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NATIVE AMERICAN INDIAN HOUSING PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING TO REVIEW THE NATIVE AMERICAN INDIAN HOUSING PROGRAMS

JUNE 28, 2006
WASHINGTON, DC

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NATIVE AMERICAN HOUSING PROGRAMS

WEDNESDAY, JUNE 28, 2006

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Senate Russell Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, and Murkowski.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will come to order.

Welcome to the oversight hearing on Indian housing. It has been nearly 10 years since Congress first passed the Native American Housing Assistance and Self-Determination Act. Since then, we have seen progress in home construction and ownership. Yet the Committee is troubled to hear that overcrowding and homelessness still exist in Indian communities. Indeed, the president of the NCAI reported to this committee at our budget hearing in February that in some cases, as many as 25 to 30 people were living in homes with no more than 3 bedrooms.

As chairman of this committee, I am concerned that these conditions may have far-reaching negative impacts on other important aspects of the lives of Indian people, such as education, economic development, and health. Adequate housing is a fundamental need that must be met to support improvements in these other areas.

I welcome the witnesses and look forward to their testimony.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Mr. Chairman, first of all, thank you for calling this hearing. I extend a welcome to our witnesses and appreciate their being with us.

As I have indicated before, I think there is a bona fide crisis in health care, housing and education. Today we are talking about housing on Indian reservations. The U.S. Commission on Civil Rights has indicated that 40 percent of the on-reservation housing structures are substandard. That compares with 6 percent nationwide.

One in five reservation homes lacks complete plumbing; 90,000 Indian families are homeless or under-housed. I have toured some housing developments on some Indian reservations that are absolutely shocking with respect to their disrepair. I have told the story about Sarah Swifthawk who died in her house because she froze to death in a home that didn't have windows. They had plastic sheeting, for windows at tempertures of 35, 40 below zero, while sleeping on a cot. That is not America. That is not the best of what we ought to be offering in America, to all Americans.

So we deal today with housing, housing policy, with respect to Native Americans. We need to consider reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996. This hearing will provide some very important groundwork for those deliberations.

So Mr. Chairman, I look forward to, as always, working with you on these issues, and thank you for conducting these hearings.

The CHAIRMAN. Thank you very much.

Our first panel is Orlando J. Cabrera, who is the assistant secretary of the Office of Public and Indian Housing, Department of Housing and Urban Development. He is accompanied by Paula Blunt, general deputy assistant secretary, Office of Public and Indian Housing, and Rodger Boyd, deputy assistant secretary of Native American Programs.

If they would like to come to the witness table, you are welcome to do so. Do you want them there or not, Mr. Cabrera?

Mr. Cabrera. No, Mr. Chairman; Ms. Blunt has a medical emergency, nothing critical, and my staff is with me.

The CHAIRMAN. I am sorry to hear that, and please send our best and our condolences to Ms. Blunt.

The CHAIRMAN. Thank you.

And Pattye Green, who is a senior business manager for Native American Initiatives of Fannie Mae. Before I ask you to proceed, I would ask Senator Murkowski if she has any opening comments she would like to make.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman, and good morning. I appreciate your calling the hearing today and appreciate those who have taken their time this morning to present to us.

As you know, we have some issues in my State of Alaska that we care about a great deal. We have issues that relate to the high cost of housing primarily caused by transportation issues, as is specific up in Barrow, which is the northernmost community in the State. You essentially have one barge a year coming in to bring the supplies. If you miss the barge, the only way to get it there is to fly it hundreds and hundreds of miles, adding to the expense. So we have some logistical issues that cause us concern.

So the NAHASDA funding is very, very critical to my State, as well as it is to the rest of the Nation. So I am pleased that we are seeing some increases or some improvements in there.

I also want to just mention briefly, it is not just the expenses associated with the construction of the homes, but in many of our remote Alaska Native communities, we have water and sewer condi-

tions that often rival third world countries. And we have great concerns with how we provide potable water, how we provide sewer facilities for those in the communities. I have talked in this committee and in others about an unsophisticated sewage system which consists of a honey bucket, nothing more than a bucket with a toilet seat on top of it, and the disposal of the waste is walking it down somewhere outside the community, usually in a lagoon and dumping it there.

Federal funding for water and sewer projects in rural Alaska is separate from NAHASDA, but I want to mention these as challenges that we deal with on a daily basis, to really underscore the very unique challenges that we face in providing housing and related service.

I do appreciate the fact that the National American Indian Housing Council led a delegation of Congressional staffers to several of these remote communities last year. I think it is important that we be able to observe first-hand some of the conditions. I am thankful that they were able to attend, and would certainly welcome any of you to come up on a similar field trip.

Mr. Chairman, again, I appreciate your conducting the hearing, and I look forward to the testimony of the witnesses.

The CHAIRMAN. Thank you very much.

Mr. Cabrera, please proceed. Welcome.

STATEMENT OF ORLANDO J. CABRERA, ASSISTANT SECRETARY, OFFICE OF PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACCOMPANIED BY RODGER BOYD, DEPUTY ASSISTANT SECRETARY, NATIVE AMERICAN PROGRAMS

Mr. CABRERA. Thank you, Mr. Chairman.

Mr. Chairman, Mr. Vice Chairman, and members of the committee, good morning and thank you for inviting me to comment on HUD's Indian Housing and Community Development programs. My name is Orlando Cabrera, and I am HUD's assistant secretary for Public and Indian Housing. It is a pleasure to appear before you again, and I wanted to express my appreciation for your continuing efforts to improve the housing conditions of American Indian, Alaska Native, and Native Hawaiian peoples.

From HUD's perspective, much progress is being made. Momentum needs to be sustained as we continue to work together toward creating a better living environment throughout Indian country. At the outset, let me reaffirm HUD's support for the core principle of government to government relations, with federally-recognized Indian tribes. HUD is committed to honoring this fundamental concept in our work with American Indians and Alaska Natives.

I would like to share with you my perspective on how to help tribal communities succeed. My background is in housing, so I would like to focus most of my tools on my profession, I should say my former profession.

Today there are more ways to leverage Federal funds than ever before. Tribes should look beyond HUD's Indian Housing Block Grant and title VI programs. All these new efforts involve some risk, but without risk fewer families are assisted. We have engaged in marketing and outreach activities designed to make tribes and

TDHEs more familiar with our programs, particularly those with Federal guarantees to lower the risks that have traditionally made the private sector shy away from partnering with tribes.

We are also examining a bond financing initiative that has worked well for public housing authorities, to see if it can do the same for tribes. Another way we seek to help is by encouraging TDHEs to leverage private sector capital to create more housing on reservations.

President Bush and Secretary Jackson have made their commitment to home ownership clear. Home ownership and the ability to build equity in one's home is an important component in the development of strong tribal communities for generations to come.

Creating home ownership opportunities continues to rank at the top of the Administration's priorities for the American people. And nowhere is this more important than in the Native American community.

HUD section 184, Indian Housing Loan Guarantee program, has made a significant contribution to the overall success of the Administration's home ownership initiatives. Section 184 activity for the past fiscal year shows that tribes and TDHEs are using this program with increasing frequency. In total, HUD has completed $380 million in loan guarantees through the inception of the 184 program.

During the first 8 months of fiscal year 2006, HUD approved 804 loans, obligating $123.8 million, representing a 400-percent increase in volume since 2001. The rate of loan obligations, which we estimate to reach $180 million to $200 million by the end of the fiscal year, for this fiscal year, confirms that the section 184 program is bringing home ownership to more and more tribal members at very little cost to the Federal taxpayer.

When I think of leveraging, the word collaboration comes to mind. NAHASDA's Indian Housing Block Grant program continues to be the largest single source of housing capital in Indian country. The IHBG program, which came online at the beginning of the fiscal year 1998, has now distributed over $5.7 billion in funding to tribes or their TDHEs.

But relying on IHBG funding alone without leveraging those dollars misses a significant opportunity. We are committed to exploring new ways to combine HUD resources with those of other Federal agencies, the States and the private sector.

In a combined effort to increase the home ownership rate in Indian country, address affordable housing needs and promote mortgage financing, PIH's former assistant secretary, BIA's assistant secretary and USDA's rural development acting under secretary signed a memorandum of understanding to work together with tribes to provide housing development and related assistance to all sectors of the Native American community. A major aim of the memorandum of understanding, which was signed in September of 2004, was to obtain a commitment from the BIA to expedite the production of title status reports, or TSRs, a necessary document for mortgaging of trust or restricted Indian lands.

Despite these advances, the TSR approval process is not where we want it to be. In an effort to reach our common goals, I am

meeting tomorrow with Interior Deputy Associate Secretary Cason to determine if there is more that we can do together.

Land assignment law is a big issue for us. In an effort to use the government to government relationship collaboratively and to increase the private sector housing market presence on reservations, ONAP and the BIA have worked with the Mashantucket-Pequot Tribe to establish a tribal land assignment law. Interior's Solicitor's office has approved the process and issued an opinion that individual assignments governed by tribal land assignment law do not require BIA approval or recordation. ONAP will issue program guidance on land assignments for the section 184 program in the coming months, and we expect other tribes to take advantage of this process.

This concludes my prepare remarks. Again, thank you for your time. Thank you for allowing me to testify. Again, I encourage the active participation of all tribes to share innovative approaches to housing development in Indian country.

I would be happy to answer any questions that you may have.

[Prepared statement of Mr. Cabrera appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Green, welcome.

STATEMENT OF PATTYE GREEN, SENIOR BUSINESS MANAGER FOR RURAL NATIVE AMERICAN INITIATIVES, FANNIE MAE, TISHOMINGO, OK

Ms. GREEN. Thank you, Chairman McCain, Vice Chairman Dorgan and members of the committee. My name is Pattye Green, and I am the senior business manager for Rural Native American Initiatives with Fannie Mae, and I have over 28 years of mortgage lending experience. Prior to coming to Fannie Mae, I was the home finance director of the Housing Authority of the Choctaw Nation of Oklahoma, and I am a member of the Choctaw Nation of Oklahoma.

I am pleased to be here today to discuss the barriers to capital access that we see on tribal lands and to share with you the steps that Fannie Mae is taking to help overcome those barriers, expand home ownership and affordable housing for rental opportunities in tribal communities. Fannie Mae's Congressionally granted mission, to create affordable housing opportunities for Native American families living on tribal lands, is one of the toughest challenges we face. According to the National American Indian Housing Council, we have seen some improvement, but we still see homes on tribal lands that are overcrowded, that are not connected to public sewer systems, lack indoor plumbing. Almost one-half of Indian households pay more than 30 percent of their income for housing expenses, compared to 23 percent of all households in the United States.

The home ownership rate on reservations are 41 percent and stated by NAIHC, is 33 percent, well below the national average of approximately 68 percent. An absence of conventional mortgage lending is a major factor behind the gap. The most stubborn and overwhelming barrier to capital access in Indian country is a lack of economic opportunity. Poverty rates are 26 percent for Native Americans, over double the national average of 12 percent.

In Navajo country, 43 percent of people live below the poverty level. The average per capita income is $7,300 and the unemployment rate reaches almost 25 percent.

In light of these severe socio-economic conditions, Fannie Mae is taking a three-pronged approach to expanding affordable housing on tribal lands. First, by developing the right mortgage products that make it easier for our lender partners to do business on the tribal lands. Second, by working with developers and tribal housing authorities to address the critical shortage of affordable housing units that currently exist. And finally, to develop broad partnership throughout the housing finance and tribal communities to focus on the long-term, systematic barriers to housing and community development that exists in Indian country today.

One of the groups that is important to this effort is the National American Indian Housing Council. We would like to encourage you to continue Congressional funding to this group. Against this backdrop of extreme poverty, it is not surprising that the Native American home ownership rate lags far behind the national rate, and that Native Americans are pessimistic about the lending process.

A 2000 survey by the Treasury Department found that 65 percent of tribal members viewed conventional home mortgages as difficult or very difficult to obtain. Fannie Mae has customized its suites of community lending products to respond to the unique needs of Native American communities. Our community lending products are designed to help borrowers overcome the two primary barriers to home ownership: Lack of down payment funds and qualifying income, through lower cash requirements for down payment and closing, reduced qualifying income requirements and higher acceptable debt to income and loan to value ratios that are required for traditional, conventional mortgages.

We have worked with tribes to add unique features to this product, including tribally provided home buyer eduction, down payment assistance programs and intervention programs for borrowers who get into trouble. We work with each individual tribe to understand their culture and to help them to understand the needs that they have and to customize programs that are necessary for their tribes.

We currently have relationships with 112 lenders to make loans to Native Americans on tribal lands. Since 2001, Fannie Mae has helped our lender partners serve over 8,535 Native American families by providing more than $839 million in affordable mortgage financing on tribal lands.

Perhaps the most serious challenge to affordable housing in the near term is the critical shortage of affordable housing on tribal lands. According to the National American Indian Housing Council, there is an immediate shortage of 200,000 units on tribal lands. The Navajo Housing Authority estimates that it alone needs 21,000 new housing units to satisfy the unmet needs of all Navajo families, including 12,000 new homes for purchase.

Fannie Mae has worked closely with tribes and other housing partners, such as the Blackfeet Reservation in Montana, the Standing Rock Reservation in South and North Dakota, both with the construction of new units and rehabilitation of existing units through investments in low income housing tax credit investments,

collateralized revenue bonds and HUD-guaranteed Native American Housing Assistance and Self-Determination Title VI loans. We have also begun to provide tribal housing authorities with additional financing via our community lending business channel to help bridge funding gaps through the construction phase of their development.

Nationwide, we have invested over $160 million in low income housing tax credits. We have helped with over $51 million in title VI loans and $1.5 million in additional financing to support construction and rehabilitation units in tribal land since 2001.

Finally, financial experience poses a barrier to capital access for Native Americans. Many Native Americans do not have banking relationships, and in many Native American economies, financial transactions have long been conducted in cash. As a result, many Native Americans have little regular familiarity with banking, credit reporting and the loan qualification process and standards. And unsurprisingly, they have difficulty obtaining credit through traditional means.

In 2002, the conventional loan denial rate for Native Americans was 23 percent. The lack of experience and familiarity with bank practices and products also leaves many Native American communities vulnerable to unscrupulous financial practices that undermine communities. In 2003, 53 respondents believed that lenders based on race and identified predatory lending and that is why they were being denied.

Lastly, Mr. Chairman, I would like to briefly mention our own efforts to institutionalize our commitment to Native American housing issues. In January of this year, Fannie Mae created a new business unit that focuses on addressing the toughest housing challenges in our distressed urban areas, rural communities and tribal lands. In addition to supporting our business units, as they seek to make investments in these areas, we are also developing targeted, place-based strategies to create long-term solutions that are both transformative and scaleable.

Ultimately, our goal is not to just make investments in short-term, but also to play a meaningful role in transforming these distressed areas into healthy and vibrant markets where access to private capital is indistinguishable from other, more established areas of the United States. I hope that with these comments, Fannie Mae has begun to make progress in expanding home ownership for Native Americans. But it is important to recognize that we have so much more to do, and we will continue to listen closely to Indian country leaders to build long-term partnerships and to address the tough housing and economic challenges facing Native American communities today.

Thank you and I would be happy to answer any questions.

[Prepared statement of Ms. Green appears in appendix.]

The CHAIRMAN. Thank you very much.

Secretary Cabrera, I understand you recently notified tribal leaders that HUD will not process any further fiscal year 2006 Indian Housing Block Grant awards until a stay is ordered in the *Fort Peck Housing Authority* v. *HUD* case, wherein the court ordered HUD to take such action necessary to include certain housing units

in determining funding formulas for only Fort Peck. What is the impact of not processing these awards?

Mr. CABRERA. The impact is that currently there are no awards, no money going to any of the tribes until one of two things happen. I think the second is more likely than the first.

The first is to get a stay from a Federal judge in Colorado, which we suspect we probably would not get, at least that is what our legal counsel is telling us. The second is to come to essentially a stipulation with the plaintiff in this case, Fort Peck, in which case that would give us the room that we would need to go ahead and allocate. We believe that is a more likely outcome. We certainly hope it is a more likely outcome.

Yesterday afternoon, I received word that they are close but not perfectly aligned and most of the issue has to do with a commitment that HUD was asked to make with respect to 2007 appropriation that we cannot, because it would essentially infringe upon this prerogative, which is the budget. I think that can be bridged. So my sense of life is we are closer than not.

The CHAIRMAN. Well, I am not sure that if you agree to request certain funds from the Congress that that would be an infringement upon our prerogatives. There is no budget that is submitted that is not subject to the review or modification by the Congress.

Mr. CABRERA. No; I am sorry, Mr. Chairman, I wasn't clear. This isn't about an amount of money. What they were asking us to do was essentially commit to an amount of money in the context of a legal settlement where we can, certainly we can preface it, and I believe that is what our lawyers are going to do, they are going to do precisely what you have just recommended, which is to say, if Congress approves something, then great. But we can't have a breached settlement by virtue of it being a predicate to the settlement.

The CHAIRMAN. How many tribes or housing entities are being affected by this?

Mr. CABRERA. As I recall, all 561.

The CHAIRMAN. Whew. It seems to me that would lend some urgency to resolving this situation.

Mr. CABRERA. Very much so. I would love to resolve this situation.

The CHAIRMAN. What kind of help are you getting?

