

ALASKA NATIVE HOUSING ASSISTANCE DEMONSTRATION PROGRAM

A bill to specify the terms of contracts entered into by the United States, through the Department of Housing and Urban Development (HUD), and certain eligible Alaska Native Tribes and Tribal organizations to provide housing programs and services to Indian/Alaska Native families and individuals.

SEC. 1. The Native American Housing Assistance and Self-Determination Act of 1996 (25

U.S.C. 4101 et seq.) (hereinafter “NAHASDA”) is amended by striking section 107 and inserting the following:

“SEC. 107. ALASKA NATIVE HOUSING ASSISTANCE DEMONSTRATION PROGRAM.

(a) DEFINITIONS. In this section:

- (1) “affordable housing activities” means housing activities identified by the participant under subsection (j) of this section;
- (2) “Alaska housing area” means the NAHASDA service area for each eligible participant;
- (3) “demonstration program” means the Alaska Native Housing Assistance Demonstration Program established by this section;
- (4) “eligible tribal organization” means those regional housing entities established pursuant to Alaska Statute (A.S. 18.55.996) that are current recipients of funding pursuant to section 101 of this Act.
- (5) “participant” means any eligible tribal organization that has timely elected to participate in the demonstration program for the fiscal year.

(b) ESTABLISHMENT. The Secretary shall establish and implement a five year demonstration program in accordance with the provisions of this section. The program shall commence for fiscal year 2008. In the event that the demonstration

program is not reauthorized after fiscal year 2012, participants in the program shall be transitioned back to the block grant program established under section 101 of this Act. Eligible entities that choose not to participate in the demonstration program shall remain fully eligible as block grant recipients under section 101 of this Act.

(c) **ELIGIBLE TRIBAL ORGANIZATIONS.** Eligible tribal organizations that elect to participate in the demonstration program for a fiscal year, and Alaska tribes that either utilized the participant as their tribally designated housing entity on the effective date of this section or elect to participate in the demonstration program through the participant under subsection (f) of this section, may not be a recipient of block grant funding under section 101 of this Act for that fiscal year.

(d) **DEADLINE FOR ELECTION.** An eligible tribal organization desiring to participate in the demonstration program for a fiscal year must notify the Secretary of its intent to participate within 60 days of the commencement of each fiscal year; *provided, however,* that all designations must be made before the beginning of the fourth year of the program and for fiscal year 2008, the designation may be made no later than October 1, 2007.

(e) **FUNDING AGREEMENTS.** The Secretary shall on an annual basis enter into individual Annual Funding Agreements (hereinafter "AFA's") with each eligible participating entity, which agreements shall:

- (1) set forth the general terms and conditions which shall be applicable to all participating entities, and those which may be negotiated on an individual basis pursuant to the authority provided under this section; and
- (2) specify the funding amounts to be provided to each participant, which

amounts shall, consistent with the Federal Government's laws and trust relationship to and for Indian people, provide an annual base funding amount which shall be equal to that which each participating entity would have otherwise received in the year this Act is enacted, pursuant to the section 101 of this Act; and

- (3) provide that in each subsequent fiscal year, such individual base amounts as proportionate totals of the Alaska statewide total, shall only be adjusted based on overall national congressional increases to the NAHASDA block grant program or general rescissions; and
- (4) provide that in the event of overall increases to the NAHASDA block grant at the national level, Demonstration Program participants shall collectively be entitled to a proportionate amount from the national total based on the proportionate NAHASDA formula allocation percentage of the total Alaska allocation relative to the national pool at the time of the enactment of this Act; and
- (5) provide that, consistent with existing law, that each agreement entered into hereunder shall specify the amount of funding designated as Current Assisted Stock ("CAS") funding and "Needs" funding; and
- (6) provide that to the extent that affordable housing activities carried out by a participant under this Act reduce administrative or other responsibilities of the Secretary and result in savings that have not otherwise been included in an AFA, the Secretary shall make such savings available for the provision of additional services to program beneficiaries in a manner that is equitable for

beneficiaries receiving services under the provisions of this Act as well as those who continue to receive services under NAHASDA. Such identified savings, if any, as well as any funding made available pursuant to subsection (3) above, shall be distributed to participating entities pursuant to a negotiated formula allocation methodology to be mutually negotiated by the participants and the Secretary through the negotiated rulemaking process provided for below.

