

106TH CONGRESS
1ST SESSION

S. 400

[Report No. 106-145]

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 1999

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

AUGUST 27, 1999

Reported under authority of the order of the Senate of August 5, 1999, by
Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 27, 1999

Referred sequentially to the Committee on Banking, Housing, and Urban Affairs, and if the bill is not reported by that Committee by November 2, 1999, the Committee be discharged from further consideration thereof, and the bill be placed on the calendar, by unanimous consent

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”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
 8 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.

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

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

1 **SEC. 3. ORGANIZATIONAL CAPACITY; ASSISTANCE TO FAMI-**
 2 **LIES THAT ARE NOT LOW-INCOME.**

3 (a) **ORGANIZATIONAL CAPACITY.**—Section 102(c)(4)
 4 of the Native American Housing Assistance and Self-De-
 5 termination Act (25 U.S.C. 4112(c)(4)) is amended—

6 (1) by redesignating subparagraphs (A) through
 7 (K) as subparagraphs (B) through (L), respectively;
 8 and

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

12 “(A) a description of the entity that is respon-
 13 sible for carrying out the activities under the plan,
 14 including a description of—

15 “(i) the relevant personnel of the entity;
 16 and

17 “(ii) the organizational capacity of the en-
 18 tity, including—

19 “(I) the management structure of the
 20 entity; and

21 “(II) the financial control mechanisms
 22 of the entity;”.

23 (b) **ASSISTANCE TO FAMILIES THAT ARE NOT LOW-**
 24 **INCOME.**—Section 102(c) of the Native American Housing
 25 Assistance and Self-Determination Act of 1996 (25 U.S.C.
 26 4112) is amended by adding at the end the following:

1 “(6) CERTAIN FAMILIES.—With respect to as-
 2 sistance provided by a recipient to Indian families
 3 that are not low-income families under section
 4 201(b)(2), evidence that there is a need for housing
 5 for each such family during that period that cannot
 6 reasonably be met without such assistance.”.

7 **SEC. 4. ELIMINATION OF WAIVER AUTHORITY FOR SMALL**
 8 **TRIBES.**

9 Section 102 of the Native American Housing Assist-
 10 ance and Self-Determination Act of 1996 (25 U.S.C.
 11 4112) is amended—

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

13 (2) by redesignating subsection (g) as sub-
 14 section (f).

15 **SEC. 5. EXPANDED AUTHORITY TO REVIEW INDIAN HOUS-**
 16 **ING PLANS.**

17 Section 103(a)(1) of the Native American Housing
 18 Assistance and Self-Determination Act of 1996 (25 U.S.C.
 19 4113(a)(1)) is amended—

20 (1) in the first sentence, by striking “limited”;
 21 and

22 (2) by striking the second sentence.

1 **SEC. 6. OVERSIGHT.**

2 (a) ~~REPAYMENT.~~—Section 209 of the Native Amer-
3 ican Housing Assistance and Self-Determination Act of
4 1996 (25 U.S.C. 4139) is amended to read as follows:

5 **“SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING**
6 **REQUIREMENT.**

7 “If a recipient uses grant amounts to provide afford-
8 able housing under this title, and at any time during the
9 useful life of the housing the recipient does not comply
10 with the requirement under section 205(a)(2), the Sec-
11 retary shall take appropriate action under section
12 401(a).”.

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

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

18 “(a) ~~REQUIREMENTS UNDER CHAPTER 75 OF TITLE~~
19 ~~31, UNITED STATES CODE.~~—

20 “(1) ~~IN GENERAL.~~—An entity designated by an
21 Indian tribe as a housing entity shall be treated, for
22 purposes of chapter 75 of title 31, United States
23 Code, as a non-Federal entity that is subject to the
24 audit requirements that apply to non-Federal enti-
25 ties under that chapter.

26 “(2) ~~PAYMENT OF COSTS.~~—

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

4 “(B) WITHHOLDING OF AMOUNTS.—If the
5 Secretary pays for the cost of an audit under
6 subparagraph (A), the Secretary may withhold,
7 from the assistance otherwise payable under
8 this Act, an amount sufficient to pay for the
9 reasonable costs of conducting an audit that
10 meets the applicable requirements of chapter 75
11 of title 31, United States Code, including, if ap-
12 propriate, the reasonable costs of accounting
13 services necessary to ensure that the books and
14 records of the entity referred to in paragraph
15 (1) are in such condition as is necessary to
16 carry out the audit.

