

Annual NAHASDA Compliance Assessment Summary Report

Housing Authority of the Seminole Nation of Oklahoma Program Year: October 1, 2010 – September 30, 2011

As a part of NAHASDA regulatory and statutory compliance, an assessment was conducted covering NAHASDA activities for the program year 10/1/10 – 9/30/11. The compliance assessment was conducted utilizing a variety of techniques, primarily random sampling of files, records, and transactions. Interviews and discussions were also held with various HASN staff. Policies and procedures were also reviewed to determine if the routine actions of the HASN were consistent with local policies. The actual review and assessment was conducted on-site at the HASN office located in Wewoka, OK on August 24-25, 2011. The compliance assessment was conducted by Luke Toyebo, Jr., of Toyebo Professional Services who is an independent contractor who has been contracted to assist the HASN with this endeavor.

While the review was meant to be comprehensive in nature, the compliance assessment is only one instrument that the HASN may use in carrying out its self monitoring responsibilities under NAHASDA. While every effort was made to insure the accuracy of this report, the reviewer assumes no liability for errors or omissions. Due to time constraints and the volume of paperwork involved, there may be some areas or requirements that were not a part of the sampling or limited review.

Overall, the HASN has made significant improvement over the past year and continues to address previously identified areas of concern. An exit interview was conducted with key staff and their collective response was a clear indicator that they were keenly aware of the issues and concerns identified and would be able to systematically address them in a timely manner. The following pages provided a more detailed account of some of my observations during the on-site review.

1. Indian Housing Plan (IHP) and Annual Performance Report (APR)

The IHP's from 2003 through 2010 (except '04) were reviewed to determine if activities being undertaken by the HASN were identified under the open IHP's and adequate progress was being achieved. Generally, the HASN appeared to be following the IHP's with only the '05 IHP/APR not identifying L/R development as an activity/objective while the HDS financial statement from 9/30/10 showing nearly \$380,000 spent on L/R development. One prior area of concern was the number of multiple open grants with a substantial amount of money remaining in them. One of HUD's performance measures is 90% obligation of funds within 24 months of grant execution. This performance measure relates specifically to the progress the recipient has made toward achieving its stated goals and objectives. The HASN has made significant strides in addressing this prior

year's issue. The closeout of the '03, '05, '06, '07, and '08 IHBGs with this year's APR will be a significant accomplishment.

The APR's were reviewed and compared with the financial statements and other available documents to verify accuracy. The consistency of the APRs when compared to the financials has greatly improved this year. There was one recurring problem that concerned the reporting of down payment assistance (DPA) activities. The funds expended for DPA were routinely included in the Housing Management Services line total. The DPA should appear as a Development –Homeownership Acquisition activity.

Concern : The HASN has submitted APR's that are in need of minor corrections with regard to activities and expenses.

Recommendation: The HASN should carefully review the financial statements and budgets to compare activities completed and verify actual expenditures. The current APR should include the suggested changes to more accurately reflect actual accomplishments.

2. Environmental Reviews

The HASN is routinely conducting environmental reviews in accordance with 24 CFR Part 58. A review of several files indicates that the HASN is maintaining adequate environmental review records (ERR's) for all activities. The certifying official (Chief) for the responsible entity (Tribe) should be executing these documents. It is allowable for a housing staff person or a professional contractor to sign the ERR as the preparer but only the certifying official may sign for the responsible entity. The certification of environmental reviews is a governmental function and only the Tribe may execute these documents unless they have specifically delegated this authority to another party. A review of the recent environmental assessments revealed that the certifying official had not executed the recent update. Although there is no required format for EAs under Part 58, the Statutory Worksheet and HUD recommended EA form should be consulted and compared with any other format utilized to make sure that all related laws and authorities, executive orders, and other related requirements are adequately addressed. A prior year's concern with "exempt and categorical exclusions not subject to" activities not being covered has been addressed.

Recommendation: The HASN should make sure that the certifying official signs the ERR's for all activities.

3. Labor Standards

A review of the development and construction contract files was conducted to determine compliance with NAHASDA requirements related to labor standards. Overall, the records were organized in a manner that was sufficient to meet program requirements. The construction contract being utilized was a simple document that was understandable and easy to follow. NAHASDA requirements at 24 CFR Part 1000.16 (a)(c) and (e) are applicable to the HASN's contracts. There are specific required clauses that may be

found in the General Conditions form used by many IHBG recipients. The form should be executed and attached for all major contracts. In addition, the advertisement generally used did not contain language that specified that Section 3 preference was applicable. There was no reference to the Section 7(b) Indian preference requirements either. The solicitations reviewed were restricted to Indians only so this matter is less of a concern.

