

106TH CONGRESS
2D SESSION

S. 400

AN ACT

To provide technical corrections to the Native American Housing Assistance and Self-Determination Act of 1996, to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Native American Housing Assistance and Self-Deter-
6 mination Act Amendments of 2000”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Restriction on waiver authority.
- Sec. 3. Assistance to families that are not low-income.
- Sec. 4. Elimination of waiver authority for small tribes.
- Sec. 5. Labor standards.
- Sec. 6. Environmental compliance.
- Sec. 7. Oversight.
- Sec. 8. Allocation formula.
- Sec. 9. Hearing requirement.
- Sec. 10. Performance agreement time limit.
- Sec. 11. Technical and conforming amendments.

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

4 (a) IN GENERAL.—Section 101(b)(2) of the Native
 5 American Housing Assistance and Self-Determination Act
 6 of 1996 (25 U.S.C. 4111(b)(2)) is amended by striking
 7 “if the Secretary” and all that follows through the period
 8 at the end and inserting the following: “for a period of
 9 not more than 90 days, if the Secretary determines that
 10 an Indian tribe has not complied with, or is unable to com-
 11 ply with, those requirements due to exigent circumstances
 12 beyond the control of the Indian tribe.”.

13 (b) LOCAL COOPERATION AGREEMENT.—Section
 14 101(c) of the Native American Housing Assistance and
 15 Self-Determination Act of 1996 (25 U.S.C. 4111(c)) is
 16 amended by adding at the end the following: “The Sec-
 17 retary may waive the requirements of this subsection and
 18 subsection (d) if the recipient has made a good faith effort
 19 to fulfill the requirements of this subsection and sub-
 20 section (d) and agrees to make payments in lieu of taxes

1 to the appropriate taxing authority in an amount con-
 2 sistent with the requirements of subsection (d)(2) until
 3 such time as the matter of making such payments has
 4 been resolved in accordance with subsection (d).”.

5 **SEC. 3. ASSISTANCE TO FAMILIES THAT ARE NOT LOW-IN-**
 6 **COME.**

7 Section 102(c) of the Native American Housing As-
 8 sistance 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. LABOR STANDARDS.**

2 Section 104(b) of the Native American Housing As-
 3 sistance and Self-Determination Act of 1996 (25 U.S.C.
 4 4114(b)) is amended—

5 (1) by striking “Davis-Bacon Act (40 U.S.C.
 6 276a–276a–5)” and inserting “Act of March 3,
 7 1931 (commonly known as the ‘Davis-Bacon Act’)
 8 (46 Stat. 1494, chapter 411; 40 U.S.C. 276a et
 9 seq.)”; and

10 (2) by adding at the end the following:

11 “(3) APPLICATION OF TRIBAL LAWS.—Para-
 12 graph (1) shall not apply to any contract or agree-
 13 ment for assistance, sale, or lease pursuant to this
 14 Act, if such contract or agreement is otherwise cov-
 15 ered by 1 or more laws or regulations adopted by an
 16 Indian tribe that requires the payment of not less
 17 than prevailing wages, as determined by the Indian
 18 tribe.”.

19 **SEC. 6. ENVIRONMENTAL COMPLIANCE.**

20 Section 105 of the Native American Housing Assist-
 21 ance and Self-Determination Act of 1996 (25 U.S.C.
 22 4115) is amended by adding at the end the following:

23 “(d) ENVIRONMENTAL COMPLIANCE.—The Secretary
 24 may waive the requirements under this section if the Sec-
 25 retary determines that a failure on the part of a recipient
 26 to comply with provisions of this section—

1 “(1) will not frustrate the goals of the National
2 Environmental Policy Act of 1969 (42 U.S.C. 4331
3 et seq.) or any other provision of law that furthers
4 the goals of that Act;

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

8 “(3) is a result of inadvertent error, including
9 an incorrect or incomplete certification provided
10 under subsection (c)(1); and

11 “(4) may be corrected through the sole action
12 of the recipient.”.

13 **SEC. 7. 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 the 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).”.

