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The Native American Housing Assistance and Self-Determination Act (NAHASDA): Issues and Reauthorization Legislation in the 114th Congress

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Summary

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA; P.L. 104-330) replaced several existing sources of housing funding for Native Americans with a single block grant, the Native American Housing Block Grant (NAHBG). Through the NAHBG, tribes and Alaska Native villages receive formula funding from the Department of Housing and Urban Development (HUD) to use for a variety of affordable housing activities that benefit low-income Native American households living in tribal areas. NAHASDA also authorizes a loan guarantee program for tribes (the Title VI loan guarantee) and funding for training and technical assistance. In addition, NAHASDA (as amended) authorizes the Native Hawaiian Housing Block Grant (NHHBG), which provides funds for affordable housing activities for low-income Native Hawaiians eligible to reside on the Hawaiian Home Lands.

While tribes are generally supportive of NAHASDA, some have advocated for changes to program requirements. For example, tribes have argued for streamlining certain cross-cutting federal requirements when multiple sources of funds are used in a single project, for more flexibility in setting certain program requirements, and for HUD to respond to requests for approvals or waivers of NAHASDA requirements in a more timely fashion.

Furthermore, some in Congress have expressed concern over certain NAHASDA-related issues. For several years, there has been some opposition in Congress to reauthorizing housing programs for Native Hawaiians out of concern that such programs could be construed to be based on race. Congress has also debated whether, and how, to respond to ongoing litigation between the Cherokee Nation and the Cherokee Freedmen. More recently, Congress has expressed concern about a few tribes that have accumulated large balances of unexpended NAHASDA funds.

The authorization for most NAHASDA programs expired at the end of FY2013 (the authorization for the NHHBG expired at the end of FY2005), although Congress has generally continued to provide funding for these programs. The reauthorization process has presented an opportunity for Congress to consider potential program changes advocated by tribes as well as other issues related to NAHASDA that are of interest to Congress. In the 114th Congress, the House passed a NAHASDA reauthorization bill (H.R. 360), while in the Senate a different bill was favorably reported out of committee (S. 710).

Both H.R. 360 and S. 710 would have reauthorized a number of Native American and Native Hawaiian housing programs, authorized certain new program demonstrations and set-asides for Native American housing, and provided for a reduction in NAHBG formula funding for certain tribes with large amounts of unspent funds (although in slightly different ways). Both bills also included a number of changes to NAHASDA requirements, including provisions related to streamlining environmental review and lease termination requirements when NAHASDA funds are combined with other sources of funding, and allowing tribes to set their own maximum rents for NAHASDA-assisted housing.

Although the House and the Senate reauthorization bills addressed many of the same issues, they did not always do so in the same way. Each bill also included provisions related to certain issues that were not included in the other bill.

Neither of these NAHASDA reauthorization bills, nor any other NAHASDA reauthorization legislation, was enacted by the end of the 114th Congress.

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Introduction

In 1996, Congress enacted the Native American Housing Assistance and Self-Determination Act (NAHASDA; P.L. 104-330). The law represented a major reorganization of federal housing assistance for Native Americans, consolidating most of the federal housing funding that previously had been provided to tribes into a single block grant.[1] NAHASDA recognizes the rights of tribal self-governance and self-determination, and is intended to give tribes more control over affordable housing decisions and provide flexibility to tribes to address their specific housing needs.

The centerpiece of NAHASDA is the Native American Housing Block Grant (NAHBG), the primary program that provides housing assistance to Native American tribes.[2] Through the NAHBG, the Department of Housing and Urban Development (HUD) provides formula funding to federally recognized tribes and Alaska Native villages or to their tribally designated housing entities (TDHEs). These recipients of NAHBG funds can use them for a variety of affordable housing activities that address the housing needs of low-income Native Americans living in the respective tribes' formula areas.

NAHASDA also authorizes a loan guarantee program to help tribes access private funding for housing development activities (the Title VI loan guarantee program) and funding for training and technical assistance. Additionally, a 2000 amendment to NAHASDA authorized the Native Hawaiian Housing Block Grant (NHHBG) program, through which HUD provides funds to Hawaii's Department of Hawaiian Home Lands. NHHBG funds are used to provide housing for low-income Native Hawaiians eligible to live on the Hawaiian Home Lands.

Tribes are largely supportive of NAHASDA and the Native American Housing Block Grant.[3] Nevertheless, tribes have also advocated for a number of changes to program requirements that they argue could enhance their ability to improve housing conditions in tribal areas.[4] Many of the changes that have been proposed by tribes have to do with streamlining program requirements, particularly when NAHASDA funds are used with other sources of federal funds; providing more flexibility for tribes to make their own decisions about housing programs; and requiring HUD to be more responsive to requests for approvals or waivers of certain requirements. In some cases, goals such as increasing tribal flexibility and self-determination may need to be balanced against the goal of providing sufficient protections and oversight to ensure that program funds are being used appropriately.

Congress has expressed interest in certain issues related to NAHASDA beyond those raised by tribes. One such issue has been concern about some tribes' accumulated balances of unspent NAHASDA funds. Additionally, some Members of Congress have opposed reauthorization of the Native Hawaiian Housing Block Grant out of concerns that it could be construed to provide benefits based on race. Others have debated whether NAHASDA funding should be provided to

[1] NAHASDA terminated the ability of tribes to receive funds under several existing housing programs. However, there are some programs that continue to provide housing assistance to tribes today, including the Section 184 Indian Home Loan Guarantee Program and the Indian Community Development Block Grant Program (ICDBG) within HUD, as well as the Housing Improvement Program administered by the Bureau of Indian Affairs (BIA).

[2] The NAHBG is sometimes also called the Indian Housing Block Grant, or IHBG.

[3] For example, see Government Accountability Office, *Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, GAO-10-326, February 25, 2010, http://gao.gov/products/GAO-10-326.

[4] For example, see the discussion draft of NAHASDA reauthorization legislation circulated by the National American Indian Housing Council and accompanying materials at http://naihc.net/nahasda/.

the Cherokee Nation in light of an ongoing legal dispute involving whether the Cherokee Freedmen, descendants of former Cherokee slaves and free blacks who resided with the Cherokee at the time of the Civil War, are entitled to membership in the tribe. The latter two issues were debated when NAHASDA was last reauthorized in 2008 and continue to be of interest to Congress.

The authorization for most NAHASDA programs expired at the end of FY2013, although Congress has generally continued to provide funding for NAHASDA programs. The reauthorization process has presented an opportunity for Congress to consider changes to the law and the programs that it authorizes as well as other housing issues affecting Native Americans. The 114th Congress considered NAHASDA reauthorization legislation, with different bills being offered in the House and the Senate. However, no NAHASDA reauthorization legislation was enacted by the end of the 114th Congress.

This report briefly describes selected policy issues related to NAHASDA that have been raised by tribes or Congress in recent years. It then provides a table that compares the provisions of the NAHASDA reauthorization bills that were considered by the House and the Senate in the 114th Congress with each other and with existing law. For more information on NAHASDA in general, see CRS Report R43307, *The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA): Background and Funding*, by Katie Jones.

Selected Current Issues

This section discusses some of the more prominent NAHASDA-related issues that have been raised by tribes or debated by Congress in recent years. Among the issues raised by tribes, it generally focuses on proposed changes to NAHBG program requirements. It does not address issues that tribes have raised related to overall program funding levels or proposed changes related to the NAHBG funding formula.[5]

Tribes are not a monolithic group—their sizes, histories, and cultures, and the geography of where they live, vary greatly—and tribes do not always agree about potential changes to NAHASDA. When this report discusses changes that have been advocated by tribes, it generally means that the changes have been repeatedly raised by some tribes or championed by the National American Indian Housing Council (NAIHC), a group that advocates for the housing interests of Native Americans.[6]

[5] The NAHBG formula was developed within the parameters set by NAHASDA by a negotiated rulemaking committee that included representatives of tribes and HUD. Some tribes have advocated for changes to the data used in the NAHBG funding formula or for other formula-related changes. Though tribes have not agreed on these potential changes, they have generally 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. A negotiated rulemaking committee that included representatives of tribes and HUD met multiple times between 2013 and 2016 to consider possible changes to the NAHBG formula, resulting in a final rule promulgated by HUD to make some changes to the formula. See Department of Housing and Urban Development, "Native American Housing Assistance and Self-Determination Act; Revisions to the Indian Housing Block Grant Program Formula," 81 *Federal Register* 83674-83687, November 22, 2016, https://www.gpo.gov/fdsys/pkg/FR-2016-11-22/pdf/2016-27208.pdf. For additional background on the consideration of changes to the NAHBG funding formula, see Government Accountability Office, *Data Use and Regulatory Status of the Indian Housing Block Grant Program*, GAO-15-353R, March 10, 2015, http://gao.gov/assets/670/668942.pdf.

[6] The NAIHC is a national nonprofit organization that advocates for tribal housing issues before Congress. For more information, see the NAIHC's website at http://www.naihc.net/.

