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The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA): Background and Funding

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Summary

Native Americans living in tribal areas experience some of the poorest housing conditions in the United States. Native Americans in tribal areas are several times more likely to live in housing that is physically substandard or overcrowded than the U.S. population as a whole. They are also more likely to live in poverty than the general population, further contributing to housing problems. In addition, a number of issues, such as the legal status of tribal land, pose unique barriers to housing for many people living in tribal areas.

In light of these conditions, and the federal government's trust responsibility to Native American tribes, Congress has provided funding for Native American housing programs for several decades. The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) reorganized the previous system of housing assistance for Native Americans and replaced it with a single block grant program, the Native American Housing Block Grant (NAHBG). In addition, the law focused on self-determination for tribes, giving tribes broad authority to choose how to use the affordable housing funds they receive under NAHASDA.

Through the NAHBG, the Department of Housing and Urban Development (HUD) distributes formula funding to Native American tribes and Alaska Native villages, or to organizations the tribes have designated to administer the funding (known as tribally designated housing entities (TDHEs)). Tribes and TDHEs, in turn, use the funding for a range of affordable housing activities to benefit low-income tribal households. These activities include developing new housing for rental or homeownership, maintaining or operating existing housing units, providing infrastructure, and offering housing-related services.

In addition to the NAHBG, NAHASDA also authorizes a loan guarantee program to help tribes obtain private financing for housing activities (the Title VI Loan Guarantee program) and authorizes funding for training and technical assistance. An amendment to NAHASDA in 2000 established the Native Hawaiian Housing Block Grant (NHHBG) program to provide housing assistance for Native Hawaiians similar to the assistance provided under the NAHBG.

HUD estimates that about 100,000 housing units have been built, acquired, or rehabilitated since the NAHBG began. The majority of these units have been substantially rehabilitated rather than built or acquired. In general, many tribes choose to use their NAHBG funds to develop more homeownership units than rental units, in part because homeownership units have fewer ongoing costs for tribes. The NHHBG has been used to build, acquire, or rehabilitate nearly 600 homes since the program began, and to provide services or training to another 1,500 households.

The authorization for NAHASDA programs, other than the Native Hawaiian Housing Block Grant, expired at the end of FY2013. (The Native Hawaiian Housing Block Grant program has not been reauthorized since its initial authorization expired at the end of FY2005.) Congress has been considering bills to reauthorize NAHASDA.

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Introduction

Native Americans living on reservations or other tribal lands are more likely to experience poor housing conditions, such as living in housing that is physically substandard or overcrowded, than the population as a whole. One reason for this is that a disproportionate number of Native Americans are low-income, making it difficult to afford suitable housing. Additionally, Native Americans who live on reservations or in other tribal areas face housing issues that do not generally apply to the rest of the country, such as the legal status of trust land and the implications that has for mortgage lending.

Recognizing the singular challenges in providing affordable housing for Native Americans in tribal areas, and the need for such housing, in the 1960s the federal government began to implement specific housing programs for Native Americans that were separate from other affordable housing programs. Questions about whether these programs were meeting their goals, and whether they were running efficiently, persisted for several decades. In 1996, Congress passed the Native American Housing Assistance and Self-Determination Act (NAHASDA). The law reorganized several existing federal housing assistance programs for Native Americans into a single block grant program. In addition to providing funding for affordable housing for Native Americans, the law focused on self-determination for tribes, giving tribes broad authority to choose how to use the affordable housing funds they receive under NAHASDA.

The block grant program authorized under NAHASDA provides funding to tribes and Alaska Native villages for affordable housing activities that benefit low-income Native Americans living in tribal areas. A separate block grant program, established later by an amendment to NAHASDA, makes funding available for housing for low-income Native Hawaiians who are eligible to live on the Hawaiian Home Lands. NAHASDA also authorizes a loan guarantee program to help tribes and Alaska Native villages access financing for affordable housing activities and authorizes funding for training and technical assistance.

This report provides some brief background on Native American housing issues and the system of federal housing assistance for Native Americans prior to NAHASDA. It then describes the programs authorized by NAHASDA: the Native American Housing Block Grant, the Title VI Loan Guarantee Program, and the Native Hawaiian Housing Block Grant, as well as funding for training and technical assistance. It concludes with a discussion of historical funding levels for NAHASDA programs and tribes' uses of NAHASDA funds.

A Note About Terminology

Throughout this report, the term "Native American" is meant to include both American Indians and Alaska Natives. It does not include Native Hawaiians. The term "tribes" is generally used to mean Native American tribes and Alaska Native villages that are recognized by the federal government. The term "tribal land" is used to refer to land that is under the jurisdiction of a federally recognized tribe, such as reservations or other trust land.

Background on Native American Housing Issues

The federal government currently recognizes over 550 Native American tribes and Alaska Native villages across the United States. These tribes and Alaska Native villages vary widely in terms of size, population, geography, history, and culture. The size and surroundings of tribes' reservations and other tribal lands are also very different. For example, some reservations are very large while others are quite small—the largest is over 16 million acres, while the smallest reservations

encompass fewer than 1,000 acres—and some tribes do not have reservations at all.[1] Many reservations are located in remote rural areas, while some are located closer to urban areas.

According to the U.S. Census, more than 5 million individuals identified as American Indian or Alaska Natives (AIAN) in 2010.[2] Of this number, nearly 3 million individuals identified themselves solely as American Indians or Alaska Natives, while an additional 2 million identified as AIAN in combination with another race.[3] Not everyone who identifies as AIAN is a member of a federally recognized tribe or Alaska Native village. Some individuals who identify as AIAN may not be formally enrolled members of any tribe, and some may be enrolled members of state recognized tribes or other tribes not formally recognized by the federal government. Furthermore, many people who identify as AIAN do not live on or near reservations or in other tribal areas. Of those who identified as AIAN alone, about one-third lived in tribal areas (such as on reservations or on off-reservation trust lands) in 2010, according to the Census.[4]

This report describes the main federal housing program for members of federally recognized tribes and Alaska Native villages who are living on tribal lands or in nearby areas. Native Americans who do not live in tribal areas are potentially eligible for the same federal housing programs as the rest of the population.[5] Certain issues impact housing and housing programs in tribal areas differently than the rest of the country. The special nature of the relationship between the federal government and federally recognized tribes has implications for Native American housing and housing programs. Furthermore, the restricted legal status of tribal lands has implications for financing housing in these areas. Finally, while economic conditions and the quality of the housing stock vary by tribe, housing conditions in tribal areas generally tend to be worse than in other areas.

The Federal Government's Relationship with Tribes

The federal government's relationship with federally recognized tribes is unique in several ways. For one thing, federally recognized tribes are sovereign nations, and the relationship between the federal government and tribes is a government-to-government relationship. Tribes are entitled to govern their own affairs, including deciding tribal membership and leadership, and tribal areas are governed by tribal law.

Furthermore, the federal government has a long-standing trust responsibility to members of federally recognized Native American tribes, meaning that it has a responsibility to provide for certain needs of tribes and tribal members. This trust responsibility was first established through treaties between the federal government and individual tribes; under these treaties, tribes generally ceded land to the federal government in exchange for protection and certain annuities, personnel, goods, and services. Over time, the federal government's trust responsibility to tribes has been affirmed through laws, court decisions, and executive orders, and has been the basis for

[1] Bureau of Indian Affairs, "Frequently Asked Questions," http://www.bia.gov/FAQs/index.htm.

[2] U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010*, 2010 Census Briefs, issued January 2012, p. 1, http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf.

[3] Beginning with the 2000 Census, respondents have had the option of identifying with more than one race.

[4] U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010*, 2010 Census Briefs, issued January 2012, p. 12, http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf. Not only American Indians and Alaska Natives live in tribal areas. According to the Census, nearly three-quarters of those living in American Indian areas did not identify as American Indian or Alaska Native, and over two-thirds of those living in Alaska Native villages did not identify as American Indian or Alaska Native (see pp. 13-14 of the Census Brief).

[5] For more information on federal housing programs available to the general population, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*.

a number of federal programs that provide funds or services specifically to Native American tribal members.

At times, the federal government's responsibility to provide certain services to tribes and the tribes' right to govern their own affairs can appear to be in conflict. Tribal leaders have expressed concerns that having federal agencies administer funding that is provided to tribes, and making most of the decisions about how such funding is used, undermines tribal sovereignty and impedes the ability of tribes to develop the capacity and resources needed to administer their own affairs. In light of these concerns, federal policy towards Native Americans began to shift towards the concept of self-determination beginning in the 1970s.

Self-determination recognizes the sovereignty of tribes and aims to give tribes authority over their own affairs. In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act (P.L. 93-638), providing tribes with the authority to contract to provide services otherwise provided by the federal government and to administer their own education programs. It represented the first major shift towards self-determination in federal programs for Native Americans. Self-determination has continued to be a cornerstone of federal Indian policy since that time, with the government providing funds for many social programs to tribes while allowing tribes greater discretion in how they implement those programs.

Legal Status of Tribal Land

The legal status of tribal land poses some distinctive challenges for housing for Native Americans. Most tribal land is held in trust or otherwise restricted in some way.[6] When land is held in trust, it means that the federal government holds the title to the land for the benefit of an individual ("individual trust land") or a tribe ("tribal trust land"). Both tribal and individual trust lands are subject to restrictions on alienation and encumbrance—that is, trust land generally cannot be transferred, leased, or have a lien or claim placed against it without the approval of the Bureau of Indian Affairs (BIA). When land is held in restricted fee status, rather than in trust, an individual or tribe holds the title to the land, but the land still cannot be alienated or encumbered without the BIA's approval.

These restrictions on trust and restricted lands raise issues for mortgage lending because the land generally cannot be used as collateral for a mortgage. Banks are usually unwilling to offer mortgage loans (either for households to purchase a home or for developers to build housing) where they will not be able to take title to the land if the borrower does not repay the mortgage as promised.

Because of the restrictions on mortgaging trust land, many loans on trust lands involve long-term leases of the land, with the leasehold interest acting as the collateral for the loan since the ownership interest in the land cannot be transferred. For example, an individual might obtain a 50-year leasehold interest in the land, and obtain a mortgage using that leasehold interest and the home as collateral. This has provided a model for lending on lands that have legal restrictions to being mortgaged. However, leases on tribal lands also generally require the BIA's approval. The process of obtaining the BIA's approval to obtain a long-term lease of trust land can make it more complicated and time-consuming to take out a mortgage.[7]

[6] According to the BIA, the federal government holds over 56 million acres of land in trust for Native American tribes or individuals, and there are about 326 federal Indian reservations or communities across the United States. See U.S. Department of the Interior, Bureau of Indian Affairs, "Frequently Asked Questions," http://www.bia.gov/FAQs/.

[7] The Helping Expedite and Advance Tribal Homeownership Act (the HEARTH Act, P.L. 112-151), enacted on July

Another factor that can pose obstacles to mortgage lending is that tribal lands are subject to tribal laws, rather than state or federal laws. This includes laws governing foreclosure and eviction procedures if someone who took out a loan fails to pay it back as promised. This can contribute to banks being unwilling to offer loans on tribal lands, because banks might be uncertain about tribal laws or have concerns that some tribes do not have sufficient foreclosure or eviction laws in place. Together, these factors can limit the availability of private financing in tribal areas, either for individuals to purchase homes or for developers to access capital to increase the supply of housing.

