

Community Investments Vol. 9, Issue 3 New Directions in Native American Housing... the Program for the Future

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On October 26, 1996, President Clinton signed into law the Native American Housing Assistance and Self-Determination Act of 1996. Effective October 1, 1997, this Act is the first U.S. Housing and Urban Development (HUD) housing program designed specifically for Native Americans. In the past, HUD's Indian Housing Program was adapted from public housing programs intended for large cities, with special rules added to "round the corners" off a square peg. Now, under this new legislation, Tribes and the Office of Native American Programs (ONAP) work in partnership to develop a new approach focused specifically on assisting tribal governments in meeting the housing needs of their communities.

The Act consolidates various HUD programs into one formula driven block grant, on behalf of Indian Tribes, to provide housing assistance for Native Americans. Programs in the new block grant program include: assistance

under the Housing Act of 1937 (Public/Indian housing and Section 8 rental assistance); HOME; Youthbuild; and Homeless Assistance.

Through a consolidation of HUD funds, and with the flexibility to create programs that amplify the integration of various HUD component program models, development project funding decisions become sole tribal decisions, based on priorities established by Tribes on behalf of their members. Because HUD funds will come directly to established TDHEs (tribally designated housing entities), Tribes can effectively reduce the time it takes to construct or renovate development projects by contracting directly with financing agencies and outside developers as needed. This allows Tribes to act pro-actively and react more expeditiously to leverage federal funds to secure private capital for development activity.

For the first time, an Act discusses a "trust responsibility" in regard to Indian housing. In this case, it refers to the government's responsibility to assist Tribes in meeting their housing needs. The Act, however, does not state a financial responsibility.

Under the Act, Tribes now have the option of designing and administering their own affordable housing activities to meet the specific needs of their tribal communities, or they may opt to have the Indian Housing Authorities (IHAs) continue to play this role. The Act requires HUD, to the extent funds are available, to make grants to a Tribe or a TDHE to carry out affordable housing activities on behalf of the Tribe or Tribes. Grants will only be awarded to those Tribes or TDHE's who have received HUD approval for their submitted Indian Housing Plans.

Existing Indian Housing Authorities (IHAs) will automatically be retained as TDHEs, if the Tribes so chose or abdicate their responsibility to designate an alternative TDHE. New state-recognized Tribes will not be eligible under this

program; those currently receiving funding will be "grandfathered" into the program with a cap on funding amounts.

All regulations under this Act are required to be issued in accordance with negotiated rule-making, adapted to the "unique government-to-government relationship between the Indian Tribes and the United States."

The six categories of activities for providing affordable housing (or related housing services) are: Indian housing assistance (modernization or operating assistance for housing previously developed or operated pursuant to a contract between HUD and an IHA); development of additional affordable housing; housing-related services for affordable housing; management services for affordable housing; safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

Norwest is participating with HUD and Tribes to build home ownership using the Section 184 Loan Guarantees for Indian Housing Program. In Arizona, Norwest just recently financed new home construction for its first borrowers under the HUD Section 184 Program. The improvements to the Section 184 Program included in the Act can give us a greater opportunity to help meet the housing needs of the Native American communities we serve.

- Carolyn Mitchell, Norwest Bank Arizona N.A.

What the Act Will Do

The Act:

- Authorizes necessary sums for each of fiscal years 1998-2001;
- Limits use of assistance to provide affordable housing for low-income Indian families on Indian reservations and other Indian areas, with

some specified exceptions for families with higher incomes and non-Indian families (similar to the Mutual Help program);

- Removes Tribes/TDHEs from Title VI and Title VIII of Civil Rights Acts of 1964 and 1968; tribal preference in tenant selection is now statutory;
- Caps rents for any low-income family at 30% of monthly adjusted income, and TDHEs can use any deductions they choose;
- Provides that any Tribe/TDHE that owns or operates Indian housing developed under the United States Housing Act of 1937 is required to reserve and use necessary amounts from the block grant for operating assistance for such housing;
- Allows recipients to use grant amounts for affordable housing activities through equity investments, interest bearing and non-interest bearing loans or advances, interest subsidies, leveraging of private investments, or other forms of assistance HUD determines to be appropriate. In addition, recipients may invest grant amounts, for the purpose of carrying out affordable housing activities, in investment securities and other applications as approved by HUD;
- Requires HUD to allocate assistance in accordance with the allocations formula based on factors that reflect the need of Indian Tribes and Indian areas for affordable housing activities, including the number of assisted units, the extent of poverty and economic distress and number of Indian families; and other objectively measurable conditions as HUD and the Indian Tribes may specify. HUD is also required to consider relative administrative capacities and challenges faced by recipients;
- Assures each Tribe a grant at least as large as the amount provided to the IHA for operation and modernization of 1937 Act Indian housing in fiscal year 1996;
- Authorizes HUD to guarantee obligations issued by Indian Tribes/TDHEs, (up to 5 times the tribal grant amount) to finance affordable housing activities; use of these guarantees is permitted only

if other financing is not available (the Tribe borrows from a lender and pledges future grant funds for HUD guarantee of the loan);

- Makes miscellaneous improvements to the Section 184 Loan Guarantees for Indian Housing Program, including permitting Ginnie Mae to issue mortgage-backed securities covering section 184-guaranteed obligations; and for Tribes to be borrowers under the program;
- Authorizes leasing of any trust or restricted Indian lands by Indian owners for up to 50 years, subject to approval of the Tribe and the Secretary of the Interior for housing development and residential purposes;
- Requires local cooperation agreements and payment of user fees out of the Tribe's block grant funds; and
- Authorizes appropriations for a national organization representing Native American housing interests for providing training/technical assistance to IHAs/TDHEs for fiscal years 1997-2001.

Under this program, TDHEs must submit, annually, for HUD approval, a 5-year and 1-year housing plan. TDHEs must also submit a year-end activity report. All annual reports must be made available to the public.

"I've been with HUD a long time, and the last time I can remember changes that were so far-reaching was in the 1970's when both the Community Development Block Grant and Section 8 Programs were implemented. This new program is an opportunity for all of us to start fresh and go in a new direction...towards a better living environment for all Native Americans."

- Dom Nesni, Deputy Assistant Secretary, HUD, ONAP

Two committees are being established to propose rule-making for the Act. One committee will work on the block grant allocation formula; the other on the rules for implementing all other parts of this Act.

Negotiated rule-making is a process where-by the Tribes and HUD will arrive at mutually agreeable rules, within the scope of the Act, for the operation of the program. This process is new to Native American housing programs. ONAP will not simply be writing a proposed rule and soliciting public comment. It is truly a negotiated process. Anyone with proposed rules, suggestions, ideas, or comments should forward them to the rule-making negotiation committees through the National Congress of American Indians, the Native American Indian Housing Council, or regional IHA associations.

During the coming year there are new regulations to negotiate and trainings to be conducted by ONAP staff. Tribes must form TDHEs. There will be a necessary reorganization of work procedures and process and much more. It will take everyone working together to make all the pieces fit and to make a smooth transition into the new program on October 1, 1997.

For further information, a copy of the Act is available at:

<http://www.codetalk.fed.us>.