

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-
DETERMINATION REAUTHORIZATION ACT OF 2007

AUGUST 3, 2007.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
Services, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2786]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the
bill (H.R. 2786) to reauthorize the programs for housing assistance
for Native Americans, having considered the same, report favorably
thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2786, the Native American Housing Assistance Self Determination Reauthorization Act of 2007, reauthorizes the Native American Housing Assistance Self Determination Act (NAHASDA) of 1996 for five years and amends the law to address housing needs in Indian Country.

The bill clarifies rules and regulations that apply to NAHASDA to remove regulatory burdens and make it easier for tribes to execute their Indian Housing Plans pursuant to NAHASDA. The bill also attempts to encourage tribes to participate in low income housing tax credit projects and the Title VI loan guarantee program, and to compete for HOME funds. The bill also creates a self-determination housing program to allow tribes to make independent decisions regarding the use of a portion of their NAHASDA grant to acquire, rehabilitate, and construct housing.

BACKGROUND AND NEED FOR LEGISLATION

NAHASDA was signed into law in 1996, and was reauthorized in 2002 for five years. NAHASDA reorganized and simplified the Department of Housing and Urban Development's (HUD) system of housing assistance to American Indians and Alaska Natives by eliminating several separate HUD programs and replacing them with a single block grant program made directly to tribes. The purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance.

Through the amendments made to the Act under this bill, the Committee seeks to confirm the right of tribal self-governance and to reduce regulatory burdens on tribes in connection with the execution of their Indian Housing Plans pursuant to NAHASDA.

The Committee recognizes the desire of tribes to have reduced oversight and burdensome regulations, and more self-determination in regard to the use of NAHASDA grant funds. The Committee addresses this desire by including a provision in the bill to provide for a self-determination housing program whereby tribes may use up to 15 percent (capped at \$1 million) of their annual NAHASDA grant for self-determined housing activities, which housing activities will not require approval nor be subject to annual oversight, but will be subject to oversight in year four prior to any future reauthorization of the program. It is the desire of the Committee that this program be used to benefit low-income housing needs in Indian Country, specifically the acquisition, rehabilitation, and construction of such housing.

The Committee also recognizes the need for economic development and infrastructure in conjunction with successful affordable housing developments. The Committee will work on separate legislation to address economic development and infrastructure in conjunction with the acquisition, rehabilitation, and construction of affordable housing in Indian Country.

HEARINGS

The Subcommittee on Housing and Community Opportunity held a hearing entitled "Reauthorization of the Native American Hous-

ing Assistance and Self-Determination Act” on June 6, 2007. The following witnesses testified:

Panel One:

- The Honorable Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development

Panel Two:

- Ms. Cheryl Parish, Vice Chairwoman, National American Indian Housing Council

- Ms. Sami Jo Difuntorum, Executive Director, Karuk Tribe Housing Authority

- Ms. Aneva J. Yazzie, Chief Executive Officer, Navajo Housing Authority

- Mr. Wendler Nosie, Sr., Chairman, San Carlos Apache Tribe

- Ms. Jacqueline L. Johnson, Executive Director, National Congress of American Indians

- Mr. Mark Chino, President, Mescalero Apache Tribe

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 26, 2007, and ordered H.R. 2786, Native American Housing Assistance and Self-Determination Act of 2007, reported by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 2786, the Native American Housing Assistance Self Determination Reauthorization Act of 2007, reauthorizes NAHASDA for five years through 2012, and amends the law to address housing needs in Indian Country with the goal to provide affordable housing in Indian Country.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by

the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 2007.

Hon. BARNEY FRANK,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2786, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Chad Chirico.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 2786—Native American Housing Assistance and Self-Determination Reauthorization Act of 2007

Summary: H.R. 2786 would reauthorize the Native American and Native Hawaiian Block Grant programs and would authorize the appropriation of such sums as necessary for those programs for each of fiscal years 2008 through 2012. In addition, the bill would reauthorize the loan program under Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 for fiscal years 2008 through 2012.

CBO estimates that appropriation of the amounts necessary to implement H.R. 2786 would cost \$2.2 billion over the 2008–2012 period. Enacting H.R. 2786 would not affect direct spending or revenues.

