

NAHASDA AMENDMENTS 1998-2008

NAIHC LEGISLATIVE COMMITTEE ANALYSIS

NOTE: All NAHASDA Amendments Listed Below are Self-Executing, and are Currently in Full Force and Effect, Unless the Amendment is Noted by an Asterisk (*), in which Case the Amendment Requires Implementing Rules Before Taking Effect.

Committee Reached Consensus on These Issues

I T E M #	AMENDMENTS BY NAHASDA SECTION	AMENDMENT CATEGORY	HUD POSITION PER PIH NOTICE 2009-50	PIH NOTICE ISSUE #	REGULATORY SUBPART	POTENTIALLY RELEVANT REGULATIONS	COMMENTS
		N/A = Not applicable 1 = No rule change needed 2 = Minor rule change needed 3 = Discussion/ Negotiation required	An overview of how HUD proposes to address the NAHASDA amendments		A – General B – Affordable Housing Activities C – Indian Housing Plan D – Allocation Formula E – Federal Guarantees F – Recipient Monitoring		
1	<u>Section 2</u> 2008: PL 110-411 amended § 2.	2 (4 raters) or 3 (1 rater)	A conforming regulation is required at 24 CFR 1000.2.	1	A	1000.2	Regulation adopted by Committee 4/1/10 Change should to shall in (a)(6) & (7)
DEFINITIONS							
2	<u>Section 4</u> 1998: PL 105-276 rewrote §4(10), now (11) – “Indian Area” defined	1	This is a technical correction. No action is required.	42	A	1000.10	No Reg needed – Statutory format only Consensus 5/11/10

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3	1998: PL 105-276 amended §4(12)(c)(i)(II) (now 4(13)(c)(i)(II) due to a subsequent amendment) <i>Seems clerical.</i>	1	There are no comments related to this section.	43	A	1000.10	No Reg needed – Statutory format only Consensus 5/11/10
4	2002: PL 107-292 added §4(22). <i>Now repealed by 2008 amendment.</i> Now Sec. 4 (8)	N/A	No comments regarding section 4(22).	N/A	A	1000.10	Repealed by subsequent amendment Consensus 5/11/10
5	2008: PL 110-411 amended §4. <i>Defines “Housing related community development.”</i>	1	A conforming regulation is required at 24 CFR 1000.10.	2	A	1000.10	Regulation adopted by Committee 4/1/10 Adds definition
TITLE I: BLOCK GRANTS AND GRANT REQUIREMENTS							
6	<u>Section 101</u> 2000: PL 106-568 amended §101(b)(2).	3	No reference to section 101(b)(2) in HUD PIH Notice 2009-50.	N/A	C	1000.224	Amended waiver provision. Workgroup C decision – to Committee for discussion/NegReg Consensus 7/20/10
7	1998: PL 105-276 rewrote §101(c). <i>Partially superseded by 2000 change (see below).</i>	3	A clarification limiting the circumstances under which the Secretary would be prohibited from making a grant due to the lack of a cooperation agreement between a recipient and a local governing body. No conforming regulation is required.	44	C	1000.240 1000.242	Amended provision on local cooperation agreements. Workgroup C decision – to Committee for discussion/ NegReg Consensus 7/21/10

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8	2000: PL 106-568 amended §101(c).	3	HUD previously published Notice PIH 2003-2 and Notice PIH 2003-3 addressing many of these amendments. Section 101(c) as amended by PL 106-568 does not appear to be addressed in Notice.	N/A (possibly under 44?)	C	1000.240 1000.242	Same comment as in item no. 7 above. Consensus 7/21/10
9	1998: 105-276 amended §101(d)(1).	3 (was 1)	This is a technical correction. No action is required.	45	C	1000.242	Workgroup C wants further discussion Consensus 7/21/10
10	1998: PL 105-276 amended §101(d)(2). Clerical change.	3 (was 1)	This is a technical correction. No action is required.	45	C		Workgroup C wants further discussion Consensus 7/21/10
11	2002: PL 107-292 amended §101(h). This is a change that allows tribes/TDHEs to use a portion of their grants to plan for “housing and community development activities” (and not just “affordable housing activities.”).	3	Conforming regulations are required at 1000.236 and 1000.238.	32	C	1000.236 1000.238	Workgroup C decision – to Committee for NegReg Consensus 7/21/10
12	2008: PL 110-411 amended §101. The change to §101(a) is clerical.	1	No conforming regulation is required.	3	A		No Reg needed – statutory format only Consensus 5/11/10
13	The reference to Subtitle B in §101(g) should be self-executing, because Subtitle B is itself self-executing (see below).	1	Section 101(g) does not appear to be addressed in this Notice.	N/A	A		No Reg needed – statutory format only Consensus 5/11/10

