiency identified, the following streamlined procedures are to be followed. Where other and/or several deficiencies have been identified, one of which may be a delinquent APR, Area ONAPs should continue to follow the process outlined above in 6.2.1.

Tool: Past Due Notice/Letter of Warning



If an APR is not received within 3 days after its due date, the Area ONAP is required to issue the grant recipient a *Past Due Notice/Letter of Warning* (utilizing the sample provided in the Appendix), in accordance with 24 CFR §1000.530(a)(1). This notice gives the recipient 30 days to submit an APR. (Please note that there may be instances where the Area

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ONAP may give a lesser amount of time to respond.) The *Past Due Notice/Letter of Warning* notifies the recipient:

- that an edit has been added to the recipient's line of credit, requiring HUD review of drawdown requests before funds may be disbursed by the Line of Credit Control System (LOCCS).*
- that HUD may impose sanctions, as prescribed in 24 CFR §§1000.532 and/or 1000.538, if the APR is not received.

*LOCCS assists in planning, accounting, and evaluating HUD disbursements. It also can enforce program guidelines for document processing by automatically denying payment requests from grantees that do not comply with their reporting schedule.

***Tool: Notice of Intent to
Impose Sanctions***

If the recipient does not respond to the *Past Due Notice/Letter of Warning* within the time allowed, the Area ONAP will prepare and transmit a *Notice of Intent/Offer of Informal Meeting* (utilizing the sample provided in the Appendix) to the recipient, in accordance with §1000.532(b). The Area Administrator is authorized to sign the *Notice of Intent* and will not be required to submit it to the DPO or the Enforcement Center prior to signature.

If there are funds remaining in a recipient's current grant(s), ONAP will propose to limit the availability of those funds under §1000.538(a)(3). However, if no funds remain, ONAP will propose to condition the next grant until an acceptable APR is submitted, as allowed under the authority in §1000.532(a). Both of these sanctions are equivalent to determining that the recipient is "high risk" under 24 C.F.R. §85.12 and placing the special condition on its grant(s) outlined in §85.12(b)(2), "withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period".

***Tool: Imposition of
Sanctions Letter***

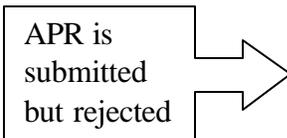
If the recipient does not respond to the *Notice of Intent/Offer of Information Meeting* or does not resolve the deficiency after the opportunity for an informal meeting, the Area ONAP will prepare the draft *Imposition of Sanctions* letter (utilizing the sample provided in the Appendix). Once the draft is completed, the GE Specialist is to send it to the Enforcement Center, along with a chronology. This chronology should list all actions taken by the Area ONAP and the recipient in regards to the delinquent APR. The Area ONAP will not have to submit the supporting documentation (reminder letter, *Past Due Notice/Letter of Warning*, *Notice of Intent/Offer of Informal Meeting*, and other correspondence) unless and until the enforcement action proceeds to an

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administrative hearing. At the same time, the GE Specialist sends the *Imposition of Sanctions* letter to the Enforcement Center, he/she should also send it to the DPO. At this point, the process will be the same as what is outlined in 6.2.1, above, e.g., the *Imposition of Sanctions* is reviewed and concurred on by the Enforcement Center and signed by the Deputy Assistant Secretary.

After imposing sanctions, the GE Specialist should remain in contact with the recipient to encourage submission of the APR. If the recipient has not submitted the APR after 6 months, the Area ONAP should begin enforcement actions to impose additional, more severe sanctions, for lacking the administrative capacity to administer their program and not substantially complying with the requirements of 24 C.F.R. Part 1000. By following this procedure, it should eliminate the prospect of amending an *Imposition of Sanctions* due to a subsequent year's APR being delinquent.

If the recipient submits the APR prior to issuance of the *Imposition of Sanctions* and the Area ONAP determines that it is incomplete and rejects it, the Area ONAP will, at that point, follow the process outlined in 6.2.1. When the Area ONAP submits the draft letter (whether it is the *Notice of Intent/Offer of Informal Meeting* or the *Imposition of Sanctions*) to the DPO, it must also submit a copy of the APR and the letter rejecting the APR for the DPO's review.



6.2.3 Recipient Hearing Process



A recipient may request a hearing under the provisions of §1000.540 within 30 days of the date of the notification letter of a pending enforcement action.



If there is a request for a hearing, the Enforcement Center manages the process with the assistance of the Area ONAP and DPO. Under §1000.532, reallocation of funds withdrawn from the recipient cannot be accomplished until 15 days after the hearing. If there is no request for a hearing, the sanctions are imposed and the Area ONAP retains the management.



A hearing is presided over by an administrative law judge under procedures specified in 24 CFR Part 26. ONAP staff should expect to devote a substantial amount of their time to briefings and coordination with the Enforcement Center during a hearing process. Typical cases last for several months. The Enforcement Center counsel represents ONAP in the hearing process.



