

NATIONAL AMERICAN INDIAN HOUSING COUNCIL

WHITE PAPER

ON THE *AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009*

APRIL 16, 2009

INTRODUCTION

On February 17, 2009, President Obama signed into law the *American Recovery and Reinvestment Act of 2009* (“ARRA”, Pub.L. 111-5). First taking shape during the collapse of the housing and financial sectors in the fall of 2008, this \$787 billion legislation is designed to create jobs through direct Federal spending aimed at rebuilding America’s aging infrastructure. The ARRA is structured with 2 divisions: “Division A – Appropriations” and “Division B – Tax, Unemployment, Health, State Fiscal Relief, and Other.” The ARRA aims to provide financial stimulus and relief in 5 broad areas: job creation, infrastructure, energy efficiency and science, assistance to the unemployed, and state and local government fiscal stability. For the most recent updates, go to: www.hud.gov/recovery or www.naihc.net.

The ARRA includes \$487 billion in Federal spending and \$300 billion in tax provisions, and includes numerous provisions related to infrastructure repair and construction in Native American communities including schools and hospitals, roads and bridges, broadband and health information technologies, and housing and related infrastructure. What follows is a summary of the ARRA as it relates to Native American housing.

FUNDING DISTRIBUTED THROUGH HUD

Native American Housing Assistance and Self-Determination Act: The ARRA is in the form of a Supplemental Appropriations measure and, in addition to Fiscal Year 2009 funding, appropriates an additional \$510 million to the Department of Housing and Urban Development (“HUD”) for Indian housing programs and activities.

This additional \$510 million will be allocated to HUD, which will administer it consistent with the *Native American Housing Assistance and Self-Determination Act of 1996* (“NAHASDA,” as amended, 25 U.S.C. §4101). In general, NAHASDA authorizes a wide array of activities including new construction, rehabilitation, acquisition, infrastructure, and various support services. Housing assisted with these funds may be either for rental or for homeownership. NAHASDA funds can also be used for certain types of community facilities if the facilities serve eligible, low-income residents.

Given the primary objective of the ARRA is to quickly stimulate large numbers of jobs, HUD is directed to give preference to those projects and activities that will result in employment as well as the construction or repair of long-term physical assets to help grow the economy in the out years.

Under the ARRA, **\$510 million** has been appropriated to HUD for the following programs and activities:

- **\$255 million** for the Indian Housing Block Grant to be “distributed by the same funding formula used in fiscal year 2008.” The Secretary is directed to obligate the \$255 million to be distributed by formula within 30 days of enactment (March 17, 2009). These funds must be used for new construction, acquisition, rehabilitation (including energy efficiency and conservation), and infrastructure. The Secretary is also directed to give priority to those projects that can be bid and contracted within 180 days from the date the funds were made available to the recipients. ***HUD will send letters directly to each Indian Housing Block Grant recipient*** indicating the allocation of funds with instructions on how to amend FY 2008 Indian Housing Plans.
- **\$242 million** to be provided *competitively*. The Secretary is directed to obligate the “competitive” funds by September 30, 2009, with priority to projects that will spur construction and rehabilitation and create employment opportunities for low-income and unemployed persons. The Secretary is directed to obligate 100 percent of funds within one year; spend at least 50 percent within 2 years; and spend 100 percent within 3 years. Failure to comply with this schedule will require the Secretary to recapture any such unobligated or unexpended funds. ***In the near future, HUD will provide instructions on how Indian Housing Block Grant recipients can participate in this program.***
- **2 percent** of these funds may be set aside for a housing entity eligible to receive funding under NAHASDA’s title VIII – housing assistance for Native Hawaiians. The “housing entity” is defined in NAHASDA as the Department of Hawaiian Home Lands. The Department of Hawaiian Home Lands will receive \$10.2 million.
- **0.5 percent** of these funds may be set aside for HUD to implement the program through staffing, training, technical assistance, technology, monitoring, travel, enforcement, research and evaluation activities. The amount that HUD will retain for these activities is \$2.8 million.

If the Secretary finds that a waiver is necessary to expedite or facilitate the use of these funds, he may waive or specify alternative requirements of “any provision in the statute or regulation” except for the following requirements: fair housing, discrimination, labor standards, and the environment.

Community Development Fund: The new law also appropriates **\$1 billion** for Community Development Block Grants with a 1 percent set-aside for Indian tribes, which is administered pursuant to 42 U.S.C. §5306. As such, HUD has set aside \$10 million for the Indian Community Development Block Grant program. Please be aware that only grantees that received funding in FY 2008 are eligible for ICDBG funding through ARRA. The Secretary is directed to give priority to projects that can award contracts within 120 days of the date the funds are made available. In administering the funds under this section, if the Secretary finds that waiver is necessary to expedite or facilitate the use of these funds, the Secretary may waive or specify alternative requirements of “any provision in the statute or regulation” except for the following requirements: fair housing, discrimination, labor standards, and the environment.