1 (b) AUDITS AND REVIEWS.—Section 405 of the Na-
 2 tive American Housing Assistance and Self-Determination
 3 Act of 1996 (25 U.S.C. 4165) is amended to read as fol-
 4 lows:

5 **“SEC. 405. REVIEW AND AUDIT BY SECRETARY.**

6 “(a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE
 7 31, UNITED STATES CODE.—An entity designated by an
 8 Indian tribe as a housing entity shall be treated, for pur-
 9 poses of chapter 75 of title 31, United States Code, as
 10 a non-Federal entity that is subject to the audit require-
 11 ments that apply to non-Federal entities under that chap-
 12 ter.

13 “(b) ADDITIONAL REVIEWS AND AUDITS.—

14 “(1) IN GENERAL.—In addition to any audit or
 15 review under subsection (a), to the extent the Sec-
 16 retary determines such action to be appropriate, the
 17 Secretary may conduct an audit or review of a re-
 18 cipient in order to—

19 “(A) determine whether the recipient—

20 “(i) has carried out—

21 “(I) eligible activities in a timely
 22 manner; and

23 “(II) eligible activities and cer-
 24 tification in accordance with this Act
 25 and other applicable law;

1 “(ii) has a continuing capacity to
2 carry out eligible activities in a timely
3 manner; and

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

6 “(B) verify the accuracy of information
7 contained in any performance report submitted
8 by the recipient under section 404.

9 “(2) ONSITE VISITS.—To the extent prac-
10 ticable, the reviews and audits conducted under this
11 subsection shall include onsite visits by the appro-
12 priate official of the Department of Housing and
13 Urban Development.

14 “(c) REVIEW OF REPORTS.—

15 “(1) IN GENERAL.—The Secretary shall provide
16 each recipient that is the subject of a report made
17 by the Secretary under this section notice that the
18 recipient may review and comment on the report
19 during a period of not less than 30 days after the
20 date on which notice is issued under this paragraph.

21 “(2) PUBLIC AVAILABILITY.—After taking into
22 consideration any comments of the recipient under
23 paragraph (1), the Secretary—

24 “(A) may revise the report; and

1 “(B) not later than 30 days after the date
 2 on which those comments are received, shall
 3 make the comments and the report (with any
 4 revisions made under subparagraph (A)) readily
 5 available to the public.

6 “(d) EFFECT OF REVIEWS.—Subject to section
 7 401(a), after reviewing the reports and audits relating to
 8 a recipient that are submitted to the Secretary under this
 9 section, the Secretary may adjust the amount of a grant
 10 made to a recipient under this Act in accordance with the
 11 findings of the Secretary with respect to those reports and
 12 audits.”.

13 **SEC. 8. ALLOCATION FORMULA.**

14 Section 302(d)(1) of the Native American Housing
 15 Assistance and Self-Determination Act of 1996 (25 U.S.C.
 16 4152(d)(1)) is amended—

17 (1) by striking “The formula,” and inserting
 18 the following:

19 “(A) IN GENERAL.—Except with respect to
 20 an Indian tribe described in subparagraph (B),
 21 the formula”; and

22 (2) by adding at the end the following:

23 “(B) CERTAIN INDIAN TRIBES.—With re-
 24 spect to fiscal year 2000 and each fiscal year
 25 thereafter, for any Indian tribe with an Indian

1 housing authority that owns or operates fewer
2 than 250 public housing units, the formula
3 under subparagraph (A) shall provide that if
4 the amount provided for a fiscal year in which
5 the total amount made available for assistance
6 under this Act is equal to or greater than the
7 amount made available for fiscal year 1996 for
8 assistance for the operation and modernization
9 of the public housing referred to in subpara-
10 graph (A), then the amount provided to that
11 Indian tribe as modernization assistance shall
12 be equal to the average annual amount of funds
13 provided to the Indian tribe (other than funds
14 provided as emergency assistance) under the as-
15 sistance program under section 14 of the
16 United States Housing Act of 1937 (42 U.S.C.
17 1437l) for the period beginning with fiscal year
18 1992 and ending with fiscal year 1997.”.

