



Association of Alaska Housing Authorities

2010

Federal Legislative Priorities

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**“Dedicated to Increasing the Supply of
Quality, Affordable Housing in Alaska”**

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Overview of the Association of Alaska Housing Authorities (AAHA)

The Association of Alaska Housing Authorities (AAHA) is a private, non-profit 501(c)(3) corporation whose current membership consists of 14 regional housing authorities created pursuant to Alaska State statute, plus the Alaska Housing Finance Corporation (AHFC). AAHA is dedicated to increasing the supply of quality, affordable housing in Alaska. In partnership with AHFC and an ever-growing list of other state and federal partners, AAHA members serve residents in every part of Alaska. The regional housing authorities have built well over 7,000 housing units since their inception in 1971. *AAHA members, working with our partners like AHFC, are one of the largest employers in rural Alaska and play a critical role in sustaining many local economies.*

In 2008 alone, Alaska's regional housing authorities:

- *Generated \$177 million in economic activity statewide*
- *Provided and created over 2,800 jobs statewide*
- *Achieved an Alaskan-hire rate of 99%*
- *Constructed 200 affordable, energy efficient new homes*
- *Rehabilitated over 1,000 existing homes*

Another critical function that AAHA serves is to provide a forum for private market lenders, housing-related agencies, and other housing partners to share expertise and information with the purpose of developing effective strategies for increasing the supply of affordable housing in Alaska. **In order to continue our collective efforts, AAHA members respectfully request your support for the 2010 federal priority issues identified below.**

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Association of Alaska Housing Authorities FY 2010 Federal Priorities

The Association of Alaska Housing Authorities (AAHA) is pleased to have this opportunity to submit our federal legislative priorities. AAHA members greatly appreciate the ongoing efforts of the Alaska Delegation and staff in supporting affordable housing, job creation and economic development in our state. We look forward to working with you to advance our mutual interest in improving the lives of those we have the privilege of serving.

Detailed below are priority issues for which we are seeking your support, guidance and assistance to successfully advance.

AAHA Issue # 1: NAHASDA Funding Increase:

Request:

AAHA requests that our congressional delegation support an FY11 appropriation for the Native American Housing Assistance and Self-Determination Act (NAHASDA) block grant in the minimum amount of \$875 million as recommended by the National American Indian Housing Council. The IHBG is the single largest source of federal funding for housing development, housing-related infrastructure, and home repair and maintenance for Native Americans. Even at \$875 million, this funding will not meet all housing needs, but will keep pace with the increased cost of housing construction, energy costs and other inflationary factors.

On a related matter, AAHA requests that the delegation oppose any legislative efforts to convert from census based data to tribal enrollment based data for the funding allocation methodology, or to authorize the expenditure of NAHASDA funds for an enrollment based methodology study. The idea simply won't work in Alaska.

Status / Background:

AAHA is appreciative of the congressionally approved increased amount of \$700 million for the FY10 NAHSADA block grant, after the block grant received flat-line funding for the previous five years. However, even with an increase, the block grant continues to be grossly underfunded in terms of meeting demonstrated critical housing needs in Alaska.

The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) streamlined the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing

Block Grant (IHBG) Program. Under the IHBG Program, HUD makes assistance available to tribes and Tribally Designated Housing Entities (“TDHE’s”) for Indian Housing activities. The amount of assistance made available to each Indian tribe/ TDHE is determined using a formula (IHBG Formula) that was developed as part of the NAHASDA negotiated rulemaking process. The IHBG Formula consists of two components: (1) Need and (2) Formula Current Assisted Stock (FCAS). Except in the case of tribes who had no housing stock at the time NAHASDA was passed (and thus are eligible for the Needs funding only), the amount of funding for a recipient is the sum of the need component and the FCAS component, subject to a minimum funding amount for small recipients of approximately \$50,000.

