

Calendar No. 526

110TH CONGRESS }
1st Session }

SENATE

{ REPORT
110-238

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF- DETERMINATION REAUTHORIZATION ACT OF 2007

DECEMBER 7, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 2062]

The Committee on Indian Affairs, to which was referred the bill (S. 2062) to amend the Native American Housing Assistance and Self-Determination Act of 1996 to reauthorize that Act, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE

S. 2062, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007, would reauthorize the primary Indian housing programs in Indian Country contained in the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. § 4101, et seq.), for five years. S. 2062 would reauthorize programs in the Department of Housing and Urban Development for housing assistance for Native Americans and Alaska Natives and allow grant recipients under these programs greater discretion in tailoring their housing programs to meet their needs. S. 2062 would also amend NAHASDA to enhance the crucial services provided under these programs. S. 2062 emphasizes tribal authority to design, implement, and administer tribal housing programs and confirms the federal government's commitment to furthering tribal self-determination by acknowledging a tribe's right to decide how housing, housing-related infrastructure and development are made in its community.

The bill seeks to clarify existing law while removing unnecessary statutory and regulatory burdens. The bill would allow tribes to

utilize their grant funding in innovative and effective ways to address their distinct housing needs, including the development of essential utilities and basic infrastructure with the ultimate goal of creating more homes in Indian Country.

The purpose of this bill is to reauthorize NAHASDA, which provides Federal assistance for American Indian housing in fulfillment of the federal government's trust responsibility to Indian tribes. The primary purpose of NAHASDA was to consolidate multiple housing programs into one formula block grant that could be administered by Indian tribes in a manner consistent with the right of tribal self-determination and self-governance. Through these amendments to NAHASDA, the Committee seeks to reduce unnecessary oversight, statutory, and regulatory burdens and allow tribes more flexibility to develop innovative programs to meet their housing needs while maintaining adequate federal oversight. Many of these changes are supported by both Indian tribes and the Administration.

In consulting with Indian tribes, the National American Indian Housing Council, and the Department of Housing and Urban Development, the Committee consistently heard that NAHASDA was working for Indian Country. However, we also heard that refinement was necessary so Indian tribes can maximize the benefits of the program, especially given that funding for the programs over the last couple of years has failed to keep up with the rate of inflation, resulting in fewer program funds. Suggestions included eliminating unnecessary bureaucracy by allowing tribes to decide when they will use their funds for operation and maintenance; housing-related infrastructure, including utilities; and housing-related community development.

BACKGROUND

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. § 4101 et seq.) transformed the system for providing housing assistance to Indian tribes through the Department of Housing and Urban Development (HUD). The Act restructured and streamlined HUD's system of housing assistance to American Indians and Alaska Natives by consolidating several separate HUD grant programs into a single block grant distributed directly to tribes. NAHASDA was signed into law in 1996, and was reauthorized in 2002 for five years.

As part of its unique trust relationship with Indian tribes and individual Indians, the United States has historically provided housing services to Indian people. The Snyder Act of 1921 (25 U.S.C. §13) authorized programs for the general support of Indians, including housing assistance. However, a study in the 1960's revealed that general federal housing programs were not sufficiently addressing the housing needs in Indian Country and American Indians were not being served in any meaningful way. The study described a high number of sub-standard and uninhabitable housing units in Indian Country. In response to this study, the Public Housing Administration determined that Indians on reservations and in certain other areas were eligible to participate in the public housing programs administered by HUD, pursuant to the United States Housing Act of 1937.

In 1996, Congress determined that there was a need to establish a comprehensive Indian housing program designed for the specific needs of Indian tribes and individual Indians. The result was the passage of NAHASDA. This law consolidated numerous small, competitive grant programs for Indians under one comprehensive block grant to be distributed to each tribe. The goal of the law was to allow tribes more flexibility to design housing programs that address the unique needs of their communities. The law also allows tribes to leverage their future block grants in order to obtain financing for current projects.

GENERAL PRINCIPLES IN THE REAUTHORIZATION

Self-determination

Under the federal policy of Indian Self-Determination, tribal control has significantly contributed to improving housing and other services for Indian people. Meaningful participation by tribes in administering their own Indian Housing Block Grants and engaging in negotiated rulemaking is the principal means of carrying out the Indian Self-Determination policy.

In particular, through the new Self-Determined Housing Activities Program contained in S. 2062, tribes will have increased flexibility to design and modify their housing programs, as well as formulate new ideas, concepts and methodologies to determine how their housing programs or services should be delivered to their own communities.

S. 2062 allows tribes to utilize their grant funds without unnecessary HUD approval and requires the Agency to institute negotiated rulemaking whenever the Act is reauthorized, amended or enacted.

Efficiency

Reporting. Grant recipients and HUD are in agreement that some current reporting requirements under NAHASDA are often duplicative, unnecessary and burdensome. Therefore S. 2062 eliminates the five-year housing plan, and streamlines the one-year housing plan. S. 2062 also allows grant recipients to update their original one-year housing plan in subsequent years in lieu of submission of a whole new plan.

Timeframes for Negotiated Rulemaking. S. 2062 includes timeframes for when HUD must initiate and complete negotiated rulemaking to ensure that regulations implementing amendments to NAHASDA are adopted in a timely manner with tribal input.

Elimination of Unnecessary Administrative Oversight. Importantly, S. 2062 eliminates unnecessary administrative oversight. We heard from both Indian tribes and the Administration that often times grant recipients are forced to seek HUD approval for activities that HUD routinely approves including use of funds for operation and maintenance of units, mold remediation, housing-related infrastructure, utilities and housing-related community development. S. 2062 eliminates this unnecessary administrative step.

The Committee is particularly concerned with the lack of utilities and housing-related infrastructure. Construction and rehabilitation of homes does not only involve the structure itself but must also be accompanied by development of utilities and other infrastruc-

ture to support the unit. One of the main complaints the Committee has heard from grant recipients is their inability to provide these necessary services to support their housing programs, often-times resulting in units remaining vacant due to lack of utilities or infrastructure. Indian housing differs greatly from public housing because it is not usually located in or near urban areas and, therefore, does not have access to necessary utilities and infrastructure. Therefore, inclusion of these activities is important to the success of Indian housing.

Allocation of resources

The Committee recognizes that over the last several years, Indian housing programs under NAHASDA have been significantly underfunded, and that funding levels have not kept up with inflation. This problem is especially significant for small tribes that receive minimum funding under the program and are often unable to build a single home with their annual block grant funds.

The shortage of resources has heightened the necessity to accurately determine a tribal grant recipient's true housing need so that funds are allocated to reflect this need. It is the Committee's belief that this issue is best left for resolution by the tribes and HUD through negotiated rulemaking. In order to assist with resolution of this issue, S. 2062 includes language that directs the Secretary of HUD to contract with an organization with expertise in housing data collection methodologies to assess, in consultation with tribes and Indian organizations, assess the existing data sources for determining the "need" component of the block grant formula.

The purpose of this study is to provide data to assist in developing a way to truly identify each tribe's housing needs, including those tribes that own little or no land in trust or restricted status, but have a demonstrated housing need. NAHASDA was intended to provide housing funds to each federally recognized Indian tribe and allow each tribe flexibility to determine how best to address the housing needs of its members. It is the Committee's hope that the data collected will assist in developing solutions to the various problems faced by all tribes.

SECTION-BY-SECTION ANALYSIS

The provisions of S. 2062 are the result of the Committee's consultation with Indian tribes, the National American Indian Housing Council, HUD and the National Congress of American Indians. The bill reauthorizes NAHASDA for five years and contains amendments to allow tribes or their tribally-designated housing authorities (TDHEs) greater discretion in administering their housing programs and eliminating unnecessary regulatory burdens.

Section 1. Short title; table of contents

Provides the short title to the legislation "Native American Housing Assistance and Self-Determination Reauthorization Act of 2007."

Section 2. Congressional findings

Congressional Findings (Amends Section 2 of current law): Amends Section 2 of the Act to state that the federal government

shall work to provide housing assistance and assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members in a manner that recognizes the right of Indian self-determination and tribal self-governance. Given that the housing shortage in Indian Country remains critically high, the Committee strongly believes that all must be done to solve the severe housing shortage.