17 “(b) ADDITIONAL REVIEWS AND AUDITS.—

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

23 “(A) determine whether the recipient—

24 “(i) has carried out—

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

3 “(II) eligible activities and cer-
4 tification in accordance with this Act
5 and other applicable law;

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

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

11 “(B) verify the accuracy of information
12 contained in any performance report submitted
13 by the recipient under section 404.

14 “(2) ONSITE VISITS.—To the extent prac-
15 ticable, the reviews and audits conducted under this
16 subsection shall include onsite visits by the appro-
17 priate official of the Department of Housing and
18 Human Development.

19 “(c) REVIEW OF REPORTS.—

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

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

4 “(A) may revise the report; and

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

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

17 **SEC. 7. ALLOCATION FORMULA.**

18 Section 302(d)(1) of the Native American Housing
19 Assistance and Self-Determination Act of 1996 (25 U.S.C.
20 4152(d)(1)) is amended—

21 (1) by striking “The formula,” and inserting
22 the following:

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

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

2 “(B) CERTAIN INDIAN TRIBES.—With re-
3 spect to fiscal year 2000 and each fiscal year
4 thereafter, with respect to any Indian tribe hav-
5 ing an Indian housing authority that owns or
6 operates fewer than 250 public housing units,
7 the formula under subparagraph (A) shall pro-
8 vide that the amount provided for a fiscal year
9 in which the total amount made available for
10 assistance under this Act is equal to or greater
11 than the amount made available for fiscal year
12 1996 for assistance for the operation and mod-
13 ernization of the public housing referred to in
14 subparagraph (A), the amount provided to that
15 Indian tribe as modernization assistance shall
16 be equal to the average annual amount of funds
17 provided to the Indian tribe (other than funds
18 provided as emergency assistance) under the as-
19 sistance program under section 14 of the
20 United States Housing Act of 1937 (42 U.S.C.
21 1437*l*) for the period beginning with fiscal year
22 1992 and ending with fiscal year 1997.”.

1 **SEC. 8. HEARING REQUIREMENT.**

2 Section 401(a) of the Native American Housing As-
 3 sistance and Self-Determination Act of 1996 (25 U.S.C.
 4 4161(a)) is amended—

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

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

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

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

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

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

19 “(3) EXCEPTION FOR CERTAIN ACTIONS.—

20 “(A) IN GENERAL.—Notwithstanding any
 21 other provision of this subsection, if the Sec-
 22 retary makes a determination that the failure of
 23 a recipient of assistance under this Act to com-
 24 ply substantially with any material provision (as
 25 that term is defined by the Secretary) of this
 26 Act is resulting, and would continue to result,

1 in a continuing expenditure of Federal funds in
2 a manner that is not authorized by law, the
3 Secretary may take an action described in para-
4 graph (1)(C) before conducting a hearing.

5 “(B) PROCEDURAL REQUIREMENT.—If the
6 Secretary takes an action described in subpara-
7 graph (A), the Secretary shall—

8 “(i) provide notice to the recipient at
9 the time that the Secretary takes that ac-
10 tion; and

11 “(ii) conduct a hearing not later than
12 60 days after the date on which the Sec-
13 retary provides notice under clause (i).

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

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

21 Section 401(b) of the Native American Housing As-
22 sistance and Self-Determination Act of 1996 (25 U.S.C.
23 4161(b)) is amended—

24 (1) by striking “If the Secretary” and inserting
25 the following:

1 “(1) IN GENERAL.—If the Secretary”;

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

4 “(A) is not”;

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

7 “(B) is a result:

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

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

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

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

21 “(2) PERFORMANCE AGREEMENT.—The period
22 of a performance agreement described in paragraph
23 (1) shall be for 1 year.

24 “(3) REVIEW.—Upon the termination of a per-
25 formance agreement entered into under paragraph

1 (1), the Secretary shall review the performance of
 2 the recipient that is a party to the agreement.

