

Public Law 110–411
110th Congress

An Act

To reauthorize the programs for housing assistance for Native Americans.

Oct. 14, 2008

[H.R. 2786]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Native American Housing Assistance and Self-Determination Reauthorization Act of 2008”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Native American
Housing
Assistance and
Self-
Determination
Reauthorization
Act of 2008.
25 USC 4101
note.

- Sec. 1. Short title; table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Definitions.

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

- Sec. 101. Block grants.
- Sec. 102. Indian housing plans.
- Sec. 103. Review of plans.
- Sec. 104. Treatment of program income and labor standards.
- Sec. 105. Regulations.

TITLE II—AFFORDABLE HOUSING ACTIVITIES

- Sec. 201. National objectives and eligible families.
- Sec. 202. Eligible affordable housing activities.
- Sec. 203. Program requirements.
- Sec. 204. Low-income requirement and income targeting.
- Sec. 205. Availability of records.
- Sec. 206. Self-determined housing activities for tribal communities program.

TITLE III—ALLOCATION OF GRANT AMOUNTS

- Sec. 301. Allocation formula.

TITLE IV—COMPLIANCE, AUDITS, AND REPORTS

- Sec. 401. Remedies for noncompliance.
- Sec. 402. Monitoring of compliance.
- Sec. 403. Performance reports.

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

- Sec. 501. Effect on Home Investment Partnerships Act.

TITLE VI—GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES

- Sec. 601. Demonstration program for guaranteed loans to finance tribal community and economic development activities.

TITLE VII—FUNDING

- Sec. 701. Authorization of appropriations.

TITLE VIII—MISCELLANEOUS

- Sec. 801. Limitation on use for Cherokee Nation.

Sec. 802. Limitation on use of funds.

Sec. 803. GAO study of effectiveness of NAHASDA for tribes of different sizes.

SEC. 2. CONGRESSIONAL FINDINGS.

Section 2 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) is amended in paragraphs (6) and (7) by striking “should” each place it appears and inserting “shall”.

SEC. 3. DEFINITIONS.

Section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103) is amended—

(1) by striking paragraph (22);

(2) by redesignating paragraphs (8) through (21) as paragraphs (9) through (22), respectively; and

(3) by inserting after paragraph (7) the following:

“(8) HOUSING RELATED COMMUNITY DEVELOPMENT.—

“(A) IN GENERAL.—The term ‘housing related community development’ means any facility, community building, business, activity, or infrastructure that—

“(i) is owned by an Indian tribe or a tribally designated housing entity;

“(ii) is necessary to the provision of housing in an Indian area; and

“(iii)(I) would help an Indian tribe or tribally designated housing entity to reduce the cost of construction of Indian housing;

“(II) would make housing more affordable, accessible, or practicable in an Indian area; or

“(III) would otherwise advance the purposes of this Act.

“(B) EXCLUSION.—The term ‘housing and community development’ does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).”.

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

SEC. 101. BLOCK GRANTS.

Section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking “For each” and inserting the following:

“(1) IN GENERAL.—For each”;

(ii) by striking “tribes to carry out affordable housing activities.” and inserting the following: “tribes—

“(A) to carry out affordable housing activities under subtitle A of title II; and”;

(iii) by adding at the end the following:

“(B) to carry out self-determined housing activities for tribal communities programs under subtitle B of that title.”; and

(B) in the second sentence, by striking “Under” and inserting the following:

“(2) PROVISION OF AMOUNTS.—Under”;

(2) in subsection (g), by inserting “of this section and subtitle B of title II” after “subsection (h)”; and

(3) by adding at the end the following:

“(j) FEDERAL SUPPLY SOURCES.—For purposes of section 501 of title 40, United States Code, on election by the applicable Indian tribe—

“(1) each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and

“(2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.

“(k) TRIBAL PREFERENCE IN EMPLOYMENT AND CONTRACTING.—Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this Act that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).”.

SEC. 102. INDIAN HOUSING PLANS.

Section 102 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4112) is amended—

(1) in subsection (a)(1)—

(A) by striking “(1)(A) for” and all that follows through the end of subparagraph (A) and inserting the following:

“(1)(A) for an Indian tribe to submit to the Secretary, by not later than 75 days before the beginning of each tribal program year, a 1-year housing plan for the Indian tribe; or”; and

Deadline.