Section 3. Definitions

Expansion of Definition of Housing Related Community Development (Amends Section 4 of current law): While there is a tremendous need for more homes in Indian Country, there is also a great need for community buildings, such as day-care centers, laundromats, and multi-purpose community centers. This amendment will allow Indian tribes the flexibility to construct buildings that foster a sustainable community and provide multi-purpose communal spaces which are directly and substantially related to providing housing.

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

Section 101. Block grants

Access to Federal Supply Sources (Amends Section 101 of current law): This amendment would clarify the ability of tribes to voluntarily access federal sources of supply for goods, materials, services, and for lodging, airlines, and other transportation providers in the same manner as under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.).

Tribal Preference in Employment and Contracting (Amends Section 101 of current law): Currently under NAHASDA, Indian tribes are able to institute Indian preference in hiring and contracting; however, the Act is unclear whether or not tribal preference is allowed. This amendment will clarify that a tribe may also follow tribal preference in contracting and hiring.

Section 102. Indian housing plans

Streamlining of Reporting Requirements (Amends Section 102 of current law): Currently, an Indian tribe that receives funding must submit to HUD both a five-year plan and an annual plan so the agency can determine whether grant funds are being utilized to meet the goals of the program. Amendments to this section streamline these reporting requirements by eliminating the five-year plan, duplicative reporting, and allowing the tribe to align submission of its plan to the tribal program year.

Section 103. Review of plans (Amends Section 103 of current law)

Conforming amendment allows for limited review of an Indian housing plan under the new Self-Determined Housing Activities Program created under Section 208 of this bill.

Section 104. Treatment of program income and labor standards

Low Income Housing Tax Credit Projects (Amends Section 104(a) of current law): This amendment provides that income derived from low-income housing tax credit projects, initially funded with

NAHASDA funds, is not considered “program income” when the income is replacement funding to pay for construction of projects funded by the sale of tax credits to a tax credit investor. This technical change will enable grant recipients to use these funds for other housing purposes, such as community centers or other investments, without the need for HUD approval.

Section 105.

Clarification of Negotiated Rulemaking Requirements (Amends Section 106(b)(2) of current law): HUD has failed to institute the negotiated rulemaking process in some instances where it was necessary. These amendments seek to clarify that HUD must institute negotiated rulemaking within 180 days whenever Congress enacts, substantively amends, or reauthorizes NAHASDA.

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Section 201. National objectives and eligible families

Inclusion of Rental Housing and Assistance for Essential Families (Amends Section 201(b) of current law): Currently, NAHASDA allows grant recipients to provide housing assistance for homeownership activities, loan guarantee activities under Title VI, and model activities, to non-Indian, over-income families who are essential to the community, such as doctors, dentists and other professionals.

In order to be “essential to the community,” the presence of the over-income family must be essential to the well-being of Indian families and the housing needs of these essential families cannot reasonably be met without assistance. This amendment would allow over-income families to also occupy rental housing, receive tenant-based rental assistance, or receive other forms of affordable housing services, in addition to housing assistance currently available to these families.

Given the isolated locations of many Indian communities, it is often difficult to recruit and retain health and other professionals, due largely to the unavailability of housing. This amendment seeks to assist tribes by allowing them to offer this as a necessary incentive. In particular, the expansion to permit rental assistance for such families is appropriate since the families may be present for shorter durations.

Inclusion of Non-Low Income Indian Families in Essential Family Exception (Amends Section 201(b) of current law): Current law incorrectly only permits non low-income, non-Indian families to receive housing assistance when they are essential to the Indian community. This amendment would allow *Indian* doctors, teachers, and others to be eligible for the same assistance as a non-Indian professional who is essential to the community. Indian professionals often have personal knowledge of Indian communities and a deep commitment to serve these communities long-term. It was not the intent of Congress to exclude Indian families from being considered as essential to the community and eligible for assistance under NAHASDA in the same way as essential non-Indian families.

Clarification of Law Enforcement Exception (Amends Section 201(b) of current law): NAHASDA currently allows a grant recipient to provide housing or housing assistance to law enforcement of-

ficers. This amendment would clarify that the officer may be employed by *local* governments as well as federal, state and tribal governments.

Section 202. Eligible affordable housing activities

Expansion of Affordable Housing Activities (Amends Section 202 of current law): These amendments would provide a recipient more flexibility under NAHASDA by allowing a recipient to utilize funds for the operation, maintenance and rehabilitation of rental and homeownership units, mold remediation, and necessary housing-related infrastructure, such as much needed utilities, without having to seek prior approval from HUD.

Reserve Accounts (Amends Section 202 of current law): This new provision would allow grant recipients to engage in sound financial planning by permitting them to keep three months' worth of administrative and operating expenses in a reserve account.

Section 203. Program requirements

Carry-Over Provision (Amends Section 203 of current law): Under this new language, grant recipients would be allowed to carry over those funds, not committed for use or expended, for subsequent fiscal years. These funds are not subject to the restrictions contained in Section 202(9) of the Act. Grant recipients have requested this change, given the nature of construction projects, which are often completed in subsequent fiscal years.

Exemption for Procurement of Goods and Services under \$5,000 (Amends Section 203 of current law): Current law requires grant recipients to solicit competitive bids for the procurement of goods and services purchased with grant funding regardless of the cost of such goods or services. This amendment would provide a de minimis exception for goods and services under \$5,000, thus alleviating the administrative burden of soliciting bids for nominal goods and services.

Section 204. Low-income requirement and income targeting

Period of Affordability (Amends Section 205 of current law): This section would amend NAHASDA by adding a new provision to limit the requirement for binding commitments to keep the property as affordable housing during its useful life (or affordability period) to only those units that are owned by a tribe or TDHE.

This provision addresses the affordability period (or useful life) of units owned by a grant recipient. Under current law, all units with HUD assistance are required to have an affordability period, including homeownership units that are under a lease-purchase agreement between the housing entity and the homebuyer. This creates a hardship if a homebuyer dies before the lease purchase contract is completed, because the unit may not be devised, bequeathed, or inherited by a family member if the family member cannot qualify as low-income at the time of the homebuyer's death. The amendment will limit affordability periods to rental and homeownership units owned and operated by a grant recipient, and provide that mandatory affordability periods are not meant to include units with lease-purchase agreements where the homebuyer will eventually take title to the unit, and other types of units where the housing entity's investment or assistance is limited.

Section 205. Treatment of funds

Low Income Tax Credit Program (Adds new Section 206 to current law): An Indian tribe or its TDHE may use Indian Housing Block Grant funds for a wide range of affordable housing activities, including the provision of project-based or tenant-based rental assistance for eligible families.

The low-income housing tax credit (LIHTC) program offers a tax incentive to promote the development of affordable rental housing. This tax credit encourages investment in affordable housing by providing developers with a source of equity investment in return for an agreement to keep rents at a level that would be affordable for low-income families. The tax credit is allocated competitively to private developers to construct, acquire, or rehabilitate affordable rental housing. Given the severe shortage of housing in Indian Country, it is necessary to encourage construction, which this amendment seeks to accomplish.

The federal tax credit is allocated over a 10-year period using a formula that takes into account certain costs, called the “eligible basis.” Generally, federal grants used in a project reduce the eligible basis at a dollar-for-dollar rate. However, the Internal Revenue Service (IRS) recognized that certain types of federal rental assistance payments are not federal grants that require a reduction in a building’s eligible basis (for example, payments made pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437(f)). However, rental assistance provided with Indian Housing Block Grant funds has not been recognized by the IRS as assistance that does not reduce the eligible basis.

Because it was the intent of Congress that IHBG funds achieve similar goals as those under the 1937 Act, this amendment would ensure that project-based and tenant-based rental assistance provided with IHBG funds would not reduce the eligible basis of a building or project, for LIHTC purposes.

Section 206. Availability of records

Access to National Crime Information Center for Employment Applicants (Amends Section 208(a) of current law): NAHASDA currently allows a grant recipient to access the criminal records of applicants for housing or tenants under the Act. This amendment will allow grant recipients to access criminal records for tribal housing employees also. Grant recipients have requested this change because often times these employees have access to premises where children are present.

Section 207. Self-Determined Housing Activities for Tribal Communities Program

Self-Determined Housing Activities (Adds new Sections 231–235 to current law): This amendment would create a new housing program under NAHASDA that would allow grant recipients greater discretion in providing housing, housing-related activities (including utilities and other infrastructure) and housing-related community development. Under the program, a grant recipient who has been audit-free for three years may use up to 20% or \$2 million of its block grant funds for housing and housing-related activities. Reporting requirements and HUD oversight are significantly reduced under this program to allow a grant recipient the discretion to use

a portion of its NAHASDA funds in a manner that is truly self-determined. This program is an important step in recognizing that the grant recipient is the best at determining the needs of its community and utilizing its grant funds to meet those unique needs.

