



U. S. Department of Housing and Urban Development Public and Indian Housing

Special Attention of:
ONAP Administrators;
Tribes; and Tribally
Designated Housing Entities

Notice PIH 2009 - 50 (ONAP)

Issued: December 3, 2009

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Cross Reference(s):
24 CFR PART 1000

Subject: Statutory Changes to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

1. Purpose

The purpose of this Notice is to provide information on how HUD will address amendments made to the Native American Housing Assistance and Self-Determination Act (NAHASDA) by the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, and earlier statutory amendments to NAHASDA.

2. Introduction and Background

On October 14, 2008, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Public Law 110-411) (NAHASDA Reauthorization Act or NRA) became law. In 1998, 2000, 2002, 2004, and 2005, other amendments to NAHASDA also became law.

Compliance with these statutory provisions was required upon enactment. In this Notice, HUD is highlighting certain amendments that may be the subject of upcoming negotiated rulemaking.

Rulemaking is required whenever the Department determines it is necessary for HUD to establish binding requirements or definitions in the course of implementing a statutory provision. Conforming regulations are required when NAHASDA regulations need to be updated to align the regulatory language to the statutory language.

The Department has identified those provisions of the NRA and the earlier statutory amendments that require a conforming regulation, and those provisions that the Department has determined require rulemaking.

3. Consultation with Tribal Governments

In accordance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Department's Government-to-Government Tribal Consultation Policy

(published in the *Federal Register* on September 28, 2001), and section 105 of the NAHASDA Reauthorization Act, the Secretary shall establish a negotiated rulemaking committee to make recommendations for proposed regulations to implement the NRA's provisions, as well as certain earlier NAHASDA statutory amendments. In addition, HUD received comments from the National American Indian Housing Council and other organizations on how certain statutory provisions should be addressed. All comments received were given serious consideration.

4. Process

A negotiated rulemaking committee is being established through a series of *Federal Register* notices, and will meet periodically. The dates and places of such meetings will be announced to the public through *Federal Register* notices.

5. Structure of this Notice

Amendments to NAHASDA are listed below in reverse chronological order, and by Public Law number and year of passage. Many of the earlier NAHASDA amendments have been addressed by other Public and Indian Housing (PIH) notices. Examples are Notices PIH 2003-2, PIH 2003-3, and, more recently, PIH 2009-14. If a statutory provision requires that additional guidance be issued, that information has been noted. An index to the amendments is listed in Appendix A of the Notice.

6. Amendments to NAHASDA

- a. **NAHASDA Reauthorization Act Amendments to NAHASDA:** The following discusses the implementation of the 2008 statutory amendments to NAHASDA. New language in each section is **bolded**.
1. The NRA amends paragraphs (6) and (7) of section 2 of NAHASDA, "Congressional Findings," by striking "should" and replacing it with "shall" in both paragraphs. The sentences now read:
 - (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 **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 **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.).

A conforming regulation is required at 24 CFR 1000.2.

2. The NRA amends section 4 of NAHASDA by adding a new paragraph (8) entitled “Housing Related Community Development” and redesignating paragraphs (8) through (21) as (9) through (22).

The new paragraph states:

- (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 tribe 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 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. 2701 et seq.)’.**

A conforming regulation is required at 24 CFR 1000.10.

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

3. The NRA amends section 101(a) of NAHASDA which now reads as follows:
- (a) **AUTHORITY –**
- (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—**
 - (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) 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.**

No conforming regulation is required.

4. The NRA amends section 101 of NAHASDA by adding a new (j), which now reads as follows:
- (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.**

Tribes and tribally designated housing entities should consult with the General Services Administration for information on the Federal Supply program. Information on the GSA Schedules Program (also referred to as Multiple Award Schedules and Federal Supply Schedules) can be obtained on the GSA website. Go to www.gsa.gov and select the GSA Schedules link under the Purchasing Program tab.

Note that the administrative requirements under 24 CFR Part 85 apply. The Indian Preference requirements outlined in 24 CFR 1000.52 continue to apply. Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises. HUD will issue general guidance to assist tribes on how the GSA schedule can work in the Indian Housing Block Grant program.