19 **SEC. 9. HEARING REQUIREMENT.**

20 Section 401(a) of the Native American Housing As-
21 sistance and Self-Determination Act of 1996 (25 U.S.C.
22 4161(a)) is amended—

23 (1) by redesignating paragraphs (1) through
24 (4) as subparagraphs (A) through (D), respectively,

1 and indenting each such subparagraph 2 ems to the
2 right;

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

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

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

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

12 (4) by adding at the end the following:

13 “(3) EXCEPTION FOR CERTAIN ACTIONS.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of this subsection, if the Sec-
16 retary makes a determination that the failure of
17 a recipient of assistance under this Act to com-
18 ply substantially with any material provision (as
19 that term is defined by the Secretary) of this
20 Act is resulting, and would continue to result,
21 in a continuing expenditure of Federal funds in
22 a manner that is not authorized by law, the
23 Secretary may take an action described in para-
24 graph (1)(C) before conducting a hearing.

1 “(B) PROCEDURAL REQUIREMENT.—If the
 2 Secretary takes an action described in subpara-
 3 graph (A), the Secretary shall—

4 “(i) provide notice to the recipient at
 5 the time that the Secretary takes that ac-
 6 tion; and

7 “(ii) conduct a hearing not later than
 8 60 days after the date on which the Sec-
 9 retary provides notice under clause (i).

10 “(C) DETERMINATION.—Upon completion
 11 of a hearing under this paragraph, the Sec-
 12 retary shall make a determination regarding
 13 whether to continue taking the action that is
 14 the subject of the hearing, or take another ac-
 15 tion under this subsection.”.

16 **SEC. 10. PERFORMANCE AGREEMENT TIME LIMIT.**

17 Section 401(b) of the Native American Housing As-
 18 sistance and Self-Determination Act of 1996 (25 U.S.C.
 19 4161(b)) is amended—

20 (1) by striking “If the Secretary” and inserting
 21 the following:

22 “(1) IN GENERAL.—If the Secretary”;

23 (2) by striking “(1) is not” and inserting the
 24 following:

25 “(A) is not”;

1 (3) by striking “(2) is a result” and inserting
2 the following:

3 “(B) is a result”;

4 (4) in the flush material following paragraph
5 (1)(B), as redesignated by paragraph (3) of this
6 section—

7 (A) by adjusting the margin 2 ems to the
8 right; and

9 (B) by inserting before the period at the
10 end the following: “, if the recipient enters into
11 a performance agreement with the Secretary
12 that specifies the compliance objectives that the
13 recipient will be required to achieve by the ter-
14 mination date of the performance agreement”;
15 and

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

17 “(2) PERFORMANCE AGREEMENT.—The period
18 of a performance agreement described in paragraph
19 (1) shall be for 1 year.

20 “(3) REVIEW.—Upon the termination of a per-
21 formance agreement entered into under paragraph
22 (1), the Secretary shall review the performance of
23 the recipient that is a party to the agreement.

1 “(4) EFFECT OF REVIEW.—If, on the basis of
2 a review under paragraph (3), the Secretary deter-
3 mines that the recipient—

4 “(A) has made a good faith effort to meet
5 the compliance objectives specified in the agree-
6 ment, the Secretary may enter into an addi-
7 tional performance agreement for the period
8 specified in paragraph (2); and

9 “(B) has failed to make a good faith effort
10 to meet applicable compliance objectives, the
11 Secretary shall determine the recipient to have
12 failed to comply substantially with this Act, and
13 the recipient shall be subject to an action under
14 subsection (a).”.

15 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

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

20 (1) by striking the item relating to section 206;
21 and

22 (2) by striking the item relating to section 209
23 and inserting the following:

“209. Noncompliance with affordable housing requirement.”.

24 (b) CERTIFICATION OF COMPLIANCE WITH SUBSIDY
25 LAYERING REQUIREMENTS.—Section 206 of the Native

1 American Housing Assistance and Self-Determination Act
2 of 1996 (25 U.S.C. 4136) is repealed.

3 (c) TERMINATIONS.—Section 502(a) of the Native
4 American Housing Assistance and Self-Determination Act
5 of 1996 (25 U.S.C. 4181(a)) is amended by adding at the
6 end the following: “Any housing that is the subject of a
7 contract for tenant-based assistance between the Secretary
8 and an Indian housing authority that is terminated under
9 this section shall, for the following fiscal year and each
10 fiscal year thereafter, be considered to be a dwelling unit
11 under section 302(b)(1).”.

Passed the Senate February 28, 2000.

Attest:

Secretary.

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AN ACT

To provide technical corrections to the Native American Housing Assistance and Self-Determination Act of 1996, to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.