

# NAHASDA AMENDMENTS 1998-2008

## NAIHC ANALYSIS

***NOTE: All NAHASDA Amendments Listed Below are Self-Executing, and are Currently in Full Force and Effect, Unless the Amendment is Noted by an Asterisk (\*), in which Case the Amendment Requires Implementing Rules Before Taking Effect.***

AMENDMENT DATE, TITLE, AND FUNCTION	CATEGORIZATION OF AMENDMENT FOR PURPOSE OF NEGOTIATED RULEMAKING
	<p>Five NAIHC raters evaluated each NAHASDA amendment according to the following ranking system:</p> <p>N/A = Not applicable for neg reg</p> <p>1 = No rule change needed</p> <p>2 = Minor rule change needed, but can be accomplished quickly</p> <p>3 = More extensive discussion and negotiation will be required</p>
<b>CONGRESSIONAL FINDINGS</b>	
<p><b><u>Section 2</u></b></p> <p>2008: PL 110-411 amended § 2.</p>	2 (4 raters) or 3 (1 rater)
<b>DEFINITIONS</b>	
<p><b><u>Section 4</u></b></p> <p>1998: PL 105-276 rewrote §4(10). Seems clerical.</p>	1
<p>1998: PL 105-276 amended §4(12)(c)(i)(II)</p>	1

Seems clerical.	
<b>2002:</b> PL 107-292 added §4(22). Now repealed by 2008 amendment.	N/A
<b>2008:</b> PL 110-411 amended §4. Defines “Housing related community development.”	1
<b>TITLE I: BLOCK GRANTS AND GRANT REQUIREMENTS</b>	
<b><u>Section 101</u></b>	
<b>2000:</b> PL 106-569 amended §101(b)(2).	3
<b>1998:</b> PL 105-276 rewrote §101(c). Partially superseded by 2000 change (see below).	3
<b>2000:</b> PL 106-568 amended §101(c).	3
<b>1998:</b> 105-276 amended §101(d)(1).	1
<b>1998:</b> PL 105-276 amended §101(d)(2). Clerical change.	1
<b>2002:</b> PL 107-292 amended §101(h). This is a change that allows tribes/TDHEs to use a portion of their grants to plan for “housing and community development activities” (and not just “affordable housing activities.”).	3
<b>2008:</b> PL 110-411 amended §101. The change to §101(a) is clerical.	1
The reference to Subtitle B in §101(g) should be self-executing, because Subtitle B is itself self-executing (see below).	1
This amendment deals with “federal supply sources.”	1

This amendment deals with “tribal preference.”	1 (2 raters) or 3 (2 raters)
<p><b><u>Section 102</u></b></p> <p><b>1998:</b> PL 105-276 amended §102(a). Clerical and superseded by 2008 changes.</p>	1
<p><b>2000:</b> PL 106-568 amended §102(c) by adding at the end §(6). This subsection was repealed in 2008.</p>	N/A (2 raters) or 1 (2 raters)
<p><b>2000:</b> PL 106-568 amended §102(f) by re-designating former subsection (g) as (f). The 2000 change actually repealed old §102(f), dealing with special IHP rules for small tribes (see §222). There never were any such rules.</p>	1
<p><b>2008:</b> PL 110-411 amended §102. The change to 102(a) converts the IHP requirement from a “fiscal year” to a “tribal program year,” and this will require changes to several regulatory sections (see, e.g., §§201 and 214).</p> <p>The changes to §102(b) changed the content of the IHP. However, the existing regulations merely cross-reference the statute when defining the required contents of the IHP (§220).</p>	2  1
<p><b><u>Section 103</u></b></p> <p><b>1998:</b> PL 105-276 amended §103(c)(3). This change actually conformed the statute to the regulation (§203(a)(3)).</p>	N/A
<p><b>2008:</b> PL 110-411 amended §103(d). This amendment deals with conversion to a “tribal program year.”</p> <p>There probably needs to be a rule clarifying new §103(e), since that subsection erroneously refers to non-existent subsections. That error is related to the new Subtitle B, which is self-executing (see below).</p>	2  2
<p><b><u>Section 104</u></b></p>	