(B) in subparagraph (B), by striking “subsection (d)” and inserting “subsection (c)”; and

(2) by striking subsections (b) and (c) and inserting the following:

“(b) 1-YEAR PLAN REQUIREMENT.—

“(1) IN GENERAL.—A housing plan of an Indian tribe under this section shall—

“(A) be in such form as the Secretary may prescribe; and

“(B) contain the information described in paragraph (2).

“(2) REQUIRED INFORMATION.—A housing plan shall include the following information with respect to the tribal program year for which assistance under this Act is made available:

“(A) DESCRIPTION OF PLANNED ACTIVITIES.—A statement of planned activities, including—

“(i) the types of household to receive assistance;

“(ii) the types and levels of assistance to be provided;

“(iii) the number of units planned to be produced;

“(iv)(I) a description of any housing to be demolished or disposed of;

“(II) a timetable for the demolition or disposition; and

“(III) any other information required by the Secretary with respect to the demolition or disposition;

“(v) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); and

“(vi) outcomes anticipated to be achieved by the recipient.

“(B) STATEMENT OF NEEDS.—A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe, and the means by which those needs will be addressed during the applicable period, including—

“(i) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

“(ii) a description of the estimated housing needs for all Indian families in the jurisdiction.

“(C) FINANCIAL RESOURCES.—An operating budget for the recipient, in such form as the Secretary may prescribe, that includes—

“(i) an identification and description of the financial resources reasonably available to the recipient to carry out the purposes of this Act, including an explanation of the manner in which amounts made available will leverage additional resources; and

“(ii) the uses to which those resources will be committed, including eligible and required affordable housing activities under title II and administrative expenses.

“(D) CERTIFICATION OF COMPLIANCE.—Evidence of compliance with the requirements of this Act, including, as appropriate—

“(i) a certification that, in carrying out this Act, the recipient will comply with the applicable provisions of title II of the Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) and other applicable Federal laws and regulations;

“(ii) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this Act, in compliance with such requirements as the Secretary may establish;

“(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of

families for housing assisted with grant amounts provided under this Act;

“(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents and homebuyer payments charged, including the methods by which the rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this Act;

“(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this Act; and

“(vi) a certification that the recipient will comply with section 104(b).”;

(3) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively; and

(4) in subsection (d) (as redesignated by paragraph (3)), by striking “subsection (d)” and inserting “subsection (c)”.

SEC. 103. REVIEW OF PLANS.

Section 103 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4113) is amended—

(1) in subsection (d)—

(A) in the first sentence—

(i) by striking “fiscal” each place it appears and inserting “tribal program”; and

(ii) by striking “(with respect to” and all that follows through “section 102(c)”); and

(B) by striking the second sentence; and

(2) by striking subsection (e) and inserting the following:

“(e) SELF-DETERMINED ACTIVITIES PROGRAM.—Notwithstanding any other provision of this section, the Secretary—

“(1) shall review the information included in an Indian housing plan pursuant to subsections (b)(4) and (c)(7) only to determine whether the information is included for purposes of compliance with the requirement under section 232(b)(2); and

“(2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, or results included pursuant to subsections (b)(4) and (c)(7).”.

SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.

Section 104(a) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4114(a)) is amended by adding at the end the following:

“(4) EXCLUSION FROM PROGRAM INCOME OF REGULAR DEVELOPER'S FEES FOR LOW-INCOME HOUSING TAX CREDIT PROJECTS.—Notwithstanding any other provision of this Act, any income derived from a regular and customary developer's fee for any project that receives a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, and that is initially funded using a grant provided under this Act, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.”.

Deadlines.

SEC. 105. REGULATIONS.

Section 106(b)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4116(b)(2)) is amended—

(1) in subparagraph (B)(i), by striking “The Secretary” and inserting “Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this Act, the Secretary”; and

(2) by adding at the end the following:

“(C) SUBSEQUENT NEGOTIATED RULEMAKING.—The Secretary shall—

“(i) initiate a negotiated rulemaking in accordance with this section by not later than 90 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this Act; and

“(ii) promulgate regulations pursuant to this section by not later than 2 years after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 and any other Act to reauthorize this Act.

“(D) REVIEW.—Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to this section in effect on the date on which the review is conducted.”.