Mr. CABRERA. We have, our legal counsel and the Department of Justice are working very intently with Fort Peck's counsel in order to come to some resolution.

The CHAIRMAN. How much money are we talking about here in the Fort Peck situation?

Mr. CABRERA. Mr. Chairman, may I please consult with my staff?

The CHAIRMAN. Yes; sure. Roughly.

If your staff would just like——

Mr. CABRERA. It is okay, I am sorry. It is $400,000. And I believe there are a few other tribes, one that comes to mind is Arapaho, that also agrees with Fort Peck's position on this. I don't recall what that number is.

The CHAIRMAN. You are talking about $400,000?

Mr. CABRERA. Yes.

The CHAIRMAN. Holding up hundreds of millions of dollars?

Mr. CABRERA. Yes; because the issue is the way that the formula grant is administered. So by virtue of undertaking the lawsuit and getting this particular order, that is the regrettable precise effect.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Mr. Chairman, let me also ask the same line of questions. You would not be required to hold up funding to other tribes. I am sure because this deals with Fort Peck and a decision with respect to Fort Peck. I understand that you may have to recalculate the funds. But you could assume, create reserves that would allow you to do that at some point, such as reserve a body of funds and at least distribute some portion of the housing funds, could you not?

Mr. CABRERA. As I understand it from our legal counsel, the very incomplete answer to that is no. And the reason is because of the nature of the formula distribution inside of the appropriation. I remember actually expressly asking that question, and the answer was that this particular order throws the entire formula into question.

Senator DORGAN. Tell me the quantity that is now frozen? Do you know off-hand?

Mr. CABRERA. Mr. Vice Chairman, may I again consult with my staff?

Senator DORGAN. Yes; please.

Mr. CABRERA. Thank you.

Approximately $300 million.

Senator DORGAN. You know, I don't understand the answer you have received from lawyers, nor why you would accept that answer. A $400,000 discrepancy issue here is holding up in, did you say in, did you say $300 million?

Mr. CABRERA. Yes.

Senator DORGAN. In a $300-million pool of money, you are certainly able to reconcile whatever is judged to be done to recalculate that formula within the context of a portion of that $300 million. But there is no reason at all to be holding up all of the housing money in anticipation of having to find an answer here. You certainly could be moving some of that housing money out now. Are you saying you are prevented by your attorneys from doing that?

Mr. CABRERA. No; I am saying that our attorneys are counseling that based upon this particular Federal judge's order, that if we did, we would be in contravention of the order. And more to the point, the issue, and I respect that, I respect the idea that proportionally, the $400,000 in terms of the relative amount, the $400,000, no, the $300 million, it appears very small.

The issue isn't the money. The issue is the formula.

Senator DORGAN. I understand.

Mr. CABRERA. And this particular order basically said, the entire administrative mechanism that you are using is invalid.

Senator DORGAN. I understand all of that. But do you think the judge would have anticipated that you should hold up all of the funding going out for housing in order to reconcile the $400,000?

Mr. CABRERA. Forgive me, I didn't mean to interrupt.

I think what the judge thought was that this was just a Fort Peck issue. And so I don't think that, I think that is why we have some hope on this day, but we are not certain on this day, and that

is because I am not entirely sure the judge was aware that it would affect basically the other 560 tribes. That is why we are seeking the stay and that is why we would like to resolve this.

Senator DORGAN. But do you agree it would minimally affect most of the other tribes?

Mr. CABRERA. No; in some cases it is a significant effect. As I recall, there is a significant effect to both the Cherokee and the Navajo Tribe.

Senator DORGAN. How many tribes do we have in this country that are eligible for housing funds?

Mr. CABRERA. 561.

Senator DORGAN. So you are saying that three of them would be affected?

Mr. CABRERA. No; those are the only ones that I remember.

Senator DORGAN. Oh, all of them because of the formula distribution?

Mr. CABRERA. Yes; it would basically redistribute the way the formula is undertaken.

Senator DORGAN. What if you don't get this resolved in the coming days or weeks? You just hold up all the housing funds for Native Americans for the rest of the year?

Mr. CABRERA. No; I think what I would ask, or I have asked our lawyers to do is visit the idea of asking the judge for greater clarity with respect to how it is he would have us proceed.

Senator DORGAN. Why hasn't that been done already?

Mr. CABRERA. I believe it has. I believe that effort has begun.

Senator DORGAN. How has the judge responded?

Mr. CABRERA. I don't know. That I don't know as of today. I believe the other major effort really has been to have the parties deal with it and then go to the judge and say, look, we agree, we can proceed.

Senator DORGAN. You know, I bet these lawyers that are giving you this advice are pretty well housed. So the issue here is the urgency to get housing money to Native Americans. And we have authorized and appropriated funding for housing. I am not trying to badger you here. I think you have gotten some bad advice from some place. And I think there must be room administratively to continue a program, especially a program that responds to an urgent need, even if you probably hold a reserve back to recalculate this formula at some point.

I can't believe the judge would render a decision that says, okay, in order to resolve this, you need to hold up all the housing funds nationally. I can't believe that would be the intent of the Federal court.

Mr. CABRERA. No; and that is what I was trying to say earlier, maybe I didn't say it as perfectly as I should have. We believe that the judge's order focused on these two particular parties, and that is why we want to revisit the issue of the order with the judge.

We are working on a separate and equivalent track to deal with it within the parties themselves. We are hopeful that that would happen. But certainly we are trying to resolve this issue. Once we get clarity, as I noted earlier, we would very much like to proceed. Our issue is not feeling comfortable with what or how the order ap-

proaches the entire formula issue. It only deals really with Fort Peck.

And at the same time, maybe, hopefully, probably, Fort Peck and HUD would come to some agreement on how to proceed in the interim, so that we can go ahead and move. In either case, we are moving quickly.

Senator DORGAN. Mr. Cabrera, I confess I don't understand the formula or perhaps the nuances of the judge's order. But I do know that the housing funds that we have provided have now been shut off for a month. Indian leaders are very concerned about that, and should be, because they are, in their Government, trying to develop housing programs to deal with a very serious problem. One only needs to look at some of the housing stock that exists to see how much disrepair there is, and then understand how many people need housing and don't have access to it.

So I hope you will understand the urgency of this and I hope that the agency will go back to those lawyers who have told you that you have to hold it all up. I can't conceive that would be the case. I hope you will report back on a weekly basis to this committee. My hope is the first weekly report will be to say that we have resolved this and we have gotten the money out there and are starting to build housing stock.

Mr. CABRERA. Mr. Vice Chairman, if that report would come this afternoon, nobody would be happier than me. I would like to resolve this. I have an enormous amount of empathy for the situation. But at the end of the day, we are moving steadfastly to resolve this. And I will be happy to report weekly on this. I deal with Fort Peck or the Fort Peck situation if not every day, then very nearly every other day. So we are moving diligently to resolve this in the best legal way possible.

Senator DORGAN. Ms. Green, just briefly, Mr. Chairman, Ms. Green, thank you for your testimony. I know that you have a program you have been doing with respect to North and South Dakota at the Standing Rock Reservation.

Ms. GREEN. Yes.

Senator DORGAN. Could you just give us a very brief description of that program and your results?

Ms. GREEN. Yes; at the Standing Rock Reservation is one of what we are calling our deep dives, where we are going into the reservations and bringing in all of our parts of Fannie Mae, where we do single family projects. We are doing low income housing, bringing in multi-family, bringing in bridge loans, whatever we can do to help the reservations to bring in whatever they need to transform their reservations, any type of housing needs.

Standing Rock is a great example of what we are doing there. For example, we have done low income housing tax credits, we have done a single family project there. For instance, we have done 248 units on Standing Rock Reservation, affordable rental housing in the past 5 years. That has been a great, great project that we are doing there. We are there for a long term, we are not just going in and doing a one time project. We are there for 10 years, 20 years, whatever they need us for. So we go back every year and do an update.

Our CBC there is working on an ongoing basis with Standing Rock. We have done grants, we give them grants for revolving loan projects, whatever it is that they need to do. But as of date, we have helped them, investing with the 248 rental projects that they have got going there.

Senator DORGAN. Thank you very much, Ms. Green.

Mr. Cabrera, thank you for being with us today as well.

Mr. CABRERA. Thank you, Senator.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I just want to follow up very briefly on the comments made by my colleagues about the litigation and the status of it. I think it has been made clear the urgency to this. I guess I am somewhat surprised that perhaps the judge is not aware of the ramifications, potentially, to all of these tribes, 500 some odd tribes out there. I would certainly hope that that clarification is made very, very quickly.

Just one quick question for you, Mr. Cabrera. I wanted to ask you about the Indian housing, the cost study, which is already underway, a study that is certainly going to have a long-term effect on the allocation of Indian housing nationwide. We are a little bit concerned, from Alaska's perspective. Because if the housing study goes in a way that unfortunately we feel it might, it could have a very negative impact to the housing authorities in the State of Alaska. As I mentioned in my opening statement, we have some unique challenges that we face when it comes to construction of housing in the State. And so it is very important for HUD to be taking a look at this very wide cross-section of data from the various housing authorities in the State.

We also recognize that it is very important from the national perspective to be getting a wide cross-section of data. Recognizing that compilation of all this can take some time, has there been any thought given to allocating additional time to complete the study, to ensure that the study is going to be very complete, accurate and fair?

Mr. CABRERA. Yes; as I recall, it was already extended by another 6 months. Further, Senator, I think that we have had the University of Illinois Urban Center working very closely with Blake Azama, as I recall, and other corporations or corporation representatives in Alaska on this issue. So I believe that there has been progress. I understand precisely how seriously you take the issue.

Senator MURKOWSKI. Well, we understand that you are looking to come up to the State some time in August, so hopefully we would have an opportunity to talk with you a little bit more about the issue and to give you the first-hand tour of some of the issues. We appreciate your willingness to come up.

Mr. CABRERA. I look forward to it, thank you.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Cabrera, we will be trying to get involved in this, because we think that it needs to be resolved quickly. We are going to begin by, Senator Dorgan and I, and other members of the committee, sending a letter to the Secretary saying we want his personal in-

volvement in this. We can't hold up housing for 500 tribes because of a $400,000-dispute.

And I understand it is more complicated than that. I fully understand that. It is a policy problem. But we just can't do that. We owe more than that to Native Americans.

So we are going to start out with a letter, and then we are going to have to maybe look at something legislatively or something, I don't know exactly what, but we need to explore all the options to get this issue resolved quickly. I hope you will join us in that effort.

Mr. CABRERA. Mr. Chairman, absolutely. I would say this is not relating to the letter, but with respect to the legislation. I think that by the time this gets resolved, either in the context of getting a clarified order or getting an arrangement with Fort Peck, whatever that might be, that will probably preempt any need for legislation. This is not an unreasonable judge, this is someone whom most practicing lawyers respect greatly, including me.

So I think at the end of the day this will probably work out. I know in the interim it is painful, not the least of which for me. I just wanted to make sure you were aware, I will report weekly going forward.

Senator DORGAN. Could I, Mr. Chairman, say, and I can't speak for the Chairman, I don't believe there ought to be an interim. In the interim, there should not be a shut-off of funds. These are critically needed funds for housing and we can recalculate or you can recalculate some sort of reserve to deal with this formula issue. But the funding should not have been shut off to hundreds of tribes.

Mr. CABRERA. I understand.

The CHAIRMAN. And unfortunately, probably is not good enough. So we urge you to act as quickly as possible, and we will be paying close attention. I thank you very much. Thank the witnesses.

Our next panel is Marty Shuravloff, who is the chairman of the National American Indian Housing Council; A.D. Ellis, principal chief of the Muscogee Creek Nation; and James Steele, who is the chairman of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and Mr. Steele is accompanied by Jason Adams, who is the executive director of the Housing Authority.

Mr. Shuravloff, am I pronouncing your name correctly?

Mr. SHURAVLOFF. You are, Mr. Chairman.

The CHAIRMAN. Thank you. Please proceed.

STATEMENT OF MARTY SHURAVLOFF, CHAIRMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL, WASHINGTON, DC

Mr. SHURAVLOFF. Good morning, Chairman McCain, Vice Chairman Dorgan, Senator Murkowski and distinguished members of the Senate Committee on Indian Affairs.

My name is Marty Shuravloff, and I am honored to appear before you today as the recently elected chair of the National American Indian Housing Council, the oldest and largest Indian housing organization in the Nation, representing the housing interests of more than 460 tribes. I am an enrolled member of the Village of Leisnol and also serve as the executive director of the Kodiak Island Housing Authority.

Now in its 32d year, the NAIHC is the major capacity building organization providing guidance, technical assistance, training and

other services. NAIHC trains thousands of Indian housing and other staff per year, offering most of its training for free. NAIHC also uses state of the art technology to save tribes time and travel costs, by offering training by webcast and video. In addition, NAIHC provides scholarships that help offset travel costs, ensuring that the poorest tribes receive training. In 2005, 200 different tribes and TDHEs benefitted from 751 scholarships granted by NAIHC.

For 32 years, NAIHC has provided invaluable assistance to Indian tribes and TDHEs, and in no small way has made the difficult implementation phase of NAHASDA a success. Along the way, NAIHC has endured many difficulties, including a Federal housing agency that may, due to paternalistic tendencies, create the opposite of self-determination. Additionally, NAIHC has dealt with Congressional appropriators who are unaware of, or worse, unmoved by, the dire economic conditions that characterize Native communities.

The impact of Federal funding for the Native American block grant has been steadily eroded by inflation. It has gone from $600 million in 1998 to $624 million this fiscal year, an actual decline when adjusted for inflation. During the same time, Federal funding made available to the NAIHC for technical assistance and training to Indian tribes and their TDHEs has also declined, threatening its very existence.

The Department of Housing and Urban Development maintains that NAIHC has undisbursed funds left over from fiscal year 2004 and 2005, and unobligated funds left over from fiscal year 2006 that somehow NAIHC is unable or unwilling to spend. The truth of the matter is that NAIHC expends funds on a reimbursement schedule and what HUD says is in the pipeline has been expended but not yet billed to HUD as of March 2006.

If NAIHC continues to expend funds at the same rate as in 2005, the pipeline funds will be completely gone by February 2007. The erroneous perceptions have been caused by the many administrative delays in NAIHC's work contract with HUD. NAIHC receives its funds on a reimbursement basis, after incurring costs for HUD-approved activities. NAIHC's current contract with HUD took months to complete. While HUD shows these funds as unused, NAIHC can show that the funds will be exhausted by the work of the NAIHC throughout the year.

If House-passed levels of technical assistance funding prevail, NAIHC shuts down. It is that simple. For fiscal year 2007, the House has proposed $990,000 for technical assistance and training services for NAIHC. And it is no exaggeration to say that with this or a similar level of funding in the next fiscal year, NAIHC will close its doors in or around January 2007. We hope this committee will not let this happen.

Under the leadership of Senator McCain, NAHASDA was created and rests on a firm foundation of Indian self-determination, reflecting the time tested principles of local tribal decision making and tribal economic self-sufficiency. That means that Indian tribes themselves, not HUD, design, implement and conduct housing and related programs for their members.

In passing NAHASDA, Congress intended HUD's role to be minimally intrusive. NAIHC, tribes and TDHEs have established a legislative working group to identify and address legislative and regulatory issues of tribal concern with the statute as it now stands. Their issues include the impediments of the program assessment rating tool process and how to improve the data collection and reporting elements.

The severe problem with methamphetamine in Indian communities, the insufficient or non-existent infrastructure in Indian communities, addressing the problem of mold in federally-assisted tribal homes, the establishing of development reserve accounts as an eligible activity under NAHASDA, replacing the 30 percent income rule with fair market rents, Federal procurement issues related to housing materials, the elimination of Secretarial approval for long-term leases, and overdue and necessary reforms to the Bureau of Indian Affairs tribal status report process.

NAIHC is committed to finding resolutions to these problems. To address the infrastructure deficiencies in Indian country, NAIHC is collaborating with Federal agencies in the development of an infrastructure memorandum of understanding that will encourage agencies to assist tribes with infrastructure development. Additionally, NAIHC has established two internal working groups to deal with issues related to NAHASDA reauthorization and the formula allocation.

The Native American Block Grant program is the main program for funding tribal housing under NAHASDA. Historically, decennial census numbers have been one element in the calculation of distribution of Native American housing block grant funds. A change in the census collection technique in the 2000 census led to a change in distribution patterns, causing a question to be raised regarding the use of a specific set of census data.

A failure of the negotiated rulemaking committee to arrive at a consensus on which census data to use caused HUD to use a data set that has led to a disagreement among tribes concerning the formula. To help resolve this issue, NAIHC has established a task force with the goal of arriving at a position that is agreeable to all tribes regarding the accounting of American Indian and Alaska Natives in the formula.

And finally, Mr. Chairman, members of the committee, NAIHC also is gravely concerned about HUD's recent decision to potentially withhold allocation of the remaining fiscal year 2006 funds if the Department is unable to obtain a stay pending appeal of the court's decision in the *Fort Peck Housing Authority* v. *U.S. Department of Housing and Urban Development.* While we understand the difficulties presented by the *Fort Peck* decision, this decision could cause severe hardships on recipients whose funding may be inappropriately withheld.

As you are aware, most tribal and TDHE recipients are dependent on such funding to continue operating and providing services to their low income members. Such disruption in funding could lead to some completely shutting down.

