

105TH CONGRESS
1ST SESSION

H. R. 2663

To provide technical corrections to the Native American Housing Assistance and Self-Determination Act of 1996, to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1997

Mr. METCALF introduced the following bill; which was referred to the
Committee on Banking and Financial Services

A BILL

To provide technical corrections to the Native American Housing Assistance and Self-Determination Act of 1996, to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Native American Housing Assistance and Self-Deter-
6 mination Act Amendments of 1997”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Restriction on waiver authority.
- Sec. 3. Organizational capacity; assistance to families that are not low-income.
- Sec. 4. Elimination of waiver authority for small tribes.
- Sec. 5. Expanded authority to review Indian housing plans.
- Sec. 6. Inclusion of homebuyer selection policies and criteria.
- Sec. 7. Oversight.
- Sec. 8. Allocation formula.
- Sec. 9. Hearing requirement.
- Sec. 10. Performance agreements.
- Sec. 11. Public availability of Indian housing plans.
- Sec. 12. Technical and conforming amendments.

SEC. 2. RESTRICTION ON WAIVER AUTHORITY.

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

SEC. 3. ORGANIZATIONAL CAPACITY; ASSISTANCE TO FAMILIES THAT ARE NOT LOW-INCOME.

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

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

(2) by inserting before subparagraph (B), as redesignated by paragraph (1) of this subsection, the following:

“(A) a description of the entity that is responsible for carrying out the activities under the plan, including a description of—

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

“(ii) the organizational capacity of the entity, including—

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

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

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

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

1 **SEC. 4. ELIMINATION OF WAIVER AUTHORITY FOR SMALL**
2 **TRIBES.**

3 Section 102 of the Native American Housing Assist-
4 ance and Self-Determination Act of 1996 (25 U.S.C.
5 4112) is amended—

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

7 (2) by redesignating subsection (g) as sub-
8 section (f).

9 **SEC. 5. EXPANDED AUTHORITY TO REVIEW INDIAN HOUS-**
10 **ING PLANS.**

11 Section 103(a)(1) of the Native American Housing
12 Assistance and Self-Determination Act of 1996 (25 U.S.C.
13 4113(a)(1)) is amended—

14 (1) in the first sentence, by striking “limited”;
15 and

16 (2) by striking the second sentence.

17 **SEC. 6. INCLUSION OF HOMEBUYER SELECTION POLICIES**
18 **AND CRITERIA.**

19 Section 207(b) of the Native American Housing As-
20 sistance and Self-Determination Act of 1996 (25 U.S.C.
21 4137(b)) is amended—

22 (1) by striking “TENANT SELECTION.—” and
23 inserting “TENANT AND HOMEBUYER SELEC-
24 TION.—”;

25 (2) in the matter preceding paragraph (1), by
26 inserting “and homebuyer” after “tenant”; and

1 (3) in paragraph (3)(A), by inserting “and
2 homebuyers” after “tenants”.

3 **SEC. 7. OVERSIGHT.**

4 (a) REPAYMENT.—Section 209 of the Native Amer-
5 ican Housing Assistance and Self-Determination Act of
6 1996 (25 U.S.C. 4139) is amended to read as follows:

7 **“SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING**
8 **REQUIREMENT.**

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

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

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

20 “(a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE
21 31, UNITED STATES CODE.—

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

1 audit requirements that apply to non-Federal enti-
2 ties under that chapter.

3 “(2) PAYMENT OF COSTS.—

4 “(A) IN GENERAL.—The Secretary may
5 arrange and pay for any audit required under
6 paragraph (1).

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

20 “(b) ADDITIONAL REVIEWS AND AUDITS.—

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

1 “(A) determine whether the recipient—

2 “(i) has carried out—

3 “(I) eligible activities in a timely
4 manner; and

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

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

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

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

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

21 “(3) COST OF ADDITIONAL AUDITS.—Additional
22 audits and reviews conducted under this subsection
23 shall be paid for by the Secretary.

24 “(c) REVIEW OF REPORTS.—

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

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

10 “(A) may revise the report; and

11 “(B) not later than 30 days after the date
12 on which those comments are received, shall
13 make the comments and the report (with any
14 revisions made under subparagraph (A)) readily
15 available to the public.

16 “(d) EFFECT OF REVIEWS.—Subject to section
17 401(a), after reviewing the reports and audits relating to
18 a recipient that are submitted to the Secretary under this
19 section, the Secretary may adjust the amount of a grant
20 made to a recipient under this Act in accordance with the
21 findings of the Secretary with respect to those reports and
22 audits.”.

