

105TH CONGRESS  
2D SESSION

# H. R. 4482

To amend the Native American Housing Assistance and Self-Determination Act of 1996 to make necessary technical corrections.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. METCALF introduced the following bill; which was referred to the Committee on Banking and Financial Services

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## A BILL

To amend the Native American Housing Assistance and Self-Determination Act of 1996 to make necessary technical corrections.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American  
5 Housing Assistance and Self-Determination Act Amend-  
6 ments of 1998”.

7 **SEC. 2. RESTRICTION ON WAIVER AUTHORITY.**

8 Section 101(b)(2) of the Native American Housing  
9 Assistance and Self-Determination Act of 1996 (25 U.S.C.  
10 4111(b)(2)) is amended by striking “if the Secretary” and

1 all that follows before the period at the end and inserting  
 2 the following: “for a period of not more than 90 days, if  
 3 the Secretary determines that an Indian tribe has not  
 4 complied with, or is unable to comply with, those require-  
 5 ments due to extreme circumstances beyond the control  
 6 of the Indian tribe”.

7 **SEC. 3. ADMINISTRATIVE CAPACITY; ASSISTANCE TO FAMI-**  
 8 **LIES THAT ARE NOT LOW-INCOME.**

9 (a) ADMINISTRATIVE CAPACITY.—Subparagraph (K)  
 10 of section 102(c)(4) of the Native American Housing As-  
 11 sistance and Self-Determination Act of 1996 (25 U.S.C.  
 12 4112(c)(4)) is amended to read as follows:

13 “(K) a description of the entity that will  
 14 carry out the activities under the plan, includ-  
 15 ing—

16 “(i) the relevant personnel of the en-  
 17 tity; and

18 “(ii) the administrative capacity of the  
 19 entity, which shall describe the extent to  
 20 which the entity—

21 “(I) is financially stable;

22 “(II) has adequate financial con-  
 23 trols and systems in place;

24 “(III) has adequately trained  
 25 staff; and

1                   “(IV) has demonstrated ability to  
2                   comply with applicable statutes, regu-  
3                   lations of the Department of Housing  
4                   and Urban Development, contracts  
5                   and other program requirements.”.

6           (b) ASSISTANCE TO FAMILIES THAT ARE NOT LOW-  
7 INCOME.—Section 102(c) of the Native American Housing  
8 Assistance and Self-Determination Act of 1996 (25 U.S.C.  
9 4112(c)) is amended by adding at the end the following:

10                   “(6) CERTAIN FAMILIES.—With respect to as-  
11                   sistance provided by a recipient to Indian families  
12                   that are not low-income families under section  
13                   201(b)(2), evidence that there is a need for housing  
14                   for each such family during that period that cannot  
15                   reasonably be met without such assistance.”.

16 **SEC. 4. ELIMINATION OF WAIVER AUTHORITY FOR SMALL**  
17 **TRIBES.**

18           Section 102 of the Native American Housing Assist-  
19           ance and Self-Determination Act of 1996 (25 U.S.C.  
20           4112) is amended—

21                   (1) by striking subsection (f); and

22                   (2) by redesignating subsection (g) as sub-  
23                   section (f).

1 **SEC. 5. INCLUSION OF HOMEBUYER SELECTION POLICIES**  
2 **AND CRITERIA.**

3 Section 207(b) of the Native American Housing As-  
4 sistance and Self-Determination Act of 1996 (25 U.S.C.  
5 4137(b)) is amended—

6 (1) by striking “TENANT SELECTION.—” and  
7 inserting “TENANT AND HOMEBUYER SELECTION.—  
8 ”;

9 (2) in the matter preceding paragraph (1), by  
10 inserting “and homebuyer” after “tenant”; and

11 (3) in paragraph (3)(A), by inserting “and  
12 homebuyers” after “tenants”.

13 **SEC. 6. OVERSIGHT.**

14 (a) REPAYMENT.—Section 209 of the Native Amer-  
15 ican Housing Assistance and Self-Determination Act of  
16 1996 (25 U.S.C. 4139) is amended to read as follows:

17 **“SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING**  
18 **REQUIREMENT.**

19 “If a recipient uses grant amounts to provide afford-  
20 able housing under this title, and at any time during the  
21 useful life of the housing such recipient does not comply  
22 with the requirement under section 205(a)(2), the Sec-  
23 retary shall take appropriate action under section  
24 401(a).”.