- 5. The NRA amends section 101 of NAHASDA to add a new (k), which now reads as follows:

(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).

Rulemaking is required to define the scope of this provision.

- 6. The NRA amends section 102(a)(1) of NAHASDA, to read as follows:

(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

This provision will require the issuance of a PIH Notice that will provide additional information on the cumulative changes to the Indian Housing Plan (IHP) process. Consultation has and is being conducted on this process. Conforming regulations are required at 24 CFR 1000.201, 24 CFR 1000.214, and 24 CFR 1000.216.

- 7. The NRA amends section 102(b) of NAHASDA by striking the requirement for a 5-YEAR PLAN.

This provision will require the issuance of a PIH Notice that will include a revised IHP and provide additional information on the cumulative changes to the IHP process. Consultation has and is being conducted on this process. Conforming regulations are required at 24 CFR 1000.220 and 24 CFR 1000.524(e).

8. The NRA amends section 102 of NAHASDA by revising and renumbering the 1-Year Plan Requirement as subsection 102(b), which now reads as follows:

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

(v) a timetable for the demolition or disposition; and

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

(vii) 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

(viii) 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).**

This provision will require the issuance of a PIH Notice that will include a revised IHP and provide additional information on the cumulative changes to the IHP process. Consultation has and is being conducted on this process. No conforming regulation is required. The revisions to section 102(b)(2)(D) require no changes in the nondiscrimination requirements at 24 CFR 1000.12, which include but are not limited to compliance with section 504 of the Rehabilitation Act of 1973.

9. The NRA amends section 103(d), "REVIEW OF PLANS," of NAHASDA to change the requirements from fiscal year to tribal program year, and to remove the references to the five-year plan. It now reads as follows:

(d) **UPDATES TO PLAN-** After a plan under section 102 has been submitted for an Indian tribe for any **tribal program** year, the tribe may comply with the provisions of such section for any succeeding **tribal program** year by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

This provision will require the issuance of a PIH Notice that will include a revised IHP and provide additional information on the cumulative changes to the IHP process. Consultation has and is being conducted on this process. No conforming regulation is required.

10. The NRA amends section 103 of NAHASDA by striking subsection (e), and replacing it with a new (e), “SELF-DETERMINED ACTIVITIES PROGRAM,” which reads as follows:

- (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).**

This provision concerns review of information in a recipient’s IHP on self-determined activities. Recipients are not required to include this information in their IHP. A technical correction is needed to strike this provision from the statute.

11. The NRA amends section 104(a), “TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS,” by adding a new paragraph (4), which reads as follows:

- (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.**

No conforming regulation is required.

12. The NRA amends section 106, “REGULATIONS,” of NAHASDA at (b)(2)(B)(i), and adds 2 new provisions, at 106(b)(2)(C) and (D), which read as follows:

- (B) COMMITTEE-**
- (i) IN GENERAL- Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 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).

- (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 2008 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 2008 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.

No conforming regulation is required.

TITLE II--AFFORDABLE HOUSING ACTIVITIES

13. The NRA amends section 201(b) of NAHASDA, “ELIGIBLE FAMILIES,” at paragraphs (1), (2), (3) and (4) to read as follows:
- (1) **IN GENERAL-** Except as provided under paragraphs (2) and (4), **and except with respect to loan guarantees under the demonstration program 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) **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.
 - (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) **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 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) 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

Over-income essential families can now include both Indian and non-Indian families. Over-income families under the loan guarantees demonstration program under title VI are eligible. In addition, these families are eligible for any housing or housing assistance eligible under NAHASDA and approved by the Secretary based on a need for housing for those families that cannot be met without the assistance. Previously, assistance was limited to homeownership activities, model activities and loan guarantee activities.

Law enforcement officers can be provided housing or housing assistance if they are employed on a full-time basis by any other unit of local government. Previously, there was a limitation to the Federal Government, or a state, county or lawfully recognized tribal government. Conforming regulations are required at 24 CFR 1000.104, 1000.106, 1000.108 and 1000.110.