Additionally, many tribes have pledged their Native American Housing Block Grant funds as security for title VI or section 184 loans, and HUD's proposed course of action could result in default

on these loans, requiring the United States to assume the payment of these loans. NAIHC urges this committee to persuade HUD to reconsider its decision and seek an alternative solution, if at all possible.

In conclusion, I would like to thank you for giving us this opportunity to speak. We look forward to working with the committee on all issues affecting Indian housing programs.

[Prepared statement of Mr. Shuravloff appears in appendix.]

The CHAIRMAN. Thank you.

Chief Ellis.

STATEMENT OF A.D. ELLIS, PRINCIPAL CHIEF, MUSCOGEE CREEK NATION, OKMULGEE, OK

Mr. ELLIS. Good morning, Mr. Chairman, distinguished committee. It is a great honor to be invited here this morning to represent my nation.

My name is A.D. Ellis, I am presently principal chief of the Muscogee Creek Nation, the fourth largest tribe in America, with over 62,000 members. Our housing program has basically been a successful program. We now have over 100 employees in our housing division. Since 1970, we have built 2,900 homes, 240 low rent apartments and the biggest thing that has helped the tribe was the initiation of NAHASDA.

Before that, I heard the Vice Chairman mention reservations. The misconception is all Federal funding goes to reservation tribes. The distinction of the Oklahoma tribes is different. Out of the 39 tribes in Oklahoma, 38 of them do not have reservations.

All the housing authorities in Oklahoma fall under State of Oklahoma law. All the Housing Authority employees, the board of directors and funds, up until NAHASDA, was submitted to the Housing Authority. In the last 3 years I came into office, I petitioned the State of Oklahoma to exercise the sovereignty of the Muscogee Nation. We got the Senate and House of Representative to agree. In March of this year, the Governor signed a bill relinquishing all State housing laws and assets to the Muscogee Nation. We received $43 million in assets and cash and the State of Oklahoma no longer exists in the Creek Housing Authority.

Now, the Housing Authority is run by tribal government, totally tribal government, no interference. We know what our people need. We live among them. I received a HUD home in 1988. I waited 6 years to get the house. I ran into all the roadblocks. I know what the people need, I know what they go through in trying to get these.

Since the NAHASDA program was initiated, in the last two years we have gone from tribal boundaries to statewide mortgage assistance program. At the present time, we purchase modular homes from an Oklahoma prison system at a great reduction in price.

In Oklahoma, most of our people are under one-quarter blood. Out of our 62,000 people, about 42,000 are less than one-quarter. So what we call the full-blood people are very reluctant to ask for anything. We put them first choice, referencing the elderly. We use proceeds of sale that the State turned over to us for emergency next-day assistance.

We now build homes on restricted lands. We are purchasing a building company to build our own modular homes. And I didn't bring my housing director with me today due to budget sessions, but I assure you, I am not an expert in housing, I only control the housing.

But he did say that we oppose the voting that the housing council took in Hawaii previously on the using the census of the count of tribal members. I think if it passes, I think the Navajo Nation will probably accumulate another 7 million. The tribes in Oklahoma will probably lose about 15 million. So we are going to address that a little later.

Again, Mr. Chairman, I appreciate being here on behalf of the Oklahoma tribes. Thank you, sir.

[Prepared statement of Mr. Ellis appears in appendix.]

The CHAIRMAN. Thank you very much, Chief.

Chairman Steele, welcome.

STATEMENT OF JAMES STEELE, JR., CHAIRMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN NATION, ACCOMPANIED BY JASON ADAMS, EXECUTIVE DIRECTOR, HOUSING AUTHORITY

Mr. STEELE. Good morning. I would like to greet you in the language of the Salish and Kootenai Tribes. [Greeting in native tongue.]

Good morning, Chairman McCain, Vice Chairman Dorgan, Senator Murkowski, and members of the committee. My name is James Steele. I am the chairman of the Confederated Salish and Kootenai Tribes of the Flathead Indian Nation in present day western Montana. I appreciate the opportunity to speak before you today. With me here today is Jason Adams, executive director of the Salish and Kootenai Housing Authority.

I have submitted a detailed written statement and will now summarize my remarks.

The Confederated Salish and Kootenai Tribes are one of the original 10 self-governance tribes in the United States, and we are the only tribes in the country to operate both our IAM program and our title plant. We were the first tribe in the country to organize under the Indian Reorganization Act.

My testimony discusses two interesting things we are doing on the reservation involving the issuance of private mortgages by utilizing the HUD 184 program. Our housing authority has partnered with several of the local lenders on the Flathead Reservation to provide this home ownership program to our membership. We have over 80 mortgages that have been completed, with the majority of those loans being on trust land.

In all of the transactions, the tribal council placed our housing authority in a position of essentially an additional guarantor over and above HUD's guarantee. We are also quite proud of our home buyer education program. In the last year, we have had over 80 families graduate from the classes with 56 of those families going on to obtain a mortgage through either the HUD 184 program or our own tribal credit program.

The housing issues that I would like to touch on today are the Native American Housing Assistance and Self-Determination Act

reauthorization, the NAHASDA funding formula and funding levels for fiscal year 2007, the funding level for the National American Indian Housing Council and the issue of HUD freezing NAHASDA funds to recipients that have not received their fiscal year 2006 funds.

When you reauthorize NAHASDA, it is important that you address the 30 percent rule. The 30 percent rule is a mandate in the act that requires all tenants in units supported by NAHASDA funds to have to pay no more than 30 percent of their adjusted income in rent. The intent behind this rule may have been admirable, but as cited in my testimony, is simply not working, in great part because it is too rigid. Our position is that our tribes could benefit from discretion in this regard, and that we could design and implement a rental fee schedule that provides an incentive to those who have lived in poverty historically and who then go on to work.

From a tribal leader's perspective, the problem is that the rule doesn't allow us to self-determine the structure of the housing program that we provide. We think that the assistant secretary of HUD erred in 2003 when he arbitrarily changed the use of census data from the single race data set to the multi-race data set. As I understand, this decision was made without consulting with tribes and without giving tribes the opportunity to provide input back to HUD on the effects that such a decision would have to the recipients of NAHASDA.

I am encouraged by the work that has begun at NAIHC to work within its membership to convene a task force to study this issue and work toward common ground with its membership to find an answer to this issue. I believe that when tribes come to the table with the expectation for solving an issue themselves, it will happen.

I would ask this committee to assist the NAIHC with the proposal that comes forth from the task force. The funding level for NAHASDA is totally inadequate. I would ask that this committee support a substantial increase in the fiscal year 2007 appropriation far above what the President's budget proposal contains.

If funding levels from fiscal year 2002 had been maintained with modest inflation, the fiscal year 2007 appropriation for NAHASDA should be approximately $748 million, not $625 million as contained in the President's budget. Without some increase in funding, housing authorities and many others are forced to make tough decisions on cutting programs, decreasing the level of maintenance of existing units and not being able to leverage funding to create new, affordable housing opportunities.

I support funding for the National American Indian Housing Council. It is very discouraging to see that the President's budget proposal does not contain any funding for the council. I would ask that this committee fully support funding for the council and its membership of 265 tribes, including funds needed to keep up with the cost of providing the services.

The final issue I would like to discuss today is the recent decision from HUD to freeze all allocation of the NAHASDA block grant funds to those tribes that have not yet received their fiscal year 2006 funding. HUD is apparently reacting to a court decision stemming from a lawsuit filed by the Fort Peck Housing Authority. The

court ruling declared a NAHASDA regulation invalid, which therefore changed the NAHASDA funding formula. I understand HUD is appealing the decision and has decided to freeze funding until the outcome of their appeal.

While we understand HUD's need to protect itself, should they lose this lawsuit, freezing all unobligated NAHASDA funding to 141 tribes is not the answer. It is not clear how these tribal housing authorities are going to operate without this funding. We ask this committee to promptly consult with the Appropriations Subcommittee on HUD, the Banking, Housing and Urban Affairs Committee, about a possibility of a joint communication to HUD to obligate these funds. If HUD loses this lawsuit, they should be required to submit a supplemental appropriations request or to access the DOJ judgment fund, the same way any other agency would if they lost a lawsuit

It has been an honor to be invited to testify before this committee. Thank you for having this hearing and for providing an opportunity for a panel of tribal representatives to come and give our perspective on some of the important issues facing Indian Country in the area of housing. Thank you.

[Prepared statement of Mr. Steele appears in appendix.]

Senator MURKOWSKI [presiding]. Thank you, Mr. Steele, and thank you to all of you who have joined us here this morning.

The chairman had to excuse himself, he had another committee that began at 10:30, and he had to make an introduction of another individual. So he apologizes that he had to leave before the hearing was able to conclude.

But I do appreciate the perspective that the three of you have been able to give us, and to hear the concerns raised by the panel as to the effect that tying up these funds through the Fort Peck situation can have. We recognize that, and the Chairman and Vice Chairman clearly stated the need to act in this area and to do so very quickly.

Mr. Shuravloff, you had mentioned the working groups or the task force that has been pulled together in anticipation of the NAHASDA reauthorization coming up. I understand that you have been working, or NAIHC has been working with the Native housing authorities nationwide to gather some suggested changes to this act. I do understand that you have not yet formalized the report. Can you give us any preliminary insight as to the findings that you can disclose at this point in time?

Mr. SHURAVLOFF. Senator Murkowski, at this point we are in the process of gathering both regulatory and statutory issues that we may want to look at during the reauthorization of the act. We hope to have that concluded here in the very near future.

Senator MURKOWSKI. What does that mean, in the very near future? When do you anticipate you will be done with this?

Mr. SHURAVLOFF. Well, what the work product, the product that is coming out is, we hope to have done it within the next couple of months. Then in our December meeting, we hope to have a business meeting to ratify any amendments that the membership would like to move forward with the reauthorization process.

Senator MURKOWSKI. So at this point, it is too early, too premature to indicate what some of the preliminary findings might be?

Mr. SHURAVLOFF. Yes; it is.

Senator MURKOWSKI. All right. You mentioned in your comments the issue of mold. We are finding that, particularly in many of our villages in western Alaska, mold is a tough issue for us, it is a significant issue. Can you give me some indication the extent of the problem, beyond what I am aware of, in Alaska? How big of an issue is this as it relates to our housing for Native Americans and Alaska Natives?

Mr. SHURAVLOFF. It has become a large issue nationwide. I think we see it a lot in Alaska, especially because of our housing building techniques. I think most people realize that mold is a product of not enough air movement through the house, and the moisture that gathers, of course, creates the mold.

I know in Alaska there is a study that has been going on and I think is being concluded on developing some different building techniques. But I have been hearing of problems all across the Country on mold issues. It is definitely a big issue.

In terms of numbers, I don't have that available. But I know across the country everybody seems to be dealing with it in just about every State.

Senator MURKOWSKI. Certainly from the health perspective, it is something that should cause us concern. We don't want to be building housing that is going to cause health problems for those that are living in them. We know that when you have any significant degree of mold in a home, it can.

We had a hearing about 1½years ago on teacher housing out in rural Alaska, and heard testimony from a young woman that became very ill and learned that it was not necessarily the housing techniques that had failed, they had installed the vapor barrier inside out or on the wrong side. So what had happened was a level of mold buildup in the house, the house looked pretty good from the outside. But it was not a liveable structure, because of some of the construction issues.

So yes, we need to work to make sure that we have got good construction techniques. But we also need to remember that we can't move forward with just shoddy workmanship, either. I think in that situation, that was exactly what was happening.

Mr. SHURAVLOFF. Yes, Senator; if I might add, I think a lot of the problem is education on the homeowner's part. Ventilation is one of the main issues when you deal with mold. One of the things we have found is that our own residents continually have to be educated on the requirements of leaving windows open or turning fans on to keep some ventilation within the unit.

That seems to be one of the big problems we are dealing with, is education. It may not necessarily be the building itself, but just the education of the residents within the unit.

Senator MURKOWSKI. Well, the education is certainly important. When Ms. Green was testifying, speaking to the fact that there are so many of our Alaska Natives, Native Americans, who have not had certain background in financing, understanding the financing, having built a credit record. Because they basically operate using cash, having no bank account.

There is an educational process that comes with home ownership that does not just relate to the management and operation of the

home itself, but also even prior to getting into the home. I think we recognize that we have many issues that we need to deal with. And we are not going to be able to resolve them all overnight. But working together, with committed individuals, we will make some progress.

I appreciate the time that you have taken, and the time that you have taken to travel here to Washington to give us your perspectives. With that, we will adjourn the Committee. Thank you.

[Whereupon, at 10:40 a.m., the committee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF A.D. ELLIS, PRINCIPAL CHIEF, MUSCOGEE NATION, OKLAHOMA

My name is A. D. Ellis and I am presently Principal Chief of the Muscogee [Creek] Nation of Oklahoma. I have 15 years in elected office which included 8 years on the National Council and 4 years as second chief.

Housing and Health issues in the Muscogee Nation are a top priority as it probably is for every tribal nation. With the increased funding in the last 15 years, we have been able to keep up with the yearly demand but it seems to always have a waiting list of 500 to 700 people. The Muscogee [Creek] Nation is situated in the most depressed area in Oklahoma and has had this distinction for many years.

In 1997 with the introduction of the NAHASDA Program and the funding sent directly to the tribe instead of the Housing Authority, we were able to serve our peoples needs more efficiently. Unknown to most everyone in Oklahoma and especially State leaders such as Senators, Representatives and even the Governor, all Tribal Housing Authorities were controlled by State laws. This was a great opportunity for tribal citizens to balk against elected tribal leaders as they served on housing boards under State law and not tribal law. These housing boards were formed in the late 1960's before tribal government and constitutions were formed. Great amounts of money and other assets were controlled by housing authority boards that would not cooperate with tribal leaders. Even under these unfavorable circumstances, we have built approximately 50 new homes per year and probably another 50 homes purchased, called 'acquisition homes'.

Another program that came with NAHASDA is the 184 Program and Mortgage Assistance. Mortgage Assistance provides up to $25,000 for down payment and closing costs for those that qualify for a loan from a lender that participates in the program. This is a no payback benefit if the homebuyer stays in the home for a period of years.

We have about 100 employees in our new housing division which is a new arm of my administration. My first year in office I terminated the entire board of directors and top management and formed the new housing division controlled by the tribal government. This is the third year of trying to exercise our tribal sovereignty and was successful.

A friendly State Senator carried a specially crafted piece of legislation to the Oklahoma Senate and House to unanimously pass the legislation to allow the Muscogee Nation to assume all programs and assets of the Creek Nation Housing Authority of Oklahoma. The State of Oklahoma ceased to exist with the Creek Nation Housing Authority.

Since assuming complete control we have made many policy changes to better serve our citizens. One is to lower the income requirements to own a HUD of NAHASDA home.

- Previously a person had to earn over $15,000 to qualify. This left out the very people that needed help the most. By lowering the earning requirements to $5,000 annually the most needy and lower income people could qualify.
- A policy giving the full blood citizen priority along with tribal elders has been implemented.
- Mortgage assistance was restricted to tribal boundaries and has been changed to state boundaries. Now any Creek citizen living in the State of Oklahoma can receive assistance.

Progress is moving slowly forward and if we continue to receive funds at this level we plan to serve our present housing needs within 7 years.

Our present funding needs are now being challenged by reservation tribes from other States. The funding is based on the 2000 census count which was based on Indian and Multi-race Indians as listed on the census card.

A change in the numbers by a different census count, "Indian Only", could reduce the funding for all Indians in Oklahoma and increase it for all Reservation Tribes. The Indian population in Oklahoma is near 600,000 with most belonging to the Five Tribes of Eastern Oklahoma being the Cherokee, Choctaw, Chickasaw, Seminole, and Creek. If this formula has to be changed we hope it could wait until the 2010 census count.

Over all the NAHASDA program is working and the Native American population is being served by a professional and capable housing division dedicated to serve the Muscogee [Creek] people. Any support from the U.S. Congress and the U.S. Senate is always appreciated and we need the funding levels to remain as they are or more.

STATEMENT OF ORLANDO J. CABRERA
Assistant Secretary
Office of Public and Indian Housing
U.S. Department of Housing and Urban Development

Before the
Committee on Indian Affairs
United States Senate

June 28, 2006

INTRODUCTION

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, thank you for inviting me to provide comments on HUD's Indian housing and community development programs.

My name is Orlando Cabrera, and I am Assistant Secretary for the Office of Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to 561 federally-recognized Indian tribes. We serve these tribes directly or through their tribally designated housing entities (TDHE), by providing grants and loan guarantees designed to support affordable housing, community and economic development activities. Our partners are diverse; they are located on Indian reservations, in Alaska Native Villages, and in other traditional Indian areas. We also work with Native Hawaiians on the Hawaiian Home Lands.

It is a pleasure to appear before you again and I would like to express my appreciation for your continuing efforts to improve the housing conditions of American Indian and Alaska Natives. From HUD's perspective, much progress is being made. Tribes are taking advantage of new opportunities to improve the housing conditions of the Native American families residing on Indian reservations, on trust or restricted Indian lands and in Alaska Native Villages. This momentum needs to be sustained as we continue to work together toward creating a better living environment for them.

OVERVIEW

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the government-to-government relationship with federally-recognized Indian tribes. HUD is committed to honoring this fundamental principle in our work with American Indians and Alaska Natives.

