

106TH CONGRESS  
1ST SESSION

# S. 400

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 1999

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill;  
which was read twice and referred to the Committee on Indian Affairs

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## A BILL

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 1999”.

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. Organizational capacity; assistance to families that are not low-income.
- Sec. 4. Elimination of waiver authority for small tribes.
- Sec. 5. Expanded authority to review Indian housing plans.
- Sec. 6. Oversight.
- Sec. 7. Allocation formula.
- Sec. 8. Hearing requirement.
- Sec. 9. Performance agreement time limit.
- Sec. 10. Block grants and guarantees not Federal subsidies for low-income housing credit.
- Sec. 11. Technical and conforming amendments.

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

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

13 **SEC. 3. ORGANIZATIONAL CAPACITY; ASSISTANCE TO FAMILIES THAT ARE NOT LOW-INCOME.**

15 (a) ORGANIZATIONAL CAPACITY.—Section 102(c)(4)  
 16 of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4112(c)(4)) is amended—

18 (1) by redesignating subparagraphs (A) through  
 19 (K) as subparagraphs (B) through (L), respectively;  
 20 and

1           (2) by inserting before subparagraph (B), as re-  
2           designated by paragraph (1) of this subsection, the  
3           following:

4           “(A) a description of the entity that is respon-  
5           sible for carrying out the activities under the plan,  
6           including a description of—

7                   “(i) the relevant personnel of the entity;  
8                   and

9                   “(ii) the organizational capacity of the en-  
10           tity, including—

11                   “(I) the management structure of the  
12                   entity; and

13                   “(II) the financial control mechanisms  
14                   of the entity;”.

15           (b) ASSISTANCE TO FAMILIES THAT ARE NOT LOW-  
16 INCOME.—Section 102(c) of the Native American Housing  
17 Assistance and Self-Determination Act of 1996 (25 U.S.C.  
18 4112) is amended by adding at the end the following:

19           “(6) CERTAIN FAMILIES.—With respect to as-  
20           sistance provided by a recipient to Indian families  
21           that are not low-income families under section  
22           201(b)(2), evidence that there is a need for housing  
23           for each such family during that period that cannot  
24           reasonably be met without such assistance.”.

1 **SEC. 4. ELIMINATION OF WAIVER AUTHORITY FOR SMALL**  
 2 **TRIBES.**

3 Section 102 of the Native American Housing Assist-  
 4 ance and Self-Determination Act of 1996 (25 U.S.C.  
 5 4112) is amended—

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

7 (2) by redesignating subsection (g) as sub-  
 8 section (f).

9 **SEC. 5. EXPANDED AUTHORITY TO REVIEW INDIAN HOUS-**  
 10 **ING PLANS.**

11 Section 103(a)(1) of the Native American Housing  
 12 Assistance and Self-Determination Act of 1996 (25 U.S.C.  
 13 4113(a)(1)) is amended—

14 (1) in the first sentence, by striking “limited”;  
 15 and

16 (2) by striking the second sentence.

17 **SEC. 6. OVERSIGHT.**

18 (a) REPAYMENT.—Section 209 of the Native Amer-  
 19 ican Housing Assistance and Self-Determination Act of  
 20 1996 (25 U.S.C. 4139) is amended to read as follows:

21 **“SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING**  
 22 **REQUIREMENT.**

23 “If a recipient uses grant amounts to provide afford-  
 24 able housing under this title, and at any time during the  
 25 useful life of the housing the recipient does not comply  
 26 with the requirement under section 205(a)(2), the Sec-

1 retary shall take appropriate action under section  
2 401(a).”.

3 (b) AUDITS AND REVIEWS.—Section 405 of the Na-  
4 tive American Housing Assistance and Self-Determination  
5 Act of 1996 (25 U.S.C. 1465) is amended to read as fol-  
6 lows:

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

8 “(a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE  
9 31, UNITED STATES CODE.—

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

16 “(2) PAYMENT OF COSTS.—

17 “(A) IN GENERAL.—The Secretary may  
18 arrange for, and pay the cost of, any audit re-  
19 quired under paragraph (1).

20 “(B) WITHHOLDING OF AMOUNTS.—If the  
21 Secretary pays for the cost of an audit under  
22 subparagraph (A), the Secretary may withhold,  
23 from the assistance otherwise payable under  
24 this Act, an amount sufficient to pay for the  
25 reasonable costs of conducting an audit that

meets the applicable requirements of chapter 75 of title 31, United States Code, including, if appropriate, the reasonable costs of accounting services necessary to ensure that the books and records of the entity referred to in paragraph (1) are in such condition as is necessary to carry out the audit.