OPERATIONS OF INDIAN PROGRAMS

The Department of the Interior's Bureau of Indian Affairs ("BIA") administers a modestly-funded program entitled the Housing Improvement Program ("HIP"), which provides grants of modest amounts (often not more than \$1,500) for home rehabilitation, renovation and repair. As tribal housing becomes older and dilapidated, HIP strives to ensure that existing housing stock remain safe, healthy and habitable. Under ARRA, **\$40 million** is appropriated "for workforce training programs and the housing improvement program."

USDA RURAL DEVELOPMENT

Rural Housing Service: The §502 single family (direct) loan program will be funded an additional **\$1 billion**. The §502 single family loans (guaranteed) program will also be appropriated an additional **\$10.5 billion**. Indian tribes are eligible for these USDA programs for housing and rural development.

Rural Community Facilities Program: **\$1.2 billion** for direct loans and grants for rural community facilities programs. Tribal governments are eligible for funds to construct, enlarge or improve essential community facilities for health care, public safety, and community and public services.

Rural Water and Waste Disposal Program: **\$2.8 billion** for direct loans and grants for the rural water, waste water, and waste disposal programs. Tribes are eligible for funds to construct, repair, modify, expand, or otherwise improve water supply and distribution systems and waste collection and treatment systems, including storm drainage and solid waste disposal facilities.

WEATHERIZATION AND ENERGY EFFICIENCY (HUD and DOE)

HUD and the U.S. Department of Energy ("DOE") will allocate **\$1.6 billion** in economic recovery funds to retrofit existing homes. HUD's programs include \$4.5 billion to renovate and upgrade public and Native American housing (a good portion of which will be invested in energy improvements) as well as \$250 million for energy retrofits of privately owned federally assisted housing. DOE will invest \$5 billion in weatherization funds; \$3.2 billion for a new Energy and Environment Block Grant that cities and states can use to retrofit homes; \$3.1 for the State Energy Program; and other programs.

OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL

Indian tribes are eligible for assistance from the HUD Office of Healthy Homes and Lead Hazard Control ("Healthy Homes") to identify and control lead based paint hazards in eligible housing. Tribes and States are eligible for the Healthy Homes funding appropriated by the ARRA in the amount of **\$100 million**.

HEALTH AND HUMAN SERVICES – INDIAN HEALTH SERVICE

Housing development in Native American communities involves more than simply building dwelling units. Most American Indian reservations and Alaska Native communities are in geographically remote and rural areas. Therefore, community development often starts with the design and construction of basic physical infrastructure and amenities that most Americans take for granted. This includes water and wastewater infrastructure, electricity, heat and cooling

systems, and a host of others. Within the U.S. Department of Health and Human Services is the Indian Health Service (“I.H.S.”). Under the ARRA, I.H.S. will be allocated a total of \$545 million. The I.H.S. Sanitation Facilities Construction Account will receive an additional **\$100 million** in appropriated funds.

DEPARTMENT OF THE TREASURY

Tribal Economic Development Bonds: The ARRA includes a number of tax measures including section 1402, which authorizes the Secretary of the Treasury to “allocate” a **\$2 billion** limitation among Indian tribal governments in the U.S. to issue tax-exempt bonds (called “Tribal Economic Development Bonds”) to finance tribal economic development activity. Significantly, section 1402 provides that in issuing such bonds, the “Indian tribal government (and any instrumentality of such tribal government) shall be treated as a State for purposes of section 141.” This language provides much-needed congressional clarification to recent Internal Revenue Service (“IRS”) interpretations of the *Indian Tribal Government Tax Status Act of 1982* that required tribally-issued bonds to be solely for the purpose of fulfilling an “essential governmental function.”

Applying this test to tribes, but not to the States, the IRS has discouraged the use of tax-exempt debt by Indian tribes resulting not only in disparate treatment *vis a vis* the States, but also in a higher cost of capital for economic development purposes. Bond proceeds may not be used to finance buildings that house class II or class III gaming operations nor may they be used to finance “any facility located outside the Indian reservation.”

Community Development Financial Institutions Fund Program Account: **\$8 million** has been appropriated for financial assistance, technical assistance, training, and outreach programs designed to benefit Native American, Native Hawaiian, and Alaska Native communities.

THE NEXT 18 MONTHS

After 6 months of vigorous debate, the ARRA has been signed into law and the focus will shift from the Congress to the Federal agencies that are charged with spending. Accordingly, Indian tribes and tribally-designated housing entities should be developing a firm understanding of the processes and procedures to be used by the agencies as well as compiling their project justifications and budgets, accompanied by job creation statistics and long-term growth projections, to submit to the agencies.

By design, the ARRA requires the agencies to spend the funding quickly and to monitor the way the funding is being used to ensure consistency with the objectives of the Act. Accountability and transparency will be paramount in the execution of ARRA and the Obama Administration has established a new website (www.recovery.gov) so the American people can determine how and under what circumstances taxpayer funds are being spent.

NAIHC promotes and supports Native housing entities in their efforts to provide culturally relevant and quality affordable housing on behalf of Native people. NAIHC is the only national organization representing housing interests of Native people who reside in Indian communities, Alaska Native Villages, and on native Hawaiian Home Lands. NAIHC has a membership of 270 tribes and native housing entities, representing nearly 460 Indian tribes and native Hawaiians, and provides its members with training, technical assistance, research, communications and advocacy.