

NATIONAL AMERICAN INDIAN HOUSING COUNCIL

SECTION-BY-SECTION ANALYSIS OF H.R.2786

THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-
DETERMINATION REAUTHORIZATION ACT OF 2008

October 15, 2008

Section 1. Short Title; Table of Contents. (Pp. 1-2)

Section 1 provides the title of the Act is the “Native American Housing Assistance and Self-Determination Act Reauthorization Act of 2008” and provides a table of contents for this Act.

Section 2. Congressional Findings. (Page 2)

Section 2 amends the Act’s findings by replacing “should” with the mandatory “shall” with regard to the Federal government’s role in providing housing assistance and the development of private housing finance mechanisms, and doing so in ways that recognize Indian self-determination and tribal self governance.

Section 3. Definitions. (Page 2)

Section 3 provides a new definition of “Housing Related Community Development” as “any facility, community building, business, activity, or infrastructure” that (1) is owned by a tribe or a tribally designated housing entity (TDHE), (2) is necessary to the provision of housing; and (3) would help reduce the cost of housing construction, or (3)(a) would make housing more affordable, accessible or practicable, or (3)(b) would otherwise advance the purpose of the Act.

Section 101. Block Grants. (Pp. 2-3)

Section 101 adds the following new sections:

“(j) Federal Supply Sources” – to have tribes and TDHEs considered “Executive agencies” for purposes of the Federal supply schedule and to make “each employee of the Indian tribe or [TDHE]” eligible to have access to that schedule on the same basis as employees of Executive agencies.

“(k) Tribal Preference in Employment” – to make tribal (as opposed to “Indian”) employment and contract preference laws govern with respect to a grant received by that Indian tribe.

Section 102. Indian Housing Plans.**(Pp. 3-5)**

Section 102 deletes the phrase “fiscal year” where it appears and replaces it with “tribal program” without changing the requirement that annual plans be filed. Amends section 102 by deleting subsection “(b) 5-year plan”, re-designating the remaining paragraphs, by renaming subsection (c) as “(b) Annual plan”, and by striking current section “(1) Goals and objectives” and replacing it with “(1) Description of Planned Activities” which will detail the types of households to be assisted, the types and levels of assistance to be provided, and the quantity of units produced, households assisted and outcomes anticipated. This section also:

- Strikes in its entirety “(4) Affordable housing resources”;
- Redesignates as “(4) Certificate of Compliance” and
- Redesignates as “(5) Certain Families”;
- Deletes “Indian” from “(5) Certain Families” and
- Adds a new subsection “(6) Self Determined Housing Activities Program”

Section 103. Review of Plans.**(Page 5)**

Section 103 re-writes subsection “(d) Updates to Plan” so that once a tribe submits a housing plan under §4112, it may comply with subsequent reporting requirements by submitting only information related to changes that are necessary to the plan originally submitted. Strikes “(e) Effective date” and inserts instead a new “(e) Self-determined Activities Program” limiting the Secretary’s scope of review of the housing plan to ensure that the recipient is within the funding limits for the self-determined housing activities program contained in new section 232(b)(2) and not judging the results or outcomes of those activities.

Section 104. Treatment of Program Income and Labor Standards.**(Page 5)**

Section 104 excludes from program income any income derived from a developer’s fee if the project receives a Low-Income Housing Tax Credit and the project is funded initially with grant funds under the Act only if the developer’s fee is approved by the relevant State housing credit agency.

Section 105. Regulations.**(Page 6)**

Section 105 requires the Secretary to establish a negotiated rulemaking committee to develop implementing regulations not later than 180 days after enactment of this Act or any other Act to reauthorize this Act. Requires the Secretary to (i) initiate the actual rulemaking not later than 90 days after enactment of this Act or any other Act to reauthorize this Act, and (ii) promulgate regulations to implement these changes not later than 18 months after enactment. Requires the Secretary in consultation with the Indian tribes to review “once every 7 years” the regulations promulgated pursuant to this section.

Section 201. National Objectives and Eligible Families. (Pp. 6-7)

Section 201 includes loan guarantees under title VI as an allowable housing activity; authorizes housing or housing assistance to a family that is not low income provided the Secretary authorizes such; strikes the word “Non-Indian” from “(3) Non-Indian Families” and rewrites it to read “(3) Essential Families;” adds the phrase “or other unit of local government” to the list of potential governmental employers of law enforcement officers that are eligible to receive housing or housing assistance.