25 (b) AUDITS AND REVIEWS.—Section 405 of the Na-  
26 tive American Housing Assistance and Self-Determination

1 Act of 1996 (25 U.S.C. 1465) is amended to read as fol-  
2 lows:

3 **“SEC. 405. REVIEWS AND AUDITS.**

4 “(a) **REQUIREMENTS UNDER CHAPTER 75 OF TITLE**  
5 **31, UNITED STATES CODE.—**

6 “(1) **IN GENERAL.—**An entity designated by an  
7 Indian tribe as a housing entity shall be treated, for  
8 purposes of chapter 75 of title 31, United States  
9 Code, as a non-Federal entity that is subject to the  
10 audit requirements that apply to non-Federal enti-  
11 ties under that chapter.

12 “(2) **PAYMENT OF COSTS.—**

13 “(A) **IN GENERAL.—**The Secretary may  
14 arrange and pay for any audit required under  
15 paragraph (1).

16 “(B) **WITHHOLDING OF AMOUNTS.—**If the  
17 Secretary pays for an audit under subpara-  
18 graph (A), the Secretary may withhold, from  
19 the assistance otherwise payable under this Act,  
20 an amount sufficient to pay for the reasonable  
21 costs of conducting an audit that meets the ap-  
22 plicable requirements of chapter 75 of title 31,  
23 United States Code, including, if appropriate,  
24 the reasonable costs of accounting services nec-  
25 essary to ensure that the books and records of

1           the entity referred to in paragraph (1) are in  
2           such condition as is necessary to carry out the  
3           audit.

4           “(b) ADDITIONAL REVIEWS AND AUDITS.—

5           “(1) IN GENERAL.—In addition to any audit  
6           under subsection (a)(1), to the extent the Secretary  
7           determines such action to be appropriate, the Sec-  
8           retary may conduct an audit of a recipient in order  
9           to—

10                   “(A) determine whether the recipient—

11                           “(i) has carried out—

12                                   “(I) eligible activities in a timely  
13                                   manner; and

14                                   “(II) eligible activities and cer-  
15                                   tification in accordance with this Act  
16                                   and other applicable law;

17                           “(ii) has a continuing capacity to  
18                           carry out eligible activities in a timely  
19                           manner; and

20                           “(iii) is in compliance with the Indian  
21                           housing plan of the recipient; and

22                   “(B) verify the accuracy of information  
23                   contained in any performance report submitted  
24                   by the recipient under section 404.

1           “(2) COST OF ADDITIONAL AUDITS.—Additional  
2 audits and reviews conducted under this subsection  
3 shall be paid for by the Secretary.

4           “(c) REVIEW OF REPORTS.—

5           “(1) IN GENERAL.—The Secretary shall provide  
6 each recipient that is the subject of a report made  
7 by the Secretary under this section notice that the  
8 recipient may review and comment on the report  
9 during a period of not less than 30 days after the  
10 date on which notice is issued under this paragraph.

11           “(2) PUBLIC AVAILABILITY.—After taking into  
12 consideration any comments of the recipient under  
13 paragraph (1), the Secretary—

14           “(A) may revise the report; and

15           “(B) not later than 30 days after the date  
16 on which those comments are received, shall  
17 make the comments and the report (with any  
18 revisions made under subparagraph (A)) readily  
19 available to the public.

20           “(d) EFFECT OF REVIEWS.—After reviewing the re-  
21 ports and audits relating to a recipient that are prepared  
22 under this section, the Secretary may adjust the amount  
23 of a grant made to a recipient under this Act pursuant  
24 to section 401(a), or refer for civil action any reported  
25 matter pursuant to section 401(e), or take other action

1 as may be appropriate in accordance with existing proce-  
2 dures of the Department of Housing and Urban Develop-  
3 ment relating to audits and reviews of fund recipients.”.

