

Small Tribes Task Force: Final Report

**Facilitated by the Coalition for Indian Housing and Development
Chaired by Raymond Concho, Jr.**

The Small Tribes Task Force was created at the request of CIHD Chairman, Russell Sossamon, in an effort to address the issues concerning insufficient funding for small tribes that were raised at the 2002 NAIHC Annual Convention and documented in NAIHC resolution number 2002-03. The establishment of the Task Force was also part of a proposal from CIHD to Senator Harry Reid (D-NV), who is dedicated to bringing about a change in policy to help increase the capacity and productivity of small tribal housing programs.

The Task Force met via conference call for the first time in July and met every other week thereafter for four months, with one face-to-face meeting held in Las Vegas in October. Between conference calls the Task Force communicated using an email distribution list developed by CIHD. All tribes of all sizes were invited to participate at any time, and were free to invite their legal representation to participate. Minutes from each Task Force meeting were distributed to as many Tribes and TDHEs as possible.

GOAL: The goal of the Task Force was to formulate recommendations to place before the formula negotiated rulemaking committee. There was full understanding that these are only recommendations that the rulemaking committee would be free to accept or reject at their will. The recommendations were to be ready in time to present to those assembled at the CIHD Legal Symposium in Las Vegas on December 11-12, 2002. The product of the Task Force is a set of proposals attached to this document.

Although the Task Force had originally considered the possibility of a legislative proposal as one of their products, it was the opinion of the group that the negotiated rulemaking committee was the proper forum for addressing this issue.

The National American Indian Housing Council and the Coalition for Indian Housing and Development are committed to addressing the housing needs of small tribes and will continue to seek solutions to benefit their members.

COMPONENTS OF THIS REPORT: The remainder of this report is broken down into two major sections: a compilation of notes from the various Task Force meetings, and proposals produced by the Task Force.

Meeting Notes: In this section you will find a summary of the major points discussed during Task Force meetings followed by a list of action items completed by the Task Force.

Proposals: In this section are seven proposals put forward by members of the Task Force. The Task Force decided to accept all proposals, rather than combining them into a single recommendation, so that all ideas would be considered by the negotiated rulemaking committee. At the top of each proposal you will find the proposal number and the name of the Tribe or group of Tribes that submitted the proposal. Also contained in each proposal is a formula that each Tribe can apply to their yearly IHBG allocation to calculate how that particular proposal will affect their own Tribe.

A presentation and discussion of these recommendations will be provided at the opening plenary session of the CIHD Legal Symposium on Thursday, December 12, 2002.

TASK FORCE MEETINGS: POINTS of DISCUSSION

Legislative Options

Three elements of the proposal to Senator Reid (D-NV) were possibilities for legislation: the development of a fund for recaptured NAHASDA money which has remained un-obligated and unspent for at least five years, the development of a separate, one-time appropriation specifically for small tribes, and encouraging tribes toward consortia.

- The Task Force explored the idea of using recaptured funds for small tribes' funding. Questions that were raised include who would be eligible, would it be a permanent policy or just one time, and how much would each tribe be eligible for?

Because we may not see an increase in appropriations for the next couple of funding cycles, the redistribution of recaptured funds may be our only source of increase in NAHASDA funding. Currently, HUD is not reinforcing the recapture policy; we need to consider encouraging HUD to implement the policy in the coming years.

One problem with recaptured funds is it sends the wrong message to Congress if we are trying to tie it to an increased appropriation. On one hand we are saying the money is not getting spent, but at the same time we are saying we need more funding.

- The Task Force explored and discussed the possibility of a one-time appropriation for small tribes. The problem is that it would be difficult to get an appropriation outside of NAHASDA, and if it is set within NAHASDA, then there is no guarantee for an increase in appropriations.

Concerns of supplemental funding include the instability of the yearly grant awards (tribes will have no guarantee of funding for the next year); the additional application, reporting, or program requirements that may accompany the funding; and, if umbrella tribes are disqualified or penalized, there emerges a penalty for tribes to join umbrellas.

- The Task Force also discussed encouraging consortia among the smaller tribes. The organization has maintained a strong position that mandating consortia is an affront to tribal sovereignty, but that there may be incentives developed to encourage small tribes to join together to increase their collective funding. This would not help tribes for which distance or other complications would not work for consortia-building.