<b>2002:</b> PL 107-292 amended §104(a)(1). <b>See below.</b>	3
<b>2002:</b> PL 107-292 amended §104(a)(1)(B) by striking subparagraph (b). <b>The deletion was actually to (a)(1)(B). The changes were part of Congress’ desire to let tribes use program income for “housing related activities,” and apparently requires a change to §62(b) of the regulations.</b>	3
<b>2002:</b> PL 107-292 amended §104(a)(2). <b>See above.</b>	3
<b>2002:</b> PL 107-292 amended §104(a)(2)(B). <b>See above.</b>	1
<b>2002:</b> PL 107-292 amended §104(a)(2) subparagraph (C).	1
<b>2002:</b> PL 107-292 amended §104(a)(2) by adding (D). <b>See above.</b>	3
<b>2005:</b> PL 109-136 amended §104(a)(2).	2
<b>2000:</b> PL 106-569 amended §104(b)(1). <b>Clerical.</b>	1
<b>2000:</b> PL 106-569 added §104(b)(3). <b>This change allowed use of tribal prevailing wage rates. Although HUD has allowed use of tribal wage rates, it has never amended the pertinent regulation (§16).</b>	2
<b>2008:</b> PL 110-411 amended §104. <b>This amendment was to exclude LIHTC developers’ fees from “program income”.</b>	2
<b><u>Section 105</u></b>	
<b>2000:</b> PL 106-568 added §105(d). <b>This is the “environmental compliance waiver” section.</b>	3
<b><u>Section 106</u></b>	
<b>2008:</b> PL 110-411 amended §106(b)(2)(B)(i).	2
<b>2002:</b> PL 107-292 amended §106(b)(2)(A). <b>See above.</b>	2
<b>2002: P.L. 107-292 amended §106(b)(2)(D) – Amendment adds a requirement that the Secretary review the regulations promulgated pursuant to this section not less than every 7 years in consultation with the tribes.</b>	N/A (3 raters) or 3 (1 rater)

<b>Section 108</b>	
<b>2002:</b> PL 107-292 amended §108. <b>Technical change.</b>	1
<b>2008:</b> PL 110-411 amended §108. <b>Technical change.</b>	1
<b>Section 201</b>	
<b>2000:</b> PL 106-568 amended §201(b) by substituting “paragraphs (2) and (4)” for “paragraph (2)”. It also inserted paragraph (4) and redesignated former paragraphs (4) and (5) as (5) and (6), respectively. <b>This change authorized tribes to provide assistance to law enforcement officers. HUD never amended the regulations to accommodate law enforcement officers. (See §§104-110).</b>	3
<b>2000:</b> PL 106-568 inserted paragraph 201(b)(4) and redesignated former paragraphs (4) and (5) as (5) and (6), respectively. <b>See above.</b>	3
<b>1998:</b> PL 105-276 amended §201(b)(5).	3
<b>2008:</b> PL 110-411 amended §201(b). <b>There are several changes here. The first (§ 201(b)(1)) unconditionally exempts projects assisted by loan guarantees from the family eligibility requirements. This requires a conforming rule change to §1000.110(a)-(c).</b>	3
<b>The second (§201(b)(2)) and ((§201(b)(2)(B))) allows any form of NAHASDA assistance to “ineligible” families whom the tribe can prove needs the assistance, and dictates that the Secretary shall establish limits. This requires a change to the regulations at §1000.110(a)-(c).</b>	3
<b>Thirdly, §201(b)(3) extends “essential family” eligibility to Indians, contrary to existing rule (§1000.104(c)).</b>	3
<b>Finally, §201(b)(4)(A) expands the ranks of eligible law enforcement officers which,</b>	3

