

Calendar No. 334

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
113-152

REAUTHORIZING THE NATIVE AMERICAN HOUSING AS- SISTANCE AND SELF-DETERMINATION ACT OF 1996, AND FOR OTHER PURPOSES

APRIL 11, 2014.—Ordered to be printed

Mr. TESTER, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1352]

The Committee on Indian Affairs, to which was referred the bill (S. 1352) to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996, and for other purposes, having considered the same, reports favorably with an amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 1352 is to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996 until the end of fiscal year 2018.

BACKGROUND

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) was enacted to further tribal self-governance, and streamline and simplify the process of providing housing assistance to tribes and tribal members. Programs authorized under this legislation are the main housing delivery mechanism to Indian country at the Department of Housing and Urban Development (HUD). This legislation has been reauthorized twice, once in 2002 and again in 2008. In 2000, Congress enacted the Hawaiian Homelands Homeownership Act, adding a parallel housing block grant program for Native Hawaiians to the legislation. Technical corrections were made to NAHASDA in 1998, 2004, 2005 and 2010.

NAHASDA, which went into effect for fiscal year 1998, replaced the fragmented Indian housing programs under the United States

Housing Act of 1937 with the Indian Housing Block Grant program. It provided Indian tribes with the choice of administering the block grant through their existing Indian Housing Authorities or their tribally-designated housing entities. Prior to the enactment of NAHASDA, HUD distributed funding to housing authorities and tribes through 14 different programs. Nine of those programs were competitive, while the other five were formula-based or awarded on a first-come, first-served basis. None of the programs had uniform criteria for making the awards.

The implementation of NAHASDA eliminated 9 of the 14 separate Indian housing programs at HUD and replaced them with a single block grant program. The funds are awarded to Indian tribes through a noncompetitive block grant. The amount of the grant is determined by an allocation formula based on need, housing stock, and several other factors.

NAHASDA was reauthorized in 2002. Former Senator Ben Nighthorse Campbell introduced a bill in early 2001 which passed the Senate by Unanimous Consent and easily cleared the House of Representatives without amendment. No substantial changes were made to the law. NAHASDA was again reauthorized in 2008. The reauthorization was introduced by then Representative Dale Kildee and easily passed both the House and Senate.

NEED FOR LEGISLATION

S. 1352 incorporates proposals identified at oversight hearings and roundtables conducted by the Committee on Indian Affairs and the Committee on Banking, Housing and Urban Affairs through direct testimony and an open comment period. In addition, comments were received by the Committee on Indian Affairs from national Indian organizations and housing advocates, including the National American Indian Housing Council and the National Congress of American Indians.

For the most part, the tribal administration of programs authorized under the Act has served to reduce the outstanding housing need in Indian country. S. 1352 would propose to increase the effectiveness of housing programs, by reducing duplicative and redundant practices and requirements. It would further include Indian housing components in other HUD programs and provide incentives to increase the number of housing projects that serve Indian country, in particular by strengthening Indian tribes' ability to address homelessness among Native American veterans.

Notwithstanding the very troubling statistics of housing need throughout Indian country, the reauthorization does not increase the Federal spending authorization for this program. This is the case. According to the Department of Housing and Urban Development 2012 data, over 25 percent of, or almost 274,000 out of nearly 1 million, American Indian housing units have "severe housing needs." The Department of Housing and Urban Development defines those needs as those homes lacking basic plumbing or kitchen facilities, having more than 1.01 persons per room, or having a housing cost burden of more than 50 percent of income. Twenty-eight percent of Indian reservation households lack adequate plumbing and kitchen facilities, while nationally only 5.4 percent of households lack such infrastructure. An estimated 200,000 hous-

ing units are needed immediately in Indian country and approximately 90,000 Native families are homeless or under-housed.

Below are major provisions of S. 1352:

Multiple Federal Partners. Housing projects in Indian country often have several different sources of funding to complete a single unit. These funding streams can include the Department of Housing and Urban Development, the Department of Agriculture, the Indian Health Service, the Department of the Interior and the Department of the Treasury. The proposed legislation would provide that for housing-related developments with multiple Federal partners, one set of standards would prevail over all Federal requirements under each project. Indian tribes have consistently informed the Committee that completing similar requirements for multiple agencies has burdened housing authorities with redundant requirements. S. 1352 seeks to reduce the duplicative processes tribal housing authorities must complete to provide housing to Indian communities.