6.2.4 Confirm recipient compliance with required corrective actions/removal of sanctions

Certain of the sanctions imposed may provide that the sanctions will be removed if the recipient takes identified corrective actions within a specified timeframe. In such situations, once the actions are taken, the GE Specialist will prepare a letter for the DAS' signature that confirms compliance with corrective actions and removes the sanction(s). The letter will be routed through the GE Division Director, the DPO, the OGC (if appropriate) and the Enforcement Center for concurrence. The GE Specialist updates the *monitoring log and or audit-tracking log* with regular status reports and when compliance is confirmed and sanction removed. **Note:** for sanctions imposed by the Area ONAP for ICDBG recipients under §1003.702, the Administrator would sign the letter.

6.3 High Risk Designations

The authority of §85.12 may only be invoked when the Area ONAP believes a recipient's deficient performance meets the requirements of §85.12 (a) and the performance problems:

- have only recently been discovered and the timely issuance of a grant award precludes the use of part 1000, subpart F process and procedures; or
- have been identified in a draft or final report but the recipient has not had adequate opportunity to implement corrective or remedial actions prior to the timely issuance of a grant award.

The use of the process and procedures discussed under Section 6.2 is the preferred approach.

Special conditions and/or restrictions can only be placed on future grants and usually should not be repeated for subsequent grants. These guidelines govern the IHBG and ICDBG programs. The Area ONAP may determine a recipient is "high risk" (and remove such designation) without the prior concurrence of the DAS or review by the Enforcement Center; however, such action may only be taken with the concurrence of the Area ONAP Enforcement Panel.

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Not all of the possible special conditions listed in §85.12 (b) are available and some are only available with restrictions. Specifically, it is not possible to include a special condition which would withhold authority for a recipient to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period; the use of such a condition would conflict with the provisions of Section 401(a)(1)(C) of NAHASDA.

The special conditions and/or restrictions that the Area ONAP may impose must be risk-specific and are limited to:

- payment on a reimbursement basis – this condition would include pre-review of supporting documentation before HUD approval of a Treasury draw through LOCCS.
- requiring additional, more detailed financial reports – given potential conflict with Section 401(a)(1)(C) of NAHASDA, for IHBG, cannot be linked with availability of payments. Also more detailed reports could be requested but, if not provided, subpart F procedures would be followed to enforce.
- additional project monitoring.
- requiring the recipient to obtain technical or management assistance – given potential conflict with Section 401(a)(1)(C) of NAHASDA, for IHBG, cannot be linked with availability of payments. Technical or management assistance could be recommended; but if recipient failed to follow the recommendation, subpart F procedures would be followed to enforce.
- establishing additional prior approvals – given potential conflict with Section 401(a)(1)(C) of NAHASDA, for IHBG, cannot be linked with availability of payments. Additional approvals could be established; but if the recipient failed to comply, subpart F procedures would be followed to enforce.

6.3.1 Responsibilities

GE Specialist

Prior to awarding a new grant, the GE Specialist will gather all relevant information and, in coordination with the GE Division Director, make the recommendation to the Enforcement Panel of a “high risk” designation and the actions required to bring a recipient into compliance and to remove the “high risk” designation. The

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special conditions and/or restrictions must correspond to the high-risk condition and be included in the award. This will require that the GE Specialist, with the Enforcement Panel's concurrence, determine the most appropriate way to address the deficiency and what documentation would need to be submitted by the recipient in order to verify that the action had been taken, thus, enabling the "high risk" designation to be removed.

The GE Specialist is responsible for keeping the appropriate GM Specialist informed throughout the process of the intended action. The GE Specialist must notify the recipient in writing, as early as possible, of the "high risk" designation and impending actions.

Enforcement Panel

The Enforcement Panel must review the recommended "high risk" designation, the actions recommended by the GE Specialist to address the conditions, which support such a designation, and it must concur in these matters or provide viable options for the Area ONAP to pursue.

GE Director

The GE Director is responsible for ensuring that all "high risk" designations meet the statutory requirements of Section 401 and that the conditions imposed under 24 CFR §85.12 do not conflict with those requirements.

6.4 Limited Denials of Participation, Debarments and Suspensions (24 CFR part 24 sanctions)

A "Limited Denial of Participation" (LDP) is an action that immediately excludes or restricts a person from participating in HUD program(s) within a defined geographic area. A "Debarment" is an action taken to exclude a person from participating in covered transactions. A "Suspension" is an action taken that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceeding as may ensue.

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6.4.1 Responsibilities

Prior to initiating an LDP, debarment, or suspension, the GE Specialist should consult with its local counsel to ensure that the action is appropriate and that the proper procedures are followed.

If an LDP is issued, a sanctioned party has a right to informal consultation with ONAP and a right to a hearing. The GE Director must refer suspensions and debarments through the Regional Counsel's Office to the Enforcement Center for action. The causes for LDPs, debarments, and suspensions are listed at 24 CFR Part 24. The GE Director should also advise the Program Office – Office of Grants Evaluation of any such actions taken.

The DPO will notify other Area ONAPs of impending LDPs, debarments, and suspensions. The purpose is to alert the Area ONAPs of potential spillover effects among their recipients. For example, a recipient staff member issued a LDP by an Area ONAP may attempt to join the staff of a recipient in a different office's jurisdiction.