NAHBG Program Requirements

The NAHBG provides formula funding to tribes to carry out affordable housing activities that benefit low-income Native American households living in tribal areas.[7] NAHBG funds are subject to a number of requirements that are meant to ensure that the program meets its intended purpose, including requirements intended to ensure that NAHBG-assisted housing is and remains affordable to low-income households. In addition, NAHBG funds are subject to a variety of requirements that are common across many federal programs, such as requirements to carry out environmental reviews and to pay prevailing wages to workers on NAHBG-assisted projects.

Many of the changes to NAHBG requirements advocated by tribes have to do with streamlining certain cross-cutting federal requirements when multiple sources of federal funds are used in a project, providing tribes additional flexibility to set their own requirements, or requiring HUD to respond to requests for approvals or waivers in a timely manner. In some cases, goals such as increasing tribal flexibility and self-determination may create a tension with federal oversight goals.

Environmental Review Requirements

NAHBG-funded activities are subject to certain requirements that are common across federal programs. One example is environmental review requirements under the National Environmental Policy Act (NEPA). Sometimes, a project that uses NAHASDA funds might also use funding from another federal agency, such as the U.S. Department of Agriculture (USDA) or the Department of the Interior's Bureau of Indian Affairs (BIA). Other agencies might have somewhat different rules for complying with overarching federal requirements such as environmental reviews required by NEPA.

Some tribes have argued that the different requirements under different federal programs make it more difficult to combine funding from multiple sources to use for affordable housing activities. They argue that these duplicative or conflicting requirements are burdensome and costly, making it more complicated to combine funding sources and reducing the amount of funds available for housing. Some tribes have suggested that meeting NAHASDA's standards for certain cross-cutting requirements, such as environmental reviews, should be sufficient to satisfy other federal agencies' requirements when multiple funding sources are used in a NAHBG-assisted project.[8]

Congress has made some efforts to address overlapping environmental review requirements in Native American housing. The explanatory statement accompanying the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) included provisions related to the issue of multiple environmental reviews, directing HUD to work with the Council on Environmental Quality and other federal agencies "to develop a coordinated environmental review process to simplify tribal housing development and related infrastructure needs." The explanatory statement directed HUD and the other agencies to consult with tribes and TDHEs and to report their conclusions, recommendations, and any necessary statutory changes to the

[7] NAHASDA funds can be used to serve households who are not low-income under certain conditions. See 25 U.S.C. 4131(b) and 24 C.F.R. §1000.110.

[8] For example, see U.S. Congress, Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, 113th Cong., 1st sess., April 10, 2013, S. Hrg. 113-5 (Washington: GPO, 2013), "Prepared Statement of Annette Bryan, Executive Director, Puyallup Nation Housing Authority," p. 28, and "Prepared Statement of the Association of Alaska Housing Authorities," p. 55, http://www.indian.senate.gov/sites/default/files/upload/files/CHRG-113shrg80495.pdf.

appropriations committees by May 1, 2015.[9] HUD provided an interim report on its progress to the appropriations committees on May 6, 2015,[10] and a final report was released on December 15, 2015.[11]

Prevailing Wage Requirements

A similar issue has to do with prevailing wage requirements. In general, workers on federally funded projects must be paid a prevailing wage under the Davis-Bacon Act. Under NAHASDA, workers on projects assisted with NAHBG funds must be paid a prevailing wage as determined by HUD or by the Davis-Bacon requirements, depending on the type of worker.[12] However, if a NAHBG-assisted project is subject to a requirement to pay a prevailing wage rate determined by the tribe, then the HUD-determined or Davis-Bacon prevailing wages do not apply to the project.

Although tribally determined prevailing wages can satisfy the requirement to pay a prevailing wage under NAHASDA, other federal funding sources may still require the payment of Davis-Bacon wages. This can create complications for projects that use NAHASDA and other sources of funds. Similar to the environmental review requirements, tribes have proposed that using tribally determined prevailing wages should satisfy the requirement to pay prevailing wages for all federal sources of funding in projects that use both NAHASDA and other sources of federal funds.[13]

Maximum Rent

Other changes advocated by tribes have to do with providing tribes with more flexibility in setting their housing program requirements. One example of a NAHASDA program requirement tribes have sought more flexibility with is the maximum rent that can be charged for NAHBG-assisted housing.

Under the NAHASDA statute, the maximum rent or homebuyer payment (that is, the payment under a lease-purchase agreement) for a housing unit assisted with NAHBG funds cannot exceed 30% of the tenant's income.[14] Many tribes have argued that the 30% rule is too restrictive and that tribes should be allowed to set their own maximum rents. Tribes say that the ability to charge higher rents could allow them to more easily pay for the costs of maintaining and operating NAHBG-assisted units (such as paying for repairs, utilities, and general maintenance). Because tribes do not receive an ongoing operating subsidy for NAHBG-assisted units, the inability to charge higher rents means they have to use more of their NAHBG funds to cover the costs of

[9] "Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment On H.R. 83," *Congressional Record,* vol. 160 (December 11, 2014), p. H9982.

[10] "Coordinated Environmental Review Process: Interim Report," prepared by U.S. Department of Housing and Urban Development in collaboration with the Coordinated Environmental Review Process Workgroup, http://portal.hud.gov/hudportal/documents/huddoc?id=Env_Interim_Repo_050615.pdf.

[11] "Coordinated Environmental Review Process: Final Report," prepared by U.S. Department of Housing and Urban Development in collaboration with the Coordinated Environmental Review Process Workgroup, https://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf.

[12] 25 U.S.C. 4114(b)

[13] For example, see Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, "Prepared Statement of Annette Bryan, Executive Director, Puyallup Nation Housing Authority," p. 28, http://www.indian.senate.gov/sites/default/files/upload/files/CHRG-113shrg80495.pdf.

[14] 25 U.S.C. 4133(a). Rents charged to NAHBG-assisted households that are not low-income can exceed the 30% of income standard.

operating existing units or find other funds that can be used for this purpose. Using more NAHBG funds to operate existing units reduces the amount of funds available for other uses, such as developing new units.

Tribes also argue that the ability to charge rents that exceed 30% of income could reduce administrative burdens associated with recertifying tenant incomes, and that it would further the cause of tribal self-determination by leaving decisions about maximum rents to the tribes.[15]

On the other hand, others have argued that allowing tribes the flexibility to set higher rents could make it more difficult to ensure that NAHBG funds are meeting NAHASDA's objective of providing affordable housing. Some lawmakers have expressed concerns that allowing tribes to set maximum rents that exceed 30% of tenant income could make NAHBG-assisted housing unaffordable for some low-income households.[16]

Total Development Cost

Tribes have also sought additional flexibility with limits on the total cost of housing assisted under NAHASDA. NAHBG-assisted housing is supposed to be of "moderate design."[17] In other words, NAHASDA funds are not intended to be used to construct high-cost or luxury dwelling units. To ensure that this requirement is met, HUD publishes total development cost (TDC) limits that are intended to reflect the cost of moderately designed housing in a given area.[18] A TDC is based on the average current construction costs for moderately designed housing in an area taking into account at least two nationally recognized residential construction cost indices.[19]

Tribes can establish their own written standards to ensure that NAHBG-assisted housing is of moderate design. If a tribe has its own written standards, it must ensure that the cost of a NAHBG-assisted project (including all sources of funding) does not exceed the TDC by more than 10% without receiving prior approval from HUD. Tribes that have not adopted their own written standards may not exceed the TDC limits without receiving prior approval from HUD.[20] Tribes can request a variance to exceed the TDC for a specific project or to have the TDC limits adjusted, but must submit information to support such a variance to HUD and receive HUD approval.

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[15] For example, see Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, Prepared Statement of Annette Bryan, Executive Director, Puyallup Nation Housing Authority, p. 27, http://www.indian.senate.gov/sites/default/files/upload/files/CHRG-113shrg80495.pdf.

[16] For example, see Rep. Maxine Waters, "Waters Statement on Legislation to Renew Housing Assistance for Native Americans and Hawaiians," press release, December 2, 2014, http://democrats.financialservices.house.gov/news/documentsingle.aspx?DocumentID=398650.

[17] 24 CFR §1000.156

[18] Published TDCs can be used for buildings of up to four units that are located on the tribe's land base. Tribes must request TDCs from HUD for buildings with more than five units or buildings that are located within the tribe's Indian area for the purpose of NAHASDA but are not located on the tribe's land base. See HUD Notice PIH 2010-47, "Total Development Costs (TDC) for Affordable Housing under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8809.pdf.

[19] 24 CFR §1000.302. An explanation of how TDCs are calculated is included in HUD Notice PIH 2010-47.The most recent TDC cost limits published by HUD are in HUD Notice PIH 2016-07, "Extension – Total Development Costs (TDC) for Affordable Housing under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)," available at https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices.

[20] 24 C.F.R. §1000.158

Tribes have requested that HUD respond to requests to exceed the TDC limits in a timelier manner, and/or that tribes be given more flexibility to exceed the TDC by more than 10% without obtaining prior HUD approval. In particular, tribes point to the higher costs of developing energy-efficient housing, which could provide cost savings for the tribe or housing owner over the long term but generally has higher initial costs.[21] (Costs related to energy-efficient construction are one type of information that a tribe can submit to HUD in support of its request for a variance to exceed the TDC for a given project.[22]) Tribes also note the time and procedural burdens involved in requesting approval from HUD.

