

§ 4102. Administration through Office of Native American Programs

The Secretary of Housing and Urban Development shall carry out this chapter through the Office of Native American Programs of the Department of Housing and Urban Development.

(Pub. L. 104-330, §3, Oct. 26, 1996, 110 Stat. 4018.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

§ 4103. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Adjusted income

The term “adjusted income” means the annual income that remains after excluding the following amounts:

(A) Youths, students, and persons with disabilities

\$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household)—

- (i) who is under 18 years of age; or
- (ii) who is—
 - (I) 18 years of age or older; and
 - (II) a person with disabilities or a full-time student.

(B) Elderly and disabled families

\$400 for an elderly or disabled family.

(C) Medical and attendant expenses

The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of—

- (i) medical expenses, in the case of an elderly or disabled family; and
- (ii) reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(D) Child care expenses

Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(E) Earned income of minors

The amount of any earned income of any member of the family who is less than 18 years of age.

(F) Travel expenses

Excessive travel expenses, not to exceed \$25 per family per week, for employment- or education-related travel.

(G) Other amounts

Such other amounts as may be provided in the Indian housing plan for an Indian tribe.

(2) Affordable housing

The term “affordable housing” means housing that complies with the requirements for affordable housing under subchapter II. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(3) Drug-related criminal activity

The term “drug-related criminal activity” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 802 of title 21).

(4) Elderly families and near-elderly families

The terms “elderly family” and “near-elderly family” mean a family whose head (or his or her spouse), or whose sole member, is an elderly person or a near-elderly person, respectively. Such terms include 2 or more elderly persons or near-elderly persons living together, and 1 or more such persons living with 1 or more persons determined under the Indian housing plan for the agency to be essential to their care or well-being.

(5) Elderly person

The term “elderly person” means a person who is at least 62 years of age.

(6) Family

The term “family” includes a family with or without children, an elderly family, a near-elderly family, a disabled family, and a single person.

(7) Grant beneficiary

The term “grant beneficiary” means the Indian tribe or tribes on behalf of which a grant is made under this chapter to a recipient.

(8) Housing related community development

(A) In general

The term “housing related community development” means any facility, community building, business, activity, or infrastructure that—

- (i) is owned by an Indian tribe or a tribally designated housing entity;
- (ii) is necessary to the provision of housing in an Indian area; and
- (iii)(I) would help an Indian tribe or tribally designated housing entity to reduce the cost of construction of Indian housing;
- (II) would make housing more affordable, accessible, or practicable in an Indian area; or
- (III) would otherwise advance the purposes of this chapter.

(B) Exclusion

The term “housing and community development” does not include any activity con-

ducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(9) Income

The term “income” means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

(A) Any amounts not actually received by the family.

(B) Any amounts that would be eligible for exclusion under section 1382b(a)(7) of title 42.

(C) Any amounts received by any member of the family as disability compensation under chapter 11 of title 38 or dependency and indemnity compensation under chapter 13 of such title.

(10) Indian

The term “Indian” means any person who is a member of an Indian tribe.

(11) Indian area

The term “Indian area” means the area within which an Indian tribe or a tribally designated housing entity, as authorized by 1 or more Indian tribes, provides assistance under this chapter for affordable housing.

(12) Indian housing plan

The term “Indian housing plan” means a plan under section 4112 of this title.

(13) Indian tribe

(A) In general

The term “Indian tribe” means a tribe that is a federally recognized tribe or a State recognized tribe.

(B) Federally recognized tribe

The term “federally recognized tribe” means 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 [43 U.S.C. 1601 et seq.], 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 (25 U.S.C. 450 et seq.).¹

(C) State recognized tribe

(i) In general

The term “State recognized tribe” means any tribe, band, nation, pueblo, village, or community—

(I) that has been recognized as an Indian tribe by any State; and

(II) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for housing for Indian families and has received funding pursu-

ant to such contract within the 5-year period ending upon such effective date.

(ii) Conditions

Notwithstanding clause (i)—

(I) the allocation formula under section 4152 of this title shall be determined for a State recognized tribe under tribal membership eligibility criteria in existence on October 26, 1996; and

(II) nothing in this paragraph shall be construed to confer upon a State recognized tribe any rights, privileges, responsibilities, or obligations otherwise accorded groups recognized as Indian tribes by the United States for other purposes.

(14) Low-income family

The term “low-income family” means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(15) Median income

The term “median income” means, with respect to an area that is an Indian area, the greater of—

(A) the median income for the Indian area, which the Secretary shall determine; or

(B) the median income for the United States.

(16) Near-elderly person

The term “near-elderly person” means a person who is at least 55 years of age and less than 62 years of age.

(17) Nonprofit

The term “nonprofit” means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(18) Person with disabilities

The term “person with disabilities” means a person who—

(A) has a disability as defined in section 423 of title 42;

(B) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which—

(i) is expected to be of long-continued and indefinite duration;

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

(C) has a developmental disability as defined in section 15002 of title 42.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etio-

¹ See References in Text note below.

logic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this chapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(19) Recipient

The term “recipient” means an Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this chapter on behalf of the tribe or tribes.

(20) Secretary

Except as otherwise specifically provided in this chapter, the term “Secretary” means the Secretary of Housing and Urban Development.

(21) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States and Indian tribes.