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SAMPLE PAST DUE NOTICE/LETTER OF WARNING for Delinquent ASERs

[Insert recipient Name & Address]

Dear *[insert recipient name]* :

SUBJECT: Past Due Notice/Letter of Warning
Annual Status and Evaluation Report
Indian Community Development Block Grant(s) # _____

This is to notify you that an Annual Status and Evaluation Report (ASER) covering the fiscal year ending *[insert fiscal year ending]* for *[insert if appropriate: "each of"]* the subject Indian Community Development Block Grant[s] (ICDBG) is delinquent. The ICDBG regulations at 24 CFR §1003.506(a) require that grantees submit an ASER on each open grant 45 days after the end of the Federal fiscal year. Therefore, the ASER was due by November 15, *[insert appropriate year]*. As of this date, we have not received the ASER[s]. This constitutes a formal letter of warning pursuant to §1003.701(b)(2).

The ASER provides important information regarding the progress made in completing approved activities, a breakdown of funds spent on each major project activity or category, and an evaluation of the effectiveness of the project in meeting your community development needs. Since this information has not been provided, it will be necessary for HUD to review your payment requests through the Line of Credit Control System (LOCCS) before funds can be disbursed. Therefore, before requesting funds from LOCCS, you must submit the LOCCS Request Voucher for Grant Payment (Form HUD-27053) with supporting documentation for the disbursement. Fax transmissions will be accepted unless indicated otherwise. Example of supporting documentation may include:

- contracts or contract register,
- invoices or check register, and
- payroll information.

This will enable us to verify that the ICDBG funds you are requesting will be used for eligible activities in accordance with your ICDBG application and that the activities are

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in compliance with statutory and regulatory requirements. The requirement to submit a LOCCS request voucher for grant payment will be discontinued when your ASER[s] is [are] received and is [are] found to be complete and accurate.

As a grant recipient, you are responsible for ensuring compliance with all ICDBG requirements. According to 24 CFR §1003.701, if you fail to address this identified problem, HUD may impose sanctions as prescribed in §1003.703. Section 1003.703 authorizes HUD to terminate, reduce, or limit the availability of funds upon HUD's determination that you failed to comply with the ICDBG regulations after being afforded the corrective or remedial actions of 24 CFR §1003.701.

If we do not receive the ASER[s] for the fiscal year ending [*insert fiscal year ending*] within 30 days from the date of this letter, we will consider taking the necessary actions pursuant to §1003.703 to enforce this regulatory requirement. In accordance with the provisions in §1003.703, you will be provided with an opportunity for a hearing.

We look forward to receipt of your ASER[s] and hope that you are able to respond to this matter as soon as possible. If we may provide you with any assistance or you have questions on this matter, please contact [*insert GES name*], Grants Evaluation Specialist, at _____.

Sincerely,

[*insert GE Director's name*]
Director
Grants Evaluation Division

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SAMPLE NOTICE OF INTENT for Delinquent ASERs

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear [insert recipient name]:

SUBJECT: Indian Community Development Block Grant
Letter of Intent/Offer of Informal Meeting
Notice of Administrative Actions

This is to notify you that HUD intends to impose sanctions under the Indian Community Development Block Grant (ICDBG) Program as authorized at 24 CFR §1003.703 because the [insert recipient name] failed to submit an Annual Status and Evaluation Report (ASER) for [insert if appropriate: “each of”] its ICDBG[s] for the fiscal year ending [insert fiscal year ending]. The ICDBG regulations at 24 CFR §1003.506 require submission of the report within 45 days after the end of the Federal fiscal year.

The [insert recipient name] received [insert #] grant[s] under the ICDBG Program, [insert grant number(s)], for which [an] ASER[s] was [were] due on [insert due date]. Pursuant to 24 CFR §1003.701(b)(2), on [insert date of Letter of Warning], HUD issued a letter of warning that notified you that the ASER[s] was [were] past due. Also, you were advised that if the ASER[s] was [were] not received within 30 days of the date of that letter, HUD would consider taking the necessary actions to enforce this statutory requirement. As of this date, the ASER[s] has [have] not been received in this Office.

[Insert technical assistance provided to recipient on this issue.]

We have determined under 24 CFR §1003.701(a)(1) that [insert recipient name] failed to address this performance problem. The sanction HUD intends to impose is:

- Under the authority of §1003.703(a)(3), HUD will limit the availability of funds to the [insert recipient name] on its current grant[s]. A grant condition will be imposed that will not allow funds to be drawn down until [an] acceptable ASER[s] is [are] received by this Office

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If the ASER[s] is [are] not received by [insert date], then HUD will terminate the grant[s], as authorized by §1003.703(a)(1).

It is our strongest desire not to impose these sanctions. As an effort to resolve this deficiency, you are hereby provided the opportunity to request, within 30 days of the date of this letter, an informal meeting with us to discuss the issue.

If you have questions regarding this letter, please contact [insert GES name], Grants Evaluation Specialist, at [insert phone number].