HUD has expressed some concerns about allowing tribes to exceed the TDC by more than 10% without receiving approval from HUD, noting that investing NAHASDA funds in higher-cost homes reduces the amount of funding available for other housing units.[23] Allowing tribes more flexibility to exceed the TDC by a greater amount before HUD's approval is required may reduce HUD's ability to ensure that NAHASDA funds are being spent on moderately designed housing.

Affordability Period and Binding Commitments

NAHBG-assisted housing is required to be affordable. In general, NAHASDA defines housing as affordable if it is occupied by a low-income household (or a household that was low-income at the time that it first rented or purchased the property) and meets other requirements described in the statute (such as the maximum rent requirement described earlier). 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 Secretary.[24] The recipient must require "binding commitments," such as deed restrictions or other mechanisms, to ensure that the affordability period will be met.[25]

Tribes have sought additional flexibility related to these binding commitments for certain types of NAHASDA investments. Currently, tribes can choose to set a short affordability period for units that use small investments of NAHASDA funds, but they must always set some kind of affordability period secured by a binding commitment.[26] Some tribes have proposed that affordability periods and binding commitments should not apply at all for privately owned housing units that use less than a certain amount of NAHBG funds.[27] The amount could be a

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[21] For example, see Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, "Statement of Annette Bryan, Executive Director, Puyallup Nation Housing Authority," p. 29.

[22] U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2010-47, p. 3, as extended by PIH Notices 2011-63, 2013-05, 2014-16, 2015-09, and 2016-07. PIH Notices applicable to NAHASDA are at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/regs/notices.

[23] U.S. Congress, Senate Committee on Indian Affairs, *S. 235, The Alaska Native Tribal Health Consortium Land Transfer Act; S. 920, the Fond Du Lac Band of Lake Superior Chippewa Non-Intercourse Act of 2013; and S. 1352, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2013*, 113th Cong., 1st sess., July 31, 2013, S. Hrg. 113-126 (Washington: GPO, 2013), Prepared Statement of Hon. Sandra Henriquez, Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development, pp. 13-14, http://www.indian.senate.gov/sites/default/files/upload/files/CHRG-113shrg85897.pdf.

[24] 25 U.S.C. 4135(a)(2)

[25] The 2008 law that reauthorized NAHASDA specified that this requirement does not apply to family or household members that subsequently take ownership of homeownership units assisted under NAHASDA. (See 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.

[26] 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.

[27] For example, see the National American Indian Housing Council's *Section-by-Section Analysis NAIHC Discussion*

specified dollar amount or a percentage of the total development cost maximum for the area.[28] However, removing the affordability period and binding commitment requirements for certain types of NAHBG investments could make it harder for HUD to ensure that NAHBG funds used in this way result in housing that continues to be affordable.

Expediting HUD Responses to Requests for Approvals or Waivers

A number of NAHBG requirements can be waived by HUD if certain conditions are met. This includes the ability to exceed the TDC by more than 10%, as described previously, as well as factors related to environmental review requirements,[29] the timing of submission of Indian Housing Plans,[30] and a requirement to enter into local cooperation agreements before developing NAHASDA-assisted housing in other jurisdictions,[31] among other things.

Some tribes have argued that HUD is sometimes too slow in responding to requests for waivers of these requirements, making it more difficult and time-consuming for tribes to carry out their affordable housing activities under NAHASDA. They have urged Congress to enact time limits for HUD to respond to various waiver requests, and have sometimes argued that such requests should be considered to be approved if HUD does not respond within the given timeframe. Additionally, tribes have argued that HUD should be required, rather than allowed, to waive certain requirements if specific conditions are met.[32]

HUD has stressed the need to balance timeliness with accuracy, and has noted that approvals sometimes take longer because additional information is needed from the tribe.[33]

IHS Sanitation Facilities Funding

Outside of NAHBG requirements, another issue that tribes have framed as one of tribal flexibility has to do with using sanitation facilities construction funding appropriated to the Indian Health Service (IHS) in conjunction with HUD funding. For many years, Congress has stipulated in annual appropriations acts that funding for the construction of sanitation facilities appropriated to IHS may not be used to construct sanitation facilities for new homes that are funded through HUD grant programs.[34] (IHS is part of the Department of Health and Human Services, although it

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Draft, detailing its proposed changes to NAHASDA, at http://naihc.net/nahasda/; and Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, Prepared Statement of Russell Sossamon, Executive Director, Choctaw Nation Housing Authority, p. 42.

[28] For example, see Ibid.; NAIHC's Section-by-Section Analysis of NAIHC's Discussion Draft of NAHASDSA reauthorization legislation at http://naihc.net/nahasda/; and Senate Committee on Indian Affairs, *Legislative Hearing on* S. 710, *the Reauthorization of the Native American Housing Assistance and Self-Determination Act of 2015 (NAHASDA)*, prepared testimony of Mr. Gary Cooper, Board Member and Chairman of the Legislative Committee–National American Indian Housing Council, p. 4, available at http://www.indian.senate.gov/hearing/legislative-hearing-s-710-reauthorization-native-american-housing-assistance-and-self.

[29] 25 U.S.C. 4115(d)

[30] 25 U.S.C. 4111(b)(2). In order for tribes to receive their NAHBG funding, they must submit annual Indian Housing Plans (IHPs) to HUD for approval. The IHPs detail a tribe's housing needs and its plans for using NAHBG funds.

[31] 25 U.S.C. 4111(c)

[32] For example, see the National American Indian Housing Council's Section-by-Section Analysis of NAIHC's discussion draft of NAHASDA reauthorization at http://naihc.net/nahasda/. The NAIHC discussion draft included a number of proposals for waiver requests to be deemed approved if HUD did not act within a certain timeframe.

[33] Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, p. 43.

[34] For example, see the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), Division F,

is traditionally funded through the annual appropriations acts for the Department of the Interior.) The prohibition is meant to ensure that planning for new homes built with HUD funding includes the necessary sanitation facilities infrastructure in the cost of a home, and that limited IHS sanitation facilities funding can remain available to provide sanitation facilities infrastructure for existing housing or housing funded through other sources.[35]

Tribes have advocated for the ability to use the IHS sanitation facilities funding in conjunction with HUD-funded housing construction.[36] While NAHASDA funds can be used for housing-related infrastructure, NAHASDA does not provide dedicated funds for that purpose. Therefore, tribes must balance their needs for additional housing and related infrastructure when choosing how to use NAHASDA funds or find other sources of funding for infrastructure. In some cases, tribes may not adequately plan for providing infrastructure for NAHBG-assisted homes or such homes may tax existing infrastructure systems.[37] Tribes have noted their ongoing need for funding for sanitation facilities and have argued that tribes should be able to choose how to combine federal funds provided for tribal housing and infrastructure.

Even if Congress enacted language allowing tribes to use IHS sanitation facilities funding in conjunction with new HUD-funded housing in authorizing law, that authority could still be overridden if prohibitions on using IHS sanitation facilities funding for this purpose continued to be included in future annual appropriations laws.

Funding for Training and Technical Assistance

NAHASDA authorizes funding for "a national organization representing Native American housing interests" to provide training and technical assistance to tribes and tribally designated housing entities that administer NAHASDA funds.[38] That funding was traditionally provided to the National American Indian Housing Council (NAIHC). However, since FY2012 annual HUD appropriations acts have provided training and technical assistance funding for "national *or regional* organizations representing Native American housing interests" (emphasis added), and Congress has indicated that it expects the funds to be awarded competitively.[39] (In some years,

under the "Indian Health Facilities" heading, at http://www.gpo.gov/fdsys/pkg/PLAW-113publ235/pdf/PLAW-113publ235.pdf.

[35] See the Department of Health and Human Services FY2016 Budget Justification for the Indian Health Service, p. CJ-171, http://www.ihs.gov/budgetformulation/includes/themes/newihstheme/documents/FY2016CongressionalJustification.pdf; and U.S. Congress, Joint Hearing before the Senate Committee on Indian Affairs and House Committee on Resources, *S. 556 To Amend the Indian Health Care Improvement Act to Revise and Extend that Act, and H.R. 2440 To Improve the Implementation of the Federal Responsibility for the Care and Education of Indian People by Improving the Services and Facilities of Federal Health Programs for Indians and Encouraging Maximum Participation of Indians in Such Programs*, 108th Cong., 1st sess., July 16, 2003, S. Hrg. 108-199 (Washington: GPO, 2003), http://www.gpo.gov/fdsys/pkg/CHRG-108shrg88509/html/CHRG-108shrg88509.htm, discussing a similar provision in a bill to reauthorize the Indian Health Care Improvement Act that was considered in the 108th Congress.

[36] For example, such a provision was included in Sec. 205 of the NAHASDA reauthorization discussion draft circulated by the NAIHC, available at http://naihc.net/wp-content/uploads/2015/04/NAHASDA-reauth-revised-03-01-13.pdf.