Concern : The general contract conditions were not always attached to the actual contract. The general conditions form contains requirements specific to labor standards and related laws and authorities.

Concern : In its solicitation, the HASN is not including language stating that Section 3 preference is applicable. 24 CFR Part 1000.42 requires recipients to comply with Section 3 of the HUD Act of 1968 and the implementing regulations at 24 CFR Part 135. HUD has determined that the \$200,000 threshold requirement relates to IHBG assistance received and not individual contracts.

Recommendation: Revise current contract to include all applicable contract requirements or incorporate the general conditions as an attachment and have both parties execute. Revise solicitation advertisements/notices to include required Section 3 and Indian preference language. Another suggestion is to have the plans/specifications initialed by the parties and incorporated by reference.

4. Total Development Cost Standards (TDC's)

NAHASDA requirements at 24 CFR Part 1000.156 require that affordable housing assisted with IHBG funds be of a moderate design. In order to assist IHBG recipients in addressing this requirement, HUD periodically publishes TDC's for the applicable area/location. The HASN should be able to demonstrate that each IHBG assisted unit does not exceed the published TDC limit by number of bedrooms. The TDC applies to all funds utilized regardless of the source. The HASN does keep records regarding development costs and the Finance Office communicates with the Field Services Office regarding expenses incurred. Another related requirement involving the use of the TDC/DC&E limits is the 40% threshold for CAS units to be considered IHBG assisted units. For Mutual Help units that are paid off and conveyed, the HASN may retain and use the proceeds of sale for purposes outside the normal scope of NAHASDA as per the HUD published Transition Notice. However, the HASN should be tracking all IHBG funds expended on MH units prior to conveyance to make sure that the 40% of DC&E limit is not exceeded on a per unit basis. If the IHBG costs exceed 40% of a MH unit's DC&E/TDC, the unit is regarded as an IHBG assisted unit and is subject to all NAHASDA requirements.

Concern : The HASN has not established and certified that the 40% TDC/DC&E threshold has not been exceeded with regard to the use of IHBG funds. Without these records, HUD may question the identity of MH proceeds of sale and require the HASN to comply with all NAHASDA requirements when utilizing these funds. This is only a concern if the HASN decides to use proceeds of sale outside the normal scope of NAHASDA.

Recommendation: Develop and maintain subsidiary ledgers for each MH unit to determine the actual amount of IHBG funds expended on each MH unit prior to conveyance.

5. Procurement

The HASN has established a micro purchasing clause in their Procurement Policy. The inclusion of a micro purchasing clause greatly simplifies the procurement process and decreases the volume of required paperwork. The formal solicitations reviewed were in accordance with Part 85.36 and the files were adequately documented. In the formal solicitation files, the only deficiency noted was the lack of a statement regarding the applicability of Section 3 preference in the solicitation (advertisement). The detailed bid packet contained information relating to the applicability of Section 3. The Indian preference (Section 7(b)) clause should also be clearly stated in each solicitation and is also applicable to any sub contracts.

See Concern Above: The HASN solicitations (advertisement) should clearly state that the described procurement is subject to Section 3 of the HUD Act of 1968. Recommendation: Review all solicitations for inclusion of the Indian preference and Section 3 preference clauses.

6. Section 504 Uniform Accessibility Requirements

NAHASDA regulations at 24 CFR Part 1000.12 regarding non discrimination state that Section 504 is applicable to IHBG assisted activities. As a part of this requirement, the HASN is required to make certain accommodations for persons that are disabled. The HASN has addressed previous issues with UA requirements and is now in compliance in terms of maintaining the required number of UA units per the size of their rental inventory.

7. Insurance

The HASN currently has all of their housing units and properties insured through Amerind Risk Management Corporation. There is currently a system in place to remind the HASN staff to add newly constructed and /or acquired units. The HASN staff have made all of the necessary adjustments to the current inventory in accordance with Amerind's requirements and time frame. HASN staff were also advised of the insurance requirements applicable to privately owned affordable housing that the HASN is rehabilitating. These participants are required to show verification of insurance prior to work being commenced. There were no deficiencies identified in this area.