Sincerely,

[insert Administrator's name]
Administrator

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SAMPLE IMPOSITION OF SANCTIONS for Delinquent ASERs

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear *[insert recipient name]*:

We are regretfully notifying you that HUD is imposing sanctions on *[insert grant #(s)]* because you failed to submit the ASER[s] *[insert if appropriate: “for each of those grants”]* for the period *[insert fiscal year ending]*. Sanctions are authorized in the Indian Community Development Block Grant (ICDBG) Program by 24 CFR §1003.703. You have a right to request a hearing. The ICDBG regulations at 24 CFR §1003.506 require submission of the report within 45 days after the end of the Federal fiscal year.

The Federal fiscal year ended on September 30, *[enter appropriate year]*; therefore, ASERs were due on November 15, *[enter appropriate year]*, for all open grants. On *[insert Past Due Notice/Letter of Warning date]*, you were notified by letter that your ASER[s] was *[were]* delinquent and that if the ASER[s] was *[were]* not received within 30 days, ONAP would begin sanctions for your noncompliance with this regulatory requirement.

The letter from *[insert FONAP Administrator’s name]* dated *[insert date of Notice of Intent/Offer of Informal Meeting]*, notified you of our intent to impose sanctions and offered you an opportunity for an informal meeting before we imposed sanctions.

[Insert additional information, including information on correspondence to/from recipient specific to recipient and any technical assistance provided.]

The Tribe bears the responsibility for program compliance. See §1003.500.

The importance of the submission of an ASER to HUD cannot be overstated. First, submission of the report is a regulatory requirement. §See 1003.506. Second, the ASER assists HUD in evaluating a recipient’s performance and in identifying technical assistance needs of the recipient. The ASER is also important to a tribe because it reports on the progress made towards meeting its community development needs and objectives for tribal members and other interested parties.

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Accordingly, as authorized by §1003.703(a)(3), HUD intends to limit the availability of funds under ICDBG. Therefore, ICDBG funds will be limited on grant[s] [*insert grant number(s)*]. Is the ASER[s] is [*are*] not received by [*insert date*], HUD will terminate the grant[s] in accordance with §1003.703(a)(1).

If you disagree with HUD's determination that you have failed to comply with this program requirement, then you have a right to a hearing before an Administrative Law Judge. The hearing would be conducted in accordance with §1000.540 OR §1003.703(a) and Part 26, Subpart B. If you want a hearing, you must submit a request within 30 days of the date of this letter. You must submit an original and two copies of your request for a hearing to the Docket Clerk, HUD, Departmental Enforcement Center, Portals Building, 1250 Maryland Ave., S.W., Suite 200, Washington, D.C. 20024.

If you have any questions, please direct them to [*insert name of ONAP Administrator*], Administrator for the [*insert Area ONAP*] Office of Native American Programs, at [*insert Administrator's phone number*].

Very sincerely yours,

[*insert name of DAS*]
Deputy Assistant Secretary
for Native American Programs

Grants Evaluation Guidebook

SAMPLE PAST DUE NOTICE/LETTER OF WARNING for Delinquent Audits (not compliant with §1000.544)

[Insert Recipient Name & Address]

Dear [insert recipient name] :

SUBJECT: Past Due Notice/Letter of Warning
Independent Public Accountant Audit
Indian Housing Block Grant(s) # _____

This is to notify you that an audit covering the fiscal year ending (FYE) [insert fiscal year ending] for the subject Indian Housing Block Grant(s) (IHBG) is delinquent. The Single Audit Act and OMB Circular A-133 require that recipients that expend Federal funds in the amount of \$300,000 or more have an annual audit conducted by a public accountant or a Federal, State, or local government audit organization, which meets the generally accepted government auditing standards and that it comply with the requirements of A-133. A complete audit report package for FYE [insert FYE] was to be submitted to the Federal Audit Clearinghouse within 30 days after receipt of the auditor's report or 9 months after the end of the audit period, whichever was earlier. This constitutes a formal letter of warning pursuant to §1000.530(a)(1).

The audit report expresses the opinion of an auditor whether your financial statements present fairly the financial position, results of operations, and changes in financial position for the year-ended according to generally accepted accounting principles applied on a consistent basis. Although the audit report is directed to management or the Board of Directors, the reports are used by interested third parties, such as HUD, tribal members, and potential lenders to gain useful information about your financial situation, use of resources, internal controls, and compliance with governmental rules, regulations, and requirements.

As a grant recipient, you are responsible for ensuring compliance with all NAHASDA and OMB Circular A-133 requirements. According to 24 CFR §1000.530, if you fail to address this identified problem, HUD may impose sanctions as prescribed in §§1000.532 and/or 1000.538. Section 1000.532 authorizes HUD to adjust your future grant funds. Upon HUD's determination that you failed to comply substantially with any

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provision of NAHASDA, §1000.538 authorizes HUD to terminate, reduce, or limit your grant payments, or replace you as the recipient.

If we do not receive a compliant audit for the fiscal year ending [*insert fiscal year ending date*] within 30 days from the date of this letter, we will consider taking the necessary actions pursuant to §§1000.532 and/or 1000.538 to enforce this statutory requirement. In accordance with these regulatory provisions, you will be provided with an opportunity for an informal meeting, and if the issue remains unresolved, you will be provided with the opportunity for a hearing.

We look forward to receipt of your audit and hope that you are able to respond to this matter as soon as possible. If we may provide you with any assistance or you have questions on this matter, please contact [*insert GES name*], Grants Evaluation Specialist, at _____.