4 **SEC. 7. REMEDIES FOR NONCOMPLIANCE.**

5 (a) HEARING REQUIREMENT.—Section 401(a) of the  
6 Native American Housing Assistance and Self-Determina-  
7 tion Act of 1996 (25 U.S.C. 4161(a)) is amended—

8 (1) by redesignating paragraphs (1) through  
9 (4) as subparagraphs (A) through (D), respectively,  
10 and indenting each such subparagraph 2 ems to the  
11 right;

12 (2) by striking “Except as provided” and in-  
13 serting the following:

14 “(1) IN GENERAL.—Except as provided”;

15 (3) by amending subparagraph (B), as redesign-  
16 nated by paragraph (1) of this subsection, to read  
17 as follows:

18 “(B) reduce payments under this Act to  
19 the recipient by an amount equal to the sum of  
20 the amount of such payments that were not ex-  
21 pended in accordance with this Act and the cost  
22 of additional audits and reviews requested by  
23 and paid for by the Secretary.”;



1           (4) by striking “If the Secretary takes an ac-  
2           tion under paragraph (1), (2), or (3)” and inserting  
3           the following:

4           “(2) CONTINUANCE OF ACTIONS.—If the Sec-  
5           retary takes an action under subparagraph (A), (B),  
6           or (C) of paragraph (1)”;

7           (5) by adding at the end the following:

8           “(3) EXCEPTION FOR CERTAIN ACTIONS.—

9           “(A) IN GENERAL.—Notwithstanding any  
10          other provision of this subsection, if the Sec-  
11          retary makes a determination that the failure of  
12          a recipient of assistance under this Act to com-  
13          ply with any provision of this Act is resulting,  
14          and would continue to result, in an expenditure  
15          of Federal funds in a manner that is not au-  
16          thorized by law, the Secretary may take an ac-  
17          tion described in paragraph (1)(C) before con-  
18          ducting a hearing.

19          “(B) PROCEDURAL REQUIREMENT.—If the  
20          Secretary takes an action described in subpara-  
21          graph (A), the Secretary shall—

22                 “(i) provide notice to the recipient at  
23                 the time that the Secretary takes that ac-  
24                 tion; and

1                   “(ii) conduct a hearing not later than  
2                   60 days after the date on which the Sec-  
3                   retary provides notice under clause (i).

4                   “(C) DETERMINATION.—Upon completion  
5                   of a hearing under this paragraph, the Sec-  
6                   retary shall make a determination regarding  
7                   whether to continue taking the action that is  
8                   the subject of the hearing, take another action  
9                   under this subsection, or take no action.”.

10                  (b) NONCOMPLIANCE BECAUSE OF TECHNICAL INCA-  
11                  PACITY.—The matter following paragraph (2) of section  
12                  401(b) of the Native American Housing Assistance and  
13                  Self-Determination Act of 1996 (25 U.S.C. 4161(b)) is  
14                  amended by inserting “take an action under subsection (a)  
15                  or” after “the Secretary may”.

16                  **SEC. 8. PUBLIC AVAILABILITY OF PLANS, REPORTS, AND**  
17                  **OTHER INFORMATION.**

18                  Title IV of the Native American Housing Assistance  
19                  and Self-Determination Act of 1996 (25 U.S.C. 4161 et  
20                  seq.) is amended by adding at the end the following:

21                  **“SEC. 408. AVAILABILITY OF INFORMATION.**

22                  “(a) IN GENERAL.—Each recipient shall make avail-  
23                  able to the general public any housing plan, annual per-  
24                  formance report, audit report, performance agreement,  
25                  and policy of the recipient.

1       “(b) WAITING LISTS.—With respect to waiting lists  
2 for housing assisted, or housing assistance using grant  
3 amounts provided, under this Act, each recipient shall  
4 make available—

5               “(1) to the general public, aggregate informa-  
6 tion regarding the number of persons or families on  
7 such waiting lists, but may not make available infor-  
8 mation that identifies (in any manner) the persons  
9 or families on such list; and

10              “(2) to a family on such a waiting list, upon the  
11 request of the family, information regarding the  
12 family’s place on the list and reasons for that place,  
13 and any movement relative to other families on this  
14 list.

15 Each recipient shall maintain information made available  
16 under this subsection for purposes of review and audit  
17 under sections 405 and 406.”.

18 **SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.**

19       (a) TABLE OF CONTENTS.—Section 1(b) of the Na-  
20 tive American Housing Assistance and Self-Determination  
21 Act of 1996 (25 U.S.C. 4101 note) is amended in the table  
22 of contents—

23               (1) by striking the item relating to section 206;

24               (2) by striking the item relating to section 209

25       and inserting the following:

“209. Noncompliance with affordable housing requirement.”;

1 and

2 (3) by inserting after the item relating to sec-  
3 tion 407 the following:

“408. Public availability of information.”.

4 (b) DEFINITION OF INDIAN AREAS.—Section 4(10)  
5 of the Native American Housing Assistance and Self-De-  
6 termination Act of 1996 (25 U.S.C. 4103(10)) is amended  
7 by inserting “an Indian tribe or” after “within which”.

