

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), 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.

SUBCHAPTER III—ALLOCATION OF GRANT AMOUNTS

§ 4151. Annual allocation

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this chapter for the fiscal year, in accordance with the formula established pursuant to section 4152 of this title, among Indian tribes that comply with the requirements under this chapter for a grant under this chapter.

(Pub. L. 104-330, title III, §301, Oct. 26, 1996, 110 Stat. 4036.)

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Statutory Notes and Related Subsidiaries

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.

§ 4152. Allocation formula**(a) Establishment****(1) In general**

The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on October 26, 1996, in the manner provided under section 4116 of this title, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this chapter among Indian tribes in accordance with the requirements of this section.

(2) Study of need data**(A) In general**

The Secretary shall enter into a contract with an organization with expertise in housing and other demographic data collection methodologies under which the organization, in consultation with Indian tribes and Indian organizations, shall—

- (i) assess existing data sources, including alternatives to the decennial census, for use in evaluating the factors for determination of need described in subsection (b); and
- (ii) develop and recommend methodologies for collecting data on any of those

factors, including formula area, in any case in which existing data is determined to be insufficient or inadequate, or fails to satisfy the requirements of this chapter.

(B) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(b) Factors for determination of need

The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:

(1)(A) The number of low-income housing dwelling units developed under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), pursuant to a contract between an Indian housing authority for the tribe and the Secretary, that are owned or operated by a recipient on the October 1 of the calendar year immediately preceding the year for which funds are provided, subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section if—

- (i) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or
- (ii) the unit is lost to the recipient by conveyance, demolition, or other means.

(B) If the unit is a homeownership unit not conveyed within 25 years from the date of full availability, the recipient shall not be considered to have lost the legal right to own, operate, or maintain the unit if the unit has not been conveyed to the homebuyer for reasons beyond the control of the recipient.

(C) If the unit is demolished and the recipient rebuilds the unit within 1 year of demolition of the unit, the unit may continue to be considered a low-income housing dwelling unit for the purpose of this paragraph.

(D) In this paragraph, the term “reasons beyond the control of the recipient” means, after making reasonable efforts, there remain—

- (i) delays in obtaining or the absence of title status reports;
- (ii) incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance;
- (iii) clouds on title due to probate or intestacy or other court proceedings; or
- (iv) any other legal impediment.

(E) Subparagraphs (A) through (D) shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed by not later than 45 days after October 14, 2008.

(2) The extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.

(3) Other objectively measurable conditions as the Secretary and the Indian tribes may specify.

(c) Other factors for consideration

In establishing the formula, the Secretary shall consider—

(1) the relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity; and

(2) the extent to which terminations of assistance under subchapter V will affect funding available to State recognized tribes.

(d) Funding for public housing operation and modernization**(1) Full funding****(A) In general**

Except with respect to an Indian tribe described in subparagraph (B), the formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is equal to or greater than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the total amount of such operating and modernization assistance provided for fiscal year 1996 for such tribe.

(B) Certain Indian tribes

With respect to fiscal year 2001 and each fiscal year thereafter, for any Indian tribe with an Indian housing authority that owns or operates fewer than 250 public housing units, the formula shall provide that if the amount provided for a fiscal year in which the total amount made available for assistance under this chapter is equal to or greater than the amount made available for fiscal year 1996 for assistance for the operation and modernization of the public housing referred to in subparagraph (A), then the amount provided to that Indian tribe as modernization assistance shall be equal to the average annual amount of funds provided to the Indian tribe (other than funds provided as emergency assistance) under the assistance program under section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437) for the period beginning with fiscal year 1992 and ending with fiscal year 1997.

(2) Partial funding

The formula shall provide that, if, in any fiscal year, the total amount made available for assistance under this chapter is less than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for

which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the amount that bears the same ratio to the total amount available for assistance under this chapter for such fiscal year that the amount of operating and modernization assistance provided for the tribe for fiscal year 1996 bears to the total amount made available for fiscal year 1996 for assistance for the operation and modernization of such public housing.