I'd like to share with you my perspective on how I'd like to help tribal communities succeed. My background is in housing so I would like to focus most on the tools of my profession; those tools used to leverage funding from multiple sources. Today there are more tools available than ever before. Tribes should look to federal resources such as the Native American Housing Assistance and Self-Determination Act's (NAHASDA) Indian Housing Block Grant and Title VI programs, but they also need to pursue opportunities such as the low-income housing tax credits. There are other federal and state programs that they may qualify for but are not using now. In order to better utilize all resources, they need to explore partnerships with the private sector-the most overlooked resource.

All these new efforts involve some risk, but without risk, fewer families are assisted.

We've engaged in marketing and outreach activities designed to make tribes and TDHEs more familiar with our programs, particularly those with federal guarantees to lower the risks that have traditionally made the private sector shy away from partnering with tribes. We are also

examining a bond financing initiative that has worked well for public housing authorities to see if it can do the same for tribes. We can also assist with advice on how to leverage private-sector capital to create more housing on reservations. As we move forward, we are aware of, and will work within the government-to-government relationship that exists between this Department and the federally recognized Indian tribes we serve.

In my presentation today, I will also cover the following topics:

1. A description of HUD's Native American programs.
2. Barriers and challenges to housing and community development in Indian Country, and HUD's accomplishments in response to them.
3. Current issues, including consultation and negotiated rulemaking.
4. Census issues, including the use of 2000 Census data in the Indian Housing Block Grant program.
5. HUD's response to the Inspector General's 2001 report on the implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

PROGRAMS SYNOPSIS

I would now like to give you a brief description of our programs.

INDIAN HOUSING BLOCK GRANT (IHBG) PROGRAM

The Native American Housing Assistance and Self-Determination Act of 1996, as amended, or NAHASDA, provides formula-based housing block grant assistance to Indian tribes or their tribally designated housing entities. To qualify for a grant, the tribe must submit, for HUD's review for compliance, both a one-year and a five-year Indian Housing Plan containing a mission statement, goals and objectives, and an activities plan by which the recipient will provide affordable housing during the grant period. At the end of each grant year, an Annual Performance Report must be submitted describing how the grantee met its stated objectives. The program began in FY 1998. Prior to NAHASDA, Indian housing authorities received funds under the authority of the United States Housing Act of 1937, as amended (1937 Act).

Funding Distribution: Need-based formula funding allocations under the Indian Housing Block Grant (IHBG) program are predicated on two factors; need and Formula Current Assisted Stock (FCAS), which means the number of dwelling units that are currently owned or operated by the grant recipient that were developed under an Annual Contributions Contract authorized by the 1937 Act. FCAS also includes Section 8 units that continue to be operated after contract expiration in a manner similar to the Section 8 program.

Applicant Eligibility: Eligible tribes include federally recognized Indian tribes and the five state-recognized Indian tribes formerly eligible under the 1937 Act.

Legal Authority: Titles I through V of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (Public Law 104-330; 110 Stat. 40; 25 U.S.C. 4101 et seq.)

Regulations: 24 CFR part 1000

TITLE VI TRIBAL HOUSING ACTIVITIES LOAN GUARANTEE FUND (Title VI)
(Federal Guarantees for Financing for Tribal Housing Activities)

This program authorizes HUD, through the Office of Native American Programs, to guarantee obligations issued by tribes or their tribally designated housing entities (TDHE) to finance the eligible affordable housing activities enumerated in Section 202 of NAHASDA and other housing-related community development activities consistent with the purposes of NAHASDA. No guarantee will be approved if the total outstanding obligations exceed five times the amount of the grant for the issuer, taking into consideration the amount needed to maintain and protect the viability of housing developed or operated pursuant to the 1937 Act.

The program requires issuers to pledge current and future IHBG appropriations toward the repayment of the guaranteed obligations. The full faith and credit of the U.S. is pledged to the payment of all guarantees.

HUD may not guarantee obligations exceeding $400 million for each of Fiscal Years 1997-2007 with a cumulative cap of $2 billion for the eleven-year period. Once 50 percent of the authority has been committed in any year, HUD may limit the amount of guarantees any one tribe may receive in any fiscal year to $50 million or request an increase in the statutory dollar limitations. HUD may enter into commitments to guarantee loans for any fiscal year only to the extent that funds have been appropriated.

Funding Distribution: Eligible applicants apply for loans directly to lenders, and the Federal guarantee is issued after the loan is approved.

Applicant Eligibility: Grant recipients under the IHBG program authorized by NAHASDA.

Legal Authority: Title VI of Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330; 25 U.S.C. 4101 et seq.).

Regulations: 24 CFR part 1000, subpart E.

SECTION 184 INDIAN HOUSING LOAN GUARANTEE FUND (Section 184)

Section 184 of the Housing and Community Development Act of 1992 established a loan guarantee program for Indian families, Indian tribes, Indian housing authorities (IHA), and tribally designated housing entities (TDHE). The purpose of the program is to provide access to

private mortgage financing for Indian families, TDHEs/IHAs, and Indian tribes that could not otherwise acquire housing financing because of the unique legal status of Indian lands. The loans guaranteed under the program are used to construct, acquire, refinance, or rehabilitate single-family housing located on trust land or land located in an Indian or Alaska Native area. This guarantee authority is freestanding and has its own guarantee fund. HUD may enter into commitments to guarantee loans for any fiscal year only to the extent amounts have been provided in appropriations acts.

Funding Distribution: Eligible applicants apply for loans directly to lenders, and the federal guarantee is issued after the loan is approved.

Applicant Eligibility: Indian families, TDHEs/IHAs, and Indian tribes.

Legal Authority: Section 184 of the Housing and Community Development Act of 1992, as amended (Public Law 102-550; 106 Stat. 3739; 12 U.S.C. 1715z-13a)

Regulations: 24 CFR part 1005

INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT (ICDBG) PROGRAM

The ICDBG program provides federal aid for Indian tribes and Alaska Native Villages to develop viable Native American communities. Competitive grants are awarded to eligible Indian tribes and Alaska Native Villages to improve the housing stock, provide community facilities, make infrastructure improvements, fund micro-enterprises, and expand job opportunities. Eligible activities include housing rehabilitation, acquisition of land for housing, and assistance for homeownership opportunities for low- and moderate-income persons, construction of single- or multi-use facilities, streets and public facilities, and economic development projects--especially those sponsored by nonprofit tribal organizations or local development corporations. Funds may not be used for constructing or improving government facilities, for new housing construction (unless carried out by an eligible nonprofit organization), for general government or income expenses, for operating or maintenance expenses, for political activities, or to purchase equipment.

Funding Distribution: Under Section 106 of the Housing and Community Development Act of 1974, one percent of the Title I Community Development Block Grant appropriation, excluding amounts appropriated for use under Section 107, is allocated for grants to Indian tribes. Area Offices of Native American Programs distribute the funds to eligible Indian tribes and Alaska Native Villages on a competitive basis, according to selection criteria set forth in a regulation and an annual Notice of Funding Availability.

Applicant Eligibility: Federally recognized Indian tribes or tribal organizations applying on behalf of such a tribe.

Legal Authority: Title I of the Housing and Community Development Act of 1974, as amended (Public Law 93-383; 88 Stat. 633; 42 U.S.C. 5301 et seq.)

Regulations: 24 CFR part 1003

NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM (NHHBG)

This program is patterned after the Indian Housing Block Grant program, but contains changes to address the housing needs and circumstances of Native Hawaiians. The NHHBG program authorizes HUD to make grants to the State of Hawaii's Department of Hawaiian Home Lands (DHHL) to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. The DHHL must submit for HUD review a one-year and a five-year housing plan containing the goals, mission, and methodology by which DHHL will accomplish its objectives during the grant period. At the end of each grant year, an Annual Performance Report must be submitted describing how the grantee met its stated objectives.

The five categories of eligible activities for providing affordable housing (or related housing services) are:

- Development of additional affordable housing;
- Housing-related services for affordable housing;
- Management services for affordable housing;
- Safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime; and
- Housing activities under model programs designed to carry out the purposes of the Act, if specifically approved by HUD as appropriate.

Funding Distribution: Although the NHHBG program makes reference to a formula distribution, at present there is only one eligible grantee, the DHHL.

Applicant Eligibility: Department of Hawaiian Home Lands.

Legal Authority: Title VIII of NAHASDA, as added by Section 513 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569); and Section 203 of the Omnibus Indian Advancement Act (Public Law 106-568; 42 U.S.C. 4221).

Regulations: 24 CFR part 1006

SECTION 184A NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND (Section 184A)

This program is generally patterned after the Section 184 Indian Housing Loan Guarantee program but contains changes to address the housing needs and circumstances of Native Hawaiians. The purpose of the loan guarantee program is to provide access to sources of private mortgage financing to Native Hawaiian families who could not otherwise acquire housing financing because of the unique legal status of the Hawaiian Home Lands, or as a result of a lack of access to private financial markets. Eligible borrowers include Native Hawaiian families who

are eligible to reside on Hawaiian Home Lands, the DHHL, the Office of Hawaiian Affairs, or private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians. Loans are to be used to construct, acquire, or rehabilitate eligible housing located on the Hawaiian Home Lands.

This guarantee authority is freestanding and has its own guarantee fund. HUD may enter into commitments to guarantee loans for any fiscal year only to the extent amounts have been provided in appropriations acts.

Funding Distribution: Eligible applicants apply for loans directly to lenders, and the federal guarantee is issued after the loan is approved.

Applicant Eligibility: Native Hawaiian families, the DHHL, the Office of Hawaiian Affairs, and private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

Legal Authority: Section 184A of the Housing and Community Development Act of 1992, as added by Section 514 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569); and Section 204 of the Omnibus Indian Advancement Act (Public Law 106-568; 12 U.S.C. 1715z-13b).

Regulations: 24 CFR part 1007

BARRIERS, CHALLENGES AND ACCOMPLISHMENTS

As we prepared for this hearing, we focused on matters and issues that might be of interest to the Committee. There are many factors that can negatively influence housing, community development, and economic development within Indian Country. Grinding poverty, the lack of existing infrastructure that cities and suburban areas inevitably possess and others often take for granted, the processes involved in encumbering trust lands for housing purposes, the long geographic distances to and from transportation centers and markets, and a myriad of other reasons all combine to create the barriers and challenges that make it difficult for the Native American families who live in Indian Country to have better lives.

We cannot and will not ignore these realities; we deal with them every day. But we will allow others to tell those stories, and not focus on a recitation of how difficult things can be. Instead, we'd like to emphasize how we're working with tribes and their tribally designated housing entities to make things better.

For various reasons, housing development on reservations has been viewed by many as a "social program," and not as an engine for economic development. But as we know, one of the leading economic indicators for measuring the Nation's economy is housing. We need to advance our collaboration with tribes, other federal agencies, and the private sector to clearly establish housing development as a key component, a building block, in the creation of sustainable economies on Indian reservations. Over many years we have concentrated on the

development and management of HUD-assisted housing, and we firmly believe that we now need to develop the capacity to expand beyond that. Through the leveraging of federal financial resources with private capital, we can create greater opportunities for housing, new businesses and jobs ... all contributing to the creation of sustainable economies.

The key building blocks that will establish the foundation for developing more sustainable economies are:

- creating stronger institutions
- investing in human capital
- strengthening legal frameworks
- leveraging sources of capital
- fostering economic diversity

When I think about these issues the word "collaboration" comes to mind. NAHASDA's Indian Housing Block Grant (IHBG) funding continues to be the largest source of housing capital on trust land today. However, reliance on IHBG alone to house tribal members without including leverage is counter-productive to a community. We need to continue exploring new ways to combine HUD resources with those of other federal agencies, such as USDA's Rural Development, the Departments of Energy and Commerce, as well as with State housing finance agency programs, such as low-income housing tax credits, HUD HOME funds, New Markets tax credits, Homeownership Vouchers, and private-sector financing through the GSEs --Fannie Mae, Ginnie Mae, and the Federal Home Loan Banks.

We have sought these partnerships to improve financing opportunities for individuals and tribes, and to make housing a key contributor to developing sustainable reservation economies.

HUD and the BIA

Memorandum of Understanding (MOU)

In September of 2004, in a combined effort to increase the homeownership rate in Indian Country, address affordable housing needs and promote mortgage financing, PIH's Assistant Secretary, the Bureau of Indian Affair's (BIA) Assistant Secretary, and the Department of Agriculture's Rural Development Acting Under Secretary signed an MOU to work together, and with tribes and their TDHEs, to provide housing development and related housing assistance to all sectors of the Indian communities, including those at the lowest income level. A major aim of the MOU was to obtain a commitment from the BIA to expedite the production of Title Status Reports, a necessary document for the mortgaging of trust or restricted Indian lands.

On the one-year anniversary of the signing of the MOU, the BIA issued an internal, streamlined TSR processing memorandum. The MOU introduced a title endorsement that eliminates the need for a second certified TSR in a mortgage transaction that takes place in Indian Country. HUD's Office of Native American Programs has been working with area, state and regional BIA realty officers to refine the process to ensure that all lending requirements

under the new policy are being met. Local BIA staff are receptive to recommendations by HUD and lenders on how to simplify their procedures, but challenges remain on implementation and the time it takes for BIA approval.

This initiative has produced a draft procedure to streamline the TSR process and two tribal demonstration projects are in the final planning phase.

Despite these advances, the TSR process is not where we wish it to be. In an effort to reach our common goals, Interior Deputy Associate Secretary Cason and I will be meeting tomorrow in order to determine if there is more we can do together.

Land Assignment Law

In a collaborative effort with tribes to enhance the housing market on reservations, the Office of Native American Programs and the BIA have worked with the Mashantucket Pequot tribe to establish a tribal assignment law. Through the use of a tribal land assignment law, the tribe will be able to issue a land assignment to a tribal member that is not subject to the 50-year statutory limitation on encumbrances. Interior's Solicitor's Office has approved the process and issued an opinion that individual assignments governed by tribal land assignment law do not require BIA approval or recordation. This process will make it possible for tribal members to transfer and/or assign their property interest to their heirs under tribal law. The tribe must create a title plant and recordation process as well as develop assignment laws before obtaining BIA authorization to proceed. ONAP will issue program guidance on the use of land assignments for the Section 184 program in the coming months.

Section 184 Accomplishments

Homeownership and the ability to build equity in one's home is an important component in the development of strong tribal communities for generations to come. Creating homeownership opportunities continues to rank at the top of this Administration's priorities for the American people, and nowhere is this more important than in the Native American community.

We have some positive news to share with you on the Section 184 Indian Housing Loan Guarantee Program. Section 184 activity for the past fiscal year shows that tribes and TDHEs are taking advantage of this program on behalf of eligible families. This is important because moving families into their own homes frees up some subsidized housing units for lower-income families, as well as creating economic opportunities for entire communities.

In FY 2005, we increased the number of loan guarantees from 619 to 634, while dollar volume jumped from $62.3 to $76.8 million in mortgage guarantees respectively. During the first nine months of FY 2006, ONAP's Office of Loan Guarantee approved 897 loans obligating $137.2 million. Loan guarantees through June 26, 2006, totaled 834, for $124.2 million. In total, we have completed more than 3,406 Section 184 loan guarantees, representing over $391.9 million in homeownership investments. The escalating rate of loan obligations (estimated to

reach $180-200 million in this fiscal year) confirms that the Section 184 program is bringing homeownership to more and more tribal members.

We've also worked to expand the Section 184 program to allow tribes to assist their members who want to become homeowners, but who live outside the reservation boundaries. In September of 2004, HUD issued a notice to make this happen. The Seminole Tribe of Florida was the first tribe in the nation to utilize this new policy; they can now assist their tribal members to obtain mortgage guarantees through the entire state of Florida.

Twenty-five more tribes have followed the Seminole's lead and they too can now designate a wider region as their "Indian area"–meaning they can go beyond reservation borders to assist their members. For example, Native American borrowers have accessed the HUD Section 184 in expanded Indian areas within California, Wisconsin, Washington, Colorado, and Arizona. This will provide greater opportunities for banks and other lenders to make mortgage loans to Native Americans. Under the new guidelines, a tribe can submit to HUD documentation that shows a historical connection to an area, or other information that would justify providing tribal members or other Indians that reside in that area with access to the Section 184 program. A tribal ordinance, resolution, certification, or other documentation can be used to memorialize official tribal action. Requests should be submitted to HUD's Office of Native American Programs. We will review the documentation and make a determination within 30 days of a submission.

In addition to the "expanded service area," the Office of Native American Programs has made a number of enhancements to the Section 184 loan guarantee program. These enhancements will make it easier for tribes and individual borrowers to access mortgagee financing. Among the key changes is a new refinancing policy for Mutual Help Homeownership Opportunity Program conveyance transactions and cash-out refinancing for tribally-owned housing built with NAHASDA or tribal dollars.

These are positive changes that will help ensure the Section 184 program continues to play a vital role in the Department's homeownership efforts in the coming years. We encourage all tribes to work with us as we strive to increase the number of Native American families who will realize the dream of owning their own home.

Title VI Accomplishments

Although it has been in existence since NAHASDA became law, the Title VI Tribal Housing Activities Loan Guarantee Fund continues to be underutilized. Those tribes and tribally designated housing entities with no significant audit findings can borrow up to five times their annual Indian Housing Block Grant allocation and use their future IHBG funds as collateral to back up the loan. HUD provides a 95 percent guarantee to a lender in the event of a default through the Title VI program.