[37] 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, pages 41 and 49, http://gao.gov/assets/310/301157.pdf.

[38] 25 U.S.C. 4212

[39] See U.S. Congress, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the Fiscal Year Ending September 30, 2012, and for Other Purposes, Conference Report to accompany H.R. 2112, 112th Cong., 1st sess., November 14, 2011, H.Rept. 112-284 (Washington: GPO, 2011), p. 316, https://www.congress.gov/112/crpt/hrpt284/CRPT-112hrpt284.pdf.

Congress has provided funding for training and technical assistance for national and regional organizations, but it has also required that a certain amount of that funding be provided specifically to a national organization.[40]) In the past, both Congress and the Administration have noted that the NAIHC has had carryover balances from previous years that could be used to carry out its training and technical assistance activities and that, while the NAIHC is the only national organization that focuses on Native American housing issues, there are regional organizations that could also provide training and technical assistance to tribes.[41]

As a result of this language in recent appropriations laws, in recent years HUD has distributed training and technical assistance funding to multiple groups through a competitive process. The NAIHC has opposed this change in the distribution of training and technical assistance funding, arguing that it is best positioned to assist tribes and that tribes have not called for the system for training and technical assistance to be changed.[42] Some tribes have also expressed concerns that changes in the way in which technical assistance funding is provided may make it more difficult for tribes to receive assistance that is tailored to their specific needs or to receive training specifically from the NAIHC if they prefer.[43]

Unexpended Balances of NAHBG Funds

In recent years, Congress has expressed concern over NAHBG funds that have been awarded to tribes under NAHASDA but remain unexpended.[44] According to a Government Accountability Office (GAO) report, tribes cumulatively had $1 billion in unexpended NAHBG funds in July 2013.[45] A small number of tribes are responsible for most of the unexpended funds, and the Navajo Nation, in particular, at one point accounted for as much as half of the total amount.[46] The Navajo Nation consistently receives the largest NAHBG allocation of any tribe due to its size and

[40] For example, the Consolidated Appropriations Act, 2016 (P.L. 114-113) made $3.5 million available for national or regional organizations to provide training or technical assistance, but specified that at least $2 million of that amount should be provided to a national organization.

[41] For example, see U.S. Congress, House Committee on Appropriations, *Departments of Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill, 2013*, report to accompany H.R. 5972, 112th Cong., 2nd sess., June 20, 2012, H.Rept. 112-541 (Washington: GPO, 2012), p. 83, http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt541/pdf/CRPT-112hrpt541.pdf. See also HUD's FY2012 Congressional Budget Justifications, p. L-18, http://portal.hud.gov/hudportal/documents/huddoc?id=NAH_Block_G_2012.pdf.

[42] See U.S. Congress, Senate Committee on Indian Affairs, Legislative Hearing on S. 710, The Reauthorization of the Native American Housing Assistance and Self-Determination Act of 2015 (NAHASDA), 114th Cong., 1st sess., March 18, 2015, Written Testimony of Mr. Gary Cooper, Executive Director of the Housing Authority of the Cherokee Nation and Chairman of the Legislative Committee and the National American Indian Housing Council, available at http://www.indian.senate.gov/hearing/legislative-hearing-s-710-reauthorization-native-american-housing-assistance-and-self.

[43] Government Accountability Office, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts*, March 2014, pp. 19-23, http://www.gao.gov/assets/670/662063.pdf, describing concerns that some tribes have about the changes to the way in which training and technical assistance are provided.

[44] For example, in the conference report that accompanied the FY2012 HUD appropriations law Congress called it "unconscionable" that some tribes have not spent large balances of NAHBG funds despite the need for housing in tribal areas. See U.S. Congress, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the Fiscal Year Ending September 30, 2012, and for Other Purposes*, Conference Report to Accompany H.R. 2112, 112th Cong., 1st sess., November 14, 2011, Report 112-284 (Washington: GPO, 2011), pp. 315-316, http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt284/pdf/CRPT-112hrpt284.pdf.

[45] Government Accountability Office, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts*, GAO-14-255, March 2014, p. 37, http://gao.gov/products/GAO-14-255.

[46] See HUD's FY2013 Budget Justifications at http://portal.hud.gov/hudportal/documents/huddoc?id=native-amer-house.pdf, page J-15. GAO found that the Navajo Nation accounted for about 42% of unexpended funds in July 2013.

housing needs. In past years, capacity issues and other concerns have led to a slow spend-out of the Navajo Nation's NAHBG funds, although it has undertaken efforts in recent years that may improve its ability to spend funds.[47]

Both tribes and HUD have pointed to multiple factors that can contribute to unexpended balances. These include lack of capacity and staff turnover at some tribal housing authorities, the fact that it can take several years to complete the construction of new housing, and additional difficulties in constructing housing stemming from the recent economic downturn or the short building seasons that some tribes face. Some tribes that receive smaller allocations might need to save several years' worth of funds before they have accumulated enough to undertake certain types of projects, such as new construction.[48] Some tribes also say that the balance of unexpended funds is due to HUD not providing funds to tribes in a timely manner or being slow to approve waivers or approvals related to NAHBG-funded projects, and delays by the Bureau of Indian Affairs in approving leases on trust lands.[49] HUD has said that it is providing additional technical assistance to tribes with large balances of unexpended funds and working with the tribes to help them spend their funds in a more timely fashion.[50]

Since FY2012, Congress has been including five-year obligation deadlines for NAHBG funds in annual appropriations laws. In general, funds have to be expended by tribes no later than 5 years after the end of the obligation period, meaning that the funds remain available for no more than 10 years from the year of appropriation.[51] Previously, appropriations laws specified that funds would remain available until expended, meaning that there was no deadline for tribes to spend their funds. Congress has also begun directing HUD to notify tribes of their allocation amounts within 60 days of the appropriations law being enacted.

Congress and the Administration have also considered additional provisions that would reduce grant amounts for tribes that have large amounts of unexpended funds under certain circumstances or would otherwise limit some tribes' funding. One such provision, which applied only to FY2016 appropriations, was enacted. The Consolidated Appropriations Act, 2016 (P.L. 114-113) required that if a tribe had undisbursed NAHBG funds totaling more than three times the formula allocation it would otherwise receive, its formula allocation for FY2016 would be reduced commensurately. This provision only applied to tribes that were eligible for formula allocations of at least $8 million (a small number of tribes).

Similar, though not identical, provisions had been proposed in the President's FY2015 budget request and NAHASDA reauthorization legislation considered in both the 113th and 114th Congresses, though these provisions were ultimately not enacted.[52] Furthermore, the FY2016

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[47] Government Accountability Office, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts*, Appendix II, Navajo Housing Authority Case Study, pp. 42-51.

[48] See HUD's FY2015 Budget Justifications, p. L-14, http://portal.hud.gov/hudportal/documents/huddoc?id=FY15CJ_NAT_AM_HG_BLK_GRNTS.pdf.

[49] For example, see Senate Committee on Indian Affairs, *Identifying Barriers to Indian Housing Development and Finding Solutions*, "Response to Written Questions Submitted by Hon. John Barrasso to Cheryl A. Causley," p. 84.

[50] HUD FY2014 Budget Justifications, p. L-12, and U.S. Congress, Senate Committee on Indian Affairs, *S. 235, The Alaska Native Tribal Health Consortium Land Transfer Act; S. 920, the Fond Du Lac Band of Lake Superior Chippewa Non-Intercourse Act of 2013; and S. 1352, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2013*, 113th Cong., 1st sess., July 31, 2013, S. Hrg. 113-126 (Washington: GPO, 2013), Prepared Statement of Hon. Sandra Henriquez, Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development, p. 14.

[51] 31 U.S.C. 1552(a)

[52] See HUD's FY2015 Budget Justifications, p. L-18. Legislation that has included similar provisions includes the

HUD appropriations bill approved by the Senate Appropriations Committee (H.R. 2577) would have limited any single tribe's NAHBG allocation to no more than 10% of the total amount of funding provided to the program. Based on recent allocations, such a provision would only affect the Navajo Nation, the recipient of the largest amount of NAHBG funding. This provision was not included in the final FY2016 HUD appropriations law.

Housing Programs for Native Hawaiians

In 2000, NAHASDA was amended to add the Native Hawaiian Housing Block Grant (NHHBG). The NHHBG provides funds to Hawaii's Department of Hawaiian Home Lands (DHHL) to use for affordable housing activities for low-income Native Hawaiians eligible to reside on the Hawaiian Home Lands.[53]

Another HUD program, the Native Hawaiian Housing Loan Guarantee Program (also called the Section 184A program), provides loan guarantees on certain home mortgages obtained by Native Hawaiians on the Hawaiian Home Lands. The Native Hawaiian Housing Loan Guarantee program is authorized under the Housing and Community Development Act of 1992, as amended, rather than under NAHASDA.[54] Both the NHHBG and the Native Hawaiian Housing Loan Guarantee programs were originally authorized through FY2005. They have not been reauthorized since then, although Congress has usually continued to provide funding for the programs in annual appropriations acts.[55]

Some lawmakers have opposed the reauthorization of the NHHBG and other programs that solely benefit Native Hawaiians. This opposition largely stems from a broader debate about the relationship between the federal government and Native Hawaiians. Unlike federally recognized tribes, which are sovereign nations with a government-to-government relationship with the United States, Native Hawaiians are not recognized by the federal government as a separate political entity. While recipients of NAHBG funds are eligible because of their political status as federally recognized tribes, some have argued that programs that solely benefit Native Hawaiians could be construed to be based on race, a constitutionally suspect basis, and could therefore

FY2015 HUD appropriations bill passed by the House (H.R. 4745), NAHASDA reauthorization legislation passed by the House near the end of the 113th Congress (H.R. 4329), and NAHASDA reauthorization bills that were considered by the 114th Congress (H.R. 360 and S. 710) and are discussed in this report.