Total Development Costs (TDCs). The Total Development Costs imposed by the Department of Housing and Urban Development cap the amount of funds that may be used on a project but there is an allowance of 10 percent that a project may exceed before a waiver is required by the Department. This legislation would raise the cap to 20 percent before a TDC cap waiver request would be required.

HUD/VASH program. HUD and the Department of Veterans Affairs operate a housing program known as the Housing and Urban Development/Veterans Affairs Supportive Housing (HUD/VASH) program. This program utilizes vouchers to house homeless or under-housed veterans. Tribal housing authorities do not meet certain program administrative requirements to manage these vouchers. S. 1352 establishes a demonstration project for tribal housing authorities to administer HUD/VASH through the existing NAHASDA administrative structure.

The demonstration program is particularly well suited for implementation in Indian country since Indian people have served in this Nation's military at higher rates than any other minority group in the country. However, when these veterans return home, they are faced with the same lack of housing that existed when they left. Indian veterans want to return home to serve their communities and this change in the law will help facilitate their return. By creating a demonstration program that would allow Indian tribes to manage this voucher program directly, a veteran can go to one housing agency to receive the services he needs, instead of the tribal agency for one form of assistance and then a state agency for the HUD/VASH program.

This change in the law does not authorize any new spending. It simply provides that up to five percent of any already-authorized and appropriated funds could be used for this purpose.

Native Hawaiian Housing. This legislation would reauthorize Title VIII of the Native American Housing Assistance and Self-Determination Act through Fiscal Year 2018.

SECTION-BY-SECTION ANALYSIS

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

Sec. 101. Treatment of program income and prevailing wages

This section provides that income from program income (such as rent payments) will be considered non-program income and may be used without the restrictions placed on the initial program income. This section also clarifies that, for projects funded by multiple Federal sources, where a tribal prevailing wage law exists, the tribal law will govern the prevailing wage requirements associated with the use of Federal funds.

Sec. 102. Environmental review

This section provides that, for projects involving multiple Federal agencies, the use of the environmental standards delineated in NAHASDA will satisfy the environmental review requirements of the other Federal agencies.

Sec. 103. Authorization of appropriations

This section reauthorizes NAHASDA programs through the end of fiscal year 2018.

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Sec. 201. Low-income requirement and income targeting

This section increases the minimum value of improvements (using NAHASDA funds) required to have binding commitments from HUD to \$10,000. These binding commitments are contractual requirements that ensure a house will remain affordable (i.e., will have continued future use) for the life of the property. This section would also allow a tenant in a low income rental unit the option to purchase the unit, if the tenant family was low-income at the time of initial occupancy, regardless of whether the tenant would currently qualify as low income.

Sec. 202. Lease requirements and tenant selection

This section clarifies that requirements in NAHASDA regarding adequate written notice of termination of leases will apply to any project funded, even in part, with NAHASDA funds.

Sec. 203. Self-determined housing activities for tribal communities

This section repeals the provisions authorizing the program for self-determined housing activities (25 U.S.C. 4145 et seq.), similar to the self-governance concepts of the Indian Self-Determination and Education Assistance Act.

Sec. 204. Total Development Cost maximum project cost

This section increases the allowable percentage of development costs for one housing unit to 20 percent of the Total Development Costs (TDCs). Tribal housing entities must currently seek a waiver for any development costs of a particular housing unit that exceed the TDC by 10 percent.

TITLE III—COMPLIANCE, AUDITS, AND REPORTS

Sec. 301. Reports to Congress

This section changes the requirement that the annual HUD Indian housing report be provided to the entire Congress and instead specifically designates the committees of jurisdiction as the recipients of these reports. In addition, this section requires these reports be made publically available.

TITLE IV—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

Sec. 401. HUD/VASH

This section authorizes a demonstration project for the administration of the HUD-Veterans Affairs Supportive Housing (VASH) program for the benefit of at-risk or homeless Indian veterans through the NAHASDA requirements in lieu of the requirements of the United States Housing Act of 1937.

The HUD/VASH program combines Housing Choice Voucher rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA). The VA provides these services for participating veterans at VA medical centers and community-based outreach clinics.