One suggestion was to look at the current limitations in the definition of a TDHE to increase a tribe's flexibility for what it designates its TDHE. For example, allow non-profits to be TDHEs.

Focus on the Formula

- The Task Force believes that the first and most important thing to do is to gather up as much available data as possible about the formula to use for reference. Housing Authorities are encouraged to provide the Negotiated Rulemaking Committee with as much data on need (program costs, wait lists, etc.) as possible.

- It was also suggested to examine data components of the formula like the Allowable Expense Level that hasn't been changed in five years, the Total Development Costs, and the FMR.
- It is generally accepted that there is a major flaw in the formula that, if fixed, could help small tribes in their yearly allocations. When numbers are run with the current formula, even if there was \$1.5 billion in appropriations and no minimum funding level, there would still be a lot of small tribes still receiving nothing.
- Another idea discussed was adding a second formula to the NAHASDA grant that specifically addresses the lowest allocations.
- The Task Force considered looking at all government agencies that give substantial amounts of money to tribes and ascertain what factors they use in their funding formulas.
- The Task Force would like to see more attention given and data run on the "current assisted stock", or CAS, portion of the formula.

Minimum Funding Proposals

NOTE: All seven funding proposals drafted by the Small Tribes Task Force are included at the end of this packet.

- Concerns of baseline funding include the difficulty of identifying an amount that would satisfy Small Tribes' needs, regardless of geographical area, service area, capacity, need, etc. Another concern is the perceived principle of 'entitlement', indicating that tribes are entitled to a certain amount of funding, regardless of interest, capacity or need.
- It was reported that SWIHA supports the .05% proposal (proposal number one).
- Some Task Force members from Alaska expressed concern that they are being singled out in the concern over IHBG funding. One of the proposals seems to disqualify umbrella tribes from applying for NAHASDA funds independently. This could be a problem for many Alaska members.
- HUD's Region 8 (Northern Plains Region) continues to have general discussion of the proposals. It was reported that the majority of Region 8 tribes are in support of proposal three.
- Also, the group would like to see more attention given to the sources of funding. If a pool of money is created for tribes that have great need and little funding, it has to be determined where that money will come from, and what adjustments need to be made.

General Concerns

- OVERALL ISSUES: The two over-reaching issues identified for the small tribes funding issue are the mechanism of delivery, and the dollar amount.
- AVAILABLE FUNDING: Both members of Congress and representatives from HUD have indicated that they are not in favor of increased funding in FY2003 and perhaps beyond, partly because current funding is not being spent.

- EXPENDITURE RATES: Some members of Congress and some representatives from HUD see problems with the rate at which NAHASDA is spent out, and the amount of funds still in the “pipeline” from past funding cycles.
- DATA: Congress and HUD want to see more concrete numbers from tribes, especially those figures that would define the current need.
- FAIRNESS: Some STTF members identified a difference or conflict between “fair and equitable” in funding, versus “fair and equitable” in building or development.
- FUNDING FOR ADMINISTRATIVE NEED VS. FUNDING FOR UNMET HOUSING NEED: There is some concern about taking on the task of funding small tribes’ unmet housing need in lieu of trying to meet their administrative funding need. Some Task Force members feel that, because there is unmet housing need within most Indian communities, the Task Force should not take on the responsibility of trying to satisfy the housing need of small tribes alone. Instead, some feel the focus should be on trying to help the small tribes solve their administrative funding crisis, allowing the small tribes to focus their attention on their own housing deficiencies.

TASK FORCE MEETINGS: ACTION ITEMS

1. The Small Tribes Task Force repeatedly contacted HUD for technical assistance via phone calls, letters and in-person meetings. HUD denied the Task Force assistance for the fear that it would be seen as pre-Negotiated Rulemaking consultation.
2. Task Force members consulted with their regions on proposal ideas and preference, and then reported back to the Task Force.
3. Task Force members, as well as Chair Raymond Concho and CIHD Executive Director Kristy McCarthy, sent letters to HUD officials on the importance of making the creation of the Formula Negotiated Rulemaking Committee a priority.
4. The Task Force held a meeting in Las Vegas, October 8-9, 2002.
5. The Task Force drafted, discussed and debated six funding proposals that are included in this packet that will be presented to the Formula Negotiated Rulemaking Committee when it convenes.
6. The Task Force recruited the aid of Cris Kinney from IHS to run formula data on the six formula proposals, in order to better assess the outcome of each proposal.
7. The Task Force contacted HUD ONAP via telephone and letters, to encourage them to use the 2000 census data in the FY2003 NAHASDA funding cycle.