[53] 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. 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/.

[54] Both the Native Hawaiian Housing Block Grant and the Native Hawaiian Housing Loan Guarantee Program were established by the Hawaiian Home Lands Homeownership Act of 2000, enacted as part of the American Homeownership and Economic Opportunity Act of 2000 (P.L. 106-569). The law amended NAHASDA and the Housing and Community Development Act of 1992, respectively.

[55] No funding was provided for the Native Hawaiian Housing Block Grant or the Native Hawaiian Housing Loan Guarantee Program in the Consolidated Appropriations Act, 2016 (P.L. 114-113). According to HUD's FY2016 Budget Justifications, sufficient carryover balances were available to continue to administer these programs without an appropriation in FY2016. See HUD's FY2016 Congressional Justifications for each of these two programs at https://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/fy16_CJ.

potentially be deemed to be unconstitutional.[56] They also express concerns that such programs may appear to confer a political status similar to that of tribes on Native Hawaiians.[57]

Lawmakers who support reauthorizing the NHHBG have argued that the federal government should be responsible for providing certain kinds of assistance to Native Hawaiians, similar to the assistance it provides to Native Americans, based on the history of the United States' relationship with Hawaii. They also cite the need for affordable housing on the Hawaiian Home Lands and barriers to housing development on the Hawaiian Home Lands that are similar to those on tribal lands.[58]

In past Congresses, NHHBG reauthorization has been considered both in standalone bills and broader NAHASDA reauthorization bills,[59] but has continued to meet with opposition.[60]

The Cherokee Freedmen and NAHASDA

The Cherokee Freedmen are descendants of former Cherokee slaves and free African Americans who resided with the Cherokee Nation at the close of the Civil War. For many years, there has been ongoing litigation between the Cherokee Freedmen, the Cherokee Nation, and the United States over whether the Freedmen have a right to membership in the tribe. The Cherokee Freedmen claim a right to tribal membership based on an 1866 treaty between the United States and the Cherokee Nation. The Cherokee Nation has attempted to remove the Cherokee Freedmen from the tribal membership rolls citing the sovereign right of tribes to determine tribal membership.[61]

When NAHASDA was last reauthorized (in 2008), some lawmakers supported denying NAHASDA funding to the Cherokee Nation if it did not restore tribal citizenship rights to the Cherokee Freedmen. Others opposed such efforts, citing reluctance to intervene in a dispute that was being considered in the courts and concerns about the effect that denying NAHASDA funding would have on low-income members of the Cherokee Nation.[62]

Ultimately, Congress included language in the 2008 NAHASDA reauthorization law prohibiting the Cherokee Nation from receiving NAHASDA funding unless (1) a specific temporary

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[56] For example, see debate on the Native Hawaiian Housing Block Grant at "Native American Housing Assistance and Self-Determination Reauthorization Act of 2007," *Congressional Record*, vol. 153 (September 6, 2007), pp. H10187-H10190, https://www.congress.gov/crec/2007/09/06/CREC-2007-09-06-pt1-PgH10182.pdf.

[57] For example, see "Additional Views Submitted by Congressman John Campbell" in U.S. Congress, House Committee on Financial Services, report to accompany H.R. 835, 110th Cong., 1st sess., March 15, 2007, H.Rept. 110-50 (Washington: GPO, 2007), http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt50/pdf/CRPT-110hrpt50.pdf.

[58] For example, see debate on a 2007 bill to reauthorize Native Hawaiian housing programs at "Hawaiian Homeownership Opportunity Act of 2007," House debate, *Congressional Record*, March 21, 2007, p. H2769-H2772, https://www.congress.gov/crec/2007/03/21/CREC-2007-03-21-pt1-PgH2769-2.pdf.

[59] For example, in the 113th Congress H.R. 231 and S. 640 both would have reauthorized the NHHBG. A NAHASDA reauthorization bill reported out of committee in the Senate during the 113th Congress (S. 1352) and an amended version of NAHASDA reauthorization passed by the House (H.R. 4329) also would have reauthorized the NHHBG.

[60] For example, see "Unanimous Consent Request—S. 1352," *Congressional Record*, vol. 160 (December 8, 2014), pp. S6374-SS6375, http://www.gpo.gov/fdsys/pkg/CREC-2014-12-08/html/CREC-2014-12-08-pt1-PgS6374.htm.

[61] For more detailed information on the Cherokee Freedmen dispute, see the CRS congressional distribution memorandum *Overview of Cherokee Freedmen Litigation* by Jane M. Smith, available to congressional clients from CRS upon request.

[62] See the debate over Cherokee Freedmen provisions at "Native American Housing Assistance and Self-Determination Reauthorization Act of 2007," *Congressional Record*, vol. 153 (September 6, 2007), pp. H10182-H10186, https://www.congress.gov/crec/2007/09/06/CREC-2007-09-06-pt1-PgH10182.pdf.

injunction in tribal litigation on the Cherokee Freedmen dispute remained in effect during litigation or (2) there was a settlement to the litigation.[63] The injunction in question maintained tribal membership for the Cherokee Freedmen pending resolution of the case. The tribal litigation has since ended, and the injunction remained in place throughout, presumably removing any restrictions on the Cherokee receiving NAHASDA funding.

Federal litigation in the case is ongoing, and an injunction in the federal litigation maintains tribal membership for the Cherokee Freedmen pending resolution of the federal litigation.

NAHASDA Reauthorization Legislation in the 114th Congress

NAHASDA has been reauthorized twice since it was first enacted in 1996. The most recent authorization for most NAHASDA programs expired at the end of FY2013, during the 113th Congress. (The authorization for the Native Hawaiian Housing Block Grant expired at the end of FY2005.) The 113th Congress considered NAHASDA reauthorization legislation but did not enact any prior to the end of the Congress.[64]

During the 114th Congress, the House and the Senate considered separate versions of NAHASDA reauthorization legislation:

- In the House, H.R. 360 was introduced on January 14, 2015, and was passed by the House under suspension of the rules on March 23, 2015.
- In the Senate, S. 710 was introduced on March 11, 2015. An amended version was favorably reported by the Senate Committee on Indian Affairs on June 4, 2015, and the Senate Banking Committee was discharged from further consideration of the bill on August 5, 2015.[65]

Both H.R. 360 and S. 710 would have reauthorized a number of Native American and Native Hawaiian housing programs, authorized certain new program demonstrations and set-asides for Native American housing, and made several changes to NAHBG requirements. Both bills addressed a number of the issues described earlier in this report, although not necessarily in the same way. Both bills also included certain other changes to NAHASDA or other Native American housing programs, many of which have been supported by tribes.

Table 1 compares the provisions of H.R. 360, as passed by the House, and S. 710, as reported out of committee in the Senate, with each other and with existing law. Ultimately, no NAHASDA reauthorization legislation was enacted during the 114th Congress.

[63] §801 of P.L. 110-411

[64] In the 113th Congress, a NAHASDA reauthorization bill (H.R. 4329) was passed by the House and a different NAHASDA reauthorization bill (S. 1352) was favorably reported out of committee in the Senate.

[65] A May 27, 1988, order provides that "legislation containing provisions affecting the Department of Housing and Urban Development (HUD) Indian housing programs that is not referred solely to the Committee on Banking, Housing, and Urban Affairs shall, in the future, upon the reporting by the Select Committee on Indian Affairs, be referred to the Committee on Banking, Housing, and Urban Affairs for a period not to exceed 60 days." (See Senator Robert Byrd, "Committee Referral of Legislation Concerning Indian Housing," *Congressional Record*, vol. 134, part 9 (May 27, 1988), pp. 13053-13054.) Therefore, S. 710 was referred to the Senate Banking Committee for a period not to exceed 60 days, and, when the Senate Banking Committee did not act on the legislation, the committee was discharged from further consideration of the bill when the 60 days expired.