TITLE II—AFFORDABLE HOUSING ACTIVITIES

SEC. 201. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES.

Section 201(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4131(b)) is amended—

(1) in paragraph (1), by inserting “and except with respect to loan guarantees under the demonstration program under title VI,” after “paragraphs (2) and (4),”;

(2) in paragraph (2)—

(A) by striking the first sentence and inserting the following:

“(A) EXCEPTION TO REQUIREMENT.—Notwithstanding paragraph (1), a recipient may provide housing or housing assistance through affordable housing activities for which a grant is provided under this Act to any family that is not a low-income family, to the extent that the Secretary approves the activities due to a need for housing for those families that cannot reasonably be met without that assistance.”; and

(B) in the second sentence, by striking “The Secretary” and inserting the following:

“(B) LIMITS.—The Secretary”;

(3) in paragraph (3)—

(A) in the paragraph heading, by striking “NON-INDIAN” and inserting “ESSENTIAL”; and

(B) by striking “non-Indian family” and inserting “family”; and

(4) in paragraph (4)(A)(i), by inserting “or other unit of local government,” after “county,”.

SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

Section 202 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4132) is amended—

(1) in the matter preceding paragraph (1), by striking “to develop or to support” and inserting “to develop, operate, maintain, or support”;

(2) in paragraph (2)—

(A) by striking “development of utilities” and inserting “development and rehabilitation of utilities, necessary infrastructure,”; and

(B) by inserting “mold remediation,” after “energy efficiency,”;

(3) in paragraph (4), by inserting “the costs of operation and maintenance of units developed with funds provided under this Act,” after “rental assistance,”; and

(4) by adding at the end the following:

“(9) RESERVE ACCOUNTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the deposit of amounts, including grant amounts under section 101, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities under this section, in accordance with the Indian housing plan of the Indian tribe.

“(B) MAXIMUM AMOUNT.—A reserve account established under subparagraph (A) shall consist of not more than an amount equal to $\frac{1}{4}$ of the 5-year average of the annual amount used by a recipient for administration and planning under paragraph (2).”.

SEC. 203. PROGRAM REQUIREMENTS.

Section 203 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4133) is amended by adding at the end the following:

“(f) USE OF GRANT AMOUNTS OVER EXTENDED PERIODS.—

“(1) IN GENERAL.—To the extent that the Indian housing plan for an Indian tribe provides for the use of amounts of a grant under section 101 for a period of more than 1 fiscal year, or for affordable housing activities for which the amounts will be committed for use or expended during a subsequent fiscal year, the Secretary shall not require those amounts to be used or committed for use at any time earlier than otherwise provided for in the Indian housing plan.

“(2) CARRYOVER.—Any amount of a grant provided to an Indian tribe under section 101 for a fiscal year that is not used by the Indian tribe during that fiscal year may be used by the Indian tribe during any subsequent fiscal year.

“(g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES.—Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this Act, of goods and services the value of which is less than \$5,000.”.

SEC. 204. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

Section 205 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4135) is amended by adding at the end the following:

“(c) **APPLICABILITY.**—The provisions of paragraph (2) of subsection (a) regarding binding commitments for the remaining useful life of property shall not apply to a family or household member who subsequently takes ownership of a homeownership unit.”.

SEC. 205. AVAILABILITY OF RECORDS.

Section 208(a) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4138(a)) is amended by inserting “applicants for employment, and of” after “records of”.

SEC. 206. SELF-DETERMINED HOUSING ACTIVITIES FOR TRIBAL COMMUNITIES PROGRAM.

(a) **ESTABLISHMENT OF PROGRAM.**—Title II of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4131 et seq.) is amended—

(1) by inserting after the title designation and heading the following:

**“Subtitle A—General Block Grant
Program”;**

and

(2) by adding at the end the following:

**“Subtitle B—Self-Determined Housing
Activities for Tribal Communities**

25 USC 4145.

“SEC. 231. PURPOSE.

“The purpose of this subtitle is to establish a program for self-determined housing activities for the tribal communities to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 101 for the Indian tribe in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure relating to housing activities or housing that will benefit the community served by the Indian tribe.

25 USC 4145a.

“SEC. 232. PROGRAM AUTHORITY.