H.R. 2786 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA); any costs to state, local, and tribal governments would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2786 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority ¹	633	0	0	0	0	0
Estimated Outlays	597	383	266	185	111	46
Proposed Changes:						
Native American Housing Block Grants:						
Estimated Authorization Level	0	634	645	657	669	680
Estimated Outlays	0	231	362	459	541	616
Title VI Loan Guarantees:						
Estimated Authorization Level	0	2	2	2	2	2
Estimated Outlays	0	2	2	2	2	2
Training and Technical Assistance:						
Estimated Authorization Level	0	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1
Native Hawaiian Housing Block Grants:						
Estimated Authorization Level	0	9	9	10	10	10
Estimated Outlays	0	1	3	5	7	9
Total Changes:						
Estimated Authorization Level	0	646	657	670	682	694
Estimated Outlays	0	235	368	467	550	628
Spending Under H.R. 2786 for Native American Housing Programs:						
Estimated Authorization Level ¹	633	646	657	670	682	694
Estimated Outlays	597	619	634	652	662	674

¹The 2007 level is the amount appropriated in that year for Native American Housing Block Grants, Title VI Loan Guarantees, and Native Hawaiian Housing Block Grants.

Basis of Estimate: CBO estimates that implementing H.R. 2786 would cost \$2.2 billion over the next five years, assuming the appropriation of the necessary funds. For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2008 and that appropriated funds will be spent at historical rates for the affected programs.

Native American Housing Block Grants

Section 2 would authorize the appropriation of such sums as necessary for the Native American Housing Block Grant program from 2008 through 2012. The block grant program provides funding to tribes to acquire, construct, rehabilitate, or manage affordable housing for low-income Native American families. In 2007, \$622 million was appropriated for this program. Assuming continued appropriations at that level and adjusting for anticipated inflation, CBO estimates that implementing this section would cost \$2.2 billion over the 2008–2012 period.

Title VI loan guarantees

Section 6 would extend the authorization of the Title VI loan guarantee program through 2012. Such guarantees allow Native American Block Grant recipients to leverage their funding by pledging future grants as security for the repayment of a loan. A private lender provides the financing and the Department of Housing and Urban Development (HUD) provides a 95 percent guarantee of the principal and interest due in the case of a default. The size of the Title VI loans can be no larger than five times the grant recipient's annual grant amount. HUD estimates this program currently has a subsidy rate of about 12 percent. In 2007, the program received an appropriation for subsidy costs of \$2 million, which will support about \$17 million in loans. Assuming appropriation of

similar amounts, CBO estimates that implementing this section would cost \$11 million in additional subsidy costs through 2012.

There have been few losses to date in the Title VI program; however, repayment of these loans have been funded by federal grants. As a result, the actual cost to the government is borne by the grant program. It is uncertain what the cost of these loans would be in the absence of the grant program, but it likely would be higher, perhaps substantially.

Training and technical assistance

Section 7 would authorize the appropriation of such sums as necessary for the 2008–2012 period to fund a national organization representing the housing interests of Native Americans to provide training and technical assistance to Indian housing authorities. Such assistance is intended to build the housing authorities' capacity to administer housing programs in accordance with federal regulations. In 2006, the most recent year in which funds were provided, \$1 million was appropriated to be used by the National American Indian Housing Council for these purposes. Assuming appropriation of similar amounts, CBO estimates that implementing this section would cost \$5 million through 2012.

Native Hawaiian Housing Block Grants

Section 8 would authorize the appropriation of such sums as necessary for the Native Hawaiian Housing Block Grant program from 2008 through 2012. Program grants are used to develop, maintain, and operate affordable housing for low-income Native Hawaiian families through the Department of Hawaiian Home Lands. In 2007, \$9 million was appropriated for this program. Assuming continued appropriations at that level and adjusting for anticipated inflation, CBO estimates that implementing this section would cost about \$25 million through 2012.

Intergovernmental and private-sector impact: H.R. 2786 contains no intergovernmental or private-sector mandates as defined in UMRA. Grants authorized in the bill would benefit the state of Hawaii and tribal governments that participate in housing assistance programs. Any costs to those governments of complying with grant conditions would be incurred voluntarily.