“(b) ADDITIONAL REVIEWS AND AUDITS.—

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

“(A) determine whether the recipient—

“(i) has carried out—

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

“(II) eligible activities and certification in accordance with this Act and other applicable law;

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

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

1           “(B) verify the accuracy of information  
2           contained in any performance report submitted  
3           by the recipient under section 404.

4           “(2) ONSITE VISITS.—To the extent prac-  
5           ticable, the reviews and audits conducted under this  
6           subsection shall include onsite visits by the appro-  
7           priate official of the Department of Housing and  
8           Human Development.

9           “(c) REVIEW OF REPORTS.—

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

16           “(2) PUBLIC AVAILABILITY.—After taking into  
17           consideration any comments of the recipient under  
18           paragraph (1), the Secretary—

19           “(A) may revise the report; and

20           “(B) not later than 30 days after the date  
21           on which those comments are received, shall  
22           make the comments and the report (with any  
23           revisions made under subparagraph (A)) readily  
24           available to the public.

1       “(d) EFFECT OF REVIEWS.—Subject to section  
 2 401(a), after reviewing the reports and audits relating to  
 3 a recipient that are submitted to the Secretary under this  
 4 section, the Secretary may adjust the amount of a grant  
 5 made to a recipient under this Act in accordance with the  
 6 findings of the Secretary with respect to those reports and  
 7 audits.”.

8 **SEC. 7. ALLOCATION FORMULA.**

9       Section 302(d)(1) of the Native American Housing  
 10 Assistance and Self-Determination Act of 1996 (25 U.S.C.  
 11 4152(d)(1)) is amended—

12               (1) by striking “The formula,” and inserting  
 13 the following:

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

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

18               “(B) CERTAIN INDIAN TRIBES.—With re-  
 19 spect to fiscal year 2000 and each fiscal year  
 20 thereafter, with respect to any Indian tribe hav-  
 21 ing an Indian housing authority that owns or  
 22 operates fewer than 250 public housing units,  
 23 the formula under subparagraph (A) shall pro-  
 24 vide that the amount provided for a fiscal year  
 25 in which the total amount made available for



1 assistance under this Act is equal to or greater  
 2 than the amount made available for fiscal year  
 3 1996 for assistance for the operation and mod-  
 4 ernization of the public housing referred to in  
 5 subparagraph (A), the amount provided to that  
 6 Indian tribe as modernization assistance shall  
 7 be equal to the average annual amount of funds  
 8 provided to the Indian tribe (other than funds  
 9 provided as emergency assistance) under the as-  
 10 sistance program under section 14 of the  
 11 United States Housing Act of 1937 (42 U.S.C.  
 12 1437l) for the period beginning with fiscal year  
 13 1992 and ending with fiscal year 1997.”.

14 **SEC. 8. HEARING REQUIREMENT.**

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

18 (1) by redesignating paragraphs (1) through  
 19 (4) as subparagraphs (A) through (D), respectively,  
 20 and indenting each such subparagraph 2 ems to the  
 21 right;

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

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

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

“(2) CONTINUANCE OF ACTIONS.—If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1)”; and

(4) by adding at the end the following:

“(3) EXCEPTION FOR CERTAIN ACTIONS.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this Act to comply substantially with any material provision (as that term is defined by the Secretary) of this Act is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.

“(B) PROCEDURAL REQUIREMENT.—If the Secretary takes an action described in subparagraph (A), the Secretary shall—

“(i) provide notice to the recipient at the time that the Secretary takes that action; 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, or take another ac-  
 9 tion under this subsection.”.

10 **SEC. 9. PERFORMANCE AGREEMENT TIME LIMIT.**

11 Section 401(b) of the Native American Housing As-  
 12 sistance and Self-Determination Act of 1996 (25 U.S.C.  
 13 4161(b)) is amended—

14 (1) by striking “If the Secretary” and inserting  
 15 the following:

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

17 (2) by striking “(1) is not” and inserting the  
 18 following:

19 “(A) is not”;

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

22 “(B) is a result:

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

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

3 (B) by inserting before the period at the  
4 end the following: “, if the recipient enters into  
5 a performance agreement with the Secretary  
6 that specifies the compliance objectives that the  
7 recipient will be required to achieve by the ter-  
8 mination date of the performance agreement”;  
9 and

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

11 “(2) PERFORMANCE AGREEMENT.—The period  
12 of a performance agreement described in paragraph  
13 (1) shall be for 1 year.