“(a) **DEFINITION OF QUALIFYING INDIAN TRIBE.**—In this section, the term ‘qualifying Indian tribe’ means, with respect to a fiscal year, an Indian tribe or tribally designated housing entity—

“(1) to or on behalf of which a grant is made under section 101;

“(2) that has complied with the requirements of section 102(b)(6); and

“(3) that, during the preceding 3-fiscal-year period, has no unresolved significant and material audit findings or exceptions, as demonstrated in—

“(A) the annual audits of that period completed under chapter 75 of title 31, United States Code (commonly known as the ‘Single Audit Act’); or

“(B) an independent financial audit prepared in accordance with generally accepted auditing principles.

“(b) **AUTHORITY.**—Under the program under this subtitle, for each of fiscal years 2009 through 2013, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this subtitle.

“(c) **AMOUNTS.**—With respect to a fiscal year and a recipient, the amounts referred to in subsection (b) are amounts from any grant provided under section 101 to the recipient for the fiscal year, as determined by the recipient, but in no case exceeding the lesser of—

“(1) an amount equal to 20 percent of the total grant amount for the recipient for that fiscal year; and

“(2) \$2,000,000.

“SEC. 233. USE OF AMOUNTS FOR HOUSING ACTIVITIES.

25 USC 4145b.

“(a) **ELIGIBLE HOUSING ACTIVITIES.**—Any amounts made available for use under this subtitle by a recipient for an Indian tribe shall be used only for housing activities, as selected at the discretion of the recipient and described in the Indian housing plan for the Indian tribe pursuant to section 102(b)(6), for the construction, acquisition, or rehabilitation of housing or infrastructure in accordance with section 202 to provide a benefit to families described in section 201(b)(1).

“(b) **PROHIBITION ON CERTAIN ACTIVITIES.**—Amounts made available for use under this subtitle may not be used for commercial or economic development.

“SEC. 234. INAPPLICABILITY OF OTHER PROVISIONS.

25 USC 4145c.

“(a) **IN GENERAL.**—Except as otherwise specifically provided in this Act, title I, subtitle A of title II, and titles III through VIII shall not apply to—

“(1) the program under this subtitle; or

“(2) amounts made available in accordance with this subtitle.

“(b) **APPLICABLE PROVISIONS.**—The following provisions of titles I through VIII shall apply to the program under this subtitle and amounts made available in accordance with this subtitle:

“(1) Section 101(c) (relating to local cooperation agreements).

“(2) Subsections (d) and (e) of section 101 (relating to tax exemption).

“(3) Section 101(j) (relating to Federal supply sources).

“(4) Section 101(k) (relating to tribal preference in employment and contracting).

“(5) Section 102(b)(4) (relating to certification of compliance).

“(6) Section 104 (relating to treatment of program income and labor standards).

“(7) Section 105 (relating to environmental review).

“(8) Section 201(b) (relating to eligible families).

“(9) Section 203(c) (relating to insurance coverage).

“(10) Section 203(g) (relating to a de minimis exemption for procurement of goods and services).

“(11) Section 206 (relating to treatment of funds).

“(12) Section 209 (relating to noncompliance with affordable housing requirement).

“(13) Section 401 (relating to remedies for noncompliance).

“(14) Section 408 (relating to public availability of information).

“(15) Section 702 (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).

25 USC 4145d.

“SEC. 235. REVIEW AND REPORT.

“(a) REVIEW.—During calendar year 2011, the Secretary shall conduct a review of the results achieved by the program under this subtitle to determine—

“(1) the housing constructed, acquired, or rehabilitated under the program;

“(2) the effects of the housing described in paragraph (1) on costs to low-income families of affordable housing;

“(3) the effectiveness of each recipient in achieving the results intended to be achieved, as described in the Indian housing plan for the Indian tribe; and

“(4) the need for, and effectiveness of, extending the duration of the program and increasing the amount of grants under section 101 that may be used under the program.

“(b) REPORT.—Not later than December 31, 2011, the Secretary shall submit to Congress a report describing the information obtained pursuant to the review under subsection (a) (including any conclusions and recommendations of the Secretary with respect to the program under this subtitle), including—

“(1) recommendations regarding extension of the program for subsequent fiscal years and increasing the amounts under section 232(c) that may be used under the program; and

“(2) recommendations for—

“(A)(i) specific Indian tribes or recipients that should be prohibited from participating in the program for failure to achieve results; and

“(ii) the period for which such a prohibition should remain in effect; or

“(B) standards and procedures by which Indian tribes or recipients may be prohibited from participating in the program for failure to achieve results.