8 (c) CROSS-REFERENCE.—Section 4(12)(C)(i)(II) of  
9 the Native American Housing Assistance and Self-Deter-  
10 mination Act of 1996 (25 U.S.C. 4103(12)(C)(i)(II)) is  
11 amended by striking “section 107” and inserting “section  
12 108”.

13 (d) ELIMINATION OF TAX EXEMPTION.—Section 101  
14 of the Native American Housing Assistance and Self-De-  
15 termination Act of 1996 (25 U.S.C. 4111) is amended—

16 (1) by striking subsections (c), (d) and (e); and

17 (2) by inserting the following after subsection

18 (b):

19 “(c) COOPERATIVE AGREEMENTS.—Housing owned  
20 and operated by the recipient and developed under a con-  
21 tract between the Secretary and an Indian housing author-  
22 ity pursuant to the United States Housing Act of 1937  
23 may be tax-exempt and subject to a payment in lieu of  
24 taxes pursuant to or as recited by a cooperation agreement  
25 between the recipient and the local governing body. Unless

1 abrogated, changed, or modified with the consent of the  
2 housing authority or any successor, existing cooperation  
3 agreements shall remain in full force and effect for so long  
4 as the beneficial title to such a project is held by the hous-  
5 ing authority or any successor.

6 “(d) FEE IN LIEU OF TAX REQUIRED.—If one or  
7 more local governing bodies are providing services to hous-  
8 ing assisted under this Act and, because of Federal, tribal,  
9 or State law, or the restricted nature or trust status of  
10 the land, the property is exempt from real property taxes,  
11 personal property taxes, or special assessment, a recipient  
12 may not request and the Secretary shall not provide a  
13 block grant under this Act unless a user fee is paid to  
14 the local governing body or bodies, as compensation for  
15 nonfee services normally provided by that entity to offset  
16 its costs or unless receipt of such user fees is waived by  
17 a local governing body. The amount of the user fee shall  
18 be determined by the recipient and the local governing  
19 body, but it must be based on the reasonable value of the  
20 services provided by the local governing body or bodies.

21 “(e) REQUIREMENTS RELATED TO FEE.—Notwith-  
22 standing subsection (d)—

23 “(1) total user fee payments to all local govern-  
24 ing bodies for a single housing unit shall be reason-  
25 able and comparable as determined by the Secretary,

1 in consultation with affected local governing bodies,  
2 using local factors;

3 “(2) any projects placed under a new or exist-  
4 ing cooperation agreement that requires a payment  
5 in lieu of taxes shall be exempt from the require-  
6 ments of subsection (c);

7 “(3) user fee payments shall be required for all  
8 units;

9 “(4) housing whose total assistance under this  
10 Act is less than \$10,000 shall be exempt from the  
11 requirements of subsection (c); and

12 “(5) all housing shall be exempt from the re-  
13 quirements of subsection (c) if such housing is  
14 owned by the occupant at the inception of the assist-  
15 ance or if conveyance of the beneficial title is subse-  
16 quently made to the occupant.”.

17 (e) SUBMISSION OF INDIAN HOUSING PLAN.—Sec-  
18 tion 102(a) of the Native American Housing Assistance  
19 and Self-Determination Act of 1996 (25 U.S.C. 4112(a))  
20 is amended—

21 (1) in paragraph (1), by inserting “(A)” after  
22 “(1)”;

23 (2) in paragraph (1)(A), as so designated by  
24 paragraph (1) of this subsection, by adding “or” at  
25 the end;

1           (3) by striking “(2)” and inserting “(B)”; and  
2           (4) by striking “(3)” and inserting “(2)”.

3           (f) CLARIFICATION.—Section 103(c)(3) of the Native  
4 American Housing Assistance and Self-Determination Act  
5 of 1996 (25 U.S.C. 4113(c)(3)) is amended by inserting  
6 “not” before “prohibited”.

7           (g) APPLICABILITY OF PROVISIONS OF CIVIL RIGHTS  
8 ACT.—Section 201(b)(5) of the Native American Housing  
9 Assistance and Self-Determination Act of 1996 (25 U.S.C.  
10 4131(b)(5)) is amended—

11           (1) by inserting “federally recognized” before  
12 “Indian tribes”; and

13           (2) by striking “under this subsection” and in-  
14 serting “under this Act”.