14. The NRA amends section 202 of NAHASDA, “ELIGIBLE AFFORDABLE HOUSING ACTIVITIES,” in the matter preceding paragraph (1), in paragraph (2), “DEVELOPMENT,” in paragraph (4), “HOUSING MANAGEMENT SERVICES,” and by adding a new paragraph (9), RESERVE ACCOUNTS.” The section now reads as follows:

Affordable housing activities under this title are activities, in accordance with the requirements of this title, **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:

- (2) DEVELOPMENT- The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, **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.
- (4) HOUSING MANAGEMENT SERVICES- The provision of management services for affordable housing, including preparation of work specifications, **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 ¼ of the 5-year average**

of the annual amount used by a recipient for administration and planning under paragraph (2).

The provisions of the introduction and (2) DEVELOPMENT and (4) HOUSING MANAGEMENT SERVICES do not require conforming regulations. The new provision on reserves will require rulemaking to determine the requirements for reserve accounts.

15. The NRA amends section 203 of NAHASDA, “PROGRAM REQUIREMENTS,” by adding new paragraphs (f) and (g), which read as follows:

(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.

Section 203(f) requires a conforming regulation to remove 24 CFR 1000.524(a). Section 203(g) does not require a conforming regulation. PIH Notice 2009-14, dated May 18, 2009, has been issued. It provides additional information on the de minimis exemption.

16. The NRA amends section 205 of NAHASDA, “LOW-INCOME REQUIREMENT AND INCOME TARGETING,” by adding a new subsection (c), which reads as follows:

(c) APPLICABILITY- The provisions of paragraph (2) of subsection (a) regarding binding commitments for the remaining useful life of property shall not apply to a family or household member who subsequently takes ownership of a homeownership unit.

Binding commitments no longer apply to a family or household member who subsequently takes ownership of a homeownership unit. Section 205(c) requires a conforming regulation to amend 24 CFR 1000.142. The NAHASDA Guidance on useful life and binding commitments will also be revised.

17. The NRA amends section 208(a) of NAHASDA, “AVAILABILITY OF RECORDS,” to read as follows:

- (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.**

A conforming regulation is required to amend 24 CFR 1000.150.

18. The NRA creates a new Subtitle B under Title II of NAHASDA, “Self-Determined Housing Activities for Tribal Communities,” which reads as follows:

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 2009 through 2013, 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 in accordance with section 202 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 the 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.

No conforming regulation is required. A PIH notice will be issued that provides additional information regarding the new demonstration program. HUD will develop a notice providing guidance on the demonstration program and consult with tribes on its content.

Sections 232 and 233 require technical corrections because the cross-references to 102(b)(6) do not exist. The proper cross-reference is 102(b)(2)(D).

Section 234 requires two technical corrections: the cross reference in paragraph (5) to 102(b)(4) does not exist, nor does the provision referenced at paragraph (11). The proper cross-reference is 102(b)(2)(D). Section 234(b)(11) should be struck, which will require re-numbering of paragraphs 234(b)(12)-(15).

Section 235 will require notice under the Paperwork Reduction Act to advise recipients of the reporting requirements. A technical correction is also needed in Section 235 to clarify the reporting deadline date, as the program is authorized through 2013.

TITLE III---ALLOCATION OF GRANT AMOUNTS

19. The NRA amends section 302(a) and (b) of NAHASDA, "ALLOCATION FORMULA," to read as follows:

(a) ESTABLISHMENT-

(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)

(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 purposes 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.**
- (E) Subparagraphs (A) through (D) shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed by not later than 45 days after the date of enactment of this subparagraph.**

Section 302(a) does not require a conforming regulation. A conforming regulation is required to implement section 302(b). Conforming regulations are required at 24 CFR 1000.312, 24 CFR 1000.318, and 24 CFR 1000.322. Pursuant to 24 CFR 1000.306(b), not later than May 21, 2012, the IHBG Formula will be reviewed and any necessary changes will be made with respect to funding under the Formula Current Assisted Stock component.

