

# **Indian Housing and the Native American Housing Assistance and Self-Determination Act (NAHASDA)**

## **Outline for November 5, 2021 Presentation Indian Law Section – Idaho State Bar**

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- b. **Low Income Housing Tax Credits**
- c. **Bureau of Indian Affairs Housing Improvement Program**
- d. **Other activities**

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- b. **1937 Housing Act.**
- c. **1961 Department of Interior Task Force Report**
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# **Indian Housing and the Native American Housing Assistance and Self-Determination Act**

**Idaho State Bar – Indian Law Section  
November 5, 2021**

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# **What do Indian Housing Authorities and Tribal Housing Programs Do?**

**Affordable Housing activities under NAHASDA**

**Low Income Housing Tax Credits**

**Bureau of Indian Affairs Housing Improvement Program**

**Other activities**

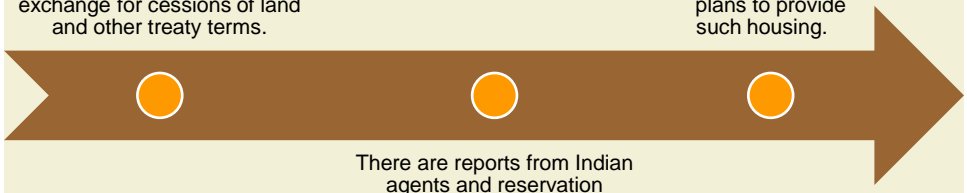
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# Historical documents

United States has long acknowledged an obligation to provide housing to Indian people.

Numerous treaties contain provisions that require the United States to provide housing or housing assistance for tribal members in exchange for cessions of land and other treaty terms.

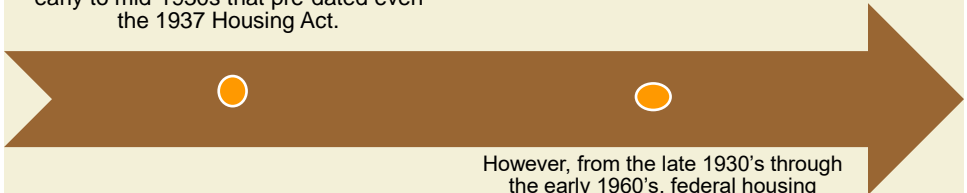
The BIA issued a number of "circulars" addressing the need for and plans to provide such housing.



There are reports from Indian agents and reservation superintendents throughout the late 1800's indicating concerns for and attempts to provide housing to Indian people.

# Historical documents

There is documentation of a moderately-sized Indian housing program from the early to mid-1930s that pre-dated even the 1937 Housing Act.



However, from the late 1930's through the early 1960's, federal housing programs for Indians disappeared as the "termination" policy took hold.

## 1937 Housing Act.

- 42 U.S.C. § 1437 (1988).
- Established the Public Housing Administration, now HUD.
- PHA/HUD's main focus was the allocation of funding to various public housing authorities around the country, which built, operated, and maintained the federally-funded low-income housing stock.
- For the first twenty years, Public Housing Administration/HUD did not fund or oversee any Indian housing.

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## 1961 Interior Report.

- 1961 Interior Task Force report recommended BIA create a housing division and that the Public Housing Administration enlarge the low-rent public housing program to provide for Indians living in Indian Country.
- PHA's General Counsel wrote a legal opinion determining that low-rent housing programs were authorized in Indian Country under the 1937 Housing Act.

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## 1961 Interior Report.

- Because the 1937 Act was structured to provide funding only through public housing authorities, PHA was of the opinion that only independently-operated Indian housing authorities could receive funding under the Act.
- It was because of this housing authority requirement that the tribes who established housing programs through the 1960's, 70's and 80's did so through Indian housing authorities that were established by but operated separately from their tribal governments.

## HUD Oversight under 1937 Act

- As with the public housing programs, HUD exercised a substantial degree of oversight and control over the operation of Indian housing programs.
- Much of HUD's experience was with dense, urban public housing, and thus much of their approach and oversight was geared toward that model—which did not apply in most of Indian Country.

## NAHASDA – Enacted in 1996

- Indian housing programs changed substantially with the enactment of the Native American Housing Assistance and Self-Determination Act (NAHASDA) in 1996.
- 25 USC §§ 4101 – 4167
- Regulations at 24 CFR part 1000.

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## NAHASDA – Enacted in 1996

- NAHASDA removed Indian housing programs completely from the 1937 Housing Act, and established a separate, non-competitive block grant appropriation that would be allocated among tribes according to a needs-based formula.
- NAHASDA also substantially changed how Indian housing programs would operate.

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# NAHASDA – Enacted in 1996

- While HUD still maintained general oversight of Indian housing programs, substantially **more control over planning and the day-to-day operations** of Indian housing was delegated to tribes.
- NAHASDA gave the tribes and their tribal designated housing entities (TDHEs) much more **flexibility in the design and operation** of housing programs.

1996

# NAHASDA – Enacted in 1996

- NAHASDA established **negotiated rulemaking** as the means by which implementing regulations would be adopted, ensuring that tribes had a seat at the table when those regulations were developed.
- NAHASDA expressly authorized the use of **tribal preference** in the provision of housing services, and required **Indian preference in hiring and contracting**.
- Amended in 2008 to allow for **tribal preference in hiring and contracting**.