Table 1. Comparison of H.R. 360, S. 710, and Existing Law

Existing Law	H.R. 360	S. 710
Program and Funding Reauthorizations		
Native American Housing Block Grant Reauthorization		
Sec. 108 of NAHASDA (25 U.S.C. 4117) authorizes the appropriation of such sums as may be necessary for the NAHBG for each of FY2009 through FY2013. Congress appropriated $650 million for the NAHBG in each of FY2015 and FY2016.	Sec. 301 would have amended 25 U.S.C. 4117 to reauthorize the NAHBG from **FY2015 through FY2019**. Instead of authorizing "such sums as may be necessary," it would have authorized **$650 million per year**.	Sec. 103 would have amended 25 U.S.C. 4117 to reauthorize the NAHBG from **FY2016 through FY2020**. It would have continued to authorize **such sums as may be necessary**.
Native Hawaiian Housing Block Grant Reauthorization		
Sec. 824 of NAHASDA (25 U.S.C. 4243) authorizes such sums as may be necessary for the NHHBG for each of FY2001 through FY2005. In FY2015, Congress appropriated $9 million for the NHHBG. No funding was provided for the program in FY2016; the President's budget request indicated that sufficient carryover balances were available to continue to administer the program during FY2016 without additional appropriations.	Sec. 801 would have amended 25 U.S.C. 4243 to reauthorize the NHHBG from **FY2015 through FY2019**. Instead of authorizing "such sums as may be necessary," it would have authorized **$13 million per year**.	Sec. 703 would have amended 25 U.S.C. 4243 to reauthorize the NHHBG from **FY2016 through FY2020**. It would have continued to authorize **such sums as may be necessary**.

Existing Law	H.R. 360	S. 710
Section 184 Program Reauthorization		
Through the Indian Home Loan Guarantee Program (also called the Section 184 program), HUD guarantees certain mortgages made to Native Americans in tribal areas. It is authorized under the Housing and Community Development Act of 1992 (P.L. 102-550) rather than under NAHASDA. Current law authorizes the Secretary to guarantee loans under this program to the extent that funds are provided in annual appropriations acts, authorizes appropriations of such sums as may be necessary for each of FY2008 through FY2012, and authorizes the Secretary to guarantee loans in each of FY2008 through FY2012 up to an aggregate loan volume not to exceed amounts specified in annual appropriations acts (12 U.S.C. 1715z-13a). In FY2015, Congress appropriated $7 million for the Section 184 program to guarantee an overall loan volume of up to $744 million. In FY2016, Congress appropriated $7.5 million to guarantee an overall loan volume of up to $1.2 billion.	Sec. 502 would have amended 12 U.S.C. 1715z-13a to authorize appropriations of **$12.2 million per year** from **FY2015 through FY2019**. It would have authorized HUD to guarantee **an aggregate loan volume of up to $976 million per year** in each of those years.	Sec. 504 would have amended 12 U.S.C. 1715z-13a to authorize appropriations of **$12.2 million per year** from **FY2016 through FY2020**. It would have authorized the Secretary to guarantee loans in each of those years up to an aggregate loan volume not to exceed amounts specified in annual appropriations acts.

Existing Law	H.R. 360	S. 710
Section 184A Program Reauthorization		
Through the Native Hawaiian Home Loan Guarantee Program (also called the Section 184A program), HUD guarantees certain mortgages made to Native Hawaiians residing on the Hawaiian Home Lands. It is authorized under the Housing and Community Development Act of 1992, as amended, rather than under NAHASDA. Current law authorizes the Secretary to guarantee loans under this program to the extent that funds are provided in annual appropriations acts, authorizes appropriations of such sums as may be necessary for each fiscal year from FY2001 through FY2005, and authorizes the Secretary to guarantee loans in each fiscal year from FY2001 through FY2005 up to an aggregate loan volume of up to $100 million per year (12 U.S.C. 1715z-13b). In FY2015, Congress appropriated $100,000 for the Section 184A program to guarantee an overall loan volume of up to $16.130 million. No funding was provided for the program in FY2016; the President's budget request indicated that sufficient carryover balances were available to continue to administer the program during FY2016 without additional appropriations.	Sec. 802 would have amended 12 U.S.C. 1715z-13b to authorize appropriations of **$386,000 per year** from **FY2015 through FY2019.** It would have authorized HUD to guarantee **an aggregate loan volume of up to $41.504 million per year** in each of those years.	Sec. 704 would have amended 12 U.S.C. 1715z-13b to authorize appropriations of **$386,000 per year** from **FY2016 through FY2020**. It would have authorized HUD to guarantee **an aggregate loan volume of up to $41.504 million per year** in each of those years.

Existing Law	H.R. 360	S. 710
Training and Technical Assistance Funding		
Sec. 703 of NAHASDA (25 U.S.C. 4212) authorizes such sums as may be necessary for training and technical assistance funding for each of FY2009 through FY2013. The funding is to be provided to a national organization representing Native American housing interests.	No provision	Sec. 503 would have amended 25 U.S.C. 4212 to require the Secretary to make such sums as may be necessary available each fiscal year to a national *or regional* organization representing Native American housing interests to provide training and technical assistance. The funds would have been awarded on a competitive basis. The language would have essentially codified the process for distributing training and technical assistance funding that had been included in annual appropriations acts in recent years.
NAHBG Program Requirements		
Environmental Reviews		
Recipients of NAHASDA funds must comply with environmental review requirements under the National Environmental Policy Act of 1969 (NEPA). HUD's regulatory requirements for environmental reviews under NEPA are at 24 C.F.R. Parts 50 and 58. Sec. 105 of NAHASDA (25 U.S.C. 4115) allows tribes to carry out their own environmental reviews subject to certain procedures. (Tribes can also choose to have HUD carry out the environmental review.)	Sec. 103 would have amended 25 U.S.C. 4115 to specify that, if a tribe was using both NAHBG funds and other federal funds in a project, the environmental review carried out for the NAHBG would satisfy the environmental review requirements associated with the other federal funds if (1) the tribe had assumed responsibility for carrying out the environmental review requirements and (2) the other sources of federal funds did not exceed 49% of the project's cost.	Sec. 102 would have amended 25 U.S.C. 4115 to specify that complying with the environmental review requirements under that section would satisfy any other environmental review requirements required under any other federal law or regulation by any other agency involved in the project. It would have also directed the Secretary to coordinate compliance with the environmental review requirements with all affected federal agencies and tribes.
Under current law, the Secretary is *allowed* to waive certain procedural requirements related to environmental reviews under NAHASDA under certain conditions (25 U.S.C. 4115(d)).	H.R. 360 would have *required* the Secretary to waive certain procedural requirements if the conditions specified in statute were met, and would have required the Secretary to act on a waiver request within 60 days.	S. 710 did not include the waiver provisions that were included in H.R. 360.

Existing Law	H.R. 360	S. 710
Total Development Cost		
HUD's regulations at 24 C.F.R. §1000.156 require that housing assisted under NAHASDA be of "moderate design." HUD periodically publishes total development cost (TDC) limits that are intended to reflect the cost of moderately designed housing in an area. Tribes can establish their own written standards to ensure that NAHASDA-assisted housing is of moderate design. If a tribe has its own written standards, it must ensure that a NAHASDA-assisted project does not exceed the TDC by more than 10% without receiving prior approval from HUD. Tribes that have not adopted their own written standards may not exceed the TDC limits without receiving prior approval from HUD (24 C.F.R. §1000.158).	Sec. 104 would have amended 25 U.S.C. 4113, regarding HUD's review of tribes' Indian Housing Plans, to require HUD to approve or deny a tribe's request for approval to exceed the TDC by more than 10% within 60 days of receiving the request. It would have also added the definition of TDC that currently appears in HUD regulations to the NAHASDA statute at 25 U.S.C. 4103.	Sec. 205 would have specified that housing developed, acquired, or assisted under the NAHBG could not exceed the TDC by more than 20% without HUD's prior approval.
Maximum Rent		
Sec. 203(a) of NAHASDA (25 U.S.C. 4133(a)) specifies that the maximum rent or homebuyer payment (that is, the payment in a lease-purchase program) that can be charged for a housing unit assisted with NAHBG funds cannot exceed 30% of the tenant's income.	Sec. 202 would have amended 25 U.S.C. 4133 to provide that the 30% maximum rent or homebuyer payment requirement would not apply if the tribe (or the entity designated by the tribe to administer NAHASDA funds) had a written policy governing rents and homebuyer payments that included a provision governing maximum rents or homebuyer payments.	Sec. 201 would have amended 25 U.S.C. 4133 to provide that the 30% maximum rent or homebuyer payment requirement would not apply if the tribe (or the entity designated by the tribe to administer NAHASDA funds) had a written policy governing rents, homebuyer payments, *and tenant protections* that included a provision governing maximum rents or homebuyer payments.

