

106TH CONGRESS  
2D SESSION

# S. 400

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 2000

Referred to the Committee on Banking and Financial Services

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## AN ACT

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 2000”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Restriction on waiver authority.
- Sec. 3. Assistance to families that are not low-income.
- Sec. 4. Elimination of waiver authority for small tribes.
- Sec. 5. Labor standards.
- Sec. 6. Environmental compliance.
- Sec. 7. Oversight.
- Sec. 8. Allocation formula.
- Sec. 9. Hearing requirement.
- Sec. 10. Performance agreement time limit.
- Sec. 11. Technical and conforming amendments.

3 **SEC 2. RESTRICTION ON WAIVER AUTHORITY.**

4 (a) IN GENERAL.—Section 101(b)(2) of the Native  
 5 American Housing Assistance and Self-Determination Act  
 6 of 1996 (25 U.S.C. 4111(b)(2)) is amended by striking  
 7 “if the Secretary” and all that follows through the period  
 8 at the end and inserting the following: “for a period of  
 9 not more than 90 days, if the Secretary determines that  
 10 an Indian tribe has not complied with, or is unable to com-  
 11 ply with, those requirements due to exigent circumstances  
 12 beyond the control of the Indian tribe.”.

13 (b) LOCAL COOPERATION AGREEMENT.—Section  
 14 101(c) of the Native American Housing Assistance and  
 15 Self-Determination Act of 1996 (25 U.S.C. 4111(c)) is  
 16 amended by adding at the end the following: “The Sec-  
 17 retary may waive the requirements of this subsection and  
 18 subsection (d) if the recipient has made a good faith effort  
 19 to fulfill the requirements of this subsection and sub-  
 20 section (d) and agrees to make payments in lieu of taxes

1 to the appropriate taxing authority in an amount con-  
 2 sistent with the requirements of subsection (d)(2) until  
 3 such time as the matter of making such payments has  
 4 been resolved in accordance with subsection (d).”.

5 **SEC. 3. ASSISTANCE TO FAMILIES THAT ARE NOT LOW-IN-**  
 6 **COME.**

7 Section 102(c) of the Native American Housing As-  
 8 sistance and Self-Determination Act of 1996 (25 U.S.C.  
 9 4112(c)) is amended by adding at the end the following:

10 “(6) CERTAIN FAMILIES.—With respect to as-  
 11 sistance provided by a recipient to Indian families  
 12 that are not low-income families under section  
 13 201(b)(2), evidence that there is a need for housing  
 14 for each such family during that period that cannot  
 15 reasonably be met without such assistance.”.

16 **SEC. 4. ELIMINATION OF WAIVER AUTHORITY FOR SMALL**  
 17 **TRIBES.**

18 Section 102 of the Native American Housing Assist-  
 19 ance and Self-Determination Act of 1996 (25 U.S.C.  
 20 4112) is amended—

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

22 (2) by redesignating subsection (g) as sub-  
 23 section (f).

1 **SEC. 5. LABOR STANDARDS.**

2 Section 104(b) of the Native American Housing As-  
 3 sistance and Self-Determination Act of 1996 (25 U.S.C.  
 4 4114(b)) is amended—

5 (1) by striking “Davis-Bacon Act (40 U.S.C.  
 6 276a–276a–5)” and inserting “Act of March 3,  
 7 1931 (commonly known as the ‘Davis-Bacon Act’)  
 8 (46 Stat. 1494, chapter 411; 40 U.S.C. 276a et  
 9 seq.)”; and

10 (2) by adding at the end the following:

11 “(3) APPLICATION OF TRIBAL LAWS.—Para-  
 12 graph (1) shall not apply to any contract or agree-  
 13 ment for assistance, sale, or lease pursuant to this  
 14 Act, if such contract or agreement is otherwise cov-  
 15 ered by 1 or more laws or regulations adopted by an  
 16 Indian tribe that requires the payment of not less  
 17 than prevailing wages, as determined by the Indian  
 18 tribe.”.