Under this section, no more than five percent of rental assistance provided for the HUD/VASH may be used for this demo project which shall be awarded to grantees according to need, administrative capacity (of the tribal housing entities), and other funding criteria established by the HUD Secretary, in consultation with the VA Secretary.

Tribal housing entities eligible for NAHASDA funding may be eligible participants in the demo project and will administer the distribution of rental assistance according to their NAHASDA rental programs. The grantees shall report to the Secretary on the use of rental assistance and provide information to the Secretary to assess the effectiveness of the demonstration project.

Sec. 402. 50-year leasehold interest in trust or restricted lands for housing purposes

This section reconciles a technical difference in the maximum leasehold terms under the NAHASDA and the Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act) by allowing tribes to use either source of authority for housing-related land leasing decisions. The HEARTH Act, enacted in 2012, authorizes leases of trust or restricted surface lands for residential purposes for terms not to exceed 75 years; whereas, the NAHASDA authorizes leases for housing development or residential purposes for terms not to exceed 50 years.

Sec. 403. Training and technical assistance

This section reauthorizes funding for the training and technical assistance for tribal housing entities in accordance with the fiscal years for which funding is provided for the Indian Housing Block Grants.

TITLE V—MISCELLANEOUS

Sec. 501. Community-based development organizations and tribally designated housing entities

This section authorizes a tribally-designated housing entity to qualify as a community-based development organization for purposes of applying for the HUD Indian Community Development Block Grant program.

Sec. 502. Elimination of limitation on use for Cherokee Nation

This section repeals the prohibition on funding for the Cherokee Nation of Oklahoma.

Sec. 503. Reauthorization of the Native Hawaiian Homeownership Act

This section reauthorizes the housing assistance for Native Hawaiian programs through Fiscal Year 2018.

Sec. 504. Matching or cost participation requirement

This section authorizes the use of funds under NAHASDA for the purpose of meeting matching or cost participation requirements of any other Federal or non-Federal program.

LEGISLATIVE HISTORY

S. 1352 was introduced on July 24, 2013, by Senator Maria Cantwell. The bill was referred to the Committee on Indian Affairs. On July 31, 2013, the Committee held a hearing on the bill. On December 18, 2013, the Committee met to consider the bill. One substitute amendment was offered, and the bill as amended was adopted and ordered favorably reported by voice vote. On January 13, 2014, the bill was referred to the Committee on Banking, Housing, and Urban Affairs, where it was discharged on March 24, 2014.

Two similar bills were introduced in the House of Representatives. On March 18, 2014, Representative Don Young introduced H.R. 4277. The bill was referred to the House Committee on Financial Services. On March 27, 2014, Representative Steve Pearce introduced H.R. 4329. The bill was referred to the House Committee on Financial Services.

SUMMARY OF THE AMENDMENTS

The Committee on Indian Affairs held a business meeting on December 18, 2013, to consider the bill, S. 1352. Senator Cantwell offered an amendment in the nature of a substitute. The Amendment made four technical or clarifying corrections and two substantive changes to the introduced bill.

First, the amendment clarified language that the current tenant may purchase the home currently being rented if the family was low-income at the time of initial occupancy—which was the original intent of the bill. Second, the amendment clarified, in the HUD/VASH demonstration project, that assistance provided to participating tribal housing entities include administrative costs consistent with what is currently funded under the HUD/VASH program. Third, the amendment corrected a subsection number and,

in the HUD/VASH demonstration project, replaced the word “use” with “utilization.” Utilization is the technical term for fund usage employed by HUD for the VASH program. Next, the amendment corrected the applicable service area for the HUD/VASH demonstration project to be “Indian areas” as defined in the Native American Housing Assistance and Self-Determination Act rather than “Indian lands” as defined in the Native American Business Development, Trade Promotion, and Tourism Act of 2000. This definition will make service areas for the HUD Indian housing programs consistent.

Finally, the amendment struck the low income tax credit provisions from the bill. As with many bills introduced in Congress, the provisions may involve more than one Committee of jurisdiction. To fully address the wide-ranging housing needs in Indian country, S. 1352, includes provisions involving various housing and related programs and incentives. One key provision in the bill as introduced involved an amendment to the Internal Revenue Code to include projects serving Indian communities in the Low Income Housing Tax Credit program. This provision would create a preference in the allocation of the tax credits for Indian housing projects.