Housing Conditions in Tribal Areas

Housing conditions on tribal lands vary widely. However, in general, the housing problems of Native Americans living on tribal lands tend to be particularly severe compared to the rest of the country. Historically, Native Americans on tribal lands have been more likely than the general population to live in housing that is overcrowded and/or physically substandard, and this continues to be the case today.

Many issues contribute to poor housing conditions in tribal areas. Lack of economic development and economic opportunity contributes to substandard housing. Native Americans living on tribal lands are nearly twice as likely to live in poverty as the general population,[8] making it difficult for many families to afford safe, affordable housing or leading to overcrowding.[9] The issues raised by the legal status of trust land can make it difficult for tribes or individuals to obtain capital to finance affordable housing in tribal areas. Furthermore, the remoteness of some reservations can make it difficult or expensive to obtain building materials or find qualified labor, raising the cost of housing construction.

In the years prior to the enactment of NAHASDA, several studies detailed the generally poor condition of housing on tribal lands. In 1989, Congress established the National Commission on American Indian, Alaska Native and Native Hawaiian housing, which released its final report in 1992.[10] It described a persistent need for decent housing on tribal lands and identified barriers to the provision of such housing. In 1996, just before NAHASDA was enacted, the Urban Institute completed a study for HUD on Native American housing needs and the progress of existing housing programs in meeting those needs.[11] It found that 28% of Native Americans on reservations or in other tribal areas were living in housing that lacked plumbing or kitchen

30, 2012, granted tribes the right to take over the lease approval functions that have been performed by the BIA under certain circumstances.

[8] The Housing Assistance Council, *Housing in Native American Lands*, January 2012, http://www.ruralhome.org/storage/documents/nativeamerinfosheet2.pdf.

[9] Definitions of overcrowding vary, but a common definition is a home where there is more than one person per room living in the home. For example, see the definition used in HUD's "Worst Case Housing Needs 2009 Report to Congress," February 2011, p. 63, http://www.huduser.org/Publications/pdf/worstcase_HsgNeeds09.pdf.

[10] *Building the Future: A Blueprint for Change: "By Our Homes You Will Know Us": Final Report of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing,* 1992, available at http://hdl.handle.net/2027/pur1.32754063631521.

[11] HUD has contracted with the Urban Institute to perform a congressionally mandated updated study on Native American housing needs. An interim report was released in March 2014. For more information on the study, which was required by S.Rept. 111-69, see U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "Assessment of Native American, Alaska Native, and Native Hawaiian Housing Needs," http://www.huduser.org/portal/native_american_assessment/home.html.

facilities or was overcrowded, and that overall about 40% of Native Americans living in tribal areas were experiencing inadequate housing conditions.[12]

Since NAHASDA took effect in FY1998, tribes indicate that the law has had a positive impact on their ability to address housing needs in tribal areas.[13] However, poor housing conditions remain much more prevalent in tribal areas than in the country as a whole, and some tribes experience particularly severe conditions. According to an analysis of 2010 Census data by the Housing Assistance Council, a nonprofit organization focused on rural housing issues, 5% of housing units on tribal lands lack complete plumbing facilities, and 5% lack complete kitchen facilities, compared to less than 1% of housing units nationally that lack each of these features. Eight percent of housing units on tribal lands are overcrowded, compared to 3% nationally.[14] Tribal officials, policy makers, and others routinely describe extremely poor housing conditions that many tribes experience.[15]

In light of the special trust relationship between the federal government and tribes, the specific issues that affect housing on tribal lands, and the poor housing conditions in these areas, the federal government has established several programs that directly target housing on Native American lands over the last several decades. The next section of this report provides a brief overview of the evolution of federal housing programs for Native Americans, leading up to the reorganization of Native American housing programs into the system that is in place today.

Brief History of Native American Housing Programs

The federal government has had a long-standing policy of promoting access to decent and affordable housing for all Americans. The Housing Act of 1949 included a goal of "a decent home and a suitable living environment for every American family."[16] However, Native Americans living on reservations or other tribal lands generally had little access to the affordable housing programs established by the federal government until the early 1960s. At that time, the government began to recognize that Native Americans largely lacked access to existing affordable housing programs and took steps to provide affordable housing funding explicitly for Native Americans.

In 1961, tribal governments were first recognized as eligible to receive funding under the public housing program, which had been established by the Housing Act of 1937 and was administered at the time by the Public Housing Administration. This recognition allowed tribes to establish Indian housing authorities (IHAs), similar to local public housing authorities (PHAs), to

[12] Kingsley et al., *Assessment of American Indian Housing Needs and Programs: Final Report*, prepared for the U.S. Department of Housing and Urban Development Office of Policy Development and Research by The Urban Institute, May 1996, p. xii, http://www.huduser.org/publications/pdf/Hud%207159_1.pdf.

[13] For example, see U.S. Government Accountability Office, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, GAO-10-326, February 2010, p. 34, http://www.gao.gov/assets/310/301157.pdf, indicating that most tribes say that NAHASDA has had a positive impact on their ability to address housing needs.

[14] Housing Assistance Council, *Housing on Native American Lands*, January 2012, http://www.ruralhome.org/storage/documents/nativeamerinfosheet2.pdf.

[15] For example, see the written testimonies of several housing officials representing different tribes at an April 2013 hearing before the Senate Committee on Indian Affairs, describing housing that lacks basic facilities, is in a state of substantial disrepair, subject to extreme crowding, and generally inadequate to meet the demand. Copies of the witnesses' written testimony can be found at http://www.indian.senate.gov/hearing/oversight-hearing-identifying-barriers-indian-housing-development-and-finding-solutions.

[16] P.L. 81-171 (42 §U.S.C. 1441 et. seq.)

administer federal housing assistance programs authorized under the 1937 law.[17] In 1962, the Public Housing Administration established the Mutual Help Homeownership Opportunity Program to provide funds to IHAs to help Native Americans achieve home ownership through a lease-purchase program.[18] Both the public housing program and the Mutual Help program were administered by the Department of Housing and Urban Development (HUD) after that department was established in 1965, and these two programs provided the bulk of housing assistance to Native Americans until NAHASDA reorganized the federal government's Native American housing programs into today's block grant system.

Also in 1965, the Bureau of Indian Affairs (BIA) within the Department of the Interior established the Housing Improvement Program (HIP). Through HIP, the BIA provides grants to assist the least well-off Native Americans with repairing severely inadequate housing. The BIA was authorized to establish various assistance programs for Native Americans by the Snyder Act of 1921. However, while it used this authority to establish other types of programs for Native Americans, it did not create a specific housing program for Native Americans until it created HIP.

In the mid-1970s, the government began to recognize that simply extending existing programs to tribal areas was not always effective, given some of the unique circumstances related to housing on tribal lands. Despite the availability of a number of affordable housing programs in tribal areas, poor housing conditions in tribal areas persisted. In 1978, a report from the General Accounting Office (GAO) noted that, despite the fact that HUD, BIA, and the Farmers Home Administration administered several programs that could help provide affordable housing for Native Americans, these programs had "not been effective in providing the number of units necessary to keep pace with the increasing need for decent, safe, and sanitary Indian housing."[19] The report noted that HUD's programs were generally designed for more urban areas, and tended to be less effective on reservations located in more rural areas.

Federal agencies began to make efforts to make housing programs more targeted to the specific circumstances of Native Americans living in tribal areas. Around this time, HUD created a separate Office of Indian Housing[20] to administer the agency's Native American housing programs, which were previously operated as part of the public housing program.[21] In 1976,

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[17] For more information on the public housing program, see CRS Report R41654, *Introduction to Public Housing*. Although IHAs also became eligible to participate in the Section 8 program, which was established in the 1970s and is also administered by PHAs, there was generally little IHA participation in the Section 8 program as of the early 1990s. For more information on IHAs and Section 8, see U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "Feasibility of Expanded Use of Section 8 Vouchers by Indian Housing Authorities," March 1992, http://www.huduser.org/Publications/pdf/HUD-006004.pdf. For more information on the Section 8 program in general, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*.

[18] The Mutual Help Homeownership Opportunity Program was initially established administratively, and was codified in law in 1988. Under the program, as codified, an IHA leased a home to a family for a period of up to 25 years. The family made an initial minimum contribution of $1,500 in cash, labor, or land toward the cost of the home, and then made monthly payments of 15-30% of its adjusted income, which were deposited into an equity account. Families were also responsible for necessary home repairs and maintenance. When a family had enough money in its equity account, it could purchase its home. No new funding has been appropriated for the Mutual Help program since NAHASDA went into effect, but existing contracts remain in effect. For more information, see HUD's website at http://portal.hud.gov/hudportal/HUD?src=/programdescription/muthelp.

[19] U.S. General Accounting Office, *Substandard Indian Housing Increases Despite Federal Efforts—A Change Is Needed*, March 31, 1978, p. i, http://www.gao.gov/assets/130/122005.pdf.

[20] Today, HUD's Native American programs are administered by the Office of Native American Programs (ONAP) within the Office of Public and Indian Housing (PIH).

[21] Kingsley, Thomas G. et al., *Assessment of American Indian Housing Needs and Programs: Final Report*, prepared

regulations governing Native American housing assistance were published separately from the public housing regulations.

Federal efforts to improve housing conditions in tribal areas continued during the 1980s and early 1990s. In 1983, Congress authorized a program to allow the Federal Housing Administration (FHA) to insure home mortgages made on tribal lands. This program was intended to address issues related to the lack of availability of mortgage credit on tribal lands and to encourage lenders to offer mortgages in these areas. In 1988, Congress passed the Indian Housing Act of 1988 (P.L. 100-358), which separated Native American housing assistance from the existing public housing program in law and specified that future amendments to the public housing program would not apply to the Native American program (although existing requirements of the public housing program did continue to apply). The law also codified the Mutual Help Homeownership Opportunity Program. In 1992, Congress authorized another loan guarantee program, the Section 184 program, to encourage mortgage lending on tribal lands by allowing HUD to guarantee certain home mortgages in tribal areas.

By the early 1990s, tribes were eligible to receive funding through at least 14 HUD programs, each of which had its own eligibility criteria and program requirements.[22] These included programs specifically for tribes, such as Mutual Help, the Indian public housing program, and programs to provide loan guarantees on tribal lands such as the Section 184 program. It also included other, broader HUD programs for which tribes were eligible to receive funds, often through a set-aside of funding from the larger program. However, taken together, these programs were generally seen as inadequate to address the persistent housing needs and unique circumstances of Native Americans living on tribal lands.[23] Furthermore, these programs generally did not recognize the principle of tribal self-determination.

The Native American Housing Assistance and Self-Determination Act of 1996

In 1996, Congress enacted the Native American Housing Assistance and Self-Determination Act (P.L. 104-330). The law represented a major reorganization of federal Native American housing assistance, consolidating most of the federal housing funding that previously had been provided to tribes under HUD programs into a single block grant that provides funds to eligible tribes based on a formula.

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for the U.S. Department of Housing and Urban Development Office of Policy Development and Research by the Urban Institute Center for Public Finance and Housing, May 1996, p. 102, http://www.huduser.org/publications/pdf/Hud%207159_1.pdf.

[22] U.S. General Accounting Office, *Native American Housing: Information on HUD's Funding of Indian Housing Programs*, GAO/RCED-99-16, November 1998, p. 4, http://www.gao.gov/assets/230/226638.pdf. Other HUD programs for which tribes were eligible to receive funds included the HOME Investment Partnerships Program and Emergency Shelter Grants.