“(c) PROVISION OF INFORMATION TO SECRETARY.—Notwithstanding any other provision of this Act, recipients participating in the program under this subtitle shall provide such information to the Secretary as the Secretary may request, in sufficient detail and in a timely manner sufficient to ensure that the review and report required by this section is accomplished in a timely manner.”.

(b) TECHNICAL AMENDMENT.—The table of contents in section 1(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 note) is amended—

(1) by inserting after the item for title II the following:

“Subtitle A—General Block Grant Program”;

(2) by inserting after the item for section 205 the following:

“Sec. 206. Treatment of funds.”;

and

(3) by inserting before the item for title III the following:

“Subtitle B—Self-Determined Housing Activities for Tribal Communities

- “Sec. 231. Purposes.
 “Sec. 232. Program authority.
 “Sec. 233. Use of amounts for housing activities.
 “Sec. 234. Inapplicability of other provisions.
 “Sec. 235. Review and report.”.

TITLE III—ALLOCATION OF GRANT AMOUNTS

SEC. 301. ALLOCATION FORMULA.

Section 302 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4152) is amended—

(1) in subsection (a)—

(A) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”; and

(B) by adding at the end the following:

“(2) STUDY OF NEED DATA.—

“(A) IN GENERAL.—The Secretary shall enter into a contract with an organization with expertise in housing and other demographic data collection methodologies under which the organization, in consultation with Indian tribes and Indian organizations, shall—

Contracts.

“(i) assess existing data sources, including alternatives to the decennial census, for use in evaluating the factors for determination of need described in subsection (b); and

“(ii) develop and recommend methodologies for collecting data on any of those factors, including formula area, in any case in which existing data is determined to be insufficient or inadequate, or fails to satisfy the requirements of this Act.

“(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.”; and

(2) in subsection (b), by striking paragraph (1) and inserting the following:

“(1)(A) The number of low-income housing dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), pursuant to a contract between an Indian housing authority for the tribe and the Secretary, that are owned or operated by a recipient on the October 1 of the calendar year immediately preceding the year for which funds are provided, subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section if—

“(i) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or

“(ii) the unit is lost to the recipient by conveyance, demolition, or other means.

“(B) If the unit is a homeownership unit not conveyed within 25 years from the date of full availability, the recipient shall not be considered to have lost the legal right to own, operate, or maintain the unit if the unit has not been conveyed to the homebuyer for reasons beyond the control of the recipient.

“(C) If the unit is demolished and the recipient rebuilds the unit within 1 year of demolition of the unit, the unit may continue to be considered a low-income housing dwelling unit for the purpose of this paragraph.

“(D) In this paragraph, the term ‘reasons beyond the control of the recipient’ means, after making reasonable efforts, there remain—

“(i) delays in obtaining or the absence of title status reports;

“(ii) incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance;

“(iii) clouds on title due to probate or intestacy or other court proceedings; or

“(iv) any other legal impediment.

Deadline.

“(E) Subparagraphs (A) through (D) shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed by not later than 45 days after the date of enactment of this subparagraph.”.

TITLE IV—COMPLIANCE, AUDITS, AND REPORTS

SEC. 401. REMEDIES FOR NONCOMPLIANCE.

Section 401(a) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4161(a)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following:

“(2) **SUBSTANTIAL NONCOMPLIANCE.**—The failure of a recipient to comply with the requirements of section 302(b)(1) regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this title.”.

SEC. 402. MONITORING OF COMPLIANCE.

Section 403(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4163(b)) is amended in the second sentence by inserting “an appropriate level of” after “shall include”.

SEC. 403. PERFORMANCE REPORTS.

Section 404(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4164(b)) is amended—

(1) in paragraph (2)—

(A) by striking “goals” and inserting “planned activities”; and

(B) by adding “and” after the semicolon at the end;

(2) in paragraph (3), by striking “; and” at the end and inserting a period; and

(3) by striking paragraph (4).

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

SEC. 501. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.

(a) IN GENERAL.—Title V of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4181 et seq.) is amended by adding at the end the following:

“SEC. 509. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.