Estimate prepared by: Federal costs: Chad Chirico; Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Peter Richmond.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2786 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. The short title is the “Native American Housing Assistance and Self-Determination Reauthorization Act of 2007”

Section 2. Indian Housing Block Grant reauthorization and amendments

This section authorizes sums as necessary for the Indian Housing Block Grant for five years. In 2006 and 2007 the block grant was \$624 million (which is divided among more than 550 tribes by formula). The President’s 2008 budget requests \$627 million for the block grant.

The section makes the following amendments to NAHASDA:

- Federal Supply Sources—The purpose of this amendment is to make Federal supply sources through the GSA more accessible to tribes—for example, allowing tribes and TDHEs (tribally designated housing entities) to receive government discounts when traveling for housing business.

- Tribal Preference in Employment and Contracting—The purpose of this amendment is to expressly recognize tribal preference (pursuant to tribal law), in addition to Indian preference (which is already in statute), in hiring and contracting for NAHASDA activities.

- Program Income—The purpose of this amendment is to exclude from NAHASDA program income the development fee paid to tribes in connection with a low income housing tax credit project.

- Essential Families—This amendment permits tribes and TDHEs to provide housing or housing assistance through NAHASDA to any family determined to be essential to the well being of the community—Indian or non-Indian families. An example of an essential family is a doctor in a very rural area where other housing is not available.

- Eligibility of Local Law Enforcement Officers—This amendment adds “local” law enforcement as an eligible family for NAHASDA funding. Currently the reference is to “county” which in

some cases is not sufficient to cover all law enforcement officers that serve Indian Country.

- **Operation and Maintenance Costs**—The amendment expressly provides that the NAHASDA grant may be used to support operational costs of units built with NAHASDA funds, such as rental assistance. In practice this already happens.

- **Reserve Accounts**—The amendment allows tribes to establish a reserve account up to 20 percent of their NAHASDA grant. It must be invested pursuant to NAHASDA requirements and any interest income is considered NAHASDA program income. The use of the funds is subject to the tribes housing plan approved by HUD.

- **Use of Grant Amounts over Extended Periods (Carryover)**—The amendment expressly permits a tribe to carry over its NAHASDA grant from year to year. In practice this already happens. Carry-over funds are subject to a tribe's housing plan approved by HUD.

- **De Minimis Exemption for Procurement**—This amendment eliminates the competitive procurement rules and procedures for purchases of goods and services under \$5,000. (Tribes will no longer have to obtain a competitive bid for a \$20 hammer.)

- **Availability of Records (Criminal background checks)**—Tribes and TDHEs may currently obtain a criminal background check on tenants. This amendment expands the check to applicants for employment for work with a TDHE or doing housing-related work for a tribe.

Section 3. Self-determined housing activities for tribal communities

This section creates a self-determination program whereby tribes may set aside 15 percent of their NAHASDA grant, up to \$1 million, for housing activities that are not approved or directly regulated by HUD. In 2011, HUD will conduct a review of the program based on results and report to Congress. Tribes are prohibited from using the money for infrastructure, commercial and economic development, and operating costs.

Section 4. HOME

This section provides that NAHASDA does not prohibit tribes from competing for HOME funds; and allows tribes to more freely compete for HOME funds. It clarifies that a state may not prohibit such competition for HOME funds based on NAHASDA.

Section 5. GAO study of NAHASDA

Requires GAO to study the effectiveness of NAHASDA for tribes of different sizes; specifically with respect to smaller tribes for which grants of lesser or minimum amounts have been made under the Act. GAO must report to Congress in 12 months and make recommendations regarding any appropriate changes to NAHASDA derived from the study.

Section 6. Title VI loan guarantees education program and reauthorization of the loan guarantee program

This section requires HUD to conduct educational seminars with tribes on how to utilize the loan guarantee program authorized under Title VI and reauthorizes sums as necessary for the Title VI loan guarantee program for five years. Under the Title VI loan

guarantee program, tribes can use future NAHASDA grants as collateral to obtain loans for housing activities.

Section 7. Title VII training and technical assistance reauthorization

This section reauthorizes sums as necessary for a national organization that represents the housing needs of tribes to provide training and technical assistance to tribes regarding housing.