[23] For example, at a hearing on NAHASDA before the legislation was enacted, Representative Doug Bereuter, the Vice Chairman of the Subcommittee on Housing and Community Opportunity of the House Committee on Banking and Financial Services, said, "... the programs ... that are designed for the Country at large don't often work well for the Indian community, and we want to adapt or create new programs as necessary to meet the housing needs of Native Americans...." See U.S. Congress, House Committee on Banking and Financial Services, Subcommittee on Housing and Community Opportunity, *The Native American Housing Assistance and Self-Determination Act of 1996*, 104th Cong., 2nd sess., February 27, 1996 (Washington: GPO, 1996).

Purpose

President Clinton signed NAHASDA into law on October 26, 1996, and it took effect on October 1, 1997 (the beginning of FY1998). The congressional findings recognized the federal government's unique relationship with tribes and its responsibility to ensure access to affordable, decent homes for Native Americans, while at the same time recognizing the rights of tribal self-governance and self-determination.[24]

The centerpiece of NAHASDA was a reorganization of most of the existing federal housing assistance for Native Americans into a single block grant program, the Native American Housing Block Grant (NAHBG). (This block grant is sometimes also referred to as the Indian Housing Block Grant, or IHBG.) NAHASDA removed the ability of IHAs to directly receive funds through most other HUD programs, and instead authorized tribes to receive block grant funds that could be used for a broad range of affordable housing activities.[25] Specifically, NAHASDA eliminated tribes' ability to receive funds under programs authorized by the Housing Act of 1937, as amended, such as the public housing program, Section 8, and Mutual Help. It also eliminated tribes' ability to directly receive funds through the HOME Investment Partnerships Program block grant, homelessness assistance programs, and the Youthbuild program (which has since been transferred from HUD to the Department of Labor).[26] Tribes were given the flexibility to choose how to use the funds provided under the new block grant program to meet their housing needs within the parameters set by the law.

NAHASDA also established a loan guarantee program to help tribes obtain private financing for affordable housing activities and authorized funding for technical assistance. In 2000, the law was amended to add a block grant providing housing assistance for Native Hawaiians.

NAHASDA has been amended several times since it was enacted, and has been reauthorized twice, in 2002 (P.L. 107-292) and 2008 (P.L. 110-411). The most recent authorization for most NAHASDA programs expired at the end of FY2013. (The Native Hawaiian Housing Block Grant has not been reauthorized since its original authorization expired in FY2005.) The 113th Congress considered NAHASDA reauthorization legislation, but none was enacted prior to the end of the 113th Congress. In the 114th Congress, the House and Senate have each been considering NAHASDA reauthorization bills (H.R. 360 and S. 710, respectively). For more information on NAHASDA reauthorization efforts in the 114th Congress, see CRS Report R44261, *The Native American Housing Assistance and Self-Determination Act (NAHASDA): Issues and Reauthorization Legislation in the 114th Congress*, by Katie Jones.

Negotiated Rulemaking

NAHASDA requires that regulations implementing the statute must be issued through a negotiated rulemaking process.[27] Negotiated rulemaking means that the process of developing

[24] The findings are at 25 U.S.C. 4101.

[25] Although NAHASDA terminated tribes' ability to receive funding under several other housing programs, there are some programs that were not consolidated into the block grant and continue to provide housing assistance to tribes today. Programs that continue to provide assistance to tribes include the Section 184 Indian Home Loan Guarantee Program, FHA's Section 248 program, and the Indian Community Development Block Grant Program (ICDBG) within HUD, as well as the Housing Improvement Program administered by BIA.

[26] An amendment to NAHASDA in 2008 clarified that, although tribes are no longer eligible for formula grants under the HOME program, they are allowed to apply for HOME funds from states or localities that participate in the program.

[27] 25 U.S.C. 4116(b)(2)

regulations to implement the statute includes groups and individuals with a stake in the outcome of the regulations, as well as the federal agency tasked with implementing the law.[28] In the case of NAHASDA, negotiated rulemaking means that regulations are developed through a process that includes tribal representatives as well as representatives of HUD.

Amendments to NAHASDA have clarified that negotiated rulemaking must also be used to develop any regulations required by amendments to the statute. HUD is required to establish a negotiated rulemaking committee within 180 days of the enactment of any laws reauthorizing NAHASDA to develop any proposed regulations that may be required.[29]

Native American Housing Block Grants

The Native American Housing Block Grant program is the centerpiece of NAHASDA and the largest source of federal funding specifically targeted to Native American housing. Through the NAHBG, HUD provides funding to federally recognized Indian tribes and Alaska Native villages.[30] In addition, five state recognized tribes that had contracts with HUD to receive funding under the pre-NAHASDA housing programs authorized by the Housing Act of 1937 are also eligible recipients of NAHBG funds. (Native Hawaiians are not eligible for NAHBG funds. Rather, Native Hawaiians are eligible for a separate housing program authorized by an amendment to NAHASDA, discussed in the "Housing Assistance for Native Hawaiians" section of this report.)

Each year, Congress appropriates funding for the NAHBG to HUD, which then distributes formula grants to eligible tribes and Alaska Native villages, or to organizations that tribes or Alaska Native villages have identified to administer their grants (known as tribally designated housing entities, or TDHEs).[31] TDHEs can be IHAs that administered previous housing programs for tribes, or they can be tribal departments or nonprofit entities. A single TDHE can be designated to administer the NAHBG for one or more tribes. Tribes and TDHEs that receive NAHBG funds are referred to as recipients.

Indian Housing Plans

In order to receive NAHBG funds, a tribe or its TDHE must submit an annual Indian Housing Plan (IHP) and have it approved by HUD. The IHP describes the tribe's affordable housing needs

[28] For more information on the concept of negotiated rulemaking in general, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

[29] See 25 U.S.C. 4116(b)(2). This provision was added in the 2008 reauthorization of NAHASDA, and applied to that reauthorization and any subsequent laws to reauthorize NAHASDA.

[30] NAHASDA defines federally recognized tribes to be "any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975." See 25 U.S.C. 4103. There are currently 566 federally recognized tribes and Alaska Native villages. See Bureau of Indian Affairs, Department of the Interior, "Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs," 80 *Federal Register* 1942-1948, January 14, 2015, http://www.gpo.gov/fdsys/pkg/FR-2015-01-14/pdf/2015-00509.pdf.

[31] Within HUD, the NAHBG is administered by the Office of Native American Programs (ONAP), which is part of HUD's Office of Public and Indian Housing (PIH). ONAP has six regional offices: Alaska, the Northwest, the Southwest, the Northern Plains, the Southern Plains, and the Eastern Woodlands. More information on the regional ONAP offices, including contact information, is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/aboutonap.

and its planned affordable housing activities for the next one-year period. These plans include descriptions of the activities that the tribe plans to fund with the NAHBG, estimates of the number of housing units or households that will be assisted and the amount of funding that will be spent on each activity, and requests for HUD approval of any necessary waivers of NAHBG requirements, among other things.[32] The IHP must be submitted to HUD at least 75 days before the beginning of the tribal program year.

While the IHP is required to be submitted and approved by HUD before a tribe can receive NAHBG funding, tribes are also required to submit an Annual Performance Report (APR) to HUD after the program year detailing the actual activities that the tribe funded with NAHBG funds. Recently, HUD combined the IHP with the APR. Now, tribes or TDHEs submit the IHP portion of the form prior to the beginning of the program year, and then submit the APR portion after the program year ends.[33]

Funding Formula

The NAHASDA statute directed the Secretary of HUD to establish a formula for the distribution of NAHBG funds based on several factors. These factors include the number of housing units developed under certain pre-NAHASDA housing programs that continue to be operated by a tribe; poverty measures; and the number of members of federally recognized tribes (or the five state recognized tribes that are eligible for NAHASDA) that are living in the tribe's formula area. The actual formula is set out in regulations, which were developed through negotiated rulemaking between the tribes and HUD.[34] It is based on two broad parameters: formula current assisted stock (FCAS), which measures the pre-NAHASDA housing stock developed under the 1937 Housing Act programs that the tribe continues to operate, and housing need.

The two main components of the formula are also adjusted by additional factors intended to reflect costs in the local area. For example, the formula is adjusted to reflect either fair market rents in the area or the amount of operating subsidy a tribe received to operate its public housing units developed under the Housing Act of 1937. It also takes into account "total development cost," which is the cost of building a "moderately designed" house in the area based on the average of at least two nationally recognized residential construction cost indices.[35] The formula is also adjusted to ensure that each tribe receives a certain minimum amount of funding.[36]

A tribe receives NAHBG funds based on the FCAS and need within its formula area, which is defined as reservations, trust land, and other tribal areas.[37] A tribe can request that additional areas

[32] Previously, tribes were also required to submit a five-year housing plan to HUD. Congress removed this requirement when it reauthorized NAHASDA in 2008.

[33] The combined IHP/APR form is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/guidance.

[34] A negotiated rulemaking committee that was convened in 2013 has been considering possible changes to the formula. For more information, see http://ihbgrulemaking.firstpic.org/.

[35] See 24 C.F.R. §1000.320 and §1000.325.

[36] Under the FCAS component of the formula, the regulations provide for an adjustment to a tribe's allocation if the tribe would be provided less funding for operating and maintaining FCAS units than the tribe's IHA had received for operating subsidy and modernization costs for public housing in FY1996. Furthermore, under the need component of the formula, the regulations specify that each tribe shall receive a minimum allocation of 0.007826% of the available appropriations, after set-asides, as long as the tribe receives less than $200,000 under the FCAS part of the formula for that fiscal year and can demonstrate the presence of households at or below 80% of median income. See 24 C.F.R. §1000.328 and 24 C.F.R. §1000.340.

[37] Specifically, the regulations define formula areas to include "(i) Reservations for federally recognized Indian tribes,

be added to its formula area. To do this, the tribe must show that it has an agreement with the governing entity of the area to provide housing services in the area, and that it either (1) could exercise court jurisdiction or (2) is providing substantial housing services in the area and will continue to do so.[38] A tribe's formula area for the purposes of the NAHBG might differ from the area that is included as part of a tribe's service area for the purposes of other programs.

Formula Current Assisted Stock

As described earlier in this report, prior to the enactment of NAHASDA, tribes received federal housing assistance through HUD programs that had been authorized under the Housing Act of 1937. These included the Mutual Help program and the public housing assistance provided to IHAs. Although tribes no longer receive funding or develop new units under these programs, they continue to operate and maintain units that were built under the Housing Act of 1937. Therefore, in order to provide tribes with funds to continue to maintain and operate these units, part of the formula for distributing NAHBG funding is based on the number of housing units that were developed by the tribe under these 1937 Housing Act programs and continue to be owned or operated by the tribe today. Section 8 units are also included in this part of the formula if the tribe continues to provide rental assistance similar to the Section 8 program. Altogether, the number of housing units assisted under these programs that continue to be operated by a tribe is referred to as formula current assisted stock.[39]

The tribe is responsible for continuing to operate and maintain units developed under the 1937 Housing Act programs for as long as they remain in existence or until a homeowner unit is conveyed to the occupant. Therefore, the purpose of the FCAS component of the formula is to provide funds for both an operating subsidy and a modernization allocation for tribes to operate and maintain these units. Tribes report changes to their FCAS to HUD each year. Tribes might stop operating units funded under these old programs when a homeowner takes possession of a lease-purchase unit or when an older unit is demolished, for example.[40] According to HUD, about half of tribes eligible for formula allocations under NAHASDA have FCAS.[41]

Need

After the FCAS component of the formula is calculated, the remaining NAHBG funds are distributed based on need within a tribe's formula area. The need portion of the formula takes into

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as defined by the U.S. Census; (ii) Trust lands; (iii) Department of the Interior Near-Reservation Service Areas; (iv) Former Indian Reservation Areas in Oklahoma Indian Areas, as defined by the U.S. Census as Oklahoma Tribal Statistical Areas (OTSAs); (v) Congressionally Mandated Service Areas; (vi) State Tribal Areas as defined by the U.S. Census as State Designated American Indian Statistical Areas (SDAISAs); (vii) Tribal Designated Statistical Areas (TDSAs); (viii) California Tribal Jurisdictional Areas established or reestablished by federal court judgment; and (ix) Alaska formula areas." See 24 C.F.R.§1000.302.