Small Tribes Task Force

Proposal 1

(Submitted by Nevada-Cal)

October, 2002

FOR DISCUSSION PURPOSES ONLY

California Nevada Indian Housing Association

Base Funding Proposal

The minimum allocation in any year to a recipient under the needs component of the NAHASDA appropriation allocation formula shall equal .05% of the total appropriation for that year.

As an example, based on an estimated appropriation in fiscal year 2003 of \$632,383,000, the minimum allocation to any recipient of NAHASDA funds under the needs component of the funding formula would equal approximately \$317,000.

This allocation under the needs component of the funding formula would be available to any federally recognized Indian tribe who qualifies for an IHBG under NAHASDA.

Small Tribes Task Force

Proposal 2 (Submitted by Utah Paiute)

October, 2002

FOR DISCUSSION PURPOSES ONLY

PROPOSED

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT SUPPLEMENTAL GRANT PROGRAM

NAHASDA Indian Housing Block Grants (IHBG) are allocated based on local need and the amount of current assisted stock. Because of limited federal appropriations, basing tribal allocations on only these factors results in certain special small tribes and Native Alaskan village needs not being met. Because of their small populations some small tribes and villages assert that they receive funding under IHBGs that is not enough to establish housing assistance programs. The NAHASDA Supplemental Grant (SG) Program therefore provides additional grants to qualifying NAHASDA IHBG eligible tribes and villages.

Supplemental Grants are designed to be combined with IHBGs and other federal, state and private money. By using Supplemental Grants and leveraging this and IHBG money, small tribes and villages that have commitment and capacity can create and operate housing assistance programs. Supplemental Grants can be used to fund administration, conduct planning, act as seed money and finance programs.

Only those federally recognized tribes and villages that operate individual programs that receive less than \$125,000 in IHBG funding in a single year, or who are members of a regional housing entity that collectively receive less than \$125,000 in IHBG funding, are eligible for Supplemental Grants. SGs will be given out for one or two year periods and no single grant shall exceed \$75,000.

Supplemental Grants are not an entitlement. Though individual applications are required, the application form and procedure are simple and do not require employment of a consultant or grantsman. Applications are to be submitted at the same time Indian Housing Plans are filed. Selection will be made pursuant to a competitive award process administered by the U.S. Department of Housing and Urban Development's National Office of Native American Programs (HUD). All applicants must demonstrate 1) need and 2) capacity equal to or in excess of the grant amount level being requested. Tribes and HUD will jointly determine what standards will be used to award these Grants.

Supplemental Grants are not restricted to constructing and operating housing and may be used by tribes and villages in a variety of ways to improve housing conditions in their formula areas. Most NAHASDA procedures and rules apply.

\$7.5 million will be set aside from NAHASDA Block Grant Funds for Supplemental Grants for FFY 2004. This replaces the \$50,000 and \$25,000 minimum IHBG funding that has existed since the inception of NAHASDA. The non-reallocated portion of Supplemental Grants to IHBG funding for FFY 2004 shall be maintained in the future as annual NAHASDA and IHBG appropriations change.

Small Tribes Task Force

Proposal 3 (Submitted by Utah Paiute)

October, 2002

FOR DISCUSSION PURPOSES ONLY

PROPOSED NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT SUPPLEMENTAL GRANT PROGRAM

NAHASDA Indian Housing Block Grants (IHBG) are allocated based on local need and the amount of current assisted stock. Because of limited federal appropriations, basing tribal allocations on only these factors results in certain special small tribes' needs not being met. Because of their small populations some small tribes assert that they receive funding under IHBGs that is not enough to establish housing assistance programs. The NAHASDA Supplemental Grant (SG) Program therefore provides additional grants to qualifying NAHASDA IHBG eligible tribes.