1996



# NAHASDA – Enacted in 1996

- NAHASDA also addressed some of the legal and jurisdictional issues—authorizing **50-year leases of Indian trust lands** for housing purposes.
- NAHASDA expressly recognized **treaty-based and trust-based obligations** on the part of the U.S. to provide housing for low-income Indian people

1996

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# Objectives of NAHASDA

- to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;
- to ensure better access to private mortgage markets for Indian tribes and their members

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## Objectives of NAHASDA

- to coordinate activities to provide housing for Indian tribes and their members with Federal, State, and local activities to further economic and community development for Indian tribes and their members;
- to plan for and integrate infrastructure resources for Indian tribes with housing development for tribes; and
- to promote the development of private capital markets in Indian country.

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## Limited HUD Oversight

- **HUD’s “limited review” of the IHP.** Such review may only focus on ensuring “that the plan complies with the requirements of Section 102,” so that HUD cannot get into the position of micromanaging tribal housing programs.
- **HUD monitoring for compliance with statute and regulations.**
- Tribes or Housing Authorities have broad flexibility in provision of services.

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## HUD Enforcement

Title IV is the enforcement provision of NAHASDA, and provides the mechanisms by which HUD exercises its oversight.

- Section 401 sets out HUD’s sanctions authority: termination of payments, reduction of payments, limiting availability of payments, or replacing the TDHE.
- In lieu of sanctions, HUD may also refer to the Department of Justice for civil action against the tribe/TDHE.

## NAHASDA – Block Grants

- Title I sets out the basic requirements for receiving and using the block grants that are appropriated each year.
- The grant is known as the Indian Housing Block Grant (IHBG).
- The IHBG allocation formula is addressed in Title III.

## Indian Housing Block Grant

NAHASDA establishes a **needs-based, non-competitive grant program** for allocation of the IHBG appropriations.

- The formula determines how much each tribe/TDHE is allocated from each year's appropriation.
- The basic formula requirements are set out in Section 302, and detailed in 24 CFR part 1000, subpart D.
- Subject to negotiated rulemaking every five years.

## Unique Tribal Provisions

- **Davis-Bacon prevailing wages and Tribal prevailing wages**
- **Environmental review**
- **Local cooperation agreements**
- **Tribal preference in providing services, contracting and employment**

## Unique Tribal Provisions

- Indian Housing Plans (IHP)
- TDHE or Tribal Housing Department
- Negotiated rulemaking
- Block grant for allocation of funds

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## Eligible Families

- Section 201 also addresses the requirements to serve eligible families (defined as American Indian or Alaska Native families who are at or below 80% of the area median income).
- It expressly allows for tribal-member preference in providing housing.

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## Affordable Housing Activities

**Section 202** sets out the list of eligible “affordable housing activities” that may be carried out under NAHASDA:

- Provision of **modernization or operating assistance** for previously developed 1937 Act housing.
- **Acquisition, new construction, reconstruction, or moderate or substantial rehabilitation** of affordable housing (i.e., “development”).
- Provision of **housing-related services** for affordable housing.

## Affordable Housing Activities

**Section 202** sets out the list of eligible “affordable housing activities” that may be carried out under NAHASDA:

- **Management services** for affordable housing.
- **Safety, security, and law enforcement** measures and crime prevention activities appropriate to protect residents of affordable housing from crime.
- **“Model activities”** – Must be designed to carry out NAHASDA’s purposes and must be specifically approved by HUD.
- **Restrictions:** No gaming or general economic development.

## Basic Program Requirements

**Section 203** sets out the basic **program requirements**,

- 30% maximum rents
- Must carry insurance for housing resources
- Must enact policies to cover rents, admissions/eligibility/occupancy, and maintenance.

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## Self-Monitoring

- **Section 403** sets out the **self-monitoring requirements** of NAHASDA, through which tribes/TDHEs are required to monitor their own compliance with NAHASDA.
- **Section 404** sets out the requirements for the **Annual Performance Reports** (APRs) that tribes/TDHEs must provide to HUD, and which HUD is to rely upon in monitoring compliance.
- **Section 405** authorizes HUD to conduct its own independent review and audit, and **Section 406** authorizes audits by the GAO.

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## Termination of Prior Housing Programs

- NAHASDA consolidated all the various funding sources for Indian housing into a single Indian Housing Block Grant appropriation.
- Thus, in Title V, Congress expressly terminated tribal eligibility for these other programs, including Section 8, 1937 Act, and Housing Assistance for the Homeless.

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## NAHASDA Title VI

### Loan Guarantee Program

- Title VI establishes a loan guarantee program through which tribes/TDHEs can obtain loans from private lending institutions that are guaranteed by the United States.
- The guarantee is a pledge by the U.S. to repay all or a portion of a loan if the tribe/TDHE defaults under the terms of the repayment agreement.
- Tribe/TDHE pledges its future IHBG funds to repay U.S.

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## NAHASDA Reauthorization

- NAHASDA was passed with a five year expiration period.
- Was renewed in 2001 and again in 2008.
- Expired in 2013.
- Has not yet been reauthorized.

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## NAHASDA Reauthorization

- Each Congressional session since 2013, tribes and their advocates in Congress seek reauthorization.
- It has been and continues to be a bi-partisan effort.
- Some changes are being proposed to update the statute to provide for flexibility, self-determination, and efficiency.

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# NAHASDA Reauthorization

- Consolidated environmental review
- Timelines for HUD to act or deny waivers
- Revise 30% rule
- Total Development Cost exemptions

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# Questions?

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