Alaska Natives suffer from escalating and above national average rates of overcrowding, inadequate housing, and unemployment, both as to the general U.S. population, and within the Native American population as well. The 2009 Alaska Housing Assessment produced by Cold Climate Housing Research Center & Information Insights estimates a need for nearly 13,000 new housing units to meet demand created by overcrowded conditions and houses that are severely substandard. Almost half of the housing is needed in smaller and more remote rural communities, many of which are Alaska Native villages.

NAHASDA funded programs are the primary vehicle for meeting Alaska’s critical rural housing needs and collectively are a major part of the overall economy of the state, particularly in rural Alaska.

AAHA Issue # 2: AAHA Member Tax Status Clarification:

There is current inconsistent treatment of Alaska housing authorities relative to other tribal housing authorities in regards to tax related issues and status. The current situation has a significant negative impact on AAHA members’ ability to leverage funding through tax exempt borrowing.

Request: Lacking any definitive guidance from the IRS on the question of HA tax status, (i.e., whether HAs qualify as “political subdivisions” or some other classification of “governmental unit”), members continue to experience difficulty in terms of lenders refusing to enter into tax-exempt loan transactions, and securing the benefits of the tax exempt bond provisions of IRC sections 103 and 141-150. Members have therefore proceeded to request assistance in the form of legislative action which would remedy the current situation by providing for the following:

"For purposes of Title 26, United States Code, Alaska Regional Housing Authorities created under Alaska Statutes sections 18.55.995 and 18.55.996 shall be treated as political subdivisions of a State."

Status / Background:

There does not seem to be any logical reason why Alaska regional housing authorities (HA's) should not have the same tax application and advantages as those provided to every other tribal housing authority across the country, keeping in mind that the proposed language only provides that AK HAs "*be treated as*" political subdivisions for Title 26 tax purposes, not that *they are* by law political subdivisions with all its broader meaning. There would not seem to be any disadvantage to such a designation.

Alaska housing authorities (HA's) have a unique history and background. The existing Alaska Regional Native Housing Authorities (HA's) were created under Alaska statutes 18.55.995-998. The legislative purpose as stated in Section 995 was in part "... to provide a means for certain native associations to form *public corporations* with the power and duties comparable to [the Alaska Housing Finance Corporation]." Each ANCSA regional non-profit was basically given the opportunity to act as an "initiator," by being given the authority to take action through their respective boards to create a HA for their respective service and geographic area. The non-profit was given authority to appoint a 5 member HA Board of Commissioners who would each serve a 3-year term. This structure remains in place today. That is essentially the only legal authority the non-profits have in terms of their relationship with their respective HA's. They do not otherwise participate in or have any influence over the internal affairs of the HA's, and in fact do not have legal authority to even remove appointed members. The internal operations or structure of the HA's are governed strictly by the statutory authority granted under A.S. 18.996(b) and our internal bylaws.

As public bodies "corporate and politic," the HA's are essentially treated as non-profits most of the time and for most purposes. However, this status can be called into question in certain situations or under certain circumstances. For instance, as a rule, HA's are considered tax exempt from both property and sales taxes by municipal governments. (See Op. Att'y Gen, July 24, 1985. "Private leasehold interests of the Regional Native Housing Authorities ... do not appear to be subject to municipal property taxation.") Hotels and airlines allow HA's to claim the benefit of government rates. HA's are participants in the federal and state government surplus property pools.

On the other hand, there is uncertainty among lending institutions in regards to our status and this directly and negatively impacts our potential borrowing and financing options.

As an example, when one of our members was recently seeking financing on a building purchase, a local Anchorage bank proposed a very attractive internal "portfolio loan" at a rate significantly below market rates assuming that as a state chartered housing authority the organization would qualify as a governmental entity or "the equivalent to a government entity," thereby allowing the bank to pass on the attractive interest rate based on the assumption that the revenue stream from the loan would be tax exempt.