Supplemental Grants are designed to be combined with IHBGs and other federal, state and private money. By using Supplemental Grants and leveraging this and IHBG money, small tribes that have commitment and capacity can create and operate housing assistance programs. Supplemental Grants can be used to fund administration, conduct planning, act as seed money and finance programs.

Tribes seeking Supplemental Grants must make an election in their Indian Housing Plans requesting the Grants and make an additional showing. When awarded the Grant, they shall receive funding that, when combined with their IHBG, does not exceed in total \$100,000. Only those federally recognized tribes and villages that operate individual programs that receive less than \$100,000 in IHBG funding in a single year, or who are members of a regional housing entity that collectively receive less than \$100,000 in IHBG funding, are eligible for Supplemental Grants.

Supplemental Grants are not an entitlement. All tribes seeking Supplemental Grants must make a specific showing in their Indian Housing Plans of 1) need and 2) capacity equal to or in excess of the grant amount level being requested. This will be done using a special page added to the Plans for this purpose. Tribes and HUD will jointly determine what standards will be used to award these Grants.

Supplemental Grants are not restricted to constructing and operating housing and may be used by tribes in a variety of ways to improve housing conditions in their formula areas. Most NAHASDA procedures and rules apply.

\$7.5 million will be set aside from NAHASDA Block Grant Funds for Supplemental Grants for FFY 2004 along with reallocated unused formula money from the previous year. This replaces the \$50,000 and \$25,000 minimum IHBG funding that has existed since the inception of NAHASDA. The non-reallocated portion of Supplemental Grants to IHBG funding for FFY 2004 shall be maintained in the future as annual NAHASDA and IHBG appropriations change.

Small Tribes Task Force

Proposal 4

(Submitted by Aquinnah Wampanoag)

October, 2002

FOR DISCUSSION PURPOSES ONLY

PROPOSED NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT SUPPLEMENTAL GRANT PROGRAM

The NAHASDA Formula allocated \$50,000 in the first year for a new tribe to set up a housing department or a TDHE. In the second year the formula provides \$25,000 for on going administration. This allocation was not fair funding to the new tribes to enter into the NAHASDA funding process. There was sentiment at the time of the establishment of the original committee that new tribes were not to benefit from the NAHASDA allocation. It was believe that the funds for new tribes should come from other sources.

It is apparent that there is not sufficient funding available from other sources to provide for the needs of the new tribes to provide safe decent and sanitary living conditions for their tribal members living in (or desiring to live in) their designated tribal area with the funds provided for the ensuing years (2-5).

Therefore, a supplemental funding must be provided for these tribes to achieve their mission of providing housing for their members. This proposal is an attempt to meet the needs of these new tribes (federally and state recognized tribes as defined in NAHASDA).

A tribe (or TDHE) must in the first year set up a housing entity. During the first year they must create policies that comply with NAHASDA, create a working plan for the next four years that commits to the type of programs that they intend to administer. These programs could include but are not limited to creating low rent housing, mutual help housing, mortgage assistance, rehab of units owned by tribal members or the tribe, tax credits or a title IV program. Then the entity may submit an IHP (one and five year plan) to HUD where there will be a box indicating that they are intending to apply for funding under their needs component in that plan.

HUD must then approve the policies and the IHP to be sure that they comply with NAHASDA. Technical assistance to achieve this goal may be received from either HUD or NAIHC. HUD must review this plan with the same diligence that they use with tribes who are already receiving block grants under NAHASDA. The plan can provide for the development of 1 new house in the first year, or the rehab or no more than ?? houses or funding for other NAHASDA approved programs. The grant allocation under the need component cannot exceed the TDC for the designated tribal area.

HUD will do everything in their power to ensure that Indian Health Service funding can become available to provide funds under the Sanitation Facilities Construction program to provide for water and wastewater facilities.

When the units are completed (new development or rental) funds will be provided under the FCAS component of the formula to ensure the maintenance of the tribally owned units.

No further IHPs for development or rehabilitation will be approved until such time as the first year's plan units are completed and occupied.

Funding for this component of NAHASDA can be funded with funds that are not distributed from the previous year(s), and recaptured funds. These funds will be set-aside for IHPs submitted each year by new tribes. If the funds are not requested in any fiscal year they will then be distributed according to the formula to all tribes the following year.