[38] 24 C.F.R. §1000.302

[39] For the purposes of the formula, the number of FCAS units operated by the tribe is multiplied by an operating subsidy to arrive at a grant amount for the tribe.

[40] The 2008 NAHASDA reauthorization (P.L. 110-411) amended the law to make some exceptions to the circumstances under which a tribe can no longer count a unit as part of its FCAS. Specifically, a 1937 Act unit that is demolished and would otherwise be removed from the FCAS can continue to be counted if it is rebuilt within one year, and a homeownership unit that reaches the end of its lease period and should be conveyed to a homeowner can continue to be counted as FCAS if it cannot be conveyed for reasons beyond the control of the tribe (such as title issues or other legal impediments). See 25 U.S.C. 4152(b)(1).

[41] U.S. Department of Housing and Urban Development, FY2015 Budget Justifications, p. L-3, http://portal.hud.gov/hudportal/documents/huddoc?id=FY15CJ_NAT_AM_HG_BLK_GRNTS.pdf.

account the Native American population, the income characteristics of the population, and the state of the housing stock in a tribe's formula area. More specifically, the need component of the formula is made up of the following seven factors, with the weight each factor is given in parentheses:[42]

- The number of American Indian or Alaska Native households that are overcrowded or lack either kitchen or plumbing facilities (25%);
- The number of American Indian or Alaska Native households that have a housing cost burden greater than 50% of annual income (22%);
- Housing shortage, defined as the number of American Indian or Alaska Native households with an annual income less than or equal to 80% of median income,[43] minus current assisted stock and housing units developed under NAHASDA (15%);
- The number of American Indian or Alaska Native households with annual incomes less than or equal to 30% of median income (13%);
- The number of American Indian or Alaska Native households (11%);[44]
- The number of American Indian or Alaska Native households with annual incomes between 30% and 50% of median income (7%); and
- The number of American Indian or Alaska Native households with annual incomes between 50% and 80% of median income (7%).

Each participating tribe receives an allocation of funding based on the formula current assisted housing stock and need in its formula area.[45]

Tribes can challenge most of the data used by HUD in determining formula allocations, including the population estimate (the number of Native Americans living in the formula area) and what HUD refers to as the household variables (the number of households in different situations). A tribe can challenge the data by submitting other data that it feels more accurately represent the tribe's housing needs. The data must be collected in a way that is consistent across tribes and must be acceptable to HUD. Examples that HUD gives of the types of data that might be used to challenge Census data are administrative data, such as tribal enrollment figures or data from the Indian Health Service (IHS), or a survey that is conducted by the tribe.[46]

The NAHASDA regulations, developed pursuant to negotiated rulemaking with representatives from both HUD and the tribes, specify that the data used to calculate the need portion of the

[42] The need component of the formula is described in regulations at 24 C.F.R. §1000.324.

[43] The regulations specify that the median income for a Native American area is the greater of the median income in the applicable county or the median income in the U.S. as a whole. See 24 C.F.R. §1000.10.

[44] Because members of multiple tribes might live in a given tribe's formula area, the number of American Indian and Alaska Native households in the area can be greater than a tribe's enrolled membership. The NAHASDA regulations specify that the number of Native Americans living in the formula area that are counted for the purposes of the formula cannot exceed twice the tribe's enrollment. This cap is intended to ensure that funds are distributed fairly among tribes. If the number of Native Americans in the area exceeds twice the tribal enrollment, the tribe must show that it is providing housing services to a substantial number of non-tribal members in order to include non-tribal members above the cap in the population data for the purposes of the formula. See 24 C.F.R. §1000.302.

[45] HUD publishes data showing each tribe's need and FCAS on its NAHBG formula webpage at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula.

[46] U.S. Department of Housing and Urban Development, *Challenging U.S. Decennial Census Data: Guidelines for the Indian Housing Block Grant Formula*, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8614.pdf.

formula should be data that are "collected in a uniform manner that can be confirmed and verified for all AIAN [American Indian and Alaska Native] households and persons living in an identified area."[47] The regulations also specified that, initially, U.S. Census data would be used. HUD has continued to use Census data to calculate the need portion of the formula.[48] Some tribes have argued that Census data are not the most accurate source to use for calculating the NAHBG formula because they include anyone who identifies as American Indian or Alaska Native, not just members of federally recognized tribes (the population that is eligible for NAHASDA). Other tribes have maintained that Census data are the most reliable source of data that are collected uniformly across tribes and should continue to be used.

Furthermore, since the Census began to allow respondents to identify as belonging to more than one race in 2000, there has been disagreement over whether the "single-race" or "multi-race" Census data should be used to count the number of Native Americans living in an area for the purposes of the formula. Since FY2006, annual appropriations acts have directed HUD to calculate the formula both ways for each tribe—that is, once using only the number of people who identify as American Indian or Alaska Native alone, and once including the total number who identify as Native American or Alaska Native whether alone or in combination with another race—and to award each tribe the larger of the two grant amounts. For more details on the use of Census data in the NAHBG formula, and the debate over the use of single-race or multi-race data, see **Appendix**.

Eligible Activities

Tribes can use NAHBG funds for a wide range of affordable housing activities. In most cases, the housing assisted with NAHBG funds must benefit low-income members of federally recognized tribes (or members of the small number of state recognized tribes that are eligible for NAHASDA). Tribes can give preference to their own tribal members, as opposed to members of other federally recognized tribes living in their formula areas, if they indicate such a preference in their IHP.[49]

NAHBG funds can be used to develop, operate, maintain, or support affordable housing, including both rental housing and homeownership housing, as well as to provide associated infrastructure and services. The NAHASDA statute identifies six broad categories of activities for which NAHBG funds can be used:

- *Indian Housing Assistance*: Funds can be used to provide maintenance or operating assistance for housing that was developed under the programs authorized by the Housing Act of 1937 prior to NAHASDA.
- *Development*: Funds can be used to acquire, construct, reconstruct, or rehabilitate affordable housing. Among other things, this category allows funds to be used for infrastructure and utilities.
- *Housing Services*: Funds can be used for services for residents, including housing counseling, support for resident organizations, and services that promote residents' self-sufficiency.

[47] 24 C.F.R. §1000.330(a)

[48] The Census data used to calculate the need portion of the formula are adjusted annually using Indian Health Service data on Native American births and deaths in accordance with 24 C.F.R. §1000.330.

[49] 25 U.S.C. 4131(b)(6) and 24 C.F.R. §1000.120

- *Housing Management Services*: Funds can be used for services related to the management of affordable housing, such as processing loans, performing inspections, selecting tenants, and providing maintenance or operating assistance for housing that was developed using NAHBG funds.[50]
- *Crime Prevention and Safety*: Funds can be used for safety, security, and law enforcement activities related to protecting residents of affordable housing.
- *Model Activities*: Funds can be used for model programs that are consistent with the purposes of NAHASDA and are approved by the Secretary of HUD.

The regulations limit the amount of funds that can be used for administrative expenses to 20% of the annual grant amount.[51] If a tribe intends to use more than 20% of a grant amount on administrative expenses, it must get approval from HUD. Eligible administrative expenses include costs such as program administration, data collection, and, if the tribe chooses, staff and overhead costs. Tribes can also put up to a certain amount of funds into reserve accounts to accumulate funds for planning and administrative activities.[52]

Figure 1 shows the percentage of total NAHBG expenditures between FY2008 and FY2013 that were used for each eligible activity under NAHASDA. The largest percentages of expenditures were for Indian housing assistance, defined as the operation and maintenance of pre-NAHASDA housing units (37%), and for housing development (31%), followed by administrative expenses (15%). The other categories of eligible activities each represented less than 10% of expenditures. Since this represents expenditures, rather than number of units assisted, the smaller percentages of funds expended on many eligible activities may partly reflect the lower cost of these activities as compared to developing or operating affordable housing.

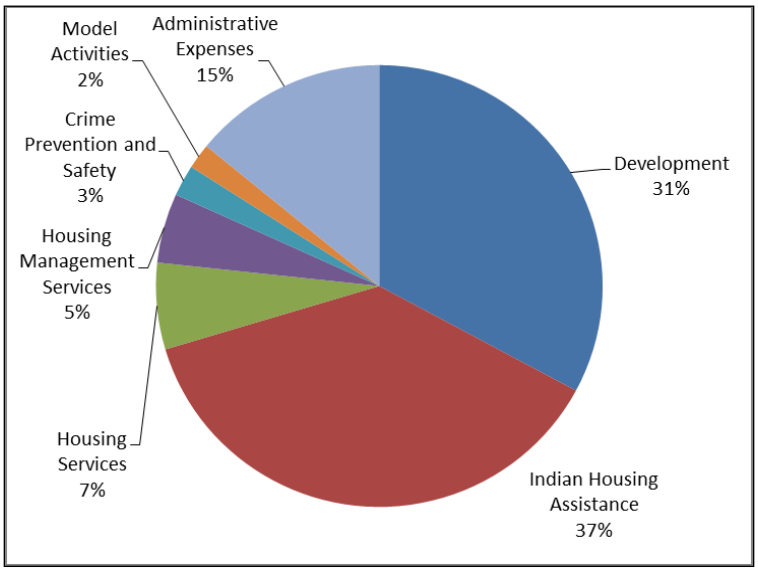
[50] Prior to the 2008 NAHASDA reauthorization, use of funds for maintenance or operating assistance for NAHASDA-assisted units was considered a model activity, rather than a housing management service, and therefore tribes were required to obtain approval from HUD before they could use funds for this purpose. The 2008 reauthorization act specified that maintenance and operating assistance for NAHASDA-assisted units was an eligible use of funds under the category of housing management services.

[51] 24 C.F.R. §1000.238

[52] 25 U.S.C. 4132

Figure 1. Percentage of NAHBG Funding Used for Each Category of Eligible Activities

FY2008-FY2013



Source: Figure created by CRS based on data included in HUD's FY2015 Budget Justifications.

Notes: Figure shows the percentage of expenditures between FY2008-FY2013 for each activity.

Income and Affordability Requirements

NAHBG funds are intended to provide affordable housing to low-income tribal members. Therefore, the statute and regulations include several provisions related to ensuring that housing assisted with NAHBG funds is and remains affordable to this population.