19 **SEC. 6. ENVIRONMENTAL COMPLIANCE.**

20 Section 105 of the Native American Housing Assist-  
 21 ance and Self-Determination Act of 1996 (25 U.S.C.  
 22 4115) is amended by adding at the end the following:

23 “(d) ENVIRONMENTAL COMPLIANCE.—The Secretary  
 24 may waive the requirements under this section if the Sec-  
 25 retary determines that a failure on the part of a recipient  
 26 to comply with provisions of this section—

1 “(1) will not frustrate the goals of the National  
 2 Environmental Policy Act of 1969 (42 U.S.C. 4331  
 3 et seq.) or any other provision of law that furthers  
 4 the goals of that Act;

5 “(2) does not threaten the health or safety of  
 6 the community involved by posing an immediate or  
 7 long-term hazard to residents of that community;

8 “(3) is a result of inadvertent error, including  
 9 an incorrect or incomplete certification provided  
 10 under subsection (c)(1); and

11 “(4) may be corrected through the sole action  
 12 of the recipient.”.

13 **SEC. 7. OVERSIGHT.**

14 (a) REPAYMENT.—Section 209 of the Native Amer-  
 15 ican Housing Assistance and Self-Determination Act of  
 16 1996 (25 U.S.C. 4139) is amended to read as follows:

17 **“SEC. 209. NONCOMPLIANCE WITH AFFORDABLE HOUSING**  
 18 **REQUIREMENT.**

19 “If a recipient uses grant amounts to provide afford-  
 20 able housing under this title, and at any time during the  
 21 useful life of the housing the recipient does not comply  
 22 with the requirement under section 205(a)(2), the Sec-  
 23 retary shall take appropriate action under section  
 24 401(a).”.

1 (b) AUDITS AND REVIEWS.—Section 405 of the Na-  
 2 tive American Housing Assistance and Self-Determination  
 3 Act of 1996 (25 U.S.C. 4165) is amended to read as fol-  
 4 lows:

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

6 “(a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE  
 7 31, UNITED STATES CODE.—An entity designated by an  
 8 Indian tribe as a housing entity shall be treated, for pur-  
 9 poses of chapter 75 of title 31, United States Code, as  
 10 a non-Federal entity that is subject to the audit require-  
 11 ments that apply to non-Federal entities under that chap-  
 12 ter.

13 “(b) ADDITIONAL REVIEWS AND AUDITS.—

14 “(1) IN GENERAL.—In addition to any audit or  
 15 review under subsection (a), to the extent the Sec-  
 16 retary determines such action to be appropriate, the  
 17 Secretary may conduct an audit or review of a re-  
 18 cipient in order to—

19 “(A) determine whether the recipient—

20 “(i) has carried out—

21 “(I) eligible activities in a timely  
 22 manner; and

23 “(II) eligible activities and cer-  
 24 tification in accordance with this Act  
 25 and other applicable law;

1                   “(ii) has a continuing capacity to  
2                   carry out eligible activities in a timely  
3                   manner; and

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

6                   “(B) verify the accuracy of information  
7                   contained in any performance report submitted  
8                   by the recipient under section 404.

9                   “(2) ONSITE VISITS.—To the extent prac-  
10                  ticable, the reviews and audits conducted under this  
11                  subsection shall include onsite visits by the appro-  
12                  priate official of the Department of Housing and  
13                  Urban Development.

14                  “(c) REVIEW OF REPORTS.—

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

21                  “(2) PUBLIC AVAILABILITY.—After taking into  
22                  consideration any comments of the recipient under  
23                  paragraph (1), the Secretary—

24                  “(A) may revise the report; and

1           “(B) not later than 30 days after the date  
 2           on which those comments are received, shall  
 3           make the comments and the report (with any  
 4           revisions made under subparagraph (A)) readily  
 5           available to the public.

6           “(d) EFFECT OF REVIEWS.—Subject to section  
 7   401(a), after reviewing the reports and audits relating to  
 8   a recipient that are submitted to the Secretary under this  
 9   section, the Secretary may adjust the amount of a grant  
 10   made to a recipient under this Act in accordance with the  
 11   findings of the Secretary with respect to those reports and  
 12   audits.”.