8. Lead Based Paint Requirements

The NAHASDA regulations at 24 CFR Part 1000.40 state that HUD's lead based paint requirements are applicable to IHBG assisted units. Dwelling units constructed in 1978 or after are exempt from these requirements. Per discussions with HASN staff, the HASN now has several staff that have received their required certifications in the area of LBP inspection, mitigation and renovation. The HASN has also been registered with the EPA as being compliant per LBP regulations and requirements.

9. Cooperation Agreements

NAHASDA requires that HASN owned property be exempt from all real and personal taxes. In order to be tax exempt, a cooperation agreement is needed from the local taxing body or government. Generally, this would be the county. Some recipients also secure cooperation agreements with the municipality that the affordable housing is located in as well. The HASN staff stated that they recently secured an executed cooperation agreement with Seminole County for their LIHTC project although they were unable to locate it during the on-site assessment. The HASN should locate the cooperation agreement and maintain it in a file for safe keeping.

10. Travel

Several travel expense reports were reviewed. A new simplified format has been developed and is being used by HASN personnel. The form was completed in the correct manner, documentation attached and the calculations were accurate. The expense forms contained the necessary signatures from the travelers. The travel activities reviewed were carried out in accordance with HASN Policy.

11. Program Eligibility

The HASN staff has been vigorously working on reviewing and updating files where needed. They are also in the process of scanning hard copies and developing electronic files. The information is being catalogued and maintained in a simple user friendly format that is going to be an excellent system when completed. Improvements have been made in this area. The waiting list and selection determination documentation is now being maintained

Several Mutual Help participant files were reviewed. The files were complete with regard to basic eligibility information and income verification. The HASN staff was advised to retain the initial placement and eligibility certification documentation in the files. The MHOAs selected for review were executed after the implementation of NAHASDA. The MHOA should no longer be utilized post NAHASDA. MHOAs generally require an administrative charge which may be contradictory to NAHASDA if it exceeds 30% of a family's monthly adjusted income. Work being completed on these units with the use of IHBG funds should be tracked to make sure the 40% of DC&E threshold is not being

exceeded. An addendum to the MHOA in such cases should be executed and placed into the file to bring the MHO into compliance with NAHASDA. The HASN can continue to utilize the Mutual Help Policy for occupancy only and should no longer be admitting families to the MH program as it is no longer in existence except for the MHOAs that remain in place.

The Lease Purchase and LOPA files that were reviewed for compliance revealed some errors in terms of the income and payment calculations. One of the participants that appeared to be eligible for the statutory travel deduction was not provided one. Upon closer analysis, it appears that “excessive mileage” is not defined in written form. The Lease Purchase Policy appears to be used to manage virtually all of the HASN’s existing programs that relate to occupancy. The files reviewed contained information that was not always in accordance with HASN Policy. The statutory deductions from NAHASDA are not included and must be provided to participants in determining adjusted annual income. The Lease Policy in general appears to need major revisions as it is particularly confusing and is hard for the staff to implement in a fair and consistent manner. In discussions with staff, it appears the staff has identified some of these issues already and the LP Policy is in the process of being reviewed and revised.

The inspections were being conducted as required for HASN managed properties. For individual work items that do not pass inspection and are in need of correction, a follow up inspection should be conducted and documented to demonstrate the unit has been brought into compliance. This practice was not always carried out for non compliant inspection items.

Concern: The HASN is not compliant with all NAHASDA and HASN policy requirements regarding eligibility, admissions, income/payment determination and occupancy. The HASN Lease Purchase Policy is not NAHASDA compliant.

Recommendation: The HASN should conduct a thorough review of all participant files to determine compliance. The HASN should review the execution dates of all MHOA’s to determine if the administrative charge is in fact enforceable. If the MHOA was executed post NAHASDA, the HASN may want to offer a friendly addendum to the MHOA’s affected. The HASN should simply state to the participant that the MHOA in its current form is non compliant with NAHASDA requirements. The addendum should contain language that the HASN cannot charge a payment that exceeds 30% of monthly adjusted income. The HASN should also verify that all of its agreements contain this same language prohibiting payments in excess of 30% of monthly adjusted income.

Recommendation: The HASN should carefully review and revise the current Lease Purchase Policy. Attention should be paid to purchase price and payment determination.

12. Useful Life and Binding Commitments

A review of existing files was not conducted due to time constraints. A subsequent interview with staff revealed that the HASN has been executing and recording binding commitments requiring that each IHBG assisted unit remain affordable for its useful life. Mutual Help units are exempt from this requirement and the rental units do not need a binding commitment unless there is a potential for conveyance such as a rent to own scenario. The HASN is compliant with this requirement.