Sincerely,

[*insert GE Director's name*]
Director
Grants Evaluation Division

[*insert if Tribe is not the recipient:*
“cc:
_____ Tribe”]

Grants Evaluation Guidebook

SAMPLE NOTICE OF INTENT for Delinquent Audits (not compliant with §1000.544)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear *[insert recipient name]*:

SUBJECT: Indian Housing Block Grant Program
Letter of Intent/Offer of Informal Meeting
Notice of Administrative Actions

This is to notify you that HUD intends to impose sanctions under the Indian Housing Block Grant (IHBG) Program as authorized at 24 CFR §§1000.532 and 1000.538 because the *[insert recipient name]* failed to comply with the Single Audit Act and OMB Circular A-133 and submit the audit for its IHBG(s) for the fiscal year ending *[insert fiscal year end]*.

The Single Audit Act and OMB Circular A-133 requires that any non-Federal entity that expends \$300,000 or more in a fiscal year in Federal funds must submit an audit to the Federal Audit Clearinghouse within 30 days after receipt of the auditor's report or 9 months after the end of the audit period, whichever is earliest, and that it comply with the requirements of A-133. The Native American Housing Assistance and Self-Determination Act (NAHASDA) regulations at 24 CFR §1000.544 also require that recipients comply with the Single Audit Act and OMB A-133.

The *[insert recipient name]* received *[insert #]* grants under NAHASDA, *[insert grant numbers]*, for which audits were required to be conducted. Pursuant to 24 CFR §1000.530(a)(1), on *[insert date of Letter of Warning]*, HUD issued a letter of warning that notified you that the audit was past due. Also, you were advised that if the audit was not received within 30 days of the date of that letter, HUD would consider taking the necessary actions to enforce this statutory requirement. *[Insert attempts Area ONAP has made to assist recipient in complying with this requirement.]* As of this date, the audit has not been received in the Federal Audit Clearinghouse.

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We have determined under 24 CFR §1000.530(b) that *[insert recipient name]* failed to address this performance problem. The sanctions HUD intends to impose are:

- Under the authority of §1000.538(a)(3), HUD will limit the availability of payments to the *[insert recipient name]* on current grants *[if applicable]*. A grant condition will be imposed that will not allow funds to be drawn down until an audit that is in compliance with OMB Circular A-133 is received by this Office; and/or
- Under the authority of §1000.532(a), HUD will limit the availability of payments to the *[insert recipient name]* on its next grant. A grant condition will be imposed that will not allow funds to be drawn down until an audit that is in compliance with OMB Circular A-133 is received by this Office.

These sanctions will remain in effect until the audit for the fiscal year ending *[insert fiscal year ending date]* is received in this Office and is in compliance with OMB Circular A-133. In other words, it must have been submitted and accepted by the Federal Audit Clearinghouse. Please be warned that if the *[insert recipient name]* fails to submit the audit, HUD is also authorized under §1000.532 to adjust future IHBGs and to terminate payments (i.e., terminate existing grants) under §1000.538.

It is our strongest desire not to impose these sanctions. As an effort to resolve this deficiency and in accordance with the provisions at §1000.532(b), you are hereby provided the opportunity to request, within 30 days of the date of this letter, an informal meeting with us to discuss the issue.

If you have questions regarding this letter, please contact *[insert GES name]*, Grants Evaluation Specialist, at _____.

Sincerely,

[insert Administrator's name]
Administrator

*[Note: insert if Tribe is not recipient:
"cc:
_____ Tribe"]*

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SAMPLE IMPOSITION OF SANCTIONS for Delinquent Audits (not compliant with §1000.544)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear [insert recipient name]:

We are regretfully notifying you that HUD is imposing sanctions on [insert IHBG grant #s] because you failed to submit the audit for the fiscal year ending [insert fiscal year ending]. Sanctions are authorized in the Indian Housing Block Grant (IHBG) Program by 24 CFR §§1000.532 and 1000.538. More specifically, we will be limiting your expenditure of current funds and/or limiting your expenditure of future funds [choose whichever one(s) is appropriate]. You have a right to request a hearing. [Insert if funds are still available in current grants: “We are also immediately suspending payments under your IHBG(s).”]

The Single Audit Act and OMB Circular A-133 require that any non-Federal entity that expends \$300,000 or more in a fiscal year in Federal funds must submit an audit to the Federal Audit Clearinghouse within 30 days after receipt of the auditor’s report or 9 months after the end of the audit period, whichever is earliest, and that it comply with the requirements of A-133. The Native American Housing Assistance and Self-Determination Act (NAHASDA) regulations at 24 CFR §1000.544 also require that recipients comply with the Single Audit Act and OMBA-133.

On [insert Past Due Notice/Letter of Warning date], you were notified by letter that your audit was delinquent and that if a compliant audit was not received within 30 days, ONAP would begin sanctions for your noncompliance with this statutory and regulatory requirement.

The letter from [insert FONAP Administrator’s name] dated [insert date of Notice of Intent/Offer of Informal Meeting], notified you of our intent to impose sanctions and offered you an opportunity for an informal meeting before we imposed sanctions.