TITLE III—ALLOCATION OF GRANT AMOUNTS

Section 301. Allocation formula

Study of Need Data (Amends Section 302 of current law): This amendment would direct the Secretary of HUD to contract with an organization with expertise in housing data collection methodologies to assess, in consultation with tribes and Indian organizations, the existing data sources for determining the “need” component of the block grant formula.

Currently, there is disagreement among Indian tribes regarding how the “need” component of the formula is calculated. The controversy is over the use of data collected by the Census Bureau that is used when calculating each tribe’s “need” portion of the formula. The data gathered by the Census Bureau allows an individual to check multiple categories of race. The self-reported data is then categorized as individuals who are “single race” or “multi-race”. Depending on which category of data is used, a tribe’s funding under the formula can change. It is unlikely that individuals know how their decision regarding race will be used in calculating the housing needs for their tribe.

Congress has implemented a short-term remedy to account for an individual’s self-identification by directing HUD to calculate the need component of the formula based on the category of data that gives each tribe the highest amount of funding. However, due to insufficient funding, all tribes have received a cut in their funds. All interested parties are unsatisfied with this result, but tribes have yet to come to consensus on how to resolve the issue.

This study is authorized with the hope of providing Indian tribes with a tool to resolve this issue and to assist in developing a way to truly identify Indian Country’s and individual grant recipients’ housing needs, including those recipients who are landless but have a demonstrated housing need.

Clarification of Units Eligible Under Funding Formula (Amends Section 302 of current law): This amendment clarifies that conveyed units or other units no longer owned or operated by a grant recipient as affordable housing, including those units the recipient no longer has the legal right to own, operate or maintain, may not be counted in the funding formula. This not only includes conveyed units but those units that are required to be conveyed based on the homebuyer agreement; units demolished and not rebuilt within a specific time frame; or units no longer being operated as low-income units. Conveyance of each homeownership unit should occur as soon as possible after a unit becomes eligible for conveyance based on the terms of the Agreement. The recipient has not lost the legal right to own, operate or maintain the unit if it has not been conveyed for reasons beyond the control of the recipient, as enumerated in the provision.

A 2001 HUD Office of Inspector General audit report identified the need for removal of these ineligible units from the funding formula calculations. In response, the majority of those grant recipi-

ents who had included ineligible units in their count have paid or are in the process of paying back these funds. This funding formula was developed by Indian tribes through negotiated rulemaking, and recently reaffirmed in 2007, to ensure that the funding is allocated based on need.

TITLE IV—COMPLIANCE, AUDITS, AND REPORTS

Section 401. Remedies for non-compliance

Clarification on Availability of Administrative Hearing (Amends Section 401(a) of current law): Under this amendment, if a grant recipient is required to relinquish overpaid funds due to the inclusion of housing units deemed ineligible under Section 301, the action does not constitute substantial non-compliance by the grantee and does not automatically trigger a formal administrative hearing process. This amendment has been included due to the significant amount of time and resources involved in a hearing, which may not be necessary when a grant recipient is otherwise in compliance with the requirements of the Act.

Section 402. Monitoring of compliance

Appropriate Level of Monitoring of Compliance (Amends Section 403(b) of current law): HUD is authorized under the Act to conduct on-site inspections of a grantee's housing programs and units to assess the program's compliance with the Act. There is concern that some regional HUD offices have been conducting inappropriate and costly inspections, while other regional offices fulfill this requirement in an effective and reasonable manner. Given this inconsistency among regions, this amendment would clarify that HUD is only to conduct an appropriate level of on-site inspections.

Section 403. Performance reports (Amends Section 404(b) of current law)

This section makes necessary technical amendments to annual reporting requirements.

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

Section 501. Effect on Home Investment Partnerships Act

Clarification of Eligibility for HOME Program Assistance (Adds new Section 509 to current law): This amendment clarifies that NAHASDA grant recipients are still eligible for the benefits of the HOME Assistance Program administered through states. HOME Assistance has the potential to provide a much-needed source of funding for Indian housing purposes.

TITLE VI—GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES

Section 601. Demonstration program for guaranteed loans to finance Tribal Community and Economic Development Activities

Expansion of Title VI Demonstration Project (Adds new Section 606 to current law): Title VI of NAHASDA currently allows grant recipients to borrow or issue bond debt up to five times their annual NAHASDA allocation for housing purposes described in the

Act. This amendment would establish a five-year demonstration program which would allow grant recipients to access vital economic development and infrastructure programs, while requiring that NAHASDA funds remain for their original intended housing purposes.

TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

Section 701. Training and technical assistance (Amends Section 703 of current law)

Reauthorizes such sums as necessary for a national non-profit Indian organization that represents the interests of Indian tribes, Indian housing authorities, and tribally designated housing entities throughout the United States, to provide training and technical assistance. In order to receive such funds, the organization must have at least 30 years of experience in representing the housing interests of Indian tribes and tribal housing entities throughout the United States.

TITLE VIII—FUNDING

Section 801. Authorization of appropriations (Amends Sections 108, 605, 703 of current law)

Reauthorizes NAHASDA from FY2008 through FY2012 by amending Sections 108, 605, 703 of the Act.

Section 802. Funding conforming amendments

Methamphetamine use has reached epidemic levels in Indian Country and has negatively impacted tribal communities. The primary purpose of this provision is to authorize funding for methamphetamine remediation in tribal housing.

LEGISLATIVE HISTORY

On September 18, 2007, Senators Dorgan, Reid, Murkowski, Inouye, Johnson, Cantwell, Tester, Bingaman, and Domenici introduced S. 2062, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007. Senator Stabenow was added as a co-sponsor on October 29, 2007.

Hearings were held preceding introduction on March 22, 2007 and July 19, 2007. The Committee held an open business meeting on September 27, 2007, at which it voted to favorably report S. 2062 to the full Senate with a recommendation that the bill do pass.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 27, 2007, the Committee on Indian Affairs convened a business meeting to consider S. 2062 and other measures, and voted to have the bill favorably reported to the full Senate, without amendment, with recommendation that the bill do pass.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated October 24, 2007, was prepared for S. 2062:

S. 2062—Native American Housing Assistance and Self-Determination Reauthorization Act of 2007

Summary: S. 2062 would reauthorize the Native American Block Grant program and would authorize the appropriation of such sums as are necessary for that program for each of fiscal years 2008 through 2012. In addition, the bill would reauthorize the loan program under Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 for fiscal years 2008 through 2012, and authorize a new loan guarantee demonstration program to finance tribal community and economic development activities. CBO estimates that implementing S. 2062 would cost about \$2.2 billion over the 2008–2012 period, assuming the appropriation of the necessary amounts.

The Joint Committee on Taxation (JCT) estimates that enacting S. 2062 would reduce revenues by \$1 million over the 2008–2012 period and by \$6 million over the next 10 years by changing how Native American Block Grant funds are treated when awarding Low Income Housing Credits. In addition, CBO estimates that the bill would increase direct spending by less than \$500,000 per year by allowing the Treasury Forfeiture Fund to be used to make payments to Indian tribes to cover costs to clean up areas used as methamphetamine laboratories.

S. 2062 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. 2062 is shown in Table 1. The costs of this legislation fall within budget functions 450 (community and regional development) and 600 (income security).

Basis of estimate: For this estimate, CBO assumes that S. 2062 will be enacted by the end of calendar year 2007, that the amounts necessary to implement the bill will be appropriated for each year, and that outlays will follow historical patterns. Components of the estimated costs are described below.

Spending subject to appropriation

In total, CBO estimates that S. 2062 would authorize the appropriation of \$639 million in 2008 and \$3.3 billion over the 2008–2012 period. Appropriation of those amounts would result in estimated outlays of \$2.2 billion over the next five years.

Native American Housing Block Grants. Section 801 would authorize the appropriation of such sums as are necessary for the Native American Housing Block Grant program from 2008 through 2012. The block grant program provides funding to tribes to acquire, construct, rehabilitate, or manage affordable housing for Native American families with low incomes. In 2007, \$622 million was appropriated for this program. Assuming continued funding at that level after adjusting for anticipated inflation, CBO estimates that implementing this section would cost \$2.2 billion over the 2008–2012 period.