Section 8. Title VIII Native Hawaiian block grant reauthorization

This section reauthorizes sums as necessary for the housing assistance program and block grant for Native Hawaiians for five years. It makes no program changes. The Native Hawaiian block grant was \$9 million in 2006 and 2007. The President's budget requests \$6 million for 2008.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title.

* * * * *

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Subtitle A—General Block Grant Program

* * * * *

Subtitle B—Self-Determined Housing Activities for Tribal Communities

Sec. 231. Purposes.

Sec. 232. Authority.

Sec. 233. Use of amounts for housing activities.

Sec. 234. Inapplicability of other provisions.

Sec. 235. Review and report.

* * * * *

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

* * * * *

Sec. 509. Effect on HOME Investment Partnerships Act.

* * * * *

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

SEC. 101. BLOCK GRANTS.

(a) **AUTHORITY.**—For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this Act) make grants under this section on behalf of Indian tribes to carry out affordable housing activities *under subtitle A of title II and to carry out self-determined housing activities for tribal communities programs under subtitle B of such title.* Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

* * * * *

(g) **USE FOR AFFORDABLE HOUSING ACTIVITIES UNDER PLAN.**—Except as provided in subsection (h) *of this section and subtitle B of title II,* amounts provided under a grant under this section may be used only for affordable housing activities under title II that are consistent with an Indian housing plan approved under section 103.

* * * * *

(j) **FEDERAL SUPPLY SOURCES.**—*For purposes of section 501 of title 40, United States Code (relating to services for executive agencies), an Indian tribe or tribally designated housing entity shall be considered to be an executive agency when carrying out housing programs, services, functions and activities under the tribe or tribally designated housing entity, and its employees shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency.*

(k) **TRIBAL PREFERENCE IN EMPLOYMENT AND CONTRACTING.**—*Notwithstanding any other provision of law, with respect to any grant made under this Act on behalf of an Indian tribe that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the grant or portion of the grant.*

SEC. 102. INDIAN HOUSING PLANS.

(a) * * *

(b) **5-YEAR PLAN.**—Each housing plan under this section shall be in a form prescribed by the Secretary and shall contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(1) * * *

* * * * *

(4) **SELF-DETERMINED HOUSING ACTIVITIES PROGRAM.**—*A statement of the manner in which the program for the Indian tribe under subtitle B of title II will be carried out and implemented, and an overview of the benefits to the low-income community intended to be achieved from activities to be undertaken during the period pursuant to the program for the Indian tribe under subtitle B of title II.*

(c) **1-YEAR PLAN.**—A housing plan under this section for an Indian tribe shall be in a form prescribed by the Secretary and con-

tain the following information relating to the upcoming fiscal year for which the assistance under this Act is to be made available:

(1) * * *

* * * * *

(3) FINANCIAL RESOURCES.—An operating budget for the recipient, in a form prescribed by the Secretary, that includes—

(A) an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this Act, including an explanation of the manner in which amounts made available will leverage additional resources *and a description of any amounts made available pursuant to a grant under section 101 for the Indian tribe for any preceding fiscal year which have not been, or are not expected to be, obligated or expended before the beginning of the fiscal year for which the plan is submitted, including any amounts in any reserve account established pursuant to section 202(9); and*

* * * * *

(7) SELF-DETERMINED HOUSING ACTIVITIES PROGRAM.—A statement of housing activities to be undertaken during the period pursuant to the program for the Indian tribe under subtitle B of title II and a description of the benefit such activities will provide for the low-income community.

* * * * *

SEC. 103. REVIEW OF PLANS.

(a) * * *

* * * * *

[(e) EFFECTIVE DATE.—This section and section 102 shall take effect on the date provided by the Secretary pursuant to section 106(a) to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this Act in fiscal year 1998.]

(e) SELF-DETERMINED ACTIVITIES PROGRAM.—Notwithstanding any other provision of this section, the Secretary—

(1) shall review the information included in an Indian housing plan pursuant to subsections (b)(4) and (c)(7) only to determine whether such information is included for purposes of compliance with the requirement under section 232(b)(2); and

(2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, and results included pursuant to such subsections.

SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.