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14	This amendment deals with “federal supply sources.”	3 (was 1)	Directs Tribes and Tribal Designated Housing Entities to consult with the General Services Administration for information on the Federal Supply program. Administrative requirements under 24 CFR Part 85 apply. The Indian Preference requirements outlined in 24 CFR 1000.52 continue to apply. Preference to Indian-owned companies and Indian-owned organizations stills applies in the award of contracts and subcontracts. HUD will issue general guidance to assist tribes on how the GSA schedule can work in the Indian Housing Block Grant program.	4	A		No Reg needed – statutory format only HUD will issue general guidance on how GSA can work with IHBG. Consensus 5/13/10
15	PL 110-411 amended §101 to add a new ‘(k) Tribal Preference in Employment and Contracting	1 (2 raters) or 3 (2 raters) 3 Work Group A	Rulemaking is required to define the scope of this provision.	5	A	1000.48 – 54	Consensus 6/9/10
16	Section 102 1998: PL 105-276 amended §102(a). Clerical and superseded by 2008 changes.	1	A technical correction. No action is required.	46	C		See Item no. 19 Consensus 5/11/10

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17	2000: PL 106-568 amended §102(c) by adding at the end §(6). This subsection was repealed in 2008.	N/A (2 raters) or 1 (2 raters)	Section 101(c) does not appear to be addressed in this Notice.	N/A	C		Workgroup C decision – no regulation required. Consensus 5/11/10
18	2000: PL 106-568 amended §102(f) by re-designating former subsection (g) as (f). The 2000 change actually repealed old §102(f), dealing with special IHP rules for small tribes (see §222). There never were any such rules.	1	Section 101(f) and (g) do not appear to be addressed in this Notice.	N/A	C		Workgroup C decision – no regulation required. Consensus 5/11/10
19	2008: PL 110-411 amended §102(a)(1). The change to 102(a)(1) converts the Indian Housing Plan (IHP) requirement from a “fiscal year” to a “tribal program year,” and this will require changes to several regulatory sections (see, e.g., §§201 and 214).	2	These provisions will require the issuance of a PIH Notice that will provide additional information on the cumulative changes to the Indian Housing Plan (IHP) process. Consultation has and is being conducted on this process. Conforming regulations are required at 24 CFR 1000.201, 24 CFR 1000.214, and 24 CFR 1000.216.	6	C	1000.201 1000.214 1000.216 1000.220	Funding - IHP Deadline Submission Min. Requirements Regulations adopted by Committee 4/1/10. Additionally, definition of “tribal program year” added to 1000.10 and adopted by Committee on 4/01/10.
20	The changes to §102(b) changed the content of the IHP. However, the existing regulations merely cross-reference the statute when	1		7, 8	C	(some items moved to #22)	<u>Drafting Committee</u> <u>To Do: All references to the “5-year plan” to be deleted from the regulations.</u>

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	<p>defining the required contents of the IHP (§220).</p> <p>The 2008 Amendments also abolished the 5-year plan</p>					<p>1000.220 1000.524(c) 1000.524(e) 1000.512(b) 1000.524(e)</p>	<p><u>Parking lot item under 102(b) – Definition of “jurisdiction” at 102(b)(2)(B) should be subject to neg reg.</u> Consensus 5/11/10</p> <p>Regulations adopted by Committee 4/1/10</p> <p>The Committee replaced the old IHP language concerning “goals and objectives” with the new language referring to “planned activities in 1000.524(e) 1000.512(b)(1).</p> <p>The Committee deleted the reference to the 5-year plan in 1000.524(e).</p>
21	<p><u>Section 103</u></p> <p>1998: PL 105-276 amended §103(c)(3). This change actually conformed the statute to the regulation (§203(a)(3)).</p>	N/A	This is a technical correction. No action is required.	47	C		<p>Workgroup C decision – no regulation required. This was a clerical change to the statute. Consensus 5/11/10</p>