25 USC 4184.

“Nothing in this Act or an amendment made by this Act prohibits or prevents any participating jurisdiction (within the meaning of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing any amounts made available to the participating jurisdiction under that Act (42 U.S.C. 12721 et seq.) to an Indian tribe or a tribally designated housing entity for use in accordance with that Act (42 U.S.C. 12721 et seq.).”.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 note) is amended by inserting after the item relating to section 508 the following:

“Sec. 509. Effect on HOME Investment Partnerships Act.”.

TITLE VI—GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES

SEC. 601. DEMONSTRATION PROGRAM FOR GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES.

(a) IN GENERAL.—Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191 et seq.) is amended by adding at the end the following:

“SEC. 606. DEMONSTRATION PROGRAM FOR GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES.

25 USC 4196.

“(a) AUTHORITY.—

“(1) IN GENERAL.—Subject to paragraph (2), to the extent and in such amounts as are provided in appropriation Acts, subject to the requirements of this section, and in accordance with such terms and conditions as the Secretary may prescribe, the Secretary may guarantee and make commitments to guarantee the notes and obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing activities carried out on Indian reservations and in other Indian areas that, under the first sentence of section 108(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308), are eligible for financing with notes and other obligations guaranteed pursuant to that section.

“(2) LIMITATION.—The Secretary may guarantee, or make commitments to guarantee, under paragraph (1) the notes or obligations of not more than 4 Indian tribes or tribally designated housing entities located in each Department of Housing and Urban Development Office of Native American Programs region.

“(b) LOW-INCOME BENEFIT REQUIREMENT.—Not less than 70 percent of the aggregate amount received by an Indian tribe or tribally designated housing entity as a result of a guarantee under this section shall be used for the support of activities that benefit low-income families on Indian reservations and other Indian areas.

“(c) FINANCIAL SOUNDNESS.—

Criteria.

“(1) IN GENERAL.—The Secretary shall establish underwriting criteria for guarantees under this section, including fees for the guarantees, as the Secretary determines to be necessary to ensure that the program under this section is financially sound.

“(2) AMOUNTS OF FEES.—Fees for guarantees established under paragraph (1) shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section, as determined based on the risk to the Federal Government under the underwriting requirements established under paragraph (1).

“(d) TERMS OF OBLIGATIONS.—

“(1) IN GENERAL.—Each note or other obligation guaranteed pursuant to this section shall be in such form and denomination, have such maturity, and be subject to such conditions as the Secretary may prescribe, by regulation.

“(2) LIMITATION.—The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless—

“(A) the period is more than 20 years; or

“(B) the Secretary determines that the period would cause the guarantee to constitute an unacceptable financial risk.

“(e) LIMITATION ON PERCENTAGE.—A guarantee made under this section shall guarantee repayment of 95 percent of the unpaid principal and interest due on the note or other obligation guaranteed.

“(f) SECURITY AND REPAYMENT.—

“(1) REQUIREMENTS ON ISSUER.—To ensure the repayment of notes and other obligations and charges incurred under this section and as a condition for receiving the guarantees, the Secretary shall require the Indian tribe or housing entity issuing the notes or obligations—

Contracts.

“(A) to enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this section;

“(B) to demonstrate that the extent of each issuance and guarantee under this section is within the financial capacity of the Indian tribe; and

“(C) to furnish, at the discretion of the Secretary, such security as the Secretary determines to be appropriate in making the guarantees, including increments in local tax receipts generated by the activities assisted by a guarantee under this section or disposition proceeds from the

sale of land or rehabilitated property, except that the security may not include any grant amounts received or for which the issuer may be eligible under title I.

“(2) FULL FAITH AND CREDIT.—

“(A) IN GENERAL.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section.

“(B) TREATMENT OF GUARANTEES.—

“(i) IN GENERAL.—Any guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligations for the guarantee with respect to principal and interest.

“(ii) INCONTESTABLE NATURE.—The validity of any such a guarantee shall be incontestable in the hands of a holder of the guaranteed obligations.

“(g) TRAINING AND INFORMATION.—The Secretary, in cooperation with Indian tribes and tribally designated housing entities, may carry out training and information activities with respect to the guarantee program under this section.

