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DISCUSSION DRAFT LEGISLATION TO AMEND AND REAUTHORIZE THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 19, 2007

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DISCUSSION DRAFT LEGISLATION TO AMEND AND REAUTHORIZE THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF–DETERMINATION ACT

THURSDAY, JULY 19, 2007

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

The Committee met, pursuant to notice, at 9:48 a.m. in room 485, Senate Russell Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We next will move to the hearing that we have scheduled for today on Indian housing. I will describe that hearing and ask if my colleagues have any opening statements as well.

The hearing is a discussion on draft legislation to amend and reauthorize the Native American Housing Assistance and Self-Determination Act. We will receive testimony on a draft bill. The reauthorization of what is known as NAHASDA, the Native American Housing Assistance and Self-Determination Act, is very important. We want to hear from tribal leaders, tribal housing directors, and the Administration.

We are all aware of the grave need for housing in Indian Country. During our March hearing on Indian housing, we heard alarming statistics. Ninety-thousand Indian families are homeless or under-housed. Approximately 40 percent of on-reservation housing is considered inadequate. Over ⅓ of Indian homes are overcrowded. More than 230,000 housing units are immediately needed to provide adequate housing in Indian Country.

Equally disturbing is the fact that funding for Indian housing has decreased over the last several years because it has not kept up with inflation and the rising cost of building materials.

Our purpose in this discussion draft bill is to strengthen NAHASDA by providing tribes with increased flexibility with the goal of producing more homes in Indian Country.

This discussion draft bill is based on suggestions offered at our March hearing, and our consultations with individual Indian tribes, the National American Indian Housing Council and the Administration.

You will notice that the amendments are incremental changes to current law. We realize that "one size does not fit all" in Indian

housing. Housing needs in the Great Plains differ greatly from those in the Southwest. This is why we retained the basic structure of the Indian Housing Block Grant Program, because through this block grant program, tribes and tribal housing entities are able to use the funds to serve their unique needs.

We thank you for traveling here today and look forward to hearing your suggestions on the discussion draft.

I remind our witnesses that your full statements will be made a part of the record, and we ask that you summarize your written statements. As always, the hearing record will remain open for two weeks for others who wish to submit written statements.

I recognize the Vice Chairman.

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

Thank you Mr. Chairman. I am pleased that you are holding this hearing this morning regarding the reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996, which is known throughout Indian and Alaska Native communities as NAHASDA.

It has been more than a decade since Congress enacted NAHASDA. Modeled after the highly successful Indian Self-Determination and Education Assistance Act of 1975, which ushered in tribal self-sufficiency as the new direction for federal policy, the NAHASDA has also succeeded where so many other government programs have failed. In these past ten years, Indian and Alaska Native communities have built or rehabilitated approximately 60,000 units of housing, not counting the accompanying infrastructure and utilities development.

However, there is still more to be done and some alarming statistics still remain. While Indian and Alaska Native communities have successfully chipped away at the chronic housing problem throughout Indian Country, there is still a need for an estimated 200,000 homes in Indian and Alaska Native communities. Multiple studies have shown that over 40 percent of all Indian housing is inadequate and that 21 percent of homes in tribal areas are overcrowded, compared with 3 percent nationally. Costs to repair or replace tribal housing remains stubbornly high at over $125,000, and even higher for tribes in rural areas.

I am confident that this Committee and this Congress will see the re-authorization of NAHASDA as an opportunity to further improve the management and efficiency of this effective program. I look forward to hearing the testimony today and working with the Chairman to pass an improved NAHASDA that will be an even more effective tool for tribal leaders in their battle to reduce poverty and homelessness in their communities.

The CHAIRMAN. Thank you very much.

Senator Tester?

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Mr. Chairman, I once again want to thank you for holding this important hearing.

I want to thank the panelists that are going to testify today, and thank you for coming to Washington, D.C. to testify.

This is a critically important issue. When we talk about prioritization in Indian County, health care, of course, is probably the first priority, and housing in my perspective is one of the close seconds, because in many areas it is not only unavailable, it is inadequate, and in some cases it is being lived in, but by all other standards it is unlivable.

So we need to address these issues. I hope this hearing is able to shed light and give us the kind of direction that we can look forward to some good policies that will help solve these housing problems in Indian Country.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Rodger J. Boyd is Deputy Assistant Secretary for Native American Programs at the U.S. Department of Housing and Urban Development. Mr. Boyd, thank you for being with us.

As I indicated, your full statement will be made part of the record, so we would ask that you summarize.

OK, all right. Why don't you proceed?

Thank you very much.

STATEMENT OF RODGER J. BOYD, DEPUTY ASSISTANT SECRETARY FOR NATIVE AMERICAN PROGRAMS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. BOYD. Thank you, Mr. Chairman and Members of the Committee, for inviting me to provide comments on the reauthorization of HUD's Indian Housing and Loan Guarantee Programs.

My name is Rodger Boyd and I am HUD's Deputy Assistant Secretary for Native American Programs. My office is within the Office of Public and Indian Housing, PIH. PIH is responsible for the management, operations and oversight of HUD's Native American and Native Hawaiian programs.

These programs are available to 562 federally recognized Indian tribes, five State-recognized Indian tribes, and Hawaii's Department of Hawaiian Home Lands. We serve these entities directly or through their tribally designated housing entities by providing grants and loan guarantees designed to support affordable housing and community development. Our partners are diverse. They are located on Indian reservations and Alaska Native villages, and on Hawaiian home lands.

It is my pleasure to appear before you again. I would like to express my appreciation for your continuing efforts to improve the housing conditions of American Indians, Alaska Natives and Native Hawaiian peoples. From HUD's perspective much progress has been made. This momentum needs to be sustained as we continue to work together to create a better living environment for Native American communities.

One way to sustain this momentum is through the reauthorization of all HUD's Native American and Native Hawaiian housing and loan guarantee programs. The department supports reauthorization and is examining a number of statutory amendments to NAHASDA that may be offered during the reauthorization process.

Here is a brief overview of some of the amendments HUD is considering: number one, to amend Section 201(b)(2) of NAHASDA to allow essential over-income families to occupy rental housing and obtain tenant-based rental assistance. Currently, certain over-income non-Indian families may be declared essential to a tribal community. These families may participate in home ownership and model activities but not in the rental program. Rental is a more appropriate activity for people who may not stay on the reservation for an extended period of time.

The B part of that is to amend Section 201(b)(3) so that essential Indian families can be housed regardless of income. Through an oversight, current law allows only non-Indian families to be declared "essential."

Two, amend Section 205 to delete the requirement for useful life and binding commitments for home ownership units, and make the provision applicable only in the case of rental and lease-purchase housing that is owned or operated by a grant recipient. Current restrictions have sometimes prevented the children or spouse of deceased home buyers from inheriting the deceased's interest in the property.

Third, to amend Section 302, the Indian housing block grant allocation formula, to stop counting units for FCAS purposes in the years after they are conveyed, demolished or disposed of. This change would comport with the process established by the original negotiated rulemaking committee that crafted the Indian housing block grant regulations.

Also, to amend Title IV of NAHASDA to clarify that issues related to the repayment of FCAS allocations do not constitute, in and of themselves substantial noncompliance by a grantee. The declaration of substantial noncompliance triggers a formal administrative hearing and there is no reason to begin such a process when a grantee mistakenly reports an over-count or under-count of the number of units in management.

The next proposal is to amend Section 202 for housing services to clarify that grantees may use their Indian Housing Block Grant funds for maintenance and operations of units developed with Indian Housing Block Grant funds. Currently, grantees may do so, but this is considered a model activity and requires specific HUD approval. The amendment would reduce paperwork for grant recipients and HUD staff.

Amend Section 102 of NAHASDA to simplify and streamline the Indian housing plan submission required by deleting the 5-year plan requirement, streamlining the 1-year plan to eliminate duplicative information, and establish Indian housing plan due dates based on the grantee's program year.

Also amend Section 404 of NAHASDA to delete the requirement for a grantee to describe how it would change its programs as a result of its experiences. Most grantees do not think it is of value to report on this information.

Amend the Native Hawaiian Loan Guarantee Program, Section 184A, to allow refinancing and to remove the requirement that the annual Native Hawaiian housing plan must include cross references to any loan guarantee activity. Both amendments will con-

form the Section 184A program to the Indian Housing Section 184 Loan Guarantee program.

The grantee would still be free to provide any loan guarantee information in their Native Hawaiian Housing Plan if they so desire.

Mr. Chairman, we have worked with the Committee staff members, as well as those on the House side, and with the National American Indian Housing Council, with regard to legislative amendments as they are developed. We would be pleased to continue doing so.

I would also like to thank you for recently reauthorizing Section 184, the Indian Housing Loan Guarantee Program, which was signed into law by the President on June 18 of this year. The dramatic increase in the use of the Section 184 program is a success story for all tribes, TDHEs, and especially for the thousands of Native American families that are now homeowners as a direct result of this program.

We do believe that these are exciting times and we look forward to continuing our efforts with this Committee and with Indian Country to provide better affordable housing and housing opportunities for home ownership.

Thank you.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF RODGER J. BOYD, DEPUTY ASSISTANT SECRETARY FOR NATIVE AMERICAN PROGRAMS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

INTRODUCTION

Mr. Chairman, and Members of the Committee, thank you for inviting me to provide comments on the reauthorization and amendment of the Native American Housing Assistance and Self-Determination Act.

My name is Rodger Boyd, and I am Deputy Assistant Secretary for Native American Programs, which is part of the Office of Public and Indian Housing (PIH). PIH is responsible for the management, operation and oversight of HUD's Native American and Native Hawaiian programs. These programs are available to 562 federally-recognized Indian tribes, 5 state-recognized Indian tribes formerly eligible under the United States Housing Act of 1937, and the State of Hawaii's Department of Hawaiian Home Lands. We serve these entities directly, or through their tribally designated housing entities (TDHE), by providing grants and loan guarantees designed to support affordable housing and community development activities. Our partners are diverse; they are located on Indian reservations, in Alaska Native Villages, and on the Hawaiian Home Lands.

In addition to those duties, PIH's jurisdiction encompasses the public housing program, which aids over 3,000 public housing agencies that provide housing and housing-related assistance to low-income families.

It is a pleasure to appear before you, and I would like 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. Tribes are taking advantage of new opportunities to improve the housing conditions of the Native American families residing on reservations, on trusts or restricted lands and in Alaska Native Villages.

This momentum needs to be sustained as we continue to work together toward creating a better living environment in Native American communities.

OVERVIEW OF NATIVE AMERICAN PROGRAM

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

Increasing minority homeownership is one of the President's primary goals. HUD's Native American housing and loan guarantee programs are the lynchpins for accomplishing this within Indian Country.

For example, our latest figures show that during FY 2006, tribes and their TDHEs used Indian Housing Block Grant (IHBG) funds to build, acquire, or substantially rehabilitate more

than 1,600 rental units and more than 6,000 homeownership units. Each of these units became a home to a Native American family. There have been recent successes with our loan guarantee programs too; and this will be discussed in more detail in a few moments.

The block grant and loan guarantee programs are important vehicles for achieving the Department's goal of reducing overcrowding in Native American communities by 10 percent over 10 years.

Tribes are increasing their capacity to comprehensively manage and grow their affordable housing programs. HUD's Office of Native American Programs (ONAP) has continued to develop more robust performance indicators to measure our progress and the progress of our grant recipients. At the same time, we are seeking to strengthen data collection capability to improve reporting and ensure that we can understand and communicate the rate of program fund obligations, expenditures, and production.

The Department is continuing to consult with tribal leaders and Native American housing officials on how we can improve and streamline data collection for the IHBG program and for the Indian Community Development Block Grant program.

REAUTHORIZATION OF THE NATIVE AMERICAN AND NATIVE HAWAIIAN HOUSING AND LOAN GUARANTEE PROGRAMS

As a policy matter, the Department supports the reauthorization of all Native American and Native Hawaiian housing and loan guarantee programs. The Department has developed a number of statutory amendments to NAHASDA that may be offered during the reauthorization process. Many of these amendments are similar, or identical to, amendments contained in the discussion draft that is the subject of this hearing. As the Administration continues to examine this legislative proposal, the Administration expects to communicate specific comments or concerns. HUD's amendments are described briefly below.

As background, here is a brief overview of the statutes that authorized these programs.

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) created the IHBG and Title VI Tribal Housing Activities Loan Guarantee programs (Title VI). On December 27, 2000, the Omnibus Indian Advancement Act (Pub. L. 106-568) amended NAHASDA by adding a new title VIII, "Housing Assistance for Native Hawaiians." Title VIII authorized the Native Hawaiian Housing Block Grant program, which is similar to the IHBG program, but serves Native Hawaiian families eligible to reside on the Hawaiian Home Lands.

The Omnibus Indian Advancement Act also established the Section 184A Native Hawaiian Loan Guarantee program (12 U.S.C. 1715z-13b). This single-family home loan guarantee program for Native Hawaiians is similar to the Section 184 Indian Housing Loan Guarantee program authorized by the Housing and Community Development Act of 1992 (Pub.

L 102-550, 12 U.S.C. 1715z-13a). Public Law 110-37, approved June 18, 2007, reauthorized the Section 184 program for an additional 5 years.

With the exception of the Section 184 program, the "Authorization of Appropriations" for these programs has or is about to expire. At Assistant Secretary Cabrera's request, my office consulted with headquarters and field office staff about statutory revisions to make these programs more user-friendly. During our regional and national housing summits, we also consulted with tribal and Indian housing leaders about ways to streamline the Indian Housing Plans (IHP) and Annual Performance Reports (APR) they submit. As an offshoot of that process, we established a work group to revise and streamline the IHP and APR formats and requirements. Some of the amendments under consideration are the result of decisions made by that work group and my staff.

We also met a number of times with House and Senate Committee staff to discuss reauthorization, and attended joint meetings with Committee staff members and representatives from the National American Indian Housing Council (NAIHC) on this subject.

This is a brief overview of the amendments HUD is considering.

1. **Allowing for Over-income and Essential Indian Families**: Right now, a tribe or TDHE can declare that certain over-income families are essential to the tribal community. Those families can then participate in NAHASDA's homeownership activities, loan guarantee activities under Title VI, and model activities. They cannot occupy rental housing, receive tenant-based rental assistance, or receive other forms of affordable housing services. An amendment to section 201(b)(2) of NAHASDA would permit the tribe or TDHE to allow these over-income families to do so. Another amendment to section 201(b)(3) of NAHASDA would permit essential Indian families to be housed regardless of income. Current law only permits essential non-Indian families to be housed regardless of income.

2. **Affordability Period:** An amendment to section 205 would delete the requirement for an affordability period, or "useful life" under binding commitments for all dwelling units assisted with IHBG funds, including homeownership units, and make the provision applicable only in the case of rental and lease-purchase housing owned and operated by the tribe or TDHE. In a number of instances, the current restrictions have prevented the children or spouse of a deceased homebuyer from inheriting the deceased's interest in the property.

3. **Formula Current Assisted Stock (FCAS):** An amendment to section 302, the IHBG Allocation Formula, would change the way that housing units in management are counted for formula purposes. It would stop counting units for FCAS purposes in the year after they are conveyed, demolished or disposed of. This change would comport with the process established by the original negotiated rulemaking committee that crafted the IHBG regulations.

In addition, an amendment to Title IV of NAHASDA would clarify that issues related to repayment of IHBG FCAS allocations do not constitute, in and of themselves, substantial

noncompliance by a grantee. Substantial noncompliance by a grantee triggers a formal administrative hearing on the issue.

4. **Operation and Maintenance of NAHASDA Units:** An amendment to section 202(4) "Housing Services," would clarify that grantees may use IHBG funds for the maintenance and operation of units developed with IHBG funds. Currently, this is considered a model activity, and the amendment would reduce paperwork for grantees and HUD staff.

5. **Indian Housing Plan (IHP) Streamlining:** An amendment to section 102 would simplify and streamline the IHP submission requirements by deleting the 5-year plan requirement, streamlining the one-year plan to eliminate duplicative information, and establishing IHP due dates based on a grantee's program year.

6. **Annual Performance Report (APR) Streamlining:** An amendment to section 404 of NAHASDA would delete the requirement for a grantee to describe how it would change its programs as a result of its experiences. Most grantees do not think this information is necessary. Another amendment would conform the APR to reflect the IHP changes that are made.

7. **An amendment to the Section 184A program would allow refinancing and de-link it to the annual Native Hawaiian Housing Plan (NHHP).** The Section 184 Indian Housing Loan Guarantee program permits refinancing, and this amendment would conform the Native Hawaiian Section 184A program accordingly. The amendment to the NHHP removes the requirement to discuss loan guarantee activity, but the grantee remains free to mention this activity in the NHHP. These amendments would conform the Section 184A program to the Section 184 program.

These proposed amendments will streamline paperwork submission and approval requirements, and provide better program clarity and direction. They are aimed at reducing administrative burdens on grantees and HUD staff. The majority of these amendments are similar or identical to amendments being proposed by the National American Indian Housing Council and others. We also worked closely with the IHP/APR working group on the streamlining amendments. To put some context to these proposals, a brief description of our programs follows.

SYNOPSIS OF HUD NATIVE AMERICAN AND NATIVE HAWAIIAN 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 both a one-year and a five-year Indian Housing Plan (IHP) to HUD for a compliance review. The IHP contains a mission statement, goals and objectives, and an activities plan stating how 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 IHBG program are predicated on two factors: need, which is the extent of poverty and economic distress and the number of Indian families within the Indian areas of the tribe; and Formula Current Assisted Stock (FCAS), which is 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
(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 TDHEs, 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 United States is pledged to the payment of all guarantees. The guarantee covers 95 percent of principal and interest.

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 TDHEs. 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 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

HELPING TRIBAL COMMUNITIES SUCCEED IN AFFORDABLE HOUSING AND ECONOMIC DEVELOPMENT

We would like to share with you some perspectives on how to help tribal communities succeed. Tribes should look to federal resources such as NAHASDA's Indian Housing Block Grant and the Title VI programs, but they also need to consider other opportunities such as State-administered federal low-income housing tax credits, and other federal and state programs that

they may qualify for, but are not using now. They also need to explore partnerships with the private sector, the most overlooked resource.

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 implementing 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 cognizant of, and will work within the government-to-government relationship that exists between this Department and the federally recognized Indian tribes we serve.

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; now we 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.

We have identified some key building blocks to establish the foundation for developing more sustainable economies. These are:

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

HUD's goal is to utilize PIH's Native American programs as catalysts for economic development, and to contribute to building sustainable economies within tribal communities. How do these programs contribute to sustainable economies? Homeownership programs create equity and promote asset building for Native American families. As a result, there is a greater level of commerce and expenditures within the community, and at Native American-owned businesses. Developing housing also greatly assists in creating permanent local jobs.

Not only do these programs provide an influx of funds into Indian communities, they can be used to attract other sources of capital. Today, there are more ways to leverage federal funds than ever before. We encourage tribes to look beyond ONAP programs and pursue opportunities such as low-income housing tax credits, other federal and state programs, and to seek partnerships with the private sector.

ONAP's success with the Section 184 Loan Guarantee program, expanding the use of Title VI, and the creation of a tax-exempt bond financing program will greatly assist in building sustainable economies and make this goal a reality.

The Key is Leveraging

ONAP has formed a leveraging workgroup consisting of staff from HUD's headquarters and regional offices. This group is exploring different ways in which ONAP's programs can be used with outside financial resources. Members are also available for direct technical assistance to tribes to assist in the creation of financial strategies for housing development.

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 on-line at the beginning of FY 1998, has now distributed over $5.7 billion in funds to tribes for affordable housing development.

Imagine the impact on tribal communities if these funds were leveraged on a 5-to-1 or 3-to-1 basis. Relying on IHBG alone, without leveraging those dollars, misses a significant opportunity. One of the fundamental tools for achieving sustainable economies is the ability to access and leverage capital. HUD encourages tribes to look beyond their grant funding and to leverage IHBG funds with other resources. Increased leveraging brings outside capital, the possibility of mixed-use development, and the overall expansion of economic development to Indian Country.

The use of low-income housing tax credits, in conjunction with IHBG funds, is another valuable leveraging tool. HUD is in the process of promulgating a regulation to clarify that project-based or tenant-based rental assistance, provided with IHBG funds in a manner consistent with assistance provided under the Section 8 program, will meet the standards set by the Secretary of the Treasury, enabling that agency to make a determination that the building or project does not reduce the eligible basis for tax credit purposes.

Bond Financing

ONAP's newest initiative to provide yet another opportunity to access private capital is IHBG bond financing. This program will build on the successes of HUD's public housing bond financing program, the Capital Fund Financing program. Bond financing will provide the tribes a means to leverage their Indian Housing Block Grant dollars to address their housing needs immediately. Under this program, tribes may leverage up to one-third of their annual IHBG for debt service on bond financing.

This program will assist tribes in meeting their housing needs in a shorter time frame by accessing more funds up front, rather than waiting to accumulate funds over time through IHBG alone. The potential benefits of bond financing include: the possibility of providing lower interest rates through tax-exempt financing, and the opportunity to finance larger transactions as compared to the Title VI program.

The ability of tribes to issue bonds to implement affordable housing activities promotes self-sufficiency and supports the development of sustainable tribal economies while addressing the basic needs of the community.

HUD and the Bureau of Indian Affairs

Title Status Reports

HUD continues to work with the Bureau of Indian Affairs (BIA), the Department of Agriculture, tribes and TDHEs, and mortgage industry representatives to improve the Title Status Report (TSR) process. On April 5, 2007, HUD participated in a national training session in Albuquerque, New Mexico for BIA Realty and Land Title Records Office personnel only. This BIA staff training focused on developing a clear understanding of mortgage transactions and opportunity costs associated with time delays. The interactive training session created a blueprint for the 17 regional training sessions that began in June at the Navajo Nation, and culminate with a November session held in Alaska. These training sessions, for tribes, federal agencies, lenders, and other finance partners, will focus on the implementation of a standardized TSR process that will make it possible for them to follow the same procedure regardless of where the trust land transaction occurs. The goal is to streamline the TSR process and increase access to private-sector capital on trust land.

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. Creating homeownership opportunities continues to rank at the top of this Administration's priorities for the American people.

The Section 184 program may be used by a Native American family to acquire a mortgage, or by the tribe or its TDHE, to build new homeownership units within a community.

In FY 2006, the Section 184 program guaranteed 1,139 single-family loans to Native American homebuyers, consisting of $172.3 million in loan guarantees completed, and another $18 million in loans approved. This represents a $190 million investment in Indian Country. Through June 30, 2007, 909 loans for $153.1 million have been guaranteed. This is a 21 percent increase over the same period in FY 2006.

The Section 184 program will continue 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.

Land Assignment Procedure

In a collaborative effort with tribes to enhance the housing market on reservations, the Office of Native American Programs and the BIA worked with the Mashantucket Pequot tribe to establish a

tribal land assignment procedure. Through the use of tribal land assignments, 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. This process will make it possible for tribal members to transfer and/or assign their property interest to their heirs under tribal law and allow the tribe to supervise its land use in a manner similar to that undertaken by other sovereign entities. The tribe must create a title plant and recordation process that meets title insurance industry standards, as well as develop assignment laws or ordinances before proceeding. A tribe must submit a copy of their land assignment law, including eviction or foreclosure ordinances, to HUD for approval before a Section 184 loan guarantee can be issued.

Title VI Accomplishments

Tribes and TDHEs with no significant audit findings can borrow up to five times their annual Indian Housing Block Grant Need allocation, and use their future IHBG funds as collateral to back up the Title VI loan. HUD will provide a 95 percent guarantee to a lender in the event of a default. Currently, the program is underutilized by the tribes. In response, ONAP is stepping-up its outreach efforts, and has developed a new capacity-building strategy, based on the successes of marketing the Section 184 program.

ONAP has begun a new marketing and outreach program geared for tribal leaders. It will increase awareness of the benefits associated with leveraged financing and the Title VI program. The emphasis is on economic self-sufficiency through entrepreneurship.

Realizing that financing and development concepts are new to some tribes, ONAP will increase the technical assistance provided to them. ONAP staff is available to provide direct assistance to tribes, including financial planning and development strategies.

Since the Title VI program requires that a tribe or a tribal housing entity act, either wholly or in part, as a developer, ONAP is tailoring some of its training and workshops to build the necessary development capacity.

Native Hawaiian Programs Accomplishments

Native Hawaiian Housing Block Grant (NHHBG) Program

The Department of Hawaiian Home Lands (DHHL) has focused a significant amount of NHHBG resources on site and infrastructure improvements to support the development of new homeownership units. DHHL has also partnered with public entities, private nonprofit, and for-profit organizations to assist families in achieving and maintaining homeownership.

There are numerous affordable housing activities in process at more than 14 sites throughout the state of Hawaii. Here are a few examples: $4.4 million in FY 2003 NHHBG funds were used towards the $21 million infrastructure cost for 326 homes that will be built in the Kaupea project on the island of Oahu, resulting in 78 NAHASDA-assisted units. Kekaha Residential lots, a project of 49 single-family homes, will be constructed on the island of Kauai.

$1.8 million of FY 2004 NHHBG funds were used towards the $3.75 million cost for infrastructure improvements, resulting in 22 NAHASDA-assisted units. Partnerships with Habitat for Humanity and other self-help providers are making it possible for low-income Native Hawaiian families to achieve homeownership through the self-help method of construction in various projects on the islands of Kauai, Oahu, Maui, Molokai, and Hawaii. Partnerships have also been secured to implement a home rehabilitation loan program, a self-help home repair training program, and to provide homeownership counseling and training.

Section 184A Native Hawaiian Housing Loan Guarantee Program

The DHHL, a State agency, is our primary program partner. Among its other activities, DHHL is 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 11 single-family homes on the Hawaiian Home Lands made available for Native Hawaiian families. In May 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 finalizing processing guidelines that will facilitate full implementation of the Section 184A loan guarantee program. It is anticipated that as more housing units are developed on Hawaiian Home Lands, the Section 184A program will provide homebuyers with an attractive alternative to the limited financing options available on the 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 other training sessions 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 and technical assistance 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 a DVD providing instructions to housing staff and residents on mold prevention and remediation, 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. Finally, we are again preparing to hold regional and national Native American housing summits over the next two years.

CONCLUSION

Thank you again for the opportunity to provide this information. I look forward to your questions.

The CHAIRMAN. Thank you very much.

Mr. Boyd, you mentioned in your testimony provisions in the discussion draft which HUD supports. Are there provisions that you do not support? Is your testimony that the Administration would support the discussion draft that is now before us?

Mr. BOYD. Mr. Chairman, to date we have not really had an opportunity to fully brief and work with Assistant Secretary Cabrera on the entirety of this bill. We will have that opportunity when he returns to the office next week. At that time, as we begin to brief him and work with him, we would like to have a continued discussion with this Committee and the staff as we further develop our positions on the entirety of the bill.

The CHAIRMAN. But you have a chance to review the discussion draft. Are there things in the discussion draft that you expect we will be hearing from you that you oppose at this point?

Mr. BOYD. I really don't know at this point. I would rather have the opportunity to discuss this with the Assistant Secretary and then report back to the Committee.

The CHAIRMAN. Would it be all right than in Senate language we say that you have expressed no opposition?

[Laughter.]

The CHAIRMAN. All right. As soon as you have had a chance to do the more thorough review, we want to work to move this legislation and we want your thoughts and ideas about it.

You mentioned support for allowing over-income essential families to receive tenant-based rental assistance in rental housing. Give me your assessment of how that will assist tribes and what is the current need for those services?

Mr. BOYD. Well, right now the regulation allows for essential families to be able to participate in NAHASDA program. These are for the most part non–Indian families: doctors, policemen, nurses, what have you. What our amendment proposes to do is to eliminate or do away with the non–Indian component of that and just open that up so that both non-Indian and Indian professionals that are essential to the community can participate in the NAHASDA programs.

The CHAIRMAN. Mr. Boyd, as you look at the housing needs on the reservations, I think the testimony we are going to hear later today talks about the NAHASDA program and the success of it. The fact is that its existence is beneficial to the tribes and so on. But virtually all of the testimony describes again how dramatically underfunded it is. They talk about there being virtually no increase in funding on these issues. I have a list in front of me that goes back to Fiscal Year 2002, $648 million. It is now down, with not only no increase, but a slight decrease. And then you consider inflation, and so you have washed away a fair amount of the value.

Would you agree that in addition to the authorization, in order to begin to address the problems that exist out there and to begin to solve some of those problems there has to be an increase in funding?

Mr. BOYD. What we have been trying to do over the last several years, and certainly for myself over the last several years since I have taken this position, is to work with tribal organizations, regional housing authorities, tribal leaders throughout the Country, to develop strategies for leveraging the funds that we do have available, and funds that Congress has provided to us.

I think we have been fairly successful in taking those funds that we have to leverage those funds to get more interest, State housing finance agencies, as an example, from the Federal Home Loan

Bank, using low-income housing tax credits. Especially through the Title VI program, and certainly through our 184 program, we have been able to leverage a lot of our resources. I think there has been some very good success stories throughout Indian Country in that leveraging, noting that we have to deal with the funds that we have available.

The CHAIRMAN. But my question was, at a time when we have 90,000 either homeless or ill-housed and we have about 40 percent of the on-reservation housing is considered inadequate. We have had testimony here, one tribal chair said his two daughters have a used trailer house that was moved from Michigan to South Dakota, with no indoor toilet. They have a wood stove in their living room vented out with a pipe through the living room window. These are Third World conditions.

I look at the decreasing funding request. The Administration request is $627 million in this budget request. Seven years ago, it was $648 million. Then we are told that if we go above the President's budget request that he will veto legislation.

So you see the fix we are in. Would you not agree that no matter that you do a good job, and I will submit that we appreciate the work you are doing with tribes, but would you not agree that the witnesses that will follow you that describe the need to adequately fund the structuring of NAHASDA is also a critical need.

Mr. BOYD. Certainly, we do recognize that need, and certainly I think we would gladly receive any kind of assistance we could get.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. Thanks, Mr. Chairman.

When we talk about the funding component and the need to increase the funding, but in addition to the funding, I am also hearing from many of my tribal housing authorities that they are seeking some additional flexibility within the housing program itself.

Section 208 of this draft bill allows the grant recipients to use up to 15 percent of its NAHASDA funds to accomplish the goal of getting more housing out there, more affordable housing. It gives them a little bit more flexibility. What is HUD's position on this?

Mr. BOYD. Well, we have taken note of that. We are not quite sure yet. Again, going back to my earlier statement with regard to talking with Assistant Secretary Cabrera, we would like a little bit more time to formulate a more firm position on that section.

Senator MURKOWSKI. I have a couple of other questions that are very specific as to sections of the bill. So what I will do is I will present those to you for written response. But we would look forward to closer scrutiny, a greater analysis, and constructive help with some of these sections. If there is going to be opposition of if you feel that we can enhance it in some way, we would certainly appreciate hearing that.

The bill also authorizes tribal reserve accounts, which allow the tribal housing entities to set aside a limited amount of their funding, which can be helpful in bridging the funding gaps or anything unforeseen that may arise. What is HUD's view, then, on these reserve accounts?

Mr. BOYD. What we have noted is that in some cases we know that the tribes can already do that. I think what we are going to do internally is to reach back out to find out from tribes why they

really—we don't quite understand why this is really needed at this point.

Senator MURKOWSKI. The bigger question would be if there are these unforeseen circumstances that come about, what is it that we can do to perhaps mitigate them or anticipate them so that it is not this surprise, if you will, at the time when you need the funding most.

Mr. BOYD. Well, in our review of our current statute and regulations, this is already permissible. In other words, tribes can already do this. So we are trying to figure out why this is really needed. We would be glad to discuss this more with the Committee and staff and try to work through this until Mr. Cabrera gets back into the office next week.

Senator MURKOWSKI. The other issue that I would like to bring up with you this morning is the push, rightfully so, to hire tribal members to complete the housing construction projects, keeping the money within the boundaries of their communities. Tribes are saying that HUD is interpreting Indian preference as not incorporating tribal preference. Can you tell me what HUD's interpretation is of the tribal preference laws?

Mr. BOYD. Right now, we agree with the Indian Self-Determination Act. We recognize that if tribes can set up their own Indian preference, then we defer to them.

Senator MURKOWSKI. So you would work to encourage that so that local members of the tribes are involved with the construction projects, so that it is the win-win. You get the housing and you get employment at the same time.

Mr. BOYD. We note that a lot of tribes already have their own Indian preference, their own tribal preference laws.

Senator MURKOWSKI. There is a tribal preference provision in the draft bill. I don't know if you are prepared to give me a comment in terms of your support of that. It is something I would like to know, specifically what HUD's position on that draft provision is.

Mr. BOYD. OK. Can I let you know that after we talk to the Assistant Secretary?

Senator MURKOWSKI. All right.

Thank you, Mr. Chairman.

Mr. BOYD. Thank you.

The CHAIRMAN. Senator Tester?

Senator TESTER. Thank you, Mr. Boyd. I appreciate your testimony.

I, too, want to reiterate the fact that your perspective on the discussion draft is critically important. For us to move forward in a timely manner, it is important to know what your position is.

I just have a couple of real quick questions. The over-income statement, is there a level that determines over-income, a dollar amount?

Mr. BOYD. I believe it is 80 percent of median.

Senator TESTER. Eighty percent of median income for that State?

Mr. BOYD. Yes. Well, it is across the Country.

Senator TESTER. Across the Country?

Mr. BOYD. Yes, across the Country for that region.

Senator TESTER. OK. OK, 80 percent of median income. OK. So the question would become, I mean, you are talking about folks who are essential to a community.

Mr. BOYD. Yes, sir.

Senator TESTER. I think it is a good recruitment tool. I guess the question is, when I visualize the housing needs in Indian Country, and with the dollar amount going down, it is kind of a two-edged sword. I want to make sure that you have good doctors, policemen, teachers, all those kind of things, but on the other side of the coin you have people who are living in Third World conditions that need to be addressed, and I don't want money to be taken away from those kind of needs and put into folks who have more resources to develop their own housing.

What is your perspective on that?

Mr. BOYD. Well, this really allows the tribe to make the decision. I think it would be good under self-determination, to demonstrate further self-determination. This really allows the tribe to make that decision on their own. It is not mandatory, but it does open the door. I know that we have had some situations where a professional Native American family that is essential to the community had to leave or work outside the community. We just thought that this would be a way to provide the tribe with more options.

Senator TESTER. Yes, I think it is good. Overall when I look at it, I think it is good. I just think that combined with the decreases in funding that are especially painful when you take into account inflation, there is a concern that. That is all. I think it is a step in the right direction.

The affordability period or useful life—what exactly are we talking about? I mean, are we talking about a period of time? I didn't track it very well.

Mr. BOYD. The key that we are trying to accomplish here with regard to useful life, it is usually 20 years.

Senator TESTER. Twenty?

Mr. BOYD. Twenty. But also what we want to do is be able to allow with our recommendations, so that children can inherit these properties from their families.

Senator TESTER. OK. Thank you. I don't mean that to be critical. I just was curious. I just didn't know.

The last question I have dovetails on what the Chairman was asking about, about the $627 million, and you said that you were being very successful in leveraging funds. Could you give me any kind of idea of how many private dollar funds are being leveraged with these monies?

Section 184 is Federal dollars. Right? And there are probably some other Federal dollars. I am talking about, are you able to leverage outside money, outside of the Federal Government?

Mr. BOYD. I can give you a couple of examples, Senator. Certainly, I think one of them would be the Passamaquoddy Tribe in New England that through their Title VI program leveraged about $1.5 million.

Senator TESTER. And how many bucks were put in to do that? Is it a one to one match?

Mr. BOYD. No. They bought in on a total project. It was a housing development project. The total amount of the project was $8

million, so they were able to leverage the Title VI program and that contribution, with total cost of the housing project was $8 million. Some of it was low-income housing tax credits. Some of it may come from State housing finance agencies.

Another tribe used our Title VI for bridge financing. They also then brought in additional funds. As I mentioned earlier, a number of tribes really are beginning to look at Title VI, especially Title VI, and of course 184, and look at other opportunities for leveraging, including from the State housing finance agencies.

As a matter of fact, we were just in Alaska recently and had some really good meetings with the State housing finance agency. They are doing a very good job in reaching out to the Alaska Native community, as well as some of the other States in the Lower 48.

Senator TESTER. I applaud those efforts to leverage. Make no mistake about it. I think it is good. I know we could get into truly the weeds on this thing. I would really be interested in knowing what kind of percentages you are talking about overall, of the $627 million, what is that leveraged up to?