TITLE IV---COMPLIANCE, AUDITS, AND REPORTS

20. The NRA amends section 401(a) of NAHASDA by adding a new number (2), “SUBSTANTIAL NONCOMPLIANCE,” and by redesignating paragraphs (2) and (3) as (3) and (4). Paragraph (2) now reads as follows:
- (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.**

A conforming regulation is required at 24 CFR 1000.534.

21. The NRA amends section 403(b) of NAHASDA, “MONITORING OF COMPLIANCE,” by adding in the second sentence “an appropriate level.” It now reads as follows:

(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.

Rulemaking is required to determine the appropriate level of onsite inspections.

22. The NRA amends section 404(b) of NAHASDA, “PERFORMANCE REPORTS,” to change the language in paragraphs (2) and (3), and by striking paragraph (4). This subsection now reads as follows:

(c) 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 **planned activities** identified in the Indian housing plan of the grant beneficiary; and
- (3) indicate the programmatic accomplishments of the recipient.

This provision will require the issuance of a PIH Notice that will include a revised Annual Performance Report (APR) and provide additional information on the cumulative changes to the APR process. Consultation has and is being conducted on this process. No conforming regulation is required.

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

23. The NRA amends Title V of NAHASDA by adding a new section 509, “EFFECT ON HOME INVESTMENTS PARTNERSHIP ACT,” which reads as follows:

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.).

No conforming regulation is required.

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

24. The NRA amends Title VI of NAHASDA by adding a new section 606, “**DEMONSTRATION PROGRAM FOR GUARANTEED LOANS TO FINANCE TRIBAL COMMUNITY AND ECONOMIC DEVELOPMENT ACTIVITIES.**” The new Title VI Demonstration Program reads as follows:

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

(a) AUTHORITY-

- (1) IN GENERAL-** Subject to paragraph (2), 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.
- (2) LIMITATION-** The Secretary may guarantee, or make commitments to guarantee, under paragraph (1) the notes or obligations of not more than 4 Indian tribes or tribally designated housing entities located in each Department of Housing and Urban Development Office of Native American Programs region.
- (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, may 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 2009 through 2013.

- (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 \$1,000,000 for each of fiscal years 2009 through 2013.
- (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, 2013.

No conforming regulation is required. This provision will require the issuance of a PIH notice that will provide additional information regarding the new demonstration program. HUD will develop a notice providing guidance on the demonstration program and consult with tribes on its content.

TITLE VII---FUNDING

25. The NRA amends section 108, "AUTHORIZATION OF APPROPRIATIONS," of NAHASDA to change the authorization for appropriations for the Indian Housing Block Grant program from "1998 through 2007," to "2009 through 2013." It reads as follows:

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 **2009 through 2013**. This section shall take effect on the date of the enactment of this Act.

No conforming regulation is required.

26. The NRA amends section 605 of NAHASDA to change the authorization for appropriations and aggregate fiscal year limitations for the Title VI program from 1997 through 2007, to 2009 through 2013. It now reads as follows:

- (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 **2009 through 2013**.
- (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 **2009 through 2013**.

No conforming regulation is required.

27. The NRA amends section 703 of NAHASDA, "TRAINING AND TECHNICAL ASSISTANCE," to change the authorization for appropriations from 1997 through 2007, to 2009 through 2013. It now reads as follows:

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 **2009 through 2013**.

No conforming regulation is required.

28. The following additional provisions of the NAHASDA Reauthorization Act did not amend NAHASDA.

SEC. 801. LIMITATION ON USE FOR CHEROKEE NATION.

No funds authorized under this Act, or the amendments made by this Act, or appropriated pursuant to an authorization under this Act or such amendments, shall be expended for the benefit of the Cherokee Nation; provided, that this limitation shall not be effective if the Temporary Order and Temporary Injunction issued on May 14, 2007, by the District Court of the Cherokee Nation remains in

effect during the pendency of litigation or there is a settlement agreement which effects the end of litigation among the adverse parties.

SEC. 802. LIMITATION ON USE OF FUNDS.