Many tribal and Indian housing leaders tell me about how difficult it is to involve the private sector in on-reservation housing activities. In many cases they lack a financial

relationship with local banks. A federal guarantee makes the deals more stable and attractive to private sector banks. The flexible nature of this program makes it possible to finance any NAHASDA-eligible housing or housing-related activity over a period of up to 20 years. Title VI has also proven to be a cost-effective source of gap financing during the early stages of a development project.

During the first nine months of FY 2006, seven loans totaling $5.3 million have been guaranteed; four firm commitments worth $4.9 million have been issued, with closings pending; and seven preliminary letters of acceptance, totaling approximately $14.3 million, have been issued on active projects. Since the first loan closed in FY 2000, $94.8 million in Title VI financing has been leveraged with funding from other sources to produce 1,566 housing units, with a total investment in excess of $135 million. We ask tribes to think about how they can jump-start and enhance their housing programs by the infusion of additional funding obtained through the Title VI program.

Native Hawaiian Program Accomplishments

Native Hawaiian Housing Block Grant (NHHBG) Program

The Department of Hawaiian Home Lands (DHHL) has been an active partner; there are numerous affordable housing activities in process at more than 14 sites. Let me give you three examples. Waiakea 6, a project of 40 single-family homes, will be constructed on a 21-acre site near Hilo. $2 million of FY 2002 NHHBG funds were used for site and infrastructure improvements, while an additional $1.3 million in FY 2002 NHHBG funds is being used to provide technical assistance and low-interest loans for 13 self-help homebuyers in this project. The Lalamilo project is using $2 million of FY 2003 NHHBG funds to leverage $7 million for site and infrastructure improvements for this project's initial phase of 36 single-family homes on the island of Hawaii. Additional FY 2004 NHHBG funds are obligated for other construction activities at this location. On the island of Oahu, $44.4 million in FY 2003 NHHBG funds is being used toward the $21 million infrastructure cost for 326 homes that will be built in the Kaupea project.

Section 184A Native Hawaiian Housing Loan Guarantee Program

The Department of Hawaiian Home Lands (DHHL), a State agency, is our primary program partner. Among their other activities, they are responsible for the allocation of leasehold interests on the Hawaiian Home Lands. In August of 2005, the DHHL closed its first Section 184A transaction, a $1.7 million institutional loan that resulted in the availability of 11 single-family homes for Native Hawaiian families.

In May of 2006, a Section 184A loan agreement was executed between HUD and DHHL to make the 184A guaranteed loan available to individual Native Hawaiian borrowers. HUD is working diligently on processing guidelines that will facilitate full implementation of the Section 184A program. We anticipate that as DHHL develops more housing units, the 184A loan will

provide homebuyers with an attractive alternative to the limited financing options available on the Hawaiian Home Lands.

HUD Training and Technical Assistance

Training and Technical Assistance remains a critical component of all our Native American programs. The IHBG's Training and Technical Assistance set-aside provided the initial training and technical assistance to most grantees, enabling them to function effectively under NAHASDA, and we continue to provide that assistance. Functional and programmatic training topics, such as "NAHASDA Essentials," "Financial Management," "Environmental Review," "Procurement," and many others are provided around the country on an on-going basis. Specialized training on such diverse topics as "Gang Violence," "Establishing Boys & Girls Clubs," and "Preventing Mold and Moisture," is also available. Training and outreach is conducted for the Section 184 and Title VI Loan Guarantee programs as well. The ICDBG program has a training course that has made an impact on the quality of applications received for this competitive program, and we are in the process of establishing training for the Native Hawaiian programs.

On-site technical assistance is made available to IHBG grantees at their request. Technical assistance through other means, such as the DVD providing instruction to housing staff and residents on mold prevention, is produced and distributed to tribes and housing entities, as well as to other interested parties. Workshops have also been developed to examine such specific topics as the possibilities of developing "green" housing that is both affordable and energy efficient.

CURRENT ISSUES

We would now like to discuss a number of issues that we believe are of interest to the Committee, including the consultations recently completed on the Indian Housing Plan, Annual Performance Report and Annual Status and Evaluation Report, along with information on our progress toward completing the formula allocation negotiated rulemaking, and our plans for the next one.

Last year we also held our National Indian Housing Summit, which was preceded by eight regional housing summits and consultation sessions throughout Indian Country, where we asked tribal and TDHE officials and other interested parties to give us their priorities on how to make the programs we manage work better.

Finally, the Committee has asked us to comment on decennial census data and related issues, and on a HUD Inspector General Report on the implementation of NAHASDA that was issued in 2001.

CONSULTATION ON INDIAN HOUSING PLAN, ANNUAL PERFORMANCE REPORT AND ANNUAL STATUS AND EVALUATION REPORT

Following eight consultation sessions throughout the country to discuss and collect information and recommendations for modifications to the key planning and reporting documents for ONAP's Native American programs --- the Indian Housing Plan, the Annual Performance Report, and the Annual Status and Evaluation Report --- a workgroup was formed. The workgroup is made up of 12 tribal housing professionals, two each from every ONAP region. ONAP field and headquarters staff also participate in the workgroup.

The workgroup met for the first time on June 15, 2005, at the National American Indian Housing Council's Annual Convention. Subsequently, the workgroup met frequently by conference calls to review the accumulated recommendations and develop revised draft forms. The workgroup also met in Tacoma, Washington on August 30-31, 2005, and presented their recommended revised forms at ONAP's National Housing Summit on September 20-22, 2005, in Reno, Nevada. The workgroup answered questions and documented recommendations from those attending the presentation. Using feedback from this presentation, the workgroup is finalizing the draft forms and they will soon begin the clearance and approval process.

FORMULA ALLOCATION NEGOTIATED RULEMAKING

In January of 2006, we held our final Formula Allocation Negotiated Rulemaking Committee meeting. The formula, which was created under NAHASDA and fleshed out in its implementing regulations, required revisiting and updating. After extended deliberations, the Committee brought forward over 20 proposals, and reached consensus on about half. It was an arduous and challenging process to, and I commend all Committee members, tribal leaders and members of the public for their contributions and dedication to the process.

On February 25, 2005, HUD published a proposed rule for public comment in the *Federal Register*. During the public comment period, a total of 49 comments were received. We then reconvened the Committee for a final meeting to discuss the public comments received on the proposed rule. The meeting provided the opportunity for the Committee to consider changes to the proposed rule based on the public comments. After this meeting concluded, a drafting work group was established to finalize the preamble to the final regulation implementing the Committee's changes. Once the drafting work group completes this task, the Department will publish the final rule.

NEXT NEGOTIATED RULEMAKING

Let me also state for the record that HUD is committed to holding the next negotiated rulemaking as expeditiously as staffing and resources will allow. On February 22, 2005, we published a Notice in the *Federal Register* announcing HUD's intent to establish such a Committee, outlining the scope of what the Committee would cover, and requesting nominations to this Negotiated Rulemaking Committee. On March 29, 2006, we published the list of the

Committee members selected. We anticipate that the new Negotiated Rulemaking Committee will convene its first meeting sometime during the last quarter of calendar year 2006.

REGIONAL HOUSING SUMMITS AND THE NATIONAL HOUSING SUMMIT

As I mentioned earlier, in 2004 we held six regional housing summits throughout Indian Country. We know that many, if not most of the issues related to affordable housing are local issues that can best be solved locally in the spirit of self-determination. We were there to support the efforts of tribes and housing entities and to ensure that the appropriate stakeholders: financial institutions, lenders, bank regulators, federal agencies and tribal leaders were represented at the summits. Overall, we had quite enthusiastic audiences and good attendance, with over 800 participants. Through open discussions and collaboration, each summit produced strategies and actions for:

- Accessing more capital through leveraging;
- Strategic economic and community planning;
- TDHE capacity building; and
- Housing development.

The results of all six summits and a final report are available on ONAP's Code Talk webpage. The National Housing Summit, which was designed to build upon the issues raised and lessons learned at the regional summits, was held last September in Reno, Nevada. I would like to thank the over 800 participants for making the summit a success. The details of the summit are also available on our CODETALK website; please visit it for additional information.

CENSUS AND DATA ISSUES

HUD's Decision to Use Multi-Race Census Data in the IHBG Formula

Many tribes have questioned why the Department chose to use "multi-race" Census data to allocate Indian Housing Block Grant funds under the Need component of the formula.

In order to put this issue into perspective, it is important to understand the underlying policy that supports the IHBG formula. The two main components of the formula are "Formula Current Assisted Stock (FCAS)" and "Need." "Current Assisted Stock (CAS)" are those units developed under an Annual Contributions Contract between an Indian Housing Authority and HUD, with funds appropriated pursuant to the United States Housing Act of 1937 (1937 Act). FCAS are CAS units plus all units in the development pipeline as of the effective date of NAHASDA. The amount of funding for each FCAS unit is calculated by determining the operating subsidy and modernization allocation for each tribe that owns or operates 1937 Act housing units. The 1937 Act provided all funds for Indian housing development and modernization from 1962 until 1998. The reason for using this data is to provide funding to keep all dwelling units developed during those decades in good condition, so they remain viable as housing for Native American families. FCAS for all tribes is summed nationally, as that portion of the formula is a required priority. FCAS is then subtracted from the total funds appropriated

under the IHBG formula and the remaining amount is what is left for distribution under the Need component of the formula. FCAS nationally accounts for approximately 46 percent of the total annual IHBG formula.

The Need component of the IHBG formula is calculated using seven weighted factors, all of which are based on the Native American families living in the Indian tribe's Formula Area: those who pay more than 50 percent of their income for housing; households overcrowded, or without kitchens or plumbing, housing shortage, households with incomes between 30–50 percent of median income; households between 50-80 percent of median; and number of AIAN persons. All this information comes from Census-derived data.

It is important to remember that all Census data from respondents is "self-reported." When 2000 Census data became available, the Department carefully considered which measure of the number of American Indian/Alaska Native (AIAN) persons should be used to compute the IHBG allocation. In 1990, the Census only permitted respondents to identify themselves as members of a single race. However, the 2000 Census allowed respondents to identify themselves in multiple racial categories.

An AIAN person who checks the block for "American Indian or Alaska Native" is asked to print the name of the enrolled or principal tribe. This does not preclude that person from indicating that they also identify themselves with another race. In addition, because they can list the principal tribe, it does not mean that they are enrolled members of that tribe. The 1990 Census data, the 2000 "AIAN alone" Census data, and the 2000 "AIAN alone and in combination with other racial groups" Census data all rely on self-identification.

NAHASDA requires that IHBG funds be distributed to Indian tribes for affordable housing activities that serve Indian families. The term "Indian" (which includes an Alaska Native) is defined at Section 4(9) of NAHASDA, and specifically refers to a person who is a member of an Indian tribe. Section 4(12) of NAHASDA defines "Indian Tribe" to be any federally recognized tribe and a small subset of state recognized tribes with certain characteristics. Section 302(b) of NAHASDA requires that the IHBG allocation formula be based on factors that reflect the housing needs of the Indian tribes and the Indian areas of the tribes. NAHASDA does not prescribe how such factors are to be derived, characterized, or defined, as long as they can be measured objectively.

There has been much discussion throughout Indian Country about the 2000 Census and how it is being used to calculate the Need component in the IHBG formula. Many tribes have taken firm positions on this issue. The increase in the number of people who self-identify as AIAN -- regardless of whether they are AIAN alone or AIAN in combination with other racial groups -- is used for very limited purposes in the IHBG formula. The fact that there are now approximately 4.1 million AIAN persons has no direct effect on the IHBG formula calculations unless those persons are in an Indian tribe's Formula Area, as defined in NAHASDA. As a practical matter, this means that all the AIAN persons in Chicago, Los Angeles, New York City, Albuquerque and Gallup, New Mexico, and in Winslow, Arizona are not counted for IHBG formula purposes.

This is an important point, so let me reiterate it. These AIAN persons are not counted for IHBG formula purposes. They would only be counted if they reside in a tribe's IHBG Formula Area. These IHBG Formula Areas were originally determined using the regulations developed by the initial negotiated rulemaking committee that met in 1997-1998 to develop the NAHASDA regulations.

The Formula Area for an Indian tribe is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or tribally designated housing entity has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities (including Indian tribes) of the area, including but not limited to: a reservation, trust land, Alaska Native Village Statistical Area, Alaska Native Claims Settlement Act Corporation Service Area, Department of the Interior Near-Reservation Service Area, former Indian Reservation Areas in Oklahoma as defined by the Census as Tribal Jurisdictional Statistical Areas, Congressionally Mandated Service Areas, and State legislatively defined Tribal Areas as defined by the Census as Tribal Designated Statistical Areas.

For additional areas beyond those identified, the Indian tribe must submit the area that it wishes to include in its Formula Area and what previous and planned investment it has made in the area. Also, it is important to note that in some cases, the population data for an Indian tribe within its Formula Area is greater than its tribal enrollment. In general, for those cases, to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. An Indian tribe may receive an allocation based on more than twice its total enrollment if it can show that it is providing housing assistance to substantially more non-member Indians and Alaska Natives who are members of another Federally-recognized Indian tribe than it is to its own members.

HUD is not aware of any tribe that has a 100 percent tribal blood quantum requirement for membership; many tribal members are of mixed race. As a matter of policy, the Department would not deny any person the ability to report his or her heritage. If the racial category "AIAN only" were used, a significant number of tribal members who currently are eligible would become ineligible to participate in HUD's Native American programs.

Therefore, the Department determined that the 2000 Census category "AIAN alone and in combination with other racial groups" constitutes the best available data to accomplish the statutory purposes of the IHBG program. HUD concluded that it is the most inclusive definition of AIAN persons and ensures that no such persons are excluded.

Some tribes contend that the Department did not follow its Government-to-Government Tribal Consultation Policy when it implemented the decision to use "AIAN alone and in combination with other racial groups."

The 2000 Census data related to "AIAN alone" and "AIAN in combination with other racial groups" first became available to HUD in September of 2003. We made a policy decision

to use it to calculate the FY 2004 IHBG Formula estimates that were issued on September 5, 2003. On September 22-25, 2003, we brought this issue to the Formula Allocation Negotiated Rulemaking Committee. They could not reach consensus to change this policy, nor could they reach consensus to support it. It is important to note that the original Negotiated Rulemaking Committee that met from 1997 to 1998 decided on the use of Census data as the most comprehensive data set, and the Formula Allocation Negotiated Rulemaking Committee could not agree to use any other data set.

The Department followed its Government-to-Government Tribal Consultation Policy by seeking guidance on this issue from the NAHASDA Formula Allocation Negotiated Rulemaking Committee charged with reviewing and possibly revising the IHBG regulations. A variety of alternatives were considered, including averaging "AIAN alone" with "AIAN in combination with other racial groups." The Committee did not reach consensus on any alternative. However, it is significant that the Committee did not recommend a change to current policy. The discussions with the Negotiated Rulemaking Committee were an important factor in the decision to retain what the Department believes to be the best available methodology. HUD also believes the use of "AIAN alone and in combination with other racial groups" respects the Congressional Findings of NAHASDA by honoring the government-to-government relationship that enables each tribe to establish its own membership criteria.

In the FY 2006 HUD Appropriations Act, we were directed to calculate the Need portion of the IHBG formula using both single-race and multi-race data, and to award each grant recipient the higher of the two amounts. HUD has followed this directive and we will continue to do what Congress requires on this issue.

HUD INSPECTOR GENERAL REPORT ON IMPLEMENTATION OF NAHASDA

The Committee also asked the Department to comment on a 2001 HUD Office of Inspector General Report entitled "Nationwide Audit of Implementation of the Native American Housing Assistance and Self-Determination Act of 1996" (2001-SE-107-0002, issued August 2, 2001) (hereinafter IG Report).

The IG Report found that NAHASDA grant recipients have generally implemented their Indian Housing Plans successfully, and that they possessed the administrative capacity to carry out their proposed affordable housing activities. According to the IG Report, some tribes and TDHEs were over- or under-funded because HUD did not audit every grantee's formula Current Assisted Stock (FCAS) computations to determine if tribal reporting on the Formula Response Form was accurate.

Each year, a Formula Response Form that provides information on the data to be used to calculate the IHBG formula is sent to every recipient. Recipients are required to review this data and provide corrections to the formula data by September 15th of each year. Remote and periodic on-site monitoring occurs to verify that the data and tribal responses are accurate. Based on the data that is submitted, the Department determines if the tribe has been funded properly. If the tribe has been over-funded, repayments are required. In addition, the Department reviews the

status of each Mutual Help project to determine if conveyance should have occurred and if the units should be removed from the formula. Staff also monitors the unit count for each recipient as part of the Department's on-site review. In this way, the Department is taking steps to ensure that the allocations are fair and accurate.

Another finding asserted that some grantees were not in compliance with federal fair housing requirements, and requested that HUD seek clarification on this issue with its Office of General Counsel. We have done so, and in a legal opinion entitled "Limiting Housing to Indian Families or Tribal Members," issued on June 4, 2001, the Deputy General Counsel for Housing Finance and Operations outlined when and how federal fair housing laws apply when IHBG funds are combined or leveraged with other funds. That legal opinion was incorporated into a PIH Notice issued on June 21, 2005.