Mr. BOYD. I don't have the total number right now, but I would be glad to provide that to you.

Senator TESTER. That would be good. I am just curious.

Thank you very much. I appreciate your testimony.

Mr. BOYD. You are welcome.

The CHAIRMAN. Mr. Boyd, thank you very much for being here. Let me ask again that as soon as you are able to do a full review of this discussion draft, we would ask you to do that. We do want to move ahead with the reauthorization. We want your consultation and your advice as we proceed.

So I appreciate your being here today, and look forward to further visits on the discussion draft.

Mr. BOYD. Thank you.

The CHAIRMAN. Thank you very much.

The second panel today will be the Honorable David "Doc" Brien, Chairman of the Turtle Mountain Band of Chippewa Indians in Belcourt, North Dakota; the Honorable Waldo Walker, Chairman of the Washoe Tribe of Nevada and California, from Gardnerville, Nevada. He would be accompanied by Mr. Raymond Gonzales, Executive Director of that tribe.

Ms. Aneva Yazzie, CEO of Navajo Nation Housing Authority at Window Rock, Arizona; Ms. Teri Nutter, Executive Director, Copper River Basin Regional Housing Authority in Glennallen, Alaska. Teri Nutter is from Alaska, accompanied by Mr. Dan Duame, Executive Director of that housing authority; and Mr. Marty Shuravloff, the Chairman of the National American Indian Housing Council here in Washington, D.C.

I want to thank all of you for being here today. We will appreciate your testimony as a contribution to development of a reauthorization of this important housing legislation.

We will begin with the Honorable David "Doc" Brien, Chairman of the Turtle Mountain Band of the Chippewa Indian Tribe in Belcourt, North Dakota. As I have told other witnesses, the entire statements submitted by all of you will be made a part of the permanent record, and you may summarize.

Chairman Brien, thank you very much.

STATEMENT OF DAVID BRIEN, CHAIRMAN, TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Mr. BRIEN. Good morning, Chairman Dorgan and distinguished Members of the Committee, Senator, Vice Chair Murkowski, Senator Tester. My name is David Brien. I am the Chairman of the Turtle Mountain Band of Chippewa Indians of North Dakota. We are a woodlands and prairie buffalo hunting people, and many of our members are children of the Great Lakes fur trade.

Thank you for inviting me to testify on Indian housing needs and the reauthorization of NAHASDA. It is a great honor. As you listen to our testimony today, please remember and keep in mind the children and the elders.

I would like to start by thanking Senator Dorgan of North Dakota for his leadership on Indian housing. Our reservation in North Dakota is home to approximately 14,000 resident members; 30,000 tribal members nationwide. We strongly support the reauthorization of the Native American Housing Assistance and Self-Determination Act. This Act has been very important in allowing the tribe considerable self-determination in providing housing for its low-income members.

Tribal members living in their homelands throughout the Country suffer every day from the most serious unmet housing needs in the Nation, third-world conditions. NAHASDA has been employed effectively to deliver Federal funds that may be leveraged with other funding financing. However, the continuing failure to appropriate sufficient funding for NAHASDA has proven to be a real roadblock in solving the often deplorable housing conditions we face on our reservations and in Indian Country.

Since the beginning of NAHASDA 10 years ago, there has been virtually no significant increase in the funding level, and this must be corrected. Our tribe and many others strongly support increased funding in appropriations for NAHASDA. The funding level should be at least $1 billion. That is supported by research conducted by national organizations and the tribes themselves.

The Committee's proposal to reauthorize NAHASDA contains some important and thoughtful changes that will help make NAHASDA a more effective program. In the time available, I would like to highlight a few of these issues, endorsements and recommendations.

Number one, some of the new proposed provisions appear to possibly expand the Indian housing block grant beyond serving low-income tribal members. We recommend and request that these proposals be revised to ensure that only low-income tribal members are primarily served by NAHASDA.

Number two, we applaud that the bill directs the bill directs the Comptroller General to conduct a study of new alternative data sources for the Indian housing block grant formula over the next 2 years. This study, done in consultation with the tribes, will help correct the failures of past negotiated rulemaking and HUD-mandated allocation rules that direct the use of race-based census data.

It is important that we find a way to allocate Indian housing block grant funds based on tribal membership population.

NAHASDA is not and should not become a race-based program. The use of race-based and individual self-identification data such as the U.S. Census conflicts with NAHASDA's statutory requirements and is not an appropriate way to allocate tribal housing funds.

Three, we strongly endorse the inclusion of the new self- determination activities demonstration program that would give tribes greater flexibility to administer a portion of their Indian housing block grant. In order for this program to be effective, we recommend that the stated percentage limit of grant funds be extended to approximately 20 percent.

Four, and finally, we hope that nest year Congress will be able to address changes to the 30 percent rule on tenant and home buyer payments. Tribes need more flexibility to develop their own, our own, standards and methods for payment in order to ensure that our low-income tribal members are only required to pay a fair and affordable amount for their homes.

I want to thank the Committee for its interest in pursuing the reauthorization of NAHASDA. With your permission, I would like to submit supplemental written testimony in the next week to outline our comprehensive recommendations on these issues.

We are a little people in proud Indian Country. Help us. Remember our children, the little ones, and remember our elders.

[The prepared statement and supplementary information of Mr. Brien follow:]

PREPARED STATEMENT OF DAVID BRIEN, CHAIRMAN, TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Good morning, Chairman Dorgan and distinguished Members of the Committee. My name is David Brien and I am the Chairman of the Turtle Mountain Band of Chippewa Indians. Thank you for inviting me to testify on Indian housing needs and the re-authorization of NAHASDA.

I would like to start by thanking Chairman Dorgan for his leadership on Indian housing issues.

Our reservation in northern North Dakota is home to 14,500 members. We strongly support the re-authorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA). This Act has been very important in allowing the tribe considerable self-determination in providing housing for its low-income members.

Tribal members living in their homelands throughout this country suffer everyday from the most serious unmet housing needs in the Nation. NAHASDA has been employed effectively to deliver Federal funds that may be leveraged with other funding and financing. However, the continuing failure to appropriate sufficient funding for NAHASDA has proved to be a real roadblock in solving the often deplorable housing conditions we face on our reservations. Since the beginning of NAHASDA 10 years ago, there has been virtually no significant increase in the funding level and this must be corrected. Our Tribe and many others strongly support increased funding in appropriations for NAHASDA. The funding level should be at least $1 billion as supported by research conducted by national organizations and the tribes themselves.

The Committee's proposal to re-authorize NAHASDA contains some important and thoughtful changes that will help make NAHASDA a more effective program. In the time available today, I would like to highlight just a few of these issues, endorsements, and recommendations:

1. Some of the new proposed provisions appear to possibly expand the Indian Housing Block Grant program beyond serving just low-income tribal members. We recommend and request that these proposals be revised to ensure that only low-income tribal members are primarily served by NAHASDA.

2. We applaud that the bill directs the Comptroller General to conduct a study of new alternative data sources for the Indian Housing Block Grant formula

over the next 2 years. This study, done in consultation with tribes, will help correct the failures of past negotiated rulemaking and HUD-mandated allocation rules that direct the use of race-based Census data. It is important that we find a way to allocate Indian Housing Block Grant funds based on tribal membership populations. NAHASDA is not, and should not become, a raced-based program. Use of race-based, and individual self-identification data, such as the U.S. Census, conflicts with NAHASDA's statutory requirements and is not an appropriate way to allocate tribal housing funds.

3. We strongly endorse the inclusion of the new Self-Determined Activities Demonstration program that would give tribes greater flexibility to administer a portion of their Indian Housing Block Grant. In order for this program to be effective, we recommend that the stated percentage limit of grant funds be extended to 20 percent.

4. We hope that next year, Congress will be able to address changes to the 30-percent rule on tenant and homebuyer payments. Tribes need more flexibility to develop their own standards and methods for payment in order to ensure that low-income tribal members are only required to pay a fair and affordable amount for their homes.

I want to again thank the Committee for its interest in pursuing the reauthorization of NAHASDA, and with your permission, I would like to submit supplemental written testimony in the next week to outline our comprehensive recommendations on these issues.

I would be happy to answer any questions you might have.

SUPPLEMENTARY INFORMATION

Our reservation in northern North Dakota is home to 14,500 members. We strongly support the re-authorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA). This Act has been very important in allowing the tribe considerable self-determination in providing housing for its low-income members.

Tribal members living in their homelands throughout this country suffer everyday from the most serious unmet housing needs in the Nation. NAHASDA has been employed effectively to deliver Federal funds that may be leveraged with other funding and financing. However, the continuing failure to appropriate sufficient funding for NAHASDA has proved to be a real roadblock in solving the often deplorable housing conditions we face on our reservations. Since the beginning of NAHASDA 10 years ago, there has been virtually no significant increase in the funding level and this must be corrected. Our Tribe and many others strongly support increased funding in appropriations for NAHASDA. The funding level should be at least $1 billion as supported by research conducted by national organizations and the tribes themselves.

1. Some of the new proposed provisions appear to possibly expand the Indian Housing Block Grant program beyond serving just low-income tribal members. We recommend and request that these proposals be revised to ensure that only low-income tribal members are primarily served by NAHASDA. Specifically, we request that the Committee re-examine it proposed amendment to Section 205 of NAHASDA, which, as currently proposed, would exempt housing from not only the useful life restrictions, but also the initial affordability requirements currently contained in Section 205(a)(2) (25 USC 4135 (a)(2)).

2. We applaud that the bill directs the Comptroller General to conduct a study of new alternative data sources for the Indian Housing Block Grant formula over the next 2 years. This study, done in consultation with tribes, will help correct the failures of past negotiated rulemaking and HUD-mandated allocation rules that direct the use of race-based Census data. It is important that we find a way to allocate Indian Housing Block Grant funds based on tribal membership populations. NAHASDA is not, and should not become, a raced-based program. Use of race-based, and individual self-identification data, such as the U.S. Census, conflicts with NAHASDA's statutory requirements and is not an appropriate way to allocate tribal housing funds. The question presented really concerns the following issues:

1) Which individuals within a recipient's formula area can be counted as American Indians and Alaska Natives for purposes of determining each recipient's appropriate share of Native American Housing Assistance and Self-Determination Act ("NAHASDA") funding, and

2) What data set or sets should be used to identify the number of these eligible American Indian and Alaska Natives within each recipient's formula area.

In general, NAHASDA recipients can only serve enrolled tribal members, and certain Alaska Natives, with their NAHASDA funds.[i] NAHASDA is a statute unique from other general public housing statutes by virtue of its provision of resources purely for members of Indian tribes. Any data set, whether prepared by the Census Bureau or otherwise, that fails to identify and count actual tribal members within a recipient's formula area should not be used in determining the allocation of NAHASDA grant funds.[ii] This position promotes tribal self-determination because it recognizes tribes' unique political status and relationship with the Federal Government. It affirms tribes' right to set and implement their own standards for tribal membership, and enhances tribal self-determination by endorsing, rather than ignoring, tribally identified membership lists as the basis for provision of NAHASDA funds.

The decennial census data is an inadequate data set for HUD to use in determining the number of tribal members within NAHASDA formula areas because the census fails to distinguish recognized tribal members who are entitled to receive NAHASDA funds from self-identifying non-tribal members who are not entitled to receive these funds. The census specifically disregards the unique political status of recognized tribes and its use in the formula process is fundamentally flawed. Continuing to use the decennial census undermines tribal self-determination because the census (1) removes enrollment status from the list of criteria for identifying American Indian and Alaska Natives and implements the OMB definition of AIAN which includes Canadian and Central and South American indigenous populations within the scope of the definition of American Indian and Alaska Native,[iii] (2) falsely characterizes a person's membership in a tribe as a racial classification rather than a representation of their political status as a member of a sovereign nation,[iv] and (3) collects and compiles population figures that directly conflict with tribally-determined enrollment lists.[v] Furthermore, the census arbitrarily inflates some recipients' formula numbers and increases their NAHASDA funding by counting populations that cannot be served. If HUD continues to allocate NAHASDA funds to recipients for ineligible non-tribal members, many NAHASDA recipients will continue to lose an ever-growing portion of their rightful share of the limited NAHASDA funding.

Census questions are simply not designed to capture or verify the tribal enrollment data that is necessary to facilitate the fair and targeted grant allocations required by NAHASDA. In order to produce the information necessary to establish an accurate count of tribal members within recipients' formula areas, alternate data sets that are designed and implemented by tribes in accordance with their individual membership standards can and must be developed. These tribally generated data sets will serve to both respect tribal self-determination and ensure that NAHASDA funds are fairly divided amongst all tribes and their tribal members.

3. We strongly endorse the inclusion of the new Self-Determined Activities Demonstration program that would give tribes greater flexibility to administer a portion of their Indian Housing Block Grant. In order for this program to be effective, we recommend that the stated percentage limit of grant funds be extended to 20 percent.

3. We hope that next year, Congress will be able to address changes to the 30-percent rule on tenant and homebuyer payments. Tribes need more flexibility to develop their own standards and methods for payment in order to ensure that low-income tribal members are only required to pay a fair and affordable amount for their homes.

While the central purpose of the Native American Housing Assistance and Self-Determination Act (NAHASDA) is to enhance the ability of tribes to serve the housing needs of their members, imposition of the requirement that tribes can charge rent no higher than 30-percent of a tenant's income (the "30-percent rule") undermines that purpose, and puts tribes in a uniquely disadvantageous position. NAHASDA's 30 Percent Rule, which has as its source the so-called "Brooke Amendment" in the public housing field, affects Indian tribes and tribally designated housing entities differently and more harshly than does the Brooke Amendment itself for public housing authorities.[1] This is because, unlike public housing authorities, (1) tribes are sovereign nations with the ability and power of self-governance, and (2) tribes and TDHEs do not receive Federal subsidies which compensate PHAs for losses they incur by being forced to rent their units at below-market rates. Thus, while it appears that the original intent of including the 30-percent rule in

[1] Cf. 24 C.F.R. Sections 1000.110(e)(1) and 1000.130 (2006).

NAHASDA was to subject Indian and public housing to the same requirements, imposition of the 30-percent rule has, in fact, resulted in Indian tribes being treated differently, and unfairly so, from their public housing counterparts.

NAHASDA found that "the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition." Unfortunately, Congress disregarded that responsibility by limiting the amount of income that tribes could receive from their housing projects, forcing these tribes to use housing development funds to cover the resultant deficit. As a result, and unlike public housing, the 30-percent rule under NAHASDA became a classic case of an unfunded mandate.

Unfortunately, when Congress enacted NAHASDA, it imposed the first part of the Brooke Amendment (the 30-percent rule), but omitted the second, equally important part—an operating subsidy to compensate for the impact of the rule.

Under NAHASDA, a single block grant[2] is provided to tribes to cover all of their housing needs, both operation of existing units and development of new homes. By forcing tribes to spend a large portion of their funds administering the 30-percent rule and subsidizing existing units, the 3O-percent rule serves to directly reduce the amount of new Indian housing that can be built. Tribes, in other words, are forced to eat their seed corn.

The 30 Percent Rule also imposes other operational burdens which require tribes to spend increasingly larger amounts of their grant moneys on administrative tasks, rather than using those funds to provide housing assistance. The rule, for example, mandates tribes to periodically "recertify" tenant incomes. If tribes had the option to alternatively use fair market rents as a ceiling, tribes would be able to develop alternative rent and payment formulas which would not require the re-certification of incomes. This would save tribes funds which could be applied to more productive activities such as constructing more units, improving routine maintenance or adequately funding counseling programs. A recent survey shows that TDHEs with 1937 Housing Act units would save on average 62 percent of their housing occupancy staff costs if they could elect to use fair market rents as a cap and replace the current recertification with either a flat rent schedule or some other payment formula that was less difficult to apply.

For these reasons, the Turtle Mountain Tribe supports discussion and exploration of an amendment to NAHASDA to change the 30-percent rule requirements.

I want to again thank the Committee for its interest in pursuing the reauthorization of NAHASDA, and for allowing me to submit this supplemental written testimony.

ENDNOTES

[i] Under NAHASDA, the term "Indian" means "any person who is a member of an Indian tribe." NAHASDA, 25 U.S.C. § 4101 et seq, at § 9. An "Indian Tribe" is defined as a "tribe that is a federally recognized tribe or State recognized tribe." NAHASDA, § 12(A). The term "Federally Recognized Tribe" is further defined as "any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975." NAHASDA, § 12(B). The term "State Recognized Tribe is defined as "any tribe, band, nation pueblo, village, or community (I) that has been recognized as an Indian tribe by any State; and (II) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary pursuant to the United States Housing Act of 1937 for such housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date." NAHASDA, § 12(C).

[ii] While we do not support the use of either "single-race" or "multi-race" census data for the purpose of counting tribal members and allocating NAHASDA funds to recipients, we would note that a study conducted by the Indian and Native Amer-

[2] It is important to note that the total amount of funds appropriated for NAHASDA in each of the last 10 years has never been increased and is often less than the original FY 1997 appropriation which began the program. This funding has not even kept pace with inflation, so it is no wonder that tribes must spend an ever larger portion of their grants on subsidizing existing units.

ican Employment and Training Coalition demonstrated that "a very significant portion of those identifying as Indians [on the 2000 Census] who also said they belonged to another race were persons who had identified as non-Indians in the 1990 Census. The counts for the Indian "alone" population seem more consistent with the 1990 data than do counts which include the "multi-racial" component of the Indian population." The study further explained that "Census Bureau research indicates that a substantial majority of persons identifying as "multi-racial" Indians choose a non-Indian racial category when asked to list just one race" and "that only 1 percent of the Indian "multi-racial" population lived in Federal reservation or trust land areas." "Counting Indians in the 2000 Census; Impact of the Multiple Race Response Option," Indian and Native American Employment and Training Coalition (January 16, 2004). Therefore, with respect to the two flawed census data sets, "single-race" census data and "multi-race" census data, the use of "multi-race" census data clearly results in the greatest departure from NAHASDA's requirement that only eligible tribal members be served.

[iii] *See* "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," Office of Management and Budget, 62 Federal Register 210, pp. 58781–58790 (October 30, 1997); *and* "2000 Census of Populations and Housing, Summary Social, Economic and Housing Characteristics, Selected Appendixes: 2000, Appendix B: Definitions of Subject Characteristics," pp. B–38–39, U.S. Census Bureau (June 2003), at *http://www.census.gov/population/cen2000/phc-2-a-B.pdf.* Since its decision to expand the definition of 'American Indian and Alaska Native' in 1997 over the objections of several tribal governments, OMB has failed to correct its error by excluding indigenous peoples from Canada, Central and South America from that definition and the resulting census tabulation of AIAN, despite the fact that the Census Bureau received and forwarded to OMB official recommendations from the Census Bureau's AIAN Advisory Committee recommending this change. *See* "Recommendations of the Census Advisory Committee on the American Indian and Alaska Native (AIAN) Populations Made as a Result of the Meeting on November 8–9, 2004," AIAN Advisory Committee, at *http://www.census.gov/cac/www/pdf/aian-resp-nov-2004.pdf*; *and* "Recommendations of the Census Advisory Committee on the American Indian and Alaska Native (AIAN) Populations Made as a Result of the Meeting on May 5–7, 2004," AIAN Advisory Committee, at *http://www.census.gov/cac/www/pdf/may04-recommend-aian.pdf.* As a result, non-tribal members from North, Central and South America will continue to be counted as AIAN in the 2010 Decennial Census and factored into some recipients' NAHASDA allocations to the detriment of many others until approximately 2023 (when the 2020 Decennial Census data will likely be finally compiled and implemented) or longer if the census "race" questions and AIAN definition are left substantively unchanged for the 2020 Decennial Census.

[iv] We would further point out the fact that Census Bureau has refused to even explore the option of adding a separate census question that recognizes 'American Indian' as a distinct political status separate from the purely racial categories identified by the census, despite the fact that it received this specific recommendation from the AIAN Advisory Committee. *See* "Recommendations of the Census Advisory Committee on the American Indian and Alaska Native (AIAN) Populations Made as a Result of the Meeting on October 1–3, 2003," AIAN Advisory Committee.

[v] The explanation provided for the Census Bureau's recent endorsement and effective selection of a form of the 2010 Census race questions that does not specifically address whether or not an individual self-identifying as 'AIAN' is an enrolled member of a tribe illustrates the relative lack of significance it places on obtaining enrollment information vital to administering tribal programs and the near impossibility of getting the Bureau to change its decision at this stage. *See* "Content Determination for the 2010 Decennial Census Program" (Distributed for the November 30, 2006 Special Joint Meeting of the U.S. Census Bureau Advisory Committees), U.S. Census Bureau, at *http://www.census.gov/cac/www/pdf/content-determination.pdf.*

The CHAIRMAN. Chairman Brien, thank you very, very much. I appreciate that.

I might just mention that we had a spiritual leader on your reservation who recently passed away. I recall that when his wife passed away some while ago, the circumstances of his life and the terribly inadequate housing, this wonderful elder was living in unbelievably dilapidated housing, which was not terribly unusual on the reservation. It demonstrated for me once again how much effort

needs to be made to try to improve the housing stock on the reservation.

Francis Crow was a remarkable man, and all of us will miss him.

Mr. BRIEN. Yes.

The CHAIRMAN. Let us hear from the Honorable Waldo Walker, who is Chairman of the Washoe Tribe of Nevada and California. You are from Gardnerville, Nevada. Mr. Walker, welcome. Thank you very much.

STATEMENT OF WALDO WALKER, CHAIRMAN, WASHOE TRIBE OF NEVADA AND CALIFORNIA; ACCOMPANIED BY RAYMOND GONZALES, EXECUTIVE DIRECTOR, WASHOE TRIBAL HOUSING AUTHORITY

Mr. WALKER. Thank you, Chairman Dorgan.

Good morning. Thank you for affording me the opportunity to testify before you today. It is an honor for me to be here today in front of this Committee which has done tremendous things for Indian Country and the Indian people as a whole.

As Chairman of the Washoe Tribe, it is a great honor to come before you. It is encouraging to see the deep interest this Committee has demonstrated in the reauthorization of the Native American Housing Assistance and Self-Determination Act, NAHASDA.

It is an evolving bill, as you see by the previous testimony. It affects little tribes and giant tribes. We are all in the same fight together. The reauthorization of the NAHASDA Act is crucial to the tribes and the Native American people throughout the Nation. There are a few points that I think we really need to look at, and as Committee members, I think need to be pointed out.

In Title II, Section 203(g), we strongly support the de minimis procurement, which is the exemption minimum of $5,000. Currently, HUD requires price quotes on every item purchased. This will allow us not to be bound up by the petty paperwork that we always get caught in. We have to fill out tons and tons of paperwork for a minimal cost of small amount purchase prices.

Title VII, Section 701, technical training assistance. We want to encourage onsite technical assistance through smaller tribes at the local level. It would definitely help us save costs on travel and bring the focus down to the levels of each tribe's specifics.

Also, Section 301 of the allocation formula. We would like as the Nevada Housing Association, believe that the sovereign right should be the tribe's and that they should be able to choose their data sets and negotiate with other tribes regarding the formula. The costs associated with the survey would also be best utilized by adding it back into the NAHASDA block grant funding.

The minimal funding. It is a request to this Committee to seriously consider minimal funding for small tribes. I know that the formula is sometimes difficult. It doesn't give a lot of funding to the smaller tribes, and that is one of the things that I believe really is a big challenge to NAHASDA.

Again, I would like to thank you, Mr. Chairman, and the Committee members for the opportunity to testify before you today, and for spending the time and energy to reauthorize the NAHASDA Act. The passage of this crucial bill will only continue to benefit In-

dian Country, supporting the past efforts to alleviate the severe shortage of decent, safe and sanitary housing for Indian people throughout the Nation, and continue to support the innovation and services and programs as allowed under this bill.

And finally, I want to take the opportunity to ask for your support on amendments and issues that affect the small tribes throughout Nevada and California.

Thank you.

[The prepared statement of Mr. Walker follows:]

PREPARED STATEMENT OF WALDO WALKER, CHAIRMAN, WASHOE TRIBE OF NEVADA AND CALIFORNIA; ACCOMPANIED BY RAYMOND GONZALES, EXECUTIVE DIRECTOR, WASHOE TRIBAL HOUSING AUTHORITY

Introduction

Good morning and thank you for affording me the opportunity to testify before you today. Chairman Dorgan and Committee Members it is an honor to be before this Committee today who's work has done tremendous things for Indian Country and Indian people. My name is Waldo Walker and I am the Chairman of the Washoe Tribe. It is encouraging to see the deep interest this committee has demonstrated to the reauthorization of Native American Housing Assistance Self-Determination Act of 1996 ("NAHASDA").

NAHASDA has brought flexibility to Tribes to create programs specific to their local needs and motivate innovative ways to provide housing services to their people. As a Tribal Leader it is encouraging to witness the attention and hard work of the committee members to reauthorize a bill that benefits the lives of so many Native Americans throughout the country. I applaud your efforts.

NAHASDA is an evolving bill that requires continued improvement to provide a refined tool for Indian Tribes to use to provide decent, safe, sanitary, and quality homes for their people.

Census Data

Over the last several years Tribes have been debating and maneuvering politically over the Multi-Race vs. Single Race. Regardless of the debate, the forum for this discussion and the place for a solution to be agreed upon is the Negotiating Rule Making Committee. Data collection or creations of data sets are a Tribal Leadership issue and have been negotiated by Tribal Leaders during the 1997 Negotiated Rule Making process and again in 2004. The original Negotiated Rule Making Committee has provided a safeguard by establishing in 24 CFR 1000.306, "How can the IHBG formula be modified", the measurable and verifiable data that affects the formula to be addressed every 5 years. If there is recognized need for a change then that change shall not be legislated, but shall be negotiated by the Tribes through the Negotiated Rule Making process. This process is in place for Tribes to have government to government negotiations to reach an agreement that would be in the best interest of all Tribes.

The stance of the Washoe Tribe and the Nevada and California Indian Housing Association is that it is the sovereign right of the Tribes to choose their data sets. This includes census data from multi-race or single race. In addition, if a Tribe chooses to challenge the census by utilizing data collected from their own data collection system then they can submit the data to U.S. Department of Housing and Urban Development (HUD) under the census challenge. In addition we oppose the creation and implementation of a universal data survey system. This system has a number of faults and would create an enormous burden on limited staff and resources for small Tribes to execute. The large cost estimated to implement the universal data survey system would be best utilized to increase NAHASDA appropriations.

The choice to utilize census data was exactly that, a choice, a choice agreed upon by Tribes through the negotiating rulemaking process to utilize a data collection system that was currently available. The choice wasn't to base a program on race, but the choice was to utilize a data set that was currently available without having to spend valuable resources and time to create another data system to collect population data. National American Indian Housing Council (NAIHC) actually took time to form a subcommittee to address this issue to no avail. The conclusion to the exercise is that it is the Tribe's choice to choose a data system or tool they determine best represents their Tribe. This is done through the Negotiating Rule Making proc-

ess. This matter should not be legislated for any reason, but left to the Tribe's to negotiate in good faith to solve the issue surrounding the data collection system utilized for funding distribution.

Minimal Funding

On behalf of the 135 small Tribes in Nevada and California it is my duty to continue to advocate for an adequate minimum funding level under NAHASDA. This would provide every Tribe with sufficient funds to provide meaningful housing assistance to its low income members and to comply with the administrative requirements of NAHASDA. Within the states of Nevada and California the total development cost (TDC) rates to build a single family home have doubled over the last several years. Specifically for the Washoe Tribe the current total development cost is $257,943 per home. However, the NAHASDA block grant has not increased nor has kept up with inflation further inhibiting small tribes to provide decent, sanitary homes for their tribal members.

Appropriations

As testimony is being given today it is my duty to mention the need for increased appropriations. While this committee does not determine the appropriation levels for the NAHASDA Block Grant it is vital for the record to reflect the dire need to increase appropriations. Since the 2000 Census the American Indian population doubled, but funding for the NAHASDA Block Grant did not reflect such a drastic increase in American Indian population. Increasing the appropriations will provide the opportunity for Tribes to take full advantage of the intent of NAHASDA for capacity building, creating innovative ways to leverage funds and the establishment of new programs to alleviate the waiting lists each Tribe has and the increase in American Indians throughout the Nation as demonstrated in the 2000 Census. Currently the majority of funding goes toward supporting the current 37 housing act stock and provides a minimal assistance for innovative programs, services and most important new housing.

In addition, we hope that the Senate will consider reestablishing funding the National American Indian Housing Council. NAIHC has been instrumental in providing free technical assistance to Tribes and Housing Authorities. Prior to the cut in funding technical assistance was being provided at a local level, which was a huge benefit for small Tribes who have limited funds to run their program let alone send staff to trainings. The current environment requires travel to attend needed trainings which puts a drain on their limited resources. It is our hope that the Senate would recognize the need for continued training to Tribes and Housing Professionals for them to provide excellent services and local oversight of programs.

Deficiencies of Existing Formula

The latest negotiated rule-making process revealed a significant deficiency in NAHASDA that affects the funding formula. The Current Assisted Stock component of the NAHASDA funding formula includes houses constructed under the 1937 Housing Act as one factor in allocating funds. However, it does not include houses constructed under NAHASDA. This perpetuates an anomalous situation where tribes with pre-NAHASDA houses receive funds to maintain those houses, but tribes which have constructed houses with funds provided under NAHASDA do not receive such critical assistance. It is proposed to put NAHASDA funded houses on the same footing as pre-NAHASDA houses with respect to maintenance and to assure that all federally developed and assisted housing are adequately maintained.

NAHASDA Re-Authorization

Chairman we are here today to discuss the reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996. Since originally being signed into law, the Act has been amended four times. Each amendment has been intended to improve the efficiency of the Act in providing quality, affordable housing to Indian Country. However, there are further refinements to the Act that are being introduced to make it an even more powerful tool for providing the needed support to Indian Country housing. Nevada and California Indian Housing Association supports the amendments presented by NAIHC.

It is important to point specific support for the amendment "De Minimis Exemption for Procurement of Goods and Services." Procurement for each single item under $5,000 is cumbersome and strains staff time particularly with small Tribes who have limited staff and funding on hand. Current procurement requirements results in spending time and energy far above the savings cost of small procurement purchases. In the states of Nevada and California we have Tribes located in very remote areas with several Tribes who have several communities they serve located from 20 miles to 100 miles away from each other. Due to the remote and rural areas

the Tribes reside in there are limited or no resources in the communities where work is being completed. It works against the school of thought for savings when a staff person must travel back to the main community to procure for a small item to fix a problem that is 20–100 miles away. When in reality they could travel to the closest hardware store solving a problem in a short time as opposed to several hours spent on travel, phone and pick up time for the small items to be purchased through current procurement standards. The Senate Committee on Indian Affairs is strongly encouraged to support this amendment to assist Tribes and Housing Authorities to run a more efficient program.

The proposed amendment to *Sec. 301 Allocation Formula, (2) "Study" (A) and (B)* is opposed by the Washoe Tribe and Nevada and California Indian Housing Association as mentioned above in the section Census Data. This is action that needs to take place in the Negotiated Rule Making Committee. It is the Tribes sovereign right to choose data sets and negotiate which data sets will be utilized for funding distribution or take advantage of the current process through the Census Challenge. This is an exercise that needs to be provided through the process of Government-to-Government negotiations.

Conclusion

Thank you again Chairman and Committee members for the opportunity to testify before you today and for spending the time and energy to reauthorize the Native American Housing and Self-Determination Act. The passage of this crucial bill will only continue to benefit Indian County supporting the past efforts to alleviate the severe shortage of decent, safe and sanitary housing for Indian people throughout the Nation and continue to support innovation in services and programs as allowed under this bill. Finally, I want to take the opportunity to ask for your support of amendments and issues that affect the small Tribes throughout Nevada and California.

The CHAIRMAN. Chairman Walker, thank you very much.

You are accompanied by Raymond Gonzales. Would you identify yourself? Is Mr. Gonzales here? Thank you for joining us, Mr. Gonzales. We appreciate that.

Chairman Brien, I mentioned Francis Crow. Of course, I meant Francis Cree. I want to make sure the record is correct. He was a wonderful spiritual leader of your tribe.

We are next going to hear from Ms. Aneva Yazzie the CEO of the Navajo Housing Authority, Window Rock, Arizona. You may proceed.

STATEMENT OF ANEVA J. YAZZIE, CEO, NAVAJO HOUSING AUTHORITY

Ms. YAZZIE. Good morning, Chairman Dorgan and Members of the Committee. Thank you for this opportunity to address you on the topic of reauthorization of the Native American Housing Assistance and Self-Determination Act.

President Joe Shirley was not able to be here with you today, but he asked me to extend his greetings and his appreciation for your work and your dedication to the cause of tribal sovereignty, and your support of native families across the Country.

While I have provided the Committee with more extensive comments in my written testimony, I would like to provide a summary of those comments, and I am happy to answer any questions you may have.

As Chief Executive Officer of the Navajo Housing Authority, I am charged with operating the largest tribal housing organization in the Country. The Navajo Housing Authority currently manages 8,000 units of housing, approximately 7,000 in rental units, and 1,000 in home ownership and lease-to-own units.

The Navajo Housing Authority enjoys a good working relationship with both our local HUD Office of Native American Programs and with the National ONAP office. We want to thank both Deputy Assistant Secretary Rodger Boyd and Assistant Secretary Orlando Cabrera for their support and guidance, especially in the last year.

NAHASDA is a good law, but the funding for NAHASDA is too little for its real promise to be realized. As costs increase without an increase in Federal funding, a higher share of NAHASDA funds go to support the existing housing stock. This leaves little room for the innovation and new opportunities envisioned by the members of the Committee and tribal leaders who crafted this program a decade ago.

The most contentious issue facing Indian housing in the last few years has been the use of census data to determine funding allocations. This is just not a debate about how funds are allocated. It is fundamental to NAHASDA and to all Indian programs. Tribal housing must remain for tribal members, and therefore tribal members should be counted when determining funding allocation.

I applaud you, Chairman Dorgan, for addressing this issue. To date, no consensus has been reached on a solution, but the provision in the discussion draft to study what alternative data sources exist is a major leap forward. It demonstrates that the Committee understands that there is a real problem in the current system and moves us toward a solution. Thank you, Chairman, for your courage.

Amending NAHASDA Title VI to include the eligible activities allowed under the Section 108 program gives tribes access to the benefits of a program long used by urban communities. This would increase investment in economic development and infrastructure in communities that desperate need such investment without increasing Federal appropriations.

Making this definitional change would also increase the utilization of Title VI, the credit subsidy, which often goes unused and is a regular target of rescissions. The specific language in the discussion draft does not appear to meet with what we believe was the Committee's intent in this regard, and we will work with your staff to address this.

The Navajo Nation is encouraged by the inclusion of the self- determined housing activities program. Any effort to increase self-determination is welcome, and we appreciate the move to broaden the eligible activities under this proposal. Housing cannot be built without infrastructure. Existing water and wastewater facilities are hopelessly overburdened and in many areas of our land do not exist at all.

In Indian Country, lack of infrastructure is an affordable housing problem. The exclusion of developer fees from consideration as program income and low-income housing tax credit projects is an excellent proposal. Tax credits are a small, but growing portion of total housing development in Indian Country, but one that must be supported.

One change in Federal law we would like the Committee to consider would be the elimination of the prohibition from using Indian Health Service funds in concert with NAHASDA funds. Tribes should determine where to spend scarce resources and if a tribe

would like to use IHS funds for water and wastewater in conjunction with a NAHASDA-funded housing project, that should be the tribe's decision.

Mr. Chairman, the discussion draft is good legislation, and I appreciate the opportunity to comment on it. You and your staff have done an excellent job and the recommendations I offered are simply ways to make a good bill better. I look forward to working with you as this bill moves forward, and I am happy to answer any questions you or the members of the Committee may have.

Thank you.

[The prepared statement of Ms. Yazzie follows:]

PREPARED STATEMENT OF ANEVA J. YAZZIE, CEO, NAVAJO HOUSING AUTHORITY

Chairman Dorgan and Members of the Committee, thank you for this opportunity to address you on the topic of reauthorization of the Native American Housing Assistance and Self-Determination Act. President Joe Shirley was not able to be here with you today, but he asked me to extend his greetings and his appreciation for your work and your dedication to the cause of Indian sovereignty and your support of Native families across the country.