(a) PROGRAM INCOME.—

(1) * * *

* * * * *

(4) EXCLUSION FROM PROGRAM INCOME OF REGULAR DEVELOPER'S FEES FOR LOW-INCOME HOUSING TAX CREDIT PROJECTS.—Notwithstanding any other provision of the Act, any income derived from a regular and customary developer's fee for any project assisted with a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986 that is initially funded with grant funds provided under this Act,

which fee is approved by the State housing credit agency, shall not be considered to be program income.

* * * * *

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for grants under this title such sums as may be necessary for each of **[fiscal years 1998 through 2007]** *fiscal years 2008 through 2012*. This section shall take effect on the date of the enactment of this Act.

* * * * *

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Subtitle A—General Block Grant Program

* * * * *

SEC. 201. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES.

(a) * * *

(b) **ELIGIBLE FAMILIES.**—

(1) * * *

* * * * *

(3) **[NON-INDIAN FAMILIES]** *ESSENTIAL FAMILIES.*—Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this Act for a **[non-Indian]** family on an Indian reservation or other Indian area if the recipient determines that the presence of the family **[on the Indian reservation or other Indian area]** is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.

(4) **LAW ENFORCEMENT OFFICERS.**—A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this Act for a law enforcement officer on an Indian reservation or other Indian area, if—

(A) the officer—

(i) is employed on a full-time basis by the Federal Government or a State, county, **[or]**, *or other unit of local government*, or a lawfully recognized tribal government; and

* * * * *

[(6)] (7) EXEMPTION.—Title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 shall not apply to actions by federally recognized tribes and the tribally designated housing entities of those tribes under this Act.

SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

Affordable housing activities under this title are activities, in accordance with the requirements of this title, 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:

(1) * * *

* * * * *

(4) HOUSING MANAGEMENT SERVICES.—The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, *operation and maintenance of units developed with amounts provided under this Act*, and management of affordable housing projects.

* * * * *

(9) RESERVE ACCOUNTS.—*The deposit of amounts, including grant amounts under section 101, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for funding affordable housing activities under this section in accordance with the Indian housing plan for the tribe, except that not more than 20 percent of any grant amounts under section 101 on behalf of any Indian tribe for any fiscal year may be used under this paragraph. Amounts in such a reserve account may be invested only subject to the same limitations applicable to grant amounts under section 204(b). Any income resulting from amounts in any such reserve account shall be considered to be program income for purposes of this Act.*

SEC. 203. PROGRAM REQUIREMENTS.

(a) * * *

* * * * *

(f) USE OF GRANT AMOUNTS OVER EXTENDED PERIODS.—*To the extent that the Indian housing plan for a tribe provides for the use of amounts from a grant under section 101 over more than one fiscal year or for affordable housing activities for which such funds will be committed for use or expended in a subsequent fiscal year, the Secretary may not require amounts from such a grant to be used, or committed for use, any sooner than so provided under such Indian housing plan.*

(g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES.—*Notwithstanding any other provision of law, any rules and procedures regarding competitive procurement otherwise applicable to a recipient shall not apply to the recipient in the case of procurement of goods and services under \$5,000 with grant amounts under this Act.*

* * * * *

SEC. 208. AVAILABILITY OF RECORDS.

(a) PROVISION OF INFORMATION.—*Notwithstanding any other provision of law, except as provided in subsection (b), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of (1) adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this Act for purposes of applicant screening, lease enforce-*

ment, and eviction, or (2) adult applicants for employment with the tribe in positions relating to the tribe's activities under this Act or its other housing-related activities or with the tribally designated housing entity, for purposes of applicant screening.

* * * * *

Subtitle B—Self-Determined Housing Activities for Tribal Communities

SEC. 231. PURPOSES.

The purposes of this subtitle are to establish a self-determined housing activities for the tribal communities program to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 101 for the tribe in manners that are wholly self-determined by the tribe for housing activities involving construction, acquisition, or rehabilitation of housing that will benefit the community served by the tribe.

SEC. 232. AUTHORITY.

(a) *IN GENERAL.*—Under the program under this subtitle, for each of fiscal years 2008 through 2012, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this subtitle.

(b) *QUALIFYING INDIAN TRIBES.*—For purposes of this section, the term “qualifying Indian tribe” means, with respect to a fiscal year, an Indian tribe or tribally designated housing entity that—

- (1) a grant is made in behalf of under section 101;
- (2) has complied with the requirements under subsections (b)(4) and (c)(7) of section 102; and
- (3) has no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under chapter 75 of title 31, United States Code (commonly known as the Single Audit Act), or in an independent financial audit prepared in accordance with generally accepted auditing principles.