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

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

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

17 **SEC. 10. BLOCK GRANTS AND GUARANTEES NOT FEDERAL**
 18 **SUBSIDIES FOR LOW-INCOME HOUSING**
 19 **CREDIT.**

20 (a) IN GENERAL.—Subparagraph (E) of section
 21 42(i)(2) of the Internal Revenue Code of 1986 (relating
 22 to determination of whether building is federally sub-
 23 sidized) is amended to read as follows:

1 “(E) BUILDINGS RECEIVING HOME ASSIST-
2 ANCE OR NATIVE AMERICAN HOUSING ASSIST-
3 ANCE.—

4 “(i) IN GENERAL.—

5 “(I) INAPPLICABILITY.—Assist-
6 ance provided under the HOME In-
7 vestment Partnerships Act or the Na-
8 tive American Housing Assistance and
9 Self-Determination Act of 1996 as in
10 effect on the day before the date of
11 enactment of the Native American
12 Housing Assistance and Self-Deter-
13 mination Act Amendments of 1997
14 with respect to any building shall not
15 be taken into account under subpara-
16 graph (D) if 40 percent or more of
17 the residential units in the building
18 are occupied by individuals whose in-
19 come is 50 percent or less of the area
20 median gross income.

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

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

7 (b) APPLICABILITY.—The amendment made by this
 8 section shall apply to determinations made under section
 9 42(i)(2) of the Internal Revenue Code after the date of
 10 enactment of this Act.

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

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

16 (1) by striking the item relating to section 206;
 17 and

18 (2) by striking the item relating to section 209
 19 and inserting the following:

“209. Noncompliance with affordable housing requirement.”.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 21 108 of the Native American Housing Assistance and Self-
 22 Determination Act of 1996 (25 U.S.C. 4117) is amended
 23 to read as follows:

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

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

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

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

9 (c) **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 (d) **TERMINATIONS.**—Section 502(a) of the Native
14 American Housing Assistance and Self-Determination Act
15 of 1996 (25 U.S.C. 4181(a)) is amended by adding at the
16 end the following: “Any housing that is the subject of a
17 contract for tenant-based assistance between the Secretary
18 and an Indian housing authority that is terminated under
19 this section shall, for the following fiscal year and each
20 fiscal year thereafter be considered to be a dwelling unit
21 under section 302(b)(1).”.

22 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

23 (a) **SHORT TITLE.**—*This Act may be cited as the “Na-*
24 *tive American Housing Assistance and Self-Determination*
25 *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. 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 “if*
 7 *the Secretary” and all that follows through the period at*
 8 *the end and inserting the following: “for a period of not*
 9 *more than 90 days, if the Secretary determines that an In-*
 10 *dian tribe has not complied with, or is unable to comply*
 11 *with, those requirements due to exigent circumstances be-*
 12 *yond the control of the Indian tribe.”.*

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

1 *taxing authority in an amount consistent with the require-*
 2 *ments of subsection (d)(2) until such time as the matter*
 3 *of making such payments has been resolved in accordance*
 4 *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 Assist-*
 8 *ance 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 assist-*
 11 *ance provided by a recipient to Indian families that*
 12 *are not low-income families under section 201(b)(2),*
 13 *evidence that there is a need for housing for each such*
 14 *family during that period that cannot reasonably be*
 15 *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. 4112)*
 20 *is amended—*

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

22 *(2) by redesignating subsection (g) as subsection*
 23 *(f).*

1 **SEC. 5. LABOR STANDARDS.**

2 *Section 104(b)(1) of the Native American Housing As-*
 3 *sistance and Self-Determination Act of 1996 (25 U.S.C.*
 4 *4114(b)(1)) is amended—*

5 *(1) by inserting “relating to 12 or more units of*
 6 *housing assisted under this Act” after “lease”; and*

7 *(2) by striking “Davis-Bacon Act (40 U.S.C.*
 8 *276a-276a-5)” and inserting “Act of March 3, 1931*
 9 *(commonly known as the ‘Davis-Bacon Act’) (46 Stat.*
 10 *1494, chapter 411; 40 U.S.C. 276a et seq.)”.*

11 **SEC. 6. ENVIRONMENTAL COMPLIANCE.**

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

15 *“(d) ENVIRONMENTAL COMPLIANCE.—The Secretary*
 16 *may waive the requirements under this section if the Sec-*
 17 *retary determines that a failure on the part of a recipient*
 18 *to comply with provisions of this section—*

19 *“(1) will not frustrate the goals of the National*
 20 *Environmental Policy Act of 1969 (42 U.S.C. 4331 et*
 21 *seq.) or any other provision of law that furthers the*
 22 *goals of that Act;*