As Chief Executive Officer of the Navajo Housing Authority, I am charged with operating the largest Tribal Housing organization in the country. The Navajo Nation spreads across three states: Arizona, New Mexico and Utah. The Nation covers nearly 27,000 square miles, making it larger than the State of West Virginia. The Navajo Housing Authority manages 8,000 units of housing (approximately 7,000 rental units and 1,000 home ownership and lease-to-own units) and is the largest developer of housing in this vast area.

Working in concert with other agencies of the Navajo Nation, the Navajo Housing Authority has made great strides in improving the lives of tribal members. I am lucky to have the support of a tremendous staff, both in our headquarters in Window Rock, and throughout the Navajo Nation. I am also blessed by the support of a strong Board and tribal government, including President Shirley and his staff and the Navajo Nation Council.

In the last decade, the Native American Housing Assistance and Self-Determination Act (NAHASDA) has been a useful tool in our Nation's work. The hallmarks of the law—self-determination and Tribal decision-making—are what make it successful.

The law is not without its challenges and for the past decade tribes have worked with HUD to implement the law in the most effective and efficient manner possible. The Navajo Housing Authority enjoys a good working relationship both with our local HUD Office of Native American Program and with the National ONAP Office. We thank both Deputy Assistant Rodger Boyd and Assistant Secretary Orlando Cabrera for their support and guidance, especially in the last year.

Census Data

The most contentious issue facing Indian housing in the last few years has been the use of Census data to determine funding allocations. NHA has been heavily involved in this discussion because we believe this is not just a debate about how funds are allocated; it is fundamental to NAHASDA and to all Indian programs. Tribal housing must remain for tribal members and tribal members should be counted when determining funding allocations.

NAHASDA is a tribal program, not an ethnic program. Indian programs are not created or supported by this Congress to benefit a race. Indian programs, NAHASDA included, exist because of the unique relationship between the Federal Government and Indian tribes. Treaties, statutes and Supreme Court decisions have all demonstrated, clarified and supported this notion. Individuals benefit from these programs because they are members of a tribe, not because they belong to a particular ethnic group. If we abandon that fundamental principle, we jeopardize the very existence of such programs.

When the original NAHASDA negotiated rule-making committee met to draft regulations, Census data was chosen because it was considered an unbiased source of data to quantify the need for housing in tribal service areas. However, the architects of the law did not foresee the changes that would occur in the 2000 Census, nor did they assume Census data would be used for 10 years.

The original data used was from the 1990 Census, in which individuals chose one race. In the collection of data for the 2000 Census, individuals had the option of selecting one or more races by which to identify themselves. This is what is now called "multi-race" Census data.

Clearly, Census data is not the correct way to assess housing need for tribal members. NAHASDA is a tribal program, not an ethnic program, and counting those who identify themselves as Indian regardless of whether they are tribal members is wrong and dangerous. If we are distributing funds to tribal members, we should count tribal members.

We support the use of tribal enrollment data, not Census data, to determine need under NAHASDA. Until terms of verifiable enrollment data can be agreed upon by Federal Government and tribal representatives, NHA urges a return to the use of single-race Census data because, while imperfect, it is the better approximation of tribal enrollment numbers.

I applaud you, Chairman Dorgan, for addressing this issue. To date, no consensus has been reached on a solution, but the provision in the discussion draft, to study what alternative data sources exist, is a leap forward. It demonstrates that the Committee understands that there is a real problem in the current system and moves us toward a solution. Thank you, Mr. Chairman, for your courage.

Appropriations

The major failing of NAHASDA has not been caused by the law itself, but by the lack of sufficient funding. NAHASDA is a good law, but the funding for NAHASDA is too low for its real promise to be realized. As costs increase without an increase in Federal funding, a higher share of NAHASDA funds go to support the existing housing stock. This leaves little room for the innovation and new opportunities envisioned by the members of this Committee and Tribal leaders who crafted this program a decade ago.

In addition to funding for the block grant, we would like to ask that the Congress reconsider its decision to eliminate funding for the National American Indian Housing Council. Providing for a well-trained group of professionals at the tribal level will ensure the success of NAHASDA, which clearly benefits families throughout Indian Country.

Proposed NAHASDA Amendments

The proposed amendment broadening the scope of the Title VI Loan Guarantee program holds tremendous possibilities for Indian Country. When originally created by the drafters of NAHASDA, Title VI was seen as a means to increase large-scale development of housing in Indian communities while also introducing the use of financing mechanisms used in non-Indian areas. Title VI has not, however, lived up to its original promise and continues to be underutilized.

Title VI is underutilized for two basic reasons. First, there has been a lack of effective education about the program. We are pleased to see that the draft bill addresses that by including a requirement that HUD provides training on the use of Title VI guarantees and we support the provision. Second, the activities allowed under the current Title VI program are so limited that most activities, no matter how beneficial to local tribal communities, cannot generate enough income to cover debt service on the guaranteed loan or make bond payments.

Title VI is based on the very successful Section 108 program, which allows direct recipients of Community Development Block Grant dollars to borrow or issue bonded debt for up to five times their annual formula allocation to support the functions otherwise allowed under CDBG. Tribal governments are statutorily prohibited from utilizing the Section 108 program because tribes compete for one national set-aside, known as ICDBG. Without a formula allocation under CDBG, tribes will never be able to access this vital program.

Amending Title VI to include the eligible activities allowed under Section 108 gives tribes access to the benefits of a program long used by urban communities. This would have the effect of increasing investment in economic development and infrastructure in communities desperately in need of such investment without increasing Federal appropriations. Making this definitional change would also increase utilization of Title VI, the credit subsidy for which often goes unused and is a regular target of rescissions.

The advantage of this change is that while it increases the investment in infrastructure and economic development, it does not reduce the available funds for housing because the block grant's eligible activities remain unchanged. This would allow tribes to use funds from outside sources—banks or bond investors—to support desperately needed development in Indian Country. The only way funds meant for housing could go to economic development is if the borrowing, which HUD itself

must individually approve, results in a claim against the U.S. Government. In the history of the Section 108 program we are unaware of any time in which HUD has withheld CDBG grant funds.

The potential benefit of pumping hundreds of millions of dollars into economic development and infrastructure without an increase in appropriations far outweighs the hypothetical possibility that HUD might choose to withhold funds from a few tribes because of poor oversight on their part. Effective education and diligent oversight can prevent this.

The specific language in the discussion draft does not appear to meet what we believe was the Committee's intent in this regard. The language would create a demonstration program in which 50 percent of guarantee authority could be used for activities allowed under Title I of NAHASDA, as opposed to Title VI. However, after reviewing the eligible activities, it appears that these activities are the same. We believe that to meet the Committee's goals the Section 108 eligible activities should be referenced, not Title I of NAHASDA.

The Navajo Nation is encouraged by the inclusion of the Self-Determined Housing Activities program. NAHASDA's findings and purposes establish that self-determination and self-governance are to be the hallmarks of the law:

> Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in [the Indian Self-Determination and Educational Assistance Act].

Any effort to increase self-determination is welcome and we appreciate the move to broaden the eligible activities under this proposal. Housing cannot be built without infrastructure. Existing water and waste water facilities are hopelessly overburdened and in many areas of our land do not exist at all. In some areas of Indian Country units of housing sit vacant because they have no electricity or lack water and sewer hook ups. In Indian country, lack of infrastructure is an affordable housing problem.

The exclusion of developer fees from consideration as program income in low-income housing tax credit projects is an excellent proposal. The developer fees from tax credit projects are the result of risks taken by a tribe and for developers constitute a form of profit. We should reward tribes who undertake these activities themselves. Anything this Committee, or your colleagues at the Finance Committee, can do to encourage tribes to use the tax credit program is welcome. Tax credits are a small but growing portion of total housing development in Indian Country, but one that must be supported.

Other provisions in the bill, including the eligibility of essential Indian families in housing and the inclusion of police officers, will go far to strengthening our communities. Likewise, the de minimis exemption from procurement rules when a NAHASDA recipient is spending less than $5,000 will alleviate administrative burdens. The savings one might find through a competitive bid process for such small amounts is far outweighed by the amount of time and effort that must be put in to solicit and review the bids. Saving $100 on supplies is not worth it if it took 30 staff hours to accomplish that, time that could be better spent elsewhere and if accounted for would actually be shown to cost more money than the supposed "savings."

The Navajo Nation continues to believe that the tribes themselves should be able to set rents for tenants. Local Tribal officials, like all Members of this Committee, must answer to their constituents and would not charge excessive rents. However, the continued imposition of the 30 percent maximum rent, a variant of the so-called "Brooke Amendment" from the public housing and Section programs—without even an exemption for utility costs—is contrary to the concept of tribal self-governance. We understand, however, that we have more work to do as advocates for this position before the Congress will make such a change. We hope the Committee will consider this change in future legislation.

Some language in the bill would appear to be a response to recent Federal court cases concerning the conveyance of low-income housing units and the legality of funding them under the "formula current assisted stock" portion of the NAHASDA block grant. However, such broad language as is included in the Discussion Draft is not consistent with the realities of managing housing in Indian Country. In the case of the Navajo Nation, units that are under contract terms for "Mutual Help" units should be conveyed to families cannot be conveyed because of the failure of the Bureau of Indian Affairs to provide Title Status Reports. Without these TSRs, units cannot be conveyed. This means Navajo is being criticized and threatened with a reduction in Federal funds by one Federal agency because of the failures of an-

other Federal agency. To codify a specific time period would eliminate funding for units that NHA is still required to operate and maintain. This language should be re-written if it is to remain.

One change in Federal law we would like the Committee to consider would be the elimination of the prohibition from using Indian Health Service funds in concert with NAHASDA funds. While this would not be an amendment to NAHASDA—this prohibition is included in appropriations legislation on an annual basis—there is a proposal to make this prohibition permanent through the reauthorization of the Indian Health Care Act. The concern that the lack of available funds means we should keep these funding streams separate may be well-intended, but it flies in the face of Tribal self-determination. Tribes should determine where to spend scarce resources and if a tribe would like to use IHS funds for water and waste-water in conjunction with a NAHASDA-funded housing project that should be the tribe's decision.

Conclusion

Mr. Chairman, the discussion draft is good legislation and I appreciate the opportunity to comment on it. You and your staff have done an excellent job and the recommendations I have offered are simply ways to make a good bill better. I look forward to working with you as this bill moves forward and I am happy to answer any questions you or other Members of the Committee may have.

The CHAIRMAN. Ms. Yazzie, thank you very much for your testimony.

Next, we will hear from Ms. Teri Nutter, the Executive Director of the Copper River Basin Regional Housing Authority in Glennallen, Alaska. She is accompanied by Mr. Dan Duame, who is the Executive Director. Mr. Duame, would you identify yourself? Thank you very much. We appreciate your being here.

Ms. Nutter, why don't you proceed?

STATEMENT OF TERI NUTTER, EXECUTIVE DIRECTOR, COPPER RIVER BASIN HOUSING AUTHORITY; ACCOMPANIED BY DAN DUAME, EXECUTIVE DIRECTOR OF THE ALEUTIAN HOUSING AUTHORITY

Ms. NUTTER. Good morning, Chairman Dorgan, Vice Chair Murkowski, and Members of the Committee. I am pleased to appear before you today and thank you for the opportunity to provide comments on the NAHASDA reauthorization.

Let me start by expressing our profound sadness over the recent loss of Senator Craig Thomas, who as you well know was a good friend of Indian Country, and a distinguished Member of this Committee. Our sadness is tempered by the selection of our own Senator Lisa Murkowski to be Vice Chair of the Committee, and we are pleased that she has accepted this important leadership position and that she will serve Alaska and all of Indian Country honorably and well.

My colleague and I are here today to represent our statewide native housing association, the Association of Alaska Housing Authorities. The association consists of 14 Alaska Native regional housing authorities created by State statute to meet the housing needs in our respective regions. Collectively, we are the tribally designated housing entities for approximately 75 percent of Alaska's 229 tribes and administer approximately $72 million of the $98 million of NAHASDA funding that comes to Alaska.

Mr. Chairman, I would like to take a moment to express some of the unique service delivery challenges and obstacles we face in Alaska. Alaska's vastness almost goes without saying, but really

needs to be experienced to be appreciated. Every year, thousands of tourists visit Alaska.

Tourists often fly out from Anchorage to one of our remote villages. It can be an eye-opening and rich cultural experience, but I wonder how many stop to think how did these houses get out here? I and my colleagues can tell you: only with great difficulty and very careful planning and considerable expense.

Our high cost of construction is a result of many factors, including the lack of basic statewide road and transportation systems. In most of our regions and villages, the only method of getting construction material to the job site is by barge, or where necessary, by air freight.

Barging to many of our villages requires coordinating with shipping out of Seattle and many do not have regularly scheduled services. Barges which are unable to make scheduled landing can cost up to $10,000 a day while they may wait out bad weather conditions. Barging to many villages can only be done during the short window period between breakup and freeze-up.

Another critical need and often lacking is the availability of basic heavy equipment such as forklifts, backhoes, dozers or even in some cases pickup trucks for hauling the basic tools and personnel. Many projects have been built with nothing more than four-wheelers.

Another significant challenge is the rapidly escalating high cost of energy. This is having a rippling effect on all aspects of business: the cost of construction, the cost of operating and maintaining our existing units, and home ownership. Heating fuel and gasoline can be as high as $5 to $8 a gallon.

I am sure by now you are beginning to get the picture that we are trying to paint for you.

We are doing our best to stretch our NAHASDA dollars under these difficult circumstances and the Senate draft is a good step in assisting us in this effort. We consider many of the proposed amendments to be significant improvements which promote both efficiency and flexibility. A few examples that we support and find very helpful include Section 203, which includes the carryover and the $5,000 procurement exemption; the expanded definition of "housing-related community development;" the inclusion of operation and maintenance of NAHASDA units as affordable housing activities; and the strengthening of the intent language of Section 27 in terms of recognizing the right of tribes and TDHEs to operate programs in a manner that is more in line with Indian self-determination and tribal self-governance provisions of Public Law 93–638.

Notwithstanding these positive aspects of the draft bill, the reality is given the recent funding trends, we are being asked to do more with less. If this trend is not reversed, which we hope this Committee will consider, there are further amendments that can improve our service delivery. We appreciate the apparent underlying intent of subtitle B, Self-Determined Housing Activities for Tribal Communities, but we have serious reservations about its implementation. It does not represent the type of self-determination or self- governance service delivery model that has become the

standard in Alaska and which we would like to see expand in a more meaningful way in the final bill.

Monitoring and compliance—we urge you to seriously reconsider the inclusion of NAIHC's proposal in this area. The lack of revisions in this section unfortunately leaves us with a bill that in our review remains far too HUD-centric, rather than tribal-centric.

Finally, we are greatly concerned about the proposed amendment in Section 302 which calls for an alternative data set feasibility study. We strongly support the continued use of census data in Alaska and the resolution of formula allocation issues through continued tribal negotiation.

In conclusion, on behalf of the Association of Alaska Housing Authorities and many tribal beneficiaries that we have the privilege to serve, I sincerely thank the Chairman and members for this chance to share our views on this important piece of legislation. We look forward to continuing our dialogue and offering our support as the bill moves toward successful passage.

Thank you.

[The prepared statement of Ms. Nutter follows:]

PREPARED STATEMENT OF TERI NUTTER, EXECUTIVE DIRECTOR, COPPER RIVER BASIN HOUSING AUTHORITY; ACCOMPANIED BY DAN DUAME, EXECUTIVE DIRECTOR OF THE ALEUTIAN HOUSING AUTHORITY

Introduction

Good morning Chairman Dorgan, Vice Chair Murkowski and Members of the Committee. My name is Terri Nutter and I am an Athabascan of the Udjichu clan, a tribal member of the village of Gulkana and the Executive Director of the Copper River Housing Authority in Alaska. I am very pleased to appear before you today and thank you for the opportunity to provide comments on draft legislation to amend and reauthorize the *Native American Housing Assistance and Self Determination Act.*

Let me start by expressing our profound sadness over the recent loss of Senator Craig Thomas who, as you well know, was a good friend of America's Native people and was an advocate in the House of Representatives before coming to the Senate and serving on this distinguished Committee. Our sadness is tempered by the ascension of our own Senator Lisa Murkowski to be Vice Chair of the Committee and we are very pleased she has accepted this important leadership position and know that she will serve Alaska and all of Indian Country well and honorably.

Before getting into the specifics of the bill under consideration, I would like to provide some very brief background on the organizations I represent today and some of our unique circumstances that make the delivery of housing and other services in Alaska such a challenge.

My own housing authority is located in the south central part of Alaska and serves eight tribal communities spread over the 1.5 million acres of what is referred to as the "Athna Region" – the traditional place name of our people. Attending the hearing with me today is Dan Duame, Executive Director from the Aleutian Housing Authority, which serves 13 tribes spread over 100,000 square miles, a region slightly larger than Virginia, Kentucky and Maryland combined. The Aleutian region (which includes the Pribilof Islands to the north of the Aleutian Island Chain) extends westward over 1,300 miles from the southwestern corner of the Alaska mainland. Travel to the farthest village, Atka, is a 6-8 hour plane trip at a cost of approximately $950 – at least twice as long in time and three times as expensive as flying to Seattle from Anchorage – and that is if you do not get stuck for several days in Dutch Harbor on your way out there due to notoriously bad weather conditions.

In addition to our respective organizations, I am testifying today on behalf of the Association of Alaska Housing Authorities (or "AAHA"), which consists of the 14 Alaska Native regional housing authorities (including our own) recognized under Alaska state statute. AAHA members collectively represent and serve approximately 75% of Alaska's 229 tribes and administer approximately $72 million of the $98 Million NAHASDA appropriation that comes to Alaska. AAHA members are the primary providers of housing services – new construction and rehabilitation – in rural Alaska, having constructed well over 6,200 housing units since our inception in 1971.

An important recent AAHA accomplishment was its participation as a joint sponsor with the Alaska Housing Finance Corporation in the completion of the "2005 Alaska Housing Assessment Study," [1] which provides comprehensive data on current Alaska housing needs and costs. This important study illustrates both the significant on-going successes of the Association, but perhaps more importantly, our current (and growing) critical housing needs. A few mid-range estimates found in the Assessment include the following:

- An immediate need of at least 25,771 new housing units to meet population growth, relieve overcrowding, and replace substandard housing.
- To avoid replacement, the need for major repairs to 20,000 units that are substandard but salvageable.
- Total cost to repair, replace and alleviate overcrowding (defined as homes with 200 square feet or fewer per resident): $5.99 billion.

Some of the unique and difficult service delivery challenges we face in our respective regions include significant transportation and other construction logistical barriers, particularly as to the shipping of materials to our job sites which is often by barge, often under irregular schedules, and always at a very high cost. We also are often faced with permafrost conditions making our foundation systems complex and expensive; extreme weather conditions and short building seasons; and exceptionally high energy costs which in some of our communities means fuel costs which currently exceed $5.00 / gallon.

Given these challenges and our exceptionally high construction costs, we are obviously concerned about the erratic and in recent years decreasing NAHASDA funding, which as you know is currently below 1993 levels. We are struggling to avoid a backwards slide where our ability to even keep up, let alone get ahead of the demand curve is compromised. We look

[1] / Information Insights, Inc. (2005) *2005 Alaska Housing Assessment*. Fairbanks Alaska: Rogers, Brian & Lister, Cady (Produced for: Cold Climate Housing Research Center).

forward to the day when we are no longer able to come before this Committee with graphic illustrations, such as those on my right, of the "honey bucket" system still utilized by many of our communities to meet basic sanitation needs.

Our purpose in being here today is do our best to positively influence a process that will allow us to continue to improve the lives of our tribal members – those like George Nevzeroff, from Atka, who recently moved from a shack which you can see was falling down around him, into a modest new home constructed with NAHASDA funds.

As a general matter, AAHA is supportive of most of the provisions contained in the draft legislation and we commend the Committee for its work to move the bill in the right direction. It is a significant improvement over the existing law, and we might add, has numerous improvements relative to the House Draft. We thank you for the way you have solicited our views and those of our national advocacy organization, NAIHC, and included them in the bill as it has evolved.

We further urge the Committee to continue to seek a package of amendments that benefits Indian people by meeting their housing needs, while at the same time respects Indian self determination by letting tribes & TDHEs make the fundamental decisions as to how housing and housing-related infrastructure and development are made in our communities.

When Congress enacted the NAHASDA in 1996, it sought to revamp Federal laws dealing with housing and housing-related infrastructure in Native communities. The Act was intended to mark a clean break with past Federal policy by emphasizing tribal authority to design, implement, and administer housing programs in Native communities. It has resulted in real gains in the construction of new housing units and related utilities and infrastructure.

Although many of the proposed amendments contained in the draft legislation are

changes that would improve the Act by increasing tribal responsibility and authority, in our view NAHASDA remains in many respects a "*HUD-centric*", rather than a "*tribe-centric*" housing tool in terms of its latitude and apportionment of decision-making authority. Notwithstanding HUD's insistence that NAHASDA (and I quote) "already provides for tribes to exercise self-determination within the parameters of the statute", [2] the reality is that at the end of the day, NAHASDA empowers HUD, not the tribes, to make fundamental decisions.

We urge you to continue consideration of appropriate ways in the bill to promote a shift – even a reversal of this continuing paternalistic paradigm – particularly for those tribal entities with demonstrated capability and the willingness to assume greater programmatic responsibilities and authority.

Along these lines, a positive inclusion in the draft legislation --- and an improvement over the related provisions in the House Draft --- defines "Housing Related Community Development" as "any facility, community building, business, activity, or infrastructure," and is consistent with congressional intent to provide tribes the flexibility necessary to operate an effective and robust housing program.

Similarly, the draft legislation would have Indian tribes and TDHEs considered "Executive agencies" for purposes of accessing Federal sources of supply. The amendment will assist to help reduce many of our costs and is a welcome addition to the statute.

Section 103 is a positive step in the direction of relieving tribes and TDHEs of unduly burdensome reporting requirements so that once a tribe submits a housing plan under the Act, it may comply with subsequent reporting requirements by submitting only information related to changes that are necessary to the plan originally submitted. We continue to have significant

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[2] *Self-Determination Act Demonstration Project Feasibility Study*, Office of Native American Programs, U.S. Department of Housing and Urban Development, January 2005, at 19.

concerns however, about the usefulness and effectiveness of the entire IHP/APR process. It is particularly burdensome for TDHEs such as our AAHA members who have large, disparate and numerous tribal constituencies.

Reflecting the intense frustration of the tribes with HUD's pinched interpretation of the Act and its inflexibility in guiding the tribes' implementation of it, we support section 105 of the draft legislation which imposes critically needed timeframes on any new regulatory processes.

Another positive addition, Section 202 of the draft legislation would redefine "affordable housing activities" to be those activities "to develop, *operate, maintain*, or support" affordable housing for rental or homeownership rather than just those to "develop or support" housing. We are particularly pleased to see the addition of "mold remediation" to the list of allowable activities, a serious problem in many parts of Alaska and Indian Country generally.

While we welcome the authorization for "Reserve Accounts," we are concerned that the proposed "Maximum Amounts" subsection may severely limit the usefulness of this section to many of the smaller recipients and would urge that this issue be given a second look.

We strongly support the funding "carryover" provisions of Section 203 and the $5,000 threshold exemption for the procurement of goods and services. These are significant, efficiency promoting improvements.

One of the more curious provisions of the draft legislation is found in section 207, which would authorize 2 or more Indian tribes to essentially pool their block grant funds to carry out "large-scale activities." We have no position on this proposal at this time as our Association is unclear about the intent, purpose and more important, the potential implementation impact of this section in Alaska, given our already complex service delivery systems and political structures.

We frankly have very mixed feelings about Section 208, which establishes a program entitled "Self-Determined Housing Activities for Tribal Communities." While we appreciate the apparent underlying intent, the restrictive nature of the provision in terms of both the use and amount of funding to which the provision can be applied may seriously negate its application. We also believe the section is fraught with implementation difficulties and costs that will inevitably far out weigh its benefits for most tribes & TDHEs. We further believe the development of this particular provision would benefit greatly from a more serious effort at focused tribal consultation prior to its adoption. While there are elements of the proposal that are commendable, it also fails to take advantage of the tribal experience gained from alternative service delivery models which are currently being successfully implemented.

While study of an issue is generally a good thing, and may provide some valuable problem-solving information, AAHA is extremely skeptical of the value and intent of the proposed amendment to Section 302, which calls for an alternative data set feasibility study. We strongly support the continued use of census data in Alaska and the resolution of Formula Allocation issues through other negotiated means or methods. We are opposed to the siphoning of already scarce resources for this effort.

Finally, we are frankly disappointed by the timid amendments to the HUD Monitoring and Compliance section of Title IV of the Act. There is no section of the Act where the "HUD-centric" approach is more prevalent. NAIHC has proposed significant, and what we believe to be reasonable changes to the structure of Title IV that so far have been mostly ignored. AAHA strongly supports the NAIHC recommended amendments and urges the Committee to reconsider its views on these provisions. You simply can not reconcile the intrusive and heavy-handed

structure of Title IV with the strong Congressional statement of support for self-determination and tribal self-governance contained in Section 2(7). [3]

Finally, I would be doing a great disservice to our AAHA members if I did not at least briefly raise the intractable issue of our frustration over our difficulty in meeting our basic infrastructure needs. We realize this is in part a significant funding issue, but it is also an agency coordination issue that simply must be resolved, by Congressional intervention if necessary. We are encouraged that NCAI, NAIHC and the Indian Health Board have once again taken up discussions on the matter and we would strongly encourage this Committee to support whatever results or recommendations may come out of these discussions. In our view it is simply unacceptable that our members continue to be forced to construct new homes with federal resources that are contributing to the already serious health problems of our people, simply because there has not been a definitive meeting of the minds by the various involved federal and state agencies on a workable strategy to coordinate our infrastructure and building construction projects.

Conclusion

Once again, on behalf of AAHA and the many tribal beneficiaries throughout the great State of Alaska that we have the privilege to serve, I sincerely thank the Chairman and Members for this chance to share our views on this important piece of legislation. We look forward to continuing our dialog, and offering our support as the bill moves towards passage.

In closing, I would like to inform the Committee that AAHA intends to follow up with further written testimony that will include our more detailed thoughts and recommendations on many of the issues identified above, as well as other issues pertinent to this bill.

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[3] / Section 2(7), with the Senate proposed amendment, reads as follows: "(7) Federal assistance to meet these responsibilities *shall* be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the tribes or tribally designated housing entities under authorities similar those accorded tribes in Public Law 93-638 (25 U.S.C. 450, et. Seq.)." (Emphasis added.)

The CHAIRMAN. Ms. Nutter, thank you very much.

Finally today, we will hear from Mr. Marty Shuravloff, the Chairman of the National American Indian Housing Council here in Washington, D.C.

Mr. Shuravloff, thank you for your leadership and we look forward to hearing your testimony.

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

Mr. SHURAVLOFF. Thank you.

Good morning, Chairman Dorgan, Vice Chairwoman Murkowski, Members of the Committee. Thank you for inviting me to testify to present our views on the discussion draft for the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007.

Indian Country needs NAHASDA reauthorized because it directly affects our health and welfare. We appreciate your adamant support, Mr. Chairman and Members of the Committee, to focus on what this law means to native people, providing desperately needed tools to our communities so we can continue to improve the housing conditions that our people face every day.

NAHASDA meets these housing needs by increasing tribal decisionmaking to design and run their own programs and by making Federal housing assistance available directly to the Indian tribes or tribally designated housing entities. Prior to NAHASDA, an estimated 2,000 units a year were built. In NAHASDA's first year alone, over 6,000 units were built.

We believe it is in the spirit of Indian self-determination that has made NAHASDA a success and hope this is emphasized during the coming deliberations on its reauthorization.

On behalf of our membership, we have been working with your able and diligent Committee staff on proposed amendments to the law to achieve the objectives of the Act and make the law work better for us. We appreciate the clarification of the definition of "program income" so that our projects' startup costs are not counted against us.

We look forward to the expansion of our ability to establish reserve funds so we can prepare for short construction seasons. We appreciate Congress's recognition of our authority to make and follow our own laws for employment and contract preferences for our own tribal members.

Our ability to carry over funds will reduce the costs of operation and provide much-needed streamlining so we can focus more on service delivery. We applaud and thank the Committee for its efforts to enhance and further Indian self-determination in NAHASDA.

Under the proposed subtitle B, we can see how a tribe or tribally designated housing entity might set aside a portion of its block grant to devote to housing activities with long- term planning and decreased HUD reporting and oversight during the upcoming 5-year period.

We especially appreciate that the infrastructure is included in eligible activities. Infrastructure goes hand in hand with housing development and its inclusion will enhance tribal flexibility to use their funds for all stages of development.

Our members have urged the council to work with our sister organizations, the National Indian Health Board and the National Congress of American Indians, to ensure that tribes have access to adequate resources for the development of infrastructure, especially water and wastewater facilities. This collaboration has already begun.

As an Alaska Native, I am all too aware of the significant effects on tribal communities from inadequate and unsafe housing. Dilapidated houses lead to weak performance in school, poor health, and contribute to hopelessness that few Americans witness as part of their daily lives. We ask you to amend, extend and reauthorize NAHASDA to address the daunting housing challenges facing Indian tribes and people.

I would like to thank the Committee for its interest in pursuing the reauthorization of NAHASDA and for its support of American Indians, Alaska Natives, and Native Hawaiian people.

I would be happy to answer any questions the Committee might have.

[The prepared statement of Mr. Shuravloff follows:]

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

INTRODUCTION

Good Morning, Chairman Dorgan, Vice Chairwoman Murkowski and Members of the Committee. My name is Marty Shuravloff and I am the Executive Director of the Kodiak Island Housing Authority in Kodiak, Alaska. I am also a member of the Lesnoi Village, Kodiak Island, Alaska. Today I am here as the Chairman of the National American Indian Housing Council.

Since 1974, the National American Indian Housing Council (NAIHC) has assisted tribes with their goals of providing culturally relevant, decent, safe, sanitary, and affordable housing on Indian reservations, in Indian communities and Alaska Native Villages and on Native Hawaiian Home Lands. The NAIHC provides advocacy, program guidance, technical assistance, training and related capacity-building efforts for Indian housing authorities and tribally designated housing entities. The NAIHC is composed of

260 members, representing 460 tribes, and is the only national Indian organization representing Native American housing interests.

I am honored to appear before you today to provide our views about the reauthorization of the *Native American Housing Assistance and Self-Determination Act* ("NAHASDA") as amended, 25 U.S.C. §4101.

THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

Built on the solid foundation of Indian self-determination policy and the law of the same name, NAHASDA was signed into law in 1996 and enacted to meet the housing needs of Indian people by improving tribal capacity and increasing tribal decision-making in the housing arena.

Modeled after the *Indian Self-Determination and Education Assistance Act of 1975*, as amended, 25 U.S.C. §450, Indian self-determination is the key component of NAHASDA's success. Congress determined that in providing federal services to improve Indian housing, the U.S. should "recognize the right of Indian self-determination and tribal self-governance by making such assistance available [...]directly to the Indian tribes or tribally designated entities."

NAHASDA, through the Indian Housing Block Grant (IHBG), encourages tribes to design and administer their own housing programs according to the unique and local circumstances of each Indian community. Eleven years after NAHASDA was enacted, the key element of the law – the IHBG – has become the largest source of housing capital in Indian country. Since Fiscal Year 1998, nearly $6 billion in federal housing assistance has been invested in Indian Country helping Indian families make down payments on homes, make monthly rents, helped with home rehabilitation, and build new housing units. Prior to NAHASDA implementation, an estimated 2000 units a year were being built. Over 6000 units were built in NAHASDA's first year alone. We must build and protect the federal investment in Indian housing.

By returning key decisions from the Department of Housing and Urban Development to the Indian tribes, NAHASDA affords tribes the opportunity to fulfill the promise of self-sufficiency and become providers of housing for their populations. We

believe it is the spirit of Indian self-determination that must be emphasized during the coming deliberations over the reauthorization of this law.

NAHASDA REAUTHORIZATION

Indian country needs NAHASDA amended, extended and reauthorized because it is but one of a dozen major laws relating to the welfare of Indian Tribes and Alaska Natives. We appreciate the willingness and support of you, Mr. Chairman, and this Committee, to focus on and understand what the law means to Native people — providing desperately needed tools to Indian communities so we can continue to improve the housing conditions that our people face every day.

For more than 30 years the NAIHC has been a positive force for change in Indian housing. In the early 1990s, Indian tribes, housing authorities and others came together to hammer out a collective vision of how Indian self-determination should influence the delivery of housing and related community development in Native communities. The NAIHC was instrumental in shaping these discussions and in helping to draft what was enacted as the NAHASDA.

Although great strides have been made since its inception, much more is needed to make the kind of inroads that are needed for Native people. Unfortunately, more than 11 percent of Native American homes lack plumbing, far higher than the 1.2 percent the rest of the Nation faces. One in five Native Americans live in overcrowded homes, on some reservations as many as 25 to 30 people live in a three-bedroom house. Nearly half of Native American homes are considered inadequate by any reasonable standard, and less than half of all reservation homes are connected to a public sewer.

On behalf of our membership, we have been working with your able and diligent Committee staff on proposed amendments to the law and today we offer comments on the draft legislation as well as other suggestions to achieve the objectives of the act and make the law work better for us. To these ends we very much appreciate the Committee's openness and support on a number of these proposed amendments that have been included in the Discussion Draft. (Please see a section by section summary in the *Appendix*.)

We applaud and thank the Committee for its efforts to enhance and further Indian self-determination in NAHASDA. Under the proposed Subtitle B, we can see how a tribe or tribally designated housing entity might set aside a portion of its IHBG to devote to

housing activities with long-term planning and decreased HUD reporting and oversight during the upcoming five year period.

We especially appreciate that infrastructure is included in eligible activities. Infrastructure goes hand in hand with housing development and its inclusion will enhance tribal flexibility to use their funds for all stages of development. Our members have urged the Council to work with the National Indian Health Board and the National Congress of American Indians, to ensure that tribes have access to adequate resources for development of infrastructure especially water and wastewater facilities. This collaboration is underway.

THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

The *Indian Self-Determination and Education Assistance Act*, at its core, recognizes that tribes know the needs of their people and the best ways to serve those needs. Congress found that, "the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government."[1]

The present day disadvantages that mark Indian Nations with some of the lowest leading health indicators in the country stem from a history of Federal policies of first—land and resource divesture—and then, cultural assimilation. "[T]he history of Federal Indian policy initiatives since the late nineteenth century [...] have not only been ineffective in alleviating poverty, but have actually exacerbated problems of under-development in tribal areas" writes Rutgers University professor Robin Leichenko.[2] Housing development on Indian lands is foremost among these problems.

NAHASDA was meant to address this issue head on. By according Indian Nations provisions of statutory and financial services, tribes have the opportunity to fulfill their promise as self-sufficient providers of housing for their populations. Indian Self-Determination recognizes the sovereign status of Indian Nations, yet acknowledges as well that historical Federal initiatives have left whole pockets of this country a century behind

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[1] 25 U.S.C. 450 *et seq.*

[2] Leichenko, Robin M.. "Does Place Still Matter?: Accounting for Income Variation Across American Indian Tribal Areas." *Economic Geography* 79.4 (Oct 2003): p365 (22).

in standards of living. Indian Self-Determination is a process of capacity building for Indian communities to become self-sufficient in exchange for the historical land and resource cessions made through treaties and verbal agreements to an adolescent Republic.

TRUST RELATIONSHIP BETWEEN THE UNITED STATES AND INDIAN TRIBES

Stemming from treaties with Indian tribes and other federal policy from the early 1800s, the United States has a trust responsibility to Indian tribes and Alaska Native Villages. Even predating the Constitution, the United States has enjoyed this special political relationship with Indian Tribes, as marked by Supreme Court decisions over the last two centuries. NAHASDA serves to carry out the federal trust responsibility by meeting the housing goals in Indian Country.

This housing obligation falls squarely within America's trust responsibility to the Native people of this land. Virginia Davis, in a *Harvard BlackLetter Law Journal* article writes,

> Given the historical evidence, the federal obligation to provide Indian housing programs cannot arise from the United States Housing Act. Rather, it is born out of the unique relationship and history tribes have with the federal government. For some tribes, the federal obligation was articulated in treaty provisions or oral promises made during treaty negotiations. For others, it stems from the events and policies of the mid to late 1800s.[3]

This history must be recognized and serves as the foundation for the Nation's fiduciary obligations to provide housing to Indian Nations.