Upon further review by the bank's outside tax advisors (KPMG), it was determined that the bank could not be *100% certain* of how the IRS would view the status of HA's, and thus could not be 100% certain that the revenue stream from the loan would be tax exempt. They were therefore forced to withdraw the loan offer, an offer which would have saved the HA tens of thousands of dollars which could otherwise go towards direct housing and housing services rather than interest payments.

As HA's are continually asked to do more with less and leverage our federal and state funds to the maximum extent possible, entering the bond market for attractive financing options would seem a natural fit. However, in the current environment, our ability to independently operate successfully in this market is open to question. The proposed amendment would settle the issue and allow HA's to proceed with the unquestioned authority that was originally envisioned under the state statute which established the HA's.

To resolve this long-standing issue, AAHA requests support and assistance in securing a legislative solution. We believe this makes entirely good fiscal and practical sense and will greatly advance our interests as well as those of the government in seeing that our limited and decreasing funds are leveraged to the maximum extent possible. In an era where HA's are facing growing needs, rapidly rising costs and shrinking federal funds, this would appear to be a sound approach in terms of public policy as well as being technically efficient solution.

Issue 3: Support for adequately and accurately reflecting Alaska specific cost factors in the development of HUD's Total Development Cost (TDC) Limits.

Request: AAHA seeks modification of Alaska's Specific Total Development Cost factors to ensure recognition of Alaska specific development costs which are actually incurred by members. Failure to do so results in (1) artificially low maximums in some regions and (2) inaccurate data input into the NAHASDA funding formula distributions.

Status/Background: Total Development Cost (TDC) limitations are imposed on the use of NAHASDA funds by sections 1000.156 - 162 of the regulations. Under § 1000.156, "affordable housing must be of moderate design." Section 1000.158 allows a recipient to adopt written standards for its affordable housing programs that reflect the "moderate design" requirement. Tribes and TDHEs that adopt such standards may exceed published TDC limitations by up to 10% without seeking additional authorization from HUD. However, if a recipient has not adopted such standards, it may not exceed the published TDC limitations without first obtaining HUD approval through a variance process.

HUD's TDC formula does not adequately take into account the nuances of construction in unique, atypical regions, like Alaska, nor does the process reasonably allow for variances. As an example, there is no consideration for the value of construction to mitigate energy cost. The results are low TDC limits set forth by HUD that threaten the viability of quality, energy efficient and safe housing

construction in “special” areas that have a clear demonstrable need. Additionally, the variance process is cumbersome and costly.

Recommendations:

- permit the local HUD office to set Alaska’s TDC limits
- give the local HUD office more autonomy and discretion to grant a variance
- Since shipping materials to Alaska can add significant cost to housing development, exclude transportation costs from the TDC
- establish a process that would enable Tribes to set their own “Tribally Designated TDCs.”

Issue 4: To assist in providing improvements to the large numbers of rural Alaskan homes without infrastructure including running water and flush toilets, a separate appropriation should be funded specifically for infrastructure and designated to Alaska regional housing authorities; Alaska regional housing authorities should be allowed to access Village Safe Water funding; enforceable, mandatory processes should be implemented so that efficient multi-agency project coordination occurs on new development projects; and unspent Village Safe Water funds should be expediently released.

Request: AAHA requests that Alaska’s Congressional Delegation provide assistance in achieving the following recommendations:

- a separate appropriation for housing-related infrastructure.
- The process for funding and implementation of water and sewer projects in rural Alaska should be reviewed and amended to allow improved access, eligibility and implementation of water and sewer projects and associated funding by regional housing authorities.
- To ensure that water and sewer systems are installed concurrently with housing authority new developments, enforceable processes should be developed so that the Village Safe Water program and other agencies provide water and sewer infrastructure in partnership with housing authority developments.
- Support for the development of a streamlined process for the immediate release of unspent water and sewer funds in the Village Safe Water program so that water and sewer projects in rural Alaska can be completed.