as noted previously, the current regulations do not recognize at all.	
<b><u>Section 202</u></b>	
<b>2008:</b> PL 110-411 amended §202. The amendments to §202(2) expand the list of eligible “affordable housing activities.” The applicable regulation (§102) simply references the statutory definition of “affordable housing activities”.	3
<b>2002:</b> PL 107-292 amended §202 by inserting §(7). Both this and subsection (8) (see below) call for a demonstration project.	N/A
<b>2002:</b> PL 107-292 amended §202 by inserting §(8). See above.	N/A
<b><u>Section 203</u></b>	
<b>2008:</b> PL 110-411 amended §203. Subsection (f) (carryover of funds) will require some conforming regulatory changes (see, e.g., §524(a)).	2
This amendment exempts de minimus procurements (below \$5000) from procurement requirements.	1
<b>Sec. 205</b>	
<b>1998:</b> PL 105-276 amended §205(a)(1).	3
<b>1998:</b> PL 105-276 substituted §205(a)(2) for “Section 205(2)”.	3
<b>2008 - 205(c)</b> -PL 110-411 amended §205 by adding a new subsection. New Subsection (c) exempts conveyed units from a “binding commitment” requirement.	3
<b><u>Section 206 – Certification of Compliance with Subsidy-Layering Requirements – 2000 amendments repealed this section</u></b>	N/A

<b><u>Section 207</u></b>	
<b>1998:</b> PL 105-276 amended §207(b). <b>All the 1998 changes were technical.</b>	N/A
<b>1998:</b> PL 105-276 amended §207(b)(3)(A). <b>See above.</b>	N/A
<b>1998:</b> PL 105-276 amended §207(b)(3)(B). <b>See above.</b>	N/A
<b><u>Section 208</u></b>	
<b>1998:</b> PL 105-276 amended §208(a) by striking out “paragraph (2) and inserting §(b)”. <b>Technical change.</b>	N/A
<b>2008:</b> PL 110-411 amended §208(a). <b>Allowing tribes access to criminal information for job applicants is currently not provided for in existing regulations (§150).</b>	2
<b>1998:</b> PL 105-276 amended §208(b) by striking out “paragraph (1)” and inserting “§(a)”. <b>Technical change.</b>	N/A
<b><u>Section 209</u></b>	
<b>2000:</b> PL 106-568 rewrote §209. <b>This stand-alone enforcement provision has no corresponding rule, but it is linked with other statutory amendments involving monitoring, audits and enforcement (See discussions of §§401-405, below).</b>	3
<b><u>Subtitle B, Sections 231-235</u></b>	
<b>2008:</b> PL 110-411 amended Title II by adding “Subtitle B-Self Determined Housing Activities for Tribal Communities” (including §§231 (Purpose), 232 (Program Authority), 233 (Use of Amounts for Housing Activities), 234 (Inapplicability of Other Provisions) and 235 (Review and Report) . . . .	1
<b><u>Section 231</u></b>	
<b>2008:</b> PL 110-411 amended Title II by adding “Subtitle B- Self-Determined	1 (3 raters) or 2 (1 rater)

Housing Activities for Tribal Communities”, including §231 (Purpose).	
<b><u>Section 232</u></b> <b>2008:</b> PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities,” including §232 (Program Authority).	1 (3 raters) or 2 (1 rater)
<b><u>Section 233</u></b> <b>2008:</b> PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §233 (Use of Amounts for Housing Activities).	1 (3 raters) or 2 (1 rater)
<b><u>Section 234</u></b> <b>2008:</b> PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §234 (Inapplicability of Other Provisions). <i>See above.</i>	1 (3 raters) or 2 (1 rater)
<b><u>Section 235</u></b> <b>2008:</b> PL 110-411 amended Title II by adding “Subtitle B- Self-Determined Housing Activities for Tribal Communities”, including §235 (Review and Report).	1 (3 raters) or 2 (1 rater)
<b>TITLE III: ALLOCATION OF GRANT AMOUNTS</b>	
<b><u>Section 302</u></b> <b>2000:</b> PL 106-568 amended §302(d)(1)(A) [IMPLEMENTED] <i>This amendment, dealing with small tribe “hold harmless” funding, was implemented in the last NegReg session (§316(b)(2)).</i>	N/A
<b>2000:</b> PL 106-258 added	