This trust responsibility, in the words of the late scholar and Sioux statesman Vine Deloria Jr., is a *covenant* between the United States and the Indian Nations of this country. Indian Nations have fully upheld on this contract on their end.[4] What we must ask ourselves—these three generations after the last of the treaties were signed—is whether

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[3] Davis, Virgina. "A Discovery of Sorts: Reexamining the Origins of the Federal Indian Housing Obligation," 18 Harvard BlackLetter L. J. 211 (2002).
[http://www.law.harvard.edu/students/orgs/blj/vol18/davis.pdf]

[4] "The plan of Congress gradually to emancipate the Indians so that they gain greater responsibility over their own affairs is not in conflict with the government's guardianship role. It is, on the contrary, an extension of it. The ultimate aim of guardianship as the term is used here, should be that the wards become, in time, self-sufficient."

this trust responsibility has been fully realized or not. And if not what can we do further to fulfill America's housing promise to its first citizens today?

NAHASDA'S SUCCESS

More than a decade into NAHASDA now, we have seen the key element of the law—the Indian Housing Block Grant (IHBG), become the largest source of housing capital in Indian Country. NAHASDA encourages tribes to administer their IHBG according to the unique and local circumstances of each Indian Nation. Ideally, NAHASDA was also meant to enable greater tribal participation in regulations through the negotiated rule-making process and to spur housing development through the leveraging of the IHBG.

In a January 2005 Harvard Project on American Indian Economic Development study, 15 socioeconomic indicators were tracked over the course of the 1990s. The study, "American Indians on Reservations: A Databook of Socioeconomic Change Between the 1990 and 2000 Censuses," found "...positive change across a number of ...Census indicators...," including marked reductions in overcrowding in Indian Country. NAHASDA has had a demonstrably positive if ill-defined effect on Indian Housing, yet it has been an improvement over previous Federal housing statutes.

While this organization does not have the resources to estimate any statistical degree of success, neither has the Department of Housing and Urban Development been able to consistently document the impact of NAHASDA. There has been little aggregated data of the required Indian Housing Plans (IHPs) or the Annual Performance Reports (APRs) to measure the relative success of NAHASDA funding.

TREMENDOUS HOUSING NEED

Indian Nations are in the circumstances they are in not because their historical traditions cannot accommodate outside standards of living, as acknowledged by Assistant Secretary Orlando Cabrera before the Senate Commission on Indian Affairs earlier this year, but rather because failed Federal legislative initiatives have kept these areas and populations underdeveloped to an alarming degree.

Approximately 90,000 Indian families are homeless or under-housed. Twenty percent of Indian homes lacks complete plumbing facilities. On the Navajo Reservation, nearly 31 percent of the homes on the reservation lack complete plumbing.

Roughly 16 percent of Native American homes are without telephones. For the Navajo and South Dakota Indian areas, nearly 45 percent lack telephone service while only 6 percent of non-Native households lack telephone service nationwide.

Approximately 40 percent of on-reservation housing is considered inadequate as compared with roughly 6 percent nationwide. And in Alaska, Arizona, and New Mexico, overcrowding and substandard housing rates exceed 60 percent in some counties.

The reservation homeownership rate in 2004 was 41 percent, compared to the national average of 70 percent. The overall Indian homeownership rate, including off reservation areas, is estimated at 33 percent as of 2004.

Nearly half of Native American households on Indian lands pay over 30 percent of their income for housing expenses compared to 23 percent for all U.S. residents who pay more than 30 percent of their income for their housing expenses.

While the estimated need for Indian housing units has been calculated by some as 200,000 units, HUD, in a 2000 report to the U.S. Department of Treasury estimated the need at 230,000 units. While in 2002, the Millennial Housing Commission (MHC), recommended approximately 220,000 units as the immediate need. We can only surmise that since 2000, due to both the increasing Indian population and a movement of urban Indians back to reservation homelands, the need has increased. Using the lower of the two figures, at approximately $50,000 per unit, this adds up to $10 billion in need. The average American home by contrast, according to recent statistics of the National Association of Home Builders, costs approximately $90 per square foot to build. For a 2000 square foot home, the cost would be $180,000. The $10 billion number does not figure in the high costs of rural infrastructure development and rural housing construction.

The Department of Housing and Urban Development estimates the average cost of building a home at $125,000 per unit. The current HUD approach to establishing development cost limits is to calculate the cost limit for any given project as the total number of units times the respective structure type/number of bedrooms limit times the area high cost percentage. Using this figure and the 200,000 housing need number, $25 billion would be needed to adequately house Native people.

This tremendous housing need has translated in Indian Country into some of the highest overcrowding statistics in the Nation. According to a 2002 letter sent from the

Senate Indian Affairs Committee to the Senate Committee on the Budget, over 30 percent of reservation households are crowded, 18 percent are severely crowded and one in five Indian houses lack complete plumbing facilities.[5] In Alaska, nearly 40 percent of households are overcrowded.

After the immediate need to build a minimum number of housing units and reduce overcrowded conditions, infrastructure is among the foremost concerns. For instance, under NAHASDA, HUD no longer sets aside a portion of housing funds to pay for infrastructure. Tribes must make the decision of whether to use their limited NAHASDA funds to build homes to relieve overcrowded conditions, or to make needed improvements to infrastructure for existing homes.

According to the IHS, for 2004, approximately 307,584 homes were without at least one of the following: safe drinking water, sewage and/or solid waste disposal services. And fewer than 50 percent of homes on reservations are connected to a public sewer system. Substandard housing and the lack of infrastructure raises the health need of rural Indian populations and contributes to chronic illnesses.[6]

Infrastructure challenges are made especially difficult by the remoteness of many reservations. According to the Environmental Protection Agency's *Drinking Water Infrastructure Needs Survey and Assessment* (2003), the immediate critical need for American Indian and Alaska Native drinking water infrastructure is estimated, in 2003 dollars, at $2.4 billion, with an additional $100 million needed over the next 20 years.[7]

Over a century of underdevelopment has marked Indian Country with the lowest indicators of health in the Nation and among the worst housing conditions in this, the world's wealthiest country. Ultimately, more funding is needed by multiple federal agencies to address crucial infrastructure needs in Indian Country.

CONCLUSION

As an Alaska Native, I am all-too-aware of the significant effects on tribal communities from inadequate and unsafe housing. Dilapidated houses lead to weak

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[5] March 1, 2002 Letter from Senator Ben Nighthorse Campbell and Senator Daniel Inouye to Senate Committee on the Budget.

[6] The average annual cost of health care per person for the IHS user population is $2158. For the Total U.S. population, the average cost spent per person is $5921. http://info.ihs.gov/Files/ProfileSheet-Jan2007.doc

[7] EPA, http://www.epa.gov/safewater/needssurvey/pdfs/2003/fs_needssurvey_2003.pdf

performance in school, poor health, and contribute to a hopelessness that few Americans witness as part of their daily lives.

We ask you to amend, extend, and reauthorize NAHASDA to address the daunting housing challenges facing Indian tribes and people.

We want to see that momentum of Self-Determination continue so that tribal housing programs flourish because there is still much work to be done.

I want to thank the Committee for its interest in pursuing the reauthorization of NAHASDA and its support for American Indian, Alaska Native and Native Hawaiian people.

APPENDIX

SECTION BY SECTION COMMENTS

OF THE NATIONAL AMERICAN INDIAN HOUSING COUNCIL

REGARDING S.___, DRAFT LEGISLATION TO REAUTHORIZE NAHASDA

August 2, 2007

Introduction. What follows is the final analysis and comments of the National American Indian Housing Council of S.___, draft legislation circulated by the Senate Committee on Indian Affairs on July 13, 2007. As you can see from the specific comments, the NAIHC, in general, supports the draft and appreciates the opportunity to review and comment on draft legislation prior to its introduction.

Section 1. Short Title; Table of Contents. *Comment:* No comments.

Section 2. Congressional Findings. This section amends the findings section of the Native American Housing and Self-Determination Act, 25 U.S.C. §4101, *et seq*. (NAHASDA or the Act) by replacing the aspirational "should" with the mandatory "shall" with regard to the Federal government's role in providing housing assistance and the development of private housing finance mechanisms, and in doing so in ways that recognizes Indian self-determination and tribal self-governance.

Comment: NAHASDA recognizes Indian self-determination and tribal self-governance and this amendment will bolster the Federal government's obligation to provide housing to Native communities and is a welcomed addition to the Act. This change was requested by the NAIHC and the NAIHC supports it.

Section 3. Definitions. This section provides a new definition of "Housing Related Community Development" and would define the term as "any facility, community building, business, activity, or infrastructure" that (1) is owned by a tribe or a TDHE, (2) is necessary to the provision of housing; and (3) would help reduce the cost of housing construction, or (3)(a) would make housing more affordable, accessible or practicable, or (3)(b) would otherwise advance the purpose of the Act.

Comment: The new definition broadens authorized activities by making allowance for activities that might make housing "more affordable, accessible, or practicable" arguably slightly different from those that simply "reduce the cost of construction". These changes were requested by the NAIHC and the NAIHC supports them.

TITLE I – BLOCK GRANTS AND GRANT REQUIREMENTS.

Section 101. Block Grants. This section is currently titled "Subchapter I" and the changes proposed restructure the section to make allowance for the proposed new "Subtitle B" relating to "self-determined housing activities". This section also adds the following new sections:

"(j) Federal Supply Sources" – to have tribes and TDHE's considered "Executive agencies" for purposes of the Federal supply schedule and to make "each employee of the Indian tribe or [TDHE]" eligible to have access to that schedule on the same basis as employees of Executive agencies.

"(k) Tribal Preference in Employment" – to make tribal (as opposed to "Indian") employment and contract preference laws govern with respect to a grant received by that Indian tribe.

Comment: These are changes the NAIHC requested because (j) will reduce the cost of construction by enabling procurement of goods and services at more reasonable prices, and (k) shows fundamental respect for tribal law and authority. Accordingly, the NAIHC supports them.

Section 102. Indian Housing Plans. This section deletes the phrase "fiscal year" where it appears and replaces it with "tribal program" without changing the requirement that annual plans be filed. This section amends section 102 by deleting subsection "(b) 5-year plan", re-designating the remaining paragraphs, by renaming subsection (c) as "(b) Annual plan", and by striking current section "(1) Goals and objectives" and replacing it with "(1) Description of Planned Activities" which will detail the types of households to be assisted, the types and levels of assistance to be provided, and the quantity of units produced, households assisted and outcomes anticipated. This section also

- Strikes in its entirety "(4) Affordable housing resources";
- Redesignates as "(4) Certificate of Compliance" and as "(5) Certain Families";
- Deletes "Indian" from "(5) Certain Families" and
- Adds a new subsection "(6) Self Determined Housing Activities Program" reporting requirement.

Comment: With the exception of the new "self-determined housing activities" program which is discussed below, these changes have long been proposed by the NAIHC and the NAIHC supports them.

Section 103. Review of Plans. This section re-writes subsection "(d) Updates to Plan" so that once a tribe submits a housing plan under §4112, it may comply with subsequent reporting requirements by submitting only information related to changes that are necessary to the plan originally submitted. This section also strikes "(e) Effective date" and inserts instead a new "(e) Self-determined Activities Program" limiting the Secretary's scope of review of the housing plan to ensure that the recipient is within the funding limits for the self-determined housing activities program contained in new section 232(b)(2) and not judging the results or outcomes of those activities.

Comment: The change to the reporting requirement lessens the administrative burden on tribes and TDHEs in terms of supplying additional, possibly redundant, information to the Secretary and the NAIHC supports them accordingly.

Section 104. Treatment of Program Income and Labor Standards. This section amends section 104 by adding a provision to exclude from program income any income derived from a developer's fee if the project receives a Low-Income Housing Tax Credit and the project is funded initially with grant funds under the Act only if the developer's fee is approved by the relevant State housing credit agency.

Comment: This change was requested by the NAIHC and the NAIHC supports it.

Section 105. Regulations. This section amends subsection (b)(2)(B)(i) to require the Secretary to establish a negotiated rulemaking committee to develop implementing regulations not later than 180 days after enactment of this Act or any other Act to reauthorize this Act. A new subsection "(C) Subsequent Negotiated Rulemaking" would (i) require the Secretary to initiate the actual rulemaking not later than 90 days after enactment of this Act or any other Act to reauthorize this Act, and (ii) promulgate regulations to implement these changes not later than 18 months after enactment of this Act or any other Act to reauthorize this Act. Last, the section adds a new subsection "(D) Review" to require the Secretary in consultation with the Indian tribes to review "once every 7 years" the regulations promulgated pursuant to this section.

Comment: The reluctance of HUD in recent years to fully engage and consult with the tribes lead the NAIHC to propose significant changes to the negotiated rulemaking procedure and these changes are responsive to those proposals. The NAIHC strongly supports these changes but notes one curious element of the proposed change in subsection "(D) Review" and the query is this: after reviewing the regulations in place, what if anything is the subsequent obligation of the Secretary and the tribes, e.g. are they to propose revisions and if so what is the timing, format, etc. of the proposed revisions?

Section 106. Authorization of Appropriations. This section reauthorizes grants made available under this title from FY2008 through 2012.

Comment: The NAIHC strongly supports the reauthorization of this grant authority.

TITLE II – AFFORDABLE HOUSING ACTIVITIES.

Section 201. National Objectives and Eligible Families. The section amends "(b)(1) In general" by including loan guarantees under title VI as an allowable housing activity; amends "(b)(2) Exception to Low-Income Requirement" by authorizing housing or housing assistance to a family that is not low income provided the Secretary authorizes such. Section 201 also strikes the word "Non-Indian" from "(3) Non-Indian Families" and rewrites it to read "(3) Essential Families". Section 201 also adds the phrase "or other unit of local government" to the list of potential governmental employers of law enforcement officers that are eligible to receive housing or housing assistance.

Comment: These changes were requested by the NAIHC and the NAIHC supports them.

Section 202. Eligible Affordable Housing Activities. This section amends paragraph 1 of §4132 by redefining "affordable housing activities" to be those activities "to develop, *operate, maintain*, or support" affordable housing for rental or homeownership rather than just those to "develop or support" for those purposes. This section also amends "(2) Development" by striking "development of utilities", adding instead "development *and rehabilitation of* utilities, *necessary infrastructure*", and adding "mold remediation" to the list of allowable activities. This section also adds a new subsection "(9) Reserve Accounts" to authorize a tribe to establish reserve accounts to accumulate funds for purposes of administration and planning related to affordable housing activities. The funds in such accounts may not exceed ¼ of the 5-year average of the annual amount used by a recipient for such purposes.

Comment: These proposed changes will strengthen the tribes' ability to engage in the full variety of affordable housing activities, allow tribes to rehabilitate housing-related utilities and infrastructure, have been proposed by the NAIHC and the NAIHC accordingly supports them. NAIHC members have expressed concern, however, that the establishment of reserve accounts only for purposes of administration and planning will limit the ability of tribes that receive modest Indian Housing Block Grant amounts to set aside funds to accumulate and prepare for short construction seasons.

Section 203. Program Requirements. This section amends §4133 to add the following new subsections:

"(f) Use of Grant Amounts Over Extended Periods" to authorize the multi-year use of grant amounts for affordable housing purposes provided the tribe's housing plan so provides.

"(g) De Minimis Exception for Procurement of Goods and Services" to exempt from the normal procurement rules, the acquisition by a tribe of goods and services less than $5,000.

Comment: These proposed changes would be excellent additions to the Act, will result in additional units built, and will lower the per-unit cost of housing in Native communities. These are changes that have been requested by the NAIHC and the NAIHC supports them.

Section 204. Low-Income Requirement and Income Targeting. This section amends section 205 to clarify that low-income requirements apply only to rental and homeownership units that are owned and operated by a recipient.

Comment: No comments.

Section 205. Treatment of Funds. This section establishes a new "Section 206. Treatment of Funds" to clarify that tenant and project based rental funds are not "Federal funds" for purposes of the Low-Income Housing Tax Credit.

Comment: This change is related to a change requested by the NAIHC regarding developer's fees and low-income housing tax credit projects and the NAIHC supports it.

Section 206. Availability of Records. This section amends §4138(a) to make National Crime Information Center records related to criminal convictions available to tribes and TDHEs for those applying for employment.

Comment: This change was requested by the NAIHC and the NAIHC supports it.

Section 207. Investment of Grant Funds; Regional Tribally Designated Housing Entity Programs. This section establishes a new "Section 211. Investment of Grant Funds" to authorize block grant recipients to invest grant amounts in eligible instruments of not longer than 2 years if the recipient can demonstrate that it has no unresolved significant or material audit findings, and is a "self-self-governing Indian tribe" *(sic)* under the ISDEAA, or has the administrative capacity and controls to responsibly manage the investment. The amount eligible for investment is the difference between the annual formula grant amount and the total grant amount allocated for the operating subsidy element of the Formula Current Assisted Stock (FCAS) component. In cases where 2 or more Indian tribes "do not possess sufficient resources to operate a tribally-designated housing entity or otherwise to carry out large-scale activities using grant amounts", this section also establishes a new "Section 212. Regional Tribally Designated Housing Entity Programs" to authorize 2 or more Indian tribes to establish a "regional tribally designated housing entity" to pool their resources for such purposes. Such a regional TDHE may also apply for loan and guaranteed financing under title VI.

Comment: Section 204 of NAHASDA currently addresses investments. Any new provisions related to investments, including proposed Section 211, should be inserted in this section. Additionally, the requirements of Section 211, as proposed, are already in the regulations. The NAIHC is concerned about codification of these regulations. The proposed amendment related to the investment of funds was requested by the NAIHC and the NAIHC supports it. However, the source of and justification for the need for regional housing entity authority are in question. While there may be situations where 2 or more tribes may wish to consolidate their modest block grant amounts, this alone should not be used as a predicate to *require* small tribes in California, Alaska or elsewhere to consolidate their funds for these purposes. Section 211 should include funds considered assistance under Section 210 of NAHASDA.

Section 211(f) would also establish limits on the amount of NAHASDA funds that may be invested. For recipients of small annual IHBGs, who may need to invest all of their needs-based funding for several years before a significant housing project becomes practicable, these percentage limitations will work a considerable hardship.

Section 211(d) would require recipients to segregate NAHASDA funds in a separate account. This will be exceedingly difficult for program receipts from projects that were funded from multiple sources. Additionally, Section 211(d)(2) provides direct HUD control over expenditures from these accounts—including, perhaps, summarily freezing accounts—through an "agreement" with the recipient. We are considered that this new, direct, control will hinder TDHEs in performing their day-to-day program administration.

Finally, Section 212, which provides a vehicle for forming regional TDHEs, could be mistakenly be construed as establishing the sole means of creating regional TDHEs. For example, in Alaska, regional TDHEs, created under Alaska state law, serve as TDHEs under Section 4(21)(B)(ii). To ensure that this proposal does inadvertently affect these Alaska institutions, we recommend adding a new subsection (e) to read: "(e) Nothing in this section affects the eligibility of entities defined in Section 4(21)(B)(ii) of this Act from serving as a TDHE."

Section 208. Self-Determined Housing Activities for Tribal Communities Program. This section amends Title II of the Act by re-designating as "Subtitle A – General Block Grant Program" and establishing a new "Subtitle B – Self-Determined Housing Activities for Tribal Communities". The stated purpose of the new Subtitle is to "provide Indian tribes with flexibility" in the use of block grant funds "in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure". This version of Subtitle B appears to be similar to the House version of the concept with the same maximum amounts on resources included, e.g. not more than 15 percent or $1,000,000 per annum. The Senate version, however, appropriately includes infrastructure as an eligible activity and NAIHC supports such inclusion.

Comment: The NAIHC has requested clarification of the House-side proponents of such an idea as to the objectives of Subtitle B particularly in light of the apparent conflict in the ability of a tribe or TDHE to achieve more flexibility under NAHASDA than would be the case under proposed Subtitle B. Notably, new section 233(b) would prohibit the use of funds for "commercial or economic development." Our members would be supportive of the inclusion of "housing related community development" activities in Subtitle B.

TITLE III – ALLOCATION OF GRANT AMOUNTS.

Section 301. Allocation Formula. This section amends §4152(a) by adding a new section requiring the Comptroller General to conduct a study and report to Congress on the "feasibility of using an alternative data set for the need component of the block grant formula" and the "feasibility of using an alternative data set to the most recent decennial census in determining the need component of the block grant formula."

Comment: In the wake of nearly 4 years of conflict over the census issue, this section would have an independent agency study the matter and report to Congress. The NAIHC did not propose this type of provision but supports further study of the issue nonetheless. With regard to the latter part of the proposal which amends §4152(b), factors for determination of need, there are many facets and sides to this issue as well, which have been the subject of negotiated rulemaking and federal litigation. This proposal, a "Fort Peck fix," relates to codification of 24 C.F.R. 1000.318, which was overturned by the Fort Peck v. HUD decision as contrary to existing statute. As the decision states, "Section 1000.318 leads to funding allocations--with reductions to some tribes and windfalls to others--based on factors that are not related to housing needs." This is not an issue on which the NAIHC members can agree at this time; therefore, the NAIHC neither supports nor objects to the proposal and urges the Committee to continue to discuss the matter.

TITLE IV – COMPLIANCE, AUDITS AND REPORTS.

Section 401. Remedies for Non-Compliance. This section amends §4161 to provide that the failure to report the number of low-income dwelling units shall not be considered "substantial non-compliance".

Comment: No comment.

Section 403. Performance Reports. This section amends §4164(b) to replace the word "goals" with the phrase "planned activities".

Comment: No comment.

TITLE V – TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

Section 509. Effect on Home Investment Partnerships Act. This section amends §4181 by adding, "nothing in this Act or amendment prohibits or prevents any participating jurisdiction from providing amounts to an Indian tribe or TDHE."

Comment: This change is related to a change requested by the NAIHC and the NAIHC supports it.

TITLE VI – FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITES.

Section 601. Title Heading. This section amends §4191 to add to the title of the heading the phrase "And Community Development" after the "Tribal Housing".

Comment: No comment.

Section 602. Authority and Requirements. This section amends §4191 to establish a demonstration program under which the Secretary may provide loan guarantees to tribes and TDHEs to support activities that benefit low-income families on Indian reservations and in other areas. Not later than 4 years after the establishment of the demonstration program, the Secretary is required to submit a report to Congress on the activities financed under this section and the success of the demonstration program.

Comment: The activities intended to be financed by these proposed amendments are unclear and need to be made specific as does the purported interplay between this section and Title I.

Section 603. Training and Information. This section requires the Secretary to carry out educational seminars with tribes and TDHEs related to the demonstration program authorized by section 601.

Comment: Building the managerial and administrative capacity of tribes and tribally designated housing entities is an important element of NAHASDA. Requiring outreach and information dissemination by the Secretary is a laudable goal. The NAIHC, as a national organization, can play a vital role in this training in conjunction with its role as described in section 703.

Section 604. Limitations on Amount of Guarantees. This section extends the reauthorization of the loan guarantee program in §4191 from FY2008 through 2012.

Comment: The NAIHC supports reauthorization of this section.

TITLE VII – OTHER HOUSING ASSISTANCE.

Section 701. Training and Technical Assistance. This section extends the authorization to a national organization representing Native American housing interests to provide technical assistance and training to tribes and TDHEs from FY2008 through 2012.

Comment: This section should be explicit in specifying the National American Indian Housing Council as the national Indian housing organization demonstrably capable of providing technical assistance and training. Should the NAIHC not be recognized as such in this, the authorizing statute for Indian housing, the recent funding difficulties of the Council will be exacerbated. The history and background of the NAIHC provide ample basis and rationale for such a designation. In this regard, Federal lawmakers routinely and continually name the NAIHC as the sole provider of technical assistance to tribes and tribally designated housing entities:

- Senate Committee on Indian Affairs Views and Estimates Letter on President's '08 Budget (http://www.naihc.net/NAIHC/files/ccLibraryFiles/Filename/000000001199/Views-and-Estimates-Pres08-Budget.pdf)
- Senate Report 110-131, pp. 145, 164 (http://www.thomas.gov/cgi-bin/cpquery/R?cp110:FLD010:@1(sr131))
- S.1789, pp. 89, 96 (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1789pcs.txt.pdf)
- House Report 110-238, pp. 136, 161 (http://www.thomas.gov/cgi-bin/cpquery/R?cp110:FLD010:@1(hr238))
- HR 2786 NAHASDA Reauthorization Bill (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2786ih.txt.pdf)
- Congressional Budget Office (Cost Estimate dated June 29, 2007 at 3) (http://www.cbo.gov/ftpdocs/82xx/doc8274/hr2786.pdf)

Conclusion. On behalf of its membership, the NAIHC is pleased, overall, with this discussion draft. We appreciate the opportunity to comment on it. We welcome any other opportunities to assist the Committee in any way we can.

The CHAIRMAN. Mr. Shuravloff, thank you very much.

I would like to ask a general question. I think, Mr. Shuravloff, you have referred to it in your testimony, and that is the need for infrastructure. I have seen this in some of the circumstances with respect to North Dakota tribes. You find a structure—moving a structure, perhaps. We had structures moved from military installations where the structures were to have been demolished, but instead they were moved to Indian reservations, but there wasn't the infrastructure or the funding for the infrastructure—the foundation, the water, and so on. So the tribes had difficulty using that housing stock. Is that a common problem? If so, what can we do about that?

Mr. SHURAVLOFF. Mr. Chairman, the issue we are facing today is as we put new housing in with HUD dollars, the health service is restricted from coming in and supplying those houses with water and sewer infrastructure. That is one of the challenges we are facing today.

During my testimony, I mentioned we are meeting with the Indian Health Board as well as NCAI to try and address that problem and see if we can come up with some sort of fix on how we might be able to start partnering to make better use of our funds.

The CHAIRMAN. Have other tribes had similar problems with respect to infrastructure?

Ms. YAZZIE. Yes. For Navajo, if I may, Navajo is about the size of the State of West Virginia, so right off you are looking at the remoteness factor. It truly lends to the cost of infrastructure, just being exorbitant. That is the costliest component of development. So we are really faced with the extreme lack of funding with respect to even building housing for our tribal members.

The CHAIRMAN. Chairman Brien, can you describe the housing stock on your reservation? You are a reservation that has less land base than some others do, with a fairly sizable population. Can you describe the current housing stock on your reservation?

Mr. BRIEN. Yes. Actually, one second—Jim, can I get that document I gave you? The book? I have all the data on one page that he has.

Just to respond to the infrastructure, in a normal housing environment, you are just purchasing the home. In the Indian housing environment, you are purchasing the home, but you also have to pay for road, water, sewer and electricity at the same time that you are buying the home. So it adds a 30 percent or 40 percent increase in cost to the home owner.

So in Indian Country, we are simultaneously paying for a home, but also installing infrastructure as well. So that is very difficult for a tribal family to gain housing under those circumstances.

Very quickly, the data for Turtle Mountain is that the population growth on our reservation is the major driver of the local housing crisis, as our birth rate remains high and members of the tribe return to the reservation in growing numbers.

There is no currently in Turtle Mountain no habitable rental units available on the whole reservation; 20 percent of the housing units on our reservation are in need of replacement, and 25 percent are in need of major repairs. A minimum of 20 percent of our households on the reservation are living in overcrowded conditions as tribal members take in relatives and friends who cannot find housing.

The supply of suitable and available land for new homes is limited by lack of infrastructure, and of course the legal complexities of allotted lands, tribal trusts, individual trust land. It is very tough to get financing on tribal land through regular banks.

There is a need for, on our reservation, at least 635 additional housing units on Turtle Mountain and 165 units in the remainder of Rolette County by 2010.

The CHAIRMAN. Is there overcrowding of existing stock? Is it a very substantial problem?

Mr. BRIEN. Oh, yes, very much so. Yes. A minimum 20 percent of our homes are overcrowded.

The CHAIRMAN. Ms. Nutter, is overcrowding similarly a problem in the Alaska Native American housing stock?

Ms. NUTTER. Yes, it is, especially in remote villages of Alaska. When we have a lack of housing or inadequate housing, we have families that are housing with other families, and generations of families.

The CHAIRMAN. When we had a hearing talking about education in this Committee, we had someone describe, for example, a young girl in grade school who is living in a relatively small home with 23 people living in the home, and asked the question: What kind of opportunity to do homework in a quiet environment exists for that young girl? The answer is not much of an environment to do homework.

More importantly, it described as well the dramatic overcrowding in a small home, I assume in circumstances where relatives and friends come in and are given an opportunity to have some shelter because other shelter doesn't exist. That, I think, describes in a pretty dramatic way the serious problem of lack of housing stock.

I have to go to the Capitol for a leadership meeting on appropriations bills, so I am going to turn to the Vice Chair, Senator Murkowski, who will ask questions, and then Senator Tester will follow as well.

Let me as I have to depart for this meeting thank those of you who have come in many case a very long way to sit at the table and give us your advice about this legislation. This Committee commits to doing everything we can to move a reauthorization bill and one that incorporates the best suggestions that you have been able to offer as well.

Thank you very much.

Senator Murkowski?

Senator MURKOWSKI. [presiding.] Thank you, Mr. Chairman.

I would like to follow up with you, Ms. Nutter, discussing the issue of the quality of housing that we face. You mentioned the overcrowding, which we recognize in so many of our small villages, as you point out. You have multiple families, generations of families, all residing in the same very small, usually very troubled housing.

We also recognize that there are aspects that we are facing that relate to the mold levels in the houses and how that affects the health of those that are living within the homes. We do have a provision in this draft legislation that in fact does relate to NAHASDA recipients' ability to use funds for mold remediation purposes, which we know will be very important to us in the State.

We have been working over the past couple of years out of my office to make sure that when we are talking about housing issues in so many of our villages, that it is not just the housing for the residents, but also recognizing that when many of the professionals come to town—the schoolteacher, the physician's assistant—that in fact they have no place to live. It is not as if there is any available housing for rent or purchase. It simply doesn't exist.

So we have been working on an initiative to provide for teacher housing in so many of the villages that simply have no accommoda-

tion. It is not a situation of finding something nice or even something affordable. It is a question of finding anything at all.

When I took the Secretary of Education to Alaska a couple of years ago, we went to Savoonga and the principal of the school was living in the broom closet. The special education teacher was living in her classroom. These are the conditions that we face in unfortunately too many of our villages.

I want to ask you, Ms. Nutter, the draft bill has a provision that would allow for essential families, or non-low-income professionals such as I have described the teachers, to receive NAHASDA funds. Out in your area, do you have a demand for special housing, whether it is for teachers, nurses, other non-low-income professionals in the area at Glennallen, and the Copper River area in general?

Ms. NUTTER. Yes, we do. Oftentimes, our health needs, our educational needs in most of our communities are overlooked because we do not have adequate housing to house professionals. We have a difficult time in bringing professionals out that are qualified, let alone our own native tribal members that have the qualifications and are qualified that are not low income, to keep them in our community to continue to provide service to our people, because of the lack of housing.

Senator MURKOWSKI. It is tough to attract people if there is really no place to live at the end of your work day, and that unfortunately is a reality.

Marty, you had mentioned in your testimony the carryover funding and indicated that it has the potential to reduce costs of operation and provide for some streamlining. I think you said it would allow you to focus more on the service delivery. Tell me how you achieve these benefits, then, through the ability to provide for the carryover funding?

Mr. SHURAVLOFF. Well, Senator, I think the biggest or the most positive aspect of it is as we deal with this issue today, we have the ability to put our reserves aside for approximately 2 years to obligate those funds. For most small Indian tribes or TDHEs, the amount of money you set aside in 2 years still is never enough to build units. So you really have to be thinking four or 5 years out, and have the ability to put the reserves together that you need to put together, and plan the developments that you need to plan.

Having the ability to build those reserves is really a key on being able to put new units out there.

Senator MURKOWSKI. So it just enables better planning.

Mr. SHURAVLOFF. Better planning, and being able to put the funds together to actually build units, rather than trying to just have enough money to rehab what is out there.

Senator MURKOWSKI. Mr. Walker, both you and Ms. Yazzie discussed the census data issue. You have indicated that you believe that the forum for solving the census data issue should be the negotiated rulemaking committee. We know that this census data issue has been around for several years now. It seems that the big tribes and small tribes really haven't been able to come to agreement in terms of how to solve this issue. Do you think that it is possible for the big tribes and the small tribes to reach consensus

on the census data under the negotiated rulemaking process? And then Ms. Yazzie, I would ask you to respond as well.

Mr. Walker?

Mr. WALKER. I believe we all can come to a consensus. I think that as we move forward to 2010, I believe that a lot of the consultations with the census, with all of the tribes, really has to happen. I think we all can come to a favorable conclusion on how we are going to approach that data set.

Senator MURKOWSKI. Ms. Yazzie, do you agree?

Ms. YAZZIE. I also agree. I think taking the avenues in your discussion draft is a way to move forward, and looking at alternate data sources will help reach common ground for our small and large tribes. But fundamentally, though, tribes do have that right to make a determination of their tribally identified enrolled members. So we would like to work with the Committee, as well as other tribes, in finding that common ground as we believe that there is I believe a solution if we all can find that alternate data source. So yes, I believe we can.

Senator MURKOWSKI. I want to thank you all as well for coming and testifying this afternoon and traveling the distances that you have, and also for being the advocates that you are on the issue of housing within your villages, within your tribes, within your communities. It is extremely important and we appreciate the contributions.

We also look forward to your continued and active input as we move this draft legislation forward.

Senator Tester?

Senator TESTER. Thank you.

I also want to thank everybody for being here today. I am going to start with Doc Brien. In your testimony, you talked a little bit about some of the same things I actually asked of Mr. Boyd about the low income and potentially if there is expansion to non-low-income folks that could take away from housing that is absolutely critical.

The question I had was, the answer that Mr. Boyd gave was that it increased flexibility of the tribes. Do you see it the same way?

Mr. BRIEN. Yes, increased flexibility of the tribes is very important as a general concept. Of course, I would be very willing to work with the Committee to ensure carefully written law that avoids confusion and serves all parties in a win-win manner.

Senator TESTER. It would allow the tribes to prioritize?

Mr. BRIEN. Yes, yes.

Senator TESTER. Could you share with us the successes that your tribe has had in providing housing under NAHASDA?

Mr. BRIEN. Well, in 1976 my mom and dad were able to get a home ownership home that we moved into. Myself, as a young boy, moved with seven boys and mom and dad, so there were nine of us. I am the youngest in the family. That is why they call me "Doc," as a matter of fact. We moved from a trailer house with no running water to a home, a HUD home, home ownership home back in 1976. I think, from my perspective, the major wins of NAHASDA over the years has been to provide home ownership to native people. In a residential housing setting, moving from a trail-

er home to a stick-built regular home is a major, major accomplishment.

So that happened to me in 1976. Of course, these were the first set of, actually the second set of home ownership homes for our reservation. Home ownership is the major accomplishment I have seen over the years. The degree to which is should happen I think is not to the degree that I would like, of course, but we should continue to strive for home ownership.

Senator TESTER. So how can the discussion draft be refined to at least reform NAHASDA?

Mr. BRIEN. Home ownership, I was kind of contemplating what is really the solution to housing in Indian Country is the economy and jobs, I mean, if you want to move to the root cause of improving any of our conditions in Indian Country. For us on Turtle Mountain, I see jobs and a healthy economy will greatly boost the——

Senator TESTER. What is your unemployment rate right now?

Mr. BRIEN. A 67 percent unemployment rate. We have up to 4,000 people that are unemployed, or 68 percent.

Senator TESTER. This is good, actually, and I agree with you that if we can eliminate the unemployment.

Mr. BRIEN. Because if you are going to get home ownership, you need a job. Right? You know, if you have a job, you can assume a loan and buy a home. Well, many of our tribal members lack a job and therefore cannot obtain a loan. So that is why we see in Indian Country a high rate of rental versus ownership.

Senator TESTER. OK.

Next is a series of questions for Chairman Walker.

Mr. BRIEN. Mr. Tester?

Senator TESTER. Yes?

Mr. BRIEN. I just wanted to relate something regarding overcrowding.

Senator TESTER. Yes?

Mr. BRIEN. I missed it. Well, I have six children and there are eight of us in our home, and we have a three bedroom home with one bathroom. So I myself live overcrowded. I didn't even think about it, but I myself live in an overcrowded setting in my home.

I think as far as my residence in my home, I am on the upper end of comfort. And again, in my family, there are eight of us and we have one bathroom with three little girls. So I am waiting out in the hallway all the time, saying hurry up, I have to get in there. So we are very much overcrowded and I myself experience that daily.