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

2 Section 302(d) of the Native American Housing As-
3 sistance and Self-Determination Act of 1996 (25 U.S.C.
4 4152(d)) is amended by adding at the end the following:

5 “(3) ADJUSTMENT TO ALLOCATION FOR-
6 MULA.—If any housing authority received no mod-
7 ernization funding and partial or no operating as-
8 sistance during fiscal year 1996, the allocation for-
9 mula under paragraphs (1) and (2) shall be adjusted
10 to provide funding to allow such housing authorities
11 to operate properly.”.

12 **SEC. 9. HEARING REQUIREMENT.**

13 Section 401(a) of the Native American Housing As-
14 sistance and Self-Determination Act of 1996 (25 U.S.C.
15 4161(a)) is amended—

16 (1) by redesignating paragraphs (1) through
17 (4) as subparagraphs (A) through (D), respectively,
18 and indenting each such subparagraph 2 ems to the
19 right;

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

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

23 (3) by amending subparagraph (B), as redesign-
24 nated by paragraph (1) of this subsection, to read
25 as follows:

1 “(B) reduce payments under this Act to
2 the recipient by an amount equal to the sum of
3 the amount of such payments that were not ex-
4 pended in accordance with this Act and the cost
5 of additional audits and reviews requested by
6 and paid for by the Secretary.”;

7 (4) by striking “If the Secretary takes an ac-
8 tion under paragraph (1), (2), or (3)” and inserting
9 the following:

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

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

14 “(3) EXCEPTION FOR CERTAIN ACTIONS.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other provision of this subsection, if the Sec-
17 retary makes a determination that the failure of
18 a recipient of assistance under this Act to com-
19 ply with any provision of this Act is resulting,
20 and would continue to result, in an expenditure
21 of Federal funds in a manner that is not au-
22 thorized by law, the Secretary may take an ac-
23 tion described in paragraph (1)(C) before con-
24 ducting a hearing.

1 “(B) PROCEDURAL REQUIREMENT.—If the
 2 Secretary takes an action described in subpara-
 3 graph (A), the Secretary shall—

4 “(i) provide notice to the recipient at
 5 the time that the Secretary takes that ac-
 6 tion; and

7 “(ii) conduct a hearing not later than
 8 60 days after the date on which the Sec-
 9 retary provides notice under clause (i).

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

16 **SEC. 10. PERFORMANCE AGREEMENTS.**

17 Section 401(b) of the Native American Housing As-
 18 sistance and Self-Determination Act of 1996 (25 U.S.C.
 19 4162(b)) is amended to read as follows:

20 “(b) PERFORMANCE AGREEMENTS IN CASES OF
 21 NONCOMPLIANCE DUE TO TECHNICAL INCAPACITY.—

22 “(1) IN GENERAL.—If the Secretary find, pur-
 23 suant to subsection (a), that a recipient has failed
 24 to comply substantially with this Act, the Secretary
 25 may provide technical assistance for that recipient

(directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance in compliance with this Act.

“(2) CONDITIONS FOR ASSISTANCE.—The Secretary may provide assistance under paragraph (1) only if—

“(A) the failure to comply is not a practice or pattern of activities constituting willful non-compliance;

“(B) the failure to comply is a result of the limited capability or capacity of the recipient; and

“(C) the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives the recipient will be required to achieve not later than 1 year after the commencement of the performance agreement.

“(3) TIME PERIOD FOR ASSISTANCE.—If a recipient enters into a performance agreement under paragraph (2) and is unable, despite good faith efforts, to achieve the compliance objective of that performance agreement within 1 year after the commencement of the performance agreement, the Secretary may enter into a new performance agreement

1 with that recipient. The Secretary shall not enter
2 into more than 3 consecutive performance agree-
3 ments with a recipient.

4 “(4) CONTINUED FAILURE TO COMPLY.—If,
5 after 3 consecutive performance agreements, a recip-
6 ient has failed to meet applicable compliance objec-
7 tives, the Secretary shall determine the recipient to
8 have failed to comply substantially with this Act and
9 the recipient shall be subject to an action under sub-
10 section (a).”.

11 **SEC. 11. PUBLIC AVAILABILITY OF INDIAN HOUSING PLANS.**

12 Title IV of the Native American Housing Assistance
13 and Self-Determination Act of 1996 (25 U.S.C. 4161 et
14 seq.) is amended by adding at the end the following:

15 **“SEC. 408. PUBLIC AVAILABILITY OF INFORMATION.**

16 “Each recipient shall make available to the general
17 public any housing plan, policy, waiting list, or annual re-
18 port prepared by the recipient.”.