No amounts made available pursuant to any authorization of appropriations under this Act, or under the amendments made by this Act, may be used to employ workers described in section 274A(h)(3)) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)).

SEC. 803. GAO STUDY OF EFFECTIVENESS OF NAHASDA FOR TRIBES OF DIFFERENT SIZES.

- (a) **IN GENERAL-** The Comptroller General of the United States shall conduct a study of the effectiveness of the Native American Housing Assistance and Self-Determination Act of 1996 in achieving its purposes of meeting the needs for affordable housing for low-income Indian families, as compared to the programs for housing and community development assistance for Indian tribes and families and Indian housing authorities that were terminated under title V of such Act and the amendments made by such title. The study shall compare such effectiveness with respect to Indian tribes of various sizes and types, and specifically with respect to smaller tribes for which grants of lesser or minimum amounts have been made under title I of such Act.
- (b) **REPORT-** Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the results and conclusions of the study conducted pursuant to subsection (a). Such report shall include recommendations regarding any changes appropriate to the Native American Housing Assistance and Self-Determination Act of 1996 to help ensure that the purposes of such Act are achieved by all Indian tribes, regardless of size or type.

No conforming regulations are required for sections 801 and 802. Section 803 is not applicable to HUD; it requires the Government Accountability Office to conduct a study of the effectiveness of NAHASDA.

- b. **The following amendments to NAHASDA occurred between 1998 and 2005. They are identified by Public Law number and year of passage.**

Public Law 109-136 Amendment to NAHASDA: The following addresses the Public Law 109-136 (passed in 2005) statutory amendment to NAHASDA. New language is **bolded**.

29. P.L. 109-136 amended section 104(a)(2) of NAHASDA which now reads as follows:

- (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.

No conforming regulation is required. Note further, however, that item #33 below also addresses other amendments to this provision and does require rulemaking.

Public Law 109-58 Amendment to NAHASDA: The following addresses the Public Law 109-58 (passed in 2005) statutory amendment to NAHASDA. New language is **bolded**.

30. P.L. 109-58 amended section 202(2) of NAHASDA¹ which now reads as follows:

- (2) DEVELOPMENT- The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, 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.

No conforming regulation is required.

Public Law 108-393 Amendment to NAHASDA: The following addresses the Public Law 108-393 (passed in 2004) statutory amendment to NAHASDA. New language is **bolded**.

31. P.L. 108-393 amended section 601 of NAHASDA by adding the following new subsection:

- (d) **Limitation on Percentage- A guarantee made under this title shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.**

No conforming regulation is required.

Public Law 107-292 Amendments to NAHASDA: The following addresses the Public Law 107-292 (passed in 2002) statutory amendments to NAHASDA. New language pursuant to Public Law 107-292 in each section is **bolded**.

32. P.L. 107-292 amended section 101(h) of NAHASDA which now reads as follows:

- (h) **ADMINISTRATIVE AND PLANNING EXPENSES-** The Secretary shall, by regulation, authorize each recipient to use a percentage of any grant amounts received under this Act **for comprehensive housing and community development planning**

¹ Section 202(2) of NAHASDA was also amended by the NRA. See NRA amendments above.

activities and for any reasonable administrative and planning expenses of the recipient relating to carrying out this Act and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this Act and expenses of preparing an Indian housing plan under section 102.

Conforming regulations are required at 1000.236 and 1000.238.

33. P.L. 107-292 and P.L. 109-136 (passed in 2005) amended section 104(a) of NAHASDA² which now reads as follows:

(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.

Rulemaking is required to implement these provisions.

34. P.L. 107-292 amended section 106(b)(2)(A) of NAHASDA which now reads as follows:

(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.

No conforming regulation is required.

² Section 104(a) of NAHASDA was also amended by the NRA. See NRA amendments above.

35. P.L. 107-292 amended section 601 of NAHASDA which now reads as follows:

- (a) **AUTHORITY-** To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this title (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing affordable housing activities described in section 202 **and housing related community development activity as consistent with the purposes of this Act.**

A conforming regulation is required at 24 CFR 1000.424 and 24 CFR 1000.428.