(c) *AMOUNT.*—With respect to a fiscal year and a recipient, the amounts specified in this subsection are amounts from any grant under section 101 for the recipient for the fiscal year, as determined by the recipient, but in no case exceeding the lesser of (1) 15 percent of the total grant amount for the recipient for such fiscal year, or (2) \$1,000,000.

SEC. 233. USE OF AMOUNTS FOR HOUSING ACTIVITIES.

(a) *ELIGIBLE HOUSING ACTIVITIES.*—Any amounts made available for use under this subtitle by a recipient for an Indian tribe shall be used only for housing activities, as selected at the discretion of the recipient and set forth in the Indian housing plan for the tribe pursuant to section 102(c)(7), for the construction, acquisition or rehabilitation of housing that provide a benefit to families described in section 201(b)(1).

(b) *PROHIBITION ON CERTAIN ACTIVITIES.*—Amounts made available for use under this subtitle may not be used for any costs of providing infrastructure, commercial and economic development, and operating costs of housing.

SEC. 234. INAPPLICABILITY OF OTHER PROVISIONS.

(a) *IN GENERAL.*—Except as specifically provided in this Act, the provisions of title I, subtitle A of title II, and titles III through VIII shall not apply to the program under this subtitle or to amounts made available in accordance with this subtitle.

(b) *APPLICABLE PROVISIONS.*—The following provisions of titles I through VIII shall apply to the program under this subtitle and amounts made available in accordance with this subtitle:

- (1) Section 101(c) (relating to local cooperation agreements).
- (2) Subsections (d) and (e) of section 101 (relating to tax exemption).
- (3) Section 102(c)(5) (relating to certification of compliance).
- (4) Section 104 (relating to treatment of program income and labor standards).
- (5) Section 105 (relating to environmental review).
- (6) Section 201(b) (relating to eligible families).
- (7) Section 201(b)(7) (relating to preference for tribal members and other Indian families).
- (8) Section 203(c) (relating to insurance coverage).
- (9) Section 209 (relating to noncompliance with affordable housing requirement).
- (10) Section 401 (relating to remedies for noncompliance).
- (11) Section 408 (relating to public availability of information).
- (12) Section 702 (relating to 50-year leasehold interests in trust or restricted lands for housing purposes).

SEC. 235. REVIEW AND REPORT.

(a) *REVIEW.*—During calendar year 2011, the Secretary shall conduct a review of the results achieved by the program under this subtitle to determine—

- (1) the housing constructed, acquired, or rehabilitated under the program;
- (2) the effects of such housing constructed, acquired, or rehabilitated on costs to low-income families of affordable housing;
- (3) the effectiveness of each recipient in achieving the results intended to be achieved, as set forth in the Indian housing plan for the Indian tribe; and
- (4) the need for, and effectiveness of, extending the duration of the program and increasing the amount of grants under section 101 that may be used under the program.

(b) *REPORT.*—Not later than December 31, 2011, the Secretary shall submit a report to the Congress setting forth the information obtained pursuant to the review under subsection (a), which shall include conclusions and recommendations of the Secretary with respect to the program under this subtitle, including—

- (1) recommendations regarding extension of the program for subsequent fiscal years and increasing the amount pursuant to section 232(c) that may be used under the program; and
- (2) recommendations for—
 - (A) specific Indian tribes (or recipients) that should be prohibited from participating in the program for failure to achieve results, and the period for which such prohibition should remain in effect; or

(B) standards and procedures by which tribes (or recipients) may be prohibited from participating in the program for failure to achieve results.

(c) PROVISION OF INFORMATION TO SECRETARY.—Notwithstanding any other provision of the Act, recipients participating in the program under this subtitle shall provide such information to the Secretary as the Secretary may request, in sufficient detail and in a timely manner sufficient to ensure that the review and report required by this section is accomplished in a timely manner.

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TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

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SEC. 509. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.