19 **SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.**

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

24 (1) by striking the item relating to section 206;

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

“209. Noncompliance with affordable housing requirement.”;

3 and

4 (3) by inserting after the item relating to sec-
5 tion 407 the following:

“408. Public availability of information.”.

6 (b) DEFINITION OF INDIAN AREAS.—Section 4(10)
7 of the Native American Housing Assistance and Self-De-
8 termination Act of 1996 (25 U.S.C. 4103(10)) is amended
9 by inserting “an Indian tribe or” after “within which”.

10 (c) CROSS-REFERENCE.—Section 4(12)(C)(i)(II) of
11 the Native American Housing Assistance and Self-Deter-
12 mination Act of 1996 (25 U.S.C. 4103(12)(C)(i)(II)) is
13 amended by striking “section 107” and inserting “section
14 108”.

15 (d) ELIMINATION OF TAX EXEMPTION.—Section 101
16 of the Native American Housing Assistance and Self-De-
17 termination Act of 1996 (25 U.S.C. 4111) is amended—

18 (1) by striking subsections (c), (d) and (e); and

19 (2) by inserting the following after subsection

20 (b):

21 “(c) TAX EXEMPTION PERMITTED.—Housing owned
22 and operated by the recipient and developed under a con-
23 tract between the Secretary and an Indian Housing Au-
24 thority pursuant to the United States Housing Act of

1 1937 may be tax-exempt and subject to a payment in lieu
2 of taxes pursuant to or as recited by a cooperation agree-
3 ment between the recipient and the local governing body.
4 Unless abrogated, changed, or modified with the consent
5 of the housing authority or any successor, existing co-
6 operation agreements shall remain in full force and effect
7 for so long as the beneficial title to such a project is held
8 by the housing authority or any successor.

9 “(d) FEE IN LIEU OF TAX REQUIRED.—If one or
10 more local governing bodies are providing services to hous-
11 ing assisted under this Act and, because of Federal, tribal,
12 or State law, or the restricted nature or trust status of
13 the land, the property is exempt from real property taxes,
14 personal property taxes, or special assessment a recipient
15 may not request and the Secretary shall not provide a
16 block grant under this Act unless a user fee is paid to
17 the local governing body or bodies, as compensation for
18 nonfee services normally provided by that entity to offset
19 its costs or unless receipt of such user fees is waived by
20 a local governing body. The amount of the user fee shall
21 be determined by the recipient and the local governing
22 body, but it must be based on the reasonable value of the
23 services provided by the local governing body or bodies.
24 “(e) REQUIREMENTS RELATED TO FEE.—Notwith-
25 standing subsection (d)—

1 “(1) total user fee payments to all local govern-
2 ing bodies for a single housing unit shall be reason-
3 able and comparable as determined by the Secretary
4 using local factors;

5 “(2) any projects placed under a new or exist-
6 ing cooperation agreement that requires a payment
7 in lieu of taxes shall be exempt from the require-
8 ments of subsection (c);

9 “(3) user fee payments shall be required for all
10 units;

11 “(4) housing whose total assistance under this
12 Act is less than \$10,000 shall be exempt from the
13 requirements of subsection (c); and

14 “(5) all housing shall be exempt from the re-
15 quirements of subsection (c) if such housing is
16 owned by the occupant at the inception of the assist-
17 ance or if conveyance of the beneficial title is subse-
18 quently made to the occupant.”.

19 (e) SUBMISSION OF INDIAN HOUSING PLAN.—Sec-
20 tion 102(a) of the Native American Housing Assistance
21 and Self-Determination Act of 1996 (25 U.S.C. 4112(a))
22 is amended—

23 (1) in paragraph (1), by inserting “(A)” after
24 “(1)”;

1 (2) in paragraph (1)(A), as so designated by
2 paragraph (1) of this subsection, by adding “or” at
3 the end;

4 (3) by striking “(2)” and inserting “(B)”; and
5 (4) by striking “(3)” and inserting “(2)”.

6 (f) CLARIFICATION.—Section 103(c)(3) of the Native
7 American Housing Assistance and Self-Determination Act
8 of 1996 (25 U.S.C. 4113(c)(3)) is amended by inserting
9 “not” before “prohibited”.

10 (g) APPLICABILITY OF PROVISIONS OF CIVIL
11 RIGHTS.—Section 201(b)(5) of the Native American
12 Housing Assistance and Self-Determination Act of 1996
13 (25 U.S.C. 4131(b)(5)) is amended—

14 (1) by inserting “federally recognized” before
15 “Indian tribes”; and

16 (2) by striking “under this subsection” and in-
17 serting “under this Act”.