Senator TESTER. OK. Thank you.

Chairman Walker, I want to thank you for highlighting the issues faced by small tribes. We have heard from small tribes that are unable to build even one house with NAHASDA funds. Could you expand on the difficulties that your tribe faces in that regard?

Mr. WALKER. I kind of caught the end.

Senator TESTER. First of all, thank you for highlighting the issues around small tribes and NAHASDA funding. We have heard from small tribes that are unable to even build one house with NAHASDA funding. Could you kind of expand on the difficulties

that your tribe faced? You alluded to it in your remarks, being a smaller tribe.

Mr. WALKER. One of the things that really kind of put the damper on us is as we talked about earlier. A lot of the needs to bring in housing is the infrastructure portion, and a lot of it is we have to bring those services into certain areas, and that costs a lot of money, for sure, to actually even start.

So that is one of our really high costs is just bringing in the water-sewer just to build that structure.

Senator TESTER. How much do you receive yearly under NAHASDA? Do you have that figure available?

Mr. WALKER. It is $1.3 million.

Senator TESTER. And how many houses were you able to build with that last year?

Mr. WALKER. Over the last 5 years, we built 10 houses.

Senator TESTER. And it is $1.3 million a year? And over the last how many years you built 10 houses?

Mr. WALKER. Five years.

Senator TESTER. Five years. And it is because of the infrastructure that those costs were so high? If my math is right, that is about $600,000 a house.

Mr. WALKER. That was the amount of money that was set aside for those homes.

Senator TESTER. OK.

Ms. Yazzie, could you expand on some of the positive and innovative initiatives that the Navajo Nation has been able to do under NAHASDA?

Ms. YAZZIE. Certainly. One of the I think major advantages of NAHASDA as opposed to how Indian housing was administered by the Federal Government under the 1937 Act is it allows that leveraging opportunity, bringing in other outside financing to assist in stretching those dollars. I think that was one major factor.

The other thing is what the block grant allocation and mechanism did is it allows local flexibility in developing plans that are specific. Tribes have that input, that prerogative and flexibility in developing where they want to spend those funds with respect to housing services, development, crime prevention and the like. Whereas previously that had not existed in Indian housing legislation under the 1937 Act.

Senator TESTER. Are there proposals in this discussion draft that will help promote initiatives that are going on in your country?

Ms. YAZZIE. Certainly. I think I alluded to that in my oral testimony. Obviously, more detail is in our written testimony.

Senator TESTER. OK. Thank you very much.

A couple of things, Teri. You referenced the 2005 Alaska Housing Assessment Study, and you also talked about the areas that you represent. Was that 2005 Alaska Housing Study the entire assessment for the entire State of Alaska and all the tribes?

Ms. NUTTER. Yes, it was.

Senator TESTER. OK. Let me grab it real quick. I guess I won't be able to grab it real quick, so I will have to do it off the top of my head.

You had talked about needs. I think it was 25,000 new houses, 20,000 houses that were in bad shape, but could be repaired. Was that statewide or was that just in your area?

Ms. NUTTER. That was statewide. We would be more than happy to share the report with the Committee.

Senator TESTER. Yes, that is great. The bottom line is that if you were going to make an estimate, and I think you said it would take $6 billion. Is that what your report said, $6 billion?

Ms. NUTTER. Roughly.

Senator TESTER. Is that just for new housing? Or is that for new housing, repair and infrastructure?

Ms. NUTTER. The total cost to repair and replace to alleviate overcrowding, so that would include infrastructure.

Senator TESTER. OK. And that is in Alaska alone?

Ms. NUTTER. Yes.

Senator TESTER. Well, thank you very much for your testimony. That is good enough. Well, thank you very much. I appreciate you folks coming the distance and giving us your testimony.

Before I turn it back, I just want to thank Senator Barrasso for being here.

Senator MURKOWSKI. Senator Barrasso, we appreciate you being here this morning. Do you want to proceed if you have any comments that you want to make generally, and then of course questions to the witnesses. Thank you.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you, Madam Vice Chairman. It is a pleasure to be here. We had a briefing, as you know, at the Pentagon this morning, so I apologize for being late and missing some of your comments.

For folks that don't know me, I am the newest member of the Committee. I am from Wyoming, taking the seat of Senator Craig Thomas, who we unfortunately lost about a month ago. I am a practicing orthopedic surgeon and take care of a number of folks from the Northern Arapaho Tribe and the Eastern Shoshone Tribe in the State of Wyoming. That is a large portion of our State and it is very important to our State.

As an orthopedic surgeon, I am going to be looking at many things from the standpoint of health care and the health of folks all around the State. What I see is the average age for women in America is now running to about 80 for longevity and for men it is in the high 70's. And I know in Wyoming at least the life span of our Native American population is running about 49.

So I think we can do a much better job there. So I am thinking in terms of health care issues, of preventive care, early detection, early treatment, nutrition. Certainly, there is substance abuse. Near and dear to my heart is that many of the folks I get involved with directly following motor vehicle accidents, crashes, and other significant trauma relates primarily in a major part to substance abuse. I think we need to do a better job there.

So to me, quality affordable housing is part of the bigger issue to me of health and is one component of that health issue.

In trying to study this and looking at this, I believe promoting individual home ownership is a worthy goal, something we should aim for. As I read through the legislation, I look at the factors used in calculating housing fund allocations. One criteria measures the amount of housing that is owned by the tribes and by the individuals, and I just want to make sure in Section 301, because on the face of it it appears to me that it tips the scale more in favor of the tribe owning the home, rather than the individual owning the home. My experience is when an individual owns a home, that may be more pride of ownership, better care for the facility, better hygiene in there. And then that reverberates into better nutrition, better preventive measures, not just home maintenance, but maintenance of our own body and life and lifestyle, and helping us live longer, healthier lives.

So I don't know who to present the question to, but my question really comes down to that issue of your thoughts on Section 301, of whether you believe it discourages the tribes from turning over the homes for individual ownership and additional individual empowerment. I am certainly in favor of individual members becoming home owners, and then taking the steps from there.

Senator TESTER. [presiding.] Senator, I would say that that question would be best for Rodger Boyd, and Rodger is still here. If we could take the liberty, Rodger, if you would like to answer that?

Senator BARRASSO. Thank you, Senator Tester.

Mr. BRIEN. I can respond briefly from my observation and being a tribal member at Turtle Mountain of North Dakota. Individual tribal member home ownership is very closely linked to our economic conditions on each reservation. So I think there would be a positive correlation between a strong economy and strong home ownership. So most of us, many of our reservations in North Dakota just don't have a strong economy. So therefore, it tends to weight down the increased number of individual home owners. So the medicine for the sickness is jobs, so home ownership will dramatically increase in Indian Country.

Senator BARRASSO. My concern is I want to make sure that the legislation isn't pushing us away from home ownership. That is what I am trying to address.

Mr. BRIEN. Yes, yes.

Mr. SHURAVLOFF. Senator, maybe I could address that. From what I am hearing, Section 301 deals with what we call current assisted stock, which was the old 1937 Housing Act stock. Within that is the low-rent developments, as well as what was constructed which were called Mutual Help units. The Mutual Help were the home ownership units.

Typically, there was a timeframe that the residents that were in the units were buying those units directly from the tribe or housing authority that built them. So those would remain in the name of the tribe or housing authority until they met the agreements of that, and it would be transferred over at that time. But then again there are low-rent units that will stay in the current assisted stock portion of that.

Senator BARRASSO. So a stronger economy would then help that in terms of being able to fulfill the requirements for the total trans-

fer over from the tribe to the individual, with a better economy and better opportunities.

Mr. SHURAVLOFF. The Mutual Help unit will come to an end, actually, when the terms of those agreements are met. The current assisted stock that tribes receive will be reduced accordingly every year, and then they would have to use funds under new construction to develop more units.

Senator BARRASSO. Thank you.

I don't know if anyone else wants to talk to it.

Senator TESTER. Rodger, did you want to add anything?

Mr. BOYD. I think Marty described it pretty accurately. The budget is formed two ways. Some of the money does come out of [remarks made off microphone] first of all to the FCAS units. Second, then, there are [remarks made off microphone] idea of the 1937 Housing Act [remarks made off microphone].

Senator BARRASSO. Thank you very much.

Senator TESTER. So with that, thank you folks for all coming. I appreciate your testimony and appreciate your effort to get here.

The meeting is adjourned.

[Whereupon, at 11:15 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF GREGORY E. PYLE, CHIEF, CHOCTAW NATION OF OKLAHOMA

Mr. Chairman:

My name is Chief Gregory E. Pyle, principal chief of the Choctaw Nation of Oklahoma, the third largest tribe in America, with over 185,000 members. I am submitting this testimony to the Senate Committee on Indian Affairs (SCIA) of the United States Senate on the reauthorization of the Native American Housing and Self Determination Act (NAHASDA). I will restrict this testimony only to issues we feel require changes to the discussion draft of amendments reauthorizing this program.

I would like thank the Committee on its continuing commitment to improving Native American housing throughout the country. The discussion draft released by this Committee builds upon many of the successes of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. I have supported, and will continue to support, NAHASDA and look forward working with the Committee during the reauthorization process.

As I noted in the testimony I submitted to this Committee on March 22, 2007, a major part of the problem concerning housing in Indian Country involves a lack of resources to meet what is an overwhelming need. Inability of Tribes to meet the need of our people creates a snowball affect in the community, affecting health, educational opportunities and performance and, most importantly, the hope of a family and community. I realize our mission before the Committee today is not the direct increase of resources, e.g. appropriations, but I believe that crafting a bill which has the support of all Tribes, and shows that any resources dedicated to housing will be used wisely, will encourage your brethren on the Appropriations Committee to consider our program for increases in resources.

In the past decade of Tribal control over the resources provided by NAHASDA, the Choctaw Nation, and Indian Country as a whole, has made progress. I think we sometimes gloss over the fact that the title of this act for housing includes the term "Self Determination". NAHASDA is a logical extension of PL 93-638, the Self Determination and Education Assistance Act of 1975, the original Act recognizing Tribal and Alaska Native rights to make our own decisions controlling our lives and the lives of our adults and children within our own Council Chamber. The statute recognizes and embodies local control in needs analysis and program decisions and management. We stress that the statute, and the Congressional action passing it, recognized that right. It did not create that right. Our right to control Tribal programs at the local Tribal level is inherent

in our sovereignty. In recent decades that premise, long forgotten or suppressed, has again taken root, and we feel that this recognition is responsible for the progress we have made. We will continue that progress as long as we work together to enable Tribal decisions and do not revert to trying to make "one size fits all" solutions.

To this end, I support the direction of the Committee as released in the discussion draft. This leaves most of the details of implementation, including those regarding the distribution formula, to negotiated rule making. Such rule making is not an easy process, and we need to encourage it, no matter what difficulties are encountered. This is indeed the best way to ensure that tribal sovereignty on key issues is preserved. The provisions of the discussion draft illustrate the dedication of the Committee to solving issues, which I applaud, and not to "punting" these topics to other legislation.

I will address the most prominent topic of disagreement within our community directly - for four years, a failure to agree on the definition of the data set to drive the "population within the Tribal service area" factor in the distribution formula of Block Grant monies has done serious damage to a Housing Coalition once considered a mainstay. The debate has been whether to use Census data involving identification by a person as being Indian only or allow a combination of such data plus data by which a person identifies as being of Indian "race" and another "race", usually called the use of "single race" versus "multiple race" data. I do not support such a characterization, for it is the use of a "loaded term" and is inaccurate. A better term would be "combined data" or "multiple heritage". Notice all data is collected in the same means, by identification by the person answering the collection instrument.

Under the current rules, there is no provision, outside the formal appeal process, for the use of alternative data sets, since the use of Census data has always been accepted in the administration of this program and each proposed alternative has, to this point, involved a problem in collection or verification. I recognize the use of a particular data set does involve changes in the amount distributed to each Tribe, but the debate seems to have focused on this bottom line. Whether such data is statistically valid and should be used, or whether there are alternatives which are valid, fair and practical, has not played much of a role in the "fixes" offered in this debate. One "fix", which was imposed through funding language, even purported to solve the problem without decreasing funds to most of the Tribes, only to result in an "across the board" cut to anticipated funding for almost all Tribes.

The complexity of this problem is compounded by the fact that data from the 2000 Census drives several parts of the formula other than the population factor within a service area.

As I said in March:

> I will not rehash that debate today, but everyone here knows the debate tore at the solidarity of Tribes and their leaders at a time they should have been supporting higher appropriations for this program. Appropriations debate centered not around need but around political fixes and as a result, we have spent two years of internecine debate and dissension. We, and I include all those

who have debated the issue, have deeply wounded what has always been a strong center of support for the undisputed needs of all Native American and Alaska Native housing authorities and their people.

.... I come from a State which has many Tribes (37) and many proud people of Indian heritage. Many of our Members have multiple heritage, and we celebrate that fact. For years, Oklahoma was an afterthought in any program created to benefit Indian people – legislation would be written, and late in the process, someone would remember our State and hastily add in an "Oklahoma provision". Well, as you can see from my testimony today, we are from Oklahoma and we will participate from the start.

The Choctaw Nation of Oklahoma is confident that through negotiated rule-making, and with the experience gained over the last ten years, the creation of an agreed upon data set (or data sets) will be resolved. In the absence of any proof that the "Combined" data set from the 2000 Census is statistically invalid for use in the factor in the formula determining the population within a specific Tribal service area, the Housing and Urban Development Department's (HUD) decision to recognize the validity of this data should be honored. It was not made lightly. There is a process already in place to allow such a challenge to the use of this data, and I note that no Tribe has instituted such a challenge. Any resulting shift of its use in the distribution are natural to the program. Distribution should not be changed by imposition of an artificial "fix" and we would hope that language in funding measures would be allowed to lapse.

We note that the next Census is "right around the corner" and we would rather use Tribal resources and abilities to be sure it is done in a fashion supported by all factions in the current debate. This would make the study mentioned in Section 301 of Title III (on pages 31 and 32 of the Draft) unnecessary.

If a study is done, however, its purpose should be clear. Tribes will need to know the purpose of such a study or what the utilization of its results will be. Feasibility of alternatives, found in subparagraph 301(A) (beginning on page 31), should not be interpreted as an assumption of a problem with the current HUD decision to recognize the validity of Census data. If this is the intent of the authors, to assume a problem prior to evidence, then we would ask that this be revisited and changed. Also, the restatement in subparagraph 301(B) of the feasibility of using an alternative to the Census data seems to the Choctaw Nation like a carefully crafted attempt to cast an assumption that an alternative is needed. Again, this may not be the intent, but this is an issue where interpretation is important. There should be no presumption, assumption, or effort to cause anyone to feel the current set of data used in invalid in these amendments.

To make this clear, we suggest several amendments to the provision as a whole.

First, the GAO should review the use of Combined Census data sets, which HUD decided were statistically valid in distributing the NAHASDA funds. For instance, some have made an issue of what they describe as the growth in numbers of folks identifying themselves Nationwide as "Indian" by the Census in any racial category between the 1990 and the 2000 Census. Such a comparison is not possible, since the Census did not

allow individuals to recognize their multiple heritage in 1990. Who knows what the count for such a Census collection would have been. To compare the numbers of "Indian race only" identifications in 1990 with the number of "combined race" identifications in 2000 is clearly a mistake.

Additionally, the argument that such "self-identification" cannot reflect the truth on the ground within service areas, because it does not count Tribal Members only, is also a mistake. Tribes serve all qualified Indian people within the service areas, not just those who are Members of the Tribe receiving the grant. Accurate determination of this restricted number within the area to be served is not possible under the current system.

As the Chief of the third largest Tribe in the United States, you may suppose I would support simply using Tribal membership. I do not, for practical and pragmatic reasons. It simply is inaccurate. It would tilt the program toward the largest of Tribes only, which would decrease the Nationwide support we have received from all Tribes in the past. Such a result may be good for specific Tribes in the short run, but it will lead to divisions within the program and a "Balkanization" of the funding support and mechanisms (as we have seen recently). In the long run, all Tribes would suffer, in this program and in the exercise of mutual support and sovereignty.

The question is simply: are the Combined Census figures for the actual service areas of the Tribes a statistically valid reflection of the state of facts on the ground. Why consider numbers in New York or Chicago? To my knowledge, there are no NAHASDA programs in those cities. Instead, the GAO should determine if the combined Census numbers comport with other BIA, IHS, Tribal and other figures for the Tribal housing service areas. The result of this study should then be published/

Second, decisions can be made on how to conduct the studies of alternative data sets which Tribes may elect to use in lieu of the Census figures, at least in the population segment of the formula (NOTE – both authorities could be crafted in this reauthorization). Showing the current Combined Census data set is valid does not have to end the study of alternatives. We fully support the idea that there should be statistically valid options and alternatives from which Tribes can choose in NAHASDA, providing that they are fiscally sound and do not take money away from all participants in the program to research and implement. If a Tribe wishes to use its own money to create and implement, an alternative, and the result is statistically valid, we would support that. However, the first step concerning validity the Combined Census data, which has been called into question by some, is essential to giving Tribes the information they need to make informed choices.

When developing the range of alternative options for determining population in a specific Tribal service area from which Tribes, in the exercise of their sovereignty, can choose, several factors should be used in developing the alternatives:

There should be no imposition of any single data set for all Tribes.
For any data set developed as an option, such a set should have the following guidelines:

-development and use, including auditing, does not deplete scarce resources needed for housing "bricks and mortar";

-includes definitions and methods which substantiate the "facts on the ground" which could, if chosen, apply for all Tribes and is not simply an arbitrary collection based on restrictive rules;

-is collected in an objective fashion, preferably by a third party and within a set time frame;

-the results are statistically valid and verifiable, through reference to other existing data sets. A variation is, of course, probability, but this should be within predicted range, and

-it supports the range of issues which impact distribution, including conditions of housing, economic situation, presence of improvements or necessities in the home, et al..

However, should this study continue to be worded as found in the draft at Section 301 (amending Section 302 of NAHASDA), we respectfully recommend the minimal amendments below:

- in the provision in Section 301 (1)(B) found at line 18 of page 31, [amending section 302 (a) by addition of a new subpart] - that "in consultation with Indian tribes" be added after "study",

- that the phrase "an alternative data set" found in lines 20 and 21 in the same amendment, found on page 31 of the Draft, be revised to read "multiple data sets" and

- that line 4 on page 32 of the Draft (still within the same amendment) be revised by deleting "to" after the word "set", and adding "in conjunction with" after "set". By making these changes the study would ensure that tribal sovereignty and consultation are respected in the implementation of the study. It would also respect the concept of choice that the Choctaw Nation of Oklahoma strongly believes needs to be the basis for the selection of data set(s) for the formula.

In the same section of the discussion draft (Section 301(2) [amending Section 302 (b)(1), starting at page 32, line 7 and running to the end of Line 16] there is the following language:

> (2) In subsection (b)(1), by striking "Secretary." and inserting the following: "Secretary, subject to the condition that such unit shall not be considered to be a low-income housing dwelling unit for purposes of this section in any case in which—
>
> (A) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or
>
> (B) the unit is lost by conveyance, demolition, or another means.".

This provision would amend the definition of units counted under the "Currently Assisted Stock" (CAS) factor in the formula distribution of main block grants. It is our understanding that the purpose of this provision is to delete from the CAS factor any units which: 1) were constructed or funded by a Tribe through funds under the Section 8 assisted housing voucher provisions as they existed prior to the enactment of NAHASDA or subsequently under NAHASDA provisions, and 2) which have been transferred in title from current Tribal control and/or responsibility, in all its forms. These would include houses under the "Mutual Help", "Turnkey" and "Low Rent" assistance programs. The counting of such CAS rental voucher units funded under "expired Section 8 vouchers" which have been totally relinquished by the Tribe or its Housing Entity is a matter under

contention by certain Tribes. I want to be sure we are not seen as registering an opinion on that debate. The Choctaw Nation of Oklahoma has no such relinquished units.

I am concerned, however, that the language, as drafted, is so vague that it could be misinterpreted, either now or in the future, as a reason for the Tribes to lose funding for the CAS rental voucher units, even though the Tribe is using the assistance received to operate and maintain such vouchers to meet current housing needs. Along as the Tribe is using the assistance to provide housing, the CAS rental housing unit count should not be decreased. This helps the Tribe meet the goals of the NAHASDA.

I must inform the Committee the Choctaw Nation of Oklahoma would be severely hampered in our mission of providing decent, safe, and sanitary affordable housing to our tribal members by such an interpretation. Other Tribes who have functioning Section 8 rental voucher housing programs would be similarly impacted, and such a result is unfair.

The Choctaw Nation of Oklahoma had 439 Section 8 CAS rental voucher units under contract (ACC) when NAHASDA was enacted into law. This represented 439 Choctaw families who were able to live in decent, safe and sanitary affordable housing owned and operated by private market landlords. The Choctaw Nation of Oklahoma continues to operate at least that many tenant based rental vouchers, as we realize the opportunity it provides for our participants to have a better choice of where they reside

Rather than concentrating low-income families into subsidized housing projects, the participant is able to have a choice of the neighborhoods and communities in which they choose to reside. They are then able to choose which school district their children attend, how close they are to more employment opportunities or find an affordable home close to health facilities or medical providers that they may need. I believe that this choice offered to families and the successes that we have seen from this choice is one of the great achievements of NAHASDA.

The continued funding of these units also helps encourage more private housing opportunities, one of the purposes of NAHASDA. The Choctaw Nation of Oklahoma is located in Southeast Oklahoma covering over 11,000 square miles, inside whose service area is a limited supply of private market rental units. By utilizing these private market rental units with Tenant based rental vouchers we are able to provide more availability of affordable housing to our tribal families. While we operate our own affordable rental housing projects, we cannot feasibly operate projects in every community in our service area. CAS rental voucher units allow affordable housing providers to meet the needs of low-income families to have a Decent Safe and Sanitary homes in areas where we do not operate affordable rental projects. The private market landlord is responsible for all maintenance and operational costs of the home, thus making these one of the most efficient uses of a limited resource. The Choctaw Nation of Oklahoma annually has close to 500 very low-income families receiving this type of housing assistance, and we want to note no other housing program can provide assistance to make housing affordable for these 500 families without a major increase in funding and construction.

CAS rental voucher units utilized by the Choctaw Nation of Oklahoma, as well as other housing agencies, help our local communities by stabilizing the rental market and encouraging private funds into developing and maintaining rental units. As these private market rental units are developed it increases the ad-valorum tax base in those communities and creates a boost in the local economy as more private construction is done to meet the need for rental units. Without the CASD rental voucher units, these private market funds would not be used to develop additional rental units. The need from the low-income families to have decent safe and sanitary affordable housing would still be there but the ability of the family to find an available unit would be non-existent.

I think you can see the high value of this part of our program and why we do not want to risk any possibility of misinterpretation. Our concern is heightened when we realize that potential damage would be caused unintentionally by the language proposed. We think the goals of the drafters can be met through minor amendments to the language, which clarify the units to be deleted. They are as follows:

On page 32 of the Committee draft:

Line 12 : amend the language to read:
"(A) the recipient ceases to possess the legal right to own, operate, or maintain the Mutual Help, Turnkey III or Low Rent unit; or"

Line 15: amend the language to read:
"(B) the Mutual Help, Turnkey III or Low Rent unit is lost by conveyance, demolition, or another means; or"

On Line 16, delete " means.", and add the following:
"means, or
(C) the recipient ceases to maintain and operate the tenant based assistance unit."

I know this Committee has its work cut out for it with the reauthorization of NAHASDA. We look forward to working with you on the language of the bill, and we support your efforts. The Choctaw Nation of Oklahoma wishes to work with you and will be ready to offer any assistance we can.

Sincerely,

Gregory E. Pyle, Chief
Choctaw Nation of Oklahoma

GEP/al/gg

PREPARED STATEMENT OF THE CHEYENNE RIVER SIOUX TRIBE AND CHEYENNE RIVER HOUSING AUTHORITY

The Cheyenne River Sioux Tribe ("CRST") and its Tribally Designated Housing Entity ("TDHE"), the Cheyenne River Housing Authority ("CRHA"), headquartered in Eagle Butte, South Dakota, thank you for this opportunity to submit feedback and comments on the Senate Discussion Draft Bill of the reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"). The Cheyenne River Sioux Indian Reservation is a large land-based reservation of approximately 3 million acres located in north central South Dakota. The CRST Reservation is made up of over 16 communities and includes, all of Dewey and Ziebach Counties, the fifth and seventy-eighth of the poorest counties in the United States. The reservation is home to an estimated 14,000 residents, of whom an estimated 12,000 are Native American.

The CRST and the CRHA strongly support the reauthorization of NAHASDA. When NAHASDA passed in 1996, it was designed to be a bold and innovative program focusing on the recognition and enhancement of Tribal self-governance and Indian self-determination in the area of Indian housing. Not only was its purpose to help build capacity in Indian housing programs, but also to increase local, community, and Tribal control of one of the most basic human needs and fundamental prerogatives of Tribal government- the provision of shelter to its citizens. A primary purpose of NAHASDA was to address the entrenched lack of housing and lack of homeownership opportunities on reservation lands. Many of the proposed changes in the Senate Discussion Draft continue to bolster and strengthen the purposes of NAHASDA.

Brief Comments on the Senate Discussion Draft

The CRST and the CRHA are pleased with many of the proposed amendments contained in the Senate Discussion Draft. It is apparent that the drafters are very aware of and responsive to the many ongoing issues that Tribes and their TDHE's have with the current law, and have genuinely attempted to address many of those concerns. There are some proposed amendments, however, that the Tribe and the CRHA believe will have unintended negative consequences that undermine rather than enhance NAHASDA's primary purposes. Our comments are offered in the spirit of cooperation to provide the Senate with Tribal government and Tribal housing expertise, insight and feedback during this critical phase of the NAHASDA reauthorization process.

In order to address the most urgent concerns and questions, these comments are organized into two sections: 1) Fully Supported Proposed Amendments, and 2) Recommended Changes to Proposed Amendments.

1) FULLY SUPPORTED PROPOSED AMENDMENTS:
Overall, the CRHA supports the majority of the proposed amendments as enhancing self-determination, enhancing flexibility, lessening administrative burden, increasing efficiency, and/or addressing obstacles and deficiencies in the current law. The proposed amendments that are fully supported by the Tribe and the CRHA, include but are not limited to, the following:

A) Section 2. Congressional Findings.
COMMENT: The change of wording from the discretionary nature of the word "should" to the mandatory "shall" will make it clear that Congress' commitment to Tribes in passing NAHASDA is more than a mere aspiration, but is the prescribed method by which the NAHASDA program shall be administered.

B) Section 3. Definitions.
COMMENT: The new definition added in this section broadens allowable activities and this will help make the NAHASDA program more effective in accomplishing its purposes.

C) Section 101. Block Grants.
COMMENT: The proposed changes add two new sections, "Federal Supply Sources" and "Tribal Preference in Employment", which will greatly aid Tribes and TDHE's in administering their programs, as well as acknowledging Tribal self-governance by changing "Indian Preference" to "Tribal Preference." Such a change is not only timely, but also necessary to ensure that the Federal government's relationship to Tribes is echoed throughout the Act. With the exception to the changes made for "self-determined housing activities" (discussed below), the proposed changes are supported by the CRST and the CRHA.

D) Section 102. Indian Housing Plans.
COMMENT: Overall, the changes to the IHP streamline the process and reduce administrative burden, while creating more flexibility for Tribes in the provision of Tribal housing for Tribal members. With the exception of the new "self determined activities" program (discussed below), the proposed changes are supported by the CRST and the CRHA.

E) Section 103. Review of Plans.
COMMENT: Overall, the changes to this section streamline the process and reduce administrative burden since Tribes will no longer have to submit redundant information. With the exception of the new "self determined activities" program (discussed below), the proposed changes are supported by the CRST and the CRHA.

F) Section 104. Treatment of Program Income and Labor Standards.
COMMENT: The proposed amendment in this section will clarify that any income derived from a developer's fee for a Low Income Housing Tax Credit project, that meets certain requirements, is excluded as program income under the Act. This change is supported by the CRST and the CRHA.

G) Section 106. Authorization of Appropriations.

COMMENT: This section reauthorizes grants made available under this title from FY2008-2012. As such, this change is supported by the CRST and the CRHA.

H) Section 201. National Objectives and Eligible Families.
COMMENT: The proposed changes to this section that the Tribe and the CRHA supports are 1) the change that will allow loan guarantees under title VI to be an allowable housing activity and 2) the change that will allow any family, either Indian or non-Indian, to be an "essential family" under the Act. The Tribe and the CRHA do not object the change related to law enforcement officers from other units of local government eligible to receive housing or housing assistance under the Act. Please see below for comments related to the proposed amendment for non-low income, non-Indian, non-essential families.

I) Section 202. Eligible Affordable Housing Activities.
COMMENT: The CRST and the CRHA supports the following changes in this section: 1) the change that redefines "affordable housing activities" to be those activities "to develop, operate, maintain, or support" affordable housing for rental or homeownership, 2) the change that strikes "development of utilities" and adds "development and rehabilitation of utilities, necessary infrastructure", and 3) the change that includes "mold remediation" as an allowable activity. Each of these changes acknowledge that the provision of housing is more than just "bricks and mortar" and will help the Tribes accomplish the purposes of the Act.

J) Section 203. Program Requirements.
COMMENT: The proposed amendments in this section dealing with the use of grant amounts over extended periods of time and the creation of a de minimis exception to procurement rules are strongly supported by the CRST and the CRHA. Each of these changes will lessen administrative burden, lower costs, increase productivity, and aid in the building of more units.

K) Section 205. Treatment of Funds.
COMMENT: This section attempts to clarify that tenant and project based rental funds are not "Federal funds" for purposes of the Low Income Housing Tax Credit. The CRST and the CRHA support this change as it relates to developer's fees under low income housing tax credit projects.

L) Section 206. Availability of Records.
COMMENT: This proposed amendment would allow Tribes/TDHEs to access the National Crime Information Center records related to criminal convictions for those applying for employment. The CRST and the CRHA support this change.

M) Section 403. Performance Reports.
COMMENT: This proposed amendment is in line with D) above. The CRST and the CRHA do not object to this amendment.

N) Section 509. Effect on Home Investment Partnerships Act
COMMENT: This section proposes an amendment that adds "nothing in this Act or amendment prohibits or prevents any participating jurisdiction from providing amounts to an Indian tribe or TDHE." The CRST and the CRHA support this amendment.

O) Section 601. Title Heading
COMMENT: The CRST and the CRHA have no objection to this proposed amendment.

P) Section 603. Training and Information.
COMMENT: The CRST and the CRHA support this proposed amendment in that it requires the Secretary to carry out educational seminars with Tribes/TDHEs in relation to the proposed demonstration project in section 601.

Q) Section 701. Training and Technical Assistance.
COMMENT: The CRST and the CRHA support this proposed amendment. As a general inquiry, is there some reason the National American Indian Housing Council is not named as the "national organization representing Native American housing interests" in this section?

2) RECOMMENDED CHANGES TO PROPOSED AMENDMENTS:
The following sections reflect proposed amendments that the CRST and CRHA would support only if certain concerns and clarifications are made to the language.

A) Section 105. Regulations.
COMMENT: The changes embodied in this section go far to address one of the major issues Tribes and their representatives have had with the Negotiated Rulemaking process, namely timeliness by the Secretary in publishing final rules under the Act. The last Negotiated Rulemaking Committee was initiated by the Secretary in 2003 and a final rule was not published in the Federal Register until April 2007.

While it may be the intent of the proposed changes to establish standards of timeliness for both 1) regulations following enactment of any NAHASDA reauthorizing Act, and 2) for all other rulemaking necessary under the Act, as written, this section is unclear. To achieve the desired result, the CRST and the CRHA propose the following language:

> Sec. 106(b)(2)(B)(i)
> "Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 or any other Act to reauthorize this Act, the Secretary shall establish and convene a negotiated rulemaking committee, in accordance with the procedures under that subchapter, for the development of regulations under subparagraph (A).
>
> Sec. 106(b)(2)(C)
> "SUBSEQUENT NEGOTIATED RULEMAKING.—Once announced by the Secretary —
> (i) all negotiated rulemaking under the Act, except for rulemaking conducted pursuant to subsection (B)(i) above, shall be convened within 180 days, and
> (ii) once recommendations are made by the Committee, the Secretary shall promulgate any final rule within 18 months of first convening any Negotiated Rulemaking Committee, including any rulemaking conducted under subsection (B)(i) above."

The other change reflected in this section, proposed amendment Sec. 106(b)(2)(D), does cause a major concern for the CRST and the CRHA in that the Secretary may interpret this section to mean that negotiated rulemaking pursuant to Sec.106.(b)(2)(A) no longer applies when reviewing regulations under the Act. If this was the intent of the drafters, the CRST and the CRHA do not support this change and request that any review conducted by the Secretary be conducted in line with Section 106(b)(2)(A). If this was not the intent of the drafters, the CRST and the CRHA request clarification on this issue and propose the following language to do so:

> Sec. 106(b)(2)(D)
> "REVIEW.—Not less frequently than once every 7 years, the Secretary, pursuant to the procedure outlined in section 106(b)(2)(A), shall review and revise, if necessary as determined by the committee established for that purpose, the regulations promulgated pursuant to this section that are in effect on the date on which the review is conducted."

B) Sec. 201(b). National Objectives and Eligible Families.
COMMENT: This section attempts to amend the "(b)(2) Exception to Low Income Requirement" by authorizing housing or housing assistance to a family that is not low income provided the Secretary authorizes such. While this appears to be more like a technical amendment than a substantive one, on closer examination of the proposed amendment, the word "Indian" has been removed. The CRST and the CRHA cannot support this proposed amendment unless the word "Indian" is put back into this subsection. By including the word "Indian" as before, the proposed amendment would now read:

> Sec. 201(b)(2)
> "(A) EXCEPTION TO REQUIREMENT.—Notwithstanding paragraph (1), a Recipient may provide housing or housing related assistance through affordable housing activities for which a grant is provided under this Act to any Indian family that is not a low-income family, to the extent that the Secretary approves the activities due to a need for housing for those families that cannot reasonably be met without that assistance."

Essential non-Indian families are already provided for pursuant to the proposed amendment to Section 201, National Objectives and Eligible Families, whereby any family, either Indian or non-Indian, can be found an "essential family" under the Act. Providing housing for over-income, non-essential, non-Indians does not promote any of the intended purposes of NAHASDA.

C) Section 202. Eligible Affordable Housing Activities.
COMMENT: The CRST and the CRHA support the addition of a new subsection "(9) Reserve Accounts," however, there is a concern that limiting the purposes of the reserve accounts to just administration and planning is too narrow. A Reserve Account must be broad enough to allow for a reserve in the case of natural or man-made disasters, or extraordinary situations requiring significant capital such as floods, fires, hail, etc. Such costs in the short term are not met by FEMA or insurance, which take days to weeks to access on remote Indian lands. This is especially true for the CRST and CRHA, who operate over 900 units with an unmet need for 700

additional units. Another concern is that the plain reading of the new subsection "(B) Maximum Amount" appears to limit the total amount the reserve accounts can be instead of limiting the maximum amount of NAHASDA funds that can be used to initially fund the accounts. It would defeat the purpose of the reserve accounts if they were not allowed to increase to more than ¼ of the 5-year average of the annual amount used by a recipient for such purposes.

D) Section 204. Low-Income Requirement and Income Targeting.
COMMENT: This proposed amendment attempts to clarify that low income requirements apply only to rental and homeownership units owned or operated by a recipient. The CRST and the CRHA do not agree that low-income requirements apply to all rental or homeownership units that it owns or operates, but rather such income restrictions only apply to rental or homeownership units assisted with funds under this Act irrespective of whether the recipient or sub-recipient operate such units , and therefore suggests the following clarification:

> Sec. 204(c)
> "APPLICABILITY.—This section applies only to rental and homeownership units, assisted with funds under this Act."

E) Section 207. Investment of Grant Funds; Regional Tribally Designated Housing Entity Programs.
COMMENT: The CRST and the CRHA find that the proposed amendments relating to the investment of grant funds and the creation of regional TDHEs are in need of further clarification before they can support these changes. In regards to the investment of grant funds, why are the regulations now codified in the law? Section 204 of the current law dealing with investments seems to be adequately restrictive. Anything further creates more administrative burden. As written, the proposed amendments are too restrictive and limit the very purpose of investing funds, to grow more money to build and provide better housing for Tribal members. HUD and Tribes should have some discretion to change regulations over time to meet changing times and financial situations. In regards to the creation of regional TDHEs, what is the need for this proposed amendment and furthermore, while voluntary consolidation is one thing, the intent of this proposed amendment appears to create an easier road to required consolidation in the future. Regionalization is not a concept the CRST or CRHA supports for this Tribe or Region. It should always be voluntary to protect Tribal sovereignty and self-determination.