15           (h) ELIGIBILITY.—Section 205(a)(1) of the Native  
16 American Housing Assistance and Self-Determination Act  
17 of 1996 (25 U.S.C. 4135(a)(1)) is amended—

18           (1) in subparagraph (A), by striking “and” at  
19 the end; and

20           (2) by striking subparagraph (B) and inserting  
21 the following:

22           “(B) in the case of housing for home-  
23 ownership, is made available only for a family  
24 that is a low-income family;

1           “(C) in the case of a lease-purchase agree-  
2           ment, is made available at the time that the  
3           agreement for that lease-purchase is signed;  
4           and

5           “(D) in the case of a contract to purchase  
6           housing to be acquired or constructed, is made  
7           available at the time the contract for that hous-  
8           ing is entered into.”.

9           (i) CERTIFICATION OF COMPLIANCE WITH SUBSIDY  
10          LAYERING REQUIREMENTS.—Section 206 of the Native  
11          American Housing Assistance and Self-Determination Act  
12          of 1996 (25 U.S.C. 4136) is repealed.

13          (j) TENANT SELECTION.—Section 207(b)(3)(B) of  
14          the Native American Housing Assistance and Self-Deter-  
15          mination Act of 1996 (25 U.S.C. 4137(b)(3)(B)) is  
16          amended by striking “the grounds for any rejection” and  
17          inserting “such rejection and the grounds for the rejec-  
18          tion”.

19          (k) AVAILABILITY OF RECORDS.—Section 208 of the  
20          Native American Housing Assistance and Self-Determina-  
21          tion Act of 1996 (25 U.S.C. 4138) is amended—

22                 (1) in subsection (a), by striking “paragraph  
23                 (2)” and inserting “subsection (b)”; and

24                 (2) in subsection (b), by striking “paragraph  
25                 (1)” and inserting “subsection (a)”.



1           (l) IHP REQUIREMENT.—Section 184(b)(2) of the  
2 Housing and Community Development Act of 1992 (12  
3 U.S.C. 1715z–13a(b)(2)) is amended by striking “that is  
4 under the jurisdiction of an Indian tribe” and all that fol-  
5 lows before the period at the end.

6           (m) AUTHORIZATION OF APPROPRIATIONS.—Section  
7 184(i)(5)(C) of the Housing and Community Development  
8 Act of 1992 (12 U.S.C. 1715z–13a(i)(5)(C)) is amended  
9 by striking “note” and inserting “not”.

10          (n) NON-FEDERAL FUNDS.—Section 520(l)(5)(B) of  
11 the Cranston-Gonzalez National Affordable Housing Act  
12 (42 U.S.C. 11903a(l)(5)(B)) is amended by striking “and  
13 Indian housing authorities”.

14          (o) INELIGIBILITY OF INDIAN TRIBES.—Section 460  
15 of the Cranston-Gonzalez National Affordable Housing  
16 Act (42 U.S.C. 12899h–1) is amended by striking “fiscal  
17 year 1997” and inserting “fiscal year 1998”.

18          (p) TERMINATIONS.—Section 502(a) of the Native  
19 American Housing Assistance and Self-Determination Act  
20 of 1996 (25 U.S.C. 4181(a)) is amended by adding at the  
21 end the following: “Any housing that is the subject of a  
22 contract for tenant-based assistance between the Secretary  
23 and an Indian housing authority that is terminated under  
24 this section shall, for the following fiscal year and each

1 fiscal year thereafter, be considered to be a dwelling unit  
2 under section 302(b)(1).”.

3 (q) AMENDMENTS TO THE PUBLIC AND ASSISTED  
4 HOUSING DRUG ELIMINATION ACT OF 1990.—The Public  
5 and Assisted Housing Drug Elimination Act of 1990 (42  
6 U.S.C. 11901 et seq.) is amended—

7 (1) in section 5123, by inserting “, Indian  
8 tribes” before “, and private”;

9 (2) in section 5124(a)(7), by inserting “, an In-  
10 dian tribe,” before “or tribally designated”;

11 (3) in section 5125(a), by inserting “, an In-  
12 dian tribe” before “, a tribally designated”; and

13 (4) in section 5126, by adding at the end the  
14 following new paragraph:

15 “(6) INDIAN TRIBE.—The term ‘Indian tribe’  
16 has the meaning given such term in section 4 of the  
17 Native American Housing Assistance and Self-De-  
18 termination Act of 1996.”.

○