Low-Income Benefit

In general, housing funded through the NAHBG must benefit low-income Native American households that are living on reservations or in other tribal areas. Low-income is defined as having an income that is no higher than 80% of the area median income.[53]

Although housing funded through the NAHBG is generally intended for low-income Native American families, there are some exceptions. Subject to specific conditions, tribes can use NAHBG funds to assist Native American households that are not low-income if there is a need for housing for such households that cannot otherwise be met.[54] Tribes can also use NAHBG funds to provide housing for law enforcement officers under certain circumstances.[55] Finally,

[53] The statute also authorizes the Secretary of HUD to make exceptions to the 80% of area median income limit, and to set limits that are either higher or lower for a given area, if doing so is deemed necessary to account for construction costs or unusually high or low family incomes in an area (25 U.S.C. 4103). The regulations specify that the median income for a Native American area is the greater of the median income in the applicable county or the median income in the U.S. as a whole. HUD determines income limits for various family sizes each year. HUD's guidance to tribes and TDHEs on the FY2015 income limits is at http://portal.hud.gov/hudportal/documents/huddoc?id=2015-01RIHBGIncomeLimits.pdf.

[54] 24 CFR §1000.110

[55] 25 U.S.C. 4131(b)(5) and 24 CFR §1000.104

tribes can use NAHBG funds to provide housing assistance to a household whose presence is considered "essential" to the well-being of the area (an example might be a medical professional in a remote area) if the household's housing needs cannot reasonably be met without the assistance.[56]

Maximum Rent

Monthly rents or homebuyer payments (that is, payments under a lease-purchase program) in NAHBG-assisted housing may not exceed 30% of a household's monthly adjusted income.[57] Tribes or TDHEs are responsible for having written policies related to rents and homebuyer payments and methods for determining such payments. The statute does not specify a minimum rent, but tribes are free to set a minimum rent if they choose to do so (as long as the rent does not exceed 30% of a household's adjusted income).

Affordability Period

Housing assisted with NAHBG funds must remain affordable for "the remaining useful life of the property," as determined by the Secretary of HUD, or for another period of time set by the Secretary.[58] The recipient must require "binding commitments," such as deed restrictions or other mechanisms, to ensure that the affordability period will be met. An affordability period applies regardless of the amount of NAHBG funds expended on a unit, although tribes can choose to set a relatively short affordability period for units that have small investments of NAHBG funds.[59] The 2008 law that reauthorized NAHASDA specified that the long-term affordability and binding commitment requirement does not apply to households that subsequently take ownership of homeownership units assisted under NAHASDA.[60]

Oversight

The NAHASDA statute and regulations include a number of provisions related to the oversight of NAHBG funds. These provisions include both HUD's oversight of the recipients of NAHBG funds and recipients' oversight of the activities that they fund with NAHBG grants.

HUD Oversight of Recipients

NAHASDA requires recipients to submit performance reports to HUD each fiscal year describing the specific activities for which NAHBG funds were used and how they related to the housing needs set forth in the IHP.[61] These reports are known as annual performance reports (APRs), and, as noted earlier in this report, HUD has recently redesigned the report to combine it with the IHP.

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[56] 25 U.S.C. 4131(b)(3) and 24 CFR §1000.104

[57] 25 U.S.C. 4133(a)(2). Tribes can charge rents that exceed 30% of a household's income to non-low-income households assisted with NAHBG funds (see 24 C.F.R. §1000.130).

[58] 25 U.S.C. 4135(a)(2). A unit is considered to be affordable under NAHASDA if it is occupied by a household that is low-income when it initially occupies a rental unit, purchases an owner-occupied unit, enters into a lease-purchase agreement, or enters into a contract to purchase newly-constructed housing.

[59] See HUD's Office of Native American Programs, "Useful Life and Binding Commitments," program guidance No. 2013-06(R), May 10, 2013, http://portal.hud.gov/hudportal/documents/huddoc?id=2013-06USEFULLIFE.PDF.

[60] 25 U.S.C. 4135(c), as added by P.L. 110-411. The law also provides exceptions to the affordability period in the case of foreclosure, subject to certain restrictions.

[61] 25 U.S.C. 4164

NAHASDA also provides several steps that HUD can take if a recipient of NAHBG funds is not complying with the requirements of the program. If HUD finds that a tribe has substantially not complied with NAHASDA requirements,[62] then HUD is to take one of several actions, including terminating assistance to the tribe, reducing payments by the amount of funds that were not spent properly, limiting funds to the tribe, or, in certain cases, replacing the TDHE.[63] Certain notice and hearing requirements apply. The Secretary also has the authority to refer a case to the Attorney General for a civil action. For less serious instances of noncompliance, HUD can provide technical assistance to the tribe to ensure that funds are expended in compliance with the requirements of the law.

Any funds that HUD recaptures as a result of a recipient not complying with NAHASDA requirements are added to the NAHBG funds to be distributed to tribes the following fiscal year.

Recipient Oversight of Grantees

Recipients of NAHASDA funds (i.e., tribes and TDHEs) are required to ensure that funds are used in ways that comply with the program requirements. NAHASDA requires recipients to have enforceable agreements with owners of housing assisted with NAHASDA funds to ensure long-term compliance and establish remedies for noncompliance. Recipients are also required to review housing activities under NAHASDA at least annually, including through onsite inspections, to ensure that activities are complying with the requirements of NAHASDA.[64]

Title VI Loan Guarantee Program

As was described earlier in this report, the legal status of trust lands can make it difficult to obtain traditional financing for building or purchasing housing in tribal areas. This can impact not only individuals seeking mortgages to purchase homes, but also tribes seeking loan funds to build housing or other types of buildings.

Title VI of NAHASDA authorizes a loan guarantee program to help tribes obtain financing for affordable housing activities. The program is referred to as the Title VI Loan Guarantee Program. Under the Title VI program, HUD can guarantee loans made by private lenders to NAHBG recipients to help them fund affordable housing activities. Individual tribal members are not eligible for Title VI loan guarantees.[65]

The same affordable housing activities that are eligible uses of NAHBG funds are eligible under Title VI. The tribe pledges future NAHBG amounts as collateral for the loan. (A tribe can borrow up to five times the need portion of its annual NAHBG formula allocation.) If the tribe defaults on the loan, HUD will repay the lender 95% of the remaining principal and interest amount it is owed, and HUD can be repaid from the tribe's NAHBG formula allocations.

HUD receives an appropriation each year to cover the costs of the program. In recent years, Congress has appropriated about $2 million per year to cover the costs of these loan guarantees. Annual appropriations acts also include a limit on the dollar amount of loans that HUD can insure

[62] The 2008 reauthorization of NAHASDA added language specifying that a tribe's failure to properly report changes in its formula current assisted stock to HUD is not, by itself, considered substantial noncompliance. See 25 U.S.C. 4161(a)(2).

[63] 25 U.S.C. 4161

[64] 25 U.S.C. 4163

[65] Additional information on the Title VI Loan Guarantee Program is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/homeownership/titlevi.

under the program in a given year. In FY2015, HUD was authorized to guarantee up to $16.5 million in loans under this program.

As of the end of FY2014, HUD had guaranteed a total of 80 loans totaling over $200 million over the life of the program. In FY2014 alone, HUD guaranteed five loans totaling $14.4 million.[66]

Technical Assistance

NAHASDA also authorizes funding for training and technical assistance. Under Section 703 of NAHASDA, Congress authorizes funding for "a national organization representing Native American housing interests" to provide training and technical assistance to IHAs and TDHEs. Congress has provided funding for training and technical assistance for an organization representing Native American housing interests in annual appropriations acts, and this funding was traditionally provided to the National American Indian Housing Council (NAIHC).[67] Since FY2012, appropriations acts have provided funding for "national or regional organizations representing Native American housing interests." Therefore, in recent years, HUD awarded this funding to additional organizations as well as the NAIHC.[68] In FY2015, Congress provided $3.5 million for training or technical assistance for national or regional organizations that represent Native American housing interests, but directed that at least $2 million of that amount be provided to a national organization as described in the NAHASDA statute.[69]

Congress has also traditionally set aside additional funding within the NAHBG account for HUD to provide training and technical assistance related to the inspection of NAHASDA-assisted housing, various contract expenses, and housing oversight and management. In FY2015, Congress provided $2 million for this purpose.

Housing Assistance for Native Hawaiians

In 2000, Congress amended NAHASDA to add Title VIII, which provides for housing assistance for Native Hawaiians.[70] Title VIII establishes the Native Hawaiian Housing Block Grant (NHHBG) program, which is similar to the Native American Housing Block Grant program.[71] However, unlike the NAHBG, the only eligible recipient of funds under the NHHBG is the Department of Hawaiian Home Lands (DHHL), an agency of the state government of Hawaii.[72] The DHHL, in turn, can provide funds to local organizations to carry out housing activities. Like

[66] HUD FY2016 Congressional Budget Justification, p. 11-4, http://portal.hud.gov/hudportal/documents/huddoc?id=14-FY16CJ-NAHBGrants.pdf.

[67] The National American Indian Housing Council is a national nonprofit organization that advocates for the housing interests of Native Americans, Alaska Natives, and Native Hawaiians living in tribal communities, Alaska Native villages, and on the Hawaiian home lands, respectively. Its members include tribes, TDHEs, Alaska Native villages, and the Department of Hawaiian Homelands. For more information, see the NAIHC's website at http://www.naihc.net/.

[68] For example, HUD announced the FY2012 technical assistance funding awards in a press release in February 2013, available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-025.

[69] See P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015.

[70] Title VIII was added to NAHASDA by the American Homeownership and Economic Opportunity Act of 2000 (P.L. 106-569).

[71] The Native Hawaiian Housing Block Grant program is codified at 25 U.S.C. 4221, and regulations governing the program are at 24 C.F.R. Part 1006.

[72] For more information on the Department of Hawaiian Homelands, see its website at http://dhhl.hawaii.gov/.

tribes and TDHEs under the NAHBG program, the DHHL must submit a housing plan for HUD's approval prior to receiving funds.

NHHBG funds must be used for affordable housing activities that benefit low-income Native Hawaiians who are eligible to live on the Hawaiian home lands. Native Hawaiians are defined as citizens of the United States who are descended from the aboriginal Hawaiian people. The Hawaiian home lands are lands that were set aside under the Hawaiian Homes Commission Act of 1920 to be used to provide homesteads for Native Hawaiians. The lands are administered by the DHHL, which provides 99-year homestead leases to eligible Native Hawaiian applicants.[73] Those who obtain leases can then build or purchase a home on the land.

Native Hawaiians have some of the most severe housing needs, with 15% of Native Hawaiians in Hawaii living in poverty and 25% living in overcrowded conditions.[74] Furthermore, Hawaii has some of the highest housing costs in the nation, and the Hawaiian home lands tend to be located in rural areas and often include land that presents challenges for building.[75] All of these factors contribute to a shortage of affordable housing that is available to Native Hawaiians, particularly on the Hawaiian home lands. According to HUD, DHHL estimates that there are about 9,000 Native Hawaiian households that currently hold homestead leases on the Hawaiian home lands, over 26,000 households on the waiting list for leases to reside on the Hawaiian home lands, and over 32,000 households that could apply to reside on the Hawaiian home lands. DHHL estimates that there are over 34,000 households in total that may be eligible for assistance under the NHHBG—that is, Native Hawaiians eligible to reside on the Hawaiian home lands who are also low-income.[76]

Eligible activities under the NHHBG are similar to the eligible activities under the NAHBG, and include the development of affordable housing, including new construction, rehabilitation, or acquisition; providing infrastructure; offering support services and housing management services; crime prevention activities; developing community facilities that serve low-income Native Hawaiian residents of affordable housing; and model activities approved by HUD. In recent years, HUD has allowed the DHHL to use up to 20% of its grant amount for administrative expenses.[77]

Like the NAHBG, housing funded through the NHHBG must remain affordable for the remaining useful life of the property, and the monthly rents or homebuyer payments cannot be more than 30% of a household's monthly adjusted income.