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22	2008: PL 110-411 amended §103(d). This amendment deals with conversion to a “tribal program year.”	2	Section 101(d) will require the issuance of a PIH Notice that will include a revised IHP and provide additional information on the cumulative changes to the IHP process. Consultation has and is being conducted on this process. No conforming regulation is required.	9	C	1000.201 (moved from #20) *1000.110(d) *1000.238 *1000. 552(b)	Neg Reg required. Also, to drafting committee to change “fiscal year” to “tribal program year” throughout regulations where appropriate. Other IHP/APR Form related issues may need negotiation. Consensus 7/21/10
23	There probably needs to be a rule clarifying new §103(e), since that subsection erroneously refers to non-existent subsections. That error is related to the new Subtitle B, which is self-executing (see below).	2	Section 103(e) concerns review of information in a recipient’s IHP on self-determined activities. Recipients are not required to include this information in their IHP. A technical correction is needed to strike this provision.	10	C		Proposed PIH Notice ready for review and negotiation by Full Committee as of 5/12/10.
24	Section 104 2002: PL 107-292 amended §104(a)(1). See below.	3	Rulemaking is required to implement these provisions.	33	A	1000.62	Consensus 7/20/10 Work Group A asked to work with HUD in updating PIH Notice 2000-18 “Accounting for Program Income.”
25	2002: PL 107-292 amended §104(a)(1)(B) by striking subparagraph (b). The deletion was actually to (a)(1)(B). The changes were part of Congress’ desire to let tribes use program	3	Rulemaking is required to implement these provisions.	33	A	1000.62	

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	income for “housing related activities,” and apparently requires a change to §62(b) of the regulations.						
26	2002: PL 107-292 amended §104(a)(2). See 25 above.	3	See above.	33	A, then F	1000.60, 62 1000.530, 532, 538	Consensus 7/22/10
27	2002: PL 107-292 amended §104(a)(2)(B). See 25 above.	1	See above.	33	A, then F	1000.60, 62 1000.530, 532, 538	No reg needed Consensus 5/11/10
28	2002: PL 107-292 amended §104(a)(2) subparagraph (C).	1	See above.	33	A, then F	1000.60, 62 1000.530, 532, 538	No reg needed Consensus 5/11/10
29	2002: PL 107-292 amended §104(a)(2) by adding (D). See 25 above.	3	See above.	33	A, then F	1000.60, 62 1000.530, 532, 538	Consensus 7/22/10
30	2005: PL 109-136 amended §104(a)(2).	3 (was 2)	No conforming regulation is required. Note further, however, that P.L. 107-292 and P.L. 109-136 (passed in 2005) amended section 104(a) of NAHASDA and does require rulemaking.	29	A, then F	1000.60	Consensus 7/22/10
31	2000: PL 106-568 amended §104(b)(1). Clerical.	1	This section of PL 106-59 is not addressed in this notice.	N/A	A		No Reg needed – statutory format only Consensus 5/11/10
32	2000: PL 106-568 added §104(b)(3). This change allowed	2	This section of PL 106-59 is not addressed in this notice.	N/A	A	1000.16	Referred to Drafting Committee

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	use of tribal prevailing wage rates. Although HUD has allowed use of tribal wage rates, it has never amended the pertinent regulation (§16).						Consensus 5/12/10
33	2008: PL 110-411 amended §104. This amendment was to exclude LIHTC developers’ fees from “program income”.	1 (was 2)	No conforming regulation is required.	11	A	1000.62	No additional regulatory language needed. Consensus 5/11/10
34	Section 105 2000: PL 106-568 added §105(d). This is the “environmental compliance waiver” section.	3	Rulemaking is required to determine the process for requesting a waiver under 105(d).	36	A	1000.18	Consensus 6/9/10
35	Section 106 2008: PL 110-411 amended §106(b)(2)(B)(i).	2	No conforming regulation is required.	12			Back to Work Group 5/12/10; Discussed 7/21/10 Consensus 8/17/10
36	2002: PL 107-292 amended §106(b)(2)(A). See above.	2	See above.	34			Back to Work Group 5/12/10; Discussed 7/21/10 Consensus 8/17/10
37	2002: P.L. 107-292 amended §106(b)(2)(D) – Amendment adds a requirement that the Secretary review the regulations promulgated pursuant to this section not less than every 7 years in consultation with the tribes.	N/A (3 raters) or 3 (1 rater)	No conforming regulation is required.	12 NOTE: This was actually a 2008 addition			Back to Work Group 5/12/10 Discussed 7/21/10 Consensus 8/17/10

