

§ 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)".

Subsec. (b)(3). Pub. L. 106-568, §1003(j)(2), and Pub. L. 106-569, §503(i)(2), amended subsec. (b) identically, adding par. (3).

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4115. Environmental review

(a) In general

(1) Release of funds

In order to ensure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this chapter, and to ensure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may by regulation provide for the release of amounts for particular projects to tribes which assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake such projects as Federal projects.

(2) Regulations

(A) In general

The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) Contents

The regulations issued under this paragraph shall—

- (i) provide for the monitoring of the environmental reviews performed under this section;
- (ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and
- (iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) Effect on assumed responsibility

The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by a recipient of grant amounts with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the tribe has submitted to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c). The approval of the Secretary of any such certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy

Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto that are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

- (1) be in a form acceptable to the Secretary;
- (2) be executed by the chief executive officer or other officer of the tribe under this chapter qualified under regulations of the Secretary;
- (3) specify that the tribe has fully carried out its responsibilities as described under subsection (a); and

(4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to subsection (a); and

(B) is authorized and consents on behalf of the tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as such an official.

(d) Environmental compliance

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

- (1) will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] or any other provision of law that furthers the goals of that Act;
- (2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;
- (3) is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1); and
- (4) may be corrected through the sole action of the recipient.

(Pub. L. 104-330, title I, §105, Oct. 26, 1996, 110 Stat. 4028; Pub. L. 106-568, title X, §1003(d), Dec. 27, 2000, 114 Stat. 2926; Pub. L. 106-569, title V, §503(d), Dec. 27, 2000, 114 Stat. 2962.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in subsecs. (a)(1) and (c)(2), 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.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-568 and Pub. L. 106-569 amended section identically, adding subsec. (d).