

**ADDRESSING CURRENT  
INEQUITIES IN THE  
FORMULA'S AEL FACTOR  
BY ESTABLISHING THE  
NATIONAL AEL AVERAGE  
AS A BASELINE  
(NAHASDA NEGOTIATED RULE MAKING)**

## ISSUE

The NAHASDA regulations establish Formula Current Assisted Stock component to insure that housing built under the 1937 Housing Act can be maintained and former Section 8 rental assistance continued. Currently the regulations establish two adjustment factors to reflect local costs (§1000.320). One is “operating subsidy as adjusted by the greater of the AEL or FMR” and the other is “modernization as adjusted by TDC”.

For a significant number of those tribal recipients who rely on AEL this provision as currently worded unfairly reduces their NAHASDA Indian Housing block Grant funding.

Annual Expense Level or AEL was a non-project based program formally utilized by the 1937 Housing Act program to try to establish operating expenses for each Indian housing authority. It was identical to what is used in public housing. Many, including HUD, now believe this process and method is flawed and the alternative methods are being explored to more fairly and accurately determine cost. HUD and tribal officials have explained to the Negotiated Rule Making Committee and its Work Groups that individual AELs are not consistent or particularly accurate. When originally developed or updated, individual levels often were determined by the skill levels of the particular housing authority staff and the differing practices of the particular HUD offices.

Currently, an analysis of individual AELs for NAHASDA current assisted stock recipients illustrates the flawed AEL process. However, the Current Assisted Stock Negotiated Rule Making Work Group determined, by consensus, to not recommend to the full Negotiated Rule Making Committee to replace the AEL factor. For many Work Group members, the reason for doing this was that currently a method has not yet been developed that could be used as a replacement of AEL.

There are many examples where local cost areas and individual programs are similar but great variances existing between AELs. In addition, unexplainable variances exist between similar regions and between regions and national AEL averages. HUD's Southwest Region had an AEL average much higher than HUD's Northern Plains Region. The Northern Plains Region's average AEL average is inexplicably only about half of the national AEL.

For tribal recipients who do not have particularly high fair market rates, some other method needs to be used to accommodate unfair variances in AELs.

## RESOLUTION

Section §1000.320 of the NAHASDA regulations should be modified to read as follows:

§1000.320. How is Formula Current Assisted Stock adjusted for local area costs? There are two adjustment factors that are used to adjust the allocation of funds for the Current Assisted Stock portion of the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the following —

- (1) individual AEL factor
- (2) national average AEL factor; or
- (3) FMR factor, and

(b) Modernization as adjusted by TDC