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38	Section 108 2002: PL 107-292 amended §108. <i>Technical change.</i>	1	See below.	N/A	A		No Reg needed – statutory format only Consensus 5/11/10
39	2008: PL 110-411 amended §108. <i>Technical change.</i>	1	No conforming regulation is required.	25	A		No Reg needed – statutory format only Consensus 5/11/10
40	Section 201 2000: PL 106-568 amended §201(b) by substituting “paragraphs (2) and (4)” for “paragraph (2)”. It also inserted paragraph (4) and redesignated former paragraphs (4) and (5) as (5) and (6), respectively. <i>This change authorized tribes to provide assistance to law enforcement officers. HUD never amended the regulations to accommodate law enforcement officers. (See §§104-110).</i>	3	Conforming regulations are required at 24 CFR 1000.104, 1000.106, 1000.108 and 1000.110.	See the second paragraph of #13 above	B	1000.104 1000.106 1000.108 1000.110	Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10 Reopened discussion & reached Consensus 7/20/10
41	2000: PL 106-568 inserted paragraph 201(b)(4) and redesignated former paragraphs (4) and (5) as (5) and (6), respectively. <i>See above.</i>	3	See above.	N/A	B		Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10 Reopened discussion & reached Consensus 7/20/10

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42	1998: PL 105-276 amended §201(b)(5) (now 4(13)(c)(i)(II) due to a subsequent amendment)	3	Section 201 (b)(5) of PL 105-276 is not addressed in this notice.	N/A	B		Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10 Reopened discussion & reached Consensus 7/20/10
43	2008: PL 110-411 amended §201(b). There are several changes here. The first (§ 201(b)(1)) unconditionally exempts projects assisted by loan guarantees from the family eligibility requirements. This requires a conforming rule change to §1000.110(a)-(c).	3	Conforming regulations are required at 24 CFR 1000.104, 1000.106, 1000.108 and 1000.110	13	B	1000.104(b) & (c) 1000.106 1000.108 1000.110(a) – (c) (without respect to the subsections described here)	Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10 Reopened discussion & reached Consensus 7/20/10
44	The second (§201(b)(2)) and ((§201(b)(2)(B))) allows any form of NAHASDA assistance to “ineligible” families whom the tribe can prove needs the assistance, and dictates that the Secretary shall establish limits. This requires a change to the regulations at §1000.110(a)-(c).	3	Conforming regulations are required at 24 CFR 1000.104, 1000.106, 1000.108 and 1000.110.	13	B		Consensus 6/9/10 Reopened discussion & reached Consensus 7/20/10

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45	Thirdly, §201(b)(3) extends “essential family” eligibility to Indians, contrary to existing rule (§1000.104(c)).	3		13	B		Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10, 7/20
46	Finally, §201(b)(4)(A) expands the ranks of eligible law enforcement officers, which, as noted previously, the current regulations do not recognize at all.	3		13	B		Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10, 7/20
47	Section 202 2008: PL 110-411 amended §202. The amendments to §202(2) expand the list of eligible “affordable housing activities.” The applicable regulation (§102) simply references the statutory definition of “affordable housing activities”.	3	The provisions of the introduction and (2) DEVELOPMENT and (4) HOUSING MANAGEMENT SERVICES do not require conforming regulations. The new reserves provision will require rulemaking to determine requirements for reserve accounts.	14	B	1000.102	Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10
48	2002: PL 107-292 amended §202 by inserting §(7). Both this and subsection (8) (see below) call for a demonstration project.	N/A	Section 202 of PL 107-292 is not addressed in this notice.	N/A	B		No Reg – Time Expired and Study Complete Consensus 5/11/10
49	2002: PL 107-292 amended §202 by inserting §(8). See above.	N/A	Section 202 of PL 107-292 is not addressed in this notice.	N/A	B		Same as above Consensus 5/11/10