The Committee on Finance has jurisdiction over the tax matters and informed the Committee on Indian Affairs that it would assert jurisdiction over the bill as long as the tax credit provisions remained in S. 1352. Consequently, the bill, as amended at the Committee on Indian Affairs business meeting on December 18, 2013, struck the provisions involving the Low Income Housing Tax Credits. However, the Committee on Finance has committed to working with the Committee on Indian Affairs to ensure Indian tribes have broader access to these Federal tax credits. This is consistent with Federal law and policy as the United States has a Federal trust responsibility to ensure safe and affordable housing for tribal communities. Thus, the Committee on Indian Affairs will work with the Committee on Finance to make changes to the law to allow tribes broader access to this program.

Further, the Committee expects State housing agencies and the Low Income Housing Tax Credit financing agencies and brokers to fulfill their commitment to the Committee that they will work to expand the use of Low Income Housing Tax Credits in tribal communities. The use of these tax credits is not universally applied from state to state. Some states set aside a certain amount of tax credits specifically for a project in Indian country while other states do not approve any projects in Indian country.

COMMITTEE RECOMMENDATION

On December 18, 2013, the Committee on Indian Affairs held a business meeting to consider S. 1352 and other measures. Senator Cantwell introduced a substitute amendment, which was accepted by voice vote. The Committee ordered the bill, as amended, reported to the full Senate with the recommendation that it do pass.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated January 30, 2014, was prepared for S. 1352:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 30, 2014.

Hon. MARIA CANTWELL,
Chairwoman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1352, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Chad Chirico.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1352—Native American Housing Assistance and Self-Determination Reauthorization Act of 2013

Summary: S. 1352 would reauthorize the Native American and Native Hawaiian Block Grant programs for each of fiscal years 2014 through 2018. In addition, the bill would authorize a new demonstration program to provide rental assistance to Native American veterans who are homeless or at risk of homelessness. CBO estimates that implementing S. 1352 would cost about \$2.1 billion over the 2015–2019 period, assuming the appropriation of the necessary amounts.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 1352 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1352 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

Basis of estimate: CBO estimates that implementing S. 1352 would cost about \$2.1 billion over the next five years, assuming the appropriation of the necessary funds. For this estimate, CBO assumes that S. 1352 will be enacted in fiscal year 2014 and that appropriated funds will be spent at historical rates for the affected programs. For this estimate, CBO assumes no further appropriations for the programs in 2014.

	By fiscal year in millions of dollars—					
	2015	2016	2017	2018	2019	2015– 2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Native American Housing Block Grants:						
Estimated Authorization Level	660	672	685	699	0	2,716
Estimated Outlays	244	381	480	569	382	2,056
Native Hawaiian Block Grants:						
Estimated Authorization Level	10	10	11	11	0	42
Estimated Outlays	1	3	5	7	8	24
Rental Assistance Demonstration Program:						
Estimated Authorization Level	4	4	4	4	4	20
Estimated Outlays	3	4	4	4	4	19
Total Changes:						
Estimated Authorization Level	674	686	700	714	4	2,778

	By fiscal year in millions of dollars—					
	2015	2016	2017	2018	2019	2015– 2019
Estimated Outlays	248	388	489	580	394	2,099

Native American Housing Block Grants: Section 103 would authorize the appropriation of such sums as necessary for the Native American Housing Block Grant program through fiscal year 2018. The block grant program provides funding to tribes to acquire, construct, rehabilitate, or manage affordable housing for Native American families with low incomes. In 2014, \$650 million was appropriated for this program. Assuming continued appropriations at that level and adjusting for anticipated inflation, CBO estimates that implementing this section would cost slightly less than \$2.1 billion over the 2015–2019 period.

Native Hawaiian Housing Block Grants: Section 503 would authorize the appropriation of such sums as necessary for the Native Hawaiian Housing Block Grant program through fiscal year 2018. Such grants are used to develop, maintain, and operate affordable housing for Native Hawaiian families with low income through the Department of Hawaiian Home Lands. In 2014, \$10 million was appropriated for this program. Assuming continued appropriations at that level and adjusting for anticipated inflation, CBO estimates that implementing this section would cost \$24 million through 2019.