Public Law 106-568 Amendments to NAHASDA: The following addresses the Public Law 106-568 (passed in 2000) statutory amendments to NAHASDA. HUD previously published Notice PIH 2003-2 and Notice PIH 2003-3 addressing many of these amendments. The following are amendments to NAHASDA pursuant to Public Law 106-568 that may require rulemaking. New language in each section is **bolded**.

36. P.L. 106-568 amended section 105 of NAHASDA to allow the Secretary to waive, under limited circumstances, procedural errors made by a recipient in complying with environmental review requirements under the Act. Section 105(d) was added to read:

- (d) ENVIRONMENTAL COMPLIANCE. -- The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—**
- (1) will not frustrate the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) or any other provision of law that furthers the goals of that Act;**
 - (2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;**
 - (3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1); and**
 - (4) may be corrected through the sole action of the recipient.**

Rulemaking is required to determine the process for requesting a waiver under 105(d).

37. P.L. 106-568 amended section 405 of NAHASDA by modifying several provisions of the section. Section 405 now reads:

Sec. 405. REVIEW AND AUDIT BY SECRETARY.

- (a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE 31, UNITED STATES CODE.-- An entity designated by an Indian tribe as a housing entity shall be**

- treated, for purposes of chapter 75 of title 31, United States Code, as a non-Federal entity that is subject to the audit requirements that apply to non-Federal entities under that chapter.
- (b) ADDITIONAL REVIEWS AND AUDITS.—**
- (1) IN GENERAL.--** In addition to any audit or review under subsection (a), to the extent the Secretary determines such action to be appropriate, the Secretary may conduct an audit or review of a recipient in order to—
- (A) determine whether the recipient—**
- (i) has carried out—**
- (I) eligible activities in a timely manner; and**
- (II) eligible activities and certification in accordance with this Act and other applicable law;**
- (ii) has a continuing capacity to carry out eligible activities in a timely manner; and**
- (iii) is in compliance with the Indian housing plan of the recipient; and**
- (B) verify the accuracy of information contained in any performance report submitted by the recipient under section 404.**
- (2) ON-SITE VISITS.--** To the extent practicable, the reviews and audits conducted under this subsection shall include on-site visits by the appropriate official of the Department of Housing and Urban Development.
- (c) REVIEW OF REPORTS.—**
- (1) IN GENERAL.--** The Secretary shall provide each recipient that is the subject of a report made by the Secretary under this section notice that the recipient may review and comment on the report during a period of not less than 30 days after the date on which notice is issued under this paragraph.
- (2) PUBLIC AVAILABILITY.--** After taking into consideration any comments of the recipient under paragraph (1), the Secretary—
- (A) may revise the report; and**
- (B) not later than 30 days after the date on which those comments are received, shall make the comments and the report (with any revisions made under subparagraph (A)) readily available to the public.**
- (d) EFFECT OF REVIEWS.--** Subject to section 401(a), after reviewing the reports and audits relating to a recipient that are submitted to the Secretary under this section, the Secretary may adjust the amount of a grant made to a recipient under this Act in accordance with the findings of the Secretary with respect to those reports and audits.

Section 405(a) specifies that tribally designated housing entities are subject to the Single Audit Act requirements. Because the Single Audit Act applies by its own terms to tribally designated housing entities, this requirement is already set forth in the program regulations at §1000.544. The Department proposes no additional action.

Section 405(b)(1) no longer requires annual reviews and audits to be conducted by HUD. Instead, this paragraph now permits reviews and audits to the extent the Secretary determines such action to be appropriate. Rulemaking is required to implement the statutory changes.

Section 405(b)(2) requires a conforming regulation at 24 CFR 1000.520.

Section 405(c) requires a conforming regulation at 24 CFR 1000.528.

Section 405(d) modified the statute by removing the words “reduce, or withdraw grant amounts, or take other action as appropriate.” Additionally, the revised statute no longer contains the following language: “except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.” Rulemaking is required to address the statutory changes.