The IG Report also states that tribes and TDHEs need to be better educated on NAHASDA's requirements, such as the eligible affordable housing activities, which policies and procedures are required, and accounting for program income. The Department responded to this finding by implementing a series of training sessions designed to educate grantees on all aspects of the IHBG program, including compliance with the Single Audit Act and Generally Accepted Accounting Principles, which was also covered in the IG Report. In addition, written guidance bulletins and notices were developed on several topics related to NAHASDA to assist tribes and their TDHEs.

The IG Report contained nine findings with 19 recommendations. All findings were discussed with the IG, management decisions were reached, and all findings were closed. With an additional five years of program operations to draw from, the Department is pleased with the progress made by the majority of housing entities in implementing NAHASDA. The Office of Native American Programs continues a regular schedule of monitoring visits, adjusting its priorities to meet varying needs and requests.

CONCLUSION

This concludes my prepared remarks. I would be happy to answer any questions you may have.

Testimony of Pattye Green
Senior Business Manager, Fannie Mae
Senate Committee on Indian Affairs
June 28, 2006

Thank you, Chairman McCain, Ranking Member Dorgan, and Members of the Committee.

My name is Pattye Green and I am the Senior Business Manager for Rural/Native American Initiatives with Fannie Mae. In that role I work across our company's business lines to develop market strategies that enable us to make investments that have a positive impact on the affordable housing market throughout Indian Country. I have over 28 years of mortgage lending experience and, prior to coming to Fannie Mae, was the director of the Home Finance Department for the Housing Authority of the Choctaw Nation of Oklahoma. And, I am a Choctaw Tribal Member myself.

I want to thank you for inviting me to testify on the state of affordable housing on tribal lands and to commend the members of this Committee for your leadership on this issue. Your concern and attention has been and will continue to be critical to the success of public and private sector efforts to expand homeownership opportunities in the Native American community.

I am pleased to be here today to discuss the barriers to capital access that we see on tribal lands, and to share with you the steps that Fannie Mae is taking to help overcome those barriers and expand homeownership and affordable rental housing opportunities in tribal communities.

Fannie Mae's Congressionally-granted mission is to expand homeownership, with a special focus on helping underserved Americans. Finding ways to create affordable housing opportunities for Native American families living on tribal lands is one of the toughest challenges we face.

Many American Indians live on restricted land that is owned by the federal government and held in trust for their tribe. They experience chronic housing problems such as overcrowding, substandard conditions, inadequate infrastructure and a lack of availability of affordable financing. According to the National American Indian Housing Council, nearly 33 percent of homes on tribal lands—more than six times the national average—are overcrowded, less than half of the homes in Indian Country are connected to public sewer systems, and 16 percent of these homes lack complete indoor plumbing. Almost half of Indian households pay more than 30 percent of their income for housing expenses, compared to 23 percent of all households in the U.S.

The homeownership rate on reservations is 41 percent, well below the national average of approximately 68 percent. An absence of conventional mortgage lending is a major factor behind the gap.

There are a number of explanations for this lending gap. Historically, tribes did not have adequate foreclosure laws in place. Consequently, primary lenders did not offer conventional mortgages on trust land because they could not sell the loans in the secondary market.

As a result, American Indians interested in purchasing homes on tribal land had few options. They could borrow through federal mortgage programs that made only a limited number of loans per year, or they could turn to high-cost or predatory lenders. Thanks to several dedicated housing partners, American Indians on trust lands are now entering a new era in which they can obtain traditional mortgages to build or purchase their own homes.

To help meet this challenge, Fannie Mae is working with Congress, Native American tribes, the Bureau of Indian Affairs, the Department of Housing and Urban Development, the Department of Agriculture, mortgage lenders, and other housing leaders to put private capital work on Tribal Lands, creating safer, decent and affordable housing opportunities for more Native Americans.

Our goals are simple: We want to increase access to homeownership, alleviate the critical need for new affordable housing units on tribal lands, and play a meaningful role in addressing the systemic barriers to housing and community development that exist today on tribal lands. In order to meet these goals, our challenge is to build partnerships that will help make our current system of housing and mortgage finance as ubiquitous on tribal lands as it is elsewhere throughout the United States.

Overcoming Barriers

I would like to share with you some of the barriers Fannie Mae has experienced while working on tribal housing issues, as well as what we are doing to try and meet these challenges.

Economic and Infrastructure Barriers

The most stubborn and overwhelming barrier to capital access in Indian Country is the lack of economic opportunity. Poverty rates are 26 percent for Native Americans, over double the national average of 12 percent. In Navajo country, 43 percent of the people live below the poverty level; the per capita income is $7,300 and the unemployment rate reaches almost 25 percent.[1]

And in many tribal communities the economic base is negligible, leading to substandard infrastructure. Many Native American reservations and tribally designated

[1] *According to 2000 Census of Population and Housing.*

lands suffer from a limited housing stock and a lack of road and utility infrastructure to support new housing.

In light of these severe socio-economic conditions, Fannie Mae is taking a three pronged approach to expanding affordable housing on Tribal Lands: First, by developing the right mortgage products that make it easier for our lender partners to do business on tribal lands; second, by working with developers and tribal housing authorities to address the critical shortage of affordable housing units that currently exists; and finally to develop broad partnerships throughout the housing finance and tribal communities to focus on the long term systemic barriers to housing and community development that exist in Indian Country today.

Increasing Homeownership:

Against this backdrop of extreme poverty, it is not surprising that the Native American homeownership rate lags far behind the national rate and that Native Americans are pessimistic about the lending process. A 2000 survey by the Treasury Department found that 65 percent of tribal members viewed conventional home mortgages as "difficult" or "very difficult" to obtain.

Fannie Mae is working with our lender partners to tailor lending products to meet the needs of tribal members who lack the resources to qualify for traditional financing. In 1999 we launched our Native American Conventional Lending Initiative (NACLI), designed to make conventional lending possible for Native Americans on tribal trust or otherwise restricted lands. Through this initiative, the full range of our low down payment mortgage product options, as well as specific accommodations responsive to the unique circumstances of Native American borrowers, are available to lenders working on tribal lands.

Fannie Mae has also customized its suite of Community Lending mortgage products to respond to the unique needs of Native American communities. Our Community Lending products are designed to help borrowers overcome the two primary barriers to homeownership — lack of down payment funds and qualifying income -- through lower cash requirements for down payment and closing, reduced qualifying income requirements, and higher acceptable debt-to-income and loan-to-value ratios than required for traditional conventional mortgages. We have worked with tribes to add unique features to this product line, including tribally-provided homebuyer education, down payment assistance programs and intervention programs for borrowers who get into difficulty.

We currently have relationships with 112 lenders to make loans to Native Americans on tribal lands. Some of our major partners include Countrywide Home Loans, First Mortgage Company, and Washington Mutual.

Additionally, Fannie Mae uses automated underwriting to bring our most flexible underwriting options to Indian Country. The Chickasaw Nation and Choctaw Nation of

Oklahoma and the Aleutian Housing Authority in Alaska have developed the capacity, using our Desktop Originator technology, to act as a loan origination source, expanding availability of low down payment loans to tribal members. Since 2001, Fannie Mae has helped our lender partners serve over 8,535 Native American families by providing more than $839 million in affordable mortgage financing on Tribal Lands.

Expanding the Supply of Affordable Housing:

Perhaps the most serious challenge to affordable housing in the near term is the critical shortage of affordable housing units. According to the National American Indian Housing Council, there is an immediate shortage of 200,000 housing units on Tribal Lands in the United States. The Navajo Housing Authority (NHA) estimates that it alone needs 21,000 new housing units to satisfy the unmet needs of all Navajo families – including 12,000 new homes for purchase. To make this situation even more critical, Census figures indicate the tribal population for most of our larger tribes is relatively young, with the largest demographic groups being under 22 years of age. In other words, as the large segment of the Native American population grows older, the current need for affordable housing units will only increase.

As is the case with many of our larger Native American Reservations, many of the Navajo families live with extended families in overcrowded conditions, and a majority of families are unable to qualify for mortgage loans due to lack of credit, credit problems, or lack of finances to make down payments. Consequently, our focus needs to not only be on providing opportunities for affordable homeownership, but also on creating more opportunities for affordable rental housing.

Fannie Mae has worked closely with tribes and other housing partners to support both the construction of new units and rehabilitation of existing units through investments in low-income housing tax credit investments (LIHTC), collateralized revenue bonds and HUD guaranteed Native American Housing Assistance and Self Determination Act (NAHASDA) Title VI loans. We have also begun to provide Tribal Housing Authorities with additional financing via our Community Lending business channel to help bridge funding gaps during the construction phase of their developments.

An excellent example of how the private sector can work with tribal governments to increase the supply of affordable housing can be found on the Standing Rock Reservation in North and South Dakota. Working together with Fannie Mae and Raymond James, the Standing Rock Housing Authority has effectively used tribal housing funds and the Low Income Housing Tax Credit program to build and rehabilitate 248 units of affordable rental housing in the past 5 years.

Nationwide, Fannie Mae has invested over $160 million in Low Income Housing Tax Credits, over $51 million in HUD Title VI loans, and $1.5 million in additional financing to support the construction and rehabilitation of units on Tribal Lands since 2001.

By supporting the successful efforts of tribes such as the Standing Rock Sioux and helping to share that technical expertise and knowledge with other Tribal Housing Authorities, we are committed to increasing these investments to further address the critical shortage of affordable housing units on tribal lands throughout the country.

Legal and Regulatory Barriers

One of the single greatest obstacles to creating more affordable housing opportunities in Indian Country is the lack of a well developed formal property law and recordation system that allows individual tribes and their members to fully access and utilize the capital from their property assets.

Noted Third World Economist Hernando De Soto writes that the formal property system in countries such as the United States works by processing "assets into capital by describing and organizing the most economically and socially useful aspects about assets, preserving this information in a recording system—as insertions in a written ledger or a blip on a computer disk—and then embodying it in a title." De Soto further states that "A set of detailed and precise legal rules governs this entire process. Formal property records and titles thus represent our shared concept of what is economically meaningful about any asset. They capture and organize all the relevant information required to conceptualize the potential value of an asset and so allow us to control it."

While many of us may take this formal property system for granted in the United States, it does not currently exist on most Tribal Lands.

In order to develop a better formal property system on Tribal Lands, we first need to support the development of a formal property law system for each tribe that takes into consideration the unique nature of the Tribal land that is held in trust for them by the federal government.

Trust land is inalienable, being subject to transfer restrictions imposed by Indian treaties, Acts of Congress and proclamations of the Secretary of the Interior, and is generally subject to the jurisdiction and laws of the tribe, which is protected by sovereign immunity. Tribal sovereignty generally entails the right to govern, adjudicate disputes, and be immune from lawsuits. While some tribes have fully developed commercial codes, others maintain a tribal council or executive body as a legal enforcement mechanism, and some have no court system at all. As a result many lenders have concerns about the enforceability of contractual obligations and of the legal remedies available, and so find it difficult to provide capital in the face of such legal uncertainty.

Even for the willing lenders, the legal environment creates many additional hurdles. For example, there is a very limited market from which lenders can obtain data for the purposes of determining property values, and the restrictions against alienation further diminish market values. In addition, the making of a home loan on tribal land generally requires the tribe to be a party to the transaction and contracts related to the property that require the tribe to be a party are not enforceable unless the Federal Bureau

of Indian Affairs (BIA) approves the contract. The BIA, as administrator of trust lands, also has to provide title status reports on land covered under any mortgage.

Addressing the legal issues such as tribal sovereignty and tribal court jurisdiction is a prerequisite for increasing the flow of capital to tribal lands. But it is not an easy task, since each tribe is sovereign and acts independently.

Tribal governments have recognized this and have taken steps to clarify tribal sovereignty and sovereign immunity, particularly regarding business and housing development, but resolving this issue requires partnership from the private and public sectors. Fannie Mae has worked with HUD, the USDA and Treasury to support tribes in creating standardized documents and model legal ordinances to support government guaranteed and conventional mortgage activity. It is important to note that Fannie Mae no longer requires tribes to make limited waivers of their sovereign immunity for mortgage lending transactions and we also consent to tribal court jurisdiction. Additionally, we have approved the use of cost-based valuations for homes on tribal trust lands to help our lenders better determine market values.

We will continue to look for other modifications to our policies that will make it easier for our lender partners to serve the Native American community. We recognize the importance of supporting the ongoing evolution of each tribal government's legal framework and will continue to support these efforts.

Of equal importance are the regulatory barriers that pertain to the current title search and land recordation process for Tribal Lands.

If you are interested in buying a parcel of land in the United States, there is a relatively easy process that allows you to determine whether or not there is a clear title to that property. It is also relatively easy to obtain an accurate description of the property's boundaries, ownership interests, easements, restrictions, and any rights of way. This information is critical to any property transaction and lies at the foundation of how our economy functions.

On most tribal lands, obtaining this information is, at best, a difficult and complicated process. At worst, it can be impossible. In either case, it is rarely certain. In order to leverage the inherent value in a piece of property, the private sector needs to have certainty in knowing that the recording and descriptions of property on tribal lands are recorded and valid. Consequently, the establishment of a formal property system that guarantees this certainty is essential to future housing and economic growth.

Some tribes are already working to address this situation – with progress being made by the Saginaw Chippewa and Salish Kootenai Tribes in Michigan and Montana. Helping other tribes learn from these efforts will be a Fannie Mae priority in the years ahead. In fact, today, in Albuquerque, New Mexico, we are meeting with tribal leaders, representatives from HUD, the Bureau of Indian Affairs, the National Congress of American Indians, the National American Indian Housing Council and other leaders from

the non-profit, insurance and lender communities to begin developing a strategy to help more Native American Tribes address this critical issue.

Educational Barriers

Finally, financial experience poses a barrier to capital access for Native Americans. Many Native Americans do not have banking relationships, and in many Native American economies, financial transactions have long been conducted in cash. As a result, many Native Americans have little regular familiarity with banking, credit reporting, and the loan qualification process and standards. And unsurprisingly, they have difficulty obtaining credit through traditional means. In 2002, the conventional loan denial rate for Native Americans borrowers was 23 percent, the second highest among ethnic groups after African-Americans (26 percent).

This lack of experience and familiarity with bank practices and products also leaves many Native communities vulnerable to unscrupulous financial practices that undermine communities' efforts to build financial assets. In a 2003 survey by the National American Indian Housing Council, 53 percent of respondents believed that lenders discriminated based on race and identified predatory lending in their tribal areas as a serious concern.

Fannie Mae is committed to supporting local home buyer education initiatives and making available our Home Counselor Online software to tribal housing authorities and non-profit service providers. Additionally, we are supporting the efforts of the National American Indian Housing Council, First Nations Oweesta Corporation, and the Native Financial Education Coalition to increase financial literacy for families throughout Indian Country.

Native American borrowers also need to know how to deal with blemished credit when they enter the mortgage process. One of the products that Fannie Mae has tailored for lenders to help those with impaired credit is our Expanded Approval mortgage product with the Timely Payment Rewards feature. This product helps borrowers obtain affordable housing finance, while simultaneously helping to repair their credit. With this mortgage, a borrower who makes 24 on-time mortgage payments is eligible for up to a 1 percent rate reduction.

Fannie Mae's Long Term Commitment to Native American Borrowers and Communities

Lastly, Mr. Chairman, I would like to briefly mention our own efforts to institutionalize our commitment to Native American housing issues. In January of this year, Fannie Mae created a new business unit that focuses on addressing the toughest housing challenges in our distressed urban areas, rural communities, AND Tribal Lands. In addition to supporting our business units as they seek to make investments in these areas, we are also developing targeted, place-based strategies to create long term solutions that are both transformative and scalable. Ultimately, our goal is not just to

make investments in the short term, but also to play a meaningful role in transforming these distressed areas into healthy and vibrant markets, where access to private capital is indistinguishable from other more established areas of the United States.

One of the best examples of this type of place-based strategy has been on the Blackfeet Reservation in Montana, where Fannie Mae's partnership with Tribal Housing leaders seeks not only to make additional housing investments in the short term, but also to develop long term, institutionalized affordable housing solutions.

One of the goals of our partnership with the Blackfeet has been to help their Tribal Housing Authority maximize the leveraging capacity of their existing allocation of federal housing funds. In 2001, for instance, the Blackfeet spent over $25,000 per unit of their tribal housing funds to construct their first Low Income Housing Tax Credit project. Last year, by leveraging additional financing from USDA, the Federal Home Loan Bank and Fannie Mae, they spent less than $5,000 per unit of their tribal housing funds on LIHTC projects.

With the funding saved from leveraging outside resources, the tribe was able to use their remaining tribal housing funds to construct a Seniors Center for Tribal Elders and address other unmet housing and community development needs.

By developing a place based focus, we believe that we can learn from our experiences with tribes such as the Blackfeet to help create similar affordable housing solutions with other tribes throughout the country.

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I hope that with these commitments, Fannie Mae has begun to make progress in expanding homeownership for Native Americans, but it is important to recognize that we have so much more to do and we will continue to listen closely to Indian Country leaders to build long-term partnerships and address the tough housing and economic challenges facing Native American communities today.