Existing Law	H.R. 360	S. 710
Affordability and Binding Commitments		
Section 205 of NAHASDA (25 U.S.C. 4135) specifies that, in order for housing to be considered "affordable," it must be made available only to households that are low-income at the time they initially occupy, purchase, or enter into an agreement or contract to purchase the housing, depending on the type of housing. In the case of a home purchase of existing housing, the home is considered affordable if the household is low-income at the time it purchases the property.	Sec. 203 would have amended 25 U.S.C. 4135 to specify that, if a current rental unit is converted to a homebuyer or lease-purchase unit, the housing qualifies as affordable for the purposes of the NAHBG as long as the unit is only made available for the current tenant to purchase and the tenant was low-income when he or she first occupied the unit. In other words, the household would not have to qualify as low-income when it purchases (or enters into an agreement to purchase) the unit, as long as the household was low-income when it first occupied the unit as a renter.	Identical provision (Sec. 202)[a]
Housing must also be subject to certain "binding commitments," such as deed restrictions or other mechanisms, to ensure that the housing will remain affordable for a designated period of time as determined by the Secretary. HUD guidance provides that the length of time of the affordability period can vary based on the amount of NAHASDA funds invested in the project.	Sec. 203 also would have amended 25 U.S.C. 4135 to specify that binding commitments would not be required for NAHBG funds used for improvements to privately owned homes, as long as the cost of the improvements did not exceed 10% of the total development cost limit.	Identical provision (Sec. 202)[a]
Notice of Lease Termination		
Sec. 207 of NAHASDA (25 U.S.C. 4137) specifies certain requirements related to leases for rental housing that is assisted with NAHBG funds. Among other things, it provides that a tenant must be given adequate written notice of the termination of the lease, and that adequate notice is the time period required by state, local, or tribal law.	Sec. 204 would have amended 25 U.S.C. 4137 to provide that owners of rental housing assisted with NAHASDA funds and other sources of federal funds must use a lease that includes the NAHASDA requirements governing notice of lease termination, regardless of the laws governing the other federal programs.	Sec. 203 would have amended 25 U.S.C. 4137 to provide that the NAHASDA requirements governing notice of lease termination would apply to any projects and programs that are funded in part with NAHASDA funds.

Existing Law	H.R. 360	S. 710
Reviews, Audits, and Reports		
Sec. 405 of NAHASDA (25 U.S.C. 4165) allows HUD to perform certain types of reviews or audits of tribes, and gives tribes an opportunity to review and comment on any such reports.	Sec. 401 would have amended 25 U.S.C. 4165 to require the Secretary to issue a final report within 60 days of receiving comments from a tribe or TDHE.	No provision
Sec. 407 of NAHASDA (25 U.S.C. 4167) requires HUD to submit certain reports to Congress within 90 days of the end of each fiscal year in which funding is provided for NAHASDA programs. The reports are required to describe how funding was used and progress toward meeting the goals of NAHASDA.	Sec. 402 would have amended 25 U.S.C. 4167 to require the reports to be submitted specifically to the Senate Committees on Indian Affairs and Banking, Housing, and Urban Affairs and the House Committees on Financial Services *and Natural Resources, as well as any subcommittees of those committees with jurisdiction over Native American and Alaska Native affairs.* It would also have required that the reports *"be made publicly available to recipients."*	Sec. 401 would have amended 25 U.S.C. 4167 to require the reports to be submitted specifically to the Senate Committees on Indian Affairs and Banking, Housing, and Urban Affairs and the House Committee on Financial Services. It would also have required that the reports "*be made publicly available, including to recipients."*
Leasehold Interest		
Sec. 702 of NAHASDA (25 U.S.C. 4211) provides that trust or restricted lands can be leased by their owners for housing purposes for a period not to exceed 50 years, subject to the approval of the tribe and the Secretary of the Interior. It also specifies that the NAHASDA lease provisions do not limit any authority to lease trust or restricted lands that is granted by any other law or that provides for longer lease terms.	Sec. 603 would have amended 25 U.S.C. 4211 to increase the maximum lease term to 99 years, rather than 50 years. It would also have clarified that these provisions would not limit any authority to lease trust or restricted lands that was granted by any other law, *regardless of when the other law was enacted.*	Identical provision (Sec. 502)[a]

Existing Law	H.R. 360	S. 710
Local Cooperation Agreements		
Sec. 101(c) of NAHASDA (25 U.S.C. 4111(c)) limits the use of NAHBG funds for certain types of housing unless the tribe has entered into a local cooperation agreement with the governing body of the locality where the property will be located. The Secretary of HUD can waive this requirement under certain circumstances. Currently, the law does not require HUD to respond to a waiver request within a specific time frame, though the regulations at 24 C.F.R. §1000.246 require HUD to make a decision on a request for a waiver of the local cooperation agreement requirements within 30 days or provide the tribe with a reason for the delay and a timeline for making a decision.	Sec. 101 would have amended 25 U.S.C. 4111 to require the Secretary to act on such a waiver request within 60 days.	No provision
Indian Housing Plans		
Sec. 102 of NAHASDA (25 U.S.C. 4112) requires tribes to submit Indian Housing Plans (IHPs) to HUD on an annual basis as a condition of receiving NAHASDA funds, These plans detail the tribe's housing needs and how it intends to use NAHASDA funds.	Sec. 102 would have required HUD, after consulting with tribes, TDHEs, and other interested parties, to submit recommendations to Congress for alternative requirements related to the annual submission of IHPs or procedures for waiving the existing requirements. The recommendations would have been due to Congress within 120 days of the bill's enactment.	No provision

Existing Law	H.R. 360	S. 710
Section 3 Requirements		
In general, recipients of HUD funds (including NAHBG funds) are required to comply with Section 3 of the Housing and Urban Development Act of 1968, which is intended to ensure that low-income residents of an area have an opportunity to compete for jobs and contracting opportunities that arise from the use of HUD funds in that area.[b] HUD regulations at 24 C.F.R. §1000.42 provide that recipients of NAHASDA funds meet the Section 3 requirements when they comply with tribal contract and employment preference laws adopted in accordance with Sec. 101(k) of NAHASDA (25 U.S.C. 4111(k)).	Sec. 201 would have amended 25 U.S.C. 4131(b)(6), which exempts recipients of NAHASDA funds from complying with certain specified provisions of federal law, to add a provision exempting tribes from complying with Section 3 requirements.	No provision
Program Income		
Under Sec. 104(a) of NAHASDA (25 U.S.C. 4114(a)), income that tribes receive as a result of the use of NAHASDA grant amounts is considered program income. Tribes can retain program income as long as it was realized after the grant amounts were initially disbursed and the income is used for affordable housing activities.	No provision	Sec. 101 would have amended 25 U.S.C. 4114 to specify that any *additional* income that a tribe or TDHE receives as a result of the use of program income would not itself be considered program income, and its use would not be restricted.

Existing Law	H.R. 360	S. 710
Prevailing Wages		
Sec. 104(b) of NAHASDA (25 U.S.C. 4114(b)) requires that workers on projects assisted with NAHASDA funds be paid a prevailing wage. Prevailing wages are determined by HUD or by federal Davis-Bacon requirements, depending on the type of worker. However, HUD-determined or Davis-Bacon prevailing wages do not apply if the project is subject to a requirement to pay a prevailing wage determined by the tribe.	No provision	Sec. 101 would also have amended 25 U.S.C. 4114 to specify that, if a project uses NAHASDA funds and other sources of federal funds, and if the tribe is paying tribally determined prevailing wages consistent with the NAHASDA requirements, the payment of those prevailing wages would also apply to the other federal funding being used in the project.
New Program Authorizations		
HUD-VASH for Native American Veterans		
HUD-VASH is a collaborative program between HUD and the Department of Veterans Affairs (VA) that provides rental housing vouchers and supportive services to veterans who are homeless.[c] The FY2015 HUD appropriations law (P.L. 113-235) required that a portion of FY2015 HUD-VASH funding be used for a demonstration program for tribes to assist Native American veterans who are homeless or at risk of homelessness. However, tribes are not eligible for allocations of HUD-VASH vouchers under permanent law.	Sec. 501 would have required 5% of HUD-VASH funding[d] to be set aside each fiscal year for a program for Native American veterans who are homeless or at risk of homelessness modeled on HUD-VASH. Funds would have been awarded to tribes that are eligible to receive NAHBGs based on need, administrative capacity, and other criteria to be established by HUD in consultation with the VA. Tribes would have administered their funds in accordance with NAHASDA requirements. HUD would have been directed to establish requirements for the program through a notice published in the *Federal Register* and would have been required to provide opportunities for comment and consultation with tribes prior to finalizing program requirements.	Identical provision (Sec. 501)[a]

Existing Law	H.R. 360	S. 710
Alternative Privatization Authority Demonstration		
No provision in existing law.	Sec. 701 would have authorized a new demonstration program intended to increase private financing for tribal housing development. Subject to certain conditions, up to 20 tribes could have elected to partner with a private investor to address their affordable housing needs. Rather than using their NAHBG allocations to directly carry out affordable housing development, the participating tribes could have used their allocations in certain specified ways to support the private development of housing or for certain other activities. Certain NAHASDA requirements would not have applied to participating tribes.	Sec. 601 would have authorized the same new demonstration program.[a] The programs were mostly identical except for differences in certain requirements related to the submission of plans to HUD by participating tribes.
Other NAHASDA Issues		
Unspent NAHBG Funds		
No provision in existing permanent law. The Consolidated Appropriations Act, 2016 (P.L. 114-113) included a provision to reduce the FY2016 formula grants for tribes that had unspent NAHASDA balances of more than three times their expected formula grant amount. The provision only applied to tribes that were eligible for formula allocations above $8 million.	Sec. 302 would have provided that a tribe's NAHBG allocation would be reduced if, on **January 1** of a given year, the tribe had undisbursed funds totaling *more than three times the amount of its expected block grant allocation for that fiscal year*. The tribe's allocation for that fiscal year would have been reduced by the amount by which the undisbursed funds exceeded three times the calculated formula allocation. The provision would have taken effect beginning on **January 1, 2016**.	Sec. 301 would have provided that a tribe's NAHBG allocation would be reduced if, on **October 1** of a given year, it had undisbursed funds totaling *more than the sum of its NAHBG formula allocation amounts for the past three fiscal years.* The provision would have taken effect beginning on **October 1, 2017**. The tribe's allocation for that fiscal year would have been the greater of (1) the tribe's expected allocation minus the difference between the amount of undisbursed funds and the sum of the previous three years' allocations or (2) a minimum amount described in Section 302(d) of NAHASDA (25 U.S.C. 4152(d)) based on the funding the tribe received for the operation and modernization of HUD-assisted housing prior to NAHASDA.[e]