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

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

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

6 **SEC. 7. OVERSIGHT.**

7 (a) *REPAYMENT.*—Section 209 of the Native American
8 Housing Assistance and Self-Determination Act of 1996 (25
9 U.S.C. 4139) is amended to read as follows:

10 **“SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING**
11 **REQUIREMENT.**

12 *“If a recipient uses grant amounts to provide afford-*
13 *able housing under this title, and at any time during the*
14 *useful life of the housing the recipient does not comply with*
15 *the requirement under section 205(a)(2), the Secretary shall*
16 *take appropriate action under section 401(a).”.*

17 (b) *AUDITS AND REVIEWS.*—Section 405 of the Native
18 *American Housing Assistance and Self-Determination Act*
19 *of 1996 (25 U.S.C. 4165) is amended to read as follows:*

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

21 *“(a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE*
22 *31, UNITED STATES CODE.*—An entity designated by an
23 *Indian tribe as a housing entity shall be treated, for pur-*
24 *poses of chapter 75 of title 31, United States Code, as a*

1 *non-Federal entity that is subject to the audit requirements*
2 *that apply to non-Federal entities under that chapter.*

3 “(b) *ADDITIONAL REVIEWS AND AUDITS.*—

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

9 “(A) *determine whether the recipient—*

10 “(i) *has carried out—*

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

13 “(II) *eligible activities and certifi-*
14 *cation in accordance with this Act and*
15 *other applicable law;*

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

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

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

24 “(2) *ONSITE VISITS.*—*To the extent practicable,*
25 *the reviews and audits conducted under this sub-*

1 *section shall include onsite visits by the appropriate*
2 *official of the Department of Housing and Urban De-*
3 *velopment.*

4 *“(c) REVIEW OF REPORTS.—*

5 *“(1) IN GENERAL.—The Secretary shall provide*
6 *each recipient that is the subject of a report made by*
7 *the Secretary under this section notice that the recipi-*
8 *ent may review and comment on the report during a*
9 *period of not less than 30 days after the date on*
10 *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 re-*
18 *visions made under subparagraph (A)) readily*
19 *available to the public.*

20 *“(d) EFFECT OF REVIEWS.—Subject to section 401(a),*
21 *after reviewing the reports and audits relating to a recipi-*
22 *ent that are submitted to the Secretary under this section,*
23 *the Secretary may adjust the amount of a grant made to*
24 *a recipient under this Act in accordance with the findings*
25 *of the Secretary with respect to those reports and audits.”.*

1 **SEC. 8. ALLOCATION FORMULA.**

2 *Section 302(d)(1) of the Native American Housing As-*
3 *sistance and Self-Determination Act of 1996 (25 U.S.C.*
4 *4152(d)(1)) is amended—*

5 *(1) by striking “The formula,” and inserting the*
6 *following:*

7 *“(A) IN GENERAL.—Except with respect to*
8 *an Indian tribe described in subparagraph (B),*
9 *the formula”;* and

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

11 *“(B) CERTAIN INDIAN TRIBES.—With re-*
12 *spect to fiscal year 2000 and each fiscal year*
13 *thereafter, for any Indian tribe with an Indian*
14 *housing authority that owns or operates fewer*
15 *than 250 public housing units, the formula*
16 *under subparagraph (A) shall provide that if the*
17 *amount provided for a fiscal year in which the*
18 *total amount made available for assistance under*
19 *this Act is equal to or greater than the amount*
20 *made available for fiscal year 1996 for assistance*
21 *for the operation and modernization of the pub-*
22 *lic housing referred to in subparagraph (A), then*
23 *the amount provided to that Indian tribe as*
24 *modernization assistance shall be equal to the*
25 *average annual amount of funds provided to the*
26 *Indian tribe (other than funds provided as emer-*

1 *gency assistance) under the assistance program*
 2 *under section 14 of the United States Housing*
 3 *Act of 1937 (42 U.S.C. 1437l) for the period be-*
 4 *ginning with fiscal year 1992 and ending with*
 5 *fiscal year 1997.”.*

6 **SEC. 9. HEARING REQUIREMENT.**

7 *Section 401(a) of the Native American Housing Assist-*
 8 *ance and Self-Determination Act of 1996 (25 U.S.C.*
 9 *4161(a)) is amended—*