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[73] Lessees pay $1 per year for the homestead lease. Applicants can choose leases for residential, agricultural, or pastoral purposes. The Hawaiian Homes Commission Act of 1920 specified that, to be eligible for a lease on the Hawaiian Home Lands, an applicant must show that he or she has a Native Hawaiian blood quantum of at least 50%. For more information, see the DHHL website at http://dhhl.hawaii.gov/applications/applying-for-hawaiian-home-lands/.

[74] HUD FY2016 Budget Justifications (citing American Community Survey data), p. 13-5, available at http://portal.hud.gov/hudportal/documents/huddoc?id=16-FY16CJ-NHHBGrants.pdf.

[75] HUD FY2016 Budget Justifications, p. 13-2.

[76] HUD FY2016 Budget Justifications, p. 13-2.

[77] Previously, HUD had limited the amount that the DHHL could use for administrative and planning expenses to 5%. (See U.S. Department of Housing and Urban Development, Office of Native American Programs, Program Guidance NHHBG 2008-01, "Eligible Affordable Housing Activities and Administrative Expenses," June 2, 2008, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/nhhbgprogram/guidance.) However, since late 2008, HUD has allowed up to 20% of grant amounts to be used for administrative expenses. See the DHHL's FY2013 Native Hawaiian Housing Plan, p. 31, http://dhhl.hawaii.gov/wp-content/uploads/2011/05/NHHP-2013.pdf and HUD's FY2016 Budget Justifications, page 13-4, http://portal.hud.gov/hudportal/documents/huddoc?id=16-FY16CJ-NHHBGrants.pdf.

The NHHBG can be used for both rental and owner-occupied housing. However, the DHHL has historically used most of its NHHBG funding for owner-occupied housing or related activities (such as providing infrastructure or offering housing counseling). This appears to be due to the fact that the Hawaiian home lands were originally set aside for homesteading purposes, and that there are currently a large number of families on the wait list to receive a homestead lease on the Hawaiian home lands, some of whom have been on the list for years or even decades. The DHHL has traditionally used NHHBG funding to assist with constructing or rehabilitating single-family homes on the Hawaiian home lands, or to provide assistance with financing the purchase or repair of such homes.[78]

Over the life of the program through FY2014, NHHBG funds have been used to build, acquire, or substantially rehabilitate homes for 570 households and to provide counseling or other services to over 1,500 households.[79] The DHHL aims to use NHHBG funds to assist about 65 families per year with building, acquiring, or substantially rehabilitating a home.[80]

NAHASDA Funding

Appropriations

Each year, Congress appropriates funding to HUD for NAHASDA programs during the annual appropriations process. Funding for NAHASDA programs is appropriated to two accounts: the Native American Housing Block Grant account and the Native Hawaiian Housing Block Grant account.

Native American Housing Block Grant Account

Funding for all NAHASDA programs, except for the Native Hawaiian Housing Block Grant, is appropriated to the Native American Housing Block Grant account. NAHBGs themselves make up the bulk of the funding each year, but the account also includes funding to cover the costs of the Title VI Loan Guarantee Program and funding for training and technical assistance. In addition, appropriations laws include a limit on the dollar amount of loans that HUD can insure under the Title VI program during the fiscal year.

Since the account was first funded, in nominal (non-inflation-adjusted) terms, total funding has ranged from a low of $600 million (in FY1998, the first year of funding) to a high of $700 million (in FY2010), with appropriations in most years falling somewhere in between. **Table 1** shows the funding level for each program funded within the NAHBG account, as well as overall account-level funding, for each year from FY2003 to FY2015.[81]

[78] Specific types of activities that are funded by NHHBG funds are described in the DHHL's Native Hawaiian Housing Plans and Annual Performance Reports, available at http://dhhl.hawaii.gov/nahasda/nahasda-publications/.

[79] HUD FY2016 Budget Justifications, p. 13-5.

[80] HUD FY2016 Budget Justifications, p. 13-6.

[81] Total account-level funding for the NAHBG account in the years prior to FY2003 was as follows: $600 million in FY1998, $620 million in FY1999, $620 million in FY2000, $649 million in FY2001, and $649 million in FY2002.

Table 1. Annual Appropriations for the Native American Housing Block Grant Account, FY2003-FY2015

$ in millions

Fiscal Year	Native American Housing Block Grants	Title VI Loan Guarantees[a]	Technical Assistance	National American Indian Housing Council[b]	Total
2003	$636	$2	$4	$2	$645[c]
2004	$639	$2	$4	$2	$650[c]
2005	$611	$2[d]	$4	$2	$622[c]
2006	$616	$2	$4	$1	$624
2007	$617	$2	$4	—	$624
2008	$620	$0.5	$2	$2	$624
2009[e]	$635	$2	$4	$4	$645
2010	$690	$2	$4	$4	$700
2011	$639	$2	$4	$3	$649
2012	$644	$2	$2	$2	$650
2013[f]	$610	$2	$2	$2	$616
2014	$643	$2	$2	$3	$650
2015	$643	$2	$2	$4	$650

Source: Table created by CRS based on HUD and congressional budget documents and annual appropriations laws.

Notes: Totals may not add due to rounding, or because of transfers to the Working Capital Fund in certain years (see table note c.) Figures are not adjusted for inflation and do not include any supplemental funding. Appropriations acts generally do not specify the amount of funding for block grants, but specify the overall account amount and set-asides; the block grant amounts in the table are calculated by subtracting the set-aside amounts from the account's overall funding level.

a. The appropriations shown for Title VI loan guarantees are the subsidy costs needed to cover the costs of the program. In FY2015, the $2 million in credit subsidy supported an allowable level of up to $16.5 million in guaranteed loans.

b. NAHASDA authorizes funding for a national organization that represents Native American housing interests to provide training and technical assistance to tribes. In practice, this funding has historically been provided to the National American Indian Housing Council (NAIHC). However, since FY2012, appropriations laws have provided funding for *national or regional* organizations that represent Native American housing interests, and this funding has been awarded to multiple entities, including the NAIHC.

c. Totals for FY2001-FY2005 include amounts ranging from $0.5 million to $3 million that were to be transferred to the Working Capital Fund for the development and maintenance of information technology systems.

d. In FY2005, $21 million in unused credit subsidy for the Title VI program was rescinded. This rescinded amount is not reflected in the table. Including the rescinded credit subsidy, the budget authority for the Title VI program in FY2005 was negative $19 million (that is, the $2 million of new credit subsidy provided in that fiscal year minus the $21 million rescinded), and the budget authority for the overall account was $601 million.

e. FY2009 numbers do not include supplemental funding provided under the American Recovery and Reinvestment Act (ARRA, P.L. 111-5).

f. FY2013 numbers are post-sequestration and are taken from *FY2012 enacted, FY2013, and FY2014 President's Budget* funding table prepared by HUD.

Native Hawaiian Housing Block Grant Account

Table 2 shows the annual funding levels for the Native Hawaiian Housing Block Grant program in each year since it was first funded in FY2002.[82] Prior to FY2006, NHHBG funding was appropriated within the Community Development Fund account within HUD. Since FY2006, NHHBG funding has been appropriated in its own account.

The NHHBG account generally includes a set-aside of funds to be used for training and technical assistance, and this amount has been relatively steady over the years. In FY2015, $9 million was appropriated to the account, including $300,000 for training and technical assistance.

Table 2. Annual Appropriations for the Native Hawaiian Housing Block Grant, FY2002-FY2015

$ in millions

Fiscal Year	Amount
2002	$10
2003	$10
2004	$9
2005	$9
2006	$9
2007	$9
2008	$9
2009	$10
2010	$13
2011	$13
2012	$13
2013	$12
2014	$10
2015	$9

Source: Table created by CRS based on HUD and congressional budget documents and annual appropriations laws. The FY2013 number is post-sequestration and is taken from *FY2012 enacted, FY2013, and FY2014 President's Budget* funding table prepared by HUD.

Notes: Figures are not adjusted for inflation and do not include any supplemental funding. The NHHBG first received funding in FY2002. Prior to FY2006, funding for the NHHBG was appropriated as a set-aside within the Community Development Fund account. Beginning in FY2006, funding for the NHHBG was appropriated within its own account.

Tribes' Uses of NAHBG Funds

As described, tribes can use NAHBG funds for a wide variety of affordable housing activities that benefit low-income tribal members. In general, tribes rehabilitate more units with NAHBG funds than they build or acquire, and tribes are more likely to use funds for owner-occupied housing than for rental housing.

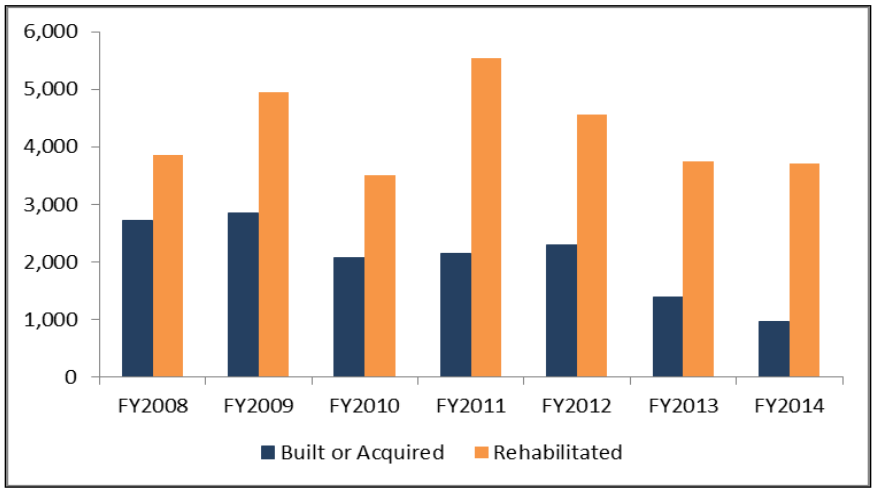
[82] U.S. Department of Housing and Urban Development, "HUD Assistant Secretary Liu Unveils Two New Programs to Provide Affordable Housing to Native Hawaiians," press release, June 13, 2002, http://archives.hud.gov/news/2002/pr02-064.cfm.

Units Assisted

Between FY2008 and FY2014, HUD reports that a total of over 44,000 units of housing were built, acquired, or rehabilitated using NAHBG funds.[83] On average, tribes used NAHBG funds to build, acquire, or rehabilitate between 5,000 and 8,000 units per year. As **Figure 2** shows, rehabilitation of housing units is more common than building or acquiring units. In FY2014, about 4,000 units were rehabilitated using NAHBG funds, compared to nearly 1,000 units built or acquired.

Figure 2. Units Built, Acquired, or Rehabilitated with NAHBG Funds

FY2008-FY2014



Source: Figure created by CRS based on data in HUD's FY2016 budget justification, p. 11-9.

HUD estimates that over 100,000 housing units have been built, acquired, or rehabilitated with NAHBG funds since the program began. Of this total, over 35,000 units have been built or acquired, and over 70,000 have been substantially rehabilitated.[84] Until recently, HUD did not systematically collect information on the number of units that benefited from NAHBG funds in ways other than construction, acquisition, or rehabilitation, such as through the use of rental assistance or down payment assistance programs.[85] HUD has begun collecting more data on other eligible activities with the revised IHP/APR form that it began using in FY2012, suggesting that more data on these uses of NAHBG funds might be available in the future.[86]

A 2009 evaluation of the NAHBG program conducted for HUD provided some estimates on the number of households or units that were assisted through other types of activities over the course of a single year. The evaluation estimated, on the basis of interviews with selected tribes, that tribes had used NAHBG funds to assist a total of about 1,000 households with down payment assistance, about 8,500 households through various rental assistance programs, and about 5,000

[83] HUD FY2016 Budget Justifications, p. 11-9.

