

“(1) SEPARATE REQUIREMENTS.—The Secretary may—

“(A) establish requirements for submission of plans under this section and the information to be included in such plans applicable to small Indian tribes and small tribally designated housing entities; and

“(B) waive any requirements under this section that the Secretary determines are burdensome or unnecessary for such tribes and housing entities.

“(2) SMALL TRIBES.—The Secretary may define small Indian tribes and small tribally designated housing entities based on the number of dwelling units assisted under this subchapter by the tribe or housing entity or owned or operated pursuant to a contract under the United States Housing Act of 1937 between the Secretary and the Indian housing authority for the tribe.”

1998—Subsec. (a). Pub. L. 105-276 redesignated par. (1) as (1)(A), par. (2) as (1)(B), and par. (3) as (2), and inserted “or” at end of par. (1)(A).

#### EFFECTIVE DATE

Section effective on the date provided by the Secretary of Housing and Urban Development pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998, see section 4113(e) of this title.

### § 4113. Review of plans

#### (a) Review and notice

##### (1) Review

The Secretary shall conduct a limited review of each Indian housing plan submitted to the Secretary to ensure that the plan complies with the requirements of section 4112 of this title. The Secretary shall have the discretion to review a plan only to the extent that the Secretary considers review is necessary.

##### (2) Notice

The Secretary shall notify each Indian tribe for which a plan is submitted and any tribally designated housing entity for the tribe whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the Indian tribe, as required under this subsection and subsection (b), the plan shall be considered, for purposes of this chapter, to have been determined to comply with the requirements under section 4112 of this title and the tribe shall be considered to have been notified of compliance upon the expiration of such 60-day period.

#### (b) Notice of reasons for determination of non-compliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under section 4112 of this title, the Secretary shall specify in the notice under subsection (a) the reasons for the noncompliance and any modifications necessary for the plan to meet the requirements under section 4112 of this title.

#### (c) Review

After submission of the Indian housing plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

(1) set forth the information required by section 4112 of this title to be contained in an Indian housing plan;

(2) are consistent with information and data available to the Secretary; and

(3) are not prohibited by or inconsistent with any provision of this chapter or other applicable law.

If the Secretary determines that any of the appropriate certifications required under section 4112(c)(5)<sup>1</sup> of this title are not included in the plan, the plan shall be deemed to be incomplete.

#### (d) Updates to plan

After a plan under section 4112 of this title has been submitted for an Indian tribe for any tribal program year, the tribe may comply with the provisions of such section for any succeeding tribal program year by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

#### (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)<sup>2</sup> and (c)(7)<sup>3</sup> only to determine whether the information is included for purposes of compliance with the requirement under section 4145a(b)(2)<sup>4</sup> of this title; and

(2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, or results included pursuant to subsections (b)(4)<sup>2</sup> and (c)(7).<sup>3</sup>

(Pub. L. 104-330, title I, §103, Oct. 26, 1996, 110 Stat. 4026; Pub. L. 105-276, title V, §595(e)(6), Oct. 21, 1998, 112 Stat. 2657; Pub. L. 110-411, title I, §103, Oct. 14, 2008, 122 Stat. 4323.)

#### REFERENCES IN TEXT

This chapter, referred to in subssecs. (a)(2) and (c)(3), was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 4112(c)(5) of this title, referred to in subsec. (c), was repealed by Pub. L. 110-411, title I, §102(2), Oct. 14, 2008, 122 Stat. 4321.

#### AMENDMENTS

2008—Subsec. (d). Pub. L. 110-411, §103(1), substituted “tribal program” for “fiscal” in two places, struck out “(with respect to information included for the 5-year period under section 4112(b) of this title or the 1-year period under section 4112(c) of this title)” before “by submitting only such information”, and struck out at end “Not less than once every 5 years, the tribe shall submit a complete plan.”

Subsec. (e). Pub. L. 110-411, §103(2), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “This section and section 4112 of this title shall take effect on the date provided by the Secretary pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998.”

1998—Subsec. (c)(3). Pub. L. 105-276 inserted “not” before “prohibited”.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Subsec. (b) does not contain a par. (4).

<sup>3</sup> So in original. Subsec. (c) does not contain a par. (7).

<sup>4</sup> So in original. Section 4145a(b) of this title does not contain a par. (2).

**§ 4114. Treatment of program income and labor standards**

**(a) Program income**

**(1) Authority to retain**

Notwithstanding any other provision of this chapter, a recipient may retain any program income that is realized from any grant amounts under this chapter if—

(A) such income was realized after the initial disbursement of the grant amounts received by the recipient; and

(B) the recipient has agreed that it will utilize such income for housing related activities in accordance with this chapter.

**(2) Prohibition of restricted access or reduction of grant**

The Secretary may not restrict access to or reduce the grant amount for any Indian tribe based solely on—

(A) whether the recipient for the tribe retains program income under paragraph (1);

(B) the amount of any such program income retained;

(C) whether the recipient retains reserve amounts described in section 4140 of this title; or

(D) whether the recipient has expended retained program income for housing-related activities.

**(3) Exclusion of amounts**

The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the recipient.

**(4) Exclusion from program income of regular developer's fees for low-income housing tax credit projects**

Notwithstanding any other provision of this chapter, any income derived from a regular and customary developer's fee for any project that receives a low-income housing tax credit under section 42 of title 26, and that is initially funded using a grant provided under this chapter, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.

**(b) Labor standards**

**(1) In general**

Any contract or agreement for assistance, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141-3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the

development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

**(2) Exceptions**

Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this chapter, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

**(3) Application of tribal laws**

Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this chapter, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

(Pub. L. 104-330, title I, §104, Oct. 26, 1996, 110 Stat. 4027; Pub. L. 106-568, title X, §1003(j), Dec. 27, 2000, 114 Stat. 2930; Pub. L. 106-569, title V, §503(i), Dec. 27, 2000, 114 Stat. 2965; Pub. L. 107-292, §5, Nov. 13, 2002, 116 Stat. 2054; Pub. L. 109-136, §3, Dec. 22, 2005, 119 Stat. 2644; Pub. L. 110-411, title I, §104, Oct. 14, 2008, 122 Stat. 4323.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

"Sections 3141-3144, 3146, and 3147 of title 40" substituted in subsec. (b)(1) for "the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110-411 added par. (4).

2005—Subsec. (a)(2). Pub. L. 109-136 inserted "restrict access to or" after "not" in introductory provisions.

2002—Subsec. (a)(1). Pub. L. 107-292, §5(1)(A), substituted "Notwithstanding any other provision of this chapter, a recipient" for "A recipient" in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 107-292, §5(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: "the recipient has agreed that it will utilize the program income for affordable housing activities in accordance with the provisions of this chapter."

Subsec. (a)(2). Pub. L. 107-292, §5(2)(A), inserted "restricted access or" before "reduction" in heading.

Subsec. (a)(2)(D). Pub. L. 107-292, §5(2)(B)-(D), added subpar. (D).

2000—Subsec. (b)(1). Pub. L. 106-568, §1003(j)(1), and Pub. L. 106-569, §503(i)(1), amended par. (1) identically, substituting "Act of March 3, 1931 (commonly known as the Davis-Bacon Act; chapter 411; 46 Stat. 1494; 40 U.S.C. 276a et seq.)" for "Davis-Bacon Act (40 U.S.C. 276a-276a-5)".