Small Tribes Task Force

Proposal 5 (Amended by Alaska Region)

October, 2002

FOR DISCUSSION PURPOSES ONLY

PROPOSED

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT SUPPLEMENTAL GRANT PROGRAM

NAHASDA Indian Housing Block Grants (IHBG) are allocated based on local need and the amount of current assisted stock. Because of limited federal appropriations, basing tribal allocations on only these factors results in certain special small tribes' needs not being met. Because of their small populations some small tribes assert that they receive funding under IHBGs that is not enough to establish housing assistance programs. The NAHASDA Supplemental Grant (SG) Program therefore provides additional grants to qualifying NAHASDA IHBG eligible tribes.

Supplemental Grants are designed to be combined with IHBGs and other federal, state and private money. By using Supplemental Grants and leveraging this and IHBG money, small tribes that have commitment and capacity can create and operate housing assistance programs. Supplemental Grants can be used to fund administration, conduct planning, act as seed money and finance programs.

Tribes seeking Supplemental Grants must make an election in their Indian Housing Plans requesting the Grants and make an additional showing. When awarded the Grant, they shall receive funding that, when combined with their IHBG, does not exceed in total \$100,000. Only those federally recognized tribes and villages that operate individual programs that receive less than \$100,000 in IHBG funding in a single year, ~~or who are members of a regional housing entity that collectively receive less than \$100,000 in IHBG funding, are eligible for Supplemental Grants.~~

Supplemental Grants are not an entitlement. All tribes seeking Supplemental Grants must make a specific showing in their Indian Housing Plans of 1) need and 2) capacity equal to or in excess of the grant amount level being requested. This will be done using a special page added to the Plans for this purpose. Tribes and HUD will jointly determine what standards will be used to award these Grants.

Supplemental Grants are not restricted to constructing and operating housing and may be used by tribes in a variety of ways to improve housing conditions in their formula areas. Most NAHASDA procedures and rules apply.

\$7.5 million will be set aside from NAHASDA Block Grant Funds for Supplemental Grants for FY 2004. This replaces the \$50,000 and \$25,000 minimum IHBG funding that has existed since the inception of NAHASDA. The non-reallocated portion of Supplemental Grants to IHBG funding for FY 2004 shall be maintained in the future as annual NAHASDA and IHBG appropriations change.

Small Tribes Task Force

Proposal 6

October, 2002

(Submitted by the Association of Alaska Housing Authorities)

FOR DISCUSSION PURPOSES ONLY

PROPOSAL FOR NEGOTIATED RULE-MAKING

Proposal to Increase the Administrative Percentage to Assist Small Tribes in the Development of Administrative Capacity

The current percentage rate of 20% allowable administrative charge is insufficient for small tribes to build capacity. At the minimum funding rate of \$25,000, a small tribe is allowed only \$5,000 annually to administer the NAHASDA program.

Proposal:

The following increase in Allowable Administrative Charge(s) would greatly assist the smaller tribes in the delivery of the NAHASDA program:

- Any tribe receiving \$200,000 or less may use up to 50% of their NAHASDA Needs funds for Administration
- Any tribe receiving \$100,000 or less may use up to 80% of their NAHASDA Needs funds for Administration
- Any tribe receiving \$25,000 or less may use up to 100% of their NAHASDA Needs funds for Administration

Small Tribes Task Force

Proposal 7

(Submitted by Fort Bidwell Tribe, Walker River Indian Housing Authority
and the Owens Valley Indian Housing Authority)

November, 2002

FOR DISCUSSION PURPOSES ONLY

Base Funding Proposal

The minimum allocation in any year to a recipient under the needs component of the NAHASDA appropriation allocation formula shall equal .05% of the total appropriation for that year; provided, however, that no single grant shall exceed 10% of the total appropriation for that year.

As an example, based on an estimated appropriation in fiscal year 2003 of \$632,383,000, the minimum allocation to any recipient of NAHASDA funds under the needs component of the funding formula would equal approximately \$317,000; and no single grant would exceed \$63,238,300.

This allocation under the needs component of the funding formula would be available to any federally recognized Indian tribe who qualifies for an IHBG under NAHASDA.