§302(d)(1)(B)[IMPLEMENTED]. See above.	N/A
<b>2008:</b> PL 110-411 amended §302(a)(1) clerical change.	1
<b>2008:</b> PL 110-411 added §302(a)(2)(A).* The conduct of HUD’s study, and an acceptable definition of “consultation,” should be the subject of NegReg discussion. *	3
<b>2008:</b> PL 110-411 added §302(b)(1).* This change amends the criteria for when a unit ceases to be counted for FCAS purposes. *	3
<b>TITLE IV: COMPLIANCE, AUDITS AND REPORTS</b>	
<b><u>Section 401</u></b>	
<b>2000:</b> PL 106-569 rewrote §401(a).	3
<b>2000:</b> §401(b)(1-4) Amendments allow Secretary and tribes to enter into performance agreements to monitor compliance.	3
<b>2008:</b> PL 110-411 amended §401(a)(2). This amendment creates an exclusion from what constitutes “substantial non-compliance.”	3
<b><u>Section 403</u></b>	
<b>2008:</b> PL 110-411 amended §403(b). This amendment requires an “appropriate level” of onsite inspection.	3
<b><u>Section 404</u></b>	
<b>2008:</b> PL 110-411 amended §404(b)(2). This section deletes one element of the performance report. The existing rule (§512(a)) merely references §404(b) in setting out what a performance report must contain.	1
<b><u>Section 405</u></b>	

<b>2000:</b> PL 106-568 rewrote §405(b).	3
<b><u>Section 408</u></b>	
<b>1998:</b> PL 105-276 amended §408.	2
<b>TITLE V: TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS</b>	
<b><u>Section 502</u></b>	
<b>2000:</b> PL 106-569 amended §502(a).	N/A
<b><u>Section 509</u></b>	
<b>2008:</b> PL 110-141 amended Title V by adding §509. <b>This section confirms tribes' eligibility to receive HOME funds.</b>	1
<b>TITLE VI: FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES</b>	
<b><u>Section 601</u></b>	
<b>2002:</b> PL 107-292 amended §601(a) by authorizing the Secretary to provide guarantees for financing "housing related community development activities" (in addition to affordable housing activities).	1
<b>2002:</b> PL 107-292 amended §601(b). <b>This change eliminated the requirement that tribes try to find financing elsewhere. It requires a conforming change to the rules (§1000.408).</b>	2
<b>2002:</b> PL 107-292 struck subparagraph §601(b) and redesignated subsection (c) as (b). <b>Technical change.</b>	N/A
<b>2002:</b> PL 107-292 redesignated subparagraph §601(d) as (c). <b>Technical change.</b>	N/A
<b><u>Section 602</u></b>	
<b>2004:</b> PL 108-393 amended §602(d),	2

establishing a limitation on percentage of guarantees made under this title.	
<b><u>Section 605</u></b>	
<b>2002:</b> PL 107-292 amended §605(a). <b>Technical change.</b>	1
<b>2002:</b> PL 107-292 amended §605(b). <b>Technical change.</b>	1
<b>2008:</b> PL 110-411 amended §605. <b>Technical change.</b>	1
<b><u>Section 606</u></b> *	
<b>2008:</b> PL 110-411 amended Title VI by adding §606.* <b>This is the new demonstration project loan guarantee program.</b>	2
<b>TITLE VII: OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS</b>	
<b><u>Section 703</u></b>	
<b>2002:</b> PL 107-292 amended §703.	1
<b>2008:</b> PL 110-411 amended §703.	1
<b>TITLE VIII: MISCELLANEOUS</b>	
<b>2008:</b> PL 110-411 added a “Title VIII-Miscellaneous”, including §§801 (limitation on Use for Cherokee Nation), 802 (Limitation on Use of Funds), and 803 (GAO Study of Effectiveness of NAHASDA for Tribes of Different Sizes [sic]).	1
<b><u>Section 801</u></b>	
<b>2008:</b> PL 110-411 added a “Title VIII-Miscellaneous”, including §801 (Limitation on Use for Cherokee Nation).	1
<b><u>Section 802</u></b>	
<b>2008:</b> PL 110-411 added a “Title VIII-	1

Miscellaneous”, including §802 (Limitation on Use of Funds).	
<p><b><u>Section 803</u></b></p> <p><b>2008:</b> PL 110-411 added a “Title VIII-Miscellaneous,” including §803 (GAO Study of Effectiveness of NAHASDA for Tribes of Different Sizes).</p>	1