[84] HUD FY2016 Budget Justifications, p. 11-5.

[85] U.S. Government Accountability Office, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, GAO-10-326, February 2010, p. 13, http://www.gao.gov/assets/310/301157.pdf.

[86] The combined IHP/APR form is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/guidance, and includes sections on output measures for a variety of types of housing assistance.

households with emergency assistance with making rent, mortgage, or utility payments during the most recent program year. Tribes had also provided ongoing maintenance or operating assistance during the year to about 5,000 rental units that had been developed using NAHBG funds.[87]

In addition to developing and maintaining new units and providing other types of housing assistance, tribes also currently continue to maintain about 31,000 existing low-rent public housing units and close to 12,000 Mutual Help units that were developed prior to NAHASDA.[88]

Homeownership vs. Rental Units

In general, many tribes choose to use NAHASDA funds to develop more new owner-occupied units rather than rental units.[89] For example, GAO found that, between FY2003 and FY2008, tribes used NAHBG funds to build, acquire, or rehabilitate nearly four times as many homeownership units as rental units. Specifically, as **Figure 3** shows, tribes assisted 40,000 homeownership units using NAHBG funds during this time period, compared to just over 10,000 rental units.[90]

One reason that tribes give for assisting more homeownership units than rental units is the ongoing cost to tribes of maintaining and operating rental units built with NAHASDA funds. Ongoing maintenance of rental units is expensive for tribes and TDHEs, while the maintenance and other costs of owner-occupied housing become the responsibility of the homeowner rather than remaining the responsibility of the tribe.[91]

[87] ACKCO, Inc. and Abt Associates, Inc., *Indian Housing Block Grant Evaluation Final Report*, prepared for the U.S. Department of Housing and Urban Development, p. 26.

[88] U.S. Department of Housing and Urban Development, *FY2015 IHBG Final Allocation Current Assisted Stock*, http://portal.hud.gov/hudportal/documents/huddoc?id=FY15FinalFCAS.pdf.

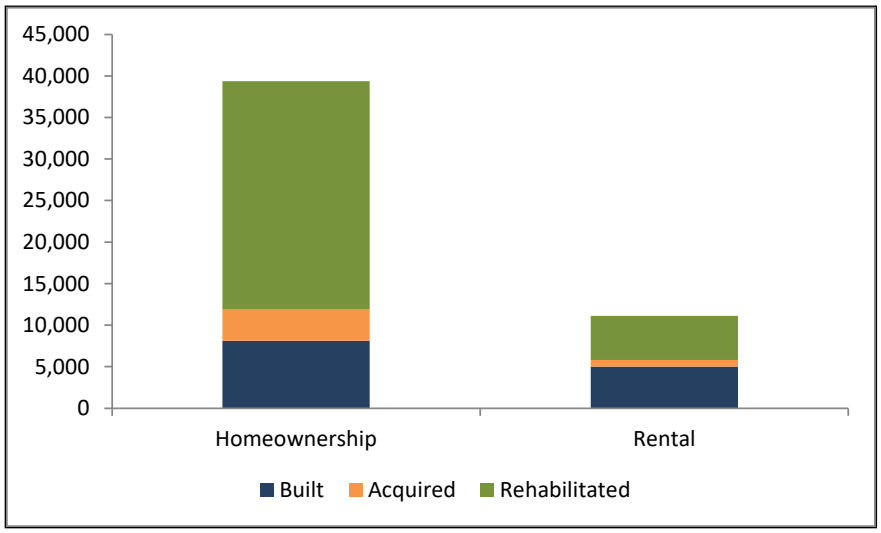
[89] U.S. Department of Housing and Urban Development, FY2014 Budget Justification, p. L-15, http://portal.hud.gov/hudportal/documents/huddoc?id=NAHSINGBLOCKGRANTS.pdf.

[90] GAO, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, February 2010, p. 14.

[91] GAO, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, February 2010, p. 15

Figure 3. Homeownership and Rental Units Developed with NAHBG Funds

Total Number of Units Developed between FY2003-FY2008



Source: Figure created by CRS based on HUD data included in GAO, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, GAO-10-326, February 2010, p. 13, http://www.gao.gov/assets/310/301157.pdf.

Notes: Figures include units built, acquired, or rehabilitated using NAHBG funds, but not other forms of rental or homeownership assistance (such as rental vouchers or down payment assistance programs).

FY2015 Formula Allocations

Every federally recognized tribe and the five state recognized tribes that were grandfathered in under NAHASDA are eligible to receive a formula allocation of NAHBG funds. Each year, HUD runs the NAHBG formula to determine how much each tribe is eligible to receive under the formula (a tribe's formula allocation).[92] However, the number and size of *grants* actually made can differ from the number and size of these *formula allocations* for several reasons.

One reason that the number and size of formula allocations may differ from the number and size of grants made is that several tribes might select the same TDHE to administer their funds, resulting in those tribes' formula allocations being combined into a single grant to that TDHE. This means that there are fewer grants made than formula allocations, and the average grant amount is generally higher than the average formula allocation. Another reason that the number of grants might differ from the number of formula allocations is that some tribes that are eligible for formula allocations may not receive a grant in a given year. This could occur because a tribe has elected not to take its formula allocation, because it did not submit an Indian Housing Plan or that plan was not approved by HUD, or for other reasons. This section describes the formula allocation amounts, rather than grant amounts, for FY2015.

In FY2015, HUD announced formula allocations totaling over $650 million in NAHBG funds for 586 tribes and Alaska Native villages.[93] The amounts of the individual formula allocations ranged

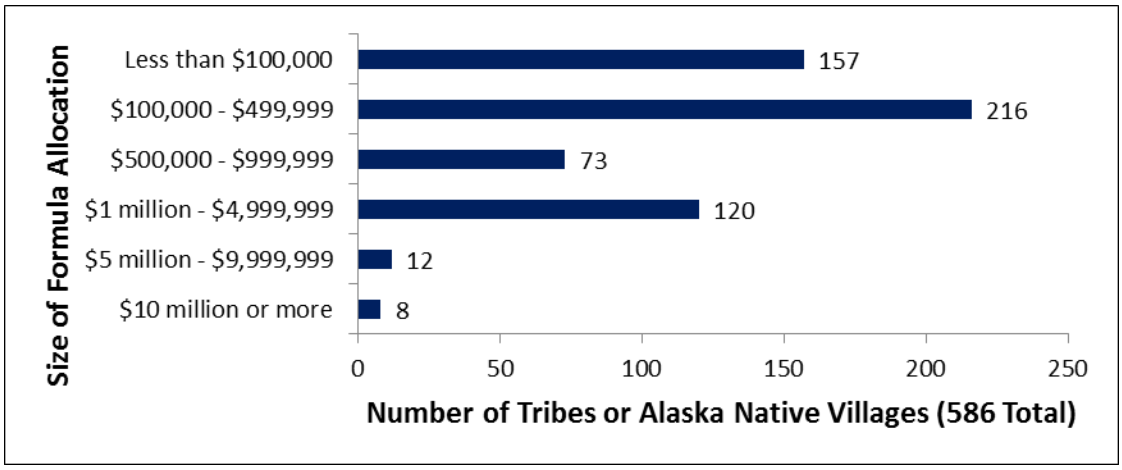
[92] Spreadsheets showing each tribe's formula allocation for the fiscal year are available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula. Formula allocations may differ from actual grant amounts for the reasons described in the text.

[93] U.S. Department of Housing and Urban Development, "HUD Announces More Than $650 Million in Indian Housing Block Grants," press release, February 18, 2015, http://portal.hud.gov/hudportal/HUD?src=/press/

from just over $50,000 (many tribes and Alaska Native villages) to nearly $84 million (the Navajo Housing Authority). The $84 million awarded to the Navajo Housing Authority was nearly three times larger than the next highest formula allocation amount (nearly $29 million to the Cherokee Nation).

The mean formula allocation was about $1.1 million, while the median formula allocation was nearly $270,000. Over 370 tribes or Alaska Native villages had allocations of less than $500,000; of these, over 150 had allocations of less than $100,000. About 140 recipients had allocations of more than $1 million; of these, 20 had allocations of at least $5 million, and eight had allocations of $10 million or more. **Figure 4** summarizes how many of the 586 formula allocations to tribes and Alaska Native villages in FY2015 fell within certain dollar ranges.

Figure 4. Number of FY2015 NAHBG Formula Allocations within Certain Dollar Ranges



Source: Figure created by CRS based on data in HUD's FY2015 IHBG Final Allocation Summaries at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula.

Notes: Figure shows the number of formula allocations, rather than grants made. A grant can be one tribe's formula allocation, or it can be several tribes' formula allocations combined into a single grant to one TDHE that has been designated by multiple tribes. Some tribes that are eligible for formula allocations may not receive their allocations in a given year for the reasons described in the text.

Tribes can leverage their NAHBG funds—that is, use the funds they receive through the program to attract additional funds from other sources—or otherwise combine NAHBG funds with other funding streams to develop affordable housing. The Title VI program is an example of leveraging, because it allows tribes to use their NAHBG funds to help them obtain additional financing from private sources. Leveraging of HUD funding was allowed prior to NAHASDA, but was not common, and some tribes have identified the ability to leverage funds as a major benefit of NAHASDA.[94] However, HUD has suggested that the ability of some tribes to leverage NAHBG

press_releases_media_advisories/2015/HUDNo_15-018. The $651 million includes funds that HUD was ordered to pay to certain tribes as a result of a recent court judgment. These payments affected the formula allocations for other tribes. See HUD's *FY2015 Final Summary, Needs and Allocation Narrative, Effect of District Court Judgments*, http://portal.hud.gov/hudportal/documents/huddoc?id=FY15FinalNeedsAllocNar.pdf.

[94] GAO, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, February 2010, p. 22

funds using Title VI is limited because tribes can only borrow up to five times the need portion of their NAHBG formula allocations.[95]

Leveraging or otherwise combining funds from multiple sources might be particularly important for tribes who receive relatively small grants under the NAHBG, since those grants alone might not be enough to undertake some larger-scale housing projects. For example, a tribe that receives an allocation of $50,000 is unlikely to be able to construct or acquire new housing units with its NAHBG funding alone, and may have to focus on other, lower-cost affordable housing activities unless it is able to combine its NAHBG funding with funding from other sources. However, smaller tribes might be less likely than larger tribes to have the capacity to seek out or administer funding from additional sources.

Other sources of funds available to tribes can include other federal programs, as well as state, local, tribal, or private funds. Some examples of other federal sources of funding for housing might include other HUD programs, the low-income housing tax credit (LIHTC) administered by the Department of the Treasury, or housing programs administered by the U.S. Department of Agriculture (USDA). Tribes might also be able to access funding for related projects, such as infrastructure needed to support housing development, from agencies including the BIA, USDA, or the Indian Health Service (IHS) within the Department of Health and Human Services (HHS).[96]

While combining funds from multiple sources can make it easier for tribes to address a wider range of housing needs, it also means that tribes have to comply with multiple programs' requirements. This can lead to challenges for tribes in leveraging NAHBG funding, including additional expense or time devoted to complying with multiple programs' requirements.