38. P.L. 106-568 amended section 401(a) of NAHASDA³ to expressly permit HUD to take certain actions before conducting a hearing, subject to procedural requirements. Section 401(a) now reads:

(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 the purposes of this title.

(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.

(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.

³ Section 401(a) of NAHASDA was also amended by the NRA. See NRA amendments above.

- (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.

Rulemaking is required to address the bolded statutory changes. A conforming regulation is required at 24 CFR 1000.534.

39. P.L. 106-568 amended section 401(b) of NAHASDA to require a performance agreement should HUD determine that a failure to comply with the requirements of the Act is due to technical incapacity of the recipient not caused by a pattern or practice of activities constituting a willful noncompliance. Section 401(b) now reads:

(b) NONCOMPLIANCE BECAUSE OF TECHNICAL INCAPACITY-

- (1) IN GENERAL-** If the Secretary makes a finding under subsection (a), but determines that the failure to comply substantially with the provisions of this Act-
 - (A) is not a pattern or practice of activities constituting willful noncompliance, and**
 - (B) is a result of the limited capability or capacity of the recipient,** the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this Act in compliance with the requirements under this Act, **if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement.**
- (2) PERFORMANCE AGREEMENT-** The period of a performance agreement described in paragraph (1) shall be for 1 year.
- (3) REVIEW-** Upon the termination of a performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.
- (4) EFFECT OF REVIEW-** If, on the basis of a review under paragraph (3), the Secretary determines that the recipient--
 - (A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and**
 - (B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to**

comply substantially with this Act, and the recipient shall be subject to an action under subsection (a).

There is no relevant provision in the existing program regulations. This statutory amendment was previously addressed by Notice PIH 2003-2. A technical correction to the statute is required at 401(b)(4)(A) to change the word “and” to “or.” Rulemaking is required to define the term “performance agreement.”

Public Law 105-276 Amendments to NAHASDA: The following lists the Public Law 105-276 (passed in 1998) statutory amendments to NAHASDA. Language added pursuant to Public Law 105-276 in each section is **bolded**.

40. P.L. 105-276 amended section 207(b) of NAHASDA which now reads as follows:

- (b) **TENANT AND HOMEBUYER SELECTION-** The owner or manager of affordable rental housing assisted with grant amounts provided under this Act shall adopt and utilize written tenant **and homebuyer** selection policies and criteria that--
- (1) are consistent with the purpose of providing housing for low-income families;
 - (2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and provide for—
 - (A) the selection of tenants **and homebuyers** from a written waiting list in accordance with the policies and goals set forth in the Indian housing plan for the tribe that is the grant beneficiary of such grant amounts; and
 - (B) the prompt notification in writing **to any rejected applicant of that rejection and the grounds for that rejection.**

No conforming regulation is required.

41. P.L. 105-276 amended section 209 of NAHASDA by changing the cross-reference to “section 205(a)(2).” Section 209 now reads as follows:

SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING REQUIREMENT

If a recipient uses grant amounts to provide affordable housing under this title, and at any time during the useful life of the housing the recipient does not comply with the requirement under section **205(a)(2)**, the Secretary shall take appropriate action under section 401(a).

This is a technical correction. No action is required.

42. P.L. 105-276 amended the definition of “INDIAN AREA” in section 4 of NAHASDA⁴ which now reads as follows:

⁴ Section 4 of NAHASDA was also amended by the NRA. See NRA amendments above.

(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.

This is a technical correction. No action is required.

43. P.L. 105-276 amended the cross-reference in the definition of “STATE RECOGNIZED TRIBE” in section 4 of NAHASDA by deleting the previous reference to “section 107” and replacing it with a reference to “section 705.” The provision now reads as follows:

(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.

This is a technical correction. No action is required.