18 (h) ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.—
19 Section 202(2) of the Native American Housing Assist-
20 ance and Self-Determination Act of 1996 (25 U.S.C.
21 4132(2)) is amended by inserting “modest” before “af-
22 fordable housing”.

23 (i) ELIGIBILITY.—Section 205(a)(1) of the Native
24 American Housing Assistance and Self-Determination Act
25 of 1996 (25 U.S.C. 4135(a)(1)) is amended—

1 (1) in subparagraph (A), by striking “and” at
2 the end; and

3 (2) by striking subparagraph (B) and inserting
4 the following:

5 “(B) in the case of housing for home-
6 ownership, is made available only for a family
7 that is a low-income family;

8 “(C) in the case of a lease-purchase agree-
9 ment, is made available at the time that the
10 agreement for that lease-purchase is signed;
11 and

12 “(D) in the case of a contract to purchase
13 housing to be acquired or constructed, is made
14 available at the time the contract for that hous-
15 ing is entered into.”.

16 (j) CERTIFICATION OF COMPLIANCE WITH SUBSIDY
17 LAYERING REQUIREMENTS.—Section 206 of the Native
18 American Housing Assistance and Self-Determination Act
19 of 1996 (25 U.S.C. 4136) is repealed.

20 (k) TENANT SELECTION.—Section 207(b)(3)(B) of
21 the Native American Housing Assistance and Self-Deter-
22 mination Act of 1996 (25 U.S.C. 4137(b)(3)(B)) is
23 amended by striking “the grounds for any rejection” and
24 inserting “such rejection and the grounds for the rejection”.
25 tion”.

1 (l) AVAILABILITY OF RECORDS.—Section 208 of the
2 Native American Housing Assistance and Self-Determina-
3 tion Act of 1996 (25 U.S.C. 4138) is amended—

4 (1) in subsection (a), by striking “paragraph
5 (2)” and inserting “subsection (b)”; and

6 (2) in subsection (b), by striking “paragraph
7 (1)” and inserting “subsection (a)”.

8 (m) IHP REQUIREMENT.—Section 184(b)(2) of the
9 Housing and Community Development Act of 1992 (12
10 U.S.C. 1715z–13a(b)(2)) is amended by striking “that is
11 under the jurisdiction of an Indian tribe” and all that fol-
12 lows before the period at the end.

13 (n) AUTHORIZATION OF APPROPRIATIONS.—Section
14 184(i)(5)(C) of the Housing and Community Development
15 Act of 1992 (12 U.S.C. 1715z–13a(i)(5)(C)) is amended
16 by striking “note” and inserting “not”.

17 (o) NON-FEDERAL FUNDS.—Section 520(l)(5)(B) of
18 the Cranston-Gonzalez National Affordable Housing Act
19 (42 U.S.C. 11903a(l)(5)(B)) is amended by striking “and
20 Indian housing authorities”.

21 (p) INELIGIBILITY OF INDIAN TRIBES.—Section 460
22 of the Cranston-Gonzalez National Affordable Housing
23 Act (42 U.S.C. 12899h–1) is amended by striking “fiscal
24 year 1997” and inserting “fiscal year 1998”.

1 (q) TERMINATIONS.—Section 502(a) of the Native
2 American Housing Assistance and Self-Determination Act
3 of 1996 (25 U.S.C. 4181(a)) is amended by adding at the
4 end the following: “Any housing that is the subject of a
5 contract for tenant-based assistance between the Secretary
6 and an Indian housing authority that is terminated under
7 this section shall, for the following fiscal year and each
8 fiscal year thereafter, be considered to be a dwelling unit
9 under section 302(b)(1).”.

10 (r) AMENDMENTS TO THE PUBLIC AND ASSISTED
11 HOUSING DRUG ELIMINATION ACT OF 1990.—The Public
12 and Assisted Housing Drug Elimination Act of 1990 (42
13 U.S.C. 11901 et seq.) is amended—

14 (1) in section 5123 by inserting “Indian
15 tribes,” before “and private”;

16 (2) in section 5124 (a)(7) by inserting “, an In-
17 dian tribe,” before “or tribally designated”;

18 (3) in section 5125 by inserting “an Indian
19 tribe,” before “or tribally designated”; and

20 (4) by adding at the end the following new
21 paragraph:

22 “(6) INDIAN TRIBE.—The term ‘Indian tribe’
23 has the meaning given that term in section 4 of the

- 1 Native American Housing Assistance and Self-De-
- 2 termination Act of 1996.”.

