

# CRS Report for Congress

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## Fact Sheet on The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

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### Summary

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), P.L. 104-330, reorganized the system of federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

The Act provides block grants to Indian tribes or their tribally designated housing entities (TDHE) for affordable housing activities. Affordable housing activities include modernizing and providing assistance to housing developed under prior HUD contracts, as well as model activities as approved by HUD. The tribe must submit an Indian housing plan (IHP), with long- and short-term goals and proposed activities, which is reviewed by HUD for compliance with statutory and regulatory requirements.

The program has been providing assistance to members of more than 500 tribes over the past 4 years and more than \$600 million has been annually appropriated for NAHASDA grants.

Authorization for NAHASDA expired at the end of FY2001. Under H.R. 1873 and S. 1210, as introduced in the 107<sup>th</sup> Congress, the authorization would be extended through FY2006 with no other changes in the current law. H.R. 3995 would extend it through FY2007 and amend NAHASDA to permit recipients to use a portion of their grant amounts for comprehensive planning. This report will be updated as reauthorization bills progress.

### Background

NAHASDA fundamentally altered the method of delivering housing services to Native Americans through the Department of Housing and Urban Development (HUD). It provides funding through block grants, separates Native American programs from the

public housing program, offers increased flexibility in developing new programs, reduces the regulatory burden, establishes performance measures to assess progress, and provides sanctions for non-compliance. Funding is provided under a needs-based formula, which was developed pursuant to negotiated rule-making. Tribes and TDHEs can leverage funds, within certain limits, by using future grants as collateral to issue obligations under a guaranteed loan program. HUD's Office of Native American Programs (ONAP) staff monitors the tribe or its TDHE to ensure compliance with the objectives of the Indian Housing Plan (IHP).

## Summary of the NAHASDA Statute

The law states that Congress finds that (1) the federal government has a responsibility to promote the general welfare of the Nation by using federal resources to aid families in seeking safe and affordable housing and healthy environments, by working to ensure a thriving national economy and a strong private housing market, and by developing partnerships among federal, state, local, and tribal governments; (2) there exists a unique relationship between the U.S. government and the governments of Indian tribes; (3) the U.S. has assumed a trust responsibility to protect Indian tribes and people; (4) providing affordable homes in a safe and healthy environment is an element of that special role; (5) there is an acute need for such housing; and (6) federal assistance to meet these responsibilities should be done in a manner which recognizes the rights of self-determination and self-governance.

**Title I.** For each fiscal year, HUD is authorized to make grants to a recipient on behalf of Indian tribes to carry out affordable housing activities. A grant may not be made on behalf of an Indian tribe unless the governing body of the locality within which any affordable housing to be assisted with grant amounts will be situated has entered into an agreement with the recipient providing for local cooperation. A grant recipient for an Indian tribe is allowed to receive a block grant only if the assisted housing is exempt from real and personal property taxes and the recipient makes annual user fee payments to compensate local governments for the costs of providing governmental services or makes payments in lieu of taxes to taxing authorities.

Grant amounts may be used only for affordable housing activities consistent with an approved Indian housing plan (IHP). An Indian tribe must submit to HUD for each fiscal year a 5-year and a 1-year IHP, which will contain the goals, mission and specific affordable housing activities which the tribe seeks to accomplish. HUD is authorized to establish abbreviated requirements for housing plans of small Indian tribes and small tribally designated housing entities. Funds for projects may not be released until the recipients certify that environmental review pursuant to certain federal laws has been carried out.

Regulations implementing the Act must be issued according to a negotiated rulemaking procedure. The procedure must conform to the unique government-to-government relationship between the tribes and the U.S. government.

HUD was authorized appropriations of such sums as may be necessary for grants for FY1998 through FY2001. Although the authorization has now expired, Congress continues to fund the program. (See section "Program Funding and Number of Tribes Assisted" of this report.)

**Title II.** The national objectives of the Act are: (1) to promote affordable housing for occupancy by low-income Indian families; (2) to ensure better access to private mortgage markets and promote self-sufficiency of Indian tribes and their members; (3) to further economic and community development by coordinating federal, state, and local activities on behalf of Indian tribes and their members; (4) to plan for and integrate infrastructure resources with housing development; and (5) to promote the development of private capital markets in Indian country.