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[Insert additional information, including information on correspondence to/from recipient specific to recipient, and any attempts the Area ONAP has made to assist the recipient in complying with this requirement.]

The IHBG recipient, [i.e., the Indian tribe or the tribally designated housing entity (TDHE)], bears the responsibility for program compliance. See §1000.502(a).

The importance of the submission of an audit to HUD cannot be overstated. First, submission of the report is a statutory and regulatory requirement (NAHASDA, Section 404, 25 U.S.C. 4164; §1000.544). Second, the audit assists HUD in evaluating a recipient's performance and in identifying technical assistance needs of the recipient. Audit reports are also important because of the dependence of third parties, such as HUD, tribal members, and potential lenders, on the reports to gain useful information about an entity's financial situation, use of resources, internal controls, and compliance with governmental rules, regulations, and requirements. See §1000.524.

The failure to submit an audit also strongly suggests that a recipient may not have the required administrative capacity to properly administer its IHBG program. See §1000.6. The audit, therefore, not only provides HUD with insight into the recipient's past performance but also may inform HUD whether the recipient has the continuing capacity to carry out its activities in a timely manner. In short, the audit can provide important information with regard to a recipient's past and future performance.

Therefore, HUD has determined that [*insert recipient name*]'s failure to submit its audit constitutes substantial noncompliance as defined in §1000.534(d).

The failure to submit an audit also indicates that [*insert recipient name*] does not have the continuing capacity to carry out its activities in a timely manner, as provided at §1000.6.

[Use the following paragraph if funds are still available in current grants:]

Accordingly, as authorized by §1000.538(a)(3), HUD intends to limit the availability of payments under NAHASDA to the [*insert recipient name*]. Because your failure to submit an audit affects all NAHASDA projects, programs, and activities, all IHBG funds will be limited. A grant condition will be imposed that will not allow funds to be requisitioned. This sanction will continue until an audit for the fiscal year ending [*insert fiscal year ending*], is received. However, if the [*insert recipient name*] does not submit the delinquent audit within 6 months of the date of this letter and/or the next

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required audit also becomes delinquent, HUD will move to terminate [*insert recipient name*]'s current IHBGs and possibly question all expenditures. HUD is also suspending payments under your grant(s), effective immediately, under the authority of §1000.538(b).

[OR, use the following paragraph if there are no funds available:]

Under the authority of §1000.532(a), HUD will limit the availability of payments to the [*insert recipient name*] on its next IHBG grant. A grant condition will be imposed that will not allow funds to be requisitioned. The program regulations at §1000.6 specify that IHBG recipients must have the administrative capacity to undertake affordable housing activities. By virtue of the above determination of substantial noncompliance with NAHASDA, HUD has determined that [*insert recipient name*] does not have the required administrative capacity. This sanction will continue until an audit for the fiscal year ending [*insert fiscal year ending*], is received.

If you disagree with HUD's determination that you have failed to substantially comply with this program requirement, then you have a right to a hearing before an Administrative Law Judge. The hearing would be conducted in accordance with §1000.540 and Part 26, Subpart B. If you want a hearing, you must submit a request within 30 days of the date of this letter. You must submit an original and two copies of your request for a hearing to the Docket Clerk, HUD, Departmental Enforcement Center, Portals Building, 1250 Maryland Ave., S.W., Suite 200, Washington, D.C. 20024.

If you have any questions, please direct them to [*insert name of ONAP Administrator*], Administrator for the [*insert Area ONAP*] Office of Native American Programs, at [*insert Administrator's phone number*].

Very sincerely yours,

[*insert name of DAS*]
Deputy Assistant Secretary
for Native American Programs

[*Note: add if Tribe is not recipient:*

cc:
_____ Tribe]

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SAMPLE PAST DUE NOTICE/LETTER OF WARNING for Delinquent Audits (not compliant with §1000.548)

[Insert Recipient Name & Address]

Dear *[insert recipient name]*:

SUBJECT: Past Due Notice/Letter of Warning
Independent Public Accountant Audit
Indian Housing Block Grant(s) # _____

This is to notify you that an audit covering the fiscal year ending *[insert fiscal year ending]* for the subject Indian Housing Block Grant(s) (IHBG) is delinquent. The Single Audit Act and OMB Circular A-133 require that recipients that expend Federal funds in the amount of \$300,000 or more have an annual audit conducted by a public accountant or a Federal, State, or local government audit organization, which meets the general standards specified in generally accepted government auditing standards and that it comply with the requirements of A-133. According to 24 CFR §1000.548, IHBG recipients must submit a copy of their latest audit, compliant with A-133 requirements, with the Annual Performance Report (APR). In other words, the audit to be submitted with the APR must have already been submitted to the Federal Audit Clearinghouse and accepted. *[Insert recipient name]*'s APR for the reporting period *[insert reporting period]* was submitted to the *[insert ONAP Office]* on *[insert receipt date]*; however, the latest compliant audit was not included. This constitutes a formal letter of warning pursuant to §1000.530(a)(1).