(f) **ADDITIONAL BASE AMOUNT INCLUSIONS; TRIBAL ELECTION.** Any Alaska tribe within a participant's housing area that did not utilize that participant as its tribally designated housing entity on the effective date of this section may designate that participant as its tribally designated housing entity, and, upon designation, that participant's base amount under paragraph (e)(1) of this section shall be credited with an amount equal to the amount of funding received by the designating tribe under section 101 of this Act for the fiscal year in which the designation is made. Any designation made under this subsection must be provided to the Secretary in writing no later than 90 days prior to the commencement of the fiscal year in which the designation will take effect, and must be made no later than July 1, 2011; *provided, however*, that for fiscal year 2008, the designation may be made no later than October 1, 2008.

(g) **PARTICIPANT BUDGETARY AUTHORITY.** Subject to the limitations of subsection (k) of this section, participants may expend funds awarded under this section on affordable housing activities and the cost of administering the demonstration project in the participant's housing area based solely on the internal

budgeting approval processes established by the governing board of each participating entity. Secretary may not require review or approval of any participant's budget allocation or reallocation.

(h) **CARRYFORWARD OF FUNDS; PROGRAM INCOME.** Notwithstanding any other provision of law, funding provided to a participant under this section for any fiscal year, which are not obligated or expended prior to the beginning of the next subsequent fiscal year shall remain available for obligation or expenditure during such subsequent fiscal year and thereafter until obligated or expended and accounted for in the annual single audit required of each participant pursuant to subsection (l) of this section. A participant may retain any income any program income that is realized from any amounts received under this section, and no awards under this section may be reduced on account of the realization of any such income.

(i) **GENERAL ADMINISTRATIVE PROVISIONS.**

(1) **FEDERAL SUPPLY SOURCES.** For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a participant shall be deemed an executive agency when carrying out programs, services, functions and activities under this section and participant and its employees shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency.

(2) **MATCHING FUNDS.** Notwithstanding any other provision of law, a participant may use funds provided under this section to meet matching or cost participation requirements under any other federal or non-federal program, and

funds provided under this section shall be considered non-federal funds.

(3) TDHE AUTHORITY. Unless otherwise limited by tribal resolution, TDHE's shall be authorized, on behalf of their respective designating tribes, to assume all duties, responsibilities and functions which are provided for under this Act and which may be lawfully delegated by such tribes.

(j) ELIGIBLE USES OF FUNDS.

(1) ADMINISTRATION AND PLANNING. Not more than twenty percent of any fiscal year award may be expended for demonstration project administration and planning.

(2) AFFORDABLE HOUSING ACTIVITIES. Participants shall be authorized to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:

(A) *Indian Housing Assistance* - The provision of any service or facility authorized for Indian tribes under Section 202(1)-(6) of this Act.

(B) *Maintenance and Modernization* - The maintenance, operation and modernization of affordable housing units constructed with funds provided under this Act.

(C) *Rental Vouchers* - Notwithstanding any other provision of law, the issuance of rental assistance payments to a building owner, including facilities owned in whole or part by a participant, or to a tenant eligible to receive assistance under this Act shall not be considered a federal award with respect to Title 26, Internal Revenue Code, Section 42. Said

rental assistance payments to either a building owner or tenant shall not affect the eligible basis of a qualified building for the taxable year and all succeeding taxable years.

(D) *Housing Related Community and Economic Development* – The development of any facility, community building, business, activity or infrastructure that –

(i) is necessary to the direct construction of affordable housing in the housing area; would help a participant reduce the cost of construction of affordable housing; or would otherwise promote the purposes of this Act;

(ii) *provided that*, ‘housing related community and economic development’ does not include any activity conducted under the Indian Gaming Regulatory Act (25 U.S.C. 2710 et seq.); and

(E) *Other Activities* - Participants may negotiate with the Secretary to authorize expenditures for other programs and services that may best meet or support affordable housing needs within their respective service areas. Any activities demonstrated to meet such needs that are designed to carry out the purposes of this Act, and not otherwise prohibited by law, shall be allowed by the Secretary to the maximum extent possible.

(k) BASE BUDGET REQUEST. For fiscal years 2009 through 2012, the Secretary shall identify, in the annual budget request by the President to the Congress under section 1105 of Title 31, United States Code, a separate Alaska Native Housing Assistance Demonstration Program funding amount which shall be equal to the sum of the

amounts received by participants in the previous fiscal year pursuant to the provisions of this section.

(1) RECORDS AND MONITORING.

(1) MAINTENANCE OF RECORDS. Each participant shall keep such records as the Secretary shall prescribe by regulation promulgated under sections 552 and 553 of Title 5, United State Code, including records which fully disclose:

(A) the amount and disposition by such participant of the proceeds of funds awarded under this section,

(B) the cost of the project or undertaking in connection with which such assistance is given or used,

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit as required by subsection (e) below.