Rental Assistance Demonstration Program: Section 401 would authorize a demonstration program to provide rental assistance to Native American veterans who are homeless or at risk of homelessness. Up to 5 percent of the funds made available for the Veterans Affairs Supported Housing Program (VASH) could be used for the demonstration. In 2014, \$75 million was appropriated for the VASH program. Assuming a program level that is 5 percent of that amount, and adjusting for anticipated inflation, CBO estimates that implementing this section would cost \$19 million over the 2015–2019 period.

Pay-as-You-Go Considerations: None.

Intergovernmental and private-sector impact: S. 1352 contains no intergovernmental or private-sector mandates as defined in UMRA. Grants authorized in the bill would benefit tribal governments that participate in housing assistance programs. Any costs to those governments of complying with grant conditions would be incurred voluntarily.

Estimate prepared by: Federal Costs: Chad Chirico; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Kim Chung.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1352 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1352.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1352, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter printed in italic):

25 U.S.C. § 4114 (Native American Housing Assistance and Self-Determination Act)

§ 4114. Treatment of program income and labor standards

(a) PROGRAM INCOME.—

[(1) AUTHORITY TO RETAIN.—Notwithstanding any other provision of this chapter, a recipient may retain any program income that is realized from any grant amounts under this chapter if—

[(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

[(B) the recipient has agreed that it will utilize such income for housing related activities in accordance with this chapter.]

(1) AUTHORITY TO RETAIN.—

(A) *IN GENERAL.*—*Notwithstanding any other provision of this Act, a recipient may retain any program income that is realized from any grant amounts under this Act if—*

(i) the income was realized after the initial disbursement of the grant amounts received by the recipient; and

(ii) the recipient has agreed that the recipient will utilize the income for housing related activities in accordance with this Act.

(B) *REQUIREMENTS.*—*Any income that is realized by a recipient from program income shall—*

(i) be considered nonprogram income; and

(ii) have no restrictions on use.; and

(2) PROHIBITION OF RESTRICTED ACCESS OR REDUCTION OF GRANT.—The Secretary may not restrict access to or reduce the grant amount for any Indian tribe based solely on—

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained;

(C) whether the recipient retains reserve amounts described in section 4140 of this title; or

(D) whether the recipient has expended retained program income for housing-related activities.

(3) EXCLUSION OF AMOUNTS.—The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

(4) EXCLUSION FROM PROGRAM INCOME OF REGULAR DEVELOPER'S FEES FOR LOW-INCOME HOUSING TAX CREDIT PROJECTS.—Notwithstanding any other provision of this chapter, 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 title 26, and that is initially funded using a grant provided under this chapter, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.

(b) LABOR STANDARDS.—

(1) IN GENERAL.—Any contract or agreement for assistance, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) EXCEPTIONS.—Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this chapter, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

[(3) APPLICATION OF TRIBAL LAWS.—Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this chapter, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.]

(3) APPLICATION OF TRIBAL LAWS.—

(A) IN GENERAL.—*Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if that contract or agreement is otherwise covered by 1 or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.*

(B) WAGES.—*The prevailing wages described in subparagraph (A) shall apply to the administration of all Federal funding for projects funded in part by funds authorized under this Act.*

25 U.S.C. § 4115 (Native American Housing Assistance and Self-Determination Act)

§ 4115. Environmental review.

(a) IN GENERAL.—

(1) RELEASE OF FUNDS.—In order to ensure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) REGULATIONS.—

(A) IN GENERAL.—The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) CONTENTS.—The regulations issued under this paragraph shall—

- (i) provide for the monitoring of the environmental reviews performed under this section;
- (ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and
- (iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) EFFECT ON ASSUMED RESPONSIBILITY.—The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) PROCEDURE.—The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c) of this section. The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) CERTIFICATION.—A certification under the procedures authorized by this section shall—

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;

(3) specify that the tribe has fully carried out its responsibilities as described under subsection (a) of this section; and

(4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(d) ENVIRONMENTAL COMPLIANCE.—The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

(1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] or any other provision of law that furthers the goals of that Act;

(2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and

(4) may be corrected through the sole action of the recipient.

(e) ENVIRONMENTAL REVIEW.—*Notwithstanding any other provision of law or use of any other source of funding for the project, compliance with the environmental review requirements of this section shall satisfy any other applicable environmental review requirement under any other Federal law (including regulations) required to be carried out by any agency involved in the project.*

25 U.S.C. § 4117 (Native American Housing Assistance and Self-Determination Act)

§ 4117. Authorization of appropriations

There are authorized to be appropriated for grants under this subchapter such sums as may be necessary for each of fiscal years [2009 through 2013] *2013 through 2018*. This section shall take effect on October 26, 1996.