The audit report expresses the opinion of an auditor whether your financial statements present fairly the financial position, results of operations, and changes in financial position for the year-ended according to generally accepted accounting principles applied on a consistent basis. Although the audit report is directed to management or the Board of Directors, the reports are used by interested third parties, such as HUD, tribal members, and potential lenders to gain useful information about your financial situation, use of resources, internal controls, and compliance with governmental rules, regulations, and requirements.



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As a grant recipient, you are responsible for ensuring compliance with all NAHASDA and OMB Circular A-133 requirements. According to 24 CFR §1000.530, if you fail to address this identified problem, HUD may impose sanctions as prescribed in §§1000.532 and/or 1000.538. Section 1000.532 authorizes HUD to adjust your future grant funds. Upon HUD’s determination that you failed to comply substantially with any provision of NAHASDA, §1000.538 authorizes HUD to terminate, reduce, or limit your grant payments, or replace you as the recipient.

If we do not receive a compliant audit for the fiscal year ending [*insert fiscal year ending date*] within 30 days from the date of this letter, we will consider taking the necessary actions pursuant to §§1000.532 and/or 1000.538 to enforce this statutory requirement. In accordance with these regulatory provisions, you will be provided with an opportunity for an informal meeting, and if the issue remains unresolved, you will be provided with the opportunity for a hearing.

We look forward to receipt of your audit and hope that you are able to respond to this matter as soon as possible. If we may provide you with any assistance or you have questions on this matter, please contact [*insert GES name*], Grants Evaluation Specialist, at _____.

Sincerely,

[*insert GE Director’s name*]
Director
Grants Evaluation Division

[*insert if Tribe is not the recipient:*
“cc:
_____ Tribe”]

Grants Evaluation Guidebook

SAMPLE NOTICE OF INTENT for Delinquent Audits (not compliant with §1000.548)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear *[insert recipient name]*:

SUBJECT: Indian Housing Block Grant Program
Letter of Intent/Offer of Informal Meeting
Notice of Administrative Actions

This is to notify you that HUD intends to impose sanctions under the Indian Housing Block Grant (IHBG) Program as authorized at 24 CFR §§1000.532 and 1000.538 because the *[insert recipient name]* failed to submit the audit for its IHBG(s) for the fiscal year ending *[insert fiscal year end]*.

The Single Audit Act and OMB Circular A-133 requires that any non-Federal entity that expends \$300,000 or more in a fiscal year in Federal funds must submit an audit to the Federal Audit Clearinghouse within 30 days after receipt of the auditor's report or 9 months after the end of the audit period, whichever is earliest, and that it comply with the requirements of A-133. The Native American Housing Assistance and Self-Determination Act (NAHASDA) regulations at 24 CFR §1000.548 require that a copy of the latest audit, compliant with A-133 requirements, be submitted with the Annual Performance Report (APR).

The *[insert recipient name]* received *[insert #]* grants under NAHASDA, *[insert grant numbers]*. The APR for the reporting period *[insert reporting period]* was received by the *[insert ONAP name]* on *[insert receipt date]*; however, the latest compliant audit was not included. Pursuant to 24 CFR §1000.530(a)(1), on *[insert date of Letter of Warning]*, HUD issued a letter of warning that notified you that the audit was past due. Also, you were advised that if the audit was not received within 30 days of the date of that letter, HUD would consider taking the necessary actions to enforce this statutory requirement. *[Insert attempts Area ONAP has made to assist recipient in complying with this requirement.]* As of this date, the audit has not been received in this Office.

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We have determined under 24 CFR §1000.530(b) that [*insert recipient name*] failed to address this performance problem. The sanctions HUD intends to impose are:

- Under the authority of §1000.538(a)(3), HUD will limit the availability of payments to the [*insert recipient name*] on current grants [*if applicable*]. A grant condition will be imposed that will not allow funds to be drawn down until an audit that is in compliance with OMB Circular A-133 is received by this Office; and/or
- Under the authority of §1000.532(a), HUD will limit the availability of payments to the [*insert recipient name*] on its next grant. A grant condition will be imposed that will not allow funds to be drawn down until an audit that is in compliance with OMB Circular A-133 is received by this Office.

These sanctions will remain in effect until the audit for the fiscal year ending [*insert fiscal year ending date*] is received in this Office. That audit must be in compliance with OMB Circular A-133. In other words, it must have been submitted and accepted by the Federal Audit Clearinghouse. Please be warned that if the [*insert recipient name*] fails to submit the audit, HUD is also authorized under §1000.532 to adjust future IHBGs and to terminate payments (i.e., terminate existing grants) under §1000.538.

It is our strongest desire not to impose these sanctions. As an effort to resolve this deficiency and in accordance with the provisions at §1000.532(b), you are hereby provided the opportunity to request, within 30 days of the date of this letter, an informal meeting with us to discuss the issue.

If you have questions regarding this letter, please contact [*insert GES name*], Grants Evaluation Specialist, at _____.