Status/Background: In 1994, only 37% of rural Alaska households had adequate sanitation facilities. Today, through funding from EPA, USDA, IHS and the State of Alaska, 77% of rural Alaskan homes have running water and flush toilets.

The above improvements notwithstanding, *one third of rural Alaska families* still do

not have access to a sanitary means of sewage disposal or an adequate supply of safe drinking water in their homes. The Alaska Department of Environmental Conservation, Village Safe Water program has stated that for these families, buckets or pit privies are the only methods for disposing of human waste and water must be hauled by individuals from community watering points or untreated sources such as creeks or rivers.

Prior to the passage of the Native American Housing Assistance and Self Determination Act (NAHASDA) in 1996, HUD funded a separate appropriation for infrastructure related to housing development. With the passage of NAHASDA, much of the housing-related infrastructure was to be funded from the NAHASDA block grant, with appropriations not keeping pace with inflation.

A separate appropriation specifically designated for infrastructure would greatly assist in the development of appropriate housing, running water and flush toilets in communities throughout Alaska.

Housing authorities are often not eligible to access federal and state water and sewer funds even though the water and sewer projects are being built in large part to support the housing constructed by the impacted housing authorities. If housing authorities were able to access program funds directly, they could efficiently implement needed water and sewer infrastructure as they build new housing.

As things currently stand, there is currently no enforceable mechanism if Village Safe Water delays implementation of their part of a development project. Housing authority homes sit vacant waiting for sewer & water hook-ups or use the notorious 'honey bucket' system pending VSW project completions. The current system is inefficient, lacks reasonable coordination and clearly is not delivering maximum benefit to intended beneficiaries.

Issue 5: AAHA members seek support for development of options for the delivery of federal funds in a manner that recognizes Alaska's unique infrastructure and service delivery mechanisms.

Request: We request that Alaska's Congressional Delegation provide assistance in achieving the following recommendations:

- AAHA members seek assistance to ensure that when federal funding applications are developed, the federal agency recognize and allow existing providers, such as regional housing authorities, to be easily designated to apply on the targeted recipients' behalf and provide the service, if requested by the recipient, or simply recognize eligibility to receive funds and provide services where designations are already in place.

Status/Background: When federal funds became available through the American Recovery and Reinvestment Act (ARRA), some agencies did not recognize existing service delivery vehicles already in place and did not allow

Alaska's tribes to easily designate another recipient to apply on their behalf, if they so chose. The DOE Energy Efficiency and Conservation Formula Block Grants were one example of this administrative failure. Housing authorities were essentially excluded from directly accessing available funds even though a tribe may have had no interest in receiving the funds directly and may have asked the housing authority to receive the funds on their behalf since many of the housing authorities were already providing a similar energy efficiency and conservation improvements in the respective tribal communities.

In many cases, government agency bureaucrats eager to respect and protect tribal sovereignty are actually thwarting tribal wishes and sovereignty by putting up administrative obstacles to accepted and expected service delivery models.

Issue #6: Preserve the Low Income Housing Tax Credit (LIHTC).

Request: We request that Alaska's Congressional Delegation assist in the preservation of this important program through support of HR 4109.

Status/Background: In Alaska, the LIHTC program finances the construction of about 137 affordable homes each year. However, the weakened economy has seriously deterred investor participation in the program throughout the nation. Without Congressional action, reduced demand for LIHTCs could lead to roughly 60,000 fewer homes being built or preserved in the United States each year, as well as 90,000 lost construction jobs. However, there is legislation already before Congress that would spur private investment in the LIHTC. HR 4109, the Low Income Housing Tax Credit Act of 2009, would allow the LIHTC to be carried back for a period of five years, a proposal supported by more than 100 national and regional housing organizations. Research indicates that the five-year carryback under HR 4109 is the appropriate solution to generate additional investor interest in the LIHTC; a recent study by Ernst & Young showed that LIHTC investment would increase significantly as a result of such legislation.