25 U.S.C. § 4135 (Native American Housing Assistance and Self-Determination Act)

§ 4135. Low-income requirement and income targeting

(a) IN GENERAL.—Housing shall qualify as affordable housing for purposes of this chapter only if—

(1) each dwelling unit in the housing—

(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit;

(B) in the case of a contract to purchase existing housing, is made available for purchase only by a family that is a low-income family at the time of purchase;

(C) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, is made available for lease-purchase only by a family that is a low-income family at the time the agreement is entered into; and

(D) in the case of a contract to purchase housing to be constructed, is made available for purchase only by a family that is a low-income family at the time the contract is entered into; and

(2) except for housing assisted under section 1437bb of title 42 (as in effect before the date of the effectiveness of this chapter), each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this chapter, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action—

(A) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure; and

(B) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) EXCEPTION.—Notwithstanding subsection (a) of this section, housing assisted pursuant to section 4131(b)(2) of this title shall be considered affordable housing for purposes of this chapter.

[(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.]

(c) APPLICABILITY.—

(1) IN GENERAL.—*The provisions of subsection (a)(2) regarding binding commitments for the remaining useful life of property shall not apply to—*

(A) *a family or household member who subsequently takes ownership of a homeownership unit; or*

(B) *any improvement to a privately owned homeownership unit if the aggregate value of the improvement for the 5-year period following completion of the improvement is less than \$10,000.*

(d) PURCHASE.—*In the case of rental housing that is made available to a current rental tenant for conversion to a homebuyer or lease-purchase unit, the current rental tenant may purchase through a contract to purchase, lease-purchase agreement, or any other sales agreement if the unit is made available for occupancy by a family that is a low-income family at the time of initial occupancy.*

25 U.S.C. § 4137 (Native American Housing Assistance and Self-Determination Act)

§ 4137. Lease requirements and tenant selection

(a) LEASES.—Except to the extent otherwise provided by or inconsistent with tribal law, in renting dwelling units in affordable housing assisted with grant amounts provided under this chapter, the owner or manager of the housing shall utilize leases that—

(1) do not contain unreasonable terms and conditions;

(2) require the owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the owner or manager to give adequate written notice of termination of the lease, which shall be the period of time required under State, tribal, or local law;

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State, tribal, or local law, a resident shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

(5) require that the owner or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms or conditions of the lease, violation of applicable Federal, State, tribal, or local law, or for other good cause; and

(6) provide that the owner or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

(b) TENANT AND HOMEBUYER SELECTION.—The owner or manager of affordable rental housing assisted with grant amounts provided under this chapter shall adopt and utilize written tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and

(B) the prompt notification in writing to any rejected applicant of that rejection and the grounds for that rejection.

(c) NOTICE OF TERMINATION.—*The notice period described in subsection (a)(3) shall apply to projects and programs funded in part by amounts authorized under this Act.*

25 U.S.C. § 4145 et seq. (Native American Housing Assistance and Self-Determination Act)

§ 4145. Purpose

The purpose of this part 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 4111 of this title 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.

§ 4145a. 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 4111 of this title;

[(2) that has complied with the requirements of section 4112(b)(6) of this title; 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 (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 part, 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 part.

[(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 4111 of this title 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.

§ 4145b. Use of amounts for housing activities

[(a) ELIGIBLE HOUSING ACTIVITIES.—Any amounts made available for use under this part 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 4112(b)(6) of this title, for the construction, acquisition, or rehabilitation of housing or infrastructure in accordance with section 4132 of this title to provide a benefit to families described in section 4131(b)(1) of this title.

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

【§ 4145c. Inapplicability of other provisions.

【(a) IN GENERAL.—Except as otherwise specifically provided in this chapter, subchapter I, part A of subchapter II, and subchapters III through VIII shall not apply to—

- 【(1) the program under this part; or
- 【(2) amounts made available in accordance with this part.

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

【(1) Section 4111(c) of this title (relating to local cooperation agreements).

【(2) Subsections (d) and (e) of section 4111 of this title (relating to tax exemption).

【(3) Section 4111(j) of this title (relating to Federal supply sources).