Section 202. Eligible Affordable Housing Activities. (Page 7)

Section 202 redefines “affordable housing activities” to be those activities “to develop, operate, maintain, or support” affordable housing for rental or homeownership rather than just those to “develop or support” for those purposes. Strikes “development of utilities” and adds “development and rehabilitation of utilities, necessary infrastructure” and “mold remediation” to the list of allowable activities. Authorizes a tribe to establish reserve accounts to accumulate funds for purposes of administration and planning related to affordable housing activities. The funds in such accounts may not exceed 1/4 of the 5-year average of the annual amount used by a recipient for such purposes.

Section 203. Program Requirements. (Page 7)

Section 203 adds the following new subsections:
“(f) Use of Grant Amounts Over Extended Periods” to authorize the multi-year use of grant amounts for affordable housing purposes provided the tribe’s housing plan so provides and that any amounts not used may be used in any subsequent fiscal year.
“(g) De Minimis Exception for Procurement of Goods and Services” to exempt from the normal procurement rules, the acquisition by a tribe of goods and services less than \$5,000.

Section 204. Low-Income Requirement and Income Targeting. (Page 8)

Section 204 clarifies that 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 regardless of income level.

Section 205. Availability of Records. (Page 8)

Section 205 makes National Crime Information Center records related to criminal convictions available to tribes and TDHEs for those applying for employment.

Section 206. Self-Determined Housing Activities for Tribal Communities Program. (Pp. 8-11)

Section 206 establishes a new “Subtitle B – Self-Determined Housing Activities for Tribal Communities” to “provide Indian tribes with flexibility” in the use of block grant

funds “in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure,” not more than 20% or \$2,000,000 per annum. Notably, new section 233(b) would prohibit the use of funds for “commercial or economic development.”

Section 301. Allocation Formula.

(Pp. 11-12)

Section 301 requires the Secretary to contract with an organization with expertise in housing and other demographic data collection methodologies, in consultation with Indian tribes and organizations, to assess existing data sources, including alternatives to the decennial census, for determination of need and to develop and recommend methodologies for collecting data on any of those factors, including formula area.

The latter part of the section 301 proposal, the so-called “Fort Peck fix”, which has been the subject of negotiated rulemaking and federal litigation, clarifies that conveyed units or other units no longer owned or operated by a grant recipient as affordable housing may not be counted in the funding formula. The Fort Peck fix 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 reauthorization legislation.

Section 401. Remedies for NonCompliance.

(Page 12)

Section 401 provides that the failure to report the number of low-income dwelling units shall not be considered “substantial non-compliance”.

Section 402. Monitoring of Compliance.

(Page 12)

Section 402 clarifies that recipient shall conduct an “appropriate level of” of onsite inspection of housing.

Section 403. Performance Reports.

(Page 12)

Section 403 replaces the word “goals” with the phrase “planned activities”.

Section 501. Effect on Home Investment Partnerships Act.

(Page 13)

Section 501 adds “nothing in this Act or amendment prohibits or prevents any participating jurisdiction from providing amounts to an Indian tribe or TDHE.”

Section 601. Demonstration Program for Guaranteed Loans to Finance Tribal Community and Economic Development Activities. (Pp. 13-16)

Section 601 establishes a demonstration program to expand tribal community and economic development loan programs to include tribes and TDHEs, a resource that is already available to local governments, to support the development of affordable housing for American Indians and Alaska Natives. Program is limited to four tribes or TDHEs per HUD region.

Section 701. Authorization of Appropriations. (Page 16)

Section 701 extends the authorization of Indian Housing Block Grants, Title VI loan guarantees and training and technical assistance, from FY2009 through 2013.

Section 801. Limitation on Use for Cherokee Nation. (Page 16)

Section 801 limits NAHASDA funds from being expended for the benefit of the Cherokee Nation. This limitation shall not be effective while the Cherokee Court's Temporary Order and Temporary Injunction issued on May 14, 2007 remains in effect.

Section 802. Limitation of Use of Funds. (Page 16)

Section 802 prohibits the use of NAHASDA funds to employ illegal aliens.

Section 803. GAO Study on Effectiveness of NAHASDA (Page 17)

Section 803 directs the Comptroller General to undertake a study of the effectiveness of NAHASDA especially as regards to its impact on Indian tribes of various sizes and types. The Comptroller is directed to submit its report to Congress not later than one year after enactment.