13   **SEC. 8. ALLOCATION FORMULA.**

14           Section 302(d)(1) of the Native American Housing  
 15   Assistance and Self-Determination Act of 1996 (25 U.S.C.  
 16   4152(d)(1)) is amended—

17           (1) by striking “The formula,” and inserting  
 18           the following:

19           “(A) IN GENERAL.—Except with respect to  
 20           an Indian tribe described in subparagraph (B),  
 21           the formula”; and

22           (2) by adding at the end the following:

23           “(B) CERTAIN INDIAN TRIBES.—With re-  
 24           spect to fiscal year 2000 and each fiscal year  
 25           thereafter, for any Indian tribe with an Indian



1           housing authority that owns or operates fewer  
2           than 250 public housing units, the formula  
3           under subparagraph (A) shall provide that if  
4           the amount provided for a fiscal year in which  
5           the total amount made available for assistance  
6           under this Act is equal to or greater than the  
7           amount made available for fiscal year 1996 for  
8           assistance for the operation and modernization  
9           of the public housing referred to in subpara-  
10          graph (A), then the amount provided to that  
11          Indian tribe as modernization assistance shall  
12          be equal to the average annual amount of funds  
13          provided to the Indian tribe (other than funds  
14          provided as emergency assistance) under the as-  
15          sistance program under section 14 of the  
16          United States Housing Act of 1937 (42 U.S.C.  
17          1437l) for the period beginning with fiscal year  
18          1992 and ending with fiscal year 1997.”.

19 **SEC. 9. HEARING REQUIREMENT.**

20           Section 401(a) of the Native American Housing As-  
21          sistance and Self-Determination Act of 1996 (25 U.S.C.  
22          4161(a)) is amended—

23                   (1) by redesignating paragraphs (1) through  
24                   (4) as subparagraphs (A) through (D), respectively,

1 and indenting each such subparagraph 2 ems to the  
2 right;

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

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

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

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

12 (4) by adding at the end the following:

13 “(3) EXCEPTION FOR CERTAIN ACTIONS.—

14 “(A) IN GENERAL.—Notwithstanding any  
15 other provision of this subsection, if the Sec-  
16 retary makes a determination that the failure of  
17 a recipient of assistance under this Act to com-  
18 ply substantially with any material provision (as  
19 that term is defined by the Secretary) of this  
20 Act is resulting, and would continue to result,  
21 in a continuing expenditure of Federal funds in  
22 a manner that is not authorized by law, the  
23 Secretary may take an action described in para-  
24 graph (1)(C) before conducting 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 AGREEMENT TIME LIMIT.**

17                  Section 401(b) of the Native American Housing As-  
18                  sistance and Self-Determination Act of 1996 (25 U.S.C.  
19                  4161(b)) is amended—

20                  (1) by striking “If the Secretary” and inserting  
21                  the following:

22                  “(1) IN GENERAL.—If the Secretary”;

23                  (2) by striking “(1) is not” and inserting the  
24                  following:

25                  “(A) is not”;

1           (3) by striking “(2) is a result” and inserting  
2           the following:

3                     “(B) is a result”;

4           (4) in the flush material following paragraph  
5           (1)(B), as redesignated by paragraph (3) of this  
6           section—

7                     (A) by adjusting the margin 2 ems to the  
8                     right; and

9                     (B) by inserting before the period at the  
10           end the following: “, if the recipient enters into  
11           a performance agreement with the Secretary  
12           that specifies the compliance objectives that the  
13           recipient will be required to achieve by the ter-  
14           mination date of the performance agreement”;  
15           and

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

17                     “(2) PERFORMANCE AGREEMENT.—The period  
18           of a performance agreement described in paragraph  
19           (1) shall be for 1 year.

20                     “(3) REVIEW.—Upon the termination of a per-  
21           formance agreement entered into under paragraph  
22           (1), the Secretary shall review the performance of  
23           the recipient that is a party to the agreement.

1           “(4) EFFECT OF REVIEW.—If, on the basis of  
2           a review under paragraph (3), the Secretary deter-  
3           mines that the recipient—

4                   “(A) has made a good faith effort to meet  
5           the compliance objectives specified in the agree-  
6           ment, the Secretary may enter into an addi-  
7           tional performance agreement for the period  
8           specified in paragraph (2); and

9                   “(B) has failed to make a good faith effort  
10          to meet applicable compliance objectives, the  
11          Secretary shall determine the recipient to have  
12          failed to comply substantially with this Act, and  
13          the recipient shall be subject to an action under  
14          subsection (a).”.

15 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

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

20                   (1) by striking the item relating to section 206;  
21          and

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

“209. Noncompliance with affordable housing requirement.”.

24          (b) CERTIFICATION OF COMPLIANCE WITH SUBSIDY  
25          LAYERING REQUIREMENTS.—Section 206 of the Native

1 American Housing Assistance and Self-Determination Act  
2 of 1996 (25 U.S.C. 4136) is repealed.

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

Passed the Senate February 28, 2000.

Attest:

GARY SISCO,  
*Secretary.*