I want to thank Chairman McCain, Ranking Member Dorgan, and the Members of the Committee for their leadership and their commitment to expanding homeownership opportunities for Native Americans. You have been champions of developing housing in Indian country and supporting tribal members' efforts to revitalize their communities. We look forward to working with the Committee to continue making progress.

Thank you, and I would be happy to answer any questions.

PATTYE GREEN

Pattye has been with Fannie Mae for 3 years as the HCD Senior Business Manager for Rural/Native American Initiatives. In that role Pattye works across Fannie Mae's business lines to develop market strategies that enable them to make investments that have a positive impact on the affordable housing market throughout Rural and Indian Country. She also manages the partnership with the National American Indian Housing Council (NAIHC) and works with tribal governments, the Congressional Native American Caucus, the Senate Indian Affairs Committee, HUD, and the Bureau of Indian Affairs to streamline and simplify the homeownership process for Native Americans. In May 2004, Pattye testified before the House Financial Services Committee at the first-ever Congressional hearing on Native Lands, where she highlighted Fannie Mae's accomplishments in Native American Lending Additionally she addressed the need for more homeownership opportunities for Native American borrowers and communities by building a stronger lender base to educate lenders about the unique characteristics of lending to tribal communities; teaching tribes how to leverage federal resources to support the production of additional affordable housing units; and developing additional products appropriately tailored to the specific needs of each tribe.

PAST EXPERIENCE: Prior to joining Fannie Mae, Pattye spent nine years with the Choctaw Nation Tribe of Oklahoma (for which she is a member) as program director of the home loan finance department. In this position, she developed and implemented loan programs totaling $51 million; negotiated with private lenders and mortgage companies to develop new loan programs for Native American lending; and participated in creating needed changes to the Native American Housing and Self-Determination Act (NAHASDA) through legislative committee meetings impacting Native American Housing. Prior to her employment with the Tribe, Pattye spent 17 years in the mortgage banking business, including stints as an assistant vice president, mortgage lender, and CRA and compliance officer.

Throughout her career, Pattye has attended and/or spoken at many conferences and meetings to discuss the development of mortgage loan programs for Native Americans, and has traveled the United States promoting them.

EDUCATION: Attended mortgage lending-affiliated classes and seminars, attended the National School of Real Estate Finance provided by Southern Methodist University and attended various business administration courses including Leadership Management, Loss Mitigation, and The National Development Council Housing Finance Training Program.

Experience	1998–2003	Choctaw Nation Housing Authority	Hugo, OK

Program Director

- Develop and implement loan programs totaling $51 million.
- Supervise loan personnel in day-to-day operations.

- Create and monitor policies and procedures.
- Negotiate with private lenders and mortgage companies to develop new loan programs for Native American lending.
- Participated in creating necessary changes to the Native American Housing and Self-Determination Act (NAHASDA) through legislative committee meetings, which would impact Native American Housing.
- Speak at various conventions and meetings about creating loan programs in Native American Country.
- Travel over the United States promoting the loan programs to Choctaw Tribal Members.
- Tribal Member of the Choctaw Nation of Oklahoma

1996–1998 Southern Okla. Closing Service Durant, OK

President

- Manage day-to-day operations.
- Cleared and title problems and prepared all real estate closing documents.
- Received an abstractor and title insurance license.

1994–1996 Choctaw Nation of Okla. Durant, OK

Loan Specialist

- Qualified and prepared all necessary documents for closing of loans.
- Presented all applications to the Board of Directors.
- Collected delinquent debts.
- Attended various seminars including tribal law.

1987-1994 First National Bank Ardmore, OK

Asst. Vice President/Mortgage Loan Officer

- Performed loan officer duties including qualifying customer and preparing all documentation for real estate closings.
- Sold loans directly to Fannie Mae and Freddie Mac. Attended originating and underwriting courses.
- Managed the Compliance, CRA, and OREO Departments.
- Member of the Executive loan committee that monitored the day-to-day loan operations of the bank.
- Attended various banking courses.

1985-1987 First National Bank Prague, OK

Loan Secretary

- Prepared loan documentation for presentation to loan committee and closing.
- Data Processing for all new loans.
- Attended several seminars and courses including loan officer training.
- Filled in as Proof Operator when needed.

1981-1985 Citizens State Bank Maud, OK

Loan Secretary/Proof Operator

- Prepared commercial and personal loan documentation for loan closings.
- Typed all letters and memos for loan officers.
- Performed Proof Operator duties.
- Filled in as bookkeeper when necessary.
- Attended various banking courses and seminars including Loss Mitigation courses.

1977-1981 Farmers and Merchants Bank Tecumseh, OK

Loan Teller/Proof Operator

- Processed all new loans. Received all loan payments. Processed all advances on open loans.
- Trained tellers.
- Performed Proof Operator duties.
- Attended various banking courses and seminars

PREPARED STATEMENT OF MARTY SHURAVLOFF, CHAIRMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Good morning Chairman McCain, Vice Chairman Dorgan, Senator Murkowski, and distinguished members of the Senate Committee on Indian Affairs. My name is Marty Shuravloff and I am honored to appear before you today to discuss matters related to the delivery of safe, decent, and affordable homes to Native people from across our great Nation.

I am also honored to have been elected last month to serve as chairman of the National American Indian Housing Council [NAIHC] the oldest and largest Indian housing organization in the Nation, representing the housing interests of more than 460 tribes. I am an enrolled member of the Leisnol Village, serve my people as executive director of the Kodiak Island Housing Authority, and serve all Alaskans by holding a variety of appointed posts such as with the Alaska Housing Finance Corporation.

Begun in 1974, 4 years after President Nixon issued his now-famous Special Message to Congress on Indian Affairs, the NAIHC is the major capacity building organization for Indian tribes and tribally designated housing entities [TDHEs] by providing guidance, technical assistance, training and related capacity-building services. The NAIHC trains thousands of Indian housing and other staff per year, offering most of its training without charging a fee. The NAIHC provides a full range of programs and services such as technical assistance to TDHEs and Indian tribes that include onsite visits, telephone and e-mail assistance, structured training classes for regional associations and housing Boards of Commissioners, and topic-specific training courses at both its Annual Convention and Legal Symposium. These tailored training courses include a new crime prevention and safety initiative launched in April 2005.

NAIHC also uses modem technology to save tribes time and travel costs by offering training by both web cast and video. For training courses and services that require travel, NAIHC offers a scholarship program that helps tribes and TDHEs offset the cost of sending individuals to much-needed and beneficial training that they may not otherwise be able to afford. In 2005, 200 different tribes and TDHEs benefited by the granting of 751 scholarships by the NAIHC. In addition to offering onsite training, NAIHC maintains a comprehensive, highly visited website and is developing a premier state-of-the-art website to help Native people educate themselves about the benefits and mechanics of homeownership. The "Native American Homebuyer" website and a technical Indian housing library are both scheduled to go online this summer.

Beginning in the early 1990's, Indian tribes, housing authorities and others came together to share their vision of how housing and related community development ought to be carried out in Native communities in the era of Indian Self Determination. The NAIHC was instrumental in shaping these discussions and helping to draft, in both spirit and letter, what would ultimately become the Native American Housing Assistance and Self-Determination Act [NAHASDA] 25 U.S.C. §§4101 *et seq*.

In 1996, this committee—under the leadership of Chairman McCain—approved legislation that revolutionized the way Federal housing programs and services are designed and implemented in Native communities. A Republican Congress approved and President Clinton signed the NAHASDA. The NAHASDA rests on a firm foundation of Indian Self Determination and reflects the time-tested principles of local tribal decisionmaking and tribal economic self-sufficiency.

Unlike previous Federal housing approaches, the NAHASDA is distinct in four ways: It stresses the trust responsibility of the U.S. Government to house Native Americans; it replaces categorical grant programs with a block grant that affords tribes more flexibility to design housing to meet each community's unique needs; it encourages tribes to develop a long-term comprehensive housing strategy through the preparation of housing plans; and it enables tribes unprecedented opportunities to use different sources of financing to meet housing needs in their community.

NAHASDA is scheduled for reauthorization in 2007. Although we have made some great strides since the inception of the act, further refinements are necessary to make it an even more powerful tool for Native communities. The NAIHC has taken a proactive role in gathering input from tribes across the Nation on the effectiveness of the act in meeting its intended purpose of providing quality, affordable housing to Native people. We respectfully request congressional support for reauthorization of the act and this committee's active and vigorous assistance in eliminating unnecessary and overly burdensome obstacles that frustrate the intent of Congress and detrimentally impact Indian housing programs.

For nearly 32 years the NAIHC has provided invaluable assistance to Indian tribes and TDHEs and in no small measure has made the often-difficult implementation phase of the NAHASDA a success. Along the way, the NAIHC has endured many difficulties including a Federal housing bureaucracy more concerned with its own preservation and well-being than in meeting its obligation to Native people; and Congressional appropriators who are unaware of—or worse, unmoved by—the dire economic conditions that characterize Native communities.

The potency of Federal funding for the Native American Block Grant [NAHBG] has been steadily eroded by inflation. Funding for the NAHBG in the past 9 fiscal years is as follows:

Fiscal Year 1998 $600 million.
Fiscal Year 1999 $620 million.
Fiscal Year 2000 $620 million.
Fiscal Year 2001 $650 million.
Fiscal Year 2002 $648.2 million.
Fiscal Year 2003 $644.8 million.
Fiscal Year 2004 $650.3 million.
Fiscal Year 2005 $622.0 million.
Fiscal Year 2006 $623.7 million.

During the same time, Federal funding made available to the NAIHC for technical assistance and training to Indian tribes and their TDHEs has also steadily eroded.

The Department of Housing and Urban Development [HUD] maintains that the NAIHC has at its disposal $3,921,282.32 in "undisbursed funds" left over from fiscal year 2004 and fiscal year 2005, and $1, 980.000.00 in "unobligated funds" left over from fiscal year 2006, adding up to a total of $5,901,282.32 that in the minds of HUD we are unable or unwilling to spend. The truth of the matter, as you know Chairman McCain, is often not as simple as the Department would have you believe.

Funds appropriated to the National American Indian Housing Council [NAIHC] are being used to provide critical housing related services to Indian tribes, TDHEs and their staff and, just as important, the funds are being expended in a timely manner. For the most recent fiscal year, the NAIHC expended $5,369,365 on HUD-approved, federally funded programs and services. According to HUD, $5,965,637.28 in prior appropriated funds were "in the pipeline" as of March 2006. At that time, however, no invoices had been submitted to HUD for 2006 expenditures. If the NA1HC were to continue to expend funds at the same rate as in 2005, the "pipeline" funds would be fully exhausted by January 2007, and any suggestions that there is sufficient funding "in the pipeline" to last through the end of fiscal year 2007 are simply inaccurate.

The main factors contributing to the "in the pipeline" perception are the many administrative delays which accompany the Cooperative Agreement entered into by HUD and the NAIHC. The NAIHC receives its funds on a reimbursement basis after incurring costs for HUD-approved activities. The NAIHC's current Cooperative Agreement with HUD took 6 months to complete from March 4, 2005, when NAIHC submitted a Statement of Work to HUD to September 14, 2005, when it was executed. This process includes eight different steps within HUD before approval to the NAIHC is granted. While HUD shows these funds as unused, NAIHC can show that the funds will be exhausted by the activities of the NAIHC throughout the year.

If House passed levels of technical assistance funding prevail, NAIHC shuts down, it is that simple. For fiscal year 2007, the House has proposed $990,000 for technical assistance and training services for the NAIHC and it is no exaggeration to say that, with this or a similar level of funding in the next fiscal year, the NAIHC will close its doors in or around January 2007. Perhaps HUD intends to satisfy the demand for technical assistance and training by tribes and TDHEs thereafter, Mr. Chairman, but this is the stark reality for the NAIHC.

The NAHASDA defines a clear government-to-government relationship between the U.S. Government and Indian tribes for purposes of providing housing and sets forth the trust responsibility of the U.S. Government to assist tribes in providing housing and improve economic development to their members. Indian Self-determination, to be meaningful, means that the Indian tribes themselves, not HUD, design, implement, and conduct housing and related programs for their members. Under this policy, tribal governments plan, conduct and administer Indian housing programs and services for their own people. In passing the NAHASDA, Congress intended HUD's role to be residual and to be minimally intrusive into tribal decision-making when it comes to housing. HUD's extensive and often heavy-handed oversight of Indian housing programs undermines the ability of tribal governments to make their own decisions about how to house and protect their people and manage

their affairs. Rather than promoting Indian Self-Determination, tribes are subjected to severe and overly burdensome regulations that not only hinder their housing programs but, more significantly, the regulations harm the welfare of their people.

In an attempt to resurrect the original intent of NAHASDA, the NAIHC, tribes and TDHEs have established a legislative working group to identify and address legislative and regulatory issues of tribal concern with the statute as it now stands. Their issues include: the impediments of the Program Assessment Rating Tool [PART] process and how to improve the data collection and reporting elements as they relate to Indian housing; the severe problem with methamphetamine in Indian communities; the insufficient or non-existent infrastructure in Indian communities; addressing the problem of mold in federally assisted tribal homes; the establishment of development reserve accounts as an eligible activity under NAHASDA; replacing the 30 percent income rule with fair market rents; Federal procurement issues relating to housing materials; the elimination of secretarial approval for long term leases and; overdue and necessary reforms to the Bureau of Indian Affairs Title Status Report process.

The NAIHC is committed to finding resolutions to these problems and is developing creative solutions to deal with these issues. For example, the Title Status Report process can be improved if tribes were broadly authorized and encouraged to contract these functions such as under the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. §§ 450 *et seq*. NAIHC has offered several training sessions on this topic for its members. In order to address the insufficient or non-existent infrastructure in Indian country, the NAIHC is collaborating with Federal agencies in the development of an infrastructure Memorandum-of-Understanding that will encourage agencies to assist tribes with infrastructure development. In addition, NAIHC has established a second internal working group to deal with issues related to the Native American Housing Block Grant Allocation Formula. The NAIHC recognizes the importance of collaboration and is committed to working with tribes and TDHEs across the Nation to address these issues and reach resolutions on them.

The Native American Housing Block Grant program is the main program for funding tribal housing under NAHASDA. NAHASDA relies on definitions of "Indian", "Indian tribe" and "Indian area" for the purpose of designating allocations. The definitions of "Indian" and an "Indian tribe" are included in the NAHASDA at section 4, paragraph 9. The term "Indian" means any person who is a member of an Indian tribe and the term Indian tribe means a tribe that is federally recognized or state recognized.

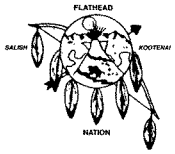
Historically, decennial census numbers have been one element in the calculation of distribution of Native American Housing Block Grant funds. A change in the census collection technique in the 2000 decennial census led to a change in distribution patterns causing a question to be raised regarding the use of a specific set of census data. A failure of the negotiated rulemaking committee to arrive at a consensus on which census data to use caused HUD to utilize a specific data set and has led to a disagreement among tribes concerning the formula for distribution.

The NAIHC membership recently passed a resolution to endorse the use of "single-race data" in the formula calculations for the Native American Housing Block Grant allocation. However, this committee knows that there remains disagreement among NAIHC membership concerning the way in which American Indians and Alaska Natives are counted by the U.S. Census Bureau. In an attempt to reach consensus on this issue, the NAIHC has established a Task Force with the goal of arriving at a position that is agreeable to all tribes regarding the counting of American Indian and Alaska Natives in the formula. The Task Force is to formulate a position which they will then present to the NAIHC membership for approval. Because this issue is unresolved at many levels, we request the active support of the Committee on Indian Affairs in these efforts.

The NAIHC is gravely concerned about HUD's recent decision to potentially withhold allocation of the remaining fiscal year 2006 funds if the department is unable to obtain a stay pending appeal of the Court's decision in the *Fort Peck Housing Authority* v. *U.S. Department of Housing and Urban Development* (Civ. Action No. 05–CV–00018–RPM–CBS, May 25, 2006). While we understand the difficulties presented by the *Fort Peck* decision, responding to what is a narrow decision possibly only affecting the Fort Peck Tribe by withholding funds for hundreds of tribes may be outside of HUD's legal authority to do. Even more fundamental is the severe hardship such a decision by HUD will have on recipients whose funding is inappropriately withheld. As you are aware, many if not most tribal and TDHE recipients are dependent on such funding to continue operating and providing service to their low-income members. Disruption of funding will impose substantial limitations on these tribes and TDHEs, conceivably leading to some completely shutting down.

Additionally, many tribes have pledged their Native American Housing Block Grant funds as security for title VI or section 184 loans and HUD's proposed course of action would result in default on those loans, requiring the United States to assume the payment of these loans. Placing the tribes and TDHEs at risk of an adverse credit rating is unacceptable. NAIHC urges this committee to persuade HUD to reconsider its decision and seek an alternative solution for the situation at hand.

In conclusion, I would like to thank you, Chairman McCain, Vice Chairman Dorgan, Senator Murkowski, and the members of the committee for your continuing support of Native people and their housing programs. The NAIHC is eager to work with the committee on all the issues affecting Indian housing programs—no matter how difficult—so that together we can achieve objectives we both share, for example, more and better housing for Native people, increasing homeownership in Native communities, and building stronger tribal economies along the way.