Title VI Loan Guarantees. Section 801 would extend the authorization of the Title VI loan guarantee program through 2012. Such guarantees allow Native American Block Grant recipients to leverage their funding by pledging future grants as security for the repayment of a loan. A private lender provides the financing and the Department of Housing and Urban Development (HUD) provides a

95 percent guarantee of the principal and interest due in the case of a default. The size of the Title VI loans can be no larger than five times the grant recipient's annual grant amount. HUD estimates this program currently has a subsidy rate of about 12 percent. In 2007, the program received an appropriation for subsidy costs of \$2 million, which will support about \$17 million in loans. Assuming appropriation of similar amounts, CBO estimates that implementing this section would cost \$10 million for additional subsidy costs through 2012.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2062

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Native American Housing Block Grants:					
Estimated Authorization Level	634	645	657	669	680
Estimated Outlays	231	362	459	541	616
Title VI Loan Guarantees:					
Estimated Authorization Level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2
Training and Technical Assistance:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
Loan Guarantee Demonstration:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	0	1	1	1	1
Study of Need:					
Estimated Authorization Level	1	0	0	0	0
Estimated Outlays	1	0	0	0	0
Total Changes:					
Estimated Authorization Level	639	649	661	673	684
Estimated Outlays	235	366	463	545	620

¹Enacting the bill also would affect revenues and direct spending. According to the Joint Committee on Taxation, revenues would decline by \$1 million over the 2008–2012 period and \$6 million over the 2008–2017 period as shown in Table 2. Direct spending would increase under the bill by less than \$500,000 each year over the 10-year period.

There have been few losses to date in the Title VI program; however, repayment of these loans have been funded by federal grants. As a result, the actual cost to the government is borne by the grant program. It is uncertain what the cost of these loans would be in the absence of the grant program, but it likely would be higher, perhaps substantially.

Training and Technical Assistance. Section 701 would authorize the appropriation of such sums as necessary for the 2008–2012 period to fund a national organization that represents the housing interests of Native Americans to provide training and technical assistance to Indian housing authorities. Such assistance is intended to build the housing authorities' capacity to administer housing programs in accordance with federal regulations. In 2006, the most recent year in which funds were provided, \$1 million was appropriated to be used by the National American Indian Housing Council for these purposes. Assuming appropriation of similar amounts, CBO estimates that implementing this section would cost \$5 million through 2012.

Loan Guarantee Demonstration. Title VI of the bill would establish a pilot program within HUD to guarantee 95 percent of the value of loans or bonds issued by Indian tribes and other entities for certain economic development purposes. Eligible projects would include acquiring and rehabilitating improved or unimproved prop-

erty, constructing and rehabilitating housing, and assisting private entities engaged in neighborhood revitalization, job-creation, and other economic development activities.

The bill would authorize the appropriation of such sums as are necessary for the subsidy cost of guaranteeing up to \$200 million in borrowing per year (with no more than \$1 billion outstanding at any given time). CBO estimates this new loan guarantee program would have a 2 percent to 3 percent subsidy cost. That estimate is based on historical data for comparable HUD programs, such as the Indian and Native Hawaiian Housing Loan Guarantee programs and the Section 108 guarantee program. Those programs require borrowers to secure debt with local tax receipts or funds received from federal grant programs. Under H.R. 2786, each borrower would be charged a fee to fully offset the subsidy cost of its loan guarantee—resulting in no significant net cost to the federal government.

Based on expected demand and historical spending patterns of similar programs, CBO estimates that administering this new program would cost about \$4 million over the 2008–2012 period, subject to appropriation of the necessary amounts.

Study of Need Data. Section 301 would require the HUD to enter into contract for an assessment of data sources that could be used to assist in the allocation of grant funding to Native American tribes and authorize the appropriation of such sums as are necessary for that purpose. Based on information provided by HUD and assuming the availability of appropriated funds, CBO estimates that implementing this provision would cost \$1 million in 2008.

Revenues

Section 205 would not allow rental assistance provided through the Native American Block Grant program to be considered as federal funds for purposes of the Low Income Housing Credit under section 42 of the Internal Revenue Code of 1986. By not counting rental assistance as federal funds, housing entities would be eligible to receive larger tax credits. The JCT estimates that revenue would decline by \$1 million over the 2008–2012 period and by \$6 million over the 2008–2017 period as shown in Table 2.

TABLE 2.—ESTIMATED CHANGES IN REVENUES UNDER S. 2062

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN REVENUES												
Estimated Revenues	*	*	*	*	*	*	–1	–1	–1	–1	–1	–6

Note: * = revenue loss between 0 and –\$500,000.

Direct spending

S. 2062 would permit the Secretary of Treasury to use the Treasury Forfeiture Fund to make payments to Indian tribes to cover costs to clean up areas used as methamphetamine laboratories. Because only a small number of sites on Indian reservations have

been cleaned, CBO estimates that this provision would cost less than \$500,000 annually.

Intergovernmental and private-sector impact: S. 2062 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.

Previous CBO estimates: On October 17, 2007, CBO transmitted a cost estimate for H.R. 2786, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007, as passed by the House of Representatives on September 6, 2007. S. 2062 is similar to the House-passed bill except that S. 2062 would not reauthorize the Native Hawaiian Block Grant program and would authorize appropriations for a data collection study. CBO's estimate of spending subject to appropriation for S. 2062 is \$23 million less than estimated for H.R. 2786 over the 2008–2012 period. In addition, H.R. 2786 would not affect direct spending or revenues. However, JCT estimates that S. 2062 would reduce revenues by \$1 million over the 2008–2012 period and by \$6 million over the next 10 years and CBO estimates that it would increase direct spending by less than \$500,000 per year.

On September 6, 2007, CBO transmitted a cost estimate for H.R. 3002, the Native American Economic Development and Infrastructure for Housing Act of 2007, as ordered reported by the House Committee on Financial Services on July 26, 2007. H.R. 3002 would establish a pilot program to guarantee loans or bonds issued by Indian tribes for certain economic development purposes. Title VI of S. 2062 is similar to H.R. 3002 and the estimated costs are identical.

Estimate prepared by: Federal spending: Chad Chirico, Daniel Hoople, and Mark Grabowicz. Federal revenues: Thomas Hohmann, Joint Committee on Taxation Impact on state, local, and tribal governments: Lisa Ramirez-Branum. Impact on the private sector: Keisuke Nakagawa.

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

EXECUTIVE COMMUNICATIONS

The Committee has received no written communications from the Executive Branch regarding S. 2062.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 2062 should be de minimis.

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. 2062, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to

be added in italic, existing law to which no change is proposed is shown in roman):

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

25 U.S.C. § 4101 et seq.

* * * * *

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Native American Housing Assistance and Self-Determination Act of 1996”.

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

- Sec. 1. Short title; *table of contents*.
- Sec. 2. Congressional findings.
- Sec. 3. Administration through Office of Native American Programs.
- Sec. 4. Definitions.

* * * * *

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Subtitle A—General Block Grant Program

- Sec. 201. National objectives and eligible families.
- Sec. 202. Eligible affordable housing activities.
- Sec. 203. Program requirements.
- Sec. 204. Types of investments.
- Sec. 205. Low-income requirement and income targeting.
- Sec. 206. *Treatment of funds*.
- Sec. 207. Lease requirements and tenant selection.
- Sec. 208. Availability of records.
- Sec. 209. Noncompliance with affordable housing requirement.
- Sec. 210. Continued use of amounts for affordable housing.

Subtitle B—Self-Determined Housing Activities for Tribal Communities

- Sec. 231. *Purpose*.
- Sec. 232. *Program authority*.
- Sec. 233. *Use of amounts for housing activities*.
- Sec. 234. *Inapplicability of other provisions*.
- Sec. 235. *Review and report*.

* * * * *

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

- Sec. 501. Repeal of provisions relating to Indian housing assistance under United States Housing Act of 1937.
- Sec. 502. Termination of Indian housing assistance under United States Housing Act of 1937.
- Sec. 503. Termination of new commitments for rental assistance.
- Sec. 504. Termination of Youthbuild program assistance.
- Sec. 505. Termination of HOME program assistance.
- Sec. 506. Termination of housing assistance for the homeless.
- Sec. 507. Savings provision.
- Sec. 508. Effective date.
- Sec. 509. *Effect of HOME Investment Partnerships Act*.

TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

- Sec. 601. Authority and requirements.
- Sec. 602. Security and repayment.
- Sec. 603. Payment of interest.
- Sec. 604. Training and information.

Sec. 605. Limitations on amount of guarantees.

Sec. 606. **[Effective date.]** *Demonstration program for guaranteed loans to finance tribal community and economic development activities.*

* * * * *

SEC. 2. CONGRESSIONAL FINDINGS.

* * * * *

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government **[should]** *shall* work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities **[should]** *shall* be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93–638 (25 U.S.C. 450 et seq.).

* * * * *

SEC. 4. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

* * * * *

(8) *HOUSING RELATED COMMUNITY DEVELOPMENT.*—

(A) *IN GENERAL.*—*The term ‘housing related community development’ means any facility, community building, business, activity, or infrastructure that—*

(i) is owned by an Indian tribes or a tribally designated housing entity;

(ii) is necessary to the provision of housing in an Indian area; and

(iii)(I) would help an Indian tribe or its tribally-designated housing entity to reduce the cost of construction of Indian housing;

(II) would make housing more affordable, accessible, or practicable in an Indian area; or

(III) would otherwise advance the purposes of this Act.

(B) *EXCLUSION.*—*The term ‘housing and community development’ does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2710 et seq.).*

[(8)] (9) INCOME.—The term ‘income’ means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

(A) Any amounts not actually received by the family.

(B) Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act.

[(9)] (10) INDIAN.—The term ‘Indian’ means any person who is a member of an Indian tribe.

[(10)] (11) INDIAN AREA.—The term ‘Indian area’ means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this Act for affordable housing.

[(11)] (12) INDIAN HOUSING PLAN.—The term ‘Indian housing plan’ means a plan under section 102.

[(12)] (13) INDIAN TRIBE.—

(A) IN GENERAL.—The term ‘Indian tribe’ means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) FEDERALLY RECOGNIZED TRIBE.—The term ‘federally recognized tribe’ means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975.

(C) STATE RECOGNIZED TRIBE.—

(i) IN GENERAL.—The term ‘State recognized tribe’ means any tribe, band, nation, pueblo, village, or community—

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date.

(ii) CONDITIONS.—Notwithstanding clause (i)—

(I) the allocation formula under section 302 shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on the date of the enactment of this Act; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

[(13)] (14) LOW-INCOME FAMILY.—The term ‘low-income family’ means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of

prevailing levels of construction costs or unusually high or low family incomes.

[(14)] (15) **MEDIAN INCOME.**—The term ‘median income’ means, with respect to an area that is an Indian area, the greater of—

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

[(15)] (16) **NEAR-ELDERLY PERSON.**—The term ‘near-elderly person’ means a person who is at least 55 years of age and less than 62 years of age.

[(16)] (17) **NONPROFIT.**—The term ‘nonprofit’ means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

[(17)] (18) **PERSON WITH DISABILITIES.**—The term ‘person with disabilities’ means a person who—

(A) has a disability as defined in section 223 of the Social Security Act;

(B) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which—

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(C) has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this Act, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

[(18)] (19) **RECIPIENT.**—The term ‘recipient’ means an Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this Act on behalf of the tribe or tribes.

[(19)] (20) **SECRETARY.**—Except as otherwise specifically provided in this Act, the term ‘Secretary’ means the Secretary of Housing and Urban Development.

[(20)] (21) **STATE.**—The term ‘State’ means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States and Indian tribes.

[(21)] (22) **TRIBALLY DESIGNATED HOUSING ENTITY.**—The terms ‘tribally designated housing entity’ and ‘housing entity’ have the following meaning:

(A) EXISTING IHA'S.—With respect to any Indian tribe that has not taken action under subparagraph (B), and for which an Indian housing authority—

(i) was established for purposes of the United States Housing Act of 1937 before the date of the enactment of this Act that meets the requirements under the United States Housing Act of 1937,

(ii) is acting upon such date of enactment as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this Act, the terms mean such Indian housing authority.

(B) OTHER ENTITIES.—With respect to any Indian tribe that, pursuant to this Act, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this Act for affordable housing for Indians, which entity is established—

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

(C) ESTABLISHMENT.—A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

[(22)] (23) HOUSING RELATED COMMUNITY DEVELOPMENT.—

(A) IN GENERAL.—The term 'housing related community development' means any tribally-owned and operated facility, business, activity, or infrastructure that—

(i) is necessary to the direct construction of reservation housing; and

(ii) would help an Indian tribe or its tribally-designated housing authority reduce the cost of construction of Indian housing or otherwise promote the findings of this Act.

(B) EXCLUSION.—The term 'housing and community development' does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2710 et seq.).

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

SEC. 101. BLOCK GRANTS.

(a) AUTHORITY.—**[For each]**

(1) *IN GENERAL.*—*For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this Act) make grants under this section on behalf of Indian [tribes to carry out affordable housing activities] tribes—*

(A) to carry out affordable housing activities under subtitle A of title II; and

(B) to carry out self-determined housing activities for tribal communities programs under subtitle B of that title

(2) **[Under] PROVISION OF AMOUNTS.**—*Under such a grant on behalf of an Indian tribe, the Secretary shall provide the*

grant amounts for the tribe directly to the recipient for the tribe.

* * * * *

(g) **USE FOR AFFORDABLE HOUSING ACTIVITIES UNDER PLAN.**—Except as provided in subsection (h) *of this section and subtitle B of title II*, amounts provided under a grant under this section may be used only for affordable housing activities under title II that are consistent with an Indian housing plan approved under section 103.

* * * * *

(j) **FEDERAL SUPPLY SOURCES.**—*For purposes of section 501 of title 40, United States Code, on election by the applicable Indian tribe—*

(1) *each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and*

(2) *each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.*

(k) **TRIBAL PREFERENCE IN EMPLOYMENT AND CONTRACTING.**—*Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this Act that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).*

SEC. 102. INDIAN HOUSING PLANS.

(a) **PLAN SUBMISSION.**—The Secretary shall provide—

【(1) (A) for an Indian tribe to submit to the Secretary, for each fiscal year, a housing plan under this section for the tribe; or】 *(1)(A) for an Indian tribe to submit to the Secretary, by not later than 75 days before the beginning of each tribal program year, a 1-year housing plan for the Indian tribe; or*

(B) for the tribally designated housing entity for the tribe to submit the plan as provided in 【subsection (d)】 *subsection (c) for the tribe; and*

(2) for the review of such plans.

【(b) **5-YEAR PLAN.**—Each housing plan under this section shall be in a form prescribed by the Secretary and shall contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(1) **MISSION STATEMENT.**—A general statement of the mission of the Indian tribe to serve the needs of the low-income families in the jurisdiction of the Indian tribe during the period.

(2) **GOALS AND OBJECTIVES.**—A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in paragraph (1) during the period.

(3) **ACTIVITIES PLAN.**—An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

(c) 1-YEAR PLAN.—A housing plan under this section for an Indian tribe shall be in a form prescribed by the Secretary and contain the following information relating to the upcoming fiscal year for which the assistance under this Act is to be made available:

(1) GOALS AND OBJECTIVES.—A statement of the goals and objectives to be accomplished during that period.

(2) STATEMENT OF NEEDS.—A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe and the means by which such needs will be addressed during the period, including—

(A) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(B) a description of the estimated housing needs for all Indian families in the jurisdiction.

(3) FINANCIAL RESOURCES.—An operating budget for the recipient, in a form prescribed by the Secretary, that includes—

(A) an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this Act, including an explanation of the manner in which amounts made available will leverage additional resources; and

(B) the uses to which such resources will be committed, including eligible and required affordable housing activities under title II and administrative expenses.

(4) AFFORDABLE HOUSING RESOURCES.—A statement of the affordable housing resources currently available and to be made available during the period, including—

(A) a description of the significant characteristics of the housing market in the jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts to be provided under this Act for rental assistance, production of new units, acquisition of existing units, or rehabilitation of units;

(B) a description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 184 of the Housing and Community Development Act of 1992, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;

(C) a description of the manner in which the plan will address the needs identified pursuant to paragraph (2);

(D) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a

contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937;

(E) a description of any existing and anticipated homeownership programs and rental programs to be carried out during the period, and the requirements and assistance available under such programs;

(F) a description of any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period, and the requirements and assistance available under such programs;

(G) a description of all other existing or anticipated housing assistance provided by the recipient during the period, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;

(H) a description of any housing to be demolished or disposed of, a timetable for such demolition or disposition, and any other information required by the Secretary with respect to such demolition or disposition;

(I) a description of the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(J) a description of the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and

(K) a description of the entity that will carry out the activities under the plan, including the organizational capacity and key personnel of the entity.