“(h) LIMITATIONS ON AMOUNT OF GUARANTEES.—

“(1) AGGREGATE FISCAL YEAR LIMITATION.—Notwithstanding any other provision of law, subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, and to the extent approved or provided for in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount not to exceed \$200,000,000 for each of fiscal years 2009 through 2013.

“(2) AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY.—There are authorized to be appropriated to cover the costs (as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a)) of guarantees under this section \$1,000,000 for each of fiscal years 2009 through 2013.

“(3) AGGREGATE OUTSTANDING LIMITATION.—The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this section shall not at any time exceed \$1,000,000,000 or such higher amount as may be authorized to be appropriated for this section for any fiscal year.

“(4) FISCAL YEAR LIMITATIONS ON INDIAN TRIBES.—

“(A) IN GENERAL.—The Secretary shall monitor the use of guarantees under this section by Indian tribes.

“(B) MODIFICATIONS.—If the Secretary determines that 50 percent of the aggregate guarantee authority under paragraph (3) has been committed, the Secretary may—

“(i) impose limitations on the amount of guarantees pursuant to this section that any single Indian tribe may receive in any fiscal year of \$25,000,000; or

“(ii) request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this section.

“(i) REPORT.—Not later than 4 years after the date of enactment of this section, the Secretary shall submit to Congress a report describing the use of the authority under this section by Indian tribes and tribally designated housing entities, including—

“(1) an identification of the extent of the use and the types of projects and activities financed using that authority; and

“(2) an analysis of the effectiveness of the use in carrying out the purposes of this section.

“(j) TERMINATION.—The authority of the Secretary under this section to make new guarantees for notes and obligations shall terminate on October 1, 2013.”.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 note) is amended by inserting after the item relating to section 605 the following:

“Sec. 606. Demonstration program for guaranteed loans to finance tribal community and economic development activities.”.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

(a) BLOCK GRANTS AND GRANT REQUIREMENTS.—Section 108 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4117) is amended in the first sentence by striking “1998 through 2007” and inserting “2009 through 2013”.

(b) FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES.—Section 605 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4195) is amended in subsections (a) and (b) by striking “1997 through 2007” each place it appears and inserting “2009 through 2013”.

(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 703 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4212) is amended by striking “1997 through 2007” and inserting “2009 through 2013”.

TITLE VIII—MISCELLANEOUS

SEC. 801. LIMITATION ON USE FOR CHEROKEE NATION.

No funds authorized under this Act, or the amendments made by this Act, or appropriated pursuant to an authorization under this Act or such amendments, shall be expended for the benefit of the Cherokee Nation; provided, that this limitation shall not be effective if the Temporary Order and Temporary Injunction issued on May 14, 2007, by the District Court of the Cherokee Nation remains in effect during the pendency of litigation or there is a settlement agreement which effects the end of litigation among the adverse parties.

SEC. 802. LIMITATION ON USE OF FUNDS.

No amounts made available pursuant to any authorization of appropriations under this Act, or under the amendments made by this Act, may be used to employ workers described in section 274A(h)(3)) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)).

SEC. 803. GAO STUDY OF EFFECTIVENESS OF NAHASDA FOR TRIBES OF DIFFERENT SIZES.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the effectiveness of the Native American Housing Assistance and Self-Determination Act of 1996 in achieving its purposes of meeting the needs for affordable housing for low-income Indian families, as compared to the programs for housing and community development assistance for Indian tribes and families and Indian housing authorities that were terminated under title V of such Act and the amendments made by such title. The study shall compare such effectiveness with respect to Indian tribes of various sizes and types, and specifically with respect to smaller tribes for which grants of lesser or minimum amounts have been made under title I of such Act.

(b) **REPORT.**—Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the results and conclusions of the study conducted pursuant to subsection (a). Such report shall include recommendations regarding any changes appropriate to the Native American Housing Assistance and Self-Determination Act of 1996 to help ensure that the purposes of such Act are achieved by all Indian tribes, regardless of size or type.

Approved October 14, 2008.

LEGISLATIVE HISTORY—H.R. 2786 (S. 2062):

HOUSE REPORTS: No. 110-295 (Comm. on Financial Services).

SENATE REPORTS: No. 110-238 accompanying S. 2062 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

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Sept. 27, House concurred in Senate amendment.