The amendments made by this title, and the provisions of this title and this Act, may not be construed to prohibit or prevent any insular area or participating jurisdiction (as such terms are used for purposes of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing amounts made available under such Act for such area or jurisdiction to Indian tribes, or tribally designated housing entities, for use in accordance with the HOME Investment Partnerships Act.

TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

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SEC. 604. TRAINING AND INFORMATION.

The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this title. Such activities shall include conducting educational seminars with tribes and tribally designated housing entities on how to utilize the loan guarantee program under this title.

SEC. 605. LIMITATIONS ON AMOUNT OF GUARANTEES.

(a) AGGREGATE FISCAL YEAR LIMITATION.—Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this title, to the extent approved or provided in appropriations Acts, the Secretary may enter into commitments to guarantee notes and obligations under this title with an aggregate principal amount not to exceed \$400,000,000 for each of [fiscal years 1997 through 2007] fiscal years 2008 through 2012.

(b) AUTHORIZATION OF APPROPRIATIONS FOR CREDIT SUBSIDY.—There are authorized to be appropriated to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of guarantees under this title such sums as may be necessary

for each of [fiscal years 1997 through 2007] *fiscal years 2008 through 2012.*

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TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

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SEC. 703. TRAINING AND TECHNICAL ASSISTANCE.

There are authorized to be appropriated for assistance for a national organization representing Native American housing interests for providing training and technical assistance to Indian housing authorities and tribally designated housing entities such sums as may be necessary for each of [fiscal years 1997 through 2007] *fiscal years 2008 through 2012.*

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TITLE VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

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SEC. 824. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this title such sums as may be necessary for each of [fiscal years 2001, 2002, 2003, 2004, and 2005.] *fiscal years 2008, 2009, 2010, 2011 and 2012.*

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ADDITIONAL VIEWS

I applaud the committee's efforts today to reauthorize NAHASDA. I have some additional views I would like to add. I was prepared to offer an amendment to this bill to add a section promoting economic infrastructure. By agreement with the Chairman that legislation has been embodied in a stand alone bill (H.R. 3002) because although this legislation continues the practice of giving Tribes more flexibility to develop housing, I believe we can and should do more. NAHASDA reauthorization is critical to addressing Native American housing needs. Tribes need adequate flexibility and autonomy to use Indian Housing Block Grant dollars efficiently and in a manner that makes the most sense for tribal members' specific needs. Since NAHASDA was implemented in 1996, tribes have seen more flexibility to use their grant money for infrastructure and rehabilitation of homes. I believe we need to take a closer look down the road to address infrastructure support and economic development in future legislation, and I look forward to working toward helping Tribes to meet their housing goals.

STEVAN PEARCE.

ADDITIONAL VIEWS

The underlying Native Hawaiian housing program that we are set to reauthorize within NAHASDA reauthorization is one of many benefits that currently flow from the federal government to Native Hawaiians—there are roughly 160 current statutes that confer such benefits. However, in 2000, the Supreme Court put many of these benefits in jeopardy with its decision in *Rice v. Cayetano*.

The Court's decision in *Rice* has led many to conclude that the current configuration of justices would likely strike down most federal benefits flowing to Native Hawaiians as a racial set-aside, if given a chance. As a result, the Hawaiian Congressional delegation has championed separate legislation to provide a process for the United States to recognize Native Hawaiians as a governing entity, i.e. a tribe that is political in nature. Instead of recognizing a currently-existing political entity that has authority over its members, the legislation (H.R. 505) would create one from scratch.

While the Financial Services Committee is not considering the sovereignty bill (H.R. 505), the Native American Housing Assistance and Self-Determination Reauthorization Act (H.R. 2786) should nonetheless give us pause before we reauthorize funding programs that are more than likely unconstitutional. This bill, H.R. 2786, which contains a provision that reauthorizes federal funding for Native Hawaiian housing, should not be construed by any future court as Congress using its power under the Indian Commerce Clause to indirectly confer tribal status on the Native Hawaiian people.

America is a melting pot of cultures from around the world. Justice Kennedy noted as much in his opinion in *Rice v. Cayetano*. “As the State of Hawaii attempts to address these realities, it must, as always, seek the political consensus that begins with a shared purpose. One of the necessary beginning points is this principle: The Constitution of the United States, too, has become the heritage of all the citizens of Hawaii.”

JOHN CAMPBELL

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