(5) CERTIFICATION OF COMPLIANCE.—Evidence of compliance which shall include, as appropriate—

(A) a certification that the recipient will comply with title II of the Civil Rights Act of 1968 in carrying out this Act, to the extent that such title is applicable, and other applicable Federal statutes;

(B) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this Act, in compliance with such requirements as may be established by the Secretary;

(C) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this Act;

(D) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such

rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this Act; and
 (E) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this Act.

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

(b) 1-YEAR PLAN REQUIREMENT.—

(1) IN GENERAL.—A housing plan of an Indian tribe under this section shall—

(A) be in such form as the Secretary may prescribe; and

(B) contain the information described in paragraph (2).

(2) REQUIRED INFORMATION.—A housing plan shall include the following information with respect to the tribal program year for which assistance under this Act is made available:

(A) DESCRIPTION OF PLANNED ACTIVITIES.—A statement of planned activities, including—

(i) the types of household to receive assistance;

(ii) the types and levels of assistance to be provided;

(iii) the number of units planned to be produced;

(iv)(I) a description of any housing to be demolished or disposed of;

(II) a timetable for the demolition or disposition;

and

(III) any other information required by the Secretary with respect to the demolition or disposition;

(v) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); and

(vi) outcomes anticipated to be achieved by the recipient.

(B) STATEMENT OF NEEDS.—A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe, and the means by which those needs will be addressed during the applicable period, including—

(i) a description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(ii) a description of the estimated housing needs for all Indian families in the jurisdiction.

(C) FINANCIAL RESOURCES.—An operating budget for the recipient, in such form as the Secretary may prescribe, that includes—

(i) an identification and description of the financial resources reasonably available to the recipient to carry out the purposes of this Act, including an explanation of the manner in which amounts made available will leverage additional resources; and

(ii) the uses to which those resources will be committed, including eligible and required affordable housing activities under title II and administrative expenses.

(D) CERTIFICATION OF COMPLIANCE.—Evidence of compliance with the requirements of this Act, including, as appropriate—

(i) a certification that, in carrying out this Act, the recipient will comply with the applicable provisions of title II of the Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) and other applicable Federal laws and regulations;

(ii) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this Act, in compliance with such requirements as the Secretary may establish;

(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this Act;

(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents and homebuyer payments charged, including the methods by which the rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this Act;

(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this Act; and

(vi) a certification that the recipient will comply with section 104(b).

[(d)] (c) PARTICIPATION OF TRIBALLY DESIGNATED HOUSING ENTITY.—A plan under this section for an Indian tribe may be prepared and submitted on behalf of the tribe by the tribally designated housing entity for the tribe, but only if such plan contains a certification by the recognized tribal government of the grant beneficiary that such tribe—

(1) has had an opportunity to review the plan and has authorized the submission of the plan by the housing entity; or

(2) has delegated to such tribally designated housing entity the authority to submit a plan on behalf of the tribe without prior review by the tribe.

[(e)] (d) COORDINATION OF PLANS.—A plan under this section may cover more than 1 Indian tribe, but only if the certification requirements under [(subsection (d))] subsection (c) are complied with by each such grant beneficiary covered.

[(f)] (e) REGULATIONS.—The requirements relating to the contents of plans under this section shall be established by regulation, pursuant to section 106.

SEC. 103. REVIEW OF PLANS.

* * * * *

(d) UPDATES TO PLAN.—After a plan under section 102 has been submitted for an Indian tribe for any [fiscal] *tribal program* year, the tribe may comply with the provisions of such section for any succeeding [fiscal] *tribal program* year [(with respect to information included for the 5-year period under section 102(b) or the 1-year period under section 102(c))] by submitting only such information regarding such changes as may be necessary to update the plan previously submitted. [Not less than once every 5 years, the tribe shall submit a complete plan.]

[(e) EFFECTIVE DATE.—This section and section 102 shall take effect on the date provided by the Secretary pursuant to section 106(a) to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this Act in fiscal year 1998.] (e) *Self-Determined Activities Program*.—*Notwithstanding any other provision of this section, the Secretary—*

(1) *shall review the information included in an Indian housing plan pursuant to subsections (b)(4) and (c)(7) only to determine whether the information is included for purposes of compliance with the requirement under section 232(b)(2); and*

(2) *may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, or results included pursuant to subsections (b)(4) and (c)(7).*

SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.

(a) PROGRAM INCOME.—

(1) AUTHORITY TO RETAIN.—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—

(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 Act.

(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 210, 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 Act, 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 the Internal Revenue Code of 1986, and that is initially funded using a grant provided under this Act, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.

* * * * *

SEC. 106. REGULATIONS.

* * * * *

(b) FINAL REGULATIONS.—

(1) **TIMING.**—The Secretary shall issue final regulations necessary to carry out this Act not later than September 1, 1997, and such regulations shall take effect not later than the effective date of this Act.

(2) NEGOTIATED RULEMAKING PROCEDURE.—

(A) **IN GENERAL.**—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, all regulations required under this Act, including any regulations that may be required pursuant to amendments made to this Act after the date of enactment of this Act, shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code.

(B) COMMITTEE.—

(i) **IN GENERAL.**—**[The Secretary]***Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 and any other Act to reauthorize this Act, the Secretary* shall establish a negotiated rulemaking committee, in accordance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A).

(ii) **ADAPTATION.**—In establishing the negotiated rulemaking committee, the Secretary shall—

(I) adapt the procedures under the subchapter described in clause (i) to the unique government-to-government relationship between the Indian tribes and the United States, and shall ensure that the membership of the committee include only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes; and

(II) shall not preclude the participation of tribally designated housing entities should tribes elect to be represented by such entities.

(C) SUBSEQUENT NEGOTIATED RULEMAKING.—The Secretary shall—

(i) *initiate a negotiated rulemaking in accordance with this section by not later than 90 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 and any other Act to reauthorize this Act; and*

(ii) *promulgate regulations pursuant to this section by not later than 2 years after the date of enactment of*

the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 and any other Act to reauthorize this Act.

(D) REVIEW.—Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to this section in effect on the date on which the review is conducted.

(c) **EFFECTIVE DATE.**—This section shall take effect on the date of the enactment of this Act.

* * * * *

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this title such sums as may be necessary for each of fiscal years [1998 through 2007] *2008 through 2012*. This section shall take effect on the date of the enactment of this Act.

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Subtitle A—General Block Grant Program

SEC. 201. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES.

* * * * *

(b) ELIGIBLE FAMILIES.—

(1) **IN GENERAL.**—Except as provided under paragraphs (2) and (4), and except with respect to loan guarantees under title VI, assistance under eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas.

(2) **[EXCEPTION TO LOW-INCOME REQUIREMENT.]**—A recipient may provide assistance for homeownership activities under section 202(2), model activities under section 202(6), or loan guarantee activities under title VI to Indian families who are not low-income families, to the extent that the Secretary approves the activities pursuant to such section or title because there is a need for housing for such families that cannot reasonably be met without such assistance. *(A) EXCEPTION TO REQUIREMENT.—Notwithstanding paragraph (1), a recipient may provide housing or housing assistance through affordable housing activities for which a grant is provided under this Act to any family that is not a low-income family, to the extent that the Secretary approves the activities due to a need for housing for those families that cannot reasonably be met without that assistance. [The Secretary] (B) LIMITS.—The Secretary shall establish limits on the amount of assistance that may be provided under this Act for activities for families who are not low-income families.*

(3) **[NON-INDIAN] ESSENTIAL FAMILIES.**—Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this Act for a [non-Indian family] *family* on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-

being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) LAW ENFORCEMENT OFFICERS.—A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this Act for a law enforcement officer on an Indian reservation or other Indian area, if—

(A) the officer—

(i) is employed on a full-time basis by the Federal Government or a State, county *or other unit of local government*, or lawfully recognized tribal government; and

(ii) in implementing such full-time employment, is sworn to uphold, and make arrests for, violations of Federal, State, county, or tribal law; and

(B) the recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

* * * * *

SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

Affordable housing activities under this title are activities, in accordance with the requirements of this title, **[to develop or to support]** *to develop, operate, maintain, or support* affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(1) INDIAN HOUSING ASSISTANCE.—The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

(2) DEVELOPMENT.—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, **[development of utilities]** *development and rehabilitation of utilities, necessary infrastructure*, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, *mold remediation*, and other related activities.