Existing Law	H.R. 360	S. 710
	HUD would have been required to notify tribes with undisbursed block grant amounts that exceeded that threshold of the unspent funds by **January 1** of a given year, and the tribe would have been required to respond to HUD explaining why it had not spent the funds and showing that it had the capacity to administer its funds.	HUD would have been required to notify tribes with undisbursed block grant amounts that exceeded that threshold of the unspent funds by **October 1** of a given year, and the tribe would have been required to respond to HUD explaining why it had not spent the funds and showing that it had the capacity to administer its funds.
	These provisions would only have applied to tribes that are eligible for an annual NAHBG allocation of $5 million or more (which is a small number of tribes).[f]	Identical provision[a]
	Any NAHBG funds that were withheld from a tribe would have been proportionately reallocated to all other tribes that were not subject to such a reduction using the need component of the NAHBG formula.	Any NAHBG funds that were withheld from a tribe would have been reallocated using the need component of the NAHBG formula.
	These provisions would not have required HUD to issue regulations, and they would not have conferred any hearing rights on tribes under any section of NAHASDA. In most other instances, Sec. 401 of NAHASDA (25 U.S.C. 4161) provides tribes with the right to a hearing before HUD can take actions such as withholding NAHASDA funds.	Identical provision[a]
Cherokee Freedmen		

Existing Law	H.R. 360	S. 710
Sec. 801 of the 2008 NAHASDA reauthorization law (P.L. 110-411) specified that the Cherokee Nation could not receive NAHASDA funding unless a specific injunction remained in place for the duration of tribal litigation related to the Cherokee Freedmen dispute or unless a settlement was reached. The tribal litigation has since ended, and the injunction remained in place throughout, presumably removing any restriction on the Cherokee Nation receiving NAHASDA funding.	Sec. 602 would have continued the existing language but updated it to reference a similar injunction in ongoing federal litigation, meaning that the Cherokee Nation could only have received NAHASDA funding if the injunction remained in place for the duration of the federal litigation or if a settlement was reached.	Sec. 702 would have repealed the existing language.
IHS Sanitation Facilities Funding		
For many years, Congress has stipulated in annual appropriations acts that funding for the construction of 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 grant programs.	Sec. 205 would have allowed tribes to use IHS sanitation facilities funding to construct sanitation facilities for housing constructed or renovated using NAHASDA funds.[g]	No provision
Using NAHASDA Funds for Matching Costs		
No provision	No provision	Sec. 705 would have provided that grant funds under NAHASDA could be used to meet matching or cost participation requirements in any other federal or non-federal programs.
Assistant Secretary of ONAP		

Existing Law	H.R. 360	S. 710
The HUD housing programs that are specifically targeted to tribes, including NAHASDA programs, are administered by HUD's Office of Native American Programs (ONAP). ONAP is located within HUD's Office of Public and Indian Housing, the head of which is an Assistant Secretary. The head of ONAP is a Deputy Assistant Secretary.	No provision	Sec. 2 would have amended 25 U.S.C. 4102, which provides that NAHASDA is to be administered by ONAP, to make the head of ONAP an Assistant Secretary within HUD who would be appointed by the President with the advice and consent of the Senate.
Changes to Other Laws		
Lands Title Report Commission		
The American Homeownership and Economic Opportunity Act of 2000 established a Lands Title Report Commission (25 U.S.C. 4043 note). Subject to funding being provided in advance in appropriations acts, the Lands Title Report Commission was directed to report on the processes used by the Bureau of Indian Affairs (BIA) related to land ownership records and methods of improving the system for producing title status reports. Members were to be appointed to the commission within 90 days of the law being enacted. However, the committee never became operational.	Sec. 601 would have amended 25 U.S.C. 4043 note to remove the language that conditions the commission on funding being provided in advance in appropriations acts, and would have required members to be appointed to the commission within 90 days of the bill being enacted (effectively restarting the clock on appointing commission members).	No provision
Community-Based Development Organizations		
HUD's Indian Community Development Block Grant program (ICDBG) provides competitive funding to tribes to use for certain community development activities.[h] HUD regulations at 24 C.F.R. §1003.207(b)(3) specify that ICDBG funds generally cannot be used to construct new housing, unless the construction is carried out by a community-based development organization as described at 24 C.F.R. §1003.204.	No provision	Sec. 701 would have specified that TDHEs qualify as community-based development organizations for the purposes of the ICDBG.

Existing Law	H.R. 360	S. 710
Methamphetamine Cleanup and Drug Elimination Grants		
The Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et. seq.) authorizes Drug Elimination Grants to be made to public housing authorities, tribes, and other owners of federally assisted housing to undertake a variety of activities to eliminate drug-related crime. The program has not been funded since FY2001.	No provision	Sec. 706 would have amended 42 U.S.C. 11903 to make methamphetamine clean-up projects an eligible use of Drug Elimination Grant funds.
Repeal of Expired Program Related to Self-Determined Housing Activities		
The 2008 NAHASDA reauthorization added Subtitle B of Title II of NAHASDA (25 U.S.C. 4145-4145d), which established a program to allow tribes additional flexibility to use some of their NAHBG grant amounts on housing activities in ways that were "wholly self-determined" by the tribe. The authority for this program expired at the end of FY2013.	No provision	Sec. 204 would have repealed this subtitle.

Source: Table created by CRS based on H.R. 360 as passed by the House, S. 710 as reported out of committee in the Senate, and current law and regulations.

a. This provision was substantively identical to the provision in H.R. 360 but included drafting differences.

b. For more information on Section 3, see HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3.

c. For more information on HUD-VASH, see CRS Report RL34024, *Veterans and Homelessness*, by Libby Perl.

d. Both bills would have amended 42 U.S.C. 1437f(o)(19), which authorizes HUD-VASH, to set aside 5% of "the funds made available for rental assistance under this subsection" for a HUD-VASH program for Native Americans. "This subsection" could be interpreted to mean subsection (o) of 42 U.S.C. 1437f, which authorizes the Section 8 Housing Choice Voucher Program. However, the provision appears to have been intended to set aside 5% of HUD-VASH funds, not 5% of Section 8 Housing Choice Voucher funds. The committee report accompanying S. 710 stated that "Up to five percent of rental assistance provided for the HUD-VASH could be used.... " for HUD-VASH for Native American veterans. (See U.S. Congress, Senate Committee on Indian Affairs, *Reauthorizing the Native American Housing Assistance and Self-Determination Act of 1996, and for Other Purposes*, report to accompany S. 710, 114th Cong., 1st sess., August 5, 2015, S.Rept. 114-117 (Washington: GPO, 2015), p. 6.) There is no committee report to accompany H.R. 360, but a committee report accompanying a NAHASDA reauthorization bill in the House during the 113th Congress that contained the same reference stated that "[e]ach year 5 percent of the funds made available for the Veterans Affairs Supported Housing Program (VASH) would be set aside for Native American veterans." (See U.S. Congress, House Committee on Financial Services, *Native American Housing Assistance and Self-Determination Reauthorization Act of 2014*, report together with minority views to accompany H.R. 4329, 113th Cong., 2nd sess., November 20,

2014, H.Rept. 113-628 (Washington: GPO, 2014), pp. 19-20.) The Congressional Budget Office (CBO) also scored this provision assuming that 5% of HUD-VASH funds would be set aside for this program. (See Congressional Budget Office, S. 710*, Native American Housing Assistance and Self-Determination Reauthorization Act of 2015, as ordered reported by the Senate Committee on Indian Affairs on April 22, 2015*, cost estimate, May 14, 2015, p. 3.)

e. This amount is described in Section 302(d) of NAHASDA (25 U.S.C. 4152(d)).

f. In FY2015, out of more than 580 tribes that were eligible for allocations of NAHBG funding, 20 tribes had allocations of $5 million or more. See HUD's *FY2015 IHBG Final Allocation Summaries* at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula.

g. Even if this provision were enacted, it could still be overridden if prohibitions on using IHS sanitation facilities funding for this purpose were included in future annual appropriations laws.

h. Information on the ICDBG is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/grants/icdbg.

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