Assistance is limited to low-income Indian families on Indian reservations and other Indian areas, with the exception of assistance for home ownership or loan guarantee activities. HUD is directed to establish limits on the amount of assistance for non-low-income families. Through the Indian housing plan, preference may be given to Indian families who are members of the tribe or to other Indian families for housing or housing assistance provided through affordable housing activities.

Eligible affordable housing activities include (1) modernizing and providing operating assistance to housing developed under prior HUD contracts, (2) purchasing, modernizing, or constructing affordable housing, (3) providing housing-related services such as counseling, and rental assistance, and homeowner assistance, (4) providing management services for affordable housing, (5) providing crime prevention and safety activities, and (6) model programs approved by HUD.

**Title III.** Each fiscal year the funds must be allocated among eligible Indian tribes. HUD is authorized to establish a grant allocation formula to be based on factors that reflect the need for assistance for affordable housing.

**Title IV.** HUD may terminate, reduce, or limit the availability of grant payments to a recipient found to be in noncompliance with provisions of this Act. A recipient found to have engaged in a practice or pattern of willful noncompliance may be replaced by another entity which will serve as the recipient for the tribe.

Each recipient must review its progress annually and submit a performance report to HUD. At least annually, HUD must conduct reviews (and audits if necessary) to determine whether the recipients have carried out their activities in a timely manner and in accordance with the objectives of the Act, whether the recipients are in compliance with the housing plan, and whether the performance reports are accurate.

At the end of each fiscal year, HUD must submit a report to Congress detailing the progress in accomplishing the objectives of the Act, the use of funds during the preceding fiscal year, and a description of the outstanding loan guarantees under Title VI of the Act.

**Title V.** Prior law contained separate titles and language authorizing Indian uses of categorical HUD programs such as public housing, the Hope program, the Youthbuild program, the HOME program, and the emergency shelter grants program. This title repeals or eliminates that language and allows for consolidation of those activities into the Indian housing block grant program.

**Title VI.** This title authorizes loan guarantees for Indian Housing Block Grant recipients, Indian tribes, and TDHEs who need additional funds to finance affordable housing activities described in Section 202 of NAHASDA. HUD may only provide the

guarantee if financing cannot be completed without the use of the guarantee. The Indian tribe and TDHE must pledge their current and future Indian Housing Block Grant (IHBG) funds to assure repayment of the obligation and may borrow up to five times their IHBG grant amount. HUD's guarantee covers 95% of the principal and interest due on the obligation. The full faith and credit of the United States is pledged to the payment of the guarantee. HUD is also authorized to make grants to an Indian tribe to cover up to 30% of the net interest costs of notes and guarantees issued under this title.

The law authorized such sums as may be necessary to be appropriated for the subsidy costs of the guarantees for FY1997 through FY2001. Although the authorization has now expired, Congress continues to fund the program and those funds are included as a set-aside within the totals shown in section "Program Funding and Number of Tribes Assisted" of this report.

**Title VII.** The Section 184 Loan Guarantee program is amended to add Indian tribes as eligible borrowers. The authority to provide loan guarantees for Indian housing to those who could not otherwise acquire financing because of the unique legal status of trust lands is amended to provide such guarantees because of the lack of access to private financial markets. The loan guarantees for eligible housing shall be used for housing under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved. The program is amended to provide that if a borrower defaults and the lender opts not to seek foreclosure, HUD may accept assignment of the loan and pay the guarantee to the lender if that is found to be in the best interest of the government. The Government National Mortgage Association (Ginnie Mae) is authorized to guarantee Section 184 loans.

Subject to the approval of the affected Indian tribe and the Secretary of the Interior, 50-year leases of trust or restricted Indian lands are permitted for housing development and residential housing purposes.

The Act authorizes appropriations of such sums as necessary for FY1997 through FY2001 for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and TDHEs. Although the authorization has now expired, Congress continues to fund the program and those funds are included as a set-aside within the totals shown in section "Program Funding and Number of Tribes Assisted" of this report.

## **Program Funding and Number of Tribes Assisted**

The program was funded for the first time in FY1998. The program was funded at \$600 million for FY1998, \$620 million for FY1999 and FY2000, \$650 million for FY2001, and \$649 million for FY2002. The Administration requests \$647 million for FY2003. Within the above totals, each year \$6 million has been set-aside for the subsidy cost of loan guarantees. Also, each year \$2 million has been set-aside for contracts with a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and TDHEs. The contract has gone to the National American Indian Housing Council.