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50	Section 203 2008: PL 110-411 amended §203. Subsection (f) (carryover of funds) will require some conforming regulatory changes (see, e.g., §524(a)).	2	Section 203(f) requires a conforming regulation to remove 24 CFR 1000.524(a). Section 203(g) does not require a conforming regulation.	15	F	1000.524(a)	Regulations adopted by Committee 4/1/10 Removed (a) and renumber remaining sections accordingly.
51	This amendment exempts de minimus procurements (below \$5000) from procurement requirements.	3 (was 1)	PIH Notice 2009-14, dated May 18, 2009, has been issued. It provides additional information on the de minimis exemption.	15	A	1000.26	Workgroup rated this issue as a 3 for the limited purpose of negotiating whether Indian preference requirements apply to de minimis procurements. Consensus 6/9/10
52	Sec. 205 1998: PL 105-276 amended §205(a)(1).	3	This is a technical correction. No action is required.	49	B	1000.10 1000.146	Consensus 6/9/10
53	1998: PL 105-276 substituted §205(a)(2) for “Section 205(2)”.	3	This is a technical correction. No action is required.	41	B		Committee adopted new regs at 1000.104 – 118 by consensus 6/9/10. Consensus on 1000.147 on 7/20/10
54	2008 - 205(c) -PL 110-411 amended §205 by adding a new subsection (c).	3	Binding commitments no longer apply to a family or household member who subsequently takes ownership of a homeownership unit. Section 205(c) requires a conforming regulation to amend 24 CFR 1000.142. The	16	B	1000.142	Proposed language ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10

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			NAHASDA Guidance on useful life and binding commitments will also be revised.				
55	<u>Section 206 – Cert. of Compliance with Subsidy-Layering Requirements – 2000 amendments repealed this section</u>	N/A	No reference to the subsidy-layer requirements in this PIH Notice 2009-50.	N/A	B		Removed from statute Consensus 5/11/10
56	<u>Section 207</u> 1998: PL 105-276 amended §207(b). All the 1998 changes were technical.	N/A	No conforming regulation is required.	40	B		No Reg Needed - Statutory format only Consensus 5/11/10
57	1998: PL 105-276 amended §207(b)(3)(A). See above.	N/A	No conforming regulation is required.	40	B		No Reg Needed - Statutory format only Consensus 5/11/10
58	1998: PL 105-276 amended §207(b)(3)(B). See above.	N/A	No conforming regulation is required.	40	B		No Reg Needed - Statutory format only Consensus 5/11/10
59	<u>Section 208</u> 1998: PL 105-276 amended §208(a) by striking out “paragraph (2) and inserting §(b)”. Technical change.	N/A		50	B		No Reg Needed - Statutory format only Consensus 5/11/10
60	2008: PL 110-411 amended §208(a). Allowing tribes access to criminal information for job applicants is currently not	2	A conforming regulation is required to amend 24 CFR 1000.150.	17	B	1000.150	Regulations adopted by Committee 4/1/10 Amended question 1000.150 1000.152 Now (a)-(c)

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	provided for in existing regulations (§150).					1000.152	
61	1998: PL 105-276 amended §208(b) by striking out “paragraph (l)” and inserting “§(a)”. Technical change.	N/A	This is a technical correction. No action is required.	50	B		No Reg Needed - Statutory format only Consensus 5/11/10
62	<u>Section 209</u> 2000: PL 106-568 rewrote §209. This stand-alone enforcement provision has no corresponding rule, but it is linked with other statutory amendments involving monitoring, audits and enforcement (See discussions of §§401-405, below).	3	This section of PL 106-568 is not addressed. However, HUD issued PIH Notice 2003-2 and indicated that no conforming rule was required.	N/A	B, then F	No existing regulation	Consensus 6/9/10
63	<u>Subtitle B, Sections 231-235</u> 2008: PL 110-411 amended Title II by adding “Subtitle B-Self Determined Housing Activities for Tribal Communities” (including §§231 (Purpose), 232 (Program Authority), 233 (Use of Amounts for Housing Activities), 234 (Inapplicability of Other Provisions) and 235 (Review and Report)	1	No conforming regulation is required. PIH notice will be issued that provides additional information regarding the new demonstration program. HUD will develop a notice providing guidance on the demonstration program and consult with tribes on its content. Sections 232 and 233 require technical corrections because the cross-references to 102(b)(6) do	18	B	No existing regulation	Consensus 6/9/10 that PIH Notice on this issue should go through HUD clearance. No regulation needed.