44. P.L. 105-276 amended section 101(c) of NAHASDA which now reads as follows:

(c) LOCAL COOPERATION AGREEMENT- **Notwithstanding any other provision of this Act, grant amounts provided under this Act on behalf of an Indian tribe may not be used for rental or lease-purchase homeownership units that are owned by the recipient for the tribe unless the governing body of the locality within which the property subject to the development activities to be assisted with the grant amounts is or will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this Act.** The Secretary may waive the requirements of this subsection and subsection (d) if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) until such time as the matter of making such payments has been resolved in accordance with subsection (d).

This is a clarification limiting the circumstances under which the Secretary would be prohibited from making a grant due to the lack of a cooperation agreement between a recipient and a local governing body. No conforming regulation is required.

45. P.L. 105-276 amended section 101(d) of NAHASDA which now reads as follows:

- (d) **EXEMPTION FROM TAXATION-** Notwithstanding any other provision of this Act, grant amounts provided under this Act on behalf of an Indian tribe may not be used for affordable housing activities under this Act for rental or lease-purchase dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or with amounts provided under this Act that are owned by the recipient for the tribe unless—
- (1) such dwelling units (which, in the case of units in a multi-unit project, shall be exclusive of any portions of the project not developed under the United States Housing Act of 1937 or with amounts provided under this Act) are exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and
 - (2) the recipient **for the tribe** makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of \$150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as--
 - (A) is prescribed by State, tribal, or local law;
 - (B) is agreed to by the local governing body in the agreement under subsection (c); or
 - (C) the recipient and the local governing body agree that such user fees or payments in lieu of taxes shall not be made.

This is a technical correction. No action is required.

46. P.L. 105-276 amended section 102(a) of NAHASDA which now reads as follows:

- (a) **PLAN SUBMISSION-** The Secretary shall provide--
- (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 (c) for the tribe; and
 - (2) for the review of such plans.

This is a technical correction. No action is required.

47. P.L. 105-276 amended and clarified section 103(c)(3) of NAHASDA which now reads as follows:

- (c) **REVIEW-** After submission of the Indian housing plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this subsection, the

Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan--

- (1) set forth the information required by section 102 to be contained in an Indian housing plan;
- (2) are consistent with information and data available to the Secretary; and
- (3) are **not** prohibited by or inconsistent with any provision of this Act or other applicable law.

This is a technical correction. No action is required.

48. P.L. 105-276 amended section 201(b)(6) of NAHASDA which now reads as follows:

- (6) EXEMPTION- Title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 shall not apply to actions by **federally recognized tribes and the tribally designated housing entities of those tribes under this Act.**

This is a technical correction. No action is required.

49. P.L. 105-276 amended section 205(a)(1) of NAHASDA which now reads as follows:

- (a) IN GENERAL- Housing shall qualify as affordable housing for purposes of this Act only if--
 - (1) each dwelling unit in the housing--
 - (A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of their initial occupancy of such unit;
 - (B) in the case of a contract to purchase existing housing, is made available for purchase only by a family that is a low-income family at the time of purchase;**
 - (C) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, is made available for lease-purchase only by a family that is a low-income family at the time the agreement is entered into; and**
 - (D) in the case of a contract to purchase housing to be constructed, is made available for purchase only by a family that is a low-income family at the time the contract is entered into; and**

This is a technical correction. No action is required.

50. P.L. 105-276 amended section 208 of NAHASDA⁵ which now reads as follows:

- (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

⁵ Section 208 of NAHASDA was also amended by the NRA. See NRA amendments above.

- 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.
- (b) EXCEPTION- A law enforcement agency described in **subsection (a)** shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

This is a technical correction. No action is required.

51. P.L. 105-276 amended Title IV of NAHASDA by adding at the end of Title IV the following provision:

SEC. 408. PUBLIC AVAILABILITY OF INFORMATION.

Each recipient shall make any housing plan, policy, or annual report prepared by the recipient available to the general public.

No conforming regulation is required.

52. P.L. 105-276 amended the TABLE OF CONTENTS in section 1(b) of NAHASDA by inserting the following:

Sec. 408 Public availability of information

This is a technical correction. No action is required.

7. For Further Information

For further information, please contact the Office of Native American Programs at (202) 401-7914.

_____/s/
Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

Appendix A. Index to Amendments

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