(22) Tribally designated housing entity

The terms “tribally designated housing entity” and “housing entity” have the following meaning:

(A) Existing IHA's

With respect to any Indian tribe that has not taken action under subparagraph (B), and for which an Indian housing authority—

(i) was established for purposes of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] before October 26, 1996, that meets the requirements under the United States Housing Act of 1937,

(ii) is acting on October 26, 1996, as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of this chapter,

the terms mean such Indian housing authority.

(B) Other entities

With respect to any Indian tribe that, pursuant to this chapter, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under this chapter for affordable housing for Indians, which entity is established—

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska,

the terms mean such entity.

(C) Establishment

A tribally designated housing entity may be authorized or established by one or more

Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

(Pub. L. 104-330, §4, Oct. 26, 1996, 110 Stat. 4018; Pub. L. 105-256, §13(b), Oct. 14, 1998, 112 Stat. 1900; Pub. L. 105-276, title V, §595(e)(1), (2), Oct. 21, 1998, 112 Stat. 2656; Pub. L. 106-402, title IV, §401(b)(2), Oct. 30, 2000, 114 Stat. 1737; Pub. L. 107-292, §3, Nov. 13, 2002, 116 Stat. 2053; Pub. L. 110-411, §3, Oct. 14, 2008, 122 Stat. 4320; Pub. L. 111-269, §2, Oct. 12, 2010, 124 Stat. 2850.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Indian Gaming Regulatory Act, referred to in par. (8)(B), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, which is classified principally to chapter 29 (§2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (13)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in par. (13)(B), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

For the effective date under section 705, referred to in par. (13)(C)(i)(II), as Oct. 26, 1996, see section 705 of Pub. L. 104-330, set out as an Effective Date note under section 4211 of this title.

The United States Housing Act of 1937, referred to in pars. (13)(C)(i)(II) and (22)(A)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

2010—Par. (9)(C). Pub. L. 111-269 added subpar. (C).

2008—Pars. (8) to (22). Pub. L. 110-411 added par. (8), redesignated former pars. (8) to (21) as (9) to (22), respectively, and struck out former par. (22) which defined “housing related community development”.

2002—Par. (22). Pub. L. 107-292 added par. (22).

2000—Par. (17)(C). Pub. L. 106-402 substituted “as defined in section 15002 of title 42” for “as defined in section 6001 of title 42”.

1998—Par. (10). Pub. L. 105-276, §595(e)(1), amended heading and text of par. (10) generally. Prior to amendment, text read as follows: “The term ‘Indian area’ means the area within which a tribally designated housing entity is authorized by one or more Indian tribes to provide assistance under this chapter for affordable housing.”

Par. (12)(B). Pub. L. 105-256 substituted “Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)” for “Indian Self-Determination and Education Assistance Act of 1975”.

Par. (12)(C)(i)(II). Pub. L. 105-276, §595(e)(2), substituted "705" for "107".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

§ 4104. Waiver of matching funds requirements in Indian housing programs

(a) Authorization of waiver

For any housing program that provides assistance through any Indian housing authority, the Secretary of Housing and Urban Development may provide assistance under such program in any fiscal year notwithstanding any other provision of law that requires the Indian housing authority to provide amounts to match or supplement the amounts provided under such program, if the Indian housing authority has not received amounts for such fiscal year under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(b) Extent of waiver

The authority under subsection (a) to provide assistance notwithstanding requirements regarding matching or supplemental amounts shall be effective only to the extent provided by the Secretary, which shall not extend beyond the fiscal year in which the waiver is made or beyond the receipt of any amounts by an Indian housing authority under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(c) Definition of housing program

For purposes of this section, the term "housing program" means a program under the administration of the Secretary of Housing and Urban Development or the Secretary of Agriculture (through the Administrator of the Farmers Home Administration) that provides assistance in the form of contracts, grants, loans, cooperative agreements, or any other form of assistance (including the insurance or guarantee of a loan, mortgage, or pool of mortgages) for housing.

(Pub. L. 101-625, title IX, §959, Nov. 28, 1990, 104 Stat. 4423.)

Editorial Notes

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsecs. (a) and (b), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Native American Housing Assistance and Self-Determination Act of 1996 which comprises this chapter.

Section was formerly classified to section 1437ff of Title 42, The Public Health and Welfare.

SUBCHAPTER I—BLOCK GRANTS AND GRANT REQUIREMENTS

§ 4111. Block grants

(a) Authority

(1) In general

For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this chapter) make grants under this section on behalf of Indian tribes—

(A) to carry out affordable housing activities under part A of subchapter II; and

(B) to carry out self-determined housing activities for tribal communities programs under part B of that subchapter.

(2) Provision of amounts

Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe.

(b) Plan requirement

(1) In general

The Secretary may make a grant under this chapter on behalf of an Indian tribe for a fiscal year only if—

(A) the Indian tribe has submitted to the Secretary an Indian housing plan for such fiscal year under section 4112 of this title; and

(B) the plan has been determined under section 4113 of this title to comply with the requirements of section 4112 of this title.

(2) Waiver

The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.

(c) Local cooperation agreement

Notwithstanding any other provision of this chapter, grant amounts provided under this chapter on behalf of an Indian tribe may not be used for rental or lease-purchase homeownership units that are owned by the recipient for the tribe unless the governing body of the locality within which the property subject to the development activities to be assisted with the grant amounts is or will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this chapter. The Secretary may waive the requirements of this subsection and subsection (d) if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2) until such time as the matter of making such payments has been resolved in accordance with subsection (d).

(d) Exemption from taxation

Notwithstanding any other provision of this chapter, grant amounts provided under this