Sincerely,

[*insert Administrator's name*]
Administrator

[*Note: insert if Tribe is not recipient:*

“cc:
_____ Tribe”]

Grants Evaluation Guidebook

SAMPLE IMPOSITION OF SANCTIONS for Delinquent Audits (not compliant with §1000.548)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Insert Recipient Name & Address]

Dear [insert recipient name]:

We are regretfully notifying you that HUD is imposing sanctions on [insert IHBG grant #s] because you failed to submit the audit for the fiscal year ending [insert fiscal year ending]. Sanctions are authorized in the Indian Housing Block Grant (IHBG) Program by 24 CFR §§1000.532 and 1000.538. More specifically, we will be limiting your expenditure of current funds and/or limiting your expenditure of future funds [choose whichever one(s) is appropriate]. You have a right to request a hearing. [Insert if funds are still available in current grants: “We are also immediately suspending payments under your IHBG(s).”]

The Single Audit Act and OMB Circular A-133 require that any non-Federal entity that expends \$300,000 or more in a fiscal year in Federal funds must submit an audit to the Federal Audit Clearinghouse within 30 days after receipt of the auditor’s report or 9 months after the end of the audit period, whichever is earliest, and that it comply with the requirements of A-133. The Native American Housing Assistance and Self-Determination Act (NAHASDA) regulations at 24 CFR §1000.548 require that a copy of the latest audit, compliant with A-133 requirements, be submitted with the Annual Performance Report (APR). In other words, the audit that is submitted with the APR must have been submitted to the Federal Audit Clearinghouse and been accepted.

Your APR for the reporting period ending [insert report period end date] was received on [insert receipt date]; however, the audit was not included. On [insert Past Due Notice/Letter of Warning date], you were notified by letter that your audit was delinquent and that if a compliant audit was not received within 30 days, ONAP would begin sanctions for your noncompliance with this statutory and regulatory requirement.

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The letter from [*insert FONAP Administrator's name*] dated [*insert date of Notice of Intent/Offer of Informal Meeting*], notified you of our intent to impose sanctions and offered you an opportunity for an informal meeting before we imposed sanctions.

[Insert additional information, including information on correspondence to/from recipient specific to recipient, and any attempts the Area ONAP has made to assist the recipient in complying with this requirement.]

The IHBG recipient, [i.e., the Indian tribe or the tribally designated housing entity (TDHE)], bears the responsibility for program compliance. See §1000.502(a).

The importance of the submission of an audit to HUD cannot be overstated. First, submission of the report is a statutory and regulatory requirement (NAHASDA, Section 404, 25 U.S.C. 4164; §1000.544). Second, the audit assists HUD in evaluating a recipient's performance and in identifying technical assistance needs of the recipient. Audit reports are also important because of the dependence of third parties, such as HUD, tribal members, and potential lenders, on the reports to gain useful information about an entity's financial situation, use of resources, internal controls, and compliance with governmental rules, regulations, and requirements. See §1000.524.

The failure to submit an audit also strongly suggests that a recipient may not have the required administrative capacity to properly administer its IHBG program. See §1000.6. The audit, therefore, not only provides HUD with insight into the recipient's past performance but also may inform HUD whether the recipient has the continuing capacity to carry out its activities in a timely manner. In short, the audit can provide important information with regard to a recipient's past and future performance.

Therefore, HUD has determined that [*insert recipient name*]'s failure to submit its audit constitutes substantial noncompliance as defined in §1000.534(d).

The failure to submit an Audit also indicates that [*insert recipient name*] does not have the continuing capacity to carry out its activities in a timely manner, as provided at §1000.6.

[Use the following paragraph if funds are still available in current grants:]

Accordingly, as authorized by §1000.538(a)(3), HUD intends to limit the availability of payments under NAHASDA to the [*insert recipient name*]. Because your failure to submit an audit affects all NAHASDA projects, programs, and activities, all

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IHBG funds will be limited. A grant condition will be imposed that will not allow funds to be requisitioned. This sanction will continue until an audit for the fiscal year ending [insert fiscal year ending], is received. HUD is also suspending payments under your grant(s), effective immediately, under the authority of §1000.538(b).

[OR, use the following paragraph if there are no funds available:]

Under the authority of §1000.532(a), HUD will limit the availability of payments to the [insert recipient name] on its next (Fiscal Year [insert year of next grant]) IHBG grant. A grant condition will be imposed that will not allow funds to be requisitioned. The program regulations at §1000.6 specify that IHBG recipients must have the administrative capacity to undertake affordable housing activities. By virtue of the above determination of substantial noncompliance with NAHASDA, HUD has determined that [insert recipient name] does not have the required administrative capacity. This sanction will continue until an audit for the fiscal year ending [insert fiscal year ending], is received.

If you disagree with HUD's determination that you have failed to substantially comply with this program requirement, then you have a right to a hearing before an Administrative Law Judge. The hearing would be conducted in accordance with §1000.540 and Part 26, Subpart B. If you want a hearing, you must submit a request within 30 days of the date of this letter. You must submit an original and two copies of your request for a hearing to the Docket Clerk, HUD, Departmental Enforcement Center, Portals Building, 1250 Maryland Ave., S.W., Suite 200, Washington, D.C. 20024.

If you have any questions, please direct them to [insert name of ONAP Administrator], Administrator for the [insert Area ONAP] Office of Native American Programs, at [insert Administrator's phone number].

Very sincerely yours,

[insert name of DAS]
Deputy Assistant Secretary
for Native American Programs

[Note: add if Tribe is not recipient:

cc:
_____ Tribe]