[95] HUD's FY2015 Budget Justifications, p. L-8, http://portal.hud.gov/hudportal/documents/huddoc?id=FY15CJ_NAT_AM_HG_BLK_GRNTS.pdf

[96] For many years, Congress has stipulated in annual appropriations acts that funding for sanitation facilities appropriated to the Indian Health Service (IHS) within the Department of Health and Human Services may not be used to construct sanitation facilities for new homes that are funded through HUD programs. (Although IHS is part of the Department of Health and Human Services, it is traditionally funded through the annual appropriations acts for the Department of the Interior.) The provision reflects a view that housing construction that uses HUD funds should plan for and include the cost of necessary sanitation facilities infrastructure, and that HUD funds should be used to provide infrastructure for HUD-assisted housing while IHS infrastructure funding should be available to provide needed infrastructure to existing homes and homes funded through other agencies' programs.

Appendix. Census Data in the NAHBG Formula

Data from the decennial Census are used for many aspects of the NAHBG formula. Some issues have arisen related to the use of these data to calculate formula allocations. First, some tribes have argued that other sources, such as tribal enrollment or survey data, would more accurately identify the population that NAHASDA is intended to serve than the Census data. Second, since 2000, the Census has allowed respondents to identify themselves as belonging to more than one race, leading to questions about whether the NAHBG formula should take into account only those who identify solely as American Indians or Alaska Natives, or those who also identify as American Indian or Alaska Native in combination with another race.

This appendix provides a brief overview of these two issues. In general, tribes have indicated that they wish to come to a consensus about formula issues among themselves through the negotiated rulemaking process, rather than having HUD or Congress make decisions on how to handle these issues.[97] Tribes have previously discussed these issues in negotiated rulemaking, but have not come to a consensus regarding any changes to date.[98]

Using Census Data to Calculate the Need Portion of the Formula

The NAHASDA regulations, as agreed upon in negotiated rulemaking, specify that the data source used to calculate the need portion of the formula must be data that are "collected in a uniform manner and that can be confirmed and verified for all AIAN [American Indian and Alaska Native] households and persons living in an identified area."[99] The regulations also specify that, initially, the data source used would be decennial Census data. HUD has continued to use Census data to calculate the need portion of the formula grant amounts for the NAHBG, including data on the number of American Indian or Alaska Native (AIAN) households.

There has been disagreement among tribes on whether Census data are the best data for HUD to use to allocate NAHBG funding. Some tribes believe that it is the most uniform, verifiable source of data available, and therefore is the fairest way to allocate funding among tribes. Other tribes, however, argue that Census data may not be representative of the population that NAHASDA is meant to serve.

NAHASDA provides funds to tribes to provide affordable housing to people who are members of federally recognized (or a small number of state recognized) tribes and are living in a tribe's formula area.[100] However, the Census counts include anyone who identifies as American Indian or

[97] For example, see the National American Indian Housing Council, "A Resolution Supporting Immediate Reauthorization of the Native American Housing Assistance and Self-Determination Act," Resolution #2013-02, stating that the "NAIHC's consensus-based position on NAHASDA reauthorization does not propose to change the Indian Housing Block Grant funding allocation formula, recognizing that any change to the funding allocation formula should be negotiated openly and on a government-to-government basis through a negotiated rulemaking process." See http://www.naihc.net/uploads/resolutions/2013/Resolution-2013-02-FINAL.pdf.

[98] Negotiated rulemaking on the NAHBG formula held in 2003-2004 included discussions on both of these formula issues, but the negotiated rulemaking committee did not reach a consensus on any changes related to these issues. See U.S. Department of Housing and Urban Development, "Native American Housing Assistance and Self-Determination Act (NAHASDA); Revisions to the Indian Housing Block Grant Program Formula," 70 *Federal Register* 9496, February 25, 2005. More recently, a negotiated rulemaking committee that was convened in 2013 has been considering possible changes to the formula. For more information, see http://ihbgrulemaking.firstpic.org/.

[99] 24 C.F.R. §1000.330

[100] The definition of "Indian" under NAHASDA is "any person who is a member of an Indian tribe," and the definition of "Indian tribe" is limited to federally recognized tribes, or state recognized tribes that received funding under the Housing Act of 1937 within the five years before NAHASDA was enacted.

Alaska Native, whether or not they are enrolled members of such a tribe. Some of the people who identify as AIAN in the Census might not be enrolled tribal members at all, or they might be members of tribes that are not eligible under NAHASDA (such as state recognized tribes, or Canadian or South American tribes). Therefore, some tribes have argued that Census data do not provide an accurate count of the tribal population, as opposed to the overall AIAN population, and have suggested that tribes should have the option of using alternative data sources that better reflect the population that NAHASDA is intended to serve. They also argue that using the reported AIAN numbers in the Census rather than data that count enrolled tribal members effectively distributes NAHBG funds based on the number of people who identify with a specific racial group rather than based on their political status as tribal members.

Some possible alternative data sources that could be used include tribal enrollment data, tribal censuses, or data collected by other federal agencies. Many tribes have argued that one or more of these sources might more accurately reflect the tribal population. Furthermore, tribes have pointed out that, as sovereign nations, they choose the conditions of tribal membership; therefore, they argue that they should be allowed to choose the best data to measure their own tribal populations.[101]

Other tribes have opposed using data sources other than the Census, arguing that the Census data are the only available data that are collected in a "uniform" and "verifiable" manner across tribes, as required by the regulations.[102] These tribes note that existing alternative data sources each have drawbacks. For example, some data might not be collected by all tribes, or the data that are produced might not be standardized or verified across tribes.[103] These tribes argue that it would be expensive and burdensome to require all tribes to adopt a single new data source, particularly if it required tribes to begin collecting data that they do not collect currently.[104] They also express concerns that allowing tribes to each use different data sources could be cumbersome, and that this approach could lead to delays in funds being awarded while HUD verified the accuracy of many different data sources.[105]

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[101] For example, see "Supplemental Comments of the Cheyenne River Housing Authority in Response to HUD Notice Concerning the Use of Census Data in the IHBG Program," April 23, 2007, Docket No. FR-5055-N-02, available at http://www.regulations.gov/#!documentDetail;D=HUD-2006-0362-0092, arguing that "The decennial census data is an inadequate data set for HUD to use in determining the number of tribal members within NAHASDA formula areas because the census fails to distinguish recognized tribal members who are entitled to receive NAHASDA funds from self-identifying non-tribal members who are not entitled to receive these funds. The census specifically disregards the unique political status of recognized tribes and its use in the formula process is fundamentally flawed."

[102] For example, see Department of Housing and Urban Development, "Native American Housing Assistance and Self-Determination Act (NAHASDA); Revisions to the Indian Housing Block Grant Program Formula," 70 *Federal Register* 9496, February 25, 2005, http://www.gpo.gov/fdsys/pkg/FR-2005-02-25/pdf/05-3642.pdf.

[103] For example, see Building Research Council, University of Illinois at Urbana-Champaign, "Report on Alternative Data Sources," February 1, 2001, http://archives.hud.gov/offices/pih/codetalk/rulemaking/2003/2003junalternative.pdf, identifying strengths and weaknesses of certain existing alternative data sources.

[104] For example, see the written testimony of the Honorable Waldo Walker, Chairman of the Washoe Tribe of Nevada and California, Senate Committee on Indian Affairs, *Legislative Hearing on Discussion Draft Legislation to Amend and Reauthorize the Native American Housing Assistance and Self-Determination Act*, July 19, 2007, http://www.indian.senate.gov/public/_files/Walker071907.pdf. The testimony supports the right of each tribe to choose the data source it wants to use, but opposes a universal data collection system on the grounds that it would be extremely burdensome for small tribes.

[105] For example, see Department of Housing and Urban Development, "Native American Housing Assistance and Self-Determination Act (NAHASDA); Revisions to the Indian Housing Block Grant Program Formula," 70 *Federal Register* 9496, February 25, 2005, http://www.gpo.gov/fdsys/pkg/FR-2005-02-25/pdf/05-3642.pdf, referencing concerns "that opening formula calculations to a variety of data sources... would jeopardize the speed, accuracy, and fairness of IHBG Formula determinations."

The 2008 reauthorization of NAHASDA included a provision directing the Secretary of HUD to contract with an organization to carry out a study of data sources, including sources other than the Census, that could be used to evaluate Native American housing needs for the purposes of the formula.[106] The law authorized appropriations to carry out the study, but no funds have been appropriated, and the study has not been carried out.

"Single-Race" and "Multi-Race" Census Data

Beginning in 2000, Census respondents have had the option of identifying themselves as belonging to more than one race. The NAHASDA statute and regulations do not specify whether HUD should use data related only to the number of individuals who identify solely as American Indian or Alaska Native ("single-race data"), or if it should also include the number who identify as American Indian or Alaska Native in combination with another race ("multi-race data").

For the FY2004 formula allocations, HUD chose to use the total number of individuals who identified as American Indian or Alaska Native, regardless of whether they also identified with another race. HUD said that it made this decision because it believed it to be the most inclusive of all Native Americans living in a tribe's formula area.[107] However, many tribes disagreed with both this decision itself and with HUD's decision to use the multi-race data without consulting tribes through negotiated rulemaking or a notice and comment period. Since FY2006, annual appropriations acts have directed HUD to calculate the formula both ways for each tribe—that is, using the single-race data and the multi-race data—and to award each tribe the larger of the two grant amounts.

Tribes have not reached a consensus about the single-race and multi-race data through negotiated rulemaking. In 2006, at Congress's direction, HUD solicited comments on its use of multi-race data in the NAHBG formula. Many tribes argued against using the multi-race data, maintaining that the single-race data are a better approximation of the tribal population that NAHASDA is intended to serve. These tribes raised concerns that those who identify as AIAN under the multi-race data might be less likely to be enrolled tribal members or less likely to live on reservations, and that using the multi-race data could therefore shift NAHASDA funding away from tribal members living on traditional reservations towards tribes that have more urban areas included in their formula areas.[108]

Although many tribes are in favor of using the single-race data, there are some tribes that favor using the multi-race data. These tribes argue that there are tribal members who identify as belonging to multiple races, and that using only the single-race data would therefore exclude these tribal members. These tribes argue that using the multi-race data is a better reflection of the total population that they serve.[109]

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[106] 25 U.S.C. 4152(a)(2), as added by P.L. 110-411

[107] Department of Housing and Urban Development, "Use of Census Data in the IHBG Program; Notice," 71 *Federal Register* 74748-74749, December 12, 2006.

[108] For example, the Navajo Housing Authority commented that " ... the problem is that the multi-race data includes many people who are ineligible for NAHASDA funds, therefore allocating funds for people who will never be using the program" and that the use of multi-race data "resulted in a massive shift of resources from areas with populations that largely self-identify as AIAN alone (which tend to be rural reservation lands) to areas including populations that largely self-identify as AIAN in combination with other races (which tend to be urban, non-reservation areas)." See the comment submitted by Aneva Yazzie of the Navajo Housing Authority at http://federal.eregulations.us/rulemaking/document/HUD-2006-0362-0001.

[109] For example, see comments submitted by the Cherokee Nation, the Oneida Housing Authority, the Seminole Nation of Oklahoma, and the Ketchikan Indian Community at http://federal.eregulations.us/rulemaking/document/HUD-2006-0362-0001.

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