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			<p>not exist. The proper cross-reference is 102(b)(2)(D).</p> <p>Section 234 requires two technical corrections: the cross reference in paragraph (5) to 102(b)(4) does not exist, nor does the provision referenced at paragraph (11). The proper cross-reference is 102(b)(2)(D). Section 234(b)(11) should be struck, which will require re-numbering of paragraphs 234(b)(12)-(15).</p> <p>Section 235 will require notice under the Paperwork Reduction Act to advise recipients of the reporting requirements. A technical correction is also needed in Section 235 to clarify the reporting deadline date, as the program is authorized through 2013.</p>	<p>18</p> <p>18</p>	<p>B</p> <p>B</p>	<p>No existing regulation</p>	

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64	Section 231 2008: PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §231 (Purpose)	1 (3 raters) or 2 (1 rater)	Same as above.	18	B	No existing regulation	Proposed PIH Notice ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10
65	Section 232 2008: PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities,” including §232 (Program Authority).	1 (3 raters) or 2 (1 rater)	Same as above.	18	B	No existing regulation	Proposed PIH Notice ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10
66	Section 233 2008: PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §233 (Use of Amounts for Housing Activities).	1 (3 raters) or 2 (1 rater)	Same as above.	18	B	No existing regulation	Proposed PIH Notice ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10
67	Section 234 2008: PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §234 (Inapplicability of Other Provisions). See above.	1 (3 raters) or 2 (1 rater)	Same as above.	18	B	No existing regulation	Proposed PIH Notice ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10

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68	<u>Section 235</u> 2008: PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §235 (Review and Report).	1 (3 raters) or 2 (1 rater)	Same as above.	18	B	No existing regulation	Proposed PIH Notice ready for review and negotiation by Full Committee as of 5/12/10. Consensus 6/9/10
TITLE III: ALLOCATION OF GRANT AMOUNTS							
69	<u>Section 302</u> 2000: PL 106-568 amended §302(d)(1)(A) [IMPLEMENTED] This amendment, dealing with small tribe “hold harmless” funding, was implemented in the last Neg Reg session (§316(b)(2)).	N/A	Specific paragraph on “hold harmless” is not addressed in this Notice. However, HUD previously published Notice PIH 2003-2 and Notice PIH 2003-3 addressing many of these amendments.	N/A	Regs for Title III of NAHASDA would typically fall under Subpart D, which is off limits under Charter		
70	2000: PL 106-258 added §302(d)(1)(B) [IMPLEMENTED]. See above.	N/A	See above.	N/A	Regs for Title III of NAHASDA would typically fall under Subpart D which is expressly off limits under Charter		

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71	2008: PL 110-411 amended §302(a)(1) clerical change.	1		19	Regs for Title III of NAHASDA would typically fall under Subpart D, which is expressly off limits under Charter.	1000.312, 316, 318, 322 (without respect to the subsections of this amendment)	Workgroup A discussed whether “consultation” should be defined in Subpart A of the regulations to ensure the Tribes have a meaningful opportunity to participate in the study of needs data under §302(a)(2)(A)
72	2008: PL 110-411 added §302(a)(2)(A).* The conduct of HUD’s study, and an acceptable definition of “consultation,” should be the subject of NegReg discussion. *	3	Section 302(a) does not require a conforming regulation. A conforming regulation is required to implement section 302(b). Conforming regulations are required at 24 CFR 1000.312, 24 CFR 1000.318, and 24 CFR 1000.322. Pursuant to 24 CFR 1000.306(b), not later than May 21, 2012, the IHBG Formula will be reviewed and any necessary changes will be made with respect to funding under the Formula Current Assisted Stock component.	19	Does “consultation” need to be defined? Perhaps in Subpart A?		
73	2008: PL 110-411 added §302(b)(1).* This change amends the criteria for when a unit ceases to be counted for FCAS purposes. *	3		19			