【(4) Section 4111(k) of this title (relating to tribal preference in employment and contracting).

【(5) Section 4112(b)(4) of this title (relating to certification of compliance).

【(6) Section 4114 of this title (relating to treatment of program income and labor standards).

【(7) Section 4115 of this title (relating to environmental review).

【(8) Section 4131(b) of this title (relating to eligible families).

【(9) Section 4133(c) of this title (relating to insurance coverage).

【(10) Section 4133(g) of this title (relating to a de minimis exemption for procurement of goods and services).

【(11) Section 4136 of this title (relating to treatment of funds).

【(12) Section 4139 of this title (relating to noncompliance with affordable housing requirement).

【(13) Section 4161 of this title (relating to remedies for noncompliance).

【(14) Section 4168 of this title (relating to public availability of information).

【(15) Section 4211 of this title (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).

【§ 4145d. Review and report

【(a) REVIEW.—During calendar year 2011, the Secretary shall conduct a review of the results achieved by the program under this part 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 4111 of this title 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 ob-

tained pursuant to the review under subsection (a) (including any conclusions and recommendations of the Secretary with respect to the program under this part), including—

【(1) recommendations regarding extension of the program for subsequent fiscal years and increasing the amounts under section 4145a(c) of this title 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 chapter, recipients participating in the program under this part 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.】

25 U.S.C. § 4167 (Native American Housing Assistance and Self-Determination Act)

§ 4167. Reports to Congress

(a) IN GENERAL.—Not later than 90 days after the conclusion of each fiscal year in which assistance under this chapter is made available, the Secretary shall submit to the 【Congress】 *Committee on Indian Affairs and the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives* a report that contains—

(1) a description of the progress made in accomplishing the objectives of this chapter;

(2) a summary of the use of funds available under this chapter during the preceding fiscal year; and

(3) a description of the aggregate outstanding loan guarantees under subchapter VI of this chapter.

(b) RELATED REPORTS.—The Secretary may require recipients of grant amounts under this chapter to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

(c) PUBLIC AVAILABILITY.—*The report described in subsection (a) shall be made publicly available, including to recipients.*

42 U.S.C. § 1437f(o)(19) United States Housing Act of 1937

§ 1437f(o)(19). Low-income housing assistance

(19) RENTAL VOUCHERS FOR VETERANS AFFAIRS SUPPORTED HOUSING PROGRAM.—

(A) SET ASIDE.—Subject to subparagraph (C), the Secretary shall set aside, from amounts made available for

rental assistance under this subsection, the amounts specified in subparagraph (B) for use only for providing such assistance through a supported housing program administered in conjunction with the Department of Veterans Affairs. Such program shall provide rental assistance on behalf of homeless veterans who have chronic mental illnesses or chronic substance use disorders, shall require agreement of the veteran to continued treatment for such mental illness or substance use disorder as a condition of receipt of such rental assistance, and shall ensure such treatment and appropriate case management for each veteran receiving such rental assistance.

(B) AMOUNT.—The amount specified in this subparagraph is—

(i) for fiscal year 2007, the amount necessary to provide 500 vouchers for rental assistance under this subsection;

(ii) for fiscal year 2008, the amount necessary to provide 1,000 vouchers for rental assistance under this subsection;

(iii) for fiscal year 2009, the amount necessary to provide 1,500 vouchers for rental assistance under this subsection;

(iv) for fiscal year 2010, the amount necessary to provide 2,000 vouchers for rental assistance under this subsection; and

(v) for fiscal year 2011, the amount necessary to provide 2,500 vouchers for rental assistance under this subsection.

(C) FUNDING THROUGH INCREMENTAL ASSISTANCE.—In any fiscal year, to the extent that this paragraph requires the Secretary to set aside rental assistance amounts for use under this paragraph in an amount that exceeds the amount set aside in the preceding fiscal year, such requirement shall be effective only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year for incremental rental assistance under this subsection.

(D) INDIAN VETERANS HOUSING RENTAL ASSISTANCE DEMONSTRATION PROGRAM.—

(i) DEFINITIONS.—*In this subparagraph:*

(I) INDIAN.—*The term ‘Indian’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).*

(II) INDIAN LANDS.—*The term ‘Indian lands’ has the meaning given the term in section 3 of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (25 U.S.C. 4302).*

(III) TRIBAL ORGANIZATION.—*The term ‘tribal organization’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).*

(ii) AUTHORIZATION OF PROGRAM.—*The Secretary may use not more than 5 percent of the amounts made*

available for rental assistance under this subsection to carry out a rental assistance and supportive housing program, in conjunction with the Secretary of Veterans Affairs, for the benefit of Indian veterans who are homeless or at risk of homelessness and who are residing on or near Indian lands.