(e) Effective date

This section shall take effect on October 26, 1996.

(Pub. L. 104-330, title III, §302, Oct. 26, 1996, 110 Stat. 4036; Pub. L. 106-568, title X, §1003(g), Dec. 27, 2000, 114 Stat. 2928; Pub. L. 106-569, title V, §503(f), Dec. 27, 2000, 114 Stat. 2964; Pub. L. 110-411, title III, §301, Oct. 14, 2008, 122 Stat. 4329.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d), 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.

The United States Housing Act of 1937, referred to in subsecs. (b)(1)(A) and (d), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. Section 14 of the Act, which was classified to section 1437f of Title 42, was repealed by Pub. L. 105-276, title V, §522(a), Oct. 21, 1998, 112 Stat. 2564. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

Subchapter V, referred to in subsec. (c)(2), was in the original "title V", meaning title V of Pub. L. 104-330, which enacted subchapter V of this chapter and section 12899h-1 of Title 42, The Public Health and Welfare, amended sections 1437a, 1437c to 1437e, 1437g, 1437i, 1437n, 1437u to 1437x, 1437aaa-5, 1437aaa-6, 1439, 11371 to 11376, 11382, 11401, 11403g, 11408, 11903a, 12747, and 12838 of Title 42, repealed sections 1437aa to 1437ee of Title 42, enacted provisions set out as notes under sections 11371, 12747, and 12899h-1 of Title 42, amended provisions set out as a note under section 11301 of Title 42, and repealed provisions set out as a note under section 1701z-6 of Title 12, Banks and Banking. For complete classification of title V to the Code, see Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-411, §301(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (b)(1). Pub. L. 110-411, §301(2), added par. (1) and struck out former par. (1) which read as follows: "The number of low-income housing dwelling units owned or operated at the time pursuant to a contract between an Indian housing authority for the tribe and the Secretary."

2000—Subsec. (d)(1). Pub. L. 106-568, §1003(g)(1), and Pub. L. 106-569, §503(f)(1), which directed identical amendment of par. (1) by substituting subpar. (A) designation, heading, and "Except with respect to an Indian tribe described in subparagraph (B), the formula" for "The formula.", were executed by making the substitution for "The formula" to reflect the probable intent of Congress.

Subsec. (d)(1)(B), Pub. L. 106-568, §1003(g)(2), and Pub. L. 106-569, §503(f)(2), amended par. (1) identically, adding subpar. (B).

SUBCHAPTER IV—COMPLIANCE, AUDITS,
AND REPORTS

§ 4161. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b), if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall—

(A) terminate payments under this chapter to the recipient;

(B) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or

(D) in the case of noncompliance described in section 4162(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 4162 of this title.

(2) Substantial noncompliance

The failure of a recipient to comply with the requirements of section 4152(b)(1) of this title regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this subchapter.

(3) Continuance of actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(4) Exception for certain actions

(A) In general

Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this chapter to comply substantially with any material provision (as that term is defined by the Secretary) of this chapter is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.

(B) Procedural requirement

If the Secretary takes an action described in subparagraph (A), the Secretary shall—

(i) provide notice to the recipient at the time that the Secretary takes that action; and

(ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).

(C) Determination

Upon completion of a hearing under this paragraph, the Secretary shall make a deter-

mination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.

(b) Noncompliance because of technical incapacity

(1) In general

If the Secretary makes a finding under subsection (a), but determines that the failure to comply substantially with the provisions of this chapter—

(A) is not a pattern or practice of activities constituting willful noncompliance, and

(B) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chapter, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement.

(2) Performance agreement

The period of a performance agreement described in paragraph (1) shall be for 1 year.

(3) Review

Upon the termination of a performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.

(4) Effect of review

If, on the basis of a review under paragraph (3), the Secretary determines that the recipient—

(A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and

(B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to comply substantially with this chapter, and the recipient shall be subject to an action under subsection (a).

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action authorized by subsection (a), if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter that was not ex-