(3) HOUSING SERVICES.—The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted pursuant to this section.

(4) HOUSING MANAGEMENT SERVICES.—The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, *the costs of operation and maintenance of units developed with funds provided under this Act*, and management of affordable housing projects.

* * * * *

(9) *RESERVE ACCOUNTS.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), the deposit of amounts, including grant amounts under section 101, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities under this section, in accordance with the Indian housing plan of the Indian tribe.

(B) *MAXIMUM AMOUNT.*—A reserve account established under subparagraph (A) shall consist of not more than an amount equal to $\frac{1}{4}$ of the 5-year average of the annual amount used by a recipient for administration and planning under paragraph (2).

SEC. 203. PROGRAM REQUIREMENTS.

* * * * *

(f) *USE OF GRANT AMOUNTS OVER EXTENDED PERIODS.*—

(1) *IN GENERAL.*—To the extent that the Indian housing plan for an Indian tribe provides for the use of amounts of a grant under section 101 for a period of more than 1 fiscal year, or for affordable housing activities for which the amounts will be committed for use or expended during a subsequent fiscal year, the Secretary shall not require those amounts to be used or committed for use at any time earlier than otherwise provided for in the Indian housing plan.

(2) *CARRYOVER.*—Any amount of a grant provided to an Indian tribe under section 101 for a fiscal year that is not used by the Indian tribe during that fiscal year may be used by the Indian tribe during any subsequent fiscal year.

(g) *DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES.*—Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to the procurement, using a grant provided under this Act, of goods and services the value of which is less than \$5,000.

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SEC. 205. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

* * * * *

(2) except for housing assisted under section 202 of the United States Housing Act of 1937 (as in effect before the date of the effectiveness of this Act), 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 Act, except for a foreclosure by a lender (or upon transfer in lieu of foreclosure) is 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), housing assisted pursuant to section 201(b)(2) shall be considered affordable housing for purposes of the Act.

(c) **APPLICABILITY.**—*Paragraph (2) of subsection (a) applies only to rental and homeownership units that are owned or operated by a recipient.*

SEC. 206. TREATMENT OF FUNDS.

Notwithstanding any other provision of law, tenant- and project-based rental assistance provided using funds made available under this Act shall not be considered to be Federal funds for purposes of section 42 of the Internal Revenue Code of 1986.

* * * * *

SEC. 208. AVAILABILITY OF RECORDS.

(a) **PROVISION OF INFORMATION.**—Notwithstanding any other provision of law, except as provided in subsection (b), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of *applicants for employment, and of adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this Act for purposes of applicant screening, lease enforcement, and eviction.*

* * * * *

Subtitle B—Self-Determined Housing Activities for Tribal Communities

SEC. 231. PURPOSE.

The purpose of this subtitle 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 101 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.

SEC. 232. 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 101;

(2) that has complied with the requirements of section 102(b)(6); 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, United States Code (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 subtitle, for each of fiscal years 2008 through 2012, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this subtitle.

(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 101 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.

SEC. 233. USE OF AMOUNTS FOR HOUSING ACTIVITIES.

(a) *ELIGIBLE HOUSING ACTIVITIES.*—Any amounts made available for use under this subtitle 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 102(b)(6), for the construction, acquisition, or rehabilitation of housing or infrastructure to provide a benefit to families described in section 201(b)(1).

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

SEC. 234. INAPPLICABILITY OF OTHER PROVISIONS.

(a) *IN GENERAL.*—Except as otherwise specifically provided in this Act, title I, subtitle A of title II, and titles III through VIII shall not apply to—

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

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

- (1) Section 101(c) (relating to local cooperation agreements).
- (2) Subsections (d) and (e) of section 101 (relating to tax exemption).
- (3) Section 101(j) (relating to Federal supply sources).
- (4) Section 101(k) (relating to tribal preference in employment and contracting).
- (5) Section 102(b)(4) (relating to certification of compliance).
- (6) Section 104 (relating to treatment of program income and labor standards).
- (7) Section 105 (relating to environmental review).
- (8) Section 201(b) (relating to eligible families).
- (9) Section 203(c) (relating to insurance coverage).
- (10) Section 203(g) (relating to a de minimis exemption for procurement of goods and services).
- (11) Section 206 (relating to treatment of funds).
- (12) Section 209 (relating to noncompliance with affordable housing requirement).
- (13) Section 401 (relating to remedies for noncompliance).
- (14) Section 408 (relating to public availability of information).

(15) *Section 702 (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).*

SEC. 235. REVIEW AND REPORT.

(a) *REVIEW.*—During calendar year 2011, the Secretary shall conduct a review of the results achieved by the program under this subtitle 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 101 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 obtained pursuant to the review under subsection (a) (including any conclusions and recommendations of the Secretary with respect to the program under this subtitle), including—

(1) *recommendations regarding extension of the program for subsequent fiscal years and increasing the amounts under section 232(c) 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 Act, recipients participating in the program under this subtitle 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.

TITLE III—ALLOCATION OF GRANT AMOUNTS

SEC. 301. ANNUAL ALLOCATION.

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this Act for the fiscal year, in accordance with the formula established pursuant to section 302, among Indian tribes that comply with the requirements under this Act for a grant under this Act.

SEC. 302. ALLOCATION FORMULA.

(a) **ESTABLISHMENT.**—[The Secretary]

(1) *IN GENERAL.*—The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, in the manner provided under section 106, establish a formula to provide for allocating amounts available for a fiscal year for block grants

under this Act among Indian tribes in accordance with the requirements of this section.

(2) *STUDY OF NEED DATA.*—

(A) *IN GENERAL.*—*The Secretary shall enter into a contract with an organization with expertise in housing and other demographic data collection methodologies under which the organization, in consultation with Indian tribes and Indian organizations, shall—*

(i) assess existing data sources, including alternatives to the decennial census, for use in evaluating the factors for determination of need described in subsection (b); and

(ii) develop and recommend methodologies for collecting data on any of those factors, including formula area, in any case in which existing data is determined to be insufficient or inadequate, or fails to satisfy the requirements of this Act.

(B) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.*

(b) *FACTORS FOR DETERMINATION OF NEED.*—*The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:*

[(1) The number of low-income housing dwelling units owned or operated at the time pursuant to a contract between an Indian housing authority for the tribe and the Secretary.] (1)(A) *The number of low-income housing dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), pursuant to a contract between an Indian housing authority for the tribe and the Secretary, that are owned or operated by a recipient on the October 1 of the calendar year immediately preceding the year for which funds are provided, subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section if—*

(i) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or

(ii) the unit is lost to the recipient by conveyance, demolition, or other means.

(B) *If the unit is a homeownership unit not conveyed within 25 years from the date of full availability, the recipient shall not be considered to have lost the legal right to own, operate, or maintain the unit if the unit has not been conveyed to the homebuyer for reasons beyond the control of the recipient.*

(C) *If the unit is demolished and the recipient rebuilds the unit within 1 year of demolition of the unit, the unit may continue to be considered a low-income housing dwelling unit for the purpose of this paragraph.*

(D) *In this paragraph, the term ‘reasons beyond the control of the recipient’ means, after making reasonable efforts, there remain—*

(i) delays in obtaining or the absence of title status reports;

- (ii) *incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance;*
- (iii) *clouds on title due to probate or intestacy or other court proceedings; or*
- (iv) *any other legal impediment.*

(2) The extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary and the Indian tribes may specify.

* * * * *

TITLE IV—COMPLIANCE, AUDITS, AND REPORTS

SEC. 401. REMEDIES FOR NONCOMPLIANCE.

(a) ACTIONS BY SECRETARY AFFECTING GRANT AMOUNTS.—

(1) IN GENERAL.—Except as provided in subsection (b), if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this Act has failed to comply substantially with any provision of this Act, the Secretary shall—

- (A) terminate payments under this Act to the recipient;
- (B) reduce payments under this Act to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this Act;
- (C) limit the availability of payments under this Act to programs, projects, or activities not affected by such failure to comply; or
- (D) in the case of noncompliance described in section 402(b), provide a replacement tribally designated housing entity for the recipient, under section 402.