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TITLE IV: COMPLIANCE, AUDITS AND REPORTS							
74	<p><u>Section 401</u></p> <p>2000: PL 106-568 rewrote §401(a).</p>	3	A conforming regulation is required at 24 CFR 1000.534.	38	F	1000.534, 538	<p>Proposed regulation regarding action against tribes withdrawn 7/22/10; Proposed statute of limitations on enforcement action failed to achieve consensus on 7/22/10; consensus achieved 7/22/10 on consolidating existing two enforcement regulations into 1000.532</p> <p>Non-Consensus relating to LOCCS Edits being a limit on the availability of funds</p>
75	<p>2000: §401(b)(1-4) Amendments allow Secretary and tribes to enter into performance agreements to monitor compliance.</p>	3	<p>This amendment was previously addressed by Notice PIH 2003-2. A technical correction is required at 401(b)(4)(A) to change the word “and” to “or.” Rulemaking is required to define “performance agreement.” A conforming regulation is required at 24 CFR 1000.534.</p>	39	F	1000.520, 530 1000.532, 538	Consensus 7/22/10

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76	2008: PL 110-411 amended §401(a)(2). This amendment creates an exclusion from what constitutes “substantial non-compliance.”	3	A conforming regulation is required at 24 CFR 1000.534.	20	F	1000.534	Non-Consensus 7/22/10 Issue is whether a hearing should be required in some cases of CAS overcounts
77	Section 403 2008: PL 110-411 amended §403(b). Requires an “appropriate level” of onsite inspection.	3	Rulemaking is required to determine the appropriate level of onsite inspections.	21	F	1000.502(d), 520, 522	Consensus 5/13/10
78	Section 404 2008: PL 110-411 amended §404(b)(2)). This section deletes one element of the performance report. The existing rule (§512(a)) merely references §404(b) in setting out what a performance report must contain.	1	This provision will require the issuance of a PIH Notice that will include a revised Annual Performance Report (APR) and provide additional information on changes to the APR process. Consultation has and is being conducted on this process. No conforming regulation is required.	22	F	1000.512	Regulation adopted by Committee 4/1/10 Changes objectives to planned activities in (b)(1)(2)
79A	Section 405 2000: Treats TDHEs as non-federal entities subject to Single Audit Act in Section 401(a)		Requires conforming changes to sections 544 and 548	37	F		Consensus 5/13/10
79B	2000: Affords recipients right to comment on HUD audit reports		Section 405(c) requires a conforming regulation at 24 CFR 1000.528	37	F		Consensus 5/13/10

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79C	2000: Amends 405(c).		The revised statute no longer contains the following language: <u>“except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.”</u> Rulemaking is required to address the statutory changes.	37	F		Non-Consensus item 7/22/10 This language still appears in the regulations, although there is no statutory basis for it. There was no consensus on whether HUD has the discretion to still enforce it.
79D	2000: PL 106-568 rewrote §405.		Section 405(d) modified the statute by cross-referencing 401(a) as being applicable to actions under 405 and replacing language that HUD may “recapture or deduct grants.”	37	F		Postponed 7/22/10 Awaiting formal legal opinion from HUD Non-Consensus 7/18/10
79E	2000: Amended language dealing with on site visits. In 405(b).		Section 405(b)(2) requires a conforming regulation at 24 CFR 1000.520. Requirement that review and audit levels be “appropriate” requires rulemaking.	37	F		Consensus 5/13/10 Consensus on New Rule 7/22/10
80	<u>Section 408</u> 1998: PL 105-276 amended §408.	2	No conforming regulation is required.	51	A or F		Self-Executing

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TITLE V: TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS							
81	<u>Section 502</u> 2000: PL 106-569 amended §502(a).	N/A	HUD Notice PIH 2009-50 does not address section 502 of PL 106-569.	N/A	(consideration not necessary)		Removed from consideration by Consensus 5/11/10
82	<u>Section 509</u> 2008: PL 110-141 amended Title V by adding §509. This section confirms tribes' eligibility to receive HOME funds.	1	No conforming regulation is required.	23	A to address		No Reg needed – Statutory format only Consensus 5/11/10
TITLE VI: FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES							
83	<u>Section 601</u> 2002: PL 107-292 amended §601(a) by authorizing the Secretary to provide guarantees for financing “housing related community development activities” (in addition to affordable housing activities).	1	A conforming regulation is required at 24 CFR 1000.424 and 24 CFR 1000.428.	35	E	1000.424 1000.428	Regulations adopted by Committee 4/1/10 Now (a) (1) & (2) Removes (d)(2) (b) & (e) amended