(2) ACCESS TO RECORDS. The Comptroller General and the Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project undertaking referred to in the preceding paragraph of this subsection, have access (for the purpose of examination) to any books, documents, papers, and records of participants which in the opinion of the Comptroller General or the Secretary may be related or pertinent to the grants, contracts, subcontracts, sub-funds, or transactions other by which funds may have been received or expended.

(3) ACCESS BY INDIAN PEOPLE. Each participant shall make such reports

and information available to the Indian people served or represented by such participant as and in a manner determined to be adequate by the Secretary.

(4) REPAYMENT OF FUNDS UPON DISSOLUTION. Should any participant, for any reason, be subject to dissolution, funds paid to the participant under this section and not expended or used for the purpose for which paid shall be repaid to the Treasury of the United States through the Secretary.

(5) SINGLE AGENCY AUDIT. All participants receiving awards under this section shall be subject to the reporting requirement of the Single Audit Act of 1984 (98 stat. 2327, 31 U.S.C. 7501 et. seq.). No other financial audit may be required by the Secretary relating to funds awarded under this section. In addition to the single-agency audit report requirements, participants shall submit such additional information concerning the programs, functions, services, or activities carried out pursuant to an agreement under this section as participants may jointly negotiate with the Secretary pursuant to Section 12 of this Act.

(m) REGULATIONS.

(1) NEGOTIATED RULEMAKING COMMITTEE.

(A) Notwithstanding sections 563(a) and 565(a) of Title 5, all regulations required under this section shall be issued according to a negotiated rulemaking procedure under subchapter III of chapter 5 of Title 5.

(B) Final rules under this subsection shall be adopted and published by the Secretary no later than eighteen (18) months following the

effective date of this Act.

(2) MEMBERSHIP. A negotiated rulemaking committee established pursuant to this section shall have as its members only Federal and participating entity representatives, a majority of whom shall be representatives of participating entities, with each entity entitled to appoint no more than 2 official representatives.

(3) EFFECT. The lack of promulgated regulations shall not limit the effect or implementation of the provisions of this section. Regulations promulgated under Section 106 of this Act shall not apply to participants, *provided that*, participants may in their sole discretion elect to include select NAHASDA regulatory provisions within an individual participant funding agreement.

(n) REPLACEMENT OF PARTICIPANT

(1) REPLACEMENT. Notwithstanding any other provision of law, the Secretary may, only in the circumstances set forth in paragraph (2) of this subsection, replace the participant with another qualified participant capable of servicing the housing area of the participant being investigated.

(2) CONDITIONS OF REMOVAL. The Secretary may replace the participant only upon a determination by the Secretary, on the record after opportunity for a hearing, that the participant has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the applicable requirements of this Act.

(3) Any replacement participant under this subsection shall act as a participant only for a period that expires upon:

(A) a date certain, which shall be specified by the Secretary upon making the determination under paragraph (2); or

(B) the occurrence of specific conditions, which conditions shall be specified in written notice provided by the Secretary to the removed participant upon making the determination under paragraph (2).

(o) APPLICABILITY OF OTHER LAWS.

(1) EFFECT OF OTHER LAWS. The provisions of this section supersede any conflicting provisions of law (including any conflicting regulations) in effect at the time of enactment, and at the request of any participant, the Secretary is authorized to waive or repeal any regulation inconsistent with the provisions of this section.

(2) FACILITATION. Except as otherwise provided by law, the Secretary shall facilitate the implementation of agreements entered into under this Act by interpreting, negotiating and implementing each existing Federal law and regulation, and negotiating implementing regulation as required by section 12 of this Act that are similar in nature, purpose and scope to agreements and regulations entered into pursuant to the self-determination and self-governance provisions of Titles I, IV and V of the Indian Self-Determination and Education Assistance Act of 1975, as amended (25 U.S.C. 450 et seq.). A participating entity may, at its discretion, choose to identify and list in an AFA which, if any specific provisions of NAHASDA and its implementing regulations shall be applicable and deemed to be incorporated into the individual AFA.

(p) AUTHORIZATION OF APPROPRIATIONS.

(1) TRAINING, COORDINATION AND TECHNICAL ASSISTANCE. There is authorized to be appropriated, and the Secretary is authorized to provide a sum of not less than \$500,000.00 for each of fiscal years 2008 through 2012 to the Association of Alaska Housing Authorities to provide training, coordination and technical assistance to participants to assume the self-governance responsibilities imposed by this section.

SEC 2. EFFECTIVE DATE. This Act takes effect October 1, 2007.

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