In the 4 years since the award of the first grant under NAHASDA, HUD has funded 368 recipients representing 552 tribes in FY1998; 356 recipients representing 527 tribes

in FY1999; 364 recipients servicing 528 tribes in FY2000; and 307 recipients serving 531 Indian tribes in FY2001. According to HUD, in FY2002, there are a total of 583 potential tribal grantees eligible for a total of about \$641 million in grants. Under prior law, HUD had provided assistance to approximately 200 Indian Housing Authorities.

## **Program Prospects and Problems**

It has been argued that NAHASDA has started a series of discussions that had not taken place before. With NAHASDA allowing tribes more control over their operations, tribes are creating housing partnerships with lenders. Tribes are educating tribal members about credit, saving, homebuying, and banking practices. Technical assistance and mentoring programs are being put in place to help Native Americans establish their own programs and institutions. Several local and regional lenders have developed the expertise to work with Native American tribes. In addition, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) sponsor programs for lending to Native Americans.

While all parties generally agree that NAHASDA has been successful, the program is not without its problems. In August, 2001, the HUD Inspector General (IG) issued a report on the implementation of NAHASDA. Its nine findings are that (1) HUD has not accurately allocated NAHASDA funds since inception of the program, (2) when projects are assisted by multiple programs there are conflicting admission requirements, (3) when TDHEs contain a number of tribes, the member tribes do not always benefit equally from their NAHASDA grants, (4) some TDHEs struggle because of their unfamiliarity with NAHASDA requirements, (5) some TDHEs lack management systems to effectively administer NAHASDA, (6) some TDHEs have not developed or complied with all policies and procedures, (7) some TDHEs have not successfully carried out their affordable housing activities, (8) there is inadequate accounting for program income and increases in uncollected rents, and (9) TDHEs need to submit timely audit reports and they need to use uniform accounting standards.

NAHASDA bars federal grants for housing unless the property in question is exempt from taxation. This requirement effectively limits the options of small and urban tribes that do not have large amounts of undeveloped, tax-exempt trust lands. Such groups would like to see NAHASDA amended to relax the tax-exempt requirements.

Many tribes have expressed concern that HUD has not adequately consulted tribes when making regulatory changes to NAHASDA. HUD appears to have taken the position that the NAHASDA requirement for negotiated rulemaking only applies to the initial promulgation of regulations, while tribes believe that a negotiated rulemaking process should also apply to subsequent additions or amendments to the regulations. In the new HUD Consultation Policy set in place last year, a provision was made to create a negotiated rulemaking advisory committee, made up of tribal members, to advise HUD on when negotiated rulemaking procedures ought to be used. In addition, HUD is currently seeking to form a Negotiated Rulemaking Committee to address issues with the NAHASDA grant formula.

While tribes view these as steps in the right direction, they do not view these steps as sufficient. HUD remains the ultimate decision maker and they contend that there is no guarantee that HUD would follow the recommendations of an advisory committee. The

preference of tribes is that the statutory language of NAHASDA be amended to clearly state that negotiated rulemaking should be used for all regulations and rulemaking made under NAHASDA.

Several tribes argue that they would be able to provide more affordable housing to members if they were able to access tax-exempt financing through Title VI of NAHASDA. To do so, Section 7871 of the Internal Revenue Code would have to be amended to accommodate NAHASDA.

## **Reauthorization of NAHASDA**

As noted above, NAHASDA contains three authorizations: (1) the authorization of appropriations for block grants for Indian tribes to carry out affordable housing activities, (2) the authorization of appropriations for the subsidy costs of loan guarantees, and (3) the authorization of appropriations for providing training and technical assistance for Indian housing authorities and TDHEs. These authorizations expired at the end of FY2001.

Under H.R. 1873 and S. 1210, as introduced in the 107<sup>th</sup> Congress, NAHASDA would be amended to extend these authorization through FY2006 and no other amendments are proposed in either bill. Title VII of H.R. 3995 would extend the authorizations through FY2007 and amend NAHASDA to permit recipients to use a percentage of their grant amounts for comprehensive housing and community development planning activities. The Subcommittee on Housing and Community Opportunity of the House Committee on Financial Services has held hearings on H.R. 3995, but to date no action has been taken on the other bills.