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84	2002: PL 107-292 amended §601(b). This change eliminated the requirement that tribes try to find financing elsewhere. It requires a conforming change to the rules (§1000.408).	2	Section 601(b) is not addressed in this Notice.	N/A	E	1000.408	Regulation adopted by Committee 4/1/10 Removed
85	2002: PL 107-292 struck subparagraph §601(b) and re-designated subsection (c) as (b). Technical change.	N/A	Section of PL 107-292 not addressed in this Notice.	N/A	E		No Reg Needed - Statutory format only Consensus 5/11/10
86	2002: PL 107-292 re-designated subparagraph §601(d) as (c). Technical change.	N/A	Not addressed in this Notice.	N/A	E		No Reg Needed - Statutory format only Consensus 5/11/10
87	Section 602 2004: PL 108-393 amended §602(d), establishing a limitation on percentage of guarantees made under this title.	2	No conforming regulation is required.	31	E	1000.410	Referred to Drafting Committee Consensus 5/12/10
88	Section 605 2002: PL 107-292 amended §605(a). Technical change.	1	Subsection not addressed in this Notice.	N/A	E	No existing regulation	No Reg Needed - Statutory format only Consensus 5/11/10
89	2002: PL 107-292 amended §605(b). Technical change.	1	Subsection not addressed in this Notice.	N/A	E	No existing regulation	No Reg Needed - Statutory format only Consensus 5/11/10

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90	2008: PL 110-411 amended §605. <i>Technical change.</i>	1	No conforming regulation is required.	26	E	No existing regulation	No Reg Needed - Statutory format only Consensus 5/11/10
91	<u>Section 606</u> * 2008: PL 110-411 amended Title VI by adding §606. <i>* This is the new demonstration project loan guarantee program.</i>	2	No conforming regulation is required. This provision will require the issuance of a PIH notice that will provide additional information regarding the new demonstration program. HUD will develop a notice providing guidance on the demonstration program and consult with tribes on its content.	24	E	No existing regulation	Workgroup awaiting review of draft PIH Notice before final recommendation Consensus 6/9/10
TITLE VII: OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS							
92	<u>Section 703</u> 2002: PL 107-292 amended §703.	1	No conforming regulation is required.	N/A?	A		No Reg needed – Statutory format only Consensus 5/11/10
93	2008: PL 110-411 amended §703.	1	No conforming regulation is required.	27	A		No Reg needed – Statutory format only Consensus 5/11/10

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TITLE VIII: MISCELLANEOUS							
94	2008: PL 110-411 added a “Title VIII- Miscellaneous”, including §§801 (limitation on Use for Cherokee Nation), 802 (Limitation on Use of Funds), and 803 (GAO Study of Effectiveness of NAHASDA for Tribes of Different Sizes [sic]).	1	See below.	28	N/A		Removed from consideration by Consensus 5/11/10
95	Section 801 2008: PL 110-411 added a “Title VIII-Miscellaneous”, including §801 (Limitation on Use for Cherokee Nation).	1	No conforming regulations are required for sections 801 and 802.	28	N/A		Removed from consideration by Consensus 5/11/10
96	Section 802 2008: PL 110-411 added a “Title VIII-Miscellaneous”, including §802 (Limitation on Use of Funds).	1	See above.	28	N/A		Removed from consideration by Consensus 5/11/10
97	Section 803 2008: PL 110-411 added a “Title VIII-Miscellaneous,” including §803 (GAO Study of Effectiveness of NAHASDA for Tribes of Different Sizes).	1	Section 803 is not applicable to HUD; it requires the Government Accountability Office to conduct a study of the effectiveness of NAHASDA.	28	N/A		Removed from consideration by Consensus 5/11/10

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98	<p><u>Section 201</u> 1998: 201(b)(6) of NAHASDA was amended in 1998 to exempt federally recognized tribes and their TDHEs from Title VI of the Civil Rights Act of 1964 and Title VIII (Fair Housing Act).</p>		<p>This issue was not addressed in the Notice, but was brought before the Committee on 5/12/10.</p>		A	1000.12	<p>Referred to Drafting Committee by Consensus 5/12/10</p>