(2) *SUBSTANTIAL NONCOMPLIANCE.—The failure of a recipient to comply with the requirements of section 302(b)(1) regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this title.*

[(2)] (3) CONTINUANCE OF ACTIONS.—If the Secretary takes an action under subparagraph (A), (B), (C), of paragraph (1), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

[(3)] (4) 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

(ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).

(C) DETERMINATION.—Upon completion of a hearing under this paragraph, the Secretary shall make a determination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.

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SEC. 403. MONITORING OF COMPLIANCE.

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(b) PERIODIC MONITORING.—Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this Act to assess compliance with the requirements of this Act. Such review shall include *an appropriate level* of onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 404 and made available to the public.

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SEC. 404. PERFORMANCE REPORTS.

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(b) CONTENT.—Each report under this section for a fiscal year shall—

(1) describe the use of grant amounts provided to the recipient for such fiscal year;

(2) assess the relationship of such use to the [goals] *planned activities* identified in the Indian housing plan of the grant beneficiary; *and*

(3) indicate the programmatic accomplishments of the recipient[; and].

[(4) describe the manner in which the recipient would change its programs as a result of its experiences.]

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TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

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SEC. 509. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.

Nothing in this Act or an amendment made by this Act prohibits or prevents any participating jurisdiction (within the meaning of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing any amounts made available to the participating jurisdiction under that Act (42 U.S.C. 12721 et seq.) to an Indian tribe or a tribally designated housing entity for use in accordance with that Act (42 U.S.C. 12721 et seq.).

TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

* * * * *

SEC. 605. LIMITATIONS ON AMOUNT OF GUARANTEES.

(a) **AGGREGATE FISCAL YEAR LIMITATION.**—Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this title, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this title with an aggregate principal amount not to exceed \$400,000,000 for each of fiscal years [1997 through 2007] 2008 through 2012.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY.**—There are authorized to be appropriated to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of guarantees under this title such sums as may be necessary for each of fiscal years [1997 through 2007] 2008 through 2012.

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SEC. 606. DEMONSTRATION PROGRAM FOR GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES.

(a) **AUTHORITY.**—*To the extent and in such amounts as are provided in appropriation Acts, subject to the requirements of this section, and in accordance with such terms and conditions as the Secretary may prescribe, the Secretary may guarantee and make commitments to guarantee the notes and obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing activities carried out on Indian reservations and in other Indian areas that, under the first sentence of section 108(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308), are eligible for financing with notes and other obligations guaranteed pursuant to that section.*

(b) **LOW-INCOME BENEFIT REQUIREMENT.**—*Not less than 70 percent of the aggregate amount received by an Indian tribe or tribally designated housing entity as a result of a guarantee under this section shall be used for the support of activities that benefit low-income families on Indian reservations and other Indian areas.*

(c) **FINANCIAL SOUNDNESS.**—

(1) **IN GENERAL.**—*The Secretary shall establish underwriting criteria for guarantees under this section, including fees for the guarantees, as the Secretary determines to be necessary to ensure that the program under this section is financially sound.*

(2) **AMOUNTS OF FEES.**—*Fees for guarantees established under paragraph (1) shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section, as determined based on the risk to the Federal Government under the underwriting requirements established under paragraph (1).*

(d) **TERMS OF OBLIGATIONS.**—

(1) **IN GENERAL.**—*Each note or other obligation guaranteed pursuant to this section shall be in such form and denomination, have such maturity, and be subject to such conditions as the Secretary may prescribe, by regulation.*

(2) **LIMITATION.**—*The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless—*

(A) *the period is more than 20 years; or*

(B) the Secretary determines that the period would cause the guarantee to constitute an unacceptable financial risk.

(e) *LIMITATION ON PERCENTAGE.*—A guarantee made under this section shall guarantee repayment of 95 percent of the unpaid principal and interest due on the note or other obligation guaranteed.

(f) *SECURITY AND REPAYMENT.*—

(1) *REQUIREMENTS ON ISSUER.*—To ensure the repayment of notes and other obligations and charges incurred under this section and as a condition for receiving the guarantees, the Secretary shall require the Indian tribe or housing entity issuing the notes or obligations—

(A) to enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed under this section;

(B) to demonstrate that the extent of each issuance and guarantee under this section is within the financial capacity of the Indian tribe; and

(C) to furnish, at the discretion of the Secretary, such security as the Secretary determines to be appropriate in making the guarantees, including increments in local tax receipts generated by the activities assisted by a guarantee under this section or disposition proceeds from the sale of land or rehabilitated property, except that the security may not include any grant amounts received or for which the issuer may be eligible under title I.

(2) *FULL FAITH AND CREDIT.*—

(A) *IN GENERAL.*—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section.

(B) *TREATMENT OF GUARANTEES.*—

(i) *IN GENERAL.*—Any guarantee made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligations for the guarantee with respect to principal and interest.

(ii) *INCONTESTABLE NATURE.*—The validity of any such a guarantee shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) *TRAINING AND INFORMATION.*—The Secretary, in cooperation with Indian tribes and tribally designated housing entities, shall carry out training and information activities with respect to the guarantee program under this section.

(h) *LIMITATIONS ON AMOUNT OF GUARANTEES.*—

(1) *AGGREGATE FISCAL YEAR LIMITATION.*—Notwithstanding any other provision of law, subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, and to the extent approved or provided for in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount not to exceed \$200,000,000 for each of fiscal years 2008 through 2012.

(2) *AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY.*—There are authorized to be appropriated to cover the costs (as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a)) of guarantees under this section such

sums as are necessary for each of fiscal years 2008 through 2012.

(3) *AGGREGATE OUTSTANDING LIMITATION.—The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to this section shall not at any time exceed \$1,000,000,000 or such higher amount as may be authorized to be appropriated for this section for any fiscal year.*

(4) *FISCAL YEAR LIMITATIONS ON INDIAN TRIBES.—*

(A) *IN GENERAL.—The Secretary shall monitor the use of guarantees under this section by Indian tribes.*

(B) *MODIFICATIONS.—If the Secretary determines that 50 percent of the aggregate guarantee authority under paragraph (3) has been committed, the Secretary may—*

(i) *impose limitations on the amount of guarantees pursuant to this section that any single Indian tribe may receive in any fiscal year of \$25,000,000; or*

(ii) *request the enactment of legislation increasing the aggregate outstanding limitation on guarantees under this section.*

(i) *REPORT.—Not later than 4 years after the date of enactment of this section, the Secretary shall submit to Congress a report describing the use of the authority under this section by Indian tribes and tribally designated housing entities, including—*

(1) *an identification of the extent of the use and the types of projects and activities financed using that authority; and*

(2) *an analysis of the effectiveness of the use in carrying out the purposes of this section.*

(j) *TERMINATION.—The authority of the Secretary under this section to make new guarantees for notes and obligations shall terminate on October 1, 2012.*

TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

* * * * *

SEC. 703. 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 1997 through 2007.】

(a) *DEFINITION OF INDIAN ORGANIZATION.—In this section, the term “Indian organization” means—*

(1) *an Indian organization representing the interests of Indian tribes, Indian housing authorities, and tribally designated housing entities throughout the United States;*

(2) *an organization registered as a nonprofit entity that is—*

(A) *described in section 501(c)(3) of the Internal Revenue Code of 1986; and*

(B) *exempt from taxation under section 501(a) of that Code;*

(3) *an organization with at least 30 years of experience in representing the housing interests of Indian tribes and tribal housing entities throughout the United States; and*

(4) *an organization that is governed by a Board of Directors composed entirely of individuals representing tribal housing entities.*

(b) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for transfer to an Indian organization selected by the Secretary, in consultation with Indian tribes, such sums as are necessary to provide training and technical assistance to Indian housing authorities and tribally-designated housing entities for each of fiscal years 2008 through 2012.*

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UNITED STATES CODE ANNOTATED

TITLE 31. Money and Finance

CHAPTER 97—MISCELLANEOUS

* * * * *

SEC. 9703

* * * * *

(K)(i) *Payment to the designated State, local, or tribal law enforcement, environmental, housing, or health entity for experts and consultants needed to clean up any area formerly used as a methamphetamine laboratory.*

(ii) *If a methamphetamine laboratory is located on private property, not more than 90 percent of the costs may be paid only if—*

(I) the property owner did not have knowledge of the existence or operation of such laboratory before the law enforcement action to close it; or

(II) the property owner notifies law enforcement not later than 24 hours after discovering the existence of such laboratory.