F) Section 208. Self Determined Housing Activities for Tribal Communities Program.
COMMENT: This proposed amendment is substantially similar to the version contained in House Bill H.R. 2786, although it does go a bit further by including infrastructure as a housing activity. In the creation of Subtitle B it is apparent that the drafters are dedicated to pursuing avenues for the enhancement of self-determination under NAHASDA and have been responsive to the Tribes/TDHEs need for flexibility in self-determining housing activities that meet the housing needs of their communities. The proposed Subtitle B has the potential of helping Tribes realize the promise of NAHASDA, as found in section 2 of the current law. However, the CRST and the CRHA have grave concerns that, as drafted, this proposal will not meet the intended purpose of creating flexibility as it does not allow Tribes/TDHEs to do anything more than they can already do under the Act, while being even more restrictive. For instance, the proposed section 233(b) prohibits the use of funds for "commercial or economic development" but a

Tribe/TDHE, outside of Subtitle B, can use block grant funds for qualifying "housing related community development" activities pursuant to section 3. The NAIHC amendments proposed to the Senate are not objectionable, however, the Tribe and CRHA urge extreme caution in adopting any subtitle that may be detrimental to Tribal self-governance and Indian self-determination by actually being too restrictive and burdensome, despite any title to the contrary.

G) Section 301. Allocation Formula.
COMMENT: The CRST and the CRHA are somewhat supportive of the proposed amendment to study the feasibility of an alternative data set for the need component of the block grant formula, but suggest that proposed subsection (a)(2)(B) is unnecessary and confusing language. It is not clear what the intent of this proposed subsection is, but if it is to require a comparison of any alternative data sets to the decennial census, the CRST and the CRHA are not in support of this comparison in regards to population numbers because the decennial census data related to population numbers is based on race, as self-identified, not the political status of tribal enrollment, as verified using other data sources such as IHS user population or Tribal enrollments by residency/location. NAHASDA was and is a program designed to serve Indians, which is a political status under the Act, not a racial issue.

In regards to proposed amendment contained on page 32 of the Senate Discussion Draft beginning on line 7, the CRST and the CRHA are opposed to this amendment and therefore propose this new subsection be stricken. The issue relates to the Fort Peck case currently being appealed before the courts. This amendment is an attempt to circumvent the legal process Tribes/TDHEs have available to them on this issue. No statutory change should be made at this time.

H) Section 401. Remedies for NonCompliance.
COMMENT: The CRST and the CRHA are opposed to the change dealing with substantial non-compliance. This is a related issue to the Fort Peck case, as discussed above, and should be stricken. In addition, elimination allows HUD to deny millions in funds to Recipients without any due process. The CRHA filed a court case on this issue in 2003, CRHA v. HUD, No. 03-1052, (8th Cir. 2002), which demonstrates exactly why this amendment should be stricken.

I) Section 602. Authority and Requirements.
COMMENT: Although the CRST and the CRHA do not object to this proposed demonstration program that would allow the Secretary to provide loan guarantees to Tribes/TDHEs in support of activities that benefit low income families on Indian reservations and in other areas need further clarification. Specifically, what are the activities that are intended to be financed under this demonstration program?

Attachment

EXECUTIVE RESOLUTION No. E-250-07-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe in order to establish its tribal organization, to conserve its tribal property, to develop its common resources, and to promote the general welfare of its people has ordained and established a Constitution and By-laws; and

WHEREAS, pursuant to the authority vested in the Cheyenne River Sioux Tribe by its Constitution, Article IV, Section I(k), to provide for the health, safety, morals, and welfare of the Tribe, the Cheyenne River Sioux Tribe duly enacted Ordinance 28, on January 6, 1977, providing for the establishment of the Cheyenne River Housing Authority; and

WHEREAS, the Cheyenne River Housing Authority's purpose is to remedy unsafe and insanitary housing conditions that are injurious to the public health, safety and morals; alleviate the acute shortage of decent, safe, and sanitary dwellings for persons of low income; and provide employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings; and

WHEREAS, on September 16, 1997, the Cheyenne River Sioux Tribe amended Ordinance 28 to designate the Cheyenne River Housing Authority as its Tribally Designated Housing Entity ("TDHE") for purposes under the Native American Housing Assistance and Self-Determination Act ("NAHASDA") of 1996; and

WHEREAS, NAHASDA is vital to addressing the low income housing needs of Tribal members, as well as promoting Tribal self-determination; and

WHEREAS, NAHASDA is due for reauthorization this year; and

WHEREAS, the Tribe has been provided with the opportunity to comment on the Senate Draft NAHASDA Reauthorization Bill; now

THEREFORE BE IT RESOLVED, the Cheyenne River Sioux Tribe hereby supports the following attached comments of the Cheyenne River Housing Authority; and

BE IT FURTHER RESOLVED, the Cheyenne River Sioux Tribe authorizes the Cheyenne River Housing Authority to submit the aforementioned attached comments on its behalf to the drafters of the Senate Draft NAHASDA Reauthorization Bill; and

BE IT FURTHER RESOLVED, that nothing in this Resolution diminishes, divests, alters or otherwise affects any inherent, Treaty, common law or other rights of the Cheyenne River Sioux Tribe, herein, including but not limited to legislative, regulatory, adjudicatory and taxing powers.

CERTIFICATION

This is to certify that the foregoing resolution has been reviewed and approved by the undersigned Executive Committee of the Cheyenne River Sioux Tribal Council, acting under duly delegated executive authority and in the best interests of the Cheyenne River Sioux Tribe, this 6th day of August, 2007, at Eagle Butte, South Dakota.

Joseph Brings Plenty, Chairman
Cheyenne River Sioux Tribe

Ev Ann White Feather, Secretary
Cheyenne River Sioux Tribe

Benita Clark, Treasurer
Cheyenne River Sioux Tribe

PREPARED STATEMENT OF RUSSELL SOSSAMON, PRESIDENT, SOUTHERN PLAINS INDIAN HOUSING ASSOCIATION

Chairman Dorgan, Vice-Chair Murkowski and Committee members:

Thank you for the opportunity to submit testimony on the Discussion Draft (Draft) on the reauthorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA). I am Russell Sossamon, President of the Southern Plains Indian Housing Association a group of 47 tribally designated housing entities with contacts in Oklahoma, Louisiana, Missouri, Kansas and Texas.

We support the work of the Committee and believe that the Discussion Draft is an excellent effort toward reaching passage of a reauthorization bill. We concur with the direction of the Draft that leaves much of the details of implementation, inclusive of formula issues, to negotiated rule making. This is the best way to ensure that tribal sovereignty on key issues is preserved. It should also serve as a clear message (which we agree with) to others involved in the legislative and funding processes that your Committee supports the resolution of formula issues through the reauthorization bill and subsequent rule making rather than through separate legislation.

SPIHA is also confident that through negotiated rule-making and with the experience gained over the last ten years, that data set usage will be resolved. This would make the study mentioned in Title III of the Draft unnecessary. Members of SPIHA also would like to underscore that there has been no empirical or other evidence to support any contention that the U.S. Census data and methodologies used to collect the data are statistically invalid. Those who question the use of self-reporting in the 2000 Census, fail to realize or note that self-reporting has always been a feature of the Census and has never been a basis for excluding Census data; and as we know, Census data remains and will continue to be a key part of formulas for a host of purposes ranging from reapportionment and civil rights to allocation of funds for federal, state and local programs.

However, should the Committee feel compelled to have this proposed study remain as part of the reauthorization bill, we respectfully recommend in line 18 of page 31, that "in consultation with Indian tribes" be added after "study", and that the phrase "an alternative data set" found in lines 20 and 21 on page 31 of the Draft, be revised to read "multiple data sets" and that line 4 on page 32 of the Draft be revised by deleting "to" after the word "set", and adding "in conjunction with" after "set". By making these changes the study would ensure that tribal sovereignty and consultation are respected in the

implementation of the study. It would also respect the concept of choice that SPIHA strongly believes needs to be the basis for the selection of data set(s) for the formula.

We support the responsible approach that the Committee is taking on formula issues. Tribal membership as the sole basis for determining the population base for NAHASDA *and* other Indian programs as some tribes have advocated, has the potential of causing more division in Indian country and producing greater confusion among tribes and the federal agencies that must administer those programs.

On behalf of the Southern Plains Indian Housing Association (SPIHA) I thank you again for your work on behalf of Indian Country and the opportunity to submit testimony on the Reauthorization of the Native American Housing Assistance and Self Determination Act Discussion Draft.

Attachment

110TH CONGRESS
1ST SESSION

S. _____

To amend the Native American Housing Assistance and Self-Determination Act of 1996 to reauthorize that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

---

A BILL

To amend the Native American Housing Assistance and Self-Determination Act of 1996 to reauthorize that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Native American Housing Assistance and Self-Determination Reauthorization Act of 2007".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Congressional findings.
Sec. 3. Definitions.

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

Sec. 101. Block grants.
Sec. 102. Indian housing plans.
Sec. 103. Review of plans.
Sec. 104. Treatment of program income and labor standards.
Sec. 105. Regulations.
Sec. 106. Authorization of appropriations.

TITLE II—AFFORDABLE HOUSING ACTIVITIES

Sec. 201. National objectives and eligible families.
Sec. 202. Eligible affordable housing activities.
Sec. 203. Program requirements.
Sec. 204. Low-income requirement and income targeting.
Sec. 205. Treatment of funds.
Sec. 206. Availability of records.
Sec. 207. Investment of grant funds; regional tribally designated housing entity programs.
Sec. 208. Self-determined housing activities for tribal communities program.

TITLE III—ALLOCATION OF GRANT AMOUNTS

Sec. 301. Allocation formula.

TITLE IV—COMPLIANCE, AUDITS, AND REPORTS

Sec. 401. Remedies for noncompliance.
Sec. 402. Monitoring of compliance.
Sec. 403. Performance reports.

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

Sec. 501. Effect on Home Investment Partnerships Act.

TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITIES

Sec. 601. Title heading.
Sec. 602. Authority and requirements.
Sec. 603. Training and information.
Sec. 604. Limitations on amount of guarantees.

TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

Sec. 701. Training and technical assistance.

1 **SEC. 2. CONGRESSIONAL FINDINGS.**

2 Section 2 of the Native American Housing Assistance
3 and Self-Determination Act of 1996 (25 U.S.C. 4101) is

1 amended in paragraphs (6) and (7) by striking "should"
2 each place it appears and inserting "shall".

3 **SEC. 3. DEFINITIONS.**

4 Section 4 of the Native American Housing Assistance
5 and Self-Determination Act of 1996 (25 U.S.C. 4103) is
6 amended—

7 (1) by striking paragraph (22);

8 (2) by redesignating paragraphs (8) through
9 (21) as paragraphs (9) through (22), respectively;
10 and

11 (3) by inserting after paragraph (7) the fol-
12 lowing:

13 "(8) HOUSING RELATED COMMUNITY DEVELOP-
14 MENT.—

15 "(A) IN GENERAL.—The term 'housing re-
16 lated community development' means any facil-
17 ity, community building, business, activity, or
18 infrastructure that—

19 "(i) is owned by an Indian tribe or a
20 tribally designated housing entity;

21 "(ii) is necessary to the provision of
22 housing in an Indian area; and

23 "(iii)(I) would help an Indian tribe or
24 tribally designated housing entity to reduce
25 the cost of construction of Indian housing;

"(II) would make housing more affordable, accessible, or practicable in an Indian area; or

"(III) would otherwise advance the purposes of this Act.

"(B) EXCLUSION.—The term 'housing and community development' does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).".

TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS

SEC. 101. BLOCK GRANTS.

Section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking "For each" and inserting the following:

"(1) IN GENERAL.—For each";

(ii) by striking "tribes to carry out affordable housing activities." and inserting the following: "tribes—

1 "(A) to carry out affordable housing activi-
2 ties under subtitle A of title II; and"; and
3 (iii) by adding at the end the fol-
4 lowing:
5 "(B) to carry out self-determined housing
6 activities for tribal communities programs
7 under subtitle B of that title."; and
8 (B) in the second sentence, by striking
9 "Under" and inserting the following:
10 "(2) PROVISION OF AMOUNTS.—Under";
11 (2) in subsection (g), by inserting "of this sec-
12 tion and subtitle B of title II" after "subsection
13 (h)"; and
14 (3) by adding at the end the following:
15 "(j) FEDERAL SUPPLY SOURCES.—For purposes of
16 section 501 of title 40, United States Code—
17 "(1) each Indian tribe or tribally designated
18 housing entity shall be considered to be an Executive
19 agency in carrying out any program, service, or
20 other activity under this Act; and
21 "(2) each Indian tribe or a tribally designated
22 housing entity and each employee of the Indian tribe
23 or tribally designated housing entity shall have ac-
24 cess to sources of supply on the same basis as em-
25 ployees of an Executive agency.

1 "(k) TRIBAL PREFERENCE IN EMPLOYMENT AND
2 CONTRACTING.—Notwithstanding any other provision of
3 law, with respect to any grant (or portion of a grant) made
4 on behalf of an Indian tribe under this Act that is in-
5 tended to benefit 1 Indian tribe, the tribal employment
6 and contract preference laws (including regulations and
7 tribal ordinances) adopted by the Indian tribe that re-
8 ceives the benefit shall apply with respect to the adminis-
9 tration of the grant (or portion of a grant).".

10 **SEC. 102. INDIAN HOUSING PLANS.**

11 Section 102 of the Native American Housing Assist-
12 ance and Self-Determination Act of 1996 (25 U.S.C.
13 4112) is amended—

14 (1) in subsection (a)(1)—

15 (A) by striking "(1)(A) for" and all that
16 follows through the end of subparagraph (A)
17 and inserting the following:

18 "(1)(A) for an Indian tribe to submit to the
19 Secretary, by not later than 75 days before the be-
20 ginning of each tribal program year, a 1-year hous-
21 ing plan for the Indian tribe; or"; and

22 (B) in subparagraph (B), by striking "sub-
23 section (d)" and inserting "subsection (c)";

24 (2) by striking subsections (b) and (c) and in-
25 serting the following:

1 "(b) 1-YEAR PLAN REQUIREMENT.—

2 "(1) IN GENERAL.—A housing plan of an In-
3 dian tribe under this section shall—

4 "(A) be in such form as the Secretary may
5 prescribe; and

6 "(B) contain the information described in
7 paragraph (2).

8 "(2) REQUIRED INFORMATION.—A housing
9 plan shall include the following information with re-
10 spect to the tribal program year for which assistance
11 under this Act is made available:

12 "(A) DESCRIPTION OF PLANNED ACTIVI-
13 TIES.—A statement of planned activities, in-
14 cluding—

15 "(i) the types of household to receive
16 assistance;

17 "(ii) the types and levels of assistance
18 to be provided;

19 "(iii) the number of units planned to
20 be produced;

21 "(iv)(I) a description of any housing
22 to be demolished or disposed of;

23 "(II) a timetable for the demolition or
24 disposition; and

1 "(III) any other information required
2 by the Secretary with respect to the demo-
3 lition or disposition;
4 "(v) a description of the manner in
5 which the recipient will protect and main-
6 tain the viability of housing owned and op-
7 erated by the recipient that was developed
8 under a contract between the Secretary
9 and an Indian housing authority pursuant
10 to the United States Housing Act of 1937
11 (42 U.S.C. 1437 et seq.); and
12 "(vi) outcomes anticipated to be
13 achieved by the recipient.
14 "(B) STATEMENT OF NEEDS.—A state-
15 ment of the housing needs of the low-income In-
16 dian families residing in the jurisdiction of the
17 Indian tribe, and the means by which those
18 needs will be addressed during the applicable
19 period, including—
20 "(i) a description of the estimated
21 housing needs and the need for assistance
22 for the low-income Indian families in the
23 jurisdiction, including a description of the
24 manner in which the geographical distribu-
25 tion of assistance is consistent with the

1 geographical needs and needs for various
2 categories of housing assistance; and
3 "(ii) a description of the estimated
4 housing needs for all Indian families in the
5 jurisdiction.
6 "(C) FINANCIAL RESOURCES.—An oper-
7 ating budget for the recipient, in such form as
8 the Secretary may prescribe, that includes—
9 "(i) an identification and description
10 of the financial resources reasonably avail-
11 able to the recipient to carry out the pur-
12 poses of this Act, including an explanation
13 of the manner in which amounts made
14 available will leverage additional resources;
15 and
16 "(ii) the uses to which those resources
17 will be committed, including eligible and
18 required affordable housing activities
19 under title II and administrative expenses.
20 "(D) CERTIFICATION OF COMPLIANCE.—
21 Evidence of compliance with the requirements
22 of this Act, including, as appropriate—
23 "(i) a certification that, in carrying
24 out this Act, the recipient will comply with
25 the applicable provisions of title II of the

1 Civil Rights Act of 1968 (25 U.S.C. 1301
2 et seq.) and other applicable Federal laws
3 and regulations;
4 "(ii) a certification that the recipient
5 will maintain adequate insurance coverage
6 for housing units that are owned and oper-
7 ated or assisted with grant amounts pro-
8 vided under this Act, in compliance with
9 such requirements as the Secretary may
10 establish;
11 "(iii) a certification that policies are
12 in effect and are available for review by the
13 Secretary and the public governing the eli-
14 gibility, admission, and occupancy of fami-
15 lies for housing assisted with grant
16 amounts provided under this Act;
17 "(iv) a certification that policies are
18 in effect and are available for review by the
19 Secretary and the public governing rents
20 and homebuyer payments charged, includ-
21 ing the methods by which the rents or
22 homebuyer payments are determined, for
23 housing assisted with grant amounts pro-
24 vided under this Act;

"(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this Act; and

"(vi) a certification that the recipient will comply with section 104(b).";

(3) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively; and

(4) in subsection (d) (as redesignated by paragraph (3)), by striking "subsection (d)" and inserting "subsection (c)".

SEC. 103. REVIEW OF PLANS.

Section 103 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4113) is amended—

(1) in subsection (d)—

(A) in the first sentence—

(i) by striking "fiscal" each place it appears and inserting "tribal program"; and

(ii) by striking "(with respect to" and all that follows through "section 102(c))"; and

1 (B) by striking the second sentence; and

2 (2) by striking subsection (e) and inserting the

3 following:

4 "(e) SELF-DETERMINED ACTIVITIES PROGRAM.—

5 Notwithstanding any other provision of this section, the

6 Secretary—

7 "(1) shall review the information included in an

8 Indian housing plan pursuant to subsections (b)(4)

9 and (c)(7) only to determine whether the informa-

10 tion is included for purposes of compliance with the

11 requirement under section 232(b)(2); and

12 "(2) may not approve or disapprove an Indian

13 housing plan based on the content of the particular

14 benefits, activities, or results included pursuant to

15 subsections (b)(4) and (c)(7).".

16 **SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR**

17 **STANDARDS.**

18 Section 104(a) of the Native American Housing As-

19 sistance and Self-Determination Act of 1996 (25 U.S.C.

20 4114(a)) is amended by adding at the end the following:

21 "(4) EXCLUSION FROM PROGRAM INCOME OF

22 REGULAR DEVELOPER'S FEES FOR LOW-INCOME

23 HOUSING TAX CREDIT PROJECTS.—Notwithstanding

24 any other provision of this Act, any income derived

25 from a regular and customary developer's fee for

1 any project that receives a low-income housing tax
2 credit under section 42 of the Internal Revenue
3 Code of 1986, and that is initially funded using a
4 grant provided under this Act, shall not be consid-
5 ered to be program income if the developer's fee is
6 approved by the State housing credit agency.".

7 **SEC. 105. REGULATIONS.**

8 Section 106(b)(2) of the Native American Housing
9 Assistance and Self-Determination Act of 1996 (25 U.S.C.
10 4116(b)(2)) is amended—

11 (1) in subparagraph (B)(i), by striking "The
12 Secretary" and inserting "Not later than 180 days
13 after the date of enactment of the Native American
14 Housing Assistance and Self-Determination Reau-
15 thorization Act of 2007 and any other Act to reau-
16 thorize this Act, the Secretary"; and

17 (2) by adding at the end the following:

18 "(C) SUBSEQUENT NEGOTIATED RULE-
19 MAKING.—The Secretary shall—

20 "(i) initiate a negotiated rulemaking
21 in accordance with this section by not later
22 than 90 days after the date of enactment
23 of the Native American Housing Assist-
24 ance and Self-Determination Reauthoriza-

1 tion Act of 2007 and any other Act to re-
2 authorize this Act; and
3 "(ii) promulgate regulations pursuant
4 to this section by not later than 18 months
5 after the date of enactment of the Native
6 American Housing Assistance and Self-De-
7 termination Reauthorization Act of 2007
8 and any other Act to reauthorize this Act.
9 "(D) REVIEW.—Not less frequently than
10 once every 7 years, the Secretary, in consulta-
11 tion with Indian tribes, shall review the regula-
12 tions promulgated pursuant to this section in
13 effect on the date on which the review is con-
14 ducted.".

15 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

16 Section 108 of the Native American Housing Assist-
17 ance and Self-Determination Act of 1996 (25 U.S.C.
18 4117) is amended by striking "1998 through 2007" and
19 inserting "2008 through 2012".

20 # TITLE II—AFFORDABLE
21 # HOUSING ACTIVITIES

22 **SEC. 201. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES.**

23 Section 201(b) of the Native American Housing As-
24 sistance and Self-Determination Act of 1996 (25 U.S.C.
25 4131(b)) is amended—

1 (1) in paragraph (1), by inserting "and except
2 with respect to loan guarantees under title VI,"
3 after "paragraphs (2) and (4),";
4 (2) in paragraph (2)—
5 (A) by striking the first sentence and in-
6 serting the following:
7 "(A) EXCEPTION TO REQUIREMENT.—Not-
8 withstanding paragraph (1), a recipient may
9 provide housing or housing assistance through
10 affordable housing activities for which a grant
11 is provided under this Act to any family that is
12 not a low-income family, to the extent that the
13 Secretary approves the activities due to a need
14 for housing for those families that cannot rea-
15 sonably be met without that assistance."; and
16 (B) in the second sentence, by striking
17 "The Secretary" and inserting the following:
18 "(B) LIMITS.—The Secretary";
19 (3) in paragraph (3)—
20 (A) in the paragraph heading, by striking
21 "NON-INDIAN" and inserting "ESSENTIAL";
22 and
23 (B) by striking "non-Indian family" and
24 inserting "family"; and

1 (4) in paragraph (4)(A)(i), by inserting "or
2 other unit of local government," after "county,".

3 **SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.**

4 Section 202 of the Native American Housing Assist-
5 ance and Self-Determination Act of 1996 (25 U.S.C.
6 4132) is amended—

7 (1) in the matter preceding paragraph (1), by
8 striking "to develop or to support" and inserting "to
9 develop, operate, maintain, or support";

10 (2) in paragraph (2)—

11 (A) by striking "development of utilities"
12 and inserting "development and rehabilitation
13 of utilities, necessary infrastructure,"; and

14 (B) by inserting "mold remediation," after
15 "energy efficiency,";

16 (3) in paragraph (4), by inserting "the costs of
17 operation and maintenance of units developed with
18 funds provided under this Act," after "rental assist-
19 ance,"; and

20 (4) by adding at the end the following:

21 "(9) RESERVE ACCOUNTS.—

22 "(A) IN GENERAL.—Subject to subpara-
23 graph (B), the deposit of amounts, including
24 grant amounts under section 101, in a reserve
25 account established for an Indian tribe only for

1 the purpose of accumulating amounts for ad-
2 ministration and planning relating to affordable
3 housing activities under this section, in accord-
4 ance with the Indian housing plan of the Indian
5 tribe.

6 "(B) MAXIMUM AMOUNT.—A reserve ac-
7 count established under subparagraph (A) shall
8 consist of not more than an amount equal to ¼
9 of the 5-year average of the annual amount
10 used by a recipient for administration and plan-
11 ning under paragraph (2).".

12 **SEC. 203. PROGRAM REQUIREMENTS.**

13 Section 203 of the Native American Housing Assist-
14 ance and Self-Determination Act of 1996 (25 U.S.C.
15 4133) is amended by adding at the end the following:

16 "(f) USE OF GRANT AMOUNTS OVER EXTENDED PE-
17 RIODS.—To the extent that the Indian housing plan for
18 an Indian tribe provides for the use of amounts of a grant
19 under section 101 for a period of more than 1 fiscal year,
20 or for affordable housing activities for which the amounts
21 will be committed for use or expended during a subsequent
22 fiscal year, the Secretary shall not require those amounts
23 to be used or committed for use at any time earlier than
24 otherwise provided for in the Indian housing plan.

1 "(g) DE MINIMIS EXEMPTION FOR PROCUREMENT
2 OF GOODS AND SERVICES.—Notwithstanding any other
3 provision of law, a recipient shall not be required to act
4 in accordance with any otherwise applicable competitive
5 procurement rule or procedure with respect to the procure-
6 ment, using a grant provided under this Act, of goods and
7 services the value of which is less than $5,000.".

8 **SEC. 204. LOW-INCOME REQUIREMENT AND INCOME TAR-**
9 **GETING.**

10 Section 205 of the Native American Housing Assist-
11 ance and Self-Determination Act of 1996 (25 U.S.C.
12 4135) is amended by adding at the end the following:
13 "(c) APPLICABILITY.—This section applies only to
14 rental and homeownership units that are owned or oper-
15 ated by a recipient.".

16 **SEC. 205. TREATMENT OF FUNDS.**

17 The Native American Housing Assistance and Self-
18 Determination Act of 1996 is amended by inserting after
19 section 205 (25 U.S.C. 4135) the following:

20 **"SEC. 206. TREATMENT OF FUNDS.**

21 "Notwithstanding any other provision of law, tenant-
22 and project-based rental assistance provided using funds
23 made available under this Act shall not be considered to
24 be Federal funds for purposes of section 42 of the Internal
25 Revenue Code of 1986.".

1 **SEC. 206. AVAILABILITY OF RECORDS.**

2 Section 208(a) of the Native American Housing As-
3 sistance and Self-Determination Act of 1996 (25 U.S.C.
4 4138(a)) is amended by inserting "applicants for employ-
5 ment, and of" after "records of".

6 **SEC. 207. INVESTMENT OF GRANT FUNDS; REGIONAL TRIB-**
7 **ALLY DESIGNATED HOUSING ENTITY PRO-**
8 **GRAMS.**

9 The Native American Housing Assistance and Self-
10 Determination Act of 1996 is amended by inserting after
11 section 210 (25 U.S.C. 4140) the following:

12 **"SEC. 211. INVESTMENT OF GRANT FUNDS.**

13 "(a) IN GENERAL.—A recipient may invest amounts
14 received under this title for the purposes of carrying out
15 affordable housing activities in investment securities and
16 other obligations in accordance with this section.

17 "(b) REQUIREMENTS.—A recipient may invest
18 amounts only if the recipient demonstrates to the satisfac-
19 tion of the Secretary that—

20 "(1) there are no unresolved significant and
21 material audit findings or exceptions in the most re-
22 cent annual audit completed under chapter 75 of
23 title 31, United States Code (commonly known as
24 the 'Single Audit Act') or an independent financial
25 audit prepared in accordance with generally accepted
26 auditing principles; and

1 "(2) the recipient—

2 "(A) is an Indian tribe that participates in
3 tribal self-governance pursuant to the Indian
4 Self-Determination and Education Assistance
5 Act (25 U.S.C. 450 et seq.); or

6 "(B) has the administrative capacity and
7 controls to responsibly manage the investment.

8 "(c) ELIGIBLE INVESTMENTS.—A recipient shall in-
9 vest amounts only in—

10 "(1)(A) obligations of the United States;

11 "(B) obligations issued by Federal Government-
12 sponsored agencies;

13 "(C) securities that are guaranteed or insured
14 by the United States; or

15 "(D) mutual (or other) funds that are reg-
16 istered with the Securities and Exchange Commis-
17 sion and that invest only in obligations of the United
18 States or securities that are guaranteed or insured
19 by the United States; or

20 "(2) accounts that are insured by an agency or
21 instrumentality of the United States or fully
22 collateralized to ensure protection of the funds, even
23 in the event of bank failure.

24 "(d) ACCOUNTS.—

1 "(1) IN GENERAL.—Amounts received under
2 this title shall be held in 1 or more accounts sepa-
3 rate from other funds of the recipient.
4 "(2) AGREEMENT.—Each of the accounts de-
5 scribed in paragraph (1) shall be subject to an
6 agreement in a form prescribed by the Secretary
7 that is sufficient—
8 "(A) to implement the regulations con-
9 tained in part 1000 of title 24, Code of Federal
10 Regulations (or successor regulations); and
11 "(B) to permit the Department of Housing
12 and Urban Development to exercise the rights
13 of the Department under 1000.60 of that title
14 (or a successor regulation).
15 "(e) TREATMENT.—An expenditure of amounts for
16 affordable housing activities under section 204(a) shall not
17 be considered to be an investment for purposes of this sec-
18 tion.
19 "(f) ELIGIBLE AMOUNTS.—Of amounts received
20 under this title, a recipient may invest an amount equal
21 to the product obtained by multiplying—
22 "(1) the difference between—
23 "(A) the amount of the annual formula
24 grant; and

1 "(B) any formula grant amounts allocated
2 for the operating subsidy element of the For-
3 mula Current Assisted Housing Stock compo-
4 nent of the formula in accordance with sections
5 1000.316(a) and 1000.320 of title 24, Code of
6 Federal Regulations (or successor regulations);
7 and
8 "(2)(A) for each of fiscal years [2008 and
9 2009], 50 percent;
10 "(B) for fiscal year [2010], 75 percent; and
11 "(C) for fiscal year [2011 and each fiscal year
12 thereafter], 100 percent.
13 "(g) TERM.—An investment under this section may
14 be for a period no more than 2 years.

15 **"SEC. 212. REGIONAL TRIBALLY DESIGNATED HOUSING EN-**
16 **TITY PROGRAMS.**

17 "(a) ESTABLISHMENT.—Any group of 2 or more In-
18 dian tribes that, as determined by the governing bodies
19 of the Indian tribes, do not possess sufficient resources
20 to operate a tribally designated housing entity or otherwise
21 carry out large-scale activities using grants provided under
22 this Act may establish a regional tribally designated hous-
23 ing entity to consolidate resources and facilitate collabora-
24 tion among those Indian tribes.

1 "(b) MEMORANDUM OF UNDERSTANDING.—On es-
2 tablishing a regional tribally designated housing entity
3 under subsection (a), each member Indian tribe shall enter
4 into a memorandum of understanding relating to the de-
5 velopment and rehabilitation projects and operation and
6 maintenance activities to be carried out by the regional
7 tribally designated housing entity that includes—
8 "(1) a description of each project and activity;
9 "(2) a timeline for completion of each project
10 and activity;
11 "(3) a description of the manner in which funds
12 and other resources of each member Indian tribe will
13 be used to carry out the projects and activities; and
14 "(4) the sequence in which the projects and ac-
15 tivities will be carried out to ensure an equitable dis-
16 tribution of benefits to each member Indian tribe, to
17 the maximum extent practicable.
18 "(c) USE OF GRANTS.—A regional tribally designated
19 housing entity may use the total amount of grant funds
20 provided under this Act to each member Indian tribe—
21 "(1) to carry out projects and activities de-
22 scribed in subsection (b);
23 "(2) to purchase necessary equipment and sup-
24 plies relating to those projects and activities; and

"(3) to submit bids for construction and rehabilitation projects to benefit any member Indian tribe.

"(d) COLLECTIVE BORROWING.—A regional tribally designated housing entity may submit an application for a loan (including a loan under title VI) on behalf of any member Indian tribe for purposes of carrying out a project or activity to benefit the Indian tribe that the Indian tribe could not carry out absent the assistance of the regional tribally designated housing entity.".

SEC. 208. SELF-DETERMINED HOUSING ACTIVITIES FOR TRIBAL COMMUNITIES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title II of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4131 et seq.) is amended—

(1) by inserting after the title designation and heading the following:

"Subtitle A—General Block Grant Program";

and

(2) by adding at the end the following:

1 **"Subtitle B—Self-Determined Hous-**
2 **ing Activities for Tribal Commu-**
3 **nities**

4 **"SEC. 231. PURPOSE.**

5 "The purpose of this subtitle is to establish a pro-
6 gram for self-determined housing activities for the tribal
7 communities to provide Indian tribes with the flexibility
8 to use a portion of the grant amounts under section 101
9 for the Indian tribe in manners that are wholly self-deter-
10 mined by the Indian tribe for housing activities involving
11 construction, acquisition, rehabilitation, or infrastructure
12 relating to housing activities of housing that will benefit
13 the community served by the Indian tribe.

14 **"SEC. 232. PROGRAM AUTHORITY.**

15 "(a) DEFINITION OF QUALIFYING INDIAN TRIBE.—
16 In this section, the term 'qualifying Indian tribe' means,
17 with respect to a fiscal year, an Indian tribe or tribally
18 designated housing entity—

19 "(1) on behalf of which a grant is made under
20 section 101;

21 "(2) that has complied with the requirements of
22 section 102(b)(6); and

23 "(3) that, during the preceding 3-fiscal-year pe-
24 riod, has no unresolved significant and material
25 audit findings or exceptions, as demonstrated in—

1 "(A) the annual audits of that period com-
2 pleted under chapter 75 of title 31, United
3 States Code (commonly known as the 'Single
4 Audit Act'); or
5 "(B) an independent financial audit pre-
6 pared in accordance with generally accepted au-
7 diting principles.
8 "(b) AUTHORITY.—Under the program under this
9 subtitle, for each of fiscal years 2008 through 2012, the
10 recipient for each qualifying Indian tribe may use the
11 amounts specified in subsection (c) in accordance with this
12 subtitle.
13 "(c) AMOUNTS.—With respect to a fiscal year and a
14 recipient, the amounts referred to in subsection (b) are
15 amounts from any grant provided under section 101 to
16 the recipient for the fiscal year, as determined by the re-
17 cipient, but in no case exceeding the lesser of—
18 "(1) an amount equal to 15 percent of the total
19 grant amount for the recipient for that fiscal year;
20 and
21 "(2) $1,000,000.
22 **"SEC. 233. USE OF AMOUNTS FOR HOUSING ACTIVITIES.**
23 "(a) ELIGIBLE HOUSING ACTIVITIES.—Any amounts
24 made available for use under this subtitle by a recipient
25 for an Indian tribe shall be used only for housing activi-

1 ties, as selected at the discretion of the recipient and de-
2 scribed in the Indian housing plan for the Indian tribe
3 pursuant to section 102(b)(6), for the construction, acqui-
4 sition, or rehabilitation of housing or infrastructure to
5 provide a benefit to families described in section
6 201(b)(1).

7 "(b) PROHIBITION ON CERTAIN ACTIVITIES.—
8 Amounts made available for use under this subtitle may
9 not be used for commercial or economic development.

10 **"SEC. 234. INAPPLICABILITY OF OTHER PROVISIONS.**

11 "(a) IN GENERAL.—Except as otherwise specifically
12 provided in this Act, title I, subtitle A of title II, and titles
13 III through VIII shall not apply to—

14 "(1) the program under this subtitle; or

15 "(2) amounts made available in accordance with
16 this subtitle.

17 "(b) APPLICABLE PROVISIONS.—The following provi-
18 sions of titles I through VIII shall apply to the program
19 under this subtitle and amounts made available in accord-
20 ance with this subtitle:

21 "(1) Section 101(c) (relating to local coopera-
22 tion agreements).

23 "(2) Subsections (d) and (e) of section 101 (re-
24 lating to tax exemption).