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

13 *(2) by striking “Except as provided” and insert-*
 14 *ing the following:*

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

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

19 *“(2) CONTINUANCE OF ACTIONS.—If the Sec-*
 20 *retary takes an action under subparagraph (A), (B),*
 21 *or (C) of paragraph (1)”;* and

22 *(4) by adding at the end the following:*

23 *“(3) EXCEPTION FOR CERTAIN ACTIONS.—*

24 *“(A) IN GENERAL.—Notwithstanding any*
 25 *other provision of this subsection, if the Sec-*

1 *retary makes a determination that the failure of*
2 *a recipient of assistance under this Act to com-*
3 *ply substantially with any material provision*
4 *(as that term is defined by the Secretary) of this*
5 *Act is resulting, and would continue to result, in*
6 *a continuing expenditure of Federal funds in a*
7 *manner that is not authorized by law, the Sec-*
8 *retary may take an action described in para-*
9 *graph (1)(C) before conducting a hearing.*

10 *“(B) PROCEDURAL REQUIREMENT.—If the*
11 *Secretary takes an action described in subpara-*
12 *graph (A), the Secretary shall—*

13 *“(i) provide notice to the recipient at*
14 *the time that the Secretary takes that ac-*
15 *tion; and*

16 *“(ii) conduct a hearing not later than*
17 *60 days after the date on which the Sec-*
18 *retary provides notice under clause (i).*

19 *“(C) DETERMINATION.—Upon completion of*
20 *a hearing under this paragraph, the Secretary*
21 *shall make a determination regarding whether to*
22 *continue taking the action that is the subject of*
23 *the hearing, or take another action under this*
24 *subsection.”.*

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

2 *Section 401(b) of the Native American Housing Assist-*
3 *ance and Self-Determination Act of 1996 (25 U.S.C.*
4 *4161(b)) is amended—*

5 *(1) by striking “If the Secretary” and inserting*
6 *the following:*

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

8 *(2) by striking “(1) is not” and inserting the fol-*
9 *lowing:*

10 *“(A) is not”;*

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

13 *“(B) is a result”;*

14 *(4) in the flush material following paragraph*
15 *(1)(B), as redesignated by paragraph (3) of this*
16 *section—*

17 *(A) by adjusting the margin 2 ems to the*
18 *right; and*

19 *(B) by inserting before the period at the end*
20 *the following: “, if the recipient enters into a*
21 *performance agreement with the Secretary that*
22 *specifies the compliance objectives that the recipi-*
23 *ent will be required to achieve by the termi-*
24 *nation date of the performance agreement”;* and

25 *(5) by adding at the end the following:*

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

4 “(3) *REVIEW.*—Upon the termination of a per-
5 formance agreement entered into under paragraph
6 (1), the Secretary shall review the performance of the
7 recipient that is a party to the agreement.

8 “(4) *EFFECT OF REVIEW.*—If, on the basis of a
9 review under paragraph (3), the Secretary determines
10 that the recipient—

11 “(A) has made a good faith effort to meet
12 the compliance objectives specified in the agree-
13 ment, the Secretary may enter into an addi-
14 tional performance agreement for the period
15 specified in paragraph (2); and

16 “(B) has failed to make a good faith effort
17 to meet applicable compliance objectives, the Sec-
18 retary shall determine the recipient to have
19 failed to comply substantially with this Act, and
20 the recipient shall be subject to an action under
21 subsection (a).”.

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

23 (a) *TABLE OF CONTENTS.*—Section 1(b) of the Native
24 *American Housing Assistance and Self-Determination Act*

1 of 1996 (25 U.S.C. 4101 note) is amended in the table of
2 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) *CERTIFICATION OF COMPLIANCE WITH SUBSIDY*
8 *LAYERING REQUIREMENTS.*—Section 206 of the Native
9 American Housing Assistance and Self-Determination Act
10 of 1996 (25 U.S.C. 4136) is repealed.

11 (c) *TERMINATIONS.*—Section 502(a) of the Native
12 American Housing Assistance and Self-Determination Act
13 of 1996 (25 U.S.C. 4181(a)) is amended by adding at the
14 end the following: “Any housing that is the subject of a con-
15 tract for tenant-based assistance between the Secretary and
16 an Indian housing authority that is terminated under this
17 section shall, for the following fiscal year and each fiscal
18 year thereafter, be considered to be a dwelling unit under
19 section 302(b)(1).”.

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