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Testimony of James Steele, Jr.
Before the Senate Indian Affairs Committee
On Native American Housing Programs
June 28, 2006

Good morning Chairman McCain, Vice Chairman Dorgan and members of the Committee, my name is James Steele and I am the Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Indian Nation in present day western Montana. I appreciate the opportunity to speak before you today. With me here today is Mr. Jason Adams, Executive Director of the Salish and Kootenai Housing Authority (SKHA). The Salish and Kootenai Housing Authority is the Tribally Designated Housing Entity (TDHE) of the Confederated Salish and Kootenai Tribes. The Confederated Salish and Kootenai Tribes is one of the original ten Self-Governance tribes in the U.S. and we are the only Tribes in the country who operate both our IIM program and our title plant. Another interesting historical fact is that we were the first in the country to organize under Indian Reorganization Act.

There are two aspects of the housing program on the Flathead Reservation that this committee may find of interest. The first is the issuance of private mortgages by our utilization of the HUD 184 program. SKHA has partnered with several of the local lenders on the Flathead Indian Reservation to provide this homeownership program to our membership. We have over 80 mortgages that have been completed with a majority of those loans being on trust land. In all of the transactions the Tribal Council placed the SKHA in a position of essentially an additional

guarantor over and above HUD's guarantee. Our taking control of the BIA's Title Plant was an important development in this process that has helped convince local lenders to issue mortgages. This allowed for timely recordation and retrieval of title documentation that is essential to the lending process. If there is ever a default the lender comes to the Housing Authority to assist in placing another tribal member into the home and assuming the mortgage. Another issue I wanted to highlight is the success of our Housing Authority in providing homebuyer education. With the use of several different grant sources the SKHA has been able to provide homebuyer education classes. In the last year we have had over 80 families graduate from the classes with 56 of those families going on to obtain a mortgage through either the HUD 184 program or our on tribal credit program. One of the advantages that we have is that our tribal leadership had the foresight to establish a tribal credit program in the 1960's and established a process to provide mortgage lending on trust land, both individual and tribal owned.

The Flathead Indian Reservation is home to the Salish, Kootenai and Pend d'Oreille people. We have an enrollment of over 7000 tribal members, with approximately 4,800 residing on the reservation. The total size of the Flathead Indian Reservation is 1.317 million acres.

According to the Bureau of Indian Affairs, 1,075 of CSKT's enrolled members are employed, but 59% of those employed live below the poverty line. The state of Montana determined the unemployment rate on the reservation to be 41% in 2002. More recently the University of Montana Business quarterly reported that the CSKT unemployment rate was 36%[1]. According to the US Census 2000, Lake County's poverty rate is 19%, 29% for children 0-17. While the reservation area is a beautiful area in Western Montana, our Tribes still wrestle with the difficult

[1] November 2004 – Business Quarterly – Special Report on Indian Reservations

issues of poverty, unemployment and low academic achievement by some segments of our population.

The low high school completion rate and incidence of non-enrollment in schools on the Flathead Reservation are major concerns for our Tribes as we compete for local jobs. The Montana Office of Public Instruction reported that the 2000-2001completion rate for American Indians at Ronan High School was 66.7 percent. The completion rate at Two Eagle River School was approximately 62 percent. In addition to students who drop out, there are Indian students who fail to enroll. In the 1990 Census, the latest data available, that group was estimated at 15% of those aged 16-19 on the Flathead Reservation. CSKT TANF data also indicate that 50% of the TANF caseload does not read, comprehend or communicate at an 8th grade level.[2]
Issues of poverty and lack of full time employment do impact housing decisions and the way the CSKT would like to operate the local SKHA housing program.

Some of the Native American housing issues that I would like to touch on today are the Native American Housing Assistance and Self-Determination Act (NAHASDA) reauthorization scheduled for 2007, the NAHASDA funding formula and funding levels for FY 2007, the funding level for our national advocacy organization the National American Indian Housing Council (NAIHC) and the latest issue of HUD freezing NAHASDA funds to recipients that have not received their FY 2006 funds.

[2] The Department of Labor establishes the 8th grade level as a functional employment level for most jobs. The CSKT DHRD offers both a GED bonus and a bonus when clients increase their reading and math scores, which translates to greater opportunities for employment and increased self esteem.

It is anticipated that the NAHASDA will be reauthorized next congressional session. I would like to inform you of one major issue in the reauthorization that is very important to the Confederated Salish and Kootenai Tribes. The issue is the 30% rule. The 30% rule is a mandate in the act that requires all tenants in units supported by NAHASDA funds to have to pay no more then 30% of their adjusted income. The intent behind this rule may have been to protect low-income beneficiaries of NAHASDA funds from being overcharged for rent or to ensure that those who could afford it were paying a percentage of their income in rent that is approximate to what is conventional in the non-Indian world. Whatever its intent, it is not working. Our position is that our Tribes could benefit from discretion in this regard and that we could design and implement a rental fee schedule that provides an incentive to those who have lived in poverty historically and then who go to work. Our goal would be a gradual rent increase with financial literacy education. The present rule also requires tribes to certify the participant's income at least annually to make sure that the 30% rule is not violated. This has created is a huge administrative burden for SKHA and other TDHE's throughout Indian country. The rule is presented as an absolute and allows for no discretion as we transition people from welfare to work.

A major problem I have with this rule, from a tribal leader's perspective, is that it does not allow the tribal leadership of the Confederated Salish and Kootenai Tribes or the Board of Commissioners of our Housing Authority to truly self-determine the structure of the housing programs that we provide to our membership with the NAHASDA funding. We successfully operate many federal programs using the discretion afforded by Indian Self-Determination. Surely true self-determination should also apply to housing. The essence of NAHASDA is for tribes to be creative in partnering with other affordable housing organizations and funding

sources to get the greatest use of the very limited funding that is received from NAHASDA. If the 30% rule is not deleted from a reauthorized NAHASDA I would ask that the tribes be able to establish a sliding scale for rent as people work to meet a maximum amount based on location and economic value of the unit and personal success or ability to pay. Our belief is that by having the ability to set a sliding scale and a maximum rent, that it would be an incentive for the members of our tribe to find some form of consistent income. Additionally as people are laid off in the winter (we have a number of seasonal jobs here) or don't achieve full time employment, the rental rate could be reduced thereby reflecting the economy and the individual's circumstance. We also believe that we could achieve a minimum rent over time and this would give the tribal member participant greater responsibility in taking care of the rental units. In this manner, there is the opportunity to build in pride and ownership of a home. The SKHA has over 400 rental units and that stock of units is aging and the cost to maintain them is ever increasing.

There are a vast number of issues in regards to the NAHASDA reauthorization and I would ask that this committee convene another hearing specifically for the reauthorization within the next year.

The original Negotiated Rulemaking session that followed the passage of NAHASDA created a funding formula to allocate the NAHASDA funds to all of the eligible recipients. The regulations required a five year review of the funding formula and the work of the second Negotiated Rulemaking Committee on the funding formula just concluded this last January. One of the major issues discussed at the last Negotiated Rulemaking Committee was how Indians are counted for purposes of funding in the NAHASDA funding formula. The funding formula uses

census data. I am sure that this Committee is aware of the vast discrepancies that exist in many parts of Indian country from the gathering of census data. It is my understanding that the last Negotiated Rulemaking committee was not able to come to any consensus on changing the use of census data. One major action took place that created a great deal of disagreement and led to the lack of consensus was an arbitrary decision from the Assistant Secretary of HUD in 2003 to change the use of census data from the single-race data set to the multi-race data set. As I understand, this decision was made without consulting with tribes and without giving tribes the opportunity to provide input back to HUD on the effects that such a decision would have to the recipients of NAHASDA. Again, as a tribal leader I am very concerned that HUD would even consider making such a major change without even consulting with tribes. I am encouraged by the work that has begun at NAIHC to work within its membership to convene a task force to study this issue and work toward common ground with its membership to find an answer to this difficult issue. I believe that when tribes come to the table with the expectation for solving an issue themselves it will happen. I would ask this committee and each member individually to assist NAIHC with the proposal that comes forth from the NAIHC task force.

I would be remiss to have this opportunity to speak before you today and not mention the totally inadequate level of funding for NAHASDA. As Mr. Adams has told me on several occasions, level funding is not good enough. For the last several years the funding level for NAHASDA has fluctuated very little, it has been up a little and it has been down a little. I am very concerned because the level of funding has not even maintained pace with inflation. The funding formula itself has inflationary factors built in but the appropriation levels have not kept up with inflation. What this means to our housing authority is less money to maintain our current units and very

little money to provide new affordable housing opportunities that are greatly needed. I would ask that this committee support a substantial increase in the FY 2007 appropriation far above what the President's budget proposal contains. If funding levels from FY 2002 had been maintained with a modest inflation the FY 2007 appropriation for NAHASDA should be approximately $748 million, not $625 million as contained in the President's budget proposal. Also, I am aware that the House of Representatives have passed H.R. 5576, the FY 2007 appropriations bill for HUD and several other agencies and that bill contains the same appropriation for NAHASDA as the president's budget proposal. Without some increase in funding our housing authority and many others are forced to make tough decisions on cutting programs, decreasing the level of maintenance of existing units and not being able to leverage funding to create new affordable housing opportunities. Ultimately our low-income tribal membership has less housing opportunities, wait longer for affordable housing and the condition of the existing housing provided is decreased. It is well known that children are not successful in school if they do not have a consistent home base. They can not enter school and be school ready without having roof over their heads and stable and secure housing. Our Tribes are not able to keep pace with the need for family housing if the funding is not increased dramatically. At home we have a housing shortage and finding affordable housing is even more difficult. Our reservation has one of the poorest communities in Montana according to the U.S. Census and that is the community of Elmo, Montana where the poverty rate is 99%. Yet across the lake, in the Finley Point area, you have some of the most expensive non-Indian homes in Montana. The situation must be corrected where the funding is stabilized and Indian families have access to affordable safe housing on their own reservation.

I would like to discuss the funding for the National American Indian Housing Council (NAIHC). Staff from our housing authority was involved in the creation of this organization that has become the leading voice for Indian housing. In its 30 year history NAIHC has done a great service to its membership. It is quite discouraging to see that a very successful organization can have its funding cut without consulting the tribes that benefit from NAIHC's training and other activities. The essence of NAIHC is to assist tribes to improve their housing programs. There are many tribes that are grateful to NAIHC and its dedicated staff of housing professionals that have been able to come along side those tribes and given very able assistance. NAIHC and its membership have worked hard to become the voice for Indian housing. What are tribes to do if the funding that is the lifeblood of this organization is cut off or substantially reduced? The sad truth is that tribes that are making progress in offering more housing services to their membership will be negatively affected by not having NAIHC to assist them. Many of those tribes do not have the resources to come here to ask for some form of assistance to establish services for their tribal membership. It is very discouraging to see that the President's budget proposal does not contain any funding for NAIHC. I would ask that this committee and its members fully support NAIHC and its membership of 265 tribes and/or TDHE's and work to not only restore NAIHC's funding but have the funding increased to keep up with the cost of providing the services.

The final issue that I would like to discuss today is the recent decision from HUD to freeze all allocations of NAHASDA block grant funds to those tribes that have not yet received their FY 2006 funding. As I understand this situation, HUD is reacting to a court decision stemming from a lawsuit filed by the Fort Peck Housing Authority. The court ruling declared NAHASDA

regulation 24 C.F.R. § 1000.318 invalid which therefore changed the NAHASDA funding formula. I understand HUD is appealing the decision and has made a decision to freeze funding until the outcome of their appeal. This decision does not directly affect our housing authority now, but the appeal will more then likely take several months if not years to be decided. What will happen if the appeal goes into next fiscal year? Will all tribes that receive NAHASDA block grant funds have their grants frozen for next year? We have been told that within our HUD region nine of 32 tribes that receive NAHASDA block grant funds have their FY 2006 funds frozen right now and I understand 141 tribes across the country are in this same position. How are they supposed to operate? Many tribes have utilized the HUD Title VI program and have borrowed future grant funds to develop projects. What will happen when those loan payments are due and the tribe does not have the resource to make the payment because their NAHASDA Block Grant funds are frozen? I understand there are many tribal housing authorities whose existence depends on receiving the NAHASDA Block Grant funding. If this freeze lasts for any length of time many tribal members who work for their tribe's housing authority will lose their jobs as these authorities do not have the funding to operate and will have to close their doors. I understand the situation that HUD has been placed in due to the court ruling, but it seems that there should be another way to carry out the ruling that will not require tribes and their housing authority staff and tenants to suffer.

It has been an honor to be invited to testify before this committee. I again would like to thank you Chairman McCain and members of the committee for having this hearing and for providing an opportunity for a panel of tribal representatives to come and give our perspective on some of the important issues facing Indian Country in the area of housing.

Salish and Kootenai use sovereignty to secure mortgages

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Posted: August 04, 2003
by: **Mark Fogarty** / Today correspondent

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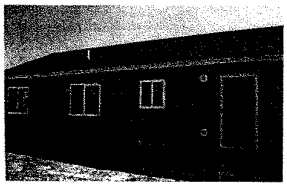

This large home in Elmo, Mont. is one of 11 being built through the "self help" method on the Flathead Reservation. All 11 families pitch in on each home, and no one moves in until all 11 units are completed. The Salish and Kootenai Housing Authority, in an unusual move, is guaranteeing repayment of individual mortgages the families are obtaining from the federal Rural Development Agency. (Photo by Mark Fogarty)

PABLO, Mont. - The Confederated Salish and Kootenai tribes are using their sovereignty in an unusual way, guaranteeing repayment of mortgages made to trib members by an outside lender.

In a small way, the tribal government is replicating what the U.S. government does on a much vaster scale, guaranteeing mortgages to lenders through the Federal Housing Administration and Department of Veterans Affairs.

The Salish and Kootenai already have an interior tribal credit program that makes mortgages to tribal members, as do many tribes. The unusual aspect of what is happening on this rural Montana reservation is that the tribe's housing authority is guaranteeing repayments to an outside lender.

And that lender happens to be the federal government, through its Rural Development section 502 mortgage.

The Salish and Kootenai Housing Authority (SKHA), under the leadership of retirin executive director Robert Gauthier, is making a few bold moves toward ending the mortgage drought on its Native homelands. Not only is it guaranteeing the RD 502 it is actually making mortgages to some of its own clients that don't qualify for Trib Credit mortgages.

The scale of these programs is infinitesimally smaller than the real FHA. The Salish and Kootenai Housing Authority, based here on t Flathead reservation, has made or insured just 40 mortgages.

SKHA has made 20 loans to clients unable to obtain finance in any other way, and it has guaranteed 20 loans extended by the federa Rural Development agency under its section 502 program.

According to Jason Adams, acting director, the Indian Housing Authority is getting the money for these unusual IHA activities by pledging unobligated money towards the guarantees (still a rhetorical question, since none of the loans has defaulted yet). And it gets money to lend from the sale of homes on the reservation constructed by the now-defunct Department of Housing and Urban Development program, Mutual Help.

On a site in Elmo, Mont. overlooking Flathead Lake, 11 houses are being built by the local Ktunaxa Community Development Corp., using the "self-help" program of Rural Development. These are large, detached single-family homes being built by all 11 families, and no one can move in until all 11 are complete. They will join nine more already completed.

The average mortgage is about $72,000, with an average mortgage payment of about $450, according to Adams, with a generous subsidy and sweat equity reducing the cost to buy to about 60 percent of appraised value. Plus, the Salish and Kootenai are timber tribes, so members can obtain several thousand dollars worth of free lumber for building a home. Still, these potential homeowners didn't all fit RD's criteria, prompting the IHA to step forward with its guarantee.

The tribe granted SKHA the leases on the land in question, and the IHA has sub-leased them to the individual tribal members. If the homeowners default, the IHA has the option of making the payments, or buying the property. Some of the people involved have fallen behind, but they have gotten caught up again, Adams said.

Its own mortgages have been made to very low income tribal members. The IHA has sold them units it has built at 40 percent of appraised value and adjusted the mortgages to their incomes. Average mortgage is in the $70,000 area, and average payment is $35 per month.

This program is on hold for the moment, but the IHA would like to do more mortgages in the future, Adams said. Defaults on these mortgages would lead to eviction and either a new homeowner, or the unit would revert to a rental.

SKHA is also working on its fourth Low Income Housing Tax Credit project, to rehab 33 rental units built in the 1970s in the Turtle Lak area outside Polson, Mont. It has also used LIHTC equity from Enterprise Social Investment Corp. and the Raymond James tax credit funds, to build 20 units of ownership-option rental housing and two 10-unit elderly living centers, one in Elmo and the other in Arlee.

Another project the IHA has underway is a trailer park with 60 rental lots in the tribal capital of Pablo.

In addition, according to Adams, about 20 tribal members have applied to local banks for government-insured Indian mortgages to refinance loans they received through the Tribal Credit office. The reason? The HUD 184 guaranteed loans now have a refinancing option, and the rates are lower.

Adams said he knew of about eight applications with Ronan State Bank, another five or six with First Interstate Bank, Polson, and fou or five more requests at Valley Bank, Ronan.

Two tribal members executed HUD 184s five years ago with Ronan State Bank, but those were on private property, rather than tribal individual trust land, where mortgages are much more complicated.

The IHA currently has 420 rental units under management, and 170 of the old Mutual Help units (down from a high of 230), which it hopes to sell to tenants who could obtain financing through Tribal Credit.