1 "(3) Section 102(b)(4) (relating to certification
2 of compliance).
3 "(4) Section 104 (relating to treatment of pro-
4 gram income and labor standards).
5 "(5) Section 105 (relating to environmental re-
6 view).
7 "(6) Section 201(b) (relating to eligible fami-
8 lies).
9 "(7) Section 203(c) (relating to insurance cov-
10 erage).
11 "(8) Section 209 (relating to noncompliance
12 with affordable housing requirement).
13 "(9) Section 401 (relating to remedies for non-
14 compliance).
15 "(10) Section 408 (relating to public avail-
16 ability of information).
17 "(11) Section 702 (relating to 50-year leasehold
18 interests in trust or restricted lands for housing pur-
19 poses).
20 **"SEC. 235. REVIEW AND REPORT.**
21 "(a) REVIEW.—During calendar year 2011, the Sec-
22 retary shall conduct a review of the results achieved by
23 the program under this subtitle to determine—
24 "(1) the housing constructed, acquired, or reha-
25 bilitated under the program;

1 "(2) the effects of the housing described in
2 paragraph (1) on costs to low-income families of af-
3 fordable housing;
4 "(3) the effectiveness of each recipient in
5 achieving the results intended to be achieved, as de-
6 scribed in the Indian housing plan for the Indian
7 tribe; and
8 "(4) the need for, and effectiveness of, extend-
9 ing the duration of the program and increasing the
10 amount of grants under section 101 that may be
11 used under the program.
12 "(b) REPORT.—Not later than December 31, 2011,
13 the Secretary shall submit to Congress a report describing
14 the information obtained pursuant to the review under
15 subsection (a) (including any conclusions and rec-
16 ommendations of the Secretary with respect to the pro-
17 gram under this subtitle), including—
18 "(1) recommendations regarding extension of
19 the program for subsequent fiscal years and increas-
20 ing the amounts under section 232(c) that may be
21 used under the program; and
22 "(2) recommendations for—
23 "(A)(i) specific Indian tribes or recipients
24 that should be prohibited from participating in
25 the program for failure to achieve results; and

1 "(ii) the period for which such a prohibi-
2 tion should remain in effect; or
3 "(B) standards and procedures by which
4 Indian tribes or recipients may be prohibited
5 from participating in the program for failure to
6 achieve results.
7 "(c) PROVISION OF INFORMATION TO SECRETARY.—
8 Notwithstanding any other provision of this Act, recipients
9 participating in the program under this subtitle shall pro-
10 vide such information to the Secretary as the Secretary
11 may request, in sufficient detail and in a timely manner
12 sufficient to ensure that the review and report required
13 by this section is accomplished in a timely manner.".
14 (b) TECHNICAL AMENDMENT.—The table of contents
15 in section 1(b) of the Native American Housing Assistance
16 and Self-Determination Act of 1996 (25 U.S.C. 4101
17 note) is amended—
18 (1) by inserting after the item for title II the
19 following:

"Subtitle A—General Block Grant Program";

20 (2) by inserting after the item for section 205
21 the following:

"Sec. 206. Treatment of funds.";

22 (3) by inserting after the item for section 210
23 the following:

"Sec. 211. Investment of grant funds.
"Sec. 212. Regional tribally designated housing entity programs.";

1 and

2 (4) by inserting before the item for title III the

3 following:

"Subtitle B—Self-Determined Housing Activities for Tribal Communities

"Sec. 231. Purposes.
"Sec. 232. Program authority.
"Sec. 233. Use of amounts for housing activities.
"Sec. 234. Inapplicability of other provisions.
"Sec. 235. Review and report.".

4 TITLE III—ALLOCATION OF 5 GRANT AMOUNTS

6 SEC. 301. ALLOCATION FORMULA.

7 Section 302 of the Native American Housing Assist-
8 ance and Self-Determination Act of 1996 (25 U.S.C.
9 4152) is amended—

10 (1) in subsection (a)—

11 (A) by striking "The Secretary" and in-
12 serting the following:

13 "(1) IN GENERAL.—The Secretary"; and

14 (B) by adding at the end the following:

15 "(2) STUDY.—Not later than 2 years after the
16 date of enactment of this paragraph, the Comp-
17 troller General of the United States shall conduct a
18 study on, and submit to Congress a report describ-
19 ing—

20 "(A) the feasibility of using an alternative
21 data set for the need component of the block

grant formula established under paragraph (1); and

"(B) the feasibility of using an alternative data set to the data set of the most recent decennial census in determining the need component of the block grant formula."; and

(2) in subsection (b)(1), by striking "Secretary." and inserting the following: "Secretary, subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section in any case in which—

"(A) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or

"(B) the unit is lost by conveyance, demolition, or another means.".

TITLE IV—COMPLIANCE, AUDITS, AND REPORTS

SEC. 401. REMEDIES FOR NONCOMPLIANCE.

Section 401(a) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4161(a)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

1 (2) by inserting after paragraph (1) the fol-
2 lowing:
3 "(2) SUBSTANTIAL NONCOMPLIANCE.—The
4 failure of a recipient to comply with the require-
5 ments of section 302(b)(1) regarding the reporting
6 of low-income dwelling units shall not, in itself, be
7 considered to be substantial noncompliance for pur-
8 poses of this title.".

9 **SEC. 402. MONITORING OF COMPLIANCE.**

10 Section 403(b) of the Native American Housing As-
11 sistance and Self-Determination Act of 1996 (25 U.S.C.
12 4163(b)) is amended in the second sentence by inserting
13 "an appropriate level of" after "shall include".

14 **SEC. 403. PERFORMANCE REPORTS.**

15 Section 404(b) of the Native American Housing As-
16 sistance and Self-Determination Act of 1996 (25 U.S.C.
17 4164(b)) is amended—
18 (1) in paragraph (2)—
19 (A) by striking "goals" and inserting
20 "planned activities"; and
21 (B) by adding "and" after the semicolon
22 at the end;
23 (2) in paragraph (3), by striking "; and" at the
24 end and inserting a period; and
25 (3) by striking paragraph (4).

TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

SEC. 501. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.

(a) IN GENERAL.—Title V of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4181 et seq.) is amended by adding at the end the following:

"SEC. 509. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.

"Nothing in this Act or an amendment made by this Act prohibits or prevents any participating jurisdiction (within the meaning of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing any amounts made available to the participating jurisdiction under that Act (42 U.S.C. 12721 et seq.) to an Indian tribe or a tribally designated housing entity for use in accordance with that Act (42 U.S.C. 12721 et seq.).".

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C.

1 4101 note) is amended by inserting after the item relating
2 to section 508 the following:

"Sec. 509. Effect on HOME Investment Partnerships Act.".

3 TITLE VI—FEDERAL GUARAN-
4 TEES FOR FINANCING FOR
5 TRIBAL HOUSING AND COM-
6 MUNITY DEVELOPMENT AC-
7 TIVITIES

8 **SEC. 601. TITLE HEADING.**

9 (a) IN GENERAL.—The heading of title VI of the Na-
10 tive American Housing Assistance and Self-Determination
11 Act of 1996 (25 U.S.C. 4191 et seq.) is amended by in-
12 serting "**AND COMMUNITY DEVELOPMENT**
13 **ACTIVITIES**" after "**TRIBAL HOUSING**".

14 (b) CONFORMING AMENDMENT.—The table of con-
15 tents in section 1(b) of the Native American Housing As-
16 sistance and Self-Determination Act of 1996 (25 U.S.C.
17 4101 note) is amended by striking the item relating to
18 the heading of title VI and inserting the following:

"TITLE VI–FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITIES".

19 **SEC. 602. AUTHORITY AND REQUIREMENTS.**

20 Section 601 of the Native American Housing Assist-
21 ance and Self-Determination Act of 1996 (25 U.S.C.
22 4191) is amended—

23 (1) in subsection (a)—

1 (A) by striking "financing affordable hous-
2 ing" and inserting the following: "financing—
3 "(1) affordable housing";
4 (B) in paragraph (1) (as designated by
5 subparagraph (A)), by striking the period at the
6 end and inserting "; and"; and
7 (C) by adding at the end the following:
8 "(2) activities that, under title I—
9 "(A) are eligible for financing; and
10 "(B) are the subject of a note or other
11 guaranteed obligation."; and
12 (2) by adding at the end the following:
13 "(e) DEMONSTRATION PROGRAM.—
14 "(1) ESTABLISHMENT.—The Secretary shall es-
15 tablish a demonstration program under which the
16 Secretary shall provide loan guarantees under this
17 section to Indian tribes and tribally designated hous-
18 ing entities to support activities that benefit low-in-
19 come families on Indian reservations and in other
20 Indian areas.
21 "(2) APPLICABILITY TO TITLE I.—Of the ag-
22 gregate amount of loan guarantees provided pursu-
23 ant to the demonstration program under this sub-
24 section, not more than 50 percent shall be for activi-
25 ties that are—

1 "(A) eligible to receive a grant under title
2 I; but
3 "(B) not eligible to receive funds (includ-
4 ing through loans or loan guarantees) under
5 this title.
6 "(3) USE OF OTHER FUNDS UNDER THIS
7 ACT.—For purposes of carrying out a project using
8 a loan guarantee provided under this subsection, an
9 Indian tribe or tribally designated housing entity
10 may use funds provided under any other provision of
11 this Act only in the proportion that—
12 "(A) the amount of those funds provided
13 specifically for activities that benefit low-income
14 families on Indian reservations and in other In-
15 dian areas; bears to
16 "(B) the total amount of those funds.
17 "(4) REPORT.—Not later than 4 years after the
18 date on which the demonstration program is estab-
19 lished under paragraph (1), the Secretary shall sub-
20 mit to Congress a report describing—
21 "(A) the activities carried out using loan
22 guarantees provided under the demonstration
23 program; and
24 "(B) the success of the demonstration pro-
25 gram.

"(5) TERMINATION.—The authority under this subsection terminates on the date that is 5 years after the date on which the demonstration program is established under paragraph (1).".

SEC. 603. TRAINING AND INFORMATION.

Section 604 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4194) is amended by inserting ", including by conducting educational seminars with Indian tribes and tribally designated housing entities on methods of using the loan guarantee program under this title" before the period at the end.

SEC. 604. LIMITATIONS ON AMOUNT OF GUARANTEES.

Section 605 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4195) is amended in subsections (a) and (b) by striking "1997 through 2007" each place it appears and inserting "2008 through 2012".

TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

SEC. 701. TRAINING AND TECHNICAL ASSISTANCE.

Section 703 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C.

1 4212) is amended by striking "1997 through 2007" and
2 inserting "2008 through 2012".

INDIAN HOUSING ADVOCACY COALITION

31, August 2007

Honorable Byron L. Dorgan, Chair
Honorable Lisa Murkowski, Vice Chair
Senate Indian Affairs Committee
838 Hart Office Building
Washington D.C. 20510

Subject: Indians - Native American Housing and Self Determination Act Re-authorization

Dear Senators,

Please find enclosed the summarized and detailed comments to Senate Committee on Indian Affairs, related to the reauthorization of the Native American Housing and Self Determination Act of 1996, (NAHASDA), on behalf of the Indian Housing Advocacy Coalition (IHAC) that represents the interests of Indian Tribes and Tribal communities in the states of California and Nevada.

In summary, this legislation builds upon efforts of the federal government to fulfill its fiduciary legal trust responsibility and reform, to support native self determination and sustainable reservation development as part of tribe's larger visions for long term cultural preservation and prosperity.

The necessary reform included in Senates NAHASDA Discussion Draft, makes dramatic impacts upon the plague of poverty, homelessness, overcrowding and isolation that still exists in Nevada and California Indian Country and overshadows most all if not all isolated successes in reservation economic development in the region.

For these reasons and others that are indirectly related to providing adequate homes for Indian families, we respectfully offer these thoughtful points of consensus for your guidance and incorporation into the Senates work on NAHASDA Reauthorization. Prior to this summary we would like to set up the context in which we pursue our noble and necessary work, and offer the following American Heritage Dictionary definition of "Home" with our editorial additions;

Home (Indian)

An environment or haven of shelter,
of happiness (with hard work), and love (and respect).

Senate NAHASDA Discussion Draft
Comments Summary

Section 211- Investment of Grant Funds – **Remove this section**

Section 212- Regionally Tribally Designated Housing Entity Programs – **Remove this section.**

Section 302 – **IHAC Tribal Choice Recommended Alternative Language;**

Add to Section 302: (d) In determining data sets to be incorporated into the formula, the Secretary shall defer to such Tribes determination of which data set it prefers, including but not limited to data complied by the United States Bureau of Census, to the extent that such data set addresses the factors set forth above.

(1) If any tribe selects a data set different than that proposed by the Secretary to be used in the formula established pursuant to subsection (a) above, the Secretary shall ensure that the determination of such tribes allocation under the formula is based on such data set, unless the Department of Housing and Urban Development can show, with reasonable accuracy, that the data set is not collected in a manner that can be confirmed and verified.

Add to Section 302: (e) Funding Levels – The allocation in any fiscal year to an Indian Tribes under the need component of the IHBG Formula shall equal to no less than .075% of the available funds for distribution under the need component for that fiscal year after FCAS and set asides. Further, the maximum allocations in any fiscal year to an Indian Tribe under the need component of the IHBG Formula shall not exceed 10% of the available funds for distribution under the need component for that fiscal year after FCAS and set asides.

Section 509 – GAO Effectiveness of NAHASDA for Tribes of Different Sizes – **Remove this section.**

Section 703 – **Support restoration of training and technical assistance funds to the National Indian Housing Council.**

Other Related Legislation Comments

H.R. 3349 – Due the complexity, far-reaching and unknown impacts of this legislative initiative the Coalition cannot support it at this time.

Please find attached further detailed comments and guidance as to both the Senate's NAHASDA Discussion Draft as well as the House of Representative's NAHASDA reauthorization recommendations contained in H.R. 2786.

As we have stated earlier, meeting the financial challenges before the Senate and these families has become a generational priority. Both the Congress and the Tribes admit far less than needed has been given to solve this problem. However, the reforms included in the Senates NAHASDA Discussion draft begins to address these challenges, but probably more than anything, the proposed and even un-drafted recommendations to provide for flexibility, choice, opportunity and innovation will get us closer to making life a little more comfortable for these dignified and deserving families.

In closing the IHAC membership wishes to express it's deepest appreciation to the Committee Chair and Co-Chair for the leadership and attention you are providing to address the alarming and critical shortages of safe, decent and affordable housing for so many who have already waited too long. Thank you for the courtesies provided and previously extended by your good offices.

Kindest Regards,

A. Brian Wallace, Legislative Consultant
Indian Housing Advocacy Coalition

Attachment – IHAC Senate/House NAHASDA Reauthorization Analysis

c.c. Honorable Harry Reid (NV)
Honorable John Ensign (NV)
Honorable Dianne Feinstein (CA)
Honorable Barbara Boxer (CA)

HR2786 (Comm. Report Version) NAHASDA Reauthorization	Senate Discussion Draft ("SB") NAHASDA Reauthorization (O:\ARP\ARP07C05.xml version)	Language differences between HR 2786 and Senate draft	Analysis of Impact	IHAC Comments
SEC. 2. CONGRESSIONAL FINDINGS. **[No changes proposed to this Section by HR 2786.]**	**SEC. 2. CONGRESSIONAL FINDINGS.** Section 2 (25 U.S.C. 4101) would be amended as follows: (6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government ~~should~~ *shall* work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and (7) Federal assistance to meet these responsibilities ~~should~~ *shall* be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 et seq.).	No similar section in HR 2786.	The proposed change in the Senate Bill (SB) indicates that providing housing assistance to Indian tribes and recognizing self-determination and self-governance are legal obligations on the federal government, not merely something the government "should" aspire to.	IHAC agrees with this change
SEC. 4. DEFINITIONS. **[No changes proposed to this Section by HR 2786.]**	**SEC. 4. DEFINITIONS.** Section 4 (25 U.S.C. 4103) would be amended as follows: [no changes to definitions 1–7] Deletes existing definition of	No changes under HR 2786.	The SB's new definition of "Housing Related Community Development" includes a broader set of activities than under the existing definition, to give the tribe or TDHE substantial flexibility to undertake activities in	IHAC has not comments

HR2786 (COMM. REPORT VERSION) NAHASDA REAUTHORIZATION	SENATE DISCUSSION DRAFT ("SB") NAHASDA REAUTHORIZATION (O:\ARP\ARP07C05.xml VERSION)	LANGUAGE DIFFERENCES BETWEEN HR 2786 AND SENATE DRAFT	ANALYSIS OF IMPACT	IHAC COMMENTS
	"Housing Related Community Development" and replaces it with the following: *(8) HOUSING RELATED COMMUNITY DEVELOPMENT.—* *(A) IN GENERAL. The term 'housing related community development' means any facility, community building, business, activity, or infrastructure that—* *(i) is owned by an Indian tribe or a tribally designated housing entity;* *(ii) is necessary to the provision of housing in an Indian area; and* *(iii)(I) would help an Indian tribe or tribally designated housing entity to reduce the cost of construction of Indian housing;* *(II) would make housing more affordable, accessible, or practicable in an Indian area; or* *(III) would otherwise advance the purposes of this Act.* *(B) EXCLUSION.—The term 'housing and community development' does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).*		support of housing. The term is used in the Title VI loan guaranty provisions of NAHASDA. The existing definition (which is left intact in HR 2786, reads as follows: (22) Housing related community development.-- (A) In general. The term "housing related community development" means any tribally-owned and operated facility, business, activity, or infrastructure that-- **(i)** is necessary to the direct construction of reservation housing; and **(ii)** would help an Indian tribe or its tribally-designated housing authority reduce the cost of construction of Indian housing or otherwise promote the findings of this chapter. (B) Exclusion. -- The term "housing and community development" does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2710 et seq.).	
TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS Section 101 (25 U.S.C. 4111) is amended by adding at the end the following new subsections:	**TITLE I—BLOCK GRANTS AND GRANT REQUIREMENTS** Section 101 (25 U.S.C. 4111) is amended by making the following edits and adding new subsections: (a) Authority.–	The SB makes changes to include applicability to subtitle B of title II under Sec. 3 (discussed below)	If Subtitle B is added, the changes in the SB will need to be incorporated into the final bill.	IHAC comments on SB items J and k IHAC agrees with changes to (j) Federal Supply Sources and to (k) Tribal Preference

HR2786 (COMM. REPORT VERSION) NAHASDA REAUTHORIZATION	SENATE DISCUSSION DRAFT ("SB") NAHASDA REAUTHORIZATION (O:\ARP\ARP07C05.xml VERSION)	LANGUAGE DIFFERENCES BETWEEN HR 2786 AND SENATE DRAFT	ANALYSIS OF IMPACT	IHAC COMMENTS
	(1) In general.—For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this chapter) make grants under this section on behalf of Indian tribes— *(A)* to carry out affordable housing activities *under subtitle A of title II; and* *(B) to carry out self-determined housing activities for tribal communities programs under subtitle B of that title.* *(2) PROVISION OF AMOUNTS.*—Under such a grant on behalf of an Indian tribe, the Secretary shall provide the grant amounts for the tribe directly to the recipient for the tribe. (g) Use for affordable housing activities under plan Except as provided in subsection (h) of this section *and subtitle B of title II*, amounts provided under a grant under this section may be used only for affordable housing activities under subchapter II of this chapter that are consistent with an Indian housing plan approved under section 4113 of this title.			
(j) FEDERAL SUPPLY SOURCES.—For purposes of section 501 of title 40, United States Code (relating to services for executive agencies), an Indian tribe or tribally designated housing entity shall be considered to be an executive agency when carrying	*(j) FEDERAL SUPPLY SOURCES.—For purposes of section 501 of title 40, United States Code—* *(1) each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service,*	HR 2786 has more specific language but no significant difference in concepts.	This amendment authorizes Indian tribes and TDHEs to have access to federal supplies in the same manner as executive agencies, which can mean lower cost or free supplies. The SB language is more precise and clear as to the intent and effect of this	Agrees with Senate Bill language (j) Federal Supply Sources

HR2786 (COMM. REPORT VERSION) NAHASDA REAUTHORIZATION	SENATE DISCUSSION DRAFT ("SB") NAHASDA REAUTHORIZATION (O:\ARP\ARP07C05.xml VERSION)	LANGUAGE DIFFERENCES BETWEEN HR 2786 AND SENATE DRAFT	ANALYSIS OF IMPACT	IHAC COMMENTS
out housing programs, services, functions and activities under the tribe or tribally designated housing entity, and its employees shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency.	*or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee shall have access to sources of supply on the same basis as employees of an Executive agency.*		provision, but the intent of the language in both bills is the same.	
(k) TRIBAL PREFERENCE IN EMPLOYMENT AND CONTRACTING.— Notwithstanding any other provision of law, with respect to any grant made under this Act on behalf of an Indian tribe that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the grant or portion of the grant.	*(k) TRIBAL PREFERENCE IN EMPLOYMENT AND CONTRACTING.— Notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this Act that is intended to benefit 1 tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant or portion of the grant (or portion of a grant).*	SB version specifies applicability extends to "portion of a grant" and includes tribal employment and contract preference regulations and tribal ordinances.	This amendment authorizes Indian tribes and TDHEs to follow a Tribal-member specific preference in hiring and contracting. Presently, NAHASDA allows for such preference in selecting tenants and homebuyers, but has no express provision for such preference in hiring and contracting. HUD has interpreted this silence as allowing only a general Indian preference. The amended language would trump HUD's interpretation. The SB language is more precise and clear as to the intent and effect of this provision, but the intent of the language in both bills is the same.	Agrees with Senate Bill language (k) Tribal Preference
Sec. 102. INDIAN HOUSING PLANS.— Section 102 (25 U.S.C. 4112) would be amended as follows.	Sec. 102. INDIAN HOUSING PLANS.— Section 102 (25 U.S.C. 4112) would be amended as follows. In subsection (a)(1)— (a) PLAN SUBMISSION.—The Secretary shall provide– (1)(A) for an Indian tribe to submit to	HR2786 does not contain amendments to requirements under the 1-year plan and retains the 5-year section. HR 2786 amends the section to require grant recipients to report on unobligated and reserve amounts. The SB contains substantial revisions in the IHP process, including the elimination altogether of the five-year	The SB involves substantial changes to the IHP requirement that would streamline the information and process, and would remove the requirement of a five-year plan. It would also change the reporting requirement from the federal fiscal year to each particular tribe's	

HR2786 (COMM. REPORT VERSION) NAHASDA REAUTHORIZATION	SENATE DISCUSSION DRAFT ("SB") NAHASDA REAUTHORIZATION (O:\ARP\ARP07C05.xml VERSION)	LANGUAGE DIFFERENCES BETWEEN HR 2786 AND SENATE DRAFT	ANALYSIS OF IMPACT	IHAC COMMENTS
	the Secretary, *by not later than 75 days before the beginning of each tribal program year, a 1-year housing plan for the Indian* tribe; or (B) for the tribally designated housing entity for the tribe to submit the plan as provided in subsection (*c*) of this section for the tribe; and (2) for the review of such plans. ***[Deletes entire 5 year plan requirement – existing subsection (b); moving 1-year plan requirement to become new subsection (b), with the following changes]*** (*b*) 1-YEAR PLAN REQUIREMENT.— *(1) IN GENERAL.*—A housing plan *of* an Indian tribe *under this section* shall— *(A)* be in *such form as the Secretary may prescribe;* and *(B)* contain the information *described in paragraph (2).* *(2) REQUIRED INFORMATION.—A housing plan shall include the following information with respect to the tribal program year for which assistance under this Act is made available:* *(A) DESCRIPTION OF PLANNED ACTIVITIES.—A statement of planned activities, including—* *(i) the types of household to receive assistance;* *(ii) the types and levels of assistance to be provided;* *(iii) the number of units planned to be*	plan requirement.	"program year." There are no corresponding amendments in HR2786. Instead, HR2786 incorporates into the IHP requirements the amendments (described below) authorizing carryover funding and reserve accounts. Since the SB completely restructures this entire section, there is no corresponding provision in the SB.	IHAC comments: (b) 1-Year Plan Requirement (1) (A) include language be in such form as agreed upon through Tribal consultation and/or negotiated rule-making

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	produced; *(iv)(I) a description of any housing to be demolished or disposed of;* *(II) a timetable for the demolition or disposition; and* *(III) any other information required by the Secretary with respect to the demolition or disposition;* *(v) a description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and* *(vi) outcomes anticipated to be achieved by the recipient.*			
	(B) STATEMENT OF NEEDS.— [***Remains the same***]			IHAC proposed revision: (B) Statement of Needs – (c) Financial Resources – an operating budget for the recipient, in a form agreed upon through tribal consultation and/or negotiated rule-making
In subsection (c)(3)(A):	(*C*) FINANCIAL RESOURCES.—An operating budget for the recipient, in a form *as the Secretary may prescribe*, that includes -			
(A) an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this chapter, including an explanation of the manner in which amounts made available will leverage additional resources *and a description of any amounts made available pursuant to a grant under section 101 for the Indian tribe for any preceding fiscal year which have not been, or*	(*i*) an identification and a description of the financial resources reasonably available to the recipient to carry out the purposes of this *Act*, including an explanation of the manner in which amounts made available will leverage additional resources; and (*ii*) the uses to which *those* resources will be committed, including eligible and required affordable housing activities under *title* II and			

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are not expected to be, obligated or expended before the beginning of the fiscal year for which the plan is submitted, including any amounts in any reserve account established pursuant to section 202(9).	administrative expenses. ***[Deletes requirement of statement of affordable housing resources.]***			
	(*D*) CERTIFICATION OF COMPLIANCE.—Evidence of compliance *with the requirements of this Act, including*, as appropriate– (*i*) a certification that, *in carrying out this Act*, the recipient will comply with *the applicable provisions of* title II of the Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) *and other applicable Federal laws and regulations;* (*ii*) a certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this *Act*, in compliance with such requirements *as the Secretary may establish*; (*iii*) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this *Act*; (*iv*) a certification that policies are in effect and are available for review by the Secretary and the public governing rents *and homebuyer*			(D) Certification of Compliance (ii) strike out as the Secretary may establish

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	payments charged, including the methods by which *the* rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this *Act*; ~~and~~ (*v*) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this *Act; and* *(vi)a certification that the recipient will comply with section 104(b).* ~~(6) Certain families. With respect to assistance provided under section 4131(b)(2) of this title by a recipient to Indian families that are not low-income families, evidence that there is a need for housing for each such family during that period that cannot reasonably be met without such assistance.~~ ***[Remainder of section stays the same]***			
	SEC. 103. REVIEW OF PLANS . Section 103 (25 U.S.C. 4113) would be amended as follows: (d) UPDATES TO PLAN.—After a plan under section 4112 of this title has been submitted for an Indian tribe for any *tribal program* year, the tribe may comply with the provisions of such section for any succeeding *tribal program* year ~~(with respect to~~	No similar amendments under HR 2786.	The SB would make minor changes to the reporting and reviewing requirements of HUD in looking at the IHP (change to tribal program year; adding a reference relevant to the Subtitle B activities). There are no corresponding amendments in HR2786.	

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	~~information included for the 5-year period under section 4112(b) of this title or the 1-year period under section 4112(e) of this title)~~ by submitting only such information regarding such changes as may be necessary to update the plan previously submitted. ~~Not less than once every 5 years, the tribe shall submit a complete plan. (e) EFFECTIVE DATE.—This section and section 4112 of this title shall take effect on the date provided by the Secretary pursuant to section 4116(a) of this title to provide for timely submission and review of Indian housing plans as necessary for the provision of assistance under this chapter in fiscal year 1998.~~ (e) SELF-DETERMINED ACTIVITIES PROGRAM.—Notwithstanding any other provision of this section, the Secretary— (1) shall review the information included in an Indian housing plan pursuant to subsections (b)(4) and (c)(7) only to determine wither the information is included for purposes of compliance with the requirement under section 232(b)(2); and (2) may not approve or disapprove an Indian housing plan based on the content of the particular benefits, activities, or results included pursuant to subsections (b)(4) and (c)(7).			IHAC agrees with SB language
SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS	SEC. 104. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.	Both bills contain essentially the same language on this issue.	This amendment would exclude from	

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Subsection (a) of section 104 (25 U.S.C. 4114(a)) would be amended by adding at the end: *(4) EXCLUSION FROM PROGRAM INCOME OF REGULAR DEVELOPER'S FEES FOR LOW-INCOME HOUSING TAX CREDIT PROJECTS.—Notwithstanding any other provision of the Act, any income derived from a regular and customary developer's fee for any project assisted with a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986 that is initially funded with grant funds provided under this Act, which fee is approved by the State housing credit agency, shall not be considered to be program income.*	Subsection (a) of section 104 (25 U.S.C. 4114(a)) would be amended by adding at the end: *(4) EXCLUSION FROM PROGRAM INCOME OF REGULAR DEVELOPER'S FEES FOR LOW-INCOME HOUSING TAX CREDIT PROJECTS.—Notwithstanding any other provision of the Act, any income derived from a regular and customary developer's fee for any project that receives a low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, that is initially funded using a grant provided under this Act, shall not be considered to be program income if the developer's fee is approved by the State housing credit agency.*		the definition of "program income" any funds received by tribes or TDHEs as "developer's fees" when carrying out a low income housing tax credit project. These fees are usually fees paid by the investor in such a project to the tribe or TDHE for managing the housing involved. By excluding such income from this definition, these funds would not be subject to the federal requirements that attach to NAHASDA funds, meaning that there would be less restrictions on the use of such funds. Language is nearly identical in both bills, and would have the same effect.	IHAC agrees with SB revisions of this section
	SEC. 105. REGULATIONS. Section 106(b)(2) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4116(b)(2) is amended— (b)(2) NEGOTIATED RULEMAKING PROCEDURE. (B) Committee (i) IN GENERAL.—*Not later than 180 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 and any other Act to reauthorize this Act,* the Secretary shall establish a negotiated	This provision, which deals with negotiated rulemaking, is addressed only in the SB. There are no corresponding changes in HR2786.	SB amendment would require that HUD establish a negotiated rulemaking committee within six months of reauthorization, to begin negotiated rulemaking within 90 days of reauthorization (these appear to be inconsistent requirements), and to publish a final rule within 18 months of reauthorization. This language would require such rulemaking every subsequent time the Act is reauthorized. The language also requires a review of the rules at least once every seven years. The language would impose timelines on HUD that currently do not exist,	

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	rulemaking committee, in accordance with the procedures under that subchapter, for the development of proposed regulations under subparagraph (A). ***[Remainder of section stays the same. New subsection (C) added.]*** *(C) SUBSEQUENT NEGOTIATED RULEMAKING.—The Secretary shall—* *(i) initiate a negotiated rulemaking in accordance with this section by not later than 90 days after the date of enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 and any other Act to reauthorize this Act; and* *(ii) promulgate regulations pursuant to this section by not later than 18 months after the date of enactment of the American Housing Assistance and Self-Determination Reauthorization Act of 2007 and any other Act to reauthorize this Act.* *(D) REVIEW.—Not less frequently than once every 7 years, the Secretary, in consultation with Indian tribes, shall review the regulations promulgated pursuant to this section in effect on the date on which the review is conducted.*		although there is no provision for what happens if HUD fails to comply. There are no corresponding changes in HR2786.	(D) Review – IHAC proposes to change 7 years to 5 years

HR2786 (Comm. Report Version) NAHASDA Reauthorization	Senate Discussion Draft ("SB") NAHASDA Reauthorization (O:\ARP\ARP07C05.xml version)	Language differences between HR 2786 and Senate draft	Analysis of Impact	IHAC Comments

HR2786 (COMM. REPORT VERSION) NAHASDA REAUTHORIZATION	SENATE DISCUSSION DRAFT ("SB") NAHASDA REAUTHORIZATION (O:\ARP\ARP07C05.xml VERSION)	LANGUAGE DIFFERENCES BETWEEN HR 2786 AND SENATE DRAFT	ANALYSIS OF IMPACT	IHAC COMMENTS
TITLE II—AFFORDABLE HOUSING ACTIVITES SEC. 201. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES. Section 201(b) (25 U.S.C. 4131(b)) would be amended as follows—	**TITLE II—AFFORDABLE HOUSING ACTIVITES** SEC. 201. NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES. Section 201(b) (25 U.S.C. 4131(b)) would be amended as follows— (b) ELIGIBLE FAMILIES. (1) IN GENERAL.—Except as provided under paragraphs (2) and (4), *and except with respect to loan guarantees under title VI,* assistance under eligible housing activities under this chapter shall be limited to low-income Indian families on Indian reservations and other Indian areas. (2) EXCEPTION TO LOW-INCOME	No similar provision under HR 2786 regarding Title VI.	The SB makes some additional structural changes to this section to clarify the Secretary's role in allowing for exceptions to the eligible families requirement. The SB also exempts activities funded through loans obtained with a Title VI loan guaranty from the eligible families requirements altogether, rather than authorizing the Secretary to do so on	IHAC prefers House version Language for essential families

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	REQUIREMENT.— *(A) EXCEPTION TO REQUIREMENT.—Notwithstanding paragraph (1), a* recipient may provide *housing or housing assistance through affordable housing activities for which a grant is provided under this Act to any family that is not a low-income family*, to the extent that the Secretary approves the activities *due to* a need for housing for *those* families that cannot reasonably be met without *that* assistance. *(B) LIMITS.*—The Secretary shall establish limits on the amount of assistance that may be provided under this chapter for activities for families who are not low-income families.		a case-by-case basis. There is no similar provision under HR 2786.	
(3) ~~*NON-INDIAN*~~ *ESSENTIAL FAMILIES.*— Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a ~~non-Indian~~ family if the recipient determines that the presence of the family ~~on the Indian reservation or other Indian area~~ is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance; and [Last paragraph of this section (relating to exemption) is	(3) ~~*NON-INDIAN*~~ *ESSENTIAL FAMILIES* — Notwithstanding paragraph (1), a recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this chapter for a ~~non-Indian~~ family on an Indian reservation or other Indian area if the recipient determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance.	HR 2786 removes references to "Indian reservation or other Indian area" in addition to removing reference to "Indian family." SB only removes reference to "Indian family."	HR2786 makes two technical amendments to the eligible families requirements, which would allow for non-low income Indian families to be deemed "essential families" where appropriate (current language appears only to allow for non-Indian families to meet this requirement), and removes the requirement that the exception only apply to reservations and Indian areas. The SB only removes the "non-Indian" families language (and not the language regarding reservations or Indian areas).	Prefers House version of language for essential families

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redesignated as paragraph (7).]				
(4) LAW ENFORCEMENT OFFICERS: [Language allowing for exemption for law enforcement officers where the officer:] (i) is employed on a full-time basis by the Federal Government, or a State, county, *or other unit of local government,* or a lawfully recognized tribal government; …	(4) LAW ENFORCEMENT OFFICERS: [Language allowing for exemption for law enforcement officers where the officer:] (i) is employed on a full-time basis by the Federal Government or a State, county, *or other unit of local government,* or lawfully recognized tribal government; …		Both bills also would clarify that any local law enforcement officer from any type of local jurisdiction could meet the requirement. The reason for this amendment is that in some states, the units of local government are not counties but municipalities or cities, and the existing language appeared to exclude law enforcement officers from such jurisdictions.	IHAC agrees with this change
SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES. Section 202 (25 U.S.C. 4132) would be amended as follows:	SEC. 202. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES. Section 202 (25 U.S.C. 4132) would be amended as follows: ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.—Affordable housing activities under this subchapter are activities, in accordance with the requirements of this subchapter, to develop, *operate, maintain,* or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities: (1) INDIAN HOUSING ASSISTANCE.–**[remains the same].** (2) DEVELOPMENT.–The acquisition,	SB makes more changes to expand "affordable housing activities" than HR2786.	Both bills make changes that would expand the definitions of "affordable housing activities" that can be funded with NAHASDA appropriations. HR2786 is a limited expansion allowing for use of NAHASDA funds for operations and maintenance of units built with NAHASDA funds. The SB includes this expansion, but also includes development and rehabilitation of infrastructure and mold remediation.	IHAC prefers SB version of changes to eligible activites

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	new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development *and rehabilitation* of utilities, *necessary infrastructure*, and utility services, conversion, demolition, financing, administration and planning, improvement to achieve greater energy efficiency, *mold remediation*, and other related activities. (3) HOUSING SERVICES.–[**no changes**]			
(4) HOUSING MANAGEMENT SERVICES.-The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, *operation and maintenance of units developed with amounts provided under this Act*, and management of affordable housing projects.	(4) HOUSING MANAGEMENT SERVICES.–The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, *the costs of operation and maintenance of units developed with funds provided under this Act*, and management of affordable housing projects.			
(9) RESERVE ACCOUNTS.—The deposit of amounts, including grant amounts under section 101, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for funding affordable housing activities under this section in accordance with the	*(9) RESERVE ACCOUNTS.—(A) IN GENERAL.—Subject to subparagraph (B), the deposit of amounts, including grant amounts under section 101, in a reserve account established for an Indian tribe only for the purpose of accumulating amounts for*	SB limits use of reserve account to administration and planning of affordable housing activities, provides the maximum amount to ¼ (25%) of a 5-year average, and makes formatting changes.	Both bills would allow tribes/TDHEs to set aside a portion of their IHBG in a reserve account established by the tribe. In the SB, the funds are to be set aside for accumulating amounts for "purposes of administration and planning" for affordable housing activities. In HR2786, the funds are	Reserve Accounts – IHAC prefers House version of changes