(iii) *MODEL.*—The program described in clause (ii) shall be modeled on the rental assistance and supportive housing program authorized under this section and applicable appropriations Acts, including administration in conjunction with the Secretary of Veterans Affairs, except that the Secretary may make necessary and appropriate modifications to facilitate the use of the program by Indian grant recipients to serve eligible Indian veterans.

(iv) *ELIGIBLE RECIPIENTS.*—Rental assistance under clause (ii) shall be made available to recipients eligible to receive grants under section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111).

(v) *FUNDING CRITERIA.*—Rental assistance under clause (ii) shall be awarded based on—

(I) need;

(II) administrative capacity; and

(III) any other funding criteria established by the Secretary in a notice published in the Federal Register after consulting with the Secretary of Veterans Affairs.

(vi) *ADMINISTRATION.*—Rental assistance made available under clause (ii) shall be administered in accordance with the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), except that grantees shall—

(I) submit to the Secretary, in a manner prescribed by the Secretary, reports on the use of rental assistance provided under the demonstration program; and

(II) provide to the Secretary information specified by the Secretary to assess the effectiveness of the demonstration program in serving eligible veterans.

(vii) *CONSULTATION.*—The Secretary, in coordination with the Secretary of Veterans Affairs, shall consult with recipients of grants under section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111) and any other appropriate tribal organization on the design of the demonstration program to ensure the effective delivery of rental assistance and supportive services to persons eligible to receive assistance under this subparagraph.

(viii) *WAIVER.*—

(I) *IN GENERAL.*—Except as provided in subclause (II), the Secretary may waive or specify alternative requirements for any provision of law (including regulations) that the Secretary administers

in connection with the use of rental assistance made available under this subparagraph if the Secretary finds that the waiver or alternative requirement is necessary for the effective delivery and administration of rental assistance made available under this subparagraph to Indian veterans.

(II) EXCEPTION.—The Secretary shall not waive or specify alternative requirements under subclause (I) for any provision of law (including regulations) relating to labor standards or the environment.

25 U.S.C. § 4211 (Native American Housing Assistance and Self-Determination Act)

§ 4211. 50-year leasehold interest in trust or restricted lands for housing purposes

(a) **AUTHORITY TO LEASE.**—Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes.

(b) **TERM.**—Each lease pursuant to subsection (a) of this section shall be for a term not exceeding 50 years.

(c) **RULE OF CONSTRUCTION.**—This section may not be construed to repeal, limit, or affect any authority to lease any trust or restricted Indian lands that—

(1) is conferred by or pursuant to any other provision of law *in effect before, on, or after the date of enactment of this section;*
or

(2) provides for leases for any period exceeding 50 years.

(d) **SELF-IMPLEMENTATION.**—This section is intended to be self-implementing and shall not require the issuance of any rule, regulation, or order to take effect as provided in section 705.

25 U.S.C. § 4212 (Native American Housing Assistance and Self-Determination Act)

§ 4212. Training and technical assistance

There are authorized to be appropriated for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities such sums as may be necessary for each **[of fiscal years 2009 through 2013]** *fiscal year for which funds are appropriated under section 108.*

Public Law 104–330; 110 Stat. 4048 (Native American Housing Assistance and Self-Determination Act)

Public Law 104–330; 110 Stat. 4048. Community-based development organization.

A tribally designated housing entity shall qualify as a community-based development organization for purposes of the Indian Community Development Block Grant program authorized under

section 106(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(a)).

Public Law 110–411; 122 Stat. 4334 (Native American Housing Assistance and Self-Determination Act)

[Public Law 110–411; 122 Stat. 4334. 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.]

25 U.S.C. § 4243 (Native American Housing Assistance and Self-Determination Act)

§ 4243. Authorization of appropriations

There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this subchapter such sums as may be necessary for each of fiscal years **[2001, 2002, 2003, 2004, and 2005]** *2014, 2015, 2016, 2017, and 2018.*