14 “(3) REVIEW.—Upon the termination of a per-  
15 formance agreement entered into under paragraph  
16 (1), the Secretary shall review the performance of  
17 the recipient that is a party to the agreement.

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

21 “(A) has made a good faith effort to meet  
22 the compliance objectives specified in the agree-  
23 ment, the Secretary may enter into an addi-  
24 tional performance agreement for the period  
25 specified in paragraph (2); and

1           “(B) has failed to make a good faith effort  
 2           to meet applicable compliance objectives, the  
 3           Secretary shall determine the recipient to have  
 4           failed to comply substantially with this Act, and  
 5           the recipient shall be subject to an action under  
 6           subsection (a).”.

7   **SEC. 10. BLOCK GRANTS AND GUARANTEES NOT FEDERAL**  
 8                   **SUBSIDIES   FOR   LOW-INCOME   HOUSING**  
 9                   **CREDIT.**

10       (a) IN GENERAL.—Subparagraph (E) of section  
 11 42(i)(2) of the Internal Revenue Code of 1986 (relating  
 12 to determination of whether building is federally sub-  
 13 sidized) is amended to read as follows:

14           “(E) BUILDINGS RECEIVING HOME ASSIST-  
 15           ANCE OR NATIVE AMERICAN HOUSING ASSIST-  
 16           ANCE.—

17                   “(i) IN GENERAL.—

18                           “(I) INAPPLICABILITY.—Assist-  
 19                   ance provided under the HOME In-  
 20                   vestment Partnerships Act or the Na-  
 21                   tive American Housing Assistance and  
 22                   Self-Determination Act of 1996 as in  
 23                   effect on the day before the date of  
 24                   enactment of the Native American  
 25                   Housing Assistance and Self-Deter-

mination Act Amendments of 1997  
with respect to any building shall not  
be taken into account under subpara-  
graph (D) if 40 percent or more of  
the residential units in the building  
are occupied by individuals whose in-  
come is 50 percent or less of the area  
median gross income.

“(II) APPLICABILITY OF OTHER  
LAW.—Subsection (d)(5)(C) does not  
apply to any building to which sub-  
clause (I) applies.

“(ii) SPECIAL RULE FOR CERTAIN  
HIGH-COST HOUSING AREAS.—In the case  
of a building located in a city described in  
section 142(d)(6), clause (i) shall be ap-  
plied by substituting ‘25 percent’ for ‘40  
percent’.”.

(b) APPLICABILITY.—The amendment made by this  
section shall apply to determinations made under section  
42(i)(2) of the Internal Revenue Code after the date of  
enactment of this Act.

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

(a) TABLE OF CONTENTS.—Section 1(b) of the Na-  
tive American Housing Assistance and Self-Determination

1 Act of 1996 (25 U.S.C. 4101 note) is amended in the table  
2 of contents—

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

4 and

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

6 and inserting the following:

“209. Noncompliance with affordable housing requirement.”.

7 (b) **AUTHORIZATION OF APPROPRIATIONS.**—Section  
8 108 of the Native American Housing Assistance and Self-  
9 Determination Act of 1996 (25 U.S.C. 4117) is amended  
10 to read as follows:

11 **“SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

12 “There are authorized to be appropriated for each of  
13 fiscal years 2000 through 2003—

14 “(1) to provide assistance under this title for  
15 emergencies and disasters, as determined by the  
16 Secretary, \$10,000,000; and

17 “(2) such sums as may be necessary to other-  
18 wise provide grants under this title.”.

19 (c) **CERTIFICATION OF COMPLIANCE WITH SUBSIDY**  
20 **LAYERING REQUIREMENTS.**—Section 206 of the Native  
21 American Housing Assistance and Self-Determination Act  
22 of 1996 (25 U.S.C. 4136) is repealed.

23 (d) **TERMINATIONS.**—Section 502(a) of the Native  
24 American Housing Assistance and Self-Determination Act  
25 of 1996 (25 U.S.C. 4181(a)) is amended by adding at the

1 end the following: “Any housing that is the subject of a  
2 contract for tenant-based assistance between the Secretary  
3 and an Indian housing authority that is terminated under  
4 this section shall, for the following fiscal year and each  
5 fiscal year thereafter be considered to be a dwelling unit  
6 under section 302(b)(1).”.

○