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Indian housing plan for the tribe, except that not more than 20 percent of any grant amounts under section 101 on behalf of any Indian tribe for any fiscal year may be used under this paragraph. Amounts in such reserve account may be invested only subject to the same limitations applicable to grant amounts under section 204(b). Any income resulting from amounts in any such reserve account shall be considered to be program income for purposes of this Act.	*administration and planning relating to affordable housing activities under this section, in accordance with the Indian housing plan of the Indian tribe.* *(B) MAXIMUM AMOUNT. A reserve account established under subparagraph (A) shall consist of not more than an amount equal to ¼ of the 5-year average of the annual amount used by a recipient for administration and planning under paragraph (2).*		set aside to accumulate amounts simply for affordable housing activities. HR2786, therefore, allows reserve funds to be used in a somewhat broader manner. The maximum amount that could be set aside is 20% of the annual IHBG in HR2786, and 25% (over a five year average) in the SB. HR2786 contains limits on how the funds can be invested, and expressly states that any income derived from such investment is deemed to be program income (subject to NAHASDA requirements). The SB does not contain these restrictions.	
SEC. 203. PROGRAM REQUIREMENTS. Section 203 (25 U.S.C. 4133) would be amended by adding at the end the following:	SEC. 203. PROGRAM REQUIREMENTS. Section 203 (25 U.S.C. 4133) would be amended by adding at the end the following:			
(f) USE OF GRANT AMOUNTS OVER EXTENDED PERIODS.—To the extent that the Indian housing plan for a tribe provides for the use of amounts from a grant under section 101 over more than one fiscal year or for affordable housing activities for which such funds will be committed for use or expended in a subsequent fiscal year, the Secretary may not require amounts from such a grant to	*(f) USE OF GRANT AMOUNTS OVER EXTENDED PERIODS.—To the extent that the Indian housing plan for an Indian tribe provides for the use of amounts of a grant under section 101 for a period of more than 1 fiscal year, or for affordable housing activities for which the amounts will be committed for use or expended during a subsequent fiscal year, the Secretary shall not require amounts*	Different language but same in concept.	These amendments allow for carryover of grant funds from one year to the next, which should in practice remove the requirement of tracking funds from each year as a separate grant. The carryover, however, is tied to the IHP describing such multi-year use of grant funds. The only substantive difference in the language is that the HB says that the Secretary "shall" not require such	(f) Use of Grant Amounts Over Extended Periods – IHAC prefers Senate version

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be used, or committed for use, any sooner than so provided under such Indian housing plan.	*to be used or committed for use at any time earlier than otherwise provided for in the Indian housing plan.*		funds to be used in a single grant year, while the SB says "may" not. This, however, may be more a stylistic distinction; in this context, the effect would appear to be the same.	
(g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES.—Notwithstanding any other provision of law, any rules and procedures regarding competitive procurement otherwise applicable to a recipient shall not apply to the recipient in the case of procurement of goods and services under $5,000 with grant amounts under this Act.	*(g) DE MINIMIS EXEMPTION FOR PROCUREMENT OF GOODS AND SERVICES.—Notwithstanding any other provision of law, a recipient shall not be required to act in accordance with any otherwise applicable competitive procurement rule or procedure with respect to procurement, using a grant provided under this Act, of goods and services the value of which is less than $5,000.*	Different language but same in concept.	These amendments create an exception to the HUD competitive procurement requirements for purchases of goods or services under $5000. The language differs slightly in each bill, but the effect is the same.	IHAC prefers Senate Language for De Minimis Exemption but is very supportive of this provision
	SEC. 205. LOW-INCOME REQUIREMENT AND INCOME TARGETING. Section 205 (25 U.S.C. 4135) would be amended by adding at the end the following: *(c) APPLICABILITY.—This section applies only to rental and homeownership units that are owned or operated by a recipient.*	No similar provision in HR 2786.	The SB adds language that limits the "useful life" affordability requirement to only those units that are owned and operated by the tribe/TDHE. This language would remove this requirement from homes purchased and/or owned by individual tribal members or other Indians (from the private market) for which the tribe/TDHE provided financial assistance with IHBG funds. There is no corresponding provision in HR 2786.	IHAC is very supportive of the Senate version of this language
	SEC. 206. TREATMENT OF FUNDS. A new Section (206) would be added to read as follows:	No similar provision in HR 2786.	This new section exempts tenant-based and project-based rental assistance made with IHBG funds	Section 206 – IHAC agrees with Senate version of revision

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	SEC. 206. TREATMENT OF FUNDS. Notwithstanding any other provision of law, tenant- and project-based rental assistance provided using funds made available under this Act shall not be considered to be Federal funds for purposes of section 42 of the Internal Revenue Code of 1986.		from being considered "Federal funds" when used in low income housing tax credit projects, making such projects more financially appealing for tribes/TDHEs by not penalizing tribes for providing such assistance to tenants. There is no corresponding provision in HR 2786.	
SEC. 208. AVAILABILITY OF RECORDS. Section 208(a) (25 U.S.C. 4138(a)) would be amended as follows: (a) PROVISION OF INFORMATION Notwithstanding any other provision of law, except as provided in subsection (b) of this section, the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of *(1)* adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this chapter for purposes of applicant screening, lease enforcement, and eviction *or (2) adult applicants for employment with the tribe in positions relating to the tribe's activities under this Act or its other housing-related activities or with the tribally designated housing entity, for purposes of applicant screening.*	SEC. 208. AVAILABILITY OF RECORDS. Section 208(a) (25 U.S.C. 4138(a)) would be amended as follows: (a) PROVISION OF INFORMATION. Notwithstanding any other provision of law, except as provided in subsection (b) of this section, the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to Indian tribes or tribally designated housing entities regarding the criminal conviction records of *applicants for employment, and of* adult applicants for, or tenants of, housing assisted with grant amounts provided to such tribe or entity under this chapter for purposes of applicant screening, lease enforcement, and eviction.	Different language but same in concept.	Both bills would amend the criminal records provision to allow tribes/TDHEs to access and use criminal records when reviewing applicants for employment (not just for housing applicants). The language in HR 2786 is somewhat more restrictive, authorizing acquisition of such information specifically for purposes of NAHASDA or housing-related activities. In addition, the SB would appear to authorize tribes/TDHEs to obtain such information on all job applicants, whether or not they are adults (HR 2786 is expressly limited to adult applicants).	Section 208 – IHAC prefers Senate version

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	SEC. 211. INVESTMENT OF GRANT FUNDS; A new Section (211) would be added: *SEC. 211. INVESTMENT OF GRANT FUNDS.* *(a) IN GENERAL.—A recipient may invest amounts received under this title for the purposes of carrying out affordable housing activities in investment securities and other obligations in accordance with this section.* *(b) REQUIREMENTS.—A recipient may invest amounts only if the recipient demonstrates to the satisfaction of the Secretary that—* *(1) there are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under chapter 75 of title 31, United States Code (commonly known as the 'Single Audit Act') or an independent financial audit prepared in accordance with generally accepted auditing principles; and* *(2) the recipient—* *(A) is an Indian tribe that participates in tribal self-governance pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); or* *(B) had the administrative capacity and controls to responsibly manage the investment.*	No similar section in HR 2786.	This new section would set out authorization for and requirements concerning the investment of IHBG funds by tribes/TDHEs. A number of tribes feel (along with HUD) that this language is not needed because such authorization is already assumed under the existing statutory language. There is no corresponding provision in HR 2786.	Section 211 – IHAC recommends this section be removed

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	(C) ELIGIBLE INVESTMENTS.—A recipient shall invest amounts only in— *(1)(A) obligations of the United States;* *(B) obligations issued by Federal Government-sponsored agencies;* *(C) securities that are guaranteed or insured by the United States; or* *(D) mutual (or other) funds that are registered with the Securities and Exchange Commission and that invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or* *(2) accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.* *(d) ACCOUNTS.—* *(1) IN GENERAL.—Amounts received under this title shall be held in 1 or more accounts separate from other funds of the recipient.* *(2) AGREEMENT.—Each of the accounts described in paragraph (1) shall be subject to an agreement in a form prescribed by the Secretary that is sufficient—* *(A) to implement the regulations contained in part 1000 of title 24, Code of Federal Regulations (or successor regulations); and* *(B) to permit the Department of Housing and Urban Development to exercise the rights of the Department*			

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	under 1000.60 of that title (or a successor regulation). *(e) TREATMENT.—An expenditure of amounts for affordable housing activities under section 204(a) shall not be considered to be an investment for purposes of this section.* *(f) ELIGIBLE AMOUNTS.—Of amounts received under this title, a recipient may invest an amount equal to the product obtained by multiplying—* *(1) the difference between—* *(A) the amount of the annual formula grant; and* *(B) any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Housing Stock component of the formula in accordance with sections 1000.316(a) and 1000.320 of title 24, Code of Federal Regulations (or successor regulations); and* *(2)(A) for each of fiscal years [2008 and 2009], 50 percent;* *(B) for fiscal year [2010], 75 percent; and* *(C) for fiscal year [2011 and each fiscal year thereafter], 100 percent.* *(g) TERM.—An investment under this section may be for a period no more than 2 years.*			
	SEC. 212. REGIONAL TRIBALLY DESIGNATED HOUSING ENTITY PROGRAMS. A new Section (212) would be added:	No similar section in HR 2786.	This new section would "authorize" tribes/TDHEs to band together into consortia that could operate as a single TDHE. This section was drafted by staff of the Senate	Section 212 – IHAC

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	SEC. 212. REGIONAL TRIBALLY DESIGNATED HOUSING ENTITY PROGRAMS. *(a) ESTABLISHMENT.—Any group of 2 or more Indian tribes that, as determined by the governing bodies of the Indian tribe, do not possess sufficient resources to operate a tribally designated housing entity or otherwise carry out large-scale activities using grants provided under this Act may establish a regional tribally designated housing entity to consolidate resources and facilitate collaboration among those tribes.* *(b) MEMORANDUM OF UNDERSTANDING.—On establishing a regional tribally designated housing entity under subsection (a), each member Indian tribe shall enter into a memorandum of understanding relating to the development and rehabilitation projects and operation and maintenance activities to be carried out by the regional tribally designated housing entity that includes—* *(1) a description of each project and activity;* *(2) a timeline for completion of each project and activity;* *(3) a description of the manner in which funds and other resources of each member Indian tribe will be used to carry out the projects and activities; and* *(4) the sequence in which the projects and activities will be carried out to*		Committee on Indian Affairs as their approach to addressing the concerns expressed by small tribes about the need for a minimum funding amount that is larger than that contained in the existing regulations. The Senate staffers are aware that such authorization to organize into consortia is already assumed under NAHASDA, and that there are already such consortia in existence, but they felt that this language would encourage other small tribes to join together to achieve economies of scale with their limited funding, or at least contribute to the discussion of a better solution for smaller tribes. The language actually adds the requirement that the participating tribes/TDHEs enter into a memorandum of understanding with certain specific issues addressed. Apparently some of the Alaska regional housing authorities have expressed concern with this proposal, since it could be read to effect how they are organized and operate. There is no corresponding provision in HR 2786.	

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	ensure an equitable distribution of benefits to each member Indian tribe, to the maximum extent practicable. *(C) USE OF GRANTS.—A regional tribally designated housing entity may use the total amount of grant funds provided under this Act to each member Indian tribe—* *(1) to carry out projects and activities described in subsection (b);* *(2) to purchase necessary equipment and supplies relating to those projects and activities; and* *(3) to submit bids for construction and rehabilitation projects to benefit any member Indian tribe.* *(d) COLLECTIVE BORROWING.—A regional tribally designated housing entity may submit an application for a loan (including a loan under title VI) on behalf of any member Indian tribe for purposes of carrying out a project or activity to benefit the Indian tribe that the Indian tribe could not carry out absent the assistance of the regional tribally designated housing entity.*			
"SUBTITLE B" - SELF-DETERMINED HOUSING ACTIVITIES FOR TRIBAL COMMUNITIES PROGRAM. *Subtitle B—Self-Determined Housing Activities for Tribal Communities* *SEC. 231. PURPOSES.* *The purposes of this subtitle are to establish a self-determined housing*	**"SUBTITLE B" - - SELF-DETERMINED HOUSING ACTIVITIES FOR TRIBAL COMMUNITIES PROGRAM.** *Subtitle B—Self-Determined Housing Activities for Tribal Communities* *SEC. 231. PURPOSES.* *The purpose of this subtitle is to establish a program for self-*	Both bills contain lengthy and detailed provisions regarding the establishment of a demonstration program that would remove a number of the NAHASDA requirements. The provisions are nearly identical.	This extensive and detailed Subtitle B establishes a demonstration project for the next five years, the expressed intent of which is to allow tribes/TDHEs to experiment with a model of service delivery that is	Subtitle B IHAC recommends that Tribes/TDHE's who participate be included in the development of the evaluation report

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activities for the tribal communities program to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 101 for the tribe in manners that are wholly self-determined by the tribe for housing activities involving construction, acquisition, or rehabilitation of housing that will benefit the community served by the tribe.	*determined housing activities for the tribal communities to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 101 for the Indian tribe in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure relating to housing activities of housing that will benefit the community served by the Indian tribe.*	Rather than reproduce the entire Subtitle B from both bills, we have instead just provided those Sections where there are substantive differences. The full text of the Subtitle B can be found in either bill. SB adds "infrastructure" to the activities covered by Subtitle B.	similar to that found in the Indian Self-Determination and Educational Assistance Act (also known as "638 contracting"). The Subtitle was drafted by the staff of Congressman Barney Frank, and they feel that it is a "big picture" approach to address the various and specific amendments proposed by NAIHC to move NAHASDA more in the direction of a self-determination program. There are a number of limitations built into this Subtitle, however, that would appear to limit its appeal to tribes/TDHEs. First, and most significantly, the activities permitted (at least under HR2786) are limited to construction, acquisition, and rehabilitation of housing. Since these are the kind of activities that tribes/TDHEs can already carry out under the existing law with fairly broad flexibility, this provision would not appear to add much to the existing bill. Second, the amount of funds that can be used toward such activities is limited to 15% of the tribe's/TDHE's annual IHBG. The SB contains nearly all the same language that the HB does, although it adds "infrastructure" to the activities covered, thus providing a bit more flexibility to tribes/TDHEs in carrying out activities under this provision (HR2786 expressly *excludes* infrastructure). Both bills also contain a provision that many	
SEC. 232. AUTHORITY. *(a) IN GENERAL.—Under the program under this subtitle, for each of fiscal years 2008 through 2012, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this subtitle.*	*SEC. 232. PROGRAM AUTHORITY.* **No corresponding provision in SB.**	Senate version requires clean audit for a 3-year period, and adds section on program authority.		
(b) QUALIFYING INDIAN TRIBES.—For purposes of this section, the term 'qualifying Indian tribe' means, with respect to a fiscal year, an Indian tribe or tribally designated housing entity that— *(1) a grant is made in behalf of under section 101;* *(2) has complied with the requirements under subsections (b)(4) and (c)(7) of section 102; and* *(3) has no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under chapter 75 of title*	*(a) DEFINITION OF QUALIFYING INDIAN TRIBE.—In this section, the term 'qualifying Indian tribe' means, with respect to a fiscal year, an Indian tribe or tribally designated housing entity—* *(1) on behalf of which a grant is made under section 101;* *(2) that has complied with the requirements of section 102(b)(6); and* *(3) that, during the preceding 3-fiscal-year period, has no unresolved significant and material audit findings or exceptions, as demonstrated in—*			

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31, United States Code (commonly known as the Single Audit Act), or in an independent financial audit prepared in accordance with generally accepted auditing principles.	*(A) the annual audits of that period completed under chapter 75 of title 31, United States Code (commonly known as the Single Audit Act), or (B) an independent financial audit prepared in accordance with generally accepted auditing principles.*		tribes/TDHEs have found troubling: at the end of the five year period, HUD is to provide a report to Congress on whether the program was a success, and whether certain tribes/TDHEs should be prohibited from participating in such a program in the future. There is no requirement for tribal participation in the development of such a report.	
	(b) AUTHORITY.—Under the program under this subtitle, for each fiscal years 2008 through 2012, the recipient for each qualifying Indian tribe may use the amounts specified in subsection (c) in accordance with this subtitle.		There is a recent development that may have an impact on this Subtitle. On August 2, 2007, Representative Don Young (R-AK) introduced a bill that would establish a self-determination demonstration program that is much broader in scope and much closer to the Indian Self-Determination Act than this Subtitle (HR 3349). Representative Young's bill, however, would make such a program available only to the regional housing authorities in Alaska. In fact, this bill is nearly identical to a proposal drafted by the Alaska Association of Housing Authorities (a coalition of the regional housing authorities in Alaska) and presented to the NAIHC Legislative Committee in February 2007. Various members of the Committee expressed concern with the draft language, and said that more time was needed to review the proposed language. The Senate Committee on Indian Affairs staff have seen Representative Young's bill, and the provisions of that bill	
(c) AMOUNT.—With respect to a fiscal year and a recipient, the amounts specified in this subsection are amounts from any grant under section 101 for the recipient for the fiscal year, as determined by the recipient, but in no case exceeding the lesser of (1) 15 percent of the total grant amount for the recipient for such fiscal year, or (2) $1,000,000.	*(c) AMOUNTS.—With respect to a fiscal year and a recipient, the amounts referred to in subsection (b) are amounts from any grant provided under section 101 to the recipient for the fiscal year, as determined by the recipient, but in no case exceeding the lesser of (1) an amount equal to 15 percent of the total grant amount for the recipient for that fiscal year; and (2) $1,000,000.*			
SEC. 233. USE OF AMOUNTS FOR HOUSING ACTIVITIES. (a) ELIGIBLE HOUSING ACTIVITIES.—Any amounts made available for use under this subtitle by a recipient for an Indian tribe shall be used only for housing activities, as selected at the discretion of the recipient and set forth in the Indian housing plan for the tribe pursuant to section	*SEC. 233. USE OF AMOUNTS FOR HOUSING ACTIVITIES. (a) ELIGIBLE HOUSING ACTIVITIES.—Any amounts made available for use under this subtitle by a recipient for an Indian tribe shall be used only for housing activities, as selected at the discretion of the recipient and described in the Indian housing plan for the Indian tribe pursuant to*			

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102(c)(7), for the construction, acquisition or rehabilitation of housing that provide a benefit to families described in section 201(b)(1). *(b) PROHIBITION OF CERTAIN ACTIVITIES.—Amounts made available for use under this subtitle may not be used for any costs of providing infrastructure, commercial and economic development, and operating costs of housing.*	*section 102(b)(6), for the construction, acquisition, or rehabilitation of housing or infrastructure to provide a benefit to families described in section 201(b)(1).* *(b) PROHIBITION OF CERTAIN ACTIVITIES.—Amounts made available for use under this subtitle may not be used for commercial or economic development.*		may result in some revisions to Subtitle B of NAHASDA.	
SEC. 234. INAPPLICABILITY OF OTHER PROVISIONS. *(b) APPLICABLE PROVISIONS.—The following provisions of titles I through VIII shall apply to the program under this subtitle and amounts made available in accordance with this subtitle:* *(7) Section 201(b)(7)(relating to preference for tribal members and other Indian families).*	*SEC. 234. INAPPLICABILITY OF OTHER PROVISIONS.* *(b) APPLICABLE PROVISIONS.—The following provisions of titles I through VIII shall apply to the program under this subtitle and amounts made available in accordance with this subtitle:* ~~*(7) Section 201(b)(7)(relating to preference for tribal members and other Indian families).*~~	Senate version removes Section 201(b)(7) (authorizing preference in providing housing services to tribal members and families) from list of provisions to which the referenced titles are inapplicable.	The intent of the Senate staff in removing this provision is not clear. It may have been an oversight. It also might be a recognition that including such a provision in a "self-determination" model program is assumed. That would, however, not be a sound assumption.	
	TITLE III—ALLOCATION OF GRANT AMOUNTS SEC. 302. ALLOCATION FORMULA. Section 302(a) (25 U.S.C. 4152(a)) would be amended as follows: (a) ESTABLISHMENT.—	No similar section in HR 2786.	This SB amendment requires the Comptroller General to conduct a study and submit a report to Congress of "alternative data sets" to those currently used in the formula for	IHAC recommends that the "study" by omitted in its entirety and recommends the following changes to Section 302

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	(1) IN GENERAL.—The Secretary shall, by regulations issued not later than the expiration of the 12-month period beginning on October 26, 1996, in the manner provided under section 4116 of this title, establish a formula to provide for allocating amounts available for a fiscal year for block grants under this chapter among Indian tribes in accordance with the requirements of this section. *(2) STUDY.—Not later than 2 years after the date of enactment of this paragraph, the Comptroller General of the United States shall conduct a study on, and submit to Congress a report describing—* *(A) the feasibility of using an alternative data set for the need component of the block grant formula established under paragraph (1); and* *(B) the feasibility of using an alternative data set to the data set of the most recent decennial census in determining the need component of the block grant formula.*		allocating the annual NAHASDA appropriations among the tribes and TDHEs. The Senate staff has included this language in an attempt to address the controversy about the use of single-race or multi-race Census data in the formula allocation process. The staff has received a lot of conflicting arguments on the use of Census data, and their expressed hope is that a study by the Comptroller General might produce a resulting data set that all sides to the dispute would be satisfied with. There is no corresponding provision in HR 2786.	**Add to Section 302:** (d) In determining data sets to be incorporated into the formula, the Secretary shall defer to such Tribes determination of which data set it prefers, including but not limited to data complied by the United States Bureau of Census, to the extent that such data set addresses the factors set forth above. (1) If any tribe selects a data set different than that proposed by the Secretary to be used in the formula established pursuant to subsection (a) above, the Secretary shall ensure that the determination of such tribes allocation under the formula is based on such data set, unless the Department of Housing and Urban Development can show, with reasonable accuracy, that the data set is not collected in a manner that can be confirmed and verified.
	SEC. 302. ALLOCATION FORMULA. Section 302(b) (25 U.S.C. 4152(b)) would be amended as follows: (b) Factors for determination of need.—The formula shall be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribes for assistance for affordable housing activities, including the following factors:	No similar section in HR 2786.	This amendment would nullify the effect of the decision in the *Fort Peck Housing Authority v. HUD* litigation. This litigation resulted in a decision from the District Court in Colorado in June 2006, which held that in calculating the formula allocation, HUD must count all units that a tribe/TDHE owned and operated at the time NAHASDA was enacted as part of the Formula Current Assisted	**Add to Section 302: (e) Funding Levels** – The allocation in any fiscal year to

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	(1) The number of low-income housing dwelling units owned or operated at the time pursuant to a contract between an Indian housing authority for the tribe and the Secretary, *subject to the condition that such a unit shall not be considered to be a low-income housing dwelling unit for purposes of this section in any case in which—* *(A) the recipient ceases to possess the legal right to own, operate, or maintain the unit; or* *(B) the unit is lost by conveyance, demolition, or another means.*		Stock (FCAS) for that tribe/TDHE, whether or not a particular unit had been conveyed or demolished. Thus, under the *Fort Peck* decision, a tribe's/TDHE's FCAS will include all units in existence as of 1998, whether or not the tribe/TDHE still owns such units, or even whether such units are still in existence. While the scope of the *Fort Peck* decision was limited to just the Fort Peck Housing Authority, several other tribes (and most of the Alaska regional housing authorities) have filed similar suits in the same court, asking for the court to order HUD to return their FCAS count to the 1998 level as well. HUD has prepared a spreadsheet analyzing the national impact, tribe-by-tribe, to the formula allocation if the *Fort Peck* decision were to become the law of the land. The result would be a shift in the allocation amounts, with some tribes/TDHEs seeing an increase in their allocation, and others seeing a decrease. (We can provide a copy of that spreadsheet if you want.) The SB amendment would negate the decision, and clarify that the only units that can be counted as FCAS under the formula are those units that are still in existence and are still owned and operated by the tribe/TDHE. There is no corresponding provision in HR 2786.	an Indian Tribes under the need component of the IHBG Formula shall equal to no less than .075% of the available funds for distribution under the need component for that fiscal year after FCAS and set asides. Further, the maximum allocations in any fiscal year to an Indian Tribe under the need component of the IHBG Formula shall not exceed 10% of the available funds for distribution under the need component for that fiscal year after FCAS and set asides.

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TITLE IV—COMPLIANCE, AUDITS, AND REPORTS **[No changes proposed by HR 2786 to this Title.]**	**TITLE IV—COMPLIANCE, AUDITS, AND REPORTS** SEC. 401. REMEDIES FOR NONCOMPLIANCE. Section 401(a) (25 U.S.C. 4161(a)) would be amended by inserting a new subsection 2 (and renumbering the existing subsections): (a) ACTIONS BY SECRETARY AFFECTING GRANT AMOUNTS. — *(2) SUBSTANTIAL NONCOMPLIANCE.— The failure of a recipient to comply with the requirements of section 302(b)(1) regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this title.*	No similar section in HR 2786.	The SB would amend the definition of "substantial noncompliance" to exclude those situations where a tribe/TDHE has provided an undercount or over count of its low-income dwelling units (i.e., its FCAS). The amendment states that such an erroneous count would not "in and of itself" be "substantial noncompliance." Presumably, an over count that is fraudulent or otherwise intentional may still count as substantial noncompliance under this amendment. There is no corresponding provision in HR 2786.	IHAC had no comments on this section
	SEC. 403. MONITORING OF COMPLIANCE. Section 403(b) (25 U.S.C. 4163(b)) would be amended as follows: (b) Periodic monitoring.— Not less frequently than annually, each recipient shall review the activities conducted and housing assisted under this chapter to assess compliance with the requirements of this chapter. Such review shall	No similar section in HR 2786.	The SB would amend the requirement that a tribe/TDHE annually review its housing to determine compliance with NAHASDA, by requiring that the tribe/TDHE conduct an "appropriate level" of onsite inspections. The term "appropriate level" is not defined, nor does the amendment state who would make the determination as to whether there has been an appropriate level of such inspections. It is interesting to note that NAIHC advocated for a	

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	include *an appropriate level of* onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in the performance report of the recipient submitted to the Secretary under section 4164 of this title and made available to the public.		revision to this section that would place more authority in tribes' hands to determine what is an appropriate amount of self-monitoring. Senate staff did not accept this proposal, and instead they inserted the "appropriate level" language, leaving it an open question as to whether HUD would determine what is an "appropriate level," or whether that determination would be a tribal one. There is no corresponding provision in HR 2786.	
	SEC. 404. PERFORMANCE REPORTS. Section 404(b) (25 U.S.C. 4164(b)) would be amended as follows. (b) CONTENT.—Each report under this section for a fiscal year shall– (1) describe the use of grant amounts provided to the recipient for such fiscal year; (2) assess the relationship of such use to the *planned activities* identified in the Indian housing plan of the grant beneficiary; *and* (3) indicate the programmatic accomplishments of the recipient. ~~(4) describe the manner in which the recipient would change its programs as a result of its experiences.~~	No similar section in HR 2786.	The SB would make some minor amendments to the requirements concerning Annual Performance Reports (APRs), namely by changing the terminology to reflect the previously discussed changes to the IHP, and to delete the requirement that the tribe/TDHE include in the APR a discussion of how it would change its programs in light of its experiences. Again, NAIHC had proposed simply deleting the APR requirement altogether, which was not accepted by Senate staff. There is no corresponding provision in HR 2786.	IHAC agrees with Sec 404 revisions in Senate version
TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS	**TITLE V—TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS**			

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Title V (25 U.S.C. 4181 et seq.) would be amended by adding at the end the following new section: *SEC. 509. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.* *The amendments made by this title, and the provisions of this title and this Act, may not be construed to prohibit or prevent any insular area or participating jurisdiction (as such terms are used for purposes of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing amounts made available under such Act for such area or jurisdiction to Indian tribes, or tribally designated housing entities, for use in accordance with the HOME Investment Partnerships Act.*	Title V (25 U.S.C. 4181 et seq.) would be amended by adding at the end the following new section: *SEC. 509. EFFECT ON HOME INVESTMENT PARTNERSHIPS ACT.* *Nothing in this Act or an amendment made by this Act prohibits or prevents any participating jurisdiction (within the meaning of the HOME Investment Partnerships Act (42 U.S.C. 12721 et seq.)) from providing any amounts made available to the participating jurisdiction under that Act (42 U.S.C. 12721 et seq.) to an Indian tribe or a tribally designated housing entity for use in accordance with that Act (42 U.S.C. 12721 et seq.).*	No significant difference in intent or impact.	Both HR 2786 and the SB add a new Section 509, addressing tribes' continued eligibility for the HOME program, which is a program using federal funds but operated and allocated by the states. Some states have unilaterally denied tribal requests to participate in the HOME program by asserting that NAHASDA deprived tribal eligibility for the HOME program. This amendment would clarify that tribes are still eligible for such funding.	IHAC agrees with Senate version of Section 509
GAO STUDY OF EFFECTIVENESS OF NAHASDA FOR TRIBES OF DIFFERENT SIZES. **[HR2786 does not identify where this language would go in the existing statute.]** *(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the effectiveness of*	**[No provision for such a study in the SB.]**	No similar section in SB.	The amendment requires a study to be conducted by the Comptroller General to determine the effectiveness of	IHAC does not agree with this provision of the proposed legislation

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the Native American Housing Assistance and Self-Determination Act of 1996 in achieving its purposes of meeting the needs for affordable housing for low-income Indian families, as compared to the programs for housing and community development assistance for Indian tribes and families and Indian housing authorities that were terminated under title V of such Act and the amendments made by such title. The study shall compare such effectiveness with respect to Indian tribes of various sizes and types, and specifically with respect to smaller tribes for which grants of lesser or minimum amounts have been made under title I of such Act. *(b) REPORT.—Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the results and conclusions of the study conducted pursuant to subsection (a). Such report shall include recommendations regarding any changes appropriate to the Native American Housing Assistance and Self-Determination Act of 1996 to help ensure that the purposes of such Act are achieved by all Indian tribes, regardless of size or type.*			NAHASDA in achieving its purposeof meeting the needs of low-income Indian people for housing. The amendment goes on to require that the study compare effectiveness based on the differences among tribes in size and in type, and specifically to focus on small tribes who have received "grants of lesser or minimum amounts." The amendment requires a report by the Comptroller General to the House Financial Services Committee (with no timeline), to provide both the conclusions of its study and to provide "recommendations" regarding changes to NAHASDA to ensure that tribes of all sizes and types can achieve the purposes of the Act. It would appear, although it is not certain, that this amendment was the result of lobbying by smaller tribes for a statutorily-established minimum funding amount or percentage. There is no corresponding provision in the SB.	

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TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITIES.	**TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITIES.** SEC. 601. TITLE HEADING. (a) IN GENERAL.—The heading of title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191 et seq.) is amended by inserting *"AND COMMUNITY DEVELOPMENT ACTIVITIES".* (b) CONFORMING AMENDMENT.—The table of contents in section 1(b)…is amended [to read] *"TITLE VI—FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITIES".* SEC. 602. AUTHORITY AND REQUIREMENTS. Section 601of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191) is amended— (a) AUTHORITY.—To such extent or in such amounts as provided in appropriations Acts, the Secretary may, subject to the limitations of this subchapter (including limitations designed to protect and maintain the viability of rental housing units owned or operated by the recipient	No similar expansion to include community development or establish a loan guarantee demonstration program under HR 2786.	HR 2786 proposes one minor change to the Title VI loan guaranty program, requiring that training and information provided by HUD to tribes on the program include educational seminars to tribes/TDHEs on how to utilize the loan guarantee program. The SB contains a similar amendment. HR 2786 and the SB also reauthorize Title VI for another five years. The SB, however, adds an additional, and substantial, element not found in HR 2786. The SB amendments to Title VI add "community development activities" to the activities that could be funded with a Title VI loan guaranty, and includes a new demonstration program section for funding such activities. (As discussed above, the term "community development activities" is redefined in a proposed amendment to NAHASDA in the SB.) The demonstration project authorizes the use of up to 50% of Title VI loan guaranty funds for such activities, and requires that HUD provide a report on the effectiveness of the demonstration program not later than four years after	IHAC had not comment on this section

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	that were developed under a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)), and upon such terms and conditions as the Secretary may prescribe, guarantee and make commitments to guarantee, the notes or other obligations issued by Indian tribes or tribally designated housing entities with tribal approval, for the purposes of financing— *(1)* affordable housing activities described in section 4132 of this title and housing related community development activity as consistent with the purposes of this chapter; *(2) activities that, under title I—* *(A) are eligible for financing; and* *(B) are the subject of a note or other guaranteed obligation.* (b) through (d) no changes *(e) DEMONSTRATION PROGRAM.—* *(1) ESTABLISHMENT:—The Secretary shall establish a demonstration program under which the Secretary shall provide loan guarantees under this section to Indian tribes and tribally designated housing entities to support activities that benefit low-income families on Indian reservations and in other Indian areas.* *(2) APPLICABILITY TO TITLE I.—Of the aggregate amount of loan guarantees provided pursuant to the*		the program is established.	

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	demonstration program under this subsection, not more than 50 percent shall be for activities that are— *(a) eligible to receive a grant under title I; but* *(B) not eligible to receive funds (including through loans or loan guarantees) under this title.* *(3) USE OF OTHER FUNDS UNDER THIS ACT.—For purposes of carrying out a project using a loan guarantee provided under this subsection, an Indian tribe or tribally designated housing entity may use funds provided under any other provision of this Act only in the proportion that—* *(A) the amount of those funds provided specifically for activities that benefit low-income families on Indian reservations and in other Indian areas; bears to* *(B) the total amount of those funds.* *(4) REPORT.—Not later than 4 years after the date on which the demonstration program is established under paragraph (1), the Secretary shall submit to Congress a report describing—* *(A) the activities carried out using loan guarantees provided under the demonstration program; and* *(B) the success of the demonstration program.* *(5) TERMINATION.—The authority under this subsection terminates on the date that is 5 years after the date on which the demonstration program is established under paragraph (1)*			

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SEC. 604(A) EDUCATIONAL SEMINARS.—Section 604(a) (25 U.S.C. 4195) would be amended by adding at the end the following: The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subchapter. *Such activities shall include conducting educational seminars with tribes and tribally designated housing entities on how to utilize the loan guarantee program under this title.*	**SEC. 604(A)** EDUCATIONAL SEMINARS.—Section 604(a) (25 U.S.C. 4195) would be amended as follows: The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this subchapter, *including by conducting educational seminars with Indian tribes and tribally designated housing entities on methods of using the loan guarantee program under this title.*	Different language but same intent.		
TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS Section 703 (25 U.S.C. 4212) is amended to reauthorize training and technical assistance funds to be provided for another 5 years.	**TITLE VII—OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS** Section 703 (25 U.S.C. 4212) is amended to reauthorize training and technical assistance funds to be provided for another 5 years.	No difference.	Both bills would reauthorize the training and technical assistance provisions set out in Section 701 for an additional five years. However, neither bill specifically mentions NAIHC as the recipient of such funding, despite the efforts by NAIHC and by a number of tribes/TDHEs to have such a specific reference included.	IHAC supports restoration of training and technical assistance funding to NAIHC with whatever specific language that would approve this
SEC. 8. HOUSING ASSISTANCE FOR NATIVE HAWAIIANS. Section 824 would be amended to reauthorize funding for Native Hawaiians for another 5 years.:		No similar section in SB.	HR 2786 contains language reauthorizing the Native Hawaiian housing program. The SB does not contain such language. Because there is some controversy being generated	IHAC generally supports Native Hawaiian programs but has no specific comment on this section

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There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this subchapter such sums as may be necessary for each of *fiscal years 2008, 2009, 2010, 2011 and 2012.*			over programs for Native Hawaiians, Senate staff are not including reauthorization of the Native Hawaiian housing program in the bill at this time, and intend to move forward with it on a separate track, in order to ensure that the reauthorization of NAHASDA stays on track.	